



Opra for EPR version 3.91

Annex C • Opra Scheme for mining  
waste operations

April 2017

This document is out of date and was withdrawn on 1 March 2019.

**We are the Environment Agency. We protect and improve the environment and make it a better place for people and wildlife.**

**We operate at the place where environmental change has its greatest impact on people's lives. We reduce the risks to people and properties from flooding; make sure there is enough water for people and wildlife; protect and improve air, land and water quality and apply the environmental standards within which industry can operate.**

**Acting to reduce climate change and helping people and wildlife adapt to its consequences are at the heart of all that we do.**

**We cannot do this alone. We work closely with a wide range of partners including government, business, local authorities, other agencies, civil society groups and the communities we serve.**

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# 1. Introduction

This document has been written to allow you to work out your Operational Risk Appraisal (Opra) banded profile for permitted mining waste operations which have some activities that are the most complicated/highest risk (tier 3 operations). It will help you understand how your activities, and how well you manage them, affect your charges.

This annex will help you work out your Opra banded profile for a mining waste operation.

You should read this document in conjunction with the Environmental Permitting Regulations Operational Risk Appraisal Scheme (Opra for EPR) version 3.91 to which this document is an annex.

Information about what you should do if, at any time, you don't agree with your Opra score is detailed in the Environmental Permitting Regulations Operational Risk Appraisal Scheme (Opra for EPR) version 3.91 document.

## Related documents

Together the following documents all relate to our Opra scheme and the links to charges. The document you are currently reading is highlighted in **bold** below. There may be other documents in the list that may help you find the type of permit you need and to work out your Opra banded profile and related charges.

- Environmental Permitting Regulations Operations Risk Appraisal Scheme (Opra for EPR) version 3.91
  - Annex A Opra scheme for installations
    - How to complete an Opra spreadsheet for installations
  - Annex B Opra scheme for waste facilities
    - How to complete an Opra spreadsheet for waste facilities
  - **Annex C Opra scheme for mining waste operations**
    - How to complete an Opra spreadsheet for mining waste operations
  - Annex D Opra for permits with fixed charges
- Environmental Permitting Charging Scheme and Guidance 2014

All these documents are available by calling our general enquiry line on 03708 506 506

## 2. Complexity Attribute

### How to calculate your complexity attribute

For 2017/18 there are only two tier3 permitted activities in the mining waste sector. These operations are:

- A Category A mining waste facility;
- A mining waste facility involving the management of hazardous waste.

Both of these activities are in complexity band C.

The complexity is based on the activities included in your permit, irrespective of whether or not you carry out that activity. If you no longer carry out a process that contributes to the complexity attribute, you can only remove these elements from your profile by applying for, and being granted a variation or a part surrender of your permit.

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## 3. Emissions and Inputs Attribute

### How to calculate your emissions and inputs attribute

We have given a “default” emission and inputs attribute of band C to all mining waste facilities. This may change in the future once we have a better understanding of the mining waste sector.

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## 4. Location Attribute

### How to calculate your location attribute

Read the notes below and enter your answers into the spreadsheet.

You should discuss answers to all the sections in this attribute during pre-application discussions with your local Environment Agency contact.

### Proximity to human occupation

This takes account of the distance from the boundary of your site to the nearest public or private occupied building (house, school, office, hospital, nursing home etc). This also includes open spaces where people are regularly present (playing fields, allotments, parks).

You shouldn't include land that people rarely use, (farmland, and privately owned woodland) and buildings that only contain your employees as you have responsibilities towards them under health and safety legislation.

### Statutory nature conservation areas

If your mining waste operation is within a certain distance of important nature conservation areas, such as sites designated under the Habitats Directive and Countryside and Rights of Way Act 2000 (CRoW), then the impact of emissions on the conservation areas must be assessed during the determination of your permit.

Once we have determined your permit, if we find that your facility will have no adverse effect on the habitat or CRoW site, we will adjust your Opra profile to reflect this.

The location of conservation sites designated under the Habitats Directive and CRoW can be found on the Natural England and Natural Resources Wales websites.

For nature conservation areas to be "relevant" they must meet certain proximity criteria in relation to the proposed operation. If your installation requires assessment for both a Habitats site and a CRoW site, then select "Yes" for both Habitats and CRoW.

When submitting your first permit application, you must answer "Yes" to the questions in the Opra spreadsheet, if your installation meets the criteria outlined below.

