

Financial provision



Jim Moriarty & Stephen McCarthy
24th May 2017

Introduction

- Environmental liability is a priority for the EPA.
- Licensed facilities carry known liabilities (associated with closure and aftercare) and potential liabilities (associated with incidents).
- Costs can be significant and run to tens of millions of euro
- Extractive waste facilities (4) and landfills have financial security requirements under EU Directives.
- Failure to make financial provision could lead to the State having to intervene following site closure, an incident or insolvency

EPA Strategy

- **EPA Strategy 2013 - 2015**
- **EPA Strategy 2016 - 2020**
- Adequate financial provision in place to manage environmental liabilities arising from the closure of potentially polluting activities
- Operators making the necessary investments in remediation and financial provision



Guidance on costings

- *Guidance on assessing and costing environmental liabilities* (EPA, 2014)
- Determining costs is a discrete task, separate to financial provision
- Two types of costs:
 - Closure & restoration/aftercare
 - Incidents



Guidance on financial provision

- *Guidance on financial provision for environmental liabilities* (EPA, 2015).
- Finalised September 2015
- Principles
- Overview of the FP process
- Acceptable FP Instruments



Guidance



<http://www.epa.ie/enforcement/financialprovisions/forenvironmentalliabilities/>

Principles

Secure

- The financial provision must be secure for the duration of the licensee's obligations (including in the event of an insolvency) under a licence so that funds are available to discharge the licensee's obligations.

Sufficient

- The financial provision must be sufficient to meet all of the licensee's obligations and must be adequate to cover the cost of closure and environmental liability risks.

Available when required

- The funds must be available to the EPA when required to discharge the licensee's obligations at the relevant time.

Instruments

Secured fund

- A secured fund with a first ranking fixed charge in favour of the EPA is suitable financial provision for all liabilities.

On demand performance bond

- Perpetual and on-demand performance bonds are suitable financial provision for all liabilities. This is provided that the failure, on expiry, to renew or replace the bond with alternative financial provision is a drawdown event.

Parent company guarantee

- A parent company guarantee is suitable financial provision for most liabilities. It is not suitable to cover inevitable closure costs.

Charge on property

- A first ranking fixed charge on property in favour of the EPA is suitable financial provision for all liabilities. However, only a certain percentage of the property's value may be used towards the satisfaction of the licensee's financial provision obligations.

Insurance

- Environmental impairment liability insurance is suitable financial provision for potential liability from incidents arising on sites. This is provided the policy wording is acceptable to the EPA.



