

Managing potential environmental liabilities

Information session on a draft financial assurance policy and draft guideline on estimating financial assurances

March 2020

Intro. This information session will provide an overview of draft proposals on public exhibition for managing potential environmental liabilities

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The NSW EPA



Who is the NSW EPA?

- The NSW Environment Protection Authority protects our environment and community
- We do this by being a leader, a partner and protector
- We lead in protecting our air, waterways, land and health of the community
- We work with communities, government and business
- We hold people and organisations to account through:
 - Licensing
 - Monitoring
 - Regulation
 - Enforcement

Effective management of environmental incidents

- The NSW EPA takes swift action in emergencies where the environment and/or human health is at risk
- We require industry to have plans to prevent and deal with pollution incidents
- We act quickly on incident reports
- We coordinate clean-up and recovery operations
- We ensure polluters pay



What are potential
environmental
liabilities?



Environmental liabilities are the real or potential costs and expenses related to damage or potential damage to the environment.

02 Why is the EPA managing environmental liabilities?

A polluter should be liable for the cost of damage caused to the environment by its activities, not the NSW community

The EPA has broad powers to manage the financial risks of potential environmental liabilities under:

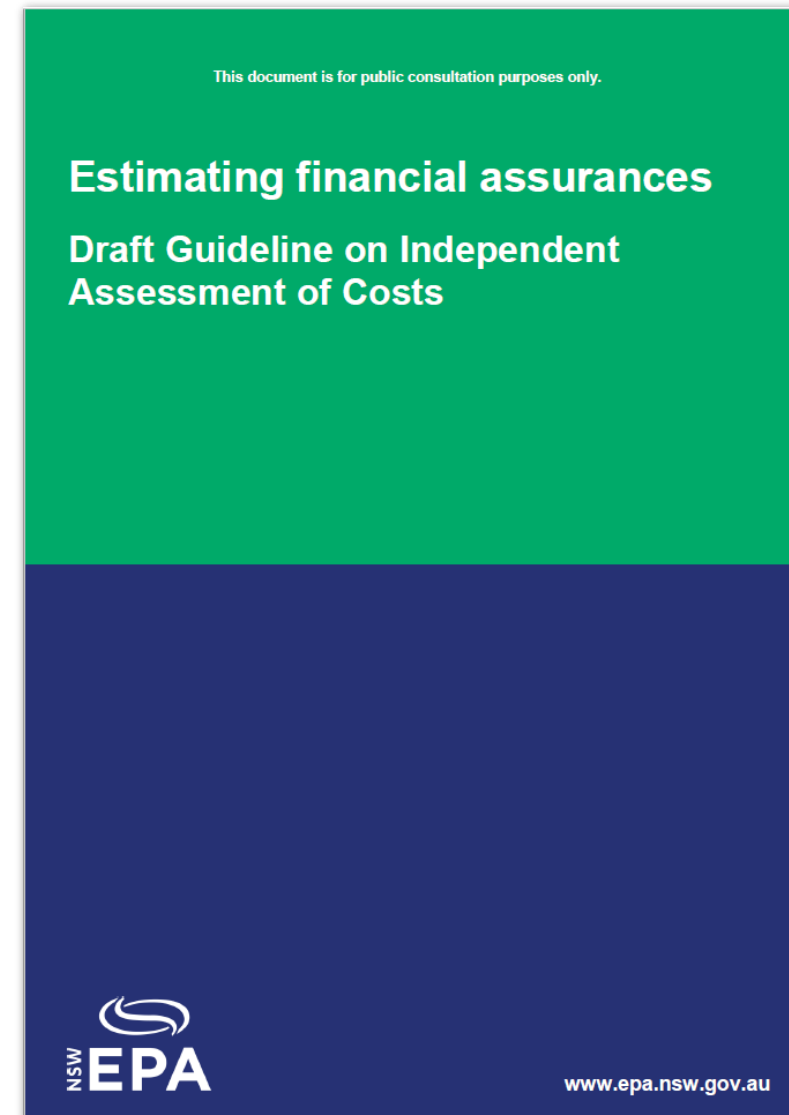
- Division 6A of the *Contaminated Land Management Act 1997*
- Part 9.4 of the *Protection of the Environment Operations Act 1997*
- Part 3A of the *Radiation Control Act 1990*.



The draft proposals



What are the EPA's proposals for managing environmental liabilities?



A person or company that holds or is applying for:

- a management order issued under the *Contaminated Land Management Act 1997*
- an environment protection licence issued under the *Protection of the Environment Operations Act 1997*
- a radiation management licence issued under the *Radiation Control Act 1990*

where the EPA requires them to provide a financial assurance for certain actions required by their licence or management order.

Outlines when and how the EPA will require a financial assurance

- A financial assurance is a type of security provided by the responsible person or company
- Includes the likely costs and expenses of the EPA in directing and supervising the carrying out of actions

How will the EPA decide who needs to provide a financial assurance?

The EPA will use the **Risk Categorisation** to assess whether a responsible person or company's potential environmental liability is of a high enough risk to need a financial assurance.

This involves looking at:

- the risk of environmental harm, including from the nature of the required actions and complexity of the pollution or contamination issue
- the cost and duration of remediation work that may be needed
- the environmental performance of the responsible person or company.

What will the EPA do with the financial assurance?

The EPA will hold onto and return the financial assurance after the actions that it applies to have been satisfactorily completed.

If the responsible person or company fails to satisfactorily carry out the actions, the EPA can use the financial assurance to fund the actions itself or to direct and supervise contractors or consultants to carry them out.

How does the EPA determine the amount of the financial assurance?

A financial assurance cannot exceed the total cost of carrying out the actions.

Generally, the EPA will require the responsible person or company to provide an **independent assessment** of the cost of carrying out the clean-up or remediation actions set out in their licence or management order to help it determine the appropriate amount of financial assurance to require.

Draft guideline on estimating financial assurances

The guideline will help persons or companies estimate their potential environmental liabilities

The guideline proposes a two-step process involving:

1. a **cost estimate** to calculate a reasonable approximation of the costs of carrying out the activity if the EPA must step in and carry these out because a responsible person or company fails to do so
2. an **independent assessment** to provide the EPA with confidence that the cost estimate is reasonable

Estimating financial assurances for some waste related activities

Appendix 2 of the draft Financial Assurance Policy

Applies to liabilities associated with removing and lawfully disposing of all liquid and non-liquid waste stored at the following activities licensed under the *Protection of the Environment Operations Act 1997*:

- Waste storage
- Waste processing (non-thermal)
- Container reconditioning
- Resource recovery



Public consultation



04 Public consultation

Closes on 14 April 2020

Have your say on the proposals at:

<https://yoursay.epa.nsw.gov.au/assurances>

04 Information sessions

Join in person or by webinar online

Tuesday 17 February 2020

10am for waste sector stakeholders regulated by the EPA

2pm for other parties regulated by the EPA

Thursday 19 March 2020

10am for consultants and financial auditors

2pm for other interested stakeholders

04 Next steps

- All responses and submissions received during the consultation period will be reviewed and used to finalise the policy and guideline.
- The policy and guideline will then be published on the EPA's website.

04 Any questions?

For further information, please contact us

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