

ENFORCEMENT OPTIONS FOR CULLS/VOLUNTEER CONTROL AND LEGISLATIVE MATTERS

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As part of the Washington State Potato Commission's comprehensive approach to the emergence of the potato late blight problem in the State, the Issues Management Committee was asked to review the current law regarding plant pests and diseases to see if any additional authorities were needed to address the problem if an enforcement approach to the problem became necessary. Following are the findings of that review.

The Issue:

The Washington State Potato Commission, Washington State University, agricultural crop protection product suppliers and others are working hard to give potato growers the tools they need to deal with the Late Blight problems facing growers. Given how rapidly the disease can spread throughout an area, a grower, packer or processor who doesn't use the tools or management practices available to prevent or reduce the severity of the infection in their fields or prevent the piling of infected culls, can have a very negative effect on potato crops in the surrounding area.

The Question:

1. Should Washington potato growers rely on each individual's responsibility to "do the right thing", that is, use the available tools or management practices necessary to protect the grower's own crop and at the same time reduce the potential for spreading a late blight infection to neighboring fields; or
2. Should the Washington State Potato Commission organize a program, working through existing County Horticultural Pest and Disease Boards, to require those who are not taking appropriate actions to reduce the spread of the disease to do so?

What are County Horticultural Pest and Disease Boards?

Chapter 15.09 RCW - Horticultural Pest and Disease Boards

Chapter 15.09 RCW provides for the establishment of county based Horticultural Pest and Disease Boards. Such Boards have been created in 10 Eastern Washington counties and have been relied on for years by the fruit industry to take corrective actions to ensure appropriate sanitation on orchard areas.

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These Boards have the strong grower support necessary to make them effective in carrying out their responsibilities. Most cases (90%) are resolved by a letter from the Board notifying the grower that control actions are necessary. Although current Board activities are limited to the fruit industry, the statutory authority is broad enough to allow work on the late blight problems such as cull piles. Some provisions of the law include:

1. Boards are activated and appointed by County Commissioners following petition from growers.
2. Boards are comprised of 5 voting members who are land owners, familiar with pests and diseases.
3. Boards have the power to inspect properties for the presence of pests or diseases and order control actions if deemed necessary.
4. Boards may take actions to control the pests or disease if the owner fails to do so and recover costs through a lien on the property.
5. Establishes landowner's duty to control and prevent the spread of pests and diseases.

Important consideration: County Horticultural Pest and Disease Boards will only be valuable tool in the Late Blight battle if there is strong grower support and participation. Since the Boards are made up of growers, nothing happens unless growers make it happen.

The Process:

1. If there is not strong support for a County Horticultural Pest and Disease Board program, then no further action will be taken at that time.
2. If there is grower support for a County Horticultural Pest and Disease Board program, the Commission's Issues Management Committee will undertake the following actions:
 - Identify growers in each potato producing county who will be willing to work with the local board, county commissioners and prosecutor to establish a late blight sanitation program.
 - Schedule meetings necessary to organize the program, and
 - Develop the basic standards and management practices that will serve as a basis for uniform enforcement actions.

Other Relevant Laws:

Chapter 17.24 RCW - Insect Pests and Plant Diseases

Chapter 17.24 of the Revised Code of Washington (RCW) provides the Director of Agriculture with the authority to establish quarantines and regulate the movement of plant products to protect Washington agriculture from insect pests, plant pathogens and diseases, noxious weeds and bee pests. As with most laws of this nature, its effectiveness is dependent on voluntary compliance within the affected industry, since it is not possible to staff the program at levels necessary to police compliance. This law has been used to establish a quarantine for seed potatoes that was last amended in 1994.

Some provisions of this quarantine include:

1. A requirement that all seed potatoes used for commercial or seed production be produced under the provisions of a certified seed potato program.
2. Exceptions to the requirement to plant certified seed potatoes may be allowed by the Director of Ag following consultation with the industry.
3. Seed potatoes shipped in violation of the quarantine will be returned, diverted to non-seed use or destroyed at the option of the owner.
4. Seed potatoes planted in violation of the quarantine will be destroyed or quarantined at the option of the owner. If the field is subsequently found to be infested it will be destroyed at the owners expense.
5. Commercial growers are responsible to obtain certification documents or tags and retain them for one year.

The State of Idaho has responded to the Late Blight outbreak by using their statutory authority, similar to that found in 17.24 RCW, to adopt an administrative rule that regulates cull piles and the importation and movement of seed potatoes. Some requirements of the new Idaho rule include:

1. Persons in a late blight free area receiving shipments of potatoes from an infested area must file a written cull pile disposal plan with the Department.
2. Only seed potato lots with zero tolerance for late blight may be shipped to or planted in Idaho.
3. Seed potatoes received from a late blight infested area must have a certificate from a recognized certification agency.
4. Non-certified potatoes produced in Idaho for planting in Idaho must be produced in late blight free areas from certified stock. Growers must provide notice when non-certified seed is used.
5. Growers may use their own eliminators for seed if they are planted by the grower who produced them from a certified parent seed stock and they were eliminated at the original grower's storage shed.
6. Cull piles generated from potatoes produced in infested areas must be rendered non-viable on a daily basis until Sept. 20, 1995.
7. Cull piles created after Sept. 20, 1995 must be rendered non-viable by April 15, 1996, and
8. Cull piles created after April 15, 1996 must be rendered non-viable on a daily basis.