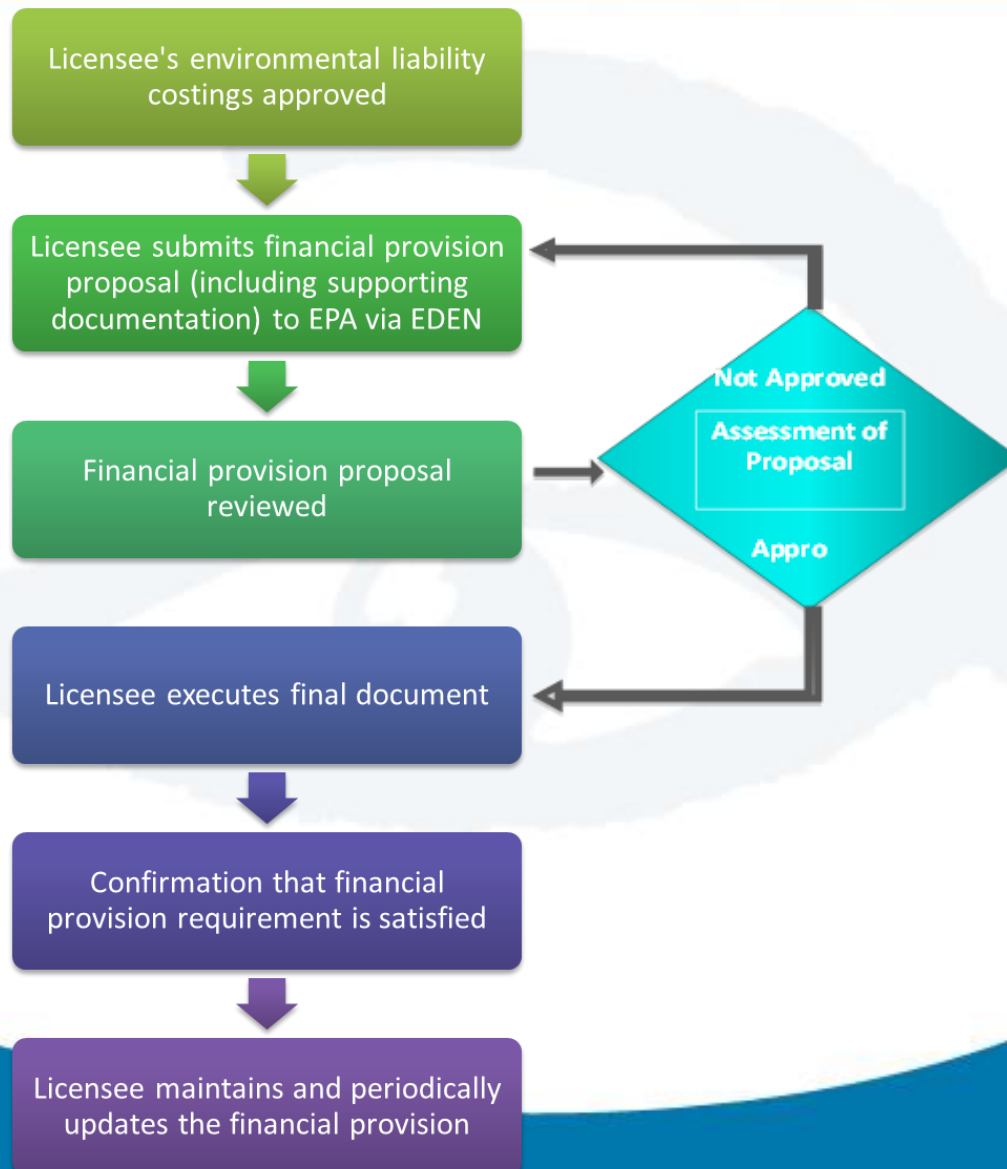
Instruments

Instrument	Inevitable closure	Other closure	Incidents	Template	Features
Secured fund	✓	✓	✓	✓	<ul style="list-style-type: none"> Dedicated account Legally and financially complex Charge in favour of the EPA Licensee can withdraw funds to pay for works
On demand performance bond	✓	✓	✓	✓	<ul style="list-style-type: none"> EPA can call in if not renewed Surety must be registered with Central Bank IRL
Parent company guarantee	-	✓	✓	✓	<ul style="list-style-type: none"> Significant financial element to the assessment Annual accounts
Charge on property	✓	✓	✓	-	<ul style="list-style-type: none"> First ranking mortgage/charge over a specific piece of real estate
Environmental insurance	-	-	✓	-	9 requirements including: <ul style="list-style-type: none"> retroactive to date licensed EPA covered if insured becomes insolvent etc.

