

# Developing new financial assurance guidance for the waste and resource recovery sector – external consultation report



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## Executive summary

This report presents the Environment Protection Authority's (EPA) response to submissions from the industry and other relevant entities on the proposed method to calculate financial assurance for waste and resource recovery facilities (WRRFs) that may be required to provide financial assurance under the *Environment Protection Act 2017* as amended by the *Environment Protection Amendment Act 2018* (the new EP Act) and the Environment Protection Regulations 2020 (the Regulations).

The proposed method to calculate financial assurance for the WRRFs was released for external consultation for 46 days, from 16 December 2020 to 31 January 2021, and prompted nine submissions. This public report contains responses to the key matters raised through the submissions.

EPA analysed each of the matters raised and has made some adjustments to the proposed calculation method. Adjustments were made based on whether the matter raised was relevant to the calculation method and sought to make the calculation method more efficient and effective. We will publish the calculation method in June 2021 and consider further review following implementation.

EPA welcomes the interest shown by the industry and other relevant parties towards the proposed financial assurance calculation method for WRRFs and is grateful for their contribution towards developing a better financial assurance instrument.

## Key matters and responses

The common themes that were raised in the submissions are:

- The proposed method is a one size fits all approach that does not consider the inherent risk of a given facility or an operator.
- Some of the materials that are handled by WRRFs should not be considered as waste, but as valuable commodities.
- The proposed method will exert an added financial burden on the waste and resource recovery sector.
- Requests for more clarity on material onsite that will be included into the volumes considered for financial assurance calculations.
- Proposals to allow alternative forms of financial assurance, in addition to the forms that are currently accepted by EPA.

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Key matter	EPA’s response
<p>The proposed method is a one size fits all approach that does not consider the inherent risk of a given facility or an operator. The proposed calculation method also implies that all WRRFs that fall into the licences and permits tiers must provide financial assurance.</p>	<p>s219(1) of the new EP Act states that EPA <b>may</b> require a financial assurance from operators that conduct prescribed activities, and that the prescribed risk assessment criteria <b>must</b> be considered when determining the need for financial assurance and the form of that financial assurance.</p> <p>The prescribed risk assessment criteria in s168 of the Regulations allow EPA to determine that a financial assurance is not necessary based on a low likelihood of the person undertaking the activity abandoning the site of the activity, taking into account the ongoing profitability of the activity and the value of the investment in the site. Other factors in the prescribed risk assessment criteria include the risk of harm, compliance history, financial capacity, prohibited person, and the nature of the potential cleanup. Application of the prescribed risk assessment criteria will ensure that the inherent risk of an operation is given due consideration when determining the need to require a financial assurance and also the form of that financial assurance. EPA will publish information on how we will apply the prescribed risk assessment criteria on our website.</p> <p>s221(1) of the new EP Act provides the factors that EPA must consider when determining the amount of the financial assurance. <b>The calculation method published by EPA is only one of the factors.</b> EPA must also give regard to reasonable estimates of cleanup costs for a given operation as well as any independent assessments provided by the duty holder in response to a request made by EPA.</p> <p>EPA recognises that published guidance does not perfectly suit every activity or circumstance. In implementing the financial assurance program and where a specific permissioned activity has been deemed to require a financial assurance, the Authority can and does require evidence-supported financial assurance proposals from individual permission holders where the activity materially differs from that described by guidance.</p>

