

Department of **Environment & Climate Change** NSW

**Financial Assurance Assessment and
Determination**

Presentation to Extraordinary Meeting of the
Orica Botany Groundwater Community Liaison Committee

6 August 2007

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Department of Environment & Climate Change NSW

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Outline

- **Contamination at Botany and legislative tools**
- **Basis for Financial Assurance**
- **DECC's assessment and review of report by Ernst and Young**
- **Financial Assurance conditions**

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Groundwater Contamination at Botany

- **Initial efforts focussed on assessments of extent, technologies and risks**
- **Voluntary process under Contaminated Land Management Act applied until 2003**

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Contaminated Land Management (CLM) Act Protection of the Environment Operations (POEO) Act

- **Declaration Order issued on Orica Botany Groundwater Plume**
- **Declaration only removed when DECC satisfied contamination is addressed**
- **Notice of Clean Up Action issued under POEO Act (September 2003)**

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Key regulatory tools used by the DECC

- **Notice of Clean-Up Action required Groundwater Treatment Plant (GTP)**
- ***Joint Determining Authority Report* prepared in 2005**
- **Environment Protection Licence also includes requirements for GTP Operations**
- **Various regulatory tools available to address contamination issues**

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Basis for Financial Assurance

- **Community submissions to *Joint Determining Authority Report***
- **Financial Assurance used to ensure long term viability of clean up following GTP construction**
- **Financial Assurance secured using POEO Act and can only be used for specific purposes**

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Objective of Financial Assurance

- Objective is “to secure or guarantee ***funding*** for or towards the ***ongoing operating costs*** of the Groundwater Treatment Plant and associated groundwater collection infrastructure”
- Required “***until such time*** as ***[DECC]*** is satisfied the premises are ***environmentally secure***”

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Development of Financial Assurance

- Orica to:
 - engage independent and qualified experts;
 - submit report to DECC by 30 Sep 06, and
 - lodge Financial Assurance with the DECC
- Preparation of report by Ernst and Young was an **independent** process

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DECC's Review and Assessment and Determination of Conditions

- **DECC's review and assessment of Ernst and Young report involved DECC Environmental Economics and Legal experts**
- **Financial Assurance developed consistent with POEO Act and international principles and practices**
- **DECC varied Orica's POEO licence on 31 January 2007 to specify requirements for Financial Assurance**

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Financial Assurance and Orica's Financial Position

- **Credit rating linked to financial position of Orica Limited as follows:**
 - **\$14.4M for BBB+ or better rating**
 - **\$35M for BBB rating, and**
 - **\$72M for rating of less than BBB**
- **Orica required to notify changes in credit rating and report information annually**

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Changes to Financial Assurance

- DECC can vary Financial Assurance “at any time depending upon ... reassessment of possible cost(s) ... or [for another] reason ... to ensure environmental security
- 3 yearly reviews for inflation and other adjustments
- Notification requirements for corporate changes that may affect Orica’s ability to fund ongoing operation of GTP

Summary

- DECC maintains a strong regulatory approach to ensure contamination at Orica’s site is appropriately addressed
- DECC has a range of powers available to take appropriate regulatory action if issues arise
- Financial Assurance is an additional mechanism to ensure long-term operation of GTP