



Consultation on assessing and scoring permit compliance

Summary of consultation responses and decisions

December 2018

We are the Environment Agency. We protect and improve the environment.

We help people and wildlife adapt to climate change and reduce its impacts, including flooding, drought, sea level rise and coastal erosion.

We improve the quality of our water, land and air by tackling pollution. We work with businesses to help them comply with environmental regulations. A healthy and diverse environment enhances people's lives and contributes to economic growth.

We can't do this alone. We work as part of the Defra group (Department for Environment, Food & Rural Affairs), with the rest of government, local councils, businesses, civil society groups and local communities to create a better place for people and wildlife.

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Foreword

The Environment Agency regulates a range of activities including:

- waste management
- industrial processes
- discharges of treated effluents to the water environment
- flood and coastal risk management
- fish passage
- radioactive substances

We regulate these under the Environmental Permitting (England and Wales) Regulations 2016 (EPR), which will also include water abstractions from April 2020.

We regulate activities which are considered to be higher risk under a permit, which can either have site specific (bespoke) conditions or standard rules.

We carry out periodic compliance assessments for all sites permitted under EPR to check that the operator is following the conditions of the permit. We categorise and score any permit non-compliances according to their level of actual or potential impact on people and the environment. We tell permit holders about the findings of a compliance assessment and also of actions they need to take to address any non-compliances.

This consultation set out proposed changes to how we assess and score permit compliance so that we carry it out in a way that is more consistent, clear and proportionate. It also explained how we use the findings of an assessment and what we record on the Compliance Assessment Report (CAR) form. The consultation described how we use scores from compliance assessments to generate annual subsistence charges for waste activities and installations.

The consultation was an opportunity for you to comment on how we could make revisions to how we assess and score permit compliance and see the new structure and layout.

Executive summary

In March 2013, the Environment Agency published the current Compliance Classification Scheme (CCS). We produced guidance for staff that describes how to assess, record and score permit compliance. CCS was developed as part of Operational risk appraisal (Opra), before the introduction of the Regulators' Code.

Last year we replaced Opra as part of our Strategic Review of Charges. But whilst the CCS methodology for assessing, recording and scoring permit compliance meets the requirements of the Regulators' Code, it could be better aligned.

In 2017 we ran some events for regulated businesses so they could review our current regulatory approaches. Using their feedback, we started work on a 5-year strategic programme we call Performance Based Regulation. This combines new and existing approaches to regulation into 4 strands:

- information-based regulation
- permit compliance
- incentive-based regulation
- behavioural interventions

This consultation described our proposals to update the CCS guidance which is the methodology we use to assess, categorise and score permit compliance. The changes we proposed in this consultation would allow us to take the first major step towards implementing Performance Based Regulation.

We sought views on potential changes to 2 of the main principles of the CCS guidance which relate to consolidation and suspension of scores. These changes could affect subsistence charges and so this is the primary reason for our consultation.

We also sought views on potential changes to our service level regarding the timeliness of providing the CAR form, and so this was another reason for our consultation.

We published the consultation on GOV.UK. It was an opportunity to share a potential new look format with regulated businesses. It has also simplified our guidance for staff. It includes a section on how we use the scores from permit compliance to generate the annual subsistence charges (waste activities and installations).

We proposed to introduce any changes, which could affect subsistence charges or our service level to customers from 1 January 2019, at the start of the compliance year. These changes would only affect subsistence charges for waste activities and installations from 2020.

This consultation was an opportunity for you to provide comments on the proposed changes to how we assess and score permit compliance.

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1. How we ran the consultation

The external consultation ran from 17 September 2018 until 29 October 2018. It asked 7 questions about the principles and layout of the guidance. We had 45 responses, which included 27 permitted site operators, 10 Trade Associations, 3 Non-Governmental Organisations and five that responded anonymously

The consultation was divided into 3 areas, which covered:

- the principles of the CCS guidance which we think should not change
- the principles of the CCS guidance and explanation of how we use compliance scores which we think should be amended or added to
- general considerations - including whether our revised guidance on how we use CCS to assess and score compliance is clear and easy to understand

2. Summary of responses to the consultation questions and our responses

This section summarises the responses to the consultation questions, our considerations and our decisions. Our overarching response is in section 3.

Question 1: To what extent do you agree that bringing these three areas together in the guidance will be helpful to understanding our regulatory approach?

