



South Dakota Legislative Research Council

Issue Memorandum 95-29

SOUTH DAKOTA'S WEED AND PEST CONTROL PROGRAM

South Dakota's weed and pest control statutes date back as far as 1890 and in recent years have been frequently revisited. Weed and pest control has always been a serious issue for South Dakota agriculture, but the situation has become more complicated in recent years with environmental questions arising over the use of pesticides and the resulting reluctance of some federal agencies to address weed and pest problems on federal land in traditional ways. South Dakota's weed and pest control program has been the subject of several legislative studies and bills, but the subject remains controversial.

Statutory Background

South Dakota's weed and pest control law is found in SDCL Chapter 38-22, while laws governing pesticides, including the pesticide registration fee, are located in SDCL Chapters 38-20A and 38-21. Basically, South Dakota's statutes create the state Weed and Pest Control Commission to work in conjunction with the state Department of Agriculture and they establish the position of state weed and pest coordinator within the department. The statutes direct the commission to formulate a program for the "prevention, suppression, control, and eradication of weeds and pests in South Dakota."

SDCL 38-22-9 and 38-22-11.1 direct the commission to promulgate rules that specify plants and animals that are considered to be weed and pests and to establish procedures for the enforcement of weed and pest control. Until

recently, the commission's rules provided for two categories of weeds and pests: more serious "noxious weeds" and "declared pests" that are to be treated on a statewide basis, and less serious "locally noxious weeds" and "locally declared pests" that are subject to enforcement and control measures in specific counties. During the summer of 1995, the commission revised its rules to create three categories of noxious weeds: "primary" noxious weeds, which correspond roughly with statewide noxious weeds; "secondary" noxious weeds, which correspond with locally noxious weeds; and "exotic" noxious weeds, which are weeds that have not yet appeared in South Dakota but may pose a threat if introduced. The purpose of the exotic weed category is to emphasize prevention as an important part of addressing the weed and pest program. The categories of declared pests (statewide) and locally declared pests remain the same. Currently, noxious weeds and declared pests in South Dakota are established by administrative rule and include the following:

Exotic Noxious Weeds:

- Johnsongrass
- Jointed goatgrass
- Perennial pepperweed
- Rush skeletonweed
- Sulfur cinquefoil
- Yellow mingonette

Primary Noxious Weeds:

- Canada thistle

Diffuse knapweed
Field bindweed
Leafy spurge
Hoary cress
Perennial sowthistle
Purple loosestrife
Russian knapweed
Spotted knapweed

Secondary Noxious Weeds:

Twenty-four species of secondary noxious weeds have been identified and listed in South Dakota.

Declared Pests:

Black tailed prairie dog
Gypsy moth

The basic enforcement mechanism for weed and pest control in South Dakota is found in SDCL 38-22-16, which states that weed or pest infested land constitutes a public nuisance. If the landowner fails to rid the area of the weeds or pests, the state, after giving proper notice to the landowner, may enter the property and perform any protective operations that are necessary. The owner must pay the costs of the protective operations, and if the owner fails to pay, the costs become a lien against the property and are to be collected in the same way that property taxes are collected. The statutes also state that damage to crops or property caused by state or county personnel in carrying out their weed and pest control duties is not the responsibility of the state or county and cannot be assessed against either entity.

In addition to enforcement efforts by the state, the statutes also direct each county to establish a county weed and pest board of five to seven members. County weed and pest boards are directed to pursue an effective program for the control of weeds and pests, to conduct at least an annual inspection of weed and pest conditions in

the county, and to submit an annual report of their activities to the state Department of Agriculture. The county boards may also employ personnel and purchase equipment and supplies necessary to carry out their activities. The county boards have essentially the same enforcement powers and methods available to them as do state personnel.

Funding for Weed and Pest Control Programs

Although counties can and do appropriate money for weed and pest control purposes, state funds are also used. One source of state funding is the weed and pest control fund, which was established in 1989. The state Weed and Pest Control Commission may use money in the weed and pest control fund to provide financial assistance to counties and other entities for weed and pest control projects and for certain education and research efforts. Beginning in FY 1991, approximately 150 grants have been provided from the weed and pest control fund, amounting to more than \$725,000.

In addition to the weed and pest control fund, the public lands weed and pest control fund was established to handle weed problems on state-owned lands; the pesticide regulatory fund is used for implementing pesticide registration requirements and the pesticide program; and the pesticide recycling and disposal fund is used to operate the waste pesticide collection, disposal, and container recycling program. Money enters each of these funds in large part by the pesticide registration fee established in SDCL 38-20A-9.

