



Environment Protection Authority

Financial Assurance Policy



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Published by:

NSW Environment Protection Authority

4 Parramatta Square

12 Darcy Street, Parramatta NSW 2150

Locked Bag 5022, Parramatta NSW 2124

Phone: +61 2 9995 5000 (switchboard)

Phone: 131 555 (NSW only – environment information and publications requests)

Fax: +61 2 9995 5999

TTY users: phone 133 677, then ask
for 131 555

Speak and listen users:

phone 1300 555 727, then ask for 131 555

Email: info@epa.nsw.gov.au

Website: www.epa.nsw.gov.au

Report pollution and environmental incidents

Environment Line: 131 555 (NSW only) or info@epa.nsw.gov.au

See also www.epa.nsw.gov.au

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This Financial Assurance Policy outlines how the EPA may impose financial assurances to secure or guarantee funding for certain actions required by your regulatory instrument.

This policy explains:

- when the EPA can require a financial assurance
- how the EPA will determine the amount of a financial assurance
- what form of financial assurance the EPA will require
- when the EPA will use and release a financial assurance.

Definitions

Term	Definition
Actions	<p>Refers to:</p> <ul style="list-style-type: none"> actions required by a management order, ongoing maintenance order, public positive covenant or restriction issued or imposed under the <i>Contaminated Land Management Act 1997</i> works or programs required by an environment protection licence issued under the <i>Protection of the Environment Operations Act 1997</i> works or programs required by a radiation management licence issued under the <i>Radiation Control Act 1990</i> actions required to meet product stewardship requirements or targets under the <i>Plastic Reduction and Circular Economy Act 2021</i>.
CLM Act	<i>Contaminated Land Management Act 1997</i>
CLM Act instruments	A management order, ongoing maintenance order, public positive covenant or restriction issued or imposed under the <i>Contaminated Land Management Act 1997</i> .
Licence	An environment protection licence issued under the <i>Protection of the Environment Operations Act 1997</i> or a radiation management licence issued under the <i>Radiation Control Act 1990</i> .
Management order	An order issued under the <i>Contaminated Land Management Act 1997</i> to carry out any action in relation to the management of significantly contaminated land.
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
PRCE Act	<i>Plastic Reduction and Circular Economy Act 2021</i>
RC Act	<i>Radiation Control Act 1990</i>
Regulatory instrument	<p>Refers to:</p> <ul style="list-style-type: none"> the product stewardship requirements and targets under the <i>Plastic Reduction and Circular Economy Act 2021</i> an environment protection licence issued under the <i>Protection of the Environment Operations Act 1997</i> a management order or ongoing maintenance order issued under the <i>Contaminated Land Management Act 1997</i> a public positive covenant or restriction imposed under the <i>Contaminated Land Management Act 1997</i> a radiation management licence issued under the <i>Radiation Control Act 1990</i>.

1. Introduction

This policy sets out when and how the EPA may require a person or company to provide financial security to manage the risks of their actions.

A financial assurance is a type of security that guarantees funding and provides access to money to cover known or estimated costs and expenses.

Under several acts that the NSW Environment Protection Authority (EPA) administers, the EPA can require a person or company to provide a financial assurance. This secures funding for actions that are required by that person or company's regulatory instrument. If the person or company fails to carry out the required actions, the EPA can do this instead, or direct and supervise others to carry them out, and claim on the financial assurance for the reasonable costs and expenses. This means the financial assurance provides the EPA with access to money to carry out actions where the responsible person or company has failed to carry them out.

A financial assurance is not a penalty for contravention of environmental legislation. A financial assurance also does not affect the liability of a person or company to carry out actions required by a regulatory instrument. This means the relevant person or company is still responsible for carrying out the actions required by its regulatory instrument even if they have provided a financial assurance for those actions. The EPA will not access the money and will return the financial assurance if satisfied that the responsible person or business has completed the actions that the financial assurance covers.

Financial assurances are one mechanism by which the EPA seeks to manage the costs and expenses related to damage or potential damage to the environment (**environmental liabilities**). A financial assurance can give effect to the polluter pays principle; that environmental liabilities created or acquired by a person or company are a cost that should be paid by that person or company and not by the NSW community.

Financial assurance is not mandatory for every person or company subject to a regulatory instrument. The EPA has the discretion to exercise its legal powers to require a financial assurance and will take a risk-based approach to deciding whether a financial assurance is likely to be required. This aligns with the EPA's risk-based licensing framework which will help to ensure that regulated actions receive an appropriate level of regulation based on the level of risk they pose.

1.1. Who does this policy apply to?

This policy applies to you if you:

- hold or are applying for an environment protection licence issued under the *Protection of the Environment Operations Act 1997* (POEO Act)
- are given a management order or ongoing maintenance order issued under the *Contaminated Land Management Act 1997* (CLM Act), or a public positive covenant or restriction on the use of your land is imposed under the CLM Act
- hold or are applying for a radiation management licence issued under the *Radiation Control Act 1990* (RC Act)
- hold an approved action plan, or have submitted an action plan for approval, under the *Plastic Reduction and Circular Economy Act 2021*

and the EPA requires you to provide a financial assurance for certain actions required by your regulatory instrument or approved action plan.

1.2. When does this policy apply?

This policy applies to financial assurances under:

- Part 9.4 of the *Protection of the Environment Operations Act 1997* (POEO Act) in relation to environment protection licences
- Part 3 Division 6A of the *Contaminated Land Management Act 1997* (CLM Act) in relation to management orders, ongoing maintenance orders, and public positive covenants and restrictions on titles imposed under the CLM Act
- Part 3A of the *Radiation Control Act 1990* (RC Act) in relation to radiation management licences
- Part 3 of the *Plastic Reduction and Circular Economy Act 2021* (PRCE Act) in relation to approved action plans.

