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# ***Pauingassi First Nation***

Box 60, Pauingassi, Manitoba, R0B 2G0

Phone: (204) 397-2371 Toll Free: 1-877-529-8866

Fax: (204) 397-2145

## **BY-LAW NO. 2013-07 of the Pauingassi First Nation A By-law for the Destruction and Control of Noxious Weeds**

**WHEREAS** the Council of the Pauingassi First Nation desires to make a by-law governing the destruction and control of noxious weeds;

**AND WHEREAS** the Council of the Pauingassi First Nation is empowered to make such by-law pursuant to paragraphs 81(1)(j), (q) and (r) of the *Indian Act*, 1985, R.S.C. c. I-5;

**AND WHEREAS** it is considered necessary for the protection of the reserve lands of the Pauingassi First Nation to provide for the destruction and control of noxious weeds;

**NOW THEREFORE** the Council of the Pauingassi First Nation hereby makes the following by-law:

### **Short Title**

1. This by-law may be cited as the "Pauingassi First Nation Noxious Weed By-law".

### **Interpretation**

2. In this by-law,

"*Band*" means the Pauingassi First Nation;

"*Council*" means the Chief and Council, as defined in the *Indian Act*, of the Pauingassi First Nation;

"*noxious weed*" means a plant that is designated as a noxious weed in Schedule A;

"*reserve*" means the reserve of the Pauingassi First Nation and includes the Pauingassi First Nation Indian Reserve;

"*weed inspector*" means the weed inspector appointed under section 5;

"*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 material or thing containing a noxious weed or weed seed.

### **Duty to Destroy**

- 4.(1) Every person in possession of any land, building, storage unit, vehicle, equipment, tools, fodder or 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 federal legislation relating to the regulation of herbicide use, that causes the plants to be destroyed or prevents the growth of the plants or 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.

### **Weed Inspector**

- 5.(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**

6. 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**

7. No person shall hinder or obstruct a weed inspector in the course of his/her duties, or furnish him with false information, or refuse to furnish him with information that he reasonably requests.

### **Destruction of Weeds**

- 8.(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**

### **9.(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 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,
- (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 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 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 Order**

**10.(1) Where an order made under subsection 8(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 9(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 8(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 8(4).

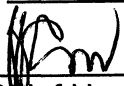
### Exemption

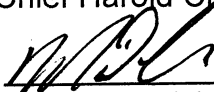
11. Sections 3, 4 and 7 do not apply to noxious weeds or weed seeds that are so far distant from any place used for agricultural or horticultural purposes that the noxious weeds or weed seeds can have no material effect on the agricultural or horticultural use of such place.

### Offence and Penalty

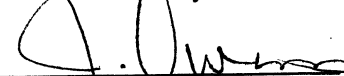
12. A person who violates section 3 or 7, or who fails to comply with an order made under subsection 8(1), commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty days, or to both.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Pauingassi First Nation this 18 day of December, 2013.

  
\_\_\_\_\_  
Chief Harold Crow

  
\_\_\_\_\_  
Councillor Michael Owens

\_\_\_\_\_  
Councillor Roddy Owens

  
\_\_\_\_\_  
Councillor James Owens

being the majority of those members of the Council of the Pauingassi First Nation present at the aforesaid meeting of the Council.

The quorum of the Council is three members.

Number of members of the Council present at the meeting: 3.

I, Harold Crow Chief/~~Councillor~~ of the Band, do hereby certify that a true copy of the foregoing by-law was mailed to the Minister of Aboriginal Affairs and Northern Development at the District/Regional/Hull office (as the case may be) pursuant to subsection 82(1) of the *Indian Act*, this 18 day of December, 2013.

  
\_\_\_\_\_  
(Witness)

  
\_\_\_\_\_  
(Chief/Councillor)

**SCHEDULE A**  
**NOXIOUS WEEDS**

<b><u>Item</u></b>	<b><u>Common Name</u></b>	<b><u>Scientific Name</u></b>
1	Barberry, common	Berberis vulgaris L.
2	Buckthorn, European	Rhamnus cathartica L.
3	Carrot, wild	Daucus carota L.
4	Colt's-foot	Tussilago farfara L.
5	Dodder spp.	Cuscuta spp.
6	Goat's-beard spp.	Tragopogon spp.
7	Hemlock, poison	Conium maculatum L.
8	Johnson grass	Sorghum halepense (L.) Pers.
9	Knapweed spp.	Centaurea spp.
10	Milkweed spp.	Asclepias spp.
11	Poison-ivy	Rhus radicans L.
12	Proso millet, black-seeded	Panicum miliaceum L. (black-seeded biotype)
13	Ragweed spp.	Ambrosia spp.
14	Rocket, yellow	Barbarea spp.
15	Sow-thistle, annual, perennial	Sonchus spp.
16	Spurge, Cypress	Euphorbia cyparissias L.
17	Spurge, leafy	Euphorbia esula L. (Complex)
18	Thistle, bull	Cirsium vulgare (Savi) Tenore
19	Thistle, Canada	Cirsium arvense (L.) Scop.
20	Thistle, nodding, spp.	Carduus spp.
21	Thistle, Russian	Salsola pestifer A. Nels.
22	Thistle, Scotch	Onopordum acanthium L.
23	Vetchling, tuberous	Lathyrus tuberosus 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 Pauingassi First Nation, A By-law for the Destruction and Control of Noxious Weeds, you are hereby ordered to destroy the noxious weeds and weed seeds described as follows:

\_\_\_\_\_ (name of noxious weeds or weed seeds)

located at \_\_\_\_\_  
\_\_\_\_\_

not later than \_\_\_\_ (number not less than seven) days from the date of service of this order.

Dated at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of weed inspector

**Note**

Pursuant to subsection 9(1) of this by-law being a By-law for the Destruction and Control of Noxious Weeds, a person who is served with an order to destroy noxious weeds or weed seeds may, within five days after service of the order, appeal the order or any requirement contained in it by filing a notice of appeal with the Band Council. The grounds for such appeal are set out in subsection 9(1) of the by-law which states:

- 9.(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 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.

Pursuant to section 9(3) of the same by-law, where a notice of appeal has been filed, the appellant is not required to comply with the order to destroy noxious weeds or weed seeds pending the determination of the appeal.

Section 11 of the by-law, which may provide the basis of an appeal, states:

- 10.** 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.