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NORTH DAKOTA NOXIOUS WEED LAW ENFORCEMENT PROCEDURES 2019-2021

INTRODUCTION

North Dakota law requires everyone to do all things necessary and proper to control the spread of noxious weeds in North Dakota. No one may distribute, sell, or offer for sale a noxious weed.

The North Dakota Agriculture Commissioner and County and City Weed Boards are given responsibility to enforce laws in relation to noxious weeds (Noxious Weed Control; N.D.C.C. § 4.1-47).

These procedures include a summary of primary responsibilities in relation to North Dakota weed control law. Also, below are some suggestions about how that law might be implemented effectively and how you can best foster landowner cooperation in the control of noxious weeds. These *Procedures* should be used in conjunction with N.D.C.C. § 4.1-47 and guidance and advice from your legal counsel.

Personal contacts, such as telephone calls and on-site visits, are highly effective in disseminating information regarding noxious weed control to the people in your county or city. Formal enforcement action is generally a measure of last resort in an effective weed control program, and it usually should only be used after all other attempts to get someone to control noxious weeds have been ineffective.

To make it more likely that an enforcement action is successful, we recommend that you maintain accurate records of every action, phone call, or conversation regarding the matter. In addition, noxious weed law requires that Weed Boards keep minutes of its Board meetings and a complete record of all official acts.

If you have any questions, please contact the Noxious Weeds Division at the North Dakota Department of Agriculture at (701) 328-2983 or Mr. Richard Weisz at raweisz@nd.gov.

Figure 1 Noxious Weed Enforcement Map (see Attachment C)

Inspection, Notice to Control, Re-Inspection

1. INSPECTION

Inspection precedes all other enforcement actions. It must be conducted by the Weed Control Officer to determine the presence of a noxious weed infestation. All inspections should be carefully and completely documented. Locations should be mapped, photographed, and infestation characteristics (density, size, composition, etc.) detailed in a dated report.

- a. An inspection may be conducted at any time. During the inspection reasonable care must be exercised to avoid damage to private property and disruption to landowner operations.
- b. All signed complaints received by the Weed Control Officer must be investigated by the Weed Control Officer.
- c. Inspections can be conducted without permission of the landowner or land manager. However, it is advisable to obtain permission, if possible.
- d. Weed Control Officers may remove weed specimens or other materials without consent of the landowner or land manager.

2. NOTICE TO LANDOWNER: NOTICE TO CONTROL

The Weed Board, if a noxious weed infestation is found and the landowner does not control the weeds, should send a *Notice to Control* (see Attachment A) to the landowner.

The *Notice to Control* must:

- a. Be served either personally or by certified mail on the landowner.
- b. Specify the time within which the landowner must meet the minimum remedial requirements;
- c. Inform the landowner of the right to request a hearing by requesting in writing that the Weed Board hold a hearing on the matter;
- d. Specify the minimum remedial requirements (i.e. mowing, spraying, herbicide formulations, etc.);
- e. Include a statement of costs that will be incurred by the weed officer to control the weeds if the landowner fails to control them; and
- f. Specify that the landowner may be subject to monetary penalties if the landowner fails to comply with the minimum remedial requirements.

The Notice to Control should also inform the landowner that the Weed Control Officer may control the weed infestation(s) and may charge the cost of control against the landowner's real estate taxes.

3. RE-INSPECTION

Re-inspection by the Weed Control Officer is necessary to determine if adequate control has been accomplished. The procedures required for initial inspection, outlined above, also apply to re-inspection. All inspections and re-inspections should be sufficiently documented.

Weed Board Control of Noxious Weeds

N.D.C.C. § 4.1-47-32 allows a Weed Board twenty-one days from receipt of a written complaint to satisfactorily address the complaint before the person who complained may file a written request for a hearing with the Board of County/City Commissioners.

After inspecting, issuing a *Notice to Control*, and re-inspecting, the Weed Control Officer may follow up with a *Notice of Enforcement Action* and/or issue the landowner a proposed penalty. A penalty may only be imposed and enforced upon order of a Weed Board or after a court hearing. Oftentimes, issuing a *Notice of Enforcement Action* is effective in fostering individual regulatory compliance in controlling the noxious weed(s) in question.

