

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 AND KAVULICH, MARCH 10, 2017

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 26, 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 ~~intended to be grown~~ <--
8 ~~for biomass and biofuel production or for other beneficial~~
9 ~~purposes; establishing the Plant Pest Management Account~~
10 ~~within the General Fund; and making a related repeal.~~

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

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27 CHAPTER 1

28 PRELIMINARY PROVISIONS

29 Section 101. Short title.

30 This act shall be known and may be cited as the Controlled

1 Plant and Noxious Weed Act.

2 Section 102. Definitions.

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

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

9 (1) Is established in this Commonwealth.

10 (2) Is geographically limited.

11 (3) Is intended to be eradicated.

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

15 (1) Is widely established in this Commonwealth.

16 (2) Cannot feasibly be eradicated.

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

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

21 (2) Poses a potential threat if introduced in this
22 Commonwealth.

23 "Committee." The Controlled Plant and Noxious Weed Committee
24 established in section 301.

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

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

1 "Controlled plant." A plant SPECIES OR SUBSPECIES that has <--
2 been determined by the committee to be a "controlled plant" and
3 is regulated to prevent uncontained growth and to negate
4 undesirable characteristics.

5 "Department." The Department of Agriculture of the
6 Commonwealth.

7 ~~"Designee." A person who is duly authorized or appointed by <--
8 the secretary to act as the representative of the department.~~

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

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

16 "Established." Either:

17 (1) a plant or plant population found growing in this
18 Commonwealth as a wild population and capable of
19 reproduction; or

20 (2) a plant that has escaped from cultivation and is
21 reproducing.

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

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

28 "Geographically limited." Found in discrete, limited
29 locations of this Commonwealth.

30 "Individual permit." A permit that is issued by the

1 department and includes site-specific terms and conditions for:

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

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

7 ~~"Infested." The presence of a noxious weed in any stage of~~ <--
8 ~~development in a specific geographic area.~~

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

11 "Landowner." A person:

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

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

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

21 ~~"Land tenant." A person actually in possession of land.~~ <--

22 ~~"Land trust." A trust in which the corpus consists of real~~
23 ~~estate and of the trustee of which appears to have full powers~~
24 ~~with the real estate and complete legal and equitable title to~~
25 ~~the trust property.~~

26 "Lessee." A person who has entered into a contract granting
27 the person occupation or use of property during a certain period
28 OF TIME in exchange for a specified rent. <--

29 ~~"Lessor." A person who grants a lease or rents property to~~ <--
30 ~~another for a definite or indefinite period of time, by a~~

1 ~~written or oral lease, irrespective of whether a statute of~~
2 ~~fraud requires the lease to be in writing.~~

3 "Noxious weed." Either:

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

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

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

14 ~~"Noxious weed permit." An individual permit issued by the~~ <--
15 ~~department that specifies terms and conditions for distribution,~~
16 ~~cultivation or propagation of a noxious weed for research and~~
17 ~~educational purposes.~~

18 "Person." An individual, corporation, association,
19 partnership, municipality or any other entity.

20 "Plant Pest Management Account" or "account." The Plant Pest
21 Management Account established under ~~section 702~~ THE ACT OF <--
22 DECEMBER 16, 1992 (P.L.1228, NO.162), KNOWN AS THE PLANT PEST
23 ACT.

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

26 "Secretary." The Secretary of Agriculture of the
27 Commonwealth.

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

1 "Treatment measure." A method of eradicating, managing,
2 regulating or controlling noxious weeds or controlled plants
3 utilizing biological, chemical or mechanical means or a
4 combination thereof.

5 "Widely established." Growing throughout multiple counties
6 and municipalities of this Commonwealth.

7 CHAPTER 3

8 REGULATION AND ADMINISTRATION

9 Section 301. Designation of noxious weeds and controlled
10 plants.

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

12 (1) The Controlled Plant and Noxious Weed Committee
13 shall have the powers of a departmental administrative board
14 in the department.

15 (2) The committee shall be composed of:

16 (i) the secretary, who shall be the chairperson of
17 the committee;

18 (ii) the Secretary of Conservation and Natural
19 Resources;

20 (iii) the Secretary of Environmental Protection;

21 (iv) the Secretary of Transportation;

22 (v) the Executive Director of the Fish and Boat
23 Commission and the Executive Director of the Game
24 Commission;

25 (vi) the chairperson and minority chairperson of the
26 Agriculture and Rural Affairs Committee of the Senate and
27 the chairperson and minority chairperson of the
28 Agriculture and Rural Affairs Committee of the House of
29 Representatives;

30 (vii) three persons, to be appointed by the

1 secretary, who must represent the interests and concerns
2 of the following groups, organizations or industries:

3 (A) One member of a Statewide general farm
4 organization.

5 (B) One member representing the ornamental, turf
6 and horticultural industry.

7 (C) One member from an institution of higher
8 education within this Commonwealth.

9 (3) Except for appointed members, who may be represented
10 by designees selected by the secretary, members may be
11 represented by a designee selected by the member.

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

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

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

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

24 (1) A majority of the committee shall constitute a
25 quorum. A quorum of the committee shall be required to take
26 any action. All actions of the committee shall be by a
27 majority vote.

28 (2) Prior to taking any action, the committee shall be
29 required to convene a public meeting to elicit comments from
30 the regulated community and other interested parties. The

1 notice and agenda for a meeting of the committee shall
2 contain a list of the plants to be considered for addition to
3 or deletion from the noxious weed list or controlled plant
4 list. The notice and agenda for a meeting shall be published
5 in the Pennsylvania Bulletin at least one week prior to the
6 meeting, except in the case of a special meeting or
7 rescheduled meeting as allowed under 65 Pa.C.S. § 709(a)
8 (relating to public notice). All meetings shall be open to
9 the public and shall comply with the requirements of 65
10 Pa.C.S. Ch. 7 (relating to open meetings).

