

No. 1986-167

AN ACT

SB 1445

Amending the act of March 1, 1974 (P.L.90, No.24), entitled "An act 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," further providing for licensing of commercial applicator firms, for licensing and certification of commercial applicators and public applicators, for registration and training of certain noncertified employees, for increased recordkeeping requirements, for additional enforcement authority and additional authority on product registration data review, and for increase of fees.

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

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

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

* * *

[(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 employee 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.]

(6) *“Applicator” means certified applicator, private applicator, commercial applicator or public applicator.*

(A) *“Certified applicator” means any individual who is certified under section 16.1, 17 or 17.1 of this act as competent to use or supervise the use or application of any pesticide.*

(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 on the property or premises of another, or on easements granted under State law, or any applicator who uses or supervises the use of any restricted use pesticide on property owned or rented by him or his employer, when not for purposes of producing an agricultural product. The secretary may by regulation deem certain types of applicators using any pesticide on their own property or that of his employer as commercial applicators.*

(D) *“Public applicator” means any certified applicator who applies pesticides as an employe of the State or its instrumentalities or any local agency.*

(E) *“Pesticide applicator technician” means any individual employed by a commercial applicator or governmental agency who, having met the competency requirements of section 16.1 of this act, is registered by the secretary to apply any pesticides under the direct supervision of a certified applicator.*

* * *

(9.1) *“Department” means the Department of Agriculture of the Commonwealth.*

* * *

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

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

* * *

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

* * *

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

* * *

(39.1) *“Secretary” means the Secretary of Agriculture of the Commonwealth.*

* * *

(40.1) *“Under the direct supervision of a certified commercial or public applicator,” unless otherwise prescribed by labeling, means application by a registered pesticide application technician acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied, or application by a crew of noncertified or non-registered employes working under the instruction and control of a certified commercial or public applicator who is physically present at the job site.*

* * *

Section 2. Section 5 of the act is repealed.

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

Section 5.1. Registration.—*(a) Every pesticide which is distributed in this State shall be registered with the secretary, subject to the provisions of this act. Such registration shall be renewed annually prior to January 1, but 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 place 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 provisions of an experimental use permit issued under section 7 of this act or an experimental use permit issued by the Federal Environmental Protection Agency.*

(b) The applicant for registration 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's.

(2) The name of the pesticide.

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

(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 and the use classification as provided for in the “Federal Insecticide, Fungicide, and Rodenticide Act of 1947,” (61 Stat. 163, 7 U.S.C. § 136 et seq.).

(c) The secretary shall require the submission of a list of all active and inert ingredients of all pesticides to be registered and may, when he deems it necessary, require the submission of the complete formula.

(d) The secretary may require a full description of the tests made on any pesticide and the results thereof upon which the claims are based. 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 twenty-five dollars (\$25) to the secretary for each pesticide registered for such applicant. All such registrations shall expire on December 31 of any one year, unless sooner cancelled. A registration for a special local

need pursuant to subsection (h) which is disapproved by the administrator of the Federal Environmental Protection Agency shall expire on the effective date of the administrator's disapproval.

(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 thirty days prior to the due date.

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

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

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

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

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

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

(6) A special local need exists.

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

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

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

(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 *or public comment*, 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 *or public comment*, adopt regulations in conformity with the primary pesticide standards, particularly as to labeling, registration requirements, and pesticides classified for restricted use as established by the Federal Environmental Protection Agency or other Federal or Commonwealth agencies.

(e) Nothing in this act shall be construed as requiring the secretary to report minor violations of this act for prosecution or for the institution of condemnation proceedings when he believes that the public interest will be served best by a suitable notice of warning in writing. *However, the secretary shall maintain an appropriate record of all violations identified as a result of use observations, misuse investigations or by inspectors in the normal conduct of their duties.*

Section 8. Prohibited Acts.—* * *

[(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.]