If after holding a hearing on the matter, the Weed Board directs the noxious weeds to be controlled by the Weed Control Officer, the landowner may appeal the decision to the County/City Commissions. A decision by the commission is final.

If the landowner does not appeal the decision to the County/City Commission, or if the Commission upholds the decision of the Weed Board, the Weed Control Officer is responsible to control the noxious weeds and charge any expenses against the real estate taxes of the land in question. The amount of the expenses that may be charged might be limited to the amount set forth in the Notice to Control issued to the landowner. Therefore, in approximating costs and completing the statement of costs in the Notice to Control, accurate estimates are required.

Penalty After a Hearing

The assessment of a monetary penalty for failure to comply with the noxious weed law pursuant to North Dakota Century Code §4.1-47-31 may be utilized either as an alternative to, or in conjunction with control measures taken by the Weed Board.

The guidelines below explain the statutory requirements for assessing the penalty. If a Weed Board determines that it would be appropriate to assess a penalty, to better ensure that the matter is handled properly and due process is afforded the landowner, the Weed Board should consult its legal counsel.

CIVIL PENALTY

1. If the Weed Board imposes the penalty, it should serve appropriate notice upon the landowner, indicating the proposed penalty and the time and place for the hearing. The Weed Board or a court can assess the penalty after a hearing.
2. The penalty may be up to eighty dollars per day with a four thousand dollar per year maximum.
3. If the Weed Board has assessed a penalty, the landowner may appeal to the County or City Commission.
4. After the Weed Board assesses the penalty, the accumulated penalties are a lien against the property of the landowner. The lien runs from the day the *Notice to Control* was served.

Quarantine

The Agriculture Commissioner is authorized to declare a quarantine to prevent the spread of noxious weeds. Any person who violates a quarantine order issued under NDCC 4.1-47-29 is guilty of a class B misdemeanor.

Any person may request that the Agriculture Commissioner declare a quarantine. Before a Weed Board or a Weed Control Officer requests a quarantine, that official should follow normal enforcement procedures (inspection, notice of control, re-inspection, etc.).

The Agriculture Commissioner may propose a nonemergency quarantine or impose an emergency quarantine:

1. NONEMERGENCY QUARANTINE

In the case of a nonemergency quarantine, the Agriculture Commissioner will:

- a. Schedule a public hearing;
- b. Provide notice of the hearing by publishing its time, place, and date in the official newspaper of each county having land within the area of the proposed quarantine; and,
- c. After review of information at the hearing, make a determination as to whether to declare a nonemergency quarantine.

2. EMERGENCY QUARANTINE

Within fourteen days of declaring and imposing an emergency quarantine, the Agriculture Commissioner will:

- a. Schedule a public hearing;
- b. Provide notice of the hearing by publishing its time, place, and date in the official newspaper of each county having land within the area of the proposed quarantine; and,
- c. After review of information at the hearing, make a determination within fourteen days of declaring and imposing the emergency quarantine as to whether to continue imposition of the emergency quarantine.

If the Agriculture Commissioner imposes a nonemergency or emergency quarantine, the Agriculture Commissioner will include in the quarantine order the date by which, or the circumstances under which, the Agriculture Commissioner will lift the quarantine order.

Public Land Enforcement

1. STATE LANDS

The Agriculture Commissioner is responsible for organizing a noxious weed control or eradication program with all state agencies owning, controlling, or have jurisdiction over lands in North Dakota.

The Weed Board:

- a. May inspect state-owned land for noxious weeds;
- b. may serve a *Notice to Control* letter on the state official responsible for managing the land (though the form letter will require revision in light of tax exempt status enjoyed by state-owned land);
- c. may re-inspect the land to determine if the minimum remedial requirements have been met;
- d. may serve a *Notice of Enforcement* letter on the state official responsible for managing the land if the minimum remedial requirements have not been met (though the form letter will require revision in light of tax exempt status enjoyed by state-owned land);
- e. must get approval to control the noxious weeds from the Agriculture Commissioner;
- f. may enter upon the state-owned land to control the noxious weeds after the Agriculture Commissioner's approval has been received;
- g. may send the state agency responsible for managing the land a bill for the control expenses incurred by the board;

The state agency must pay expenses of the weed control 30 days following receipt of the bill.

