

***SAMPLE NOXIOUS WEED CONTROL BY-LAW**

** This is a sample by-law only, to be used as a guide when drafting a by-law that takes into consideration local conditions or concerns. It is recommended that a draft of a by-law be submitted to a By-Law Advisor for comment and review and to avoid it potentially being disallowed pursuant to section 82(2) of the Indian Act. Any submission of a by-law that is based on this sample by-law does not guarantee that the by-law will be allowed to come into force. The by-law must be considered in its entirety before such a determination can be made. Neither the Minister of Indian and Northern Affairs nor the Department of Indian Affairs and Northern Development guarantee the present and future validity or enforceability of a by-law that is based on this sample by-law. These are ultimately issues for enforcement agencies and the courts to decide.*

**By-Law Number _____
A Noxious Weed Control By-Law**

- or -

→NOTE: if repealing an existing Noxious Weed Control by-law, include the title below instead:

**By-law Number _____
To Repeal and Replace By-law Number _____
Respecting the Control of Noxious Weeds By-Law
Enacted on the [day] of [month] in [year]**

THE COUNCIL of the _____ Indian Band (“the Council”) is of the opinion that it is necessary to protect the reserve lands of the _____ Band by destroying and controlling the spread of noxious weeds.

PARAGRAPHS 81(1)(j), (q) and (r) of the *Indian Act*, R.S.C. 1985, c. I-5 (hereinafter “the Act”), provide that a council of a band may make by-laws for the purpose of destroying and controlling noxious weeds, for any ancillary matters and for imposing a penalty for the violation of any such by-law;

→NOTE: if repealing an existing by-law, include this recital:

THE _____ Indian Band Council enacted By-Law Number _____ on the [day] of [month] in [year], and wishes to repeal it and replace it with this by-law;

THE COUNCIL hereby makes the following by-law:

Short Title

1. This by-law may be cited as the _____ Indian Band Noxious Weed Control By-Law.

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Interpretation

2. In this by-law:

“Band” means the _____ Band;

“Council” means the Council, as defined in the Indian Act, of the _____ Band;

“noxious weed” means a plant that is designated as a noxious weed in Schedule “A” and does not include any illegal substances set out under the *Controlled Drugs and Substances Act*;

“reserve” means the reserve of the _____ Band and includes the Band’s Reserves No. ___ and No. ___;

“weed inspector” means the weed inspector appointed under section “6”;

“weed seed” means the seed of a noxious weed.

Bringing or Placing Noxious Weeds

3. No person shall knowingly bring onto the reserve or place or permit to be placed on any part of the reserve any noxious weed or weed seed, or any materials or thing containing a noxious weed or weed seed.

Duty to Destroy Noxious Weeds

4.(1) Every person in possession of land, a building, a storage unit, a vehicle, equipment, tools, fodder or a standing or harvested crop located on the reserve shall destroy all noxious weeds or weed seeds growing or located thereon or therein as often as is necessary to prevent the spread, growth, ripening or scattering of noxious weeds or weed seeds.

(2) Noxious weeds shall be destroyed by means of:

- a. Covering the plants with mulch or other substances that prevent the growth of the plants or the ripening of their seeds;
- b. Pulling or otherwise removing the plants from the soil;
- c. Cutting the roots or stalks of the plants before the seeds have developed sufficiently to ripen after the cutting;
- d. Ploughing or cultivating the soil on which the plants are growing; or
- e. Treating with a herbicide, approved under the relevant legislation that causes the plants to be destroyed or prevents the growth of the plants or the ripening of their seeds.

the ripening of their seeds.

- (3) Weed seeds shall be destroyed by means of:
- a. Removal to locations where the seeds are unable to germinate or, if germination takes place, where the noxious weeds are unable to grow to maturity;
 - b. Composting;
 - c. Use as silage or other form of fodder in which the weed seeds are consumed by animals;
 - d. Grinding;
 - e. Crushing; or
 - f. Burning.

Person Deemed in possession

5. For the purposes of this by-law, the person making use of or residing on the land shall be deemed, unless the contrary is proven, to be the person in possession of it.

Weed Inspector

- 6.(1) The Council may, by resolution, appoint one or more weed inspectors to administer and enforce this by-law.
- (2) The Council may, in the resolution, provide for reasonable remuneration to be paid to a weed inspector.