Distances are measured from the mining waste operation boundary to the identified conservation site.

If don't meet any of the criteria for either the Habitats Directive or CRoW, then leave the answers to these blank.

	<b>Sites</b>	<b>Distance</b>
<b>CRoW</b>	Sites of Special Scientific Interest (SSSI)	1km
<b>Habitats Directive</b>	Ramsar Sites	1km
	Special Areas of Conservation (SAC)	
	Special Protection Areas (SPA)	
	Marine Protection Areas (MPA)	

There are a number of other nature conservation, heritage and landscape designations such as Scheduled Ancient Monuments, National Nature Reserves and Local Wildlife Sites. The proximity of these to your facility does not influence your Opra profile but we may consider them when permitting your facility.

Contact your local Agency officer if you require any information on the requirements of the Habitats Regulations or the CRoW Act.

If you vary your permit or the status of the designated site changes, this may impact on this element of your profile and we may adjust your Opra profile accordingly.

### **Groundwater/aquifers**

You can find if your site is in a Groundwater Protection Zone (GPZ) (also known as a Groundwater Source Protection Zone) or on an aquifer from our website on "[What's In Your Back Yard?](#)" You will need to score regardless of the zone number, even if it is a "Special Zone".

There are two types of aquifer designation; these are Superficial (drift) and Bedrock. You should look at both of these to determine if your site is on an aquifer. If your site is on "unproductive Strata" then you do not need to score.

### **Sensitivity of surface waters**

You need to consider any waters where there is any **potential** pathway for pollution, such as a dry ditch or drainage system that could transmit any spill to groundwater and/or surface water and how the water could be affected.

The way we classify sensitivity of receiving waters has changed with the introduction of the Water Framework Directive (WFD).

However, we will continue to use the General Quality Assessment (GQA) approach that Opra has used in previous years, using the last available data – for 2009.

If the boundary of your mining waste operation is within 10 metres of any receiving water, even if your drainage is an entirely closed system, you need to make an entry for the sensitivity of receiving waters.

You do not receive a score if your site meets the following criteria:

- Is over 10m from any receiving waters; and
- Is an entirely enclosed system or has all surface or foul water discharging to public sewer for sewage treatment.

We classify the sensitivity of receiving waters for GQA in terms of both chemical and biological water quality. We rate the water quality from A to E, where A represents the highest quality, and E the lowest.

When answering this question you should use the relevant water quality classification for your facility. If there is a score for both biological and chemical use the higher. To convert the letter based classification into numeric grades used within Opra:

Class A or estuarine/coastal = 1

Class B = 2

Class C = 3

Class D = 4

Class E or F = 5

Discharging to more than one watercourse?	Choose closest score, or if they are the same distance, use the more sensitive
Discharging to an unclassified stretch that joins a classified stretch within 1km?	Use sensitivity of classified stretch
Is the closest classified stretch over 1km away?	Use the score of 2
Is there any evidence to show the watercourse: <ul style="list-style-type: none"> <li>• Supporting salmonids, or having direct impact on waters covered by The Bathing Waters or Shellfish Directives?</li> <li>• Being a dry ditch?</li> </ul>	<ul style="list-style-type: none"> <li>• Score of 3</li> <li>• Score of 1</li> </ul>
Does the site discharge to a soakaway or land, rather than surface water?	Use the score of 1

You can find information on the quality of surface waters in the [What's In Your Backyard](#) pages on our web site or contacting your local Environment Agency office.

## Direct run-off

If your site has any surface water run-off to ground water and /or surface waters from mining waste operations, you need to indicate what treatment you have, or are planning, in your waste management plan.

## Flood Plain

See [What's In Your Back Yard](#) on our website to check if your mining waste operation or any mining waste deposits you are planning will be in a flood plain. Check the "Flood Risk" layer and enter your postcode. You should talk about answers to this section with your local officer during pre-application discussions.

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This document is out of date and was withdrawn on 1 March 2019.

# 5. Operator Performance (Management Systems) Attribute

## How to calculate your operator performance attribute

This attribute takes into account the following factors, which each have a table and related questions in the Opra spreadsheet titled Operator Performance. We will audit your management systems once a permit has been issued. Much of the information you need for this attribute may be in your waste management plan and you should refer to this.

### Management systems:

- Operations and maintenance
- Competence and training
- Emergency planning
- Organisation
- Enforcement history

For each of these tables you should add your own references to relevant documents in the final column. You should send us copies of any document you reference here with your application.

