



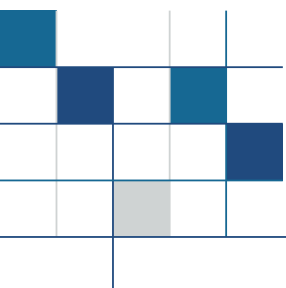
Guideline

Regulatory principles

Activities regulated under the *Environmental Protection Act 1986*,
Part V: Effective and efficient regulation

July 2015

(Plain English version, December 2020)



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1. Objective

This guideline discusses how the Department of Water and Environmental Regulation applies good regulatory principles to our regulatory functions under Part V of the *Environmental Protection Act 1986* (EP Act). These principles support effective and efficient environmental regulation and a higher level of consistency and transparency within our industry regulation function.

2. Background

The department undertakes environment regulation functions, mostly under the EP Act, of licensing, approvals, compliance and enforcement for:

- emissions and discharges
- waste
- noise
- clearing of native vegetation.

Licences and approvals allow activities that may otherwise be unlawful. When we grant such approvals, we are responsible to ensure the activities do not pose unacceptable risks to public health or the environment.

See below for the hierarchy of instruments that govern the environmental regulation we administer:

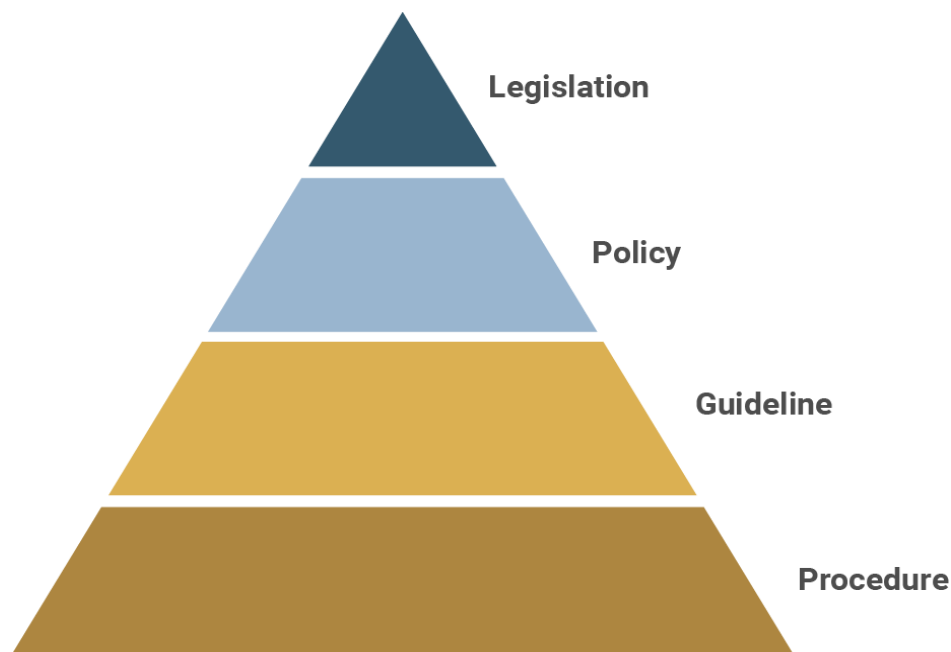


Figure 1: Hierarchy of regulatory instruments



We believe these principles are central to administering an efficient and effective regulatory cycle.

