

Part 527 – Easement Common Provisions

Subpart S – Violations and Enforcement

527.170 Applicability, Purposes, and Objectives of the Violations and Enforcement Provisions

- A. Applicability.—This policy applies to all easements and 30-year contracts where the United States is the grantee including easements or 30-year contracts enrolled through the Agricultural Conservation Easement Program – Wetland Reserve Easement (ACEP-WRE) component Emergency Watershed Protection Program – Floodplain Easements (EWPP-FPE), Farm and Ranch Lands Protection Program (FRPP) stewardship easements, Grassland Reserve Program (GRP), Healthy Forests Reserve Program (HFRP), Wetlands Reserve Program (WRP) and the Other Stewardship Lands (OSL) Programs, and all predecessor easement programs.
- (1) This provision does not apply to easements where the United States is not a grantee, including easements enrolled through the Agricultural Conservation Easement Program – Agricultural Land Easements (ACEP-ALE) component, FRPP, the Farmland Protection Program, GRP, and Watershed Operations.
 - (2) If monitoring, management, or enforcement responsibilities have been formally delegated to a qualified State or Federal agency, per the applicable guidance for ACEP-WRE found in CPM 440_528.150 or GRP found in Departmental Manual 9500-012, should follow the authority granted through the agreement.
- B. Purposes and Objectives.—
- (1) The purposes of monitoring and enforcement activities are to ensure that all easements and 30-year contracts under NRCS jurisdiction achieve the purposes of the programs under which they were acquired and to ensure that the resources and taxpayer investment are adequately protected. Regular monitoring is crucial to NRCS’ ability to determine if program purposes and objectives are being achieved, identify what actions may be needed to achieve those purposes and objectives, prevent violations from occurring, and ensure that violations that do occur are cured in a timely manner. The goal of easement enforcement is to return the easement or 30-year contract to its pre-violation condition.
 - (2) A violation is any action that is prohibited or unauthorized under the terms of the deed or contract or actions that are noncompliant with other restoration or management activity requirements that NRCS may have established pursuant to the deed or contract. This violation and enforcement policy provides NRCS the framework to—
 - (i) Detect and determine if a violation has occurred.
 - (ii) Assess and document impacts of the violation to support a determination of damages.
 - (iii) Identify requirements needed to cure the violation and restore the easement or contract to its pre-violation condition.
 - (iv) Communicate curative requirements to the landowner.
 - (v) Create and maintain an easement case file necessary to aid in the enforcement of easement deed or 30-year contract terms and to meet agency recordkeeping responsibilities.
 - (vi) Ensure compliance actions are completed in a timely manner.
 - (vii) Develop and implement strategies to engage with landowners to avoid future violations.

527.171 Violations

A. Preventing Violations

- (1) In managing easements and 30-year contracts, emphasis must be focused on preventing violations because enforcement actions are time consuming and costly.
- (2) The keys to successfully preventing violations are—
 - (i) Clear, direct, and up-front communication with landowners from early in the enrollment process. This communication begins with NRCS discussing with the landowner the rights and responsibilities that come with a co-ownership relationship between the United States as easement holder and the fee title landowner.
 - (ii) Landowner authorizations that include, as appropriate, plans and schedules of operations, compatible use authorizations (CUA), management plans, and operation and maintenance (O&M) plans should be reviewed with the landowner and anyone who may be implementing activities on the landowner's behalf. All plan and implementation documents must clearly set forth technical requirements, such as timing, intensity, extent, duration, location, species composition, and other relevant information necessary to establish clear and enforceable guidelines for any activities authorized to be implemented on the easement or contract area.
 - (iii) NRCS must not provide assurances, guarantees, or other indications to the landowner that activities that are prohibited in the deed or 30-year contract will be authorized. For example, NRCS must not promise a CUA prior to easement closing.
 - (iv) A well-documented history of regular and systematic monitoring activities (See 440-CPM 527, Subpart P), including timely follow up with the landowner to address areas of concern, additional planning needs, questions, or other requests identified during monitoring.
- (3) Communication with landowners is critical to maximizing successful long-term stewardship and minimizing violations. Effective communication includes:
 - (i) Discussing the terms and conditions of the easement deed or 30-year contract along with program purposes and objectives with the landowner prior to executing the easement or contract.
 - (ii) If at any time the fee title ownership of the property is transferred in whole or part, NRCS should make timely contact with new landowners to: review easement deed or 30-year contract language, allowances, restrictions, and responsibilities; discuss the landowners goals, objectives, and understanding of the easement or 30-year contract; and review existing plans and CUAs and determine if updates or changes are needed. (see Subpart Y, "Exhibits," for sample letter to new landowner). Any existing CUAs that the new landowner agrees to implement must be granted to the new landowner.
 - (iii) Depending on the activity and the individuals involved, landowner communications may occur by personal contact, letter, email, or telephone. When authorized by the landowner, it may also include an intermediary, such as a property manager or tenant.
 - (iv) NRCS State offices should consider developing regular means of communication with landowners such as newsletters that facilitate an understanding of easement or 30-year contract restrictions as well as the habitat and wildlife benefits resulting from their enrollment in the program.
- (4) Collecting and preserving information and managing monitoring records in a consistent manner is an important component of both preventing violations and prosecuting violations effectively. NRCS must maintain thorough and complete investigation records and a record of conversations with the landowner to be able to determine how, when, and why a violation occurred and what steps have been taken to detect, assess, and cure the violation. An

