

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27<sup>TH</sup> 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 and send to [council2022@isa.org.jm](mailto:council2022@isa.org.jm).

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

USA

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

52 Review of the performance assessments of the Environmental Management and Monitoring Plan

**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.**

1. A Contractor shall conduct performance assessments of the Environmental Management and Monitoring Plan. The Commission shall review the performance assessments of the Environmental Management and Monitoring Plan undertaken by 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 applicable Regional Environmental Management Plan; ~~if any; and~~
- (d) 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.

1(bis). In conducting a performance assessment of the Environmental Management and Monitoring Plan, the Contractor shall take into account:

- (a) changes in knowledge, technology, mining patterns, monitoring techniques and detection capabilities;
- (b) the outcomes of management reviews of the environmental management system conducted under regulation 46(2)(e); and
- (c) information and data derived from monitoring at the mine site and impact area as well as from any Exploitation by other Contractors.

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; ~~or~~
- (d) **When deemed necessary by the Council in response to third-party or whistleblower information submitted to the Council.**

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.

4. The Commission shall review a performance assessment report at its next available meeting, provided that the report has been circulated at least 30 Days in advance of such meeting. 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 to be unsatisfactory or the report submitted to be inadequate, **in accordance with these regulations and the applicable Standards 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 an** unsatisfactory performance assessments ~~or~~ the Commission has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor ~~in accordance with consistent 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.

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

We agree with the many delegations who prefer to strike "if any" after referencing the applicable REMP. Further in paragraph 1, we recommend the addition of a part (d) to specify that the EIA and EIS should be reviewed and taken into account in the process of reviewing the EMMP. In this way, the Contractor will be able to leverage site- and impact area-specific monitoring data to verify the findings of the EIA and EIS and evaluate whether those new data warrant updates to conclusions presented in the EIA and EIS and therefore to the EMMP. We also recommend the addition of a paragraph 1bis to include consideration of changes in knowledge, technology, monitoring techniques and detection capabilities, together with information and data derived from monitoring at the mine site and impact area and from Exploitation by other Contractors, in conducting the performance assessment of the EMMP. In paragraph 2, we support retaining the more frequent annual review option for performance assessments, at least early on in exploitation, given the nascency of the industry and the need for adaptive management as our understanding of environmental impacts and how to manage them changes over time. We also suggest a new paragraph 2(d) to allow for an ad-hoc performance assessment in response to information submitted by third parties for the Council's consideration. In paragraph 5, we propose referencing the regulations and Standards in addition to the Guidelines. In paragraph 6, if a Contractor is not submitting regular reports or is

otherwise clearly out of compliance within a year's time frame, we believe that it makes more sense not to wait for multiple unsatisfactory annual assessments before hiring an external reviewer to conduct the annual assessment.