Towards Sustainable Mining

Aboriginal and Community Outreach Protocol

Towards Sustainable Mining
Vers le développement minier durable
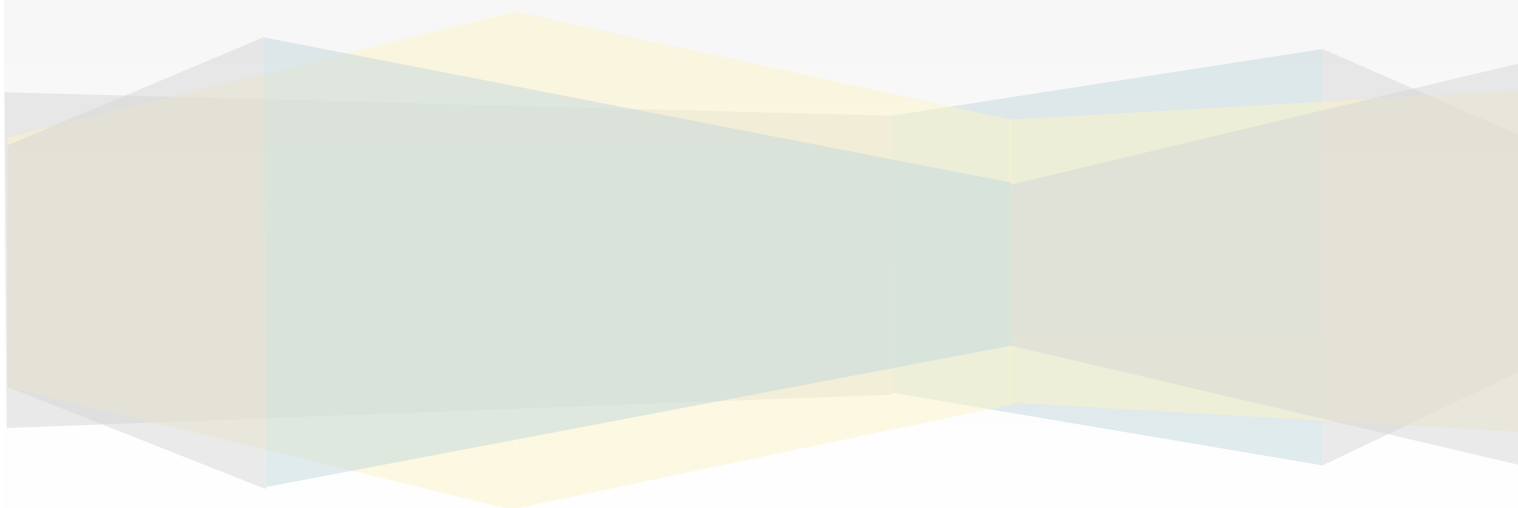
TSM ASSESSMENT PROTOCOL

A Tool for Assessing Aboriginal and Community Outreach Performance

Purpose

The purpose of the assessment protocol is to provide guidance to facilities in completing their evaluation of Aboriginal and community outreach performance against TSM indicators. The assessment protocol sets out the general expectations for Aboriginal and community outreach as part of the TSM initiative. This protocol supports implementation of the TSM Mining and Aboriginal Peoples Framework. As with any assessment of a management system, professional judgment is required in assessing the degree of implementation of a system indicator and the quality of management processes and intervention. Application of this protocol will, therefore, require a level of expertise in auditing and systems assessment and knowledge of and experience in the practice of Aboriginal and community outreach. This assessment protocol provides an indicator of the level of implementation of proactive outreach and engagement practices as part of the TSM initiative. It is not, of itself, a guarantee of the effectiveness of Aboriginal and community outreach activities.

Performance Indicators

The Aboriginal and community outreach protocol contains four indicators:

1. Community of Interest (COI) Identification
2. Effective COI Engagement and Dialogue
3. COI Response Mechanism
4. Reporting

1. COMMUNITY OF INTEREST (COI) IDENTIFICATION

Purpose

To confirm that efforts have been made to identify COI, including Aboriginal communities and organizations, affected or perceived to be affected by their operations or who have a genuine interest in the performance and activities of a company and/or operation.

