

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH SESSION:
COUNCIL - PART I**

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

1. Name of Working Group:

IWG ENV

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

Federal Republic of Germany

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

DR 52

Red bold text indicate Germany's textual proposals

4. 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 the ir 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 mitigation and management measures included in the Environmental Management and Monitoring Plan, as a part of the approved pPlan of Work;

(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 the plan measures included in the ~~Environmental Management and~~

~~Monitoring Plan and take into consideration 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.

(g)bis The implementation report of the Environmental Management and Monitoring Plan, as well as the comments and evaluation from the Commission in accordance with Regulation 48 above.

(g)ter Any finding of the Inspectors, especially those findings that indicate the non-compliance of the Contractors towards the submitted and approved Environmental Monitoring and Management Plan, as well as the recommendations on measures to be taken as shown in the inspection result.]

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] [Compliance body] following:

- (a) An Incident ~~or Notifiable~~;
- (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 **independent** 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 **treated the same as a modification of a Plan of Work pursuant to regulation 57 mutatis mutandis** ~~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 Ssponsoring State or States of any action taken pursuant to this regulation.

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

- We have noted that there is some inconsistency with the amendments proposed in Paragraphs 1 a and c. While we support the clarifying language of Paragraph 1a, we would not see the need to repeat conformity with the EMMP in Para 1c. Instead, the focus of Para 1c should be conformity with the applicable Regional Environmental Management Plan.
- It appears a general issue across the regulations how to refer to REMPs. The wording used here and in some other places, i.e. that REMPs are “*taken into consideration*” is insufficient. For example, any protected area designated with an REMP is nothing to consider but is a mandatory requirement to be respected. We therefore propose that 1c reads “The conformity of the plan with the applicable Regional Environmental Management Plan.”
- We support the proposed insertion of paragraph 1g(ter), suggesting that the assessments also refer to the findings of inspectors.
- We welcome the addition of the new text in Para 4 regarding the publication of the report and we assume that this section was subject to the work by the intersessional group on stakeholder consultations.
- Also in Paragraph 4, in the last sentence, we suggest the addition of “independent” so that external independent experts are consulted for the review.
- In Paragraph 6, a verb appears to be missing, needs to be revisited,
- In Paragraph 8b, we suggest a rewording of the last sentence so that it reads: “A revised plan shall be treated the same as a modification of a Plan of Work pursuant to regulation 57 *mutatis mutandis*”. We hold the view that a revision of an EEMP should be treated as a modification of a plan of work, so that Reg 57 regarding “material change” shall be applied.)
- Lastly, we have noted in the explanatory text box the proposal to move the text currently in Paragraphs 1 a-g into the EMMP guideline. We would be open about the placing of these provisions, however, if taken out of the regulations, the appropriate place would be an EMMP standard, rather than a guideline. This is also supported by the current wording in the chapeau paragraph where it says that the “contractor shall”, hence underlining the bindingness of these provisions.