



Comments on Proposed Changes to the Permitting Regime under the *Environment Act*

A Summary of the Public Review Held June to August 2013

**Comments on Proposed Changes to the Permitting
Regime under the *Environment Act***

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Introduction

Permits are an effective tool to ensure that all proponents are meeting their environmental responsibilities under Yukon's *Environment Act*. There are eight regulations under the *Environment Act* that require proponents to obtain a permit before undertaking certain activities:

- Air Emissions Regulations
- Contaminated Sites Regulation
- Designated Materials Regulation
- Ozone-Depleting Substances and Other Halocarbons Regulation
- Pesticides Regulations
- Solid Waste Regulations
- Special Waste Regulations
- Storage Tank Regulations

Objective

Yukon government wants to ensure that the permitting system continues to function effectively and efficiently, in a way that is fair for all proponents and transparent to both proponents and the public. In order to improve the existing permitting system, Yukon government has proposed the following three amendments:

- 1) Extend permit durations;
- 2) Eliminate application fees; and
- 3) Formalize review fees.

Public Input

Invitations to comment on the proposed changes were sent to all current permit holders (321), Yukon First Nations, and the Yukon Environmental and Socio-economic Assessment Board (YESAB). In addition, the opportunity to comment was advertised to the general public via newspaper advertisements, the Department of Environment website, social media, and a news release. The public engagement period began June 27, 2013 and ended August 31, 2013.

Respondents included: the Yukon Energy Corporation, YESAB, Kwanlin Dün First Nation, Village of Carmacks, Village of Haines Junction, Town of Watson Lake, Village of Mayo, Town of Faro, Yukon Conservation Society, Klondike Placer Miners' Association, Yukon Wildlife Preserve, Minto Exploration Ltd., D.G. Regan and Associates Ltd., Skookum Asphalt Ltd., Whitehorse Beverages and Foods, Dall Contracting Ltd., McCrae Petro-Canada, Berry & Smith Trucking, Source Motors Ltd., as well as individual public members. Meetings were held by request with the Mayo Renewable Resources Council, Yukon Chamber of Mines and Yukon Prospector Association.

This document summarizes the results of the survey and the comments received. Clarifications to specific questions raised are also provided.



Results

1. Extending Permit Durations

Under the existing permitting regime, the maximum permit duration for any type of permit is three years. This means that proponents must renew permits every three years even if there are no significant changes to the permitted activity.

The majority of respondents (71.9%) did not have any concerns with the proposal to extend the maximum permit duration to 10 years.

Do you have concerns about this proposed change?

Answer Options	Response Percent	Response Count
Yes	25.0%	16
No	71.9%	46
Don't know	3.1%	2
Comments		39
Answered question: 64		
Skipped question: 1		

Comments Received

Many of the comments received were positive, citing that longer permit duration would accommodate longer range activities, reduce administrative effort, and make the permitting system more efficient. One respondent was of the view that longer permit durations may encourage industrial activity in the territory. Furthermore, other respondents recognized that proponents would not be required to undergo another review by the Yukon Environmental and Socio-economic Assessment Board (YESAB) simply because the *Environment Act* permit is due for renewal.

Respondents asked that the criteria for determining the duration of each type of permit within the 10-year maximum be transparent. The permit durations decided upon should be publicly available and clearly outlined in documents and posted on the Yukon government website.

There was some concern that all projects would be assigned the maximum 10-year permit duration without considering differences between types of activities. Respondents mentioned that higher risk activities should be issued shorter duration permits and one respondent suggested that permit durations correspond with the YESAB time period assigned to that project.

Some respondents stated that 10 years is too long for

a permit to be issued because of the possibility that the permitted activity may change within the 10-year period. Respondents also highlighted the possibility that scientific knowledge, industry best-practices, land tenure, or land use of the area may change during the permit period. It is also possible that mistakes could be made when the permit is issued or complaints could be received about the activity.

It was noted that longer permit duration may result in the initial permit application process becoming more time-consuming. Respondents wondered whether government has the ability to revoke or amend a permit in response to these circumstances. One proponent stated that a new permit should be required when ownership or management of a project changes.

