

# Financial assurances and stockpiling – who, when, what and how much

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*EPA 1116/19: This information sheet describes the EPA's proposed approach to requiring stockpile controls and financial assurances as conditions of authorisation under section 51 of the Environment Protection Act 1993.*

## Introduction

### Waste reforms

In recent years, the EPA has embarked on a significant waste reform program to better support fair and equitable competition, stability, growth and innovation in the waste and resource recovery sector. The reforms involved amendments to the *Environment Protection Act 1993* (EP Act) in November 2017. Amendments included improved waste stockpiling controls, provisions supporting the assessment and identification of materials as waste or approved recovered resources, additional deterrents for breaches of the EP Act and licence conditions, enhanced tools for investigating and prosecuting illegal dumping and more comprehensive provisions for imposing financial assurances.



**Uncontrolled burning stockpile**

Section 51 of the EP Act gives the EPA the power to require a financial assurance as a condition of authorisation, not only where there is the risk of environmental harm but now also where there is a risk of unauthorised stockpiling or abandonment of waste or other matter. A financial assurance is a type of financial security that can be required by the EPA to prevent the cost of rehabilitation and clean-up being inappropriately transferred to third parties, including the state government and the community.

### Purpose of financial assurances as a stockpile control measure

Stockpiling can result in environmental harm, for example through stockpile fires and exposure of the community to smoke and dust, as well as creating a financial liability that can be passed onto government if a site is abandoned.

Stockpiling can pose a significant concern due to the potential for levy avoidance, and the risk of market distortion, through the indefinite holding of material without either recovering or selling the materials, or disposing of the material to landfill. Materials that can be stockpiled include soils, fill and overburden, construction and demolition waste, as well as timber, green waste, residual waste and industry byproducts.

There is a need to balance the reasonable need of business and local government to undertake some degree of stockpiling against excessive stockpiling that can create environmental, abandonment or unfair competition risks. The EPA's legislative powers to require licence-holders to provide a financial assurance is an important measure to encourage licence-holders to both improve environmental practices and circulate materials according to the waste management hierarchy, to prevent excessive stockpiling and abandonment risks.

## Objects of the Act (section 10)

To ensure that, as far as is reasonably practicable, the following measures are taken including in section 1(b):

- (iaa) *to promote the circulation of materials* through the waste management process and *to support a strong market for recovered resources* by –
  - (A) programs to encourage and assist industry, public authorities and the community to engage in resource recovery; and
  - (B) regulating resource recovery; and
  - (C) regulating the handling, storage, treatment, transfer, transportation, receipt or disposal of waste or other matter; and
  - (D) *preventing the unauthorised stockpiling of waste or other matter*;
- (vi) to allocate the costs of environment protection and restoration equitably and in a manner that encourages responsible use of, and reduced harm to, the environment with polluters bearing an appropriate share of the costs that arise from their activities, products, substances and services;

## Stockpile controls (section 45)

(3)(b) The Authority may impose or vary a condition of an environmental authorisation at any time –

- (iia) if, in the case of a condition imposing a *maximum allowable stockpile limit*, the Authority considers it necessary to impose or vary the condition in order to promote the circulation of materials through the waste management process

## Financial assurances (section 51)

Section 51(1) establishes that financial assurances may take the form of a bond, a specified pecuniary sum, a policy of insurance, a letter of credit or a guarantee given by a bank, any other form of security approved by the Authority.

Under section 51(2), the Authority may impose or vary a condition under this section at any time.

Under section 51(3) the Authority in determining whether to impose or vary a condition of a financial assurance, must have regard to the following:

- (a) if there is a risk of –
  - (i) environmental harm; or
  - (ii) *unauthorised stockpiling or abandonment of waste or other matter*, associated with the activity authorised under the environmental authorisation or any activity previously undertaken at the place to which the authorisation relates – the degree of that risk;
- (b) the likelihood of action being required to make good any resulting environmental damage, to decommission, dismantle or remove stockpiled or abandoned plant or equipment or to deal with any other stockpiled or abandoned waste or other matter;
- (c) the nature and cost of such action and the length of time such action is likely to take (including following cessation of the activity so authorised);
- (d) whether the holder of the authorisation has previously contravened this Act (whether or not in connection with the activity authorised under the environmental authorisation) and if so, the nature, number and frequency of the contraventions;
- (e) the Authority's reasonable estimate of the total of the likely amounts involved in satisfaction of the purposes for which the financial assurance is required;
- (f) the depreciation of the value of the financial assurance over time;
- (g) any other matters considered relevant by the Authority or prescribed by regulation.

