



Natural Resources Conservation Service
210 Walnut Street, Room 693
Des Moines, IA 50309-2180

February 21, 2013

**IOWA INSTRUCTION 440-391 – WRP, EWRP and EWPP EASEMENT VIOLATION
RESOLUTION**

IA391.0 PURPOSE

To distribute guidance on how to resolve easement violations discovered on Wetlands Reserve Program (WRP), Emergency Wetlands Reserve Program (EWRP) and Emergency Watershed Protection Program (EWPP) easements.

IA391.1 SCOPE

These instructions should be followed when resolving WRP, EWRP and EWPP easement violations

IA391.2 FILING INSTRUCTIONS

This Iowa Instruction will be posted on the Iowa NRCS Employee Website, which can be accessed at <http://www.ia.nrcs.usda.gov/intranet/> under the Iowa NRCS eDirectives System section.

IA391.3 EXHIBITS

See attachment.

A handwritten signature in black ink that reads "Jay T. Mar" and "Acting Sec" below it.

Jay T. Mar
State Conservationist

Attachment

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(IA Instruction 440 - 391 First Edition – February 2013)

IOWA INSTRUCTION 440-391 – WRP, EWRP, and EWPP EASEMENT VIOLATION RESOLUTION

1. PURPOSE:

To distribute guidance on how to resolve easement violations discovered on Wetlands Reserve Program (WRP), Emergency Wetlands Reserve Program (EWRP) and Emergency Watershed Protection Program (EWPP) easements.

2. EXPLANATION:

Easement Violation Policy can be found in the WRP Manual under 514.67 Violations through 514.68 Enforcement and is attached here. Sample letters are also found in the Exhibits of the WRP Manual and attached here. Violations recorded during On-Site and Off-Site Easement Monitoring Reviews and then loaded into the National Easement Staging Tool (NEST) require action by the local offices to resolve documented violations. The State Office Easement Programs Team will provide Field and Area Office staff a list of easements needing to proceed to the violation resolution process.

NEST records easement as three conditions: GREEN, YELLOW and RED. GREEN means that the easement conditions are being met and NO ACTION NEEDED. YELLOW means that unauthorized uses have been documented which can be resolved with an administrative action and WORK ACTION NEEDED. RED means violation has been documented and cannot be resolved with an administrative action and ACTION REQUIRED.

NRCS must confirm there is an actual violation present. Therefore, if a non-NRCS person (contractor) has documented a violation, NRCS will need to revisit the easement to confirm that an actual violation exists. This must be documented by completing Violation Worksheet (Exhibit 108.G) OR completing an On-Site Annual Monitoring Worksheet. If “minor/YELLOW” violations exist, completing the On-Site Annual Monitoring Worksheet will suffice. If a “major/RED” violation exists, the Easement Violation Worksheet (Exhibit 108.G) must be completed and the process outlined in it followed.

Examples of “minor/Yellow” violations include allowable compatible uses such as small pile of garbage on site, small area of encroachment (less than 0.5 acres), food plots that are less than 5 percent of the easement area AND less than 5 acres in size, etc. that can be resolved with an approved Compatible Use Authorization (CUA). Minor violations are most likely documented in NEST with “Condition Yellow”, although with further NRCS review of the easement, this condition may need to be raised to a major violations or “Condition Red”.

Examples of “major/RED” violations include uses occurring that are NOT ALLOWABLE under the compatible use process such as big piles of garbage on site, large areas of encroachment (greater than 0.5 acres), permanent structures on site, legal access has been blocked or built on, etc. Major violations are most likely documented in NEST with “Condition Red”.

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Once a violation has been documented (minor or major), a landowner will be given a “reasonable notice” and opportunity to correct the violation (514.67.C). Minor violations should need a shorter period to correct than a major violation. Furthermore, using the Easement Violation Worksheet, item 6.1 to resolve minor violations and proceed to 6.2 for major violations. Action Items given to landowners to resolve violations will be communicated to the State Office to be entered into NEST; all action items must have deadlines given to landowners of when the resolution action needs to be completed by. Documentation of action items completed by the deadlines must be provided to the State Office to be entered into NEST.

Resolution Leads

Violation resolution shall be attempted at the lowest level possible.

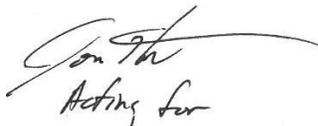
For “minor/Yellow” violations, Field Offices will be the lead.

For reasonably correctable “major/RED” violations, Area Offices will be the lead.

For the most serious major violations, the State Office will take over from the Area Offices, once the violation process has been implemented using this process identified here without an outcome of resolution.

Violation resolution process for field and area office personnel is not complete until the State Office has received all of the resolution documentation in the official easement folder. The entire violation process is not complete until the condition of the easement in NEST is “Green”.

