

WEST VIRGINIA

Summary Table of Agency Authorities:

State Agency	Scope of Authority	Explicit Authority to Enter Private Land without Consent	Process Required	Relevant provisions
Department of Natural Resources	Wildlife and other natural resources	Enter “to make surveys or inspections for conservation purposes.”	None stated.	W. VA. CODE ANN. § 20-1-7(10)
Department of Agriculture	Noxious weeds	The WVDA has the authority to enter upon any public or private premises, except private residences, to examine and sample all plants and trees, soil, articles, and substances that are suspected of being infested or infected with a noxious weed.	The WVDA must provide reasonable notification and right of entry is limited to “during reasonable working hours.”	W. VA. CODE ANN. § 19-12D-3
	Plant pests	The WVDA has the authority to enter upon public or private premises, except private residences, to examine and sample plants, trees, soil, articles, and substances that might be infested with dangerous plant pests.	None stated. Access is limited to “reasonable working hours.”	W. VA. CODE ANN. §§ 19-12-4; 19-12-8.

Explanatory Notes:

West Virginia does not have any laws or regulations directly addressing threats from aquatic invasive species. Two agencies, the West Virginia Department of Natural Resources and the West Virginia Department of Agriculture, have some broad authorities that could be drawn upon but no explicit authority to access private land for control or eradication efforts.

West Virginia Department of Natural Resources

The West Virginia Department of Natural Resources (DNR) does not have any specific authorities related to aquatic invasive species. The DNR, however, has broad authority to protect the state’s wildlife and other natural resources,¹¹⁷ which includes the authority to “enter private lands to make surveys or

¹¹⁷ See W. VA. CODE ANN. § 20-1-7.

inspections for conservation purposes.”¹¹⁸ Although this provision does not authorize control or eradication measures without landowner consent, it could facilitate access to private land to determine the presence of aquatic invasive species.

West Virginia Department of Agriculture

Noxious Weed Act

Pursuant to the state’s Noxious Weed Act, the West Virginia Department of Agriculture (WVDA) bears primary responsibility for establishing surveillance, suppression, and control programs for noxious weeds.¹¹⁹ Noxious weeds are defined as “any living plant, or part thereof, declared by the (WVDA), after public hearing, to be detrimental to crops, other desirable plants, waterways, livestock, land or other property, or to be injurious to public health or the economy.”¹²⁰ These authorities are relevant to the control of aquatic invasive species as the WVDA has declared purple loosestrife a noxious weed.¹²¹ The WVDA has also incorporated the federal noxious weed list, which includes numerous aquatic plants, into the state’s noxious weed list.¹²²

To carry out its authorities under the Noxious Weed Act, the WVDA is authorized “to enter upon any public or private premises, except private residences, and the curtilage thereof, at reasonable times, after reasonable notification to the owner and tenant or agent in order to examine and sample all plants and trees, soil, articles, and substances which are suspected of being infested with a noxious weed.”¹²³ The required method or procedure for providing “reasonable notification” to a property owner is not set forth.

If the WVDA determines that a noxious weed infestation exists for which suppression and control activities are practical, the WVDA may declare a quarantine, enter into a cooperative suppression or control agreement with any person, or undertake suppression or control activities.¹²⁴ It is not clear whether the WVDA can undertake suppression or control activities on private property without a landowner’s consent. Access by a willing landowner, however, could presumably be facilitated through the negotiation of a cooperative suppression or control agreement.

Plant Pest Act

If a noxious weed poses a threat to agricultural, horticultural, or other interest of the state, the WVDA has some additional authorities it can draw upon under the Plant Pest Act.¹²⁵ The WVDA may conduct detection and abundance surveys for plant pests or noxious weeds of a highly injurious nature that may be present in West Virginia to determine the need to establish control practices.¹²⁶

¹¹⁸ *Id.* at § 20-1-7(10).

¹¹⁹ *Id.* at § 19-12D-4; W. VA. CODE R. § 61-14A-2.

¹²⁰ W. VA. CODE § 19-12D-3(e).

¹²¹ W. VA. CODE R. § 61-14A-5.

¹²² *Id.* See also W. VA. CODE R. tit. 61, Series 14A, App. A.

¹²³ W. VA. CODE § 19-12D-9.

¹²⁴ W. VA. CODE R. 61-14A-4.

¹²⁵ W. VA. CODE § 19-12-3(a). The Plant Pest Act contains the same definition of noxious weed as the Noxious Weed Act. See *id.* at § 19-12-2.

¹²⁶ *Id.* at § 19-12-4.

The WVDA has the authority to enter public or private premises (except private residences) to examine and sample all plants and trees, soil, articles, and substances that are suspected of being infested or infected with dangerous plant pests or other insects or noxious weeds.¹²⁷ Although access is limited to “reasonable working hours,” there is no reasonable notification requirement as found in the Noxious Weed Act.¹²⁸ Furthermore, the legislation states that “no person shall obstruct or hinder” the WVDA in the discharge of its duties.¹²⁹ The WVDA’s right to entry appears stronger under the Plant Pest Act than the Noxious Weed Act, but it is narrower as it only extends to examination and sampling. There is no mention of control or eradication activities.

¹²⁷ *Id.* at § 19-12-8.

¹²⁸ *Id.*

¹²⁹ *Id.*