

CARs: A Vehicle To Compliance?



Ahlim Hashm, technical director at RPS, looks at Compliance Assessment Reports and asks... are they delivering?

The Compliance Classification Scheme (CCS) scheme is a standard approach used by waste regulators to classify permit breaches and enable their assessment of operational compliance with permit conditions, and consideration of environmental impacts of breaches.

Non-compliances are recorded over the course of a calendar year informing the regulator's calculation of compliance rating (Environment Agency) or OPRA score (Natural Resources Wales) using a points system, ranging

from 60 for category 1 breach (major environmental impact) to 0.1 for category 4 breach (no impact). Allocations are reported on the gov.uk website to be based on the subsequent regulatory work in dealing with the breaches. Regulator's recovery of costs through prosecution for category 1 breaches is also considered.

An operator's yearly subsistence charges are adjusted by their annual total of non-compliance points, but the compliance rating also has further far reaching



consequences. Enforcement actions including serious revocation and suspension notices are often based on a site's compliance rating. Site compliance – specifically enforcement actions or convictions will directly affect determination of new permits, variations and transfer applications and also commercial reputation.

Many operators have felt unclear on how their regulatory officers recorded non-compliance using the CCS until the EA published its internal guidance "Recording non-compliance using the Compliance Classification Scheme (CCS)" on 24 May 2018 which is a positive step towards improving transparency and enabling better understanding of CCS' principles. It gives insight into what regulators are expecting from their officers in terms of ensuring consistency and focusing resources.

Although it does not prescribe how to categorise permit breaches, it provides principles and topics where officers need specific guidance. The guidance is based on five main principles:

- record all non-compliance
- reasonably foreseeable impact
- scoring root cause
- consolidating CCS scores, and suspending CCS scores.

The guidance suggests breaches are best categorised on a case-by-case basis using the above principles.

RPS, as consultant to operators and regulators, has assisted in assessing many Compliance Assessment Reports (CARs). Although the guidance is beneficial in informing and assisting officers, the remaining subjectivity of assessment would benefit from better clarification:

Delay In Issuing CARs

ALTHOUGH, THE EA CCS Guidance states "all non-compliances must be recorded on the CCS database within 14 days of them being observed", we have seen CAR reports issued some months after the related site visit, and instances of multiple CARs issued on the same day for site visits weeks apart with the same breaches scored in both. Without the guidance specifying the course of action, if a CAR wasn't issued within those 14 days, this will remain an issue needing resolution. Considering the aim is to identify breaches that can result in environmental impacts and propose corrective actions, issuing late CARs seems to defeat the main objective.

Frequency of same breaches being scored in multiple CARs:

The EA guidance "Compliance Classification Scheme Scoring guide for installations and waste facilities regulated under the Environmental Permitting Regulations 2010" (EA Scoring Guidance) states: "Returning a non-compliant situation back to a compliant one may take some time. We aim to support and encourage positive actions and we will work with operators who are genuinely working towards compliance."

However the CCS guidance does not specify clear frequency and timings to visit sites and issue CARs leaving it to officer discretion. We understand the number of hours for regulation of any site within a year depends on OPRA score/compliance rating, site complexity and nature of activities. The identified hours are used to regulate the site during the following year in the form of site visits, audits, waste return assessments,

"Site compliance – specifically enforcement actions or convictions will directly affect determination of new permits, variations and transfer applications and also commercial reputation"

reports, etc. CARs must be issued following any site visit, and scores can be applied for the same non-compliance in each issued CAR. This subjectivity in the frequency of issuing CARs could result in a high level of inconsistency as it is reliant on individual officers' judgement.

Scores may be suspended under certain circumstances as an incentive to operators

working towards compliance. The regulator always scores the first non-compliance but may agree to suspend the charging element of CCS scoring for further related non-compliances while the operator is actively demonstrating timely steps to bring their activities into compliance. However, within guidance, unless there is a statutory notice in place, suspension of CCS scores is a concession that the regulator may choose, but is not obliged, to make for operators taking positive action. Frequent CARs with no suspension of scores in comparison to the other extreme of less frequent CARs and suspension demonstrate the dual effect these two decisions may have on a site's overall score. Hence it is important that a clarification on reasonable frequency is provided to ensure consistency.

Multiple Scores for Single Breaches:

The EA CCS Guidance specifically states: "A single breach of a condition must only be recorded once, under a single SC [sub-category]. If you think that a single breach could be recorded under more than one SC you should choose the one that appears to best describe the breach."

