

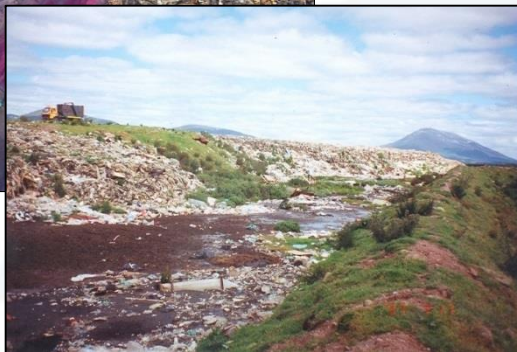
Financial Provision for Environmental Liabilities



Stephen McCarthy, EPA,
Law and the Environment 2018
UCC, 26/04/2018

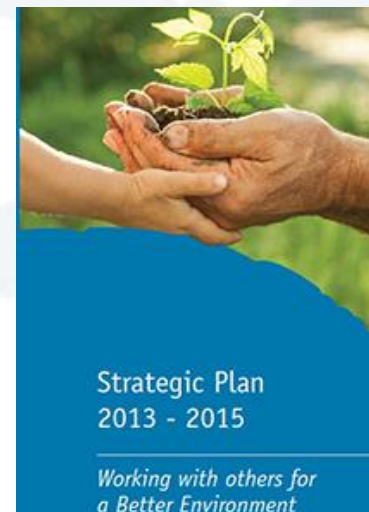
Introduction

- Closure and aftercare
- Incidents
- Financial provision



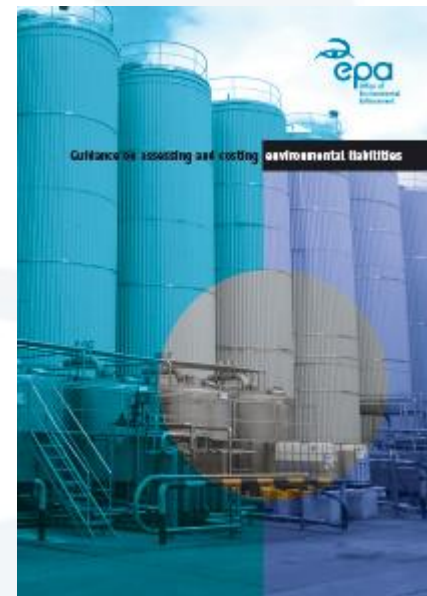
EPA Strategy

- **EPA Strategy 2013 - 2015**
- **EPA Strategy 2016 - 2020**
- Reduced environmental risks at EPA regulated facilities through tailored interventions and by ensuring appropriate financial provisions are in place.



Guidance on costings 2014

- *Guidance on assessing and costing environmental liabilities* (EPA, 2014)
- Divided between two types of costs:
 - Closure & restoration/aftercare
 - Incidents



Guidance on financial provision 2015

- *Guidance on financial provision for environmental liabilities* (EPA, 2015).
- Finalised September 2015
- Principles
- FP Instruments
- Templates



Guidance



<http://www.epa.ie/enforcement/financialprovisionforenvironmentalliabilities/>

Financial provision 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.

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.

