

# ENFORCEMENT AND PROSECUTION POLICY TRAINING

Including Common Incident Classification

ENVIRONMENTAL PROTECTION



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# **Environmental Protection**

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## Introduction

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# Introduction

**T**his workbook will introduce you to the Environment Agency's Common Incident Classification Scheme (CICS) and the Enforcement and Prosecution Policy (EPP).

CICS determines how incidents will be defined and classified.

EPP sets out the general principles for the Agency to follow in relation to enforcement and prosecution. More specific guidance is provided on how the EPP applies to each of the Agency's functions in the *Functional Enforcement Guidelines*.

The new policies are designed to ensure consistency of application of the CICS and EPP across all regions and functions of the Agency.

Full details of the CICS and EPP are given in policy documents of the same names. This workbook is not intended to replace these documents, but rather to serve as a guide to their contents. They will help you implement the new proposals in your own functional area: in this case, environmental protection.

As you know, you will soon be attending a one-day workshop. If you complete this workbook now, you will have a broad understanding of both the new Enforcement Policy and the CICS. This will mean that at the workshop you will be able to discuss how it all relates to your job.

In order to complete the second part of this workbook, you will also need a copy of the *Functional Enforcement Guidelines*. Your team manager should be able to supply this.

If you find that there are certain parts of this workbook you do not understand or activities you cannot complete, don't worry: simply highlight them and move on. You will then be able to discuss them at the workshop.

Please remember to take this workbook to the workshop.

# Environmental Protection

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## Objectives

By the time you have completed this workbook, you should be able to:

- ◆ explain why the CICS and EPP have been introduced
- ◆ consider the practical implications of CICS and EPP in your day-to-day work
- ◆ understand the relationship between the CICS and EPP.

## Common Incident Classification Scheme (CICS)

# The Common Incident Classification Scheme (CICS)

**T**he Environment Agency is committed to responding effectively and efficiently to all incidents and emergencies. In order to categorise an incident correctly, you will need to understand the two distinct elements (or tiers) of the CICS:

**Tier 1** categorises the Agency's response or efforts made in dealing with the incident

**Tier 2** categorises the *actual* environmental impact of the incident.

Tier 1 is common to all functions across the Agency; Tier 2 is split into Environmental Protection and Water Management parts.

## What is an incident?

The Environment Agency defines an incident as a specific event which:

- ◆ is brought to the attention of the Agency
- ◆ is within the Agency's areas of responsibility
- ◆ may have an environmental and/or operational impact.

Having identified an incident, you will need to assess it according to:

- ◆ its potential impact on the environment
- ◆ its actual impact on the environment
- ◆ its impact on the Agency's resources
- ◆ the media impact.

# Environmental Protection

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## Tier 1 – impact on resources

In order to determine the level of impact on Agency resources, you will need to refer to the definitions of the various levels. Checklist 1 summarises the main criteria for each level and will assist you in assigning an impact category.

### ✓ Checklist 1: Level of impact criteria

#### Level A

##### Does the incident:

- ◆ require major deployment of Agency resources and reorganisation of priorities at Regional or National level?
- ◆ severely disrupt normal operations?
- ◆ have the potential for Category 1 impact?
- ◆ generate national or extensive local media coverage?
- ◆ necessitate opening an Area or Regional Incident Room?

#### Level B

##### Does the incident:

- ◆ require significant deployment of Agency resources and reorganisation of priorities at local or regional level?
- ◆ have potential for Category 2 impact?
- ◆ generate considerable local media interest?

## **Common Incident Classification Scheme (CICS)**

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### **Level C**

#### **Does the incident:**

- ◆ require limited deployment of Agency resources?
- ◆ have potential for Category 3 impact?
- ◆ generate local media or public interest?

### **Level D**

#### **Does the incident:**

- ◆ require no deployment of Agency resources and no anticipated impact on the environment?