11 (3) The committee shall have the following powers and
12 duties:

13 (i) To establish a noxious weed list inclusive of
14 the list set forth under section 307. The committee may
15 add weeds to or delete weeds from the noxious weed list,
16 or move noxious weeds to the controlled plant list, in
17 accordance with the provisions of this act.

18 (ii) To establish a controlled plant list and to add
19 plants to or delete plants from the controlled plant list
20 in accordance with the provisions of this act. A
21 controlled plant, upon approval of the committee, may be
22 moved from the controlled plant list to the noxious weed
23 list.

24 (iii) To propose the addition or deletion of plants
25 to or from the noxious weed list or controlled plant
26 list. The committee may request that the department
27 perform a study and risk assessment related to any plant
28 the committee may consider for addition to or deletion
29 from the noxious weed list or controlled plant list.

30 (iv) To publish the noxious weed list and the

1 controlled plant list and any additions or deletions or
2 changes thereto as a notice in the Pennsylvania Bulletin.
3 Any additions to or deletions from the noxious weed list
4 or the controlled plant list shall become effective 60
5 days from publication.

6 ~~(c) Prohibitions.~~ <--

7 ~~(1) The growth, propagation or existence of a Class A~~
8 ~~noxious weed, Class B noxious weed or Class C noxious weed on~~
9 ~~any land or water or in any vessel or carrier within this~~
10 ~~Commonwealth, except for permitted research or educational~~
11 ~~purposes, is strictly prohibited.~~

12 ~~(2) Any person, including a landowner, municipality,~~
13 ~~landlord, land tenant, land trust, lessor or lessee of~~
14 ~~property where these weeds are introduced or exist may be~~
15 ~~subject to a control order.~~

16 ~~(3) An individual permit shall be required for research~~
17 ~~and educational purposes.~~

18 ~~(d) (C) Noxious weed and controlled plant seeds.--~~ <--

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

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

29 Section 302. Permits.

30 (a) General rule.--The following permitting rules apply with

1 regard to noxious weeds for research or educational purposes and
2 to controlled plants for research or marketing purposes,
3 cultivation, propagation, ~~growing,~~ storing, warehousing or <--
4 display, and for retail, wholesale ~~or production~~ or <--
5 distribution.

6 (1) For noxious weeds, the department may issue
7 individual permits. ~~The permits~~ A PERMIT may allow for the <--
8 cultivation and propagation of a noxious weed for research
9 and educational purposes only. The department shall establish
10 the criteria for a noxious weed individual permit through the
11 issuance of a temporary order, as set forth in ~~paragraph (4)~~ <--
12 SUBSECTION (D) (4). <--

13 (2) For controlled plants, the department may issue
14 individual permits or general permits. ~~The permits shall be~~ <--
15 ~~required for research, marketing, retail, wholesale or~~
16 ~~production, growth, cultivation or propagation of a~~
17 ~~controlled plant and the storage, warehousing, display or~~
18 ~~distribution of any controlled plant.~~

19 ~~(3) General permits may be issued for the research,~~
20 THE DEPARTMENT SHALL ESTABLISH THE CRITERIA FOR A CONTROLLED <--
21 PLANT INDIVIDUAL PERMIT THROUGH THE ISSUANCE OF A TEMPORARY
22 ORDER AS SPECIFIED UNDER SUBSECTION (D) (4).

23 (B) PERMIT REQUIRED.--NO PERSON MAY RESEARCH, MARKET,
24 DISTRIBUTE, TRANSPORT, CULTIVATE, HOLD, RETAIL, WHOLESALE,
25 PROPAGATE OR DISPLAY A NOXIOUS WEED OR CONTROLLED PLANT WITHOUT
26 OBTAINING A PERMIT FROM THE DEPARTMENT IN ACCORDANCE WITH THE
27 PROVISIONS OF THIS ACT.

28 (C) GENERAL PERMITS.--GENERAL PERMITS MAY BE ISSUED FOR THE
29 RESEARCH, marketing, retail, wholesale, ~~production, growth~~ <--
30 TRANSPORT, storage, warehousing, display, distribution, <--

1 cultivation or propagation of controlled plants under the
2 following circumstances:

3 ~~(i) General permits may be issued on a regional or~~ <--

4 (1) GENERAL PERMITS MAY BE ISSUED ON A REGIONAL OR <--

5 Statewide basis for controlled plants where the controlled
6 plants have similar characteristics and are capable of being
7 cultivated, propagated, processed and controlled or

8 eradicated in a similar fashion. ~~Where possible, the~~ <--

9 ~~department shall issue general permits for controlled plants~~
10 ~~for research purposes and those being marketed, cultivated,~~
11 ~~propagated or distributed for the purpose of biofuel~~
12 ~~production.~~

13 ~~(ii) General permits shall be published in the~~

14 (2) GENERAL PERMITS SHALL BE PUBLISHED IN THE <--

15 Pennsylvania Bulletin effective upon publication.

16 ~~(4) Individual permits may be issued for research or the~~ <--
17 ~~marketing, distribution, cultivation or propagation of~~
18 ~~controlled plants under the following circumstances:~~

