

# Compliance and Enforcement Policy

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Environment  
Protection  
Authority Victoria



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# 1. Purpose of compliance and enforcement

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Environment Protection Authority (EPA) Victoria protects and improves our environment by preventing harm to the environment and human health. EPA's vision is a healthy environment that supports a liveable and prosperous Victoria. We want environmental outcomes that allow all Victorians to have clean air, healthy waterways, safe land and minimal disturbances from noise and odour.

As an effective environmental regulator EPA's role is to monitor industry and ensure it complies with the *Environment Protection Act 1970* (EP Act)<sup>1</sup> to achieve the environmental outcomes we want for Victoria. The EP Act is a framework to protect Victoria's environment and it also sets out a set of overarching principles that EPA must consider.<sup>2</sup> EPA, and its authorised officers, are also responsible for ensuring compliance with the *Pollution of Waters by Oils and Noxious Substances Act 1986* (POWBONS Act).<sup>3</sup>

EPA aims to be an effective regulator and an influential authority on environmental impacts that also exercises its statutory authority fairly and credibly. This policy articulates EPA's approach, method and priorities in ensuring compliance with our Acts and carrying out our compliance and enforcement powers. The policy also identifies many of EPA's enforcement powers, how they differ depending on how severe the non-compliance is, and an explanation of how and when they will be used. EPA commits itself to this policy and the principles it establishes.

EPA will balance the use of our influence and enforcement tools to achieve compliance, uphold environmental standards and drive environmental improvement. Our role in driving environmental improvement is clearly described in section 1L of the EP Act, which states that 'the aspirations of the people of Victoria for environmental quality should drive environmental improvement.'

The policy is divided into four key parts:

- EPA's regulatory model, approach and principles (sections 2 - 4)
- monitoring compliance (section 5)
- compliance and enforcement measures (sections 6, 7, 9 - 11)
- publication of enforcement information (section 8).

Subordinate compliance and enforcement policies and guidelines are available at [www.epa.vic.gov.au](http://www.epa.vic.gov.au)

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1 Including environment protection regulations (regulations) and state environment protection and waste management policies (policies).

2 See EP Act, sections 1B to 1L.

3 The POWBONS Act is used to prevent pollution of Victoria's marine environment through setting requirements for boat and ship owners and masters.

# 2. Principles of compliance and enforcement

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This policy explains how EPA uses enforcement to achieve compliance and create credible deterrents against breaking the law.

EPA is guided by eight principles when undertaking its compliance and enforcement role, exercising its regulatory responsibility and administering the EP Act. The principles are:

- Targeted:** We will target our compliance and enforcement activities to prevent the most serious risk or harm.
- Proportionate:** Regulatory measures and responses will be proportional to the problem they seek to address and how culpable, or responsible for the problem, the offender is.
- Transparent:** Regulations and standards will be developed and enforced transparently. Information and any lessons learned will be shared and promoted. Enforcement actions will be public, to build the credibility of, and confidence in, EPA's regulatory approach and processes.
- Consistent:** Outcomes from our enforcement activities should be consistent and predictable. EPA aims to ensure that similar circumstances, non-compliances and incidents lead to similar enforcement outcomes.
- Accountable:** To ensure full accountability, the compliance of duty-holders<sup>4</sup>, our enforcement decisions and the conduct of authorised officers will be explained and open to public scrutiny.
- Inclusive:** EPA will engage with the community, business and government to promote environmental laws, set standards and provide opportunities to participate in compliance and enforcement.
- Authoritative:** EPA is prepared to be judged on whether individuals and business understand the law and their obligations.
- EPA will set clear standards, clarify and interpret the law and provide authoritative guidance and support on what duty-holders need to do to comply.
- EPA will also be an authoritative source of information on the state of the environment, the level of compliance with the laws it regulates, and what the key risks and new and emerging issues are.
- Effective:** Enforcement activity will seek to prevent environmental harm and impacts to health, and improve the environment. Enforcement action will be timely to minimise environmental impacts and maximise the effectiveness of any deterrence.

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4 EPA regards anyone who has a duty or obligation under the EP Act as a duty-holder

### 3. Environment protection - EPA Victoria's regulatory model

EPA's regulatory model is based on risk. EPA will prioritise compliance and enforcement activity, and allocate resources where it can, to make the biggest difference to Victoria's environment by addressing the biggest risks to environment and health.

The EP Act establishes EPA Victoria and provides a framework for preventing and controlling air, land and water pollution and noise, increasing resource efficiency, reducing waste and improving environmental performance. EPA coordinates activities to do with the discharge of wastes into the environment; the generation, storage, treatment, transport and disposal of industrial waste; and the generation and release of noise.

The EP Act gives us discretion in how we exercise our functions and address the harms and impacts it was established to prevent and control. This discretion includes how we prioritise and allocate our resources and how enforcement decisions are made and what actions are taken. EPA's regulatory model and this policy explain how we enforce the legislation we administer, and prioritise our compliance and enforcement activity. They outline the strategies we will apply when dealing with those industries and businesses we regulate.

#### A risk-based and responsive regulatory model

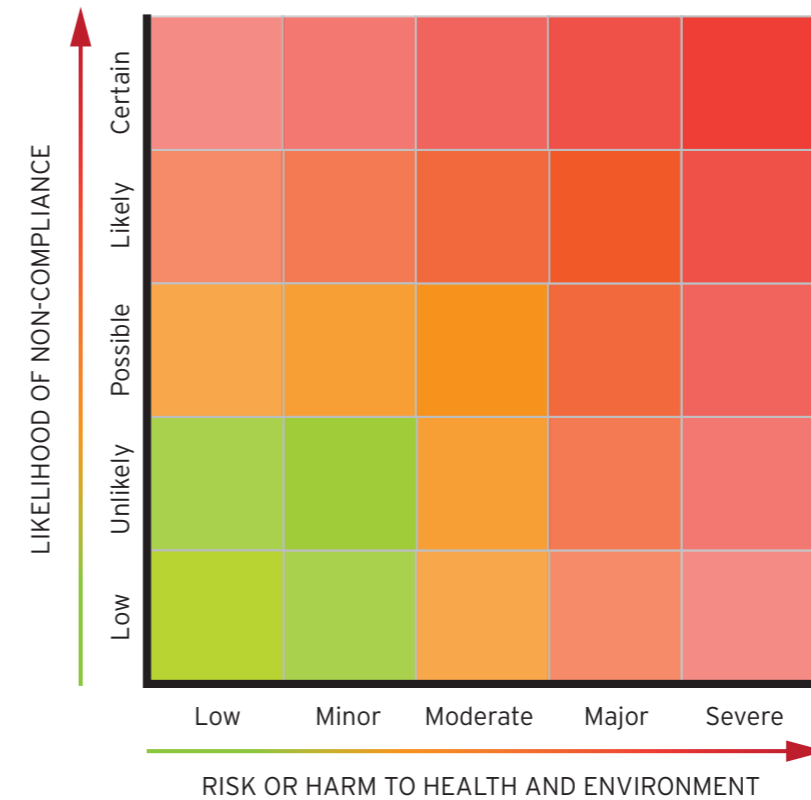
EPA will allocate our resources where the biggest difference can be made, or where the biggest risks to environment, health, safety or wellbeing can be managed.

We have adopted a risk-based model in which our targeting of enforcement and our responses to incidents, compliance requirements, level of non-compliance and pollution reports will change depending on the risk or harm to health and the environment.

EPA prioritises its compliance monitoring and inspection efforts towards the biggest risks of harm to the environment and to those people and businesses that are less likely to comply.

EPA defines risk as a combination of two elements: consequence (the risk or harm to health and environment) and likelihood (the chance that non-compliance will occur).

EPA's approach to targeted enforcement



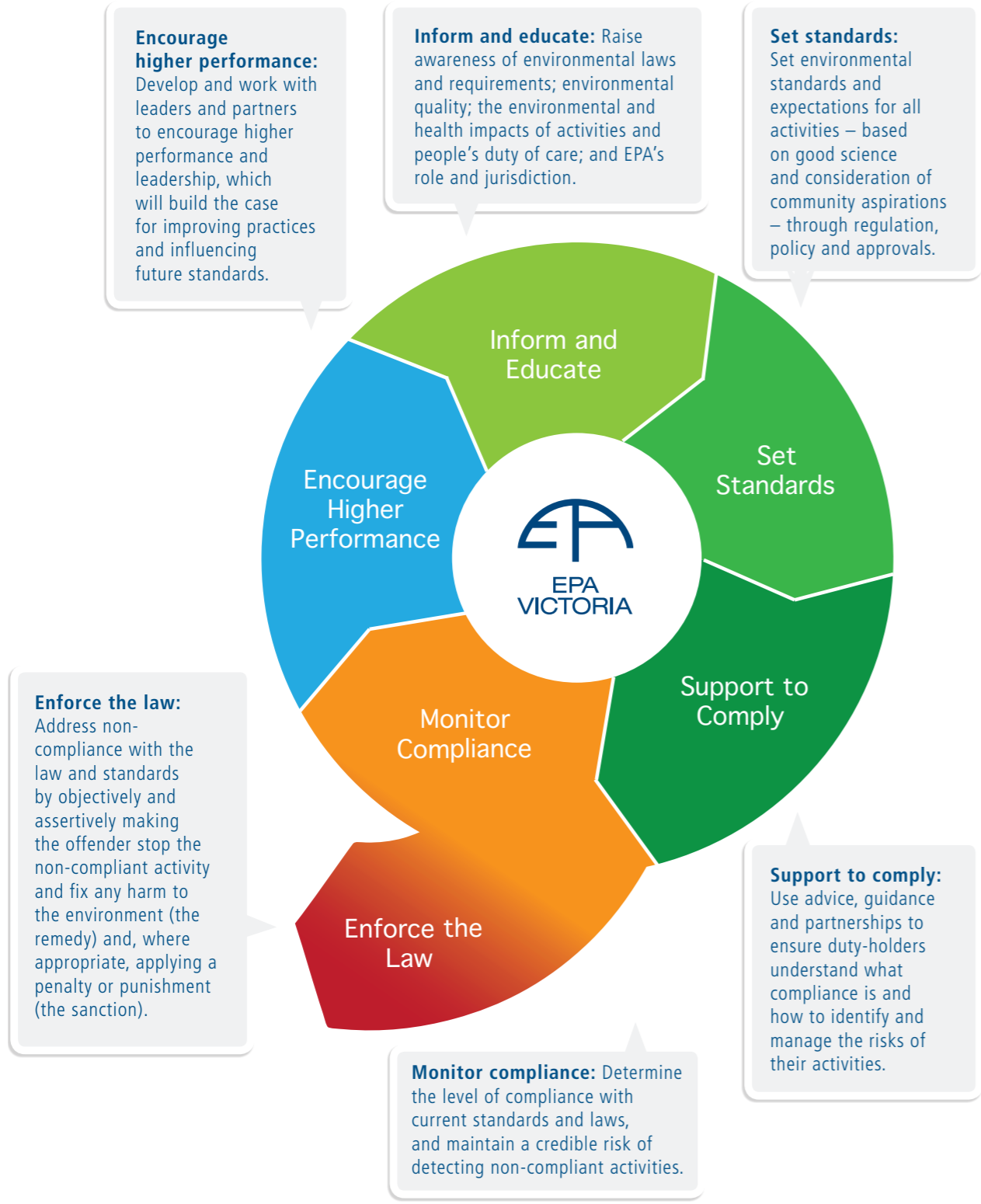
**Consequence:** The risk or harm to health or environment has five levels: low, minor, moderate, major and severe. This takes into account the actual or potential impacts on human health, environment and amenity. It also considers the scale and duration of any harm or impact and the level of public concern. See section 11 for a full description of the five risk levels.