# Environmental Protection

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## Tier 2 – environmental impact

Use Checklist 2 to help you determine the most appropriate category. Where an incident falls within the responsibilities of the EP function, you will need to consider the environmental impact across all three environmental media: land, air and water. The category of the highest selected criteria listed will determine the level to be assigned to the incident

### ✓ Checklist 2: Environmental impact criteria

#### Water

Does the incident involve?

##### Category 1 (Major)

- ◆ Persistent and extensive effects on water quality.
- ◆ Major damage to aquatic ecosystem.
- ◆ Closure of a potable abstraction point.
- ◆ Major impact on amenity value.
- ◆ Major damage to agriculture/commerce.
- ◆ Serious impact on people.

##### Category 2 (Significant)

- ◆ Significant effect on water quality.
- ◆ Significant damage to aquatic system.

## **Common Incident Classification Scheme (CICS)**

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- ◆ Non-routine notification of potable abstractors.
- ◆ Reduction in amenity value.
- ◆ Damage to agriculture/commerce.
- ◆ Impact on people.

### **Category 3 (Minor)**

- ◆ Minimal effect on water quality.
- ◆ Minor damage to aquatic ecosystem.
- ◆ Amenity value only marginally affected.
- ◆ Minimal impact on agriculture/commerce.

### **Category 4 (No impact)**

- ◆ No impact.

## **Land**

**Does the incident involve?**

### **Category 1 (Major)**

- ◆ Persistent and extensive contamination of land.
- ◆ Major damage to terrestrial ecosystem.
- ◆ Major impact on property.
- ◆ Major effect on amenity value.
- ◆ Major damage to agriculture/commerce.
- ◆ Serious impact on people.

# Environmental Protection

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## Category 2 (Significant)

- ◆ Significant contamination of land.
- ◆ Significant damage to terrestrial ecosystem.
- ◆ Significant impact on property.
- ◆ Reduction in amenity value.
- ◆ Damage to agriculture/commerce.
- ◆ Impact on people.

## Category 3 (Minor)

- ◆ Minimal contamination of land.
- ◆ Minor damage to local ecosystem.
- ◆ Amenity value only marginally affected.
- ◆ Minimal impact on agriculture/commerce.

## Category 4 (No impact)

- ◆ No impact.

## Air

### Does the incident involve?

#### Category 1 (Major)

- ◆ Persistent and extensive effects on air quality.
- ◆ Major damage to ecosystem.
- ◆ Major effect on amenity value.

## **Common Incident Classification Scheme (CICS)**

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◆ Major damage to agriculture/commerce.

◆ Serious impact on people.

### **Category 2 (Significant)**

◆ Significant effect on air quality.

◆ Significant damage to ecosystem.

◆ Reduction in amenity value.

◆ Significant damage to agriculture/commerce.

◆ Impact on people (health and safety).

### **Category 3 (Minor)**

◆ Minimal effect on air quality.

◆ Minor damage to local ecosystem.

◆ Minor effect on amenity value.

◆ Minimal impact on agriculture/commerce.

### **Category 4 (No impact)**

◆ No impact.

# Environmental Protection

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## Activity 1

Think of a recent incident with which you have been involved. Use Checklists 1 and 2 to determine the level of impact on Agency resources and the category of impact on the environment. State the criteria you have used and why you have used each one.

**Incident:**

**Level:**

**Reasons for choice:**

**Category:**

**Reasons for choice:**

## **Common Incident Classification Scheme (CICS)**

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**Remember:** after an incident has concluded, a classification should be assigned; this, together with additional details, will be recorded on a National Incident Recording System.

NB. An incident may affect one, two or all three environmental media.

