

Some grass seed cleaned

Olson Fennels Seed of Oregon has managed to have its tall fescue shipment from Argentina cleaned so well of the serrated tussock weed that the seed can be sold on the open market. But co-owner Greg Fennels said the company will not sell it in the United States.

"We don't want either the responsibility or the public knowledge that we would be shipping to other parts of the country," Fennels said. "Hopefully we'll be able to export the product."

Chuck Havens, chief operations officer of the USDA Plant Protection and

Quarantine Program, said Olson Fennels' seed was cleaned so thoroughly that inspectors could find no presence whatsoever of the outlawed noxious weed.

Havens said USDA inspectors allow "zero tolerance" in their testing. If any weed is found, the entire shipment of seed is banned from sale.

Olson Fennels had its seed cleaned at Smith's Seed Services in Hawley, Ore

Smith's is reportedly one of about 300 seed-cleaning facilities in the country.

Seed suit possible

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sizeable financial loss, explained the problem simply: "The United States government screwed up... The government is 100 percent involved, and the other parties involved are totally innocent and yet have all the burden of the negative publicity and financial burden and everything else. It's been a very ugly deal."

Other companies that imported the seed were Seaboard Seed Co. of Bristol, Ill., Normac, Inc. of Tangent, Ore., Allied Seed Cooperative of Nampa, Idaho, Gateway Seed Co. of St. Louis, Mo., and Hanceford Seed Co. of Sommerset, Ky.

Snafu outlined

The "foul-up" stems from provisions, or absence of them, in the Federal Seed Act and the Federal Noxious Weed Act.

In the 1930s the government passed the Federal Seed Act that has regulated the seed industry for 50 years. In 1973 Dr. Joseph Spears of the Animal Plant Health Inspection Service (APHIS) and Dr. Warren Shaw of USDA-ARS wrote the Federal Noxious Weed Act to control importation of undesirable weeds into the country.

In a move supported by the American Seed Trade Association, APHIS decided to exempt imported seeds from the Noxious Weed Act and regulate seed weeds under the Federal Seed Act.

Section 12 of the Federal Noxious Weed Act of 1974 states: "The provisions of this act shall not apply to shipments of seed subject to the Federal Seed Act."

But while the Federal Noxious Weed Act had serrated tussock listed as prohibited in the United States, the weed was never listed under the Federal Seed Act.

"The analysis certificate that we received, and other people received, from Argentina said right on it: serrated tussock," Fennels said. "The quarantine officials in Oregon and in the people in D.C. and across the country let the stuff in, looked right at that weed and put their stamp of approval on it."

"What they did when they did that was OK legal distribution of the seed in the U.S. and absolve the Argentines of any responsibility."

The 26 lots of seed passed through the USDA inspectors and on to the American companies importing it, including Pennington Enterprises, which in turn distributed it to 1,100 K mart stores around the country.

After it passed inspection, some of the seed was found to contain serrated tussock, which is dangerous to sheep and cattle.

But when the USDA was informed of the weed, Richard Backus, assistant to the deputy administrator of PPQ, wrote a memorandum concerning Federal Seed Act/Federal Noxious Weed Act interactions to state and

territory agricultural regulatory officials:

"Because fescue is regulated by the Federal Seed Act, the Plant Protection and Quarantine USDA can take no action."

At that point, Sen. James McClure of Idaho requested USDA to place a stop-sell order and impound the seed. He got results from USDA Deputy Assistant General Counsel for the Regulatory Division Thomas Bundy.

Bundy, who says he was dealing with "a case of first impression," said, "This was the first time a weed that was not listed under the Federal Seed Act and was listed under the Noxious Weed Act was ever found in a shipment of seed."

"We are in agreement," Bundy said, "that in this case the tall fescue is subject to the Seed Act, but the Seed Act does not cover the serrated tussock. In our position the Noxious Weed Act would cover the serrated tussock since it is not subject to the Seed Act even if it is mixed in with seed that is subject to the Seed Act."

Backed by Bundy's position, Backus on Feb. 7 sent a memorandum stating: "This supersedes our previous communication: Any weed or imported seed listed in Federal Noxious Weed Act regulations is subject to the Federal Noxious Weed Act even if it occurs in a shipment of seed."

At that point they issued emergency action notices and stopped the sale of all the seed, some five months after Pennington's seed came into the country.

