

1984 BILL 15

Second Session, 20th Legislature, 33 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 15

AGRICULTURAL PESTS ACT

MRS. CRIPPS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 15
Mrs. Cripps

BILL 15

1984

AGRICULTURAL PESTS ACT

(Assented to _____, 1984)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1(1) In this Act,

- (a) "Court" means the Court of Queen's Bench;
- (b) "Crown" means the Crown in right of Alberta;
- (c) "highway" means a highway as defined in the *Highway Traffic Act*;
- (d) "inspector" means a person appointed as an inspector, including an ex officio inspector, under section 9;

(e) "land" includes the land down to the low water mark of a stream, lake or other body of water that is contiguous to or located on land;

(f) "livestock" means cattle, sheep, goats and other captive ruminants, swine, horses and poultry;

(g) "local authority" means

(i) the council of a city, town, village, summer village, county or municipal district,

(ii) the board of administrators of a new town, or

(iii) the Minister of Municipal Affairs, in the case of a special area or improvement district;

(h) "Minister" means the Minister of Agriculture;

(i) "municipal secretary" means

(i) in a city, the city clerk,

(ii) in an improvement district or special area, the Minister of Municipal Affairs or an officer of the Department of Municipal Affairs designated by him, or

(iii) in any other municipality, the person appointed by the council as municipal secretary;

(j) "nuisance" means an animal, bird, insect, plant or disease declared to be a nuisance under section 2;

(k) "occupant" means a person occupying or exercising control or having the right to occupy or exercise control over land or property;

(l) "owner" means

(i) in the case of land, a person who is registered under the *Land Titles Act* as the owner of land, or

(ii) in the case of personal property, a person who is in lawful possession of it or who has the right to exercise control over it;

(m) "pest" means an animal, bird, insect, plant or disease declared to be a pest under section 2;

(n) "property" means personal property and includes vegetation but does not include livestock.

(2) A reference in this Act to a by-law includes, when appropriate, an order of the Minister of Municipal Affairs.

Declaration of
pest or nuisance

2(1) Subject to subsection (2), if the Lieutenant Governor in Council considers that an animal, bird, insect, plant or disease is destroying or harming or is likely to destroy or harm any land, livestock or property in all or part of Alberta, he may, by regulation, declare the animal, bird, insect, plant or disease to be

(a) a pest, or

(b) a nuisance,
throughout Alberta or in part of Alberta.

(2) Subsection (1) does not apply to an animal or bird that is
(a) big game,
(b) a bird of prey, or
(c) a game bird,
as defined in the *Wildlife Act*.

Powers of
Minister

3(1) The Minister may
(a) investigate any matter,
(b) conduct surveys,
(c) establish programs, or
(d) enter into agreements with any person, local authority, agency
or government,

for the purpose of preventing the establishment of, controlling or
destroying a pest or nuisance and preventing or reducing damage
caused by a pest or nuisance.

(2) The Minister may exempt any land from the operation of all or
part of this Act.

Delegation of
Minister's powers

4(1) The Minister may in writing delegate to
(a) an employee of the Government of Alberta,
(b) an employee of the Government of Canada,
(c) a local authority, or
(d) a member of a local authority

a power, duty or function conferred on him by this Act and the
regulations, except the power to make regulations.

(2) A power, duty or function delegated to a local authority or a
member of a local authority may be exercised only within the mu-
nicipality represented by the local authority.

Duty of
individual

5(1) An owner or occupant of land may prevent the establishment
of, control or destroy a nuisance on land he owns or occupies.

(2) An owner or occupant of land or property or the owner or person
in control of livestock shall take active measures to

- (a) prevent the establishment of pests on or in the land, property
or livestock unless otherwise authorized by the Minister,
- (b) control or destroy all pests on or in the land, property or
livestock unless otherwise authorized by the Minister, and
- (c) destroy any crop, vegetation or other matter that contributes
or may contribute to the maintenance or spread of a pest on or
in the land, property or livestock.