The EPA can require a financial assurance as a condition of your regulatory instrument (or approved action plan in the case of the PRCE Act). This may occur on:

- a new licence, as a variation of your existing licence or as a condition of suspension, revocation, or surrender of your licence
- a new management order or ongoing maintenance order or as an amendment of your existing order
- a new public positive covenant or restriction on the use of land, or as a variation of your existing covenant or restriction
- an approved action plan.

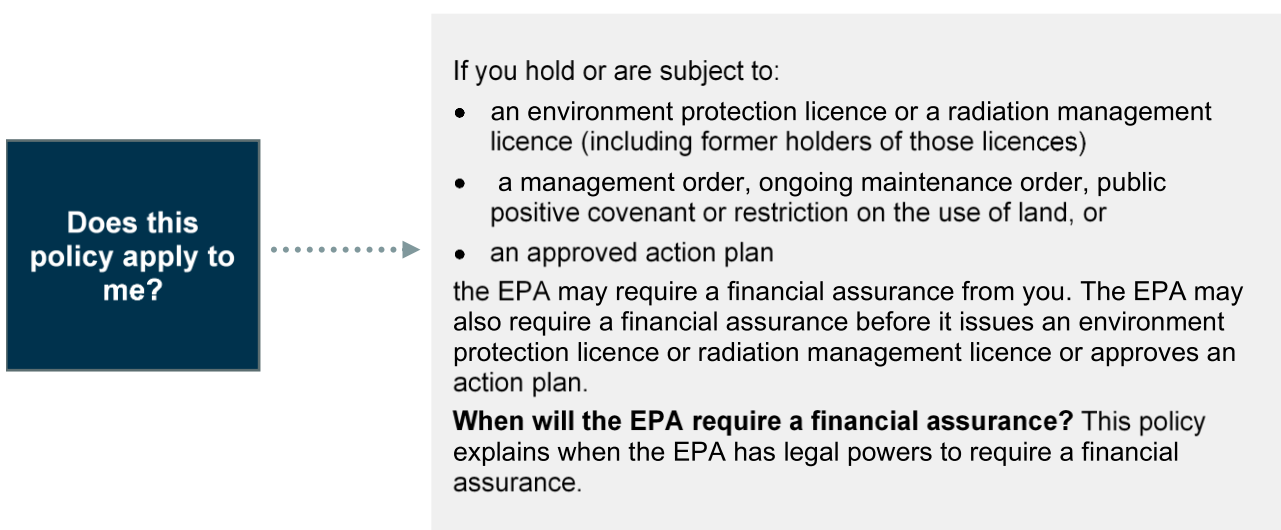
1.3. What does this policy do?

This policy explains when the EPA may require you to provide a financial assurance.

Section 2 explains financial assurances.

It explains how the EPA makes decisions to require a financial assurance and determine the amount required. This part of the policy also explains what form of financial assurance the EPA may require, and how the EPA may access one.

The following diagram illustrates how the different sections of this policy apply to you and to each step of the EPA's decision-making process relating to financial assurances.



Will the EPA require me to provide a financial assurance?



The EPA can require a financial assurance if it is justified due to the degree of risk of environmental harm, the remediation or other work that may be required, your environmental record or financial capacity. The degree of risk of harm to human health is also considered for radiation management licences and approved actions plans.

When will the EPA require a financial assurance?

This policy explains what the EPA will consider when deciding whether you are required to provide a financial assurance. The risk categorisation tool the EPA will apply when making this decision is in Appendix A.

What amount of financial assurance will the EPA require?



The amount of financial assurance is a reasonable estimate of the total likely costs and expenses of the relevant actions.

What amount of financial assurance will the EPA require?

This policy explains the costs that the financial assurance will cover and when you may be required to provide an independent assessment of costs to calculate the amount of your financial assurance.

What must I do if I am required to provide financial assurance?



You must provide a financial assurance that meets the EPA's requirements.

What type of financial assurance will the EPA accept?

This policy explains the types of financial assurance the EPA will accept and the standard requirements the financial assurance must meet.

What will the EPA do with my financial assurance?



The EPA will hold onto your financial assurance until you have satisfactorily completed the actions required. If you fail to carry out your actions, the EPA can use the financial assurance to fund the actions after giving you written notice and considering any written representations that you make.

What will the EPA do with my financial assurance?

This policy explains how the EPA will:

- claim on or realise a financial assurance
- claim excess costs not covered by a financial assurance
- return a financial assurance.

2. Financial assurances

2.1. What is a financial assurance?

A financial assurance is a type of security provided by the responsible person or company. It provides the EPA with access to money to cover the costs of carrying out actions (including the likely costs and expenses of the EPA in directing and supervising the carrying out of actions) where the responsible person or company fails to carry them out.

2.2. When may the EPA require a financial assurance?

The EPA has legal powers to require a financial assurance to secure and guarantee funding for actions required by a regulatory instrument. These legal powers are listed in Table 1 below. The EPA has the discretion to exercise these powers. A financial assurance is not mandatory for every holder or person subject to a regulatory instrument.

Table 1 The EPA's legal powers to require financial assurance

Regulatory instrument	Purpose of financial assurance	Governing legislation
Management order	Secure or guarantee funding for or towards carrying out of actions required under a management order.	<i>Contaminated Land Management Act 1997</i> (section 14(1A) and Part 3 Division 6A).
Ongoing maintenance order	Secure or guarantee funding for or towards carrying out of actions required under an ongoing maintenance order.	<i>Contaminated Land Management Act 1997</i> (section 28 and Part 3 Division 6A).
Public positive covenant or restriction	Secure or guarantee funding for or towards carrying out of actions required under a public positive covenant or restriction.	<i>Contaminated Land Management Act 1997</i> (section 29 and Part 3 Division 6A)
Environment protection licence	Secure or guarantee funding for or towards works or programs (such as remediation work or pollution reduction programs) required by an environment protection licence.	<i>Protection of the Environment Operations Act 1997</i> (section 70 and Part 9.4).
Radiation management licence	Secure or guarantee funding for or towards works or programs (such as securing, storage or disposal of regulated material) required by the radiation management licence.	<i>Radiation Control Act 1990</i> (section 13B and Part 3A).
PRCE Act	Secure or guarantee funding for or towards carrying out of actions required to meet product stewardship requirements or targets under the PRCE Act.	<i>Plastic Reduction and Circular Economy Act 2021</i> .

