



The Coal
Authority



Mine Water Treatment Schemes

Code of Practice



The Coal Authority Photograph - Passive Mine Water Treatment Scheme
Tan-Y-Garn, adjacent to the River Cathan, north east of Garnswilt, near Ammanford, Carmarthenshire

2012

Acknowledgements

This Code of Practice has been jointly prepared the Coal Authority and representatives of the Minerals Planning Advisory Group of the Planning Officers Society.

The date of this publication is 2012 and future revisions will be dependent upon relevant policy and/or legislation. This document is only available in electronic format from the Coal Authority's website. It is also published in the POS Briefing Note style format, without pictures, on the POS website.

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The Coal
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The Coal Authority is a Non-Departmental Public Body sponsored by the Department of Energy and Climate Change; and works to protect the public and the environment in mining areas, now and for future generations. This Code of Practice supports one aspect of the work of the Coal Authority.



The Planning Officers Society represents the senior professionals and managers of planning services in the public sector in serving English Local Authorities. The Society's aim is to make planning more effective in delivering sustainable development to support the well-being of our communities.

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(as amended)

Preface

Significant changes took place in the legislative framework covering the coal industry as a result of the privatisation process. The Coal Industry Act 1994 placed the responsibility for the control of the nation's coal resources in the hands of a new public organisation, The Coal Authority (CA). The CA has a particular responsibility to manage the historic legacy of coal mining which includes treating mine water discharges from old mines and preventing the pollution of watercourses. The CA in partnership with the Environment Agency (EA) monitors mine water levels and have an agreed national programme of mine water treatment schemes; this is available on the CA website.

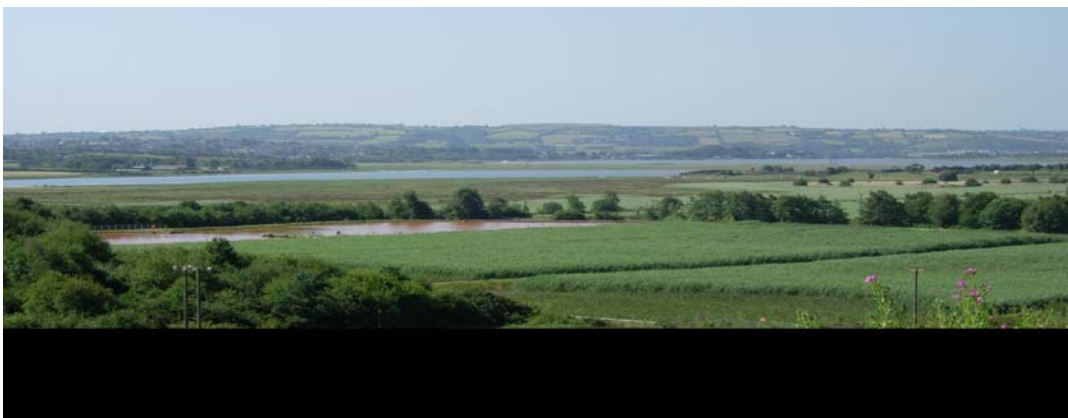
To treat mine water can involve the establishment of simple reed beds to more substantial treatment plants. To assist the implementation of these necessary facilities and to clarify the appropriate procedures this Code of Practice has been prepared jointly between the CA and the Planning Officers' Society (POS) primarily for Mineral Planning Authorities (MPAs) within the coalfield areas, but will be of interest to other Local Planning Authorities (LPAs).

The Code of Practice seeks to provide a framework for a closer working relationship between the CA and planning authorities in bringing forward mine water treatment schemes, based on four objectives:

- To establish a mutual interpretation of the General Permitted Development Order (GDPO) 1995 (as amended) between all of the parties;
- To ensure commitment from the appropriate MPA and LPAs to be involved in the consideration of proposals through a clear and agreed planning process;
- To ensure commitment from the CA for an early dialogue about their forthcoming programme of mine water treatment schemes; and
- To consider the need for an Environmental Impact Assessment (EIA) in appropriate cases.