**Likelihood:** The likelihood of non-compliance also has five levels: low, unlikely, possible, likely and certain. Likelihood takes into account (a) the track record of the business – past incidents, inspections, enforcement and pollution reports; (b) business systems in place to identify and manage environmental risk; (c) competence of the business and its operators; and (d) the level of resources the business dedicates to environmental management, compliance and maintenance.

When EPA starts the enforcement process following an incident of risk or non-compliance, we consider risk or harm and also take into account the circumstances and culpability of the offender. Culpability considers the offender's history, how long the incident or non-compliance continued, whether or not the harm is still occurring or has been reduced, whether the risk was foreseeable and whether the act or omission was intentional. For a full description of culpability factors and EPA's enforcement response, see section 10.

Our regulatory model uses objective elements that can be applied when we target inspection activity and other regulatory resources to those areas with the potential to cause the biggest harm. The model also allows a transparent discussion between a regulated business and EPA about the level of attention it might receive.

# 4. EPA's regulatory approach



'Compliance' means following the law. It means obtaining the right approvals or permissions. It means conducting authorised activities in accordance with any conditions or regulatory requirements.

Compliance is the responsibility of all businesses, organisations, governments and individuals. Everyone has obligations under the law. All parties have a social duty of care to the environment to reduce their environmental impact and ensure that future generations experience a clean and improved environment. All duty-holders are accountable to the regulator and the public to prevent and minimise environmental harm.

EPA undertakes a range of activities on behalf of the Victorian community to achieve compliance with the EP Act. EPA uses a balanced regulatory approach with a mix of compulsory and voluntary methods.

Our approach to regulation involves a number of key steps:

**A. Inform and educate:**  
**Raising awareness of impacts, obligations, EPA's role and a social duty of care**

A key role for EPA is to raise awareness of environmental laws and requirements; environmental quality; the environmental and health impacts of activities and individual duty of care; and EPA's role and jurisdiction.

EPA will promote, on behalf of the community, its aspirations for an improved environment. We do this by stating what is the responsibility for environmental impacts from the activities of duty-holders – business, industry, local and state government bodies, and individuals.

We all share a social duty of care to protect the environment and to not cause harm.

EPA will broadly promote its purpose, jurisdiction and role in protecting the environment. We will clearly communicate our regulatory approach and how we work with co-regulators, community, business, government and non-government organisations to protect, care for and improve the environment.

EPA emphasises education and raising awareness as an effective way of encouraging people to comply. Broad knowledge of what the environmental obligations are under the law will increase compliance and provide a common understanding for EPA to enforce the law.

EPA will regularly communicate compliance levels and broadly promote our enforcement strategy, compliance plan and future compliance campaigns to provide clear information about areas or issues we are focusing on.



## B. Set standards:

### Providing clear and authoritative standards based on science and community aspirations

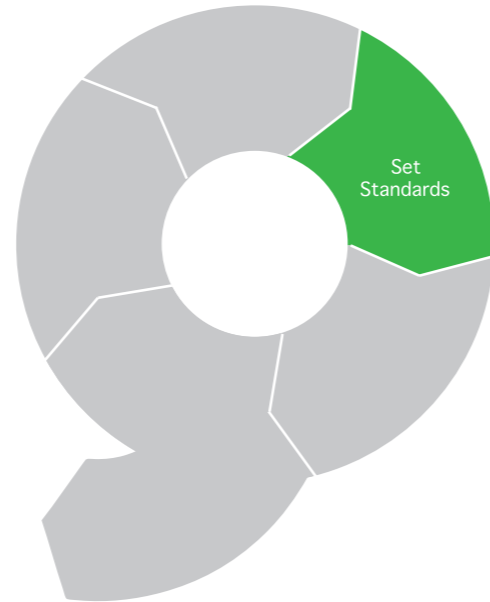
EPA sets environmental standards and expectations for all activities through regulation, policy and approvals. These standards are based on good science and consideration of community aspirations.

EPA promotes compliance by setting clear standards and raising awareness of risks and controls to protect the environment. EPA will be clear about what the law requires and will support duty-holders to achieve compliance by setting clear standards and providing guidance on how they can be met. Standards focus on the key causes of environmental harm, seek to protect our sensitive environments and drive environmental improvement.

Standards are based on rigorous science, evidence, an understanding of the state of the environment and current and future risks. Standards will evolve over time with changing environmental conditions, national and international standards and community aspirations.

EPA will work with industry associations, businesses, community organisations, and local and state governments in developing standards and promoting good practice.

In order to ensure laws and standards evolve and that standards of protection continuously rise to meet those standards, EPA supports duty-holders to perform beyond current standards.



## C. Support to comply:

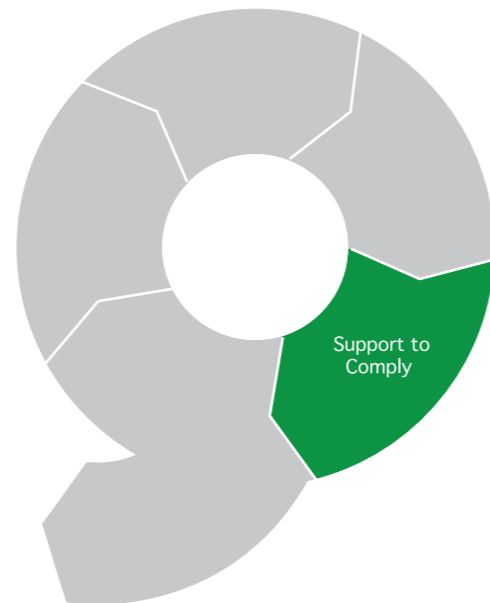
### Providing practical, constructive and authoritative advice on how to comply with the law

EPA promotes compliance by providing advice on how to comply with the law and, where non-compliance is found, how to remedy it. EPA uses advice, guidance and partnerships to ensure duty-holders understand what compliance is and how to identify and manage the risks of their activities.

One of EPA's key functions is to provide advice to any person who has a duty or obligation under the EP Act, regulations or policy about how to comply with that duty or obligation.

EPA will provide practical and constructive advice on how to comply with the law, interpret standards and, where necessary, provide support on how to remedy any non-compliance.

This compliance advice may include referring people to applicable codes of practice, best practice management guidelines, protocols for environmental management, international standards or other relevant information. Compliance advice does not extend to providing legal advice.



The onus for compliance will always rest with the party who has a duty or obligation under the law.

Advice EPA provides will not give any additional legal rights or defences for any alleged non-compliance with the law. The degree to which a party takes into account advice provided by EPA will be taken into consideration when deciding whether to prosecute.

## D. Monitor compliance:

### Monitoring compliance with the law and maintaining a credible risk of detection

A core function of EPA is to determine levels of compliance with current standards and laws, and maintain a credible risk of detecting non-compliance.

EPA's primary focus is on prevention; wherever possible, we want to ensure that incidents of non-compliance and their impacts are avoided. EPA constantly improves its capacity to detect and respond to non-compliance. When EPA identifies or becomes aware of a problem or a risk, it seeks to resolve the problem before it leads to an impact on the environment. Monitoring compliance and investigating non-compliance is therefore a key role for EPA.

Section 5 of this policy provides more details on monitoring methods, the purpose of investigations and criteria for undertaking comprehensive investigations.



## E. Enforce the law:

### Requiring parties to make good any (or 'the') harm caused, and deterring non-compliance

EPA addresses non-compliance with the law and standards by objectively and assertively requiring remedy and, where appropriate, applying sanctions.

'Enforcement' means the use of influence, authority and statutory methods to compel compliance with the law. The EP Act includes a range of principles to guide EPA's day-to-day activities and decisions. This policy supports the application of Principle 1K of the Act – the principle of enforcement (outlined below).

#### Principle of enforcement

Enforcement of environmental requirements should be undertaken for the purpose of:

- better protecting the environment and its economic and social uses
- ensuring that no commercial advantage is obtained by any person who fails to comply with environmental requirements
- influencing the attitude and behaviour of persons whose actions may have adverse environmental impacts or who develop, invest in, purchase or use goods and services which may have adverse environmental impacts.

