

3-205. Abatement of nuisance not imminently dangerous; procedure; lien; foreclosure; release of lien; reimbursement costs and penalties to state for certain abatements; civil penalty.

- A. If the director believes the danger to the agricultural and horticultural industry is not imminent, or if impractical for any reason to summarily abate the nuisance, as described in sections 3-203, 3-204, 3-206 and 3-207, the director shall not require summary destruction or eradication, but shall set forth the measures required to be taken by the owner or person in charge to control, suppress or eradicate the danger, and shall require the person, at the person's expense, to take and comply with the measures specified in the direction and subsequent directions.
- B. The directions shall be made, given and served as prescribed for summary abatement, and if they are not complied with, the director may proceed as provided by the directions, and the expense shall be charged against the state.
- C. If the plant or thing constituting the nuisance consists only of personalty and is not attached to land or contained in a building, enclosure, vehicle or place belonging to the person, the state shall have the same lien and it is enforceable in the same manner as provided for summary abatement of the nuisance under section 3-204.
- D. If the plant or thing is attached to land or contained in a building, enclosure or vehicle that is the property of the person, the lien shall also attach to the land, building, enclosure or vehicle, and the director shall prepare and file in the office of the county recorder where the property is situated a notice of the lien, setting forth the amount and the name of the owner or person in charge, and stating that the amount of the lien shall be paid within thirty days from filing the notice, or otherwise the property will be subjected to payment thereof.
- E. The lien shall be prior to all other liens against the property except liens for state and county taxes. If the amount of the lien is not paid within the thirty days, the county attorney, on written request of the director, shall foreclose the lien against the property impressed therewith as other liens are foreclosed.
- F. On satisfaction of the lien, the director shall issue a release of the lien to the person against whom the lien was claimed. Such release shall be a document in a form as specified in section 11-480.
- G. If the director is required to abate the nuisance of stub, soca or volunteer cotton following the refusal by the owner or person in charge or control of the nuisance to do so, the owner or person in charge or control of the nuisance shall reimburse the department for the actual costs of the state's abatement of the nuisance. An injunction shall not be granted to stay this state from abating the nuisance. The director may request the cotton research and protection council to provide monies pursuant to section 3-1085, subsection B to help defray the department's cost of abatement until the owner or person in charge reimburses the department for those costs. If the actual costs of abatement are not paid within ten days after the owner or person in charge receives notice of the amount of the costs, the director may impose a civil penalty of one hundred fifty per cent of the costs of abatement. At the director's request, the attorney general shall file an action in superior court to recover civil penalties assessed pursuant to this subsection. All civil penalties collected under this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the dangerous plants, pests and diseases trust fund established by section 3-214.01.