

Guidelines on Enforceable Undertakings

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1 Introduction

The EPA administers a range of environmental laws including the *Protection of the Environment Operations Act 1997* (POEO Act). Under that Act, the EPA has a number of regulatory options available to it when responding to a breach of environmental legislation. Amongst these options, and in increasing order of seriousness, the EPA can send an official warning letter, issue a penalty notice, negotiate an enforceable undertaking, or prosecute.

These Guidelines outline when the EPA will consider an enforceable undertaking to be an appropriate regulatory response. While these Guidelines will be of interest to a number of stakeholders, they have been written primarily with the regulated community in mind, specifically those who have breached environmental legislation.

Enforceable undertakings are a voluntary and legally binding agreement between the EPA and the party alleged to have breached environmental legislation ('you'). The agreement includes commitments by you, in response to an alleged breach, that are designed to achieve improved environmental outcomes.

The benefit of enforceable undertakings is that they are an efficient, flexible and transparent tool. They allow the EPA to obtain a set of fit-for-purpose commitments that address specific issues in response to an alleged breach.

The EPA decides whether to accept a proposed enforceable undertaking in accordance with these Guidelines. In doing so it also refers to the EPA Prosecution Guidelines and EPA Compliance Policy which guide when a prosecution is the appropriate regulatory response to an alleged breach.

These Guidelines set out how you can propose an enforceable undertaking for the EPA to consider. The onus is on you to submit an application; however, the EPA can make you aware of the option of an enforceable undertaking if it considers it might be appropriate for you to submit an application for consideration.

An enforceable undertaking is a regulatory option for where there has been a serious breach of legislation; however, it is a less serious response than prosecution (e.g. there is no criminal conviction). You are expected to act in a manner which acknowledges this. The EPA expects you to approach the enforceable undertaking process with genuine contrition for your role in the incident and an honest commitment to engage with the process in a productive way. You can demonstrate this by taking responsibility for your actions, taking responsibility for the pollution incident and/or admitting to any wrongful acts, omissions or conduct. You can also demonstrate this by preparing a proposal that genuinely responds to the seriousness of the incident and genuinely cooperating with the EPA in response to the incident and any investigation.

The EPA can accept enforceable undertakings under section 253A of the POEO Act. These agreements are enforceable by the Land and Environment Court.

These Guidelines outline:

- what an enforceable undertaking is
- when the EPA is likely to consider and accept an enforceable undertaking
- what an acceptable enforceable undertaking needs to address
- how you can propose an enforceable undertaking to the EPA and the negotiation process
- how compliance with an enforceable undertaking is monitored
- the process for varying or withdrawing an enforceable undertaking
- standard, non-negotiable terms of enforceable undertakings.

2 What is an enforceable undertaking?

Enforceable undertakings are voluntary and legally binding written agreements between the EPA and you, the party alleged to have contravened a provision of one of the following Acts:

- POEO Act (section 253A)¹
- any Act for which the EPA has a function under the POEO Act (i.e. *Petroleum (On-Shore) Act 1991*)
- *Contaminated Land Management Act 1997* (CLM Act) (section 96A)
- *Environmentally Hazardous Chemicals Act 1985* (section 213(2) of POEO Act)
- *Ozone Protection Act 1989* (section 213(2) of POEO Act)
- *Pesticides Act 1999* (section 110)
- *Radiation Control Act 1990* (section 24A)
- *Waste Avoidance and Resource Recovery Act 2001* (section 213(2) of POEO Act).

An enforceable undertaking contains details of the commitments you have made in response to the alleged breach. The onus is on you to submit an application to the EPA proposing an enforceable undertaking.

The application is effectively an invitation, from you to the EPA, to begin the process of negotiating an enforceable undertaking.

The EPA is far more likely to enter into an enforceable undertaking if you are willing to take responsibility for your actions, responsibility for the pollution incident and/or admit to any wrongful acts, omissions or conduct.

An enforceable undertaking forms part of your compliance history and a copy of all enforceable undertakings are published on the EPA's public register. The EPA also issues a media release publicising the details of each finalised enforceable undertaking.

The enforceable undertaking process does not affect any of your other legal notification obligations.