Another commonly noted concern was that scrutiny of the permitted activity might decrease if permits are issued for longer intervals. Some respondents noted that regular reviews of permitted activities are required to keep the activities in check and that proponents must be monitored

Clarifications

How will the duration for each type of permit be determined and will the permit durations be publicly available?

Yukon government proposes to set the maximum permit duration (10 years) in the regulations and then use policy to assign typical permit durations for each type of activity. The permit duration for each activity type would be determined based on the duration of the proposed activities, level of human and/or environmental risk posed by that activity, the time periods of other related requirements or approvals, and consistency with similar permitted activities. For example, public solid waste disposal facilities must prepare a 10-year Solid Waste Management Plan in accordance with the Solid Waste Regulations. In this case, it would make sense for solid waste permits to be issued for the same period of 10 years. For other activities, such as the need for a one-time relocation permit to move contaminated material, the permit duration would be much shorter and likely issued for one year. The remaining permit types would fall within 1 to 10 years.

Once defined, the policy on typical permit durations will be publically available.



Will permit conditions be updated if scientific knowledge or industry best-practices change during the permit period?

Permit conditions would be updated when a permit is due for renewal or if the permit holder requests an amendment. This may include revisions that incorporate new knowledge or a change in practices.

As the Department of Environment recognizes that scientific knowledge and industry best-practices may change during the permit period, only a small number of permits would be issued for the maximum 10-year duration. The maximum permit duration of 10 years is being proposed because it provides for both administrative efficiency and an opportunity to update permit conditions. Renewals of permits would reflect any new knowledge regarding certain activities and their environmental and human health impacts.

Will longer permits affect the level of scrutiny that permittees are subject to?

No. The frequency of inspections depends on the potential risk that the activity poses to human health and/or the environment, not the duration of the permit. Both the Department of Environment and the Department of Energy, Mines and Resources have responsibilities for inspecting permitted activities under the *Environment Act*. Furthermore, some permits require the proponent to monitor the potential environmental and human health impacts of the permitted activity as well as report the results to the Department of Environment. These requirements are also based on the potential risk of the activity and are not related to the duration of the permit.

If a permit holder is found non-compliant with a permit condition, the *Environment Act* or its regulations, enforcement action would be taken.

Does the Department of Environment have the right to revoke or amend a permit during the permit period?

All permittees are required to inform the Department of Environment whenever the activities covered by their permit change so that the permit conditions can be updated accordingly. The permit would be amended in response to a reported change regardless of when it is due to expire. This ensures that the permit remains up-to-date and continues to protect human and environmental health. Furthermore, the Department of Environment can suspend or cancel a permit under certain circumstances if the permitted activity may cause significant damage to the environment or pose a threat to public health or safety.



2. Eliminating Application Fees

Seven of the eight permitting regulations under the *Environment Act* require a fee of \$0 to \$100 to be paid when a proponent submits a permit application. The exception is for fuel storage tank permit applications, where fees are based on tank size.

Most respondents (73.0%) did not have any concerns with the proposal to eliminate application fees.

Do you have concerns about this proposed change?

Answer Options	Response Percent	Response Count
Yes	23.8%	15
No	73.0%	46
Don't know	3.2%	2
Comments		29
Answered question:		63
Skipped question:		2

Comments Received

The comments received on this proposal were of two sentiments. One group of respondents supported the elimination of application fees as a way to promote compliance. The other group suggested that the fee structure be reviewed and revised to reflect the administrative cost and environmental risk of particular activities.

Respondents in favour of eliminating application fees noted that this would be beneficial for small businesses. Respondents that supported maintaining or revising application fees said the cost of handling permit applications should be borne by the proponent, not by government. Several respondents urged the Yukon government to develop a fee structure that is straightforward and reflects both the staff time required to process particular types of applications and the environmental impact of those activities. One proponent suggested monitoring the performance of the permitting system after eliminating application fees to observe the change.

Clarifications

Why is the Department of Environment not proposing to raise application fees to cover staff salaries?