Communities of Interest (COI) Identification: *Assessment Criteria*

LEVEL	CRITERIA
C	COI have not been identified.
B	Some local or direct COI have been identified. Plans are in place to develop a system for identifying COI.
A	A documented system is in place for COI identification at the facility level that includes those with challenging interests.
AA	The documented system in place for identification of COI at the facility includes COI whose interest in the operation may be indirect and issues-based (e.g., provincial and national NGOs).
AAA	The COI themselves are invited to provide regular input into the identification of COIs to ensure that consideration is given to a broad range of interests.

Communities of Interest (COI) Identification: *Frequently Asked Questions*

#	FAQ	PAGE
1	What is a Community of Interest (COI)?	10
2	What is an Aboriginal person?	10
3	What is an Indigenous person?	10
4	How does a facility identify Aboriginal communities and organizations that are affected or perceived to be affected by the operations or those that have a genuine interest in performance and activities of a company and/or operation?	11
6	Can corporate documentation be used to demonstrate facility-level commitment?	11

2. EFFECTIVE COI ENGAGEMENT AND DIALOGUE

Purpose

To confirm that processes have been established to communicate with COI, including Aboriginal communities and organizations, to understand their viewpoints, to transparently inform them of company activities and performance, to actively engage them in dialogue and participation on issues of concern to them, and to identify how issues might be addressed through measures such as mitigation, compensation, or other actions.

Effective COI Engagement and Dialogue: *Assessment Criteria*

LEVEL	CRITERIA
C	Communications with COI are reactive. • The facility has no engagement and dialogue processes. • COI are neither consulted nor engaged. • Communications are typically one way only.
B	• Informal engagement processes are in place, and occasional dialogue occurs with COI. • There are plans to develop COI engagement systems, but they have not been implemented.
A	Documented COI engagement and dialogue systems are in place. • The facility provides assistance to ensure COI are able to participate in engagement and dialogue processes, where appropriate. • Communications are written in the local language for COI (as required) and are written in language that is clear and understandable to COI. • Designated employees have been informed of and trained in meeting Aboriginal consultation requirements, including those procedural aspects that have been transferred to the proponent by any applicable government. • Time is built into processes to allow for meaningful review of proposals by COI. • Relevant materials are provided to COI for review in a timely manner. • Processes are in place to engage with COI on credible risks to the public that are associated with company activities, including tailings management.

AA	• COI are invited to provide input to determine the scope of engagement on issues of concern to them, including those associated with identified credible risks to the public such as tailings management. • Processes exist to identify the needs of COI for capacity building to allow them to engage in effective participation on issues of interest or concern to them. • Accountability for COI engagement and dialogue rests with senior management. • Senior management reviews engagement and dialogue systems, and the results from COI engagement, at least annually. • Engagement and dialogue training is provided to designated personnel, including appropriate culturally-specific training. • Designated employees are informed of and trained in meeting Aboriginal consultation requirements transferred to the proponent by governments. • Traditional knowledge is sought, as appropriate, from local Aboriginal communities and organizations and is applied to support decisions and inform practices including environmental monitoring. • Consultation protocols established by Aboriginal communities and organizations are followed or integrated into consultation procedures to the extent possible.
AAA	Formal mechanisms or agreements with COI are in place to ensure they can effectively participate in issues and influence decisions that may interest or affect them. • The facility has a consistent history of meaningful engagement with COI. • Processes to build the capacity of COI to allow them to effectively participate in dialogue exist. • COI contribute to periodic reviews of engagement processes to allow continual improvement. • Negotiated agreements with Aboriginal peoples are in place for the operations or projects where appropriate.

Effective COI Engagement and Dialogue: *Frequently Asked Questions*

#	FAQ	PAGE
1	What is a Community of Interest (COI)?	10
2	What is an Aboriginal person?	10
3	What is an Indigenous person?	10
5	What are negotiated agreements?	11
6	Can corporate documentation be used to demonstrate facility-level commitment?	11
9	What does "clear and understandable" mean?	14
10	What is meant by "capacity building"?	14
11	What are "engagement" and "dialogue"?	14
12	How is "senior management" defined?	14

3. COI RESPONSE MECHANISM

Purpose

To confirm that there are processes to receive complaints and concerns from COI, including Aboriginal communities and organizations, to ensure that they are understood and effectively responded to.