Approved By:



Jay T. Mar
Acting for

Date: February 22, 2013

Jay T. Mar
State Conservationist
Natural Resources Conservation Service
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Attachments:

Annual Monitoring Worksheet
WRP Manual Sections 514.67 through 514.68
WRP Manual Exhibits 108.G WRP Violation Worksheet
WRP Manual Exhibits 108.H Easement Violation Informal Resolution Letter
WRP Manual Exhibits 108.I Easement Violation Notification Letter
WRP Manual Exhibits 108.J Confirmation of Remedied Violation Letter
WRP Manual Exhibits 108.K Easement Violation Noncompliance Letter

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ANNUAL MONITORING WORKSHEET

County/Parish

Select the Appropriate Program: EWPP-FPE EWRP FRPP GRP HFRP WRP

Landowner(s) Phone Monitoring Date
 NEST Agreement & Parcel Number Other identifying name or number
 Monitor(s) Affiliation if other than NRCS

The purpose of monitoring is to ensure compliance with program policy, the terms of easement deeds, evaluate restoration progress, determine restoration repairs or enhancements needed to ensure maximum environmental benefits, and to maintain contact with landowners or partners. Staff with applicable expertise should collect the monitoring information. Partners with the appropriate technical expertise may be authorized to conduct monitoring reviews. The landowner or decision maker should be offered the opportunity to participate in monitoring reviews.

Photographs from designated points are recommended when conducting onsite monitoring.

Methods of Monitoring

<input type="radio"/> Ownership Review	Landowner contact and answer question 1 of this worksheet. <i>Only applicable in the year immediately following onsite monitoring that did not require corrective actions or had no violations.</i>
<input type="radio"/> Offsite	A review of the most recent aerial photography and answer questions 1, 3 and 4 of this worksheet.
<input type="radio"/> Summary Review	At a minimum; a cursory onsite visit, a landowner contact and answer questions 1, 2, 3 and 4 of this worksheet. <i>Only applicable during the pre-restoration phase.</i>
<input type="radio"/> Onsite	At a minimum; landowner contact, a review of available aerial photography and answer all questions on this worksheet.

Landowner Information

- 1) A. Landowner Contact (attempted) Date Contact Method
 B. Was current land ownership verified? YES NO
 Date of verification Verified by
 C. If there is a new landowner, were they notified of the easement and have records been updated? (If yes, Onsite Monitoring is required for the next 2 years) YES NO
 New landowner name(s) (if applicable)

 D. Follow up requested by landowner
- 2) Was the landowner or decision maker present during the review? YES NO

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ANNUAL MONITORING WORKSHEET

This table is a list of possible action items that can be taken to address concerns or violations discovered during the monitoring event. Use this list as a reference when answering the monitoring questions that ask for action items to be listed. Some of the action items listed in this table are not applicable to all programs or all questions.

Action Items				
(1) NRCS action needed (FA contract)	(2) NRCS Action needed (3rd party contract)	(3) Entity action needed	(4) Landowner action needed	(5) CUA needed
(6) Plan needs to be developed/updated	(7) O&M plan needs to be developed/updated	(8) NRCS Enforcement action needed	(9) Other	

Monitoring Questions

- 3) A. Are the terms and conditions of the easement deed being met?
 (e.g. no encroachment, dumping, unauthorized uses, etc.) YES NO

Select observed unauthorized uses (if applicable)

<input type="checkbox"/> Mining (includes peat/gravel)	<input type="checkbox"/> Aquaculture	<input type="checkbox"/> Commercial Seed Production	<input type="checkbox"/> Dumping
<input type="checkbox"/> Cropping	<input type="checkbox"/> Impervious Surfaces	<input type="checkbox"/> Hydrology alteration	<input type="checkbox"/> Burning
<input type="checkbox"/> Infrastructure Projects (phone gas etc.)	<input type="checkbox"/> Illegal Activities	<input type="checkbox"/> Energy Production	<input type="checkbox"/> Grazing
<input type="checkbox"/> Encroachment	<input type="checkbox"/> Structures	<input type="checkbox"/> Haying/Mowing	<input type="checkbox"/> Trails
<input type="checkbox"/> Installation/Maintenance of Acceptable Structures	<input type="checkbox"/> Timber Harvest/Cutting	<input type="checkbox"/> Pest Management	<input type="checkbox"/> Food Plots
<input type="checkbox"/> Maintenance of Private Drainage	<input type="checkbox"/> Carbon Sequestration Activities	<input type="checkbox"/> Parked Equipment	<input type="checkbox"/> Road
<input type="checkbox"/> Unauthorized Easement Subdivision	<input type="checkbox"/> Tree/Shrub	<input type="checkbox"/> Livestock	<input type="checkbox"/> Other

List the "other" items (if applicable)

- B. Can unauthorized uses be resolved with a Compatible Use Authorization?
 (Not applicable to GRP and FRPP) YES NO

If applicable, indicate which unauthorized uses can be resolved with a CUA

If the unauthorized use will not be resolved with a CUA list the applicable action items

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- 4) Is there evidence or knowledge of a spill or release of hazardous substances, petroleum products, or other potential environmental hazards on the property that need to be addressed? (Excluding the year an Ownership Review was performed)

YES NO

If yes, describe and indicate the location(s) on a property/site map. Consult with all appropriate administrative, technical and legal staff to take required action(s).

List required action items (if applicable)

- 5) A. Select current Compatible Use Authorizations (Not applicable to GRP and FRPP)

<input type="checkbox"/> Maintenance of Private Drainage	<input type="checkbox"/> Carbon Sequestration Activities	<input type="checkbox"/> Haying/Mowing	<input type="checkbox"/> Trails
<input type="checkbox"/> Management/Maintenance Activities	<input type="checkbox"/> Food Plots	<input type="checkbox"/> Timber Harvest	<input type="checkbox"/> Grazing
<input type="checkbox"/> Installation/Maintenance of Acceptable Structures	<input type="checkbox"/> Pest Management	<input type="checkbox"/> Developed Hunting/Fishing	<input type="checkbox"/> Other

List the "other" items (if applicable)

- B. Are Compatible Use Authorizations being followed?

