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October 23, 2006

Ms. Rachel Kyte
Director, Environmental and Social Sustainability Department
International Finance Corporation
2121 Pennsylvania Avenue NW
Washington, DC 20433

Re: Environmental, Health and Safety Guidelines Revision Process

Dear Ms. Kyte:

We are writing to express our initial comments and concerns regarding IFC's ongoing review and update of its Environmental, Health and Safety Guidelines and of the World Bank's Pollution Prevention and Abatement Handbook. Our comments do not directly address the technical standards articulated in the guidelines, but focus instead on strategic issues related to the Guidelines' relationship with the Performance Standards, their applicability to IFC and World Bank borrowers, and the IFC's approach to norm articulation.

1. Coherence with Performance Standards: In many instances, the draft Guidelines do not adequately reflect the requirements of the IFC's Performance Standards or the World Bank's Operational Policies. First, the draft Guidelines do not make any direct reference to the Performance Standards or to the OPs. We believe that the relationship between these two sets of documents should be clarified in the section of each guideline entitled "How to Use This Document."

More importantly, in a number of instances the Guidelines are not nearly as rigorous as the corresponding provisions of the Performance Standards or the OPs. To cite one example, the Aquaculture Guidelines employ permissive and merely suggestive language regarding environmental assessments and the need to avoid adverse impacts on critical natural habitats and endangered species. As a result, the Aquaculture Guidelines fall far below the requirements of the relevant Performance Standards and OPs. These and other similar inconsistencies should be resolved in future drafts.

2. Auditable standards or permissive recommendations?: We understood that the revised Guidelines would establish the specific performance standards that the World

Bank Group would expect of its clients in individual sectors—guidance that would be too technical or specific to include in the general performance standards. And indeed, our understanding is reflected in the Introduction to the Guidelines, which explains that “IFC uses the EHS Guidelines as a technical source of information during project appraisal activities, as described in IFC’s Environmental and Social Review Procedure.”

However, in many cases, the Guidelines do not seem well-crafted to serve this function. They often read more like a list of issues that project sponsors might wish to consider than a set of performance guidelines that IFC/WB will expect as a condition of financing. As noted above, the Guidelines can be more general or permissive than the relevant Performance Standards or OPs. Moreover, they are largely (if not entirely) discretionary—many of the impacts and management practices discussed in the Guidelines are framed as recommendations and lack explicit performance levels or auditable criteria for compliance. Indeed, in at least some cases, the effluent standards appear to be the only specific benchmarks included in the Guidelines. And the Introduction makes clear that even these quantifiable outcomes need not be applied in all cases.

In light of the pervasive use of discretionary language and the broad caveats allowing exceptions, it is impossible to determine whether IFC and the World Bank will require a borrower to address a certain issue or adhere to a given performance level. We do not see why the Guidelines should be so opaque on this point, especially since they are intended to incorporate only “performance levels and measures that are generally considered to be achievable in new facilities by existing technology, at reasonable costs.” If, by definition, the standards are readily achievable at reasonable cost, why isn’t there at least an explicit presumption that they will apply in all cases, absent a compelling reason not to enforce them in a given circumstance?

3. World Bank Group standards or global practice guidelines? Given the inconsistencies between the draft Guidelines and the Performance Standards and Operational Policies, and the limited utility of the Guidelines in articulating financing criteria or operating benchmarks for IFC/WB borrowers, we are left to wonder whether the World Bank Group and its borrowers really are intended to be the primary audience. We are keenly aware that in many quarters World Bank standards carry significant normative weight, and are often assumed to express “best practices.” We are concerned, therefore, that this revision process may be more about the *de facto* creation of global industry norms (albeit voluntary ones) than about establishing ground-rules and expectations for the World Bank Group’s operations. In fact, this larger ambition is suggested in the General Guidelines, which explain that “the EHS Guidelines are technical reference documents designed to assist a wide range of users, including project developers, financiers, facility managers, and other decision makers, by providing relevant industry background and technical information.” Conspicuously absent from this list are the World Bank Group and its clients.

We believe that there are several reasons why IFC should eschew any effort to articulate EHS performance norms for non-borrowers. First, this endeavor would clearly fall outside of IFC’s legitimate mandate as a provider of development finance: these

Guidelines do not purport to address the potential development impacts of the various industrial enterprises, nor do they articulate criteria for identifying developmentally appropriate investments.