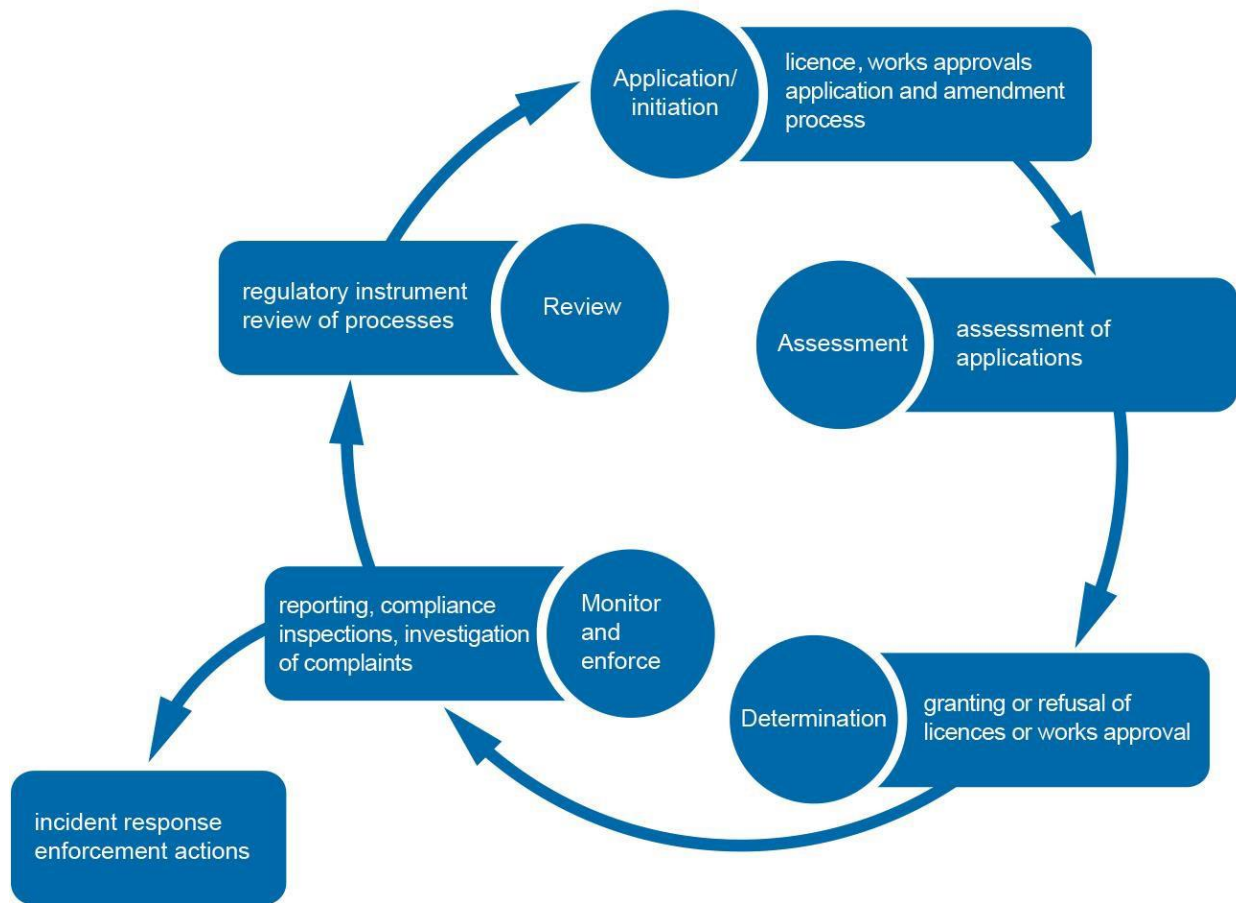


Figure 2: Regulatory cycle

3. Legislation

This guideline is about how we conduct our regulatory functions under the EP Act and its subsidiary legislation.

4. Guideline role

When we conduct our environment regulation functions, we will apply the regulatory principles in this guideline.

5. Regulatory principles

The statutory object and principles set out in section 4A of the EP Act guide our environmental regulation functions. We will also apply principles of good regulatory practice to how we exercise our environment regulation functions. See below for these principles.



