

**PROPOSED REVISION
NOXIOUS WEED AND CONTROLLED PLANT ACT**

4-9-2014

An Act relating to noxious weeds and controlled plants; creating a Noxious Weed and Controlled Plant Committee and defining its powers and duties; imposing powers and duties on the Secretary of Agriculture and municipalities; providing penalties; creating a category of controlled plants and providing for the permitting of controlled plants intended to be grown for biomass and biofuel production or for other beneficial purposes; and making a repeal. April 7, 1982, P.L. 228, No. 74.

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

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Section 1. Short title

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

Section 2. Definitions

The following words and phrases when used in this Chapter shall have the meanings given to them in this Section unless the context clearly indicates otherwise:

Class A noxious weed - any weed listed in Section 9(a) or a weed that has been determined by the Noxious Weed and Controlled Plant Committee to be a Class A Noxious Weed. Weeds in this category are established in the Commonwealth, are geographically limited and are intended to be eradicated.

Class B noxious weed - any weed listed in Section 9(b) or a weed that has been determined by the Noxious Weed and Controlled Plant Committee to be a Class B Noxious Weed. Weeds in this category are widely established in the Commonwealth and it is not feasible to eradicate them.

Class C noxious weed - any weed listed in Section 9(c) or a weed that has been determined by the Noxious Weed and Controlled Plant Committee to be a Class C Noxious Weed. Weeds in this category are not known to exist in the Commonwealth but pose a potential threat if introduced.

Controlled plant - any plant that has been determined by the Noxious Weed and Controlled Plant Committee to be a Controlled Plant. Plants in this category need to be regulated to prevent uncontained growth and to negate undesirable characteristics. Plants in this category are typically fast growing and may include those grown for biomass and biofuel production or for other beneficial characteristics. Either an individual or general permit shall be required to distribute, cultivate or propagate these plants.

Committee - the Noxious Weed and Controlled Plant Committee.

Control - the management of the population of a noxious weed or controlled plant to an acceptable level, including eradication, as determined by the Department.

Control order - a written order issued by the Department to a person detailing required treatment measures to control noxious weeds or controlled plants.

Cultivate - to grow or tend a plant or a crop.

Department - the Department of Agriculture of the Commonwealth.

Designee - Any person duly authorized or appointed by the Secretary to act as the representative of the Department of Agriculture in carrying out the provisions of this Chapter.

Distribute or Distribution - to barter, consign, exchange, give away, import, in any way transfer, offer for sale, sell, or otherwise supply or transport a noxious weed or controlled plant in this Commonwealth.

Eradication - the elimination or removal of a noxious weed or controlled plant so that no further growth occurs for at least 3 consecutive years.

Established - a plant is considered established if a plant population is found growing in Pennsylvania as a wild population and capable of reproduction, or a plant that has escaped from cultivation and is reproducing.

Federal noxious weed - any weed listed in Title 7 Code of Federal Regulations (CFR), Section 360.200 which is hereby incorporated by reference including subsequent amendments and additions.

Geographically limited - found in discrete, limited locations of the Commonwealth.

General Permit - A regional or statewide permit issued by the Department for a controlled plant. The permit establishes specific terms and conditions for distribution, cultivation or propagation of the controlled plant without the need for individual permits.

Individual Permit - a permit issued by the Department specifying site specific terms and conditions for distribution, cultivation or propagation of a controlled plant or for research and educational purposes related to a noxious weed.

Infested - the presence of a noxious weed in any stage of development in a specific geographic area.

Landlord - A person of whom lands or tenements are holden. Any person being the owner of an estate in land, or a rental property, has leased it to another person often called the tenant or lessor.

Landowner - the person in whom is vested the ownership, dominion or title of property and in whom one or more interests are vested for his own benefit; proprietor. One who owns the fee and who has the right to dispose of the property and includes one having a possessory right to land or the person occupying or cultivating it. The term shall include all Departments, boards, commissions, agencies and instrumentalities of the Commonwealth, its political subdivisions and the Federal Government.

Land tenant - The person actually in possession of the land.

Land trust - A trust in which corpus consist of real estate and in which deed to trustee appears to confer upon him full powers to deal with the real estate and complete legal and equitable title to trust property.

Lessee - One who rents property from another. Any person who has entered into a contract granting that person occupation or use of property during a certain period in exchange for a specified rent. In the case of real estate, the lessee is also known as the tenant. Any person that holds an estate by virtue of a lease. Any person given possession of land which is exclusive even of the landlord, except as the lease permits his entry and authority to demand rent or enter to make repairs.

Lessor - A person who grants a lease or rents property to another. In the case of real estate the lessor is also known as the landlord. A person who leases land for a definite or indefinite period of time, by a written or oral lease, irrespective of whether a statute of fraud requires the lease to be in writing.

Municipality - A legally incorporated or duly authorized association of inhabitants of limited area for local governmental or other public purposes. A city, borough, town, township or village. A body politic created by the incorporation of the people of a prescribed locality invested with subordinate powers of legislation to assist in the civil government of the state and to regulate and administer local and internal affairs of the community.

