

No. 24

AN ACT

HB 588

Relating to the labeling, distribution, storage, transportation, use, application and disposal of pesticides and devices; providing for registration and examination of such materials; the licensing of pesticide dealers and pest management consultants and imposing penalties.

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

Section 1. Short Title.—This act shall be known and may be cited as the “Pennsylvania Pesticide Control Act of 1973.”

Section 2. Enforcing Official.—This act shall be administered by the Secretary of Agriculture, hereinafter referred to as the secretary.

Section 3. Declaration of Purpose.—The Legislature hereby finds that pesticides are valuable to our State’s agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment. The purpose of this act is to regulate in the public interest, the labeling, distribution, storage, transportation, use, application, and disposal of pesticides. New pesticides are continually being discovered or synthesized which are valuable for the control of pests, and for use as defoliants, desiccants, plant regulators, and related purposes. The dissemination of accurate scientific information as to the proper use of any pesticide, is vital to the public health and welfare and to the environment both immediate and future.

Section 4. Definitions.—As used in this act:

(1) “Active ingredient” means:

(i) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;

(ii) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;

(iii) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

(iv) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) “Administrator” means the administrator of the Federal Environmental Protection Agency.

(3) “Adulterated” applies to any pesticide if:

(i) its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold;

(ii) any substance has been substituted wholly or in part for the pesticide; or

(iii) any valuable constituent of the pesticide has been wholly or in part abstracted.

(4) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(5) "Antidote" means a practical treatment in case of poisoning and includes first-aid treatment.

(6) "Applicators" means certified applicator, private applicator, commercial applicator, public operator, under the direct supervision of a certified applicator.

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

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

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

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

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

(7) "Beneficial insects" means those insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial.

(8) "Board" means the Pesticide Advisory Board.

(9) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(10) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(11) "Device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(12) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this State.

(13) "Environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

(14) "Equipment" means any type of ground, water or aerial equipment or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but shall not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in pesticide application.

(15) "Establishment" means any place where a pesticide or device is produced, or held, for distribution or sale.

(16) "Fungus" means any non-chlorophyll bearing thallophyte (that is, any non-chlorophyll bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

(17) "Highly toxic" means any highly toxic pesticide as determined by the administrator.

(18) "Imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the Secretary of the Interior of the United States under Public Law 91-135.

(19) "Inert ingredient" means an ingredient which is not active.

(20) "Ingredient statement" means a statement which contains:

- (i) the name and percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and
- (ii) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic.

(21) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the

most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

(22) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

(23) "Labeling" pertaining to pesticide registration means all labels and all other written, printed, or graphic matter:

(i) accompanying the pesticide or device at any time; or

(ii) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Federal Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health, Education and Welfare, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

(24) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(25) "Misbranded" means any pesticide which fails to be labeled in accordance with section 2, definitions — (q) misbranded — of the "Federal Insecticide, Fungicide and Rodenticide Act of 1947," as amended in 1972.

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

(27) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

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

(29) "Person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

(30) "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the administrator declares to be a pest under section 25 (c)(1) of the "Federal Insecticide, Fungicide and Rodenticide Act of 1947," as amended in 1972.

(31) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(32) "Pesticide dealer" means any person who sells or distributes pesticides classified for "restricted use."

(33) "Pest management consultant" means any individual who is not a licensed applicator, and who for a fee offers, or supplies technical advice, supervision or aid, or makes recommendations to the user of pesticides classified for restricted use.

(34) "Plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, the term "plant regulator" shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

(35) "Producer and produce". The term "producer" means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device. The term "produce" means to manufacture, prepare, compound, propagate, or process any pesticide or device.

(36) "Protect health and the environment" mean protection against any unreasonable adverse effects on the environment.

(37) "Registrant" means a person who has registered any pesticide pursuant to the provisions of this act.

(38) "Registration" includes reregistration.

(39) "Restricted use" means the use of a pesticide which is classified as a restricted use pursuant to section 3(d) of the "Federal Insecticide, Fungicide and Rodenticide Act of 1947," as amended in 1972.

(40) "Snails or slugs" includes all harmful mollusks.