Therefore, an EP incident could generate one Agency impact classification (for example 'A' meaning 'Major incident') and three separate environmental impact classifications, one for each media (for example, 2 for land, 3 for air and 4 for water). In this case, the classification for this incident would be:

A2 Land  
A3 Air  
A4 Water



### **Activity 2**

An incident occurs which results in both land and water pollution. A spillage of a hazardous substance contaminates a land area and then enters a controlled water. It has no impact on the air. The incident had a significant impact upon a terrestrial ecosystem and caused the closure of a potable water abstraction point. The incident has been categorised as a major (Category A) impact on Agency resources. How would this be classified under environmental impact?

# Environmental Protection

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The classification is as follows:

- A1 Water
- A2 Land
- A4 Air

Checklist 3 will help to ensure that you have considered the main points when classifying incidents.

## **Checklist 3: Common Incident Classification Scheme**

	Yes	No
For any incident, have you identified:		
◆ the level?	<input type="checkbox"/>	<input type="checkbox"/>
◆ the category?	<input type="checkbox"/>	<input type="checkbox"/>
◆ the specific criteria?	<input type="checkbox"/>	<input type="checkbox"/>
◆ the possible effects?	<input type="checkbox"/>	<input type="checkbox"/>
◆ Are you certain about your decision?	<input type="checkbox"/>	<input type="checkbox"/>
◆ If not, have you sought advice?	<input type="checkbox"/>	<input type="checkbox"/>

## Enforcement and Prosecution Policy

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# Enforcement and Prosecution Policy

**T**he Environment Agency aims to provide a 'better environment for England and Wales, both for the present and for the future'. It intends to achieve this through:

- ◆ education
- ◆ advice
- ◆ regulating the activities of others.

This section of the workbook relates to the *Enforcement and Prosecution Policy*.

## The purpose and principles of enforcement

Although we seek to prevent rather than to cure and to co-operate rather than clamp down, achieving our ideals is not always possible. Where we have to enforce, it is because we need to take remedial or preventative action to:

- ◆ protect the environment, or
- ◆ ensure compliance with environmental law.

Enforcing compliance with legal requirements forms an important part of our attempt to put the environment first. To this end, there are some general principles relating to the policy that need to be upheld, together with specific guidelines relevant to your functional area of environmental protection.

# Environmental Protection

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We wish to regulate firmly but fairly. The principles which should guide our actions are these:

- ◆ **proportionality** in applying the law and gaining compliance
- ◆ **consistency** of approach
- ◆ **transparency** about procedures and expectations
- ◆ **targeting** of enforcement action.

We'll look more closely at each of these principles.

## Proportionality

You must balance the actions you take against possible risks and costs.

Incidents may:

- ◆ cause serious environmental damage, or
- ◆ interfere with people's rights or enjoyment, or
- ◆ interfere with the Agency's ability to do its work.

The Agency's first response must be to prevent damage or harm to the environment. Any action must be in proportion to the risks posed and the seriousness of any breach of the law.

## Consistency

It is important that the advice we give, the responses we make and the enforcement actions we take should be similar across geographical regions and within and between functions. Officers must exercise discretion and professional judgement in relation to any incident. This may involve taking account of specific issues such as previous incidents, the scale of the impact, etc.

# **Enforcement and Prosecution Policy**

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## **Transparency**

We must be clear about what we expect from the public and those we regulate, what they can expect from the Agency, and the reasons for any enforcement action. This means:

- ◆ giving clear explanations of remedial action – distinguishing best practice from legal requirements
- ◆ encouraging discussion about legal compliance, (if appropriate) before enforcement action is taken
- ◆ supplying a written explanation after an event (where urgent action had been required)
- ◆ giving written details of statutory rights of appeal.

## **Targeting**

Our main efforts should be directed at those who, by their actions could cause, or potentially cause, serious environmental damage. Actions are prioritised and cover areas such as:

- ◆ responding to complaints
- ◆ assessing risks
- ◆ gathering and acting on information about illegal activities
- ◆ managing regulated activities.

# Environmental Protection

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## Activity 3

Reflect again on the incident you described in Activity 1. Think about how each of the principles may be taken into account and fill in the chart below stating how each principle might be applied.