Duty of local authority	<p>6 A local authority of a municipality shall take active measures</p> <p style="padding-left: 20px;">(a) to prevent the establishment of, or</p> <p style="padding-left: 20px;">(b) to control or destroy,</p> <p>pests in the municipality.</p>
Occupant of a highway	<p>7 A local authority may, with respect to a highway that is subject to the direction, management and control of the local authority, by by-law provide that an owner or occupant of land is, for the purposes of this Act, the occupant of that portion of a highway that lies between the boundary of the land he owns or occupies and the centre line of the highway.</p>
Applicable Acts	<p>8 A person or local authority preventing the establishment of, controlling or destroying a pest or nuisance shall do so in accordance with</p> <p style="padding-left: 20px;">(a) this Act and the regulations,</p> <p style="padding-left: 20px;">(b) if applicable, the <i>Wildlife Act</i> and the regulations, and</p> <p style="padding-left: 20px;">(c) if applicable, the <i>Agricultural Chemicals Act</i> and the regulations.</p>
Inspectors	<p>9(1) Inspectors may be appointed by a local authority or by the Minister to carry out the provisions of this Act and the regulations.</p> <p>(2) An agricultural fieldman under the <i>Agricultural Service Board Act</i> is ex officio an inspector under this Act.</p>
Appointment of inspectors by local authority	<p>10(1) The local authority of a municipality shall appoint a sufficient number of inspectors to carry out the provisions of this Act and the regulations within the municipality.</p> <p>(2) Two or more local authorities may</p> <p style="padding-left: 20px;">(a) jointly appoint inspectors to act within the municipalities represented by the local authorities, and</p> <p style="padding-left: 20px;">(b) enter into an agreement for the sharing of the costs of the inspectors appointed jointly.</p>
Failure to appoint inspectors or properly enforce Act	<p>11(1) The Minister may, if</p> <p style="padding-left: 20px;">(a) a local authority does not appoint an inspector, or</p> <p style="padding-left: 20px;">(b) in the opinion of the Minister, an inspector appointed by a local authority is not properly enforcing this Act,</p> <p>after serving notice on the local authority, cause inspectors appointed by the Minister to carry out the provisions of this Act and the regulations in a municipality.</p> <p>(2) If an inspector appointed by the Minister is requested to carry out the provisions of this Act and the regulations in a municipality</p> <p style="padding-left: 20px;">(a) pursuant to subsection (1)(a), the inspector appointed by the Minister shall continue to act until the local authority appoints an inspector in accordance with section 10(1), or</p>

(b) pursuant to subsection (1)(b), the appointment by the local authority terminates and that local authority shall not make further appointments until the Minister serves notice on the local authority that the inspector appointed by the Minister is no longer acting.

(3) Salary paid and expenses incurred by the Crown under this section

(a) shall be paid by the local authority on demand,

(b) are recoverable by the Minister as if they were a debt due the Crown, and

(c) may be recovered by the Minister by action or by withholding the amount of the salary and expenses from a grant, rent or other money that would otherwise be payable by the Crown to the local authority.

Notice

12(1) When an inspector is of the opinion that land, property or livestock contains or is likely to contain a pest or should be protected against a pest, he may issue a notice in writing directed to the owner or occupant of the land or property or to the owner or person in control of the livestock

(a) setting out the legal description of the land affected or a description of the livestock affected and the legal description of the land on which the livestock are located,

(b) naming the pest,

(c) specifying the measures to be taken and the material, if any, to be used to prevent the establishment of or to control or destroy the pest, and

(d) requiring the measures described in clause (c) to be taken within a specified period of time.

(2) If a notice is directed to a person other than the owner of land, property or livestock under subsection (1), the inspector shall also serve a copy of the notice on the owner.

(3) A notice issued under subsection (1) and a copy of the notice shall be in a form prescribed by the regulations and shall be served

(a) by delivering it personally to the person who is intended to be served,

(b) by leaving it with a person apparently over the age of 18 years at the dwelling place or place of business of the person who is intended to be served, or

(c) by sending it by double registered mail or certified mail to the last known address of the person who is intended to be served as shown on the assessment roll of the municipality within which the land, property or livestock to which it relates is situated.

(4) If, in the opinion of the inspector, service under subsection (3) cannot reasonably be effected, the inspector may post the notice or copy of the notice in a conspicuous place on the land, property or

livestock to which it relates, or on the private dwelling house of the person who is intended to be served.

Compliance with notice

13(1) A person to whom a notice is directed under section 12(1) or a person on whom a copy of the notice is served under section 12(2) shall, subject to a right of appeal given by this Act, carry out the directions contained in the notice.

(2) If

(a) a person fails to comply with a notice issued under section 12 and the appeal period has expired, or

(b) an inspector is of the opinion that it is not practical to issue a notice under section 12,

the inspector may carry out the measures described in the notice or do such things necessary in his opinion and consistent with good agricultural practice to prevent the establishment of or to control or destroy the pest or nuisance.

Appeal to local authority

14(1) A person who

(a) has an interest in land as an owner or occupant, or

(b) has an interest in livestock as an owner or person in control of livestock

and considers himself aggrieved by a notice issued by an inspector under section 12 may appeal to the local authority of the municipality in which the land or livestock is located by filing a notice of appeal under this section.

