

# Response form

## Consultation on assessing and scoring permit compliance

We welcome your views on our proposed changes. Please use this form if you are responding by email or post rather than online.

Please complete the questions and where there is a free text field, give as much information as possible to support your answer.

### How we will use your information

The Environment Agency will look to make all responses publicly available during and after the consultation, unless you have specifically requested that we keep your response confidential.

We will not publish names of individuals who respond.

We will also publish a summary of responses on our website in which we will publish the name of the organisation for those responses made on behalf of organisations.

In accordance with the Freedom of Information Act 2000, we may be required to publish your response to this consultation, but will not include any personal information. If you have requested your response to be kept confidential, we may still be required to provide a summary of it.

The Environment Agency is the data controller for the personal data you provide. For further information on how we deal with your personal data please see our Personal Information Charter on gov.uk (<https://www.gov.uk/government/organisations/environment-agency/about/personal-information-charter>) or contact our Data Protection team.

Address: Data Protection team, Environment Agency, Horizon House, Deanery Road, Bristol, BS1 5AH

Email: [dataprotection@environment-agency.gov.uk](mailto:dataprotection@environment-agency.gov.uk)

### Returning your response

The consultation will run for **6** weeks from 17th September to the 29th October 2018.

The closing date for responses is 29th October 2018. Any responses we receive after this date will not be included in the analysis.

We would like you to use this form if you are not submitting your response online. You can return it by email to [reg-interventions@environment-agency.gov.uk](mailto:reg-interventions@environment-agency.gov.uk) using the heading Compliance Consultation. Please use this email address if you have any questions regarding this consultation.

Or by post to:

Environment Agency, Ceres House, Searby Road, Lincoln, LN2 4DW

customer service line  
03708 506 506

incident hotline  
0800 80 70 60

floodline  
03459 88 11 88

## Section 1: About you

To help us analyse the responses we receive we'd like to understand more about you and type of business you own, operate or represent.

### 1. Please tell us if you are responding as an individual or on behalf of an organisation or group.

Please select one answer only from the following options:

- Responding as an individual
- Responding on behalf of an organisation or group
- Other

If you're responding on behalf of an organisation or group, please tell us who you are responding on behalf of.

\_\_The Renewable Energy Association\_\_\_\_\_

If you selected other, please specify.

\_\_\_\_\_

Other, please specify

### 2. Please tell us which sector you are a part of:

- Water Discharge Activities
- Groundwater Activities
- Installations (for example: Food & Drink, Paper & Pulp, and Intensive Farming)
- Waste Operations (including Landfill)
- Non-nuclear radioactive
- Other

If you selected other, please specify.

\_\_\_\_\_

### 3. Keeping up to date - Please tell us if you would like to:

The Environment Agency would like to keep you informed about the outcomes of the consultation. If you would like to receive an email acknowledging your response and be notified that the summary of responses has been published please give us your email address below.

By providing us with your email address you consent for us to email you about the consultation. We will keep your details until we have notified you of the response document publication.

We will not share your details with any other third party without your explicit consent unless required to by law.

You can withdraw your consent to receive these emails at any time by contacting us at: [reg-interventions@environment-agency.gov.uk](mailto:reg-interventions@environment-agency.gov.uk).

Your email address: \_\_\_\_\_jeremy@r-e-a.net\_\_\_\_\_

### 4. Can we publish your response? We will not publish any personal information or parts of your response that will reveal your identity.

Yes

No

If you do not want us to publish your response, you need to tell us why.

### 5. Please tell us how you found out about this consultation?

From the Environment Agency

From another organisation

Through an organisation/group/trade association you're a member of

Press article

Social media e.g. Facebook, Twitter

Through a meeting you attended

Other (please specify) \_\_\_\_\_

## Section 2: Your views

The revised guidance will include:

- six principles which explain how the Environment Agency assesses and scores permit compliance
- an explanation of the outcomes of a compliance assessment
- advice on how the outcomes of assessing permit compliance are used (including how this affects subsistence charges for waste activities and installations).

**6. To what extent do you agree that bringing these three areas together in the guidance will be helpful to understanding our regulatory approach? (Please select your answer)**

Strongly agree / Agree/ Neither agree nor disagree / Disagree / Strongly disagree

**Agree**

**Please provide further information to support your answer in the space below.**

The REA believes that the revised guidance should provide clarity to all operators as to how their scores are derived and what the possible outcomes are for them once they have been assessed. It is particularly important that sites are aware of the implications of the scoring to their annual subsistence charges. There needs to be greater emphasis on the day of the assessment to ensure that the site is aware of how they have performed in their assessment, too often they are left with the impression that all is well when in fact the actual outcome is very different from this.

The REA's members have commented that a one stop document would be very helpful rather than having a series of different documents to refer to. The current Gov.uk website is not easy to navigate so consolidated guidance is welcomed.

