



North Dakota's

NOXIOUS WEED

Law and Regulations



AGRICULTURE COMMISSIONER
DOUG GOEHRING



North Dakota's

NOXIOUS WEED

Law and Regulations



AGRICULTURE COMMISSIONER
DOUG GOEHRING

TABLE OF CONTENTS

A Message from the Agriculture Commissioner		ii
Chapter 4.1-47	Noxious Weed Control	1
Chapter 4.1-14	Forage Certification	12
Chapter 4-01-27	Publicly owned land - Noxious weed control or eradication	13
Chapter 57-15-06.7	Additional levies - Exceptions to tax levy limitations in counties	13
Chapter 7-06-01-02	Noxious Weed List	14
Noxious Weed Enforcement Procedures		15
A Public Official's Guide to North Dakota's Open Records and Open Meetings Laws		20

This book contains the North Dakota Noxious Weeds Law, as passed by the State Legislature, together with pertinent rules and regulations developed by the North Dakota Department of Agriculture and other state agencies.

This book is for reference only. For purposes of legal citation, please refer to appropriate sections of the North Dakota Century Code and the North Dakota Administrative Code.

MORE INFORMATION

For more information on noxious weeds in North Dakota, please contact:

The North Dakota Department of Agriculture
Plant Industries Division
1929 N. Washington St. Suite SS
Bismarck, ND 58501
701-328-2231 or 800-242-7535
ndda@nd.gov
www.nd.gov/ndda

Mailing address:
600 E. Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

A MESSAGE FROM THE COMMISSIONER

Noxious weeds cause millions of dollars in damage to North Dakota crops and forage. Many additional dollars are spent in both public and private efforts to control these weeds. In addition to their agronomic impact, noxious weeds adversely affect rural and urban landscapes, tax revenues, recreational opportunities and wildlife habitat.

Noxious weeds are not just an agricultural issue. They can be found virtually everywhere in North Dakota, even in our largest cities. It is not unusual to see leafy spurge, Canada thistle and other noxious weeds growing along city streets and in vacant lots. Some communities have found it necessary to hire weed control officers and to conduct control programs.

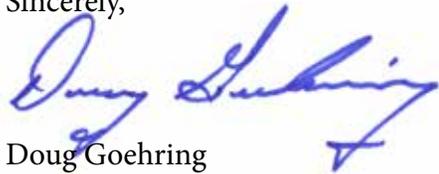
The North Dakota Department of Agriculture publishes this edition of the Noxious Weed Law to help weed boards, weed officers, landowners, public land managers and others understand the legal basis for the efforts to control noxious weeds.

This book also includes a summary of noxious weed enforcement procedures and North Dakota's open meeting and open records laws.

The 2015 Legislature made changes in North Dakota's noxious weed laws, so please discard previous editions of this book.

The war on noxious weeds will be long and costly, but it is one that I believe we can manage effectively by working together.

Sincerely,



Doug Goehring
Agriculture Commissioner



CHAPTER 4.1-47: NOXIOUS WEED CONTROL

4.1-47-01. Definitions, as used in this chapter:

1. “Board member area” means a geographical area within the county from which a member of the weed board is appointed.
2. “City weed control officer” means an individual designated by a city weed board to be responsible for the operation and enforcement of this chapter within the city.
3. “Commissioner” means the agriculture commissioner or the commissioner’s designee.
4. “Control” means to prevent a noxious weed from spreading by:
 - a. Suppressing its seeds or propagating parts; or
 - b. Destroying either the entire plant or its propagating parts.
5. “County weed control officer” means an individual designated by the county weed board to be responsible for the operation and enforcement of this chapter within each county.
6. “Noxious weed” means a plant propagated by either seed or vegetative parts and determined to be injurious to public health, crops, livestock, land, or other property by:
 - a. The commissioner in accordance with section 4.1-47-05;
 - b. A county weed board in accordance with section 4.1-47-10; or
 - c. A city weed board in accordance with section 4.1-47-21.
7. “Township road” means an improved public road that is:
 - a. Located outside of an incorporated city;
 - b. Not designated as part of a county, state, or federal aid road system; and
 - c. Constructed, maintained, graded, and drained by the township, or by the county if the township is unorganized.

4.1-47-02. Control of noxious weeds.

1. Each person shall do all things necessary and proper to control the spread of noxious weeds.
2. No person may distribute, sell, or offer for sale within this state a noxious weed.

4.1-47-03. Noxious weed control - Agriculture commissioner - Powers.

The commissioner may enter upon any land in the state to perform duties and to exercise powers under this chapter, including taking specimens of weeds or other materials, without the consent of the landowner or other person responsible for the land and without being subject to any action for trespass or damages, provided reasonable care is exercised.

4.1-47-04. Noxious weed control - Agriculture commissioner - Duties.

The commissioner shall:

1. Maintain a state noxious weed list;
2. Direct the removal of a noxious weed from a county or city noxious weed list if the commissioner, after consultation with the respective weed board and the North Dakota state university extension service, determines there is insufficient justification for the continued inclusion of that particular noxious weed;
3. Except as otherwise provided, forward all signed complaints to the proper weed control authority; and

4. Call an annual meeting of all weed control officers to review noxious weed control efforts in this state.

4.1-47-05. State noxious weed list - Compilation.

