



Environment Protection Authority

Regulatory Policy

September 2024





Acknowledgement of Country

The NSW Environment Protection Authority acknowledges the Traditional Custodians of the land on which we live and work, honours the ancestors and the Elders both past and present and extends that respect to all Aboriginal people.

We recognise Aboriginal peoples' spiritual and cultural connection and inherent right to protect the land, waters, skies and natural resources of NSW. This connection goes deep and has since the Dreaming.

We also acknowledge our Aboriginal and Torres Strait Islander employees who are an integral part of our diverse workforce and recognise the knowledge embedded forever in Aboriginal and Torres Strait Islander custodianship of Country and culture.

Aboriginal artwork by Worimi artist Gerard Black

EPA's Statement of Commitment to Aboriginal Peoples

The NSW Environment Protection Authority acknowledges Aboriginal peoples as the enduring Custodians of the land, sea, waters, and sky of New South Wales.

We recognise the entire NSW landscape, including the lands, waters, plant and animal species and seas, has spiritual and cultural significance to all Aboriginal peoples of NSW. By this understanding there is no separation of nature, wellbeing and culture. The health of the natural environment, and the health of people and culture, are intimately connected.

The EPA is committed to prioritising meaningful relationships with Aboriginal peoples to deepen our understanding of how best to care for Country. Through our partnership with the EPA Aboriginal Peoples Knowledge Group (APKG), we fully acknowledge and embrace the invaluable knowledge they hold and provide to enhance our stewardship of the Country.

The EPA understands the APKG members represent diverse landscapes – Rainforest, Desert, Saltwater and Freshwater – and they play a crucial role as a voice for the Country. We listen to the APKG as they guide, advise, nurture, and challenge us to uphold the 12 principles outlined in the *EPA's Statement of Commitment to Aboriginal Peoples*.

1. Work in respectful partnership with Aboriginal peoples.
2. Actively learn from and listen to Aboriginal voices, culture and knowledge.
3. Respect Aboriginal people's knowledge and science as an equal to Western science.
4. Weave Aboriginal knowledges and science with conventional science into the EPA's decision-making.
5. Act boldly and bravely to play our part to mend and heal Country together.
6. Ensure Aboriginal knowledge, science and Indigenous cultural intellectual property (ICIP) is protected, and Aboriginal people have free, prior informed consent.
7. Address both the tangible and intangible cultural elements of environmental protection.
8. Deliver on results that have direct benefits for Aboriginal communities.
9. Embed consistent, meaningful, and trustworthy engagement with Aboriginal communities.
10. Develop Aboriginal cultural competency across the agency.
11. Increase Aboriginal employment across the agency to exceed public sector Aboriginal employment targets and to identify specific occupational gaps.
12. Monitor the impact of this Commitment to Aboriginal peoples, Country, culture and spirit.

This collaboration ensures our strategic initiatives are firmly grounded in principles of respect and sustainability.

Ku-ring-gai Chase National Park, Guringai and Garrigal Country. Credit: Destination NSW

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Purpose

As environmental stewards, our purpose at the NSW Environment Protection Authority (EPA) is to deliver public value to improve outcomes for the environment and our communities. We aim to identify and assess the greatest risks and address the biggest impacts to the environment and the health of our communities.

Our Regulatory Framework and this Regulatory Policy together describe how we regulate.

Our Regulatory Framework gives an overview of the eight elements of the framework and how we use them, and who we work with to improve outcomes for the environment and the people of NSW.

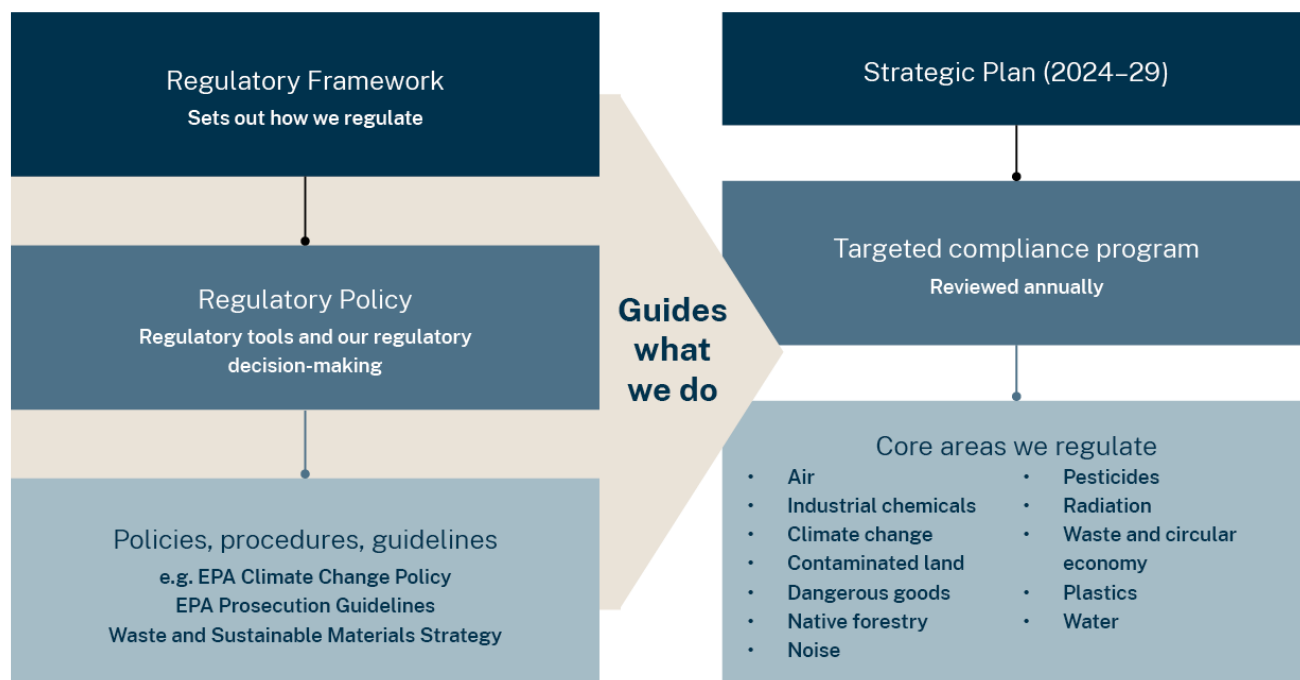
This Regulatory Policy sets out:

- what guides our regulation
- what we consider when we make a regulatory decision to identify risks, undertake an activity, manage requirements or choose an appropriate response
- an overview of the regulatory tools we use and regulatory actions we may take under each element of our Regulatory Framework, to prevent harm or address an environmental issue.

This policy supports us in applying our Regulatory Framework consistently across all areas we regulate.

It is complemented by a number of other policies and guidelines, including the *EPA Prosecution Guidelines*, which set out various matters including the factors the EPA takes into account in deciding whether, how and in what court to prosecute offences under legislation administered by the EPA.

Figure 1 How the Regulatory Policy fits into the big picture



About the EPA

As environmental stewards and the primary environmental regulator for our State we are committed to a sustainable future.

Stewardship is at the heart of what we do and guides the decisions we make every day. More information about our approach to stewardship can be found in our *Strategic Plan 2024–29*.

