

# Law Bulletin



OSU EXTENSION AGRICULTURAL &amp; RESOURCE LAW PROGRAM

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## Ohio's Noxious Weed Laws

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"Noxious weeds" are plants that can injure agricultural crops and livestock due to their invasiveness, toxicity and other harmful characteristics. The effect of noxious weeds also extends beyond agriculture to people and ecosystems. Like most states, Ohio has established processes for minimizing the negative impacts of noxious weeds. The following provisions of Ohio law address noxious weeds designation, management and eradication.

### *Designation of noxious weeds*

Years ago, Ohio's legislature gave authority to the director of the Ohio Department of Agriculture (ODA) to designate "prohibited noxious weeds." ODA's current list of noxious weeds is in Ohio Administrative Code 901:5-37-01 and includes the following:

- Shatter cane (*Sorghum bicolor*)
- Russian thistle (*Salsola Kali* var. *tenuifolia*)
- Johnsongrass (*Sorghum halepense* L. (Pers.))
- Wild parsnip (*Pastinaca sativa*)
- Wild carrot (Queen Anne's lace) (*Daucus carota* L.)
- Oxeye daisy (*Chrysanthemum leucanthemum* var. *pinnatifidum*)
- Wild mustard (*Brassica kaber* var. *pinnatifida*)
- Grapevines: when growing in groups of one hundred or more and not pruned, sprayed, cultivated, or otherwise maintained for two consecutive years.
- Canada thistle (*Cirsium arvense* L. (Scop.))
- Poison hemlock (*Conium maculatum*)
- Cressleaf groundsel (*Senecio glabellus*)
- Musk thistle (*Carduus nutans*)
- Purple loosestrife (*Lythrum salicaria*)
- Mile-A-Minute Weed (*Polygonum perfoliatum*)
- Giant Hogweed (*Heracleum mantegazzianum*)
- Apple of Peru (*Nicandra physalodes*)
- Marestalk (*Conyza canadensis*)
- Kochia (*Bassia scoparia*)
- Palmer amaranth (*Amaranthus palmeri*)
- Kudzu (*Pueraria montana* var. *lobata*)
- Japanese knotweed (*Polygonum cuspidatum*)

### *Cutting of noxious weeds along public roadways*

Ohio law requires counties, townships and municipalities to cut or destroy all noxious weeds, brush, briars, burrs, and vines growing along roads and streets within their jurisdictions. Cutting of the vegetation must occur every year between June 1 and 20, August 1 and 20, and if necessary, September 1 and 20, or whenever it's necessary to destroy the vegetation to prevent or eliminate a safety hazard. Ohio Revised Code (ORC) 5579.04 and ORC 5579.08.

### *Destruction of noxious weeds along toll roads and railroads*

Responsibility for noxious weeds growing within a toll road, railroad or railway right-of-way rests with the company's superintendent or manager. Ohio law requires the superintendent or manager to destroy noxious weeds, brush, briars, burrs and vines according to the same schedule described above for the cutting of noxious weeds along roadways. The duty to destroy the vegetation exists even if the toll road, railroad or railway is not in operation. If destruction of the noxious weeds does not occur, the township trustees may cause the removal of the weeds and may bring a civil action against the company for recovery of the costs. ORC 4959.11.

### *Cutting of noxious weeds in line fence rows*

The "line fence law" or "partition fence law" in Ohio requires landowners in unincorporated areas to cut all noxious weeds, brush, briars and thistles within four feet and in the corners of a line fence. A line fence (or partition fence) is a fence that is on the boundary line between two properties. If a landowner fails to keep his or her fence row clear of noxious weeds and other vegetation, Ohio law creates options for adjacent landowners concerned about the weeds. First, an adjacent landowner must notify the "neglectful" landowner that the weeds should be cut and must allow the owner ten days to do so. If the weeds still remain after ten days, the complaining landowner may notify the township trustees of the situation. The township trustees must view the property and determine whether there is sufficient reason to remove weeds and vegetation from the fence row. If so, the township trustees may hire someone to clear the fence row and the county auditor will assess the costs on the neglectful landowner's real property taxes. ORC 971.33 to ORC 971.35.