3 When is the EPA likely to accept an enforceable undertaking?

The EPA is most likely to accept a proposed enforceable undertaking when:

- the EPA's understanding of the facts and circumstances of the matter align with the considerations outlined in the [Appropriateness of an enforceable undertaking](#) section below
- the proposed enforceable undertaking meets the EPA's key objectives for enforceable undertakings, outlined in the [Key objectives of an enforceable undertaking](#) section below
- the completed application is lodged in the approved form, which is available on the EPA website, with all necessary accompanying information
- the application is lodged in accordance with the EPA's process and preferred timeframes, outlined in the [Process for proposing an enforceable undertaking](#) section below.

¹ The POEO Act provisions cover the majority of scenarios where the EPA seeks enforceable undertakings. The other Acts with enforceable undertaking provisions tend to mirror those in the POEO Act. For simplicity, in these Guidelines, where specific provisions are referred to only the relevant POEO Act section is referenced.

The EPA considers the merits of each application with reference to the facts of the alleged breach and the proposing party; for example, the causes of the incident and the extent to which you had control or responsibility for these causes, your environmental performance history, your actions after the incident.

You should not consider the EPA’s acceptance of an enforceable undertaking in one case as a precedent for other similar cases. Apparently similar pollution events, such as water pollution in a river, may have very different factual contexts once you consider the cause of the incident, the wrongdoer’s actions in the lead up to the incident and the relevant subjective features of the wrongdoer.

The EPA cannot and will not compel you to enter into an enforceable undertaking. Similarly you cannot compel the EPA to accept your proposed enforceable undertaking, even if the EPA has suggested you could apply for an enforceable undertaking.

4 Appropriateness of an enforceable undertaking

This section sets out the specific factors the EPA considers when evaluating whether an enforceable undertaking is an appropriate response in the circumstances.

Generally the EPA will only consider accepting an enforceable undertaking when:

- it considers you have breached one of the relevant Acts and
- you take responsibility for your actions, responsibility for the the pollution incident and/or admit to any wrongful acts, omissions or conduct in relation to the alleged breach.

If these two factors are present, the EPA will more broadly assess whether an enforceable undertaking is an appropriate regulatory outcome by considering the factors outlined in the table below.

The table details what factors weigh in favour of an enforceable undertaking being considered an appropriate response. It is a detailed, but not exhaustive, list of potentially relevant considerations.

Factor	An enforceable undertaking is more likely to be accepted when...
Nature of alleged breach	<ul style="list-style-type: none"> • it was an accident or was caused inadvertently • it was an isolated or one-off occurrence • it was not committed or motivated by commercial gain or profit • it only lasted a short time • it occurred despite high standards of operation • the cause of the alleged breach was not reasonably foreseeable • its impact or risk of impact was not reasonably foreseeable
Impact of alleged breach	<ul style="list-style-type: none"> • the extent of environmental harm was limited
History of party	<ul style="list-style-type: none"> • you are likely to comply with the enforceable undertaking • you have no history of serious prior non-compliances with environmental legislation or similar legislation

Factor	An enforceable undertaking is more likely to be accepted when...
Conduct of party	<ul style="list-style-type: none"> • you notified the EPA of the incident promptly after becoming aware of it • remediation was effective or partially effective or you made a genuine attempt to remediate • your remediation response was prompt and reasonable • you promptly submitted a proposed enforceable undertaking application with complete and detailed information • you have demonstrated a commitment to ensuring your ongoing compliance with the relevant legislation • you demonstrated genuine contrition in relation to the incident • you genuinely cooperated in response to the incident and the EPA's investigation
General circumstances	<ul style="list-style-type: none"> • there are good prospects for resolving the matter speedily • the investigation is at an early stage

In scenarios where you are one of multiple parties involved in an incident, the EPA may find it appropriate to enter into an enforceable undertaking with one of you and take other regulatory action against the others. It is also possible that the EPA may find it appropriate to enter into a number of enforceable undertakings with different parties arising from the same incident. In those cases, the existing commitments made under any other agreements and the level of individual responsibility of each party will be considered when negotiating individual agreements.

5 Key objectives of an enforceable undertaking

An acceptable application for an enforceable undertaking must address the following key objectives, but the EPA accepts that in some cases some of these objectives will not feature in the final agreement, depending on the specific facts of the case.

Enforceable undertakings must drive improvements in your environmental performance

An enforceable undertaking must set out how you will address the alleged breach and prevent such an event occurring again. To achieve this, the enforceable undertaking will usually need to identify any failings in your operational systems and/or site management that led to the alleged breach.