1 Introduction

- 1.1 Discharges of polluted water from underground coal mines have long been a problem in the traditional coal mining areas of England. It is only in recent decades with the cessation of active mining in parts of the coalfields that mine water discharges have begun to emerge as the water table recovers from artificial control during mining operations.
- 1.2 The recovery of the water table creates the potential risk of pollution of the water environment from either the flooding of former workings after extraction had ceased; or the discharge of untreated waters after flooding of the mines is complete.
- 1.3 The CA co-ordinates a national programme of mine water treatment schemes in partnership with the EA (see CA website: www.coal.decc.gov.uk). Agreed programmes have been established to monitor rising mine water levels and where necessary the pumping of mine water has been instigated to manage rising underground water levels to prevent future polluting outbreaks of mine water.
- 1.4 Mine water from abandoned collieries usually requires treatment before it can be discharged into a watercourse. Mine water treatment schemes take one of 3 forms: passive, pumped-passive or active.
 - A “**passive scheme**” captures the water at source and it is transferred by gravity through either settlement ponds and reedbeds, or just reedbeds. It depends upon the water quality. Settlement ponds are usually 3 metres deep with steep sides and are fenced off. Reedbeds are only 30-50cm deep and these are either surrounded with post and wire fencing or not fenced at all.



The Coal Authority Photograph – Passive Mine Water Treatment Scheme
Morlais, Carmarthenshire, South Wales

- A “**pumped-passive**” scheme is similar to the passive scheme, but with a pump installed to assist with the movement of the water.



The Coal Authority Photograph – Pumped Passive Mine Water Treatment Scheme
Horden, Durham,

- An “**active**” scheme is more industrial in nature, and can require large fibreglass tanks, centrifuges, portacabins, skips and hard standing.



The Coal Authority Photograph – Active Mine Water Treatment Scheme
Horden, Durham

- 1.5 The process which is adopted by the CA in bringing forward mine water treatment schemes and the point at which various interested parties are involved forms an important part of this Code of Practice.
- 1.6 Both POS and the CA have agreed that where the CA and EA monitoring programmes are identifying that a future scheme may be needed, an early dialogue between the LPA and the CA is required.
- 1.7 The main issues which arise with mine water treatment schemes from a planning perspective are:
- The need to keep parties informed of developing programmes and schemes for mine water treatment;
 - To determine whether new proposals constitute development, require planning permission, and if it is determined by the LPA to be EIA related development;
 - The need to agree a timescale for the determination of the planning application if necessary, as well as the information requirements and public consultation exercises; and
 - To assist in the agreement for the decision making route through the planning system when necessary alterations are required to an existing treatment scheme.

2 Planning Considerations for Mine Water Treatment Schemes

- 2.1 The first issue to consider is whether the proposed mine water treatment scheme will require planning permission.
- 2.2 Mine water treatment schemes do constitute development under the Town and Country Planning Act 1990; however, for the vast majority of mine water treatment schemes permission is deemed granted under the GPDO, subject to consultation with the MPA.
- 2.3 Whilst the GPDO may grant permission for certain developments it does not exclude the proposal from consideration in relation to the need for EIA, and in the same way as any other development mine water treatment scheme proposals should be screened by the MPA. Mine water treatment schemes could be considered to be development which falls under Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The MPA should record a screening opinion to identify whether the proposal is EIA development; a negative screening opinion would indicate that the development is not likely to have significant effects on the environment and therefore there is no EIA process required.
- 2.4 Alternatively, if a positive screening opinion is recorded, no permitted development rights will exist and a planning application would need to be accompanied by an Environmental Statement to be assessed through the EIA processes.
- 2.5 In planning terms the three forms of mine water treatment schemes promoted by the CA as outlined in paragraph 1.4 will fall into one of four categories:
 - Permitted Development where Prior Approval of the Mineral Planning Authority is Not Required;
 - Permitted Development with Prior Approval of the Mineral Planning Authority;
 - Mine Water Treatment Schemes requiring a Planning Application;
or
 - Mine Water Treatment Schemes requiring an Environmental Statement alongside the Planning Application

Permitted Development where Prior Approval of the Mineral Planning Authority is Not Required

- 2.6 The CA has permitted development rights relating to development required for the maintenance of a disused mine. Class E of Part 20 of the General Permitted Development Order 1995 allows the CA to construct mine water treatment schemes at/or adjacent to mines or disused mines.
- 2.7 Class E of Part 20 states "*The carrying out by the Coal Authority or a licensed operator, with the prior approval of the mineral planning authority, of development required for the maintenance or safety of a mine or for the purposes of ensuring the safety of the surface of the land at or adjacent to mine or a disused mine*" (see Appendix A).
- 2.8 If the external appearance of the site would not be materially affected by the works, and if they do not involve building, repairing, replacing, or rearranging anything more than 15 metres above ground level, the works may be undertaken without any need to seek prior approval from the MPA (Class E, E.1(1)).