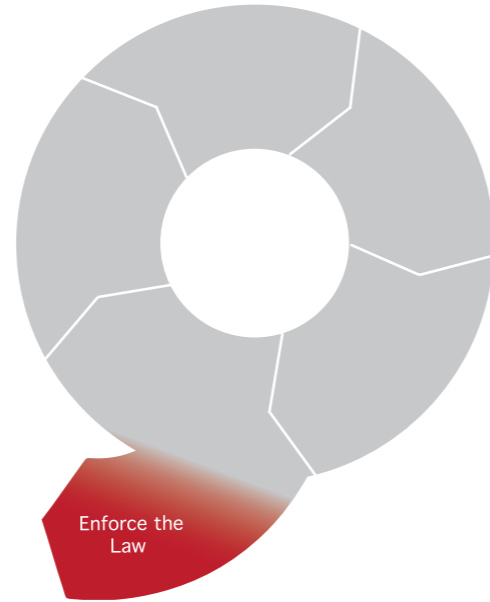
Enforcement is just one way of achieving compliance. EPA can take enforcement action when legal requirements are contravened or not complied with. Requiring parties to meet their legal obligations or remedy their non-compliance is a key part of enforcing the law.

#### Enforcement has two key elements:

- **Remedy:** Fixing the problem or 'making good'
- **Sanction:** Applying a penalty or punishment for breaking the law

EPA will use enforcement to address non-compliance, fix the problem and restore and 'make good' the harm caused by breaking the law. It may not always be possible to restore the environment to its previous state, so EPA will require offenders to 'make good' by minimising the extent of the damage or risks and taking all reasonable steps to remediate the impacts.

Remedy and punishment can be used in combination, but all contraventions of the law will be met with a requirement to fix the problem and 'make good'.



## i. Remedy: Fix the problem or make good

The first goal of enforcement is to stop non-compliance with the law and prevent further harm.

Stopping non-compliance with the law or preventing or limiting harm may be done, for example, through an authorised officer issuing a pollution abatement notice or giving a direction.

EPA will reflect the community's expectation and the EP Act principle<sup>5</sup> that the polluter should pay the cost of cleaning up pollution they have caused and restoring the environment.

The cost of cleanup and restoration won't be taken into account if there is any further sanction or punishment given.

## ii. Sanction: Apply a penalty or punishment for breaking the law

Sometimes remedying a breach is insufficient to deter lawbreakers.

In some cases enforcement can include punishment, such as when people are prosecuted for serious breaches of the law. Punishing lawbreakers is an important and effective way of deterring people from breaching their environmental obligations.

Sanctioning generally deters those offenders who might evade their obligations or seek to profit from breaking the law. In some circumstances it will be necessary to specifically deter them from offending in the future. It also levels the playing field financially for those who do the right thing and invest in prevention and environmental improvement.

See sections 6 and 7 for more information on compliance, enforcement measures and sanctions.

## F. Encourage higher performance:

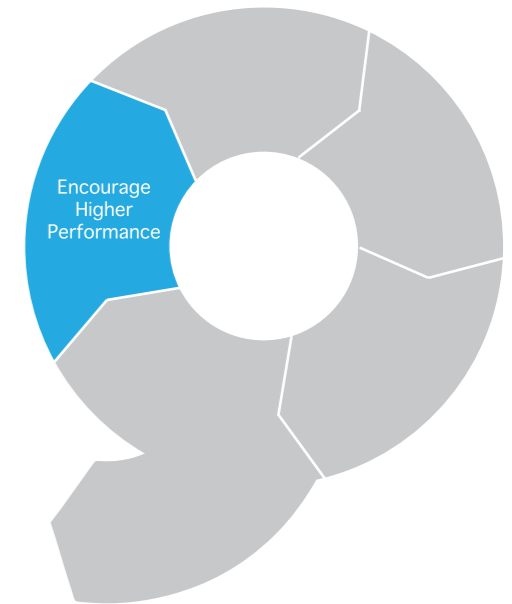
### Building the case for improving practices and influencing future standards

EPA will develop and work with leaders and partners to encourage higher performance and leadership, building the case for improving practices and influencing future standards.

EPA will work in partnership to promote higher performance and improvement that is aligned with EPA's priorities, is focused and will develop future standards.

We will drive performance, improvements and leadership that may apply to specific sites, sectors, geographic areas and business or industry groups.

This may involve establishing and supporting networks, holding seminars, publicising case studies, organising field visits, and providing grants, in-kind support and incentives for people who do the right thing and go beyond minimum standards.



<sup>5</sup> See EP Act section 1F(2) Principle of improved valuation, pricing and incentive mechanisms – Persons who generate pollution and waste should bear the cost of containment, avoidance and abatement.

## 5. Monitoring, detecting and investigating non-compliance

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EPA monitors compliance and detects non-compliance using proactive and responsive methods and undertakes both regular and comprehensive investigations. EPA is strongly supported in detecting pollution through reporting by the public, local communities, business and other government and non-government organisations.

### A. Monitoring and detecting non-compliance

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Compliance is monitored and breaches detected through a number of proactive and responsive methods including:

- site visits and inspections
- covert surveillance
- field and desktop audits
- community, employee or duty-holder reports
- monitoring data and sample collection
- observations by EPA officers
- observations and reports from other agencies or regulatory authorities
- analysis of intelligence including information, data, financial records, aerial photography and reports.

#### i. Site visits and inspections

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Proactive and planned site inspections are an important method by which EPA can determine compliance and prevent incidents and breaches.

EPA will maximise planned and proactive inspections, and will target areas of greatest risk and where non-compliance is most likely. During an inspection, EPA staff will provide feedback to duty-holders of their observations and any proposed further actions.

### ii. Community and public reports

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The community plays an important role in detecting and reporting pollution and potential impacts on the environment.

Information from the general public, industry, non-government organisations and other government agencies is a key source of intelligence for EPA inspections. EPA will constructively receive and use public reports, and ensure feedback is provided to reporters on any action taken, as well as the result of that action.

EPA's pollution report line is available 24 hours a day. EPA also encourages industry and business to establish their own public reporting lines, in order to better understand and respond to impacts on neighbourhood amenity such as odour and noise.

### B. Investigating non-compliance

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We will assess all reported or detected contraventions of the law, regulations and other requirements to determine their priority for further compliance and enforcement action.

We will prioritise to ensure the most effective use of our resources.

Our initial assessment typically includes a preliminary examination and analysis of the report or allegation in order to decide its seriousness, the likelihood that a contravention has occurred and the probable consequences. Wherever possible, EPA will act to prevent a potential breach and discourage ongoing and future breaches.

Based on the outcome of the initial assessment and what we can do under the law, EPA will determine the appropriate level, if any, of further investigation or response.

#### i. Aim of EPA investigations

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Any EPA investigation aims to:

- determine whether a law, regulation, policy or other requirement has been contravened
- determine what, if any, impact to the environment has occurred and provide advice or direction on stopping and preventing further impact and any future required actions
- collect evidence that can be used in criminal prosecutions or that might assist with other appropriate compliance and enforcement measures
- improve controls to prevent current and future non-compliance
- deter further or similar action to that which led to the non-compliance
- improve public confidence in the integrity of the regulatory system
- achieve an appropriate outcome within a reasonable time and at reasonable cost
- investigate all complicit parties involved in any incident or non-compliance.

A range of EPA officers undertake investigations. The nature, time taken and method of investigation will be determined by the circumstances of the particular incident or contravention. The evidence gathered in these investigations can form part of a comprehensive investigation.



## ii. Comprehensive investigations

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Comprehensive investigations are directed at the most serious environmental incidents and breaches that are likely to warrant a prosecution or other serious response.

A comprehensive investigation is one that involves the collection of evidence that will form a 'brief of evidence'. EPA will then review the brief of evidence to determine whether there is sufficient evidence that a criminal offence has been committed. The evidence must be credible and admissible in a court. In these circumstances, EPA may commence a criminal prosecution.

Comprehensive investigations are undertaken in order to determine:

- whether there is evidence that an offence has been committed under the EP Act or other laws administered by EPA
- the causes and consequences of non-compliance
- the environmental harm caused by the non-compliance
- whether, or the extent to which, the offender benefited commercially from the non-compliance
- the identity and responsibility of each party complicit in the offence
- whether action has been taken, or needs to be taken, to prevent a recurrence and to secure compliance with the law
- any failings of law, policy or practice in order to influence the law and guidance.

## iii. Criteria for a comprehensive investigation

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Comprehensive investigations generally happen following an incident resulting in a major or severe impact on health or environment (see section 11). This includes an impact on human health, animals, wildlife or significant ecological damage.

EPA considers three criteria in determining whether to undertake a comprehensive investigation:

- (a) strategic value to EPA
- (b) consequence
- (c) culpability.

The sum of these criteria determines whether EPA will undertake a comprehensive investigation.

- (a) **Strategic value:**  
Priority areas identified and communicated by EPA
- 

The alleged breach:

- a. occurred in a sector targeted in EPA's annual compliance plan
- b. came to light as a result of a compliance program or campaign, e.g. illegal dumping
- c. involved a breach of a remedial notice
- d. involved more than one party, such as company officers, transporters, suppliers and manufacturers or other parties involved with the primary offender.

- (b) **Consequence:**  
Risk created or harm caused to health or the environment
- 

Factors of consequences include:

- a. the seriousness of the alleged breach because of the harm or potential harm caused to the environment
- b. impact on human health
- c. impact on animals and wildlife
- d. public concern arising from the alleged breach
- e. how common the offence is.

- (c) **Culpability:**  
Related to an offender's behaviour or past actions
- 

Factors of culpability include:

- a. any financial benefit obtained through delaying or avoiding compliance
- b. the alleged breach happened because they were operating at significantly less than accepted standards
- c. the environmental effects have not been cleaned up or remedied
- d. any history of previous notices
- e. any history of previous incidents or persistent pollution reports
- f. whether there was any deliberate behaviour or recklessness that contributed to the alleged breach
- g. whether the alleged non-compliance/offence and consequences were foreseeable
- h. how long the alleged breach continued
- i. how long it's been since the alleged breach.