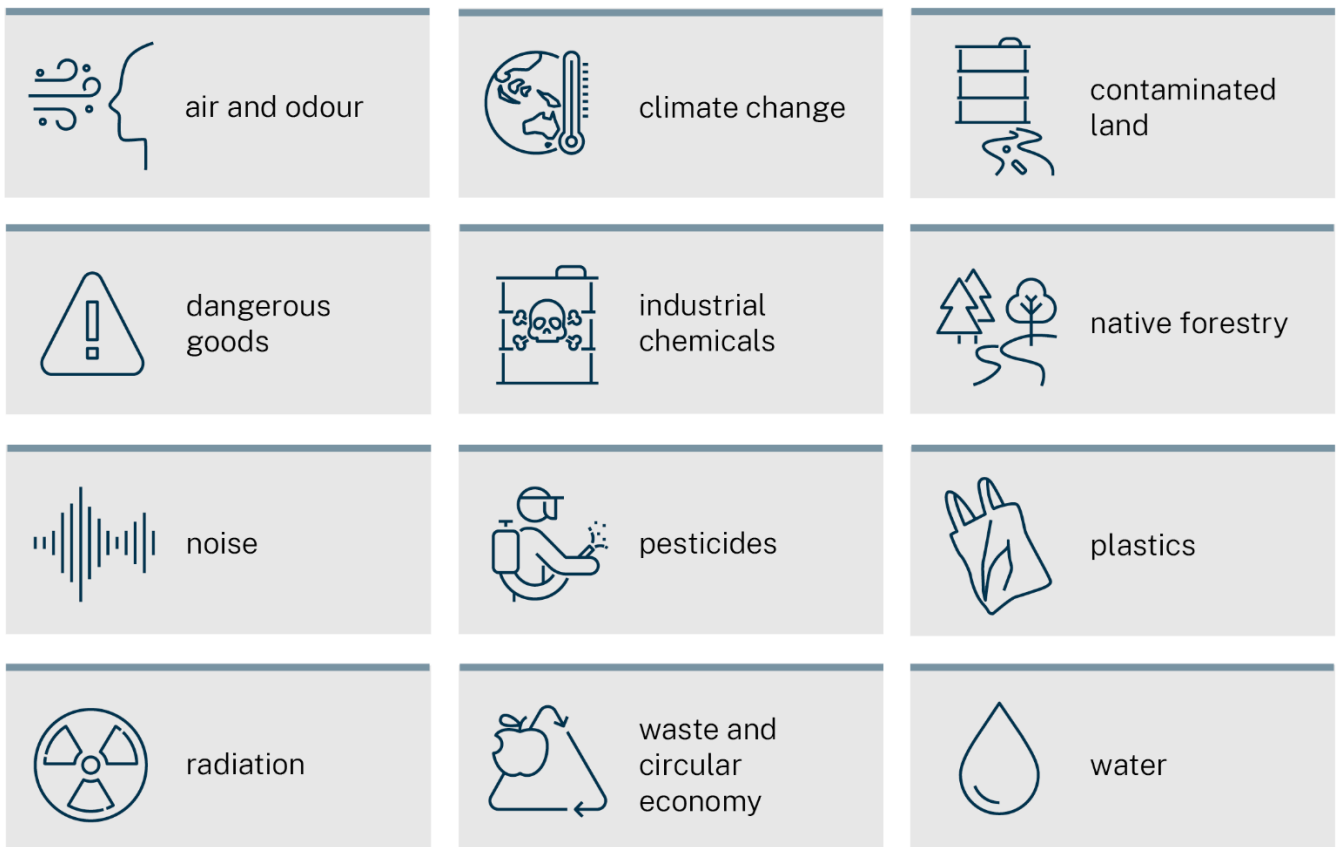
The EPA was established under the *Protection of the Environment Administration Act 1991* (POEA Act). Our objectives at the EPA are to:

- reduce risks to human health and prevent harm to the environment
- protect, restore and enhance the quality of the environment, having regard to ecologically sustainable development

(Section 6 of the POEA Act).

We are responsible for regulating a broad range of activities and their associated environmental risks under the following broad themes.

Figure 2 Broad themes under which the EPA regulates





We deliver public value and act in the public interest

We provide public value by delivering outcomes that have collective meaning or value to the people of NSW. These outcomes include improving air, land and water quality, conserving biodiversity, reducing human exposure to harmful substances, improving environmental amenity, ensuring a safe circular economy and taking action on climate change.

When needed, we take action against people, businesses and organisations to do what is best for the environment and to benefit the people of NSW.

We act in the public interest when exercising all our regulatory functions. This may include deciding whether or not to prosecute or take other action, as required by legislation.

We drive environmental improvements

We recognise improvements made by industry and the community, as well as actions taken by individuals or businesses to drive compliance or further improve environmental performance beyond compliance, such as when businesses:

- undertake proactive monitoring or proactive community engagement
- make and meet voluntary industry standards
- partake in industry research and partnerships with research bodies.

We use partnerships to solve complex issues that we cannot solve alone, to test innovative approaches, and to increase our knowledge, strengthen our insights and expand our reach to improve environmental outcomes.

We collaborate with others to co-regulate, to monitor the state of the environment, to solve problems and do research, to provide education and programs, to enable the community, to undertake campaigns and to respond to emergencies.

How we regulate

The EPA’s Regulatory Framework is balanced and underpinned by eight elements. We listen, educate, enable, act, influence, require, monitor and enforce when we regulate (see Figure 2 below). We may use one or more of these elements at the same time, in any combination or in any series. We use a fit-for-purpose approach depending on the circumstances and the issue we are trying to solve. More information can be found in the Regulatory Framework on the EPA’s website.

Figure 2 The EPA’s Regulatory Framework



We **listen** and actively engage with the community and people to understand their concerns and their ideas for addressing the issues. We listen to our voiceless environment.

We **educate** community, industry and government about environmental issues. We empower decision-making by the community and businesses to take environmental outcomes into account in their practices. We provide guidance about how people or industry can meet or exceed their legal obligations.

We **enable** the people of NSW to act to protect, enhance and restore the environment. We inform the community about what we do and how we do it. We assist the community, businesses and co-regulators and we partner with industry and government to protect, restore and enhance the environment.

We **act** to investigate and collaborate to solve problems by engaging with the community, partnering with our Traditional Custodians and research organisations, industry and government, using our investigation powers, developing policy and programs, using science and research, working with community advocates and undertaking regulatory reform.

We **influence** people, businesses, government, research and science to make changes for better environmental outcomes. We encourage change and innovation through partnerships and collaboration, communication, engagement and behaviour change initiatives. We provide incentives for people and businesses to protect, restore and enhance the environment.

We **require** compliance with obligations under environmental legislation – including regulatory instruments, licences, duties, mandatory training and accreditation. We are bound by the important objectives of our legislation that incorporates our stewardship principles and we reform legislation when needed.

We **monitor** the state of the environment and monitor compliance against legal obligations and intervene when we need to. We investigate environmental issues and non-compliance.

We **enforce** by taking appropriate action, using our powers to compel people and businesses to address or remedy harm and comply with legislation when needed. In doing this, we act as stewards for the environment.



What guides our regulation?

The EPA bases its regulatory decisions and actions on the best available information. Our decisions are informed by:

- data
- intelligence and insights
- evidence
- research and science
- Aboriginal voices, cultures and knowledges guide our approach to caring for Country
- EPA priorities based on an assessment of risks
- behavioural insights
- community science
- as well as information received from
 - other regulators
 - members of the community
 - industry
 - interest groups.

The regulatory principles set out below (Table 1) guide how we regulate and are the underlying basis for our work.

Table 1 Regulatory principles that guide how we regulate

Regulatory principle	Description
Responsive	<p>We respond to environmental or human health issues quickly and effectively to prevent or reduce harm to the environment and human health.</p> <p>We respond quickly to rapid changes in the environment and risks to human health (e.g. bushfires and floods) and to cumulative impacts.</p>
Outcomes-focused	<p>We use a fit-for-purpose approach depending on the circumstances and the issue we are trying to solve. We use a mix of regulatory tools to prevent or reduce harm to get the best outcomes for the environment and human health, and to prevent an issue from recurring.</p>
Effective	<p>We apply the right tools or take the right actions to effectively address the problem at the right time.</p>
Targeted	<p>We identify problems and focus on the most important issues to achieve the best environmental and human health outcomes.</p> <p>We identify and assess risks using the best available data, information and insights to prioritise our work.</p>
Informed and evidence-based	<p>We use an evidence-based approach to our decision-making.</p> <p>Our decisions are informed by research and science, listening to Aboriginal voices and valuing Aboriginal cultures and knowledges, EPA priorities, an assessment of risk, the best available data, information and insights including behavioural insights, and information received from the community, interest groups, industry and other regulators.</p>
Firm but fair	<p>We are guided by empathy to understand the concerns and perspectives of our stakeholders.</p> <p>We use our discretion to take regulatory action that is proportionate, fit for purpose and appropriate to the circumstances.</p> <p>We take strong regulatory action when needed.</p>
Consistent and coherent	<p>We make our decisions based on consistent processes, applying our Regulatory Framework, Regulatory Policy, other relevant policies and any relevant legislative criteria.</p> <p>Our decisions are based on the circumstances at hand.</p> <p>We explain our regulatory decisions coherently and relate these to our objectives under section 6 of the POEA Act.</p>
Transparent	<p>We provide the regulated community with clear information and explanations about environment protection legislation, regulatory instruments, our expectations and our regulatory actions.</p> <p>We provide clear information to the broader community about the EPA's role and responsibilities and the actions we take to address environmental issues.</p> <p>We provide access to information about industry's environmental performance.</p>
Ethical and accountable	<p>We conduct ourselves in accordance with the <i>EPA Code of Ethics and Conduct</i>, the guiding principles in this document, and other relevant policies and guidance.</p> <p>We document and take responsibility for our regulatory decisions and actions.</p> <p>We report on our regulatory performance.</p>
Collaborative	<p>We use partnerships to solve complex issues that we cannot solve alone, to test innovative approaches, and to increase our knowledge, strengthen our insights and expand our reach to improve environmental outcomes.</p> <p>We collaborate with others to co-regulate, to monitor the state of the environment, to act to solve problems and do research, to provide education and programs, to enable the community, to undertake campaigns and to respond to emergencies.</p> <p>The groups we collaborate with include Aboriginal peoples, knowledge holders and communities, local communities, industries and businesses, as well as other regulators and government organisations. We enhance mutual understanding, overcome environmental challenges together and deliver the best outcomes possible.</p>

Our decision-making

We make regulatory decisions every day – and not just in relation to incidents, or when a person is not complying with environmental requirements. Our regulatory decision-making includes, for example, when we are assessing a licence application, providing technical advice, designing a behaviour change or grant program, or forming a policy position on an environmental or human health issue.

