What we heard - Amendments to the Contaminated Sites Regulation and Spills Regulation

Background

Changes to the regulations are being proposed because Yukon has fallen critically behind most jurisdictions in Canada with respect to thresholds for contaminants and the management of spills, and because the current regulations are sometimes duplicative and inefficient.

In addition, the *Environment Act* was changed in 2014 following engagement with Yukoners and businesses in the territory. Without these consequential amendments to the regulations, the amendments to the Act cannot be used.

The amendments to the Act and the proposed consequential regulation amendments are aimed at:

- enhancing environment protection by updating the thresholds, standards and terminology used in this field;
- providing requirements for professionals undertaking remedial work;
- supporting development of contaminated or remediated sites by allowing a site owner to transfer responsibility of the contamination to another willing party;
- allowing site owners to voluntarily request their land be assessed for contamination to demonstrate that sites are remediated;
- increasing transparency of regulatory requirements and processes that are based on scientific evidence; and
- removing “red tape” and shortening administrative timelines for proponents by reducing duplicative processes.

Modernizing Yukon’s rules for contaminated sites and spills will better protect the territory’s water, land and air. Changes will also support economic opportunities for land development and clarify expectations for remediation.

Engagement Process

Purpose

The purpose of this engagement was to hear about the concerns and ideas that stakeholders and the public have regarding amendments to the *Contaminated Sites Regulation* (CSR) and *Spills Regulation*. In particular, the engagement focused on consequential amendments

required to bring the 2014 *Environment Act* into force. A 60-day engagement period with industry and stakeholders is required under the *Environment Act*.

Engagement methods and participation

The public engagement period began September 20, 2018 and ended November 23, 2018. Emails were sent to approximately 200 known stakeholders (environmental consultants, land treatment facility operators, members of the CSR subscription list, and contacts within the Government of Yukon) advising of the engagement and inviting comment. Regular email updates were sent during the engagement period providing information on engagement opportunities.

A number of engagement opportunities were available to stakeholders and the public to participate:

***Face-to-face workshops*:** The Government of Yukon hosted three workshops specific to receiving public input on the proposed amendments to the CSR Regulations. Workshops included:

- September 26, 2018 – Yukon government, Open Invite
- October 3, 2018 – Industry
- October 10, 2018 – Industry

There were approximately 50 attendees for the workshops combined.

"The face-to-face workshops were very constructive and kick-started a long-overdue discussion about a system that is lagging behind most parts of the country. Updated regulations can ensure Yukon's environment and citizens are protected by the best current understandings by utilizing current national standards and regulatory techniques."

Online survey: A survey was available online at engageyukon.ca from September 20, 2018 to November 23, 2018. Background information attached to the survey described the purpose of the engagement and provided an overview of the proposed changes. There were a total of 86 responses to the survey.

Teleconference calls: Teleconference calls were organized upon request. A teleconference call with employees of the Ministry of Environment of the Government of British Columbia was held on November 6, 2018. There were seven participants on this call.

Online presentations: Two online presentations were provided at the request of the British Columbia & Yukon Interdepartmental Working Group and a local consulting firm. These presentations occurred on November 19, 2018 and November 28, 2018.

Email submissions: Comments were received via email from five stakeholders.

First Nations: The department engaged in a policy-based consultation with First Nations separate from the public engagement process. It was anticipated that because First Nations are land owners and interest regarding environmental protection that these regulations would be of interest to First Nations. Letters were sent to all First Nations with an interest in Yukon lands. One First Nation responded with a request for more information which was provided.

Engagement Topics

The scope of the engagement included six topics which were proposed to be part of the proposed amendments. These six topics and their guiding questions include:

- **Contaminated site standards:** In order to reflect current national standards and latest science, which numerical standards would be most beneficial for Yukon to adopt?
- **Spill thresholds:** To align with current national standards and legislation, should Yukon update current thresholds and add new harmful substances?
- **Site professional qualifications:** To align with other jurisdictions and ensure remedial work is conducted effectively, should Yukon adopt minimum qualification standards required for site professionals performing assessment and remediation work?
- **Land treatment facilities specifications:** Should specifics for the planning of Land Treatment Facility (LTF) construction be included in the regulation in order to ensure enforceability?
- **Contaminated site permitting:**
    - With respects to Remedial Actions Plans which technical aspects should be included within them?
    - Should there be flexibility for a permit depending on the magnitude of the spill or extent of contamination?
    - Who should be privy to information included in a plan/permit?
    - Are the proposed conditions of a Certificate of Compliance appropriate?
    - To help make administrative processes more efficient, should Relocation Permits no longer be required when transporting material to a permitted land treatment facility, and/or when a remediation permit has already been issued?
- **Transfer of responsibility agreements:** What information should be included in the agreement and who should be provided a copy of the final agreement?

We also received feedback on topics outside of this scope which are highlighted in the Out of Scope Feedback section below.

Results

Overall, feedback supported the proposed amendments. Throughout the engagement, a diverse mix of helpful and constructive feedback was received and is highlighted in the following subsections.