[EPA emphasis]

## Key terms<sup>1</sup>

**Environmental liabilities:** Environmental liabilities have been described in non-legal terms as an obligation based on the principle that a polluting party should pay for damage caused to the environment by its activities. The costs of rehabilitating environmental harm, stockpiling (authorised and unauthorised) and abandonment of waste or other matter are environmental liabilities.

**Financial assurances:** For the purposes of the EP Act, financial assurances are a type of financial security that can include security bonds, bank guarantees or insurance. They can be required by governments to cover the cost of environmental rehabilitation, should a person or business fail to meet their environmental obligations. The EPA can only require a financial assurance as a condition of authorisation under the EP Act.

**Immediate market:** A market with a recognised genuine customer, who has a demonstrated and current beneficial use for the material, and who has the clear intention and capability to take or purchase the material without delay.

**Material flow:** The EPA promotes the circulation of materials through the waste management process, to support a strong market for recovered resources. At licensed sites, the stockpiling of materials must not be a process of continual growth, even with varying markets that the activity is supplying or targeting. Instead for responsible operators, material flow balances material input with the fate of the material (material fate) across reasonable timeframes<sup>2</sup>.

**Material fate:** Material fate includes those:

- approved by the EPA for on-site operational use, disposal or cover
- exiting the site as a recovered resource (eg approved recovered resource that meets an Australian Standard, or EPA approved standard, such as the waste derived fill standard) or product that is ready and intended for imminent use, without the need for further treatment to prevent any environmental harm
- transferred to another facility authorised to receive the waste
- approved by EPA for intermediate storage for future genuine customer (eg development projects, trial of new products) and an associated approved stockpile management plan
- approved by EPA to produce a by-product and its storage (with limits and timeframes) or disposal

**Maximum allowable stockpile limit:** The EPA may impose or vary a *maximum allowable stockpile limit* as a licence condition, to promote the circulation of materials through the waste management process [section 45(3)(b)(iia)].

**Stockpile management plan:** A stockpile management plan (SPMP) that can be required as a condition of licence with the aim of preventing or minimising environmental harm for stockpiled materials (refer to page 8).

**Unauthorised stockpiling:** For the purposes of the EP Act, unauthorised stockpiling of waste, or other matter, occurs if a *maximum allowable stockpile limit* (stockpile limit) imposed under this EP Act has been exceeded [section 3(5)].

**Waste market distortion:** Waste market distortion can occur when a material being stored for recycling or reuse is speculatively stockpiled long term and at volume, either because an immediate market does not exist, or to avoid paying the waste levy. An immediate market means there is an identified and recognised market available as demonstrated by the existence of a known customer with a demonstrated and available beneficial use for the material.

<sup>1</sup> For further information on stockpiling, material flow and market distortion, refer to the EPA website at [https://www.epa.sa.gov.au/environmental\\_info/waste\\_management/solid\\_waste/storage\\_and\\_stockpiling](https://www.epa.sa.gov.au/environmental_info/waste_management/solid_waste/storage_and_stockpiling)

<sup>2</sup> *Guideline for stockpile management: waste and waste derived products for recycling* (EPA 2017) [https://www.epa.sa.gov.au/files/4771349\\_guidelines\\_stockpile.pdf](https://www.epa.sa.gov.au/files/4771349_guidelines_stockpile.pdf)

## Guiding principles – stockpile controls and financial assurances

Guiding principles have been developed to assist the EPA in setting control measures for stockpiling to prevent or minimise environmental harm, abandonment and/or excessive accumulation (market distortion or levy avoidance) that can result from stockpiling of materials on licensed premises. Based on the Objects of the Act and the waste management hierarchy, the EPA will be guided by these principles when determining stockpile controls and financial assurances. The principles seek to improve the environmental performance of licence-holders, reduce environmental liabilities and reduce the risk of their costs being transferred to the community and state government through stockpile controls and financial assurances that:

- act as an incentive to improve environmental performance
- support a strong market for recovered resources
- are risk-based, reasonable and practicable
- provide regulatory certainty
- provide a fair and proportionate response to inappropriate stockpiling to ensure that material flows in accordance with the waste management hierarchy
- balance the polluter pays principle with regulatory burden and costs
- are sufficient
- are secure and available when required.