1. Before the commissioner may add a weed to or remove a weed from the state noxious weed list, the commissioner shall consult with the North Dakota state university extension service.
2. Before January 1, 2010, and at least every five years thereafter, the commissioner shall review the state noxious weed list. The commissioner shall provide each county and city weed board with at least fourteen days' notice of the time and place at which the list will be reviewed and, no later than fourteen days after conclusion of the review, shall provide each county and city weed board with written notice of any changes to the state noxious weed list.

4.1-47-06. County weed board - Members - Terms - Compensation.

1. Each board of county commissioners shall:
 - a. Establish contiguous county weed board member areas; or
 - b. Determine that county weed board members must be appointed at large.
2. The board of county commissioners shall appoint a county weed board consisting of three, five, or seven members. Members shall serve for a term of four years or until their successors are appointed and qualified. The terms must be staggered so that no more than two expire each year.
3. If the board of county commissioners has established county weed board member areas as provided for in subsection 1, any qualified elector residing in the county weed board member area is eligible to represent that area on the board. If the board of county commissioners has determined that county weed board members must be appointed at large as provided for in subsection 1, any qualified elector residing in the county is eligible to serve on the county weed board.
4. A board member shall assume office at the first regular meeting of the county weed board following that member's appointment.
5. The board of county commissioners shall remove a member of the county weed board for repeated unexcused failures to attend meetings, for refusal to act as a board member, or for incapacity. If a vacancy occurs on a county weed board, the board of county commissioners, at its next regular meeting, shall appoint an individual who possesses the necessary qualifications to fill the unexpired term.
6.
 - a. The county weed board shall elect a chairman and a vice chairman from among its members.
 - b. The county weed board shall appoint a secretary and a treasurer. The secretary and treasurer need not be members of the board.
7. The board of county commissioners shall establish the rate of compensation for county weed board members. Actual expenses incurred by board members may be reimbursed at the official reimbursement rates of the appointing authority.

4.1-47-07. County weed board - Jurisdiction.

The jurisdiction of a county weed board extends to all land within the county but does not include any land within the corporate limits of a city if that city has its own noxious weed control program under this chapter.

4.1-47-08. County weed board - Powers.

A county weed board may:

1. Expend funds from all available sources if it determines that the extent of noxious weed infestation on certain land is so severe that control efforts would place an extreme financial burden on the landowner.

2. Employ and compensate additional personnel to assist with noxious weed control efforts.

4.1-47-09. County weed board - Duties.

Each county weed board shall:

1. Implement a program for the control of noxious weeds;
2. Provide for the control of noxious weeds along county and township roads and along county highways;
3. Establish the time and place of regular board meetings;
4. Meet at least once each year;
5. Keep minutes of its board meetings and a complete record of all official acts;
6. Control and disburse all moneys received by the county from any source for noxious weed control;
7.
 - a. Provide for the compensation of its members and its secretary and treasurer;
 - b. Reimburse its members and its secretary and treasurer for actual and necessary expenses; and
 - c. Provide a mileage allowance at the same rate as that established for state employees; and
8.
 - a. Employ and provide for the compensation of a weed control officer;
 - b. Reimburse the weed control officer for actual and necessary expenses; and
 - c. Provide a mileage allowance at the same rate as that established for state employees.

4.1-47-10. County weed board - Development of county weed list.

1. A county weed board may designate as noxious certain weeds that are not on the state noxious weed list, provided the county weed board consults with the North Dakota state university extension service and that the designation is approved by the commissioner.
2. Before January 1, 2010, and at least every five years thereafter, each county weed board shall review its noxious weed list and, by majority vote, may remove any weed from its list. The county weed board shall provide the commissioner with at least fourteen days' notice of the time and place at which its list will be reviewed and, no later than fourteen days after conclusion of the review, shall provide the commissioner with written notice of any changes to the county list.
3. A county weed board shall immediately remove any noxious weed from its list when directed to do so by the commissioner in accordance with section 4.1-47-04.

4.1-47-11. County weed control officer - Membership on county weed board - Employment.

1. A county weed control officer may serve as a member of the weed control board by which the officer is employed if the officer is otherwise qualified to do so.
2. An individual may be employed as a weed control officer by several weed boards simultaneously.

4.1-47-12. County weed control officer - Powers.

A county weed control officer may enter upon any land within the jurisdiction of the officer to perform duties and to exercise powers under sections 4.1-47-01 through 4.1-47-30, including taking specimens of weeds or other materials, without the consent of the landowner or other person responsible for the land and without being subject to any action for trespass or damages, provided reasonable care is exercised.

4.1-47-13. County weed control officer - Duties.

The county weed control officer shall:

1. Cooperate with the board and be responsible for the operation and enforcement of this chapter within the county;
2. Become acquainted with the location of noxious weeds within the county;
3. Meet the pesticide certification requirements set forth in chapter 4-35;
4. Encourage noxious weed control by all landowners and land occupants within the county;
5. Investigate all signed complaints received by the officer regarding noxious weeds;
6. Post or publish in the official newspaper of the county any notices the commissioner deems necessary to further noxious weed control under this chapter;
7. Prepare reports as requested by the commissioner; and
8. Attend meetings called by the commissioner to further noxious weed control under this chapter.

