Proposed Amendments to the Environment Act

Provide your opinion on proposed changes to help maintain a healthy natural environment and promote sustainable development.
Proposed Amendments to
the Environment Act

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Cette publication est disponible en français aussi.
The Environment Act has provided a stable legislative framework for the protection of Yukon’s spectacular natural environment since 1991. Since that time there have been some considerable changes in Yukon; not the least of which are the settlement of First Nations Land Claims and Devolution. While the Environment Act has served us well, it is time that we consider modernizing this piece of legislation to meet the needs of environmental management in the 21st century.

In its current form, the Act articulates laudable goals and values. However Yukon government needs new tools and abilities to more effectively uphold those goals and values in today’s world. Whether it is implementing modern systems for recycling or better managing contaminated sites we know that the current Act is holding us back.

I encourage Yukoners to participate in this Environment Act review and modernization. Help us ensure that the Act continues to support sustainable development while recognizing the importance of a healthy natural environment.

Hon. Currie Dixon,
Minister of Environment
Objectives of the Environment Act

The objectives (described in plain language) are set out in section 5 of the Environment Act and were used during public consultation on the draft act in 1990.

- To protect essential relationships between living things and to preserve the variety of life forms.
- To ensure wise management of the environment.
- To promote sustainable development.
- To ensure complete consideration of environmental, social and economic effects in public policy making.
- To recognize the interests of Yukon residents in the regional, national and global environment.
- To use the knowledge and experience of Yukon residents in making public policy on the environment.
- To increase involvement by Yukon residents in decisions that affect the environment.

Structure of the Environment Act

The Environment Act is a complex piece of legislation. In order to make it easier to follow it was broken down into 14 parts as follows:

- Part 1: Environmental Rights
- Part 2: Environmental Responsibilities
- Part 3: Partnerships
- Part 4: Administration
- Part 5: Integrated Resource Planning and Management
- Part 6: Development Approvals and Permits
- Part 7: Waste Management
- Part 8: Waste Reduction and Recycling
- Part 9: Release of Contaminants
- Part 10: Hazardous Substances and Pesticides
- Part 11: Spills
- Part 12: Regulations
- Part 13: Enforcement
- Part 14: Offences and Penalties
Introduction

The Yukon government is committed to modern, effective environmental protection. The Environment Act (the act) sets out how the Yukon government supports sustainable development while protecting essential relationships between living things, recognizing at all times the importance of a healthy natural environment. This document presents the proposed changes to the act to achieve this goal.

The objectives of the act were developed in 1991 in consultation with Yukoners and are still relevant today (see page 2). However, the act needs to be updated to reflect the many legal and administrative changes that have taken place over the 22 years since it was enacted, such as land claims and devolution, the transfer to the Yukon government of the federal responsibility for land, water and resource management. As a result of these changes, the act requires updating.

This document explains what changes the government is considering to the act and why. Yukoners are invited to review and provide comments because we want to make sure that the act continues to reflect current values and can enable environmentally responsible opportunities.

This is not the first time Yukoners have been invited to shape the Environment Act. In the 1980s, the Yukon government identified the need for environmental legislation to address the gaps and weaknesses in the federal laws that governed most public lands in the territory. Public input collected in 1990 on the Yukon Conservation Strategy indicated strong support for an environmental protection program. The Environment Act took shape over the winter of 1990-91 and was passed by unanimous vote in the Legislature on May 29, 1991. Regulations were then developed, in consultation with affected interests, to give practical effect to the act.
Identifying the proposed changes

The proposed changes to the act discussed in this paper address three goals for the review:

- Reduce risk to human health and the environment,
- Enable sustainable development opportunities without compromising environmental protection, and
- Improve the consistency of the act with Yukon's current legislative practice.

Review of proposed changes

This document sets out the proposed changes to the Environment Act under each of these three categories. They are presented as follows:

Reduce risk to human health and the environment

1. Hazardous Substances – Enhance ability to ban hazardous substances

Advance sustainable development

2. Inspections – Allow inspection on private lands and/or of activities

Improve consistency with Yukon’s current legislative practices

3. Recycling – Allow for industry-led recycling programs

4. Contaminated Sites – Support redevelopment opportunities by third parties

5. Yukon Council on the Economy and the Environment – Enable increased flexibility in operations

6. Yukon Conservation Strategy – Support consideration of other information sources

7. Solid and Special Waste Management Plans – Enable more responsive management plans by providing for Ministerial approval and amendment of plans

Minor amendments (administrative in nature) may be considered at the same time in order to modernize the language and structure of the act.
Hazardous substances

What the act says ...