Powers of Weed Inspector

7. For the purpose of searching for noxious weeds or weed seeds, a weed inspector may, at any time between 9:00 a.m. and 6:00 p.m., enter upon any land or building, other than a dwelling house, and inspect the land or building, and any storage unit, vehicle, equipment, tools, fodder or standing or harvested crop found therein or thereon.

Obstruction of Weed Inspector

8. No person shall hinder or obstruct weed inspectors in the course of their duties, or furnish them with false information, or refuse to furnish them with information that they reasonably request.

Destruction of Weeds

- 9.(1) A weed inspector who finds any noxious weed or weed seed in or on any land, building, storage unit, vehicle, equipment, tools, fodder or standing or harvested crop may order the person in possession thereof to destroy, at that person's expense, the noxious weed or weed seed found therein or thereon.
- (2) Where a weed inspector finds any noxious weed or weed seed in or on any land, building, storage unit, vehicle, equipment, tools, fodder or standing or harvested crop of which no one is in apparent possession, the weed inspector shall apply to the Band Council for authorization to destroy the noxious weed or weed seed at the expense of the Band Council.
- (3) An order made under subsection (1) shall be in the form set out in Schedule "B" and shall specify the time within which the noxious weed or weed seed shall be destroyed, but no order shall specify a time of less than seven days from the date of service of the order.
- (4) An order made under subsection (1) shall be served on the person to whom it is addressed:
 - a. By delivering it personally to the person;
 - b. By leaving it with a person apparently over the age of eighteen years at the dwelling place or place of business of the person to whom it is addressed;
 - c. By sending it by registered mail to the last known address of the person to whom it is addressed; or
 - d. If service cannot reasonably be effected under paragraph (a), (b) or (c), by posting it in the Band Council office.

Appeal

- 10.(1) Any person who considers:
 - a. that the exemption under section 11 applies; or
 - b. that the cost to him of destroying a noxious weed or weed seed would significantly outweigh any benefit to the Band or to another resident of the reserve that would be derived from such destruction;

may, within five (5) days after service of the order upon him, appeal the order, or any requirement of the order, by filing a Notice of Appeal with the Council.

- (2) A Notice of Appeal shall be in writing and set out:
 - a. The name and address of the Appellant;
 - b. A copy of the order in respect of which the appeal is being taken; and

- a. The name and address of the Appellant;
- b. A copy of the order in respect of which the appeal is being taken; and

c. The grounds for appeal.

- (3) Where a Notice of Appeal has been filed, the appellant is not required to comply with the Order appealed pending the determination of the appeal.
- (4) Within fifteen (15) days after receipt of the Notice of Appeal, the Council shall hear the appeal.
- (5) At the hearing of the appeal, the Council shall provide the appellant and the weed inspector with an opportunity to present evidence and to make oral and written submissions.
- (6) Within ten (10) days after hearing the appeal, the Council shall confirm, revoke or vary the order appealed from, and the decision shall incorporate written reasons for the decision.
- (7) The Council shall send a copy of its decision to the appellant and to the weed inspector.

Failure to Comply with an Order

- 11.(1) Where an Order made under subsection 9(1) is not complied with, a weed inspector may, at the expense of the person to whom the Order was addressed and subject to subsection 10(3), cause the noxious weed or weed seed to be destroyed in any manner set out in subsection 4(2) or (3) that is efficient and consistent with good agricultural practice and at a cost that is reasonable in the circumstances.
- (2) A weed inspector, or anyone authorized by a weed inspector, may enter in or on any land, building, storage unit or vehicle to carry out the destruction of any noxious weed or weed seed pursuant to subsection (1).
- (3) A weed inspector shall keep a record of the expenses incurred in the discharge of his duties under subsection (1), and shall serve a statement thereof, together with a notice demanding payment, on the person who has failed to comply with the order made under subsection 9(1), whereupon the amount demanded shall become a debt owing to the Council.
- (4) Service under subsection (3) shall be effected in a manner referred to in subsection 9(4).

Exemption

12. Sections 3, 4 and 8 do not apply to noxious weeds or weed seeds that are so far distant from any place used for agricultural or horticultural purposes that the noxious weeds or weed seeds can have no material effect on the agricultural or horticultural use of such place.

weed seeds can have no material effect on the agricultural or horticultural use of such place.

Offence and Penalty

13. A person who commits an offence under this by-law, or fails to comply with an Order made under this by-law, is liable on summary conviction to a fine of not more than \$1,000 or to imprisonment for a term of not exceeding 30 days, or to both.