COI Response Mechanism: *Assessment Criteria*

LEVEL	CRITERIA
C	Minimal effort has been made to understand or incorporate COI concerns or consultation requirements. • There are no systems to track or respond to COI concerns.
B	The facility has an incomplete knowledge of COI concerns or consultation requirements. • The facility gives occasional consideration to COI concerns, based mostly on assumptions and sporadic consultations. • An informal complaint system exists. • A complaint and response system is either planned or in development.
A	The facility has a good understanding of COI concerns and consultation requirements and documents them. • A complaint and response system is in place with processes for follow-up and tracking. • COI input is considered in decision making.
AA	The facility has a thorough, documented knowledge of COI issues, concerns and consultation requirements. • The facility analyzes and acts upon the input received from COI. • Senior management considers results of the engagement and dialogue processes at least annually to determine if and how to act upon them. • Sufficient time is built into facility processes to consider and respond to COI concerns before specific plans are carried out.
AAA	Collaboration with COI occurs to establish and achieve common objectives. • Collaboration extends to address common community goals.

COI Response Mechanism: *Frequently Asked Questions*

#	FAQ	PAGE
1	What is a Community of Interest (COI)?	10
2	What is an Aboriginal person?	10
3	What is an Indigenous person?	10
6	Can corporate documentation be used to demonstrate facility-level commitment?	11
11	What are "engagement" and "dialogue"?	14
12	How is "senior management" defined?	14

4. REPORTING

Purpose

To confirm that reporting on COI engagement and dialogue activities (including activities with Aboriginal communities and organizations) is open and transparent.

Reporting: *Assessment Criteria*

LEVEL	CRITERIA
C	No reporting on COI engagement occurs beyond regulated requirements.
B	Reporting on COI engagement and dialogue activities is inconsistent. Reporting is internal only.
A	Reporting on COI engagement and dialogue activities occurs and includes responses to COI on concerns raised by them.
AA	Response to COI concerns is reported publicly on a regular basis.[1] Opportunities exist for COI to provide feedback on public reporting.
AAA	COI provide input into the scope of public reporting. COI feedback on engagement, dialogue and consultation processes and outcomes is actively sought and reported publicly.

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1 Where COI concerns are considered confidential (e.g. those related to negotiated agreements), public disclosure of the concerns and the company's response is not required.

Reporting: *Frequently Asked Questions*

#	FAQ	PAGE
1	What is a Community of Interest (COI)?	10
2	What is an Aboriginal person?	10
3	What is an Indigenous person?	10
4	How does a facility identify Aboriginal communities and organizations that are affected or perceived to be affected by the operations or those that have a genuine interest in performance and activities of a company and/or operation?	11
6	Can corporate documentation be used to demonstrate facility-level commitment?	11
11	What are "engagement" and "dialogue"?	14

APPENDIX 1: FREQUENTLY ASKED QUESTIONS

Protocol-Specific Guidance

1. What is a Community of Interest (COI)?

COI include all individuals and groups who have an interest in, or believe they may be affected by, decisions respecting the management of operations.

They include, but are not restricted to:

- employees
- aboriginal or Indigenous peoples
- mining community members
- suppliers
- neighbours
- customers
- contractors
- environmental organizations and other non-governmental organizations
- governments
- the financial community, and
- shareholders.

2. What is an Aboriginal person?

An Aboriginal person, for the purposes of this protocol, shall be as defined under Section 35(2) of the Constitution Act (1982) of Canada and includes First Nation, Métis and Inuit peoples.

3. What is an Indigenous person?

In the 30 year history of Indigenous issues at the United Nations, considerable thinking and debate have been devoted to the question of definition of "Indigenous Peoples", but no such definition has ever been adopted by a UN-system body.

The working definition reads as follows:

"Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.

"This historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors:

A. Occupation of ancestral lands, or at least of part of them;

B. Common ancestry with the original occupants of these lands;

C. Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.);

D. Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);

E. Residence on certain parts of the country, or in certain regions of the world;

F. Other relevant factors.

"On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group).

"This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference".

See: http://www.un.org/esa/socdev/unpfii/documents/workshop_data_background.doc

Note that the term "indigenous person" is used outside of Canada. Within Canada, the term "Aboriginal person" is used.

4. How does a facility identify Aboriginal communities and organizations that are affected or perceived to be affected by the operations or those that have a genuine interest in performance and activities of a company and/or operation?

The facility must conduct research to identify a) Aboriginal traditional lands and Treaty rights potentially affected by the organization, and b) on-going traditional use of the land for hunting, fishing, trapping and related harvest activities in the area of development. For some companies, this process is completed as part of the Environmental Impact Statement through which they assess Aboriginal rights to affected areas.