The EPA is using these principles to guide its practices regarding when a financial assurance will be required and how much will be the financial assurance.

## Who requires a financial assurance depends on risks

The EPA will apply a risk-based approach to determine whether a stockpile limit and/or financial assurance are required as a condition of authorisation. In addition, under section 51(3)(d) the EPA will consider whether the holder of the authorisation has previously contravened the EP Act and if so, the nature, number and frequency of the contraventions. The assessment considers the likelihood of an environmental liability becoming the responsibility of the EPA based on the type of material being stockpiled.

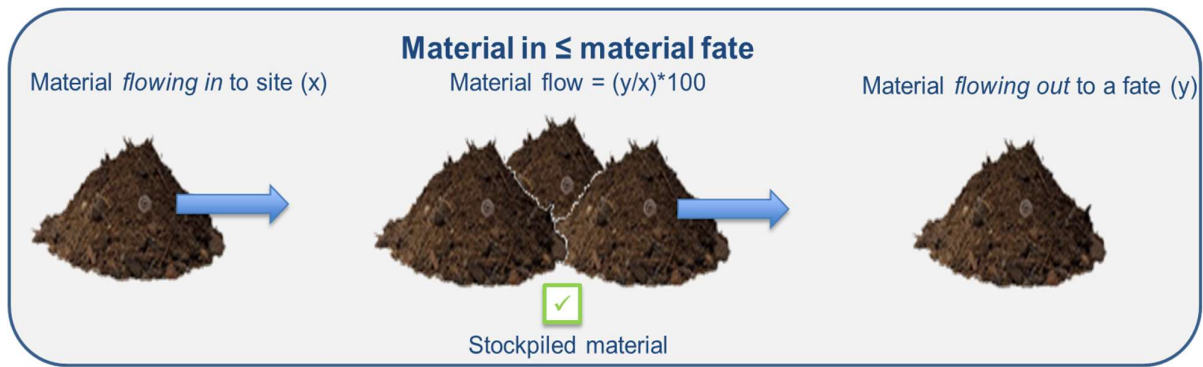
Financial assurances are unlikely to be required for most licence-holders. Financial assurances will not be required where the licence-holder undertakes sound environmental practice and represents a low risk of:

- 1 potential environmental harm,
- 2 poor material flow,
- 3 abandonment of waste or other matter, or
- 4 stockpiles with costly environmental liabilities.

## Material flow

A risk assessment that considers material flow (Figure 1) will be used by the EPA in deciding when to manage excessive stockpiling of materials, and stockpile abandonment risks, by requiring licence holders to provide a financial assurance. Poor material flow is where material flowing into a site (x) is greater than material flowing to a 'fate' (y) over a maximum time period of two years and/or milestones are not met in accordance with an approved Stockpile Management Plan (SPMP) (refer to *Stockpile Management Plan* on the following page).

The resulting stockpile can be a costly environmental liability if abandoned and may require a financial assurance to manage this risk.



**Figure 1** Good stockpile management is the responsible and sustainable management of materials where there is evidence of material flow, eg material input is less than or equal to material fate over a maximum period of two years or milestones of stockpile management are met in accordance with an approved stockpile management plan. Poor material flow is an important risk indicator of excessive stockpiling and abandonment.

### Stockpile management plan

A licence-holder may be required to provide a stockpile management plan (SPMP) to the EPA to demonstrate how stockpiles are being managed. The SPMP will need to include the following information:

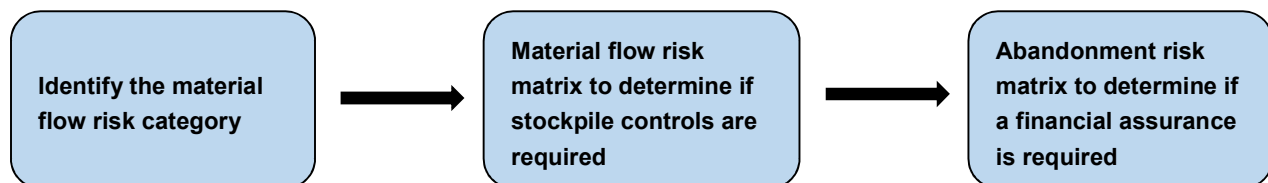
- A detailed list of the materials that are received and stockpiled at the premises and their intended fate.
- Milestones (including timeframes and volumes) for expected stockpile growth and reduction in reference to the baseline volume
- The quality assurance and control processes that will ensure the materials stockpiled are suitable for their intended fate
- Demonstrate evidence of immediate markets for all stockpiled material (including market conditions and intended customers or material fates) and
- A contingency plan to be activated if market conditions become unfavourable or in the event of an unsuccessful bid for a development project/trial of new product.