Permitted Development with Prior Approval of the Mineral Planning Authority

- 2.9 Mine water treatment schemes which are considered by the MPA to have a material effect on the external appearance of environment, or involve buildings, structures, or other works more than 15 metres above ground level will require the prior approval of the MPA (Class E).
- 2.10 This prior approval can only be withheld if the MPA is satisfied that:
- a) the development could reasonably be sited elsewhere; or
 - b) the development would injure or adversely affect the general amenity of the area (Class E, E.1(2)).
- 2.11 The MPA may also impose conditions on the approval.

Mine Water Treatment Schemes requiring a Planning Application

- 2.12 If the preferred site for a mine water treatment scheme is not adjacent to a mine/disused mine, an application for planning permission may be necessary.

- 2.13 In two-tier planning areas, there may be scope for disagreement about whether the MPA (County) or District LPA should determine such planning applications. There are several interpretations to consider, including: a mine water treatment scheme is part of the on-going restoration and after care maintenance of mineral workings; a second interpretation is that polluted minewater is "waste".
- 2.14 Under both these considerations the planning application would be determined to be a "County Matter" by virtue of the Town and Country Planning (Prescription of County Matters) (England) Regulations 2003. Furthermore, it would seem logical that as a proposal which falls within the permitted development parameters would be considered by the MPA a similar scheme requiring planning permission should also be dealt with by the MPA.
- 2.15 Where schemes are brought forward by the CA in two tier areas it is anticipated that the MPA and LPA(s) will agree on an appropriate way forward for decision making to secure the timely implementation of the scheme.

Mine Water Treatment Schemes requiring an Environmental Statement alongside the Planning Application

- 2.16 If the Planning Authority determines that a mine water treatment scheme proposal is likely to have significant effects on the environment by virtue of factors such as its nature, size or location and consequently falls within Schedule 2 of the 2011 EIA Regulations, an Environmental Statement will be required to accompany the planning application.
- 2.17 However, if the mine water treatment scheme proposal falls below the thresholds or does not trigger the requirements of Schedule 2 then it will not be deemed to be EIA development. All of the mine water treatment schemes completed to date have not been deemed to be EIA development under Schedule 2.
- 2.18 There may be circumstances in which small scale developments might give rise to significant environment effects. As a result, there is scope for subjective judgments by the MPA. The Secretary of State also has powers to direct that an EIA is required in exceptional circumstances.
- 2.19 If a proposed development has been considered as requiring EIA by the MPA, planning permission cannot be granted unless appropriate environmental information on the impact on the

environment arising from the proposed development has been provided and taken into consideration. If the CA does not agree with the MPA's view regarding the need for EIA it can seek a Direction from the Secretary of State.

2.20 In the case of a major scheme or one proposed for a sensitive location the CA should carry out the following procedural steps if they are in any doubt whether the proposal would constitute EIA development:

- 1) Request for a Screening Opinion from the MPA as to whether the proposal would require an Environmental Statement or not. The request for a Screening Opinion should be accompanied by the following:
 - a) a site location plan clearly identifying the land at an appropriate map scale;
 - b) a brief description of the nature and purpose of the proposed development;
 - c) a brief description of its possible effects on the environment; and
 - d) any other relevant supporting information concerning the development.
- 2) Within three weeks (or an agreed period) of receiving a request for an opinion, the MPA should respond in writing expressing fully, clearly and precisely, the reasons for their opinion; unless the MPA considers that the information provided is not sufficient, in which case it will notify the CA and ask for further information before a Screening Opinion is formally issued.

3 Protocol

Aim

Establish a co-operative approach which will facilitate an effective procedure to ensure mine water problems are dealt with in an environmentally acceptable manner with the minimum of delay providing close working relationship between the CA, MPA and other interested parties.