**Incident:**

**How is this principle taken into account within enforcement?**

**Proportionality**

**Consistency**

**Transparency**

**Targeting**

If you are uncertain about your responses to this activity, remember to ask about it at the workshop.

## **Enforcement and Prosecution Policy**

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Now that you have considered the key principles which lie behind our enforcement policy, we will go on to look at one of the most serious ways in which enforcement is carried out: prosecution.

### **The purpose of prosecution**

Prosecution is a serious matter with many implications and consequences which you must consider. Prosecution aims to:

- ◆ punish wrongdoing
- ◆ avoid recurrence
- ◆ deter others.

It is likely to be used together with other enforcement procedures (if available), such as prohibition notices.

Before embarking on the criminal process, there are many factors which need to be considered. We outline these here.

### **Public interest**

Prosecution should always be in the public interest and should never take place without 'sufficient, admissible and reliable evidence' and a genuine prospect of conviction. While bearing in mind our primary aim of protecting the environment, we must also be fair.

To that end, you should always stop to consider the following factors relating to public interest. Checklist 4 will help you decide on the appropriate response. Make sure you consider each of the criteria before making your decision.

## Environmental Protection

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### ✓ Checklist 4: Public interest

Consider the following criteria for any incident with which you become involved. They will help you determine the enforcement action to be taken.

What is/are:

- ◆ the *environmental effects* of the offence?
- ◆ the *foreseeability* of the offence or the circumstances leading up to it?
- ◆ the *intent* of the offender?
- ◆ the *history* of offending?
- ◆ the *attitude* of the offender?
- ◆ the *deterrent effect* of a prosecution on the offender and on others?
- ◆ the *personal circumstances* of the offender?

This is not a definitive list and there may be other factors to be taken into account. Use your discretion in weighing up the factors.

### Circumstances for prosecuting

If the Agency has sufficient evidence, normally it will prosecute:

- ◆ incidents/breaches with significant consequences for the environment
- ◆ operations being carried out without a relevant licence
- ◆ excessive or persistent breaches of regulatory requirements
- ◆ failure to comply or to comply adequately with formal remedial requirements

## **Enforcement and Prosecution Policy**

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- ◆ where management or quality standards have been recklessly disregarded
- ◆ failure to supply information (without reasonable excuse) or knowingly or recklessly supplying false or misleading information
- ◆ obstruction of Agency staff in carrying out their powers
- ◆ impersonation of Agency staff.

### **Working with other enforcers**

If another enforcement body is involved in a prosecution, the Agency will liaise with that organisation to co-ordinate, avoid inconsistencies and ensure the most appropriate offence is pursued.

### **Alternatives to prosecution**

Cautions or warnings can be considered where prosecution is not appropriate.

A caution is a written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. It will be brought to the Court's attention if the offender is convicted of a subsequent offence.

A warning is a written notification that an offence has been committed. It will be recorded and may be referred to in subsequent proceedings.

# Environmental Protection

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## Activity 4

Give examples from your own experience of both a caution and a warning. Say why this form of enforcement was given.

**Example of a caution:**

**Reason:**

**Example of a warning:**

**Reason:**

## **Relationship between CICS and Enforcement**

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# **Relationship between CICS and Enforcement**

In determining the appropriate level of enforcement action, the Agency must have regard to the extent of the actual or potential impact on the environment.

To enable consistency to be achieved in establishing impact for the purposes of enforcement, guidance should be obtained from Tier 2 of the CICS.

Although this tier relates to the categorisation of actual impact in relation to incidents, it can also be used to provide guidance in relation to incidents which result in potential impact and for non-incidents which result in both actual and potential environmental impact.

Tier 2 of the CICS can be used to assist in assessing the environmental impact criterion of the enforcement policy in the following situations:

- ◆ incidents resulting in actual environmental impact
- ◆ incidents resulting in potential environmental impact
- ◆ events (which do not fall within the definition of incident under the CICS) which result in actual or potential environmental impact.