accurate, well-documented administrative record is essential and holds greater weight in appeals or court proceedings than what may be recalled in personal testimony.

- (5) Violations may occur as a result of actions taken by the landowner or a third party. While the landowner remains responsible for ensuring compliance with the terms of the easement deed or 30-year contract, NRCS may work with the landowner and a third party to resolve the violation.

B. Investigating and Documenting Potential Violations

- (1) When a potential violation is suspected or found through onsite monitoring, offsite monitoring, as a reported observation, or is otherwise identified, the following actions must occur immediately:
 - (i) The State program manager and assistant State conservationist must be notified.
 - (ii) An onsite investigation must be conducted.
- (2) The purpose of the onsite investigation is to confirm if a violation has occurred and to complete the “Easement Violation Worksheet.” (See Subpart Y, “Exhibits,” for “Easement Violation Worksheet”).
- (3) NRCS employees who conduct site investigations should review procedures for handling potentially hostile situations prior to making personal contact with landowners or alleged trespassers to ensure the safety of all NRCS employees.
- (4) The recorded easement deed or executed 30-year contract and other records in the case file must be reviewed prior to initiating an enforcement action to confirm the activity does not comply with the specific records for the subject area.
- (5) Before making the onsite investigation—
 - (i) The NRCS State Office must contact the landowner to schedule a site investigation. Document this communication in the official easement case file.
 - (ii) Review the State Office easement case file, which includes all prior monitoring reports, permits, CUAs, management plans, and correspondence. Review technical files, that may contain restoration designs, engineering drawings, planning documents, maps, or other correspondence that may not be in the easement case file. Review records stored in electronic systems, including the easement business tool (e.g. NEST) or agency planning tools (e.g. Toolkit, CD).
 - (iii) The NRCS State Office must verify and document current fee title land ownership and, if applicable, tenancy.
 - (iv) All previous violations and resolution measures should be reviewed. Particular attention should be paid to prior contacts with the landowner and tenants and their reactions to NRCS activities on the easement or contract area. Prior confrontations or unusual reactions of the landowner or tenant, if any, should be noted.
 - (v) Obtain a blank “Easement Violation Worksheet” to record findings during the onsite investigation of a potential violation (see Subpart Y, “Exhibits,” for the easement violation worksheet).
 - (vi) Create a map of the easement, noting location of the potential violation.
 - (vii) Compile aerial imagery showing the affected area or potential violation actions over time and include the date each aerial image was taken.
 - (viii) Gather camera equipment to photograph or record the condition of the site. Photographs should be taken as soon as possible to document impacts.
 - (ix) Gather GPS equipment to record the location of the potential violation, photo points, and track the location of area examined during the onsite investigation.
- (6) During the onsite investigation document the following information on the “Easement Violation Worksheet”:

- (i) The names and affiliation of individuals in attendance at the onsite investigation, including the landowner or tenant, if present. The NRCS employees who completed the onsite investigation must sign the Easement Violation Worksheet.
 - (ii) A complete set of notes about the potential violation, including—
 - Location, size, and extent of the potential violation
 - Impacts to vegetation
 - Impacts to soils
 - Impacts to wildlife
 - Impacts to easement boundaries
 - Impacts to any other functions and values or pertinent site conditions
 - Comments made by landowners and others present

