

# Consultation response

## Part 1: Your details

**Original language of response:** English

**Name:** Jennifer Rietbergen-McCracken

**Country of residence:** Switzerland

**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:** Other

**If 'Other', please specify below:** Independent research organisation

**Are you responding on behalf of an organization?** Yes

**Please give the name of the organization:** Mrs

**Your level within the organisation:** Other

## 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?**

**Which aspects of Principle 1 do your comments relate to?**

**Your comments on Principle 1**

### Principle 2

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

**Which aspects of Principle 2 do your comments relate to?**

Requirement 2.1, Requirement 2.6, Requirement 2.5

### Your comments on Principle 2

2.1 The ability to influence project success and enhance value is greatest at the start of project appraisal and rapidly declines as a project advances towards implementation. Early identification and analysis of environmental, economic, social, governance and human rights risks alert company decision-makers to potential problems and enable the planning of pre-emptive mitigation strategies that can produce significant project-related cost savings. Alternatively, analyses may result in the avoidance of projects that present too great a risk of causing significant impacts to communities or the environment. In order to protect invaluable ecosystems and ensure intergenerational positive legacy, the standard could be strengthened by requesting from companies to determine if sites are in or adjacent to World Heritage Sites or other protected areas, to ensure that they avoid operating in internationally recognized areas of outstanding natural or cultural values. Similarly, and as stronger requirements will start applying to the management of TSF, it would be extremely damaging to allow companies to get around the problem by disposing or storing tailings and other residual waste into lakes, rivers or marine environment. This practice should be explicitly banned in the Standard. Similarly, companies

should ensure that TSF are located away from communities and workers' facilities, as well as from areas with moderate or higher seismic risk. 2.5 In order to demonstrate that sufficient funds have been set aside, companies can be expected to publicly disclose the amount of financial assurance. The requirement could usefully specify this. 2.6 As part of the risks relating to tailings operation and management, the requirement could explicitly refer to the importance of proving assurance for disaster management and recovery and require from companies to also publicly disclose the relevant information on a site-by-site disaggregated basis.

## **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?**

**Which aspects of Principle 3 do your comments relate to?**

Comments on the Principle itself, Requirement 3.4

#### **Your comments on Principle 3**

The standard currently has included FPIC as an optional step in respecting human rights, and only in relation to the rights of indigenous peoples. However for the standard to be in line with the UN Declaration on the Rights of Indigenous Peoples, respecting the right to FPIC of Indigenous Peoples should be mandatory during all stages of planning, design and implementation. Beyond this fundamental and internationally-recognised right, the standard could also better align with society expectations, and require companies to seek FPIC from all potentially-impacted communities (whether Indigenous Peoples or not) prior to constructing/expanding a tailings facility that has any potential to impact local communities (or environment. This would require full disclosure of risks and potential impacts and areas impacted in the event of failure. Requirement 3.4 would be strengthened if companies are also required to publicly disclose information and data on the functioning and uptake of this grievance mechanism (e.g. number and nature of concerns raised, details of actions taken in response, and special measures taken to address any repeat grievances). Such disclosure will improve transparency around tailings management and can also strengthen trust in, and use of. the grievance mechanism.

## **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?**

**Which aspects of Principle 4 do your comments relate to?**

Comments on the Principle itself

#### **Your comments on Principle 4**

To align better with the standard's aim of zero harm and zero tolerance for human fatality, the consequence classification, matrix could be revised to classify as 'Extreme' any failure that would result in any loss of life, instead of the current threshold of 100+ human fatalities. The current 5 levels could be reduced to Low, High (currently 'Significant') and Extreme (currently 'High' and above)

### **Principle 5**

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

**Which aspects of Principle 5 do your comments relate to?**

**Your comments on Principle 5**

### ***Principle 6***

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

**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?**

**Which aspects of Principle 7 do your comments relate to?**

**Your comments on Principle 7**

### ***Principle 8***

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

**Which aspects of Principle 8 do your comments relate to?**

Requirement 8.4

**Your comments on Principle 8**

'Public disclosure requirements' is vague. It would be clearer and stronger if this requirement was linked to Topic VI where detailed public disclosure requirements of the standard are itemised.

## ***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?**

**Which aspects of Principle 9 do your comments relate to?**

**Your comments on Principle 9**

### ***Principle 10***

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

**Which aspects of Principle 10 do your comments relate to?**

Requirement 10.2

**Your comments on Principle 10:**

10.2 Corporate goals to protect environmental values, human rights, the health and socio-economic wellbeing of communities can better be realised when businesses adopt internal accountability and incentive mechanisms for performance, which can be applied to corporate-level decision-makers as well as site-level managers and workers. As the ultimate ruling and decision-maker body, the Board of Directors should also bear responsibility for the safety and

liability of TSFs, including the consequences of dams. Financial and legal accountability should therefore not be limited to an isolated member of senior management and/or the EOR. This requirement as well as the previous (10.1) could be strengthened by explicitly expanding full responsibility and accountability to all the Board members. In the case of State-Owned Enterprises (SOE), responsibility and accountability should also be assigned to relevant members of the controlling government.