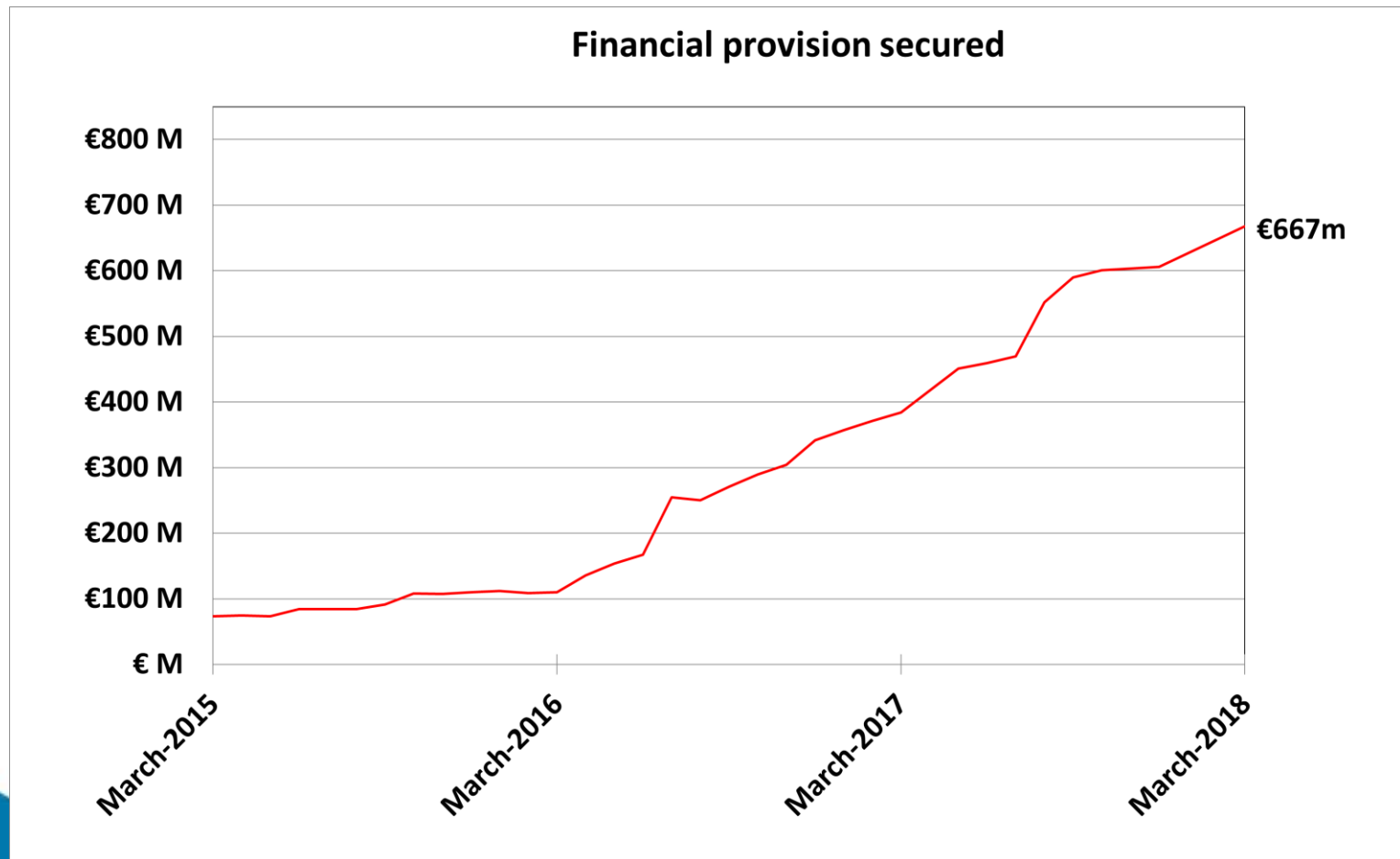
Insurance

- 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.

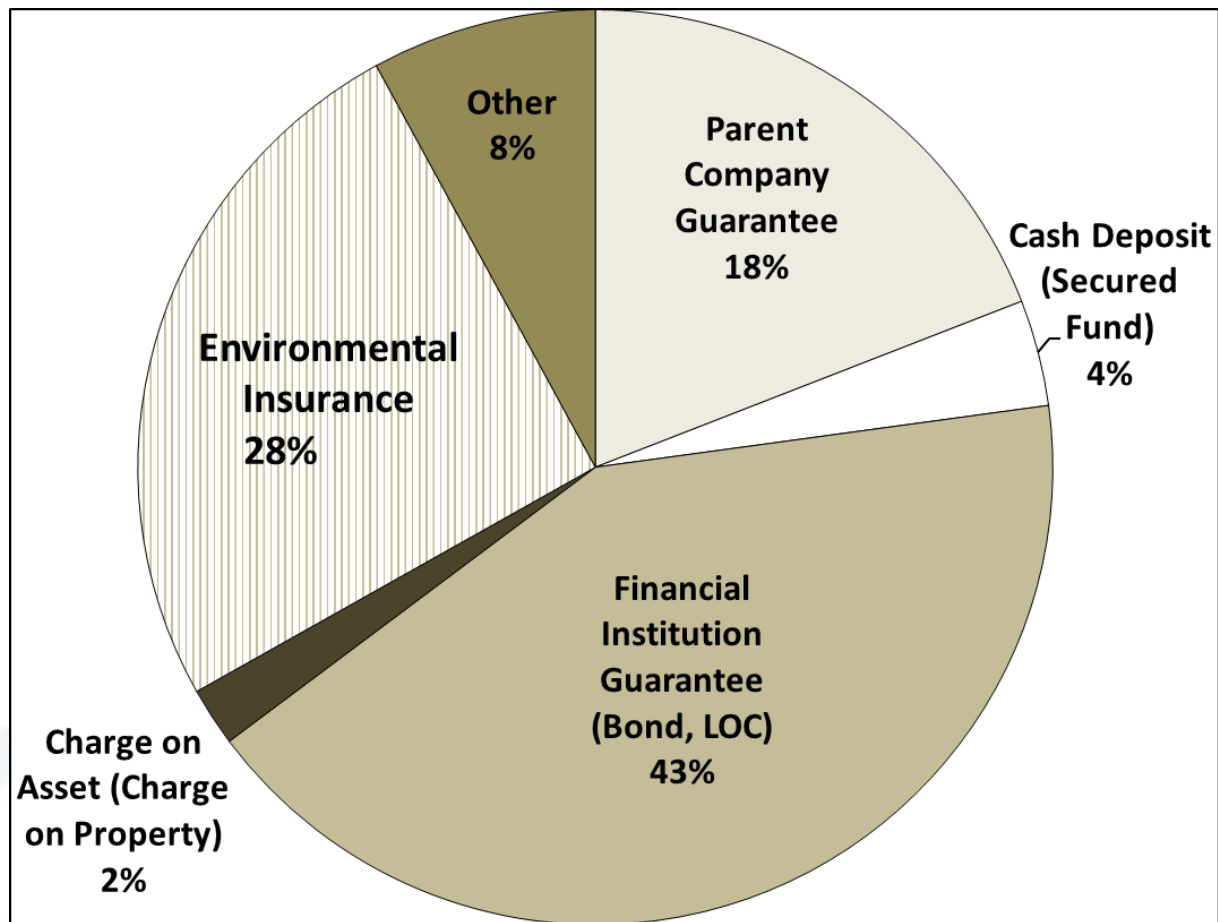
FP Instruments

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.

