

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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

Green text is in original draft; **blue text** indicates Germany's textual proposals

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 Performance assessments of the Environmental Management and Monitoring Plan

1. A Contractor shall conduct performance assessments of their 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. In conducting such a performance assessment of the Environmental Management and Monitoring Plan, the Contractor shall ~~ensure~~ 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;
- (c) ~~The conformity of] [That] The conformity of the plan with [takes into consideration] [with]~~ the 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.
- (e) The changes in knowledge, technology, mining patterns, monitoring techniques and detection capabilities are reflected;
- (f) The outcomes of management reviews of the environmental management system are conducted under regulation 46(2)(e); and
- (g) Information and data derived from monitoring at the mine site and impact area as well as from any Exploitation by other Contractors is provided.

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 every twenty-four months

2bis. An ad hoc performance assessment may be requested by the Council [or the] [[Compliance body]] following:

- (a) An Incident or Notifiable Event;
- (b) Receipt of an unsatisfactory annual report;
- (c) Issuance of a compliance notice or
- (d) When deemed necessary by the Council in response to third-party ~~[or whistle-blower]~~ information submitted to the Council.

3. A Contractor shall hire a competent and independent auditor to compile and submit a performance assessment report to the Secretary-General in accordance with, and in the format set out in, the relevant Guidelines.

4. [The Secretary-General shall publish the Performance Assessment Report and provide opportunity for Stakeholders to comment, and at the end of that consultation period shall transmit the report and any Stakeholder's comments to the Commission [and Compliance Committee / Inspector-General].] The Commission shall [, in consultation with the [Compliance Committee / Inspector-General]] review ~~[a] [the]~~ 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. [If the Commission does not possess sufficient expertise amongst its members, it shall consult independent experts to review the performance assessment.—]The Commission should, where necessary and appropriate, consult external experts to review the performance assessment. [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.]

5. Where the Commission upon review of the report and any Stakeholder comments received in relation to it, [and upon the advice of the [Compliance Committee / Inspector-General]] considers the performance assessment to be unsatisfactory or the report submitted to be inadequate, in relation to the applicable Standards, relevant Guidelines and the Environmental Management and Monitoring Plan, the Commission may require, after providing the Contractor with a reasonable opportunity to address any inadequacies, the Contractor to:

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

(b) 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 the Commission has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor consistent with the [applicable Standards] [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, 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 Commission shall:

(a) Recommend to the Council to 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 inform the [Ss]ponsoring State or States of any action taken pursuant to this regulation.

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

We suggest that in Para 1 c) former text is reinstated. REMPs should not be considered but activities should be in accordance with REMP provisions.

We support the other amendments proposed by the facilitator.