NOTE: To the extent possible these notes should include both qualitative and quantitative information about the impacts.
 - (iii) During the onsite investigation compile photographic or video documentation of all aspects of the potential violation, including—
 - The general nature of the surroundings
 - Various vantage points and directions that capture the type and extent of the potential violation
 - The most serious aspects of the potential violation
 - (iv) Collect GPS points of the violation and photopoint/videopoint locations and turn on the tracking function to create a map of the areas observed during the onsite investigation.
- (7) The landowner or their representative should, when practicable, be present during the onsite investigation. If tenants are involved, arrange with the landowner for their participation. If the landowner or representative is unavailable, a follow up visit may be necessary to discuss activities and build the easement case file.
- (i) The onsite investigation must be conducted by at minimum two NRCS employees for reasons of safety and corroboration of observations and findings. NRCS employees that conduct investigations should receive training in handling potentially hostile situations.
 - (ii) If the onsite investigation was completed prior to the landowner interview, review the findings of the onsite investigation with the landowner.
 - (iii) Photos and location maps of the violation may be shared with the landowner.
 - (iv) The official easement case file must not be taken to the landowner meeting. The file must be protected from damage and NRCS may be prohibited from sharing portions of the file with the landowner, operator, or the general public. Only USDA, NRCS, Office of the General Counsel (OGC), and Department of Justice officials are permitted access to the easement case file.
 - (v) NRCS should attempt to establish who is responsible for the activity that caused the potential violation. It may also be possible to establish who ordered the activity, and whether it was carried out by an alleged violator's employee or through a contract with a third-party.
 - (vi) NRCS must request that the landowner or third-party violator cease any ongoing violation activities. During the investigation, the NRCS employees should not discuss specific enforcement actions, but they may inform the landowner or third-party violator that they will receive written notification.
 - Depending on the severity of the violation or violator's response to it, contact the Easement Programs Division (EPD) or the local OGC office for advice before making any demands related to the violation.
 - NRCS personnel should immediately withdraw from any situation that becomes hostile.

- (8) Multiple visits to the site may be warranted to fully investigate a potential violation. This may occur if further confirmation or documentation of the violation or its impacts are needed, if the appropriate NRCS personnel were not present during the previous onsite visit, or if additional follow up is needed during or after the landowner interview. Observations and findings from any additional site investigations must be thoroughly-documented. The individuals making the report must date and sign each entry on each item of documentation.
- (9) As soon as is reasonable after departing from the site or following any offsite meetings, the NRCS employees should thoroughly document all evidence obtained, observations made, and conversations had. Important evidence may be lost if there is a delay between the visit and recording the observations and findings in the easement case file. Considerable time can pass between the onsite visits, or other meetings and interviews, and the time when the information may be needed in an enforcement action.
- (i) As soon as possible after each onsite visit, meeting, or action related to the violation, record the information on the applicable “Easement Violations Worksheet”.
NOTE: “Annual Monitoring Worksheets” and “Easement Violation Worksheets” documenting that there is no evidence of a violation may be just as important as those reports confirming and documenting violations.
- (ii) If there are any landowner conversations outside of the onsite investigation, document those on the “Easement Violations Worksheet”, recording the following information:
- The name of any parties to the conversation and the address/location of the conversation.
 - A complete description of the conversation.
 - Reference to the tract of land subject to the easement or 30-year contract.
 - Factual observations regarding the demeanor of the landowner, but do not use derogatory statements.
 - Reference any direct quotes by the landowner - these may be spontaneous or in response to specific questions.
- (iii) Upon returning to the office create a field investigation map that includes:
- The easement boundaries
 - Marked location of any potential violations
 - Individual photopoints/videopoints showing where each photograph/video was taken along with a label which records the orientation of the photograph/video
 - For photos, attach photo pages associated with the map photopoints and label each photograph with a short description
 - A GPS tracking trail depicting a map of the areas observed by the NRCS personnel onsite
- (iii) All documentation associated with a potential violation, a confirmed violation, and the eventual disposition of a violation must be retained in the easement case file, including but not limited to the completed “Annual Monitoring Worksheets” and “Easement Violation Worksheets”; all documents, maps, and photographs gathered in preparation for and resulting from the onsite investigation; and landowner and third-party interviews. Additionally, all pertinent records such as monitoring worksheets and enforcement documents must be uploaded into the appropriate easement business tool (e.g. NEST), and associated easement database elements completed as required.
- (10) The onsite investigation of potential violations must occur within 30 days of the discovery of the potential violation unless extraordinary circumstances exist and are documented in the easement case file, even when the landowner seeks to prevent access to the property. Landowner permission is not required to complete an onsite investigation of the easement or 30-year contract. When a landowner attempts to prevent NRCS onsite visit, NRCS employees

should refer to Title 440, Conservation Programs Manual, Part 527, Subpart P, “Monitoring Policy” (440-CPM-527-P).

C. Classifying Violations

(1) Determining Severity

- (i) Once a potential violation has been confirmed through an onsite investigation, a determination must be made regarding its severity. The State conservationist, may delegate, in writing, to the Assistant State Conservationist with responsibility for easement programs, the authority to determine the violation severity as either level I or level II.
- (ii) The State office staff may, at any point, consult with EPD regarding a violation severity determination.
- (iii) The severity determination must be documented on the “Easement Violation Worksheet.”