The EPA can require a financial assurance as a condition of your regulatory instrument (or approved action plan in the case of the PRCE Act). This may occur:

- when the EPA becomes aware of contamination and issues a management order requiring remediation to be undertaken in respect of significantly contaminated land

- when the EPA issues an ongoing maintenance order or imposes a restriction on use or public positive covenant on land under the CLM Act, for ongoing management of the land
- as a condition of a new licence, to secure funding for works and programs required by the licence
- as a variation of a licence or amendment of a management order, where financial assurance has not previously been provided for actions covered by the licence or management order, or the scope of actions is changed by the licence variation or management order amendment
- on suspension, revocation, or surrender of a licence where a financial assurance is required for ongoing actions
- as a condition of an approved action plan, to secure or guarantee funding for or towards the carrying out of actions required to meet product stewardship requirements or targets.

2.3. Risk-based approach

The EPA can only require a financial assurance when it is satisfied the security is justified because of conditions listed in sections 299 of the POEO Act, 42B of the CLM Act, 28D of the RC Act and 26 of the PRCE Act. The conditions that apply to your regulatory instrument are illustrated in Table 2 below.

Table 2 Conditions the EPA considers when determining if a financial assurance is justified

Risk	Environment protection licence	CLM Act instruments	Radiation management licence	PRCE Act
Degree of risk of environmental harm from your actions	✓	✓	✓	✓
Degree of risk of harm to human health from your actions	-	-	✓	✓
Waste management impacts from your actions	-	-	-	✓
Remediation work that may be required because of the actions	✓	✓	✓	
Your environmental record	✓	✓	✓ (including radiation safety and security record)	✓
The environmental record of any former holder of the licence	✓	-	✓ (including radiation safety and security record)	-
Your financial capacity	✓	✓	✓	✓

Any other matters prescribed by regulations	✓	✓	✓	✓
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The legal conditions listed above have led the EPA to adopting a risk-based approach when determining whether financial assurance is needed.

The EPA will use the Risk Categorisation in Appendix A to evaluate you and your actions as either low, medium or high risk. The risk categorisation assesses:

- the risk of environmental harm of your actions by considering the nature of your activities, and the complexity of any pollution and contamination issue (Category A of the risk categorisation), including the risk of harm to human health and any waste management impacts if relevant to your regulatory instrument
- the estimated cost and duration of any proposed or potential remediation activities (Category B of the risk categorisation)¹
- your environmental performance risk by considering your environmental record (Category C of the risk categorisation).
- whether you have demonstrated the financial capacity to carry out your actions (Category D of the risk categorisation).

Generally, financial assurance requirements will only be applied to medium or high-risk actions.

The potential liabilities arising from your actions are:

Risk level	Category	Assurance required
Low risk if:	<u>All</u> risk categories in Appendix A are assessed as low	Financial assurance is unlikely to be required.
Medium risk if:	The risk categories in Appendix A are assessed as a <u>mixture</u> of low and medium	Financial assurance may be required, but it will depend on the circumstances.
High risk if:	<u>Any</u> risk category in Appendix A is assessed as high	Financial assurance is likely to be required.

Despite the risk categorisation of your actions, the EPA may still determine that a financial assurance is justified (or not) depending on the circumstances. The risk categorisation is only a guide and does not fetter or change the EPA’s discretion.

If the financial assurance is intended for an action required by an environment protection licence, the EPA must also consider whether you have already provided a financial assurance to another public authority for carrying out substantially the same action. The EPA must consider whether your existing financial assurance is adequate to secure and guarantee funding for the action. This requirement is set out in Clause 145 of the Protection of the Environment Operations (General) Regulation 2021.

A financial assurance is not intended to duplicate any other financial security already provided to the NSW Government, for example a rehabilitation security deposit. If you are concerned that there may be duplication, please contact the EPA to discuss your individual circumstances.

The EPA also does not intend to require financial assurances from other NSW government agencies, state owned corporations or local councils as tiers of government.

¹ For licences and CLM Act instruments only. Category B risk factors do not apply to approved action plans regulated under the *Plastic Reduction and Circular Economy Act 2021*.

Examples of situations where a financial assurance may be required

A financial assurance may be required to secure actions mandated by your regulatory instrument. This may include those associated with pollution or contamination arising from the historical, inherited or recent activities of a company.

Table 3 provides examples of actions where the EPA may require financial assurance for known pollution or contamination risks that may arise during a company's life cycle. These examples are not an exhaustive list.

Table 3 Actions that may require financial assurance

Company life cycle phase	Pollution or contamination issue	Examples of actions that may require financial assurance
Pre-operational/planning	Proactive management of future waste from activities for which an environment protection licence is being sought	Proactive approach to address site closure to ensure all waste stored on site is appropriately transported and disposed to make the site safe
Operational	Contamination at an operational site from legacy activities that are unrelated to the ongoing licensed activities	Residual industrial waste is being contained on parts of the premises that are no longer in use
	Progressive safe disposal of residual waste stockpiles that are a by-product of production processes	Removal of spent pot linings from aluminium waste
	Waste industry stockpiles approaching licence limits	Removal of waste stored above the licence limit
	Pollution reduction programs or other conditions for controlling pollution or clean-up or remediation	Installation of pollution reduction equipment at industrial premises
Shut down/decommissioning	On- or off-site pollution or contamination that has emerged during a designated period after activities cease or during the deactivation of a facility or site	Remediation of groundwater contamination from former industrial premises or a coal seam gas site
Closure/rehabilitation	On- or off-site pollution or contamination anticipated and planned to be addressed as part of a rehabilitation/remediation plan designed to make a site suitable for an alternative use	Rehabilitation of a former major industrial site, including the on-site location of a containment cell regulated by the EPA, for commercial or residential use
Post closure	Long term monitoring, operation and maintenance of landfills or containment cells regulated by the EPA once remediation activities are complete	Ongoing management and monitoring of a containment cell coupled with a leachate treatment plant, groundwater treatment plant, hydraulic barriers, vapour extraction systems, etc

A financial assurance may also be required to secure or guarantee funding for or towards the carrying out of actions required to meet product stewardship requirements or targets. This may include actions to meet requirements in the legislation for stewardship of the life cycle of a regulated product. For example, requirements relating to the design, supply, recovery, recycling or disposal of a product.