Risk-based regulation

- The department will regulate to ensure there is not an unacceptable risk of harm to public health or the environment.
- We will make licensing and approval decisions, including any conditions we attach, in proportion to the level of risk (likelihood and consequence) that the activity poses to public health and the environment.
- We will target our compliance and enforcement resources at premises or activities that present the greatest risks to public health and the environment.
- Our enforcement action will be in proportion to the size or seriousness of the potential or actual harm to public health or the environment, taking into account the conduct of the responsible parties

Evidence-based decision-making

- The department will use the information we already have, and ask applicants to provide any technical and general information we need, to support our assessment of the risks of the proposed activity and to conduct our regulatory functions.
- We make informed decisions and judgments based on the best-available information, noting that the available evidence can often have limitations.

Application of Environmental Standards

- The department will establish Environmental Standards that set out what levels of environmental performance we require for certain regulated activities. We will base these on the hierarchy of preventing, controlling, abating and mitigating pollution and environmental harm.
- We will develop the Environmental Standards considering the costs and benefits of different levels of risk to public health and the environment.
- Environmental Standards may relate to the separation, siting, design, construction, commissioning, operation, closure and monitoring of emissions/discharges/by-products from activities.
- Applicants will have to show that they meet the Environmental Standards, or justify how deviations from them will achieve the same level of public health and environmental protection.
- As a response to a risk-based assessment, we may have to apply environmental regulation that is more stringent than the Environmental Standards to protect public health or the environment.
- We will refuse applications for licences or approvals if they do not show they can manage the risk of harm to public health or the environment to an acceptable level.
- Environmental performance beyond Environmental Standards will be voluntary and we will encourage this through non-regulatory means.



Appropriate conditions

- The department will issue licences and approvals with conditions to prevent an unacceptable risk of harm to public health or the environment.
- Any conditions we attach to works approvals, licences, permits and other approvals will be justifiable, clear and enforceable.
- We prefer to apply conditions that are outcome-based where practical and appropriate.
- We will apply process and management-based conditions when outcome-based conditions:
 - are not reasonable or practical
 - do not adequately address the risks to public health or the environment.
- We may include improvement conditions to transition existing activities to Environmental Standards or to address unacceptable risks to public health or the environment.
- We will apply monitoring and reporting conditions to:
 - validate assessment predictions and check the effectiveness of outcome, process, management, and improvement conditions
 - meet public reporting requirements.

Fair and equitable decision-making processes

- The department's decisions about licensing, approvals, compliance and enforcement should result in consistent outcomes under similar circumstances.
- Consistent processes will guide our regulatory functions. Outcomes will, however, depend on many variables. These include the circumstances of the situation, the actual or potential impact to public health and the environment, and the history and actions of the relevant parties.
- The rules of procedural fairness apply to our regulatory functions.
- We will assess applications and take compliance and enforcement actions fairly, without bias or undue delay. We will document our decisions and base them on findings of fact.

Engagement, consultation and transparency

- The department will consider all responses to public advertisements and results of consultation on licensing and approval applications and decisions.
- We will consult with stakeholders about, and consider submissions on, our proposed regulatory policies, Environmental Standards and guidelines.
- We will have a transparent process and document the basis for our regulatory decision-making. The resulting documents will be publicly available.



Competitive neutrality

- We will administer environmental regulation to minimise unnecessary competitive distortion between industry participants. Note that applicants' technology, process and site selection may require different levels of environmental performance.

6. Risk-based regulation

See Figure 3 for an overview of how the risk thresholds of 'beyond acceptable', 'acceptable' and 'unacceptable' environmental risk guide the department's functions. An environmental risk framework supports these risk thresholds, helping us to assess risk throughout the whole regulatory cycle.