## **CICS and EPP Link**

EPP uses the CICS to:

- ◆ assess the severity of environmental impact (actual or potential)
- ◆ achieve consistency in classifying environmental impact for enforcement purposes
- ◆ account for the enforcement action taken in relation to serious incidents.

## **Environmental Protection**

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For the purposes of enforcement, the Tier 2 categorisation system can be used for:

- ◆ incidents with actual environmental impact
- ◆ incidents with potential environmental impact
- ◆ non-incidents with actual environmental impact
- ◆ non-incidents with potential environmental impact.

## Functional Enforcement Guidelines

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# Functional Enforcement Guidelines

**R**ead through the first part of the *Functional Enforcement Guidelines*, and glance through Section 2 (Environmental Protection), which gives detailed guidelines on the application of the Policy in your own function.

Activity 5 looks at one or two issues related to the general introduction to the *Functional Enforcement Guidelines*.



### Activity 5

- 1 Why do the guidelines refer to a 'caution' as a 'formal caution'?
- 2 You have to issue a 'formal caution'. Where would you find details about the procedures involved?
- 3 What provisions must you comply with when carrying out criminal investigations?



## Functional Enforcement Guidelines

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Your responses should agree with these:

- 1 A 'formal caution' is a criminal sanction and distinguishes it from a caution given during a site investigation or interview.
- 2 Details about the procedures involved in issuing a formal caution are contained in the Agency's *National Investigations Manual* ('Investigations Manual').
- 3 When carrying out criminal investigations, you must comply with the relevant provisions of the Police and Criminal Evidence Act 1984 (PACE).
- 4 It is not always in the best interest of the Agency, or the public, to prosecute for all offences when someone has committed a number of offences. A decision will be made about which offences to prosecute by the Regional Solicitor in consultation with the relevant manager.
- 5 If you request remedial action, the steps you should take are as follows:
  - ◆ give a full explanation of the reasons for your action
  - ◆ discuss what needs to be done with the offender
  - ◆ confirm when the remedial action should start and finish
  - ◆ clarify whether the action is legally necessary, or a matter of good practice
  - ◆ explain the consequences of not carrying out the action, for example, formal enforcement and, for offences, prosecution.
- 6 Records are kept as follows:
  - ◆ warning records are kept in the area offices
  - ◆ formal cautions and prosecutions are held centrally on the National Convictions Database.

The general guidelines we have been looking at apply across all functions of the Agency. We will concentrate now on Section 2 (Environmental Protection), which gives specific guidelines on the application of the Policy to your own function.

## Environmental Protection

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### Applying the policy

The environmental protection function exercises general supervision over matters relating to the possible pollution of the air, water or land or harm to the life that lives within.

The two purposes of enforcement are:

- ◆ protect and improve all aspects of the environment
- ◆ prevent harm to human health, especially by preventing or minimising the release of polluting substances.



#### Activity 6

How does environmental protection achieve the above purposes? (If you are unsure, please refer to the *Functional Enforcement Guidelines*.)

## Functional Enforcement Guidelines

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You will have been able to find this information in the *Functional Enforcement Guidelines*. If you had any trouble with this, remember to ask about it at the workshop.

### Enforcement action – Common Offences



#### Activity 7

For each of the following offences common to all environmental protection functions, indicate:

- ◆ how you might respond
  - ◆ your reasons for the response.
- 1 Obstructing an authorised person.

**Response:**

**Reasons:**

## Environmental Protection

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- 2 Failing to comply with a requirement imposed under S. 108 EA (1995).

**Response:**

**Reasons:**

- 3 Impersonating an authorised person.

**Response:**

**Reasons:**

## Functional Enforcement Guidelines

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- 4 Failing to answer questions during an interview.

**Response:**

**Reasons:**

- 5 Obstruction or impersonation of Agency officers.