Financial provision secured



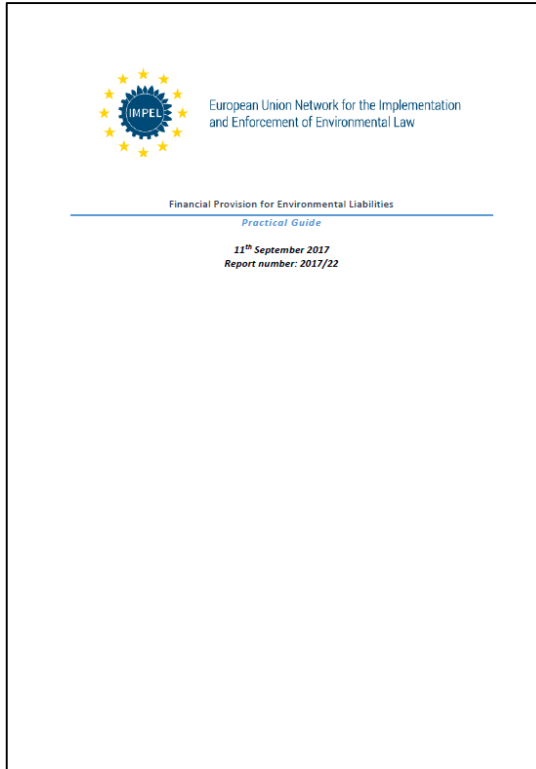
Financial provision types



IMPEL Project 2016

- Problem not unique
 - Varying requirements
 - Range of options
 - Different scenarios - challenges - solutions
 - Multidisciplinary – terminology & role of regulator
 - Gap on calculating the amount
 - Specific themes – corporate/insolvency law, vulnerability of some financial provisions, SME market availability, regulator expertise, illegal activities....
-
- Continue to develop the knowledge base
 - Produce a decision making tool - guidance

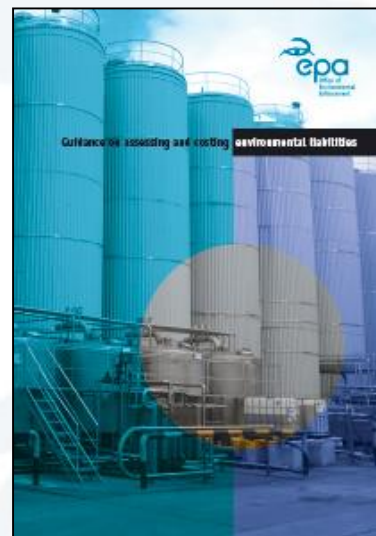
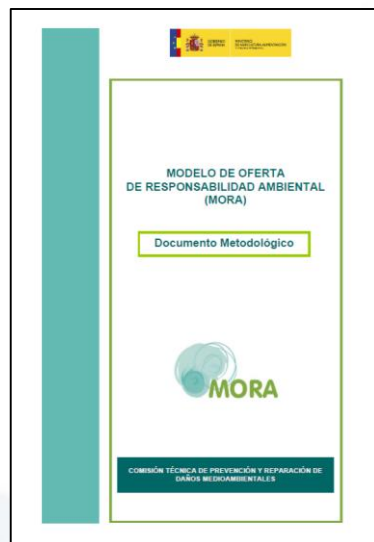
IMPEL Project 2017



- ELD expert & stakeholder groups 2016 & 2017
- EWD expert group January 2018
- European Environmental Evaluation Forum 2017
- EPA Heads BRIG Meeting April 2018

<https://www.impel.eu/wp-content/uploads/2018/01/FR-2017-22-Financial-Provisions-practical-guide.pdf>

IMPEL Project 2018



FINANCIËLE ZEKERHEIDSTELLING VOOR MILIEUSCHADE BIJ MAJEURE RISICOBEDRIJVEN

Een model voor het
categoriseren van majeure
risicobedrijven

22 november 2016

Berenschot

Conclusion

- Guidance on costings available 4 years.
- Guidance on financial provision and templates available 3 years.
- Good progress made
- The EPA will continue to enforce licence requirements as a priority

Thank you

O’Riordan, Dalton O’Regan and McCarthy (2017)
Financial provision for environmental liabilities, Environmental
Law & Management, Volume 29, Issue 4.