(41) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(42) "Weed" means any plant which grows where not wanted.

(43) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this act, pests; including, but not limited to mammals, birds, and aquatic life.

Section 5. Registration.—(a) Every pesticide which is distributed within this Commonwealth or delivered for transportation or

transported in intrastate commerce or between points within this Commonwealth through any point outside this Commonwealth shall be registered with the secretary subject to the provisions of this act. Such registration shall be renewed annually prior to January 1: Provided, That registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of this act or if the pesticide is distributed under the provision of an experimental use permit issued by the Federal Environmental Protection Agency or if the pesticide is registered and placed in smaller containers for use purposes but not for sale.

(b) The applicant for registration for a pesticide which is federally registered shall file a statement with the secretary which shall include:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicants.

(2) The name of the pesticide.

(3) Other necessary information required for completion of the department's application for registration form.

(4) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use.

(5) The use classification as provided in the "Federal Insecticide, Fungicide and Rodenticide Act of 1947," as amended in 1972.

(c) Upon approval of a State plan by the Administrator of the Federal Environmental Protection Agency an applicant for registration of a pesticide formulated for distribution and use within the State of Pennsylvania to meet special local needs shall file a statement with the secretary which shall include:

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

(2) The name of the pesticide.

(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use.

(4) The use classification as provided in the "Federal Insecticide, Fungicide and Rodenticide Act of 1947," as amended in 1972.

(d) The secretary may require a full description of the tests made and the results thereof upon which the claims are based on any pesticide not registered federally or on any pesticide on which restrictions are being considered. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

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

(f) The applicant desiring to register a pesticide shall pay an annual registration fee of ten dollars (\$10) to the secretary for each pesticide registered for such applicant. All such registrations shall expire on December 31 of any one year.

(g) Any registration approved by the secretary and in effect on December 31 for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until such time as the secretary notifies the applicant that the registration has been renewed, or otherwise denied in accord with the provisions of section 6 of this act. Forms for reregistration shall be mailed to registrants at least sixty days prior to the due date.

(h) If it appears to the secretary that the composition of the pesticide is such as to warrant the proposed claims for it and if the pesticide and its labeling and other material required to be submitted comply with the requirements of this act he shall register the pesticide.

Section 6. Refusal to Register, Cancellation, Suspension, Legal Recourse.—(a) If it does not appear to the secretary that a pesticide registered under his authority is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this act or regulations adopted thereunder he shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the provisions of this act so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the required changes, the secretary may refuse to register the pesticide.

(b) The secretary may, when he determines that a pesticide registered under his authority, or its labeling does not comply with the provisions of the act or the regulations adopted thereunder, cancel the registration of a pesticide.

(c) The secretary may, when he determines that there is an imminent hazard, suspend on his own motion, the registration of a pesticide registered under his authority.

(d) Any person adversely affected by an order issued under the provisions of this section may obtain judicial review thereof by filing an appeal in the Commonwealth Court, within thirty days after the entry of such order.

(e) All action of the secretary taken pursuant to the provisions of this section shall be subject to the provisions of the act of June 4, 1945 (P.L. 1388, No.442), known as the "Administrative Agency Law."

Section 7. Determinations; Rules and Regulations; Classified for Restricted Use; and Uniformity.—(a) The secretary is authorized, after due notice and an opportunity for a hearing:

(1) To declare as a pest any form of plant or animal life (except virus, bacteria, or other microorganisms on or in living man or other

living animals) which is injurious to man, desirable animals, desirable plants, and land; and

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

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

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

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

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

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

(5) Regulating the labeling of devices.

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

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

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

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

Section 8. Prohibited Acts.—(a) No person shall distribute, transport, or deliver for transportation, into, through or within this Commonwealth:

(1) Any pesticide which has not been registered pursuant to the provisions of this act.

(2) Any pesticide if any of the claims made for it or any of the directions for its use or its labeling differs from the representation made in connection with its registration or if the composition of the pesticide differs from the composition as represented in connection with its registration: Provided, That a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product in cases where the secretary determines that such change will not have an unreasonable adverse effect on the environment.