Chapter 15.08 RCW - Horticultural Pests and Diseases

Chapter 15.08 was first enacted in 1915 to give the Director of Agriculture the authority to deal with pests and diseases that posed a serious economic threat to the agricultural industries. The statute provides very broad authority for the Director to act to abate nuisance situations. The Department prefers to rely on specific authority as opposed to general authority, especially in the era of regulatory reform.

The Director would be hesitant to use the authority provided in this act, unless it is demonstrated that voluntary approaches would not be successful. There is no active field program enforcing the provisions of this act. Following are selected portions of the act that could be used to address a Late Blight sanitation situation.

RCW 15.08.010 - Definitions.

(2) "Horticultural premise" includes orchards, vineyards, ... vegetable farms, ... packing houses, ... and other places where nursery stock, fruits, vegetables and other horticultural products are grown, stored packed shipped, held for shipment or delivery, sold or otherwise disposed of.

(4) "Pests and diseases" means, but is not limited to, any living stage of any insect, mite, nematode, slug, snail, protozoa, or other invertebrate animal, bacteria, fungus, other parasitic plant, weed, or reproductive part thereof, virus or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in or to any plant or parts thereof, or any processed, manufactured, or other products of plants.

RCW 15.08.030 - Duty to disinfect, destroy--Disposal of cuttings.

It is the duty of every owner, shipper, consignee, or other person in charge of fruits, tables, or nursery stock, and the owner, lessee, or occupant of horticultural premises, to use sufficient methods of prevention to keep said properties free from infection by pests or disease. In event any of said properties become infected it is the duty of said persons to use effective methods to control or destroy the infection by disinfecting as in this chapter defined. All fruits, vegetables and nursery stock which cannot be successfully disinfected shall be promptly destroyed.

RCW 15.08 240 - Dumping infected products, containers, prohibited.

It shall be unlawful for a property owner or lessee to permit the piling or dumping, or for a person to pile or dump, any infected product on any property or to pile or dump infected containers where the dumping of the infected products or containers might constitute a source of infestation to horticultural products.

1996 Washington Legislative Session

The Washington State Potato Commission, working through its' Issues Management Committee has established the following priorities for the current session.

Support \$1,000,000 in funding for the Commission on Pesticide Registration through Washington State University. HB 2345 - Supplemental Budget

- Allows the Food and Environmental Quality Lab at WSU to carry out studies which support minor crop pesticide registration.
- Attracts matching funds from private sources and commodity commissions.
- Makes pest control products that would be economically unfeasible to register available to Washington growers.

- Gives growers a wider choice of pest control products that are often times more environmentally and worker friendly.
- Funding left out of '95 budget through a glitch in the process.

Support delaying the implementation of L&I's Safety Standards for Agriculture until February 1997. HB 2261.

- Delay would allow time for completion of the joint labor-management effort to make the Ag Safety Standard a user friendly document more likely to be used.
- The existing standard, which has worked well, stays in effect.
- L&I did not have the new safety standard available for growers who would be held accountable for its content as required.

Support consolidating the regulation of pesticides in the workplace within the Department of Agriculture. HB 2703.

- Both L&I and the Dept. of Ag currently have rules in place establishing pesticide worker protection standards.
- Difference between agency rules will have growers out of compliance with one or the other.
- A single administrative agency would make the enforcement system more efficient.
- WSDA is designated as the enforcer of FIFRA.

Support clarifying which B&O tax rate applies to processed fruits and vegetables that are immediately shipped out of state. HB 2119.

- Food processors pay B&O tax at the rate of 0.33 percent, while the general manufacturing rate is 0.484 percent.
- Some food processors who sell at wholesale to a purchaser who moves the product out of state have been charged the higher rate.
- Food processors need the lower rate due to low margins that exist in food processing.
- Given the distance from markets, Washington food processors need a competitive tax structure to maintain the viability of the industry.

Supports the establishment of a single statutory definition for integrated pest management. HB 2877.

- Establishes the purpose of the IPM program
 - coordinated decision-making and action
 - meet agency pest management objectives
 - uses the most appropriate pest control strategy
 - methods must be environmentally and economically sound
- Focuses effort on preventing pest problems
- Encourages monitoring for the presence of pests and pest damage

- Establishes pest damage levels that warrant treatment which considers:
 - Health
 - Public Safety
 - Economics
 - Aesthetics
- Treatment may include biological, cultural, mechanical and chemical control methods. All may be used. None must be used.

Regulatory Reform - Government regulations should support, not impede a strong agricultural industry. The Legislature should enact legislation providing for a process whereby current rules can be systematically reviewed by a strengthened Joint Administrative Rules Review Committee. Various bills have been introduced.

Private Property Rights - Legislation addressing property rights should restore the balance of power between the legitimate powers of government and the rights of citizens. Just compensation for the taking and/or abridgment of private property by government must be included in legislation on this topic.

Water Policy - Any water related legislation must fully recognize, preserve and maintain existing water rights as private property rights. Future water supply for agriculture, municipal and industrial needs should be ensured through the promotion of new water storage projects and voluntary incentive based efficiency and water transfer measures.