This section sets out what we consider when making regulatory decisions to:

- identify and assess risks
- undertake proactive activities, such as campaigns or the development of policies and programs
- manage requirements under legislation, such as licensing functions or approvals
- choose an appropriate regulatory response to an environmental issue, incident or non-compliance.

Identify and assess risks

We prioritise dealing with the greatest risks to the environment and human health, and activities that deliver public value.

We respond to the most important issues, prioritising our policies, practices and programs to address current and emerging risks.

To identify and assess risk, we:

- use data, intelligence, spatial analysis, insights, evidence and science
- take into account Aboriginal cultural values, knowledges and truth-telling
- consider relevant decision factors, outlined in Table 2 and Table 3 of this policy, that are related to an incident or non-compliance, and/or an issue of concern
- assess the risk, considering both the likelihood and consequence.

We focus our activities on reducing risks and contributing to long-term outcomes. This informs our decisions on how we act and manage the risks.

We also regularly monitor and review risks to identify changes over time and reassess our approach when required.

We encourage the people of NSW to consider the risks to the environment or human health from the activities that they undertake.

Undertaking proactive activities

We undertake proactive regulatory activities to address potential and emerging environmental risks, to prevent harm and protect the health of our community now and for future generations.

These activities include:

- education and awareness campaigns and programs to promote an understanding of requirements and expected environmental outcomes, promote best practice, and provide strategies to avoid harm for both the regulated and wider community and to promote voluntary compliance
- proactive compliance campaigns to assess compliance within the regulated community and industry and ensure awareness of their obligations. Compliance campaigns may result in further monitoring or investigation if non-compliances are identified
- development and delivery of priority programs and policy reforms to address and prevent environmental issues, such as those under the *NSW Waste and Sustainable Materials Strategy 2041* and the *New South Wales Plastics Action Plan*
- grants for local government, business, industry and the community to fund projects that deliver environmental improvements, waste prevention and recycling programs, and investment in innovation
- community and industry recycling schemes to reduce waste and promote environmental best practice and transition NSW to a circular economy.

Proactive activities are discussed in more detail under *What we consider when making regulatory decisions*. When deciding how or which proactive activities are undertaken, we consider the factors set out in Table 3.

Managing requirements under legislation

The EPA administers many pieces of NSW environmental legislation. In some cases, the legislation outlines matters that the EPA must consider when making certain regulatory decisions. We consider the matters set out in legislation in addition to any others we deem appropriate to get the best environmental outcomes.

Legislative decision-making requirements include:

- consideration of matters set out in section 45 of the *Protection of the Environment Operations Act 1997* (POEO Act) when exercising licensing functions and section 241 of the POEO Act when considering imposing a penalty for an offence
- consideration of matters set out in section 12 of the *Contaminated Land Management Act 1997* (CLM Act) when declaring land to be significantly contaminated land and section 97 of the CLM Act when considering imposing a penalty for an offence
- consideration of matters set out in section 109 of the *Pesticides Act 1999* when considering imposing a penalty for an offence
- consideration of matters set out in section 48 of the *Protection of the Environment Operations (Clean Air) Regulation 2022* (Clean Air Regulation) when determining an application to vary a licence to include a legacy condition
- consideration of matters set out in section 12 of the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017* (Container Deposit Scheme Regulation) when determining an application for a collection point arrangement approval.

Choosing a response to an issue, incident or non-compliance

We use our discretion when we are making regulatory decisions to select the best tools or act to prevent or reduce harm in response to an environmental or human health issue, an incident or non-compliance, or when making other regulatory decisions.

In exercising discretion, we consider the decision factors set out in Table 2 and Table 3, which include relevant legislative powers, policies, procedures and guidance.

We make decisions and identify appropriate action(s) based on a range of factors. These include the factors set out in Table 2 and Table 3.

We choose an appropriate response that is fit for purpose and proportionate (Figure 4 and Figure 5).

We are guided by our regulatory principles, we consider the relevant decision factors, and we take into account risk, data and insights, which informs our response.

Our regulatory principles and decision factors support us to regulate in a consistent, coherent and transparent way.

Issues, incidents and non-compliances are discussed in more detail under *What we consider when making regulatory decisions*.

Community-based or place-based approach

Sometimes we take a community-based or place-based approach. This approach is most likely to be used where there is a complex issue with no clear way forward, and where there are several people, groups or organisations with an interest.

We may also use this approach where we are considering the cumulative impacts or sources of potential harm on the environment or human health from activities that are specific to a community or place. We recognise that small effects from many individual activities can have significant environmental or human health impacts when combined.

If we take a community-based or place-based approach, we will consider the specific circumstances and engage the community to understand the local context and to share the decision-making process. When working with Aboriginal communities, we will bring open communication, truth-telling and listening to enable trust and collaboration, with a commitment that no decisions about Aboriginal peoples will be made without Aboriginal peoples.

We will bring people together in a structured way to achieve change and have a collective impact. People who are interested in or affected by an issue can engage with the EPA and each other and act to be part of the solution.

When considering how our Regulatory Framework applies to a place, we consider ecosystems as a whole; Aboriginal voices, cultures and knowledges; and the local communities in that place. Examples of places include an ecosystem or geographic area, such as Country, water catchments, airsheds, ecological communities and climatic regions.

The decision factors outlined in Table 3 relating to an issue may apply when taking a community-based or place-based approach.



Powerplant along waterside, Muswellbrook, Wonnarua Country. Credit: John Spencer/EPA

What we consider when making regulatory decisions

Decision factors are matters that the EPA consider and may apply where appropriate and relevant. The decision factors we consider when responding to an incident or non-compliance (Table 2) and the decision factors we consider when responding to an environmental issue and when undertaking proactive activities (Table 3) are outlined below.



The discussion of an **issue** in this policy refers to an issue of concern or problem that is impacting, or has the potential to impact, on the environment or human health. An issue often results from more than one source, or sometimes cumulatively from one source over time. It could occur at one place or locality, or it could be spread across several areas or all of NSW.



The discussion of an **incident** in this policy refers to an adverse instance, event or occurrence with potential or actual impacts on the environment or human health.



The discussion of **non-compliance** in this policy refers to non-compliance with legislative requirements by an individual person, company or other organisation.



The discussion of a **proactive activity** in this policy refers to proactive regulatory activities undertaken to address potential and emerging risks, such as education and compliance campaigns, programs, policy reforms and grants.

Table 2 Decision factors: What we consider when responding to an incident or non-compliance

Decision factors	Considerations
Actual or potential harm to the environment or human health	<ul style="list-style-type: none"> • Sensitivity of local environments or communities • Level and extent of the actual harm or likely extent of the potential harm • Type of harm e.g. emission, pollutant or contaminant
Seriousness of non-compliance or incident	<ul style="list-style-type: none"> • The seriousness of any alleged offence – for example, Tier 1 offences are the most serious offences under the POEO Act. • Environmental crime • The extent to which the alleged offender gained financially from the non-compliance
Attitude, intent and behaviour	<p>Whether the person, company or organisation:</p> <ul style="list-style-type: none"> • has taken voluntary action to mitigate any harm to the environment and to prevent a recurrence or future issues • has taken measures or has procedures already in place to address impacts • has cooperated; complied with EPA requests, directions or notices; and expressed willingness to take appropriate remedial actions • has failed to notify, or delayed notifying, the EPA of a non-compliance or an incident, if relevant • is culpable (whether their behaviour was intentional, reckless or negligent), including any mitigating or aggravating circumstances • has made false or misleading statements about the non-compliance or incident.
Responsible person's status	<ul style="list-style-type: none"> • Age (whether the person is a child) • Mental or physical health (e.g. whether they have a special infirmity, intellectual disability or mental illness)
Compliance history	<p>The compliance history of the person, company or organisation, including the frequency and nature of non-compliance in general, and whether non-compliance is an ongoing issue for that person, company or organisation.</p>
Measures needed to ensure compliance	<p>The measures necessary to ensure ongoing compliance, including:</p> <ul style="list-style-type: none"> • the nature of the activity and/or size and scope of the business – for example, the difference in financial capacity between a big corporation and a single operator • the age or condition of any equipment or facility • the cause and nature of any non-compliance (whether it is ongoing or discrete) • the impact of any regulatory action by the EPA on the local community.
Public value	<p>To deliver outcomes that have collective meaning or value to the people of NSW. This may include:</p> <ul style="list-style-type: none"> • considering what actions the EPA should take to prevent or reduce harm • considering what actions the EPA should take to enhance or restore the environment • listening to Aboriginal voices and acknowledging and respecting the enduring cultural and spiritual relationship Aboriginal peoples have with the land, sea and waterways • considering what the EPA should do to understand, evaluate and respond to community expectations • acting in the public interest when exercising our regulatory functions, which may include deciding whether or not to prosecute, or take other action as required under legislation • considering what the EPA should do to understand the impact on communities of any regulatory actions we take e.g. avoiding disruption to essential services (such as water, sewerage and power) if possible • considering the nature of the activity or activities the regulated entity is undertaking • deterring a person, company or entity from non-compliance, or generally deterring other people or companies from non-compliance – for example, by pursuing a prosecution or issuing a penalty notice.