The act provides a framework for managing hazardous substances and pesticides. It lists nine classes of hazardous substances, and provides for the handling and prevention of contamination by hazardous substances. (See Part 10 of the act, sections 118-122)

Issue ...

The provisions dealing with hazardous substances are vague, outdated and inadvertently limit the amount of oversight the Yukon government can provide.

Proposed change ...

Allow the Minister to ban the use, sale or supply of hazardous substances so government can respond quickly to emerging issues.

Background ...

The handling of hazardous substances is an important aspect of ensuring conservation and protection of the natural environment. The act’s current provisions need a greater level of assurance to lessen the risk of a release to protect human and environmental health. Some may consider Yukon to be a place that has “softer rules” regarding hazardous substances and may become an unwanted dumping ground. Allowing the Minister to ban hazardous substances would help prevent such circumstances.

Do you have any concerns about providing the Minister with the ability to ban the use, sale or supply of hazardous substances?

Provide your answer using the tear-out questionnaire on page 9 or the online questionnaire at www.env.gov.yk.ca/environmentact

“Hazardous substance” under the Environment Act means any product, substance, or organism listed in accordance to one of the 9 classes: explosives, gases, flammable and combustible fluids, flammable solids, oxidizing substances and organic peroxides, toxic and infectious substances, radioactive materials, corrosives and miscellaneous products, substances or organisms considered to be dangerous to life, health, property or the natural environment. This includes substances such as: gasoline, engine oil and asbestos, etc.

Inspections

What the act says ...

Throughout the act, guidance and powers are provided to Environmental Protection Officers to help them ensure people comply with the law. (See Part 13 of the act, sections 150-170)

Issue ...

While its overall approach to enforcement is sound, the act restricts inspections to only those activities subject to a permit. This approach limits government from undertaking inspections in situations where there are reasonable grounds to believe there is risk to the natural environment or imminent harm to public health or safety.

Proposed change ...

Further safeguard against harm to the natural environment or human health by allowing inspections to take place, where there are reasonable grounds, on lands and/or for activities not necessarily needing a permit.

Background ...

The enforcement approach set out in the act is not consistent with the methods taken by other Yukon statutes (e.g., Wildlife Act). The act provides for day-to-day inspections of activities requiring a permit, but not for proactive inspections on lands and/or activities not requiring a permit where there are reasonable grounds to believe there is risk to the environment and human health.

The proposed changes would give Environmental Protection Officers similar powers available in other statutes. Officers would not have the authority to enter private dwellings without consent or by warrant.

Do you have any concerns about the proposal to revise the inspection provisions?

Provide your answer using the tear-out questionnaire on page 9 or the online questionnaire at www.env.gov.yk.ca/environmentact

“Reasonable grounds” means that the Environmental Protection Officer has knowledge or reasonably believes that a development or activity is causing or likely to cause irreparable damage to the natural environment or, on consultation with a health officer, that the development or activity is causing actual or imminent harm to public health or safety.
Recycling

What the act says ...

The act allows for the establishment of the Recycling Fund in regulation and enables the use of that fund to support programs that encourage the reduction, reuse and recycling of waste in order to save natural resources and energy. (See Part 8 of the act, sections 105-110)

Issue ...

Because all recycling surcharges have to flow through the Yukon government’s Recycling Fund, it is challenging to establish industry-led recycling programs. This in turn restricts practical business opportunities to effectively encourage the reduction, reuse and recycling of waste.

Proposed change ...

Allow the recycling regime to easily adapt to future opportunities, e.g., industry-led programs.

Background ...

When the act was crafted, there were no recycling or waste reduction programs in the territory; following the practice in other jurisdictions at the time, the government launched the recycling program that includes community depots and the Recycling Club.

If an industry-led program were to be established in Yukon, recycling fees would still be collected at the sales counter for refundable commodities (e.g., pop cans).

Contaminated Sites

What the act says ...