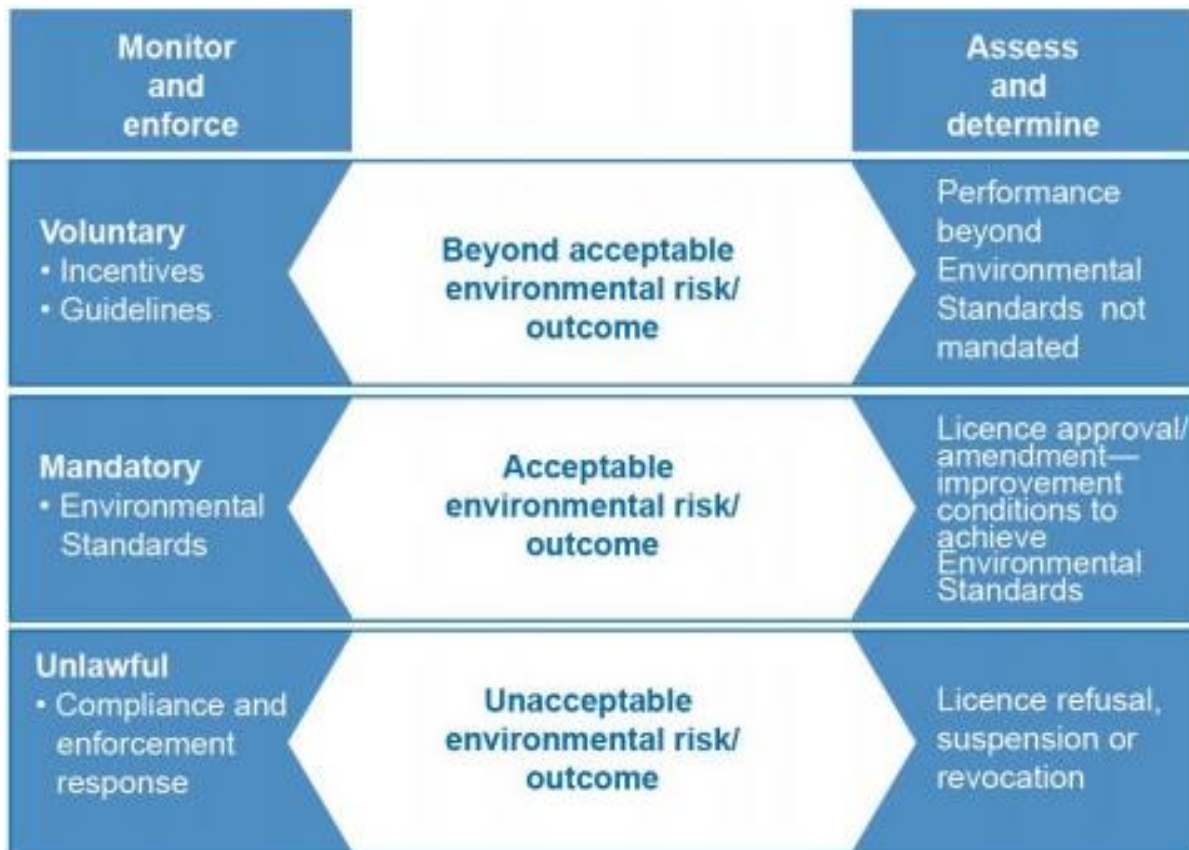


Figure 3: Risk thresholds



7. Application of regulatory principles

See Figure 4 for an overview of how the department applies the regulatory principles to the assessment and determination stages of the regulatory cycle.

To ensure we set conditions for licences consistently, we will establish essential regulatory controls for each category of licences. The environmental risk framework will help us apply these controls.