5. What are negotiated agreements?

This term refers to agreements negotiated with third parties and may include Impact Management Agreements, Participation Agreements, Impact Benefit Agreements, Socio-Economic Agreements, Environmental Agreements, among others. Many of these agreements contain confidentiality provisions which preclude public reporting of the terms, conditions, and progress made in implementing the agreements.

6. Can corporate documentation be used to demonstrate facility-level commitment?

Written senior management commitment at the corporate level (e.g. a corporate policy) can only be accepted as evidence during a facility-level self-assessment or TSM verification if it is accompanied by evidence that the corporate commitment is being applied and adhered to at the facility level. There must be evidence of a link between the corporate documentation and facility-level practices. If this linkage is established, then the corporate documentation can be accepted as evidence of facility-level commitment.

7. How should regional engagement approaches be reflected within the assessment?

Where multiple facilities are located within a particular region, the company may choose to adopt a regional approach to COI identification and engagement. In these cases, the division of roles and responsibilities between facility-level and regional-level personnel should be clearly understood and documented, and supporting systems should be developed and implemented at the appropriate level. The TSM assessment should consider both facility-level and regional systems when assessing performance for each facility included within the region.

8. How can a facility demonstrate that it has processes in place to engage with COI on credible risks to the public that are associated with company activities?

In order to engage effectively with relevant COI on credible risks, a facility must have a good understanding of the credible risks to the public associated with its activities. Identification of credible risks to the public can be done in conjunction with other risk assessment exercises. For example, the facility may choose to identify credible risks to the public while fulfilling the TSM Crisis Management and Communications Protocol's requirement to identify credible threats and risks.

A facility must also identify COI who have specific relevance to or interest in each identified credible risk. This process should be incorporated into the facility's document system for COI Engagement as described in Indicator 1. In the case of tailings management, identified COI should include:

- Those who may be directly impacted in the event of a failure of a tailings facility, and

- Those who may be impacted by the presence and operation of a tailings facility.

Issues of interest and importance will vary from one facility to the next and from one community to the next. Topics for engagement should be determined through dialogue with COI. For example in the case of tailings management, topics of interest and importance to COI could include:

- Emergency preparedness and response planning

- Nature of tailings (e.g. acid generating vs. non-acid generating)

- Environmental impacts

- Closure and reclamation

- Community safety and health

- Regulatory requirements and permitting processes

- Design plans for new facilities and expansions

- Water usage and quality

- Dust suppression

- Visual impact

- Liability and accountability

- Monitoring practices and results

- Traditional land use

- Adaptation to climate change and preparations for extreme weather events

Definition of Key Terms

9. What does "clear and understandable" mean?

Clear and understandable means that language in communications is at a reading level that is appropriate for the typical educational level of attainment of COIs and is free from technical jargon.

10. What is meant by "capacity building"?

Capacity building refers to the development, fostering and support of resources and relationships at individual, organizational, inter-organizational and systems levels, so that the COI can effectively engage with facilities and transfer information within the COI.

11. What are "engagement" and "dialogue"?

Engagement is a process of two-way communication that addresses the specific needs for information of COI and the facility in a way that is understandable to the participants in the discussion. Dialogue is a form of communication that leads to shared understanding between participants.

12. How is "senior management" defined?

For the purposes of Aboriginal and community outreach performance measurement, senior management refers to the corporate and/or facility-level personnel with overall accountability for engagement and dialogue processes. For large organizations with many sites, outreach takes place at several levels – community, regional and national. In these circumstances, senior management describes personnel with overall responsibility for outreach at each of the various levels.

