

NORTH DAKOTA CENTURY CODE
Noxious WEED CONTROL
CHAPTER 63-01.1

63-01.1-01. Control and eradication of noxious weeds.

It shall be the duty of every person in charge of or in possession of land in this state, whether as landowner, lessee, renter, or tenant, under statutory authority or otherwise, to eradicate or to control the spread of noxious weeds on those lands.

63-01.1-02. 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. "Commissioner" means the commissioner of agriculture or the commissioner's designee.
3. "Control" means to prevent the spread of any noxious weed, designated by the commissioner or other control authority, by seed or any other propagating part or, if authorized, to suppress, eradicate, or prevent or retard the spread of a pest.
4. "Control authority" means the commissioner, the county weed board, and, pursuant to the county weed board's authorization, the county weed control officer.
5. "County weed board" means members of the board of each county as appointed pursuant to section 63-01.1-04.
6. "County weed control officer" means the person designated by the county weed board to be responsible for the operation and enforcement of this chapter within each county.
7. "Eradicate" or "eradication" means to destroy a plant or, if authorized, a pest so that it is not viable.
8. "Landowner" means any owner of federal, state, municipal, or private land, under statutory authority or otherwise. The term does not include a lessee, renter, tenant, operator, or an owner of any easement or right of way.
9. "Noxious weed" means any plant propagated by either seed or vegetative parts which is determined by the commissioner after consulting with the North Dakota State University Extension Service, or a county weed board after consulting with the county extension agent, to be injurious to public health, crops, livestock, land, or other property.
10. "Operator" means the person chiefly responsible for the farming or other operations being performed on the land, whether for self-benefit, or for the benefit of the landowner or another.
11. "Person" means any individual, partnership, firm, corporation, limited liability company, company, society, association, the state, or any department, agency, or subdivision thereof, or

any other entity which occupies or owns land or which causes noxious weed seeds or propagating parts to be disseminated or transported in this state.

12. "Pest" means any pest defined in section 4-33-01 and includes prairie dog.

13. "Township road" means a public road that is an improved road, constructed, maintained, graded, and drained by the township, or county in the case of an unorganized township. A township road includes a street in an unincorporated townsite and does not necessarily have to be surfaced. A sodded road is not a township road. In order for a section line to be a township road it must be graded and drained and be an improved maintained road. A township road is a public road that is not designated as part of a county, state, or federal-aid road system and is not located in an incorporated city.

63-01.1-03. State weed control authority - Commissioner of agriculture - Powers and duties.

1. The duty of enforcing this chapter and carrying out its provisions and intent is vested in the commissioner. The commissioner shall cooperate with other weed control authorities.

2. The commissioner shall determine which weeds are noxious for the purposes of a state list of noxious weeds after consulting with the North Dakota State University Extension Service, and shall compile and keep current a list of noxious weeds.

3. The commissioner shall outline procedures, prepare and supply official notices, posters, report forms, and other documents needed in carrying out this chapter. The commissioner shall supply these documents to weed control officers, county, township, and city authorities, and others as needed to carry out an effective weed control program or, if authorized, pest control program. The commissioner shall prepare notices or posters including the noxious weed list, rules, dates for controlling, and other compliance requirements for printing in official newspapers or for posting at least annually.

4. The commissioner shall cooperate with the county weed board, county weed control officers, highway patrol officers, county sheriffs, and others in enforcing this chapter. The commissioner shall also encourage the North Dakota State University Extension Service to disseminate information and to conduct educational campaigns with respect to eradication and control of noxious weeds or, if authorized, pests.

5. The commissioner upon receiving a written complaint shall immediately refer the complaint to the proper weed control officer or control authority.

6. The commissioner shall encourage the cooperation of agencies of both the federal and state governments in furtherance of the purposes of this chapter.

7. The commissioner may adopt rules to carry out the intent of this chapter.

8. The commissioner may require operational or program reports from weed control authorities or weed control officers regarding weed control progress and activity in the state and, if authorized, pest control progress and activity in the state.

9. The commissioner shall call an annual meeting of all weed control officers, either statewide or by areas, to review the intent, operation, procedures, and accomplishments under this chapter and may also request the North Dakota State University Extension Service or others to present educational information on weed control practices or, if authorized, pest control practices. Weed control authority members must be invited to attend meetings called pursuant to this subsection.