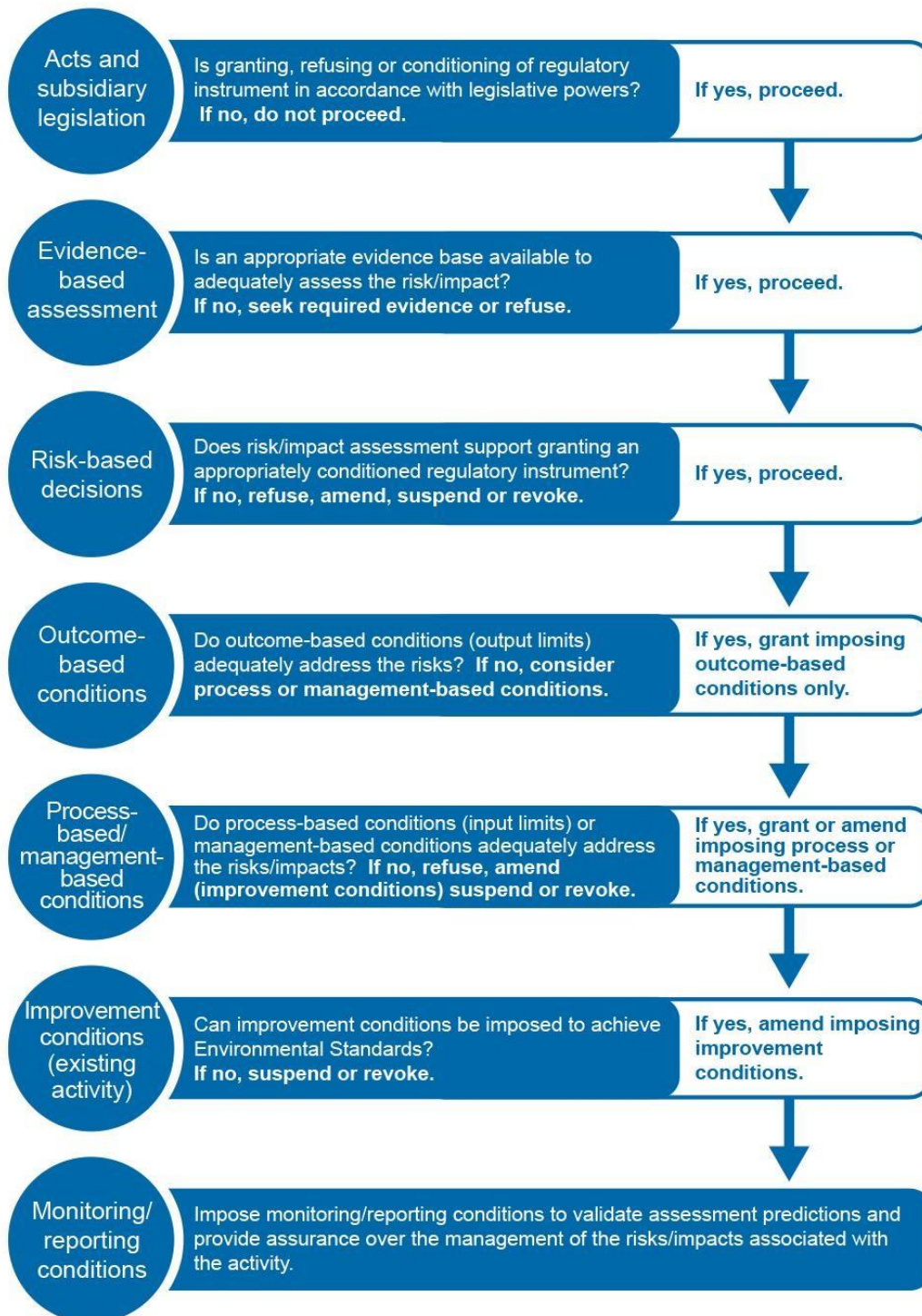




Figure 4: Regulatory principles for the assessment and determination stages of the department's regulatory cycle



See Figure 5 for an overview of how we apply the regulatory principles to the 'monitor', 'enforce' and 'review' stages of the regulatory cycle.

