

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH SESSION: COUNCIL - PART II

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

1. Name(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

2. Please indicate the relevant provision to which the textual proposal refers.

DR 104

3. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

1. Where a Contractor fails to take action required under Regulation 103, the Authority:

(a) shall notify the sponsoring State and coordinate with relevant officials of that State on further action that may be taken to enforce compliance by the Contractor; and

(b) may carry out any remedial works or take such measures as it considers reasonably necessary to prevent or Mitigate the effects or potential effects of a Contractor’s failure to comply with the terms and conditions of an Exploitation Contract. The Council shall, **after consultation with the Contractor and sponsoring State and based on the recommendations of the Commission**, determine the nature of such works or measures and the manner in which they are to be carried out.

2. If the Authority takes remedial action or measures under paragraph 1**(b) above**, the actual and reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor **and, to the extent it is liable, the sponsoring State, and may be recovered from the Environmental Performance Guarantee lodged by the Contractor.**

4. Please indicate the rationale for the proposal. [150-word limit]

We believe that language has been deleted from the end of paragraph (2) in error to ensure the ISA can use the Environmental Performance Guarantee (EPG) to cover costs it may incur taking its own remedial action. We presume that this is a primary purpose of the EPG.

We also consider that references to the sponsoring State should be added throughout the Regulation. The State may be better placed than the ISA to chase debts and take enforcement action under its national administrative and judicial processes against the Contractor (who must be a national of that State, or under its effective control, and thus within its jurisdictional reach). While the ISA may be able to recover costs, it cannot hold the perpetrator to account e.g. through civil or criminal penalties, or through disbarring them from future roles that would enable repeat issues - but a Government can. The national court is also likely to be the best forum for affected third parties to receive justice. Liability for the debt incurred from remedial action may also attach to the sponsoring State if the State has not discharged its due diligence sponsorship obligations. The ISA may wish to pursue the State for the debt in the event that costs incurred by the ISA cannot be met by the Contractor, insurance or the EPG.