APPENDIX 2: TSM SELF ASSESSMENT CHECKLIST
Aboriginal and Community Outreach

Facility Name:		Company Name:	
Assessed By:		Date Submitted:	

Supporting Documentation / Evidence:	
NAME OF DOCUMENT	**LOCATION**

Interviewees:			
NAME	**POSITION**	**NAME**	**POSITION**

	QUESTION	Y	N	NA	DESCRIPTION & EVIDENCE
INDICATOR 1: COI IDENTIFICATION					
Indicator 1 Level B	Have some local COI been identified?				
	Are there plans in place to develop a system for identifying COI?				
	If you have answered "Yes" to all of the Level B questions, continue to the Level A questions. If you have not answered "Yes" to all of the Level B questions, assess the facility as a Level C.				
Indicator 1 Level A	Is there a documented system for identifying COI?				
	Does the system allow for identification of COIs at the local or facility level that includes those with challenging interests?				
	Has research been completed and documented to identify a) Aboriginal traditional lands and Treaty rights potentially affected by the operation and b) on-going traditional use of the land for hunting, fishing, trapping and related harvest activities in the area of development?				
	If you have answered "Yes" to all of the Level A questions, continue to the Level AA questions. If you have not answered "Yes" to all of the Level A questions, assess the facility as a Level B.				
Indicator 1 Level AA	Does the system allow for identification of COIs whose interest in the operation may be indirect and issues-based? If yes, please provide some examples.				
	If you have answered "Yes" to all of the Level AA questions, continue to the Level AAA questions. If you have not answered "Yes" to all of the Level AA questions, assess the facility as a Level A.				
Indicator 1 Level AAA	Is there an interactive process that involves COI in identifying other groups or communities that should be considered a COI?				
	If you have answered "Yes" to all of the Level AAA questions, assess the facility as a Level AAA. If you have not answered "Yes" to all of the Level AAA questions, assess the facility as a Level AA.				
	ASSESSED LEVEL OF PERFORMANCE FOR INDICATOR 1				**Level:** _____

	QUESTION	Y	N	NA	DESCRIPTION & EVIDENCE
INDICATOR 2: EFFECTIVE COI ENGAGEMENT AND DIALOGUE					
Indicator 2 Level B	Are informal engagement processes in place that result in occasional dialogue with COI?				
	Are there plans in place to develop a COI engagement system?				
	If you have answered "Yes" to all of the Level B questions, continue to the Level A questions. If you have not answered "Yes" to all of the Level B questions, assess the facility as a Level C.				
Indicator 2 Level A	Is there a documented COI engagement and dialogue system in place?				
	Does the facility provide assistance to ensure COI are able to participate in engagement and dialogue processes, where appropriate?				
	Are communications clear and understandable to COI, and written in the local language (as required)?				
	Have designated employees been informed of and trained in meeting Aboriginal consultation requirements including those procedural aspects that have been transferred to the proponent by any applicable government?				
	Has clear accountability been established for COI engagement and dialogue?				
	Is sufficient time built into engagement and dialogue processes to allow for meaningful COI involvement? If yes, please provide some examples.				
	Are relevant materials provided to COI in a timely manner?				
	Are processes in place to engage with COI on credible risks to the public that are associated with company activities, including tailings management?				
	If you have answered "Yes" to all of the Level A questions, continue to the Level AA questions. If you have not answered "Yes" to all of the Level A questions, assess the facility as a Level B.				
Indicator 2 Level AA	Are COI invited to provide input to determine the scope of engagement on issues of concern to them, including those associated with identified credible risks to the public such as tailings management?				
	Is COI input into decisions that affect them actively encouraged?				
	Are processes in place to identify the needs of COI for capacity building so that they can effectively participate?				

	QUESTION	Y	N	NA	DESCRIPTION & EVIDENCE
	Does accountability for COI engagement and dialogue rest with facility senior management?				
	Is engagement and dialogue training provided to designated personnel, including appropriate culturally-specific training?				
	Does senior management review engagement and dialogue systems, and the results from COI engagement, at least annually?				
	Is traditional knowledge sought, as appropriate, from local Aboriginal communities and organizations and applied to support decisions and inform practices including environmental monitoring?				
	Are consultation protocols established by Aboriginal communities and organizations followed or integrated into consultation procedures to the extent possible?				
	If you have answered "Yes" to all of the Level AA questions, continue to the Level AAA questions. If you have not answered "Yes" to all of the Level AA questions, assess the facility as a Level A.				
Indicator 2 Level AAA	Are there formal mechanisms or agreements with COI in place to ensure they can effectively participate in issues and influence decisions that may interest or affect them?				
	Does the facility have a consistent history of meaningful engagement with COI?				
	Do COI contribute to periodic reviews of engagement processes to allow for continual improvement?				
	Are negotiated agreements with Aboriginal peoples in place for the operations or projects where appropriate?				
	If you have answered "Yes" to all of the Level AAA questions, assess the facility as a Level AAA. If you have not answered "Yes" to all of the Level AAA questions, assess the facility as a Level AA.				
	ASSESSED LEVEL OF PERFORMANCE FOR INDICATOR 2		**Level: _____**		