### ***Principle 11***

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

**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?**

**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?**

**Which aspects of Principle 13 do your comments relate to?**

No

**Your comments on Principle 13:**

### ***Principle 14***

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

**Which aspects of Principle 14 do your comments relate to?**

Comments on the Principle itself, Requirement 14.3

**Your comments on Principle 14:**

Requirement 14.3 would be strengthened by including an obligation to publicly disclose information and data on the functioning and uptake of this grievance mechanism (e.g. number and nature of concerns raised, details of actions taken in response, and special measures taken to address any repeat grievances). Such disclosure will improve transparency around tailings management and can also strengthen trust in, and use of, the grievance mechanism.

## ***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?**

**Which aspects of Principle 15 do your comments relate to?**

**Your comments on Principle 15:**

### *Principle 16*

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

**Which aspects of Principle 16 do your comments relate to?**

**Your comments on Principle 16:**

## *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?**

**Which aspects of Principle 17 do your comments relate to?**

Requirement 17.1

**Your comments on Principle 17:**

Requirement 17.1 would need more specifics in order to define 'fairly'. A useful framework to refer to is the set of open data principles, including the provision of timely (regularly updated) information in formats accessible, understandable and useful for interested stakeholders including affected communities. This could include, for example, sharing information in local languages and in verbal presentation and discussion sessions in local communities. More generally, it would be useful to define in Requirement 17.1 the public disclosure requirements of the standard, such as those relating to the disclosure of monitoring reports (Requirement 8.4).

## *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):**

**Please summarize why you chose this option:**

*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):**

**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)?**

**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?**

meaningful engagement, upfront and ongoing, including measures to fully inform local stakeholders (communities, workers) of the risks and potential impacts in the event of failure - meaningful engagement of local stakeholders in designing and testing emergency preparedness plans - meaningful and proactive disclosure including measures to provide local stakeholders with accessible and understandable information on the TSFs, their safety, and the emergency preparedness procedures

### ***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)***



## RMF Contribution to the Global Tailings Standard Public Consultation

This document sets out the RMF comments on the Draft of the Global Tailings Standard, suggesting recommendations to improve the effectiveness of the standard in building trust among stakeholders and ensuring accountability of mining companies and governments.

### Topic I Knowledge Base

#### *Protecting environmental sanctuaries*

##### Standard text

REQUIREMENT 2.1: Undertake a formal, multi-criteria alternatives analysis of all feasible sites and technologies for tailings management with the goal of minimizing risk to people and the environment. Use the knowledge base to inform this analysis and to develop facility designs, inundation studies, a monitoring program, Emergency Preparedness and Response Plans (EPRP), and closure and post-closure plans.

##### Comment:

The ability to influence project success and enhance value is greatest at the start of project appraisal and rapidly declines as a project advances towards implementation. Early identification and analysis of environmental, economic, social, governance and human rights risks alert company decision-makers to potential problems and enable the planning of pre-emptive mitigation strategies that can produce significant project-related cost savings. Alternatively, analyses may result in the avoidance of projects that present too great a risk of causing significant impacts to communities or the environment. In order to protect invaluable ecosystems and ensure intergenerational positive legacy, the standard could be strengthened by requesting from companies to determine if sites are in or adjacent to World Heritage Sites or other protected areas, to ensure that they avoid operating in internationally recognized areas of outstanding natural or cultural values. Similarly, and as stronger requirements will start applying to the management of TSF, it would be extremely damaging to allow companies to get around the problem by disposing or storing tailings and other residual waste into lakes, rivers or marine environment. This practice should be explicitly banned in the Standard.

Similarly, companies should ensure that TSF are located away from communities and workers' facilities, as well as from areas with moderate or higher seismic risk.

#### *Financial Assurance*

##### Standard text

REQUIREMENT 2.5: The amount of financial assurance shall be reviewed periodically and updated based on estimated closure and post-closure costs.



### Comment:

In order to demonstrate that sufficient funds have been set aside, companies can be expected to publicly disclose the amount of financial assurance. The requirement could usefully specify this.

### *Insurance for disaster management and recovery*

#### Standard text

REQUIREMENT 2.6: Taking into account actions to mitigate risks, the Operator will consider obtaining appropriate insurance to the extent commercially reasonable or providing other forms of financial assurance if appropriate to address risks relating to the construction, operation, maintenance, and/or closure of a tailings facility.

### Comment:

As part of the risks relating to tailings operation and management, the requirement could explicitly refer to the importance of proving assurance for disaster management and recovery and require from companies to also publicly disclose the relevant information on a site-by-site disaggregated basis.

## Topic II Affected Communities

### *FPIC*

#### Standard text:

PRINCIPLE 3: Respect the rights of project-affected people and meaningfully engage them at all stages of the tailings facility lifecycle.

Footnote: As defined in the United Nations Guiding Principles on Business and Human Rights (UNGPR). Demonstrating respect for indigenous peoples' rights may involve obtaining their 'free prior and informed consent' (FPIC), as outlined in the ICMM Indigenous Peoples and Mining Position Statement.