#### iv. Situations leading to a comprehensive investigation

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Some situations will warrant a comprehensive investigation due to their seriousness.

Examples of where comprehensive investigations may be undertaken include the following:

- Significant environmental damage or harm to human health or environment.
- A waste discharge continues after a licence is suspended or revoked, or transport of prescribed waste continues after a permit has been suspended or revoked.
- Prescribed industrial or hazardous waste is stored or stockpiled without appropriate permission or approval.
- Repeated infringement notices have been issued with no change in performance.
- Failure to comply with a notice (e.g. pollution abatement notice or clean up notice) or other lawful direction by an authorised officer, including in a situation of imminent danger.
- Fraud or a breach that undermines (i) a market mechanism or scheme in the legislation (e.g. non-licensed premises, no financial assurance, non-payment of levies) or (ii) a self-reporting mechanism such as sign-off by the CEO or Managing Director in an annual performance statement.
- Failure to implement preventative measures that results in significant commercial advantage.
- Failure to abate or clean up environmental harm, in order to achieve a commercial advantage.
- Failure to notify EPA of a waste discharge resulting in a major or severe risk or harm to the environment or health.
- Assault, intimidation or attempt to bribe an authorised officer has taken place.<sup>6</sup>
- Obstruction of an authorised officer has taken place.
- False or misleading information, obstruction or interference by the alleged offender.
- Failure to notify EPA of a breach (where this is required by law or a licence).
- The nature of the offence and action, or the attitude of the alleged offender, indicates that an infringement notice is unlikely to act as a sufficient deterrent (e.g. deliberate contravention, providing false or misleading information in an annual performance statement, contravention despite advice or a warning given by an authorised officer).

If, after a comprehensive investigation, and following a legal review, EPA determines that there is evidence that an offence appears to have been committed, enforcement action will be taken. This may involve prosecution or the issuing of a penalty infringement notice (see section 7). Decisions to prosecute are taken in line with section 7 of this policy and the Director of Public Prosecution's policies.

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<sup>6</sup> These matters will be referred to Victoria Police.

## 6. Remedial measures

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EPA will use the following measures to enforce the law and respond to incidents of non-compliance. In appropriate circumstances EPA will use these measures together with sanctions outlined in section 7 and 10.

### A. Compliance advice

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Advice from EPA officers is given in writing or confirmed in writing.

Advice may be given by an EPA authorised officer where:

- the degree of harm or potential harm to the environment, health or wellbeing is minimal
- breaches of works approvals, licences, notices, permits, regulations and policies are of an administrative nature, with no material impact.

This is an effective way of dealing with minor issues or risks where simple, immediate or short-term action can be taken by a duty-holder to comply. An example of where advice may be provided is where non-compliance can be immediately remedied in the presence of the officer without the need to issue a remedial notice or direction.

### B. Remedial notices

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Notices will be issued where works or actions required to control risk, prevent further harm or comply with the law cannot be completed in the presence of an EPA officer.

Notices and directions are legal directions to carry out works, stop activities or carry out investigations.

Remedial notices are not punishments. Notices ensure there is a formal record that EPA has required action to remedy a risk or prevent further harm, and that people are treated consistently. They hold recipients to a given time frame to comply with the requirements. Notices are not usually issued for minor risks.

Generally, three types of notices are applied by EPA:

- minor works pollution abatement notice (these require immediate attention or action)
- clean up notice (requiring immediate attention or action).
- pollution abatement notices

Authorised officers will advise recipients of a proposed notice prior to its issue. Where the situation allows, an officer will consult on its draft contents, including the time frame for compliance.

Notices may be accompanied by other enforcement measures, such as an infringement notice or prosecution. Failure to comply with a notice will lead to enforcement.

A full list of EPA's statutory tools, including notices, is available on EPA's website.

### C. Oral or written directions by an authorised officer

Where there is imminent danger to life, limb or the environment, an authorised officer may give directions.

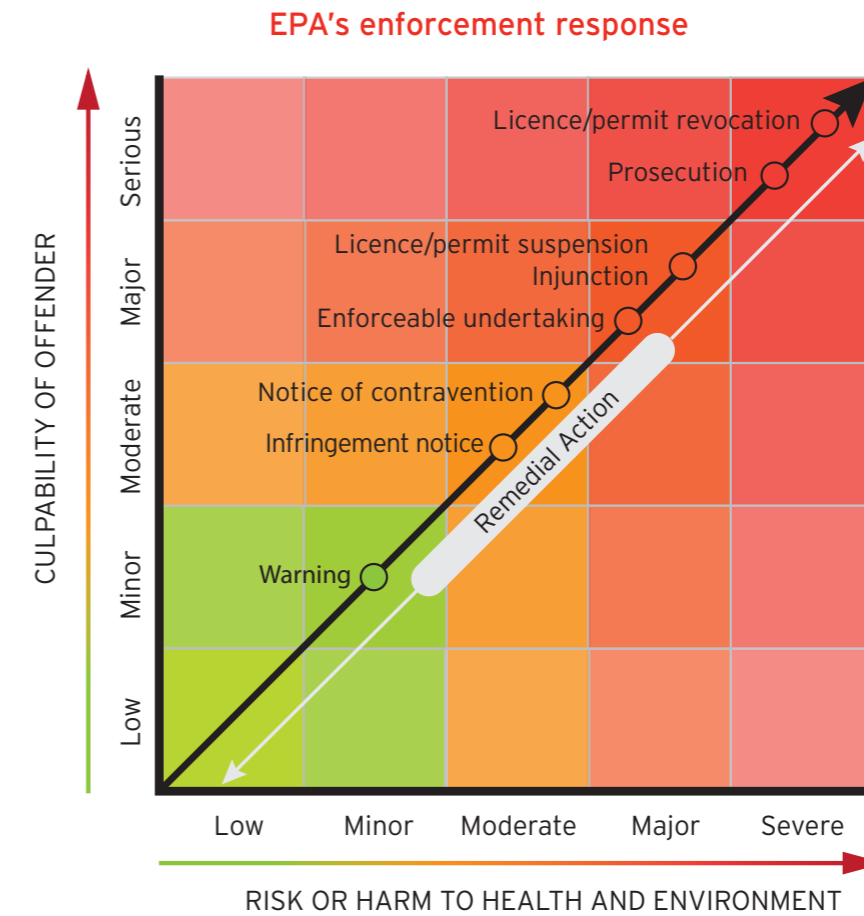
Directions require a person to remove, dispose of, destroy, neutralise or treat any pollutant, waste, substance, environmental hazard or noise. In some circumstances an authorised officer may require action to remedy a non-compliance to be taken in their presence as a substitute for issuing a pollution abatement notice.

Because of the emergency nature of these situations, such directions will normally initially be given verbally. Verbal directions will be confirmed in writing as soon as possible.

Failure to comply with directions in the above circumstances without reason is a serious offence and may result in prosecution.

## 7. Sanctions

In some cases, due to the nature of a breach or history of an offender, a sanction or punishment should be applied. EPA will take an escalating approach to sanctions, from least to most interventionist.



EPA will take an escalating approach to sanctions, ranging from a warning as the least severe to a prosecution and licence or permit revocation as the most severe. Section 10 provides further detail of the levels of culpability and risk in the ladder of sanctions applied by EPA.

EPA supports 'responsive sanctioning' to complement its compliance and enforcement activities. Responsive sanctioning uses punishment constructively to improve environmental outcomes. It is particularly relevant to the use of enforceable undertakings and court-imposed alternative penalty orders. Alternative penalty orders allow the court to require an offender to carry out a specified project to restore or enhance the environment, rather than issue a fine or warning.

The principles governing responsive sanctioning aim to:

- be responsive and consider what is appropriate for the particular offender to change their behaviour
- calculate the commercial advantage or economic benefit obtained by an offender through delayed or avoided compliance and eliminate it
- be proportionate to the nature of the offence and the harm caused
- make good or reduce the harm caused by a breach, where appropriate
- act as a specific deterrent to future non-compliance by an offender or company director
- act as a general deterrent by educating others about the potential consequences of breaking the law.

## A. Warnings

Official warnings are given in writing and recorded by EPA. Initially, the warning may be given verbally, but this will be confirmed in writing as soon as possible.

Warnings may be given by EPA where:

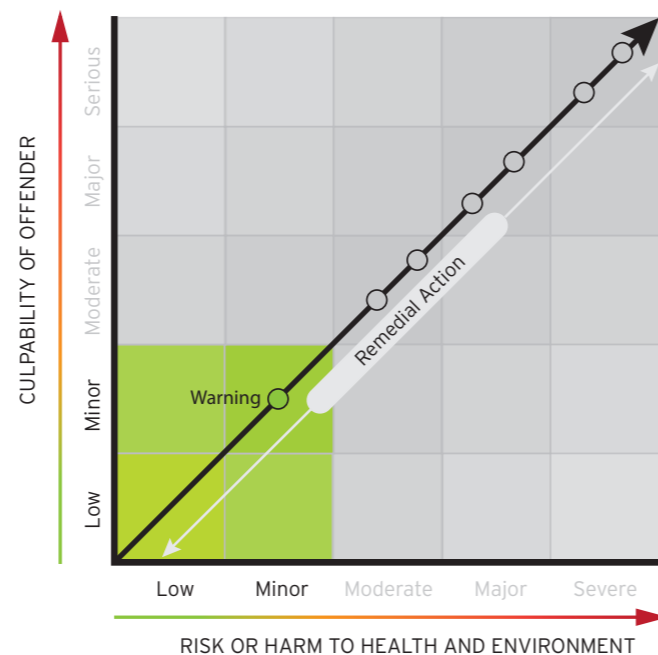
- in the interests of fairness, it can be used to signal that any further non-compliance will result in an escalating enforcement response
- the degree of harm or potential harm to the environment, health or wellbeing is minimal
- breaches of works approvals, licences, notices, permits, regulations and policies are of an administrative nature, with no material impact.