Noxious weed - a plant part or plant in any stage of development that is determined to be injurious to crops, livestock, agricultural land or other property including forest land and bodies of water, or any weed listed in Title 7 Code of Federal Regulations (CFR), Section 360.200 which is hereby incorporated by reference including subsequent amendments and additions.

Noxious weed control area - A geographic area of the Commonwealth, including, but not limited to, the entire state, municipality, or any part or tract of land or body of water where a noxious weed must be controlled as prescribed under this Act.

Noxious weed permit - an individual permit issued by the Department specifying specific terms and conditions for distribution, cultivation or propagation of a noxious weed **only** for research and educational purposes.

Propagate - to increase, multiply or spread a plant or crop through planting, cultivation or any means of reproduction.

Person - an individual, corporation, association, partnership, municipality or any other entity.

Secretary - the Secretary of Agriculture of the Commonwealth or the Secretary's designee.

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

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

Widely established - growing throughout multiple counties and municipalities of the Commonwealth.

Section 3. Designation of Noxious Weeds and Controlled Plants.

(a) Noxious Weed and Controlled Plant Committee. There is hereby created a committee to be known as the Noxious Weed and Controlled Plant Committee, which shall have the powers of a Departmental administrative board in the Department of Agriculture. It shall be composed of the Secretary of Agriculture, who shall be the chairperson of the Committee, the Secretary of Conservation and Natural Resources, the Secretary of Environmental Protection, the Secretary of Transportation, the Executive Directors of the Fish & Boat Commission and the Game Commission and the Chairs of the Agriculture and Rural Affairs Committees of the Senate and House of Representatives all of whom may designate alternates to serve in their absence. In addition, the Secretary shall appoint five members of the general public as set forth hereafter:

(1) The five appointed members of the general public shall represent the interests and concerns of the following groups, organizations or industries and shall be chosen from a list of nominees submitted by such groups, organizations or industries:

- (i) One member representing environmental interests.
- (ii) One member representing statewide farm/agricultural organizations.
- (iii) One member representing the forest products, ornamental, turf and horticultural industry.
- (iv) One member representing the agricultural industry.
- (v) One member representing agriculture and environmental research.

(2) The five appointed members of the general public shall serve four year terms except that such terms shall initially be staggered with two of the five members serving two year terms.

(3) The five appointed members of the general public shall be required to attend all regularly scheduled meetings of the Committee unless excused by the Secretary for good cause. Alternates may not be designated. More than two absences from regularly scheduled Committee meetings in any calendar year without notice to the Secretary and good cause may result in the Secretary, at his sole discretion, removing such member from the Committee. Upon removal the position shall be filled in the manner set forth in subparagraph (4) below.

(4) Successors to fill unexpired or new terms shall be appointed by the Secretary from a list of nominees submitted by the group, organization or industry to be represented.

(5) With the exception of a member that has been removed by the Secretary, a general public Committee member may continue to hold such position after his term has expired and until a successor has been appointed. However, in no case shall such time period be longer than six months beyond that member's original term of office.

(b) Powers and duties of the Noxious Weed and Controlled Plant

Committee. A majority of the Committee shall constitute a quorum. A quorum of the Committee shall be required to take any action. All actions of the Committee shall be by a majority vote. Prior to taking any action the Committee shall be required to convene a public meeting to elicit comments from the regulated community and other interested parties. The notice and agenda for a meeting of the Committee shall contain a list of the plants to be considered for addition or deletion to the noxious weed or controlled plant list. The Committee shall have the following authority:

(1) To establish a Noxious Weed List inclusive of the list set forth under Section 9 of this Chapter. The Committee shall have the authority, to add weeds to or delete weeds from the Noxious Weed List, or move noxious weeds to the Controlled Plant List, in accordance with the provisions of this Chapter.

(2) To establish a Controlled Plant List and to add plants to or delete plants from the Controlled Plant List in accordance with the provisions of this Chapter. A controlled plant, upon approval of the Committee, may be moved from the Controlled Plant List to the Noxious Weed List.

(3) To propose the addition or deletion of plants to or from the Noxious Weed List or Controlled Plant List and may request that the Department do a study and risk assessment related to any plant the Committee will be considering for addition or deletion to the Noxious Weed List or Controlled Plant List.

(4) The Committee shall publish the Noxious Weed List and the Controlled Plant List and any additions or deletions or changes thereto in the Pennsylvania Bulletin. Any additions or deletions to the Noxious Weed List or the Controlled Plant List shall become effective 60 days from publication.

(c) Prohibitions.

(1) Class A noxious weed—The growth, propagation or existence of such a weed on any land or water or in any vessel or carrier within the Commonwealth, except for permitted research or educational purposes, is strictly prohibited. Any person, including landowners, municipalities, landlords, land tenants, land trusts, lessors or lessees of property where these weeds exist may be subject to a control order. An individual permit shall be required for research and educational purposes.

(2) Class B noxious weed—The growth, propagation or existence of such a weed on any land or water or in any vessel or carrier within the Commonwealth, except for permitted research or educational purposes, is prohibited. Any person, including landowners, municipalities, landlords, land tenants, land trusts, lessors or lessees of property where these weeds exist may be subject to a control order. An individual permit shall be required for research and educational purposes.