(2) Level-I Violations

- (i) A violation may only be classified as a level-I violation if the landowner has no history of significant easement or contract violations, and the violation action meets any one of the following situations —

- Implementation of activities as prescribed in a previously authorized CUA that has since expired and would have been reauthorized by NRCS.
- No more than three pieces of operational farm equipment parked within the easement or 30-year contract boundaries, with no associated hazardous substances concerns, such as spillage or leakage of any fluids.
- Unauthorized trails on the easement or 30-year contract area created by mowing non-woody vegetation.
- Unauthorized mowing, burning, brush control, or noxious weed control that NRCS determines is beneficial to the habitat or other planned functions and values and was implemented in a manner consistent with an existing, NRCS-approved plan (e.g. management plan, operation and maintenance plan) but required a CUA or other written authorization from NRCS prior to implementation.
- Unauthorized water management that NRCS determines is beneficial to the habitat or other planned functions and values and was implemented conducted in a manner consistent with an existing, NRCS-approved plan (e.g. management plan, operation and maintenance plan) but required a CUA or other written authorization from NRCS prior to implementation.
- A small amount of non-hazardous solid waste, for example a single tire or bag of trash.

- (ii) Level-I violations may be addressed through informal communication (see 527.172(D)(3)) or via a violation notification letter (see 527.172(D)(4)) (see Subpart Y, “Exhibits,” for violation notification letter).

(iii) Examples

- Example 1. — During a regular onsite monitoring event an old tire and a few scraps of sheet metal are discovered within the easement area. This is a level-I violation and may be handled either through the informal or the informal notification process.

Example 2. — The landowner parked a single tractor on the easement area which would otherwise could be classified as a level-I violation; however, during the on-site investigation the NRCS employee notices that the tractor has leaked

some type of fluid onto the ground. Because of the spill, the violation must be elevated to a level-II violation and will require a plan to remediate the spill.

- Example 3.—The wetland reserve plan of operation (WRPO) specified brush control to improve habitat for a state-listed species in an upland area of the ACEP-WRE easement. During the onsite investigation the NRCS employee notes that vegetation in the specified area has been thinned by the landowner. This is a violation because this activity is prohibited by the terms of the warranty easement deed and no CUA was in place at the time the action was taken by the landowner. NRCS determines that the practice is beneficial to the habitat and consistent with the existing, NRCS-approved plan.

(3) Level-II Violations

(i) A level-II violation is:

- Any prohibited or unauthorized action that does not qualify as a level-I violation.
- A level-I violation that was not cured or corrected by the landowner within the timeframe specified by NRCS.
- An activity listed under level-I violations, where the size, scope, amount, method, timing, duration, extent, intensity or other characteristic of the violation has significant impacts on the easement as determined by NRCS.

(ii) Level-II violations may include, but are not limited to the following situations—

- Alteration of hydrology
- Alteration of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting or otherwise destroying vegetative cover
- Dumping or filling
- Cropping
- Mining
- New and unauthorized impervious surfaces
- Aquaculture
- New or improved road or bridge
- New or improved infrastructure
- Parking lots or pads
- New utility or pipe line including overhead or underground installations
- Tree thinning or timber harvesting
- Oil or gas well installation or exploratory drilling
- Waste or fertilizer application
- Constructed water conveyance system
- Hazardous substance releases
- Permanent structures, including a permanent hunting blind, boardwalk, shed, home, cabin, lodge, garage, boat dock, etc.
- Boundary marker or monument removal
- Human caused damage to restoration practices
- Noncompliance with a management plan or CUA
- Septic system or leach field
- Offsite activities that have on-site impacts
- Subdivision prohibited per deed terms

(iii) The State conservationist, may delegate, in writing, to the Assistant State Conservationist with responsibility for easement programs, must notify EPD of any level-