4.1-47-14. (Effective for taxable years beginning before January 1, 2016) County noxious weed control program - Payment of expenses - Mill levy authorization.

1. The board of county commissioners may pay the expenses of a county noxious weed control program authorized under this chapter from the county general fund, the noxious weed control fund, or both. In addition to the other program expenditures authorized in this chapter, the board of county commissioners may expend funds from the levy authorized under subsection 11 of section 57-15-06.7 to control noxious weeds or undesirable vegetation along county or township roads in the county.
2.
 - a. The county weed board may annually request from the board of county commissioners the levy of a tax, not to exceed the levy limitation in subsection 11 of section 57-15-06.7, but any tax levied under this section does not apply to property that lies within the boundaries of a city having a noxious weed control program under this chapter.
 - b. The board of county commissioners may levy the taxes authorized by this subsection and shall place those moneys in a separate fund designated as the weed control fund, which may be used to pay the expenses authorized under this section.
3. For purposes of this section, the expenses of a county noxious weed control program include compensation for and the reimbursement of expenses incurred by the county weed board, the county weed control officer and other employees of the board, and expenses incurred as authorized by this chapter.

(Effective for taxable years beginning after December 31, 2015) County noxious weed control program - Payment of expenses - Financial report - Tax levy authorization.

1. The board of county commissioners may pay the expenses of a county noxious weed control program authorized under this chapter from the county general fund, the noxious weed control fund, or both. In addition to the other program expenditures authorized in this chapter, the board of county commissioners may expend funds from the levy authorized under subsection 11 of section 57-15-06.7 to control noxious weeds or undesirable vegetation along county or township roads in the county.
2.
 - a. The county weed board may annually request from the board of county commissioners the levy of a tax, not to exceed the levy limitation in subsection 11 of section 57-15-06.7, but any tax levied under this section does not apply to property that lies within the boundaries of a city having a noxious weed control program under this chapter. In the year for which the levy is sought, a county weed board seeking approval of a property tax levy under this chapter must file with the county auditor, at a time and in a format prescribed by the county auditor, a financial report for the preceding calendar year showing the ending balances of each fund held by the county weed board during that year.

- b. The board of county commissioners may levy the taxes authorized by this subsection and shall place those moneys in a separate fund designated as the weed control fund, which may be used to pay the expenses authorized under this section.
3. For purposes of this section, the expenses of a county noxious weed control program include compensation for and the reimbursement of expenses incurred by the county weed board, the county weed control officer and other employees of the board, and expenses incurred as authorized by this chapter.

4.1-47-15. State appropriations for noxious weed control - Distribution - Determination.

1. The commissioner shall consult with the county and city weed boards and develop method for the distribution to county and city weed boards of all moneys appropriated by the state for noxious weed control, other than the landowner assistance grants provided for in section 4.1-47-16.
2. The method must:
 - a. Limit the amount that any county or city weed board is entitled to receive under this section to seventy-five percent of the board's actual expenditures under this section; and
 - b. Allow the commissioner to waive the limit provided for in this subsection if the commissioner determines that a noxious weed is seriously endangering areas of a county, a city, or the state.

4.1-47-16. State appropriations for noxious weed control - Landowner assistance program.

1. The commissioner shall consult with representatives of county and city weed board and develop a formula for the distribution to eligible county weed boards and eligible city weed boards of all moneys appropriated by the state for the landowner assistance program.
2.
 - a. The formula must require that county officials budget, from revenues derived from county sources, an amount equal to the revenue that could be raised by a levy of at least three mills for noxious weed control against taxable property in the county which does not lie within the boundaries of a city having a noxious weed control program under this chapter.
 - b. The formula must require that city officials budget, from city sources, an amount equal to the revenue that could be raised by a levy of at least three mills for noxious weed control.
3.
 - a. The formula must require that the landowner contribute an amount equal to at least twenty percent of the cost to be expended on behalf of the landowner.
 - b. The nature and type of the landowner's contribution must be determined by the weed board having jurisdiction over the area in which the landowner's property is located.

4.1-47-17. Control of noxious weeds within cities.

The governing body of any city having a population of three thousand or more may establish a program for the control of noxious weeds within the jurisdictional limits of the city. If a program is not established, the county weed board shall administer a program for the city.

4.1-47-18. City weed board members - Terms - Compensation.

1. If the governing body of a city elects to establish a noxious weed control program, as authorized by section 4.1-47-17, the governing body shall appoint a weed board consisting of three, five, or seven members.
2. The term of office for a board member is four years or until a successor is appointed and qualified. The terms must be staggered so that no more than two expire each year.

3. Any qualified elector residing within the city is eligible to serve on the board.
4. A board member shall assume office at the first regular meeting of the city weed board following the member's appointment.
5. The governing body of the city shall remove a member of the city weed board for repeated unexcused failures to attend meetings, for refusal to act as a board member, or for incapacity. If a vacancy occurs on a city weed board, the governing body of the city, at its next regular meeting, shall appoint an individual who possesses the necessary qualifications to fill the unexpired term.
6. The city weed board shall elect a chairman and a vice chairman from among its members.
7. The city weed board shall appoint a secretary and a treasurer. The secretary and treasurer need not be members of the board.
8. The governing body of the city shall establish the rate of compensation for city weed board members.

