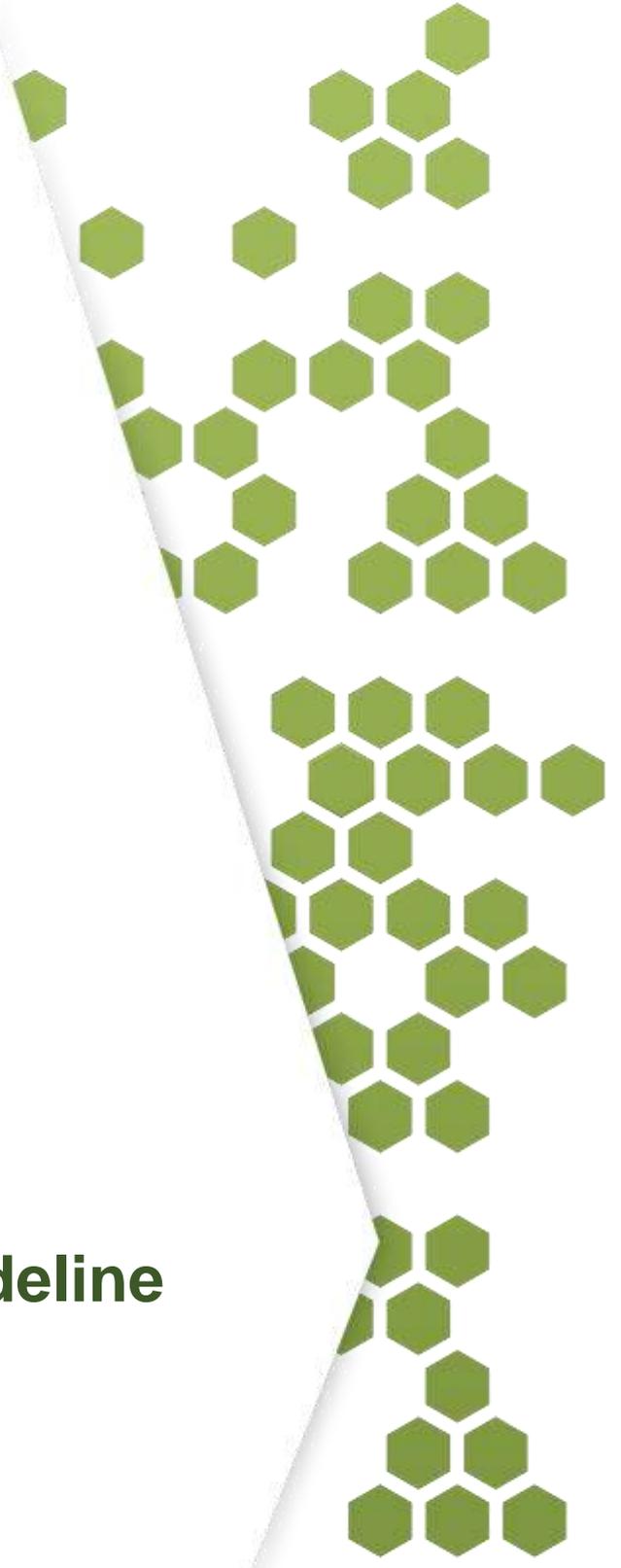


# **Risk-based Licensing Regulatory actions guideline**



The State of NSW and the Environment Protection Authority (EPA) are pleased to allow this material to be reproduced in whole or in part for educational and non-commercial use, provided the meaning is unchanged and its source, publisher and authorship are acknowledged. Specific permission is required for the reproduction of photographs.

The EPA has compiled this guideline in good faith, exercising all due care and attention. No representation is made about the accuracy, completeness or suitability of the information in this publication for any particular purpose. The EPA shall not be liable for any damage which may occur to any person or organisation taking action or not on the basis of this publication. Readers should seek appropriate advice when applying the information to their specific needs.

Every effort has been made to ensure that the information in this document is accurate at the time of publication. However, as appropriate, readers should obtain independent advice before making any decision based on this information.

All content in this publication is owned by the EPA and is protected by Crown Copyright. It is licensed under the [Creative Commons Attribution 4.0 International \(CC BY 4.0\)](#), subject to the exemptions contained in the licence. The legal code for the licence is available at [Creative Commons](#).

The EPA asserts the right to be attributed as author of the original material in the following manner:  
© State of New South Wales and the Environment Protection Authority 2015.