- II violations. The draft landowner notification must be uploaded to the easement business tool (e.g. NEST) and include all necessary enclosures.
- (iv) All actions taken once a level-II violation has been confirmed must be conducted with the guidance and ongoing participation of EPD.
 - (v) Level-II violations must follow the formal violation notification process (see 527.172(D)(4)).
 - (vi) Examples
 - Example 1.—The landowner has a farm dump on the easement area that contains tractor tires, fence posts, sheet metal, and demolition debris. This is a level-II violation because dumping is always prohibited on an easement.
 - Example 2.—The landowner erects a storage shed for mowing equipment and a shed sits two feet inside of the easement boundary. This is a level-II violation because permanent structures are prohibited on an easement.
 - Example 3.—The landowner builds a new road on the property. This is a level-II violation unless the NRCS easement was taken subject to an existing right-of-way authorizing the construction of a new road and the road was built in compliance with the terms and conditions of that preexisting right.
 - Example 4.—The landowner mows a dike and encroaches into the easement area during the nesting season of ground-nesting birds that use the easement area. The landowner would have been granted a CUA to mow the dike outside of the nesting season. This is a level-II violation because the mowing occurred during the nesting season and occurred outside of the dike.
 - Example 5.—The easement area is 30 percent infested with Canada Thistle (State-listed noxious weed) and the landowner is required by the deed terms and State law to control noxious weeds. This is a level-II violation.
 - Example 6.—Four years after the implementation of a tree planting, the landowner is provided as CUA for grazing that includes a requirement for the area planted to trees to be protected. The landowner does not control the cattle and the grazing results in damage or mortality to the trees. This is a level-II violation because the activity violates the terms and conditions of the CUA.

528.172 Enforcement

- A. After the onsite investigation and landowner interviews are completed and NRCS has determined the severity of the violation, NRCS must determine how the impacts to the easement or 30-year contract area must be restored or remediated the damage to the easement and document the requirements in a violation remediation plan (VRP). The determination of severity and development of a VRP may require consultation with EPD and OGC. In some cases, NRCS may request that OGC refer especially egregious or repeated violations to the U.S. Attorney's Office (USAO).
- B. The VRP documentation should include—
 - (1) Narrative description of the violation.
 - (2) Plan completed in the appropriate easement business and planning tools.

Note: Do not include the landowner signature on the plan – any plan necessary to remediate a violation is not voluntary.
 - (3) A description of the activities needed to restore or remediate the property fully to its pre-violation condition.

- (4) The specific implementation requirements and restrictions for any activities that will occur on the site.
 - (5) The required NRCS-CPA-52 environmental evaluation (EE), environmental assessment (EA), or an environmental impact statement (EIS).
 - (6) Measurable standards necessary for restoration or remediation to be considered complete: For example, in the case of cultivated, plowed, or destroyed grasslands, compliance will not be complete until NRCS determines reseeded grasses are established. Reseeding by the landowner is only a first step to returning to compliance and NRCS must inform the landowner that they are considered out of compliance until the grassland habitat has been reestablished. This may take several years and may require weed control (with prior authorization) or additional reseeded (with prior authorization). Identification of any required monitoring or testing (for example soil testing or well monitoring) needed to provide evidence of compliance with restoration or remediation standards.
 - (7) Time frames for completion for each restoration or remediation action must be specific and reasonable and for the shortest span of time that allows the restoration or remediation to be completed. The time frame should reflect regional specific growing seasons, weather restrictions, and must be timed to avoid or minimize wildlife impacts.
 - (8) Notification to the landowner that they are responsible for the cost to restore and remediate fully the violation. NRCS is not permitted to pay to remediate the violation on behalf of a landowner.
- C. The specific format of the VRP depends upon the severity and complexity of the violation and the associated corrective actions required by NRCS. For level-I violations, it may be possible to address all of the corrective action requirements through a modification to the WRPO, a new or updated CUA, or instructions provided in the informal violation notification process. For all level-II violations, a standalone VRP outlining the items in paragraph (2) above and any associated plans, specifications, designs, or other documents must be developed to clearly describe the restoration or remediation requirements.
- D. Landowner Notification
- (1) Once the corrective actions have been determined and the VRP is developed, NRCS must notify the landowner of the confirmed violation, the required actions, and the period to cure.
 - (2) For properties with multiple landowners, all landowners must receive individual notification of the confirmed violations. This does not apply for landowners with a common address, e.g. spouses, who can receive a single notification.
 - (3) Informal Violation Notification.—Within 14 business days of confirmation of a level-I violation, NRCS must notify the landowner of the violation. For level-I violations NRCS may provide informal notification that is either verbal or written, as described in this section. Alternatively, NRCS may determine that formal written notification of the level-I violation is warranted and will use the notification procedures described for a level-II violation.
 - (i) When providing verbal notification of a violation to a landowner, the NRCS employee must thoroughly document the conversation and retain the notes in the easement case file. The notes must at minimum include the following information:
 - the date of the conversation,
 - the names and affiliations of everyone that participated in the conversation,
 - description of the violation,
 - a detailed narrative of the conversation including the agreed-upon resolution and actions to be taken and the timeframe to complete these actions.During the conversation, the landowner should be informed that the conversation is an official notification of violation, that the conversation will be documented in the easement case file. States must send the VRP and associated documents to the landowner
- (440-527-M, 1st Ed., Amend. 132, Feb. 2020)

within 10 business days of the verbal notification unless an alternative timeline is agreed to during the conversation with the landowner.