2. FEDERAL LANDS

The Agriculture Commissioner is responsible for organizing a noxious weed control or eradication program with all Federal Agencies owning, controlling, or have jurisdiction over lands in North Dakota.

- a. If a Federal Agency does not control or eradicate noxious weed under its jurisdiction and fails to develop a noxious weed management plan, the appropriate Weed Board shall notify the Federal Agency.
- b. The Federal Agency shall provide a report, on forms prepared by the Agriculture Commissioner, to the Weed Board detailing the methods it uses to manage noxious weed and explaining why it is not controlling or eradicating them.
- c. The Agriculture Commissioner may hold a public hearing to determine why the Federal Agency is not controlling or eradicating noxious weeds.

3. POLITICAL SUBDIVISION LANDS

Weed Control Officers are responsible for organizing a noxious weed control or eradication program with all political subdivisions within North Dakota that own, control, or have jurisdiction over land.

Attachment A

**EXAMPLE: NOXIOUS WEEDS
NOTICE TO CONTROL**

Name

Address

City, State, Zip Code

Dear _____:

An inspection has confirmed the presence of uncontrolled noxious weeds, specifically _____ on the following land:

Legal Description: _____ 1 / 4 _____ Sec _____ Twp _____ Range. _____ estimated acres of uncontrolled noxious weeds were identified. Attached is an aerial map showing the infested area(s).

You are required to treat the identified infestation(s) no later than _____.

The minimum remedial requirements for treating the noxious weed(s) are:

_____.

This directive is made pursuant to North Dakota Century Code section 4.1-47-28.

Failure to control the identified weed(s) prior to the deadline set above may result in the Weed Control Officer providing for the control of them and the expenses in doing so will be charged against your land, which will be part of the real estate taxes levied against the land.

If the minimum remedial requirements are not met and the weed officer provides for control of the weeds, the county's cost to do so will be \$ _____, which will be the amount charged against your land.

In addition, pursuant to North Dakota Century Code section 4.1-47-31, you may be subject to penalties of up to \$80 per day for each day of violation, not to exceed \$4,000 per year. Any accumulated penalties are a lien against the property from the time this notice is delivered to you.

You may delay control efforts by the Weed Control Officer by making a written request to the Weed Board that it hold a hearing on the matter

Weed Control Officer

Date

Attachment B

**EXAMPLE: NOXIOUS WEEDS
NOTICE OF ENFORCEMENT ACTION**

Name

Address

City, State, Zip Code

Dear _____:

An inspection has confirmed the presence of uncontrolled noxious weeds, specifically _____ on the following land:

Legal Description: _____ 1 / 4 _____ Sec _____ Twp _____ Range. _____ estimated acres of uncontrolled noxious weeds were identified. Attached is an aerial map showing the infested area(s).

After the inspection you were sent a **NOTICE TO CONTROL** dated _____ and requiring you to treat the noxious weed(s) infestation(s) no later than _____.

Because you have failed to do so the Weed Control Officer intends to provide for control of these weeds for you and charge the expenses in doing so against your land, which will be part of the real estate taxes levied against your land pursuant to North Dakota Century Code § 4.1-47-28. If the Weed Control Officer provides for the control of the weeds, the costs will be \$_____.

You have the right to request a hearing with the _____ Weed Board. Such a request must be received by _____ to ensure the _____ Weed Board will not control the weeds until after the hearing is held and you have a chance to be heard.

If after a hearing on the matter, the Weed Board directs the Weed Control Officer to control the noxious weeds, you may appeal that decision to the _____ Commission. A decision by the _____ Commission is final.

Weed Control Officer

Date