

Consultation response

Part 1: Your details

Original language of response: English

Name: Anonymous

Country of residence: Germany

Are you willing to let us publish your response publicly on the Global Tailings Review website? Yes

Please select which stakeholder group you are representing: Mining Industry

If 'Other', please specify below:

Are you responding on behalf of an organization? Yes

Please give the name of the organization: Anonymous

Your level within the organisation: Management

Part 2: Your views on each of the Principles and Requirements in the Standard

Topic 1: Knowledge Base

Principle 1

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 1 do your comments relate to?

Comments on the Principle itself, Requirement 1.3

Your comments on Principle 1

1.1) The term "regular" or "regularly" is referenced in this section. The footnote provides some clarity.. Would it be more appropriate to use "regularly at the EOR's discretion"? Comment for Principle 1 / Principle 2/ Footnote 4 / Footnote 10 The "knowledge" is and will continue to be based on all available data TMFs will be designed based on this data. EORs of operating sites will make decisions based on the available data. The "Consequence Classification" and "Loading Criteria" are extremely conservative so we are not sure the benefit of including this footnote. If this document is already proposing the most stringent, conservative criteria, it seems this is an "over and above" statement that may cause confusion and may be impractical to "capture" as it states due to the significant uncertainties. If this footnote is included as-is, it will be a significant challenge for all readers to have the same interpretation of what it means. 1.3) "flow failure" is not defined. Include "flow failure" in the Glossary The overall aim is prevention of catastrophic failure of tailings facilities - regardless of the variable circumstances listed in this footnote. For each of

the listed pieces of information to remain in the standard, we think it should be demonstrated how it pertains directly to tailings facility design, emergency preparedness and emergency response: specifically how each piece might itself drive modifications to such designs and plans.

Principle 2

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 2 do your comments relate to?

Comments on the Principle itself, Requirement 2.4, Requirement 2.3, Requirement 2.2, Requirement 2.6, Requirement 2.5

Your comments on Principle 2

2.2) Not all tailings facilities warrant such independent review. Independent Review should not be the primary tool, but rather secondary to strong internal governance and management. Some de minimus threshold is required here - based on consequences of failure. An independent technical reviewer may also be a regulator. For clarification add: "or the regulator". 2.3) "management plans for planned activities". E.g., construction and filling of tailings facilities. I.e., not for impacts of unplanned catastrophic failures. This appears to be a mis-understanding of the Mitigation Hierarchy as borrowed from the field of biodiversity management. The MH is applied to planned activities - not unplanned catastrophes. It is likely that rights to compensation are already established in the laws of mining jurisdictions and (self-)insurance against such liabilities exists. For the purposes of this Standard, which aims first & foremost to prevent catastrophic failure of tailings facilities, a compensation requirement in case failure occurs can be acknowledged, but up-front preparation and assurance of such compensation should not be a requirement. Non-financial compensation for residual impacts of planned activities may be required by some regulators where appropriate. For the sake of legal certainty and planning security, the wording "future" compensation is misleading. Since impacts of planned activities normally are assessed before the project starts, the compensation should also be assessed and stipulated in this phase. Therefore the word "future" should be deleted. 2.4) Definition or guidance for "Material Change" would be beneficial. This is left for interpretation currently. Interpretation will differ based on the reader. Moreover, this requirement should be limited to material changes to the social or environmental conditions. Additional to Principle 2) Without wishing to downplay the importance of respecting Human Rights, Human Rights considerations should be an integral part of the updated knowledge base & alternatives analysis throughout the life cycle of the facility. To maintain focus on preventing catastrophic failure and its consequences, the whole of TOPIC II (Principle 3) should be integrated into Principles 1 & 2.

Topic II: Affected Communities

Principle 3

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 3 do your comments relate to?

Comments on the Principle itself, Requirement 3.3, Requirement 3.1

Your comments on Principle 3

3.1) In the EU, human rights due diligence occurs during the State-mandated processes applicable to mining, including as part of the permitting of the operation, rather than a separate process. Add to Footnote 13: "Human rights due diligence may occur during the State-mandated processes applicable to mining, including as part of the permitting of the operation, rather than a separate process." under Principle 2 and change from "could result in loss of life" to "could include loss of life"

3.3) The term "in good faith" is used to refer to the effort an operator should take if the risks of potential tailings facility failure could result in loss of life. This clause creates uncertainty in the amount of effort an operator should actually put into considering risk minimization. Also, the term says "shall consider", not assess or analyse, which would put a more definitive requirement on the operator to undertake a well-funded and thought-out program. Shift under Principle 2 and change from "could result in loss of life" to "could include loss of life".