**Response:**

**Reasons:**

## Environmental Protection

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- 6 Failing to provide relevant information.

**Response:**

**Reasons:**

- 7 Preventing another person from appearing before an authorised person or answering questions recklessly.

**Response:**

**Reasons:**

## Functional Enforcement Guidelines

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- 8 Intentionally making a false or misleading statement or entry in a record.

**Response:**

**Reasons:**

- 9 Failing to pay a subsistence charge for an environmental licence.

**Response:**

**Reasons:**

## Environmental Protection

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You will have been able to find this information in the *Functional Enforcement Guidelines*. If you had any trouble with this, remember to ask about it at the workshop.

### Enforcement action – Water Quality



#### Activity 8

For each of the following offences common to water quality regulation, indicate:

- ◆ how you might respond
  - ◆ your reasons for the response.
- 1 Where there is an extensive effect on invertebrate life and remedial action is poor.

**Response:**

**Reasons:**

## Functional Enforcement Guidelines

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- 2 Repeated breach of discharge consent conditions.

**Response:**

**Reasons:**

- 3 Non-compliance with an enforcement/prohibition/works notice.

**Response:**

**Reasons:**

Again, you will have been able to find this information in the *Functional Enforcement Guidelines*. If you had any trouble with this, remember to ask about it at the workshop.

# Enforcement action – Waste Management and Regulation



## Activity 9

For each of the following offences common to waste management regulation, indicate:

- ◆ how you might respond
- ◆ your reasons for the response.

Keep in mind the range of such offences may vary considerably.

- 1 Keeping controlled waste without a Waste Management Licence. (N.B. The activity is not exempt.)

**Response:**

**Reasons:**

## Functional Enforcement Guidelines

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- 2 Operating without being a registered carrier.

**Response:**

**Reasons:**

- 3 Significant breach of licensed conditions.

**Response:**

**Reasons:**

## Environmental Protection

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4 Failure to register an exemption, or as:

- ◆ a registered broker
- ◆ a professional collector
- ◆ a transporter
- ◆ a dealer.

**Response:**

**Reasons:**

5 Fly-tipping.

**Response:**

**Reasons:**

## Functional Enforcement Guidelines

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6 Handing waste to an unauthorised person.

**Response:**

**Reasons:**

7 Failure to comply with an Enforcement Notice (S.42 EPA 1990).

**Response:**

**Reasons:**

## Environmental Protection

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8 Failure to comply with notices to remove waste (S. 59 EPA 1990).

**Response:**

**Reasons:**

As above, you will have been able to find this information in the *Functional Enforcement Guidelines*. If you had any trouble with this, remember to ask about it at the workshop.

## Enforcement action – Process Industries Regulation



### Activity 10

For each of the following offences common to process industries regulation, indicate:

- ◆ how you might respond
- ◆ your reasons for the response.

## Functional Enforcement Guidelines

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- 1 Operating without an IPC authorisation.

**Response:**

**Reasons:**

- 2 Non-compliance with a release limit condition (second occasion).

**Response:**

**Reasons:**

- 3 Non-compliance with an enforcement or prohibition notice.

**Response:**

**Reasons:**

## Environmental Protection

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As above, you will have been able to find this information in the *Functional Enforcement Guidelines*. If you had any trouble with this, remember to ask about it at the workshop.

### Enforcement action – Radioactive Substances



#### Activity 11

For each of the following offences common to radioactive substance regulation, indicate:

- ◆ how you might respond
  - ◆ your reasons for the response.
- 1 Operating without a registration and/or authorisation.

**Response:**

**Reasons:**

## Functional Enforcement Guidelines

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- 2 Non-compliance with a condition in a registration or authorisation.

**Response:**

**Reasons:**

- 3 Non-compliance with an enforcement or prohibition notice.

**Response:**

**Reasons:**

As above, you will have been able to find this information in the *Functional Enforcement Guidelines*. If you had any trouble with this, remember to ask about it at the workshop.