Legislative and policy frameworks	<ul style="list-style-type: none"> • Legal requirements • Legislative procedures • Relevant EPA policies • Scope of any potential regulatory tool, for example: <ul style="list-style-type: none"> — When considering whether or not to prosecute, we review the matters set out in the <i>EPA Prosecution Guidelines</i> — When considering whether or not to enter into an enforceable undertaking, we review the matters set out in the EPA’s <i>Enforceable Undertaking Guidelines</i>. • Statutory time frames • Potential rights of appeal.
Precedent	Any legal or regulatory precedent that may be set by taking action or not taking action.
Environmental justice	<p>Environmental justice principles, such as whether there will be an impact on disadvantaged communities or vulnerable people because of an incident or non-compliance.</p> <p>The EPA promotes environmental justice for Aboriginal peoples and will keep Aboriginal voices, knowledges and perspectives at the heart of everything we do.</p>

We consider the decision factors relating to an incident or non-compliance when deciding on what action to take (Figure 4), and will tailor our response to be fit for purpose depending on the circumstances. We may use more than one regulatory action or tool. For example, our response to a non-compliance may include requiring clean-up action and education to prevent similar events in the future.

EPA Officer checking bushland, Dubbo, NSW, Wiradjuri Country. Credit: EPA



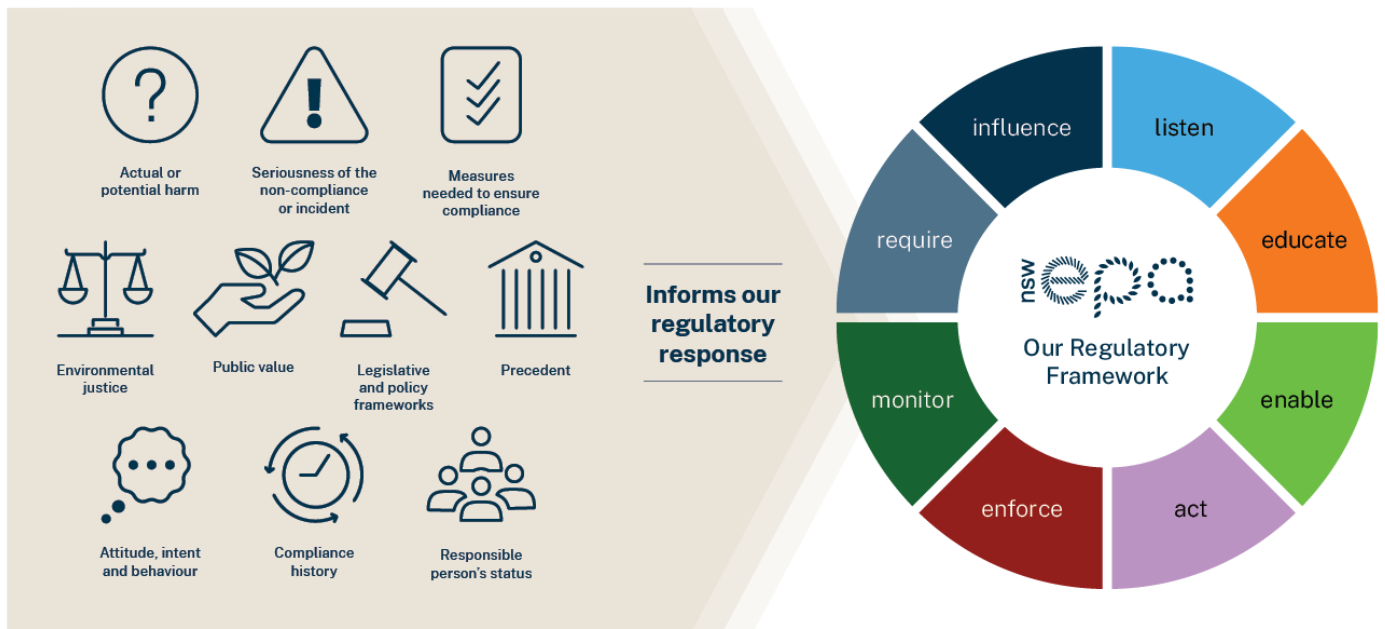


Figure 3 Decision factors considered when responding to a non-compliance or incident

Examples of how we may respond to a non-compliance or incident

Listen

- Listen to the regulated entity
- Listen to the affected community

Educate

- Education on requirements and obligations
- Promote best practice

Enable

- Enable and assist to comply
- Advisory letters

Act

- Co-regulation with local government
- Research and respond to an incident or emergency

Influence

- Monetary benefit orders
- Public warning statements

Require

- Notice requiring provision of information
- Duty to report

Monitor

- Investigations
- Inspections or audits

Enforce

- Civil or criminal proceedings
- Licence suspension or revocation
- Clean-up, remediation

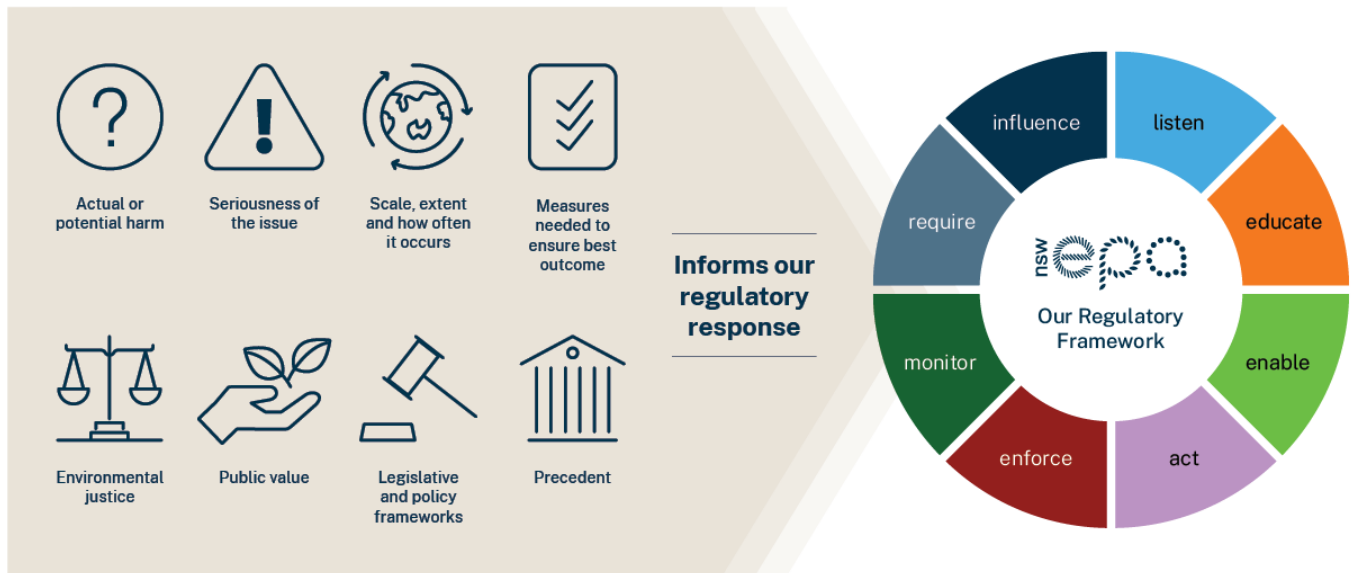
When considering the appropriate response to an environmental or human health issue, or when undertaking proactive activities, we consider the following factors, focusing on both current and future impacts on the environment and human health.

Table 3 Decision factors: What we consider when responding to an environmental issue or when undertaking proactive activities