2.4. What amount of financial assurance may the EPA require?

The amount of financial assurance required can be no more than the total cost of carrying out the actions that the financial assurance is required for.

The total cost is what the EPA considers to be a reasonable estimate of the total likely costs and expenses that may be incurred in carrying out the actions. This includes the likely costs and expenses of the EPA in directing or supervising the work.

The EPA will also consider any financial assurances that have already been provided for the same actions.

2.4.1. Independent assessment of costs

Generally, the EPA will require you to provide an independent assessment of the cost of carrying out the actions under section 42D of the CLM Act, section 300 of the POEO Act, section 28E of the RC Act and section 27 of the PRCE Act.

This will help the EPA determine the appropriate amount of financial assurance.

The EPA has developed an **Estimating Financial Assurances – Guideline on Independent Assessment of Costs** to help you obtain an independent cost assessment. The guideline covers:

- when the EPA may require an independent cost assessment
- requirements for undertaking the independent cost assessment
- how to prepare and assess the cost estimate.

The EPA will generally require an independent cost assessment as a condition of your regulatory instrument or approved action plan. There are exceptions to using the guideline for estimating the costs of actions where there is sector-specific guidance for determining financial assurances in place, such as Appendix B for certain waste-related actions.

2.4.2. Calculation of costs for certain waste-related POEO Act actions

The EPA has experience in requiring financial assurances in relation to waste-related actions licensed under the POEO Act which involve the transport and disposal of waste. From this experience, the EPA has developed a standard methodology to calculate the costs associated with actions involving the transport and disposal of waste. This methodology may be applied by the EPA for licences involving the following scheduled activities:

- waste storage
- waste processing (non-thermal)
- container reconditioning
- resource recovery.

The methodology is detailed in Appendix B. Where the methodology can be used, it may avoid the need for the EPA to require an independent assessment of costs (section 2.4.1). The methodology is a guide only and does not fetter or change the EPA's discretion in relation to financial assurances.

2.4.3. Financial hardship

The EPA may consider accepting your financial assurance in instalments if you can demonstrate financial hardship in meeting your financial assurance requirements.

Please contact the EPA to discuss your individual circumstances.

If you are unable to provide the financial assurance, the EPA may need to consider whether you have the financial capacity to comply with the obligations under your licence (or proposed licence)

and whether you are a fit and proper person or company to hold a licence. You may also be liable for not complying with the condition of your licence or approved action that requires you to provide financial assurance, and the EPA may consider suspending your licence or revoking its approval of your action plan.

2.5. What type of financial assurance may the EPA require?

The EPA may require financial assurance in the form of:

- a bank guarantee
- a bond, or
- another form of security that the EPA considers appropriate.

A **bank guarantee** is an undertaking given by a bank, on behalf of its customer, to pay a defined amount of money to another party. The EPA's ability to call on an unconditional guarantee is not affected if you go into liquidation. However, a bank guarantee can tie up your capital or other assets which the bank requires as security for the guarantee.

An unconditional bank guarantee is generally the EPA's preferred option as the EPA considers this provides greatest certainty in accessing funds in default events.

Alternatively, the EPA may require a **surety bond**. This is a legally enforceable contract between yourself, the EPA and the bond provider. Generally, a surety bond involves you paying a fee to the bond provider for issuing the bond instead of providing cash or other assets as security for the bond value.

Listed on the following page are the standard requirements the EPA intends to include in conditions for a financial assurance. It is recommended that you ask the EPA to review a draft financial assurance instrument to ensure it meets these conditions before finalising.

If you wish to provide a financial assurance by another form of security, other than a bank guarantee or a surety bond, please contact the EPA to discuss. The EPA may require another form of security if, for example, you can demonstrate that the security will provide the EPA with unconditional access to funds if you default on your obligations.

2.5.1. Standard requirements the EPA intends to apply

The EPA will generally require that:

- any financial assurance provided as a bank guarantee be unconditional and obtained from an Australian financial institution
- any financial assurance provided as a surety bond be obtained from one of the following Australian Prudential Regulation Authority (APRA) regulated institutions:
 - bank
 - credit union
 - building society
 - general insurance company
 - reinsurance company

with a minimum credit rating equivalent to A- on the Standard and Poor's Global rating or A3 on the Moody's rating.

The financial assurance, whether provided as a bank guarantee, a surety bond or in some other form, will generally need to meet the 13 standard requirements listed in Table 4 below.

Table 4 Standard requirements for a financial assurance

A financial assurance must:		
1	be unconditional (no special requirements to be met when calling on the financial assurance)	<input checked="" type="checkbox"/>
2	be irrevocable (not able to be changed or reversed by the regulated party)	<input checked="" type="checkbox"/>
3	be payable on demand of the EPA and without reference to the regulated party	<input checked="" type="checkbox"/>
4	have no expiry date	<input checked="" type="checkbox"/>
5	be made in favour of the EPA ABN 43 692 285 758 as the only beneficiary	<input checked="" type="checkbox"/>
6	be governed by the law of Australia (where possible, by the law of NSW)	<input checked="" type="checkbox"/>
7	be signed by an authorised employee of the financial institution issuing the financial assurance. If the financial assurance is being provided by a third party on behalf of the regulated party, the financial assurance must also be signed by the regulated party	<input checked="" type="checkbox"/>
8	be an original (not a photocopy)	<input checked="" type="checkbox"/>
9	include your name and correct ABN or ACN	<input checked="" type="checkbox"/>
10	include the number of your regulatory instrument or approved action plan requiring the financial assurance	<input checked="" type="checkbox"/>
11	include a brief description of the actions that the financial assurance covers (for example, "This financial assurance is required to secure or guarantee funding for works or programs required by Environment Protection Licence [xxx]")	<input checked="" type="checkbox"/>
12	include the dollar amount of security provided by the financial assurance	<input checked="" type="checkbox"/>
13	if the financial assurance identifies an address or lot title, these must match the premises listed on the licence or management order	<input checked="" type="checkbox"/>

2.6. Procedural fairness

The EPA affords procedural fairness to persons and companies whose activities it regulates and you will be given an opportunity to review and comment on the draft regulatory instrument condition requiring a financial assurance.