In determining whether to give a warning, EPA may consider:

- whether the duty-holder has a good history of compliance
- whether the duty-holder has taken reasonable steps to remedy the situation and prevent a recurrence of the breach.

Failure to comply with a warning will be documented and considered in further enforcement action.

EPA will maintain a public register, subject to privacy requirements, of warnings issued.



## B. Infringement notices

Infringement notices are a way of dealing with common breaches of the law where the impacts are not considered serious enough to warrant prosecution.

An infringement notice (IN) imposes a financial penalty for breaches of the law or EPA requirement and can be issued by an authorised officer. Three types of infringement notices can be issued by EPA:

- (1) a litter IN of up to four penalty units
- (2) an environmental IN of up to 50 penalty units
- (3) a motor vehicle IN of up to 5 penalty units for an individual, or ten penalty units for a company.

Schedule A of the EP Act sets out the specific offences for which a IN can be issued and how much the penalty is.

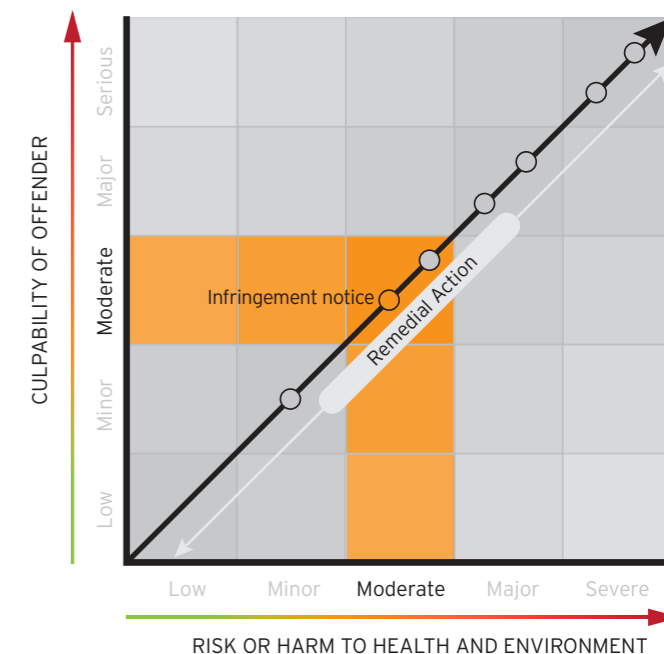
Offences for which infringement notices may be applied are well-defined and there is usually a low to moderate level of danger to the environment, health or wellbeing. Examples are:

- failure to comply with waste transport regulations
- failure to comply with a clean up notice reporting requirement
- low level waste discharges, environmental hazards or non-compliance
- littering, including dropping a cigarette butt from a vehicle
- motor vehicle (noise or emissions) offences.

### Where use is appropriate

Infringement notices are generally appropriate where the following criteria are met:

- the non-compliance has a moderate or lower environmental impact (see section 10)
- any benefit gained by delaying or avoiding compliance is roughly equal to or less than the infringement amount
- the non-compliance is minor or of a short duration, a one-off situation, the offender took immediate remedial action or the situation was easily remedied
- the facts are apparently indisputable
- inspection discovers a breach that should have been prevented by normal operating procedures
- the offence doesn't involve obvious recklessness or negligence
- an infringement notice is likely to act as a deterrent.



## Where use is inappropriate

Infringement notices are generally not appropriate where any of the following are true:

- a. A warning is more appropriate, according to the criteria in this policy (e.g. to stop an immediate environmental hazard).
- b. A prosecution is appropriate according to the criteria in this policy (e.g. for repeated offences or an offence where no reasonable steps were taken to remedy the situation).
- c. An offence that leads to an additional offence for which an infringement notice is not available (e.g. pollution resulting from works undertaken without an approval).
- d. Non-compliance has a greater than moderate environmental impact or level of culpability.
- e. Any benefit obtained by delaying or avoiding compliance is significantly more than the infringement amount.
- f. The breach is continuing and has not been remedied.
- g. Substantial breaches of notices or other EPA directions are involved.
- h. The penalty would be inadequate for the severity of the offence and not act as a deterrent.

## Resolving an infringement notice

An infringement notice provides a person with 21 days to deal with their matter. By the due date of the infringement notice a person can do one of the following:

**Pay the infringement** - paying the infringement resolves the matter and avoids recording a criminal conviction.

**Request a payment plan** (extension of time to pay, payment by instalments, or both), or request a payment arrangement with Fines Victoria.

**Apply for an internal review** – see 'internal review of an infringement' section on page 25.

**Elect to have the matter heard in court** - proceedings will commence in the criminal jurisdiction of the Magistrates' Court (or the Children's Court if you are under 18).

**Nominate the responsible person** by a statutory declaration (litter infringements only).

**Apply for a work and development permit** with Fines Victoria (individuals only).

If a person takes no action by the due date, a penalty reminder notice will be sent advising that additional costs have been incurred. A penalty reminder notice provides a person with 14 days to deal with the matter as per the options above.

### For litter or motor vehicle infringements:

If a person takes no action by the due date of the penalty reminder notice, EPA will register the infringement with Fines Victoria.

### For environmental infringements:

If a person takes no action by the due date of the penalty reminder notice, EPA will initiate prosecution proceedings or register the infringement with Fines Victoria.

## Internal review of an infringement

The *Infringements Act 2006* allows a person to apply for an internal review of a decision to issue an infringement notice. The review is done by an EPA staff member who didn't issue the fine. The right of review is limited to the following grounds:

- a. contrary to law
  - b. mistaken identity
  - c. special circumstances including:
    - mental or intellectual disability, disorder, disease or illness
    - a serious addiction to drugs or alcohol
    - homelessness
    - family violence.
  - d. exceptional circumstances that should excuse your conduct
- or
- e. person unaware (you were unaware that an infringement notice had been issued against you).

### C. Notices of contravention

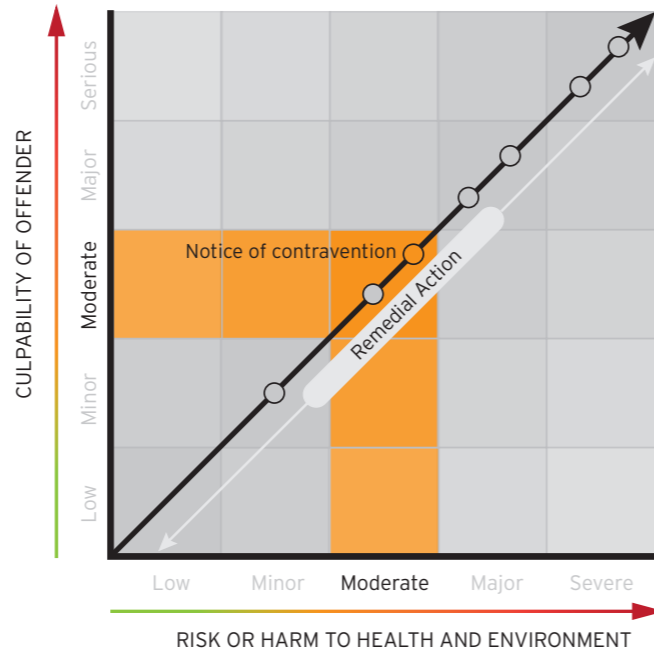
A notice of contravention formally advises the recipient that they are contravening a legal requirement and a court may apply a daily penalty.

A notice of contravention will be issued where there is a major ongoing contravention and further enforcement action is planned. The issue of a notice of contravention indicates that EPA considers any further breach a serious offence.

The recipient of a notice of contravention becomes liable when they are prosecuted to substantial daily penalties for every additional day the contravention continues. The additional daily penalty may result in the matter being prosecuted in a higher court.

All notices of contravention will trigger:

- a review of alternative avenues to prevent further non-compliance or harm, such as licence/permit suspension, notices to stop activities, or a statutory injunction
- active surveillance and monitoring of the site to determine whether impact or harm has been lessened, whether remedial action has been initiated by the offender, and to collect evidence for any future prosecution.



### D. Enforceable undertakings

An enforceable undertaking is a constructive alternative to prosecution. It allows an alleged offender to voluntarily enter into a binding agreement to undertake tasks to settle an alleged contravention of the law and remedy the harm caused to the environment and the community.

An enforceable undertaking implements systemic change within a business or by an individual to prevent future breaches of the law. The actions in an enforceable undertaking must deliver benefits to a business, industry sector or community that go beyond mere compliance with the law.

EPA will only accept an enforceable undertaking where:

- the person or organisation (the offender) takes active responsibility for the offence and its impacts
- it is the most appropriate form of enforcement response and will achieve a more effective and long-term environmental outcome than prosecution.

In some cases, taking active responsibility may require a public apology by the offender. An independent advisory panel provides advice to EPA on proposed enforceable undertakings.

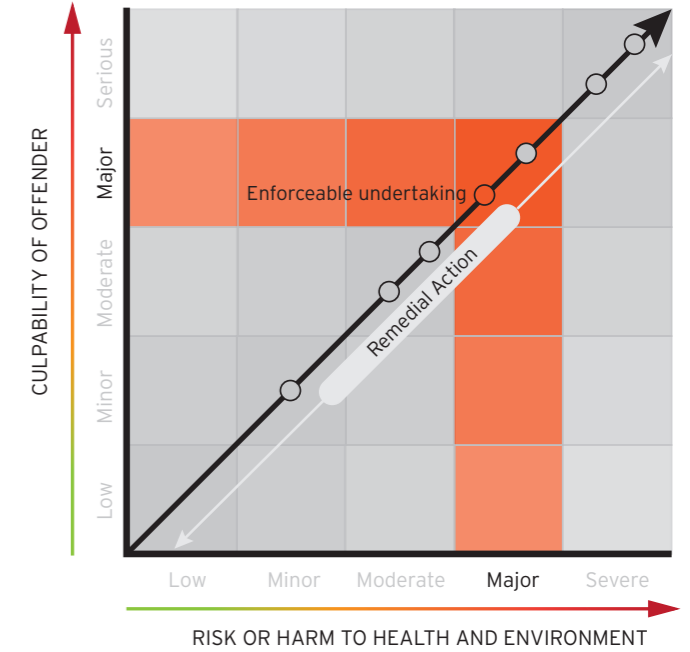
EPA may also encourage offenders and victims to meet as part of a restorative justice conference. A conference involves a structured meeting where the consequences and restitution of the offence are discussed.