Decision factors	Considerations
Actual or potential harm to the environment or human health	<ul style="list-style-type: none"> • Sensitivity of local environments or communities. • Level and extent of the actual harm or likely extent of the potential harm • Type of harm or potential harm e.g. emission, pollutant or contaminant
Seriousness of the environmental or human health issue	<ul style="list-style-type: none"> • Cumulative impacts from more than one source, or from one source over time • Sensitivity of local environments or communities • Scientific research about the environmental or human health issue • Relevant data and analysis from environmental monitoring • Potential ongoing impacts on the environment and human health
Scale and extent of the environmental or human health issue and how often it occurs	<ul style="list-style-type: none"> • Scale and extent of the environmental or human health issue or likely extent for an emerging risk • How often the issue occurs • Whether it is widespread or a systemic issue • Whether there are ongoing impacts
Measures needed to ensure best environmental or human health outcome	<ul style="list-style-type: none"> • The size of the geographic area affected or possible extent • The cumulative impact(s) or likely impacts • The scope or likely scope of the environmental or human health issue or impact on communities.
Public value	<p>To deliver outcomes that have collective meaning or value to the people of NSW. This may include:</p> <ul style="list-style-type: none"> • what actions the EPA should take to prevent or reduce harm • what actions the EPA should take to enhance or restore the environment • listening to Aboriginal voices, and acknowledging and respecting the enduring cultural and spiritual relationship Aboriginal peoples have with the land, sea, and waterways • what the EPA should do to understand, evaluate and respond to community expectations • acting in the public interest when exercising our regulatory functions or as required under legislation • what the EPA should do to understand the impact on communities of any regulatory actions we take e.g. avoiding disruption to essential services (such as water, sewerage and power) if possible • considering the nature of the activity or activities the regulated community is undertaking • encouraging environmental improvements • generally deterring people or businesses from non-compliance.
Legislative and policy frameworks	<ul style="list-style-type: none"> • Legal requirements • Legislative procedures • Relevant EPA policies • Scope of any potential regulatory tool, for example: <ul style="list-style-type: none"> — When considering whether or not to prosecute, we review the matters set out in the <i>EPA Prosecution Guidelines</i>. — When considering whether or not to enter into an enforceable undertaking, we review the matters set out in the EPA's <i>Enforceable Undertaking Guidelines</i>. • Statutory time frames • Potential rights of appeal
Precedent	Any legal or regulatory precedent that may be set by taking action or not taking action
Environmental justice	<p>Environmental justice principles, such as whether there will be an impact on disadvantaged communities or vulnerable people because of an environmental or human health issue.</p> <p>The EPA promotes environmental justice for Aboriginal peoples and will keep the Aboriginal voice, knowledges and perspectives at the heart of everything we do.</p>

We consider the decision factors relating to an issue or the proactive work we do when deciding on what action to take (Figure 5). These inform the response that we take to the issue. Our regulatory response will be fit for purpose and may result in more than one tool being used or action being taken. For example, our response to an issue may include community consultation, and education and raising awareness of legislative requirements with the relevant industry sector; then after that, we may carry out one or more compliance campaigns to check compliance.

Figure 5 Decision factors considered when undertaking a proactive activity or responding to an issue



Examples of how we may respond to an issue or undertake a proactive activity

Listen

- Community feedback
- Forums

Educate

- Awareness campaigns
- Education programs

Enable

- Grants
- Assist to comply e.g. guidance

Act

- Science
- Regulatory reform

Influence

- Promotion and advocacy, behaviour change initiatives
- Influencing land-use planning

Require

- Acts and regulations
- Training and accreditation

Monitor

- Campaigns
- Recognising cumulative improvements

Enforce

- Remediating
- Industry-based or place-based pollution reduction programs



Regulatory tools and actions

We use all the regulatory and behaviour change tools available to us to encourage actions that protect the environment and human health. We promote good practice to improve environmental outcomes and behaviours. We enable and assist the regulated community to meet the minimum requirements for compliance and improve performance beyond compliance.

Sometimes the EPA needs to ensure compliance by using enforcement tools, such as issuing a penalty notice. If necessary and fit for purpose, we take strong enforcement action.

Some of the diverse tools we use and actions we take under each element of our framework are described in the following sections of this policy. The next page provides an overview of these tools and actions. Not every tool available to the EPA is listed in this policy.

We may use more than one tool or action at the same time, in any combination or in any series (depending on the individual circumstances or the nature of the issue, problem or risk).

Some tools or actions may fit under more than one element of our Regulatory Framework; however, each tool is only described once in the following sections of this policy.

Examples of tools and actions under our Regulatory Framework



Listen

- Community groups
- Aboriginal voices
- Forums
- Stakeholder surveys
- 'Have your say' website
- Reports by the community
- Regulated community feedback

Educate

- Providing information
- Education programs
- Awareness campaigns
- Guidance
- Helping the public make informed decisions

Enable

- Assisting to comply
- Guidance
- Advisory letters
- Supporting responsible behaviours
- Sharing data and information
- Feedback from compliance campaigns
- Grants

Act

- Sound science
- Aboriginal knowledges
- National forums
- Regulatory improvements
- Regulatory reform
- Co-regulate with local government and others
- Partner with research organisations
- Respond to emergencies

Influence

- Advice, promotion and advocacy
- Behaviour change initiatives
- Monetary benefit orders
- Financial assurances
- Load-based licensing
- Levies
- Environmental improvement programs

Require

- Legislation
- Legislative obligations
- Licences
- Control orders
- Duty to report
- Mandatory training
- Training and accreditation schemes
- Approvals
- Codes of practice

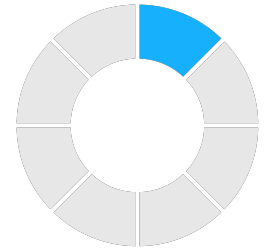
Monitor

- *State of the Environment* report
- Environmental monitoring
- Inspections
- Audits
- Investigations
- Interviews
- Campaigns

Enforce

- Notices, directions, orders
- Recall notices
- Pollution reduction programs
- Mandatory environmental audits
- Formal warnings
- Official cautions
- Penalty notices
- Enforceable undertakings
- Stop work orders
- Varying, suspending or revoking a licence
- Prosecutions
- Court orders

Listen



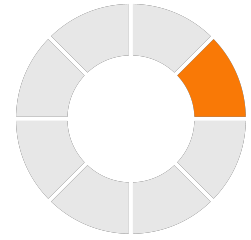
The EPA listens and acts on what it hears. We actively engage with businesses, the community and other government agencies, to understand the issues affecting them and the environment, and their ideas for addressing those issues. We listen to the needs of the people of NSW as well as to our voiceless environment.

The EPA then works with the affected parties to find and implement solutions. The EPA's Engagement Framework and Charter outlines our commitment to everyone we work with as well as our guiding principles for engagement.

Engaging the community, industry and government

- We engage with community, industry and other government agencies (local, state and federal), including through advisory groups.
- We engage across sectors to help solve issues collectively.
- We listen to the views of local communities about local issues. By coordinating community advisory groups, we help communities engage with us on these issues, and with their industrial neighbours and other key stakeholders.
- We recognise that Aboriginal peoples are key agents of change and give them agency in the environmental and human health issues that impact their lives. We embed transparency of information and two-way thinking to respond to issues and work collaboratively when seeking solutions to protect, respect and heal Country.
- We seek feedback from the community, industry and government through means such as stakeholder surveys and EPA forums.
- We use a variety of engagement methods to listen to the community, industry and government, including face-to-face and digital. We have a dedicated 'Have Your Say' website so we can listen to feedback about our specific initiatives.
- We make ourselves available to listen to and respond to the concerns of the community, industry and government.
- We encourage the community, industry and government to report environmental incidents to us.

Educate



We educate and inform the community, industry and government to help them understand our role in protecting the environment, and their own roles and responsibilities for protecting the environment and human health. We also empower them through education to make decisions and undertake behaviours to improve their own environment.

Providing information

We communicate with people using channels that meet their needs. We make our information accessible, taking into account the diverse nature of the community.

We provide information to:

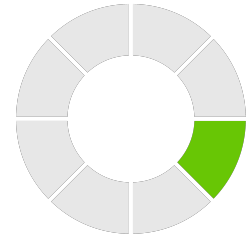
- inform others; empower them to participate in the decision-making process on environmental and human health matters; and improve behaviours
- be transparent about our regulatory activity, decision-making and performance.

Awareness and education

We provide education and awareness to:

- increase compliance and understanding of the potential harm to the environment and human health from non-compliance
- encourage improvement in environmental management practices beyond compliance, to restore and enhance the environment both now and for the future
- help support people to perform actions and behaviours that protect the environment
- address widespread non-compliance or misunderstanding of requirements through education or awareness programs, and promote community involvement in decisions about environmental matters
- provide guidance and other tools to help make meeting requirements easier, and be available to answer questions
- raise awareness and educate the public, public land managers and our co-regulators about environmental and human health issues
- raise awareness of risks to the environment and human health to influence changes in behaviour and social norms and help the public make informed decisions. This includes undertaking education campaigns.

Enable



The EPA enables the people of NSW – industry, organisations and the community – to act to protect, enhance and restore the environment. We do this through supporting the public, sharing information, and giving assistance and grants.

Supporting the public to protect the environment

We enable the community to protect the environment by:

- informing them about what we do and how we regulate
- sharing information about risks to the environment and human health
- enabling the community to report environmental matters to our dedicated Environment Line
- helping people to make informed decisions and behave responsibly.

Sharing information

We share data and information with the community, co-regulators, government organisations and research bodies to support activities that protect the environment and human health.

We do this via mechanisms such as the EPA website, the EPA's public registers and SEED (Sharing and Enabling Environmental Data), the whole-of-government environmental data repository. We collaborate with other environmental regulators through HEPA (Heads of EPAs) and AELERT (Australasian Environmental Law Enforcement and Regulators Network).

Helping improve environmental performance

We protect the environment by assisting the regulated community to comply with environmental protection requirements and promoting ways to achieve better environmental and human health outcomes. For example, we:

- consult and engage with the regulated community and industry about changes to legislation or regulatory practice
- deliver assistance programs
- work with industry on changing regulatory requirements – for instance, by providing resources and running workshops and industry forums
- share case studies and insights to encourage voluntary compliance and best practices (such as working with champions) and promote practices and behaviours that lead to good environmental outcomes
- partner with others to test innovative approaches to improve outcomes
- provide feedback from regulatory activities (such as compliance campaigns and audits) to the regulated community to help them understand how to improve their environmental performance
- issue resource recovery orders, which are to minimise harm from the re-use of resources under a resource recovery exemption.