(3) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper, if any, a label bearing the information required by this act and the regulations adopted hereunder except as the secretary shall provide in the rules and regulations for certified applicators.

(4) Any pesticide which is adulterated or misbranded.

(5) Any pesticide packaged in a container which violates any provision of the regulations adopted pursuant to section 7 (b) of this act.

(6) Any pesticide packaged in a container which is unsafe due to damage.

(7) Any pesticide application device which is misbranded.

(b) No person shall distribute any pesticide classified for restricted use to any person who is required by law to have a permit or to be certified to use or purchase such pesticide unless such person has a valid permit or is certified to use or purchase the kind and quantity of such pesticide proposed to be distributed.

(c) No person shall detach, alter, deface or destroy, wholly or in part any label or labeling prescribed in this act or in any regulations adopted hereunder.

(d) No person shall add any substance to, or take any substance from, a pesticide in a manner that may be reasonably expected to defeat the purpose of this act or the regulations adopted hereunder.

(e) No person shall use, or cause to be used, any pesticide inconsistent with its labeling or to the regulations of the secretary if such differ from, or further restrict, the labeling of the pesticide.

(f) No person shall use for his own advantage or reveal any

information relative to the formulas of pesticide products acquired by the authority of section 5 of this act, but this provision shall not be deemed to prohibit the use of disclosure of information to the secretary or proper officials or employes of the Commonwealth, or to courts of competent jurisdiction in response to a subpoena, or to physicians or pharmacists or other qualified persons for use in the preparation of antidotes.

(g) No person shall handle, transport, store, display or distribute pesticides in such manner as to endanger man or his environment or endanger food, feed or any other products that may be transported, stored, displayed or distributed with such pesticides.

(h) No person shall dispose of, discard or store any pesticide or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife or pollinating insects or pollute any water supply or waterway.

(i) No person shall make any false or fraudulent claims through any media, misrepresenting the effect of pesticide materials or application methods to be utilized.

(j) No person shall operate pesticide application equipment or devices in a faulty, careless or negligent manner.

(k) No person shall refuse or neglect to keep and maintain the records required by this act or to make reports when and as required by regulation.

(l) No person shall make false or fraudulent records, invoices or reports concerning the manufacture, transportation, sales, storage, control and application of pesticides.

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

(n) No person shall make any false statement or misrepresentation of material fact on any application for the issuance or renewal of any license, permit or certification issued pursuant to this act.

(o) No person shall refuse or neglect to comply with any limitations imposed upon a license, permit or certification issued pursuant to this act.

(p) No person shall aid or abet another to evade the provisions of this act, conspire with another for that purpose or allow his license, permit or certification to be used by another.

(q) No person shall make any false or misleading statement during or after an inspection concerning any infestation or infection of pests found on the land inspected.

(r) No person shall impersonate any Federal, State, county or city inspector or official in connection with any matter regulated by the provisions of this act.

Section 9. Denial, Suspension and Revocation of Licenses, Permits and Certificates.—(a) Upon receipt of a complaint from any person or

of a report of any agent of the secretary concerning an alleged violation of any provision of this act or of the regulations adopted hereunder or of an order issued pursuant hereto by the holder of a license, permit or certificate, the secretary after a hearing may suspend such license, permit or certificate for a period not to exceed ten days pending an inquiry into the matter.

(b) After hearing, the secretary may deny, modify, suspend or revoke a license, permit or certificate issued or to be issued pursuant to the provisions of this act if he finds that the applicant or holder has violated any provision of this act or of the regulations adopted hereunder or of an order issued pursuant hereto.

Section 10. "Stop Sale, Use, or Removal" Order.—When the secretary has reasonable cause to believe a pesticide or device is being distributed, stored, transported, or used in violation of any of the provisions of this act, or of any of the prescribed regulations under this act, he may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order upon him, the secretary may attach the order to the pesticide or device and shall notify the owner, custodian, and registrant. The pesticide or device shall not be sold, used, or removed until the provisions of this act have been complied with and the pesticide or device has been released in writing under conditions specified by the secretary or the violation has been otherwise disposed of as provided in this act by a court of competent jurisdiction.