4.1-47-19. City weed board - Powers.

A city weed board may:

1. Expend funds from all available sources if it determines that the extent of noxious weed infestation on certain land is so severe that undertaking control efforts would place an extreme financial burden on the landowner.
2. Employ and compensate additional personnel to assist with noxious weed control efforts.

4.1-47-20. City weed board - Duties.

Each city weed board shall:

1. Implement a program for the control of noxious weeds;
2. Establish the time and place of regular board meetings;
3. Meet at least once each year;
4. Keep minutes of its meetings and a complete record of all official acts;
5. Control and disburse all moneys received by the city from any source for noxious weed control;
6.
 - a. Provide for the compensation of its members and its secretary and treasurer;
 - b. Reimburse its members and its secretary and treasurer for actual and necessary expenses; and
 - c. Provide a mileage allowance at the same rate as that established for state employees; and
7.
 - a. Employ and provide for the compensation of a weed control officer;
 - b. Reimburse the weed control officer for actual and necessary expenses; and
 - c. Provide a mileage allowance at the same rate as that established for state employees.

4.1-47-21. City weed board - Development of city weed list - Review - Removal.

1. A city weed board may designate as noxious certain weeds that are not on the state or county noxious weed list, provided the city weed board first consults with the North Dakota state university extension service and that the designation is approved by the commissioner.
2. Before January 1, 2010, and at least every five years thereafter, each city weed board shall review its noxious weed list and, by majority vote, may remove any weed from its list. The city weed board shall provide the commissioner with at least fourteen days' notice of the time and place at which its list will be reviewed and, within fourteen days of the review, shall provide the commissioner with written notice of any changes to the city list.

3. A city weed board immediately shall remove any noxious weed from the board's list when directed to do so by the commissioner in accordance with section 4.1-47-04.

4.1-47-22. City weed control officer - Membership on city weed board - Employment.

1. A city weed control officer may serve as a member of the weed control board by which the officer is employed if the officer is otherwise qualified to do so.
2. An individual may be employed as a weed control officer by several weed boards simultaneously.

4.1-47-23. City weed control officer - Powers.

A city weed control officer may enter upon any land within the jurisdiction of the officer to perform duties and to exercise powers under this chapter, including taking specimens of weeds or other materials, without the consent of the landowner or other person responsible for the land and without being subject to any action for trespass or damages, provided reasonable care is exercised.

4.1-47-24. City weed control officer - Duties.

The city weed control officer shall:

1. Cooperate with the board and be responsible for the operation and enforcement of this chapter within the city;
2. Become acquainted with the location of noxious weeds within the city;
3. Meet the pesticide certification requirements set forth in chapter 4-35;
4. Encourage noxious weed control by all landowners and land occupants within the city;
5. Investigate all signed complaints received by the officer regarding noxious weeds within the city;
6. Post or publish in the official newspaper of the city any notices the commissioner deems necessary to further noxious weed control under this chapter;
7. Prepare reports as requested by the commissioner; and
8. Attend meetings called by the commissioner to further noxious weed control under this chapter.

4.1-47-25. (Effective for taxable years beginning before January 1, 2016) City noxious weed control program - Payment of expenses.

1. The governing body of a city may provide funding for a city noxious weed control program authorized under this chapter from revenues derived from its general fund levy authority.
2. The city weed board may annually request the governing body of a city to provide funds derived from its general fund levy authority in the amount necessary for the city noxious weed control program.
3. For purposes of this section, the expenses of a city noxious weed control program include compensation for and the reimbursement of expenses incurred by the city weed board, the city weed control officer and other employees of the board, and expenses incurred in the provision of noxious weed control as authorized by this chapter.

(Effective for taxable years beginning after December 31, 2015) City noxious weed control program - Payment of expenses - Financial report.

1. The governing body of a city may provide funding for a city noxious weed control program authorized under this chapter from revenues derived from its general fund levy authority.

2. The city weed board may annually request the governing body of a city to provide funds derived from its general fund levy authority in the amount necessary for the city noxious weed control program. In the year for which the levy is sought, a city weed board seeking approval of a property tax levy under this chapter must file with the city auditor, at a time and in a format prescribed by the city auditor, a financial report for the preceding calendar year showing the ending balances of each fund held by the city weed board during that year.
3. For purposes of this section, the expenses of a city noxious weed control program include compensation for and the reimbursement of expenses incurred by the city weed board, the city weed control officer, and other employees of the board, and expenses incurred in the provision of noxious weed control, as authorized by this chapter.

4.1-47-26. Publicly owned land - Noxious weed control.

Each state agency shall provide for the control of noxious weeds on land within its jurisdiction. If a state agency fails to control noxious weeds on land under its jurisdiction, the county weed board, upon approval of the commissioner, may enter upon the land to control the noxious weeds. The state agency shall reimburse the county weed board for expenses incurred in controlling the noxious weeds, within thirty days after the agency receives the bill.

4.1-47-27. Noxious weed control - Enforcement responsibilities of other agencies.

Law enforcement agents shall cooperate with the commissioner, a weed control board, and a weed control officer for the purpose of enforcing this chapter.

