

Consultation response

Part 1: Your details

Original language of response: English

Name: Michael Proulx

Country of residence: Canada

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: Investor

If 'Other', please specify below:

Are you responding on behalf of an organization? Yes

Please give the name of the organization: Sustainalytics

Your level within the organisation: Executive 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?

No

Which aspects of Principle 1 do your comments relate to?

Comments on the Principle itself, Requirement 1.3, Requirement 1.2, Requirement 1.1

Your comments on Principle 1

The main point of discussion on Principle 1 involves the explicit requirement to disclose, as opposed to 'regularly update' (1.1, 1.2, 1.3), and external sourcing (i.e. the ICMM website). REQUIREMENT 1.1 Annex 1 defines Best Practices, but this needs examples, and itself needs a regularly updated schedule. I also propose that they add some criteria for due diligence when acquiring a tailings facility as a result of acquiring a mine (that the company hires an independent, qualified engineer to assess the unique risks and hazards of all tailings facilities). Two points our ESG Risk Rating evaluations would benefit from involve; a) how these standards apply to joint ventures/operators. We analyze individual companies and experience instances where a company distances itself from a material ESG issue or event because of its minority status or not being the operator, and b) due diligence disclosure on acquired TSFs.

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 2.1, Requirement 2.4, Requirement 2.3, Requirement 2.2, Requirement 2.6, Requirement 2.5

Your comments on Principle 2

Principle 2 at the mining company level is a capacity issue effectively addressed within existing mining sector standards (MAC-TSM and IRMA for example). Sustainalytics, via its new Tailings Standards and Hazards indicator (E1.3.6), has arranged these standards ordinarily, while actively engaging the standards setters on how their assurances will investigate, assess and report on meaningful engagement (further expressed in Canada's former CSR Counselor for the Extractive Sector' CSR Due Diligence Standards kit). There are mining companies who have already considered internal structures that challenge 2.2 in definition and arguably in spirit. Further, determinations of closure and post-closure costs remains ill-defined and unarticulated; the financial sector recommends, "If you are going to forecast, forecast often." Having these cost exercises updated with each TSF's report cycle would provide actionable data. Likewise, there is developing academic research on the appropriate Discount Factor Rate used in long-term calculations, such as the life-cycle of a mine, that would add veracity to periodic review of 2.5 and 2.6. Sinking fund structures could also be considered prudent for 2.5 and 2.6 at a minimum.

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?

Requirement 3.4, Requirement 3.3, Requirement 3.2, Requirement 3.1

Your comments on Principle 3

Many of these REQUIREMENTS are considered within the Sustainalytics ESG Risk Rating methodology, and with specific assessments against UNDRIP, UN PRI, OECD to name a few. It is assumed that greater disclosure to, and engagement with, affected communities, indigenous and tribal peoples will have some mitigating impact on the worst cases, and perhaps via scenario planning exercises. Again, these standards have been expressed elsewhere within a larger pool of interests.

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?

Yes

Which aspects of Principle 4 do your comments relate to?

Comments on the Principle itself

Your comments on Principle 4

The first comment from Sustainalytics on Principle 4 concerns the transition from active to inactive (4.1 c), namely that 'landform' needs definition and inclusion in Annex 1 Terms; are there stages towards 'landform' - timelines, progress reports, repurposed lands, wetland restoration/creation, etc.? Sustainalytics would encourage adopting language that includes AE/Board responsibility for all TSFs, regardless of classification. More importantly, there is little that addresses existing legacy tailings storage facilities. The technical panel report on Brumadinho highlights the need for appropriate characterisation and monitoring. Sustainalytics knows from talking to mining companies that many feel this is an area of further work in that they are confident that closed facilities are safe, but admit that the evidence is not necessarily available, usable or sufficient in scope. Further, we would contest the validity of the AE or the Board to rebut the Extreme Consequence Classification without a specified timeline of the process, when a final determination would be taken, and the consequences of that determination should it disagree with the AE and/or company Board. Lastly, 4.1 b is troublesome in that it is accounted for as a feasible plan, but not realized; the implementation of the 'feasible' plan warrants the consideration not just that there is a feasible plan.

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

Your comments on Principle 5

Again, Sustainalytics applauds the ICMM for raising these issues. We again however refer to existing standards already developed, deployed and adopted, with external evaluations explicit (IRMA). Though Sustainalytics does encourage and include company feedback and self-disclosure, we also seek external validations. Many of the components included in the REQUIREMENTS above are implied and observed in the course of normal business practice; the Principle appears more a re-statement of normative standards and practices, doing little to inform investors, regulators, authorities and communities with mining operations nearby.

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?

Your comments on Principle 6:

Principle 7

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

Yes

Which aspects of Principle 7 do your comments relate to?

Comments on the Principle itself

Your comments on Principle 7

This Principle is sufficiently detailed and in alignment with existing standards reporting timelines, 3yr reports with annual interim reports. However, it does lack details on the consequences of non-compliance. What actions are permitted under ICMM Membership guidelines, or what assistance would the organization provide to others when non-compliance results in some controversy or event? The Principle can be constructed out of existing standards that in some cases have describe the actionable outcomes for non-compliance on memberships.