YES NO N/A

List action items

- 6) A. Is the easement accessible by the legally described route? YES NO

List action items

- B. Is the easement accessible by an alternative route? YES NO

List action items

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- 7) A. Is the boundary clearly marked and identifiable? YES NO

If no, choose at least one item below

<input type="checkbox"/> Boundary not marked	<input type="checkbox"/> Corner/ high risk posts missing	<input type="checkbox"/> One to several low risk posts missing
<input type="checkbox"/> Other		

list the "other" condition (if applicable)

Are actions needed? YES NO

List action items

- 8) Are the objectives of the management plan being met (e.g. grazing plans, WRPO, conservation plan etc.)? (Not applicable to FRPP) YES NO

List action items

- 9) Are installed practices being properly operated and maintained (e.g. in accordance with job sheets, O&M plans, etc.)? (Not applicable to FRPP) YES NO N/A

List action items

- 10) Have planned restoration or enhancement objectives been met? (Not applicable to FRPP)

YES NO N/A

List action items

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- 11) A. Are threatened or endangered species present on or proximal to this land?

(Not applicable to FRPP) YES NO

If yes, are identified habitat elements being provided to the extent possible?

YES NO

List action items

- B. Have the appropriate consultations occurred or NEPA documentation completed?

(e.g. FWS, State Specialist, etc)

YES NO list action items

- 12) Is acceptable hydrology present? (Not applicable to HFRP, GRP and FRPP)

YES NO N/A

List action items

- 13) Is acceptable vegetation present? YES NO (Not applicable to FRPP)

List action items

- 14) Are there noxious plant or pest species problems that need to be addressed?

(deed, State or local requirements)

YES NO

List action items

- 15) Are deed requirements being met for cultural resource protection? YES NO N/A

(Only answer for FRPP if cultural resources were the purpose of the enrollment)

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- 16) Are necessary water rights being maintained in accordance with the deed contract or other agreement requirement? YES NO N/A

List action items

- 17) Are there areas of concern?
(e.g. potential violation or encroachment, high risk activities on or adjacent to the easement area, conflicting landowner objectives, etc.) YES NO

List action items

- 18) Are there enhancements necessary to improve the site or other follow-up action items needed?
 YES NO

List action items

- 19) Are there landowner, partner or entity suggestions or comments? YES NO

If the answer is yes, list suggestions or comments

Additional Notes and Observations

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514.67 Violations

A. Preventing Violations and Enforcement Policy

- (1) The purpose of monitoring and enforcement activity is to prevent violations. The keys to successfully preventing violations are—
 - (i) A good relationship with the landowner. There is no substitute for frequent, direct interaction with the landowner to reinforce the provisions of the easement and answer questions that may arise.
 - (ii) An easement, contract, or RCSA document with clear and enforceable conditions and restrictions.
 - (iii) A comprehensive WRPO including, as appropriate, CUAs, landowner management plans, and O&M plans that have been reviewed with and are understood by the landowner.
 - (iv) A history of regular, systematic, and well-documented monitoring occurrences or contract status reviews.
- (2) Communication with landowners is key to minimizing violations on land enrolled in WRP. Depending on the activity and the individuals involved, this communication may be by personal contact, letter, telephone, or through an intermediary.
 - (i) NRCS State offices should consider developing newsletters or other regular means of communication with WRP landowners to facilitate an understanding of wetland and wildlife benefits resulting from their enrollment in the program.
 - (ii) When discussing easement, contract, or agreement requirements, this communication must be concise and frank in relation to what is permitted on the enrolled area.
- (3) NRCS personnel who conduct site visits should review procedures for handling potentially violent situations prior to making personal contact with landowners or alleged trespassers to ensure the safety of all NRCS personnel and agents.
- (4) To enforce easements effectively and to detect and prosecute violations, it is necessary to collect and preserve information and to manage inspection records in a consistent manner. NRCS must have good inspection records and a record of conversations with the landowner to be able to reasonably determine how and why a violation occurred. An accurate, well-documented record is essential and will be far more important in court than what may be recalled for personal testimony.
- (5) The terms and conditions of the easement deed, 30-year contract, and RCSA should be discussed with the landowner prior to recording the easement or executing the contract or agreement. If the property is transferred, it should be reviewed as soon as possible with the new landowners. (see Subpart J, "Exhibits," for sample letter to new landowner).

B. General

- (1) The State Program Manager will report all suspected violations immediately to the National WRP Manager and local Office of General Counsel (OGC) representative. The suspected violation and the eventual disposition of the violation should be documented in the official case file. Schedule an onsite visit immediately when a potential violation has been reported to NRCS or noted from monitoring activities. The purpose of the visit will be to confirm if a violation actually exists.
- (2) Visits to the easement area and such observations as wildlife usage, water conditions, land use practices, and other items of interest concerning the easement must be thoroughly documented. Documentation will include photographs of the potential violation. The individual making the report should date and sign each entry on each item of documentation. Reports documenting no evidence of violation are just as important as those reports confirming and documenting violations.