4.1-47-28. Entry upon land for noxious weed control purposes - Notices - Landowner rights - Remedial requirements - Liens.

1. a. If a county weed officer determines that any land other than that referenced in subsection 2 contains noxious weeds, the county weed control officer may first contact the occupant and request that the occupant control the noxious weeds within a prescribed time period and in a prescribed manner. If the county weed control officer determines that the occupant has failed to control the noxious weeds, as requested, the county weed officer shall serve upon the landowner written notice, either personally or by certified mail, requiring the landowner to control the noxious weeds within the time period prescribed by the county weed control officer.
- b. The notice must:
 - (1) Specify the minimal remedial requirements;
 - (2) Specify the time within which the landowner must meet the minimum remedial requirements;
 - (3) Specify that the landowner may be subject to penalties provided under this chapter if the landowner fails to comply with the remedial requirements;
 - (4) Include a statement of costs if the landowner fails to control the noxious weeds and the county weed officer must provide for control of the weeds; and
 - (5) Provide that the landowner may stay any efforts by the county weed officer to control noxious weeds on the land by requesting in writing that the county weed board hold a hearing on the matter.
- c. If the landowner does not meet the minimum remedial requirements within the time specified in the notice and does not request a hearing on the matter by the county weed board, the county weed control officer may cause the noxious weeds to be controlled and the expenses charged against the land of the landowner. These expenses are part of the taxes to be levied against the

land for the ensuing year and must be collected in the same manner as other real estate taxes.

- d. If after holding a hearing on the matter, the county weed board directs that the noxious weeds be controlled by the county weed officer, the landowner may appeal the decision to the board of county commissioners. A decision by the board of county commissioners is final.
 - e. If the landowner does not appeal the decision to the board of county commissioners, or if the board of county commissioners upholds the decision of the county weed board, the county weed control officer may cause the noxious weeds to be controlled and any expenses incurred by the county weed officer in controlling the weeds must be charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.
2.
 - a. If a city weed control officer determines that land within the officer's jurisdiction contains noxious weeds, the officer may serve upon the landowner written notice either personally or by certified mail, requiring the landowner to control the noxious weeds within the time period prescribed by the city weed control officer.
 - b. The notice must:
 - (1) Specify the minimal remedial requirements;
 - (2) Specify the time within which the landowner must meet the minimum remedial requirements;
 - (3) Specify that the landowner may be subject to penalties provided under this chapter if the landowner fails to comply with the remedial requirement;
 - (4) Include a statement of costs if the landowner fails to control the noxious weeds and the city weed officer must provide for control of the weeds; and
 - (5) Provide that the landowner may stay any efforts by the city weed officer to control noxious weeds on the land, by requesting in writing that the city weed board hold a hearing on the matter.
 - c. The city weed officer shall deliver a copy of the notice personally or forward a copy of the notice by certified mail to any tenant, lessee, or operator of the land on which the noxious weeds are located.
 - d. If the landowner does not meet the minimum remedial requirements within the time specified in the notice and does not request a hearing on the matter by the city weed board, the city weed control officer may cause the noxious weeds to be controlled and the expenses charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.
 - e. If after holding a hearing on the matter the city weed board directs that the noxious weeds be controlled by the city weed officer, the landowner may appeal the decision to the governing body of the city. A decision by the governing body is final.
 - f. If the landowner does not appeal the decision to the governing body of the city, or if the governing body of the city upholds the decision of the city weed board, the city weed control officer may cause the noxious weeds to be controlled and any expenses incurred by the city weed officer in controlling the weeds must be charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.

4.1-47-29. Quarantine - Declaration - Hearing - Penalty.

1. If the commissioner determines that a quarantine of this state or any portion thereof may be necessary to prevent the spread of noxious weeds, the commissioner shall schedule a public hearing on the matter and 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. If after the hearing the commissioner orders the imposition of a quarantine, the order must include the date by which or the circumstances under which the commissioner shall lift the quarantine order.

2. If the commissioner determines that the imposition of an emergency quarantine is necessary to prevent the spread of noxious weeds, the commissioner may impose such an order for a period not to exceed fourteen days. Within the fourteen-day period, the commissioner shall hold a public hearing as provided for in subsection 1 and determine whether a quarantine order under subsection 1 should be imposed.
3. Following the establishment of a quarantine, the movement of any product or material described in the quarantine order is subject to the order.
4. Any person who violates a quarantine order issued under this section is guilty of a class B misdemeanor.

4.1-47-30. Preventing the dissemination of noxious weeds - Penalty.

1.
 - a. A person may not willfully transport any material that contains noxious weed seeds or propagating parts, on a public road, in a manner that allows for the dissemination of noxious weeds.
 - b. A person may not willfully drive or transport any equipment, on a public road, in a manner that allows for the dissemination of noxious weeds.
 - c. A person may not willfully dispose of any material that contains noxious weed seeds or propagating parts in a manner that allows for the dissemination of noxious weeds.
2. Any person who violates this section is guilty of a class B misdemeanor.

4.1-47-31. Civil penalty.