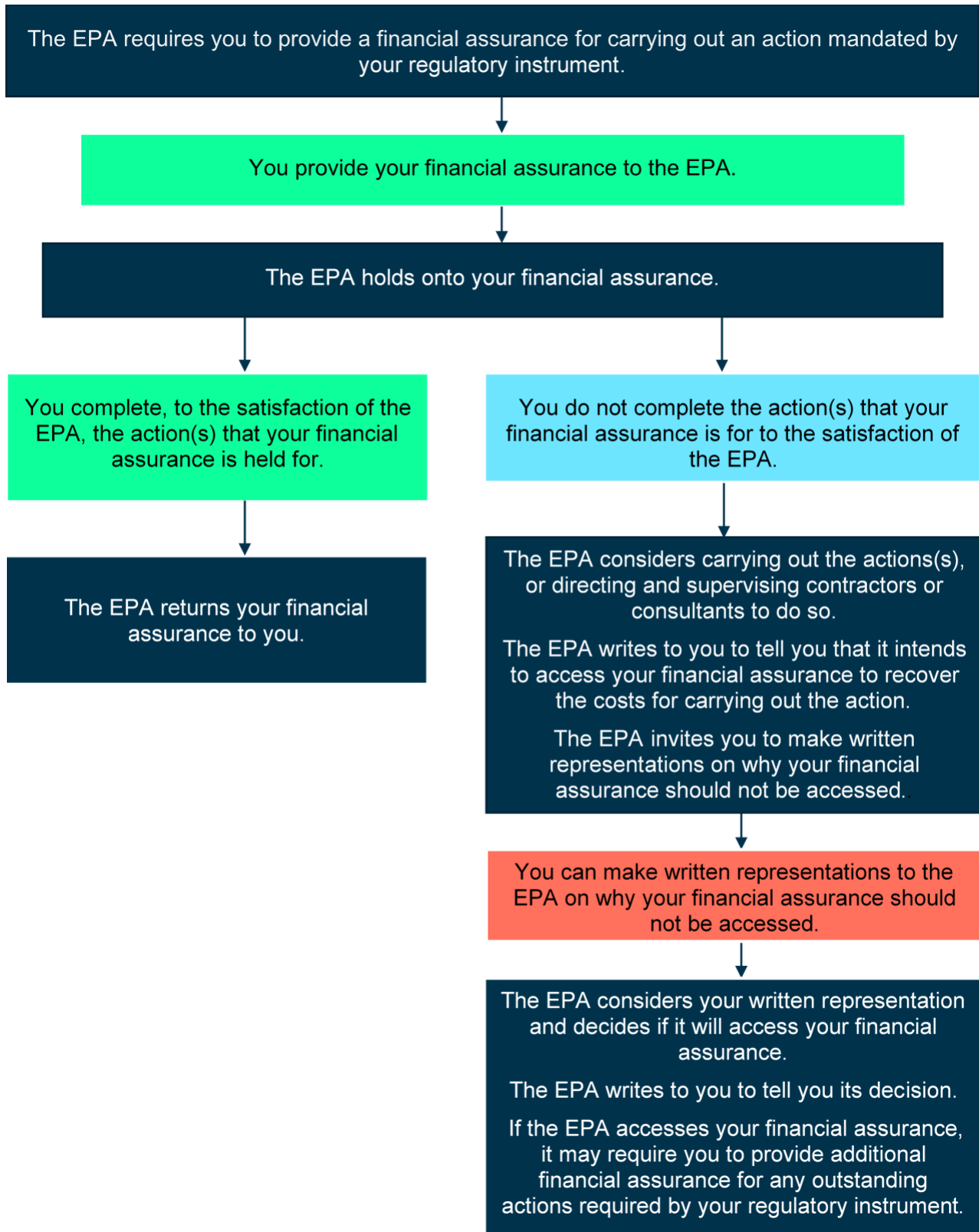
2.7. Viewing financial assurance requirements

The requirements for financial assurance on regulated activities can be viewed by searching regulatory instruments on the EPA's public registers. Approved action plans are not required to be on an EPA public register unless regulations are made under the PRCE Act requiring this.

2.8. What will the EPA do with my financial assurance?

The EPA will hold onto your financial assurance until satisfied that the actions for which it is required have satisfactorily been carried out.

The following diagram illustrates what the EPA will do with your financial assurance. These steps are described in the following pages.



2.8.1. Accessing the financial assurance

The EPA can claim on or realise your financial assurance if you fail to carry out the actions for which it is required. This means the EPA can access the money to pay for doing the action(s) that you failed to do.

Where the EPA considers you have failed to carry out an action required by your regulatory instrument that is covered by your financial assurance, it can step in and carry out this action or direct and supervise contractors or consultants to do so.

The EPA can then access the financial assurance to recover and pay for its reasonable costs and expenses but must first give you written notice of its intention. The notice must:

- include details of the actions that the EPA has or proposes to carry out
- identify the amount the EPA intends to access from your financial assurance
- invite you to provide written representations, within a period of at least 30 days of being given the notice, on why the amount of financial assurance should not be accessed as proposed.

If the EPA decides to access your financial assurance, after considering any written representations you make, the EPA will give you written notice of its decision and the reasons for it.

