



## **Gallatin County Weed District Noxious Weed Enforcement Policy**

Enforcement of the Montana County Noxious Weed Control Act is a legal action that occurs when a justifiable written complaint against a landowner is delivered to the Weed District Office and can be filed by the Weed Board, an agent of the Board, or a member of the public. Montana state law regarding noxious weeds can be found in Montana Code Annotated (MCA) Title 7, Chapter 22, Part 21 (2101-2154). MCA, 7-22-2116, states that it is unlawful for any person to permit any noxious weed to propagate or to go to seed on his/her property, unless that person adheres to the noxious weed plan of Gallatin County or has entered into, and is in compliance with, a noxious weed management agreement with the Gallatin County Weed District. Procedures for enforcing the law are defined in MCA, 7-22-2131 through 2134.

The Weed District and the Gallatin County Attorney's Office have established a process for enforcing the Weed Act that complies with these statutes. The enforcement process requires the involvement of the Weed Board, Attorney's Office and occasionally District Court and the Sheriff's Office. Once a complaint is filed and if the landowner is uncooperative, the enforcement process takes a minimum of two months to complete and requires follow up from the Weed District for the next three years. Due to the amount of resources and time required to respond to complaints, the Weed District will not follow up with a complaint until all other means of resolving the dispute have been exhausted. If the property with the alleged violation is located in a subdivision that has noxious weed covenants in place and an active Home Owners Association (HOA), the Weed District requires that the complaint be pursued through the HOA.

The Weed District may use an educational approach rather than enforcement when responding to complaints of noxious weeds. This decision will be based on a number of factors including: the magnitude of the noxious weed infestation and potential for large scale impacts; whether the noxious weed(s) currently has a limited distribution in the county and is a high priority species on the noxious weed list; potential impacts to the livelihood of surrounding neighbors; and the Weed District resources that are available for addressing the issue. If the Weed District decides that an educational approach is warranted, the landowner will be sent an informational letter explaining the impacts of noxious weeds, as well as effective control measures and the services that the Weed District can provide to assist with weed management.

**The steps involved with the legal enforcement process used in Gallatin County are outlined below.**

## **File a Complaint**

Complaints can be generated by the Board, through its authorized agent, or by a member of the public. Complaints must be submitted in writing by filling out the Gallatin County Citizen Noxious Weed Complaint Form. If a member of the public wishes to file a complaint they must schedule an appointment with the Weed District to discuss the issue and obtain a complaint form. Only one property or landowner (Respondent) may be listed on each complaint form. The form must be signed by the person making the complaint (Complainant). The complaint form and all related documents produced in the matter (e.g. photos, written notes, correspondence, etc.) are *public documents* and may be provided to any interested party. The Complainant is also required to be in compliance with the Weed Act, and their property may be subject to inspection for noxious weeds.

## **Verification of Complaint**

All complaints must be verified with an inspection by Weed District personnel. If possible, the initial inspection of the property will be conducted from a public place (road, park, etc.). Inspections may also take place from the Complainant's property (with permission). Noxious weed species and estimated infestation size will be documented. Results of the inspection will heavily influence which approach (legal enforcement or educational) will be used to communicate with the landowner. If the noxious weed problem cannot be seen from a public place or from the Complainant's property, permission to inspect will be sought from the Respondent. If the Respondent does not grant permission to inspect the property, the Weed District will move forward with the enforcement process, as outlined below.

## **Notices to Respondent** (MCA 7-22-2131)

To begin the enforcement process, the Weed District will contact the Respondent in writing by certified and general mail to seek voluntary compliance. The Respondent may also be contacted via phone or e-mail if this information is known. If the Respondent has a registered agent on file with the Montana Secretary of State, that agent will also be notified by certified and general mail. Copies of all official notices will be forwarded to the Attorney's office.

### **First Notice: Notice of Noxious Weeds and Request for Inspection**

- Informs the Respondent that a formal complaint has been filed against their property.
- Requests permission to inspect the property (preferably with the Respondent).
- Informs the Respondent that if the Weed District is not allowed access, a court order may be sought to inspect the property.
- Outlines the penalties of noncompliance as stated in the Weed Act.
- Informs the Respondent that state law requires response to the notice within ten days of receiving the notice.

If the Respondent does not contact the Weed District within ten days of receiving the first notice, or if the Respondent does not voluntarily comply with the Weed Act, they will be considered in noncompliance and will be sent a second notice (Notice of Noncompliance).

### **Second Notice: Notice of Noncompliance**

- Sent if there is no contact with the Respondent within ten days of the first notice being received or if prior attempts to work with the Respondent have failed and voluntary compliance has not been obtained.
- Notifies the Respondent that they are now in noncompliance with the Weed Act.
- Informs the Respondent that if they do not contact the Weed District within ten days of receipt of the notice and submit a written weed management plan, the Weed District will begin the process of obtaining a court order.
- States that the Respondent has the right to appeal to the Weed Board, Board of County Commissioners or to District Court within ten days.

Failure to voluntarily comply within ten days of receipt will result in noncompliance actions being taken by the Weed Board.

### **Noncompliance: Actions by the Weed Board** (MCA 7-22-2134)

- If voluntary compliance has not been obtained after sending the second notice, the Weed District, in conjunction with the Attorney's Office, shall seek a court order from District Court to treat the noxious weeds on the property.
- Once a court order is obtained, the noxious weeds on the property will be treated. This is usually a treatment with herbicide, and the manner and extent of treatment will be determined by the Weed District based on available resources and time constraints.
- Even if the Weed District treats the noxious weeds on the property, the Respondent is still required to submit a written weed management plan for approval by the Weed District. **The Respondent will continue to be in noncompliance until a written and approved three year weed management plan is in place and they demonstrate that they are implementing the plan.**
- An invoice for all costs associated with the court-ordered treatment will be sent to the Respondent. If the invoice is not paid in full within 30 days, the costs associated with treatment will be placed on the tax bill as a special tax on the land.
- Invoices will itemize:
  - Hours of labor
  - Cost of material
  - Equipment time
  - Legal fees
  - Court costs
  - A penalty of 25% of the total cost

A court order may be valid for three years, so Respondents may be subject to an enforcement action for three years following a court-ordered treatment. Per the court order, Respondents may be notified each spring that they are required to treat the noxious weeds by June 15 of that year. Respondents will then be required to notify the Weed District when the treatment has occurred. If the Respondent does not voluntarily comply, the Weed District will treat the noxious weeds and submit the invoice to the Respondent.

**Noncompliance: Actions for Respondents** (MCA 7-22-2133)

Within ten days of receiving notice to comply with the Weed Act, the Respondent may request a hearing before the Commissioners if they disagree with the weed control measures proposed by the Weed Board. If the Respondent's objection to the Weed Board's proposed action remains after the hearing, the Respondent has ten days to appeal the Commissioners' decision to the District Court that has jurisdiction in the county in which the property is located. The Weed Board may not take any action to control the noxious weeds until after the hearing and authorization is provided from the Commissioners or the Court.

**Procedures for Compliance** (MCA 7-22-2132)

A Respondent is in compliance if they submit and the Weed Board accepts a written weed management proposal and the Respondent remains in compliance if the terms of the proposal are met. The Respondent or the Respondent's representative must notify the Weed Board as measures in the proposal are taken. In accepting or rejecting a weed management proposal, the Weed Board shall consider the economic impact on the Respondent and neighboring landowners, practical biological and environmental limitations, and alternative control methods to be used.