The responses you provide to the questions relates to your facility. If you have a corporate Environmental Management System (EMS) we need to ensure that the overarching EMS has been adopted into operating procedures at your installation.

If you are an Operator applying for a permit for the first time you may not have all the procedures in place that constitute an EMS.

We recognise that you may be in the process of producing your EMS at the application stage, with an expectation that the full procedures will be in place when the permit is determined. In these instances, you can answer where appropriate 'yes' where appropriate to some of the questions in the Operator Performance attribute of the profile.

Once the permit is determined, where you have claimed that you have elements of an EMS then these will need to be in place as they are likely be checked during the first site visit. If all claimed elements of the EMS are not in place then the Opra profile will be adjusted to reflect this and any breach of permit condition(s) recorded using the Compliance Classification Scheme.

If you have a permit for more than one facility and each is covered by an EMS the procedures that you have in place should relate to each individual facility.

ISO 9001 is not an environmental specific management system. Whilst you get credit for having ISO 9001 you will obtain more credit if you have an EMS in place.

If you have EMAS or ISO 14001, certified by an organisation accredited by the UK Accreditation Service (UKAS), then you need to supply details of:

- The certificate;
- The name of the certification body;
- The certification body's registration number with UKAS.

The period of five years applies to applications only. Once a permit has been issued then the time period for this question is reduced to two years.

"Environmental reports" refers to externally published reports for shareholders, etc. detailing progress against set environmental targets.

## Enforcement history

A record of environmental enforcement action at your site would indicate that we need to regulate your site more closely. The Opra banded profile of Operators who perform poorly will be altered. This may affect your charges.

**Table 4E Penalty points system for enforcement history**

Type of action	Points after 1 <sup>st</sup> event	Points after 2 <sup>nd</sup> event if not spent	Points after 3 <sup>rd</sup> event if not spent
<b>E1</b> Enforcement/ improvement/ works notice/compliance and restoration notice(s) in the same year for different events	-5	-10	-40
<b>E2</b> Formal caution/a fixed monetary penalty/enforcement undertaking(s) in a 3-year period for different events	-5	-10	
<b>E3</b> Suspension/ prohibition/ revocation notice/stop notice(s) in a 3-year period for different events	-10	-40	

<b>E4</b> Variable monetary penalty/conviction(s) in the last 5 years by the Environment Agency (under and legislation) or by HSE under COMAH or by local authority under part I or II of Environment Protection Act 1990	-15	-40	
<b>Other possible combinations of enforcement actions/points scores resulting from different time periods before compliance action classed as “spent” (see Appendix 1)</b>			
<b>Actions</b>	<b>Points</b>		
a) E1 plus E2	-10		
b) two E1s plus E2	-15		
c) E2 plus one E3	-15		
d) E1 plus E2 plus E3	-40		
e) two E1s plus E2 plus E3	-40		
f) E1 plus E3	-40		
g) two E1s plus E3	-40		
h) two E3s	-40		
i) two E2s plus E3	-40		
j) E4 plus any E1 or E2 or E3	-40		

The scoring systems under enforcement history reflect the timescales under the Rehabilitation of Offenders Act 1974 (see page 17). For Opra, the time to become 'spent' for notices issued by the COMAH competent authority is the same as if they were notices we had issued, for example a COMAH improvement notice would become spent after one year.

#### For the Opra penalty points system:

- Enforcement, improvement, works, compliance and restoration notices are considered spent after one year.
- Formal cautions, fixed monetary penalty and enforcement undertakings are considered spent after three years.
- Suspension, prohibition and revocation and stop notices are considered spent after three years.
- The period before convictions are considered spent is governed by the Rehabilitation of Offenders Act 1974 (see Appendix 1).
- Variable monetary penalties are considered spent after five years
- Multiple notices served at the same time, in relation to the same event, will count as one notice.
- Formal cautions which cover more than one offence committed at the same time,

or in relation to the same event, will count as one formal caution.

- The date of issue of a notice or formal caution will be taken into account when determining the number of notices or formal cautions received within any period.

We may need to escalate our enforcement action for a specific non-compliant event, for example issuing a suspension notice after an enforcement notice. There are two scenarios in these cases.

**Scenario A** – Where this occurs in the same calendar year

If an enforcement notice is followed by a suspension notice for the same event, only the suspension notice will count (minus 10 points).

