

---

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

---

## Response to submissions

---





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

For further information please contact:

Information Officer  
Environment Protection Authority  
GPO Box 2607  
Adelaide SA 5001

Telephone: (08) 8204 2004

Facsimile: (08) 8124 4670

Free call (country): 1800 623 445

Website: <https://www.epa.sa.gov.au/>

Email: [epainfo@sa.gov.au](mailto:epainfo@sa.gov.au)

ISBN 978-1-876562-58-8

September 2020

© Environment Protection Authority

This document may be reproduced in whole or part for the purpose of study or training, subject to the inclusion of an acknowledgment of the source and to it not being used for commercial purposes or sale. Reproduction for purposes other than those given above requires the prior written permission of the Environment Protection Authority.



# Contents

<b>1</b>	<b>Introduction</b> .....	<b>1</b>
<b>2</b>	<b>Consultation</b> .....	<b>2</b>
	The consultation proposal .....	2
	How we consulted .....	2
	Submitters .....	2
<b>3</b>	<b>Response to submissions</b> .....	<b>3</b>
	Risk assessment method .....	3
	Stockpile management .....	3
	Regulatory burden .....	4
	Capacity .....	4
	Development applications .....	4
	Default financial assurance calculation .....	4
	EPA use of a financial assurance .....	5
<b>4</b>	<b>Next steps</b> .....	<b>6</b>



# 1 Introduction

Over the past decade, the waste and resource recovery sector has grown into an economically significant part of the South Australian economy, supported by policy settings that encourage resource recovery.

Through its stakeholder engagement process, the EPA identified a series of waste reform priorities to support the sustainable operation of the waste and resource recovery sector. The priority reforms are designed to promote further recovery and substantially address the most problematic issues within the sector, namely:

- static or growing stockpiles
- waste that has the potential to pose environmental risk by inappropriately being reused or promoted as 'product'
- potentially reusable 'fill materials' ending up at landfill due to development pressures
- the need to manage certain problematic waste
- illegal dumping.

The approach has been developed to support amendments to the *Environment Protection Act 1993* (EP Act) that aim to better support fair and equitable practices across the sector and seeks to:

- promote both improved environmental practices and circulate materials through the waste management process
- prevent excessive stockpiling and abandonment risk.

## 2 Consultation

### The consultation proposal

In 2017, the *Environment Protection Act 1993* was amended to include more comprehensive provisions on financial assurances, allowing for assurances to be used to address the risks associated with unauthorised stockpiling or abandonment of waste or other matter as well as environmental harm risks.

The EPA sought industry feedback on its draft information sheet entitled *Financial assurances and stockpiling – who, when, what and how much*<sup>1</sup> which was made available on the EPA's website. The information sheet outlined the EPA's proposed approach to requiring financial assurances to deal with stockpiling.

### How we consulted

The EPA held a stakeholder consultation session in Adelaide on 25 September 2019. A second consultation session was held in conjunction with the Local Government Association of South Australia on 3 October 2019 and lived streamed for regional councils to participate. Additional targeted stakeholder were held in March 2020 to seek further feedback on modifying the method for calculating financial assurances for lower risk and well-defined materials.

### Submitters

During the consultation period, the EPA received 10 submissions which commented on the proposal, including seven submissions from landfills and other waste and resource recovery businesses, two from industry associations and one from a state government department.

Thank you to every organisation who took the time to attend a consultation session and/or submit their views on the proposed amendments. This response to submissions summarises a range of issues raised during consultation and the EPA's response.

---

<sup>1</sup> [https://www.epa.sa.gov.au/files/14337\\_info\\_financial\\_assurances\\_stockpile.pdf](https://www.epa.sa.gov.au/files/14337_info_financial_assurances_stockpile.pdf)

### 3 Response to submissions

Overall, submissions supported improved legislation and policy to promote better resource recovery outcomes in South Australia and inappropriate stockpiling.

The approach based on assessment of risk was generally supported. Some submissions commented on the potential impacts on low risk operators and the method for calculating financial assurances for low risk materials.

The sections below discuss the feedback received from consultation on the proposed approach and the EPA's response to the feedback.

#### Risk assessment method

Some submissions sought a more explicit way for low risk facilities to have confidence they will be excluded from these requirements. It was also suggested that the financial risk of the entity be taken into account when assessing the risks of unauthorised stockpiling or abandonment.