Of the 45 respondents, 40 (88%) replied to the question; 7 replied 'strongly agree', 31 replied 'agree' and 2 replied 'neither agree nor disagree'. 28 respondents provided comments (irrespective of whether or not they had answered the question).

The majority agreed with the following proposals that bring the 3 areas of guidance together:

- 6 principles which explain how the Environment Agency assesses and scores permit compliance
- an explanation of the outcomes of a compliance assessment
- advice on how staff should use the findings of assessing permit compliance (including how this affects [subsistence charges](#) for waste activities and installations)

Additional comments included that it is difficult to navigate various bits of guidance so it would help to streamline and make it more transparent, which will make it easier to find all the information you need required to comply if it is all in one document. They hoped it would improve consistency and clarity with both staff and customers viewing the same guidance, allowing easier challenge on inconsistencies. However it must be implemented as written, we must not lose useful detail and we should provide training for operators and Environment Agency staff (including case study examples) so that everyone understands it.

Two respondents commented that we should focus our efforts on high risk sites.

Two respondents commented that it is important that we meet the 14 and 28 day CAR form timeframes and one respondent asked that we expand the guidance to cover Schedule 5 notification response timeframes. One respondent mentioned that the outcome and implications of an assessment should be communicated to the operator at the time.

Two respondents said that we should publish the underpinning risk assessment process and explain how it's used to calculate subsistence fees, as well as better explanation of how principle 3 (reasonably foreseeable impact) is applied. One respondent added that this principle should be made clearer and less subjective, they and others also asked for a simple and independent approach to enable operators to challenge the assessment or score.

One respondent who 'neither agreed nor disagreed' commented that it made sense to bring the three areas together but there wasn't enough information in the consultation to comment on whether the new guidance will be clear and effective.

One respondent noted that any link with Water Abstraction when it transfers to EPR should be managed.

Our response

Our overarching response is at the end of the questions. In relation to specific additional points raised in responses to this question:

We agree that continued staff training to ensure the guidance is implemented as written is important. We are proposing to take forward an updated package of measures which will be cascaded to all regulatory staff during 2019. This will include the topics raised by some respondents regarding CAR form timeliness and communication with the operator during an inspection.

Question 2: Do you agree with the proposed revisions to the way we would consolidate scores for ELVs?

Of the 45 respondents, 43 (95%) replied to the question and of those; 13 replied 'Strongly Agree', 25 replied 'agree', 3 replied 'neither agree nor disagree' and 2 replied 'strongly disagree'. 33 provided comments (irrespective of whether or not they had answered the question).

The majority strongly agreed or agreed with implementing the proposed revisions to how we consolidate scores for ELVs. Additional comments included that it was a very sensible, pragmatic, fair, forward thinking and proportionate approach and refreshing to see.

In the past, scoring multiple times has led to negative skewing of overall compliance and potentially indicates an artificially low compliance band. It will reduce the risk of operators being penalised simply for having more parameters specified on their permits. It will recognise that although a ELV exceedance may be repeated over a period of time the environmental impact and regulatory effort required may be no greater than for one exceedance.

One respondent offered feedback that some officers seek to score the same non-compliance under different activities and requested much clearer guidance. They disagreed with the approach that where permits only require annual monitoring this will be broken down and scored quarterly.

Another thought the implication was that the data will be assessed quarterly and for some older permits data assessment can vary from weekly to yearly and these could be disproportionately treated.

Another mentioned the quarterly period being an arbitrary frequency and asked if we had considered if could be extended to reduce the regulatory effort and burden on industry.

One respondent explained that the examples did not clearly explain how the non-compliances would work if notified in accordance with a Schedule 5 notice.

Another said the example for landfill was not correct as they also have another condition that says the same thing - so it's unclear whether the proposal would achieve the improvements.

Another suggested that there should be a clear approach from inspectors to not automatically assume that a breach is caused by an inadequate management system which often results in another breach.

One respondent said that any assessment should be a true reflection of the impact but that separate incidents should continue to be recorded in order to indicate the frequency of non-compliance.

Another mentioned that principle 5 should include some clarification on ongoing amenity non-compliance which can be repeated in different months over a year.

Another said that it was not clear why amenity non-compliances are not consolidated quarterly like ELVs.

Those that 'strongly disagreed' asked if we had developed a tool to assess cumulative impact. If there are more emissions greater than the allowed limit, then surely there is greater impact.