1.
 - a. In addition to any other penalties provided for in this chapter, a person who violates this chapter or any rules adopted under this chapter is subject to a civil penalty in an amount not to exceed eighty dollars per day for each day of violation, subject to a maximum penalty of four thousand dollars per year.
 - b. Penalties imposed upon a landowner for failing to comply with the remedial requirements, as set forth in section 4.1-47-28, are a lien against the property of the landowner from the day the notice is delivered to the landowner under section 4.1-47-28.
 - c. A person who violates subsection 2 of section 4.1-47-02 is subject to a civil penalty not to exceed one hundred dollars for each violation.
2. All penalties collected under this section must be credited to the noxious weed control fund of:
 - a. The city in which the violation occurred if the city has a noxious weed control program under this chapter; or
 - b. The county in which the violation occurred.
3. Any penalties provided for under this section may be adjudicated by a court, a county weed board, or a city weed board after a hearing.
4. An aggrieved person may appeal the imposition of a penalty by a county weed board to the board of county commissioners. An aggrieved person may appeal the imposition of a penalty by a city weed board to the governing body of the city.

4.1-47-32. Action on complaint - Request for hearing.

1.
 - a. If an individual filed a signed complaint with a county weed board or the county weed control officer and if the individual believes that the complaint has not been addressed satisfactorily

within twenty-one days from the date of the complaint, the individual may file a written request for a hearing with the board of county commissioners.

- b. Upon receiving a request for a hearing, the board of county commissioners shall schedule a public hearing within twenty-one days and shall provide notice of the hearing by publishing its time, place, and date in the official newspaper of the county.
 - c. Within fourteen days after the hearing, the board of county commissioners shall issue a determination regarding the matter and shall issue appropriate directives to the county weed board.
 - d. A decision by the board of county commissioners under this section is final.
2. a. If an individual filed a signed complaint with a city weed board or the city weed control officer and if the individual believes that the complaint has not been addressed satisfactorily within twenty-one days from the date of the complaint, the individual may file a written request for a hearing with the governing body of the city.
 - b. Upon receiving a request for a hearing, the governing body of the city shall schedule a public hearing and shall provide notice of the hearing by publishing its time, place, and date in the official newspaper of the county.
 - c. Within fourteen days after the hearing, the governing body of the city shall issue a determination regarding the matter and shall issue appropriate directives to the city weed board.
 - d. A decision by the governing body of the city under this section is final.

4.1-47-33. County and city weed boards - Control of invasive species - Acceptance of funds.

1. If a county or a city weed board determines that an invasive species is present within its jurisdiction, the weed board shall notify the commissioner.
 2. a. If funds for the control of invasive species are available to the commissioner, the commissioner may forward the funds to a weed board for the purpose of controlling the invasive species on public land and assisting private landowners in their efforts to voluntarily control the invasive species provided:
 - (1) The commissioner determines that, without intervention, the invasive species is likely to become a noxious weed during the ensuing five-year period; and
 - (2) The weed board files a plan with the commissioner detailing the manner in which and the time within which the funds are to be expended.
 - b. Notwithstanding any other law, a county or a city weed board may accept funds under this subsection and implement a plan, approved by the commissioner, for the control of invasive species within its jurisdiction.
2. In addition to any funds available from the commissioner, a county or a city weed board may accept funds from any other source to control invasive species within its jurisdiction.
 3. For purposes of this section, an invasive species means a plant species that has been introduced into this state and which the North Dakota state university extension service determines has caused or is likely to cause:
 - a. Economic harm;
 - b. Environmental harm; or
 - c. Harm to human health.

CHAPTER 4.1-14: FORAGE CERTIFICATION

4.1-14-01. Certification of forage - Compliance with other standards.

1. To obtain certification that weeds prohibited according to the standards of the North American invasive species management association are not cut when producing viable seeds and included in baled forage, the owner of the forage shall request that the agriculture commissioner conduct a certification inspection.
2. Upon receiving the request, the agriculture commissioner shall:
3.
 - a. Inspect the forage acreage within ten days before harvest to verify that weeds prohibited according to the standards of the North American invasive species management association are not present and producing viable seeds; and
 - b.(1) Ascertain that the scheduled harvest has occurred;
 - (2) Determine the number of bales for which certification tags or department-approved twine, or both, must be issued; and
 - (3) Verify that the baled forage is stored or will be stored only in an area where weeds prohibited according to the standards of the North American invasive species management association are not present and producing viable seeds.
4. If the agriculture commissioner determines that the conditions of subsection 2 have been met, the commissioner shall issue and affix or cause to be affixed on each bale of forage one dated certification tag or shall authorize the use of department-approved twine to bale the forage.

4.1-14-02. Agents of the commissioner - Designation - Training.

The agriculture commissioner may designate individuals to serve as agents of the commissioner for the purpose of conducting the inspections permitted by this chapter. To be designated as an agent, an individual must:

1. Be a weed control officer;
2. Be a member of a county or a city weed board;
3. Be determined by the commissioner to have a level of education and experience sufficient to accurately perform the requested certifications; or
4. At least once every thirty-six months, successfully complete a training program conducted by the commissioner.

4.1-14-03. Reciprocal recognition of certification.

The agriculture commissioner may contract with any governmental entity that is responsible for the certification of forage in another state or province and provide for the reciprocal recognition of such certifications.

4.1-14-04. Fees - Continuing appropriation.