Published by:

Environment Protection Authority  
59 Goulburn Street, Sydney NSW 2000  
PO Box A290, Sydney South NSW 1232  
Phone: +61 2 9995 5000 (switchboard)  
Phone: 131 555 (NSW only – environment information and publications requests)  
Fax: +61 2 9995 5999  
TTY users: phone 133 677, then ask for 131 555  
Speak and listen users: phone 1300 555 727, then ask for 131 555  
Email: [info@environment.nsw.gov.au](mailto:info@environment.nsw.gov.au)  
Website: [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

**Report pollution and environmental incidents**

Environment Line: 131 555 (NSW only) or [info@environment.nsw.gov.au](mailto:info@environment.nsw.gov.au)  
See also [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

ISBN 978 176039 170 6  
EPA 2015/0772  
November 2015

## Contents

<b>Introduction</b> .....	<b>1</b>
<b>Purpose of this guideline</b> .....	<b>1</b>
<b>The EPA decision-making process</b> .....	<b>1</b>
Consider relevant provisions in the POEO Act and regulations, and EPA guidelines .....	1
Assess the risk of harm to the environment.....	2
Licensee’s compliance history .....	2
Assess environmental measures.....	2
Alternative or complementary regulatory actions .....	2

## Introduction

The risk-based licensing system supports the EPA's regulatory framework. Risk-based licensing aims to ensure that all environment protection licensees receive an appropriate level of regulation based on the environmental risk of the activity. The EPA's [Compliance Policy](#) provides details on the EPA's regulatory approach.

There is no 'one-size-fits-all' response to non-compliance and the choice of regulatory action depends on the issue, context and actual or potential environmental impact. When compliance monitoring identifies non-compliance, its significance is evaluated to determine the most appropriate response to take. 'Significance' involves establishing the level of risk posed to the environment or impact as a result of non-compliance. Other factors, such as the licensee's record of compliance, are also considered when determining an appropriate regulatory response.

Once the level of risk has been established, the environmental non-compliance is allocated a 'significance level' of high, moderate or low. A regulatory response is undertaken that is proportionate to the seriousness of the environmental issue. Any action taken by the EPA aims to ensure that environmental impacts are minimised, contained or made good.

## Purpose of this guideline

This guideline has been developed to assist the general public and licensees to understand the factors that the EPA considers when undertaking licensing functions under the *Protection of the Environment Operations Act 1997* (POEO Act). In particular, this guideline outlines general considerations in response to environmental issues or non-compliance with licence conditions at licensed premises. It should be read in conjunction with [Risk-based Licensing: Regulatory actions tool profiles](#) and [Risk-based Licensing: Information on environmental management systems, practices and improvements](#).

This guideline is not legally binding on the EPA or any other organisation. It reflects the current operational policies of the EPA and these will be subject to review. Any changes will be published on the EPA website.

## The EPA decision-making process

EPA officers consider a range of factors when deciding on the most appropriate regulatory action in response to an environmental issue at a licensed premises. The application of this guideline does not limit the EPA's regulatory response to non-compliance.

## Consider relevant provisions in the POEO Act and regulations, and EPA guidelines

EPA officers should consider the following legislative provisions when assessing the environmental impact of the activity or work authorised or controlled by a licence.

- Chapter 3 of the POEO Act, in particular section 45 – matters to be taken into account when exercising licensing functions
- relevant sections of the POEO Regulations
- EPA policy and guidelines as relevant to the environmental issue (see the EPA website [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)).

## Assess the risk of harm to the environment

EPA officers should consider the potential or actual environmental harm caused by the environmental issue or non-compliance. A risk assessment of the environmental issue or non-compliance should consider:

- pollutant toxicity
- pollutant concentration
- pollutant load
- receiving environment (local and regional impacts)
- method of discharge to the environment
- possible exposure pathways
- duration of exposure of the environmental pollutant
- risk of harm to human health.

## Licensee's compliance history

In exercising licensing functions under the POEO Act the EPA must consider a number of matters as set out in section 45 of the POEO Act. These include considering whether a licensee is a 'fit and proper person', as referred to in section 83 of the POEO Act. The factors the EPA may consider include:

- the licensee's record of compliance with environmental legislation
- the licensee's record of compliance with their licence conditions
- the licensee's cooperation with the EPA and willingness to commit to appropriate remedial actions
- any voluntary actions undertaken to address the environmental issue.

## Assess environmental measures

EPA officers should consider a range of factors regarding the best practicable measures available to reduce the environmental impact posed by the activity, including:

- technological options, best available techniques or technology, immediate and long-term industry best practice
- new or existing pollution control equipment required
- changes to operational practices to introduce best management practices
- other capital works
- costs and feasibility
- timeframe required
- pollution studies undertaken relating to the environmental impacts of activities undertaken by the licensee.

## Alternative or complementary regulatory actions

A list of the regulatory actions used by the EPA that affect a licensee's environmental management category is provided below. The EPA decision about what regulatory action should be taken also considers the most appropriate alternative or complimentary actions. In some instances no action would be taken.

Further details in relation to the EPA's compliance and enforcement approaches and the full suite of regulatory tools available can be found in the EPA's [Compliance Policy](#). Further

information on the regulatory actions below is provided in with [Risk-based Licensing: Regulatory actions tool profiles](#).

**Regulatory responses that affect a licensee's environmental management category**

- Prosecution
- Enforceable undertakings
- Suspension of licence
- Mandatory environmental audits
- Clean-up notices
- Prevention notices
- Pollution reduction programs
- Pollution studies
- Penalty notices
- Official cautions
- Formal warnings
- Site inspections – incident related
- Penalty notices for late or non-submission of annual return
- Official cautions for late or non-submission of annual return