C. Handling Violations

- (1) When a violation of the easement or a CUA is confirmed, the landowner must be given reasonable notice and an opportunity to correct the violation voluntarily within 30 days of the date of the notice, or such additional time as the State Conservationist may allow. Depending on the severity of the violation, this initial notification may be in writing or may be made verbally by the local NRCS representative and documented to the file.

For example, upon finding unauthorized cattle on the easement, the NRCS representative may verbally tell the landowner to remove the cattle within 24 hours. A follow-up site visit must be conducted the next day to determine if the violation has been cured, and the results must be carefully documented.

- (2) If a violation is not cured as a result of a verbal notification to the landowner or if verbal notification is not appropriate for the situation, written notice is required.
 - (i) The State Conservationist must notify the EPD Director, who must notify the Deputy Chief for Easements and Landscape Planning and send the written notice to the landowner by certified, return receipt mail (see Subpart J, "Exhibits," for a sample easement violation notification letter). **OGC should review the draft notice prior to sending it to the landowner to ensure that NRCS is not compromising its enforcement position.** The returned receipt card must be kept in the official enrollment file.
 - (ii) Prior to and immediately following the response deadline, an onsite visit must be made to determine if the landowner has complied with the correction notice, and observations must be carefully documented in the case file.

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- (3) When a possible violation is found by remote sensing or otherwise, an onsite inspection is necessary. Before making the onsite inspection, the following material should be assembled:
- (i) Case file, which includes all permits, plans, and correspondence
 - (ii) Copy of pertinent material from the official State office file
 - (iii) "Easement Violation Worksheet" to record findings (see Subpart J, "Exhibits," for the "Easement Violation Worksheet")
 - (iv) Map noting location of possible violation
 - (v) Camera, video equipment, or digital camera to record the condition of the site. Photographs should be taken as soon as possible when significant changes (such as land use, new drainage facilities, or possible violations of the easement) occur.
 - (vi) The State Conservationist must contact the landowner by certified, return receipt letter or telephone call to schedule a date to visit the site. The returned receipt card or documentation of the telephone call must be kept in the official enrollment file.
- (4) When a violation has occurred, it is **extremely important** that the State Conservationist contact the local OGC representative for—
- (i) Advice on the contents of the landowner violation notification letter, including appropriate "cease and desist" language.
 - (ii) NRCS violation documentation requirements.
 - (iii) Enforcement proceedings strategy.

D. Information to Collect During Possible Violation Site Visit

During the site visit, document the following information:

- (i) The names and affiliation of individuals involved in the inspection, including the landowner if appropriate
- (ii) Location of the potential violation
- (iii) A complete set of notes about the violation, including—
 - Size, extent, and location of the possible violation
 - Grass, forbs, tree, and shrub species in the area
 - The type of restoration completed, if appropriate
 - Quantification of impacts, such as loss of wildlife species, disturbed nests, removed or destroyed posts, amount and effect of grazing, etc.
 - Any other activities or pertinent site conditions
- (iv) Compile photographic documentation of all aspects of the possible violation, including—
 - Photographs, slides, videos, or digital photos from various directions that capture the alleged violation, such as haying, mowing, grazing, cultivation, dumping, or encroachment, and the extent
 - The most serious aspects of the alleged violation
 - Potentially controversial areas concerning compliance. Show the general nature of the surrounding easement area so adequate compliance is easier to achieve
 - Mark on a map the points from which photographs were taken, and label all pertinent data on the photographic coverage
- (v) Collect GPS points of the violation and photo point locations
- (vi) Delineate the location of the violation on a current map

E. Unique Situations

- (1) NRCS recognizes that certain impairments may be beyond the control of the fee landowner or others with an interest in the subject land. For **example**, if a beaver dam on the easement area causes water to back onto an adjacent landowner's property, the dam may need to be removed or otherwise modified so that the rights of the adjacent landowner are not adversely impacted.
- (2) NRCS may, to the extent possible, work with adjacent landowners and the fee title landowner to facilitate actions to address specific problems. However, NRCS has no legal obligation to remedy the problem. 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
 - (ii) Providing the fee title landowner with permission to have the adjacent landowner or another party enter the easement or agreement area to take specific actions
 - (iii) NRCS may take action on the easement area to address the problem
 - (iv) NRCS may offer to purchase a WRP easement on the adjacent landowner's property
- (3) The party performing the corrective action must follow recommendations and direction prescribed by NRCS. This policy does not provide authority to perform corrective actions, such as maintenance or drainage improvements, outside the easement area.

514.68 Enforcement

- A. All actions taken once a violation has been identified must be conducted with the guidance and ongoing participation of the local OGC attorney and NHQ.
- B. Pre-contact Preparation
 - (1) Verify current fee title land ownership and if applicable, tenancy. Verification can be accomplished using courthouse records, FSA records, etc.

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(2) Review and become completely familiar with the case file in preparation for an interview with the landowner or tenant.

Note: It is important to thoroughly document all easement files. All previous violations and resolution measures should be reviewed. Particular attention should be paid to prior contacts with the landowner and the landowner's reactions to NRCS activities on the easement area. Prior confrontations and unusual reactions of the landowner, if any, should be noted.

C. Landowner or Tenant Contact

(1) Interview Phase.—The interview must involve two NRCS employees who have both received training in handling potentially volatile situations. This phase of the investigation could determine the success in resolving any dispute.