##### Response

In accordance with the EP Act, the EPA must consider if there is a risk of unauthorised stockpiling or abandonment, in addition to the risk of environmental harm. The risk assessments consider the nature of the business, including the alternative financial assurances available to government operators when assessing government run facilities. During the EPA's risk assessments, low risk operations will be identified and excluded from these requirements.

This information has been added to the risk assessment section of the information sheet.

#### Stockpile management

Some submissions questioned whether stockpile management plans will be required for all sites, rather than only for at-risk operations. One submission noted that it would be difficult to provide firm milestone dates and volumes for long-term projects and that the long-term holding of soil for example could be considered 'speculative' stockpiling.

##### Response

The EPA's focus is on higher risk stockpiles and promoting the circulation of materials through the circular economy. Stockpile management plans are an important proactive first step to collaborate with the authorisation-holder to set reasonable stockpile limits that accommodate genuine current and projected business needs. They also inform when financial assurances will not be required, despite large volumes of materials being stockpiled long-term on site.

The EPA recognises there can be genuine need to stockpile over long periods. Firm milestones may not be required in the stockpile management plan when the existence of a genuine future market can be shown.

## Regulatory burden

A number of submissions were concerned about potential negative impacts on legitimate businesses, such as the administration burden of preparing stockpile management plans and the costs of establishing a financial assurance.

### Response

The EPA is committed to a risk-based approach that allows for a proportional and consistent regulatory approach, with the intention not to penalise low risk operators but rather to focus on higher risk stockpiles and promoting the circulation of materials through the circular economy. These controls are not intended to be applied to all licensed sites. Financial assurances are avoidable.

## Capacity

Some submissions raised the EPA's capacity to 'effectively implement the controls' and 'in depth knowledge of the market place' to assess information contained in stockpile management plans.

### Response

The proposal has been developed in the context of EPA's current resources. The EPA has established multidisciplinary Licence Management Teams with access to skills, experience and expertise across Government. In the event that a specific expertise is not available within Government, the EPA will access external expertise as required.

## Development applications

There was a request for further information on how the controls are to be considered during the development assessment process.

### Response

When assessing referred development applications, section 57 of the EP Act requires the EPA to have regard to and seek to further the Objects of the EP Act (section 10), including 'to promote the circulation of materials through the waste management process and to support a strong market for recovered resources ... by preventing the unauthorised stockpiling of waste or other matter'. To assess development applications, the EPA may require information relating to stockpile management at a site, not only on environmental grounds, but also to ensure that materials stored on sites are to be circulated through the waste management process.

This information has been included in the information sheet.

## Default financial assurance calculation

While there was general support for the EPA's default formula to calculate financial assurances, some submissions raised the appropriateness of using disposal costs (waste levy) for lower risk materials, such as construction and demolition materials, rather than processing costs to recycle these materials.

**Response**

The EPA has developed a default formula that allows for a consistent regulatory approach and minimises the need for environmental and financial assurance calculations on an individual basis. The default formula is based on disposal costs plus transport costs.

In response to industry feedback, the EPA has undertaken further industry consultation regarding lower risk materials, such as inert demolition material, waste soils, sorted plastics and compost. Subsequently, the calculation for these materials has been modified to align with processing and management costs (rather than 80% of disposal costs) plus transport costs. In these cases, evidence must be provided to the EPA of the material's physical or chemical properties.

**EPA use of a financial assurance**

Some submissions sought further detail on when the EPA will release or claim on a financial assurance. Specifically, a question raised whether the EPA could hold onto the financial assurance to cover an authorisation-holder's other liabilities.

**Response**

EPA cannot hold onto the financial assurance to cover other liabilities and is legally obligated to release a financial assurance when the relevant environmental liability has been appropriately addressed and the conditions of the financial assurance met.

This legal requirement has been added to the information sheet.

## 4 Next steps

The EPA has considered all feedback received. The feedback has been used to update the EPA's approach to stockpiling and financial assurances. The information sheet, *Financial assurances and stockpiling – who, when, what and how much*, along with this EPA response to submissions, is available on the EPA website<sup>2</sup>.

The approach set out in the information sheet is being used by the EPA during routine assessments of development proposals, licence applications, licence renewals and other regulatory functions. In addition, the EPA is continuing to conduct audits of stockpiles at high priority waste and resource recovery facilities, to inform imposing reasonable and practical stockpile limits and financial assurances as needed.

---

<sup>2</sup> Under 'Implementation of effective stockpiling controls',  
[https://www.epa.sa.gov.au/environmental\\_info/waste\\_recycling/waste-reform](https://www.epa.sa.gov.au/environmental_info/waste_recycling/waste-reform)