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<p>Some of the materials that are handled by the WRRFs should not be considered as waste, but as valuable commodities.</p>	<p>In accordance with the new EP Act, waste includes <i>'any matter that is discarded, rejected, abandoned, unwanted or surplus, irrespective of any potential use or value'</i>. This includes waste materials intended for resource recovery or reuse. It is important to note that being a waste does not preclude the material from resource recovery or reuse or having potential value as a future commodity or product for use.</p>
<p>The proposed method will exert an added financial burden on the waste and resource recovery sector.</p>	<p>The reason that WRRFs are introduced to EPA's Permissioning framework is to provide a lawful place for all waste types and mitigate risk of harm from this sector. The benefit of including this scheduled activity and requiring a financial assurance is anticipated to be reducing the risk of pollution incidents and fires at these facilities and to protect the community from cleanup costs. The Regulatory Impact Statement that accompanied the then-exposure draft Environment Protection Regulations estimated the <i>average</i> cost to business, government and community of a fire at a WRRF is \$4 million, and estimated that the State currently experiences costs of \$105 million per year from stockpile fires and \$58 million per year for abandoned waste cleanup.</p> <p>EPA has discretion in how it requires financial assurance to be provided. Where EPA determines that there is a need for financial assurance, EPA may consider allowing the duty holder to provide the financial assurance in instalments if it cannot immediately raise sufficient capital or assets to provide the financial assurance.</p>
<p>Requests for more clarity on material onsite that will be included into the volumes considered for financial assurance calculations.</p>	<p>Where all of the waste resource recovery activities on a site meet the description of an existing scheduled category and are authorised by the permission required for that scheduled category, the A13 schedule category won't be added retrospectively. If a licence threshold for an existing scheduled category is triggered but only the permit or registration tier is triggered by other WRR activities on the site, the higher order permission exemption pathway may apply, depending on whether the higher order</p>

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	<p>permission already authorises the other WRR activities.</p> <p>Waste that is transported to its next lawful place as an input to a production process or is received under a determination or declaration of use will not require a permission for the A13 scheduled activity.</p> <p>Where EPA determines that a financial assurance is warranted, all of the waste on the premises will be included in the waste storage limits on an A13 permission and is in scope for calculating the amount of financial assurance.</p>
<p>Proposals to allow alternative forms of financial assurance, such as insurance, in addition to the forms that are currently accepted by EPA.</p>	<p>EPA must consider the prescribed risk assessment criteria when determining the form of financial assurance. The forms of financial assurances that are currently accepted by EPA include bank guarantees, bonds, any other form of financial assurance that is accepted by EPA and a combination of the above.</p> <p>EPA does not generally consider insurance as an acceptable form of financial assurance, as it is unlikely for an insurance policy to provide coverage of all situations addressed by financial assurance such as, site abandonment, market failures that affect multiple operations simultaneously, and the risk of fire. For an insurance policy to be considered by EPA, the policy would need to include the scenario of waste abandonment due to insolvency or market failure and the risk of fire; and the policy run-off period would need to allow sufficient time to secure an alternative financial assurance form if the policy was not renewed.</p>

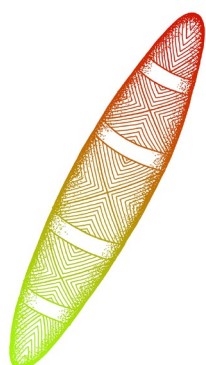
## Overview of the changes made

EPA has identified some minor amendments to the calculation method as follows:

- use of a single disposal fee for landfilling regardless of location (\$200.00/tonne)
- use of a flat rate for transportation cost per tonne regardless of location (\$15.00/tonne)
- clarification that the proposed density factor will be used only where the maximum storage capacity is based on volume rather than weight.

## Next steps

- The finalised calculation method will be published in the Government Gazette by mid-2021.
- EPA will publish an update to the current publication *Calculation of financial assurance for landfills, prescribed industrial waste management (PIW) and container washing* (publication 1596) (proposed title for the updated guidance: *Calculation of financial assurance for landfills, reportable priority waste (RPW) and waste and resource recovery facilities*), by mid-2021.
- EPA will publish responses to all the matters raised in the submissions including those outside the scope of the proposed calculation method on its website.
- EPA will publish information on how EPA will apply the prescribed risk assessment criteria to determine the need and the form of financial assurance, on its website.
- EPA will continue to review all published methods of financial assurance calculation and their implementation, and work with industry and other stakeholders to identify ways to improve the program by making financial assurance a more efficient and effective instrument.



EPA acknowledges Aboriginal people as the first peoples and Traditional custodians of the land and water on which we live, work and depend. We pay respect to Aboriginal Elders, past and present.

As Victoria's environmental regulator, we pay respect to how Country has been protected and cared for by Aboriginal people over many tens of thousands of years.

We acknowledge the unique spiritual and cultural significance of land, water and all that is in the environment to Traditional Owners, and recognise their continuing connection to, and aspirations for Country.



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