(f) No person shall use for his own advantage or reveal any information relative to the formulas, supporting data or other confidential information for registration of pesticide products acquired by the authority of section 5.1 of this act, but this provision shall not be deemed to prohibit the 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 purposes of providing health care treatment.

* * *

(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.

* * *

(s) No individual shall purchase or attempt to purchase any pesticide classified for restricted use, unless such individual is a certified or permitted pesticide applicator.

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

Section 5. Section 15 of the act is repealed.

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

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

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

(1) Commercial pesticide applicator.

(2) Public pesticide applicator.

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

(d) Application for an applicator license shall be made in writing to the secretary on a designated form provided by the secretary.

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

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

(g) The secretary shall not grant a license until the applicant for a license has furnished evidence of financial responsibility to the secretary, consisting either of a surety bond, self-insurance or a liability insurance policy or certification thereof, or other evidence of financial responsibility. The secretary shall determine by regulation the financial responsibility requirements after due notice and a hearing.

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

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

(i) All licenses shall continue in full force and effect until December 31 each year, whereupon they shall become invalid unless renewed. Forms for renewal shall be mailed to all holders of current licenses by the secretary at least sixty days prior to expiration.

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

Section 7. Section 16 of the act is repealed.

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

Section 16.1. Standards of Qualifications for Certification of Commercial Applicators.—No individual shall be certified competent to apply or supervise the application of any pesticide for any purpose unless he has demonstrated his competence to apply pesticides in the proper certification cate-

gory. Each category shall be subject to separate written testing procedures, requirements and examination fees and shall demonstrate minimum standard proficiency on the basis of a written examination conducted at an approved test site under direction of the department or its designated agents. The secretary shall require a fee not to exceed fifty dollars (\$50) for the basic core examination for certified applicators, and an additional fee not to exceed ten dollars (\$10) shall be charged for each additional category in which the applicant desires to be certified. An annual fee of thirty dollars (\$30) shall be charged when the certification does not require an examination. Certifications shall be valid for one calendar year. The secretary shall promulgate rules and regulations pertaining to:

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

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

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

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

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

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

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

(vii) Transportation, storage and disposal of pesticides.

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

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

Section 16.2. Registration of Pesticide Application Technicians.—

(1) Noncertified employes of any business engaged in applying pesticides to the lands of another or to any easement granted by the Commonwealth may apply pesticides only under the direct supervision of a certified applicator.

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

(3) The training program for a pesticide application technician shall be administered by a qualified instructor to be determined by standards prepared by the Pesticide Advisory Board and involve subject matter similar to the commercial applicator's area of competence but of a more specific nature involving the assigned tasks of the technician. The training program shall include, but not be limited to:

(i) Identification of pests relative to job responsibility.

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

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

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

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

(4) Where there are noncertified employes engaged in the application of pesticides on a job site, they shall, at a minimum, be either of the following:

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

(ii) A crew of noncertified or nonregistered employes working under the instruction and control of a certified commercial or public applicator who is physically present on the job site.

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

Section 17.2. 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 people or on the environment. To be certified, the private applicator shall pass a written examination administered at an approved test site by the secretary or his agent.

(b) Certain standards to determine the individual's competency with respect to the use and handling of restricted use pesticides by the private applicator shall take into consideration the standards of the Federal Environmental Protection Agency, but, as a minimum, shall include the following topics:

(1) Labeling and label comprehension.

(2) Safety and health.

(3) Environmental protection.

(4) Pests.

(5) Pesticides.

(6) Integrated pest management.

(7) Equipment.

(8) Application techniques and technology.

(9) Laws and regulations.

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

(d) A private applicator shall be recertified as competent with respect to the use and handling of restricted use pesticides upon the successful completion of an update training program as determined by the secretary. Such program shall include, at a minimum, a review of certification topics, but shall not include a written examination.