Action to prevent the conduct occurring again can include:

- implementing staff training
- carrying out works to prevent a recurrence (i.e. pollution studies or pollution reduction programs)
- carrying out works to upgrade plant or equipment
- creating or amending operational procedures and guidelines
- implementing or improving senior management reporting structures to oversee compliance
- implementing a program to improve your overall compliance with the POEO Act (i.e. implementing an internal compliance program).

All operators in New South Wales are required to comply with environment protection legislation. Accordingly, committing to a series of actions that only ensure future compliance

will not be good enough to satisfy the EPA that your enforceable undertaking proposal is an appropriate option in the circumstances.

Whenever possible you should demonstrate a commitment to:

- improving onsite environmental performance beyond mere compliance (e.g. investing in research and trialling of new technology to improve environmental outcomes; installing infrastructure beyond what is required to manage pollution risks)
- approaching environmental obligations in a proactive manner (e.g. implementing regular compliance audits and processes for addressing the findings of those audits; senior staff committing to and attending training in environmental management)
- developing and implementing innovative solutions to environmental issues (e.g. trialling pollution risk management systems that also benefit broader environmental outcomes, such as reducing pollution risks by recycling materials or improving separation of pollutant and non-pollutant materials).

Enforceable undertakings should deliver benefits to the local environment and/or community

An enforceable undertaking must set out how you will rectify any consequences of the alleged breach on the local environment and/or local community. This is more than committing to clean-up or remediation.

Some of the ways you can satisfy this objective include allocating funds to an existing or new project that improves the local environment or benefits the local community, or making a public and genuine apology to the communities affected by the alleged breach.

Where the proposal will include a project to deliver local environmental or community benefits, it is recommended you contact the EPA prior to submitting your application. The EPA may have advice on additional considerations you should address in your proposal, or be aware of a potential project for this component of your environmental undertaking.

Where the proposal includes a project that will be delivered by a third party, the EPA will need to be satisfied that sufficient arrangements will be put in place to ensure the third party carries out the agreed task. For example, a contract between you and the third party may be required to ensure that if the third party fails to complete their obligations you can compel them to do so. Any failure by a third party to complete their contracted services will place you in breach of your agreement.

Further guidance on negotiating appropriate projects for the benefit of the local environment or community is at [Attachment A](#).

Enforceable undertakings should drive improvements in environmental performance industry-wide

Often challenges you face will also be experienced by others within your industry and so sharing experiences can deliver broader gains for environmental performance and therefore environmental outcomes.

When proposing an enforceable undertaking you should consider whether the alleged breach affected others in the industry, what you have learnt from the incident and whether the outcomes of the enforceable undertaking could assist in improving the environmental performance of others within the industry.

Actions that demonstrate a commitment to improving environmental performance industry-wide can include:

- sharing the outcomes of your research or trials (e.g. publishing articles in industry journals, presenting at industry conferences)

- actively engaging in industry forums to communicate the outcomes of the enforceable undertaking and/or knowledge you gained through complying with its terms
- educating other businesses and assisting them to implement similar processes or infrastructure changes (e.g. mentoring).

Enforceable undertakings must contain clear and defined obligations

Enforceable undertakings are legally binding agreements. The EPA will monitor compliance with enforceable undertakings to ensure you complete the obligations you have agreed to.

Accordingly, the commitments and obligations contained in the agreement must be clearly articulated, measurable and enforceable. Obligations must be drafted in a way that is prescriptive in nature – detailing how you will meet them, measures against which completion will be assessed and timeframes within which actions will be completed.

Examples of clauses that are enforceable include:

- Train 90% of staff in new compliance strategy by 1 July 2016.
- Install a leak detection system with a flow meter that can be managed and monitored 24 hours a day, 7 days a week by a central operator by 31 March 2016.
- Fund regeneration, revegetation and weed management of 10 hectares of the Southern Wetlands Centre site at Greenvale to the agreed value of \$130,000. The works will be the responsibility of the Southern Wetlands Centre. The party undertakes to pay Southern Wetland Centre Pty Ltd within 28 days of the date on which all parties have signed this undertaking.

These are general examples. The specific facts of a case and the type of action being proposed may necessitate further details than those suggested above.

Where specific performance measures involve sampling or testing, the EPA and yourself may agree on acceptable sampling and analysis methods and specify these in the agreement. Alternatively, independent sampling or analysis may be required, and this can be specified in the agreement.

