



Aktenzeichen: BAFU-061.41-42-5/9
Geschäftsfall: [TEXT]

Open consultation Global Tailings Review: Swiss comments on the new draft Global Tailings Standard

General comments:

We want to commend the authors of this draft Standard for a relatively comprehensive document aiming at improving the responsible design, construction, operation of tailing facilities. We are aware of the triggering event for the Global Tailings Review and its mandate focused on tailings.

One crucial point is to ensure that there is a need for such a separate Standard or whether the provisions of this Standard could be added into a broader strong standard on mining operations/facilities if such a standard exists. The Initiative for Responsible Mining Assurance (IRMA) might be a candidate. Alternatively, the Global Tailings Review could have been an opportunity to evaluate the need to develop a broader on mining operations in general.

We would like to stress the importance of building on existing knowledge and experience, such as the Safety guidelines and good practices for Tailings Management Facilities, and the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) regarding Environmental Impact Assessment. We would like to better understand how the draft standard is aligned or different to the « Mining Association of Canada's Tailings Management Guide».

It would be good if the output report of the Global Tailings Review could provide explanations on those elements that provide the foundation for the development of the standard.

1. Does the structure of the draft Standard adequately capture all of the important issues when it comes to tailings?

A standard, by definition¹, should be a tool to evaluate the quality of an activity or its results. In the current structure of the draft standard however, there are no (performance) indicators nor objectives that allow such an evaluation. It seems essential to include a part on performance evaluation, to assess whether performance objectives are being met; assess the effectiveness of risk management measures.

2. Does the draft Standard address the right issues, are all issues addressed or, if there are gaps, where do these exist?

The standard addresses key issues related to due diligence and mining, but we can identify gaps in the following areas:

- We would also like to point out that the OECD has elaborated a [Guidance for Responsible Business Conduct](#) which lays down the key building blocks of a due diligence standard. We can identify a few issues from the OECD Guidance which would deserve to be included in the Standard. These issues are:
 - The need to embed due diligence in the policies of the company; the “tone of the top”, meaning the need to ensure that top management considers and publicly states due

¹ Definition (ISO): “An International Standard provides rules, guidelines or characteristics for activities or for their results, aimed at achieving the optimum degree of order in a given context. It can take many forms. Apart from product standards, other examples include: test methods, codes of practice, guideline standards and management systems standards.”



diligence or responsible business conduct as a *conditio sine qua non* to business. This could be done in the preamble or a “Topic 0” section.

- Each section (“Topic”) should start with an introductory paragraph stating the reason for the section and the expected results.
 - The Knowledge Base section should state more prominently what it is for, that it aims at identifying adverse impacts and, above all risks, in order to avoid or minimize them.
 - The Affected Communities section is welcome; it could perhaps be complemented (or introduced) with a reasoning using the internationally recognized “free prior informed consent”
 - The Design, Construction, Operation and Monitoring...” section would gain being divided in 2 or 3 sections, leaving at least a single section for Monitoring (possibly also for Operation). Monitoring should also contain issues such as tracking implementation and results.
- We think that there is an important gap regarding financial aspects: it is important to include specific requirements regarding the financial aspects of the management of the tailings facility, including requirements to cover for long term maintenance costs.
 - It is important to include specific recommendations on measures to be taken to adapt to climate change.
 - We would welcome requirements on the application of the best available technology (BAT) and on the application of industry best practices to manage risk and achieve performance objectives in a technically and economically efficient manner (Best Available/Applicable Practices – BAP). The standard could provide guidance/ or a reference to e.g. EU’s “Best Available Techniques (BAT) Reference Document for the Management of Waste from Extractive Industries” (Garbarino et al., 2018)
 - Reutilization of tailings: mining is one of the most waste-generating industry. It would be a missed opportunity not to include requirements leading to a valorization of the waste.
 - Responsibility: clarify requirements regarding responsibilities within the involved companies.

3. Is the draft Standard ambitious enough and will it lead to a step-change?

The level of ambition can be raised overall, and in specific instances. An important aspect to raise the ambition is to include performance indicators. It is impossible to judge whether the standard can lead to a step-change without having a clear plan about how it will be implemented, which organization will monitor and deliver the standard. Consideration should be given to the possibility for an independent body to carry oversight and enforcement.

4. How do you assess the relationship between the draft Standard and the legislation?

A recent report on standards in extractive industries states (IISD, 2018): *“Some areas of policy are simply difficult to regulate due to the technical nature of the industry. One example is specifying what should be included in an effective management system for tailings. These gaps, so to speak, may provide a niche to be filled by voluntary standards.”* Assuming this is a solid statement, one option would be to envisage the standard as complementary to a more general legislation that oblige tailings facilities’ owners to comply with the standard.

5. Others comments

We think that it is important for the Global Tailings Review to also consider, while developing the standard, the governance options to ensure uptake, implementation and compliance, including monitoring of the standard.