

NON-COMPLIANCE / VIOLATION PROCEDURES

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A. PROCEDURAL OVERVIEW

A.1 Definitions

For administrative purposes, the following terminology will be used to describe failure of the landowner to carry out required provisions of the conservation easement.

Non-Compliance

Failure of the grantor (landowner) to carry out the provisions of the conservation easement.

Corrective Actions Transmittal

This form notifies the landowner that the Soil and Water Conservation District (SWCD) has determined that the landowner is not in compliance with the terms of the conservation easement and what actions are required to return to compliance status.

Violation

Failure of a landowner who is in a non-compliance status to implement corrective actions as required by the SWCD within the timelines identified on the Corrective Actions Transmittal.

Corrective Action Plan

This form is used to document the status of the non-compliance determination. If the status indicates that the landowner is not in compliance or they did not respond to the Corrective Actions Transmittal, the non-compliance is now considered a violation. Actions to resolve the violations are listed. In addition, this form is used by the SWCD to certify that the landowner has failed to acknowledge and/or implement the corrective actions within the required timelines.

A.2 SWCD Jurisdictional Areas

SWCDs will be involved in resolving all types of easement non-compliance issues with landowners. In certain types of issues the district will have primary responsibility to resolve problems, in others the district will play a support role. *The SWCD has primary responsibility to resolve the following non-compliant conditions where the landowner has:*

- ❖ failed to allow the State or its agent access to the easement area to inspect and enforce the easement;
- ❖ failed to establish or maintain vegetative cover and/or structures specified in the Conservation Plan (as referenced in the recorded conservation easement);
- ❖ caused or allowed unauthorized alteration of the easement area;
- ❖ produced agricultural crops;
- ❖ employed timber stand improvement measures, except where allowed by the conservation plan;
- ❖ failed to restore the easement area after lawful repair or improvement to a public drainage system;
- ❖ placed unauthorized materials, substances, objects or constructed unauthorized structures in the easement area;
- ❖ appropriated, drained or diverted water from a wetland on the easement area; or
- ❖ cropped, grazed or altered wildlife habitat, natural features or vegetative cover without prior written approval from the state;

- ❖ additional responsibilities as assigned by the state.

A.3 Other Governmental Units Jurisdictional Areas

For the following types of non-compliance, another unit of government has a process in place to deal with the issue. The SWCD is expected to provide information and assistance to the responsible unit of government to resolve the non-compliant conditions when a landowner has:

- ❖ failed to control noxious weeds (county, township, city or MN Dept. of Agriculture has jurisdiction);
- ❖ failed to conduct emergency control of pests necessary to protect the public health (county, township, city, or MN Dept. of Health has jurisdiction); or
- ❖ failed to pay taxes and assessments levied against the easement area (county has jurisdiction).

B. NON-COMPLIANCE DETERMINATIONS AND RESOLUTION

Non-compliance situations may come to light in several ways including complaints, rumors, eyewitness reports, site investigations, and audits, to name a few. Most typically the SWCD is in the best position to learn of non-compliance and to resolve these situations quickly. Whenever possible, resolve non-compliance issues informally. The following procedure is designed to provide a framework to work from if non-compliance issues cannot be informally resolved and to help districts to be thorough and reasonably uniform in conducting investigations.

B.1 SWCD Investigations

If initial investigation, including conversations with the landowner, turns up an obvious situation not in compliance with the conservation easement and the landowner(s) agrees to take immediate corrective action, document this decision and follow up to see that corrective actions were taken.

After learning of potential non-compliance, make sure to do the following:

- ❖ review applicable law and rule;
- ❖ review contents of conservation easement file, including a review of the easement language, conservation plan, and conservation plan map;
- ❖ do an on-site investigation, including taking photographs of easement area the Conservation Easement Site Inspection form must be completed as part of this investigation); and
- ❖ interview the landowner and/or other parties where appropriate.

Keep a log of dates, times and facts surrounding your investigation. This should become part of the landowner's conservation easement file. The Conservation Easement Site Inspection form should be the central document in the investigation. All subsequent documentation should be attached to this form. Remember that the purpose of the investigation is to verify the facts. Documentation is very important!

If the district finds that the investigation has revealed that the landowner is in compliance with the requirements of the conservation easement, you can document this decision and end your work. If the non-compliance issue is not obvious to the district person conducting the investigation, or if a landowner is not cooperative, it is suggested that the SWCD board make a more formal determination.

The BWSR board conservationist should be consulted for advice when needed.

B.2 SWCD Non-compliance Determination

Now that the facts have been gathered, the SWCD must make a determination whether a landowner is not in compliance with the conservation easement requirements. It is suggested that the SWCD board of supervisors be the decision-maker. Staff should present the information at a formal district board meeting for decision by the board of supervisors.

If the district board determines that the landowner is in compliance with the terms of the conservation easement and the conservation plan, then the case is closed. If the district board determines that a non-compliant condition exists, then a *Corrective Actions Transmittal* form must be completed and sent via registered mail to the landowner. Send a copy to the board conservationist. This form should be used to:

- ❖ reference the specific items that are not in compliance with the easement or the conservation plan;
- ❖ specify what the landowner must do to correct the situation; and,
- ❖ give deadlines for performance.