Section 11. Judicial Action After "Stop Sale, Use or Removal" Order.—(a) After service of a "stop sale, use, or removal" order is made upon any person, either that person, the registrant, or the secretary may file an action in a court of competent jurisdiction in the county in which a violation of this act or regulations adopted thereunder is alleged to have occurred for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this act or regulations adopted thereunder.

(b) If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs, and if such pesticide or device is sold, the proceeds, less costs including legal costs, shall be paid to the State Treasury as provided in section 38 of this act: Provided, That the pesticide or device shall not be sold contrary to the provisions of this act or regulations adopted thereunder. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling, reprocessing, or otherwise bringing the product into compliance or withdrawal of product from the Commonwealth.

(c) When a decree of condemnation is entered against the pesticide or device, court costs, fees, storage, and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide.

Section 12. Pesticide Dealer License.—(a) It shall be unlawful for any person to act in the capacity of a pesticide dealer who sells pesticides which are classified for restricted use or advertise as, or assume to act as a pesticide dealer at any time without first having obtained an annual license from the secretary which shall expire December 31 of each year. A license shall be required for each location or outlet located within this State from which such pesticides are sold: Provided, That any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this State and who distributes such pesticides directly into this State shall obtain a pesticide dealer license for his principal out-of-state location or outlet.

(b) Application for a license shall be accompanied by a ten dollars (\$10) annual license fee and shall be on a form prescribed by the secretary.

(c) Provisions of this section shall not apply to a licensed pesticide applicator who sells pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used for such pesticide application; or any Federal, State, county or municipal agency which provides pesticides only for its own programs.

(d) Applications for renewals of pesticide license shall be mailed to registrants at least sixty days prior to due date.

(e) Each pesticide dealer shall be responsible for the acts of each person employed by him in the solicitation and sale of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, or revocation after a hearing for any violation of this act whether committed by the dealer, or by the dealer's office, agent or employe.

Section 13. Pest Management Consultant.—No individual shall perform services as a pest management consultant for a fee without first obtaining from the secretary an annual license which shall expire on December 31 of each year. Application for a license shall be on a form prescribed by the secretary and shall be accompanied by a fee of twenty-five dollars (\$25): Provided, That licensed pesticide applicators; employes of Federal, State, county or municipal agencies when acting in their official capacities; shall be exempt from this licensing provision.

Section 14. Examination for Pest Management Consultant's Licenses.—The secretary shall require each applicant for a pest management consultant's license to demonstrate to the secretary the applicant's knowledge of pesticide laws and regulations; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination for which he

has applied prior to issuing his license. An examination fee of five dollars (\$5) shall be charged when an examination is requested at other than a regularly scheduled examination date.

Section 15. Classification of Licenses.—The secretary may classify licenses to be issued under this act. Such classifications may include but not be limited to the classification of commercial applicators of pesticides as provided in the regulations promulgated under section 4 of the “Federal Insecticide, Fungicide and Rodenticide Act of 1947,” as amended in 1972. Separate classifications may be specified as ground, aerial, or manual methods used by any licensee to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents, or weeds. Each classification shall be subject to separate testing procedures and requirements: Provided, That no person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for by the secretary under the authority of this section.

Section 16. Commercial Applicator’s License.—No person shall engage in the business of applying pesticides classified for restricted use to the lands of another at any time without a commercial applicator’s license issued by the secretary. The secretary shall require an annual fee of thirty dollars (\$30) for each pesticide applicator’s license issued and shall have the authority to promulgate rules and regulations relating to:

- (1) Applicators license.
- (2) Examination requirement for obtaining an applicator’s license.
- (3) Classification of licenses.
- (4) Methods for renewals of applicator’s license.

Section 17. Private Applicators.—(a) No “private applicator” shall use any pesticides classified for restricted use without that private applicator first complying with the certification requirements determined by the secretary as necessary to prevent unreasonable adverse effects on the environment.

(b) Certification standards to determine the individual’s competency with respect to the use and handling of the pesticide or class of pesticides the private applicator is to be certified to use shall be relative to hazards as per subsection (a). In determining these standards the secretary shall take into consideration standards of the Federal Environmental Protection Agency.

