

AGRICULTURE CODE (3 PA.C.S.) - CONTROLLED PLANTS AND NOXIOUS
WEEDS

Act of Oct. 30, 2017, P.L. , No. 46

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HB 790

AN ACT

Amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, regulating controlled plants and noxious weeds; establishing the Controlled Plant and Noxious Weed Committee; providing for powers and duties of the Controlled Plant and Noxious Weed Committee; imposing powers and duties on the Secretary of Agriculture and municipalities; prescribing penalties; establishing a category of controlled plants and providing for the permitting of controlled plants; abrogating regulations; and making related repeals.

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

Section 1. Part III of Title 3 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 15

CONTROLLED PLANTS AND NOXIOUS WEEDS

Subchapter

- A. Preliminary Provisions
- B. Regulation and Administration
- C. Enforcement
- D. Miscellaneous Provisions

SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

1501. Scope of chapter.

1502. Definitions.

§ 1501. Scope of chapter.

This chapter relates to controlled plants and noxious weeds.

§ 1502. 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." A weed listed in section 1519(a) (relating to noxious weed list) or a weed that has been determined by the committee to be a Class A noxious weed and that:

- (1) Is established in this Commonwealth.
- (2) Is geographically limited.
- (3) Is intended to be eradicated.

"Class B noxious weed." A weed listed in section 1519(b) or a weed that has been determined by the committee to be a Class B noxious weed and that:

- (1) Is widely established in this Commonwealth.
- (2) Cannot feasibly be eradicated.

"Class C noxious weed." A weed listed in section 1519(c) or a weed that has been determined by the committee to be a Class C noxious weed and that:

- (1) Is not known to exist in this Commonwealth.
- (2) Poses a potential threat if introduced in this Commonwealth.

"Committee." The Controlled Plant and Noxious Weed Committee established in section 1511 (relating to designation of noxious weeds and controlled plants).

"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.

"Controlled plant." A plant species or subspecies that has been designated by the committee as a controlled plant and is regulated to prevent uncontained growth and to negate undesirable characteristics.

"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 three consecutive years.

"Established." When used in reference to a plant population, either:

- (1) a plant or plant population found growing in this Commonwealth as a wild population and capable of reproduction; or
- (2) a plant that has escaped from cultivation and is reproducing.

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

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

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

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

- (1) research, marketing, warehousing, holding, retailing, wholesaling, transporting, distributing, cultivating or propagating of a controlled plant; or
- (2) research and educational purposes related to a noxious weed.

"Landowner."

- (1) A person:

- (i) In whom is vested the title of property.
- (ii) With any rights in real property that permit possession or control of surface activities on the real property.

(2) The term includes a department, board, commission, agency and instrumentality of the Federal Government and the Commonwealth and any of its political subdivisions.

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

"Noxious weed." Either:

- (1) 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
- (2) any weed listed in 7 CFR 360.200.

"Noxious weed control area." A geographic area of this Commonwealth, including the entire State, municipality or any

part or tract of land or body of water where a noxious weed is to be controlled as prescribed under this chapter.

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

"Plant Pest Management Account" or "account." The Plant Pest Management Account established under the act of December 16, 1992 (P.L.1228, No.162), known as the Plant Pest Act.

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

"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." Established throughout multiple counties or municipalities of this Commonwealth.

SUBCHAPTER B REGULATION AND ADMINISTRATION

Sec.

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§ 1511. Designation of noxious weeds and controlled plants.

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

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

(2) The committee shall be composed of:

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

(ii) the Secretary of Conservation and Natural Resources;

(iii) the Secretary of Environmental Protection;

(iv) the Secretary of Transportation;

(v) the Executive Director of the Pennsylvania Fish and Boat Commission and the Executive Director of the Pennsylvania Game Commission;

(vi) the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the Senate and the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives;

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

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

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

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

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

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

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

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

(b) Powers and duties of committee.--

(1) 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.

