

THE PEW CHARITABLE TRUST'S COMMENTARY

***ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON
EXPLOITATION OF MINERAL RESOURCES IN THE AREA,
DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)***

Key

Black font, red font, and grey text-boxes are replicated from the Draft Regulations text.

Blue font represents commentary or edits proposed by The Pew Charitable Trusts.

Regulation 61

Post-closure Monitoring pursuant to Closure Plans / [Closure Monitoring]

~~1. A Contractor shall implement the Final Closure Plan in accordance with Best Environmental Practices and Good Industry Practice and shall report to the Secretary-General on the progress of such implementation on an [annual] [two-year] basis [after an initial 5-year period] [or on a case-by-case basis agreed by the Council on recommendation from the Commission]. This report shall include a summary of the results of monitoring, conducted in accordance with the applicable Standard and pursuant to the post-closure monitoring programme, and management actions taken in response to any adverse Environmental Effects identified through monitoring, until completion [of execution] of the Final Closure Plan.~~

1. ~~Alt.~~ A Contractor shall implement the Final Closure Plan and shall report to the Secretary-General on the progress of such implementation, including a summary of the results of monitoring, conducted in accordance with the applicable Standard and pursuant to the monitoring programme, and management actions taken in response to any ~~[residual]~~[remaining] adverse Environmental Effects identified through monitoring, until completion of execution of the Final Closure Plan. Such report will be submitted in accordance with the following schedule: on an annual basis during the first [3]/[5] years after cessation of mining activity, on a two-year basis during the next [4]/[6] years, on a five-year basis during the remaining term of the Closure Plan. This schedule [may] be adjusted by the Council based on recommendations from the Commission. If significant adverse Environmental Effects are detected, the Contractor shall report more frequently as required by the Council.

[1. bis The purpose of post-closure monitoring is:

(a) To obtain evidence that the contractor fulfilled its obligations under these Regulations including with regards to the effective protection of the Marine Environment ~~[including any remediation measures required by the Closure Plan]~~, and to verify that there are no more impacts from the Exploitation activities arising after Closure cessation;

[(b) To ~~implement~~ [accompany and document] the restoration and rehabilitation (wherever possible) of the Marine Environment; and]

(c) To get new knowledge and data about ecosystems and possibility of their restoration and rehabilitation.]

2. The Contractor shall continue to monitor the Marine Environment for a such period defined in the Closure Plan after the cessation of activities until the Closure objectives have been achieved as set out in the Closure Plan. ~~[and for the duration provided for in the Standards and taking into account Guidelines.]~~

2. bis Monitoring data, [collected by the Contractor pursuant to this Regulation, Regulation 92 bis and its Closure Plan,] shall be released publicly in an accessible format, according to the applicable Standard and taking into consideration Guidelines. ~~[at in] intervals [set out defined] in the Final Closure Plan, [according to the Standard, adhering to internationally recognized data principles, consistent with Best Scientific Practices, [in annual intervals].~~

3. Upon completion of implementation of the Final Closure Plan, the Contractor shall, in accordance with the procedure described in the applicable Standard, hire an ~~competent, independent and accredited~~ Independent A auditor to conduct a final compliance assessment and submit a final compliance assessment report, according to the applicable Standards and taking into consideration the Guideline, to the SecretaryGeneral to ensure that the Closure objectives contained in the Final Closure Plan has been [successfully delivered] ~~[met]~~. Such reports shall be reviewed by the Commission at its next meeting, provided that it has been published on the website of the Authority~~circulated~~ at least 30 Days in advance of the meeting.

3. bis The Commission shall provide a report and recommendations to the Council for consideration, who shall decide whether, the objectives of the Final Closure Plan have been achieved, which decision shall be relevant to the retention, release, forfeiture or use by the Authority of the Contractor's Environmental Performance Guarantee. The report shall be published at the Authority's website in accordance with Regulation 92.

4. If, on the basis of the auditor's report and Commission's recommendations provided pursuant to paragraphs 3 and 3bis, the Council decides that a Contractor has failed to meet the [conditions of, or deadlines related to] ~~[objectives of]~~ the Final Closure Plan and reporting hereon, the Council shall direct the Contractor [what further action must be taken to achieve satisfactory delivery of the Closure Plan] to take the necessary action to achieve the objectives of the Final Closure Plan.

Comments

- One regional group and several delegations preferred paragraph 1 Alt over the original paragraph 1.
- It has been proposed by several delegations that paragraph 1 bis might be better placed in draft regulation 59 which sets forth the objectives of the closure plan. Furthermore, it has been suggested to delete sub-paragraph 1 bis (b) as this relates to implementing restoration and rehabilitation and not post-closure monitoring. This should be discussed and resolved

DR61 deals with two separate procedures (i) **Closure Monitoring** [paragraphs (1)-(2 bis)], and (ii) **Completion of Closure** [paragraphs (3)-(4)]. **We suggest these be divided into two separate and appropriately-titled regulations.**

Paragraph (1) includes some text that seems superfluous, and could be deleted, namely “...including a summary of the results of monitoring, conducted in accordance with the applicable Standard and pursuant to the monitoring programme, and management actions taken in response to any ~~residual~~[remaining] adverse Environmental Effects identified through monitoring, until completion of execution of the Final Closure Plan”.

We agree that **paragraph (1 bis)** could move to DR59. In that paragraph ‘Closure’ should be capitalised.

In **paragraph (2)**, “cessation of activities” should be “cessation of Commercial Production”.

In **paragraph (3)** we suggest simplifying the drafting of “conduct a final compliance assessment and submit a final compliance assessment report” to “assess and report”. We believe the LTC would receive one report so, singular ‘report’ is fine.

As a small drafting note, we suggest that **paragraph (3 bis)** could begin “Based on its review under paragraph (3)...” and the comma after ‘whether’ should be deleted.

In **paragraph (4)**, we suggest referring to the ‘commitments contained in the Closure Plan’ (and ensuring that Annex VIII and DR58 are clear that the Closure Plan will contain specific and measurable commitments from the Contractor).

We consider that this DR61 would benefit from an additional provision clearly to **empower the ISA to use the Contractor's Environmental Performance Guarantee** to fund the ISA or contracted third-parties to deliver closure activities, where the Contractor has not satisfactorily completed the commitments contained in the Final Closure Plan. Though this is alluded to in paragraph (3)(bis), it is a crucial part of the regime, and we think should be expressly stated.