

The Legal Implications of Emerald Ash Borer in Iowa

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What Iowa Law Says:

- Trees fall within the definition of “Plant and plant products” set out in Iowa Code §177A.2(c)
- Iowa Code §177A.2(a) discusses “insect pests and diseases” injurious to “plants and plant products”

What Iowa Law Says:

- The State Entomologist has the duty to oversee plant safety & enforce compliance, pursuant to Iowa Code §177A.5 et. seq.
- Specifically, Iowa Code §177A.7 gives the state entomologist authority to commence eradication procedures, once a problem is found.

What Iowa Law Says:

- Should federal authorities implement procedures to quarantine or otherwise control an outbreak in plant or plant products, the state entomologist is authorized to promulgate and enforce quarantine regulations, pursuant to Iowa Code §177A.12 et. seq.

City Rights & Responsibilities in the event of an EAB Outbreak

- By ordinance, cities may require abutting property owners to maintain property “outside the lot and property lines and inside the curb lines upon the public streets except that the property owner shall not be required to remove diseased trees or dead wood on the publicly owned property or right-of-way”
- Iowa Code §364.12(2)(c)

County Rights & Responsibilities in the event of an EAB Outbreak

- Counties face statutory requirements very similar to those of cities

County Rights & Responsibilities in the event of an EAB Outbreak

- A county may require the abatement of a public or private nuisance in any reasonable manner [Iowa Code §331.384(1)(a)] and may require the removal of diseased trees or dead wood, ***except*** on publicly owned property or right-of-way [Iowa Code §331.384(1)(b)]

Applicable Case Law

- Victor Merullo, a Columbus, Ohio, attorney, did a presentation for the Arbor Day Foundation on the topic of “Trees, People and the Law” at previous ISU Shade Tree Short Course Programs

...I have borrowed from Merullo's presentation copiously

Applicable Case Law

- For our purposes, the leading case on city/county rights and responsibilities with regard to public right-of-way is *McGinn v. City of Omaha*

Applicable Case Law

McGinn v. City of Omaha

- Simply stated, a silver maple on the right-of-way in Omaha was felled by a storm, striking a car and injuring its driver. Driver sued and was successful at the trial court level, but the Nebraska Supreme Court reversed and remanded.

Applicable Case Law

McGinn v. City of Omaha

→ Bottom line - cities and counties may be held liable for trees in the right-of-way.