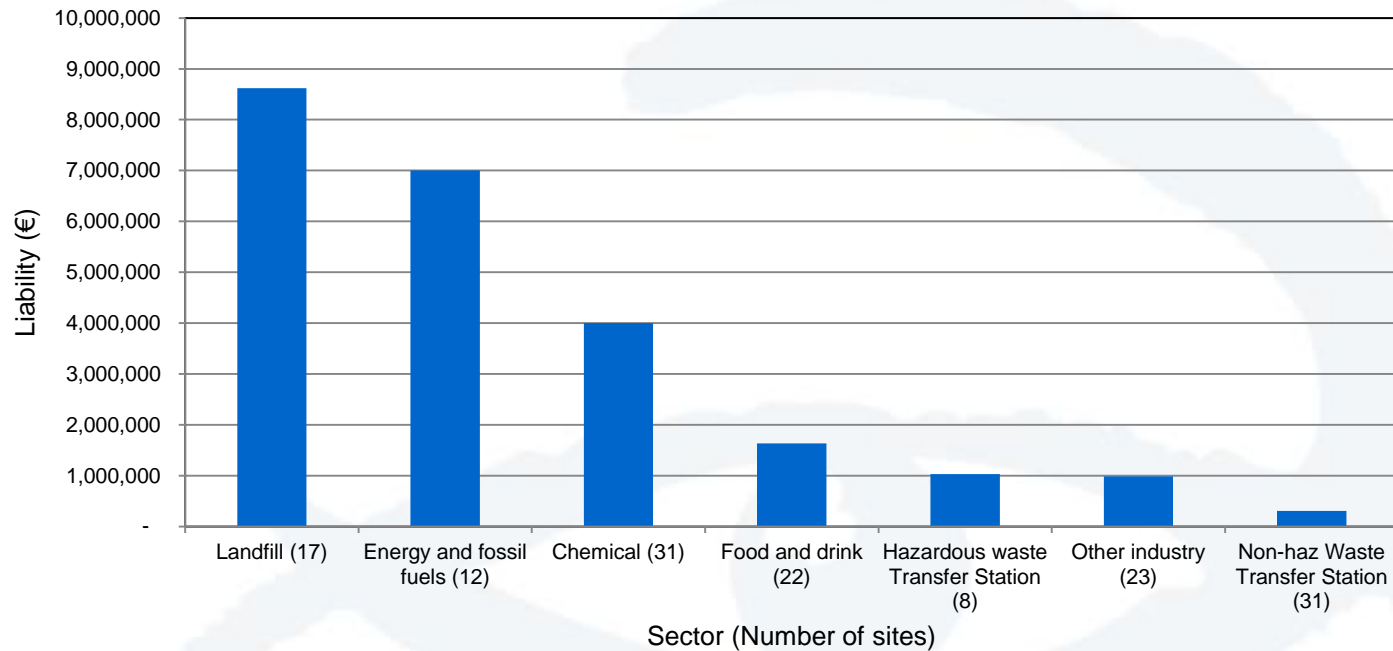
New templates and forms

- Updated bond, parent company guarantee and secured fund templates:
 - to address e.g. transfer and surrender, financial reporting
 - single party secured fund
- Added suggested forms for:
 - PCG corporate certificate (IRL)
 - PCG legal opinion (non-IRL)