19 ~~(i) Individual permits may be issued for any~~

20 (3) AN APPLICANT SEEKING A GENERAL PERMIT UNDER THIS <--

21 SUBSECTION SHALL INFORM THE DEPARTMENT OF THE APPLICANT'S
22 INTENDED USE OF THE GENERAL PERMIT AND COMPLETE AN
23 APPLICATION FOR APPROVAL TO OPERATE UNDER THE GENERAL PERMIT
24 REQUIREMENTS. THE APPLICATION SHALL INCLUDE A WRITTEN PLAN
25 ESTABLISHING THE PRACTICES AND METHODS THE APPLICANT WILL
26 UTILIZE IN ORDER TO ASSURE COMPLIANCE WITH THE GENERAL PERMIT
27 REQUIREMENTS ESTABLISHED BY THE DEPARTMENT. IN ADDITION TO
28 THE WRITTEN PLAN, THE APPLICATION SHALL STATE, AT A MINIMUM,
29 ALL OF THE INFORMATION REQUIRED UNDER SUBSECTION (D) (5) (I),
30 (II), (III), (IV), (V), (VI), (VII), AND (VIII).

1 (4) BEFORE THE APPROVAL AND ISSUANCE OF A GENERAL
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 REGARDING A CONTROLLED PLANT. THE
6 INSPECTION SHALL BE CONDUCTED DURING NORMAL BUSINESS HOURS.

7 (D) INDIVIDUAL PERMITS.--INDIVIDUAL PERMITS MAY BE ISSUED
8 FOR NOXIOUS WEEDS AND CONTROLLED PLANTS IN ACCORDANCE WITH THE
9 FOLLOWING:

10 (1) AN INDIVIDUAL PERMIT MAY BE ISSUED FOR ANY
11 controlled plant where:

12 ~~(A) The controlled plant has such individual~~ <--

13 (I) THE CONTROLLED PLANT HAS SUCH INDIVIDUAL <--
14 characteristics as to make it difficult or impossible for
15 the department to ~~govern or contain its cultivation,~~ <--
16 ~~propagation, control or eradication through~~ REGULATE a <--
17 general set of requirements.

18 ~~(B) The land or area on which the controlled~~ <--

19 (II) THE LAND OR AREA ON WHICH THE CONTROLLED plant <--
20 will be cultivated has such characteristics as would make
21 it difficult or impossible for the department to ~~govern,~~ <--
22 ~~contain, control or eradicate~~ REGULATE the controlled <--
23 plant.

24 ~~(C) The controlled plant is highly regulated or~~ <--

25 (III) THE CONTROLLED PLANT IS HIGHLY REGULATED OR <--
26 requires additional scrutiny because of a characteristic
27 of the plant that would be hard to control under a
28 general permit or where Federal law preempts and requires
29 such permitting.

30 ~~(ii) Individual permits shall be issued in writing~~ <--

1 (2) AN INDIVIDUAL PERMIT SHALL BE ISSUED IN WRITING to <--
2 the specific permit holder, contain the temporary order or
3 reference the regulations establishing the requirements of
4 the individual permit and be published in the Pennsylvania
5 Bulletin and effective as enumerated in paragraph ~~(6)~~ (4). <--

6 ~~(5)~~ (3) The department may establish through regulation <--
7 or a temporary order, ~~as set forth in paragraph (6),~~ <--
8 standards and requirements addressing the issuance and
9 criteria of an individual permit for noxious weeds and
10 controlled plants.

11 ~~(6)~~ (4) For each noxious weed, the department shall <--
12 issue a temporary order establishing the criteria for the
13 individual permit to be issued. For a controlled plant, upon
14 determining that a set of characteristics or circumstances
15 requires the issuance of an individual permit, the department
16 shall issue a temporary order establishing the criteria for
17 the individual permit to be issued. The following shall
18 apply:

19 (i) Through the temporary order, the department may
20 establish restrictions, AND standards, including bonding <--
21 requirements, ~~and penalties~~ as the department determines <--
22 are necessary to:

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

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

1 Commonwealth's flora, fauna and natural resources.

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

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

10 (ii) The department shall publish the temporary
11 order as a notice in the Pennsylvania Bulletin. A copy of
12 the order shall also be delivered to the person seeking
13 ~~to research, market, plant or cultivate the noxious weed~~ <--
14 ~~or to research, market, plant, cultivate, warehouse,~~
15 ~~store, display, grow, produce, hold, distribute, retail,~~
16 ~~wholesale or propagate the controlled plant under the~~ THE <--
17 individual permit.

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

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

30 ~~(b) Permit required.~~

<--

1 ~~(1) No person may conduct research, market, distribute,~~
2 ~~transport, cultivate, hold, retail, wholesale, propagate or~~
3 ~~reproduce a noxious weed or controlled plant without first~~
4 ~~obtaining a permit from the department in accordance with the~~
5 ~~provisions of this act.~~

6 ~~(2) Noxious weeds may not be distributed, transported,~~
7 ~~cultivated, propagated or reproduced by any manner, except~~
8 ~~for research and educational purposes. A person proposing to~~
9 ~~distribute, transport, cultivate, propagate or reproduce~~
10 ~~noxious weeds for research or educational purposes shall~~
11 ~~apply for and receive an individual permit, for each location~~
12 ~~at which the research or educational classes will be~~
13 ~~conducted, from the department prior to undertaking the~~
14 ~~activities.~~

15 ~~(3) Controlled plants may not be utilized in research,~~
16 ~~marketed, retailed, wholesaled, distributed, transported or~~
17 ~~produced, cultivated, propagated or reproduced by any manner~~
18 ~~without a permit issued by the department. The following~~
19 ~~provisions shall apply:~~