Topic III: Design, Construction, Operation and Monitoring of the Tailings Facility

Principle 4

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 4 do your comments relate to?

Comments on the Principle itself, Requirement 4.3, Requirement 4.1, Requirement 4.2

Your comments on Principle 4

This is a presumption of guilt and you must prove innocence. We do not feel this is the best approach. What is the value in including a classification table if you don't actually use it to complete a classification? Only in the "rebuttal" approach would the classification table become valuable? This appears to be a massive reach by the expert panel and will be a barrier for adoption. This Principle should be discussed and modified. 4.1) This Requirement should be discussed and modified. If one considers a Source-Pathway-Receptor model for Consequences, this Requirement seems unduly and exclusively focussed on the potential Source, whereas it should also be possible to take more efficient measures to eliminate Pathways &/or Receptors. E.g., set and enforce restrictions on residential development within the inundation zone. c) "non-credible flow failure state" is not understandable in its current form. A definition or explanation is required. If no material changes occur it is unlikely that the classification changes. So it is sufficient to review the classification every 5 years. This is congruent with EU law. The consequence of failure classification should be reviewed every 5 years. 4.2) It is not realistic to require this of all tailings facilities regardless of risk. Immediate rebuttals are likely to be obvious for the vast majority of tailings facilities covered by the scope of

this standard. This Requirement should be discussed with stakeholder experts and modified. Any new wording should focus on the intent rather than a specific mechanism. 4.3) This does not seem proportionate or realistic. What if such an upgrade is not necessary or warranted as per an appropriate assessment of risk? Perhaps in many cases, "upgrade" would simply make no sense. This Requirement should be discussed with stakeholder experts and modified. Any new wording should focus on the intent rather than a specific mechanism.

Principle 5

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 5 do your comments relate to?

Comments on the Principle itself, Requirement 5.3

Your comments on Principle 5

5.3) "Consequence Classification" is not defined. Include a reference to the relevant Table by way of definition. 5.5) To what level of design is this intended? It is very hard to make a statement such as this without including the expected level of design. We would assume "conceptual" as you likely only have enough data/information to complete a conceptual design for the specified stages. This would change through time and you could definitely improve upon the initial conceptual designs for the stages, but you will not have enough data/information to complete anything further than "conceptual" at the initial stages.

Principle 6

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 6 do your comments relate to?

Comments on the Principle itself, Requirement 6.3, Requirement 6.4

Your comments on Principle 6:

6.3) How are "conservative design criteria" to be defined? 6.4) To apply this requirement over all kind of tailings facilities without consideration of risk, consequence classification and possible failure severity is not appropriate. Differentiate between facilities where catastrophic failure cannot occur and others. Differentiate between different consequence classifications and risks.

Principle 7

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 7 do your comments relate to?

Comments on the Principle itself, Requirement 7.1, Requirement 7.2, Requirement 7.4, Requirement 7.8, Requirement 7.5

Your comments on Principle 7

7.1) Some flexibility should be provided for the presence and form of any TMS and/or ESMS for requirement 7.1. 7.2) To apply this requirement over all kind of tailings facilities without consideration of risk, consequence classification and possible failure severity is not appropriate. Differentiate between facilities where catastrophic failure cannot occur and others. Differentiate between different consequence classifications and risks, possible failure severity is not appropriate. Construction vs Design Intent Verification should be included in Glossary. It is unclear who should write the construction records report. Should this not be a requirement of the EOR or RTFE? EOR should "sign and seal" this report. 7.4) There is no need to update OMS Manual every year, it should be updated in the event of significant structural and functional changes. Delete word "annually" Some flexibility should be provided for the presence and form of any TMS and/or ESMS. Add "Operations, Maintenance and Surveillance (OMS) Manual" to Glossary. To avoid being too prescriptive with respect to form, "a TMS" would be preferable to "the TMS". 7.5) Catastrophic failure may not even be a possibility at all facilities falling within the proposed definition of "tailings facility". Modify the requirement to clarify that it does not apply to tailings facilities with lower Consequence Classifications or where catastrophic failures is not a possibility 7.8) For these requirements, we have concerns of Public Access to Information. There may be confidential information included in these documents that operators could not legally disclose. (see – 8.4 also) A review of the ESMS every 3 years would be too often if a facility was not within the extreme category. This is a good example of how this document could lead to the over-regulation of small, low risk facilities. Modify the requirement to clarify that it does not apply to tailings facilities with lower Consequence Classifications or where catastrophic failures is not a possibility.