Process

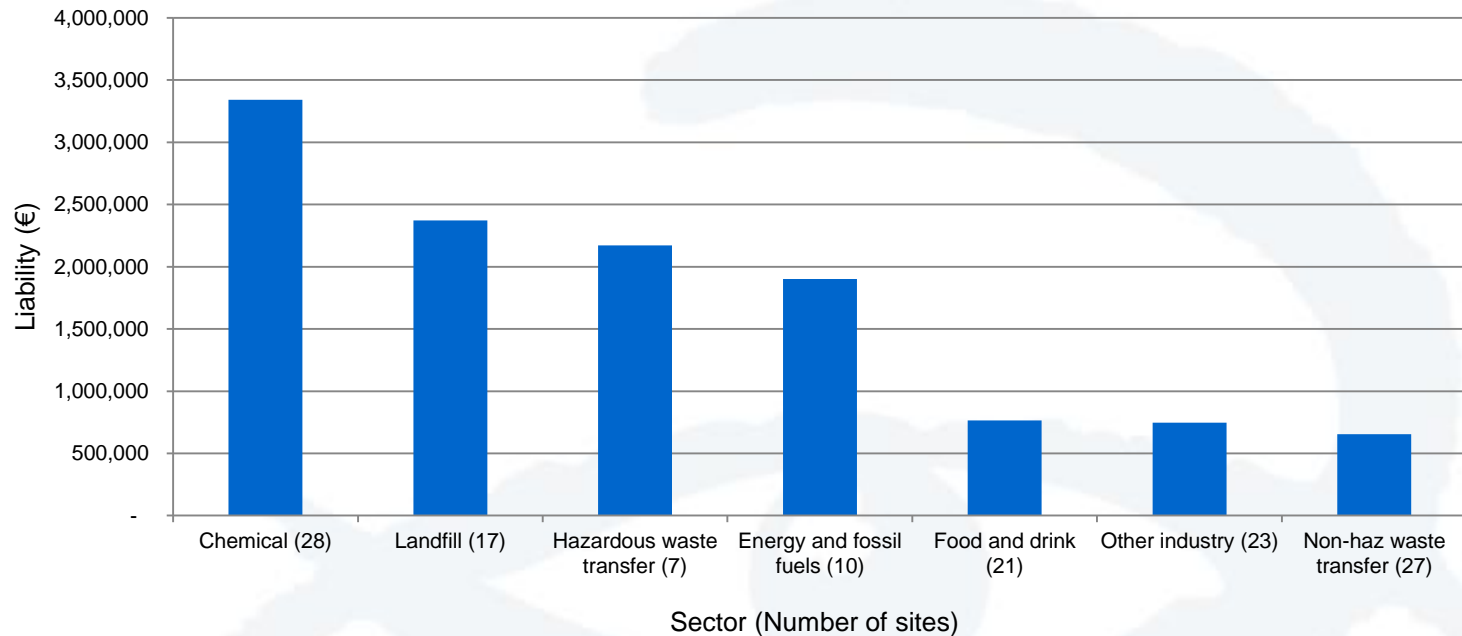


Closure costings



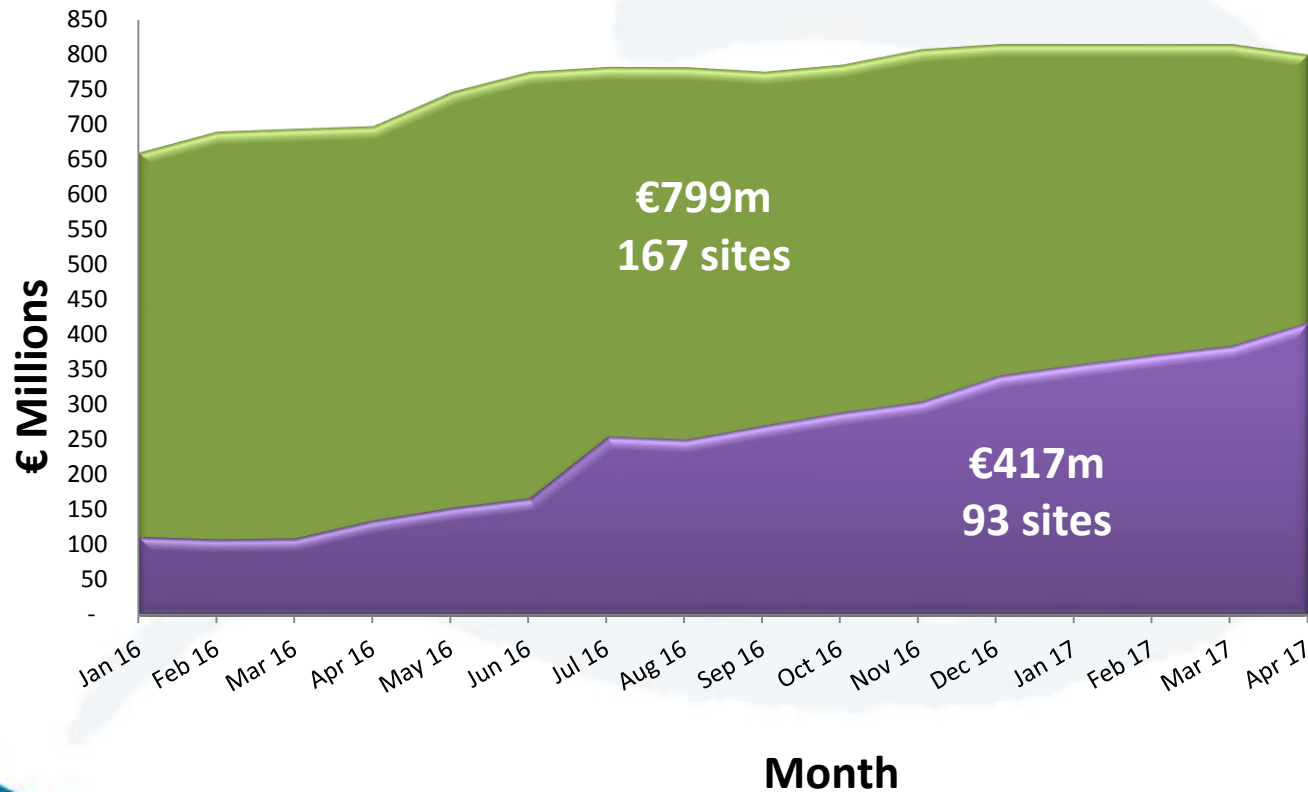
- Pre-guidance (operator initial estimate = 47% of final agreed costs)
- Post-guidance (operator initial estimate = 73% of final agreed costs)