- (ii) If informal written notification is warranted, the State program manager or assistant State conservationist with easement responsibility must send a written notice to the landowner which includes a description of the violation, the VRP and associated documents, and the timeframe for the landowner to complete the restoration or remediation actions (see Subpart Y, “Exhibits,” for a sample “Easement Violation Informal Notification Letter”).
- (iii) Regardless of the method of informal violation notification provided, the landowner must be sent a copy of the VRP and associated documents and should be given 30 calendar days following receipt such documentation, or such time as NRCS determines to be reasonable, to correct the violation.

Example.—An unauthorized trail was discovered in easement area and in this scenario the location of the trail was not identified in an existing plan and would not have been approved under a CUA. The landowner is required to reseed the trail. The landowner is verbally notified of the violation and NRCS follows up by sending a copy of the VRP. During the conversation it is discussed that the standard period to cure is 30 days after the VRP is provide, but that NRCS recognizes that the area cannot be seeded within 30 days because it would be outside of the established planting dates for the geographic area. Because of the planting dates, NRCS may allow the remediation timeframes to be longer than 30 days to allow for a successful restoration and will document this agreed to timeline.

- (iv) The required timelines to correct the violation must be documented in the easement case file and NRCS must complete timely follow up to confirm compliance. The landowner should be instructed to notify NRCS when the required actions have been completed to help expedite NRCS review.
- (4) **Formal Written Violation Notification.**—All level-II violations require written formal violation notification to the landowner within 30 calendar days of confirmation of the violation, unless a longer timeframe is agreed to by the State and EPD or OGC based on the facts of the case. Additionally, written formal violation notification may be provided for level-I violations as determined by the assistant State conservationist for easements. (See Subpart Y, “Exhibits,” for a sample “Easement Violation Formal Notification Letter.”)
- (i) The State conservationist must prepare a letter to the landowner which includes at least the following:
 - A factual description of the easement violation
 - VRP and associated documents including NRCS specifications as applicable
 - Period to cure the violation
 - Instructions for the landowner to contact a designated NRCS employee with any questions and to notify NRCS that the violation has been cured or corrected.

Note: For some types of remediation work it may be necessary for an NRCS employee or other onsite monitor to be present during implementation to ensure proper compliance.

 - Notification that noncompliance may be referred to the USAO through OGC for possible legal action.
 - (ii) Prior to sending the letter to the landowner, the State conservationist must transmit the following information to EPD through the easement business tool (e.g. NEST):
 - The draft violation notice letter
 - A detailed summary of the violation including a statement detailing:
 - The nature of the violation
 - A timeline of the violation detection, investigations, and determination activities

- Previous interactions with the landowner regarding the violations
 - Any actions taken by NRCS in the past regarding this or previous violations
 - Any particular novel, sensitive, or precedent setting issues
 - A copy of the draft VRP and associated documents
 - A map detailing the violation, including photopoints showing the violation, a copy of the executed warranty easement deed, CUAs, plans, or other pertinent documents
- (iii) In consultation with EPD, the State conservationist will send the formal written violation notification to the landowner, tenant, or both by certified letter, return receipt requested, with a copy to EPD. EPD will advise when a copy should also be sent to OGC. Written notices to the landowner of the violation are an important part of creating a reliable administrative record.
- (iv) In egregious cases, the OGC must be notified at the same time as EPD

Examples of egregious cases include—

- Current construction of permanent structures or roads
- Unauthorized infrastructure development
- Threats of condemnation
- Ongoing tree clearing
- Purposeful damage to restoration practices
- Hazardous materials spills
- Threats to NRCS employees during onsite visits

E. Appeals

- (1) Limited appeal rights must be provided in all written informal and formal notifications.
- (2) These appeal rights are limited to a written request for an informal review by the State conservationist. Except for violations of 7 CFR 12, determinations of noncompliance with the terms of the closed easement or executed 30-year contract are not subject to appeal under 7 CFR Part 11 or Part 614 (see 7 CFR § 1468.4 and 28 U.S.C. 2409a).
 - (a) For ACEP, refer to 440-CPM 528, Subpart C for policy applicable to ACEP related to appeals.