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

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

(i) To establish a noxious weed list inclusive of the list set forth under section 1519 (relating to noxious weed list). The committee may add weeds to or remove weeds from the noxious weed list or move noxious weeds to the controlled plant list in accordance with the provisions of this chapter.

(ii) To establish a controlled plant list and to add plants to or remove 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.

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

(iv) To publish the noxious weed list and the controlled plant list and additions or removals or changes thereto as a notice in the Pennsylvania Bulletin. Any additions to or removals from the noxious weed list or the controlled plant list shall become effective 60 days from publication.

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

(1) Upon the determination of the committee that a plant falls within the classification of a noxious weed or controlled plant, the committee, in consultation with the department, shall determine if the weed's seed falls within the category of a prohibited noxious weed seed or a restricted noxious weed seed and the seeds shall be regulated in the manner established in 7 Pa. Code Ch. 111 (relating to seed testing, labeling and standards).

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

§ 1512. Permits.

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

(1) For noxious weeds, the department may issue individual permits. A permit may allow for the cultivation and propagation of a noxious weed for research and educational purposes only. The department shall establish the criteria for a noxious weed individual permit through the issuance of a temporary order, as set forth in section 1514(4) (relating to individual permits).

(2) For controlled plants, the department may issue individual permits or general permits. The department shall establish the criteria for a controlled plant individual permit through the issuance of a temporary order as specified under section 1514(4).

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

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

(1) Any person who holds 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 activity specifically authorized by the permit.

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

(2) Upon notification, the department may enter onto 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 is taking place, and to conduct inspections of the premises 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 subsection shall be a violation of this chapter.

(d) 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 provided under

section 1524 (relating to appeal process). The secretary may revoke or suspend all or part of a permit issued under this section when:

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

(2) It is necessary to protect crops, livestock, agricultural land or other property, including forest land and bodies of water.

§ 1513. General permits.

General permits may be issued for the research, marketing, retail, wholesale, transport, storage, warehousing, display, distribution, cultivation or propagation of controlled plants under the following circumstances:

(1) General permits may be issued on a Statewide or regional 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.

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

(3) An applicant seeking a general permit under this section shall inform the department of the applicant's intended use of the general permit and complete an application for approval to operate under the general permit requirements. The application shall include a written 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 state, at a minimum, all of the information required under section 1514(5)(i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) (relating to individual permits).

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

§ 1514. Individual permits.

Individual permits may be issued for noxious weeds and controlled plants in accordance with the following:

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

(i) The controlled plant has individual characteristics as to make it difficult or impossible for the department to regulate through a general set of requirements.

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

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

(2) An individual permit shall be issued in writing to the specific permit holder, contain the temporary order establishing the requirements of the individual permit and be published in the Pennsylvania Bulletin and effective as provided under paragraph (4)(iii).

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

(4) For each noxious weed, 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. The following shall apply:

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

(A) Identify the specific characteristics of the noxious weed or controlled plant or the circumstances, including Federal laws, regulations or orders, 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 this Commonwealth and this Commonwealth's flora, fauna and natural resources.

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

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

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

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

(5) A written application for an individual permit shall meet the criteria established by the department through a temporary order as authorized by this chapter and be made on a form and in a manner prescribed by the department. The application shall contain at least the following:

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

(ii) The physical location, including a detailed plot map and description of the site to be planted or the site where the noxious weed or controlled plant will be propagated, cultivated, stored or distributed. The description of the location shall also include the county, municipality and the name of each road bordering

the physical location. The plot map shall be attached to the application and shall state the GPS coordinates outlining the boundaries of the site and other important landmarks.

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

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

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

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

(vii) 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.

(viii) An attestation by the applicant stating the applicant 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:

(A) If the permit holder intends to transfer possession or ownership of the noxious weed or controlled plant, the permit holder shall, before the 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 that the permit holder has obtained the required individual permit.

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

(C) If the permit holder abandons, relinquishes possession or ownership of, control over or responsibility for the noxious weed or controlled plant in a manner inconsistent 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, the cost of destruction and eradication of the noxious weed or controlled plant and any plant material associated with the noxious weed or controlled plant. The original permit holder shall continue to be subject to the penalties imposed under this chapter.