The act establishes a framework for regulations that deal with spills and contaminated sites. It identifies some of the administrative procedures for government oversight of the remediation of the lands and/or waters affected by contaminant releases. It provides authority to government to help ensure that spills are addressed properly by the responsible party. (See Part 9 of the act, sections 111-117)

Issue ...

The contaminated sites regime does not easily allow for third-parties to clean-up contaminated sites. This restriction limits the beneficial reuse of “brownfield” (i.e., remediated contaminated site) properties.

Proposed change ...

Update the regulatory framework to support brownfield development and provide clarity and certainty for landowners and developers. This would be done by allowing for the transfer of liability related to contaminated sites to others so contaminated sites can be more easily remediated and/or developed.

Background ...

Over the past 20 years, considerable knowledge has been gained about the highly technical and evolving remediation field. We now have more effective tools to prevent environmental harm and respond to releases, as well as to regulate contaminants in the environment.

Do you have any concerns about updating the recycling regime to allow for industry-led recycling programs?

Programs include recycling computers and other electronic waste.

Do you have any concerns about updating the contaminated sites provisions to allow for the transfer of liability?

A contaminant is a substance, odour, sound, vibration, heat, pathogen or radiation that is released through human activity and is foreign to the natural environment or exceeds normal levels that may cause environmental damage. For example, contaminants that may exceed allowable
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Yukon Council on the Economy and the Environment

What the act says …
The act established the Yukon Council on the Economy and the Environment (YCEE) to encourage sustainable development in Yukon. In addition to conducting reviews and preparing reports, the YCEE is to provide advice to Cabinet. It also is to review any formal complaints submitted pursuant to the act. (See Part 1 of the act, sections 20-27 and Part 2, sections 40-42, 46 and 49)

Issue …
The process for ensuring development is sustainable has evolved since 1991 beyond the role of the YCEE. Review/advisory bodies now in place, such as the Yukon Fish and Wildlife Management Board, the Yukon Water Board, and the Yukon Environmental and Socio-economic Assessment Board has shrunk the mandate of the YCEE to the point where it need not be in place at all times.

Proposed change …
Allow the council to be inactive from time to time, as determined by the Minister.

Background …
The YCEE became inactive in 2008. From 1989 to 2008, the YCEE acted on behalf of the public to advise government. Today, the public has higher expectations for consultation, transparency and accessibility to public bodies and wants to provide its input directly to government.

Do you have any concerns about allowing the Yukon Council on the Economy and the Environment to be inactive from time to time, as determined by the Minister?
Provide your answer using the tear-out questionnaire on page 10 or the online questionnaire at www.env.gov.yk.ca/environmentact

Between 1989 and 2008 the Yukon Council on the Economy and the Environment reviewed the government’s Agriculture Policy and Employment Standards Act, conducted public consultations for video lottery terminals and the expansion of casino gambling, assisted with the development of the Economic Development Strategy, as well as organized conferences and developed reports related to energy, forestry, mining and sustainable communities. Its annual operating budget was approximately $50,000.

Today, the public expects to be directly involved in creating new policies and sector-specific strategic plans versus being represented by a board. Combined with the expansion of Yukon’s assessment and planning processes (e.g., YESAA and regional land use planning), the mandate of the YCEE has shrunk to the point where it need not be in place at all times.

Yukon Conservation Strategy

What the act says …
The act gives legal recognition to the Yukon Conservation Strategy (1990) which provides guidelines for the government’s environmental policies and practices. The strategy is to be reviewed and updated every three years. (See Part 2 of the act, sections 43–46)

Issue …
The Yukon Conservation Strategy has never been revised because the approach of a broad, territory-wide strategy for conservation has shifted to regional land use plans (UFA Chapter 11), sector-focussed strategies/plans (e.g., forest management plans, Energy Strategy for Yukon, Climate Change Action Plan), and species plans (e.g., Wolf Conservation and Management Plan).

Proposed change …
Allow for the Yukon Conservation Strategy to be renewed or updated from time to time as determined by the Minister.