Enforceable undertakings must contain commitments to monitoring and reporting compliance with the milestones of the agreement

If an enforceable undertaking includes a commitment to undertake works or implement any program, it should include:

- details of the monitoring and reporting obligations you will adopt
- timeframes for the monitoring and reporting obligations you will adopt
- if you are a company, demonstrated commitment of your Board and senior management to, and involvement with the entire program, including providing appropriate resources
- the assignment of responsibility for delivery and completion of the works or program to a named senior manager in your organisation.

To achieve transparency, the EPA prefers compliance commitments which include mechanisms for publicly releasing the information; for example, publishing audit reports on your website.

Actions that will help demonstrate your commitment to monitoring and reporting can include:

- providing details of the monitoring and reporting mechanisms you will adopt
- committing to delivery of interim progress reports at specified times
- specifying content and detail that will be included in any progress or final completion reports

- specifying the manner in which interim progress reports or final completion reports will be provided to the EPA
- assigning responsibility for the monitoring and reporting to a named senior manager in your organisation
- if you are publicly releasing information on monitoring or compliance with milestones, specifying where and when this material will be published
- including a statement in your annual report of how you are progressing the commitments in your enforceable undertaking
- committing to engaging an independent auditor², at your cost, to review your compliance with the terms of the enforceable undertaking and write a 'final assessment' report outlining their professional assessment of your compliance with each component of the enforceable undertaking
- your CEO making a commitment to certify the full completion of the agreement once you have met all of your obligations under the enforceable undertaking.

Enforceable undertakings must contain indicative compliance costs

In order to ensure transparency and accountability you are required to include the estimated cost of complying with the enforceable undertaking.

You should break your cost estimate down into the cost of implementing each separate commitment under the enforceable undertaking (i.e. each project for improving environmental performance, delivering benefits to the local environment or community, assisting improving industry-wide environmental performance) and any logical subcomponents of each commitment.

You will also need to provide details to the EPA of the final cost of compliance on completion of your obligations under the enforceable undertaking. Similar to the process for estimating costs, the final costings will need to be broken down to show the specific allocations of the funds. For example, it will need to be clear what amount was allocated to coming into compliance and what amount was allocated to improvements beyond mere compliance.

Enforceable undertakings must contain a commitment that the relevant conduct has ceased and will not be recommenced

One of the key objectives of enforceable undertakings is to prevent similar incidents occurring in the future. Accordingly, in the enforceable undertaking you must make a positive commitment to:

- stop the particular conduct that concerns the EPA (for example, ceasing the conduct likely to have contributed to the alleged breach)
- and
- not recommence the conduct.

Enforceable undertakings must be made public

The EPA will not accept enforceable undertakings in confidence.

Enforceable undertakings are a matter of public record. Furthermore, clause 106(e) of the Protection of the Environment (General) Regulation 2009 provides that details or summaries of enforceable undertakings must be recorded in the public register kept by the EPA.

² In the context of legislation other than the POEO Act, there may be additional requirements about the qualifications of the auditor. For example, under the CLM Act, in certain cases an acceptable independent auditor will need to be a site accredited auditor under that Act.

Your enforceable undertaking will remain on the public register and will indicate when you have complied with all its obligations.

The EPA will issue a media release publicising the details of each enforceable undertaking it enters into.

6 Process for proposing an enforceable undertaking

If you want to propose an enforceable undertaking, you must submit a proposal to the EPA using the approved form.

By submitting a proposal, you are inviting the EPA to commence negotiations with you for an enforceable undertaking.

Submitting a proposal for an enforceable undertaking does not affect or displace any of your statutory obligations to notify the EPA of pollution incidents.

There may be cases where the EPA is in the process of investigating your matter and considers an enforceable undertaking could be an appropriate response in the circumstances. In those cases, the EPA can alert you to the option of submitting a proposal for an enforceable undertaking. In these circumstances, you will still need to submit an application and it will have to pass through the standard process. There is no guarantee that the proposal will be accepted.

Once the EPA has received and considered your application and determined whether it will enter into negotiations, the EPA will contact you and advise whether:

- the application will be progressed and which matters require further information or negotiation
- or
- the application will not be progressed and the general reasons for this.

Negotiations should usually involve at least one face to face meeting between yourself and the EPA.

Each application will contain a unique set of facts and circumstances, so if you are considering proposing an enforceable undertaking the EPA recommends you consult with it prior to submitting an application. Your first point of contact should be your closest EPA office or, if the matter is already under investigation, the EPA officer leading the investigation into the alleged breach.