To be certified as a private applicator to use pesticides classified for restricted use a private applicator shall be required to have a permit which signifies that he is competent to use such pesticides.

Section 18. Application of Act to Governmental Entities; Public Operator’s License Required; Liability.—(a) All State agencies, municipal corporations or any other governmental agency shall be subject to the provisions of this act and rules adopted thereunder concerning the application of pesticides classified for restricted use.

(b) Public operators for agencies listed in subsection (a) of this

section shall be subject to examinations as provided for in section 16. The secretary shall issue a limited license without a fee to such public operator who has qualified for such license. The public operator license shall be valid only when such operator is acting as an operator applying or supervising application of pesticides classified for restricted use used by such entities. Government and industry research personnel shall be exempt from this licensing requirement when applying pesticides only to experimental plots.

(c) Such agencies, municipal corporations, and public utilities shall be subject to legal recourse by any person damaged by such application of any pesticide, and such action may be brought in the county where the damage or some part thereof occurred.

Section 19. Insurance Required of Commercial Applicator Licensee.—(a) The secretary shall not issue a commercial applicator's license until the applicant has furnished evidence of financial responsibility with the secretary protecting persons who may suffer legal damages as a result of the operations of the applicant: Provided, That financial responsibility need not apply to damages or injury to agricultural crops, plants or land being worked upon by the applicant. Evidence of financial responsibility may consist of, but not limited to a surety bond, liability insurance or policy or self insurance.

(b) The amount of the financial responsibility as provided for in this section shall be not less than one hundred thousand dollars (\$100,000) for property damage and public liability insurance, each separately, and including loss or damage arising out of the actual use of any pesticide. Such financial responsibility shall be maintained at not less than that sum at all times during the licensed period. The secretary shall be notified ten days prior to any reduction at the request of the applicant or cancellation of such financial responsibility by the surety or insurer: Provided, That the total and aggregate of the surety and insurer for all claims shall be limited to the face of the bond or liability insurance policy if used: Provided further, That the secretary may accept a liability insurance policy or surety bond if used in the proper sum which has a deductible clause in an amount not exceeding one thousand dollars (\$1,000) for all applicators for the total amount of liability insurance or surety bond required herein: And provided further, That if the applicant has not satisfied the requirement of the deductible amount in any prior legal claim such deductible clause shall not be accepted by the secretary unless such applicant furnishes the secretary with a surety bond or liability insurance or financial responsibility which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides.

(c) Should the financial responsibility furnished become unsatisfactory, said applicant shall upon notice immediately execute a new bond or insurance or other form of financial responsibility and shall he fail to do so, the secretary shall cancel his license and give him notice

of said fact and it shall be unlawful thereafter for such person to engage in said business of applying pesticides until the evidence of financial responsibility is brought into compliance with the requirements of subsection (b) of this section and his license is reinstated by the secretary.

(d) Nothing in this act shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations of the secretary.

Section 20. Reports of Pesticide Accidents, Incidents, or Loss.—The secretary may by regulation require the reporting of significant pesticide accidents or incidents to a designated State agency.

Section 21. Inspection of Equipment.—The secretary may provide for inspection of any equipment used for application of pesticides and may require repairs or other changes before its further use for pesticide application.

Section 22. Reciprocal Agreement.—The secretary may issue a license or certification on a reciprocal basis with other states without examination to a nonresident who is licensed, or certified, in another state substantially in accordance with the provisions of this act: Provided, That financial security as provided for in section 19 of this act is met.

Section 23. Exemptions.—(a) A farmer who qualifies as a certified private applicator under section 17 of this act is exempt from provisions of section 16 of this act relating to licenses and requirements.

(b) A landscape gardener who does not apply pesticides classified for restricted use is exempt from licensing provisions of this act.

(c) A veterinarian who does not apply pesticides classified for restricted use is exempt from licensing provisions of this act.

Section 24. The secretary shall follow the procedures or regulations that are established by the Administrator of the Federal Environmental Protection Agency for the safe disposal or storage of any pesticide for which the registration has been cancelled by the Administrator of the Federal Environmental Protection Agency.