The pesticide registration fee has been amended or proposed for amendment nearly every year since the late 1980s with the proceeds to be used for a variety of purposes. The pesticide registration fee is an annual fee paid by manufacturers on each type of pesticide product

to be offered for sale in South Dakota (between 6000 and 7000 separate products), and the statutes specify how the money in the fund will be allocated.

Before 1988, the fee was \$25 per pesticide product registered, and the fee was deposited in the general fund. The 1988 Legislature raised the fee to \$50 with \$25 to be used temporarily to help establish the regulated substance response fund. The 1989 Legislature raised the total fee to \$75, with the additional money to be used for weed and pest control and for groundwater protection (for five years). In 1991, an additional \$25 was devoted to weed and pest control. In 1992, the pesticide recycling and disposal fund was established with an additional \$100 earmarked for that fund, which raised the overall pesticide registration fee to \$200. The 1993 Legislature divided the money entering the weed and pest control fund between that fund and the newly created public lands weed and pest control fund. In 1994 the groundwater protection fee expired, reducing the pesticide registration fee to \$175, and in 1995, the portion of the fee for pesticide disposal and recycling was reduced to \$25, leaving the total fee at \$100.

A bill introduced in the 1995 Legislature to apply some of the recycling fee reduction to weed and pest control purposes was defeated. Pesticide registration fees in the surrounding states range from \$75 per product in Wyoming to \$250 minimum sliding scale fees in Iowa and Minnesota, so South Dakota's fee amount is not significantly different from other states. The following tables illustrate the size and distribution of the pesticide registration fee in recent years.

	Response	<u>25</u>
	Total Fee	\$50
1989:	General Fund	\$25
	Weed/Pest Fund	25
	Groundwater Fund	<u>25</u>
	Total Fee	\$75
1991:	General Fund	\$25
	Weed/Pest Fund	50
	Groundwater Fund	<u>25</u>
	Total Fund	\$100
1992:	General Fund	\$25
	Weed/Pest Fund	50
	Pest. Recyc Fund	100
	Groundwater Fund	<u>25</u>
	Total Fee	\$200
1993:	Pest. Reg Fund	\$25
	Pest. Recyc Fund	100
	Weed/Pest Fund	25.50
	Public Lands Fund	24.50
	Groundwater Fund	<u>25</u>
	Total Fee	\$200
1994:	Pest. Reg Fund	\$25
	Pest Recyc Fund	100
	Weed/Pest Fund	25.50
	Public Lands Fund	24.50
	Groundwater Fund	<u>----</u>
	Total Fee	\$175
1995:	Pest. Reg Fund	\$25
	Pest. Recyc Fund	25
	Weed/Pest Fund	25.50
	Public Lands Fund	<u>24.50</u>
	Total Fee	\$100

Pesticide Registration Fee History

Pre- 1988:	General Fund	\$25
1988:	General Fund	\$25
	Reg. Substance	

The tables make it evident that the pesticide registration has received much legislative scrutiny in recent years and has been a tempting funding source for a variety of purposes, sometimes leaving the weed and pest control program caught in the middle and uncertain of

the stability of its funding source. The pesticide registration fee and its associated funds are established in SDCL 38-20A-9, 38-20A-9.1, 38-20A-54 to 38-20A-58; SDCL 38-21-57; and 38-22-35.

Weed and Pest Control Program Chronology

In 1994, the Legislative Research Council and Legislative Audit conducted a performance review of the Department of Agriculture. The final report for that audit included the following chronology describing the history of the weed and pest control program. The chronology illustrates the level of activity associated with the program as well as some of its recurring problems:

