

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION:
COUNCIL - PART II**

Informal Working Group - Environment

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete.

1. Name(s) of Delegation(s) making the proposal:

Federal Republic of Germany

2. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 52

3. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

Regulation 52

~~Review of the p~~Performance assessments of the Environmental Management and Monitoring Plan

1. All Contractors shall conduct performance assessments of their Environmental Management and Monitoring Plans. The ~~Authority Commission~~ shall review the performance assessments of the Environmental Management and Monitoring Plan undertaken by ~~the Contract~~ a competent and independent auditor hired by a Contractor in accordance with the relevant Standards and taking account of the relevant Guidelines to assess:

- (a) The compliance of the mining operation with the plan;
- (b) The continued appropriateness and adequacy of the plan, including the management conditions and actions attaching thereto; and
- (c) The conformity of the plan with the ~~relevant applicable~~ Regional Environmental Management Plan, ~~if any~~.
- (d) The accuracy of the findings of the environmental impact assessment as set out in the Environmental Impact Statement which informed the Environmental Management and Monitoring Plan.

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan and shall occur at least ~~annually~~ every ~~twenty-four months~~ [thirty-six months] years;

2bis. An ad hoc performance assessment may be requested by the Council following:

- (a) An Incident or Notifiable Event;
- (b) Receipt of an unsatisfactory annual report; or

(c) Issuance of a compliance notice.

3. A Contractor shall compile and submit a performance assessment report to the Secretary-General in accordance with, and in the format set out in, the relevant Guidelines. The report shall describe the assessment process undertaken by the Contractor, including who conducted it and which independent experts were engaged.

3bis. The Secretary-General shall publish the report and provide opportunity for Stakeholders to comment, and at the end of that consultation period shall transmit the report and any Stakeholders' comments to the Commission for review.

4. The Commission shall review a performance assessment report and any stakeholder comments received to it at its next available meeting, provided that the report has been circulated at least 30 Days in advance of such meeting. The Commission should, where necessary and appropriate, consult external experts to review the performance assessment. The Secretary-General shall make public the report and the findings and recommendations resulting from the Commission's review.

5. Where the Commission considers the performance assessment ~~undertaken by the Contractor~~ to be unsatisfactory or the report submitted to be inadequate, in relation to the applicable Standard and taking account of the relevant Guidelines and the Environmental Management and Monitoring Plan, the Commission may require the Contractor to:

(a) Repeat the whole or relevant parts of the performance assessment, and revise and resubmit the report;]

(b) Submit any relevant supporting documentation or information requested by the Commission including a revised report; or

[(c) Appoint, at the cost of the Contractor, an independent competent person to conduct the whole or part of the performance assessment and to compile a report for submission to the Secretary-General and review by the Commission].

6. Where a Contractor has previously submitted two successive unsatisfactory performance assessments ~~reports and or~~ the Commission has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor in accordance with the Guidelines, the Commission may procure, at the cost of the Contractor, an independent competent person to conduct the performance assessment and to compile the report.

7. ~~Where~~ Where, as a result of paragraphs 5 and 6 above, a revised assessment and report is produced, paragraph 4 above shall apply to the revised assessment.

8. Where, as the result of a review by the Commission under paragraph 4 above, the Commission concludes that a Contractor has failed to comply with the terms and conditions of its Environmental Management and Monitoring Plan or that the plan is determined to be inadequate in any material respect, the Secretary-General shall:

(a) Issue a compliance notice under regulation 103 or;

(b) Require the Contractor to deliver a revised Environmental Management and Monitoring Plan, taking into account the findings and recommendations of the Commission. A revised plan shall be subject to the process under regulation 11.

9. The Commission shall report annually to the Council on such performance assessments and any action taken pursuant to paragraphs 5 to 8 by it or the Secretary-General. Such report shall include any relevant recommendations for the Council's consideration. [Such report shall be published on the Authority's website.](#)

~~10.—The Secretary-General shall effectively manage the information from a performance assessment of the Environmental Management and Monitoring Plan.~~

[11. The Secretary-General shall inform the sponsoring State or States of any action taken pursuant to this regulation.](#)

4. Please indicate the rationale for the proposal. [150 word limit]

We support the amendments inserted by the Facilitator, if not indicated otherwise. In addition, we propose a few amendments, also in tracked changes. Regarding the proposed Para 1 (d): We support this wording discussed at the meeting: The ISA should retain powers to require a Contractor to re-visit an EIS and its conclusions and to consider how this evaluation feeds into the EMMP, particularly in the event that monitoring shows any EIA finding to be materially flawed. Furthermore, it is unclear why this regulation has been changed into the "review" of performance assessments (see heading) while it was originally a regulation on the duty by the contractor to develop and submit such assessments. The new Para 10 should either be reformulated/further specified or deleted, as it is not clear what "effective management" means.