(i) Identify yourself and the assisting employee, and state that you represent the United States Department of Agriculture's Natural Resources Conservation Service. The individual must know that it is a Federal employee who is meeting with them. This may be extremely important if the interview results in an NRCS employee being assaulted.

(ii) Establish the identity of the individual to be interviewed. Initially, this may be the landowner or tenant. Obtain the individual's address.

(iii) Identify the manager of the land in question.

(iv) Try to establish who is responsible for the activity that is considered a violation. It may also be possible to establish who ordered the activity, and whether it was done by an alleged violator's employee or through contract.

(v) Identify all persons involved and conduct an interview with each, as necessary.

(vi) Share photos and location maps of the violation. Do not take the case file to the meeting. The whole file is not open for viewing by the landowner, operator, or the general public. Only USDA, NRCS, and OGC officials are permitted to have access to the file.

(vii) If, at any point during the conversation, issues arise that may confuse the issues surrounding the case, it is best to tell the individual that you will contact them after completing your investigation. Contact the local OGC for a legal opinion, before you make any demands. NRCS personnel should withdraw from any situation that becomes hostile.

(2) Post-interview Procedures.—As soon as NRCS employees have departed from the subject's location, thoroughly document all evidence obtained during the interview. Important evidence may be lost if trusted only to memory. Considerable time can pass between the interview and the time when the information may be needed in court.

(i) Prepare the "Easement Violation Worksheet," completing the elements that apply.

(ii) Prepare a memo to the file.

Include the name and address and a complete description of the subject.

Include a reference to the tract of land covered by easement.

You may include factual observations regarding the demeanor of the subject, but do not use derogatory statements.

More importantly, make reference to direct quotes the subject made, either spontaneously or in response to specific questions.

(3) Compliance Requirements and Restitution.—After the interview, NRCS must decide what must be done to restore or remediate the damage to the easement. This may require consultation with various NRCS professionals and OGC. Serious violations may be referred to the Assistant U.S. Attorney's Office (AUSA) after consultation with OGC. After NRCS decides how to remediate the damage to the easement, notify the landowner, operator, or both by certified letter that remediation is required. Request assistance from OGC to review the letter prior to sending it.

(i) In the letter, reiterate what was told to the subject during the interview.

(ii) Clearly state the compliance terms and the compliance deadline.

(iii) Attach a map indicating the locations and work required for compliance.

(iv) The letter must be sent certified, with return receipt requested and restricted delivery. The stamped receipt is the only evidence that will indicate in court that the subject received the letter.

(v) Inform the subject that if compliance is not obtained, the case will be referred to OGC and AUSA for possible prosecution. In the initial letter, it may be preferable to avoid mentioning prosecution in order to keep a positive tone to the communication. Followup letters should mention that prosecution could occur if remediation is not obtained.

(4) Landowner Notification of Violation.—In addition to officially notifying the landowner of the violation and the steps required to cure it, written notice to the landowner of the violation is an important part of the administrative record of the violation, which may be used later in court (see Subpart J, "Exhibits," for a sample violation notification letter).

(i) In a certified letter, return receipt requested, set forth the facts of the easement violation to the landowner and detail the remediation requirements and period to cure. Copy the local OGC attorney on the letter. Provide your contact information in case the landowner has any questions.

(ii) The letter should provide the guidelines for remediation. In the letter, request that the landowner call you when the work is completed.

For serious violations, require that an NRCS representative be present to ensure proper compliance. It is extremely difficult to get landowners to go back and complete a small amount of additional work once major work is completed.

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If an extended deadline has been granted, write the landowner as a reminder of the deadline.

Mitigating circumstances such as weather, high water levels, or illness should be taken into consideration and documented in the correspondence. Seeding the crop or other work excuses are not mitigating circumstances.

Explain in the letter to the landowner that noncompliance may result in a court appearance. The U.S. Attorney makes the decision whether to prosecute a case, so be careful not to make representations in this regard.

(5) Compliance Check

(i) Immediately following the expiration of the period to cure, it is essential to make a field check to ensure compliance. For example, in the case of cultivated, plowed, or destroyed grasslands, compliance will not be complete until reseeded grasses are established.

Reseeding by the landowner or operator is only a first step to being in compliance. NRCS must be prepared to tell the landowner or operator that they will be out of compliance until the grassland habitats have been reestablished. This may take several years and may require mowing of weeds (with prior authorization) or reseeded (with prior authorization).

(ii) After the NRCS determines that the easement area has been remediated, send a certified letter notifying the landowner. Mention that any future violations may be referred to the AUSA for possible action. (See Subpart J, "Exhibits," for a sample confirmation of remedied violation letter.)

(iii) In the event the subject does not comply, an attempt should be made to recontact the landowner. These efforts should be thoroughly documented in the case file. If efforts to obtain compliance are unsuccessful, the NRCS State office will notify OGC. NRCS, with OGC's assistance, will draft and send a certified letter to the landowner indicating noncompliance and that the case is now being referred to the AUSA through OGC. (See Subpart J, "Exhibits," for a sample notification letter of case submission to Department of Justice.)