20 ~~(i) Any person who seeks to conduct research on,~~
21 ~~market, retail, wholesale, distribute, transport or~~
22 ~~produce, cultivate, propagate or reproduce a controlled~~
23 ~~plant for which an individual permit is required shall~~
24 ~~apply for and receive an individual permit from the~~
25 ~~department, for each location at which research will be~~
26 ~~conducted or a controlled plant will be marketed,~~
27 ~~retailed, wholesaled, distributed, transported from or~~
28 ~~produced, cultivated, propagated or reproduced, prior to~~
29 ~~undertaking the activity.~~

30 ~~(ii) Where the department has established a general~~

1 ~~permit requirement for a controlled plant, a person~~
2 ~~seeking to conduct research on, market, retail,~~
3 ~~wholesale, produce, distribute, transport, cultivate,~~
4 ~~propagate or reproduce the controlled plant shall, prior~~
5 ~~to undertaking the activity, inform the department of the~~
6 ~~intent and complete an application for approval to~~
7 ~~operate under the general permit requirements. The~~
8 ~~application shall include a plan establishing the~~
9 ~~practices and methods the applicant will utilize in order~~
10 ~~to assure compliance with the general permit requirements~~
11 ~~established by the department. In addition to the written~~
12 ~~plan, the application shall state, at a minimum, all of~~
13 ~~the information required in subsection (c) (1), (2), (3),~~
14 ~~(4), (5), (6), (7) and (8).~~

15 ~~(4) Prior to the approval and issuance of an individual~~
16 ~~permit or authorization to begin research, marketing,~~
17 ~~distribution, transportation, retailing, wholesaling,~~
18 ~~production, cultivation, propagation or reproduction of a~~
19 ~~controlled plant under a general permit, the department may~~
20 ~~enter onto and inspect the land and premises and all areas of~~
21 ~~the land and premises, including buildings and conveyances,~~
22 ~~that will be utilized for or where the permitted activity~~
23 ~~will be conducted. The inspection shall be limited to normal~~
24 ~~business hours and to the areas where the permitted~~
25 ~~activities will be or are occurring.~~

26 ~~(c) Individual permit application. A written application~~
27 ~~for an individual permit shall meet the criteria established by~~
28 ~~the department through a temporary order or regulation as~~
29 ~~authorized by this act, be made on a form and a manner~~
30 ~~prescribed by the department and shall contain at least the~~

1 following:

2 ~~(1) Legal name, address and daytime and evening~~
3 ~~telephone numbers of the applicant.~~

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

13 ~~(3) For any seller, distributor, holder or depository of~~
14 ~~propagation material, the name and address and the applicable~~
15 ~~Federal or Commonwealth license or certification number or~~
16 ~~both, where applicable.~~

17 ~~(4) The United States Department of Agriculture Plants~~
18 ~~Database scientific and common names of the noxious weed or~~
19 ~~controlled plant that the applicant desires to propagate,~~
20 ~~possess, import, introduce, purchase or transport, including~~
21 ~~classification of species by sterile biotype, cultivar,~~
22 ~~variety F1 parent, variety F2 parent or other name.~~

23 ~~(5) Identity of the intended plant parts to be used and~~
24 ~~the stage of development at planting, including seed, rhizome~~
25 ~~and cutting.~~

26 ~~(6) Attestation that the plant materials have been~~
27 ~~selected from apparently disease free and pest free sources.~~

28 ~~(7) A description of the packaging and biosecurity~~
29 ~~safeguards to be utilized. Plant material shall be packaged~~
30 ~~and safeguarded sufficiently to maintain isolation from the~~

1 ~~domestic environment during transportation.~~

2 ~~(8) An attestation by the permit holder stating the~~
3 ~~permit holder shall continue to comply with the permit~~
4 ~~requirements for the duration of time the plant materials are~~
5 ~~in the permit holder's possession and that the permit holder~~
6 ~~understands and agrees to the following:~~

7 ~~(i) If the permit holder intends to transfer~~
8 ~~possession or ownership of the noxious weed or controlled~~
9 ~~plant, the permit holder shall, prior to the transfer of~~
10 ~~possession or ownership, notify the department and assure~~
11 ~~the person to whom the noxious weed or controlled plant~~
12 ~~will be transferred or sold that the permit holder has~~
13 ~~obtained the required individual permit.~~

14 ~~(ii) If the permit holder intends to stop growing or~~
15 ~~cultivating the noxious weed or controlled plant, the~~
16 ~~permit holder shall notify the department and implement~~
17 ~~all measures ordered by the department to destroy the~~
18 ~~noxious weed or controlled plant, unless another person~~
19 ~~assumes responsibility for the noxious weed or~~
20 ~~controlled plant and submits a new permit.~~

21 ~~(iii) If the permit holder abandons, relinquishes~~
22 ~~possession or ownership of, control over or~~
23 ~~responsibility for the noxious weed or controlled plant,~~
24 ~~in a manner inconsistent with the provisions of this act,~~
25 ~~all plant material regulated by the permit shall be~~
26 ~~destroyed in a manner approved by the department. The~~
27 ~~original permit holder shall continue to be responsible~~
28 ~~for the noxious weed or controlled plant, the cost of~~
29 ~~destruction and eradication of the noxious weed or~~
30 ~~controlled plant and any plant material associated~~

1 ~~therewith. The original permit holder shall continue to~~
2 ~~be subject to any and all penalty provisions established~~
3 ~~under this act.~~

4 ~~(9) Identify the use of the noxious weed or controlled~~
5 ~~plant to be permitted, including ornamental landscape,~~
6 ~~agricultural crop, feed crop, research, education, biofuel,~~
7 ~~biomass, further sale or distribution or any other particular~~
8 ~~use.~~