Even if the EPA uses some or all of your financial assurance, the EPA may require you to provide another one. For example, this may happen where your licensed activity is continuing, or your regulatory instrument requires you to carry out other actions for which the EPA has not accessed the financial assurance.

2.8.2. Excess costs

If your financial assurance is not enough to cover the EPA's costs and expenses regarding the actions, the EPA can seek to recover any excess costs from you as a debt in court.

2.8.3. Reviewing the financial assurance

The EPA will generally review financial assurance requirements and whether the amount is adequate on periodic review of your licence. This will be every five years or more regularly if your specific licence condition requires it.

The financial assurance may also be reviewed if your regulatory instrument is varied or amended, and where variation or amendment concerns the amount of financial assurance required. For example, where the scope of actions authorised by your regulatory instrument changes, this may require you to provide extra financial assurance to ensure it continues to be adequate.

The EPA may release part of the financial assurance where components of the actions it covers have been completed and the total cost of carrying out the remaining actions decreases as a result.

2.8.4. Lapsing of financial assurance

If the EPA does not use your financial assurance, or uses only part of it, and is satisfied that the actions your financial assurance covers have satisfactorily been carried out, the balance of your financial assurance will be returned. When this happens, the EPA will give you written notice that your financial assurance has lapsed and arrange for it to be returned to you. The EPA will arrange a time and place for you to collect your financial assurance instrument.

You can request the EPA to consider if you have satisfactorily carried out the actions that your financial assurance covers and return your financial assurance to you.

2.8.5. Disputes

If you disagree with the EPA's decision to claim on or realise your financial assurance, you can apply to the Land and Environment Court to determine the dispute.

2.9. How are financial assurances used to manage environmental liabilities?

Environmental liabilities are the real or potential costs and expenses related to damage or potential damage to the environment. They can be either known or unknown.

Known environmental liabilities are the costs or estimated costs of identifiable environmental risks. For example, the cost of delivering pollution reduction or remediation works to clean-up pollution or contamination arising from the historical or recent activities of a company.

As the extent of the environmental risk and the actions needed to manage the pollution or contamination risk can be sufficiently identified and scoped, the costs of managing known environmental liabilities can be calculated or estimated.

Financial assurance is a mechanism for managing known environmental liabilities. It is a financial instrument to secure funding to cover the costs of actions required under a regulatory instrument. This policy outlines how and when the EPA may require a financial assurance.

Unknown environmental liabilities are the costs of environmental damage from accidental or unforeseen events. For example, fire or equipment failure leading to the unexpected release of contaminants.

The potential costs and expenses of managing unknown environmental liabilities are difficult to calculate. The environmental damage from unexpected incidents is unknown and the actions needed to manage it cannot be sufficiently identified and scoped until after the incident has happened and the pollution or contamination risks can be identified.

Unknown environmental liabilities can be managed by **environmental insurance**. For example, this covers claims for loss or damage from unexpected pollution or contamination events.

2.10. Can I be required to provide financial assurance if I already hold environmental insurance?

Yes, the EPA may decide that both financial assurance and environmental insurance are needed to cover the known and unknown environmental liabilities at a site licensed under the POEO Act.

A financial assurance does not typically cover the loss or damage that may occur from unexpected pollution or contamination events.

If you hold an environment protection licence, the EPA can require you to take out and maintain a policy of insurance for the payment of clean-up costs, and for claims for compensation or damages, resulting from pollution in connection with the activity or work authorised or controlled by your licence under section 72 of the POEO Act.

If you:

- hold a radiation management licence under the RC Act
- are issued with a management or ongoing maintenance order under the CLM Act
- are subject to a public positive covenant or restriction imposed under the CLM Act, or
- hold an approved action plan under the PRCE Act

the EPA does not currently have the power to require you to take out and maintain a policy of insurance under those instruments.

This policy does not address the EPA's powers to require environmental insurance. If you have any questions regarding this, please contact the EPA. More information on environmental insurance is available on the EPA's website.

2.11. Transitional arrangements

If you have already provided a financial assurance to the EPA as a condition of your regulatory instrument or approved action plan, it is unlikely the EPA will require changes to it until the next review of your licence or at the next review of your financial assurance (if specified in your regulatory instrument or approved action plan), whichever occurs earlier. However, you are able to request a review at any time.

If the amount of your financial assurance needs to be varied after a review, the EPA will notify you in writing before it varies your regulatory instrument or approved action plan. You will be notified of:

- the need to change the amount of your financial assurance and/or
- the proposed form of the financial assurance you will be required to provide to the EPA.

Appendix A: Risk categorisation

The following lists the factors the EPA will use to determine the risk of potential liabilities arising from your actions. The risk factors are split into three categories:

Risk category	Risk type	Summary of risk
Category A*	Risk of environmental harm	Considers the nature of the actions and complexity of the pollution or contamination issue.
Category B**	Extent of remediation work that may be required	Considers the estimated cost and duration, including practicality and feasibility, of any proposed or potential remediation actions.
Category C	Environmental performance risk	Considers the environmental record of the person or company responsible for carrying out the actions.
Category D	Financial capacity	Considers the financial health of the person or company responsible for carrying out the actions.

*For radiation management licences issued under the RC Act, this also includes the risk of harm to human health. For approved action plans under the PRCE Act, this also includes the risk of harm to human health and waste management impacts associated with the brand owner's activities to which the product stewardship requirements and targets apply.

**For licences and CLM Act instruments only. Category B risk factors do not apply to approved action plans regulated under the *Plastic Reduction and Circular Economy Act 2021*.

Your potential liabilities are assessed as:

Low risk if:	<u>All</u> risk categories (Category A, B, C and D) are assessed as low
Medium risk if:	The risk categories (Category A, B, C and D) are assessed as a <u>mixture</u> of low and medium
High risk if:	<u>Any</u> risk category (Category A, B, C or D) is assessed as high

The EPA may amend and update this Appendix from time to time.