The SPMP will be assessed by the EPA and then used to understand material flow, assess the risk and inform stockpile limits. If in the case that a SPMP is not accepted by the EPA, the licensee will be asked to revise and resubmit the plan, or the stockpile limit may be refused.

### Risk assessment process

The following sections set out the EPA's risk assessment process which will guide whether stockpile limits and financial assurances will be required as conditions of licence. In accordance with the EPA's risk framework, the risk assessment process involves two specially designed risk matrices to assess the risk of material flow at a licensed site (Figure 2) and risk of abandonment (Figure 3) to inform whether a stockpile control and/or financial assurance is required.

The process is in addition to the environmental harm risk assessment and includes the following steps:



## 1 Material flow risk categories

The level of risk associated with material flow, accumulating environmental risks and abandonment risks, is dependent on the type of material. The category of material and risk level is summarised in Table 1. Higher risk is assigned to stockpiles of materials that are not recoverable and materials that have untested and unproven markets.

**Table 1 Category of material and material flow risk**

Material risk category	Example materials	Risk description	Risk level
<b>Material that is not recoverable (may need further processing prior to final disposal)</b>	<ul style="list-style-type: none"> <li>materials for disposal at landfill</li> <li>materials for other forms of final disposal</li> <li>hazardous materials (listed waste)</li> </ul>	Risk of illegal dumping and waste levy avoidance	High risk
<b>Materials that have untested or unproven markets</b>	<ul style="list-style-type: none"> <li>industrial residues</li> <li>mixed commercial and industrial materials</li> <li>residual wastes</li> </ul>	Given the lack of established market or clearly identified future market, the abandonment risks are highest for these materials.	
<b>Materials that cost to recycle without gate fees</b>	<ul style="list-style-type: none"> <li>e-waste</li> <li>tyres</li> <li>mixed construction and demolition waste</li> </ul>	Some of these materials are known to be recyclable and contain recyclable components. However, collection, processing and transport costs exceed any value that will be obtained from the recovery of materials in the wastes, leading to higher abandonment risks.	
<b>Materials that meet a published or EPA standard but have no immediate fate or anticipating market conditions to improve</b>	<p>Larger volumes of established recyclables may be stockpiled at times anticipating future market improvements, thereby increasing the material's value (speculative stockpiling) for materials such as:</p> <ul style="list-style-type: none"> <li>cardboard and paper</li> <li>bricks and concrete</li> <li>waste fill</li> <li>recyclable metals</li> </ul>	<p>As there is a market, there is a lower risk of abandonment and lower liability. However, the market may be limited and highly variable. This may lead to speculative stockpiling which can undermine and distort the market. This behaviour is inconsistent with the Objects of the Act to promote the circulation of materials through the waste management process and to support a strong market for recovered resources.</p> <p>This behaviour is to be monitored to minimise the environmental liability and to prevent avoidance of regulatory requirements.</p>	
<b>Materials that meet a published or EPA standard and have an immediate fate</b>	<ul style="list-style-type: none"> <li>cardboard and paper</li> <li>bricks and concrete</li> <li>waste fill</li> <li>recyclable metals</li> </ul>	As there is an established market, there is a lower risk of abandonment and lower liability. At suitable sites, even large volumes of these materials can be stored without posing significant environmental harm or material flow risk.	Low risk

## 2 Material flow risk

Stockpiles of waste with good material flow are unlikely to require stockpile controls. These materials fall into the yellow zone of the matrix (Figure 2).

Stockpiles with low material flow fall into the red zone, and represent high priority risks. Low material flow is where the volume of material flowing into the site is greater than the volume of material flowing to its designated 'fate' (material fate) over a maximum time period of two years, otherwise in accordance with milestones set out in an approved SPMP. These stockpiles are likely to require stockpile controls as a condition of licence, such as stockpile limits and potentially a financial assurance.