Principle 8

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 8 do your comments relate to?

Comments on the Principle itself, Requirement 8.1, Requirement 8.2, Requirement 8.4

Your comments on Principle 8

Should also be "to minimise risk" as for other Principles. 8.1) Change to "credible potential failure modes" 8.2) It should be clarified that public disclosure of decisions should be in accordance with the law of the country concerned. Delete in the second sentence the word publish or make clear that this requirement depends on the subject. 8.4) It is not acceptable, that requirements on corporate management (tools), disclosure and governance are in principal the same for all kind of tailings facilities regardless of consequence classification or risk. The frequency of the reporting depends on the subject and consequence classification: Delete in the first sentence "and as a minimum on a quarterly basis. For these requirements, we have concerns of Public Access to Information. There may be confidential information included in these documents that operators could not legally disclose. (see – 7.8 also)

Topic IV: Management and Governance

Principle 9

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 9 do your comments relate to?

Comments on the Principle itself

Your comments on Principle 9

On first reading, it should be immediately obvious what "elevate" is intended to mean in this context. From our point of view it is not sufficiently clear what this principle's aim is. Risk is a combination of consequences and likelihood. This should be to minimise the consequences, the likelihood or both.

Principle 10

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 10 do your comments relate to?

Comments on the Principle itself, Requirement 10.3, Requirement 10.2, Requirement 10.1, Requirement 10.4, Requirement 10.5

Your comments on Principle 10:

There is a lack of clarity regarding the responsibilities of the EOR. Is it their responsibility to have their succession plan or is it the responsibility of the operator to be prepared for the scenario in which and EOR resigns? Referring to Req. 10.2 / Req. 10.3 & Req. 10.5: These requirements speak to corporate structure and accountability within an organization, however, it should be made clear that the liability rests with the corporation, not the individuals. 10.1) Catastrophic failure may not even be a possibility at all facilities falling within the proposed definition of "tailings facility". Modify the requirement to clarify that it does not apply to tailings facilities with lower Consequence Classifications or where catastrophic failures is not a possibility 10.2) This should be to minimise the consequences, the likelihood or both. Modify the requirement to clarify that it does not apply to tailings facilities with lower Consequence Classifications or where catastrophic failures is not a possibility. 10.4) To apply this requirement over all kind of tailings facilities without consideration of risk, consequence classification and possible failure severity is not appropriate. Differentiate between facilities where catastrophic failure cannot occur and others. Differentiate between different consequence classifications and risks. A performance incentive program for tailings facilities could lead to the lack of reporting or transparency for poor conditions. Tailings facilities may need work from time to time considering their nature as living structures constructed from earthen materials. To take away a bonus because a tailings facility requires improvements could be seen as punishment and dissuade reporting.

Principle 11

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 11 do your comments relate to?

Comments on the Principle itself, Requirement 11.1, Requirement 11.2

Your comments on Principle 11:

11.1) It should not be assumed that all tailings facilities will be required to have an ITRB. Modify the requirement to clarify that it does not apply to tailings facilities with lower Consequence Classifications or where catastrophic failure is not a possibility. The term ITRB is used, but requirement 2.2 indicates that a SIR can also be used. This makes the requirements of principle 11 unclear. 11.2) To apply this requirement over all kind of tailings facilities without consideration of risk, consequence classification and possible failure severity is not appropriate. Differentiate between facilities where catastrophic failure cannot occur and others. Differentiate between different consequence classifications and risks.

Principle 12

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 12 do your comments relate to?

