

# **DEPARTMENT OF AGRICULTURE**

## **PLANT INDUSTRIES**

Statutory Authority: 3 Delaware Code, Section 2402(b) (24 **Del.C.** §2402(b))  
3 **DE Admin. Code** 801

### **FINAL**

### **ORDER**

#### **801 Regulations for Noxious Weed Control**

Pursuant to the authority provided by 3 **Del.C.** §2402(b) (24 **Del.C.** §2402(b)) and 3 **DE Admin. Code** 801, the Delaware Department of Agriculture (DDA) issues this Order adopting amendments to the 801 Noxious Weed Control Regulations. Following public notice of the proposed regulation amendments, the DDA makes the following findings and conclusions.

#### **BACKGROUND AND PROCEDURAL HISTORY**

This Order considers the proposed Noxious Weed Control Regulations, and would add the following two weeds to DDA's Noxious Weed List: Amaranthus palmeri S. Watson, commonly known as "Palmer's Amaranth" and Uruchloa texana Buckl., commonly known as "Texas Panicum. Amaranthus palmeri (Palmer Amaranth) has become an increasing problem in agricultural fields due to its high rate of seed production and development of resistance to herbicides used in corn and soybean production. Uruchola texana (Texas Panicum) has become an increasing problem in agricultural fields due to the seeds' ability to germinate throughout the growing season. With this growth habit, an additional herbicide application or tillage is required for late season control.

The DDA published the proposed regulations in the May 1, 2012 Delaware *Register of Regulations*. A press release about the changes was widely distributed, and articles about the change appeared in *The News Journal*, *Daily Times/Delaware Wave*, *Delaware State News* and the *Sussex Countian*. Stories were aired on WBOC 16 and WGMD 92.7 FM. It also was picked up by the Associated Press, with a short AP item running in USA Today. The public comment period remained open from May 1 to May 31, 2012. No written public comments were received. A public hearing was not held.

#### **FINDINGS OF FACT AND CONCLUSIONS**

1. The public was given notice and opportunity to provide the DDA with comments in writing concerning the proposed regulation.
2. After considering the regulation amendments as proposed, the Department hereby adopts the regulations (attached) as final.
3. The effective date of the Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on July 1, 2012.

So ordered as of June 8, 2012

Ed Kee, Secretary

Delaware Department of Agriculture

#### **801 Regulations for Noxious Weed Control**

#### **1.0 General Definitions**

For the purpose of these Rules and Regulations

**"Noxious Weed"** means any species of plant or parts of plants, that have been designated by the Department, under 3 **Del.C.** Ch. 24, as having adverse effects or threaten agricultural production.

**"Persons"** mean any individual, partnership association, fiduciary, corporation or any organized group of persons whether incorporated or not.

**"Secretary"** means the Secretary of the Delaware Department of Agriculture

## **2.0 Designation Of Species; Investigations; Control Programs; Grants; Weed Advisory Committee.**

- 2.1 The Department of Agriculture designates the following species of weeds as Noxious Weeds in the State of Delaware:
  - 2.1.1 *Sorghum halepense* L., commonly known as "Johnsongrass"
  - 2.1.2 *Cirsium arvense* L., commonly known as "Canada Thistle"
  - 2.1.3 *Sicyos angulatus* L., commonly known as "Burcucumber"
  - 2.1.4 *Ambrosia trifida* L., commonly known as "Giant Ragweed"
  - 2.1.5 *Amaranthus palmeri* S. Watson, commonly known as "Palmer's Amaranth"
  - 2.1.6 *Uruchloa texana* Buckl., commonly known as "Texas Panicum"
- 2.2 The State Department of Agriculture may make such investigations studies and determinations as it may deem advisable in order to ascertain the extent of growth and infestation of noxious weeds in this state, and the effect of such species on agricultural production.
- 2.3 The Department may institute programs of control and eradication.
- 2.4 Authority for Department to enter into agreements.
  - 2.4.1 The Department may enter into agreements with any county or subdivision of this State, with any adjoining state, or with agencies of the federal or state governments to affect a program of control and eradication.
  - 2.4.2 When such an agreement is executed and certified in writing to the Secretary of State, the Department and the county may conduct surveys to determine the location and amount of infestations of designated noxious weeds within that county, and may provide technical and financial assistance to landowners in a cooperative control or eradication program, and may affect a program of mowing, spraying, or other control or eradication practices on road right-of-ways, drainage ditch banks, parks, playgrounds, and other public or private lands.
  - 2.4.3 The agreement between the Department and county may be terminated by either party on 30 days written notice. (3 Del.C. 1953, §2403; 57 Del. Laws, c. 701).
- 2.5 The Department may accept, use or expend such aid, gift, grant, or loan as may from time to time be made available from any source, public or private, for the purpose of carrying out the provisions of this chapter.
- 2.6 The methods of operations by the Department shall not be limited to those specifically listed in this section.
- 2.7 A Weed Advisory Committee consisting of 5 persons shall serve in an advisory capacity to the Secretary on matters concerning noxious weed control in the State. The committee shall consist of a cooperative extension representative from the University of Delaware, chosen by the Director of Cooperative Extension Services; the Noxious Weed Specialist, State Department of Agriculture; and 1 person from each of the 3 counties to be chosen by the Governor's Council on Agriculture.