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

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

(xi) Whether the noxious weed or controlled plant will be further distributed, sold, transported, replanted, used for seed or other purposes. If the noxious weed or controlled plant will be further distributed, sold, transported, replanted, used for seed or other purposes, the permit shall include the name and address of the person and location to which the noxious weed or controlled plant will be distributed, sold or transported. If sold or distributed for further propagation, the application shall include the information required under subparagraphs (i) and (ii) and the name and address of the person to which the noxious weed or controlled plant was sold or distributed for the use.

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

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

(6) The secretary may request, in writing, additional information, if necessary, from the applicant after the application is received to evaluate the potential risk to the Commonwealth. An applicant for an individual permit may be required to post a bond or other security instrument in a form satisfactory to the secretary in an amount the secretary determines.

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

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

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

§ 1515. Prohibited acts.

(a) General compliance.--It shall be a violation of this chapter to fail to comply with any provision of this chapter

or any regulation, permit requirement or order established pursuant to this chapter.

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

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

(d) Abandonment.--It shall be a violation of this chapter for a 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 actions as are necessary or ordered by the department to remediate the site.

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

(1) conceal a noxious weed or controlled plant 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.

§ 1516. Noxious weed control areas.

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

(1) The department may establish a noxious weed control area through a control order issued by the department under section 1517 (relating to control orders). The 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 control order shall remain in effect until the time as it is rescinded by the department.

(2) 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 control order.

(b) Compliance.--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 control order within the time frame indicated in the order.

(c) Publication.--Every designated noxious weed control area and any accompanying control order created under this section and section 1517 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.

§ 1517. Control orders.

(a) Noxious weeds.--

(1) The department may issue a control order requiring a person to implement treatment measures for noxious weeds. The control order shall state the general factual and legal basis for the action and shall advise the affected person that, within 15 days of receipt of the control order, the affected person 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).

(2) 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.

(3) The control order shall become final upon the expiration of the 15-day period for requesting an

administrative hearing, unless a timely request for a hearing has been filed with the department.

(b) Controlled plants.--

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

(2) 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.

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

(c) Description of situation in order.--The control order shall describe the noxious weed or controlled plant situation that exists and prescribe the required treatment measures and the date by which the measures must be completed.

§ 1518. Compliance with orders.

(a) General rule.--A person subject to a control order issued under section 1517 (relating to control orders) shall comply with the control order within the time frame specified in the control order or, if appealed, the time frame established in the final adjudication of the secretary. The cost of the treatment measures shall be borne by the person subject to the control order.

(b) Notice and duty of municipality.--

(1) 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. After receipt of the notice, the appropriate officials of the municipality shall take the necessary steps to carry out the treatment measures established in the control order within the time frame specified in the notification by the department.

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

§ 1519. Noxious weed list.

(a) Class A noxious weeds.--Preventing new infestations and eradicating existing infestations of noxious weeds in this class is high priority. The following are Class A noxious weeds:

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

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

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

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

- (5) *Cuscuta* spp., except for native species (commonly known as dodder).
- (6) *Galega officinalis* L. (commonly known as goatsrue).
- (7) *Heracleum mantegazzianum* Sommier & Levier (commonly known as giant hogweed).
- (8) *Hydrilla verticillata* (L.f.) Royle (commonly known as hydrilla).
- (9) *Oplismenus hirtellus* (L.) P. Beauv. Subsp. *undulatifolius* (commonly known as Wavyleaf basketgrass).
- (10) *Orobanche* spp., except for native species (commonly known as broomrape).
- (11) *Pueraria lobata* (Willd.) Ohwi (commonly known as kudzu).