Material flow risk matrix		Consequence				
Material in (x) > material fate (y) Material flow = (y/x) x 100		Material flow >95%	Material flow 65–95%	Material flow 40–64%	Material flow 15–39%	Material flow <15%
		Acceptable material flow	Moderate material flow	Low material flow	Very low material flow	Extreme low material flow
Likelihood	Material classification	1	2	3	4	5
	Material that is not recoverable, destined for disposal	A1	A2	A3	A4	A5
	Materials that have untested or unproven markets	B1	B2	B3	B4	B5
	Materials that cost to recycle without gate fees	C1	C2	C3	C4	C5
	Materials that meet a published or EPA standard but have no immediate fate or anticipating market conditions to improve	D1	D2	D3	D4	D5
	Materials that meet a published or EPA standard and have an immediate fate	E1	E2	E3	E4	E5

Figure 2 Material flow risk matrix

## 3 Abandonment risk

The abandonment risk matrix (Figure 3) is a tool to assess the risk of abandonment based on the category of material and the consequence if the stockpile is abandoned by the licence-holder (ie clean-up cost or cost to dispose of materials). Clean-up or disposal costs are an environmental liability that may become the responsibility of the landowner (if the land is leased) or governments (ie the community) if funds cannot be accessed from the licence-holder. The environmental liability is calculated using either of the two methods outlined on page 10. The default formula will be used where relevant costs and material flow information are not available to the EPA.

Stockpiles of materials that are assessed as high priority (red zone) will in most cases require a financial assurance.

Abandonment risk matrix		Consequence (environmental liability)				
Cost to clean up and/or dispose of material <sup>1</sup>		\$100,000– \$500,000	\$500,001– \$1,000,000	\$1,000,001– \$5,000,000	\$5,000,001– \$10,000,000	>\$10,000,000
		Insignificant	Minor abandonment	Moderate abandonment	Serious abandonment	High level serious abandonment
Likelihood	Material classification	1	2	3	4	5
	Material that is not recoverable, destined for disposal	A1	A2	A3	A4	A5
	Materials that have untested or unproven markets	B1	B2	B3	B4	B5
	Materials that cost to recycle without gate fees	C1	C2	C3	C4	C5
	Materials that meet a published or EPA standard but have no immediate fate or anticipating market conditions to improve	D1	D2	D3	D4	D5
	Materials that meet a published or EPA standard and have an immediate fate	E1	E2	E3	E4	E5

Figure 3 Abandonment risk matrix

#### 4 Local governments and risk

Local government-owned facilities face the same environmental risks as private operators. However, local governments have lower financial risks as they are perpetual body corporates and can raise revenue through rates and levies. As local government entities exist in perpetuity, their landfill sites and waste processing facilities cannot be abandoned. Furthermore in South Australia, all local governments are members of the Local Government Association Mutual Liability Scheme (LGAMLS), which constitutes insurance for the purposes of section 142 of the *Local Government Act 1999*.

The LGAMLS provides civil liability cover to meet the cost of settlement of damages by any local council. The EPA will take the above information into consideration when assessing whether local governments will require a financial assurance to address the risks of stockpiling and abandonment.