## Environmental Protection

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## Summary

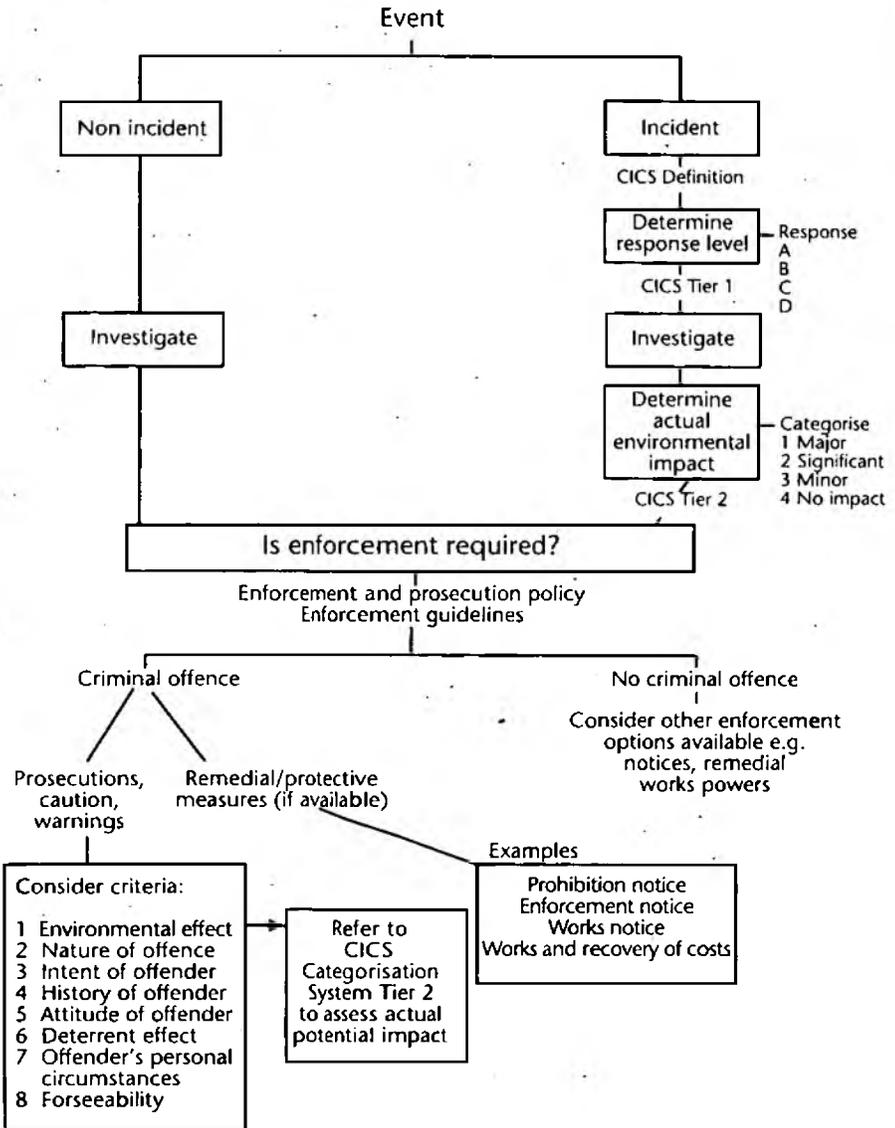
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# Summary

In this workbook you have looked at the *Common Incident Classification Scheme (CICS)* and how it relates to environmental protection. You have also become familiar with the *Enforcement and Prosecution Policy (EPP)*, noting the purposes of the policy and the factors that must be considered before considering prosecution. You have also seen how the policy relates to environmental protection with respect to the powers you may exercise.

The following flowchart will help guide you through the process of classification and enforcement.

# Environmental Protection



## Notes

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## Environmental Protection

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## Notes

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## Environmental Protection

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