9 ~~(10) Detailed description of the activity, including the~~
10 ~~intended size of area to be planted and the intended date of~~
11 ~~planting.~~

12 ~~(11) Whether the noxious weed or controlled plant will~~
13 ~~be further distributed, sold, transported, replanted, used~~
14 ~~for seed or other purposes. If so, the permit shall include~~
15 ~~the name and address of the persons and locations to which~~
16 ~~the noxious weed or controlled plant will be distributed,~~
17 ~~sold or transported. If sold or distributed for further~~
18 ~~propagation, the permit shall include the information~~
19 ~~required by paragraphs (1) and (2) and the name and address~~
20 ~~of the person to which the noxious weed or controlled plant~~
21 ~~was sold or distributed for such use.~~

22 ~~(12) A written contingency plan for each site for~~
23 ~~eradication or recapture in the event of an unauthorized~~
24 ~~escape or introduction of the controlled plant.~~

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

27 ~~(d) Additional information. The secretary may request~~
28 ~~additional information from the applicant in writing after the~~
29 ~~application is received, if necessary, to evaluate the potential~~
30 ~~risk to the Commonwealth.~~

1 ~~(e) Expiration date and renewal.~~

2 ~~(1) An individual noxious weed and controlled plant~~
3 ~~permit shall expire on December 31 of each year, unless~~
4 ~~otherwise specified in the permit. An application for renewal~~
5 ~~of a permit must be made by October 1 of the year the permit~~
6 ~~expires. An application for renewal shall describe any change~~
7 ~~to the required information previously submitted. Failure to~~
8 ~~renew an individual permit shall be a violation of this act.~~

9 ~~(2) Information regarding general permit compliance~~
10 ~~shall be updated on a calendar year basis. Updated~~
11 ~~information shall be submitted to the department no later~~
12 ~~than January 10 of each new calendar year. Failure to submit~~
13 ~~the required information within the time period established~~
14 ~~in this paragraph shall be a violation of this act.~~

15 (5) A WRITTEN APPLICATION FOR AN INDIVIDUAL PERMIT SHALL <--
16 MEET THE CRITERIA ESTABLISHED BY THE DEPARTMENT THROUGH A
17 TEMPORARY ORDER OR REGULATION AS AUTHORIZED BY THIS ACT AND
18 BE MADE ON A FORM AND A MANNER AS PRESCRIBED BY THE
19 DEPARTMENT. THE APPLICATION SHALL CONTAIN AT LEAST THE
20 FOLLOWING:

21 (I) THE LEGAL NAME, ADDRESS AND DAYTIME AND EVENING
22 TELEPHONE NUMBERS OF THE APPLICANT.

23 (II) THE PHYSICAL LOCATION, INCLUDING A DETAILED
24 PLOT MAP AND DESCRIPTION OF THE SITE TO BE PLANTED OR
25 SITE WHERE THE NOXIOUS WEED OR CONTROLLED PLANT WILL BE
26 PROPAGATED, CULTIVATED, STORED OR DISTRIBUTED. THE
27 DESCRIPTION OF THE LOCATION SHALL ALSO INCLUDE THE
28 COUNTY, MUNICIPALITY AND THE NAME OF EACH ROAD BORDERING
29 THE PHYSICAL LOCATION. THE PLOT MAP SHALL BE ATTACHED TO
30 THE APPLICATION AND SHALL STATE THE GPS COORDINATES

1 OUTLINING THE BOUNDARIES OF THE SITE AND OTHER IMPORTANT
2 LANDMARKS.

3 (III) FOR A SELLER, DISTRIBUTOR, HOLDER OR
4 DEPOSITORY OF PROPAGATION MATERIAL, THE NAME AND ADDRESS
5 AND THE APPLICABLE FEDERAL OR COMMONWEALTH LICENSE OR
6 CERTIFICATION NUMBER OR BOTH, WHERE APPLICABLE.

7 (IV) THE SCIENTIFIC AND COMMON NAMES OF THE NOXIOUS
8 WEED OR CONTROLLED PLANT FOR WHICH THE APPLICANT DESIRES
9 AN INDIVIDUAL PERMIT ACCORDING TO THE UNITED STATES
10 DEPARTMENT OF AGRICULTURE PLANTS DATABASE, INCLUDING
11 CLASSIFICATION OF SPECIES BY STERILE BIOTYPE, CULTIVAR,
12 VARIETY F1 PARENT, VARIETY F2 PARENT OR OTHER NAME.

13 (V) THE IDENTITY OF THE INTENDED PLANT PARTS TO BE
14 USED AND THE STAGE OF DEVELOPMENT AT PLANTING, INCLUDING
15 SEED, RHIZOME AND CUTTING.

16 (VI) ATTESTATION THAT THE PLANT MATERIALS HAVE BEEN
17 SELECTED FROM APPARENTLY DISEASE-FREE AND PEST-FREE
18 SOURCES.

19 (VII) A DESCRIPTION OF THE PACKAGING AND BIOSECURITY
20 SAFEGUARDS TO BE UTILIZED. PLANT MATERIAL SHALL BE
21 PACKAGED AND SAFEGUARDED SUFFICIENTLY TO MAINTAIN
22 ISOLATION FROM THE DOMESTIC ENVIRONMENT DURING
23 TRANSPORTATION.