F. Resolution and Compliance Check for level-I and level-II violations.

- (1) Immediately following the expiration of the period to cure the violation, an NRCS employee must make a field check to ensure compliance. This may require multiple visits if the curative actions require a number of steps before the violation is fully remediated.
- (2) After the NRCS employee determines that the violation has been remediated, send a letter notifying the landowner that the violation is considered cured (see Subpart Y, “Exhibits,” for a sample “Confirmation of Remedied Violation Letter.”)
- (3) In the event the landowner has not complied with the required restoration or remediation actions, an attempt must be made to recontact the landowner and obtain compliance with the VRP. (See Subpart Y, “Exhibits,” for a sample “Violation Noncompliance Letter.”) These efforts must be thoroughly documented in the easement case file.
- (4) If the landowner continues to be noncompliant after the expiration date in the Violation Noncompliance Letter has past, NRCS will work with EPD and OGC to determine the next steps, which may include OGC referring the case to the USAO.
- (5) In some limited circumstances, NRCS may directly procure the services or itself perform the actions necessary to remediate the violation and bill the landowner for all costs related to bringing the easement or 30-year contract back into compliance. Approval from EPD is required prior to commencement of such NRCS initiated or conducted remediation actions.

528.173 Litigation

A. Litigation Notice. – Sometimes a landowner who receives notice of a violation will file a lawsuit against NRCS or other party. Upon receiving notification of intent to file a lawsuit or notice of a filed lawsuit, the notified party (State office, NHQ, or OGC) must ensure that other applicable offices (State office, EPD, and OGC) are immediately notified of any such potential or actual litigation.

B. Enforcement Litigation. – If the violation of an easement or 30-year contract cannot be resolved using the administrative enforcement process, NRCS may request that OGC refer the matter to the USAO. NRCS must prepare a litigation report and NRCS staff must be made available to support the litigation.

C. Litigation Report. —The NRCS State office must prepare a litigation report whenever an easement or 30-year contract violation is the subject of a lawsuit. The State office should initially forward a copy to OGC for review. The State office will revise or update as needed based on OGC review and send the updated litigation report to OGC. OGC will send the litigation report to the USAO. The litigation report should contain the following:

- (1) The recorded easement deed or executed 30-year contract and all associated exhibits
- (2) Documentation of legal notice
- (3) The complete administrative record related to the violation and subsequent enforcement efforts, including:
 - (i) VRP
 - (ii) Correspondence to or from the landowner or tenant
 - (iii) Memos to file including notes from telephone conversations with the landowner
 - (iv) Maps
 - (v) Photographs or video of the site showing the site conditions and the violation
 - (vi) Testing results
- (4) Any documentation related to the violation history
- (5) A summary of the facts, including a timeline of events
- (6) NRCS staff names and contact information
- (7) Any other pertinent information
- (8) An index to the litigation report listing all documents and exhibits
- (9) For responses to landowner-initiated lawsuits, draft responses to allegations of facts raised in lawsuit or other responses as requested by OGC or the USAO.
- (10) Other documents or records identified for inclusion by OGC, USAO, or EPD.

D. Recovering Costs.—The USDA is authorized to recover administrative and legal costs, including attorney’s fees or expenses, associated with any enforcement or remedial action.

E. Liability.—The landowner subject to the easement deed or 30-year contract is responsible for any losses the Federal Government sustains when the landowner does not comply with applicable laws or regulations.

528.174 Compatible Uses and Other Landowner Authorizations

A. Compatible Use Authorizations Used to Resolve Level-I Violations

- (1) In very limited circumstances for level-I violations only, a CUA may be issued to resolve a violation on a US-held easement or 30-year contract for ACEP-WRE or EWPP-FPE, or HFRP, as follows:
 - (i) A landowner must be warned to cease and desist any ongoing and future activities that are a violation of the terms of the deed or 30-year contract.

