

**Frequently asked questions**

Environmental Protection Assessment Scheme, 31 March 2025

## Introduction

This document will be updated on an ongoing basis throughout the consultation period to reflect the questions and feedback we receive from stakeholders.

## General

### What is EPAS?

The Environmental Performance Assessment Scheme (EPAS) is a system to assess performance with respect to adherence to legal environmental requirements.

### Why is EPAS important?

It helps protect the environment and ensures everyone follows the rules. It supports regulation, by enabling SEPA to direct regulatory efforts to operators with unacceptable levels of performance.

### What is SEPA’s aim for EPAS?

To allow us to routinely and accurately report the environmental performance of operators, in a manner that is easily understood and accessible to all.

### What activities are included in EPAS?

The first phase of EPAS will be limited to activities that were included in our 2009-2019 Compliance Assessment Scheme: waste, radioactive substances, industrial activities and water activities. These are also the regimes that will be included in the Environmental Authorisations (Scotland) Regulations 2018 as anticipated to be amended in 2025.

In future phases, a further nine regulatory regimes are likely to be included in EPAS. These regimes are described in detail in Annex 2 of the consultation document.

### Does environmental performance and compliance with environmental legal requirements include impacts on human health?

Yes. EPAS includes everything that we regulate that could cause environmental harm as defined in the Regulatory Reform (Scotland) Act 2014. This includes harm to the health of human beings, offence to the senses of human beings, and interference with amenities or other legitimate uses of the environment, among other things. Not all activities that could impact on human health are regulated by us, for example, spreading of sewage sludge on agricultural land. Activities that we do not regulate will not be included in EPAS.

### Will non-submission of monitoring data be included in EPAS?

Yes. If the relevant report or data has not been received 30 days after the deadline a major non-compliance will be recorded. We need this information to ensure our understanding of the activity is not compromised.

### When are compliance issues resolved?

The date that we receive satisfactory evidence from an operator to demonstrate any compliance issues identified are resolved. We will only re-visit a site where it is necessary to confirm an operator has resolved any compliance issues.

### How does EPAS address non-compliance that doesn’t meet the bar of a major non-compliance but has an ongoing lower-level cumulative impact on the environment?

Compliance issues that have a lower-level impact on the environment are categorised as non-compliant. Where an issue categorised as non-compliant is ongoing for more than 180 days, an operator will be categorised as Unacceptable. If an operator is Unacceptable for more than 90 days without producing a compliance recovery plan that we have confirmed includes reasonable steps to resolve non-compliance in a timely manner, they will appear on the priority sites list.

### How does EPAS meet the better regulation principle of proportionate?

EPAS has been designed to be proportionate, recognising the need to design a scheme that can deliver for complex permits with many conditions to simple permits with very few conditions and across different regulatory regimes.  By designing a responsive scheme that gives operators the ability to achieve ‘Good’ environmental performance if they recover compliance quickly, we believe we are being proportionate and fair.

### Are complex sites with large numbers of permit conditions disadvantaged?

No, when we inspect complex sites, we do not inspect every condition at every inspection, this would be unmanageable and disproportionate. Instead, we will generally assess a sub-set on a risk basis. This means the total number of conditions assessed does not directly relate to potential numbers of individual non-compliances.

Further, allowing 30 days for an operator to resolve compliance issues which are of lower environmental significance before their environmental performance is affected provides all responsible operators with an incentive and ensures no-one is unfairly disadvantaged. If an issue is categorised as ‘Major non-compliant’, it will always affect environmental performance because these are issues of higher environmental significance. It is important all operators proactively take steps to avoid compliance issues in the first place.

### Is it realistic to expect operators to meet all their legal environmental requirements?

Yes. All authorisation conditions and legal environmental requirements should be adhered to. If necessary, an operator can apply at any time to vary or remove permit conditions where this can be justified.

### Why don’t you just report the basic compliance category? Why bother with performance?

In our 2017 Compliance Assessment Scheme consultation we proposed to report compliance in this way i.e. compliant, non-compliant and major non-compliant.  One of the key pieces of feedback we received to our 2017 consultation was that the majority of respondents disliked this proposal.

In designing EPAS we have listened and adapted our approach to take account of that feedback.  This is why EPAS is designed to use basic compliance information alongside information on environmental harm and how long any compliance issues last. This allows us to present a balanced view of environmental performance that takes account of operator response.  We think the responsive nature of the EPAS approach is fairer to operators and gives them greater opportunity to achieve good performance.

### Why make compliance information publicly accessible if the performance rating is most important?

From an EPAS perspective our key message has been and will continue to be, do not conflate compliance with performance. The compliance information is not the priority, it is the performance rating that matters.

However, we are a public body and the information we collect via our compliance verification activities should be transparent and accessible. Given that information on level of non-compliance, time in non-compliance and environmental harm contribute to performance we believe this information should be accessible to those that wish to view it. It is important to be clear that even if there were no performance scheme our intent would be to make the information we collect publicly accessible.

### Why have you decided to start applying the major non-compliance criteria before EPAS starts?

Our decision to start to apply the major non-compliance criteria before EPAS starts is to give operators time to become familiar with the criteria and have the opportunity to obtain support from us to help manage any compliance issues before performance starts to be assessed. We will not actively publish compliance information until EPAS starts as we want people to focus on environmental performance, which includes whether more serious environmental harm has been caused and how quickly compliance issues were resolved.

### What if it is not feasible to produce a compliance recovery plan within 90 days?

We think that 90 days is sufficient time to prepare a compliance recovery plan, recognising that for more complex sites this will need to be done in phases.

### Does EPAS affect enforcement action that can be taken?

No. Environmental performance ratings have no relationship to any decision we take on whether or not to take enforcement action in respect of any breach of legislation. Decisions on enforcement are taken in line with our [enforcement policy](https://www.sepa.org.uk/media/219244/enforcement-policy.pdf) and [enforcement guidance](https://www.sepa.org.uk/media/219242/enforcement-guidance.pdf). We assess the specific situation against the factors and guidance contained within that policy and Guidance. We will continue to target operators who persistently refuse to comply and who cause environmental harm.

The intention is that EPAS will act as an additional tool to prevent non-compliance. If successful, this may reduce the need to take enforcement action but there is no relationship between an EPAS rating, and any enforcement action taken.

### Will a site revert to good when an EPAS rating expires?

No – an EPAS rating will revert to ‘no known issues’. We want the EPAS rating to be as relevant as possible to what the current situation is. We do not think it is appropriate to revert to ‘Good’ when the operator was not ‘Good’ at the time of the EPAS rating calculation. Further, an operator could have taken months to resolve a compliance issue, and a new compliance issue could have occurred in the intervening period that we would not be aware of unless we undertook a repeat inspection, which would be disproportionate.

### Why can’t the EPAS rating just last until the next compliance verification activity?

We do not think it is fair for it to last until the next compliance verification activity is completed as this varies depending on the level of risk those activities pose to the environment. For low risk permitted activities there may be several years between planned inspections.

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