63-01.1-03.1. County weed board - Jurisdiction.

All land within the boundaries of North Dakota, including all federal, state, private, and municipally owned lands, is included in the county weed board's jurisdiction within the county in which the land is located.

63-01.1-04. County weed board as control authority.

1. The county weed board of each county is the control authority for that county.
2. The board of county commissioners shall establish the number of members of the board and shall establish board member areas. Each board member area must be contiguous. The board of county commissioners shall appoint a county weed board consisting of five or seven members. Members shall serve for a term of four years or until their successors are appointed and qualified. The terms of members must be staggered so that the terms of no more than two members expire each year. Any qualified elector in the board member area subject to taxation is eligible to represent that area on the board. In each county encompassing a city with a population of five thousand or more, one board member must be appointed from within the city limits of that city unless the city has established a city weed control program pursuant to section 63-01.1-10.1.
3. A board member shall assume office at the first regular meeting of the county weed board following that member's appointment.
4. The board of county commissioners shall remove a member of the county weed board for repeated unexcused failure to attend meetings or for refusal or incapacity to act as a board member. When 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, as a board member to fill the unexpired term.
5. The county weed board shall elect from its members a chairman and a vice chairman, and appoint a secretary and a treasurer. The secretary and treasurer need not be members of the board. The board of county commissioners may set rates of compensation for board members. Board members are entitled to reimbursement for actual and necessary expenses and a mileage allowance at the rate established for state employees.

63-01.1 -04.1. Powers and duties of county weed board.

1. The county weed board shall designate a county weed control officer who shall cooperate with the board and be responsible for operation and enforcement of this chapter within the district. The officer may be a member of the county weed board or may be any other interested and able person. The same person may serve as weed control officer for more than one county weed board. Employment is for a tenure and at rates of compensation and reimbursement for

travel expenses as the county weed board may prescribe and is without regard to any provisions of law relating to age or dual compensation. The county weed board shall certify the designation of a county weed control officer to the commissioner.

2. The county weed board may expend funds from those sources authorized in section 63-01.1-06 for the purpose of controlling noxious weeds, in addition to any other expenditures for control authorized by this chapter, when weeds have grown on any public or private land and a control authority finds that the extent of the weeds is so severe that their eradication would constitute an extreme financial burden upon the person otherwise liable for the expense.

3. The county weed board may develop and compile a county list of noxious weeds. Any county list shall, at a minimum, contain those noxious weeds determined by the commissioner. The commissioner may remove a county weed board noxious weed determination from the county list after consulting with the board and the North Dakota State University Extension Service.

4. County weed boards shall cooperate with all other control authorities.

5. The county weed board shall implement and pursue an effective program for control of noxious weeds and, if authorized, pests.

6. The county weed board shall fix the time and place of regular meetings. The board shall meet at least once each year and the meeting is open to the public. The board shall keep minutes of all meetings and a complete record of all official acts.

7. The county weed board shall make at least one annual inspection to determine the progress of weed control activities within the county and, if authorized, the progress of pest control activities within the county.

8. The county weed board shall control and disburse all moneys received by the county, for weed control, from any source.

9. The county weed board shall render technical assistance to any city with a population of three thousand or more which establishes a program as provided in section 63-01.1-10.1.

10. The county weed board may authorize the county weed control officer in cooperation with local law enforcement personnel to stop and inspect vehicles suspected of transporting noxious weed-infested materials.

63-01.1-04.2. County weed board - Pest control.

The board of county commissioners in consultation with the county weed board may authorize the county weed board to control pests. A county weed board that has been authorized to control pests pursuant to this section may expend funds made available from state or federal sources for pest control purposes.

63-01.1 -05. Duties of county weed control officer.

The county weed control officer shall:

1. Cooperate with the county weed board, other control authorities and weed control officers, the county extension agent, county land users, the commissioner, and others in furtherance of the provisions of this chapter.
2. Become acquainted with the location of noxious weeds and, if authorized, pests on all land within the county.
3. Through personal contact, by letter, telephone, or other means, encourage noxious weed and, if authorized, pest control or eradication by all landowners or occupants within the county.
4. Investigate all complaints received by the county weed control officer, the county weed board, or the commissioner.
5. Take proper enforcement action when necessary.
6. Cause to be posted or inserted in official newspapers those official notices the commissioner may deem necessary in the furtherance of this chapter.
7. Prepare reports as requested by the commissioner.
8. Attend area or statewide meetings called by the commissioner for the purpose of assisting in the effective execution of this chapter.
9. Serve as county seed inspector for the purposes of enforcing the laws and regulations under the jurisdiction of the state seed department as directed by the state seed commissioner.