- 1945 - Program Inception. Goal - 100% cooperation through education of land managers on the need to control weeds using research based methods in an organized system that employs enforcement of requirements by the Department of Agriculture when control is not completed voluntarily.
- 1952 - Statute amended. Commission given responsibility for administration, research, education and enforcement as a result of public input. Counties perform the investigation, request assistance, the situation is reviewed and if there is no compliance the DoA completes the necessary action.
- 1975 - Enforcement placed under the supervision of a State Weed Supervisor (now termed coordinator).
- 1978 - Full-time field person is authorized at the request from counties for on-site assistance with administration, organization and enforcement.
- 1980 - Field person becomes the supervisor of inspectors. Regular DoA inspectors do enforcements.
- 1982 - Summer study of weed program performed by the legislature as a result of sunset legislation.
- 1983 - Current organizational structure is set. Enforcement authority given to counties as well as the Department of Agriculture to make the process move more quickly. Assistance to boards, program training for county personnel, and coordination with state and federal agencies are set as the department's responsibilities. Education and research responsibilities remain with South Dakota State University. Insect, bird and rodent control responsibilities are added to the program.
- 1985 - Use of regular Department of Agriculture inspectors for enforcement is determined to not be effective. An additional part-time weed and pest inspector is added. Weed and pest infestation surveys document that control is below the desired level. Weed infestation is expanding rapidly; Canada thistle is doubling its acreage of infestation every ten years.
- 1986 - Three-year action plan is developed and adopted by the Commission to increase the program effectiveness and results in 90% compliance with requirements. Needs assessment sessions are conducted with county boards at district meetings. Land use category and environmental limitation based weed inventory is developed to determine control methods needed. A statewide thistle emphasis program is initiated.
- 1987 - Legislation is introduced to create a

Weed and Pest Fund to fund action on needs identified in 1986 and in accordance with the action plan developed to address the needs. Primary commission goals for the future are set based on local input and are to seek additional FTEs to do inspections, help with enforcements and provide on-site assistance. Executive Order #4 increases farmer/rancher representation on the commission from four to six members. The Weed and Pest Fund bill fails. The Commission is asked to document the need for funding and FTEs.

1988 - Policy for a unified program is developed. The commission provides documentation of the need for the requested funding and FTEs. Weed and Pest Fund legislation is introduced with a \$50/product surcharge as the funding source. Proposed legislation is not approved. Through problem solving sessions with county boards and the commission, assistance to counties for enforcement, organization and training of personnel and education of the general public are determined to be the priorities for use of the funds. Biocontrol program authorization and funding is requested based upon limitation to control data. Biocontrol legislation is not authorized. Control on federal lands issue is targeted beginning with drought task force meetings conducted with a USDA team sent by the U.S. Secretary of Agriculture.

1989 - Weed and pest policy is finalized and adopted by the commission. Legislation for a \$25/product surcharge is introduced and passed. Grant program is finalized and explained to the counties. A meeting is conducted in Billings, Montana, with federal agencies to start development of a formal weed control policy on federal lands. Work begins on federal noxious

weed legislation with surrounding states and congressional delegation.

1990 - Legislation to fully fund the weed and pest fund introduced. Proposed legislation fails. Legislators ask for a track record of the weed and pest program. Several other weed and pest related bills are introduced and fail. The need for action is recognized by legislators and a summer study of the program is conducted. Assistance to counties with programming, education and enforcement are determined to be the primary needs. Six bills are drafted by the committee to address the identified needs. Goals, objectives and strategies to accomplish the program needs become part of the strategic plan for the next five years. Staffing and funding are identified as the key elements to achieving success. Federal Noxious Weed Act of 1974 is amended as part of the 1990 Farm Bill. Agencies are required to budget for control and comply with control requirements in areas where control is being done in an organized manner.

1991 - Several summer study bills are introduced. SB2 and HB1003 dealt with county budgeting and bidding procedures and were passed. SB4 provided for civil penalties for noncompliance, and SB3 dealt with weed seeds in commercial feeds. Both bills were defeated. HB1004 was passed and raised the pesticide registration surcharge from \$25 to \$50. HB1005 requested four FTEs and general funds for area weed and pest supervisors. Additionally, HB1011 appropriating funds for weed control on Red Lake was introduced. Both HB 1005 and HB 1011 were defeated. The final bill approved two FTEs for three years, a \$25 increase in the surcharge and required the funds be spent to fund the two FTEs and to control weeds

on meandered lakes. A State Interagency Agreement was also required. The agreement had four goals: increase penalties for non-compliance, allow the department to recover costs of enforcements, encourage county weed and pest boards to provide 75% of the weed control on state agency lands and to improve county weed and pest board proficiency.

Office of Plant Industry is reorganized to better address weed and pest control problems. Reorganization includes rearranging FTEs and assigning responsibility for biological control activities and quarantine activities. Area weed and pest control supervisors begin work in August assisting counties with their fall control programs and conducting the state's enforcements. A pilot project for noxious weed control in and around meandered lakes was started on Red Lake in Brule County.