Risk categorisation

Risk factors	Low	Medium	High
Category A: Risk of environmental harm			
Works or programs licensed by an environment protection licence issued under the <i>Protection of the Environment Operations Act 1997</i>			
<p>A1 Operating characteristics Consider the nature of materials used and produced, including waste, pollution/contamination controls and waste management practices</p>	<p>Operations are likely to give rise to no or minor pollution or contamination issues.</p> <p>The nature of products and chemicals used, and waste generated, is non-hazardous. There are good pollution controls and waste management practices are in place.</p> <p>For example:</p> <ul style="list-style-type: none"> • products and chemicals used in production processes or stored onsite are non-toxic/non-hazardous • controls are in place and maintained to minimise risk of pollution or contamination (such as enclosed facilities, hardstand areas, bunds or other containment measures, chemical containers stored inside, or housekeeping procedures) • operations and plant and equipment are relatively new (several years) and no or few malfunctions have been reported • waste generated onsite is non-toxic/non-hazardous in nature • waste stockpiles are below licence limits 	<p>Operations are likely to give rise to minor to moderate pollution or contamination issues.</p> <p>Hazardous products and chemicals are used and/or waste is generated. Risk mitigating factors are in place such as pollution controls and waste management practices.</p> <p>For example:</p> <ul style="list-style-type: none"> • toxic/hazardous products and chemicals are used in production processes or stored onsite • some controls are in place and maintained to minimise risk of pollution or contamination (such as enclosed facilities, hardstand areas, bunds or other containment measures, chemical containers stored inside, or housekeeping procedures) • operations are well established, and plant and equipment is in good working order and routinely serviced • waste generated onsite is toxic/hazardous in nature, or a mixture of hazardous/non-hazardous • waste stockpiles are approaching licence limits 	<p>Operations are likely to give rise to major pollution or contamination issues.</p> <p>Hazardous products and chemicals are used and/or waste generated. Risk mitigating factors are not in place or do not operate effectively.</p> <p>For example:</p> <ul style="list-style-type: none"> • toxic/hazardous products and chemicals are used in production processes or stored onsite • controls to minimise pollution or contamination are absent or poorly maintained • activities give rise to biosecurity hazards, pathogens or other human health risks (such as from intensive agriculture, sewage treatment, livestock processing, waste storage) • activities impact sensitive receptors (such as drinking water supplies, ecologically significant waterways or habitats including national parks, marine parks and World

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|---|--|---|
| <ul style="list-style-type: none"> • waste is promptly processed or disposed of (such as at facilities close to the site) • waste processing and disposal costs are low: waste volumes are well below licence limits and/or low-cost waste types are involved (such as oils, hydrocarbons, emulsions, inert sludges, industrial wash waters, putrescible/organic wastes, contaminated soils). | <ul style="list-style-type: none"> • waste stockpile levels are gradually increasing • waste, including hazardous waste, is generally promptly processed or disposed of • waste processing and disposal costs are moderate: low to medium-cost waste types are involved (such as oils, hydrocarbons, emulsions, inert sludges, industrial wash waters, putrescible/organic wastes, contaminated soils). | <p>Heritage areas, residences, schools, parks)</p> <ul style="list-style-type: none"> • plant and equipment require upgrading or replacing, and/or the site has a history of plant and equipment failure • waste generated onsite is toxic/hazardous in nature • the site has a history of exceeding its waste stockpile licence limits • waste stockpiles are growing rapidly • waste is difficult to process or dispose of as there are few receivers of waste, it must be transported a significant distance, or limits apply on volume and/or type of waste received • waste processing or disposal costs are high: waste volumes are approaching licence limits and/or high-cost waste types are involved (such as asbestos, PCBs, highly odorous organic chemicals, heavy metals, chlorinated or halogenated wastes, cyanide wastes, pesticides). |
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Sites regulated under the *Radiation Control Act 1990*

A2 Operating characteristics

Consider the nature and extent of radioactive substances and radiation equipment, and controls to manage them

Operations are likely to give rise to no or minor pollution or contamination issues.
For example:

Operations are likely to give rise to minor to moderate pollution or contamination issues.
For example:

Operations are likely to give rise to major pollution or contamination issues.
For example:

- Category 4 and 5 radioactive substances are involved
 - ionising and non-ionising radiation apparatus
 - an approved security plan is in place and is routinely checked and updated
 - controls are in place and maintained to minimise risk of pollution and contamination (such as to protect radioactive substances and storage from unauthorised access, manipulation or damage while in use or storage and during transport).
- Category 1, 2 and 3 radioactive substances are involved
 - an approved security plan is in place and is routinely checked and updated
 - controls are in place and maintained to minimise risk of pollution and contamination (such as to protect radioactive substances and storage from unauthorised access, manipulation or damage while in use or storage and during transport).
- history or risk of poor management of Category 1 and 2 radioactive substances.

Sites regulated under the *Contaminated Land Management Act 1997*

A3 Complexity of pollution/contamination issue

Consider the nature and extent of pollutants/contaminants, their impacts and required clean-up action

Minor pollution or contamination issue.

For example:

- occurs in a defined onsite area
- impacts a single medium (soil, surface water, groundwater, air)
- has short-term (less than a year) and reversible environmental effects
- poses minimal or no risk to human or ecological health
- requires limited pollution reduction measures or clean-up actions (such as removal of contaminated material only).

Minor to moderate pollution or contamination issue.

For example:

- on and/or offsite impacts
- impacts single or multiple media (soil, surface water, groundwater, air)
- has short- to medium-term (1–3 years) persistent but reversible environmental effects
- poses a minor to moderate risk to human or ecological health
- requires limited to moderate pollution reduction measures or clean-up actions (such as over and above removal of contaminated material).

Major pollution or contamination issue.

For example:

- covers a large area
- impacts single and/or multiple media (soil, surface water, groundwater, air)
- has on and offsite impacts
- has long-term (greater than three years or in perpetuity) or irreversible environmental effects
- impacts sensitive receptors (such as drinking water supplies, ecologically significant waterways or habitats, residences, schools, parks)
- involves highly volatile or toxic substances

- has persistent and/or bio-accumulative environmental effects
- poses a high risk to human or ecological health
- occurs at a facility or site that has a long history of pollution or contamination issues
- requires significant pollution reduction measures or clean up actions.