EPA considers that enforceable undertakings are not appropriate where any of the following circumstances exist:

- serious breaches of the EP Act involving high or serious levels of culpability (see section 10)
- multiple serious breaches or systemic failures
- significant incidents involving considerable public interest requiring a transparent hearing in court
- applicants have been the subject of previous prosecutions of a serious nature
- EPA cannot be satisfied of ongoing compliance.

Enforceable undertakings can be enforced through the courts if the actions committed to are not delivered in accordance with the terms of the undertaking.

Enforceable undertakings guidelines, from the Victorian Government Gazette, are available on EPA's website at [www.epa.vic.gov.au](http://www.epa.vic.gov.au).



## E. Suspension of licence or permit

Suspending a licence or permit temporarily removes the ability for a licence-holder or waste transporter to operate.

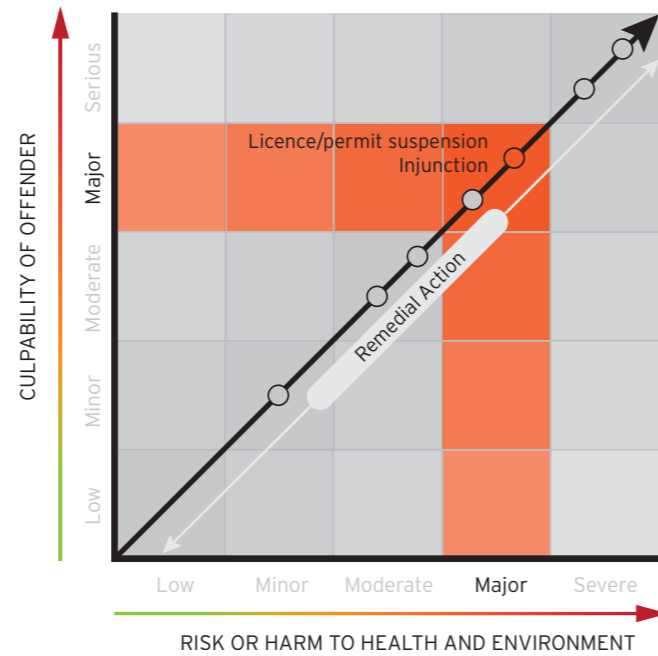
A licence may be granted by EPA authorising the discharge or handling of waste. The licence-holder has to comply with all conditions of the licence. Similarly, the holder of a waste transport permit is responsible for complying with all conditions of the permit.

EPA may suspend a licence or permit where the holder:

- has failed to demonstrate to EPA that continued operation would not result in unacceptable risk or harm to the environment or health
  - has a history of repeated breaches of licence conditions, including non-payment of licence fees, non-payment of landfill levies, and failure to submit an annual performance statement (APS) on time or in the required form
  - fails to provide evidence or respond to requests for information relating to purported compliance in their APS
  - obstructs or fails to respond to a direction from an authorised officer
- or
- is subject to a financial assurance requirement and has failed to provide the financial assurance determined by EPA

A licence or permit suspension may be for a specified period or until any necessary conditions are fulfilled. EPA will give the licensee or permit-holder procedural fairness before deciding whether or not to go ahead with a suspension, by giving notice of its intention to suspend the permit or licence, and the grounds for suspension or revocation.

The licence or permit-holder will be given a reasonable opportunity to demonstrate and provide evidence as to why the proposed suspension should not occur. Any decision to suspend by EPA will take into consideration any submissions made by the holder of the licence or permit.



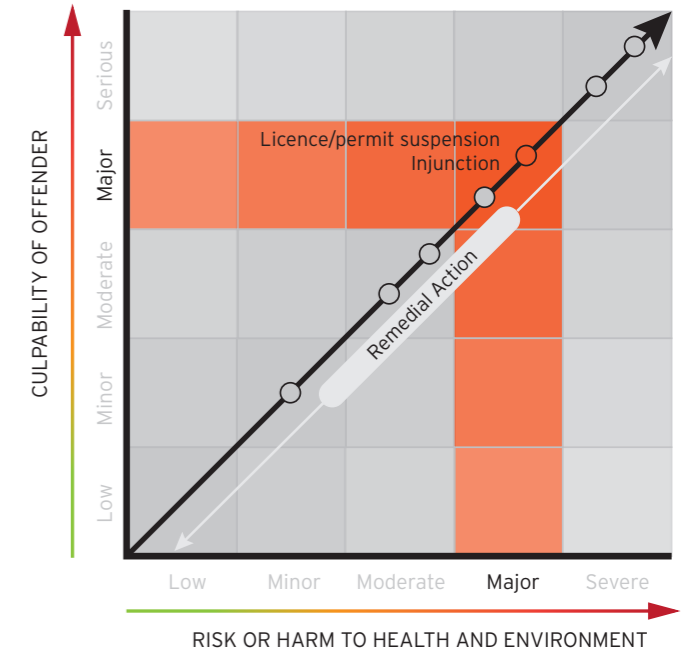
## F. Injunctions

EPA can apply for an injunction from the Supreme Court to stop a person contravening the EP Act or a condition of a licence, notice, works approval or permit.

Whether or not a prosecution has taken place, EPA can apply to the Supreme Court for an injunction to stop any person from contravening the law or require them to comply with the law or statutory instrument.

An injunction can be used to prevent a contravention of a works approval, licence or notice where there is an urgent and serious environmental or health harm or risk. Injunctions can also be sought where other enforcement measures have not been effective.

An example of where an injunction may be sought is where a business continues to discharge or handle wastes, or conduct works without – or in contravention of – an approval or notice from EPA. Failure to comply with an injunction may be a contempt of court.



## G. Prosecutions

Prosecutions seek to provide an appropriate sanction to the offender and act as a deterrent. EPA will consider prosecuting an individual or company where other enforcement measures are inadequate, or unlikely, to ensure ongoing compliance.

The decision on whether to prosecute for a breach of environmental laws is significant, as the effect on those involved (the defendant/accused, the community) will be considerable.

Environmental offences are generally indictable or serious criminal offences. EPA must operate within a broader prosecutorial framework as part of the criminal justice system. This requires the highest standard of integrity to be applied to any decisions around prosecutions.

In cases where there are several possible defendants, EPA may prosecute one, some or all parties, depending on the circumstances. If a corporation by act or omission has broken the law, section 66B of the EP Act also holds individual directors and those concerned in the management of the corporation to account, subject to some defences.

When considering a prosecution EPA will always seek to calculate the economic benefit gained from delayed or avoided compliance.

### Criteria for a prosecution

In deciding whether or not to prosecute, EPA adopts the policies of the Director of Public Prosecutions (DPP)<sup>7</sup> which are based on the Prosecution Policy of the Commonwealth. Three tests set by the DPP policies need to be met.

#### Sufficient evidence exists:

- The existence of a *prima facie* case.
- There is enough evidence to justify proceedings.

#### Prospect of conviction:

- There needs to be a reasonable prospect of conviction – that is, an evaluation of how strong the case is likely to be when presented in court.

This takes into account such matters as the availability, competence and credibility of witnesses and their likely impression on the court or tribunal that will determine the matter, and the admissibility of any confession or other evidence, and any lines of defence available to the defendant.

#### Public interest considerations, which include but are not limited to:

- the seriousness or, conversely, triviality of the alleged offence or whether it is only of a technical nature
- any mitigating or aggravating circumstances
- the characteristics of the alleged offender – any special infirmities/medical conditions, prior compliance history and background
- consideration to its impact, and the age of the alleged offence
- the degree of culpability of the alleged offender
- whether the prosecution would be seen as counter-productive – that is, by bringing the law into disrepute
- the availability and efficacy of any alternatives to prosecution
- the prevalence of the alleged offence and the need for deterrence, both specific and general
- whether the alleged offence is of considerable public concern.

### Criteria for a prosecution against a company officer, director or manager

Company officers are responsible for environmental protection. They, and not just the company, may be personally accountable if their company fails to comply.

EPA regards a 'company officer' as anyone who has the capacity to make decisions, or participates in making decisions, that have a real or direct influence on an organisation's policy, planning or financial standing. A person who only implements these decisions is not regarded as a 'company officer'.

The following matters will also be considered in deciding whether or not to prosecute company officers:

- Whether the person exercised due diligence in the performance of the company and actions to prevent the incident, including:
  - their degree of knowledge
  - their capacity for decision making
  - the actions or inactions of others
  - any other relevant matters.
- Whether the officer failed to take reasonable steps to prevent the incident.
- The degree of culpability involved in the officer's behaviour.
- Past advice or warnings provided to the officer regarding matters leading to the incident, or whether the officer should have reasonably known about past advice or warnings.