(3) Class C noxious weed—The growth, propagation or existence of such a weed on any land or water or in any vessel or carrier within the Commonwealth, except for permitted research or educational purposes, is strictly prohibited. Any person, including landowners, municipalities, landlords, land tenants, land trusts, lessors or lessees of property where these weeds are introduced shall be subject to a control order. An individual permit shall be required for research and educational purposes.

Section 4. Permits

(a) **General rule.** – The following general permitting rules apply with regard to noxious weeds for research or educational purposes and to controlled plants that are cultivated, propagated, grown, stored, warehoused, held or displayed or for retail, wholesale or commercial production or distribution.

(1) Noxious Weeds - Noxious weed permits shall be individual permits and may allow for the cultivation and propagation of a noxious weed for research and educational purposes only. The Department shall have the power to establish the criteria for a noxious weed individual permit through the issuance of a temporary order, as set forth in subsection (a)(4) of this Section 4.

(2) Controlled Plants - Individual Permits or General Permits shall be required for the retail, wholesale or commercial production, cultivation or propagation of a controlled plant and the storage, warehousing, display or distribution of any controlled plant.

(i) General Permits. General Permits may be issued for the distribution, cultivation or propagation of controlled plants under the following circumstances:

(A) General permits may be issued on a regional or statewide basis for controlled plants where the controlled plants have similar characteristics and are capable of being cultivated, propagated, processed and controlled or eradicated in a similar fashion. Where possible, the Department will endeavor to issue general permits for controlled plants being cultivated, propagated or distributed for the purpose of biofuel production.

(B) General permits will be published in the Pennsylvania Bulletin and shall be effective upon publication.

(ii) Individual Permits. Individual Permits may be issued for the distribution, cultivation or propagation of controlled plants under the following circumstances:

(A) Individual permits may be issued for any controlled plant where the controlled plant has such individual characteristics as to make it difficult or impossible for the Department to govern or contain its cultivation, propagation, control or eradication through a general set of requirements; or where the land or area on which the controlled plant will be cultivated has such characteristics as would make it difficult or impossible for the

Department to govern, contain, control or eradicate the controlled plant.

(B) Individual permits shall be issued in writing to the specific permit holder, shall contain the temporary order or reference the regulations establishing the requirements of the individual permit and will be published in the Pennsylvania Bulletin and shall be effective as set forth below in subsection (a)(4) of this Section 4.

(3) The Department may establish through regulation or a temporary order, as set forth in subsection (4) of this Section 4 below, standards and requirements addressing the issuance and criteria of an individual permit for noxious weeds and controlled plants.

(4) Temporary Order – For all noxious weeds the Department shall issue a temporary order establishing the criteria for the individual permit to be issued. For a controlled plant, upon determining that a set of characteristics or circumstances requires the issuance of an individual permit the Department shall issue a temporary order establishing the criteria for the individual permit to be issued.

(i) Through the temporary order the Department may establish such restrictions, standards, including bonding requirements, and penalties as the Department determines are necessary to:

(A) Identify the specific characteristics of the noxious weed or controlled plant or the circumstances that require the issuance of the individual permit;

(B) Assure the permit holder institutes proper containment, remediation and eradication criteria to protect the interests of the public, the native plant and animal populations in the Commonwealth and the Commonwealth's flora, fauna and natural resource;

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

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

(ii) The Department shall publish the temporary order in the Pennsylvania Bulletin. A copy of the order shall also be delivered, through hand delivery, certified or regular mail, to the person seeking to plant or cultivate the noxious weed or to plant, cultivate, distribute or propagate the controlled plant under the individual permit.

(iii) The provisions of the temporary order shall be applicable as of the date of actual or constructive notice of the order or any later date specified in that temporary order. Publication in the Pennsylvania Bulletin shall affect constructive notice.

(iv) The temporary order shall remain in effect for a period not to exceed the length of time for which the individual permit was issued,

unless such permit is reissued or extended, or until the criteria set forth in the temporary order are established in regulation, whichever occurs first.

(b) Permit required. – No person may distribute, transport, cultivate, propagate or reproduce any noxious weed or controlled plant without first obtaining a permit from the Department in accordance with the provisions of this Chapter.

(1) Noxious weeds - Noxious weeds may not be distributed, transported, cultivated, propagated or reproduced by any manner, except for research and educational purposes. Any person proposing to distribute, transport, cultivate, propagate or reproduce noxious weeds for research or educational purposes shall apply for and receive an individual permit, for each location at which the research or educational classes will be conducted, from the Department prior to undertaking such activities.

(2) Controlled Plants – Controlled plants may not be retailed, wholesaled, distributed, transported or commercially produced, cultivated, propagated or reproduced by any manner without a permit issued by the Department.

(i) Individual permit required - Any persons seeking to retail, wholesale, distribute, transport or commercially produce, cultivate, propagate or reproduce a controlled plant for which an individual permit is required shall apply for and receive an individual permit from the Department, for each location at which a controlled plant will be retailed, wholesaled, distributed, transported from or commercially produced, cultivated, propagated or reproduced, prior to undertaking such activities.