Section 25. Pesticide Advisory Board.—(a) There is hereby created a Pesticide Advisory Board consisting of three licensed pesticide applicators residing in the State (one shall be licensed to operate ground equipment, one shall be licensed to operate aerial equipment, and one shall be licensed for structural pest control), one entomologist in public service, one environmental health specialist from the Pennsylvania Department of Health, one toxicologist in public service, one plant pathologist in public service, one member from the agricultural chemical industry, one member from the food processing industry, two producers of agricultural crops or products on which pesticides are applied or which may be affected by the application of pesticides, one representative of the Pennsylvania Department of Agriculture, one

representative of the Pennsylvania Fish Commission, one representative from the Pennsylvania Game Commission, one representative of the Pennsylvania Department of Environmental Resources and one representative of the Pennsylvania Department of Transportation. Such members shall be appointed by the Governor for terms of four years and may be appointed for successive four-year terms at the discretion of the Governor. The Governor may remove any member of the board prior to the expiration of his term of appointment for cause: Provided, That at the inception of this act the Governor shall appoint four members which shall not include two members from any one representative group for a period of two years; five members for a period of three years which shall not include two members from any one representative group; and five members for a period of four years which shall not include two members from any one representative group. All subsequent terms for appointments to such board shall be for a period of four years.

(b) Upon the death, resignation, or removal for cause of any member of the board, the Governor shall fill such vacancy within thirty days of its creation, for the remainder of its term in the manner herein prescribed for appointment to the board.

(c) The board shall advise the secretary on any or all problems relating to the use and application of pesticides. This may include pest control problems, environmental or health problems related to pesticide use, and review of needed legislation, regulations and agency programs.

(d) The board shall elect one of its members chairman. The members of the board shall meet at such time and at such place as shall be specified by the call of the secretary, chairman, or a majority of the board, no less than four times a year.

Section 26. Legal Recourse.—Any person aggrieved by any action of the secretary may obtain a review thereof by filing an appeal therefrom in the Commonwealth Court within thirty days of issuance of notice of the action.

Section 27. Information.—The secretary may, in cooperation with the Pennsylvania State University or any other public educational institutions and industry associations publish information and conduct short courses of instruction in the areas of knowledge required in sections 14, 16 (2) and 17 of this act.

Section 28. Unlawful Conduct.—It shall be unlawful to violate any of the provisions of this act or rules and regulations adopted hereunder or any order issued pursuant hereto.

Section 29. Criminal Penalties.—(a) Any person engaging in unlawful conduct as set forth in section 28 of this act, upon conviction thereof in a summary proceeding, may be sentenced to pay a fine of not more than three hundred dollars (\$300) or to undergo imprisonment for a term which shall be fixed at not more than ninety days, or both.

(b) Any person, other than a private applicator, who, within three

years after being convicted of an offense pursuant to subsection (a) of this section, engages in similar unlawful conduct, or who violates any provision of this act after such person was issued a written warning by the secretary pursuant to the provisions of this act, shall be guilty of a misdemeanor of the second degree and, upon conviction thereof, may be sentenced to pay a fine of not more than five thousand dollars (\$5,000) or imprisonment for a term that shall be fixed at not more than two years, or both.

(c) Any person who, being a private applicator, within three years after being convicted of an offense pursuant to subsection (a) of this section, engages in similar unlawful conduct, or who violates any provision of this act after such person was issued a written warning by the secretary pursuant to the provisions of this act, shall be guilty of a misdemeanor of the third degree and, upon conviction thereof, may be sentenced to pay a fine of not more than two thousand five hundred dollars (\$2,500) or imprisonment for a term that shall be fixed at not more than one year, or both.

Section 30. Civil Penalties.—In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act or a rule or regulation adopted hereunder, or any order issued pursuant hereto, the secretary after hearing, may assess a civil penalty upon a person other than a private applicator for such violation. The civil penalty so assessed shall not exceed ten thousand dollars (\$10,000). The civil penalty shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner now or hereafter provided at law for the collection of debt. If any person liable to pay such civil penalty neglects or refuses to pay the same after demand, the amount of the civil penalty, together with interest and any other costs that may accrue, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of such person after the same has been entered and docketed of record by the prothonotary of the county where such property is situated. It shall be the duty of each prothonotary, upon receipt of the certified copy of such a lien, to enter and docket the same in the records of his office, and to index the same as judgments are indexed without requiring the payment of costs as a condition precedent to the entry thereof.

