

I support the comments already made by Bruno Milanez and Payal Sampat.

It is disappointing to see that the ambition outlined in the principles and expanded in the forward seem to have been eroded in this draft standard. I also wish to express my opposition to any attempt to have this standard apply only to new tailings facilities, rather than existing ones.

That said, here are my comments, suggestions, and a few questions for clarification regarding the draft.

Requirement 1.2: What is meant by “regularly updated”? Minimum timeframe should be specified.

Requirement 1.3: Where the risk is “very high” or “extreme”, we should not be talking about characterizing the risk, we should be talking about eliminating it.

Requirement 1.4: Stakeholders must include workers, their families, and the communities and cultures that depend upon them.

Requirement 2.1: Emergency Preparedness and Response Plans must be rehearsed regularly (at least annually) or they will be ineffective when required. Timeframe should be specified.

Requirement 2.2: How will independence be assured, when almost certainly the mine owner/operator will be paying the ITRB or the independent senior technical reviewer?

Requirement 2.3: Add workers, i.e. “... and meaningfully engage potentially affected workers and communities in the process.”

Requirement 2.4: If “adaptive management” is taken to mean a variant of continuous improvement, then it should be noted that continuous improvement is not always applicable as a process. Continuous improvement is only applicable if what is presently being done is generally correct, but needs to be done better, or more frequently. If, however, what is presently being done is fundamentally incorrect, then it cannot be “continuously improved” to become good. In the context of tailings facilities, if they are fundamentally unsound they cannot be “adaptively managed”; rather, they must be replaced with something that is reliable and safe – and that something should be determined in consultation with workers and other stakeholders. Notwithstanding the Panel’s scope of work, if best practice indicates that certain technologies are known to be unreliable then due diligence would require a mining operator to refrain from using them or immediately remediate them.

Requirements (2) (footnotes): While I personally strongly agree that “data collection should... follow established ethical research protocols and consider matters of privacy and data sovereignty” how will this affect rule-making in the USA where recent changes seem to exclude some regulatory agencies from taking into account any data that cannot be fully traceable and sourced?

Requirement 2.5: What is meant by “periodically”? Minimum periodicity should be defined.

Requirement 2.6: What is meant by “the extent commercially reasonable”? Why is commercial reasonability the only criteria? What about ethical reasonability? Commercial reasonability provides an excuse for inaction.

Requirement 3.1: Add workers: i.e. "... including impacts on the individual and collective rights of indigenous peoples and tribal peoples, and workers, their families, and the communities and cultures that rely on them".

Requirement 3.3: Where sudden physical and/or economic displacement may occur, provisions for resettlement are necessary, but not sufficient. For example, the impacts on workers, who may lose their lives or their livelihoods in the aftermath of a disaster, thereby affecting also their families, and the communities and cultures that rely on them, must be considered. With respect to all Project Affected People, in the case of a disruption of their lives or livelihoods, the principles of a Just Transition must apply. Just Transition has become an accepted part of the dialogue on environmental issues, therefore must now be considered an international best practice. For an understanding of what this entails, see ILO "Guidelines for a just transition towards environmentally sustainable economies and societies for all" ILO, 2015 ISBN 978-92-2-130627-6 (print) 978-92-2-130628-3 (web pdf) and also IndustriALL Global Union's "A Trade Union Guide to Just Transition" <http://www.industrialunion.org/a-just-transition-for-workers>).

Requirement 7.2: This does not address the situation where the "Design Intent" was fundamentally flawed.

Various Requirements: Regarding independent technical review(s): since there can be no "independence" if the mine operator is paying the review panel or expert, the standard should point out that governments (the "competent authority") have a responsibility to regulate and enforce.

Requirement 10.1: Add reference to contractors and subcontractors, i.e. "... that is mandatory for all its subsidiaries, contractors, sub-contractors, and joint ventures."

Requirement 10.3: What is meant by a "dotted reporting line"? I think I know what this means, but it is management jargon that is not transparent to everyone. The authority and responsibility (and liability) of management should be explicit.

Requirement 10.4: Based on experience in the occupational health and safety world, a "performance incentive program" often leads to the suppression of the reporting of problems rather than their resolution, particularly in budget-constrained departments.

Requirement 11.1: It is positive that the risk assessment process refers to a "multidisciplinary team" however it must also be a multi-stakeholder team. The only people with the moral authority to assess a risk, are those who face the risk. Any risk assessment done without the full participation of those who face the risk (workers, members of potentially affected communities, etc.) is illegitimate. This is true even if there are technical skills necessary to the risk assessment – it is the responsibility of those with the necessary knowledge and technical skills to fully and patiently explain it to those who do not, and justify their responses to legitimate questions.

Requirement 11.3, 11.4 and others: the above comment about risk assessment applies to periodic reviews of any sort.

Requirement 11.5: I do not agree that any review can ever justifiably "be done by a single person".

Requirement 17.3: Only a legal prohibition should offer an excuse for non-disclosure, i.e. "Relevant information to be disclosed shall... provided that such disclosure: (i) is not prohibited by applicable law;..."

Annex 1, Glossary: Project Affected People must include “workers, their families, and the communities and cultures that rely on them”.