Three of the respondents that 'strongly agreed' also requested guidance for officers on cumulative impact.

One also asked for clarification on the term 'condition', especially in relation to Look up Table and Upper Tier failures.

One that 'agreed' asked for CAR forms to be received promptly and wanted us to include supporting text to explain how scores and cumulative impact is considered.

One that 'strongly disagreed' asked if there will be an incentive to comply with any other emission limit if they emit over one. And that if the root cause of each breach has to be investigated then it should mean more regulatory effort.

One thought that it would be unwise for us to consolidate ELV scores, or do anything which could reduce penalties. Especially while conventional oil and gas extraction remains such a controversial issue, or while the role of EU institutions in monitoring and enforcing environmental law is being re-negotiated or terminated. They made specific reference to reduced public trust and confidence in regulation, reduced clarity leading to greater infringement, reduced penalties leading to greater infringement, unfairness of consolidation in comparison to motoring offences and the effect of the cessation of EU involvement in UK environmental protection.

Our response

Our overarching response is at the end of the questions. In relation to specific additional points raised in responses to this question, we are proposing a package of training for our regulatory officers, we will include scoring under the sub-criteria on the CAR form.

In response to the comments regarding quarterly monitoring, this is an approach that has been in the existing guidance since it was published in 2013 and was not part of this consultation. This also applies to the comment relating to scoring the management system as that is part of Principle three: scoring the root cause.

In relation to comments regarding amenity breaches, they were not part of any proposed changes in this consultation, however we will review the comments in the event of any future changes.

Question 3: Do you agree that by offering the potential for suspended scores to continue beyond 6 months, that we are giving opportunity to address complex non-compliances?

Of the 45 respondents, 43 (96%) replied to this question, and of those, 37 agreed or strongly agreed, 4 disagreed or strongly disagreed, and 2 neither agreed nor disagreed. 37 respondents provided comments.

The majority of respondents supported the proposal to remove the 6 month limit on suspending scores. Many respondents supported the flexibility it offered, arguing that some requirements can take more than 6 months to implement.

Whilst there was a large majority of support for this proposal, there were also some words of caution. These included a warning that some operators may try and exploit it by dragging out the implementation of requirements. So we should assess each on its merits on a case by case basis and would need to robustly monitor progress throughout the agreed period. One respondent expressed concerns that this may lead to additional costs.

Questions were asked about our decision making process, and the need for industry experts to help decide whether or not to suspend for longer than 6 months.

Of those that disagreed with the proposal, one respondent raised specific concerns in relation to the onshore oil and gas sector, specifically operators of hydraulic fracturing activities.

One other respondent suggested it would be unfair to compliant operators. Another specifically objected to voluntary action plans being unavailable for poor performers.

There was concern that some operators may be confused by this provision, including what we mean by 'complex non-compliances'.

Our response

Our overarching response is at the end of the questions. In relation to specific additional points raised in responses to this question:

Suspending scores should not be seen as escaping punishment - the operator will be scored when the first breach or breaches are identified. If they're serious enough, then this would result in the operator's compliance band becoming D, E or F.

We only suspend scores after we've agreed steps that must be taken and have set deadlines. If the operator then fails to do what is required, and the notice or action plan is not complied with, the scores will be reinstated. The scores will be taken into account when we calculate the operator's compliance band and charges (for waste and installations).

However, we appreciate that suspending scores when a permit holder is following an agreed plan or enforcement notice will result in an improvement in their compliance band. This could mean that their subsistence charge does not reflect the cost of the regulatory effort that has been incurred. In the case of score suspension over 2 compliance years, then the site is likely to be in compliance band A in the second compliance year.

Question 4: Do you agree that creating an additional principle to explain the categories of non-compliance will be clearer?

Of the 45 respondents, 42 (93%) replied to this question, and of those, 38 agreed or strongly agreed, 2 disagreed or strongly disagreed, and 2 neither agreed nor disagreed. 36 provided comments.

Most respondents supported this proposal, and welcomed improvements to clarity and transparency. Several respondents suggested we include examples or case studies to

help bring it to life. One respondent asked that the examples include our assessment of root cause.

There were concerns about 2 points in the consultation document - how we assess 'cumulative impact' and 'reasonably foreseeable' impact, and our interpretation of 'significant' and 'major' impact. Some respondents said we should consult further on these principles because of the potential for subjectivity and inconsistency.

