

## VIRGINIA

### Summary Table of Agency Authorities:

Agency	Scope of Authority	Explicit Authority to Enter Private Land without Consent	Process Required	Relevant provisions
<b>Department of Game and Inland Fisheries</b>	Nonindigenous Aquatic Nuisance Species	May enter to inspect and to seize or eradicate any species found on property.	If owner does not consent, DGFB must obtain a warrant.	VA. CODE ANN. § 29.1-576
<b>Department of Agriculture and Consumer Services</b>	Noxious Weed	May enter “any premises” to inspect for noxious weeds.	No warrant requirement, but DACS must have probable cause to believe there are noxious weeds present.	VA. CODE ANN. §§ 3.2-800, 3.2-807

### Explanatory Notes:

Virginia has legislation specifically addressing aquatic nuisance species, and the state has given regulatory authority over these species to the Virginia Department of Game and Inland Fisheries. In addition, the state’s Department of Agriculture and Consumer Services has regulatory authority over noxious weeds in the state.

### **Department of Game and Inland Fisheries**

Virginia enacted the Nonindigenous Aquatic Nuisance Species Act in 2003. The Act provides the Virginia Department of Game and Inland Fisheries (DGIF) with broad authority to conduct operations and take measures to suppress, control, eradicate, prevent, or slow the spread of any nonindigenous aquatic nuisance species.<sup>104</sup> “Nonindigenous aquatic nuisance species” is defined as:

a nonindigenous aquatic freshwater animal species whose presence in state waters poses or is likely to pose a significant threat of harm to (i) the diversity or abundance of any species indigenous to state waters; (ii) the ecological stability of state waters; or (iii) the commercial, industrial, agricultural, municipal, recreational, aquacultural, or other beneficial uses of state waters. Nonindigenous aquatic nuisance species shall include the zebra mussel, quagga mussel, and all species of snakehead fishes of the family Channidae.<sup>105</sup>

By regulation, the DGIF has listed an additional five species as nonindigenous aquatic nuisance species: black carp, New Zealand mudsnail, rusty crayfish, Chinese mitten crab, and marbled crayfish.<sup>106</sup>

<sup>104</sup> VA. CODE ANN. § 29.1-573.

<sup>105</sup> *Id.* § 29.1-571.

<sup>106</sup> 4 VA. ADMIN. CODE § 15-20-210(A).

The DGIF has explicit authority to enter onto private property to carry out the purposes of the Act. Pursuant to a warrant or the consent of the owner, the DGIF may enter upon and conduct reasonable inspections of “any property in the Commonwealth” to determine if a nonindigenous aquatic nuisance species is present and to seize or eradicate any species found.<sup>107</sup> In Virginia, a search warrant may be issued by a judge or magistrate upon a showing of “reasonable and probable cause for the issuance of search warrant.”<sup>108</sup>

### **Virginia Department of Agriculture and Consumer Services**

The Virginia Department of Agriculture and Consumer Services (DACS) is the state agency charged with addressing threats from noxious weeds. The DACS is directed to develop a plan, in coordination with the DGIF, for the identification and control of noxious weeds in the surface waters and lakes of the Commonwealth.<sup>109</sup>

Noxious weed is defined as “any living plant, not widely disseminated, or part thereof, declared by the [DACS] through regulations ... to be detrimental to crops, surface waters, including lakes, or other desirable plants, livestock, land, or other property, or to be injurious to public health or the economy.”<sup>110</sup>

Several aquatic plants are listed as noxious weeds in Virginia. The DACS has two categories of listed noxious weeds: Tier 1 and Tier 2. Tier 1 noxious weeds, which include Giant Salvinia, mean any noxious weed that is not native to Virginia that (1) has no known populations present or is not widely disseminated and (2) successful eradication or suppression is likely.<sup>111</sup> Tier 2 noxious weeds, which include water spinach and purple loosestrife, are noxious weeds that are not native to Virginia, are not widely disseminated in the state, and for which successful suppression is feasible but eradication is unlikely.<sup>112</sup> The DACS may conduct eradication or suppression activities to prevent the dissemination of a Tier 1 noxious weed.<sup>113</sup> “Eradication or suppression activities may include, but are not limited to, the following: destruction, seizure, stop sale, stop delivery, treatment, or ordering the regulated article to be returned to its point of origin.”<sup>114</sup>

To carry out its duties and responsibilities related to noxious weeds, the DACS is legislatively authorized to make reasonable inspections of “any premises in the Commonwealth and any property therein or thereon” when there is probable cause to believe there are noxious weeds present.<sup>115</sup> There are no provisions outlining procedures the DACS must follow prior to exercising this authority; however, the reference to probable cause suggests the DACS must follow generally applicable search and seizure procedures. The DACS may seek to obtain from an appropriate court a permanent or temporary injunction to restrain a person from violating any provision of the state noxious weed laws.<sup>116</sup>

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<sup>107</sup> VA. CODE ANN. § 29.1-576.

<sup>108</sup> *Id.* § 19.2-52.

<sup>109</sup> *Id.* § 3.2-801.

<sup>110</sup> *Id.* § 3.2-800.

<sup>111</sup> 2 VA. ADMIN. CODE § 5-317-10.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* § 5-317-80.

<sup>114</sup> *Id.*

<sup>115</sup> VA. CODE ANN. § 3.2-807.

<sup>116</sup> *Id.* § 3.2-808.