(ii) General permit authorized – Where the Department has established a general permit for the controlled plant, a person seeking to retail, wholesale, commercially produce, distribute, transport, cultivate, propagate or reproduce that controlled plant shall, prior to undertaking such activities, inform the Department of such intent and complete an application for approval to operate under the general permit requirements. The application shall include a plan establishing the practices and methods the applicant will utilize in order to assure compliance with the general permit requirements established by the Department. In addition to the written plan, the application shall set forth, at a minimum, all of the information required in subparagraphs (1)-(8) of subsection (c) of this Section 4.

(3) Right of Entry and Inspection – Prior to the approval and issuance of an individual permit or authorization to begin distribution, transportation, cultivation, propagation or reproduction of a controlled plant under a general permit, the Department shall have the authority to enter onto and inspect the land and premises and all areas of the land and premises, including buildings and conveyances, that will be utilized for or where the permitted activity will be conducted. Such inspection shall be limited to normal business hours and to the areas where the permitted activities will be or are occurring.

(c) Individual permit application. – A written application for an individual permit shall meet the criteria established by the Department through a temporary order or regulation as allowed under this chapter, be made on a form prescribed by the Department and shall contain at least the following:

(1) Legal name, address, daytime and evening phone numbers of the applicant.

(2) Physical location, including a detailed plot map and description of the site(s) to be planted or site(s) at which the noxious weed or controlled plant will be propagated, cultivated, stored or distributed. The description of the location shall also include the county(ies), municipality(ies) and the name of the road or roads bordering the physical location. The plot map shall be attached to the application and shall set forth the GPS coordinates outlining the boundaries of the site and other important landmarks.

(3) For any seller, distributor, holder or depository of propagation material, provide the name and address and the applicable Pennsylvania, State, Commonwealth or Federal license or certification number or both where applicable.

(4) The USDA Plants Database scientific and common name(s) of the noxious weed or controlled plant(s) that the applicant desires to propagate, possess, import, introduce, purchase or transport, including classification of species (sterile biotype, cultivar, variety F1 parent; F2 parent, other).

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

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

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

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

(i) If the permit holder intends to transfer possession or ownership of the noxious weed or controlled plant the permit holder shall, prior to such transfer of possession or ownership, notify the Department and assure the person to whom the noxious weed or controlled plant will be transferred or sold has obtained the required individual permit.

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

(iii) If the Permit holder abandons, relinquishes possession or ownership of, control over or responsibility for the noxious weed or controlled plant, in a manner not consistent with the provisions of this chapter, all plant material regulated by the permit shall be destroyed in a manner approved by the Department. The original permit holder shall continue to be responsible for the noxious weed or controlled plant and shall be responsible for the cost of destruction and eradication of the noxious weed or controlled plant and any plant material associated

therewith and shall continue to be subject to any and all penalty provisions established in this Chapter.

(9) Identify the use of the noxious weed or controlled plant to be permitted, such as, ornamental landscape, agricultural crop, feed crop, research, educational, biofuel, biomass, further sale or distribution, or any other particular use.

(10) Detailed description of the activity to include the intended size of area to be planted and the intended date of planting.

(11) Whether the noxious weed or controlled plant will be further distributed, sold, transported, replanted, used for seed or other purposes. If so the permit shall include the name and address of the persons and locations to which the noxious weed or controlled plant will be distributed, sold or transported. If sold or distributed for further propagation, the permit shall include the information required by paragraphs (1) and (2) of this subsection (c) and the name and address of the person(s) to which the noxious weed or controlled plant was sold or distributed for such use.

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

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

(d) Additional information. - The Secretary may request additional information from the applicant in writing after the application is received if necessary to evaluate the potential risk to the Commonwealth.

(e) Expiration date and renewal. -

(1) Individual permits - All individual noxious weed and controlled plant permits expire on December 31st of each year, unless otherwise specified in the permit. Applications for renewal of permits shall be made by October 1st of the year the permit expires. Applications for renewal shall describe any changes to the required information previously submitted. Failure to renew an individual permit shall be a violation of this Chapter.

(2) General permits - Information regarding general permit compliance shall be updated on a calendar year basis. Updated information shall be submitted to the Department no later than January 10th of each new calendar year. Failure to submit the required information within the time period established herein shall be a violation of this Chapter.

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

(1) Any person holding a permit or required to hold a permit under this Chapter shall notify the Department, in writing, prior to any change of status related to the permit, including:

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

(ii) Intent to move the location of the business or entity or the location of the activities - distribution, transportation, cultivation, propagation or reproduction of controlled plants or research and education related to noxious weeds and controlled plants – specifically authorized by the permit.

(iii) Intent to discontinue the activities - distribution, transportation, cultivation, propagation or reproduction of controlled plants or research and education related to noxious weeds and controlled plants – specifically authorized by the permit.

(2) Upon notification the Department, in performance of its duties to protect the interests of the public, the native plant and animal populations in the state and the state's flora, fauna and natural resources, shall have the authority to enter on to the land and premises, including buildings and conveyances that were utilized for or where the permitted activity of the person holding or required to hold a permit under this Chapter took or are taking place, and to conduct such inspections of the premise, as are necessary to determine what remedial, eradication or containment practices are necessary prior to the closure or other change of status occurring.

(3) Failure to notify the Department or otherwise comply with the provisions of this paragraph (f) shall be a violation of this Chapter.