Our response

Our overarching response is at the end of the questions. In relation to specific additional points raised in responses to this question:

We acknowledge the feedback that some of our assessments are open to interpretation. However, our officers will now have clearer guidance to help them arrive at a particular categorisation. , and 'Reasonably foreseeable' is a well-tested and clearly defined legal concept, which we apply in these circumstances.

We are bound by the Regulators Code so our regulatory decisions can be challenged. If an operator believes our interpretation about the impact of a particular breach is incorrect or inconsistent with the guidance, they can appeal our decision.

Question 5: Do you agree with the proposed extension to 28 days to share the CAR form following the assessment of periodic reports containing monitoring data, information or analysis?

Of the 45 respondents, 42 (93%) replied to this question, and of those, 27 agreed or strongly agreed, 4 disagreed or strongly disagreed, and 11 neither agreed nor disagreed. 31 respondents provided comments.

Most respondents supported our proposal for the extension to 28 days to share the CAR form following assessment of periodic reports containing monitoring data, information or analysis.

Many respondents recognised that it would 'enable the Environment Agency to better prioritise and manage their workload'. Others remarked that it would 'enable more complex cases or detailed reports to be suitably assessed'.

There were also words of caution from respondents, with a large number of these relating to the current performance of the Environment Agency when producing and delivering CAR forms to operators. That there were concerns that the Environment Agency does not have the resources to meet existing deadlines, and that we should follow the timescales in the regulator's guidance.

There were also calls for us to become more transparent about our performance reporting. There should be a clearer and more effective way to contest CCS scores.

Those that disagreed with the proposal all raised concerns about lengthening the time for feedback on non-compliances - 'that in order to ensure prompt closure of any non-conformances, operators would want to see the CAR reports soon as possible'.

Our response

Our overarching response is at the end of the questions. In relation to specific additional points raised in responses to this question:

We agree that the guidance and timescales should be adhered to by both the operator and the regulator. Not only to ensure that operators' gain timely feedback to assist, but as a regulator we are working in-line with the Regulators' Code. We will explore the reasons why it may take longer and are proposing a further package of training for staff, to ensure the guidance is implemented as written. This will include the topics raised by some respondents about CAR form timeliness and communication with the operator during an inspection.

Question 6: Do you agree that it's helpful to explain the results of a compliance assessment and how we use this data and information, as well as the link to charges to this guidance?

Of the 45 respondents, 42 (93%) replied to this question, and of those, 29 agreed or strongly agreed, 3 neither agreed nor disagreed. 29 provided comments.

The majority of respondents supported bringing information into this guidance to create a better link between our compliance assessments and the subsistence fee. No respondents disagreed to the proposal.

Respondents welcomed greater transparency. Having the guidance in one place with the links to charges would be helpful.

That increased transparency would allow operators to see where the increased regulatory effort is required by the Environment Agency. Explaining the results of a compliance assessment and the links to charges is helpful.

One respondent said that a clearer explanation of the link between charging and compliance would reinforce the message that compliant sites are cheaper to operate.

There were some comments that the incentives for sites in compliance bands A and B were not great enough and that currently there is 'too much stick and not enough carrot'.

Our response

Our overarching response is the end of the questions. In relation to specific additional points raised in responses to this question:

We acknowledge respondents views that there are insufficient incentives for good compliance. This is something which we plan to review under our proposals for Performance Based Regulation where we'll explore how we can better incentivise, recognise and reward sustained high performing sites in the future. This work is in its early stages and will be developed over the coming years.

Question 7: we really value your feedback on our proposals. Please tell us if you have any further comments and provide as much information as possible to support your answer.

Of the 45 respondents, 33 (73%) replied to this question with further comments.

Respondents summarised that they thought the proposals were a positive and sensible move which they supported.

Several respondents said that the consultation should have considered further changes and other principles. These covered several main areas:

- CAR Forms - guidance on frequency of inspection, consequences of not meeting the 14 day limit and standardising assessment across the Environment Agency

- further clarity in the guidance - reasonably foreseeable impact, scoring inadequate procedure and worked examples
- principle 4 - root cause scoring
- challenge procedures - suggest a simple, fully independent process
- incentives for compliant operators
- who the officer will speak to onsite if the Technically Competent Manager is not there
- weighting of the scores

Two respondents felt that we could do more in relation to landfill, such as with the multiple measures they have in a quarter and legacy permit conditions at closed landfills.