- (ii) When considering whether to issue a CUA for activities that are being conducted in violation of the deed or 30-year contract terms, NRCS must determine whether issuing a CUA to continue the activity will affect the agency's ability to enforce future violations on the specific property or in the larger community.
 - (iii) A CUA shall not be issued merely for expedience in resolving a situation. In order for a CUA to be issued, the use must clearly further the functions and values for which the easement or 30-year contract was acquired and otherwise meet the technical requirements for the issuance of CUAs under the applicable easement program.
 - (iv) A CUA may only be authorized to resolve a violation when the NRCS finds that the CUA would otherwise have been authorized with regard to all considerations (amount, location, timing, method, extent, intensity, durations, etc.) if a CUA had been requested prior to the discovery of the violation.
 - (vi) A CUA may be issued to authorize and prescribe specifically the implementation of certain activities that are outlined in the associated VRP.
 - (v) Any CUA issued in connection with a level-I violation must be issued in accordance with the applicable policy and procedures (for ACEP in 440-CPM-528, Subpart P, for EWPP-FPE in 390-EWPPM-514, Subpart F, and for HFRP in 440-CPM-511, Subpart H.440-CPM-528.152) based on the enrollment type and subject to the following additional limitations:
 - A CUA issued to resolve a level-I violation may only be issued for a maximum of 1 year.
 - If the landowner has diligently adhered to the terms of the 1-year CUA and has committed no other easement violations during the 1-year CUA term, then NRCS, at its sole discretion, may issue a new CUA that adheres to the CUA term limits established in the applicable program policy.
 - NRCS must complete an onsite review of the activities authorized under the CUA used to resolve a violation and a field inspection of the entire easement prior to issuing the new CUA.
 - (vii) Any CUA issued to resolve a violation must be uploaded to the easement business tool (e.g. NEST).
- (2) Other Violations Resolved Prior to Issuing a CUA.—
- (i) All other violations on a property must be remedied prior to the issuance of a CUA.
Example.—NRCS identified a solid waste pile on the property, during annual monitoring the landowner requested a CUA for a food plot. NRCS should not grant the CUA until NRCS confirms the solid waste pile has been fully remediated.
 - (ii) If, during subsequent inspections of the property, other violations are discovered, the CUA should be cancelled.
 - (iii) Upon determination of a violation, existing CUAs on the property must be reviewed for compliance and may be cancelled upon the discovery of a violation unless cancellation of the existing CUA would hinder the long-term protection and enhancement of the wetland functions and values of the easement or 30-year contract. If the CUA is cancelled, NRCS must provide the landowner with the VRP and implementation timeframes to reestablish the habitat.
 - (iv) A new CUA to undertake activities on the easement that are unrelated to the identified violation should not be issued until all violations on the easement have been remedied, unless withholding such CUAs for would hinder the long-term protection and enhancement of the wetland functions and values of the easement or 30-year contract.
 - (v) During the violation remediation process, NRCS should discuss future management of the easement or 30-year contract area with the landowner, including future actions the landowner is interested in implementing on the area and the issuance of any new CUAs

after the violation has been remediated, including CUAs that had been cancelled or withheld during the violation remediation period.

B. Management Plans Revisions Used to Resolve Level-I Violations

- (1) The management plans for GRP and other easement program enrollment types that do not have CUA authority may need to be revised as part of the VRP.
- (2) A management plan may only be revised when the maintenance and management activity clearly benefits the purposes for which the easement was acquired.
- (3) A management plan may only be revised when the amendment does not infringe on the rights of the United States and when the amendment furthers the program purposes being achieved on the easement area.
- (4) A management plan may be revised to specifically authorize and prescribe the implementation of certain activities that are outlined in the associated VRP.
- (5) In some very limited circumstances for level-I violations only, a management plan may be revised to resolve a violation, as follows:
 - (i) A landowner must be warned to cease and desist any ongoing and future activities that are a violation of the deed terms while the VRP is developed.
 - (ii) When considering issuing a management plan revision for activities that are being conducted in violation of the deed terms, NRCS must carefully weigh the nature of the authorization and whether revising a management plan to continue the activity will affect the agency's ability to enforce future violations on the specific property or in the larger community in general.
 - (iii) A management plan revision should not be considered merely for expedience in resolving a situation and must clearly further the program purposes for which the easement was acquired.
 - (iv) NRCS must complete an onsite review of the entire easement to inspect the activities authorized under the original management plan prior to issuing the revised management plan.
 - (v) All other violations on a property must be remedied prior to revising management plan.

C. Easement Modifications Not Permitted for Violations.—Generally, a post-closing easement administration action (subordination, modification, exchange, termination) may not be used to correct an easement violation.

D. Unique Situations

- (1) NRCS recognizes that certain impairments may be beyond the control of the fee title landowner.
- (2) NRCS may, to the extent possible, work with others including third parties, adjacent landowners and the fee title landowner to facilitate actions to address specific unique situations. However, NRCS has no legal obligation to remedy these issues. NRCS assistance may be in the form of any of the following actions:
 - (i) Providing the fee title landowner with permission to take specific actions on the easement or agreement area. The following require consultation with EPD:
 - Taking action on the easement area to address the issue – NRCS cannot provide authority to the third party or neighbor to conduct activities on the easement.
 - Offering to purchase an easement on the adjacent landowner's property if eligible and regular program funding is available.
 - (ii) The party performing the action must follow recommendations and direction prescribed by NRCS. This policy does not provide authority to perform or provide funds for actions, such as maintenance or drainage improvements, outside the easement area.

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- (iii) Any action that purports to authorize activities on the land may require preparation of an environmental analysis or other environmental documentation.