The agriculture commissioner may set and charge fees for certifying forage in accordance with this chapter. The commissioner shall deposit moneys collected under this chapter in the environment and rangeland protection fund.

Editor's Note: The following section from Title 4 of the North Dakota Century Code relates to weed control:

CHAPTER 4-01: AGRICULTURE COMMISSIONER

4-01-27. Publicly owned land - Noxious weed control or eradication.

1. The commissioner shall attempt to arrange a noxious weed control or eradication program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state.
2. Each weed control officer shall attempt to arrange a noxious weed control or eradication program with political subdivisions owning or controlling public land within the weed control officer's jurisdiction.
3. If a federal agency does not control or eradicate noxious weeds on land under the jurisdiction of the agency and does not develop a management plan for controlling or eradicating the noxious weeds, the appropriate weed control office shall notify the agency of the failure to control or eradicate the noxious weeds. The federal agency shall provide a report to the weed control authorities detailing the methods used by the federal agency and showing cause why the federal agency is not controlling or eradicating the noxious weeds. The commissioner may specify the forms on which the federal agency report must be submitted.
4. Upon being notified by a weed board of the federal agency's failure to control or eradicate noxious weeds, the commissioner may hold a public hearing to determine the reason for the failure.

Editor's Note: The following section from Title 57 of the North Dakota Century Code relates to weed control:

CHAPTER 57-01: TAX COMMISSIONER

57-15-06.7. Additional levies - Exceptions to tax levy limitations in counties.

The tax levy limitations specified in section 57-15-06 do not apply to the following mill levies, which are expressed in mills per dollar of taxable valuation of property in the county:

11. A county levying a tax for weed control as provided in section 4.1-47-14 may levy a tax not exceeding four mills.

CHAPTER 7-06-01: REGULATIONS

7-06-01-02. Noxious weeds listed.

Weeds declared noxious shall be confined to weeds that are difficult to control, easily spread, and injurious to public health, crops, livestock, land, or other property. The following weeds have been declared noxious for the purpose of North Dakota Century Code chapter 63-01.1:

1. Absinth wormwood (*Artemisia absinthium* L.).
2. Canada thistle (*Cirsium arvense* (L.) Scop.).
3. Dalmatian toadflax (*Linaria genistifolia* spp. *dalmatica*).
4. Diffuse knapweed (*Centaurea diffusa* Lam.).
5. Leafy spurge (*Euphorbia esula* L.).
6. Musk thistle (*Carduus nutans* L.).
7. Purple loosestrife (*Lythrum salicaria* L., *Lythrum virgatum* L., and all cultivars).
8. Russian knapweed (*Centaurea repens* L.).
9. Saltcedar (*Tamarisk* spp.).
10. Spotted knapweed (*Centaurea maculosa* Lam.).
11. Yellow toadflax (*Linaria vulgaris*).

History: Amended effective June 1, 1985; February 1, 2000; September 1, 2002; April 1, 2010.

General Authority: NDCC 4.1-47-04, 28-32-02

Law Implemented: NDCC 4.1-47-04

NORTH DAKOTA NOXIOUS WEED LAW ENFORCEMENT PROCEDURES

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, there 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 Plant Industries Division at the North Dakota Department of Agriculture at (701) 328-2983.

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* 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 Control 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 thirty 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.

A Public Official's Guide to North Dakota's OPEN MEETINGS AND OPEN RECORDS LAWS

As public servants, the performance of official duties is subject to public scrutiny. North Dakota has “sunshine laws” which provide that all government records and meetings must be open to the public unless a specific statute authorizes a record or meeting to be closed. The best protection for public officials is to have a good working knowledge of the laws and the exceptions that apply.

Public Access

All “public entities” are subject to the Open Meeting and Open Record laws, including: state and local government agencies, rural fire and ambulance districts, public schools, private businesses or non-profit organizations that are supported by or expending public funds, and contractors, if the contractor is providing services in place of a public entity rather than simply providing services to that entity.

The terms “record” and “meeting” are defined broadly. Anyone has the right to attend meetings of a public entity or to access and obtain copies of the entity’s records, regardless of where they live. To deny public access to a record or a meeting, the public entity first has to identify the law that closes the record or the meeting, then the entity must explain that law to the person requesting access.

- To deny access to a record, the public entity must explain within a reasonable time the legal authority for denying the request. If asked, the entity must put the denial and explanation in writing.
- To deny access to a meeting, the public entity must identify the topics to be considered and the legal authority for closing a meeting before asking the public to leave the meeting room.

Violations

Anyone may ask the Attorney General to issue an opinion regarding an alleged violation of the open records or meetings laws. If the Attorney General finds there was a violation, the entity has seven days to take the corrective action required by the Opinion. Criminal prosecution also may result if the public entity or employee knowingly violated the law.

Quick Tips

The basic Open Meetings and Open Records laws are found in Chapter 44-04 of the North Dakota Century Code (N.D.C.C.), beginning at Section 44-04-17.1.