(g) Revocation or suspension. - Within 30 days of receipt of a notice of revocation, the permit holder may apply for an amendment to the permit or request a hearing as outlined in Section 14 (related to appeal process) of this Chapter. The Secretary may revoke or suspend all or part of a permit issued under this Section when:

(1) The Secretary determines that a permittee has failed to comply with the requirements of this Chapter.

(2) It is necessary to protect the interests of the public, to protect native plant and animal populations in the state, or to otherwise protect the state's natural resources.

Section 5. Prohibited acts

(a) General compliance - It shall be a violation of this Act to fail to comply with any provision of this Chapter or any regulation or order established under this Chapter or to aid or assist any person in a violation of this Chapter or a regulation or order established under this Chapter.

(b) Noxious weeds – Except as established in an individual permit allowing such for educational or research purposes, it shall be a violation of this Act, to distribute, cultivate or propagate any noxious weed within the Commonwealth.

(c) Controlled Plants - It shall be a violation of this Act to retail, wholesale or commercially produce, distribute, cultivate or propagate a Controlled Plant without a permit issued by the Department.

(d) Abandonment – It shall be a violation of this Act for any person holding or required to hold or comply with a permit requirement of this Chapter to abandon a noxious weed or controlled plant site or premises without first notifying the Department and taking such actions as are necessary or ordered by the Department to remediate the site, including all land, buildings, conveyances or other areas where a noxious weed or controlled plant are located, and eradicate the noxious weed or controlled plant growing, cultivated, distributed or transported from, reproduced or otherwise present on that site.

(e) Concealment or misrepresentation - It shall be unlawful for any person to do any of the following:

(1) Cause any concealment of noxious weeds or controlled plants from inspection; or

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

(f) Non-compliance with permit requirements – It shall be a violation of this Chapter to fail to comply with any of the requirements established in the general or individual permit, including setting for any misrepresentations on permit applications or failing to comply with attestations and other specific requirements established by the permit or in the permit application.

Section 6. Noxious weed control areas

(a) The Department may establish a noxious weed control area as specified in this Chapter. A noxious weed control area shall be established through a Noxious Weed Control Order issued by the Department. Such Order shall be published in the Pennsylvania Bulletin and disseminated to persons in the noxious weed control area that will be affected by the Order. A Noxious Weed Control Order shall remain in effect until such time as it is rescinded by the Department or until the criteria set forth in the Noxious Weed Control Order are established in regulation. The purpose of a noxious weed control order shall be to prevent the dissemination of noxious weeds within this Commonwealth. When noxious weeds are found in any geographic area, the area and any adjacent areas as the Department deems necessary shall be designated as a noxious weed control area and a noxious weed control order shall be issued. After a noxious weed control area has been established, the Department shall issue such conditions or restrictions as it considers necessary to prevent or reduce the movement of noxious weeds from the noxious weed control area.

(b) The Department shall give notice of the establishment of a noxious weed control area and the Noxious Weed Control Order, either in writing, through electronic messaging or media, or by publication in at least one newspaper of general circulation in the areas affected. Within the noxious weed control area, the Department may prohibit, without inspection, the movement, shipment or transportation of any noxious weed or other material capable of carrying the noxious weed from the area under the noxious weed control area.

(c) The Department shall require an affected landowner or lessee or other person within the noxious weed control area to comply with the provisions of the Noxious Weed Control Order within the timeframe indicated in the Order. A Noxious Weed Control Order may require treatment measures, including remedial, containment and eradication requirements, for the noxious weeds to be implemented by the landowner, lessee or other affected person.

(d) Every designated noxious weed control area and any accompanying Noxious Weed Control Order created under this Section 6 shall be published in the Pennsylvania Bulletin pursuant to the act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law.

Section 7. Control orders

(a) The Department may issue a control order requiring any person, including landowners, landlords, land tenants, land trusts, lessors or lessees to implement treatment measures for noxious weeds if the Department finds that noxious weeds are growing on the property owned or occupied by such person. The control order shall set forth the general factual and legal basis for the action and shall advise the affected person that within fifteen days of receipt of the control order he may file with the Department a written request for an administrative hearing. The hearing shall be conducted in accordance with 2 Pa.C.S. (relating to administrative law and procedure). The written control order of the Department shall be served upon the affected person by personal service or by registered or certified mail, return receipt requested. The control order shall become final upon the expiration of the fifteen-day period for requesting an administrative hearing, unless a timely request for a hearing has been filed with the department.

(b) The Department may issue a control order requiring controlled plant permit holders to implement treatment measures for controlled plants if the Department finds that controlled plants are abandoned, have escaped cultivation or for non-compliance with the applicable individual or general permit requirements. The Department may issue a control order requiring any person, including landowners, landlords, land tenants, land trusts, lessors or lessees to implement treatment measures for controlled plants if the Department finds that the controlled plants are growing on any premises or property without a valid permit. The order shall set forth the general factual and legal basis for the action and shall advise the affected person that within fifteen days of receipt of the order he may file with the Department a written request for an administrative hearing. The hearing shall be conducted in accordance with 2 Pa.C.S. (relating to administrative law and procedure). The written control order of the Department shall be served upon the affected person by personal service or by registered or certified mail, return receipt requested. The control order shall become final upon the expiration of the fifteen-day period for requesting an administrative hearing, unless a timely request for a hearing has been filed with the Department.