Please be aware that **the terms of an enforceable undertaking are not finalised or legally binding until the Chief Environmental Regulator of the EPA has signed the agreement.**

You will find a list of the standard conditions of enforceable undertakings at [Attachment B](#).

7 Key timeframes

If you are proposing an enforceable undertaking you should submit an application in the approved form at the earliest opportunity and ideally **within one month** of the alleged breach taking place.

The EPA will aim to advise you whether the application is to be progressed, or not, within 28 days of the EPA receiving the application.

Negotiations for an enforceable undertaking should be concluded **no more than six months** after the alleged breach. This is to ensure there is sufficient time for the EPA to finalise its investigation into the alleged breach and commence prosecution if negotiations do not lead to an agreed enforceable undertaking.

It will only be in exceptional circumstances that:

- an application proposing an enforceable undertaking will be accepted more than five months after the alleged breach
- or
- negotiations for an enforceable undertaking will be continued more than six months after the alleged breach.

If you are submitting an application or pressing for negotiations outside of these timeframes you will have to provide strong justification as to why the EPA should accept this. This will include evidence of your genuine commitment to the process, including providing a realistic proposal and responding to the EPA's queries quickly and comprehensively.

Your failure to fully cooperate with the process and/or provide full information or details to the EPA will weigh heavily against progression or further consideration of your proposal.

Your provision of prompt, considered and comprehensive information and cooperation are key ingredients to successful negotiation of an appropriate enforceable undertaking.

While an enforceable undertaking is being negotiated the EPA will continue to progress its investigation of the alleged breach. This allows the EPA to proceed with a prosecution if negotiations fail. The EPA will seek payment for its investigation and legal costs as part of any enforceable undertaking. This should provide you with a strong incentive to finalise negotiations at the earliest possible time.

You should not delay taking preventative action to remedy the impacts of the alleged breach or the issue that led to the alleged breach while negotiations are underway. The EPA will look favourably on your proactive actions.

8 Completing obligations under an enforceable undertaking

An enforceable undertaking will remain in force for the period stated in the agreement.

You will generally be required to submit a final report detailing compliance with all of your obligations under the agreement within one month of the final terms being completed.

If the EPA is satisfied you have complied with all its terms, you will be notified accordingly in writing.

An enforceable undertaking will remain on the EPA's public register after you have completed your obligations under it. This is important for transparency. It continues to be part of your compliance record.

9 EPA monitoring of compliance

The EPA monitors implementation of obligations under enforceable undertakings. This includes reviewing interim progress reports and final compliance reports.

If the EPA has reason to believe you have not complied with a term of your enforceable undertaking, the EPA may apply to the Land and Environment Court for appropriate orders

(section 253A(3) of POEO Act). The EPA will make public its application to the Court and seek legal costs from you when appropriate.

The Court can order (section 253A(4) of POEO Act):

- you to comply with a term of the agreement
- you to pay to the State an amount representing the financial benefit you gained as a result of your breach of the agreement
- you to compensate any other person who has suffered loss or damage as a result of your breach of the agreement
- suspension or revocation of your environment protection licence
- you to prevent, control, abate or mitigate any actual or likely harm to the environment caused by the breach of the agreement
- any other order it considers appropriate.

If you breach an enforceable undertaking this is not itself an offence under the POEO Act. However, if the EPA successfully obtains a court order as a result of proceedings brought because of your breach of an enforceable undertaking, then a breach of that court order may constitute contempt of court.

10 Variations and withdrawals

An enforceable undertaking may only be withdrawn or varied with the EPA's written consent (section 253A(2) of the POEO Act).

This process can be completed through an exchange of letters.

The EPA will only consider your request to vary or withdraw an undertaking if you make it in writing and:

- it does not alter the spirit of the original undertaking
or
- compliance with the original undertaking is found to be impractical
or
- there has been a material change in the circumstances.

Your written request should be clear in its details and provide justification for the request.

The EPA will record withdrawals and variations on the public register.

It will be in very rare circumstances that the EPA considers it appropriate to withdraw an agreement. Completion of your obligations under an agreement is not a reason for withdrawing an enforceable undertaking.

Attachment A – Guidance on negotiating appropriate projects for the benefit of the local environment or community

When you make a proposal to enter an enforceable undertaking, the most common scenario will be that you include details of proposed projects in your application; however, either the EPA or you can propose a project during negotiations.