24 (VIII) AN ATTESTATION BY THE APPLICANT STATING THE
25 APPLICANT SHALL CONTINUE TO COMPLY WITH THE PERMIT
26 REQUIREMENTS FOR THE DURATION OF TIME THE PLANT MATERIALS
27 ARE IN THE PERMIT HOLDER'S POSSESSION AND THAT THE PERMIT
28 HOLDER UNDERSTANDS AND AGREES TO THE FOLLOWING:

29 (A) IF THE PERMIT HOLDER INTENDS TO TRANSFER
30 POSSESSION OR OWNERSHIP OF THE NOXIOUS WEED OR

1 CONTROLLED PLANT, THE PERMIT HOLDER SHALL, BEFORE
2 THE TRANSFER OF POSSESSION OR OWNERSHIP, NOTIFY
3 THE DEPARTMENT AND ASSURE THE PERSON TO WHOM THE
4 NOXIOUS WEED OR CONTROLLED PLANT WILL BE
5 TRANSFERRED OR SOLD THAT THE PERMIT HOLDER HAS
6 OBTAINED THE REQUIRED INDIVIDUAL PERMIT.

7 (B) IF THE PERMIT HOLDER INTENDS TO STOP
8 GROWING OR CULTIVATING THE NOXIOUS WEED OR
9 CONTROLLED PLANT, THE PERMIT HOLDER SHALL NOTIFY
10 THE DEPARTMENT AND IMPLEMENT ALL MEASURES ORDERED
11 BY THE DEPARTMENT TO DESTROY THE NOXIOUS WEED OR
12 CONTROLLED PLANT, UNLESS ANOTHER PERSON ASSUMES
13 RESPONSIBILITY FOR THE NOXIOUS WEED OR
14 CONTROLLED PLANT AND IS ISSUED AN INDIVIDUAL
15 PERMIT.

16 (C) IF THE PERMIT HOLDER ABANDONS,
17 RELINQUISHES POSSESSION OR OWNERSHIP OF, CONTROL
18 OVER OR RESPONSIBILITY FOR THE NOXIOUS WEED OR
19 CONTROLLED PLANT, IN A MANNER INCONSISTENT WITH
20 THE PROVISIONS OF THIS ACT, ALL PLANT MATERIAL
21 REGULATED BY THE PERMIT SHALL BE DESTROYED IN A
22 MANNER APPROVED BY THE DEPARTMENT. THE ORIGINAL
23 PERMIT HOLDER SHALL CONTINUE TO BE RESPONSIBLE
24 FOR THE NOXIOUS WEED OR CONTROLLED PLANT, THE
25 COST OF DESTRUCTION AND ERADICATION OF THE
26 NOXIOUS WEED OR CONTROLLED PLANT AND ANY PLANT
27 MATERIAL ASSOCIATED WITH THE NOXIOUS WEED OR
28 CONTROLLED PLANT. THE ORIGINAL PERMIT HOLDER
29 SHALL CONTINUE TO BE SUBJECT TO THE PENALTIES
30 IMPOSED UNDER THIS ACT.

1 (IX) THE IDENTIFICATION OF THE USE OF THE
2 NOXIOUS WEED OR CONTROLLED PLANT TO BE PERMITTED,
3 INCLUDING ORNAMENTAL LANDSCAPE, AGRICULTURAL CROP,
4 FEED CROP, RESEARCH, EDUCATION, BIOFUEL, BIOMASS,
5 FURTHER SALE OR DISTRIBUTION OR ANY OTHER PARTICULAR
6 USE.

7 (X) A DETAILED DESCRIPTION OF THE ACTIVITY
8 AUTHORIZED BY THE PERMIT, INCLUDING THE INTENDED SIZE
9 OF THE AREA TO BE PLANTED AND THE INTENDED DATE OF
10 PLANTING.

11 (XI) WHETHER THE NOXIOUS WEED OR CONTROLLED
12 PLANT WILL BE FURTHER DISTRIBUTED, SOLD, TRANSPORTED,
13 REPLANTED, USED FOR SEED OR OTHER PURPOSES. IF THE
14 NOXIOUS WEED OR CONTROLLED PLANT WILL BE FURTHER
15 DISTRIBUTED, SOLD, TRANSPORTED, REPLANTED, USED FOR
16 SEED OR OTHER PURPOSES, THE PERMIT SHALL INCLUDE THE
17 NAME AND ADDRESS OF THE PERSON AND LOCATION TO WHICH
18 THE NOXIOUS WEED OR CONTROLLED PLANT WILL BE
19 DISTRIBUTED, SOLD OR TRANSPORTED. IF SOLD OR
20 DISTRIBUTED FOR FURTHER PROPAGATION, THE APPLICATION
21 SHALL INCLUDE THE INFORMATION REQUIRED UNDER
22 SUBPARAGRAPHS (I) AND (II) AND THE NAME AND ADDRESS
23 OF THE PERSON TO WHICH THE NOXIOUS WEED OR CONTROLLED
24 PLANT WAS SOLD OR DISTRIBUTED FOR SUCH USE.

25 (XII) A WRITTEN CONTINGENCY PLAN FOR EACH SITE
26 FOR ERADICATION OR RECAPTURE IN THE EVENT OF AN
27 UNAUTHORIZED ESCAPE OR INTRODUCTION OF THE NOXIOUS
28 WEED OR CONTROLLED PLANT.

29 (XIII) AN ATTESTATION THAT THE APPLICANT SHALL
30 COMPLY WITH ALL TERMS AND CONDITIONS CONTAINED IN THE

1 PERMIT.

2 (6) THE SECRETARY MAY REQUEST ADDITIONAL INFORMATION, IF
3 NECESSARY, FROM THE APPLICANT IN WRITING AFTER THE
4 APPLICATION IS RECEIVED TO EVALUATE THE POTENTIAL RISK TO THE
5 COMMONWEALTH.