(6) Judicial Process

(i) **Litigation Report.**—NRCS must prepare three copies of a litigation report when an easement violation is to be referred to the AUSA for possible legal action. The litigation report should contain the following:

The complete administrative record related to the violation and subsequent enforcement attempt by NRCS, including the following:

Correspondence, maps, photographs, or video of the site showing the violation

Testing results

Correspondence from the landowner or tenant

Any other relevant information

An index to the report for ease of reference

A summary of the facts, including a chronology of events

Agency names and contact numbers

The local NRCS representative starts the routing process by submitting one copy of the case report to the State office. The State office should then forward a copy to OGC.

(ii) **Personal Liability.**—The landowner receiving the cost-share payments is responsible for any losses the Federal Government sustains when the landowner does any of the following:

Infringes on the rights of others

Does not comply with applicable laws or regulations

Allows others to infringe on the rights of the Federal Government

(iii) **Recovering Costs.**—The United States or the Department is entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action. Legal action can take either or both of two forms:

Criminal prosecution of the person who violates the easement, Federal law, or regulation

Civil action to prevent further easement violation or to collect monetary damages

514.69 Other Considerations

A. Mitigation

(1) WRP easements, contracts, and agreements provide authority to protect, restore, enhance, and improve enrolled wetlands and associated uplands in a manner that will maximize wildlife habitat and other wetland functions and values. Because the program is fully funded, the assumption is that WRP lands will receive the conservation attention necessary to achieve this full degree of protection, restoration, enhancement, and improvement. It is not permissible to enter into WRP easements, contracts, or agreements and not implement, to the maximum extent practicable, all needed land treatment conservation actions.

(2) It is not appropriate to allow another entity to expend mitigation funds on any of the land treatment conservation actions that would be practicable to fund under WRP. This policy extends to any compensatory action taken by an entity to mitigate adverse ecological impacts, including but not limited to, the Clean Water Act of 1972, the Endangered Species Act of 1973, and the Marine Mammal Protection Act of 1972. Section 1222(f)(2) of the Food Security Act of 1985, as amended, does not allow wetlands restored with Federal funds to be utilized for the Food Security Act wetland mitigation purposes.

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Example WRP Easement Violation Worksheet

Processing of violations must be conducted in accordance with Wetlands Reserve Program (WRP) statute, regulations in 7 CFR Part 1467, and policy, as provided in Title 440, Conservation Program Manual, Part 514, Subpart G, Section 514.67. This worksheet provides a template for tracking and documenting the process of evaluating potential violations and followup actions. The actions in this worksheet are not all-inclusive; therefore, where a discrepancy exists between the WRP statute, regulation, and policy and this worksheet, the statute, regulations, and policy prevail.

Contract No.:	Violation No.:
Date of initiation:	Number of violations initiated on this date:
Description of possible violation:	
<p>Possible violations have been identified on this easement during recent monitoring. Immediately notify the State program manager responsible for WRP, who will review and assist in preparing any necessary documents and will coordinate with the regional OGC and the local office to ensure that proper violation procedures are followed. Assemble the required documentation in preparing for a site visit to determine if a violation exists, and provide copies of this information to the State program manager. Record and date all actions, correspondence, conversations, and notes on this tracking record. Proceed as instructed by the State program manager and the regional OGC.</p>	
<p>If you have determined that this potential violation is:</p> <p><input type="checkbox"/> Not a violation or</p> <p><input type="checkbox"/> Has already been corrected,</p> <p>then describe the conditions, and sign and date here. Return the form to the State office. No further action is required.</p>	
DC Signature:	Date:

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1. Documentation checklist (list of materials needed to proceed)

Description	✓
1.1. Easement contract folder, which includes all permits and correspondence	
1.2. Copy of monitoring worksheet	
1.3. Map, noting location of possible violation, and CD of existing digital pictures	
1.4. Digital camera and GPS unit	
Notes:	

2. Schedule Onsite Inspection

2.1. Prepare a letter for the State Conservationist's signature according to the scheduling letter template.	Date letter was sent to State office:
2.2. A copy of the certified, return-receipt letter will be filed in the State office's official WRP contract folder.	Date letter was sent to landowner:
Notes:	

3. Conduct onsite inspection

3.1. Date of inspection:	Time begun:	Time ended:
3.2. Persons present		
Name	Affiliation	

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3.3. Locate the possible violation
3.4. Make a complete set of notes about the potential violation.
3.4.1. Use a GPS in the area to determine size and extent and record the coordinates:
3.4.2. Grass, forb, tree, and shrub species in the possible violation area:
3.4.3. Photograph and describe the area of possible violation:
3.4.4. Loss of wildlife species, dead nesting hens, disturbed nests, removed or destroyed posts, amount and effect of grazing, etc:
3.4.5. Any other pertinent site conditions:
3.4.6. Comments of landowner or others present:

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4. For determining if a violation exists, the examples provided below detail activities that would be considered violations and those activities that could be permitted. In general, activities authorized by a compatible-use authorization, in the terms of the Warranty Easement Deed, or preexisting exceptions to the title that were determined acceptable, would be permitted activities if conducted in accordance with the authorizing documents. Any activities conducted by the landowner outside of their reserved rights in the Warranty Easement Deed, subject to rights title and interests conveyed to the United States, or outside of any specific acknowledgements or authorizations provided by NRCS would be considered a violation.