Advisory letters

We use advisory letters to remind or inform a person, company or organisation of their need to meet their legal obligations and to avoid potential breaches.

Grants

We provide grants to a person, company or organisation to fund certain kinds of projects that provide public value. They include grants to:

- assist or advance environment protection (POEA Act (s 8)). For instance, we provide grants to community groups to help them protect the environmental or human health – for example, by developing guidelines, standards and policies for environment protection, or by monitoring the state of the environment (outside of their legislative obligations).
- enable community groups to obtain technical assistance to make public submissions, or for other environmental protection matters (POEA Act (s 8)). This may allow the community to take part in the decision-making process on environmental protection matters.

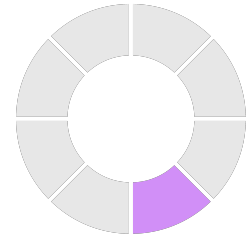
Grants that are currently provided include those under the *NSW Waste and Sustainable Materials Strategy 2041* and the *New South Wales Plastics Action Plan*. They will help transition NSW to a circular economy and mitigate climate change impacts. These grants are for areas such as:

- reducing illegal dumping
- reducing litter through strategic prevention measures
- reducing commercial and industrial waste
- developing circular economy opportunities.

Red waste and yellow recycling bins at beachside suburb. Credit: Evolving Images/EPA



Act



We act to solve existing problems and prevent possible future problems. We investigate environmental issues, enforces compliance and responds to emergencies. We engage with stakeholders; educate industry and the general community; collaborate with co-regulators; partner with Traditional Owners; and work to continually improve the Regulatory Framework.

Regulatory improvements and reform

We lead reviews of legislation to improve environmental protection in NSW and influence national forums through our regulatory reform work. We are committed to continually improving how we apply our Regulatory Framework so that we can respond to current and emerging issues, to protect the community and the environment.

Our reform work includes changes to legislation, legal instruments, policy approaches and programs.

- Legislation and legal instruments– we provide advice for the development of clear and appropriate laws where they are needed to protect the community and the environment.
- Policy and procedures – we develop policies and procedures that ensure we regulate in a consistent, effective and efficient way.
- Programs and initiatives – we develop programs, innovative regulatory approaches and behaviour change initiatives.

Working with others to regulate

We work with local government to help us engage with local communities. Where we have a co-regulatory role under legislation, we support local government capability through training, regulatory and scientific advice, and developing and sharing guidance. We conduct shared campaigns for regulatory issues and work on environmental problems together.

We partner with other regulators to reduce regulatory overlap, share information and intelligence, and work together on environmental solutions.

We collaborate with other regulators on leading regulatory practice, through forums such as Heads of EPAs (HEPA) and the Australasian Environmental Law Enforcement and Regulators Network (AELERT).

We participate in national regulatory forums to agree on national objectives that are incorporated into how we regulate the environmental areas we are responsible for in NSW (such as pesticides, radiation and dangerous goods).

Sound science

We obtain, require, commission, promote and encourage the latest science and research to help solve environmental problems and regulatory challenges, and to ensure we are using evidence as the basis for our decisions and actions.

- We carry out or commission research on new and emerging problems or current issues.
- We capture and analyse data from environmental monitoring, compliance monitoring, and industry and community insights, to inform our decisions, regulatory improvements and environmental solutions.
- We listen deeply to Aboriginal voices to include Aboriginal cultural knowledges to care for Country.
- We partner with external science experts, research organisations, universities, and other state, territory and national agencies, when expertise in those organisations can inform our regulation, or where we have joint expertise and can learn from each other.
- We apply scientific rigour to proposed new technologies to be used by industry.
- We obtain and consider scientific advice when undertaking regulatory reform.
- We build capabilities in the science and technical fields within the EPA and more widely with co-regulators and industry to improve outcomes.
- We provide opportunities to test new ideas for improving environmental outcomes.

Considering a community-based or place-based approach

We may act using an approach where we consider impacts to the environment, ecosystems and/or the community in that place. If we take a community-based or place-based approach we will consider the specific circumstances of that place and engage the community, including the Aboriginal community, to understand the local context and to share in the decision-making process. We develop meaningful relationships with Aboriginal knowledge holders to understand the needs of individual communities.

There can be cumulative impacts or sources of potential harm to a system such as a water catchment or an airshed from numerous and diffuse sources and pathways. We will consider how we can identify risks, adverse impacts to Country and Aboriginal communities, and address harm or potential harm at a system level, using sound science and Aboriginal cultural knowledges, with the understanding that caring for Country is a shared responsibility of all community members.

Responding to incidents and emergencies

The EPA has an important role in helping communities, industries and public land managers to prepare for and recover from incidents, emergencies and disasters. Our role is to make sure that risks or impacts to land, air, and water, including Aboriginal cultures and our natural ecosystems, are minimised or avoided. This includes preventing, preparing for, responding to and recovering from environmental challenges, such as fire and flood.

Our role in state emergency and incident response is part of how we contribute to caring for Country. Under the NSW emergency management arrangements, the EPA is the lead agency for the Environmental Services Functional Area. In this capacity, we work with combat agencies such as Fire and Rescue NSW, functional areas such as Engineering Services, and supporting agencies, in responding to emergencies and leading prevention, preparedness and recovery activities. *The State Emergency Rescue and Management Act 1989* (SERM Act) and State Emergency Management Plan (EMPLAN) set out these emergency management arrangements.

Our trained incident management staff can be deployed to major incidents such as fires, explosions, spills, contamination or radiation incidents, and provide advice to protect the environment and human health in response and recovery, as well as providing sampling and monitoring expertise. As a regulator, the EPA investigates and acts on suspected breaches of environmental legislation that have caused or contributed to an incident.

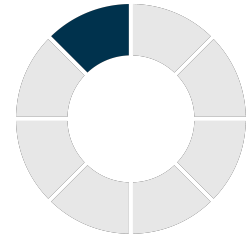
Smaller incidents may be managed by local government. Our response level depends on:

- the type and quantity of the materials exposed to the environment
- the sensitivity of the local environment
- public health and community needs.

Hazardous incident investigation, Dubbo, NSW, Wiradjuri Country. Credit: EPA



Influence



To achieve outcomes beyond what direct regulation allows, the EPA uses influence and advocacy to achieve better environmental and human health outcomes. Influence includes providing advice, financial incentives, information sharing and collaboration. As an advocate, the EPA works with communities, industry, co-regulators and other government agencies to ensure their decisions and behaviours take into account the protection of the environment and human health.

The EPA voice in land-use planning

The planning and development assessment process under the *Environmental Planning and Assessment Act 1979* plays a vital role in preventing or reducing environmental impacts. Our role is to advise the government on recognising the importance of environmental protection in the planning and development assessment process and integrating our licensing processes with it (s 7 POEA Act).

In participating in land-use planning, the EPA:

- promotes ecologically sustainable development
- takes a risk-based approach to ensure our advice and recommendations help decision-makers to require the right safeguards to protect, restore and enhance the environment and to protect human health
- may promote a place-based approach to ensure cumulative impacts or sources of potential harm on the environment or human health from activities that are specific to a place are considered
- will recommend refusal of a development application if we consider the potential environmental and human health impacts cannot be sufficiently mitigated.

More detail on [planning requirements](#) is available on the website of the [Department of Planning, Housing and Infrastructure](#).

Public warning statements

We have the power to make or issue public warning statements about specified activities, persons, substances or complaints of concern that are in the public interest. This allows us to warn the public about matters of concern, and acts to discourage people or businesses from engaging in illegal activities.

Financial incentives

We use market-based instruments and other economic incentives to achieve better outcomes for the environment and human health.

These instruments and incentives harness market forces to influence behaviour, and are consistent with the 'polluter pays' principle (i.e. that those who generate pollution should bear the cost of

managing it). Market-based instruments are particularly useful in managing complex pollution issues, driving incremental improvements over time, and managing the cumulative impacts of pollution from multiple sources. Some examples are listed below.

Load-based licensing scheme

This encourages cleaner industrial production through the ‘polluter pays’ principle. It requires some of the EPA’s licensees to pay additional fees based on the pollutant load they emit: the more they pollute, the more they pay.

The scheme provides an economic incentive for licensees to reduce their emissions and improve their environmental performance beyond what they are required to do to comply with their licence conditions or regulations alone. It is one way we control, reduce and prevent air and water pollution. Fees depend on the amount of assessable pollutants and the types of pollutants that an activity releases into the environment, as well as the conditions in the receiving environment.

Incentives to improve environmental performance

We encourage businesses and organisations with an environment protection licence under the POEO Act to improve their environmental performance.