Section 17.3. Protection of Trade Secrets and Other Information.—

(a) In submitting data required by this act, the applicant may:

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

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

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

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

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

Section 10. The act is amended by adding a section to read:

Section 23.1. Temporary Suspensions.—A license or certificate issued under this act may be temporarily suspended under circumstances as determined by the secretary to be an immediate and clear danger to the public health and safety. The secretary shall issue an order to that effect, without a hearing but upon due notice, to the licensee or certificate holder concerned at his or her last known address, which shall include a written statement of all allegations against the licensee or certificate holder. The secretary shall thereupon commence formal action to suspend, revoke and restrict the license or certificate of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within thirty days following the issuance of an order temporarily suspending a license, the secretary shall conduct, or cause to be conducted, a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee or certificate holder whose license or certificate has been temporarily suspended may be present at the preliminary hearing and may be represented by

council, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license shall be immediately restored. The temporary suspension shall remain in effect until vacated by the secretary, but in no event longer than one hundred eighty days.

Section 11. Section 25(a) of the act is amended to read:

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.] *There is hereby created a Pesticide Advisory Board. Members of the Pesticide Advisory Board shall be residents of the Commonwealth of Pennsylvania. The Pesticide Advisory Board shall consist of three licensed pesticide applicators (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 member representing environmental interests (having demonstrated significant expertise and knowledge of pesticide handling and application), one representative of the Pennsylvania Department of Agriculture, one representative of the Pennsylvania Fish Commission, one representative*

of 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 six members which shall not include two members from any one representative group for a period of two years; six 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.

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Section 12. The act is amended by adding a section to read:

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

(1) The control of the aerial application of restricted use pesticides to rights-of-way only after notice in a newspaper of general circulation in the affected area, at least one week prior to the date of application. This regulation shall include, but not be limited to:

(i) Minimum spraying distances.

(ii) Procedural prohibitions and restrictions relating to weather conditions.

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

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

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

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

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

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

(1) Designated natural areas on State forest lands.

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

Section 13. Section 30 of the act is repealed.

Section 14. The act is amended by adding a section to read:

Section 30.1. Civil Penalties.—(a) *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 thereunder, or any order issued pursuant to, the secretary may assess a civil penalty not to exceed ten thousand dollars (\$10,000) upon an individual or business for each offense.*

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

(c) *In determining the amount of the penalty, the secretary shall consider the gravity of the violation. Whenever the secretary finds a violation which did not cause harm to human health or unreasonable adverse effect on the environment, the secretary may issue a warning in lieu of assessing a penalty.*

(d) *In cases of inability to collect such civil penalty or failure of any person to pay all or such portion of the penalty as the secretary may determine, the secretary may refer the matter to the Office of the Attorney General which shall recover such amount by action in the appropriate court.*

Section 15. Sections 35 and 37 of the act are amended to read:

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

Section 37. Delegation of Duties; *Exclusion of Local Laws and Regulations.*—(a) 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.

(b) *This act and its provisions are of Statewide concern and occupy the whole field of regulation regarding the registration, sale, transportation, distribution, notification of use, and use of pesticides to the exclusion of all local regulations. Except as otherwise specifically provided in this act, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, handling or use of pesticides, if any of these ordinances, laws or regulations are in conflict with this act.*

Section 16. The act is amended by adding a section to read:

Section 37.1. Fees, Fines and Civil Penalties.—*All fees imposed by this act shall remain in effect until changed by the secretary by regulation subject to the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." If the revenues raised by fees, fines and civil penalties imposed under this act are not sufficient to meet expenditures for the administration and enforcement of this act over a two-year period, the secretary shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures.*

Section 17. Section 38 of the act is amended to read:

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.] *Fees so collected, as well as moneys derived from registration, licensing and fines, and civil penalties shall be paid into a special restricted account in the General Fund to be known as the Pesticide Regulatory Account for use by the department in administering the act. All such moneys placed in the Pesticide Regulatory Account under the provisions of this section are hereby made available immediately and are hereby specifically appropriated to the department for the purposes herein specified.***

Section 18. This act shall take effect in 90 days.

APPROVED—The 12th day of December, A. D. 1986.

DICK THORNBURGH