Certain Violations	Permitted Activities
Trash: garbage	Wildlife feeders, nesting structures, and bird and bat boxes
Equipment storage	Mowing of access routes and trails with a compatible use certificate; permanent vegetation is maintained
Unapproved cropping	Approved planting or harvesting of crops, as identified in the preacquisition crop harvest letter to the landowner or CUA <u>1/</u>
Unapproved alteration of vegetation or wetland hydrology <u>1/</u>	Approved alteration of vegetation and hydrology, as described in the Wetlands Restoration Plan of Operations or landowner-management guidelines and authorized in a CUA
Prohibited structures: Structures or buildings, temporary or permanent, that compromise maximizing wildlife habitat benefits or wetland values and functions are prohibited.	Acceptable structures include undeveloped recreational uses reserved under the warranty easement deed (including hunting equipment, such as tree stands and hunting blinds that are rustic and customary for the locale, as determined by NRCS); and platforms, walkways, and signage for the purpose of wildlife observation, hunting, education, and scientific research, when consistent with the long-term protection and enhancement of the wetland and other natural values and authorized by a CUA.
Removal of boundary markers <u>2/</u>	
Surface mining, including mining for peat or other organic materials	
Commercial seed production or harvest, commercial wild rice or cranberry production	
Development of road or another transportation system that fragments the easement, alters hydrology, or otherwise diminishes easement values	Maintenance of existing roads, as authorized by a CUA or in accordance with terms in the certificate of use and consent accepting an existing exception to title
<u>1/</u> Includes (but not limited to) such activities as creating roads, unvegetated trails, tree	

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planting, haying, grazing, burning, tree removal, recreational mowing, fish pond construction, etc.
<u>2/</u> Boundary markers that are missing that would be facing rivers and streams should not be considered a certain violation. These may have never been installed or may have been destroyed by a flood event. Reinstalling them would not be worthwhile due to a certain loss during a future flood event.

5. Determine if the violation may be NRCS's responsibility.

5.1. Mitigating Circumstance	Y/N
Condition was present when the easement was established.	
Verbal or written approval was given to landowner.	
Boundary markers were not placed properly, or were not placed at all.	
Other:	
Notes:	

5.2. If any of the mitigating circumstances are present, detail them here and attach supporting information.

6. Provide information gathered in steps 1-5 to State WRP program manager (who will work with regional OGC) to determine how best to proceed.

<p>6.1. If you believe that the violation is minor and may be resolved by an informal contact with the landowner:</p> <p>6.1.1. Send a letter to the landowner using the informal resolution letter template (514.108H) (preferred method) and document in the violation file.</p> <p align="center">OR</p> <p>6.1.2. Telephone the landowner to explain the violation and how to resolve it.</p> <p align="center">AND</p> <p>6.1.3. Revisit site following the response deadline, document resolution, or go to the formal violation process if unresolved.</p>	Date and Action Taken
6.2. If the violation is major and cannot or should not be resolved informally, proceed to the formal violation process.	

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Notes: [Record landowner response.]

7. Begin formal violation process

7.1. Prepare a letter for the State Conservationist's signature, according to the violation letter template (514.108I).	Date sent to State office:
7.2. A copy of the certified return receipt will be filed in the State Office's official WRP contract folder.	Date letter was sent to landowner:
Notes:	

8. Revisit site prior to and immediately following the response deadline to see if the landowner has complied with the correction notice.

8.1. If the landowner has complied : Prepare a letter for the State Conservationist's signature according to the compliance letter template (514.108J).	Date sent to State office:
8.1.1. A copy of the certified, return-receipt letter will be filed in the State office's official WRP contract folder.	Date letter was sent to landowner:
8.2. If the landowner has not complied : Prepare a letter for the State Conservationist's signature according to the noncompliance letter template(514.108K).	
8.2.1. A copy of the certified return receipt will be filed in the State office's official WRP contract folder.	Date letter was sent to landowner:

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Notes:

For State office use

Conclusions:	
Closed: _____ or Referred to OGC: _____	
Signed: _____	Date: _____

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United States Department of Agriculture



Natural Resources Conservation Service

SAMPLE EASEMENT VIOLATION INFORMAL RESOLUTION LETTER

CERTIFIED RETURN RECEIPT REQUESTED

[Date]

[Landowner Name]
[Street Address]
[City, State, ZIP Code]

Dear [Landowners]:

This letter is in reference to violation [number] of [number] total violations of WRP Contract Number [contract number].

A separate letter is being sent in reference to each violation.

During a recent visit to the Wetlands Reserve Program (WRP) easement area on your property, NRCS officials became aware that you have not been in compliance with the terms and conditions of the WRP Warranty Easement Deed. In particular, we found that [description of violation].

This violation can be corrected, and the situation resolved, by [description of resolution]. If you complete this correction by [acceptable resolution date, but no more than 5 days from now], we will cancel the formal violation process in this case.

We intend to work with you to resolve this violation as simply as possible. Please call me at [insert contact information] with any questions about the provisions of the Warranty Easement Deed, the nature of the violation, the necessary correction, or the timeframe that we have requested.

If you have not contacted me at [insert contact information] by [insert respond by date, no more than 5 days from now] to confirm that the violation has been corrected, we will initiate the formal violation process and will notify you of it.