(b) Class B noxious weeds.--The department may require control of Class B weeds to contain an injurious infestation, or may provide education or technical consultation. The following are Class B noxious weeds:

- (1) *Carduus nutans* L. (commonly known as musk thistle).
- (2) *Cirsium arvense* L. (commonly known as Canada thistle).
- (3) *Cirsium vulgare* L. (commonly known as bull thistle).
- (4) Exotic *Lythrum* species, including *Lythrum salicaria* L. (commonly known as purple loosestrife), the *Lythrum salicaria* complex and *Lythrum virgatum* L. (commonly known as European wand loosestrife), their cultivars and any combination thereof.
- (5) *Persicaria perfoliata* (L.) H. Grass (formerly known as *Polygonum perfoliatum* L.) (commonly known as mile-a-minute weed).
- (6) *Rosa multiflora* L. (commonly known as multiflora rose).
- (7) *Sorghum bicolor* L. Moench (commonly known as shattercane).
- (8) *Sorghum halepense* (L.) Pers. (commonly known as Johnsongrass).
- (9) *Conium maculatum* L. (commonly known as poison hemlock).

(c) Class C noxious weeds.--Preventing introduction and eradicating infestations of noxious weeds in this class is the highest priority. Class C noxious weeds are any Federal noxious weeds listed in 7 CFR 360.200 (relating to designation of noxious weeds) not established in this Commonwealth which are not referenced above.

(d) Committee determination.--Any plant or weed designated as a noxious weed under this section and as authorized under section 1511 (relating to designation of noxious weeds and controlled plants).

§ 1520. Fees.

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

- (1) General permit, \$150 per permit with a \$50 annual renewal fee.
- (2) Individual permit, \$250 per permit with a \$100 annual renewal fee.
- (3) Inspection fees for field locations - \$50 inspection fee for up to 10 acres, with a \$5 per acre fee for each additional acre up to a maximum fee of \$500.
- (4) Inspection fees for greenhouses - Greenhouse locations shall be assessed a fee based on square footage as follows:
 - (i) \$50 for less than 5,000 square feet.
 - (ii) \$100 for 5,000-25,000 square feet.

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

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

(6) Laboratory testing - Fees as established in Chapter 71 (relating to seed).

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

(c) Payment of fees.--Fees shall be paid by check, money order or electronic payment made payable to the Commonwealth of Pennsylvania. Failure to pay a fee on time shall be a violation of this chapter. A late fee of \$25 shall be assessed for every month that a fee is past due.

§ 1521. Powers and duties of secretary and department.

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

(b) General powers and duties of 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) Issue and enforce a written control order to any person in possession of a noxious weed or controlled plant.

(2) Issue and enforce written permits and permit requirements to any person who wishes to research, market, hold, warehouse, retail, wholesale, propagate, transport, cultivate or distribute a noxious weed or controlled plant under the terms and conditions as are reasonably required to carry out the provisions of this chapter.

(3) Utilize any enforcement tool authorized by this chapter to control, remediate, contain or eradicate a noxious weed or controlled plant.

(4) Recover, from the noncomplying person or landowner, expenses and costs incurred in the enforcement and compliance actions. The department may impose additional civil or criminal penalties for failure to comply. The penalties shall include the reasonable cost of eradication and compliance expenses incurred by the department.

(5) If the department is denied access to any building, conveyance, equipment, land or vehicle where the 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 the building, conveyance, equipment, land or vehicle for that purpose. The court may, upon application by the department, issue the search warrant for the purposes requested.

(c) Right of entry and inspection.--In the performance of the duties required by this chapter, the department and its inspectors, employees and agents shall have access, during reasonable hours, to inspect the land and premises and any areas of the land and premises, including buildings and conveyances, that are or will be utilized for permitted activities.

(d) Search warrants.--

(1) 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, 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.

(2) Upon review of the declaration, the court may issue a search warrant for the 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.

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

(i) That, in cases involving a person who holds an individual permit or general permit under this chapter, the inspector, employee or agent has been refused or delayed entry for the purpose of inspection.

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

(e) Inspections and sampling authority.--

(1) The department, through its inspectors, employees and agents, may inspect any land, premises, buildings, vehicles, vessels, articles, locations, machinery, conveyances or other places of a person holding a permit under this chapter.

