

## Issues With Noxious (and Other) Weeds and Seeds

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### Observation

A constant struggle for farmers is the battle with weeds. Some weeds must be controlled. Those are the ones that are listed by the state as noxious weeds. Failure to control those can bring monetary penalties from local government officials. Then there are non-noxious weeds that aren't required to be controlled. Those are a big issue when a neighbor fails to control them and their seeds drift in the wind and create a weed problem on an adjacent owner's tract. That can also present legal issue. In addition, both the state and federal government have rules governing seeds designed to prevent the spread of noxious weeds.

Legal issues associated with weeds – it's the topic of today's post.

### Federal Seed Act

Originally enacted in 1939, the Federal Seed Act (Act) (7 U.S.C. §§ 1551-1611) has two major purposes: (1) to correct abuses in the merchandising of agricultural and vegetable seed in interstate commerce; and (2) to prevent the importation of adulterated or misbranded seed. The Act is essentially a truth-in-labeling law that protects buyers against purchasing mislabeled or contaminated seed by imposing stringent labeling requirements under which the class and variety of seed must be specified on the label of the seed product.

Under the Federal Seed Act, seeds are deemed to include "agricultural," "vegetable," or "weed" seeds. In general, the labels must disclose the variety name and kind of seed, and the percentage by weight of each variety of seed representing over 5 percent of the total weight of the container. Hybrid seeds must be designated, and the label must also contain the lot number, origin (state or nation) of the seed, percentage by weight of weed seeds, the kind and rate of occurrence of noxious weeds, the percentage of germination, the date of the germination test, and the date after which any inoculant used on the seeds may be ineffective. The Act establishes seed certifying agencies that have the power officially to certify seeds as meeting purity, packaging and processing standards established by the Secretary of Agriculture. Without certification, any representation of purity is deemed to be a false representation. [7 U.S.C. § 1562](#).

Violations of the Act may result in having the seed seized, and civil and criminal penalties imposed. Any violation of the Act or rules and regulations committed with knowledge or as the result of gross negligence is considered a misdemeanor and subjects the offender to a maximum fine of \$1,000 for the first offense and \$2,000 for each subsequent offense. Any other violation of the Act or rules and regulations, even though committed without knowledge or actual negligence, subjects the violator to a fine of between \$25 and \$500 for each violation. Any act, omission, or failure by an officer, agent, or employee also binds the company, principal, or employer, as the case may be. The Act does not directly create a private civil remedy for the buyer who may be harmed by a violation, but buyers may recover damages against the seed seller or distributor under general tort or contract law, or by claiming a breach of warranty. If the problem related to the seeds stems from the failure of the producer or seller to comply with the Act, that will generally be a major factor in resolving the lawsuit.



Seed imported into the United States is also subject to inspection and sampling requirements under the Act. [7 U.S.C. § 1581](#). The Collector of Customs is authorized to draw samples of all seeds and screenings so they may be tested and analyzed to insure their fitness for use in the United States. The Act establishes requirements regarding importation of seed into the United States and when seeds may be denied entry. Certain seed which is declared to be imported for the seeding of roses is subject to the import provisions of the Act. Seed that is adulterated or deemed to be unfit for seeding purposes may be prohibited from importation. Unfit or adulterated seed may be cleaned or processed under the supervision of a USDA employee. If, after careful analysis, it is determined that the clean seed meets the requirements of the Act, the seed may be admitted into the United States.

### State Noxious Weed Laws

The liability of farmers and ranchers for the spread of weeds and other noxious or invasive vegetation onto adjoining land is governed by statute in almost all jurisdictions. Noxious weed laws create a duty on the part of owners, tenants, and other possessors of land to destroy noxious weeds or otherwise prevent their spread. A typical noxious weed statute delegates enforcement authority to state agriculture officials, as well as local boards and officials. A typical statute defines the type of noxious weed or other vegetation subject to regulation, establishes county weed control districts, authorizes the appointment of local weed control officials and specifies their authorities and duties, prescribes the duty of landowners to destroy weeds, establishes the procedure for giving notice to offending parties, and provides local control authorities with limited enforcement powers. Most state noxious weed statutes provide that weed control officials may assess the cost of removing weeds to the property owner rather than a tenant or other person in possession of the premises. Some statutes also impose criminal penalties for violations.

**Recovering damages against a neighbor.** Most state noxious weed laws do not permit an injured landowner to recover civil damages for the spread of weeds from an adjoining owner's property. However, this does not prevent an injured party from suing to recover damages for the defendant's negligence in allowing weeds to overspread the plaintiff's land. For example, the South Dakota Weed Act (*S.D. Codified Laws Ch. 38-22*) has been held to not prohibit a private nuisance action for damages caused by a failure to control non-noxious weeds. [Collins v. Barker, 668 N.W.2d 548 \(S.D. 2003\)](#). In the South Dakota case, the court held that a farmer has duty to use ordinary care in working the land. Under the facts of the case, the plaintiff could bring a nuisance action to determine whether the defendant breached the duty of ordinary care in working Conservation Reserve Program (CRP) land.

