

EPA position on provision of financial assurance for licences and works approvals

Draft position statement



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EPA position

This position statement clarifies how financial assurances will be applied to licences and works approvals. Section 67B of the *Environment Protection Act 1970* and associated regulations provide for financial assurances.

Financial assurance is a financial security required to be submitted for certain types of activities. Schedule 1 of the *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007* specifies the scheduled activities that are required to have a financial assurance.

Currently, the scheduled activities required to have a financial assurance as a condition of a licence or works approval are:

A01 Prescribed Industrial Waste Management

A05 Landfills

G04 Bulk Storage

G05 Container Washing

All duty holders with a licence to undertake these scheduled activities have a licence condition requiring a financial assurance.

A financial assurance may also be applied as a condition of works approvals for these activities. The works approval will not be deemed to be completed until the required financial assurance is in place.

EPA may also require a financial assurance through Pollution Abatement Notices, to address contaminated land management and/or any of the scheduled activities outlined above. *Publication 1418: Remedial Notices Policy* addresses financial assurances required under Pollution Abatement Notices.

Background

Financial assurance was introduced as a regulatory tool following a number of incidents where the EPA conducted clean up following business failures.

The purpose of a financial assurance is for the duty holder to assure the EPA that in the event clean up is required, appropriate funds are available.

Amount of a financial assurance

Section 67B(2) states that the EPA is to determine the type and extent of a financial assurance. EPA maintains guidance documents that specifically address calculation of financial assurance amounts.

The purpose of an EPA position

An EPA position sets out how you can expect EPA to act when the law gives us discretion to act in different ways. An EPA position provides EPA's view of the law or policy - it is not itself a law. It offers certainty and consistency in how we will act in particular circumstances. The intended audiences are EPA duty holders, the community and other stakeholders. We develop EPA positions with stakeholder and community input and make them public like any other form of EPA guidance.

Prescribed Industrial Waste (A01) and Container Washing (G05)

Sites that are licensed to store Prescribed Industrial Waste are required to lodge a financial assurance equivalent to the cost of removing and either treating or disposing of the waste permitted to be stored on the site. The disposal or treatment costs used to calculate a financial assurance are determined by EPA.

The financial assurance assumes that the maximum amount of permitted waste is stored at the site. The calculation also assumes that the waste that is most expensive to dispose of is stored up to the licensed limit.

To reduce the required financial assurance, licence holders should consult with EPA in order to reduce the amount of waste permitted to be stored on their site, or to include licence sub-limits for wastes that are expensive or difficult to treat or dispose.

Suspected or known contamination issues at licensed sites will be addressed separately through remedial notices rather than through the licence. An additional financial assurance may be required under a Pollution Abatement Notice as part of addressing contamination.

Where composting operations (A07) are also licensed to receive Prescribed Industrial Waste (A01), financial assurance is required. The amount will be based on addressing identified risks associated with composting Prescribed Industrial Waste.

Landfills (A05)

There are substantial costs associated with maintaining, capping, and monitoring landfills. Financial assurance for landfills aims to ensure that there is adequate provision made by landfill operators for closure and aftercare, as well as providing an incentive for landfills to progressively rehabilitate and ultimately move into the closure phase.

Progressive rehabilitation of landfills in accordance with licence conditions will reduce the amount of financial assurance required.

Privately Operated Landfills (A05)

There are two components of a privately operated landfill financial assurance; Operational Financial Assurance, and Closure and Aftercare Financial Assurance. Both components are required to be in place for active landfills.

The Operational component will be released upon the surrender of the licence, once the EPA determines that the Closure and Aftercare component is adequate to address the remaining anticipated costs of closure and/or aftercare of the landfill. The Closure and Aftercare component can be reduced gradually when EPA is presented with evidence that rehabilitation milestones have been met.

Local Government-operated Landfills (A05)

EPA is committed to ensuring that the full life cycle costs of waste management activities are considered during operations, and that adequate funds are set aside during operations to fund closure and aftercare costs.

For local government-operated landfills, EPA will accept a description of the mechanisms proposed to cover closure and aftercare costs. Evidence must be presented that the council has evaluated the anticipated costs and has made adequate provision to cover these costs.

Bulk Storage (G04)

EPA requires a written undertaking from parent companies that sites will be remediated to suit the proposed end land use, with appropriate management of any offsite impacts of contamination.

Suspected or known contamination issues at licensed sites will be addressed separately through remedial notices rather than through the licence. An additional financial assurance may be required under a Pollution Abatement Notice as part of addressing contamination.

Types of financial assurance acceptable to EPA (the Authority)

Section 67B(1) of the *Environment Protection Act 1970* outlines the types of financial assurance the Authority may require. The list is broad and allows the Authority to identify the most appropriate method in each instance.

In deciding the type and amount of financial assurance, EPA considers 1) the likelihood of EPA incurring costs to fund a clean up, and 2) the possible magnitude of that clean up.

EPA will publish guidance on types of financial assurance.

Providing a financial assurance

EPA may allow duty holders to stage the provision of a financial assurance over a period of time. The timeframes for providing a financial assurance will be embedded within the conditions of the licence and/or works approval.

Enforcement of financial assurance requirements

In the event of a duty holder failing to meet expectations for complying with financial assurance works approval or licence conditions, for example if an agreed timeframe for submitting a financial assurance is not met, the non-compliance will be escalated in line with EPA's Compliance and Enforcement Policy. Continued failure to comply may result in licence or works approval suspension or revocation.

In the event that licence conditions that inform the calculation of the amount of financial assurance are breached, an additional financial assurance may be required either through a licence requirement or a Pollution Abatement Notice, in addition to enforcement action taken to address the breach of licence conditions.

Publication 1322: Licence Management outlines what compliance with financial assurance licence conditions means. This publication is regularly updated.

Review of financial assurance

EPA will review the amount of financial assurance held at least every five years and/or in conjunction with a review of EPA's financial assurance calculation guidance.

The financial assurance amount will also be reviewed whenever the licence is amended in a way that affects the amount of financial assurance required, for example if waste storage limits change or if additional landfill cells are approved.

Release of a financial assurance

EPA will release the financial assurance when it is satisfied that no clean up will be required as a result of the use of the premises. This may extend beyond the time that the works approval or licence is in force.

Duty holders must apply in writing to EPA to have the financial assurance released, and will be advised of EPA's decision within 60 days of the written application.

Applications for the release of a financial assurance must be accompanied by sufficient evidence that no further clean up will be required at the site.

Claiming on a financial assurance

In the first instance, it is the polluter's responsibility to remedy pollution. However, the EPA may, if it considers necessary, conduct a clean up or cause a clean up to be conducted. *Publication 1538: EPA Cleanup and cost recovery under the Environment Protection Act* describes the use of EPA's powers to clean up and recover costs.

If the EPA incurs costs under section 62(1) or 62B(2) of the Environment Protection Act, it may recover those costs against the financial assurance held.

In the event that EPA claims a financial assurance, the duty holder will be notified of EPA's intention to claim on the financial assurance.