The current fees for *Environment Act* permits bring in just hundreds of dollars per year for the Yukon government. In order for permit application fees to cover all or part of the salaries of the staff that issue permits, the application fees

would have to be raised significantly. Fees in that situation would be prohibitive for many proponents and would likely reduce compliance with the *Environment Act*. Not recovering costs for the issuance of permits is consistent with most Yukon government regulatory agencies.

Why are application fees not based on the potential risk to the environment and/or human health that the activity poses?

Although Yukon government is proposing to eliminate application fees, the potential risk of the activity to human health and/or the environment will continue to be taken into consideration through the review and approval process. This process results in mitigations that reduces the potential risk to within acceptable levels. For highly technical and complex projects that involve third-party technical reviews, the proponents would be responsible for covering the costs of those reviews. See the third proposal, "Formalizing Review Fees," for more information.

Will the Department of Environment monitor the permitting system after removing application fees to see if more people apply for permits?

The Department of Environment will monitor and be able to determine whether more or fewer permits are issued after any changes to the permitting system come into effect. However, we would be unable to determine whether a change in the number of permits issued is due to eliminating application fees or due to other factors.

Does eliminating permit application fees affect the permit holder's obligation to comply with permit requirements?

The requirement to obtain a permit under the *Environment Act* and comply with the permit conditions is a legal obligation set out in the regulations and is non-negotiable. This requirement does not depend upon whether money is exchanged between proponent and government.



3. Formalizing Review Fees

Some permit applications require the proponent to submit detailed scientific information, such as hydrogeological assessments, to the Department of Environment. These reports are often sent by government to third-party technical experts to verify the findings, which results in a cost. The Yukon government proposes to make it clear to all proponents that when these types of technical external reviews are required, the proponent is responsible for paying the cost.

While over half (56.5%) of the respondents expressed no concerns with the proposed change, more than one third (35.5%) did. However, many of the concerns appear to stem from uncertainty about how the proposal would be implemented versus a lack of support for the concept itself.

Additional concerns included the possibility that charging proponents for review fees may discourage investment and development in the territory. One respondent asked that the review fee process be assessed regularly to ensure it is meeting the needs of all stakeholders.

Others thought that government should cover the costs to have an application reviewed by a consultant if the technical expertise is not available in-house. Further information was requested on how government would acquire quotes from reviewers and there was a desire for the list of government-approved reviewers to be publicly available.

A number of respondents felt that it is fair to charge proponents for the cost of having their technical information reviewed. It was thought to be important for a company's submission to be reviewed by an independent expert. Other respondents, however, stated that it is redundant for a company's technical information, prepared by an expert, to be reviewed by another expert. One respondent suggested that proponents be given instructions on how to provide information in such a way that an external review is not required. Additional respondents stated that eliminating application fees while charging proponents for review fees is inconsistent.

Another common concern was that the timeline for acquiring a permit could be extended or uncertain as a result of needing to undergo an external technical review. Some respondents suggested that application timelines be publicly available for different types of permit applications so that a proponent is aware of the approximate length of time required.

Do you have concerns about this proposed change?

Answer Options	Response Percent	Response Count
Yes	35.5%	22
No	56.5%	35
Don't know	8.1%	5
Comments		34
Answered question:		62
Skipped question:		3

Comments Received

The most common comment received was that the review fees should be specified in advance so that proponents are aware of the total cost of obtaining a permit at the time of application. Some respondents felt that the maximum (and in some cases minimum) fee should be set in the regulations. It was recommended that Yukon government examine other jurisdictions' fee ranges as well as the number of consultant hours required to review a particular type of document when establishing the fees. Some respondents expressed a desire to be consulted further on this matter and given the opportunity to comment on the proposed fees before they are finalized.

Overall project cost was another area of concern, with some respondents noting that review fees could increase the costs of working in the territory and that businesses would pass these costs on to customers. Other respondents were concerned that the fees charged to proponents would not be fair, partly because consultants may charge the government higher rates than they would charge a private sector client. One respondent was concerned that government may not strive to seek the lowest cost if the proponent is paying for the review.

Clarifications

How will the review process work?

Upon receiving a permit application, Department of Environment staff would review the application to determine whether the supporting technical documentation requires an external technical review.