	QUESTION	Y	N	NA	DESCRIPTION & EVIDENCE
INDICATOR 3: COI RESPONSE MECHANISM					
Indicator 3 Level B	Does the facility give occasional consideration to COI concerns?				
	Is there an informal complaint system in place?				
	Are there plans in place to develop a complaint and response system?				
	If you have answered "Yes" to all of the Level B questions, continue to the Level A questions. If you have not answered "Yes" to all of the Level B questions, assess the facility as a Level C.				
Indicator 3 Level A	Does the facility have a good understanding of COI concerns?				
	Are these concerns documented?				
	Is there a complaint and response system in place with processes for follow-up and tracking?				
	Is COI input considered in decision-making? If yes, how?				
	If you have answered "Yes" to all of the Level A questions, continue to the Level AA questions. If you have not answered "Yes" to all of the Level A questions, assess the facility as a Level B. *NOTE: If a facility has not fully identified its COI, it cannot have thorough, documented knowledge of COI issues and concerns. This means that if a facility scored Level B for Indicator 1, it cannot score higher than a Level A for Indicator 3.*				
Indicator 3 Level AA	Does the facility have a thorough, documented knowledge of COI issues and concerns?				
	Does the facility analyze and act on input received from COI? If yes, please provide some examples.				
	Does facility senior management consider the results of the engagement and dialogue processes at least annually to determine if and how to act on them?				
	Is sufficient time built into facility processes to consider and respond to COI concerns before specific plans are carried out? If yes, please provide some examples.				
	If you have answered "Yes" to all of the Level AA questions, continue to the Level AAA questions. If you have not answered "Yes" to all of the Level AA questions, assess the facility as a Level A.				
Indicator Level AAA	Does collaboration with COI occur to establish and achieve common objectives? If yes, please provide some examples.				
	Does this collaboration extend to address common community goals?				
	If you have answered "Yes" to all of the Level AAA questions, assess the facility as a Level AAA. If you have not answered "Yes" to all of the Level AAA questions, assess the facility as a Level AA.				
	ASSESSED LEVEL OF PERFORMANCE FOR INDICATOR 3				**Level: _____**

	QUESTION	Y	N	NA	DESCRIPTION & EVIDENCE
INDICATOR 4: REPORTING					
Indicator 4 Level B	Is there some internal reporting on community engagement and dialogue?				
	If you have answered "Yes" to all of the Level B questions, continue to the Level A questions. If you have not answered "Yes" to all of the Level B questions, assess the facility as a Level C.				
Indicator 4 Level A	Does reporting on community engagement and dialogue activities occur?				
	Does reporting include responses to COIs on concerns raised by them?				
	If you have answered "Yes" to all of the Level A questions, continue to the Level AA questions. If you have not answered "Yes" to all of the Level A questions, assess the facility as a Level B.				
Indicator 4 Level AA	Are responses to COI concerns publicly reported on a regular basis?				
	Do opportunities exist for COI to provide feedback on public reporting?				
	If you have answered "Yes" to all of the Level AA questions, continue to the Level AAA questions. If you have not answered "Yes" to all of the Level AA questions, assess the facility as a Level A.				
Indicator 4 Level AAA	Do COI provide input into the scope of public reporting?				
	Is COI feedback on engagement and dialogue processes and outcomes actively sought and reported publicly?				
	If you have answered "Yes" to all of the Level AAA questions, assess the facility as a Level AAA. If you have not answered "Yes" to all of the Level AAA questions, assess the facility as a Level AA.				
	ASSESSED LEVEL OF PERFORMANCE FOR INDICATOR 4	**Level: _____**			

Towards Sustainable Mining
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For more information about the TSM initiative, visit:

The Mining Association of Canada
www.mining.ca/tsm

Quebec Mining Association
www.amq-inc.com

Finnish Mining Association (FinnMin)
www.kaivosvastuu.fi/in-english

The Argentinean Chamber of Mining Entrepreneurs (CAEM)
www.caem.com.ar/hms/

Botswana Chamber of Mines
www.bcm.org.bw

Confederación nacional de empresarios de la minería y de la metalurgia (CONFEDEM)
www.confedem.com