Section 31. Civil Remedy.—In addition to any other remedies provided for in this act, 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 act or the rules and regulations promulgated hereunder or any order issued pursuant to this act 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

unlawful conduct, as defined in section 28 of this act, 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 such proceedings. In addition to an injunction, the court, in such equity proceedings, may levy civil penalties as provided in section 30 of this act.

Section 32. *Concurrent Remedies.*—The penalties or remedies prescribed by this act shall be deemed concurrent and the existence of or exercise of any remedy shall not prevent the secretary from exercising any other remedy hereunder, at law or in equity.

Section 33. *Enforcement.*—(a) For the purpose of carrying out the provisions of this act the secretary may enter upon any public or private premises at reasonable times, in order to sample and examine pesticides or devices on the distributors premises including any vehicle of transport, for the purpose of determining whether they comply with the requirements of this act.

The secretary may also:

(1) Have access for the purpose of inspecting any equipment subject to this act and such premises on which such equipment is kept or stored.

(2) Inspect lands actually or reported to be exposed to pesticides.

(3) Inspect storage or disposal areas.

(4) Inspect or investigate complaints of injury to humans or land.

(5) Sample pesticides being applied or to be applied.

(b) Should the secretary be denied access to any land or buildings where such access was sought for the purpose set forth in this act, he may apply to any issuing authority for a search warrant authorizing access to such land or buildings for said purposes. The court may upon such application issue the search warrant for the purposes requested.

Section 34. *Cooperative Agreements.*—The secretary may cooperate, receive grants-in-aid, and enter into agreements with any agency private or public of the Federal Government, of this Commonwealth or with any agency of another state, in order:

(1) To secure uniformity of regulations.

(2) To cooperate in the enforcement of the Federal Pesticide Control Laws through the use of State and Federal personnel and facilities and to implement cooperative enforcement programs.

(3) To develop and administer State programs for training and certification of certified applicators consistent with Federal standards.

(4) To contract for training with other agencies including Federal agencies for the purpose of training certified applicators.

(5) To contract for monitoring pesticides for the national plan.

(6) To prepare and submit State plans to meet Federal certification standards.

(7) To regulate certified applicators.

Section 35. *Records.*—Any person issued a license or permit under provisions of this act shall be required by the secretary to keep accurate

records of such relevant information as the secretary may deem necessary as specified by regulation.

Section 36. Publication of Information.—The secretary shall publish and distribute annually to each pesticide registrant or licensee or other interested persons a composite report of the results of analyses based on official samples as compared with the analyses guaranteed and information concerning the distribution of pesticides: Provided, That individual distribution information shall not be a public record.

Section 37. Delegation of Duties.—All authority vested in the secretary by virtue of the provisions of this act may with like force and effect be executed by such employes of the Commonwealth as the secretary may from time to time designate for said purpose.

Section 38. Disposition of Funds.—Fees so collected as well as moneys derived from registration, licensing and fines, and civil penalties, shall be paid into the State Treasury.

Section 39. Prior Liability.—The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this act becomes effective.

Section 40. Repealers.—(a) The act of June 5, 1957 (P.L.248, No.125), known as the "Pennsylvania Pesticide Act of 1957," is repealed, upon implementation of this act.

(b) All other acts and parts of acts are repealed in so far as inconsistent with the provisions of this act.

Section 41. The sum of three hundred fifty-four thousand dollars (\$354,000) is hereby appropriated to the Department of Agriculture for the fiscal year July 1, 1974 to June 30, 1975 to carry out the provisions of this act.

Section 42. Effective Date.—The provisions of this act shall become effective six months after the approval of the State plan by the Administrator of the Federal Environmental Protection Agency as provided under section 4 (b) of the "Federal Insecticide, Fungicide and Rodenticide Act of 1947," as amended in 1972.

APPROVED—The 1st day of March A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 24.



Secretary of the Commonwealth.