**7. The proposed amendments include changes to the principle of consolidation around Emission Limit Values (ELVs). Do you agree with the proposals to consolidate scores for ELVs?**

*(Please select your answer)*

Strongly agree / Agree/ Neither agree nor disagree / Disagree / Strongly disagree

**Strongly agree**

**Please provide further information to support your answer in the space below.**

*The REA agrees with the proposed revisions to the way in which scores for ELVs will be consolidated. It is important not to lose sight of the fact that the potential for environmental impact is the reason monitoring is carried out and that although there may be a repeated number of ELV exceedances over a period of time, the environmental impact may be no greater than one exceedance or that the regulatory effort is required to be any greater.*

**8. The proposed amendments include changes to the principle of suspension. Do you agree that by offering the potential for suspended scores to continue beyond six months, that we are giving operators greater opportunity to address complex non-compliances? (Please select your answer)**

Strongly agree / Agree/ Neither agree nor disagree / Disagree / Strongly disagree

**Strongly agree**

**Please provide further information to support your answer in the space below.**

*The REA believes that by providing the opportunity where required for the suspension period to be extended beyond six months where appropriate is a positive step. As long as the site sticks with an agreed voluntary action plan to make the necessary changes to remedy the original failing. It is not uncommon for more complex failings to require building works to address the particular issue and in these cases it will be necessary to seek planning permission for infrastructure improvements which will inevitably take longer and most likely require in excess of six months to fully remedy the situation.*

*It is suggested that for D category sites, this approach should not be considered. The REA believes that there should be the flexibility within the system not to automatically preclude these sites from being given a voluntary suspension period if it is appropriate. In some instances there will be a major underlying issue with these sites which may require a significant re-design of the facilities to make it complaint for the future.*

*The REA agrees with the suggestion that additional information may be requested from these sites in order to grant any temporary suspension.*

*The REA would like to see external stakeholders form part of the review panel in order that there is an alternative viewpoint from experienced stakeholders including industry, as well as the regulator in order that there is a greater level of impartiality provided within these review panels.*

**9. The proposed amendments include creating an additional principle: 'Principle 6 - Assessing the category of non-compliance' in order to add further explanation about the categories of non-compliances and better link them to the other principles. Do you agree that creating an additional principle to explain the categories of non-compliance will be clearer? (Please select your answer)**

Strongly agree / Agree/ Neither agree nor disagree / Disagree / Strongly disagree

**Agree**

**Please provide further information to support your answer in the space below.**

*The REA believes that where possible, there needs to be as much transparency provided to the site operator in order that they are fully aware of where their failings are and what they can do to address these. The suggestion to provide simpler and clearer guidance for stakeholders which is linked to other principles is welcomed by the REA.*

**10. The proposed amendments include an exception to the current 14 days limit to share the Compliance Assessment Report (CAR) form, where we are assessing periodic reports containing monitoring data, information or analysis. Do you agree with the proposed extension period to 28 days to share the CAR form following the assessment of periodic reports containing monitoring data, information or analysis? (Please select your answer)**

Strongly agree / Agree/ Neither agree nor disagree / Disagree / Strongly disagree

**Agree**

**Please provide further information to support your answer in the space below.**

The REA believes that where monitoring data has to be assessed, then a further 14 days should be allowed for the EA to examine this prior to making a submission to the permit holder. This should be the exception rather than the norm. HOWEVER, it should be noted that too often, CAR form scores are submitted far too long after the visit has taken place on site. A CAR inspection is a 'snapshot' of what is seen on the day of inspection and in order for the operator to act on the findings reported, it is important that these findings are made to the operator swiftly within days, rather than weeks or months as has been reported to the REA by some of its members.

In the past forms would be signed off by both parties on the day of inspection so that there was transparency and no ambiguity as to what was seen on the day with an agreed action plan to resolve any issues. This is no longer the case and too often the CAR form returned does not accurately reflect what was seen and agreed on the day and this is neither fair nor a transparent way to act. The REA would like to see CAR forms returned within a maximum time period of 14 working days to overcome this concern. There should be no surprises to the operator when they receive the completed CAR form as the discussions had on the day with the officer should have ensured they were fully agreed on issues. This openness is essential if there is to be a relationship built on trust between the regulator and site operator.

**11. The proposed amendments include adding additional information on how we use compliance data and information. Do you agree that it is helpful to explain the results of a compliance assessment and how we use this data and information, as well as the link to charges in this guidance? (Please select your answer)**

Strongly agree / Agree/ Neither agree nor disagree / Disagree / Strongly disagree

**Agree**

**Please provide further information to support your answer in the space below.**

*It is always helpful for the recipient to understand fully the reasons behind any decisions taken, in order that they can learn from this interpretation for the future so that they can improve their performance. Some information on how the data is used would also be useful as this would provide greater confidence in the complete process and reassure the recipient that this is more than just a paper exercise but that the information can be used for a wider purpose which will be beneficial to the sector as a whole.*

## Section 3: Other comments

**12. 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.**

**Answers:**

**1. Complaints in respect to CAR reports need to be dealt with as quickly as possible in order to resolve any outstanding issues. The REA has concerns that too often these deliberations can take an excessive period of time, although we recognise that in more complex cases it will take time to gather evidence of non-compliance. As mentioned previously, if frank and open discussions were to take place and were signed off and agreed between parties then there would be less controversy after the event. There is currently an appeals process in place which allows the site to ask for clarification on any decisions taken within the CAR reports. REA members have commented that too often the concerns that they raise go unanswered or even ignored and no changes are made on account of their appeal. The REA believes that it is important that there is transparency within the appeals process and that a response is provided to the permit holder.**

**2. The REA is keen to understand why not all the principles have been opened up for discussion and consultation, as Principle 4 (The root cause of the original non-compliance) is an area which the REA believes should be debated further. A failure of Mgt systems is often cited as an issue and scored against the operator and this may happen for a number of failures which can add a significant number of points to the assessment which will have a detrimental impact on the overall score for the site resulting in them receiving a higher annual subsistence charge. It is very easy to make an overall assessment that the mgt system is at fault for every failure and it appears from reports that I have had highlighted to me that there is significant variation in the interpretation of this matter. It is for this reason that the REA believes that all the principles should be consulted on rather than a select few.**

**3. The ramifications of CAR forms for the site can be considerable, not only financially but in respect to the time taken by the operator to address the issues highlighted. It is important that it is transparent to all that there is clear accountability not only on the operator but also on the EA officer for their actions.**

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