63-01.1-05.1. Certification of county weed control officers -Extension service.

1. The commissioner shall adopt rules setting the requirements for certification categories of county weed control officers, after consultation with the director of the agricultural experiment station and the director of the North Dakota State University Extension Service, or their respective designees. All designated county weed control officers must be certified pursuant to the rules adopted by the commissioner before assuming their duties.
2. The North Dakota State University Extension Service shall establish a program to provide educational instruction to local weed control officers.

63-01.1-06. Funding of programs.

1. The board of county commissioners may pay expenses from the general fund in any one year in furtherance of this chapter, including weed control along public highways in the county. The county weed board may certify annually to the board of county commissioners a tax, not to exceed two mills on the taxable valuation of all taxable property in the county, to carry out this chapter. In addition, the county weed board, with the approval of a majority vote of the board of county commissioners, may certify up to two additional mills on the taxable valuation of all taxable property in the county. If a county assesses more than three mills, at least one mill must be dedicated to leafy spurge control. However, the tax may not be levied on property within the corporate limits of a city that establishes a program under section 63-01.1-10.1. The board of county commissioners shall levy the tax. The county treasurer shall hold all taxes levied and collected in separate funds to be known as the weed control fund and the leafy spurge fund,

which shall be used to carry out this chapter. The levy shall be made to cover the salary and expenses of the county weed board, county weed control officer, the expense of weed control along public highways in the county, and other expenses• incurred in the operation of an effective weed control program in the county. The tax may be levied in excess of the mill levy limit prescribed by law for general purposes.

2. The commissioner shall allocate the funds of any legislative appropriation to the county weed boards and cities which establish a program under section 63-01.1-10.1 pursuant to a formula adopted by the commissioner, after consultation with county weed boards. Land owners shall contribute a minimum of twenty percent of the cost of noxious weed control on their land. No county weed board or city may receive an amount in excess of one-half of the board's or city's actual expenditures for noxious weed control from any legislative appropriation, unless the appropriation provides assistance in noxious weed control to a board or city under subsection 3.

3. If a county weed board determines a weed is seriously endangering areas of a county or the state, assistance in control may be provided by legislative appropriation. The commissioner shall allocate the appropriation accordingly, and the commissioner and each affected county weed board and city which establishes a program under section 63-01.1-10.1 shall be responsible for ensuring that the funds are properly expended.

4. To be eligible to receive state cost share funds a county shall levy a minimum of three mills for noxious weed or leafy spurge control. The request for allocated funds pursuant to subsections 2 and 3 must be initiated by the county weed board or city which establishes a program under section 63-01.1-10.1 by submitting a voucher and documentation. Upon approval of the voucher and documentation by the commissioner, the office of management and budget shall make the payment out of funds appropriated for control of weeds.

63-01.1-08. Entry upon land for weed control purposes - Notices- Landowner rights - Remedial requirements - Liens - Penalty.

1. Any control authority or anyone authorized thereby, may enter upon all land under their jurisdiction for the purpose of performing their duties and exercising their powers under this chapter, including the taking of specimens of weeds or, if authorized, pests or other materials, without the consent of the landowner, lessee, renter, tenant, or operator, and without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised.

2. If any land is found to be infested with noxious weeds or, if authorized, pests by any control authority, the county weed control officer may serve upon the landowner written notice either personally or by certified mail, requiring the landowner to control or eradicate the noxious weeds or, if authorized, pests within the time period prescribed by the county weed control officer. If the landowner resides in another state, the landowner shall control or eradicate the noxious weeds or, if authorized, pests within the time period prescribed by the county weed control officer. Additional time may be requested from the county weed board. The notice must specify the landowner may be subject to the penalties provided in section 63-01.1-15 if the landowner fails to comply. The notice must specify minimal remedial requirements. A copy of the notice may be sent by certified mail to any tenant, lessee, or operator of the land. If the county weed board will control the weeds or, if authorized, pests upon failure of the landowner to control the weeds or, if authorized, pests, the notice must also include a statement of costs. If the landowner does not control or eradicate the noxious weeds or, if authorized, pests within the specified time, the

county weed control officer may cause the noxious weeds or, if authorized, pests to be controlled or eradicated 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. If the county weed board intends to control the weeds or, if authorized, pests, the notice must include a statement informing the landowner that the landowner may request the county weed board not to control the weeds or, if authorized, pests. If the landowner requests the county weed board not to control the weeds or if authorized, pests, the board may not control the weeds or, if authorized, pests until by a majority vote of the board control is authorized.