## **3.0 Importation; Transportation; Control And Elimination**

- 3.1 It shall be unlawful to import designated noxious weeds into this State, or to transport designated noxious weeds within this State, in any form capable of growth, except for purposes of research with the prior written approval of the State Department of Agriculture. It shall be unlawful to knowingly contaminate any uninfested land or roadway with designated noxious weeds through the movement of rootstocks, seed, soil, mulch, nursery stock, farm machinery, or other medium.
- 3.2 It shall be unlawful to knowingly allow designated noxious weeds to set seed on any land, or to allow any portion of a designated noxious weed plant to reach a height or vine length of 24 inches; and it shall be the duty of each landowner or person who has the present right to possess and/or use the land to mow, cultivate, treat with chemicals, or use such other practices as may be prescribed by the Department of Agriculture as effective in preventing seed set on designated noxious weed infestations or in elimination of the designated noxious weed plant.

## **4.0 Prosecution Of Violations**

- 4.1 An exemption from prosecution is allowed by the Noxious Weed Law. To be exempt a landowner or person who possesses or has the use of that land must enter into a written agreement, commonly known as a compliance agreement, with the Department of Agriculture. The agreement must specify terms and conditions of a program for the control and eradication of designated noxious weeds and the land that is covered. So long as all the terms and conditions are being complied with, there is no violation of this chapter as to the land covered by the agreement.
- 4.2 Failure to comply with the provisions of this chapter may result in the assessment of a civil penalty. No civil penalty shall be imposed until an administrative hearing is held before the Secretary or his or her designee

after due notice (20 days) has been given to the landowner or person who possesses or has use of the land in accordance with 29 Del.C., Ch.101, §10122.

## **5.0 Hearing Procedure And Appeals**

- 5.1 All hearings which are held to enforce the provisions of this chapter shall be conducted by the Secretary or his or her designee. The landowner or person who possesses or has use of the land shall have the right to appear personally, and to be represented by counsel, and to provide evidence and witnesses in his or her own behalf. The Department shall preserve a full record of the proceeding. A transcript of the record may be purchased by any person interested in such hearing on payment to the Department the cost of preparing such transcript.
- 5.2 The Department shall issue a decision in writing to the landowner or person who possesses or has use of the land within 30 days of the conclusion of the hearing.
- 5.3 Any individual who feels aggrieved by an action of the Department as a result of an action resulting from a hearing held under this chapter may make an appeal, within 30 days of such action, to the Superior Court, and after full hearing the Court shall make such decree as seems just and proper. Written notice of such appeal, together with the grounds thereof, shall be served upon the Secretary of the Department.

## **6.0 Penalties**

- 6.1 Any person who interferes with the Department of Agriculture in the enforcement of this chapter as determined in an administrative hearing, shall be assessed a civil penalty of no less than \$50 nor more than \$500 on each count.
- 6.2 Any person who refuses to comply with the provisions of this chapter shall be assessed a civil penalty of a minimum of \$100 or \$25 per acre of land upon which noxious weeds have seed, whichever is greater.
- 6.3 The proceeds of any fines or penalties imposed under this chapter shall be deposited into an appropriated special fund account in the Department of Agriculture.
- 6.4 These funds shall be used to support the noxious weed eradication programs of the Department of Agriculture.

## **7.0 Cutting And Spraying Of Noxious Weeds By The Department Of Transportation**

- 7.1 The Department of Transportation shall cut down, or cause to be cut down, noxious weeds growing in the rights-of-way over which it has charge or supervision, as often in each year as shall be sufficient to prevent them from going to seed. When particular problem areas have been identified, they shall be sprayed to eradicate the weed. (64 Del. Laws, c. 2851 §1).

**16 DE Reg. 66 (07/01/12) (Final)**