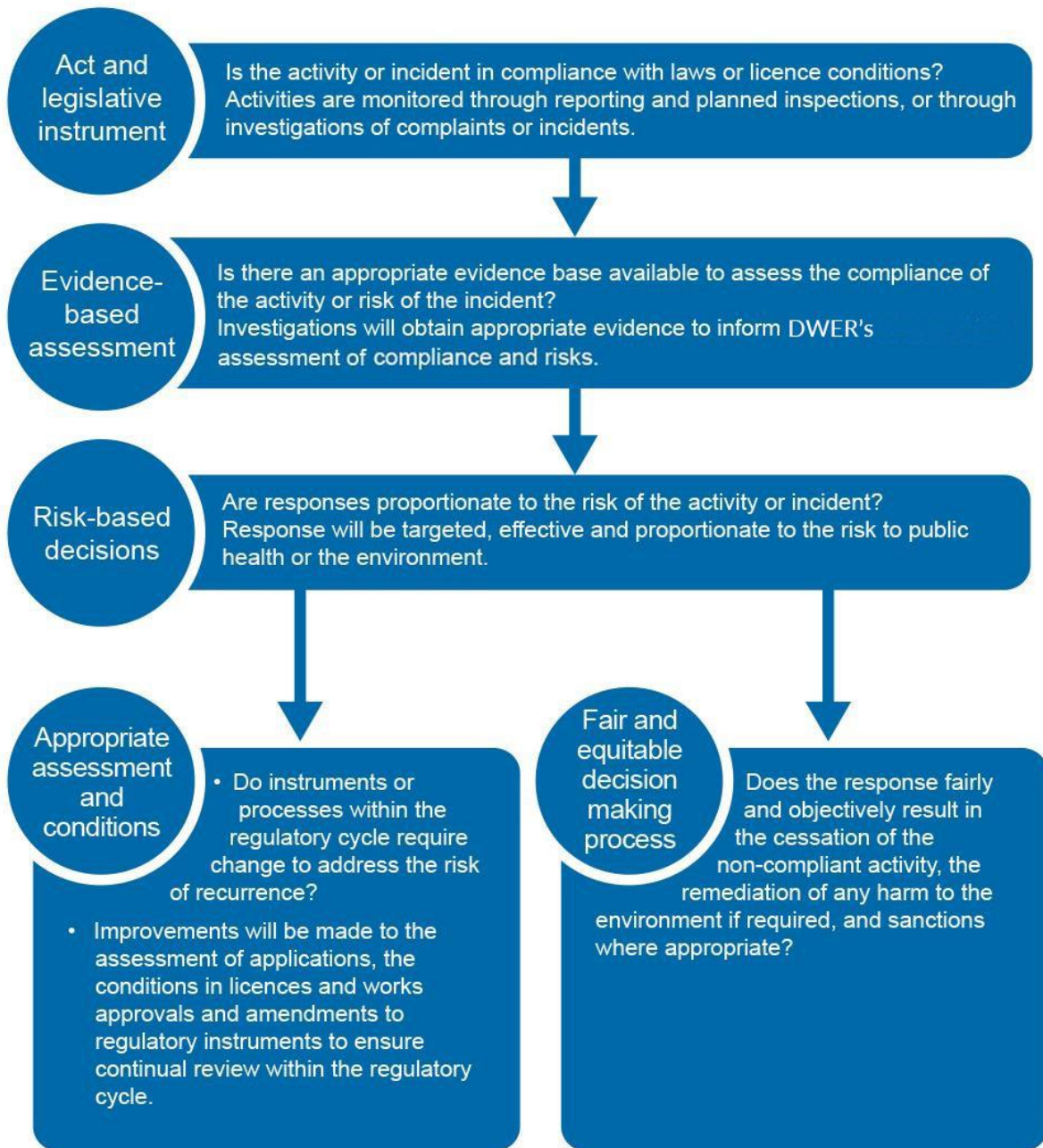


Figure 5: How we apply the regulatory principles to the 'monitor', 'enforce' and 'review' stages of the regulatory cycle



8. Implementation

The principles set out in this guideline will guide how we develop and implement regulatory policies and procedures. They will help us make decisions and produce supporting documents for industry, clearing and noise regulation. We will also apply these principles to our compliance and enforcement practice.

9. Start date

This guidance statement takes effect from 13 July 2015.

10. Review

We will review this guidance statement as soon as practicable after the fifth year of its inception.