State land managing agencies contract with county weed and pest boards for weed control. Some of the boards agree to do more control work on state lands. Others are not willing to or able to do the additional control work. Some counties do not have a weed and pest control program sufficiently funded and organized to take on the additional responsibility. Some of the county boards indicate they do not have sufficient equipment to conduct control work on agency lands. To assist those counties, the commission authorized \$80,000 in grants specifically to help counties to be able to contract control work with the state agencies.

The Weed and Pest Control Commission and the Department of Agriculture host a meeting with all federal agencies with land

management responsibility. A memorandum of understanding between the department, the Weed and Pest Control Commission and the federal land managing agencies is drafted and guidelines for weed control on federal lands are started.

1992 - Several new county support programs are implemented, including county weed and pest supervisor certification and training, and county board training. County personnel meetings are held and county program reviews are conducted with the county boards.

Special appropriation from the Weed and Pest Fund to the Department of Agriculture for authority for the two FTEs and the Meandered Lakes projects is approved. The Memorandum of Understanding between the Weed and Pest Control Commission, the department and all land-managing federal agencies is completed. The memorandum calls for coordinated management of noxious weeds on public and private lands and implementation of action plans to prevent, control, and contain noxious weeds through an integrated management system. About one-half of the state enforcements are returned to the counties.

The Red Lake project continues and another project was started on Lake Andes.

1993 - Several bills are introduced to address the goals in the State Interagency Agreement. The bills define control responsibilities on meandered lakes, authorize civil penalties for the Weed and Pest Control Statutes and establish an emergency assistance fund. All of the bills fail. Other legislative action removes \$25 of the Weed and Pest surcharge and gives

the funds to the Department of School and Public Lands and disallows use of weed and pest funds for the purchase of equipment.

Guidelines for the coordinated management of noxious weeds are written, finalized and distributed. A number of cooperative projects are started, including: Bull Creek drainage, Belvidere Lake, Waggoner Lake, Little Missouri River, Spearfish Canyon, Belle Fourche River and Cheyenne River.

Expanded efforts are made to improve inter-agency communication between the counties and the bordering counties and tribes.

Direct county assistance is provided by one-on-one assistance to supervisors, boards and county commissioners and mediation of disputes between counties and state and federal agencies, other states, other counties and tribes. Eight county weed and pest boards are convinced to hire a county weed and pest supervisor. Supervisor training is provided for new county weed and pest supervisors and spring and summer training sessions are provided for all supervisors.

1994 - Area weed and pest supervisor FTEs are terminated. All state enforcements are turned back to the counties. Interagency meetings are held with all federal and state land-managing agencies. Spring training sessions are conducted. Development of Species Management plans is started. A Weed Task Force is organized to reconcile statutes that address weeds.

Recent Activities and Issues

As noted earlier the 1995 Legislature reduced the pesticide recycling and disposal fee from \$100 to \$25 but did not provide additional funding for weed and pest control activities. The 1994 performance review of the Department of Agriculture recommended that “a consistent direction be established and maintained for the weed and pest control program.” However, the frequent changes to the program funding statutes make it difficult to plan in some respects. The Weed Task Force established in 1994 continues to meet and evaluate policies. One product of the task force is the new system for delineating noxious weeds described above.

Another issue that presents a difficult problem for state and local officials and for private landowners is the lack of consistent weed and pest control policies at the federal level. Reluctance of some federal agencies to aggressively address weed problems on federal lands, sometimes due to environmental concerns, has caused animosity at all levels. Besides contributing to weed infestation, the federal example can make state enforcement efforts more difficult. State-federal contacts on this issue are ongoing, but problems can be expected to continue.

Biocontrol or the use of organisms that are the natural enemies of weeds or insect pests is a recent innovation in weed and pest control. Biocontrol provides an alternative to pesticides in infested areas that are environmentally sensitive or inaccessible and have the potential to provide self-renewing and environmentally sound management tools that can be used as part of an integrated pest management program for South Dakota.

Summary

According to the Agricultural Extension Service at South Dakota State University, state and local efforts to control weeds and pests prevented the

loss of more than \$56 million in 1994. Weed and pest control efforts have continued in South Dakota almost since statehood, and while the direction of the programs will change with the times and be adjusted in response to environmental requirements and needs, the importance of the program to South Dakota agriculture is evident.

This issue memorandum was written by Tom Magedanz, Principal Research Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