Procedure

1. The CA will arrange to meet POS Minerals PAG representatives at least once every 12 months to inform them of the proposed national programme for treatment of mine water schemes. The POS will feed back this information to MPAs where relevant.
2. The CA will include on their website a list of forthcoming mine water treatment schemes.
3. The CA will write to the appropriate MPA to arrange a meeting and site visit to outline the proposal for a forthcoming mine water treatment scheme at the earliest possible opportunity. In two tier areas, the MPA will also invite the District Council(s).
4. Following the meeting with the CA the MPA will advise the CA in writing within a reasonable period of time whether the proposal would be deemed to be permitted development or if planning application would be necessary, and also whether it constitutes EIA related development.
5. If a planning application needs to be determined the MPA and relevant District Council will agree which Local Planning Authority which will deal with the application and advise the CA.
6. If the proposal is considered to be EIA development the MPA, in two tier areas, will consult with the District Council before formally issuing a Screening Opinion to the CA.

If the proposal requires the submission of a planning application

The Mineral Planning Authority will:

- Publicise the proposal promptly and consult widely in accordance with the adopted Statement of Community Involvement (SCI), informing the CA of any responses. If the MPA arranges and conducts a public meeting, the CA will have the opportunity to attend to explain their proposals;
- Identify the Planning Officer who is dealing with the application;
- Keep the CA informed of progress with the application on a regular basis and make them aware of comments received as soon as practicable and advise the CA of the decision making route for the application either through delegated powers or by committee decision; and
- Determine the planning application after giving due regard to the Planning Officer's recommendation which will have been arrived at within the context of national and regional policy guidance and development plan policies.

The Coal Authority will:

- Ensure an early liaison (at least 1 year in advance) between the CA and MPA on the principles of individual schemes to allow time for pre-application discussions (if necessary) so any relevant planning matters can be considered at early stage;
- Maintaining a dialogue with the MPA in relation to the intention and progress on preparing a scheme;
- Ensure the MPA is given the opportunity to comment on the project before it is submitted, either through meetings at offices or on site;
- Ensure that the correct information as required by the MPA is submitted with the planning application (see below);
- Ensure that any consultants and or contractors employed to undertake work on the CA's behalf shall have regard of this document; and
- The CA will report on any changes in the priority of the most significant discharges of mine water to the MPA and the POS through regular meetings.

4 Submissions of Information to the MPA

- 4.1 The type of information which the MPA require is broadly the same irrespective of whether the application is for prior approval under permitted development rights or an application for full planning permission. The principal differences are that the latter involve completing an application form and ownership certificates and a fee payable, whereas the former need only a covering letter containing a written request for approval and accompanied by sufficient detail of siting, design and external appearance to understand what the proposal is seeking under permitted development rights.
- 4.2 The quality of information submitted is very important. It should always be clear and complete. Good submissions can help explain to local people and consultees, as well as officers and elected members, exactly what is proposed and its likely impact. By adopting high standards unnecessary time and effort can be avoided and help allay concerns. In addition, good quality submissions are likely to result in speedier and better informed decisions.
- 4.3 By adhering to the guidance set out below, the CA will be able to achieve the quality of submissions that this Code of Practice is seeking to deliver.
- 4.4 Full planning application submissions should comply with the National Information Requirements and MPA Local Validation Lists. As a guide the submission should include the following written details and drawings:
- **Written Statement** setting out the background to the application, such as the nature of the problems caused by the mine water discharge, any environmental or ecological information regarding the site or its surroundings, an explanation of how the proposed works are intended to remedy the problems. This may include reference to experience gained from other schemes.
 - **Visual Impact Assessment** including a before and after photomontage of the site in its surrounding.
 - **Hydrological Impact Assessment**

- **Site Location Plan** - Ordnance Survey based, at minimum scale 1:10,000. The plan should show:
 - Site boundary outlined in red;
 - Any adjoining land owned or controlled by the applicant outlined in blue; and
 - Surrounding landscape features, including streams, rivers, dwellings, settlements, roads, rights of way etc.