There are instances of a single issue scored multiple times under various breaches within the same CAR, unreasonably inflating non-compliance scores. This is particularly apparent when the root cause of a breach is repeatedly considered to be the operator's management system, specifically the implementation rather than the procedural aspects.

Scoring of breaches:

The regulator in all other cases, except amenity conditions, categorises a non-compliance based on its potential level of impact, decided by what is reasonably foreseeable were the non-compliance to result in an environmental incident.

CCS is similar to the Common Incident Classification Scheme (CICS) in that the regulator categorises non-compliances between 1 and 4 based on environmental impact. However, CICS categorises incidents based on actual environmental impact while the CCS relies on experience and practical understanding to determine what impact is reasonably foreseeable. Regulatory officers are encouraged to be pragmatic when considering what level of pollution incident might occur, and to take into consideration any

procedures or infrastructure that the operator has in place to mitigate pollution. This is one of the most controversial points where regulators and operators disagree, specifically where mitigation measures are to be considered, and further clarification would greatly improve transparency.

Amenity conditions:

These relate to odour, dust, noise, pests and litter. The regulators categorise non-compliance based on actual environmental impact. Most amenity conditions in environmental permits use wording similar to 'as perceived by an authorised officer of the Environment Agency'. The guidance suggests that where such wording is used the regulating officers must attend and substantiate the amenity problem themselves, and check whether the operator has been using appropriate measures; it is not uncommon to see amenity related breaches recorded without evidence of substantiation.

To improve how permit compliance is assessed and scored so it is more consistent, clear and proportionate and to explain how regulators use the findings of an assessment, and what they record on the CAR forms, the EA opened a consultation on 17th September which closed on 29th October. NRW has not published an equivalent.

The consultation proposes changes to the last two



principles, namely consolidation and suspending scores, and proposes an additional sixth principle "assessing the category of non-compliance". This is currently covered by Principle 1 but separating it is reasoned to be simpler, clearer to differentiate and more cohesive.

Its proposed change to Principle 4 seeks to address non-compliance related to emission limit values. Currently, the regulator consolidates some scores, particularly in relation to reporting periods, except where permits contain conditions relating to Emission Limit Values (ELVs) and have several parts, or may appear as a number of tables. As the site's compliance band is generated from the sum of individual scores, the scores of multiple non-compliances, even minors, may result in a compliance band that does not truly reflect the impact or risk posed or the regulatory effort required. Non-compliances are consolidated during assessment so that an individual permit condition is only categorised and scored once per assessment, meaning that several non-compliances under a single permit condition will only result in one score. A permit condition may have non-compliances for several reasons but is still only one permit condition non-compliance.

The consultation proposes that the new guidance clarify details on how this is applied to emission limits.

A revision to the principle of suspending scores is proposed, by removing the current six month limit because completing all steps in a notice or action plan may take longer, especially where a non-compliance is being resolved through infrastructure investment. It is therefore proposed that scores will initially be suspended for six months, and a subsequent review carried out by a specialist panel to consider extending the suspension period. A permit holder may then be asked to provide additional information to support a request to extend the suspension period.

The proposed Principle 6 reiterates the importance of consolidation and clarifies that when several non-compliances are identified under one permit condition, they will be consolidated (Principle 2). The category and score given will usually be the most severe of the non-compliances identified. The exception is where there is potential for cumulative impact. It also proposes that duration of non-compliance is accounted for when assessing the category and score. Duration may be linked to exposure and increase the reasonably foreseeable impact, or, for amenity conditions, the actual impact.

Regulating officers are currently advised to tell operators when they have carried out any kind of site-based compliance assessment at a manned site and have identified non-compliance, giving an indication of categorisation before leaving site. The consultation states that limited information is currently provided to explain the outcomes of a compliance assessment and more could be reported when explaining officers' responses.

Exception

OPERATORS ARE encouraged to discuss the advice provided, and requirements or decisions with the regulator, as soon as a non-compliance is identified, and for the regulator to share the evidence used to determine the level of risk to human health, quality of life and the environment. Regulators should share CAR forms with permit holders within 14 days of carrying out a compliance assessment, even if they have not identified non-compliance. The consultation proposes to add an exception for compliance assessments conducted following submission of a periodic report containing monitoring data, information or analysis, where results would be recorded on a CAR form and shared with the permit holder within 28 days, enabling the regulator to better manage assessment workloads.

These proposed changes will resolve some of the identified issues, but further detail will still be necessary to improve consistency and transparency. The guidance is now publicly available and should help towards improving understanding of the CCS, which could be further benefitted with training engagement to increase mutual understanding of the scoring mechanism. Making available other relevant guidance such as operational instruction 526_06 will also provide further improvement. ■

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