Others suggested consideration should be given to a classification scheme that acknowledges and reduces the need for reporting insignificant breaches.

Some respondents said we should be working on changing legislation to impose much stronger sanctions and fines on non-compliant and illegal sites, and doing more rigorous background checks on waste permit applications. High tonnage facilities receiving lots of complaints should be given a higher level of scrutiny.

One respondent commented that the consultation was not widely communicated and assumed existing knowledge. One respondent commented that our regulatory framework often falls short of being proportionate to the risk to the environment, it should be applied consistently and implemented by competent, well trained staff.

Water industry respondents asked for examples relative to the water, groundwater and discharge activities in the guidance and how the changes will affect the compliance element of the subsistence charge when it's applied to them.

One respondent highlighted the size of the current guidance and whether the proposed changes would lengthen it.

Our response

Our overarching response is at the end of the questions. In relation to specific additional points raised in responses to this question:

We acknowledge the responses that suggested additional changes for our consideration. We will try to address the comments about CAR forms and on site communication through regulatory officer training as mentioned in our response to previous questions.

The remaining comments relating to weighting of scores, principle 4 and incentives were not part of this consultation. However, as mentioned in our response to question 6, we will explore further changes as part of Performance Based Regulation, which will be developed over the coming years.

In response to the comments regarding challenge procedures, this is already set out on the back of the CAR form.

With regard to comments about legislation change to impose stronger sanctions and fines for non-compliant and illegal sites: Defra have run 2 consultations relevant to this - in [2015](#) they consulted on proposals to enhance enforcement powers at regulated facilities and in [2018](#) on proposals to tackle crime and poor performance in the waste sector. Both of these have resulted in additional powers for the Environment Agency to deal with non-compliant and illegal sites.

We acknowledge the feedback from one respondent regarding communication of the consultation. We will review communication of future consultations. However, we feel that the consultation was aimed at existing operators who should have a level of familiarity and understanding of the principles within the guidance.

3. Our overarching response

We thank all respondents for their time and contribution to this consultation.

In the longer-term, we want to move towards a common framework for regulating across all permitted sites. We're also keen to build on this common framework as we develop the principles of Performance Based Regulation.

However, in the short-term we've decided not to take forward the proposed changes to consolidating ELVs or suspending scores as outlined in this consultation. We have also decided not to change our service level regarding the timeliness of the CAR form - this will remain as 14 days. We have taken this decision to give us additional time to assess the impact of our guidance and the role it plays in enabling us to protect people and the environment.

We are fulfilling our commitment to streamline, simplify and publish our existing guidance for staff on GOV.UK, so that more people can access and understand it more easily.

During this consultation, we have reviewed our current approach to assessing permit compliance across regimes. Whilst in the future, we want to move towards a common regulatory framework for all permitted sites, we acknowledge that in the short term there is a need for some differences in our current approaches.

The streamlined and simplified guidance is an interim policy position. It applies to waste, installations (including intensive farming) and non-nuclear radioactive substances only. We're reviewing our interim policy positions for the other regimes and we'll publish any amendments where appropriate.

4. Next steps

We'll publish the streamlined and simplified guidance on GOV.UK in January 2019.

5. List of respondents

ConocoPhillips Teesside Operations
RPS
Cathedral Hygiene
National Farmers Union
Gamble Plant (Norfolk) Ltd
United Kingdom Without Incineration Network (UKWIN)
Amey Plc Ltd
FABRA UK
Western Power Distribution
UK Steel
Yorwaste Ltd
Yorkshire Water
ENVA Resource Management Limited
Biffa Waste Services Ltd
British Steel
Mineral Products Association
British Aggregates Association
Chemical Industries Association
Horizon Nuclear power
Southern Water Services Limited
CBI Minerals Group
SRCL Ltd
SMDSA
South West Water Ltd
Veolia Environmental Services UK PLC
Confederation of Paper Industries
GWP Consultants LLP
Ecclesfield Conservation and Local History Group
Anglian Water Services
EDF Energy
FCC Environment
Energy UK
Viridor Waste Management Ltd
National Grid Plc
Stobart Energy

The Renewable Energy Association
Environmental Services Association
Food and Drink Federation
Thames Water
United Kingdom Onshore Oil and Gas

Five did not provide a name.

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