(2) A notice of appeal shall be in writing and shall set out

(a) the name and address of the appellant,

(b) a copy of the notice in respect of which the appeal is being taken,

(c) the legal description of the land affected or a description of the livestock affected and the legal description of the land on which the livestock were located, and

(d) the grounds for appeal.

(3) A notice of appeal shall be served on the municipal secretary

(a) by any of the methods set out in section 12(3), and

(b) within the time specified in the notice issued under section 12 for taking any measure, or within 10 days of service of the notice, whichever is less.

(4) A notice of appeal shall be accompanied by a deposit in an amount set out in the regulations which shall be refunded if the appellant is successful in his appeal under this section or in a review under section 15.

(5) A local authority shall at the beginning of each calendar year appoint a committee to hear and determine appeals under this sec-

tion and on receipt of a notice of appeal a local authority shall refer the appeal to that committee.

(6) Within 5 days of receipt of a notice of appeal, the committee shall hear and determine the appeal and the committee may confirm, rescind or vary the notice that was issued.

(7) The municipal secretary shall, on determination of the appeal, send a copy of the decision together with the written reasons, if any, by double registered mail or certified mail to the appellant.

Review by
Minister

15(1) An appellant who is dissatisfied with the decision of a committee under section 14 may, within 3 days after he receives a copy of the decision, request a review of the decision or a part of it by the Minister.

(2) The Minister may confirm, rescind or vary the decision of the committee.

Notice stayed
pending appeal

16 If a notice of appeal is served under section 14(3), the notice referred to in that section is stayed until

(a) the appeal under that section is disposed of, or

(b) a review under section 15 is conducted or the time for requesting the review under section 15 has expired without a review being requested.

Powers of
inspector

17(1) In this section, "land" does not include a private dwelling house.

(2) For the purpose of carrying out his duties, an inspector may

(a) enter at any reasonable hour on any land to inspect the land or any buildings, property or livestock on the land,

(b) on giving reasonable notice, direct the owner or person in control of livestock to assemble and confine the livestock for the purpose of an inspection, and

(c) take specimens of a pest or nuisance and of any matter or thing that contains or is suspected of containing a pest or nuisance.

(3) An inspector shall carry the identification supplied to him by the local authority or Minister appointing him and shall show it on request to a person owning or in charge of anything affected by the inspector's activities under this Act or the regulations.

Warrant to enter
private dwelling
house

18(1) If it appears to a provincial judge or a justice of the peace, on information laid before him on oath, that there are reasonable and probable grounds for believing that a private dwelling house within his jurisdiction contains a pest or nuisance, the provincial judge or justice of the peace may issue a warrant authorizing a peace officer, with or without an inspector, to enter the private dwelling house, by force if necessary, for the purpose of searching for the pest or nuisance.

(2) Before entering a private dwelling house pursuant to this section, a peace officer shall take reasonable steps to find the owner or person

in charge of it and shall endeavour to obtain the co-operation of that person.

(3) When a peace officer uses force in entering or searching a private dwelling house, he shall use no more force than is reasonably required under the circumstances.

Recovery of
inspector's
expenses

19(1) If expenses are incurred by an inspector pursuant to section 13(2), the municipal secretary of the municipality in which the expenses were incurred shall serve a statement of the expenses and a demand for payment on the owner of the land, property or livestock in respect of which the work was carried out.

(2) The statement of expenses and demand for payment shall be served by any of the methods set out in section 12(3).

(3) In the case of expenses incurred for work carried out to land, if the owner fails to pay the amount set out in the statement of expenses and to file a notice of dispute under subsection (4) within 30 days of receiving the statement of expenses and demand for payment, the municipal secretary shall add the amount of those expenses to the assessment roll as a tax against the land to which the work was carried out and it shall be collected in the same manner as taxes.

(4) If the owner files with the municipal secretary a notice of dispute denying liability or disputing the amount of the expenses, the local authority is limited to recovering the expenses referred to in subsection (3) by an action against that owner.

(5) In the case of expenses incurred for work carried out to property or livestock, if the owner fails to pay the amount set out in the statement of expenses within 30 days of receiving the statement of expenses and demand for payment, the local authority is limited to recovering those expenses by an action against the owner of the property or livestock.

Stop order

20(1) Notwithstanding anything in this Act, if the Minister is satisfied that a person

(a) has contravened or is contravening this Act or the regulations, or

(b) owns or operates anything that causes the maintenance or spread of a pest,

the Minister may direct a stop order to that person in accordance with subsection (2).