**Scenario B** – It doesn't happen in the same calendar year

In year one, the enforcement notice counts (minus 5 points) and, in year two, the suspension notice counts (minus 10 points).

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# 6. Compliance Rating Attribute

## Determining your compliance rating band

Compliance rating identifies the risk arising from operating regulated facilities. It shows those operators and facilities who we would regard as higher risk and so need extra regulatory effort for compliance assessment

We calculate your compliance rating after your permit has been issued.

## Compliance Classification Scheme

We've adopted a standard approach to classify permit breaches known as the Compliance Classification Scheme (CCS). Compliance rating is based on the CCS events over the course of a calendar year (January to December). Non-compliances identified and recorded in 2016 are used to work out the compliance rating for 2017 Opra banded profiles and charges. In the first year after your permit is issued the compliance rating will be based on any non-compliances from when your permit is issued until 31 December.

### Management system assessment

Where we find a serious management system failure we will review the management system section of your Opra banded profile. This will happen if we find a failure that scores a CCS Category 1 or 2, or for repeated failures that score 3 or 4. We'll look at how effective your management system is as part of our compliance assessment.

### Converting CCS points into an Opra band

We convert permit breaches into a points system, and add the points from each event to give an annual total non compliance point. We allocate points based on the relative amount of additional work we usually have to do while dealing with different types of permit breach. For Category 1 breaches some of our costs are recovered through subsequent legal action, for example costs allocated following prosecution. We have taken this into account when we calculating the points score.

CCS category breach	CCS Points per breach
1	60
2	31
3	4
4	0.1

We total the points for each non-compliance over a calendar year and convert the annual total into an Opra band:

- Opra Band A: 0 CCS points

- Opra Band B: 0.1 - 10 CCS points
- Opra Band C: 10.1 - 30 CCS points
- Opra Band D: 30.1 - 60 CCS points
- Opra Band E: 60.1 - 149.9 CCS points
- Opra Band F: 150 + CCS points

### **How your compliance rating will affect your Opra band**

Your base Opra score will be reduced if you achieve a band A for your compliance rating. This reflects the reduction in risk posed by well-managed installations.

If you have an occasional minor breach of a permit condition we will not change your overall Opra risk score.

If you have experienced greater non-compliance and have a band higher than B, your basic Opra risk score will increase due to the additional workload we generally associate with higher compliance banding.

Details of the charge adjustment for each Opra band are included in the Environmental Permitting Charging Scheme Guidance.

### **Telling you about your compliance rating band and permit breaches**

We will:

- Tell you as soon as possible of any non-compliance and how we will classify this under the CCS. We will also tell you about any proposed enforcement action to deal with the breach;
- Give you the opportunity to clarify/discuss with an Environment Agency officer why we have awarded the event a specific CCS category;
- Tell you how to raise the matter with the Environment Agency officer's line manager if you aren't happy with the categorisation of a non-compliance. If you consider we haven't applied our published guidance on CCS, see who to contact on page 19;
- Tell you about all non-compliance events that we use to calculate your compliance rating attribute band.

### **If a permit is transferred between operators**

If you have a permit that has been transferred from a previous operator, the compliance rating for the previous operator will continue to apply to you. This is because the previous compliance record at a site continues to be a good indicator of the amount of regulatory effort we need to carry out.

If the previous compliance rating was band C, D, E or F, but we have strong evidence that you are very different to the old operator and the previous non-compliance issues have been dealt with, or can be quickly sorted out, we will reset the compliance rating band to band B.

If you have a permit which has been partially transferred to you, we will make a decision on a case by case basis as to which operator will receive the compliance rating associated with the pre-transfer permit. This will be based on our knowledge of the site and the operators concerned.

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## 7. Abbreviations

CCS	Compliance Classification Scheme
COMAH	Control of Major Accident Hazard Regulations
EMAS	Eco-Management and Audit Scheme
EMS	Environmental management system
EPR	Environmental Permitting Regulations 2010
GPZ	Groundwater protection zone
HSE	Health and Safety Executive
Opra	Operational Risk Appraisal
UKAS	UK Accreditation Service
SSSI	Site of Special Scientific Interest

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# Appendix - Rehabilitation of Offenders Guidance

## Relevant Offences for Operator Performance

Enactments for offences considered relevant for recording under the enforcement history element of the Operator Performance attribute are listed in the table below. The offences are specific to the permitted facility, i.e. only offences committed within the facility boundary are recorded. Relevant offences committed by any person operating within the facility boundary prior to permit issue will also be recorded. Operators with more than one permitted facility who are convicted of a relevant offence will only have this offence recorded against the Opra profile for the facility where the offence occurred.