- A statute may declare certain records to be exempt or confidential. If a record is exempt, a public entity may release it at its discretion. It is not a violation of the law to decline to provide an exempt record. If a record is confidential, the public entity either cannot release it or first must redact the confidential information.
- A governing body may close a meeting to talk with its attorney if the discussion pertains to the attorney’s advice regarding a pending or reasonably predictable lawsuit involving the public entity.
- Economic development information identifying the name, nature and potential location of a business considering relocating or expanding within the state can be closed until the business announces its intentions.
- Public employee salary and job performance information is open but certain personal and payroll

information may be exempt or confidential. Generally, a public entity may not close a meeting simply to discuss employee performance or salary issues.

- Confidentiality clauses in a settlement agreement involving a public entity are against public policy and are declared void by state law.
- The definition of “record” includes all recorded information, regardless of physical form (paper, e-mail, computer file, photographs, audiotape, or videotape) that has a connection with how public funds are spent or with a public entity’s performance of its governmental functions. E-mails relating to public business are subject to disclosure even if the official uses a personal e-mail account or home computer. Electronic records maintained by or for a public entity must be accessible.
- Public officials and employees generally should know what records under their control must be disclosed. A delay to seek legal advice is reasonable only if there is a legitimate legal or factual question on what may be disclosed. It is not reasonable to delay responding to a request until the next meeting of the governing body.

Open Meetings

“Meeting” means any gathering of a quorum of the members of a governing body of a public entity regarding public business, and includes: committees and subcommittees, informal gatherings or work sessions, and discussions where a quorum of members are participating by phone, e-mail or any other electronic communication (either at the same time or in a series of individual contacts. If a governing body delegates any authority to two or more people, the newly formed committee is also subject to the open records and meetings laws.

- The only time a gathering of a quorum of members is not a meeting is if it is a purely social gathering—as soon as public business is discussed, it becomes a “meeting.”
- A member of the public does not have the right to speak to the governing body at an open meeting. The public is entitled only to see and hear what happens at a meeting, and to record or broadcast those observations. Other statutes, however, may require a hearing for public comment.

Closed Meetings

Before a governing body may close a portion of its meeting, it first must convene in a properly noticed open meeting. Next, it has to announce the legal authority to close the meeting and the topics to be considered during the closed portion of the meeting. After that, unless the law requires a closed meeting, the governing body must vote on whether to close the meeting. Any executive session must be tape recorded. All substantive votes must be recorded by roll call. Final action on the topics considered in the executive session must be taken during the open portion of the meeting.

Meeting Notice

Prior written notice is required for all meetings of a public entity. The notice must include the date, time and location of the meeting and the agenda topics the governing body expects to address during the meeting. Regular meeting agendas may be altered at the time of the meeting. For special or emergency meetings, only the specific topics included in the notice may be discussed.

Meeting notices must be filed with the Secretary of State (state agencies), the City Auditor (city-level entities) or the County Auditor (all other entities) or, alternatively, the public entity may choose to post the meeting schedules and notices on its official website. Notices also must be posted in the entity’s main office, if it has one,

and at the location of the meeting (if the meeting is held elsewhere). Additionally, notice of special or emergency meetings must be given to the entity's official newspaper and any media representatives who have asked for notices of special or emergency meetings. Copies of meeting notices can be obtained from the appropriate office. If asked, a public entity must provide the requester with personal notice of its meetings during a specified time.

As a general rule, there is no minimum advance notice period for public meetings. Notice must be posted, filed at the central location (or on the entity's website), and given to anyone who has requested it, at the same time the members of the governing body are notified of the meeting.

Open Records

Anyone has the right to view or get a copy of public records, regardless of the reason. However, a request must reasonably identify existing records. A request for public records can be made in any manner - in person, by mail, e-mail, fax, or by phone. The entity must respond to the request within a reasonable time, either by providing the requested record or by explaining the legal authority for denying all or part of the request. Depending on the amount of records requested, a "reasonable" time could be a couple of hours or a few days, but not several days or weeks. If the entity cannot fulfill the request immediately, it should give a requester an estimate of when the record(s) will be ready. If a public entity receives five or more requests from the same requester within seven days, the public entity may treat the requests as one request in computing the time it takes to locate and excise the records. The entity may supervise access to an original record to prevent its alteration or destruction.

A public entity cannot ask why the records are requested, ask for identification, or require a request be made in writing (or in person). An entity does not have to respond to questions about its functions, create or compile records that do not exist, or explain the content of a record.

Costs

Access to records is generally free. An entity may charge up to 25¢ per page for copies on standard letter or legal size paper. For any other record (photos, maps, etc.), the entity may charge the actual cost of making the copy, including labor, materials and equipment. Other statutes may authorize a different fee. If requested, available electronic records must be provided in electronic format.

The first hour of locating requested records (including electronic records) is free. After the first hour, an entity may charge up to \$25 per hour for locating records. An entity also may charge up to \$25 per hour (after the first hour) for the time it takes to review records to redact any exempt or confidential information. In addition to charges for locating and redacting, if providing electronic records takes more than an hour then the actual cost of Information Technology (IT) resources may be charged. If the requester wants the records mailed, actual postage costs may be included in the charge. The entity may require the requester to pay the charges before making or releasing the record(s). The public entity may withhold records pursuant to a request until such time as a requester provides payment for any outstanding balance for prior requests.

More information is available on the North Dakota Attorney General's website at <http://www.ag.nd.gov/openrecords/ORM.htm>.