63-01.1-09. County weed board to control or eradicate noxious weeds and pests along county and township highways.

The county weed board shall eradicate or control noxious weeds or, for purposes of section 63-01.1-04.2, pests as defined in this chapter along county and township highways within the county and the expense incurred for noxious weed control must be paid from funds as provided in section 63-01.1-06

63-01.1-10.1. Cities to control noxious weeds within cities.

1. The governing body of any city, with a population of three thousand or more, may act as a control authority, and may establish and administer a program for the control of 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.
2. The governing body of any city with a population of three thousand or more may levy a tax, not to exceed two mills on the taxable valuation of property within the corporate limits of the city, to establish and administer the program.
3. Moneys received by the cities from the levy may be used in any phase of weed control as determined by the governing body of the city. The control program shall include work on weeds included on any county or state noxious weed list.
4. The governing body of a city which establishes a control program may petition the commissioner of agriculture for special assistance in funding authorized by section 63-01 .1-06.
5. The governing body of any city may act in conjunction with any other control authority or officer also required to act under this chapter.

63-01.1-12. Preventing dissemination of noxious weeds.

1. To prevent the dissemination of noxious weeds by machinery, trucks, harvesting, or other farm equipment, or during transportation of plants, forage, screenings, dirt, and other articles which may be transported by any means, the commissioner shall, from time to time, publish a list of the possible methods of disseminating the propagating parts of such weeds.
2. All operators of tillage, seeding, and harvesting equipment shall be required to clean such equipment to prevent the spread of noxious weeds by seed or other propagating parts prior to moving such equipment on public highways, airways, waterways, or by any other means of conveyance, public or otherwise. Trucks or trailers transporting grain screenings shall be

constructed and covered so as to prevent weed seed dissemination. Scattering and dumping on land or in water of any material containing noxious weed seeds or propagating parts is prohibited unless such material has been processed or treated, or is buried sufficiently deep to destroy seeds and other propagating parts.

63-01.1-12.1. Quarantine period - Materials or farm products and area defined.

1. Whenever the commissioner, the county weed board, or anyone authorized thereby finds any area of the state to be infested with noxious weeds, and it is established that materials or farm products from that area are liable to spread noxious weeds into other areas to the injury of others, the commissioner shall, without unnecessary delay, declare a quarantine against the area to prevent the transfer of materials or farm products from the quarantined area. When it is ascertained that noxious weeds are likely to be introduced into this state by the importation of materials or farm products, the commissioner shall declare a quarantine against the importation of those materials or farm products.

2. The commissioner shall declare an individual county quarantine when requested by resolution adopted by a two-thirds majority of the county weed board of the county in which the quarantine is to be declared.

3. For the purposes of this section, "area" means a geographical section of land as identified by the commissioner, which may include cities and counties or any portion of a city or county; "farm products" means all crops, crop products, plants or portions thereof, but shall not mean livestock; and "materials" means gravel or other substances that can be transported over a state highway.

63-01.1-12.2. Noxious weed certification - Gravel and sand pits and hay land.

1. The commissioner, after consultation with the North Dakota State University Extension Service, may adopt rules for certifying that gravel, scoria, or sand surface mining operations and land producing hay for sale or for resale are not contaminated with noxious weeds. The rules must identify the extent noxious weeds are allowed with certification.

2. The county weed board, after consultation with the North Dakota State University Extension Service, may certify gravel, scoria, or sand surface mining operations and land producing hay for sale or for resale as not contaminated with noxious weeds.

3. The commissioner shall adopt a schedule of fees that county weed boards and the North Dakota State University Extension Service may charge for inspecting, testing, analyzing, and certifying gravel, scoria, or sand surface mining operations and hay land.

4. Certification of gravel, scoria, or sand surface mining operations or hay land is not a warranty of any kind as to the quality of the gravel, sand, or hay produced from an inspected and certified location. The only representation made is that land from which sand and gravel is surface mined or land producing hay for sale or resale has been inspected for contamination by noxious weeds under rules adopted by the commissioner.