- Control of Major Accident and Hazards Regulations 1999
- Environmental Permitting Regulations 2007 and 2013
- Environmental Protection Act 1990, section 33, 57(5), 59(5), 69(9), 70(4), 71(3) or 80(4)
  - Integrated pollution control waste management statutory nuisance
- Landfill (England and Wales) Regulations 2002, regulation 17(1)
- Pollution Prevention and Control (England and Wales) Regulations 2000
  - Integrated pollution prevention and control
- Water Resources Act 1990
  - Pollution of surface and groundwater
- Control of Major Accident and Hazards Regulations 1999
- Control of Pollution (Amendment) Act 1989: Section 1, 5 or 7(3)
- Customs and Excise Management Act 1979: Section 170 (for environmental/metal theft related offences only)
- Environment Act 1995: Section 110(2)
- Environmental Permitting Regulations 2007 & 2010: Regulation 38
- Environmental Protection Act 1990: Section 33 and 34
- Food and Environment Protection Act 1985: Section 9(1)
- Fraud Act 2006: Section 1 (for environmental/metal theft related offences only)
- Hazardous Waste (England and Wales) Regulations 2005
- Hazardous Waste (Wales) Regulations 2005
- Landfill (England and Wales) Regulations 2002: Regulation 17(1)
- Pollution Prevention and Control (England and Wales) Regulations 2000
- Proceeds of Crime Act 2002: Sections 329, 330, 331 & 332 (for environmental/metal theft related offences only)
- Producer Responsibility Obligations (Packaging Waste) Regulations 2007
- Scrap Metal Dealers Act 1964 (for environmental/metal theft related offences only)
- Theft Act 1968: Sections 1, 8, 9, 10, 11, 17, 18, 22 & 25 (for environmental/metal theft related offences only)
- Transfrontier Shipment of Waste Regulations 1994 & 2007
- Waste Electrical and Electronic Equipment Regulations 2006
- Waste (England and Wales) Regulations 2011: Regulation 42
- Water Resources Act 1991: Section 85, 202 or 206

## The Rehabilitation of Offenders Act 1974 Guidance

1. The Rehabilitation of Offenders Act 1974 allows an individual who has been convicted of a criminal offence and has not been sentenced to more than two and a half years in prison to become a rehabilitated person at the end of a rehabilitation period. This is provided they have not been convicted of an indictable offence during that period. At the end of this period, the conviction is treated as spent.
2. For the purposes of all of the relevant convictions tests, a rehabilitated person should be treated as a person who has not committed, been charged with, prosecuted for, convicted of, or sentenced for the offence or offences which are spent. Thus, such offences do not have to be disclosed on any application form nor do we have to consider them in any application.
3. The Rehabilitation of Offenders Act 1974 does not apply to corporate bodies, which includes companies. In considering relevant convictions against a corporate body, Government Circulars 11/91 and 11/94 and Waste Management Paper 4 all note that convictions cannot become spent and must be disclosed in applications. However, the Government has advised us to consider whether the conviction would have been spent had it been committed by an individual.

The rehabilitation periods commonly applicable to relevant convictions are indicated in the table below. This is only a summary and it should be noted that different periods apply to juveniles.

For the purposes of Opra, the time 'spent' for notices issued by the COMAH competent authority will be the same as if these were notices issued by the Environment Agency, for example COMAH improvement notice would become spent after one year.

<b>Commonly applicable rehabilitation periods</b>	
<b>Sentence</b>	<b>Rehabilitation period (from date of conviction)</b>
A sentence of prison or youth custody of more than 6 months and not exceeding 2½ years	10 years
A sentence of prison or youth custody of 6 months or less	7 years
Fine	5 years
Community Punishment Order	5 years
Community Rehabilitation Order	5 years
Conditional discharge	1 year, or until the order expires (whichever is longer)
Bound over	1 year, or until the order expires (whichever is longer)
Absolute discharge	6 months

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## Further information

All the Opra documents are available by calling our general enquiry line on 03708 506 506.

If you have any questions or comments on Opra, or suggestions as to how we could improve either the scheme or any of the supporting documents, please email us at [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk). call 03708 506 506 or write to us at:

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