Local government may be consulted on appropriate projects, and depending on the circumstances, community or stakeholder groups could also be involved in appropriate cases.

It is essential that any proposed project includes:

- a project outline and terms of reference where relevant
- a full and itemised cost schedule and, if relevant, an indication of who covers what costs
- a project plan with specific milestones to facilitate enforceability
- provisions for interim and final monitoring and reporting to the EPA
- an environmental benefit that is tied to the impacts of the conduct of concern (e.g. a water quality improvement project for a water pollution incident)
- a benefit that is preferably local to the community/environment affected by the conduct of concern
- details of any necessary approvals and a reasonable contingency plan in the event that you cannot obtain the approval (e.g. development approval)
- a project that is not contingent on unsecured third party funding
- a project that is a fresh commitment and does not constitute works or a funding commitment you have already made outside of the proposed enforceable undertaking.

The specific circumstances of the case will determine what the EPA considers an appropriate amount for you to contribute to any proposed project(s). The following factors are an indicative, but not exclusive, list of relevant considerations:

- the likely penalty a court would impose if you were prosecuted and convicted of the alleged breach
- the legal costs you will avoid by not being prosecuted
- the negative public exposure you will avoid by not being prosecuted
- the extent of environmental harm caused, or potential harm likely to have been caused by the alleged breach
- any monetary benefit you obtained as a result of your actions leading to the alleged breach
- the likely benefit to the environment, industry or community of any other commitments made under the enforceable undertaking and how that affects the overall package you have agreed to implement
- the nature and size of commitments the EPA has accepted in previous enforceable undertakings involving similar facts.

Attachment B – Standard conditions of enforceable undertakings

All enforceable undertakings will contain conditions to the following effect:

- you take responsibility for your actions, responsibility for the pollution incident and/or admit to any wrongful acts, omissions or conduct and provide detail of the alleged breach; or at an absolute minimum, you acknowledge the EPA's justifiable concern about the alleged breach and provide detail of the alleged breach
- a positive commitment by you to stop the conduct of concern and not recommence that conduct
- how you will address your responsibility for the alleged breach and prevent that conduct occurring again, and rectify the consequences of that conduct
- you acknowledge that enforceable undertakings are public and the EPA will post a copy of the agreement on its public register and may publicise the agreement in other forums, such as media releases
- you acknowledge that the EPA's acceptance of the enforceable undertaking does not affect its power to investigate a contravention arising from future conduct or to pursue criminal prosecution or civil remedies or use other regulatory powers under the relevant environmental legislation for that future conduct
- you acknowledge the enforceable undertaking does not affect the rights or remedies available to any other persons or entity nor does it affect any other statutory obligations under the POEO Act
- you acknowledge that any of your communication referring to projects you delivered as part of the enforceable undertaking will clearly link the project to the enforceable undertaking and the fact it was entered into as a result of an alleged breach
- you declare that the enforceable undertaking does not include any expenditure commitments which existed or were budgeted for prior to the agreement (i.e. the enforceable undertaking contains only new commitments not old commitments)
- you acknowledge the agreement has no operative force until formally accepted by the Chief Environmental Regulator of the EPA
- you acknowledge the enforceable undertaking may only be varied with the EPA's agreement and in accordance with the POEO Act
- you acknowledge that enforceable undertakings, as varied from time to time, will remain in force until completed or withdrawn in accordance with the POEO Act
- you understand that the EPA will take into account an enforceable undertaking in regulatory matters under the POEO Act.

Enforceable undertakings will also include conditions that you will pay³:

- the reasonable costs of the EPA in investigating the alleged breach
- the EPA's reasonable legal costs in negotiating and finalising the agreement
- the EPA's reasonable costs of monitoring compliance with the agreement.

The EPA will not accept an enforceable undertaking if it:

- contains a clause denying liability
- omits any of the standard clauses detailed above

³ The EPA intends to recover its full costs of investigating, negotiating and finalising, and monitoring compliance with an agreement.

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- contains any clause that sets up defences for possible non-compliance with an enforceable undertaking
- contains any clause that sets up defences for possible future contraventions of the POEO Act or other environmental legislation
- contains any terms that will result in an unreasonable delay in environmental remediation
- contains any terms that impose an obligation on the EPA or any other person without their consent
- contains any commitments which are contingent on receiving third party funding
- contains any commitments which are contingent on receiving an approval from a third party and there is no reasonable alternative plan if the approval is not obtained.