Licensees who perform well and minimise their environmental risk are rewarded with reduced fees, while poor performers pay greater fees as an incentive to improve performance.

We encourage the use of environmental improvement programs (EIPs) by providing a financial incentive to achieve improved environmental outcomes.

When applied to an environment protection licence, an EIP may help reduce licence administration fees.

A program is only considered an EIP if it will achieve improved environmental outcomes above what is required under the POEO Act or regulations or licence conditions.

A business can seek to proactively improve its environmental performance by completing works under an EIP. EIPs are attached to licences and can include works to reduce pollution or to implement sustainability or cleaner production techniques. Because EIPs are applied to licences, they are legally enforceable.

Financial assurances

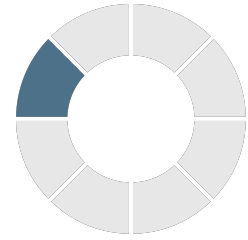
We may require a financial assurance to safeguard against a future environmental liability. A financial assurance is a type of security that provides the EPA with access to money to carry out works in cases where the responsible party doesn’t complete them. We can require a financial assurance under a contaminated land management order, an environment protection licence or a radiation management licence. We may choose to require a financial assurance if we are satisfied that the condition is justified having regard to certain matters, including the degree of risk of environmental harm, the remediation work needed, and the environmental performance of the regulated person or company.

Sponsorship

We sponsor activities and events to help us share information and knowledge with stakeholders, recognise achievements, support best practice, and work constructively with business and the community.



Require



As NSW's primary environmental regulator, the EPA administers key environment protection legislation. This is the agency's core role, and one that gives the EPA many responsibilities and functions. Acts the EPA administers are listed on the EPA website.

We require compliance with certain obligations, including:

- obligations under legislation, regulatory instruments, approvals and licences
- duties
- mandatory training
- accreditation.

This Regulatory Policy applies to regulatory tools under all the relevant Acts and their associated regulations.

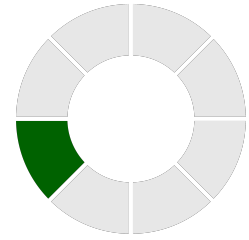
These tools allow the EPA to require the regulated community to comply with directions to act, environmental standards and limits, operating controls, competency standards, and monitoring and reporting requirements.

They help achieve better environmental and human health outcomes.

Examples of such tools are:

- environment protection licences
- dangerous goods driver and vehicle licences
- radiation user and management licences
- pesticide licences
- pesticide control orders
- duty to notify of a pollution incident or contamination
- mandatory training and accreditation of individuals (e.g. dangerous goods drivers, pesticide users, radiation equipment users)
- protocols under the Integrated Forestry Operation Approvals (IFOAs)
- private native forestry code of practice
- notices to provide information
- contaminated land preliminary investigation orders and management orders
- preliminary investigation notices under POEO Act
- financial assurances under a contaminated land management order, an environment protection licence or a radiation management licence
- resource recovery orders
- recall notices.

Monitor



The EPA monitors both the state of the environment and regulatory compliance. This allows us to track the development of existing issues and identify both emerging issues and opportunities to prevent harm. We can then frame appropriate policies and courses of action.

Monitoring the state of the environment

To protect the environment, we must be informed about the state of our environment and industry performance. We monitor the environment to understand and inform the community on changes in environmental indicators over time.

We use monitoring to:

- guide our actions and inform our regulatory priorities and strategic programs
- keep the community informed
- identify environmental issues and non-compliance, and encourage improved practices and behaviours
- set emission limits and other outcomes
- support emergency services during incidents.

We require some of the regulated community to undertake environmental monitoring. We partner with other agencies and research bodies to undertake monitoring and also monitor the environment ourselves.

We prepare the *NSW State of the Environment* report every three years to keep the community updated on the health of our environment (climate, air, land, biodiversity, water and marine environments). The report provides credible, robust, statewide environmental information that can be used for developing environmental policy, making relevant decisions and managing the state's environmental assets. It provides a snapshot (including status, trends and challenges) of the main environmental issues facing NSW.

Tools to monitor compliance and environmental issues

We monitor compliance with legislation, licences, approvals and other requirements using a variety of tools, including inspections, audits and investigations.

We conduct research, data analysis and intelligence, and use science and data we access from others such as research bodies, citizen scientists, and other government agencies, to monitor environmental issues.

Reports and notifications

We receive reports of potential non-compliance and environmental issues from the community, industry and other regulators. There are requirements under environment protection legislation for the regulated community to report on pollution incidents and contamination. This informs us about pollution incidents and potential risks, so we can act to protect the environment and human health.

Inspections

We use site inspections to collect data and information and monitor compliance. Where appropriate we also provide information and guidance to assist with compliance.

During inspections we ask questions and provide information, and may also collect samples, view records and take photographs.

Audits

We use compliance audits to assess whether regulatory requirements are being complied with and to improve environmental performance. Audits can be undertaken on a single premises or audit programs can focus on a specific industry or activity.

An audit is a systematic independent process in line with ISO 19011:2018 *Guidelines for Auditing Management Systems*.

The aim of strategic environmental compliance and performance audit programs is to encourage operators and industry sectors to improve their environmental performance. These programs combine an assessment of compliance with a review of best environmental management practices.

We generally make audit findings available in audit reports on the EPA website and will engage with the relevant industry sectors in audit findings.

Campaigns

We use campaigns to monitor environmental issues that may be widespread or emerging. These campaigns may involve inspections, surveys, audits, investigations and education. They provide an opportunity to raise awareness about our requirements, best practices and good behaviours.

We use the information gained from these campaigns to develop effective interventions, such as behaviour change initiatives and enforcement actions, and to develop or improve guidance.

We also undertake joint programs or campaigns with other government agencies and local government.

Investigations

To protect the environment and human health, we investigate alleged incidents of actual or potential harm and, where appropriate, take regulatory action. During an investigation, we gather evidence to establish whether an offence has occurred and, if it has, how serious the offence is and who may be responsible.

This evidence can be in various forms including documents, data, information and records, videos, photographs, samples, statements and records of interview.

Under the environment protection legislation, we can issue various investigation notices and use powers to obtain information during an investigation and in the administration of the legislation.

This can include preliminary investigation notices that can direct a person or company to take certain actions such as sampling and testing to inform an investigation or respond to an incident.

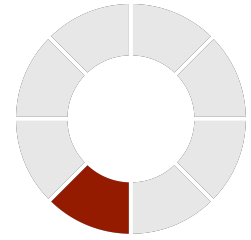
We may ask a person or company to provide an explanation for an alleged breach and to describe any circumstances that may justify it. We may ask this in an interview during an investigation or in a 'show cause' letter, which we send towards the end of an investigation.

Read more about our investigative tools and powers under the POEO Act in the *Powers and Notices Guideline for Authorised and Enforcement Officers*.

EPA officers sampling water, Newcastle, Awabakal Country. Credit: Nick May/EPA



Enforce



The EPA will take enforcement action to compel people, companies and organisations to meet their legal obligations when they have not complied with requirements. Enforcement is intended to deter offenders from re-offending and to deter other parties from committing similar offences. It also shows the community that the NSW Government is serious about protecting the environment and human health.

Enforcement may include:

- compelling the person, company or organisation to address the non-compliance
- penalising the person, company or organisation with a fine or other penalty, or commencing action against the person or organisation in court.

Sometimes the EPA needs to take hard action against those who cause, or may cause, significant harm to the environment or human health or those who are not willing to change their behaviour to prevent or reduce harm.

Actions to remedy harm or prevent potential harm

Notices, directions and orders to control or prevent harm

We use notices, directions and orders to address environmental harm or harm to human health, or to prevent potential harm from occurring. These notices, directions and orders include:

- clean-up notices, which specify clean-up action to be taken in relation to a pollution incident. In certain circumstances, such as when there is an immediate risk to the environment or human health from the pollution incident, we may issue a verbal clean-up direction followed by a written notice with the details
- prevention notices, which specify actions that must be taken, or must not be taken, to ensure an activity is carried on in an environmentally satisfactory manner, such as installing or repairing equipment
- prohibition notices (under the POEO Act), which can direct a person or company to stop doing an activity. The EPA can recommend a prohibition notice to the Minister who makes the decision
- stop work orders (for forestry activities likely to result in a contravention of forestry legislation), which are used to direct a person to stop a specific action and to take specific actions as directed by the EPA. These can be issued verbally by the EPA and confirmed in writing within 72 hours
- noise control notices and noise abatement directions, including to address industrial noise and noise from vehicles
- compliance cost notices, to recover costs and expenses related to clean-up notices and actions; prevention notices; prohibition notices; and noise control notices
- improvement notices (for dangerous goods) and remediation orders (for forestry), which can be used to remedy harm

- contaminated land preliminary investigation orders, voluntary management proposals, management orders and ongoing maintenance orders, which are used to investigate or manage contamination
- directions to public authorities under section 12 of the POEO Act
- directions to deal with dangerous situations involving radiation
- recall notices for substances, with the approval of the Minister, including where a substance poses a potential risk of harm to human health or the environment.