Contaminated site standards

Survey results showed the majority of participants supported adding or updating Yukon's regulations to reflect new national standards and the latest scientific knowledge (95%). There was a fairly even split between preferring to adopt the standards from another jurisdiction (52%) to adopting the Canadian Council of Ministers of the Environment standards (48%). Constructive feedback mentioned the need to remove current water standards that are more specific to aesthetics (iron/manganese) and that caution should be given when adopting standards in full from other jurisdictions with different geography, population and industry. Additionally, we received feedback that although CCME standards may be more accurate for hydrocarbon testing, it would be preferable to adopt British Columbia standards which were updated in 2018, the most recently updated in the country.

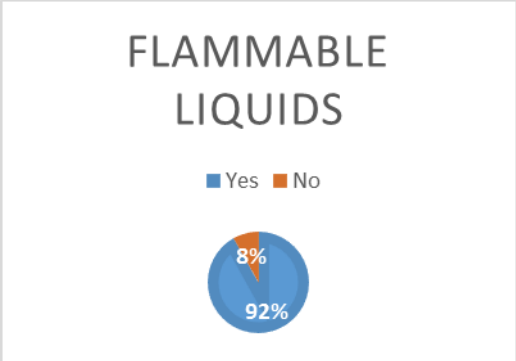
> *"Present BC CSR standards are more current than CCME guidelines. Most of the current CSR standards are "risk-based" and reflect current toxicological reference values, whereas some CCME guidelines do not. Given the present Yukon standards were adopted from the BC CSR (old CSR schedules), an alternate, perhaps superior approach would be to adopt the present BC CSR standards".*

Spill thresholds

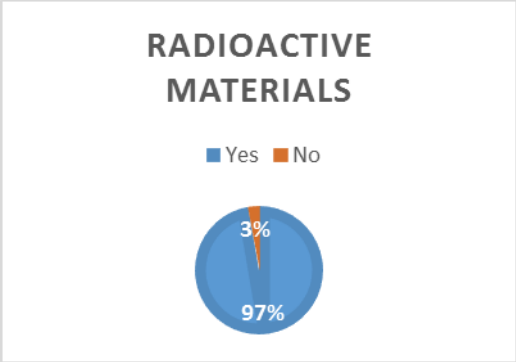
The vast majority of respondents (95%) supported updating and adding new reportable spills thresholds in order to align with national standards, legislation and associated risk levels. A small percentage (5%) of respondents would not support such a motion citing over regulation.

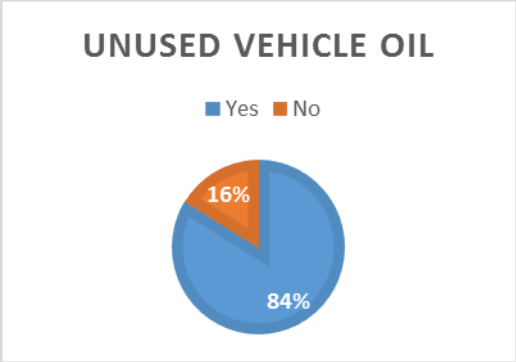
Some of the thresholds that were proposed to be updated or added to Yukon's regulations include flammable liquids, radioactive materials, lithium batteries, asbestos, dry ice, unused vehicle oil, new manufactured chemicals and unknown substances.

When specifically asked about flammable liquids, radioactive materials and unused motor oil, the majority of participants responded that they would support adding new reportable spills thresholds in Yukon.



"I think that 'potentially harmful substances' should be looked at very thoroughly in order to capture a vast array of substances, but also a caveat that allows you to incorporate other substances that may come out in the future."





Thresholds for miscellaneous items such as lithium batteries, asbestos and dry ice were well supported (87%), as well as a new catch-all category to cover potentially harmful substances not otherwise regulated (95%). Participants communicated that the reporting threshold for flammable liquids is long overdue, that the adaptation of another jurisdictions thresholds may unintentionally cause significant issues here in Yukon and that there is a current lack of a reporting chart which would be easy to understand for the average person.

Site professional qualifications

Overall, there was strong support (91%) for defining minimum qualification standards of site professionals working within Yukon. Specifically, requirements for a minimum education and minimum years of experience for the professional completing the remedial work were supported 83% and 69% respectively. Concerns were raised that such requirements limit what

the average citizen can remediate since these minimum qualifications would require that the individual to hire a professional consultant at considerable cost. This, in turn, may deter people from remediating known contamination. The concern was also raised that a company who has workforce of qualified people in varying sectors may be barred from completing their own remedial work due to not being independent of the company and/or project.

> *"This depends on who is being defined as a site professional. I support the minimum years of experience standard for people performing senior reviews and signing off on reports however people starting out in this industry still need to be able to participate and perform the work and be able to gain experience without being excluded by a minimum experience rule".*

Participants indicated that an individual with years of credible experience should not be disqualified if they do not have a degree or diploma. It was discussed that the Government of Yukon may be willing to make exceptions when proof of an appropriate technical skillset is provided. Participants also voiced concern that the terminology used for the individual could be misleading. It was suggested that "Qualified Professional" should be used since the word professional incorporates both education and years of experience.