(2) In a stop order, the Minister may order the person to whom it is directed to

(a) cease the contravention specified in the order,

(b) stop the operation of a plant, structure, equipment or thing specified in the order, either permanently or for a specified period, or

(c) cease the contravention under clause (a) and stop the operation under clause (b),

and the stop order shall contain the Minister's reasons for making it.

(3) The Minister shall cause a copy of the stop order to be served on the person to whom it is directed, and that person, on receipt of the copy, shall comply with the stop order forthwith.

(4) A person who is served with the stop order under subsection (3) and fails to comply with the stop order forthwith is guilty of an offence and liable to a fine of not more than \$1000 for each day that the offence continues.

(5) If the person to whom a stop order is directed fails to comply with the stop order forthwith on service of a copy of it on him, the Minister may apply to the Court by originating notice for an order directing that person to comply with the stop order.

(6) If the person to whom the stop order is directed fails to comply with the Court order,

(a) the failure to comply with the stop order may be dealt with by the Court as a civil contempt of the Court,

(b) an inspector authorized by the Minister for the purpose and persons assisting the inspector may, without notice and without incurring liability, enter on any land and do any acts necessary to carry out the stop order,

(c) the sheriff, the sheriff's bailiff and any person at the written direction of the sheriff may assist the inspector and his assistants in enforcing their powers and duties under clause (b), and

(d) the Minister may recover by action any expenses incurred by the Crown in carrying out the stop order from the person to whom the stop order was directed.

(7) The Minister may

(a) amend a stop order if he considers it advisable in the circumstances to do so, or

(b) revoke a stop order

and shall notify accordingly the person to whom the stop order was directed.

(8) Service of the stop order, Court order and notification under subsection (7) shall be effected by any of the methods set out in section 12(3).

Regulations

21 The Lieutenant Governor in Council may make regulations

(a) respecting qualifications of inspectors;

(b) respecting the content and use of forms;

(c) authorizing the Minister to permit the keeping of any pest or nuisance on conditions prescribed by the Minister;

(d) permitting, prohibiting and otherwise governing the planting, growing, handling, sale, transportation and disposition of potatoes in all or any part of Alberta;

- (e) authorizing an inspector to order the disposition or destruction of potatoes or other matter or to do any other thing to prevent the spread of or to control bacterial ring rot;
- (f) concerning the manner in which potatoes that contain or may contain bacterial ring rot are to be handled, transported and disposed of, including the manner of packaging and labelling;
- (g) concerning the sterilization of any machinery, equipment and storehouse employed in the production, storage or distribution of potatoes;
- (h) authorizing an inspector to inspect potatoes at any point in Alberta or while the potatoes are being transported to determine whether they contain bacterial ring rot;
- (i) establishing areas in Alberta to which all or part of the regulations apply;
- (j) prohibiting and restricting the removal from any area or the movement in an area of any crop, vegetation, livestock, animal or other matter;
- (k) prohibiting or restricting the use of and governing the disposition or destruction of any crop, vegetation, livestock, animal or other matter that may contribute to the spread of a pest or nuisance;
- (l) concerning the procedure to be followed in an area for controlling, destroying or preventing the establishment of a pest or nuisance;
- (m) naming, approving, distributing or arranging for or approving the distribution of any equipment, vehicle or device for or incidental to the control of a pest or nuisance, with or without conditions;
- (n) designating the area or areas in Alberta within which any poison, insecticide, compound, device or equipment may be used for the purposes of this Act and the regulations;
- (o) appointing persons to supervise the use of any poison, insecticide, compound, device or equipment for the purposes of this Act and the regulations;
- (p) defining and classifying any poison, insecticide, compound, device and equipment for the purposes of this Act and the regulations;
- (q) governing, prohibiting or restricting the use of any poison, insecticide, compound, device, vehicle, control technique or equipment for the purposes of this Act and the regulations.

Prohibition

22 No person shall

- (a) in any manner obstruct an inspector in the discharge of his duties,
- (b) wilfully fail to use or wilfully misuse any poison, insecticide, compound, device or equipment, or

(c) for propagation purposes acquire, sell, distribute or use any seed, root, tuber or other vegetable material containing a pest.

Offences and penalties

23 A person who contravenes this Act or the regulations is guilty of an offence and liable to a fine of not more than \$5000 and in default of payment to a term of imprisonment of not more than 60 days.

Act binds Crown

24 The Crown is bound by this Act.

Repeal

25 *The Agricultural Pests Act, RSA 1980 cA-8, is repealed.*

Coming into force

26 *This Act comes into force on Proclamation.*