Comments on the Principle itself, Requirement 12.4

Your comments on Principle 12:

12.4) Though the intention is supported, this phrasing of the Requirement is likely impractical. For practical reasons, change "not influenced" to "not unduly influenced"

Principle 13

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 13 do your comments relate to?

Yes

Your comments on Principle 13:

13.5) replace "reward" by "support"

Principle 14

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 14 do your comments relate to?

Requirement 14.1

Your comments on Principle 14:

14.1) This principle offers protection for employees and contractors who have concerns regarding a tailings facility, but what about the RTFE or EOR or SIR? There is no processes related to the protection of the most knowledgeable people working on the facility, who still rely on the operator to be paid for their work.

Topic V: Emergency Response and Long-Term Recovery

Principle 15

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 15 do your comments relate to?

Comments on the Principle itself, Requirement 15.2

Your comments on Principle 15:

To apply these requirements over all kind of tailings facilities without consideration of risk, consequence classification and possible failure severity is not appropriate. Differentiate between facilities where catastrophic failure cannot occur and others. Differentiate between different consequence classifications and risks. The term "best practice methodologies" is problematic because what works best in one regional context could be particularly ineffective in another regional context. This should be rephrased to something like "to minimise consequences including violation of human rights" or "to minimise risk". 15.2) There will not be risk of loss of life at all tailings facilities. change "due to the", to "when there is".

Principle 16

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 16 do your comments relate to?

Comments on the Principle itself

Your comments on Principle 16:

To apply these requirements over all kind of tailings facilities without consideration of risk, consequence classification and possible failure severity is not appropriate. Differentiate between facilities where catastrophic failure cannot occur and others. Differentiate between different consequence classifications and risks.

Topic VI: Public Disclosure and Access to Information

Principle 17

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 17 do your comments relate to?

Comments on the Principle itself, Requirement 17.1, Requirement 17.3, Requirement 17.2

Your comments on Principle 17:

The word "decisions" is problematic because it can be understood to refer to decisions of the regulator, not all of which can be made public depending on the jurisdiction. Principles of public access to information on decisions are often set out in national law and vary across jurisdictions. It should be clarified that public disclosure of decisions should be in accordance with the law of the country concerned. 17.1) Data and information about possible risks should be made only available to relevant stakeholders but should not necessarily be publicly disclosed, in order to prevent misuse. Change the term "publicly disclose" to "Make available to stakeholders" Footnote 36 and 37 could be extremely onerous and cost prohibitive for the operator. To compile and provide the specified information is time consuming and may require significant expenditure. Recommend removing "at no charge, as soon as possible" from these Footnotes and this Requirement. It may well be beneficial to provide this information, but the timing, and the cost, need to be considered which they don't appear to be in this standard. 17.3) To apply these requirements over all kind of tailings facilities without consideration of risk, consequence classification and possible failure severity is not appropriate. Differentiate between facilities where catastrophic failure cannot occur and others. Differentiate between different consequence classifications and risks.

Part 3: Your views on the Standard

Your view as to whether the content of the Standard meets your expectations

Your view as to whether the content of the Standard meets your expectations (closed question):

5: Goes well beyond my expectations

Please summarize why you chose this option:

1) The contents of the standard obviously derive from requirements for tailings ponds. However the standard includes all kind of extractive waste facilities (wet and dry). Therefore some requirements seem not appropriate for dry Tailings. 2) To apply these requirements over all kind of tailings facilities without consideration of risk, consequence classification and possible failure severity is not appropriate. Therefore it should be differentiated between facilities where catastrophic failure cannot occur and others; and between different consequence classifications and risks.

Your view on whether the Standard will create a step change for the industry in the safety and security of tailings facilities

Your view on whether the Standard will create a step change for the industry in the safety and security of tailings facilities (closed question):

2: Will deliver minor improvements to the safety and security of tailings facilities

Please summarize why you chose this option:

Does the content of the Standard address all aspects of tailings facility management adequately?

Does the content of the Standard address all aspects of tailings facility management adequately (closed question)?

No

Please explain why and/or what is missing:

Part 4: Suggestions for topics to be included in the accompanying Recommendations Report

On which topics would you expect to have further clarification or guidance in this document?

Other information

Non-fitting response text (text submitted which did was not in response to one of the questions above)

Attachment 1 reference (if applicable)

Attachment 2 reference (if applicable)