Background …
About 95 percent of the action items in the Yukon Conservation Strategy have been completed and the remaining are on-going initiatives.
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Released in May 1990, the Yukon Conservation Strategy provided guidelines for the environmental policies and practices of the Yukon government and was instrumental in building the foundation of the Environment Act itself. Since the conservation strategy was introduced, knowledge about conservation and sustainable development has greatly increased. Today, conservation and sustainable development initiatives are now exercised by a variety of means in Yukon, such as the Yukon Environmental and Socio-economic Assessment Act, strategies and action plans, and intergovernmental agreements such as the Yukon River Salmon Agreement.

Solid and Special Waste Management Plans

What the act says ...

The act establishes the ability for government to manage solid waste disposal facilities and special waste management facilities in accordance with regulations, plans and permits. (See Part 7 of the act, sections 94-99)

Issue ...

Cabinet approval is required for solid waste management plans, as well as any amendments made to these plans. This authority structure is not effective operationally. In addition, the act requires the establishment of a territory-wide special waste management plan. In practice, however, government approves special waste management plans that are customized for individual facilities.

Proposed changes ...

• Allow for solid management plans to be approved by the Minister, and
• Require special waste management plans to be developed for individual facilities rather than one for the entire territory.

Background ...

The requirement for solid and special waste management plans is an important component of how operators manage waste. Streamlining the waste management regime by having approvals dealt with at the operational level will remove the current overlap with the act’s permitting system. Additionally, requiring individual special waste management facilities to have a customized plan is a better way to reduce risk to human and environmental health while respecting the unique circumstances of each operation.

Do you have any concerns about the proposal to update the solid and special waste management plan provisions?

Provide your answer using the tear-out questionnaire on page 11 or the online questionnaire at www.env.gov.yk.ca/environmentact

Solid waste management plans were first submitted by each public solid waste disposal facility in 2002 and 2003 and covered a 10-year period. These plans set out how and where waste will be dealt with. The plans considered potential impacts to the environment (e.g., water and air quality, wildlife), society (e.g., adjacent land uses, aesthetics), and the related legal obligations. Currently 28 solid waste management plans are in place in Yukon; all are in the process of being revised and updated.
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FEEDBACK FORM

Use this tear-out form to provide your comments and ideas about the proposed changes to Yukon’s Environment Act. Your responses will be kept confidential, that is, your name will not be associated with your response. A document summarizing all responses received will be posted online.

1. Hazardous Substances
   Do you have any concerns about providing the Minister with the ability to ban the use, sale or supply of hazardous substances?
   Yes ☐ No ☐ Don’t Know ☐
   Comments: __________________________________________________________
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2. Inspections
   Do you have any concerns about the proposal to revise the inspection provisions to allow inspections on lands and/or for activities not necessarily needing a permit?
   Yes ☐ No ☐ Don’t Know ☐
   Comments: __________________________________________________________
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3. **Recycling**
Do you have any concerns about updating the recycling regime to allow for industry-led recycling programs?

Yes ☐  No ☐  Don’t Know ☐

Comments: __________________________

4. **Contaminated Sites**
Do you have any concerns about updating the contaminated sites provisions to allow for the transfer of liability?

Yes ☐  No ☐  Don’t Know ☐

Comments: __________________________

5. **Yukon Council on the Economy and the Environment**
Do you have any concerns about allowing the Yukon Council on the Economy and the Environment to be inactive from time to time, as determined by the Minister?

Yes ☐  No ☐  Don’t Know ☐

Comments: __________________________
6. **Yukon Conservation Strategy**
   Do you have any concerns about allowing the *Yukon Conservation Strategy* to be renewed or updated from time to time as determined by the Minister?
   
   Yes ☐  No ☐  Don’t Know ☐

   **Comments:**

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7. **Solid and Special Waste Management Plans**
   Do you have any concerns about the proposal to update the solid and special waste management plan provisions to have plans approved by the Minister and special waste plans developed for individual facilities?

   Yes ☐  No ☐  Don’t Know ☐

   **Comments:**

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**Any other comments?**

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Optional: Your contact information

Environment Yukon will send you a copy of the document summarizing all responses received if you provide your contact information.

DEADLINE FOR COMMENTS: OCTOBER 14, 2013

If you have any questions or would prefer to provide your comments verbally, call 1-800-661-0408 extension 5634 or in Whitehorse 667-5634. Fax this questionnaire to (867) 393-6213, scan and email it to ppar@gov.yk.ca, or mail it to:

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