In cases where damage payments are warranted the landowner is also responsible for restoring the easement area at his or her own cost if permanent features have been altered.

The SWCD board must also determine whether the non-compliance makes the landowner liable to the State for double or treble damages as required in Minnesota Statutes Section 103F.515, Subd. 9., which states, in part:

"Subd. 9. Enforcement and damages. (a) A landowner who violates the term of a conservation easement or agreement under this section, or induces, assists, or allows another to do so, is liable to the state for treble damages if the trespass is willful, but liable for double damages only if the trespass is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater."

District staff should solicit landowner input when developing a *Corrective Action Plan*. It is important that the corrective action transmittal not be an absolute mandate because the landowner may have knowledge of certain conditions, or suggest actions to achieve the desired end results, which are somewhat different from what the district has proposed. This provides opportunity for negotiation between the district and the landowner. Deadlines for landowner performance should be practical and reasonable. For example, reseeding of vegetation should be required during the next upcoming recommended seeding period for the cover to be established; removal of unauthorized materials should be accomplished as soon as necessary equipment can access the area, etc. The district should allow up to 30 days for the landowner to respond and to negotiate. If there is any uncertainty on the part of the district board in making the determination, contact your BWSR board conservationist.

Once negotiations are completed the SWCD should complete the *Corrective Action Plan* portion of the form with the landowner, if possible, and obtain the landowner's signature. If a negotiated plan is not arrived at within the 30-day period, the district should complete the Corrective Action Plan, sign it and provide it to the landowner(s) requesting their concurrence and signature and the return of the form within 10 working days. Landowner compliance with the plan of action should be recorded in the district's conservation easement files. If the landowner fails to comply with the corrective actions identified they will be considered in violation of the terms of the easement.

C. VIOLATIONS PROCEDURE DETERMINATIONS AND RESOLUTION

Occasionally, the SWCD's best efforts to resolve non-compliance issues may not be successful. If the landowner(s) fails to respond refuses to sign and/or does not implement the required corrective action plan, the landowner(s) is considered in a "violations" status. The SWCD must work closely with the BWSR board conservationist to resolve all violations.

C.1 BWSR Board Conservationist (BC) Role

Up to this point the BC's role has been to advise the SWCD. With an unresolved violation, the BC becomes directly involved with the problem. The SWCD should review the file materials with the BC and accompany the BC on an on-site visit to the conservation easement area. The landowner should be invited to accompany them on the site. The BC may wish to consider inviting the BWSR Easement Programs Coordinator to participate in the on-site visit.

After the on-site visit the BC will decide to either uphold the SWCD's corrective action recommendations or recommend a different corrective action plan. If the BC recommends changing the SWCD's corrective action plan, the BC should coordinate this with the district and obtain a modified corrective action plan prior to communicating with the landowner. The BC will then communicate the required follow-up action to be taken by the landowner in writing via registered mail to the landowner(s). The BC will inform the landowner(s) that if the new plan (or the existing plan if no changes are recommended) is not agreed to within 10 working days from landowner receipt of the letter, then the violation will be forwarded via the BWSR to the State Attorney General (AG) to commence legal action to enforce the provisions of the conservation easement. A copy of this letter should be provided to the Conservation Easement Coordinator. If the landowner(s) agree to the new corrective action plan, it is the responsibility of the SWCD to monitor landowner implementation.

If the BC has not successfully resolved the violation, then the violation is referred to the BWSR Easement Programs Coordinator.

C.2 BWSR Easement Programs Coordinator Role

The BWSR Easement Programs Coordinator will refer easement violations to the BWSR Board along with a recommendation to commence legal action. Such recommendations shall be made through the Executive Director. All BWSR BCs will work through the Easement Programs Coordinator to seek Attorney General assistance.

C.3 Board Role

The Board shall consider all staff recommendations to commence legal action. If the Board determines that the recommendation is valid, it shall request the AG representative to commence legal action. The Board shall hear appeals from landowners consistent with Minn. Rules Subp. 8400.3930.

C.4 Attorney General Role

The Easement Programs Coordinator and/or BC shall brief the AG representative regularly on non-

compliance issues and solicit advice to resolve them.

The BC and/or the Easement Programs Coordinator shall brief the AG representative and share all file materials and evidence on an easement violation at the time a request to commence legal action is made. The AG representative may wish to communicate directly with the SWCD at this point to obtain additional information.

Upon request, the AG may commence legal action to resolve the violation as authorized in MRS 103F 515, Subd. 9 (b):

"(b) Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney's fees, and any other appropriate relief to enforce sections 103F.505 to 103F.531 in district court in the county where all or part of the violation is alleged to been committed, or where the landowner resides or has a principal place of business."

C.5 Monitoring Compliance with Court Orders

If a court order is obtained, the AG shall provide a copy of the order to the BWSR Easement Programs Coordinator. The Easement Programs Coordinator shall, in turn, provide a copy to the BC and the SWCD. It is the responsibility of the SWCD to notify the AG if any court order to correct the easement violation is not carried out.