6 (7) AN INDIVIDUAL PERMIT SHALL EXPIRE ON DECEMBER 31 OF
7 EACH YEAR, UNLESS OTHERWISE SPECIFIED IN THE PERMIT. AN
8 APPLICATION FOR RENEWAL OF AN INDIVIDUAL PERMIT MUST BE MADE
9 BY OCTOBER 1 OF THE YEAR THE PERMIT EXPIRES. AN APPLICATION
10 FOR RENEWAL SHALL DESCRIBE ANY CHANGE TO THE REQUIRED
11 INFORMATION PREVIOUSLY SUBMITTED. FAILURE TO RENEW AN
12 INDIVIDUAL PERMIT SHALL BE A VIOLATION OF THIS ACT.

13 (8) GENERAL INFORMATION REGARDING PERMIT COMPLIANCE
14 SHALL BE UPDATED ON A CALENDAR YEAR BASIS. UPDATED
15 INFORMATION SHALL BE SUBMITTED TO THE DEPARTMENT NO LATER
16 THAN JANUARY 10 OF EACH NEW CALENDAR YEAR. FAILURE TO SUBMIT
17 THE REQUIRED INFORMATION WITHIN THE TIME PERIOD ESTABLISHED
18 UNDER THIS PARAGRAPH SHALL BE A VIOLATION OF THIS ACT.

19 (9) BEFORE THE APPROVAL AND ISSUANCE OF AN INDIVIDUAL
20 PERMIT, THE DEPARTMENT MAY ENTER ONTO AND INSPECT THE LAND
21 AND PREMISES, INCLUDING BUILDINGS AND CONVEYANCES, THAT WILL
22 BE UTILIZED FOR THE PURPOSE OF ENGAGING IN AN ACTIVITY
23 AUTHORIZED BY THE PERMIT. THE INSPECTION SHALL BE LIMITED TO
24 NORMAL BUSINESS HOURS.

25 ~~(f)~~ (E) Notice of closing, change of name or moving <--
26 location.--

27 (1) Any person who holds a permit ~~or is required to hold~~ <--
28 ~~a permit~~ under this act shall notify the department, in
29 writing, prior to any change of status related to the permit,
30 including:

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

3 (ii) Intent to move the location of the business or
4 entity or the location of the activity specifically
5 authorized by the permit.

6 (iii) Intent to discontinue the activities
7 specifically authorized by the permit.

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

19 (3) Failure to notify the department or otherwise comply
20 with the provisions of this subsection shall be a violation
21 of this act.

22 ~~(g)~~ (F) Revocation or suspension.--Within 30 days of receipt <--
23 of a notice of revocation, the permit holder may apply for an
24 amendment to the permit or request a hearing as outlined in
25 section 312. The secretary may revoke or suspend all or part of
26 a permit issued under this section when:

27 (1) The secretary determines that a ~~permittee~~ PERMIT <--
28 HOLDER has failed to comply with the requirements of this
29 act.

30 (2) It is necessary to protect the interests of the

1 public, to protect native plant and animal populations in
2 this Commonwealth, or to otherwise protect this
3 Commonwealth's natural resources.

4 Section 303. Prohibited acts.

5 (a) General compliance.--It shall be a violation of this act
6 to fail to comply with any provision of this act or any
7 regulation, permit requirement or order established under this
8 act.

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

13 (c) Controlled plants.--It shall be a violation of this act
14 to ~~conduct~~ research, market, hold, warehouse, retail, wholesale, <--
15 ~~produce~~, TRANSPORT, DISPLAY, distribute, cultivate or propagate <--
16 a controlled plant without a permit issued by the department.

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

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

25 (1) conceal a noxious weed or controlled plant from
26 inspection; or

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

30 ~~(f) Noncompliance with permit requirements. It shall be a~~ <--

1 ~~violation of this act to fail to comply with any of the~~
2 ~~requirements established in a general or individual permit.~~

3 Section 304. Noxious weed control areas.

4 ~~(a) General rule. The department may establish a noxious~~ <--

5 (A) GENERAL RULE.--THE FOLLOWING APPLY: <--

6 (1) THE DEPARTMENT MAY ESTABLISH A NOXIOUS weed control
7 area through a ~~noxious weed~~ control order issued by the <--
8 department. The order shall be published in the Pennsylvania
9 Bulletin and disseminated to persons in the noxious weed
10 control area that will be affected by the order. A ~~noxious~~ <--
11 ~~weed~~ control order shall remain in effect until such time as
12 it is rescinded by the department or until the criteria set
13 forth in the ~~noxious weed~~ control order are established by <--
14 regulation. ~~The purpose of a noxious weed control order shall~~ <--
15 ~~be to prevent the dissemination of noxious weeds within this~~
16 ~~Commonwealth.~~

17 ~~(b) Notice. The department shall give notice of the~~
18 ~~establishment of a noxious weed control area and the noxious~~
19 ~~weed control order. Within the noxious weed control area, the~~

20 (2) WITHIN THE NOXIOUS WEED CONTROL AREA, THE department <--
21 may prohibit, without inspection, the movement, shipment or
22 transportation of any noxious weed or other material capable
23 of carrying the noxious weed from the area under the ~~noxious~~ <--
24 ~~weed~~ control order.

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

1 ~~for the noxious weeds to be implemented by the landowner, lessee~~
2 ~~or other affected person.~~

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

8 Section 305. Control orders.

9 (a) Noxious weeds.--

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

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

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

26 (b) Controlled plants.--

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

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

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

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

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

21 Section 306. Compliance with orders.

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

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

30 (1) If the person subject to the control order fails to

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

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

15 Section 307. Noxious weed list.

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

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

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

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

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

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

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

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

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

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

3 (10) *Orobanche* L. (commonly known as broomrape).