## When will stockpile controls and financial assurances be required?

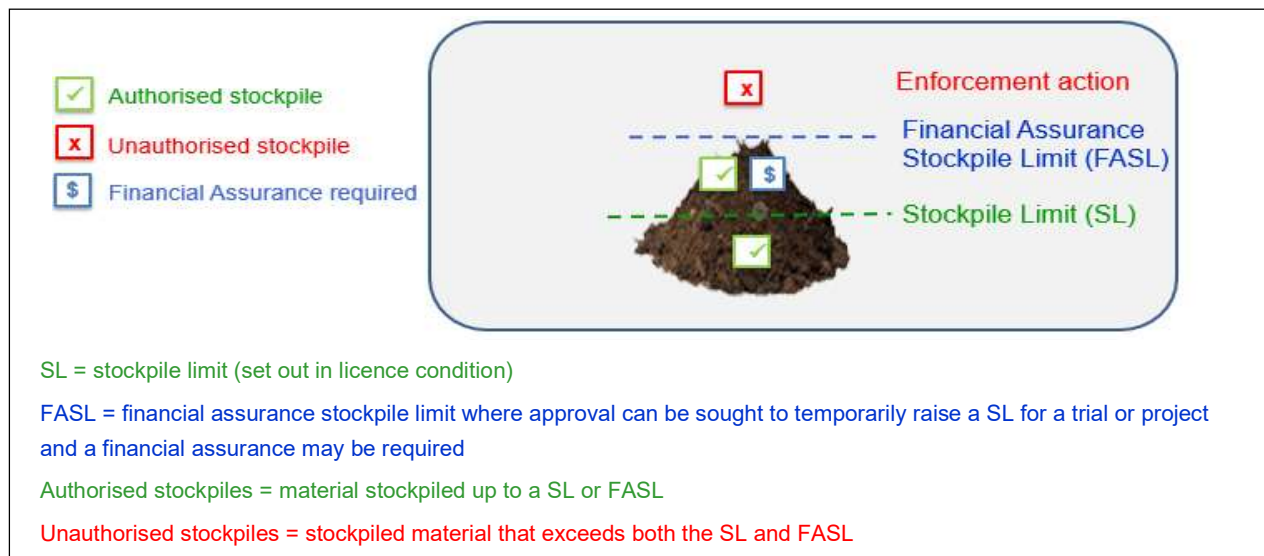
There are a number of controls or regulatory tools available for the EPA to consider and select from in order to prevent or minimise abandonment and/or poor material circulation of materials through the waste management process. The controls, typically ranging from minimum expectations set out in guidance documents to mandatory requirements set out in licence conditions, are:

- Guideline for stockpile management: Waste and waste derived products for recycling
- Maximum allowable stockpile limit
- Temporary financial assurance stockpile limit

Section 45(3)(b)(iia) of the EP Act sets out that the EPA may impose or vary a maximum allowable stockpile limit as a condition of licence at any time, to promote the circulation of materials. Stockpile limits are unlikely to be required where licensees have good environmental practices and stockpiles present a low risk of environmental harm, unauthorised stockpiling or abandonment.

Setting stockpile limits and financial assurances as licence conditions will be informed by stockpile management plans (SPMPs) when submitted by the licence-holder to the EPA. The SPMP allows the EPA to understand the availability of an immediate market and material flow for the material to be stockpiled.

A maximum allowable stockpile limit can be either a standard stockpile limit (SL) or a temporary financial assurance stockpile limit (FASL). When the stockpiles are below the SL they are authorised stockpiles and no financial assurance is required. However, a licence-holder may seek approval to temporarily increase their stockpiles for a variety of reasons, eg a trial or expansion for a large upcoming project. When a stockpile increases, the abandonment risk and environmental liability increases (Figure 3). A financial assurance may be required for the amount up to the temporary FASL (Figure 4). The financial assurance will be in place as long as the FASL is in place. Similarly, a financial assurance may be required when the EPA seeks to reduce existing high risk stockpiles to a lower SL.



**Figure 4** Financial assurance is an interim measure that allows material to be temporarily stockpiled above the stockpile limit and up to the financial assurance stockpile limit (only when approved by the EPA)

## How is the amount of financial assurance calculated?

### Low risk materials

Established recyclables with strong immediate market and high circulation is the lowest risk category. A financial assurance will typically not be required unless there is extremely low material flow and the stockpiled material presents an environmental liability with a high level serious abandonment (Figure 3).

### Higher risk materials

#### Calculation based on information provided by the licensee

In accordance with the EP Act, the environmental liability and financial assurance calculations will be based on the costs of dealing with stockpiled or abandoned materials. The EPA will seek relevant costs from the licensee, generally through stockpile management plans. The EPA's default calculation (refer to the following section) is to guide licensees as to the type of information that will be required. The EPA will ground truth the information provided and may require further verification by a suitable third party.

#### Calculation using the EPA default formula

Where the relevant costs are not provided to the EPA, a default formula will be used (Figure 5). This default formula is a reasonable estimate of the total likely amounts involved to deal with stockpiled and abandoned materials [section 51(3)]. The estimate has regard to the likelihood that the fate of the material will be disposal to landfill (ie the material may not meet a standard nor have an immediate market).

The default formula to calculate the financial assurance amount has two components: the base formula to calculate the environmental liability of the stockpile, and a risk multiplier (%).


Firstly, the base formula takes into account the volume of the material, the waste levy the volume would incur if being disposed of, plus the cost of transporting the materials to the landfill and treatment costs if required. In the circumstances of hazardous waste stockpiling, the treatment costs would be calculated according to a site-specific assessment made by an appropriate environmental consultant.