### Comment:

The standard currently has included FPIC as an optional step in respecting human rights, and only in relation to the rights of indigenous peoples. However for the standard to be in line with the UN Declaration on the Rights of Indigenous Peoples, respecting the right to FPIC of Indigenous Peoples should be mandatory during all stages of planning, design and implementation. Beyond this fundamental and internationally-recognised right, the standard could also better align with society expectations, and require companies to seek FPIC from all potentially-impacted communities (whether Indigenous Peoples or not) prior to constructing/expanding a tailings facility that has any potential to impact local communities or environment. This would require full disclosure of risks and potential impacts and areas impacted in the event of failure.

### *Community grievance mechanism*

#### Standard text:

REQUIREMENT 3.4: Establish an effective operational-level, non-judicial grievance mechanism that addresses the concerns, complaints and grievances of project-affected people that relate to the tailings facility.

#### Comment:

Requirement 3.4 would be strengthened if companies are also required to publicly disclose information and data on the functioning and uptake of this grievance mechanism (e.g. number and nature of concerns raised, details of actions taken in response, and special measures taken to address any repeat grievances). Such disclosure will improve transparency around tailings management and can also strengthen trust in, and use of, the grievance mechanism.

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

### *Consequence Classification Matrix*

#### Comment:

To align better with the Standard's aim of zero harm and zero tolerance for human fatality, the consequence classification, matrix could be revised to classify as 'Extreme' any failure that would result in any loss of life, instead of the current threshold of 100+ human fatalities. The current 5 levels could be reduced to Low, High (currently 'Significant') and Extreme (currently 'High' and above)

### *Disclosure of monitoring results*

#### Standard text:

REQUIREMENT 8.4: Report the results of the monitoring program at the frequency required to meet company, regulatory and public disclosure requirements, and as a minimum on a quarterly basis. The RTFE and the EOR shall review and approve these reports.

#### Comment:

'Public disclosure requirements' is vague. It would be clearer and stronger if this requirement was linked to Topic VI where detailed public disclosure requirements of the standard are itemised.

## Topic IV Management and Governance

### *Collective responsibility and accountability*

#### Standard text:

REQUIREMENT 10.2: A member of senior management shall be accountable for the safety of tailings facilities and for minimizing the social and environmental consequences of a tailings facility failure. This Accountable Executive will also be accountable for a program of

tailings management training, for emergency preparedness and response, and for recovery after failure. The Accountable Executive or delegate must have regular scheduled communication with the Engineer of Record (EOR).

**Comment:**

Corporate goals to protect environmental values, human rights, the health and socio-economic wellbeing of communities can better be realised when businesses adopt internal accountability and incentive mechanisms for performance, which can be applied to corporate-level decision-makers as well as site-level managers and workers. As the ultimate ruling and decision-maker body, the Board of Directors should also bear responsibility for the safety and liability of TSFs, including the consequences of dams. Financial and legal accountability should therefore not be limited to an isolated member of senior management and/or the EOR. This requirement as well as the previous (10.1) could be strengthened by explicitly expanding full responsibility and accountability to all the Board members. In the case of State-Owned Enterprises (SOE), responsibility and accountability should also be assigned to relevant members of the controlling government.

*Worker and stakeholder grievance mechanism*

**Standard text:**

REQUIREMENT 14.3: Initiate prompt investigations of all credible employee and stakeholder complaints and grievances, swiftly resolve concerns and complaints and provide remedy as required.

**Comment:**

Requirement 14.3 would be strengthened by obliging companies to publicly disclose information and data on the functioning and uptake of this grievance mechanism (e.g. number and nature of concerns raised, details of actions taken in response, and special measures taken to address any repeat grievances). Such disclosure will improve transparency around tailings management and can also strengthen trust in, and use of, the grievance mechanism.

## Topic VI Public Disclosure and Access to Information

*Open data disclosure*

**Standard text:**

REQUIREMENT 17.1: Publicly disclose relevant data and information about the tailings facility and its consequence classification in order to fairly inform interested stakeholders.

**Comment:**

Requirement 17.1 would need more specifics in order to define 'fairly'. A useful framework to refer to is the set of open data principles, including the provision of timely (regularly updated) information in formats accessible, understandable and useful for interested stakeholders including affected communities. This could include, for example, sharing information in local languages and in verbal presentation and discussion sessions in local communities. More generally, it would be useful to define in Requirement 17.1 the public disclosure requirements of the standard, such as those relating to the disclosure of monitoring reports (Requirement 8.4).

## Suggestions for topics to be included in the Recommendations Report

### Text:

This Standard will be supplemented by a Recommendations Report which will:

- Provide the context surrounding the development of the Standard;
- Provide guidance on how the Requirements of the Standard can be achieved;
- Outline a proposal on how implementation and assurance will be managed; and
- Illustrate best practice in some of these issues.

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

### Comment:

- meaningful engagement, upfront and ongoing, including measures to fully inform local stakeholders (communities, workers) of the risks and potential impacts in the event of failure

- meaningful engagement of local stakeholders in designing and testing emergency preparedness plans

- meaningful and proactive disclosure including measures to provide local stakeholders with accessible and understandable information on the TSFs, their safety, and the emergency preparedness procedures