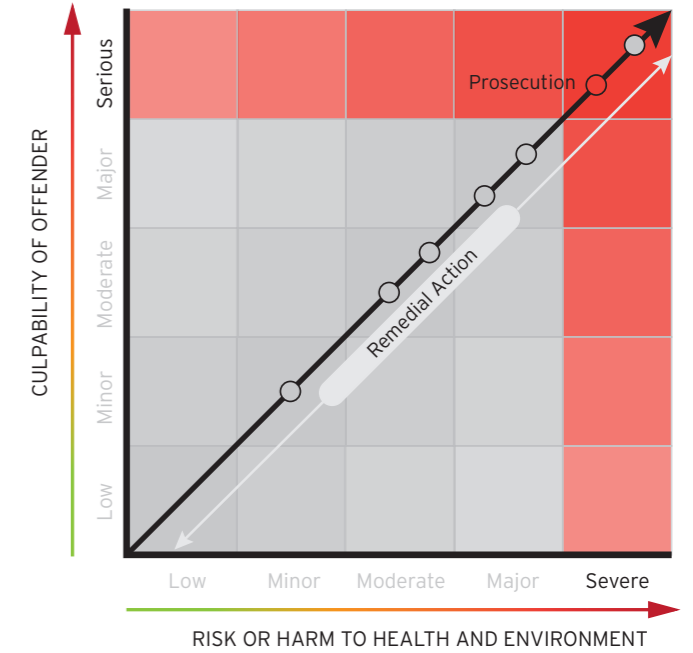
Considering the above criteria, it will be rare that a manager who is not a company officer will be of a sufficient level of authority or influence to attract criminal liability.

### Appeals

EPA may seek to appeal sentences imposed on environmental offenders.

Appeals are brought by the DPP in the public interest, on recommendation by EPA. Appeals will only be sought where there is a reasonable prospect of the appeal succeeding, such as where a penalty imposed by a court is considered manifestly inadequate. In most cases, the DPP will seek the views of EPA.

EPA will be guided by the principles set out in the DPP's policies<sup>8</sup>.



<sup>7</sup> In particular, Policy 2: The Prosecutorial Discretion, available at [www.opp.vic.gov.au](http://www.opp.vic.gov.au)

<sup>8</sup> In particular, Policy 11: Appeals by the DPP to the Court of Appeal, available at: [www.opp.vic.gov.au](http://www.opp.vic.gov.au)



## Court orders and alternative sentencing

Where found guilty of an offence, a person may be ordered by the court to undertake actions in addition to, or instead of, any penalty. An order may include publicising the offence, undertaking a specific project to restore or enhance the environment, or undertaking an environmental audit.

The court may choose to issue an order under section 67AC of the EP Act of its own accord or on the recommendation of EPA. EPA prefers to use restorative 67AC orders; however, orders will not be used where the offence involved serious culpable behaviour of a deliberate nature.

EPA makes recommendations to the court on suitable projects. Projects are sourced from the Inspiring Environmental Solutions program that invites Victorian communities to submit community and environment-based projects. When a prosecution suitable under section 67AC is identified, a small number of proposals are invited to submit a detailed project plan. Project proposals are assessed using established criteria available on EPA's website.

EPA will only recommend the issuing of orders to the court where all of the following are met:

- The offence has not involved deliberate non-compliance.
- The person or company takes active responsibility for the offence and its impacts.
- The project will result in, or contribute to, restoring the harm caused to the environment and the affected community.
- The project will contribute to restoring the relationship between the offender and the victims.
- The project helps the offender, including senior company officers, understand the direct impact of their activities on the surrounding environment and the community.

EPA will always seek publication of environmental offences and a public apology as part of any court order. EPA may also encourage offenders and victims to meet as part of a restorative justice conference.

## H. Revocation of licence or permit

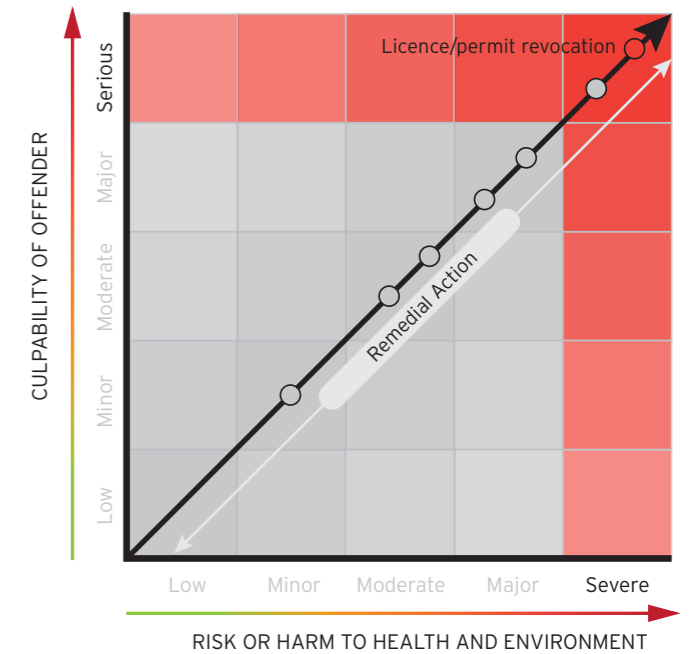
Revoking a licence or permit permanently removes the ability for a licence-holder or waste transporter to operate.

EPA will consider revocation of a licence or permit where:

- the holder has a history of serious breaches of licence conditions or the EP Act
- the holder has been convicted of an offence against the EP Act and, in the opinion of EPA, is no longer a fit and proper person
- serious breaches continue to occur after prosecution or
- EPA cannot be assured that the premises will continue to be safe to people or the environment.

EPA will give the licensee or permit-holder procedural fairness before deciding whether or not to go ahead with a revocation, by giving notice of its intention to revoke the permit or licence, and the grounds for revocation.

The licence or permit-holder will be given a reasonable opportunity to demonstrate and provide evidence as to why the proposed revocation should not occur. Any decision to revoke by EPA will take into consideration any submissions made by the holder of the licence or permit.



## 8. Publication of enforcement information

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EPA's role includes communicating its enforcement activities to the community.

When EPA undertakes enforcement, it makes information regarding the offence, the offender, EPA's action and the action of the polluter to resolve the issue publicly available on EPA's website. This public disclosure is an integral part of both specific and general deterrence.

The website lists various types of enforcement information – including abatement notices, infringement notices, directions or prosecution details – that ensures that the community affected by pollution is aware of action taken by EPA. All EPA prosecutions are made public, with an accurate account of the case provided on our website and a summary in our annual report. Any enforceable undertaking is publicised and a copy published on our website.

All published information is accurate and does not infringe privacy requirements. Publishing information aims to enhance the deterrent affect of enforcement and promote any environmental requirements or standards.

## 9. Decision-making framework for enforcement action

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When deciding what enforcement action is appropriate, EPA will consider the level of harm, risk of harm, likelihood of non-compliance and culpability of the offender.

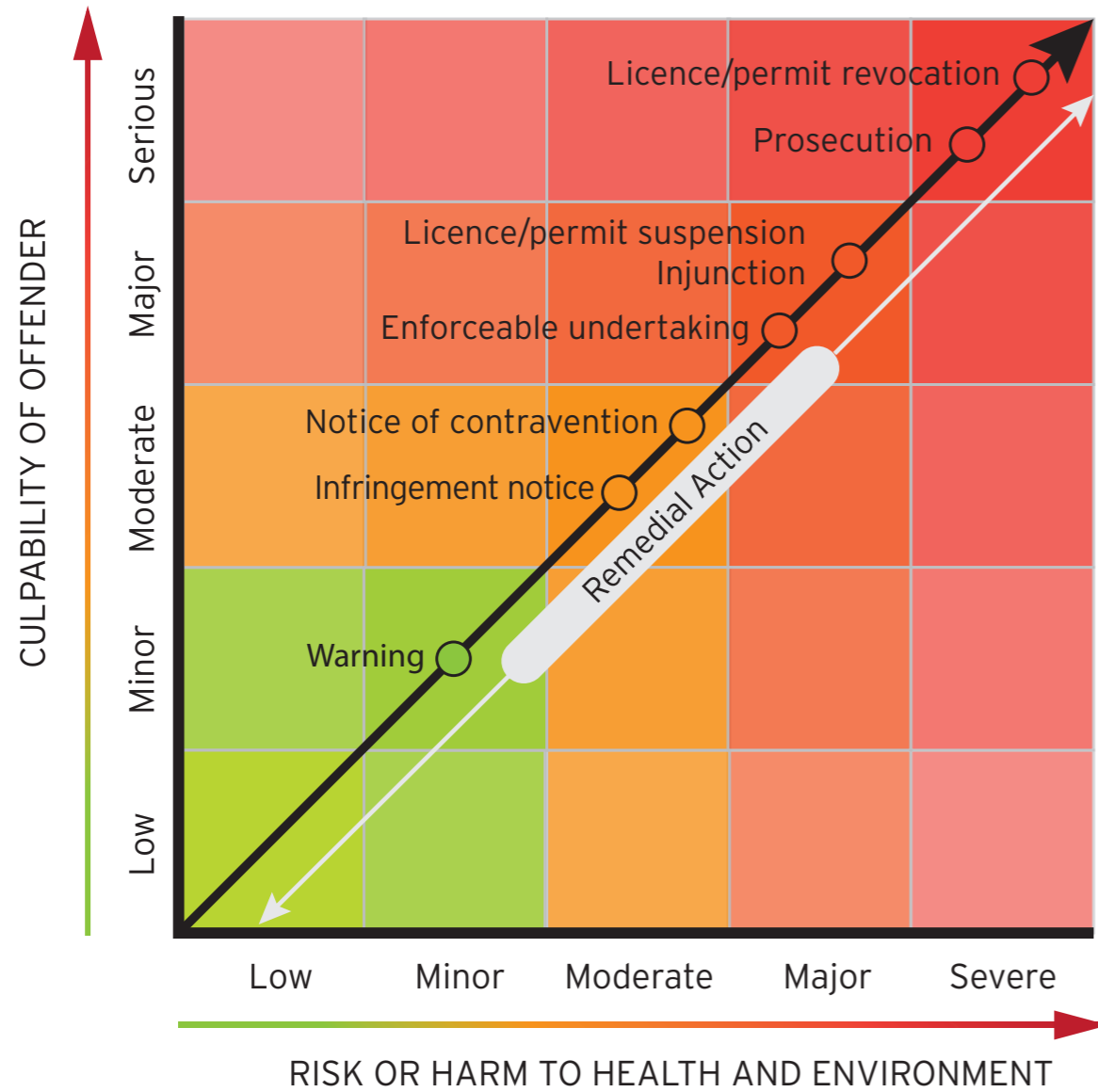
The following framework, outlined in sections 10 and 11, will guide EPA and its authorised officers when enforcing the EP Act. The framework will ensure consistency in enforcement actions and predictability for the community or anyone with a duty or obligation under the law.