Principle 8

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

Yes

Which aspects of Principle 8 do your comments relate to?

Comments on the Principle itself

Your comments on Principle 8

My comment is directed generally at the Principle, but REQUIREMENT 8.2 more specifically. At question is the last sentence, which focuses on the monitoring program's effectiveness. Sensitivity assessments and escalatory protocols need to accompany changes in the 'expected performance and any deterioration of performance' to provide confidence measures will be taken in a timely matter. The explicit mention of Accountable Executive/Board fiduciary responsibility here bolsters the value of Principle 8.

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?

No

Which aspects of Principle 9 do your comments relate to?

Comments on the Principle itself

Your comments on Principle 9

This is the Principle where this Standard can better draw from existing ones

elsewhere; on Board/Executive fiduciary responsibilities; or as came from the 2008 Financial Crisis, not having Compliance Departments report to Legal. Additionally, what needs clarification are the consequences for non-compliance - what happens when mandated additional steps are not realized? What, if any remedial action, can the ICMM take against its membership? The Management and Governance structure of the ICMM is at play here and that needs to be transparently disclosed.

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?

Your comments on Principle 10:

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?

Your comments on Principle 11:

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?

Your comments on Principle 12:

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:

In addition to workers' experience-based knowledge, and in line with previous Principles that involved community and indigenous peoples, this site specific knowledge should be available while 'planning for all stages of the tailings facility lifecycle.'

Principle 14

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

Yes

Which aspects of Principle 14 do your comments relate to?

Your comments on Principle 14:

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?

No

Which aspects of Principle 15 do your comments relate to?

Comments on the Principle itself

Your comments on Principle 15:

Part of the assessments Sustainalytics undertakes and considers are the standards that outline Emergency Response Systems - their management, implementation, deployment, training, testing etc., that would include the provisioning of short-term survival needs in accordance with pre-assessed and/or conditional risk scenarios and conditions; with capacity and delivery constraints considered in the response matrix. Again, much of this is already known and understood. What could be integrated here, and indeed throughout the standards thus far, or maybe the Standards should begin with is Topic VI: Public Disclosure and Access to Information. Start with the ICMM's declaration to and the consequences of non-compliance of, public disclosure and access to information, a top down approach.

Principle 16

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

No

Which aspects of Principle 16 do your comments relate to?

Comments on the Principle itself, Requirement 16.1

Your comments on Principle 16:

Principle 16 is long on appearances and short on substance. There is nothing new here, and the fact that this is somehow seen as needing codification is disappointing in 2020. 16.1 'Meaningfully engage' will be a contested term and could be changed to something that includes results-oriented outcomes, or reached by a consensus of affected stakeholders.

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

Your comments on Principle 17:

Public Disclosure and Transparency are crucial to maintaining a social license to operate. That ICMM is considering these while consulting the public about a global tailings initiative illustrates how removed the sector is from societal trends, complexity, and integration. The space between the mining company and the end consumer is narrowing; the age where the means and methods that record and report on the providence of materials and characteristics is upon us. Principle 7 is 'table stakes' companies' ignore at their own risk.

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):

3: Meets my expectations

Please summarize why you chose this option:

In the role of Director, Mining Research at Sustainalytics, I am familiar with the ICMM Membership and their corporate activities around tailings. Tailings, and our new Tailings Standards and Hazards indicator is a component in the larger Emissions, Effluents and Waste (EEW) material ESG issue, one of ten that we assess each company against. EEW is #1 in the frequency of event/controversy occurrence for the sector: from July 2016 to July 2019 Sustainalytics tagged 279 incidents under EEW, versus 225 for Community Relations, and 163 for Labour Relations, #2 and #3 respectively, and more than double (130) the number of incidents for #4 Occupational Health and Safety.

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:

The Standard as outlined we would expect to deliver minor improvements, more because they repackage, and in some instances advance, existing norms, rather than develop new ones. Convergence of standards, and towards the most robust grouping, should be the goal, not the re-introduction or repackaging of refinements and existing standards. One of the more salient aspects of Sustainalytics Tailings

Standards and Hazards indicator is the elegance of the ordering of the standards based on disclosure-transparency, accountability, verifiability and menu of BAPs/BATs.

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:

The adequacy of the Standard is contingent on the expected audience; an appeal to all audiences will generate little more than a statement of the status quo spiced up with aspirational language. With all due respect to importance of the undertaking and the esteemed ICMM, this is akin to asking race care drivers to set the speed limit on public roads ; too much self-regulation has been a critique levelled at sectors through time - from railroads, oil, banks, and now the mining sector as it concerns tailings management. Industry 2.0, or whatever categorization one wishes to use to describe business today, is the 'becoming' of transparency and inter-connectedness. Understanding risk exposures beyond the balance sheet are increasingly part of t

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?

Further clarification or guidance topics could include formalized tailings metrics - such as size/volume in cubic metres, volume changes, horizontal shift displacement trends, TSF contents by %, improved timelines on reporting and escalatory protocols for non-compliance, changes/sensitivities in ratings, external assessments and verifications on surrounding eco-systems and eco-services. A mapping of these Standards to the existing standards from MAC, IRMA, RMI and WGC for example. Where does the ICMM rise above and fall short of those standards?

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)