In reality, however, obtaining a judgment may be rather difficult. An injured landowner must usually prove that the weeds were spread by the defendant's active negligence or willful conduct rather than by nature. While it may be possible for the plaintiff to prove negligence by the fact that the defendant was found guilty of violating a criminal weed control provision, there does not appear to be any authority directly on point.

An offended landowner may also be able to recover damages for the spread of noxious weeds onto their land from an adjoining landowner's premises by showing that the noxious weeds were destroyed negligently. For example, in [Kukowski v. Simonson Farm, Inc., 507 N.W.2d 68 \(N.D. 1993\)](#), the court held that a farmer has a duty to exercise ordinary care when attempting to control or remove weeds. The land at issue in the case was seeded to grass and a weed control chemical was applied. Over the course of the growing season, a stand of Kochia and Russian thistle grew on the CRP acreage. The landowner combined the weeds in an attempt to control the weeds. A neighboring farmer sued alleging that the combine broke off the weeds in an unnatural manner, allowing them to blow onto their property, causing damage. The neighbor also claimed that the use of the combine "branded" the weeds, making them readily identifiable as coming from the CRP ground. \$80,000 of damages were claimed for clean-up costs, reduced crop yields and costs for present and future weed control. While the court noted that the common law does not hold a



landowner liable for the natural spread of weeds from their property, liability can be present if weeds spread from an independent act of negligence.

**Weeds in the fence line.** For noxious weeds that are in a partition fence line, state law typically sets forth a procedure for the adjoining landowners to follow to take care of the problem. That procedure may involve one adjoining landowner making a request of the other adjoining landowner to clear the fence line of noxious weeds. After a set time, if the needed control hasn't occurred, then local officials can be notified. The local officials will come view the matter and make a determination concerning weed control. If action is to be taken, the local officials may hire someone to control the weeds and then add the costs to the responsible landowner's property tax bill.

**Road ditches and railroads.** Many states have law requiring counties, townships or municipalities to control noxious weeds within their jurisdiction that are growing along public roadways. There typically is a timeframe established for the control measures to be taken. There might also be a weed control requirement outside the specified timeframe(s) if control is necessary to minimize a public safety hazard. If a landowner controls noxious weeds in ditches, recovery of control costs against the responsible governmental entity is possible, but only if proper procedural requirements are first followed such as providing notice and then (after a period of time without action) requesting the local court to order the governmental body to fulfill its duty. For example, in [\*Metzger v. Horton, 2013 Ohio 2964 \(Ohio Ct. App. 2013\)\*](#), a farmer bought a larger combine and needed trees and brush trimmed back along a road he used to get access to the land he farmed. He requested that the township trustees trim the vegetation, but when they didn't get the job done, he did it himself and billed the township \$1,863 for his costs. The township trustees didn't pay the invoice and the farmer sued. He lost. The court held that he didn't follow the proper procedure of seeking a court to order the township to do its job. As such, his costs he sought reimbursement for were self-imposed.

For noxious weeds that are growing in the right-of-way of toll-road or rail line, state law commonly specifies the company controlling the toll road (for toll roads) and the railroad company (for rail lines) is responsible for controlling noxious weeds. If control doesn't occur, state law typically gives the local government the ability to eliminate the weeds and sue the responsible company for the cost of control.

**Public land.** For noxious weeds on public land, state law may detail the procedure to be followed in controlling such weeds.

### Non-Noxious Weeds

Weeds that are not on a state's (or county's) noxious weed list also present problems. While a farmer has a duty to control the spread of noxious weeds, as noted above, that duty doesn't extend to non-noxious weeds absent malicious intent to injure an adjoining landowner. For example, in [\*Krug v. Koriel, 23 Kan. App. 2d 751, 935 P.2d 1063 \(1997\)\*](#), the court held that there is no common law duty in Kansas to control volunteer wheat so as to prevent the spread of wheat streak mosaic virus that is caused by the wheat curl mite because volunteer wheat is not listed as a noxious weed under Kansas law.

Controlling volunteer wheat (and grassy weeds) is a key point, there is no treatment for wheat streak mosaic virus. This is a big issue in Kansas. Most recent data show that the five-year average statewide loss is 1.74 percent of the Kansas wheat crop. In 2017, the loss was estimated at \$76.8 million – 5.6 percent of the statewide wheat crop. A drought in the major wheat growing regions of Kansas in the fall of 2019 and spring of 2020 could mean that more volunteer wheat will be present in 2021 without additional control measures being taken. Adding to the potential for more volunteer wheat in 2021 is hail damage, head scab and even waterlogged fields in late summer in some areas. Simply planting later can be at least a partial control technique.



## Conclusion

Seeds and weeds present practical and legal issues for farmers and ranchers. With respect to seeds, detailed rules apply to seed that is certified. For weeds, it's important to understand the types of noxious weeds in a particular state and the rules governing their control. For, non-noxious weeds properly following protocol for their control is critical.

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