Second, there are other international organizations that may be better positioned to take on this task. This kind of technical standard setting would be more appropriately conducted by an institution or institutions that have a more explicitly scientific remit and greater in-house technical capacity and expertise to evaluate (and contribute to) the available literature on the EHS impacts of certain industrial operations. For example, depending on the sector or substantive issue under consideration, such entities as the ILO, FAO, UNEP, WHO, or the secretariats for multilateral environmental agreements (such as the CBD and the Stockholm and Rotterdam Conventions) may be more effective and credible lead institutions for this kind of technical standard setting. Indeed, many of these organizations have already issued substantial guidance in their areas of expertise. By explicitly deferring to the work of these organizations, IFC would leave global standard-setting to the relevant experts, facilitate consistency across international institutions, and avoid duplicating other international efforts in these areas.

Third, the fact that this kind of technical norm articulation does not fit comfortably within IFC's mandate or its core competencies will almost certainly hamper its consultation efforts. While the convening power of the IFC is no doubt considerable, the most critical constituencies in any technical standard setting—physical scientists, public health experts, epidemiologists, etc—are not the natural stakeholders of the institution. We therefore question whether IFC will be able to identify and engage the most qualified experts. Indeed, without substantial outreach efforts, these experts are unlikely to even be aware of this review process, let alone to fully recognize its significance. Again, there are other international organizations that more frequently engage with these critical communities, and are therefore better positioned to conduct an appropriately participatory and inclusive consultation process.

In light of these concerns, we recommend that IFC narrow and reframe this exercise so that it focuses exclusively on articulating the EHS performance standards that the WBG will expect from its borrowers. With this objective in mind, many of the Guidelines could be strengthened, and the reflexive use of hortatory language could be abandoned in favor of a clearer exposition of which substantive standards and management practices the WBG will require of its borrowers, and which it will merely encourage.

4. *The views of other international organizations:* The weaknesses outlined above are also relevant with respect to the development of standards for use by the World Bank Group. We therefore believe that IFC should follow the practice of other international organizations such as the World Trade Organization and revise its review processes to ensure that the judgments of other international organizations with greater technical expertise are fully incorporated into the substantive standards.¹

¹ The World Trade Organization has explicitly incorporated such deference into its Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Rather than seek to articulate

Indeed, the Articles of Agreement of the IBRD *requires* the Bank to pay greater attention to the views of “international organizations” having specialized responsibilities in related fields.² In our view, the current approach in which an undifferentiated list of sources is appended to each guideline, without any indication of how they were relied upon, balanced, or interpreted, does not meet this requirement. Rather, meaningful consideration of these opinions requires, at a minimum, that the Bank either (a) defer to the judgments of international agencies with more specific technical knowledge, or (b) provide fully reasoned explanations regarding how it has considered these judgments and why it may have derogated from them.

5. *The need for better source citation:* Finally, there is not always any indication of how the specific recommended effluent and release standards have been developed. They should be footnoted to specific technical sources so that their coherence with established best practice standards can be verified. Without footnotes, the reference section is unhelpful to the reader who would seek to further explore a specific issue. In many cases, there is no way to tell who has generated the underlying standards, or whose standards IFC is applying (or derogating from, as the case may be).

6. *Commitment to transparency of consultations:* IFC’s EHS revisions website does not explain how comments will be considered or incorporated. We believe that the integrity and transparency of the process would be improved if IFC committed to publishing comments that have been received (unless the commentator requests anonymity), and explaining how drafts have incorporated public comments.

independent standards, the Agreement directs members to adopt SPS measures “on the basis of international standards, guidelines and recommendations developed by the relevant international organizations, including the *Codex Alimentarius* Commission, the International Office of Epizootics and the relevant international and regional organizations operating within the framework of the international plant protection convention.” See, Article 3 and Preamble to the AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES, Annex 1A to the AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION.

² The IBRD Articles of Agreement, Art. V, §8(a) requires the Bank to cooperate with “any general international organization and with public international organizations having specialized responsibilities in related fields.” Section 8(b) provides, “In making decisions on applications for loans or guarantees relating to matters directly within the competence of any international organization of the types specified in the preceding paragraph and participated in primarily by members of the Bank, the Bank shall give consideration to the views and recommendations of such organization.”

In close, we therefore believe that IFC should:

- (a) narrow and reframe this exercise so that it focuses exclusively on articulating the EHS performance standards that the WBG will expect from its borrowers;
- (b) more explicitly defer to the judgments of international agencies with greater technical expertise regarding appropriate EHS standards;
- (c) clearly identify those standards that the WBG will treat as mandatory, and the circumstances under which it will allow borrowers to derogate from non-mandatory standards;
- (d) publish and respond to comments that are received, and
- (e) clearly explain how the draft and final Guidelines strengthen or weaken the provisions of the existing Guidelines.

We look forward to your response, and to discussing these issues further.

Sincerely,

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