Secondly, the financial assurance amount may be reduced depending on the abandonment risk ie the material category. Table 2 shows the sliding scale of risk multipliers (%) for each material category.

Risk multiplier		Environmental liability base formula
<i>financial assurance amount</i>	= _____ % x	$\left[ \begin{array}{l} \text{mass/volume of material where the} \\ \text{financial assurance applies} \\ \times \\ \text{cost to treat, process or dispose of (waste levy rate)} \end{array} \right] + \text{transport material to disposal or market*}$
<p>* Based on third party costs or the following transport costs formula as a default:  <b>Transport costs = time (hours) x \$125 per hour x number of loads</b>            where:            Price per hour = \$125 per hour (rate provided to EPA by industry)            Time = the average travel time (from origin to fate and return trip)            Treatment costs = market rate            Current waste levy rates can be found at <a href="https://www.epa.sa.gov.au/business_and_industry/waste-levy">https://www.epa.sa.gov.au/business_and_industry/waste-levy</a></p>		

**Figure 5** Where relevant costs and material flow information are not provided by the licensee, the EPA will use this default formula to calculate environmental liabilities of high risk stockpiles and financial assurances (see Table 2 for risk multiplier)

**Table 2 The sliding scale of risk multipliers (%) for determining financial assurance amount**

Material that is not recoverable (may need further treatment prior to final disposal)	100% x base formula	 High risk
Materials that have untested or unproven markets	100% x base formula	
Materials that cost to recycle without gate fees	90% x base formula	
Materials that meet a published or EPA standard but have no immediate fate or anticipating market conditions to improve	80% x base formula	
Materials that meet a published or EPA standard and have an immediate fate	None (unless there is a history of contravention)	
		Low risk

The calculated amount of financial assurance is to cover for the increased environmental liability of a temporary stockpile (above the stockpile limit up to the financial assurance stockpile limit) in the event of abandonment. Having the financial assurance in place means that the level of risk is reduced to an acceptable risk level (no longer in the red zone of the abandonment risk matrix in Figure 3). An example financial assurance calculation is provided in the box below.

### Example of a financial assurance calculation at a metropolitan recovered resource facility using the default formula

**Material being stockpiled:** Bricks and concrete

**Existing authorised stockpile limit (SL):** 50,000 tonnes.

**Licence condition change request:** The licence-holder seeks to increase the stockpile of bricks and concrete to 100,000 tonnes in anticipation of winning a contract for a project in the following year.

#### EPA risk assessment

**Material category:** Materials that meet a published or EPA standard but have no immediate fate or anticipating market conditions to improve.

**EPA assesses** the proposal to ensure that it is appropriate for approval via development approval and environmental authorisation, eg infrastructure and environmental harm controls are appropriate. As part of this assessment, the EPA seeks stockpile management information, such as intended markets and timeframes, to assess risks and inform the increased authorised stockpile limit as well as the period it will be in place. The information is not provided to the EPA.

**Environmental liability:** \$6,250,000 (using EPA base formula calculation for 50,000 tonnes of material to be stockpiled over the SL, 3 hours to disposal and trucks with payload of 25 tonnes)

$$\begin{aligned}
 \text{Environmental liability base formula} &= \left[ 50,000 \text{ tonnes} \times \$110 \text{ (waste levy)} \right] + \$750,000 \text{ transport costs} \\
 &= \$6,250,000
 \end{aligned}$$

where:

$$\text{transport costs} = 2,000 \text{ loads (25 tonne trucks transporting 50,000 tonnes)} \times 3 \text{ hours} \times \$125 = \$750,000$$

**EPA risk assessment result:** The material has a low material flow (currently less than 20%) and the material flow risk is high or D4 (Figure 2). The increased stockpile for a potential future project represents a high environmental liability for the EPA and high risk of abandonment or D4 (Figure 3).

The EPA authorises a financial assurance stockpile limit (FASL) of 100,000 (tonnes) as requested by licence-holder. However based on the high level of risk, a financial assurance is required as a condition of licence, along with a stockpile management plan (SPMP), to ensure the material will flow to its designated fate in accordance with authorised timeframes and quality assurance requirements.