 - **Site Layout Plans** – Ordnance Survey minimum scale 1:2500. Depending on the extent of the site, other scales such as 1:1250 or even 1:500 may be appropriate. The plans should show:
 - Site boundary outlined in red;
 - Other land in the ownership or control of the applicant outlined in blue;
 - Existing and proposed levels or contours, including details for adjoining land, to assist in the assessment of intervisibility and visual impacts.
 - Existing and proposed site features, including buildings, structures, trees, hedges and any other means of enclosure.
 - Existing and proposed means of access.
 - Any hard and soft landscaping, land forming, screening, and planting.
 - Drainage and discharge arrangements.

 - **Detailed Plans and Drawings of Proposed Site Features** - for example, buildings, plant, ponds, lagoons, ditches and outfalls, roads, parking and loading areas, hard standing, walls, fences etc. These should be scaled as appropriate to what is intended and include the details of the materials proposed to be used.

 - **Existing and Proposed Cross Sections** - these should extend beyond the site boundary to enable assessment of intervisibility and visual impacts.
- 4.5 The objective should be to make clear differentiation between the existing situation and what is proposed. This should illustrate the overall appearance of the proposal without replicating the detailed technical drawings necessary for construction contracts, for example showing points of detail such as pipe diameters, gulleys, manholes, water levels etc.

4.6 At least four copies of all documents should be sent to the MPA. Plans should be provided on separate sheets and be no smaller than A4 size.

- **Environmental Statement** - If an Environmental Impact Assessment is required, Schedule 4 of the 2011 Regulations sets out the information that should be included in the Environmental Statement. The following matters would generally be those most applicable to mine water treatment schemes:
 - A description of the aspects of the environment likely to be significantly affected by the development including, people, fauna, flora, soil, water, air, climate, architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
 - A description of the likely significant effects of the development on the environment resulting from the development, the use of natural resources and the emission of pollutants from the site.
 - A description of the measures envisaged to prevent, reduce and offset any significant adverse effects on the environment.
 - An indication of any difficulties encountered in compiling the required information.
 - A description of the main alternatives to the development considered by the applicant and an indication of the reasons for the selected option.
 - A non-technical summary.
- **Appropriate Assessment** - Although unlikely to be applicable, one further consideration is that an appropriate assessment under the EU Habitats Directive would need to be conducted by the MPA if it is possible that a minewater treatment scheme is likely to have a significant effect on a European protected site for nature conservation (Natura 2000) either individually or in combination with other plans or projects.

4.7 The information submitted by the CA should allow the MPA to consider all possible impacts of the development on the site's nature conservation objectives.

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Appendix A

PART 20

COAL MINING DEVELOPMENT BY THE COAL AUTHORITY AND LICENSED OPERATORS

Class E of the General Permitted Development Order 1995

Permitted development E. The carrying out by the Coal Authority or a licensed operator, with the prior approval of the mineral planning authority, of development required for the maintenance or safety of a mine or a disused mine or for the purposes of ensuring the safety of the surface of the land at or adjacent to a mine or a disused mine.

Prior approvals E.1(1) The prior approval of the mineral planning authority to development permitted by Class E is not required if—

(a) the external appearance of the mine or disused mine at or adjacent to which the development is to be carried out would not be materially affected;

(b) no building, plant or machinery, structure or erection—

(i) would exceed a height of 15 metres above ground level, or

(ii) where any building, plant, machinery, structure or erection is rearranged, replaced or repaired, would exceed a height of 15 metres above ground level or the height of what was rearranged, replaced or repaired, whichever is the greater, and

- (c) the development consists of the extension, alteration or replacement of an existing building, within the limits set out in paragraph (3).
- (2) The approval referred to in Class E shall not be refused or granted subject to conditions unless the authority are satisfied that it is expedient to do so because—
 - (a) the proposed development would injure the amenity of the neighbourhood and modifications could reasonably be made or conditions reasonably imposed in order to avoid or reduce that injury, or
 - (b) the proposed development ought to be, and could reasonably be, sited elsewhere.
- (3) The limits referred to in paragraph E.1(1)(c) are—
 - (a) that the cubic content of the building as extended, altered or replaced does not exceed that of the existing building by more than 25%, and
 - (b) that the floor space of the building as extended, altered or replaced does not exceed that of the existing building by more than 1,000 square metres.

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