Severance

14. Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.

Effective Date

15. Pursuant to section 82(2) of the *Indian Act*, this by-law comes into force forty (40) days after a copy of it is mailed to the Minister, unless it is disallowed by the Minister within that period. The Minister may also declare this by-law to be in force at any time before the expiration of the forty (40) day period.

→NOTE: if repealing an existing Noxious Weed Control by-law, include this paragraph:

Repeal

11. By-Law Number _____ enacted on the [day] of [month] in [year], and being a By-Law to _____, is now repealed.

THIS BY-LAW IS made at a duly convened meeting of the Council of the _____ Indian Band this [day] of [month] in [year].

Voting in favour of the by-law are the following members of the _____ Indian Band Council:

(Member of the Council)

(Member of the Council)

(Member of the Council)

(Member of the Council)

(Member of the Council)

(Member of the Council)

(Member of the Council)

(Member of the Council)

These being the majority of those members of the _____ Indian Band Council present at the above dated meeting of the _____ Indian Band Council.

The quorum of the _____ Indian Band Council is _____ members.

The number of members of the _____ Indian Band Council present at the above dated meeting was _____.

I, (Chief/Councillor of the _____ Indian Band), promise that a true copy of the foregoing by-law will be mailed to the Minister of Indian Affairs and Northern Development at the _____ office within four days pursuant to subsection 82(1) of the Act.

(Chief/Councillor of the _____ Indian Band)

(Witness) (Chief/Councillor)

SCHEDULE "A": LIST OF NOXIOUS WEEDS

ITEM	COMMON NAME	SCIENTIFIC NAME
1	Barberry, common	<i>Berberis vulgaris</i> L.
2	Buckthorn, European	<i>Rhamnus cathartica</i> L.
3	Carrot, wild	<i>Caucus carota</i> L.
4	Colt's-foot	<i>Tussilago farfara</i> L.
5	Dodder spp.	<i>Cuscuta</i> spp.
6	Goat's-beard spp.	<i>Tragopogon</i> spp.
7	Hemlock, poison	<i>Conium maculatum</i> L.
8	Johnson grass	<i>Sorghum halepense</i> (L.) Pers.
9	Knapweed spp.	<i>Centaurea</i> spp.
10	Milkweed spp.	<i>Asclepias</i> spp.
11	Poison-ivy	<i>Rhus Radicans</i> L.
12	Proso millet, black-seeded	<i>Panicum miliacem</i> L. (black-seeded biotype)
13	Ragweed spp.	<i>Ambrosia</i> spp.
14	Rocket, yellow	<i>Barbarea</i> spp.
15	Sow-thistle, annual	<i>Sonchus</i> spp. Perennial
16	Spurge, Cypress	<i>Euphorbia cyparissias</i> L.
17	Spurge, leafy	<i>Euphorbia esula</i> L. (Complex)
18	Thistle, bull	<i>Cirsium vulgare</i> (Savi) Tenore
19	Thistle, Canada	<i>Cirsium arvense</i> (L.) Scop.
20	Thistle, nodding, spp.	<i>Carduus</i> spp.
21	Thistle, Russian	<i>Salsola pestifer</i> A. Nels.
22	Thistle, Scotch	<i>Onopordum acanthium</i> L.
23	Vetchling, tuberous	<i>Lathyrus tuberosus</i> L.

NOTE:

- i. "A. Nels" is an abbreviation for Aven Nelson;
- ii. "L" is an abbreviation for Linnaeus;
- iii. "Pers." Is an abbreviation for Persoon;
- iv. "Scop." Is an abbreviation for Scopoli; and
- v. "spp." Is an abbreviation for species.

SCHEDULE "B"

ORDER TO DESTROY NOXIOUS WEEDS OR WEED SEEDS

TO: _____
Name of Person

Address

Under By-law No. _____ of the _____ Band, A Noxious Weed Control By-law, you are ordered to destroy the noxious weeds and weed seeds described as follows:

Name of Noxious Weed or Weed Seeds

Location of Noxious Weed or Weed Seeds

By Deadline (Not less than 7 days from the date of service of this Order)

Signature of Weed Inspector

NOTE: Pursuant to section 10(1) of the Noxious Weed Control By-law, any person served with an Order to destroy noxious weeds or weed seeds may, within five (5) days of service of the Order, appeal the Order or any requirement under the order by filing a Notice of Appeal with the Band Council.