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**NORTH DAKOTA NOXIOUS WEED LAW
ENFORCEMENT PROCEDURES
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INTRODUCTION

North Dakota law (NDCC §63-01.1-01) requires North Dakota landowners and other persons in charge or possession of land to eradicate or control the spread of noxious weeds.

Authority to carry out the noxious weed law is vested with the North Dakota Commissioner of Agriculture and county and city weed boards. This manual provides guidelines for enforcement actions by county and city weed boards.

Personal contacts, such as telephone calls and on-farm visits, are most effective in getting the "noxious weed message" to landowners and land managers in your county or city. Enforcing the state's noxious weed law is a measure of last resort in a weed control program, and should only be used when all other attempts to get a landowner or land manager to control noxious weeds have failed.

It is very important to maintain written records of every action, phone call, or conversation regarding the enforcement action. A follow-up letter should always confirm telephone conversations. The success of enforcement actions relies on the records maintained by the control authority.

Inspection, Notice to Control, Re-Inspection

1. INSPECTION

Inspection precedes all other enforcement actions. It should be conducted by the weed control officer to determine the presence of a noxious weed infestation(s). All inspections should be carefully and completely documented.

- a. An inspection may be conducted at any time, provided reasonable care is exercised.
- b. All complaints received by the weed control officer, the weed board or the commissioner must be investigated by the weed control officer.
- c. Inspections can be conducted without permission of the landowner or land manager. It is advisable to obtain permission, if possible.
- d. Weed officers may remove weed specimens without landowner or lessee consent.

2. NOTICE OF LANDOWNER CONTROL

If a noxious weed(s) is found, a *Notice To Control* (see sample letter on the page following) is sent to the landowner. The *Notice To Control* document must:

- a. be served personally, or by certified mail, to the landowner. The notice may also be sent personally or by certified mail to the tenant, lessee, or operator of the land.
- b. include a deadline to control;
- c. inform the landowner of the right to request additional time from the weed board;
- d. specify the minimal remedial requirements expected (i.e. mowing, spraying, herbicide formulations, etc.);
- e. inform the landowner of the right of the weed board to control the weed infestation(s) and place the cost of treatment against the landowner's real estate taxes;
- f. include an estimate of costs if the weed board intends to control the infestation(s);
- g. specify that the landowner may be subject to the penalties in section 63-01.1-15.

3. RE-INSPECTION

Re-inspection by the weed control officer may be necessary to determine if adequate control has been accomplished. The procedures required for initial inspection, outlined above, also apply to re-inspection. Documentation is a must!

**EXAMPLE: NOXIOUS WEEDS
NOTICE TO CONTROL**

Name
Address
City, State, Zip Code

Dear _____:

An inspection authorized by the _____ Weed Board has confirmed the presence of uncontrolled _____ on:
Noxious Weed(s)

Legal Description: _____ 1 / 4 _____ Sec _____ Twp _____ Range

Estimated acres of uncontrolled noxious weeds: _____. Attached is an FSA aerial map showing the infested area(s).

You are hereby required by the _____ Weed Board to treat the _____ infestation(s) no later than _____.
Noxious Weed(s) Deadline

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

This request is made pursuant to North Dakota Century Code section 63-01.1-08. Failure to control or eradicate the noxious weed(s) within the specified time may result in the weed officer controlling or eradicating this weed(s) for you and the expenses charged against your real estate taxes. If the _____ Weed Board controls the weed(s) as described above, the cost will be \$_____.

In addition, pursuant to North Dakota Century Code section 63-01.1-15, you may be subject to penalties of \$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 notice is delivered to the landowner. If you are unable to treat this weed(s) by the deadline listed, you may ask the weed board for additional time.

Weed Officer

Date

Weed Board Control of Noxious Weeds

After inspecting, issuing a *Notice To Control* and re-inspecting, the county or city weed board may choose to follow up with either or both of the following: a *Notice of County Enforcement Action* or issue the landowner a penalty after a hearing. While issuing a *Notice of County Enforcement Action* may result in control and/or eradication of the noxious weed(s), the board may be faced with paying the cost of the control measures up front.

1. FORCED CONTROL OF WEED INFESTATION(S) ON PRIVATE LAND BY A WEED BOARD

- a. A *Notice of County Enforcement Action* (see sample letter on the following page) is sent to the landowner. The *Notice of County Enforcement Action* must meet requirements a, b, e, f, and g from the *Notice To Control* and must inform the landowner of his or her right to request the weed board not to control the weed infestation(s) in question.
- b. If the landowner requests the weed board not control the weed infestation(s) in question, the board may not control the weed infestation(s) until control is authorized by a majority vote of the board.
- c. Expenses for this control are charged to the landowner and levied as real estate taxes against the land for the ensuing year and must be collected in the same manner as real estate taxes.

