

## NEW YORK

### Summary Table of Agency Authorities:

State Agency	Scope of Authority	Explicit Authority to Enter Private Land without Consent	Process Required	Relevant provisions
<b>Department of Environmental Conservation (jointly with Department of Agriculture and Markets)</b>	Prohibited and regulated invasive species	Actively eliminate invasive species on “project sites funded or regulated by the state” (applies to projects on private lands with state funding).	None stated	N.Y. ENVTL. CONSERV. LAW § 9-1709; N.Y. COMP. CODES R. & REGS. tit. 6, § 575.3-.5
<b>Department of Agriculture and Markets</b>	Noxious weeds, injurious insects, plant diseases	“Full access” to all premises and places to enforce Article 14 (re: prevention and control of plant diseases and insect pests).	None stated	N.Y. AGRIC. & MKTS. LAW §§ 163, 164, 167
		Eradicate or control infected/infested plants, articles, or noxious weeds.	NYDA must issue order to owner or person in charge of premises. NYDA may enter upon refusal or failure to comply.	N.Y. AGRIC. & MKTS. LAW §§ 163, 164, 167

### Explanatory Notes:

New York’s invasive species legislation is part of its Environmental Conservation Law. The legislation gives regulatory authority over invasive species to the Department of Environmental Conservation.<sup>63</sup> In addition, the law creates a nine-member inter-agency invasive species council that is directed to, among other things, assess the impacts of invasive species in the state and develop a “comprehensive plan for invasive species management.”<sup>64</sup> The Department of Agriculture and Markets has regulatory authority over noxious weeds and plant pests.<sup>65</sup>

### **Department of Environmental Conservation**

The New York Department of Environmental Conservation (NYDEC) has regulatory authority over prohibited and regulated invasive species. The state defines invasive species as species that are both “nonnative to the ecosystem under consideration” and “whose introduction causes or is likely to cause

<sup>63</sup> N.Y. ENVTL. CONSERV. LAW § 9-1709.

<sup>64</sup> *Id.* § 9-1705.

<sup>65</sup> N.Y. AGRIC. & MKTS. LAW § 163.

economic or environmental harm or harm to human health.”<sup>66</sup> The state has specified that in order to be an invasive species, the harm caused by the species must significantly outweigh the species’ benefit.<sup>67</sup> The NYDEC has listed a wide range of species under this authority, from algae to mammals, as well as both terrestrial and aquatic species.<sup>68</sup>

The NYDEC is responsible for restricting “the sale, purchase, possession, propagation, introduction, importation, transport and disposal of invasive species.”<sup>69</sup> The NYDEC has authority to “prohibit[] and actively eliminate” invasive species at “project sites funded or regulated by the state.”<sup>70</sup> These project sites may in practice include some private lands, such as those receiving benefits under cooperative programs. Although the NYDEC does not have explicit authority to enter private lands for invasive species detection or control, the NYDEC does issue invasive species permits for certain activities, such as the purchase of invasive species for research, educational, or other approved purpose.<sup>71</sup> Such permits contain a condition imposed by the NYDEC that states “[t]he permittee shall allow Department personnel access to the containment or introduction site during business hours for collection of physical, chemical and biological data deemed necessary by the Department.”<sup>72</sup>

### **Department of Agriculture**

The New York Department of Agriculture and Markets (NYDA) is responsible for managing noxious weeds, injurious insects, and plant diseases in the state. The definition of noxious weed specifically references agriculture, stating that a noxious weed is “any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in this state, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation.”<sup>73</sup> The scope of the NYDA’s authority to address aquatic noxious weeds, therefore, seems to be limited to those plants that pose a threat to agriculture.

The NYDA may take any action deemed necessary to “prevent the introduction” of these organisms into the state, although the NYDA is directed to consult with the NYDEC concerning the eradication of noxious weeds.<sup>74</sup> These general authorities do not explicitly include entry onto private property, but may be broad enough to allow such entry. The NYDA may order the owner or person in charge of infested or infected plants, articles, and premises (including private lands) to take measures to control or eradicate the infection, infestation, or noxious weeds. The order should be delivered through “personal service, service through the mails, or by newspaper publication.”<sup>75</sup> If the responsible person does not act within the prescribed time period, the NYDA can carry out the measures directly and impose costs on the person.

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<sup>66</sup> N.Y. ENVTL. CONSERV. LAW § 9-1703.

<sup>67</sup> *Id.* § 9-1703; N.Y. COMP. CODES R. & REGS. tit. 6, § 575.2.

<sup>68</sup> N.Y. COMP. CODES R. & REGS. tit. 6, § 575.3.

<sup>69</sup> N.Y. ENVTL. CONSERV. LAW § 9-1709.

<sup>70</sup> *Id.*

<sup>71</sup> N.Y. COMP. CODES R. & REGS. tit. 6, § 575.9.

<sup>72</sup> Application and Permit to: (1) Possess With Intent to Sell, Import, Purchase, Transport, or Introduce a Prohibited Invasive Species for Research, Education, or Other Approved Activity; or (2) Introduce a Regulated Invasive Species into a Free-Living State in New York State, available at [http://www.dec.ny.gov/docs/wildlife\\_pdf/invaspecpermit52014.pdf](http://www.dec.ny.gov/docs/wildlife_pdf/invaspecpermit52014.pdf).

<sup>73</sup> N.Y. AGRIC. & MKTS. LAW § 161.

<sup>74</sup> *Id.* § 163.

<sup>75</sup> *Id.* § 164.

Finally, the NYDA has “full access to all premises, places, farms, buildings, vehicles, airplanes, vessels and cars” for purposes of enforcing statutory provisions regarding these organisms, and specifically for examining plants or articles that are “infested or infected or susceptible to infestation or infection by injurious insects or plant diseases, or contaminated by noxious weeds.”<sup>76</sup> Although this provision does not provide authority for control or eradication, it does provide authority to access private lands for enforcement or investigation.

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<sup>76</sup> *Id.* § 167.