### *Removal of noxious weeds on private land beyond the fence row*

Ohio's township trustees must also become involved when a landowner fails to destroy noxious weeds on private land beyond the fence row. The procedure begins when the township trustees receive written information that noxious weeds exist on a parcel in the township. The township trustees must then notify the owner or other party responsible for the land about the existence of noxious weeds. The owner must either destroy the weeds or show the township trustees why there is no need for doing so. If the owner does not take one of these actions within five days of the trustee's notice, the township trustees must cause the weeds to be cut or destroyed. The county auditor assesses the costs for destroying the weeds against the owner's real property taxes. ORC 5579.05(A) to ORC 5579.07.

Similar provisions in Ohio law exist for the cutting of noxious weeds on private land within a municipality. ORC 731.51 to ORC 731.53.

### *Identification of noxious weeds on certain public lands*

When notified that noxious weeds are growing on land that is owned or managed by the Ohio Department of Natural Resources or on park land owned or managed by the state or a political subdivision, Ohio law requires the township trustees to notify the county Extension Educator. The Extension Educator must form a committee with a person designated by the state or political subdivision landowner and a designated supervisor of the soil and water conservation district. Within five days of the date the township provided the notice of noxious weeds, the committee must meet and "consider ways to deal with the problem." The committee must report its findings and recommendations to the township trustees. We presume that the township trustees are to share the noxious weed report and recommendations with the ODNR or political subdivision but strangely, Ohio law does not require the board of trustees to do so. ORC 5579.05(B).

### **Where to find Ohio laws**

To read Ohio's noxious weed laws online, visit the website for the Ohio Revised Code at <http://codes.ohio.gov/orc>, using the citations for each law that we've provided above. The first two numbers in the citation refer to the Title number where you will find the law.

### **For more information from the OSU Agricultural & Resource Law Program:**

- Visit our website at <http://farmoffice.osu.edu>.
- Sign up to receive our blog postings by e-mail for timely articles on legal issues of importance to Ohio agriculture at <http://aglaw.osu.edu/blog>.
- Contact us by e-mail at [aglaw@osu.edu](mailto:aglaw@osu.edu).

### **Frequently asked questions about noxious weed laws**

*My neighbor doesn't keep his fence row clear of noxious weeds. What can I do about it?*

First, talk to the neighbor. If your neighbor doesn't respond favorably, the second step is to provide a written notice to the neighbor stating that he has ten days to clear the fence row of the noxious weeds. Third, if the neighbor still doesn't take action, provide a written notice of the situation to the township trustees, which will initiate a process that could result in the trustees determining that there is a valid need to clear the fence row and hiring some to do the work. Your neighbor will be legally obligated to pay for the costs on his property tax bill.

*I've been notified by my township trustees that I have noxious weeds on my property. What should I do?*

Be aware that you must respond within five days of the date the trustees notified you about the weeds or the trustees will have the authority to destroy. Your options are to destroy or cut the weeds or to provide information to the township trustees showing that there is no need to take action. For example, such information might include showing that noxious weeds don't exist on the property or showing that plants were incorrectly identified as noxious weeds.

*Do I have to destroy my crop if noxious weeds are on my land?*

No, Ohio law states that you must only "cut or destroy the weeds" if you have been notified by the township trustees that noxious weeds are on your property.

*Noxious weeds are growing in the road right-of-way. Can I remove them myself and charge the township for my costs?*

You may remove the noxious weeds, but you will probably not receive reimbursement for your costs unless the township trustees violated their duty to cut the weeds even after you followed the proper legal process for demanding their action. Ohio law requires the township trustees to cut road right-of-way weeds in early June and August, in early September if necessary, and at other times if public safety is at issue. If they fail to do so, you should formally complain to the township trustees in writing or by speaking at a township meeting. If the trustees still fail to take action, the next step is to file a "writ of mandamus" action that asks the court to order the clearing. Seeking reimbursement for your work prior to following this legal process is not the proper method for enforcing the township's duty, according to the Second District Court of Appeals in *Mezger v. Horton*, 2013 Ohio 2964.

*How do I know which weeds are "noxious"?*

The director of the Ohio Department of Agriculture conducts rulemaking to designate a plant as a prohibited noxious weed. The list of plants that the director has formally designated as noxious weeds is in the Ohio Administrative Code and is available at <http://codes.ohio.gov/oac/901:5-37-01>.