Incident costings

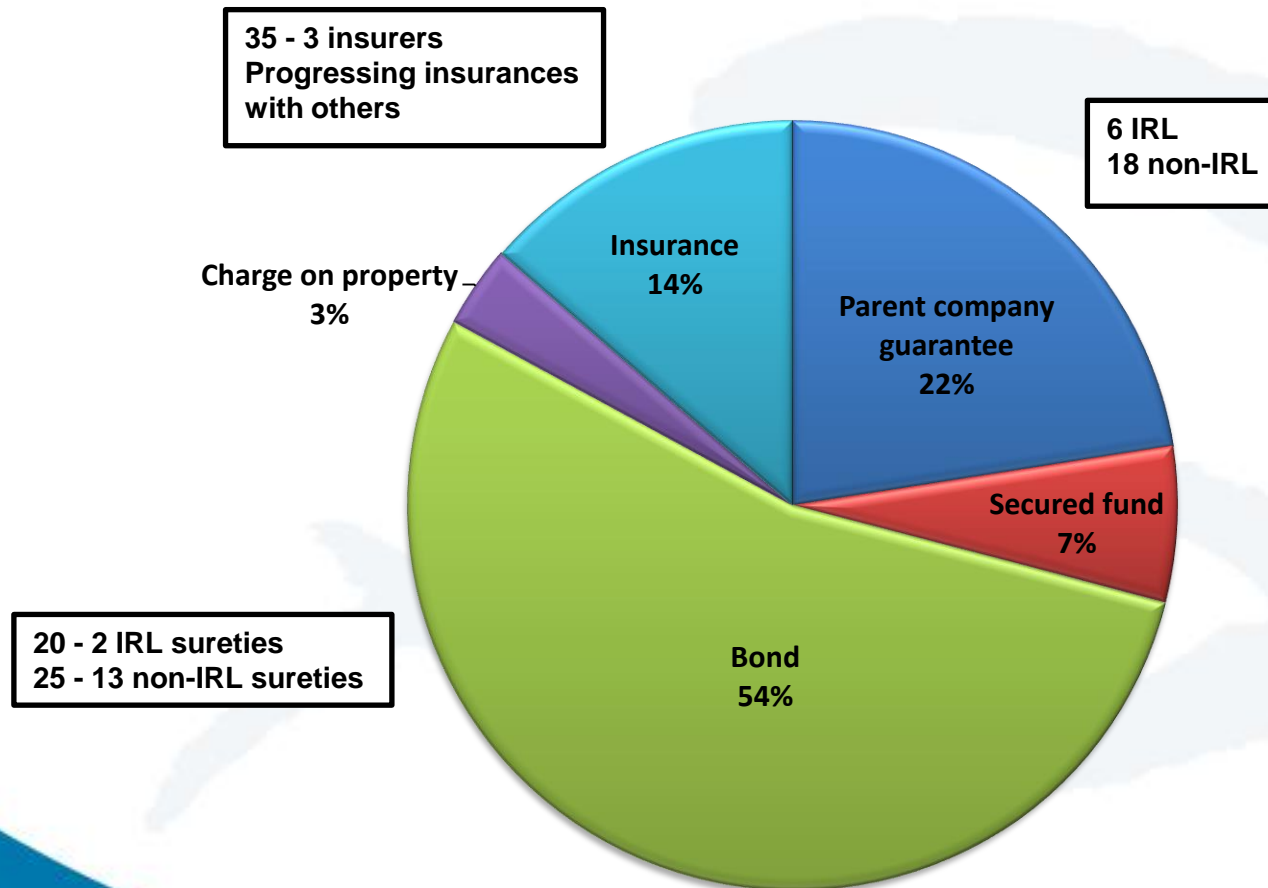


- Pre-guidance (operator initial estimate = 21% of final agreed costs)
- Post-guidance (operator initial estimate = 43% of final agreed costs)
- Challenge: boundaries on fate of emissions and environmental impact

Financial provision secured



Financial provision



IMPEL Project

- EPA Network > BRIG > IMPEL
- Produce guidance on financial provision
- SEPA, EPA, 2 x academic lawyers, 1 x consultant (EA, EU Commission, Sweden, Portugal, Spain)
- Year 1 > Questionnaire > Workshop > Report
- Year 2 > Workshop > Guidance

<https://www.impel.eu/projects/financial-provision-what-works-when/>

IMPEL Project

- Information deficit, e.g. no report under LFD, determining amount.
- Varying requirements/solutions in the EU and internationally:
 - EA: 74% bonds.
 - SEPA: move from credit checks to bonds/secured funds.
 - Germany: reported nearly blanket voluntary insurance uptake.
 - Finland: environmental insurance scheme/fund since 1998.
 - Sweden: environmental insurance programme 1986-2010.
 - Spain: revised requirements to focus on higher risk.
 - Netherlands: expanding requirements to Seveso.
- SECURE, SUFFICIENT and AVAILABLE WHEN REQUIRED
- Latest ELD report - weak case for EU mandatory financial provision

Good environmental outcomes



Conclusion

- Guidance on costings available over 2.5 years.
- Guidance on financial provision finalised 1.5 years and EPA has developed templates further in that period.
- With all elements now in place, good progress has been made
- The EPA will continue to enforce licence requirements as a priority



Thank you

j.moriarty@epa.ie

s.mccarthy@epa.ie