If an external technical review is required, the proponent would be notified of the fee and the estimated length of time required. If the proponent still wished to move forward with the permitting process, the prescribed fee would then be paid in full to the Department of Environment. The money paid by the proponent would be used in its entirety to pay the external technical reviewer under the contract; no funds would be retained by the department. All proponents, including other Yukon government departments, would be required to cover the cost of external technical reviews.



How will government select its initial list of approved reviewers and will this list be reassessed?

Once the external technical reviewer's qualifications have been accepted by the Department of Environment, they would be added to a Standing Offer Agreement (established by following a request for bids or proposals) in accordance with the Yukon government's Contract Regulations and Contracting and Procurement Directive. The names of qualified individuals accepted onto the Standing Offer Agreement would be publicly available. The Standing Offer Agreement would be developed and used for an initial period of a year, renewable for up to two additional years at the government's discretion. Each time the Standing Offer Agreement is renewed (every three years, at minimum) the list of approved reviewers would be reassessed.

How will the review fees be established and will they be available in advance?

The Department of Environment would seek quotes from consultants and compare them to the fees charged in other jurisdictions. The Department of Environment would use this information to establish the fees that would be paid to the consultants and charged to permit proponents. The fees for each type of review would be specified in the Standing Offer Agreement and would not be subject to change until the Standing Offer Agreement expires. The fees would be outlined in government documents so that permit proponents are aware of the cost of obtaining a permit up front.

Will the need for a technical review lengthen the permit application process?

Applications that require technical reviews do take longer to process. These projects tend to be more complex and carry a higher level of environmental risk. Time is needed for external technical experts to analyze information and verify the conclusions provided by proponents. However, there are ways to streamline the process. Most proponents who are required to submit detailed scientific investigations as part of their permit application are also required to undergo an environmental assessment under the Yukon Environmental and Socio-economic Assessment Act (YESAA). In these cases, proponents may wish to submit their permit application and supporting documents prior to or at the same time as they enter the YESAA process. This would allow the external technical review to be completed while the environmental assessment is being carried out.

Will the review timelines be fixed and known in advance?

Upon receipt of a completed application package the Department of Environment would advise the proponent of the timeframe and applicable fee for the external technical review. Typical review timelines would also be made available within certain supporting government documents (such as application guidelines, etc.). The timeline for the external technical review would be established in the contract between the Department of Environment and the external technical reviewer, and would be measured from when the external reviewer receives the proponent's documents. The established timeframe would only cover the external review process and would not include the length of time required for Department of Environment staff to process the application and issue the permit.

Why does the technical information submitted by a company have to be reviewed by another expert?

The reports submitted with permit applications are in part based on assumptions made by the expert preparing the report. As a result, it is best practice to have technical reports examined by another expert in order to ensure that there is independent support for both the assumptions used and the resulting conclusions. Before issuing an external technical review contract, the Department of Environment would ensure that the third-party expert selected does not have a conflict of interest with the proponent, the consultant that prepared the report, or with the physical site to which the report pertains.

Why eliminate application fees and then charge proponents for review fees?

The elimination of application fees benefits proponents that are simply trying to meet their legal responsibility to obtain a permit under the *Environment Act*. Unlike application fees, review fees would only apply to certain projects that are more likely to pose a significant risk to human health and/or the environment. Therefore, eliminating application fees may promote compliance with the *Environment Act* while charging proponents for review fees would ensure that the proponent, not the taxpayer, pays the cost of verifying the potential environmental impacts of their proposed activity.

Will there be further consultation with stakeholders before the review fees are set?

The review fees would be based on quotes received from consultants and compared with fees used in other jurisdictions. The fees will not be put out for public comment but they will be included in the public tender used to establish the list of approved reviewers and made publicly available on Yukon government's website.



Additional Comments

Some respondents chose to provide general comments on a variety of issues not directly pertaining to the three proposed changes to the permitting regime. These comments are not addressed in this document.

Next Steps

The Department of Environment will take the comments received into consideration as we move forward to amend the permitting regime. Permit holders and YESAB will be notified prior to any changes being implemented and any changes will be posted on the Department of Environment webpage.