(c) The control order shall describe the noxious weed or controlled plant situation that exists and prescribe the required remediation, control, eradication or treatment measures and the date by which such measures must be completed.

Section 8. Compliance with orders

(a) The person subject to the control order shall comply with a control order issued under Section 7 of this Chapter (related to control orders) within the timeframe specified in the control order or if appealed the timeframe established in the final adjudication of the Secretary. The cost of the remediation, control, eradication or treatment measures shall be borne by the person subject to the control order.

(b) If the person subject to the control order fails to comply with the control order, the Department shall notify that person and the municipality within which the person resides or where the person's property is located by certified mail. Thereafter, the appropriate officials of the municipality shall take the necessary steps to carry out the

measures established in the control order within the timeframe specified in the notification by the Department.

(c) A municipality which acts to control a noxious weed or controlled plant on a non-complying person's property shall have the authority to recover their expenses and costs incurred in carrying out the measures established in the control order from the person that was the subject of the Department's control order.

Section 9. Noxious weed list

(a) Class A Noxious Weeds

- (1) *Galega officinalis* L. (commonly known as Goatsrue)
- (2) *Heracleum mantegazzianum* Sommier & Levier (commonly known as Giant hogweed)
- (3) *Pueraria* DC. (commonly known as Kudzu)
- (4) *Sorghum bicolor* L. Moench (commonly known as Shattercane)
- (5) *Sorghum halepense* L. Pers. (commonly known as Johnson grass)
- (6) *Amaranthus palmeri* S. Watson (commonly known as Palmer amaranth)

(b) Class B Noxious Weeds

- (1) *Carduus nutans* L. (commonly known as Musk thistle)
- (2) *Cirsium arvense* L. (commonly known as Canadian thistle)
- (3) *Cirsium vulgare* L. (commonly known as Bull thistle)
- (4) Exotic *Lythrum species* including *Lythrum salicaria* L. (commonly known as Purple loosestrife); the *Lythrum salicaria* Complex; and *Lythrum virgatum* L., (commonly known as European wand loosestrife); their cultivars and any combination thereof.
- (5) *Polygonum perfoliatum* L. (commonly known as Mile-a-minute)
- (6) *Rosa multiflora* L. (commonly known as Multiflora rose)

(c) Class C Noxious Weeds - Any federal noxious weed listed in 7 CFR 360.200 not established in the Commonwealth which are not referenced above.

(d) Any plant or weed determined to be a noxious weed by the Committee as authorized by Section 3 (related to designation of noxious weeds) of this Chapter.

Section 10. Fees

The Department may establish fees for permitting the distribution, cultivation or propagation of controlled plants as set forth in regulation or noxious weeds for education and research purposes.

Section 11. Powers and duties of the Secretary and Department

(a) **General rule.**--The Secretary is hereby authorized and empowered to enforce all the provisions of this Chapter and shall have power to prescribe, modify and enforce such reasonable rules, regulations, standards, tolerances, notices, and orders as in the judgment of the Secretary which shall be necessary to carry out the provisions of this Chapter. The Secretary may employ all proper means for the enforcement of this Act,

including issuing notices of violation and orders, filing violations for criminal prosecution, seeking injunctive relief, imposing civil penalties, and entering into consent agreements. The Secretary may enter into agreements pursuant to Section 15 (related to cooperation with other entities) of the Chapter, which shall be filed with the Department, for the purposes of noxious weed and controlled plant control.

(b) General powers and duties of the Department.--The Department, in carrying out the provisions of this Chapter and in addition to all other authority granted to the Secretary and the Department by this Chapter, shall have the authority to:

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

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

(3) Issue and enforce a written control order to any person in possession of a noxious weed or controlled plant which may be found in violation of any of the provisions of this Chapter in order to prohibit further propagation, cultivation or distribution of such noxious weeds or controlled plants until the Department has determined compliance with this Chapter. With respect to noxious weeds or controlled plants, which have been subject to a control order as provided in this Chapter, the person in possession of such noxious weeds or controlled plants shall have the right to appeal as provided for in Section 14 (related to appeal process) of this Chapter.

(4) Issue and enforce written permits and permit requirements to any person who wishes to propagate, transport, cultivate or distribute a controlled plant under such terms and conditions as are reasonably required to carry out the provisions of this Chapter.

(5) When the Department acts under a control order, administrative order, or other enforcement tool authorized by this Chapter to control, remediate, contain or eradicate a noxious weed or controlled plant on a non-complying landowner's property or to otherwise enforce the provisions of this Chapter, its attendant regulations or an order issued under the authority of this Chapter, it shall have the power to recover, from the non-complying landowner, expenses and costs incurred in such enforcement and compliance actions. The Department may impose additional civil or criminal penalties for failure to comply. Such penalties shall include the reasonable cost of eradication and compliance expenses incurred by the Department.

(6) Should the Department be denied access to any buildings, conveyances, equipment, land or vehicles where such access was sought for the purposes and under the authority set forth in this Chapter; the Secretary may apply to any issuing authority for a search warrant authorizing access to such buildings, conveyances, equipment, land or vehicles for said purposes. The court may upon such application issue the search warrant for the purposes requested.