Activities regulated under the *Plastic Reduction and Circular Economy Act 2021*

A4

Low risk of environmental harm, harm to human health or waste management impacts associated with brand owner’s activities to which the product stewardship requirements and targets apply.

For example:

- waste is promptly processed or disposed of (such as at facilities close to the site)
- brand owner undertaking all actions, as set out in its approved action plan.
- the nature of products and chemicals used, and waste generated, is non-toxic and non-hazardous.
- waste management and other product stewardship costs are low.
- volume or quantity of regulated products to which product stewardship requirements or targets apply is low.

Medium risk of environmental harm, harm to human health or waste management impacts associated with brand owner’s activities to which the product stewardship requirements and targets apply.

For example:

- brand owner undertaking some actions, as set out in the Waste Action Plan
- the nature of products and chemicals used, and waste generated, is toxic or hazardous but appropriate risk mitigation measures are being implemented.
- waste management and other product stewardship costs are moderate.
- volume or quantity of regulated products to which product stewardship requirements or targets apply is moderate.

High risk of environmental harm, harm to human health or waste management impacts associated with brand owner’s activities to which the product stewardship requirements and targets apply.

For example:

- brand owner undertaking no actions, as set out in the Waste Action Plan
- the nature of products and chemicals used, and waste generated, is toxic or hazardous
- waste management or other product stewardship costs are high
- volume or quantity of regulated products to which product stewardship requirements or targets apply is high
- failure to comply with product stewardship requirements or targets could give rise to

biosecurity hazards, pathogens or other human health risks

- failure to comply with product stewardship requirements or targets could impact sensitive receptors (such as drinking water supplies, ecologically significant waterways or habitats including national parks, marine parks and World Heritage areas, residences, schools, parks).

Category B: Extent of remediation work that may be required²			
B1 Indicative estimated cost of action³	Less than \$1 million	\$1 million to \$5 million	Greater than \$5 million
B2 Timeframe for action	Less than one year	One to three years	Greater than three years
B3 Practicality and feasibility of remediation work	Well established practices and technologies	Emerging and adopted approaches	New or untested treatment or methods
Category C: Environmental performance			
C1 Environmental compliance record, including but not limited to the EPA’s risk-based licensing Environmental Management Category (if applicable) Compliance issues that arise at any time, including after the most recent Environmental Management Category determination, should be considered.	Environmental Management Category A or B and/or Good history of compliance with EPA requirements. For example: <ul style="list-style-type: none"> • no instances of non-compliance with environmental laws or 	Environmental Management Category C and/or Moderate history of compliance with EPA requirements. For example: <ul style="list-style-type: none"> • no or few non-compliances with minor administrative or filing requirements, or resulting from 	Environmental Management Category D or E and/or Poor history of compliance with EPA requirements. For example: <ul style="list-style-type: none"> • long-term pattern of non-compliance with environmental

² For licences and CLM Act instruments only. Category B risk factors do not apply to approved action plans regulated under the *Plastic Reduction and Circular Economy Act 2021*.

³ To be escalated annually in line with the CPI in increments of \$100,000 from May 2022.

	<p>conditions of licence or management order</p> <ul style="list-style-type: none"> no previous legal proceedings against the regulated party or its directors for environmental offences. 	<p>maintenance or calibration downtime of continuous monitoring equipment</p> <ul style="list-style-type: none"> no penalty, prevention, clean up or show cause notices issued in the last three years no previous legal proceedings against the regulated party or its directors for environmental offences. 	<p>laws or conditions of licence or management order,</p> <ul style="list-style-type: none"> one or more penalty, prevention, clean up or show cause notices issued in the last three years regulated party or its directors have previously been convicted of environmental offences.
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Category D: Financial capacity

<p>D1 Financial health Consider key financial performance indicators and any other signs of financial distress.</p> <p>For the PRCE Act, consider ongoing financial capacity to meet product stewardship requirements and targets, whether through its approved action plan or otherwise.</p>	<p>Person or company is likely to be of sound financial health. For example:</p> <ul style="list-style-type: none"> financial statements for the past 3 years report a strong financial position auditor's report does not identify any matters of concern and auditor's opinion has not been modified. 	<p>There may be some areas of concern about the person or company's financial health that may need to be monitored. For example:</p> <ul style="list-style-type: none"> plant and equipment is not being maintained or repaired, or monitoring and reporting requirements are not being met, indicating insufficient resources to carry out these functions sector is experiencing an economic downturn or similar businesses are winding up a deed of guarantee is provided to other companies in the corporate group. 	<p>There may be serious concerns about the personal or company's financial health. For example:</p> <ul style="list-style-type: none"> failure to maintain financial records and statements financial statements for the past 3 years report weak financial position matters of concern raised in auditor's report or report modified relating to profitability or ability to pay debts recent media articles report on insolvency or financial distress negative Australian Stock Exchange announcements about financial performance, profitability or cash flow directors banned or disqualified by the Australian Securities and Investments Commission.
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Appendix B: Standard methodology for certain waste-related POEO Act actions

The standard methodology to calculate the costs associated with actions involving the transport and disposal of waste referred to in section 2.4.2 of this policy is set out below.

Likely financial assurance amount	=	Amount of waste the facility is licensed to store	x	(Unit waste transport cost + disposal cost)
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The EPA will generally take the following steps as part of calculating a financial assurance amount:

1. consider the authorised waste types and amounts listed in your POEO licence.
2. use the above formula to calculate the cost to transport and dispose of all the listed wastes up to the authorised amount detailed in your POEO licence.
3. consider any positive value waste, i.e. waste that can be reused or reprocessed by other industry sectors. The costs for these wastes can be excluded from the calculations.
4. speak to you before finalising the calculations to verify the amount.

The EPA may seek further information on waste transport and disposal costs from you to assist with the calculation.

The EPA may amend and update this Appendix from time to time.