4 (11) *Pueraria* DC. (commonly known as kudzu).

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

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

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

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

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

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

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

21 (7) *Sorghum bicolor* L. Moench (commonly known as
22 shattercane).

23 (8) *Sorghum halepense* (L.) Pers. (commonly known as
24 Johnson grass).

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

29 ~~(d) Committee determination. Any plant or weed designated~~ <--
30 ~~as a noxious weed as authorized by section 301.~~

1 Section 308. Fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ~~(3)~~ (1) Issue and enforce a written control order to any <--
29 person in possession of a noxious weed or controlled plant.

30 ~~(4)~~ (2) Issue and enforce written permits and permit <--

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

6 ~~(5)~~ (3) When utilizing any enforcement tool authorized <--
7 by this act to control, remediate, contain or eradicate a
8 noxious weed or controlled plant, ~~and~~ OR to recover, from the <--
9 noncomplying person or landowner, expenses and costs incurred
10 in such enforcement and compliance actions. The department
11 may impose additional civil or criminal penalties for failure
12 to comply. Such penalties shall include the reasonable cost
13 of eradication and compliance expenses incurred by the
14 department.

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

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

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

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

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

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

12 ~~(e) (C) Search warrants.--~~ <--

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

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

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

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

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

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

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

13 ~~(f)~~ (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 ~~or required~~ <--
18 ~~to hold~~ a permit under this act.

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

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

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

1 committee.

2 Section 310. Stop-sale orders.

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

16 (b) Official marking of noxious weeds and controlled plants
17 ~~under~~ SUBJECT TO a stop-sale order.-- <--

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

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

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

28 Section 311. Seizure and condemnation.

29 (a) General rule.--Where the distribution, transportation,
30 cultivation, propagation, ~~reproduction~~ MARKETING, RETAIL, <--

1 WHOLESale, HOLDING, WAREHOUSING, research or educational
2 practices of a noxious weed or controlled plant is not in
3 compliance with the provisions of this act or any regulation
4 promulgated or order issued under this act, the department, in
5 addition to any other action ~~allowed~~ AUTHORIZED under this act, <--
6 may file a complaint before a court of competent jurisdiction in
7 the area in which the noxious weed or controlled plant is
8 located, or before the Commonwealth Court, requesting such
9 injunctive relief as necessary to prevent harm and requesting an
10 order of seizure and condemnation be issued.

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

18 Section 312. Appeal process.

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

26 Section 313. Cooperation with other entities.

27 The department may cooperate and enter into agreements with
28 any individual, person, organization or Federal, State, county,
29 or municipal agency for the purpose of implementing the
30 provisions of this act. The department may assist in the

1 enforcement of any Federal noxious weed quarantine established
2 under Federal act or regulations.

3 Section 314. Rules and regulations.

4 The department may promulgate rules and regulations and
5 establish and enforce orders necessary for administration and
6 implementation of this act. IN ACCORDANCE WITH THE ACT OF JULY <--
7 31, 1968 (P.L.769, NO.240), REFERRED TO AS THE COMMONWEALTH
8 DOCUMENTS LAW, THE ACT OF OCTOBER 15, 1980 (P.L.950, NO.164),
9 KNOWN AS THE COMMONWEALTH ATTORNEYS ACT, AND THE ACT OF JUNE 25,
10 1982 (P.L.633, NO.181), KNOWN AS THE REGULATORY REVIEW ACT.

11 CHAPTER 5

12 ENFORCEMENT

13 Section 501. Unlawful conduct.

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

17 Section 502. Interference with inspector, agent or employee of
18 department.

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

26 Section 503. Enforcement and penalties.

27 (a) Criminal penalties.--Unless otherwise specified, a
28 person who violates a provision of this act or a rule or
29 regulation adopted under this act or any order issued under this
30 act:

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

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

13 (b) Civil penalties.--

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

26 (2) No civil penalty shall be assessed unless the person
27 assessed the penalty has been given notice and an opportunity
28 for a hearing on the assessment in accordance with the
29 provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice
30 and procedure of Commonwealth agencies) and 7 Subch. A

1 (relating to judicial review of Commonwealth agency action).

2 Section 504. Injunctive relief.

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

10 Section 505. De minimis violations.

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

17 CHAPTER 7

18 MISCELLANEOUS PROVISIONS

19 ~~Section 701. Transfer.~~

<--

20 ~~The amount of \$300,000 shall be transferred from the General~~
21 ~~Fund to the account to be utilized for the purposes enumerated~~
22 ~~under this act.~~

23 Section 702 701. Disposition of funds.

<--

24 (a) Plant Pest Management Account.--Money received from
25 permitting fees, control work reimbursement, fines and penalties
26 under this act shall be paid into ~~a special nonlapsing~~
27 ~~restricted account in the General Fund, to be known as the Plant~~
28 Pest Management Account.

<--

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

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

3 (2) State funds appropriated to the department for
4 purposes of this act.

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

7 Section ~~703~~ 702. Preemption. <--

8 All local laws contrary to this act are preempted.

9 Section ~~704~~ 703. Abrogation. <--

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

14 Section ~~705~~ 704. Repeals. <--

15 Repeals are as follows:

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

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

20 (3) 3 Pa.C.S. Ch. 71 is repealed insofar as it is
21 inconsistent with this act.

22 Section ~~706~~ 705. Effective date. <--

23 This act shall take effect in 60 days.