(c) Right of Entry; Inspection of land, buildings, records, articles and locations. - In the performance of the duties required by this Chapter the Department its inspectors, employees and agents shall have free access, during reasonable hours, to any

land or premises on which noxious weeds or controlled plants are present or found or where there is reasonable suspicion of such. With regard to persons possessing or required to possess an individual or general permit to distribute, transport, cultivate, propagation or reproduce a controlled plant or to carry out research or education related to a noxious weed, the Department shall have the authority to enter onto and inspect the land and premises and all areas of the land and premises, including buildings and conveyances, that will or are being utilized for such activities or where the permitted activity will or is being conducted.

(d) Refusal of entry. It shall be unlawful for any person to refuse or delay access to any Department inspector, employee or agent, to hinder, thwart or defeat inspection by misrepresentation or concealment of regulated articles, facts or conditions or to prevent an inspector, employee or agent from gaining entry through an act of omission, or to interfere with an inspector, employee or agent of the Department as set forth in Section 18 (related to interference with inspector, agent or employee of the department) of this Chapter.

(e) Search warrants. If an inspector, employee or agent of the Department has probable cause to believe a noxious weed or controlled plant exists on a property or premises or if access or entry as described in subsections (b), (c) and (d) of this Section 11 is refused or delayed by any person, the Department's inspector, employee or agent may, upon oath or affirmation, declare before a court of competent jurisdiction that the inspector, employee or agent has probable cause to believe that noxious weeds or controlled plants exist on the land or premises. Upon review of such declaration, the court of jurisdiction may issue a search warrant for such property or premises. The search warrant shall describe the property or premises, which may be searched under authority of the search warrant, but need not describe the exact or all possible noxious weeds or controlled plants that exist or may exist on the property or premises. An inspector, employee or agent of the Department armed with such a search warrant shall have all the authority of a constable or peace officer in the execution of the warrant. It shall be sufficient probable cause to show either of the following:

(1) That in cases involving a person that holds or is required to hold an individual or general permit under this Chapter the inspector, employee or agent of the Department has been refused or delayed entry, as described in subsection (d) of this Section 11, for the purpose of inspection.

(2) The Department inspector, employee or agent has reasonable grounds to believe that a violation of the Chapter or regulations promulgated or orders issued under the authority of this Chapter has or is occurring.

(f) Inspections and sampling authority. The Department, through its inspectors, employees and agents is hereby given the authority to inspect any land, premises, buildings, vehicles, vessels, article, location, machinery, conveyance or other place of any person holding or required to hold a permit under this Act to distribute, transport, cultivate, propagate or reproduce a controlled plant or to carry out research or education related to a noxious weed under this Chapter. The Department may also inspect any records required to be kept under the individual or general permitting requirements of this Chapter and its attendant orders and regulations. In addition to inspection, the Department may collect samples and take pictures of any noxious weeds or controlled plants. Furthermore, the Department and its inspectors, employees and agents shall have

the authority to enter onto the land or premises of a person where noxious weeds or controlled plants are viewed or found for the purpose of investigation and carrying out the remediation, containment and eradication methods necessary to perform the duties and edicts of this Chapter. Where the premises to be inspected is not that of a person required to hold a permit under this Act, the Department, its inspectors, employees or agents shall obtain permission of the owner or a search warrant in order to enter or search any building, vehicle, vessel, article, machine or conveyance located on such land or premises.

(g) Delegation.—The Secretary may delegate any powers and duties under this Chapter to any agent acting on behalf of the Department with the exception of the power and duties of the Noxious Weed and Controlled Plant Committee.

Section 12. Stop-sale orders

(a) General rule. The Department may issue and enforce a written or printed stop-sale order to any person holding or required to hold a permit under this Act or to any person, including landowners, landlords, land tenants, land trusts, lessors or lessees where a noxious weed or controlled plant exists. The stop-sale order shall require such person to hold at a designated place any noxious weed or controlled plant when the Department finds the noxious weed or controlled plant is being offered or exposed for sale in violation of any of the provisions of this Chapter. This includes a violation of a control order, a treatment order, a stop-sale order, a regulation or any other provision, order or standard established in this Chapter, or under authority of this Chapter. Noxious weeds or controlled plants under a stop-sale order issued under authority of this paragraph shall remain so until the Department is notified by the person to whom the stop-sale order was directed that the prescribed treatment or action has been taken and a re-inspection of the premises indicates the treatment has been completed and was effective.

(b) Official marking of noxious weeds and controlled plants under a stop-sale order. Noxious weeds and controlled plants under a stop-sale order shall be clearly identified and, where practicable, conspicuously marked. It shall be unlawful for any person to remove markings placed by the Department for this purpose unless so instructed by the Department.

(c) Violation of a Stop-Sale order. It shall be unlawful to violate a stop-sale order issued under this Chapter. The Department may impose any and all penalties authorized under this Chapter for a violation of such order.

Section 13. Seizure and condemnation.