The framework does not provide a definitive guide to any specific enforcement approach adopted by EPA, but gives an indication as to how the severity of EPA's response will change to take account of:

- the harm and impact caused by any breach
- the level of culpability of the regulated company or individual.

The principles and criteria detailed in this policy will be used in determining the most appropriate enforcement action for a given situation.

# 10. EPA's enforcement response



CULPABILITY OF OFFENDER	RISK OR HARM TO HEALTH AND ENVIRONMENT
<b>Serious</b>	<b>Severe</b> Permanent or long-term, serious environmental harm, or actual or potential life-threatening or long-term harm to health, safety and wellbeing. Long-term and wide-scale amenity impact with the potential to impact on health, or high level of public concern.
<b>Major</b>	<b>Major</b> Actual or imminent serious environment harm, or actual high-level harm or potential harm to health, safety or wellbeing. Medium to long-term or wide-scale amenity impact, or high public concern.
<b>Moderate</b>	<b>Moderate</b> Medium level or term of actual or potential harm to health, safety, wellbeing or the environment. Localised and short-term amenity impact on many, or moderate public concern.
<b>Minor</b>	<b>Minor</b> Transient environmental impact or transient amenity impact on few. Low potential for health impact, or low public concern.
<b>Low</b>	<b>Low</b> No or minimal environmental or amenity impact, or no health impacts.

### CULPABILITY OF OFFENDER

#### Serious

Intentional: Repeated non-compliance, past convictions or deliberate or wilful act. Acted with no regard to harm or prompted by financial motive to make a profit or save incurring an expense. Non-compliance of long duration (years) and still occurring. Risk was obvious and preventable. Non-compliance involves a significant falling short of accepted standards or involved misleading conduct.

#### Major

Reckless: Regular/repeated non-compliance, past enforcement activity or breaches of related environmental law. Acted recklessly knowing harm would result but gave no thought to the risk despite obvious consequences. Non-compliance of long duration (years), risk was foreseeable and easily preventable. Concerns of employees or others ignored and non-compliance due to a significant falling short of accepted standards. Harm has not been abated. No cleanup or remedial action undertaken.

#### Moderate

Knowing: Past isolated non-compliance, relevant incidents or persistent reports. Disregard of risks, acted knowing that harm could result. Non-compliance of medium duration (months), risk was foreseeable and, whilst difficult to prevent, was preventable. Non-compliance occurred due to poor standards of operation. Harm abated, cleanup and remedial action initiated.

#### Minor

Negligent: Past non-compliance reported or found. Little apparent regard to risk of harm with or without knowledge of risks caused by actions despite no intention to cause harm. Non-compliance of short or medium duration (weeks), difficult to predict and prevent and occurred despite reasonable standards of operation. Harm abated, partially cleaned up and remedied.

#### Low

Low culpability: No history of non-compliance and a genuine lack of awareness or understanding of obligations existed. Non-compliance of short duration (days), could not have been predicted or prevented and occurred despite high standards of operation. Harm abated, cleaned up and remedied.

### RISK OR HARM TO HEALTH AND ENVIRONMENT

#### Severe

Permanent or long-term, serious environmental harm, or actual or potential life-threatening or long-term harm to health, safety and wellbeing. Long-term and wide-scale amenity impact with the potential to impact on health, or high level of public concern.

#### Major

Actual or imminent serious environment harm, or actual high-level harm or potential harm to health, safety or wellbeing. Medium to long-term or wide-scale amenity impact, or high public concern.

#### Moderate

Medium level or term of actual or potential harm to health, safety, wellbeing or the environment. Localised and short-term amenity impact on many, or moderate public concern.

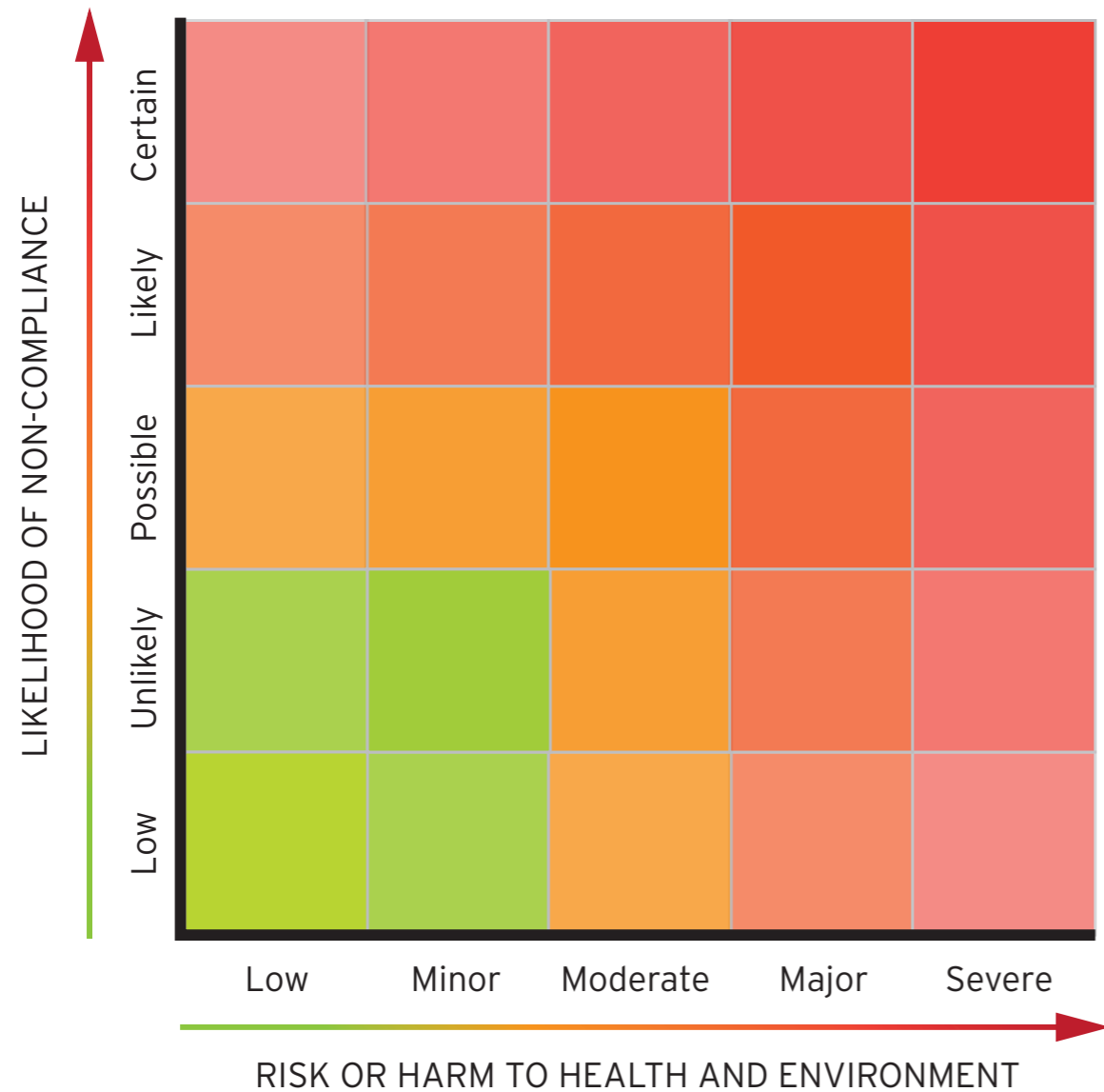
#### Minor

Transient environmental impact or transient amenity impact on few. Low potential for health impact, or low public concern.

#### Low

No or minimal environmental or amenity impact, or no health impacts.

# 11. EPA's approach to targeted enforcement



### LIKELIHOOD OF NON-COMPLIANCE

**Certain**

Repeated unlawful behaviour and more than likely not to make an effort to comply. Refusing to comply or furnish required information or intentionally including false or misleading information.

**Likely**

Wilful non-compliance. Little or no demonstrated assurance and/or capacity to meet regulatory requirements. No attempts to identify or control environmental risks.

**Possible**

Numerous previous occurrences of non-compliance. May not make adequate effort to comply. Little or no awareness of and/or capacity to meet regulatory requirements and identify or control environmental risks.

**Unlikely**

Fair record with previous isolated occurrences of non-compliance. Questionable awareness of and/or capacity to meet regulatory requirements and identify and control environmental risks.

**Low**

No previous occurrence of non-compliance. Good demonstrated awareness of and/or capacity to meet regulatory requirements, and identify, eliminate or control environmental risks. Co-operative attitude.

### RISK OR HARM TO HEALTH AND ENVIRONMENT

**Severe**

Permanent or long-term, serious environmental harm, or actual or potential life-threatening or long-term harm to health, safety and wellbeing. Long-term and wide-scale amenity impact with the potential to impact on health, or high level of public concern.

**Major**

Actual or imminent serious environmental harm, or actual high-level harm or potential harm to health, safety or wellbeing. Medium to long-term or wide-scale amenity impact, or high public concern.

**Moderate**

Medium level or term of actual or potential harm to health, safety, wellbeing or the environment. Localised and short-term amenity impact on many, or moderate public concern.

**Minor**

Transient environmental impact or transient amenity impact on few. Low potential for health impact, or low public concern.

**Low**

No or minimal environmental or amenity impact, or no health impacts.

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