Sincerely,

[Name of State WRP Program Manager]
State WRP Program Manager

cc: National WRP Manager
State Conservationist
Assistant State Conservationist, Field Operations
State WRP Manager

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IOWA INSTRUCTION 440-391 – WRP, EWRP, and EWPP EASEMENT VIOLATION RESOLUTION

United States Department of Agriculture



Natural Resources Conservation Service

SAMPLE EASEMENT VIOLATION NOTIFICATION LETTER

CERTIFIED RETURN RECEIPT REQUEST

[Date]

[Landowner's Name]
[Street Address]
[City, State, ZIP Code]

Dear [Landowners]:

This letter is in reference to violation [number] of [number] total violations of Wetlands Reserve Program (WRP) Contract Number __[contract number]__.

A separate letter is being sent in reference to each violation.

During a recent visit to the WRP easement area on your property, NRCS became aware that you have not been in compliance with the terms and conditions of the WRP Warranty Easement Deed (hereafter referred to as "easement deed"). In particular, we have discovered that [description of violation, *such as that recipient is in the process of installing culverts at two locations on the easement area without written authorization from NRCS, as required by parts III and IV of the easement deed*]. We have enclosed a copy of the easement deed for your reference. This action constitutes a violation under the provisions of the easement deed.

You are hereby notified that you must **cease and desist** any further activities related to the [description of reason for cease-and-desist order, *such as installing unauthorized culverts*]. Unless authorized in writing as a compatible use, the easement deed prohibits the [list relevant deed prohibitions, *such as altering or tampering with water control structures or devices; diverting, causing, or permitting the diversion of surface water into, within, or out of the easement area by any means. The easement deed also prohibits building or placing of buildings or structures on the easement area.*].

You are hereby notified that you must correct this violation within 30 days of the date of this notice. This corrective action is independent of any action you may need to take to resolve any potential violation of Federal or State wetland regulations or requirements. Please contact [insert contact information] to notify NRCS when the required corrective action for WRP purposes has been implemented.

If you fail to take corrective action within the time specified, NRCS may [action NRCS may take, *such as removing structures that are not in compliance with the terms and conditions of the easement deed*]. Should such action be taken, NRCS has the right to assess you any such expenses, including any legal or attorney fees incurred.

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**IOWA INSTRUCTION 440-391 – WRP, EWRP, and EWPP EASEMENT
VIOLATION RESOLUTION**

Sincerely,

[Insert name of State Conservationist]
NRCS State Conservationist

Attachments: Warranty Easement Deed

cc: Director, Easement Programs Division, Washington, DC
Office of General Counsel Regional Attorney
Assistant State Conservationist for Programs
Assistant State Conservationist for Field Operations
District Conservationist

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IOWA INSTRUCTION 440-391 – WRP, EWRP, and EWPP EASEMENT VIOLATION RESOLUTION

United States Department of Agriculture



Natural Resources Conservation Service

SAMPLE CONFIRMATION OF REMEDIED VIOLATION LETTER

CERTIFIED RETURN RECEIPT REQUESTED

[Date]

[Landowner's Name]
[Street Address]
[City, State, ZIP Code]

Dear [Landowners]:

This letter is in reference to violation [number] of [number] total violations of WRP Contract Number __[contract number]__.

A separate letter is being sent in reference to each violation.

On [Insert date], you were notified by certified letter of actions required to correct [Describe violation], which was a violation under the provisions of the Wetlands Reserve Program Warranty Easement Deed (hereafter referred to as "easement deed") on your property.

Following the 30-day period in which you were allowed to correct this violation, we inspected the easement area. We found that you **have complied** with the required corrective action and are no longer in violation of the terms and conditions of the easement deed.

This letter confirms that you are in compliance with the terms and conditions of the easement deed in reference to this particular violation only. It does not declare compliance or failure to comply with regard to any other violations that may be pending on your property.

Sincerely,

[Insert name of State Conservationist]
NRCS State Conservationist

cc: Director, Easement Programs Division, Washington, DC
Office of General Counsel Regional Attorney
Assistant State Conservationist for Programs
Assistant State Conservationist for Field Operations
District Conservationist

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IOWA INSTRUCTION 440-391 – WRP, EWRP, and EWPP EASEMENT VIOLATION RESOLUTION

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Natural Resources Conservation Service

SAMPLE EASEMENT VIOLATION NONCOMPLIANCE LETTER

CERTIFIED RETURN RECEIPT REQUESTED

[Date]

[Landowner's Name]
[Street Address]
[City, State, ZIP Code]

Dear [names of landowner or landowners]:

This letter is in reference to violation [number] of [number] total violations of WRP Contract Number __[contract number]__.

A separate letter is being sent in reference to each violation.

On [insert date], you were notified by certified letter of actions required to correct [violation], which was a violation under the provisions of the Wetlands Reserve Program (WRP) Warranty Easement Deed (hereafter referred to as "easement deed") on your property.

Following the 30-day period in which you were allowed to correct this violation, we inspected the easement area. Our finding is that you **have not complied** with the required corrective action and remain in violation of the terms and conditions of the easement deed.

NRCS will [describe action to be taken – to be developed in consultation with OGC], which will be completed with the Office of General Counsel's review and assistance.

Sincerely,

[Insert name of State Conservationist]
NRCS State Conservationist

cc: Director, Easement Programs Division, Washington, DC
Office of General Counsel Regional Attorney
Assistant State Conservationist for Programs
Assistant State Conservationist for Field Operations
District Conservationist

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