Discouraging

"The most discouraging part of the whole thing," Pennington said, "is that they changed the regulations and the department's attitude is — and I quote a letter from Secretary of Agriculture Clayton Yeutter in April: 'I sincerely regret any inconvenience to Pennington Enterprises Inc.'"

"No compensation, restitution, nothing else, just that I regret any inconvenience."

Pennington, who employs 550 people, said his company "is not trying to introduce this weed seed into agriculture, or golf courses or any other place where it should not be. We relied on the government laws and regulations. It was imported in good faith, it was inspected by the U.S. Department of Agriculture Plant Protection and Quarantine. It was sold in three-pound bags for lawn seed and not for grazing. It was clearly labeled as Argentine tall fescue."

"We had it tested by two commercial seed labs and they didn't find the tussock seed weed in the tests. We did everything we could in good faith to give American consumers a reasonably priced grass seed. There was a severe shortage of tall fescue last year because of the drought; otherwise, this never would have been imported."

And now, after all of our good-faith efforts,

GOVERNMENT UPDATE

Irrigation systems face inspection

In order to conserve water, some communities in California are starting to require approval of sprinkler irrigation plans.

Dr. Kenneth H. Solomon of California State University Fresno's Center for Irrigation Technology told a group in Michigan, "Our drought conditions have made everyone very concerned about water. Most (California) cities have someone on staff responsible for water conservation and many cities sponsor educational programs

encouraging it.

"People are trying to check on the adequacy of the sprinkler system through the permit process. Before those plans are approved and you get your permits, someone wants to check the irrigation system and make sure it's going to do a good job."

Still other cities are considering listing plant materials they would require contractors to use to conserve water on new construction.

Weed's been here

Owners of both Pennington Enterprises, Inc. and Olson Fennels Seed say the serrated tussock weed has been entering the United States for years in shipments of Argentine seed.

"Tall fescue has been imported from Argentina for 20 years," Greg Fennels said. "It's had tussock in it probably every year it's been imported; it's just that it got the public's attention this year and somebody noticed that it wasn't supposed to be here."

Sonny Pennington said, "This is the first time the USDA has acknowledged this weed has come into the country. Apparently they feel that if one pound of it is sold it will contaminate the entire country."

"In reality this weed has been coming into the country in shipments of love grass from Argentina for years."

The USDA's Chuck Havens, chief operating officer of the Plant Protection and Quarantine Program, said this is the first year his department has been aware that the weed had been in the country.

"We do an inspection, a standard, worldwide procedure," he said. "Anyone needs to know that with a sampling procedure and even with a zero tolerance (which we have), there's always a chance that 'X' percent of the time you're going to miss a light infestation."

we have one gentleman in Washington, who as a salaried government employee decides he can change the law and cost the seed industry a million dollars... If one person can do that, what happened to 'a kind and gentle nation'?"

"After 14 years of the Federal Noxious Weed Act being enforced one way (one attorney) decided he would enforce it another way," Pennington said. "I always thought regulators couldn't legislate and, secondly, when they passed regulations they had to hold hearings. But all that was done by this one attorney (Bundy) up in Washington."

In Oregon, Fennels said, "The little tall fescue we bought, we bought it as Argentine, we sold it as Argentine, we had distributors set up to handle it as Argentine... We did not import it with any intent to deceive anyone. We did it very much above-board."

Government stands pat

But Chuck Havens, chief operations officer for PPQ, said, "The official position is that the only authority that exists in the law to allow reimbursement of any party in a case like this is when they go to court and prove that any action we take was not authorized by the statutes. And our position is that it was and any such case could not prevail."

Asked if the Federal Seed Act would be rewritten to include seed weeds, Havens said he thought they would not "because the interpretation is that we can take action on the weeds..."

"They are saying that the intent of Congress was never to prohibit us from taking action on listed noxious weeds..."

"My personal opinion is that certainly some clarification is needed, but not necessarily" that the Federal Seed Act be rewritten.

For his part, Bundy said, "There is no one person that you can say is responsible... There is no one entity that is responsible for it. It is a series of things that happened."

"You cannot say that either side is completely responsible and doesn't bear some responsibility, including the seed companies."

However, he said, "You have to remember the U.S. government is immune from suits except for some very limited situations in which the Congress has seen fit to consent to being sued."

"Under Section 12 we are prohibited from compensating and a court is prohibited from awarding any damages unless they can show that there was no authority to take action."

Bundy said it "is up to Congress and their wisdom" as to whether or not they think the government should be sued.

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