Land treatment facilities specifications

Engagement results showed strong support (87%) to add specifications specific to the planning and construction of land treatment facilities into the regulation. There was also support to include language specifying the maximum volume that the facility can contain, the number and dimension of cells and the method of testing to ensure remediation is complete, environmental monitoring requirements, future land use and the specifics of monitoring in relation to "permeability" of natural liners.

Other notable comments on the topic included the following:

- Specifications should be performance oriented rather than prescriptive;
- Northern climate should be taken into account if federal guidelines for land farming are going to be referenced;
- Ensure that adding specifics into legislation does not lead to future stagnation of standards, ingenuity and technology;
- Ensure the protocols/regulations are enforceable; and
- Consider not only LTFs but also the facilities of companies that ship contaminated material to southern facilities.

Contaminated site permitting

The requirements for a Remedial Action Plan topic received notable feedback both in the face-to-face workshops as well as the online survey. Of the suggested details to be included in a remedial action plan there was even support for each with 51% of participants providing feedback. These details include:

- Information pertaining to the responsible party and the site's geographic location;
- A summary of existing information about contamination and of the remediation strategies that have been considered;
- A timetable of remedial activities;
- Details on any public communication, security measures and of the sampling that will be undertaken; and
- Reasons for risk management and a description of the extent/nature of contamination expected to remain at the site after the Remedial Action Plan.

Additional suggestions included First Nation consultation objectives, specifying the period in which remediation is expected to be completed, clearly describing the selected remedial option and the acknowledgement of potential surface and groundwater interactions.

When asked if remediation requirements should be placed in the regulations or if flexibility should be allowed though outlining remediation projects requirements within a site-specific permit, the majority (73%) of respondents supported the permit option. There was a common theme which supported a site-specific approach for remediation that allows for innovative technologies or adaptive management to be adopted into a preexisting remedial project in the future. It was also suggested that public communications about the flexible nature of a remediation permit should be very clear, so that big spillers don't expect the same approach as small spillers.

It was proposed that the conditions included in a Certificate of Compliance must be agreed to by any land owner/occupier, any party entitled to use the site, and any affected third party. This was supported by 89% of respondents.

Of the respondents who provided input, 89% agree that Relocation Permits should still be required to transport contaminated material to a permitted LTF. It was mentioned that removing the regulator from the relocation process could be added work for the LTF operator. It was noted that if the LTF operator has the ability to seek the expertise of a regulator, it may work to eliminate the permit process.

Overall, the ability to react quickly to a spill in order to remediate the site to accepted standards was seen as paramount. In order to achieve this, it was suggested not to require a permit for

the immediate cleanup of a spill, and to have a combination of remediation requirements for small projects (100 m^3 of contaminated material) and that larger projects would require permits.

> "A combination of these options would allow for efficient response to spills. Having a set of remediation requirements would allow for faster response time for spill remediation. Setting out permits for sites where initial remediation was unsuccessful (i.e. historical contamination or unsuccessful spill remediation) allows for some flexibility for each site, as not all sites are the same…"

Transfer of responsibility agreements

Feedback from 35 participants showed support for the idea of the ability to create an agreement to transfer the responsibility of a contaminated site. There was fairly even support as to what information should be included to develop a Transfer of Responsibility Agreement, specifically that both parties acknowledge that on-site contamination is identified and fully delineated (29), that the original responsible party retains liability for any contamination which was not identified (22) and that the new responsible party assumes liability for any new contamination created after the signing of the agreement (31).

> "This is a complex issue. For example, parties transferring liability should be able to determine between themselves who will hold liability for contamination created but not identified or delineated prior to a transfer of liability".

Additionally, there was relatively even support for who should be provided a copy of the Transfer of Responsibility Agreement. Of the 35 people who responded, any land owner/occupiers using the site should receive notice gained the most support at 34, the public via a copy of the agreement being placed on the public registry was second at 26 and finally, 22 people indicate that the Minister of Environment should be provided notice. In addition to the three proposed options, participants identified the following groups that should also be notified:

- First Nations
- Adjacent property owners

- Yukon Conservation Society
- Local Governments

Additional comments as to what should be included in a certificate included:

- The potential for offsite impacts and emerging contaminants;
- Include a "best efforts" clause to ensure that fair and reasonable work is honoured; and
- Clearly display the information on the public online property titles registry.

Out of Scope Feedback

In addition to the above results, we received feedback on the below topics that were not included in the original scope of the engagement.

Background Metals

A number of stakeholders expressed frustration with the current processes for addressing metals concentrations suspected to be representative of natural background conditions. It was explained that these processes are developed at the protocol level and do not require amendments to the regulation to change. No feedback was received on how the regulation could be amended to address stakeholder's concerns regarding background metals.

One Year Implementation Period

There was strong support among stakeholders for an implementation period following the amendments to give stakeholders time to adjust to the changes. The feedback we received indicated that a one year implementation period would provide a reasonable amount of time for this adjustment. No feedback was received opposing an implementation period.