

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION: COUNCIL -
PART III**

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:

President's Text

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

The Pew Charitable Trusts

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

DR 26

*Blue font are proposed amendments by the Council President.

*Pew's amendments are indicated as in-line edits in red font.

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.

1. A Contractor shall lodge an Environmental Performance Guarantee in favour of the Authority and no later than **30 days before** the commencement date of Commercial Production in the Mining Area.

2. The required form and amount of the Environmental Performance Guarantee shall be [assessed and recommended by the Commission and] determined [by the Council] **at the time it considers the application for a Plan of Work for Exploitation** according to the applicable Standards and take account of the applicable Guideline, and shall reflect the forecasted costs required for:

(a) The premature closure of Exploitation activities;

(b) The **implementation of the Contractor's Closure Plan ~~decommissioning and final closure of Exploitation activities, including the removal of any Installations and equipment; and~~**

(c) The post-closure monitoring and management of residual Environmental Effects.

(d) **The implementation of the Emergency Response and Contingency Plan pursuant to Regulation 33, or otherwise.**

(e) **The delivery of the Contractor's Environmental Management and Monitoring Plan**

(f) **Remediating or compensating any environmental damages arising from Contractor activities that were not predicted and permitted in the Plan of Work,**

on the basis of the principle that whoever produces pollution should cover the costs their pollution imposes on others.

4 (e) At each renewal of an exploitation contract.

4 (f) At any time that the Environmental Performance Guarantee, or any part of it, is used or drawn upon by the Authority.

5. A Contractor shall, as a result of any review under paragraph 4 above, recalculate the amount of the Environmental Performance Guarantee within 60 Days of a review date and submit this calculation to the Secretary General for forwarding to the Commission for their review. [The Commission, in consultation with the Finance Committee, shall promptly assess and make appropriate recommendations to the Council, which shall determine the revised amount. Within 30 days, the Contractor shall] ~~and~~ lodge a revised guarantee in favour of the Authority.

6. The Authority shall hold such guarantee **for the necessary duration** in accordance with **these Regulations, and** its policies and procedures, which shall provide for:

- The repayment or release of any Environmental Performance Guarantee, or part thereof, upon compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee; or
- The forfeiture of any Environmental Performance Guarantee, or part thereof, where the Contractor fails to comply with such obligations.
- **Payments by the Contractor to return the Environmental Performance Guarantee to its original amount if the Environmental Performance Guarantee is used by the Authority.**

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

Para 1: In paragraph (1), we suggest the timeframe for lodging of the EPG should be ‘no later than 30 days before commencement of Commercial Production’ to allow the ISA sufficient time to confirm receipt and check that the lodgement meets relevant requirements.

Para 2: We suggest clarification that the amount of EPG is determined by the Council at the time it approves to Plan of Work for Exploitation, as this needs to be clear at the outset, and incorporated into the Plan of Work as a condition of the contract. We suggest that the wording in sub-paragraphs (b) and (c) can be streamlined as the Closure Plan includes within its scope the Contractor’s obligations with regards to decommissioning, removal of equipment, post-closure monitoring etc.

We also suggest including in paragraph (2)’s list of sub-paragraphs, the Emergency Response and Contingency Plan, and possibly also the EMMP, and/or a wider ‘Polluter Pays’ principle provision, depending on the outcome of the policy decision by Council with regard to the breadth of focus of the EPG. We will submit textual proposals to this effect.

Para 4 and 5: In paragraph (4), we propose the addition of new sub-paragraphs (e) and (f) to add to other trigger points for review of the EPG amount, namely (e) at each renewal of an exploitation contract, and (f) any time that the EPG has been used.

We support amendments to paragraph (5). The ISA should recalculate the bond on review, not just the Contractor. This is important to retain control over any revisions to the EPG type and amount that the Council originally approved. We also wonder whether the Finance Committee should play a role here, perhaps being consulted by the LTC.

Para 6: We suggest a light amendment to the chapeau of paragraph 6 to clarify that the Authority should hold the guarantee ‘for the necessary duration’ and in accordance with ‘these Regulations, and’ relevant policies and procedures. We also recommend addition of a new sub-paragraph (c) to cover new payments from the Contractor where the EPG is diminished through use.