Where the distribution, transportation, cultivation, propagation, reproduction, research or educational practices of any noxious weed or controlled plants are not in compliance with the provisions of this Chapter or any regulation promulgated or order issued under this Chapter, the Department, in addition to any other action allowed under this Chapter, may file a complaint before a court of competent jurisdiction in the area in which the noxious weed or controlled plant is located, or before the Commonwealth Court, requesting such injunctive relief as necessary to prevent harm and requesting an order of seizure and condemnation be issued. In the event that the court finds the noxious weed or controlled plant to be in violation of this Chapter, or any regulation promulgated or order

issued under this Chapter, the court shall order the condemnation of the noxious weed or controlled plant. Upon execution of such court order the condemned noxious weed or controlled plant shall be disposed of in any manner consistent with the laws of the Commonwealth.

Section 14. Appeal process.

All administrative appeals shall be taken and hearings conducted in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

Section 15. Cooperation with other entities.

The Department is authorized to cooperate, receive grants-in-aid and enter into agreements with any individual, person, organization or Federal, State, county, or municipality agency for the purpose of implementing the provisions of this Act. The Department shall also have the authority to assist in the enforcement of any Federal noxious weed quarantine established under Federal acts or regulations.

Section 16. Rules and regulations.

The Department may promulgate and enforce rules and regulations and establish and enforce Orders necessary for administration and implementation of this Chapter.

Section 17. Unlawful conduct.

It shall be unlawful for any persons to fail to comply with or to cause or assist in the violation of any order or any of the provisions of this Chapter or the rules and regulations adopted under this Chapter.

Section 18. Interference with inspector, agent or employee of the Department.

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

Section 19. Enforcement and penalties

(a) Criminal penalties. - Unless otherwise specified, any person who violates any of the provisions of this Chapter or a rule or regulation adopted thereunder or any order issued pursuant thereto:

(1) For the first offense, commits a summary offense and may, upon conviction, be sentenced for each offense to pay a fine of not less than \$50 nor

more than \$100 and costs of prosecution or to undergo imprisonment for a term which shall be fixed at not more than 90 days, or both.

(2) For a subsequent offense committed within three years of a prior conviction for any violation of this Chapter or any rule, regulation or order made under this Chapter, commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than \$500 nor more than \$1,000 and costs of prosecution or to imprisonment for not more than two years, or both.

(b) Civil penalties.

(1) In addition to any other remedy available at law or in equity for a violation of this Chapter, the Department may assess a civil penalty of not more than \$5000, plus cost of remediation, containment or eradication, upon any person for each violation of this Chapter or a regulation promulgated or order issued under authority of this Chapter. The civil penalty assessed shall be payable to the Department for deposit into the Plant Pest Management Account as set forth in Section 22 (related to disposition of funds) of this Chapter. Such penalty amount shall be collectible in any manner provided by law for the collection of debt, including referring any collection matter to the Office of Attorney General, which shall recover such amount by action in the appropriate court.

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

Section 20. Injunctive relief

In addition to any other remedies provided for in this Chapter, the Attorney General, at the request of the Secretary, may initiate, in the Commonwealth Court or the court of common pleas of the county in which the defendant resides or has his place of business, an action in equity for an injunction to restrain any and all violations of this Chapter or the rules and regulations promulgated under this Chapter or any order issued pursuant to this Chapter from which no timely appeal has been taken or which has been sustained on appeal. In any such proceeding, the court shall, upon motion of the Commonwealth, issue a preliminary injunction if it finds that the defendant is engaging in conduct that is unlawful under this Chapter or is engaging in conduct which is causing immediate or irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with the proceedings. In addition to an injunction, the court, in such equity proceedings may levy civil penalties, as established, under Section 19 (relating to enforcement and penalties) of this Chapter.

Section 21. Deminimis violations

Nothing in this Chapter shall be construed as requiring the Department to report a violation or to institute seizure proceedings or other enforcement actions under this Chapter as a result of deminimis violations of this Chapter when the Department

concludes that the public interest will be best served by a suitable notice of violation or warning in writing.

Section 22. Disposition of funds

Moneys received from permitting fees, control work reimbursement, fines and penalties shall be paid into a special restricted account in the General Fund known as the Plant Pest Management Account. All moneys in the Plant Pest Management Account are hereby appropriated to the Department for the purposes of this Chapter and the act of Dec. 16, 1992, P.L. 1228, No 162 known as the Plant Pest Act or their successor acts. All moneys placed in the account under the provisions of this Section 22 are hereby made available immediately and are hereby specifically appropriated to the Department for the purposes of those Chapters and not to replace general revenues heretofore appropriated for this purpose.

Section 23. Exclusion of local laws and regulations

This Chapter and its provisions are of statewide concern and occupy the whole field of regulation regarding noxious weeds or controlled plants to the exclusion of all local regulation. Except as otherwise specifically provided in this Act, no ordinance or regulation of any municipality, political subdivision or home rule municipality may prohibit or in any way attempt to regulate noxious weeds or controlled plants, if any of those ordinances, laws or regulations are in conflict with this Chapter.

Section 24. Repeal

The act of April 7, 1982, P.L. 228, No. 74, known as the Pennsylvania Noxious Weed Control Act, is repealed.

Section 25. Effective date

This act shall take effect in 60 days.