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NORTH DAKOTA NOXIOUS WEED LAW ENFORCEMENT PROCEDURES
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INTRODUCTION

North Dakota law (NDCC § 4.1-47-02) requires every person to do all things necessary and proper to control the spread of noxious weeds and makes it illegal for any person to distribute, sell, or offer for sale within this state a noxious weed

Authority to carry out the noxious weed law is vested with the North Dakota agriculture commissioner and county and city weed boards.

Personal contacts, such as telephone calls and on-site visits, are most effective in getting the "noxious weed message" to people in your county or city. Formal enforcement action is a measure of last resort in a weed control program, and should only be used when all other attempts to get a person to control noxious weeds have failed.

To better ensure successful enforcement actions, it is very important to maintain records of every action, phone call, or conversation regarding the matter. In addition, the state's noxious weed law requires that weed boards keep minutes of its board meetings and a complete record of all official acts.

North Dakota Century Code 4.1-47-32 allows the 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.

Figure 1 Noxious Weed Enforcement Map (see Attachment C)

These *Procedures* contain the Department of Agriculture's understanding of the governing law, which is in Chapter 4.1-47 of the Century Code, as well as some suggestions about how that law might be implemented and how control of noxious weeds by landowners can be effectively secured. These *Procedures*, however, should be used in conjunction with the statutes in Chapter 4.1-47 and with guidance and advice, as needed, from the weed officer's or weed board's county state's attorney or city attorney.

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 disrupting 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 officers may remove weed specimens or other materials without consent of the landowner or land manager.

2. **NOTICE OF LANDOWNER CONTROL**

If a noxious weed infestation is found and the landowner does not control the weeds, a *Notice to Control* (see Attachment A) should be sent 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—and thereby delay taking control measures—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 of the right of the weed officer to cause the weed infestation(s) to be controlled and to charge the cost of control against the landowner's real estate taxes.

3. **RE-INSPECTION**

Re-inspection by the weed officer is 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!

Weed Board Control of Noxious Weeds

After inspecting, issuing a *Notice to Control* and re-inspecting, the weed officer may choose to follow up with a *Notice of Enforcement Action* and/or issue the landowner a penalty, although the penalty can only be imposed after a weed board or court hearing. Issuing a *Notice of Enforcement Action* may result in control of 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 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 officer must cause the noxious weeds to be controlled and expenses charged 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 estimating costs and completing the statement of costs in the Notice to Control, caution and completeness is 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 beneficial 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 state's attorney.

CIVIL PENALTY

1. The weed board or a court can impose the penalty but only after a hearing. If the weed board imposes the penalty it should serve an appropriate notice upon the landowner, indicating the proposed penalty and the time and place for the hearing.
2. The penalty is not to exceed 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, based soley on his determination, is responsible for declaring a quarantine to prevent the spread of noxious weeds. There are two kinds of quarantines; one imposed in the more normal course of business and one for emergencies. 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 issue a quarantine. Before a weed board or a weed officer requests a quarantine they should follow normal enforcement procedures (inspection, notice of control, re-inspection, etc.).

1. **QUARANTINE -** The commissioner must :

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.
c. make a determination. If a quarantine is imposed the order must include the date by which or the circumstances under which the commissioner will lift the quarantine order.

2. **EMERGENCY QUARANTINE -** The commissioner may impose an emergency quarantine for a period not to exceed fourteen days. Within the fourteen day period the commissioner must:

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.
c. make a determination. If a quarantine is imposed the order must include the date by which or the circumstances under which the commissioner will lift the quarantine order.

Public Land Enforcement

1. **STATE LANDS**

The agriculture commissioner shall attempt to arrange a noxious weed control or eradication program with all state agencies owning, controlling, or have jurisdiction over lands in the state.

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 control 30 days following receipt of the bill.

2. **FEDERAL LANDS**

The Agriculture Commissioner shall attempt to arrange a noxious weed control or eradication program with all federal agencies owning, controlling, or have jurisdiction over lands in the state. 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 agency of its failures. 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. The 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 shall attempt to arrange a noxious weed control or eradication program with all political subdivisions of the State of 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 hereby 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 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 $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 officer by making a written request to the weed board that it hold a hearing on the matter

_____
Weed 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 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 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 officer to control the noxious weeds, you may appeal that decision to the _____ commission. A decision by the commission is final.

_____
Weed Officer

_____
Date