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

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

(f) Delegation.--The secretary may delegate any power or duty under this chapter to an agent acting on behalf of the department, with the exception of the powers and duties of the committee.

§ 1522. Stop-sale orders.

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

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

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

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

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

§ 1523. Seizure and condemnation.

(a) General rule.--Where the distribution, transportation, cultivation, propagation, marketing, retail, wholesale, holding, warehousing, research or educational practices of a noxious weed or controlled plant is not in compliance with the provisions of this chapter, a permit, or any regulation promulgated or order issued under this chapter, the department, in addition to any other action authorized 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 the injunctive relief as necessary to prevent harm and requesting an order of seizure and condemnation be issued.

(b) Relief.--In the event that the court finds the noxious weed or controlled plant to be in violation of this chapter, a permit, 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 the court order, the condemned noxious weed or controlled plant shall be disposed of in any manner consistent with the laws of this Commonwealth.

§ 1524. Appeal process.

An administrative appeal shall be taken and hearing 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). A person must file an appeal of an enforcement action by the department within 15 days of the date of the enforcement action.

§ 1525. Cooperation with other entities.

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

§ 1526. Rules and regulations.

The department may promulgate rules and regulations and establish and enforce orders necessary for administration and implementation of this chapter in accordance with the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

SUBCHAPTER C ENFORCEMENT

Sec.

1541. Unlawful conduct.

1542. Interference with inspector, agent or employee of department.

1543. Enforcement and penalties.

1544. Injunctive relief.

1545. De minimis violations.

§ 1541. Unlawful conduct.

It shall be unlawful for a person to fail to comply with or to cause or assist in the violation of a permit, an order or a provision of this chapter or any attendant regulation.

§ 1542. Interference with inspector, agent or employee of department.

A person who willfully or intentionally interferes with an inspector, employee or agent of the department in the performance of the 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.

§ 1543. Enforcement and penalties.

(a) Criminal penalties.--Unless otherwise specified, a person who violates a permit, a provision of this chapter or a rule or regulation adopted pursuant to this chapter or any order issued under this chapter:

(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 \$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 a violation of this chapter or a rule, regulation or order made pursuant to this chapter, commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than \$500 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 \$10,000, plus cost of remediation, containment or eradication, upon a person for each violation of this chapter, a permit or a regulation promulgated or order issued under the authority of this chapter. The civil penalty assessed shall be payable to the department for deposit into the account. The 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 the amount by action in the appropriate court.

(2) No civil penalty shall be assessed unless the person who 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).

§ 1544. 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 Commonwealth Court or the court of common pleas of the county in which the defendant resides or has a place of business, an action in equity for an injunction to restrain any and all violations of this chapter, a permit, order or the rules and regulations promulgated under this chapter.

§ 1545. De minimis 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 de minimis violations of this chapter if the

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

SUBCHAPTER D
MISCELLANEOUS PROVISIONS

Sec.

1561. Disposition of funds.

1562. Preemption.

§ 1561. Disposition of funds.

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

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

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

(2) State funds appropriated to the department for purposes of this chapter.

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

§ 1562. Preemption.

All local laws contrary to this chapter are preempted.

Section 2. The regulations under 7 Pa. Code §§ 111.22 (relating to prohibited noxious weed seeds) and 111.23 (relating to restricted noxious weed seeds) are abrogated insofar as they are inconsistent with the addition of 3 Pa.C.S. Ch. 15.

Section 3. Repeals are as follows:

(1) The General Assembly declares that the repeals under paragraphs (2) and (3) are necessary to effectuate the addition of 3 Pa.C.S. Ch. 15.

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

(3) 3 Pa.C.S. Ch. 71 is repealed insofar as it is inconsistent with the addition of 3 Pa.C.S. Ch. 15.

Section 4. This act shall take effect in 60 days.

APPROVED--The 30th day of October, A.D. 2017.

TOM WOLF