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

Name _____
Address _____
City, State, Zip Code _____

Dear _____:

An inspection authorized by the _____ Weed Board has confirmed the presence of uncontrolled _____ on:
Noxious Weed(s)

Legal Description: _____ 1 / 4 _____ Sec _____ Twp _____ Range

Estimated acres of uncontrolled noxious weeds: _____. Attached is an FSA aerial map showing the infested area(s).

On _____, you were sent a **NOTICE OF LANDOWNER CONTROL** by
Date
the _____ Weed Board requiring you to treat the _____
Noxious Weed(s)
infestation(s) no later than _____.
Deadline

Because you have failed to treat the noxious weeds as required by the **NOTICE OF LANDOWNER CONTROL**, the _____ Weed Board intends to control or eradicate these weeds for you and charge expenses against your real estate taxes pursuant to North Dakota Century Code § 63-01.1-08. If the _____ Weed Board controls the weeds, the costs will be \$_____.

You have the right to request the _____ Weed Board not to control or eradicate the weeds. Such a request must be received by _____ date to ensure the _____ Weed Board will not control the weeds unless a majority vote of the _____ Weed Board authorizes the control.

Weed Officer

Date

Penalty After a Hearing

The assessment of a penalty for failure to comply with the noxious weed law pursuant to North Dakota Century Code §63-01.1-15, may be utilized either as an alternative to, or in conjunction with, a *Notice of County Enforcement Action*. The procedure for enforcement under North Dakota Century Code section 63-01.1-15, however, is somewhat unclear. The statute states that the penalty may be adjudicated by “a court or by a county or city weed board after a hearing,” but does not specify the procedures for the hearing or for an appeal to the courts. Therefore, it appears that weed boards are to develop procedures for conducting hearings and adjudicating penalties. The guidelines below explain the statutory requirements for assessing the penalties. If a weed board determines that it would be beneficial to assess penalties following hearings on a regular basis, and would like to develop procedures for conducting hearings, the weed board should consult its states attorney in developing such procedures.

1. CIVIL PENALTY

- a. The weed board adjudicates the penalty after a hearing before the weed board: The weed board should serve appropriate notice upon the landowner, indicating the proposed penalty and the time and place for the hearing.
- b. The penalty is not to exceed eighty dollars per day with a four thousand dollar per year maximum.
- c. If the weed board has assessed a penalty, the landowner may appeal to county or city commissioners, and finally to district court. The state’s attorney would represent the weed board in an appeal to the district court.
- d. After the weed board assesses the penalty, the accumulated penalties are a lien against the property of the landowner from the day *Notice To Control* was served.

Quarantine

1. QUARANTINE AGAINST AN INFESTED AREA

The Commissioner of Agriculture is responsible for declaring a quarantine against an area, based on his determinations or those of the weed board.*

- a. Investigation and inspection.
- b. Resolution adopted by a two-thirds majority of a weed board requesting quarantine. (This step is unnecessary if the commissioner acts without a request from a weed board.)
 1. In a non-emergency, commissioner issues notice of intent to quarantine and gives individual opportunity to be heard.
 2. In an emergency, commissioner issues quarantine and gives individual a post-quarantine opportunity to be heard.

2. QUARANTINE AGAINST MATERIALS BEING IMPORTED INTO STATE

The Commissioner of Agriculture, based solely on his determination, is responsible for declaring a quarantine to prohibit noxious weeds from being introduced into the state by the importation of materials or farm products.*

- a. Investigation and inspection by the commissioner.
- b. Determination of likeliness of introduction of noxious weeds by importation.
 1. In a non-emergency, commissioner issues notice of intent to quarantine and gives opportunity to be heard.
 2. In an emergency, commissioner issues quarantine against importing materials or farm products and gives a post-quarantine opportunity to be heard.

3. LIFTING QUARANTINE

The authority to lift a quarantine lies solely with the agriculture commissioner.

*See North Dakota Century Code §63-01.1-12.1

Public Land Enforcement

1. STATE LANDS

- a. Investigation and inspection are completed by the weed board and *Notice To Control* is served.
- b. Any control action must have approval by the Commissioner of Agriculture.
- c. Weed boards may enter upon state land to control noxious weeds.
- d. The state agency must pay expenses of the control 30 days following receipt of the bill.

2. FEDERAL LANDS

- a. The federal agency shall develop a management program for controlling noxious weeds.
- b. If the federal agency does not control or set up a noxious weed management program to the satisfaction of the weed board, the weed control officer shall notify the federal agency as provided in North Dakota Century Code §63-01.1-08.
- c. The federal agency shall provide a report to the Commissioner of Agriculture describing control methods and showing cause why the agency is not controlling the noxious weeds.
- d. The Commissioner of Agriculture may hold a hearing to determine the reason for the federal agency's failure or refusal to control noxious weeds.