Pollution studies and pollution reduction programs

We may require some businesses that have an environment protection licence to complete pollution studies and pollution reduction programs (PRPs). These initiatives help us understand and reduce environmental harm that may be caused by the businesses.

We may require a licensee to complete a pollution study about the environmental impact(s) of their activities on the receiving environment (air, water, land, and sensitive receivers in the case of noise and the appropriate management of waste).

We may also require a licensee to develop, submit and comply with a PRP. These programs are intended to achieve improved environmental outcomes within a specified time frame.

PRPs aim to prevent, control, abate or mitigate pollution from regulated activities at licensed premises through a program of actions. Such programs include carrying out works or installing plant and equipment.

PRPs may be added to a single licence or added to a number of licences to address a broader issue.

Varying a licence or approval

Licence and approval conditions are in place to protect the environment and human health and relate to the type and scale of activity authorised or controlled by the licence or approval. We may choose to vary a licence or approval under the legislation we administer by making changes to the conditions attached to it. We may also do this to respond to changes in the activity, to legislative changes or to risks to the environment or human health. A variation may be necessary to ensure the licence or approval is more appropriate to recent activities, where new issues or scientific knowledge has emerged, or to achieve the desired outcome where current requirements are no longer fit for purpose.

Mandatory environmental audits

Under section 175 of the POEO Act, the EPA may require a mandatory environmental audit. Such audits are aimed at improving the environmental performance of a licensed operation. The licence holder must engage a qualified environmental auditor to undertake a mandatory environmental audit of their operation.

Civil enforcement proceedings

Under Chapter 8 of the POEO Act, the EPA may take court action to remedy or restrain a breach of the POEO Act or regulations. Similar provisions exist under other legislation enforced by the EPA. Under section 253 of the POEO Act, the EPA can also bring proceedings to remedy or restrain a breach (or a threatened or apprehended breach) of any other Act, or statutory rule, if that breach is causing or is likely to cause harm to the environment. The aim of civil enforcement is not to punish

but to restore compliance with the law. For example, it may include the court making remediation orders.

Warnings, penalties and prosecutions

Formal warnings

We sometimes issue formal warnings when harm could have been avoided or the opportunity exists for a person, company or organisation to quickly achieve voluntary compliance with legislative requirements.

In these cases, the seriousness of the non-compliance is usually at the lower end of the scale and we consider further enforcement action is not necessary at the time. We can escalate our response if the issue is not addressed.

Penalty notices and official cautions

We may issue an official caution if the offence is one for which a penalty notice may be issued.

A caution, rather than a penalty notice, is used if we have reasonable grounds to believe that an offence has been committed and that a caution is appropriate in the circumstances, with regard to the factors set out in the Attorney General's *Caution Guidelines under the Fines Act 1996*. We may use an official caution in situations where the offending behaviour did not involve significant risk or impact to the public and is at the lower end of seriousness for that offence or was not knowingly or deliberately committed.

Penalty notices are fines issued for breaches when the facts are clear, the breach is serious and a penalty notice is likely to deter the person, company or organisation from further breaches. There are penalty notice offences prescribed in the environment protection legislation. Issuing a penalty notice allows the person served with the notice to pay a fine rather than have the alleged offence dealt with in court. The person may choose not to pay the fine and instead elect to have the matter dealt with in court. Penalty notices are designed primarily to deal with one-off breaches that can be remedied easily.

Enforceable undertakings

Enforceable undertakings are one of the tools we use to protect the environment and are designed to improve environmental outcomes and prevent future breaches.

They are voluntary and legally binding agreements between us and a person, company or organisation alleged to have breached environmental legislation.

Enforceable undertakings are a:

- more serious regulatory response than a warning letter or penalty notice
- less serious regulatory response than prosecution (where it is possible to incur a criminal conviction).

Our *Guidelines on Enforceable Undertakings* provide further information on proposing, negotiating and monitoring enforceable undertakings to produce the best outcomes.

Suspend or revoke a licence or approval

We may suspend a licence or approval. This means the person or company can no longer lawfully carry out the activities authorised in the licence or approval until the conditions specified in the suspension have been met or we remove the suspension. We may revoke a licence or approval, permanently cancelling the authorisation to carry out activities. Sometimes we impose conditions to prevent ongoing environmental harm after the activity stops – for example, to rehabilitate land polluted by the activity or to manage contamination.

Prosecutions

We may prosecute a person, company or organisation. We will target serious non-compliance and repeat offenders and may, where appropriate, pursue custodial sentences against individuals for environmental crime.

Prosecutions are at the most serious end of how we respond to alleged breaches of environment protection legislation to protect our community and environment. Where a person, company or organisation is prosecuted by the EPA in court, they may:

- be convicted for environmental offences
- need to pay fines, penalties, compensation and costs
- ordered to restore and prevent harm to the environment or publish details of the offence.

When we are deciding whether prosecution is the appropriate response we consider the factors set out in the *EPA Prosecution Guidelines* and this Regulatory Policy, and the alternative regulatory actions available to us.

Environment protection legislation provides several sentencing options a court may consider, including imposing fines and custodial sentences for environmental offences. In some cases a court will have the option to impose orders on an offender – for example, to carry out work to prevent or control harm to the environment as a result of the offence, or to make good any environmental damage caused.

Fines, penalties and court orders

Often the courts will decide a penalty is the most appropriate response to a breach. A penalty's severity will depend on the nature of the offence.

There are monetary penalties (fines) for offences under environment protection legislation, and some more serious offences also have potential prison sentences for individuals. Many offences under environmental legislation impose a higher fine on corporations than on individuals. Some offences are 'continuing offences', which means there is a daily penalty that can continue to accumulate for ongoing breaches.

A fine or prison sentence may not always be an adequate punishment or deter the offender. We can also request a court to consider an alternative sentencing option. These types of court orders may be in addition to, or instead of, a fine or prison sentence.

Monetary benefits orders

We may apply to the court for a monetary benefits order as part of sentencing, to ensure an offender does not profit from an offence.

Using this regulatory tool, an offender can be ordered to pay an amount of money equal to the amount they gained from an offence.

The EPA may choose to apply to the court for a monetary benefit order after considering the nature of the offence, the actual or potential environmental harm, and the environmental performance of the offender and industry.

Procedural fairness

Procedural fairness means acting fairly in our regulatory decision-making: the fairness of the process of how we make a decision.

More information about when the EPA offers procedural fairness is provided in the EPA's *Powers and Notices Guideline for Authorised and Enforcement Officers* under the *Protection of the Environment Operations Act 1997*.



Stanwell Park Beach, Tharawal Country. Credit: Caz Nowaczyk/EPA

Definitions

Aboriginal cultures and knowledges – the different cultures and knowledges held by diverse Aboriginal peoples across NSW

Aboriginal peoples – diverse Aboriginal identities or geo-cultural community groups across NSW

Compliance – a person, company or organisation meeting their legal requirements and obligations under NSW environment protection legislation.

Cumulative impacts – changes to the environment or human health caused by the combined impact of past and current human activities and extreme weather events resulting in natural disasters including bushfires, floods and heatwaves. This impact may be the result of multiple activities and sources, or of one source over time.

Data – units of information, facts or numbers, examined and used in decision-making.

Enforcement – compelling a person, company or organisation to achieve compliance with relevant NSW environment protection legislation.

Environmental crime – significant wilful or reckless wrongdoing resulting in environmental harm, or for personal gain or profit

Intelligence – knowledge drawn from assessed information that helps the EPA to understand risks and harm to the environment and human health and assists the EPA to decide how to act.

Issue – an issue of concern or problem that is impacting, or has the potential to impact, on the environment or human health. An issue often results from more than one source, or sometimes cumulatively from one source over time. It could be at one place or locality, or it could be more widespread across several areas or all of NSW.

Non-compliance – when a legislative requirement has been contravened or disobeyed by an individual person, company or organisation.

Organisation – a public authority, government agency or department, or other legal entity.

Place – a social and physical concept. It can be a physical setting, point, or area in space that is determined by people and communities. A place is a complex system made up of people, the surrounding environment, and the relationship between the two. A place can be natural or human-made, and the geographic area covered by a place can be at any scale agreed by the people within it.

Regulated community – the people, businesses, industries and organisations that are regulated by the EPA.

Regulation – the functions performed by the EPA to protect, enhance and restore the environment, reduce the risks to human health and prevent degradation of the environment. Regulation includes all the elements of the EPA's regulatory approach.

Risk – potential harm or adverse impact to human health or the environment

Stewardship – the careful and responsible management of something entrusted to one's care. The EPA, as a steward of the environment, has the responsibility for caring for, preserving and protecting our unique ecosystem for future generations



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Protection Authority

Visit:
6 Parramatta Square
10 Darcy Street
Parramatta NSW 2150

Mail:
Locked Bag 5022,
Parramatta NSW 2124

Phone:
+61 2 9995 5000 (switchboard)

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@epa.nsw.gov.au

Website:
epa.nsw.gov.au

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info@epa.nsw.gov.au

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