63-01.1-13. Publicly owned land - Weed and pest control.

1. The commissioner shall attempt to arrange a satisfactory noxious weed and pest eradication or control program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state. Weed control officers shall attempt to arrange a satisfactory noxious weed or, if authorized, pest eradication or control program with cities, park boards, cemeteries, school boards, counties, and other local entities owning or controlling public land within the control authority. State agencies controlling or having jurisdiction over lands within the state shall provide for eradication or control of noxious weeds and pests on such lands. Upon failure of a state agency to adequately control noxious weeds or, if authorized, pests on land under its control, the county weed board for the county in which all or a portion of the land is located, upon approval of the commissioner, may enter upon the land to control the noxious weeds and, if authorized, pests. The state agency shall reimburse the county weed board for expenses incurred in the control of noxious weeds or, if authorized, pests pursuant to this section within thirty days after the agency receives the bill.

2. A federal agency shall develop a management program for controlling noxious weeds or, if authorized, pests on land the agency controls or over which the agency has jurisdiction. If a federal agency does not control or set up a management program to the satisfaction of the weed control authority, the weed control office shall notify the agency as provided in section 63-01.1-08. The federal agency shall provide a report to the commissioner and the county weed authorities describing the methods used by the federal agency and showing cause why the federal agency is not controlling the noxious weeds or, if authorized, pests. The commissioner may specify the forms on which the federal agency report must be submitted.

3. Upon being notified by a county of the federal agency's failure to control noxious weeds or, if authorized, pests, the commissioner may hold a public hearing under such conditions and terms as the commissioner determines advisable, to determine the reason for the failure or refusal.

63-01.1-14. Weed control enforcement responsibilities of other agencies.

The state highway patrol, county sheriffs, and the truck regulatory division shall, when requested to do so by a local weed control officer or a weed control authority, cooperate with local weed control officers and the commissioner, and shall have the authority to enforce subsection 2 of section 63-01.1-12 where machinery, commodities, or articles are being moved on state and federal highways or on county or township roads and may be contributing to the dissemination of noxious weeds.

63-01.1-15. Penalties.

1. A custom or commercial operator of tillage, seeding, and harvesting equipment who violates subsection 2 of section 63-01.1-12 is guilty of a class B misdemeanor. A control authority may institute necessary criminal actions under this subsection.

2. Persons failing to comply with the rules and notice provisions of this chapter are subject to a civil penalty not to exceed fifty dollars per day for each day of violation, subject to a maximum penalty of two thousand five hundred dollars per year. The accumulated penalties under this section are a lien against the property of the landowner from the day the notice is delivered to the landowner under section 63-01.1-08. All penalties collected pursuant to this section must be deposited with the treasurer of the political subdivision and credited to the weed control fund in

the political subdivision in which the penalty originated. Penalties collected pursuant to this section for failure or refusal to perform remedial requirements for the control of pests on an infested area must be credited to the weed control fund in the political subdivision in which the penalty originated but dedicated for use by the county weed board to control pests. The penalty may be adjudicated by the courts or by the county weed board after a hearing. An aggrieved landowner may appeal the imposition of a penalty by the county weed board to the board of county commissioners.

Regulations

Chapter 7-06-0 1

7-06-01 -01 Weed control officer's certification

A weed control officer shall be certified upon completion of certification in two categories under the North Dakota Century Code chapter 4-35. The two categories are agricultural pest control and right of way. A temporary certification may be issued for a period of one year to a weed control officer.

History: Amended effective February 1, 1982.

General Authority: NDCC 28-32-02, 63-01.1-03.

Law Implemented: NDCC 63-01.1-05.1.

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 63-0 1. 1:

1. Absinth wormwood (*Artemisia absinthium* L.)
2. Canada thistle (*Cirsium arvense* (L.) Scop.)
3. Diffuse knapweed (*Centaurea difusa* Lam.)
4. Field bindweed (*Convolvulus arvensis* L.)
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. Spotted knapweed (*Centaurea maculosa* Lam.)

10. Yellow starthistle (*Centaurea solstitialis* L.)

History: Amended effective June 1, 1985; February 1, 2000.

General Authority: NDCC 28-32-02, 63-01.1-03

Law Implemented: NDCC 63-01.1-03