### Calculating the financial assurance

**Risk multiplier:** 80%

**Environmental liability:** \$6,250,000 for the 50,000 tonnes of material where financial assurance applies (FASL–SL)

$$\text{Financial assurance amount} = 80\% \times \$6,250,000 = \$5,000,000$$

### Outcome

With the financial assurance in place, material circulation is encouraged and the residual environmental liability for the 50,000 tonnes of material is:

$$\text{Residual environmental liability} = \$6,250,000 - \$5,000,000 = \$1,250,000$$

This residual environmental liability is a lower risk (D3). If the temporary stockpile of 50,000 tonnes of material is reduced as per SPMP milestones, the EPA will not need to draw on the assurance and it will be released to the licence-holder. If the stockpile is not reduced as per the SPMP, then the costs of the EPA dealing with the stockpile are covered.

## What type of financial assurance?

Section 51(1) of the EP Act provides that the EPA may require the holder of the authorisation to provide a financial assurance in the form of:

- a bond
- a specified pecuniary sum
- a policy of insurance
- a letter of credit or a guarantee given by a bank
- any other form of security approved by the EPA.

Unconditional bank guarantees will be the preferred form as they are accessible by the EPA when needed and without conditions imposed<sup>3</sup>. This reduces the financial risk for the EPA. In addition, the requirements that operators need to meet to be granted a bank guarantee provides increased certainty that the entity is legitimate and financially viable.

## Review

The EPA will review the amount of a financial assurance held at least every five years. The review may coincide with reviews of the licence or the licence conditions (ie according to the SPMP). The financial assurance may also be reviewed should a licence-holder's regular reporting (including mass balance) or audit reports suggest a change in material flow that is inconsistent with the SPMP.

The amount of financial assurance may be adjusted for longer-term agreements based on consumer price index (CPI).

<sup>3</sup> An example of a bank guarantee can be found in the Victoria EPA publication (publication 1595) available at <https://www.epa.vic.gov.au/our-work/publications/publication/2016/april/1595>

## EPA claim

In the first instance, it is the licence-holder's responsibility to remedy unauthorised stockpiling of materials. Section 51(1) provides that the EPA may use, realise or claim against the financial assurance for costs or expenses, or for loss or damage, incurred or suffered by the EPA or any other person in the event of:

- the holder of the authorisation contravening a licence condition by or under the EP Act; or
- failure by the holder of the authorisation to take specified action within a specified period.

## Releasing the financial assurance

The EPA will release the financial assurance when it is satisfied that no costs will be incurred by the EPA as a result of the activities undertaken at the licensed premises. This may extend beyond the time that the works approval or licence is in force.

Licence-holders may also apply for an amendment to the financial assurance amount if the level of risk changes, eg when stockpiles requiring a financial assurance are appropriately disposed of or an immediate market opportunity arose earlier than an authorised timeframe. Applications must be submitted in writing to the EPA. Applications for the release of a financial assurance must be accompanied by sufficient independent evidence that no further clean-up will be required at the site. Licence-holders will be advised of EPA's decision within 60 days of the written application.

## Enforcement

In the event of a licence holder not complying with financial assurance licence conditions, for example, if an agreed timeframe for submitting a financial assurance is not met, then non-compliance will be escalated in line with the EPA guideline *Compliance and enforcement – Regulatory options and tools* (2009)<sup>4</sup>. This may include issuing environment protection orders for example. Continued failure to comply may result in licence suspension or cancellation. Compliance with stockpile limits and the identification of non-compliant stockpiling will be supported by reporting data and volumetric survey requirements.



Large stockpiles of material at a landfill site

<sup>4</sup> [https://www.epa.sa.gov.au/files/4771765\\_cem.pdf](https://www.epa.sa.gov.au/files/4771765_cem.pdf)

## Further information

### Legislation

[Online legislation](#) is freely available. Copies of legislation are available for purchase from:

Service SA Government Legislation Outlet  
Adelaide Service SA Centre  
108 North Terrace  
Adelaide SA 5000

Telephone: 13 23 24  
Facsimile: (08) 8204 1909  
Website: <https://service.sa.gov.au/12-legislation>  
Email: [ServiceSAcustomerservice@sa.gov.au](mailto:ServiceSAcustomerservice@sa.gov.au)

### General information

Environment Protection Authority  
GPO Box 2607  
Adelaide SA 5001

Telephone: (08) 8204 2004  
Facsimile: (08) 8124 4670  
Freecall: 1800 623 445 (country)  
Website: <https://www.epa.sa.gov.au>  
Email: [epainfo@sa.gov.au](mailto:epainfo@sa.gov.au)

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