



**Proposed Contaminants
Regulation
Discussion paper to
facilitate stakeholder
engagement**

May 2024

Introduction

The Government of Yukon is seeking feedback on proposed changes to the way contaminated sites and spills are managed in the territory. The Government of Yukon is aiming to introduce a new Contaminants Regulation that would repeal and replace the existing *Contaminated Sites Regulation* and the *Spills Regulation*.

The 2014 Environment Act

A new Contaminants Regulation is needed to implement amendments made to the *Environment Act* in 2014. At that time, the *Environment Act* was amended to improve the Government of Yukon's ability to reduce risks to human and environmental health and improve the Act's consistency with modern legislative regimes for contaminants. This includes changes to the remediation of contaminated sites and management of spills to include industry and businesses in activities, which were previously handled by government.

The 2014 *Environment Act* describes the responsibilities and processes for cleanup and reporting of spills and remediation of contaminated sites. The 2014 amendments included:

- alignment of the spills and contaminated sites regimes to create process consistency for all contaminated sites (both new and old);
- allowing the transfer of responsibility of a contaminated site to another person to promote remediation and development of contaminated sites; and
- increasing flexibility for remediation of contaminated sites and long-term site closure options through the introduction of certificates of compliance with conditions.

A new Contaminants Regulation

A new Contaminants Regulation is needed to further define the process for remediating a contaminated site and to guide responsible parties and property owners in the early planning stages to increase the likelihood of successful remediation.

This regulation was first proposed in 2018 and widely engaged on at that time ([see the *What we heard report for the 2018 engagement*](#)). Due to the time that has passed since the previous engagement, the government is re-engaging on the proposed regulation to update and consider stakeholder feedback before the regulation is finalized.

In addition to enacting the 2014 *Environment Act* amendments, the proposed new regulation is needed to improve clarity, reduce redundancies and align the Yukon with other jurisdictions. The new regulation is proposed to address the following:

- eliminating duplicative regulatory authorizations to streamline the remediation process (e.g., establishing exemptions for relocation permits).
- defining the process for:
 - transferring responsibility;
 - determining a site as contaminated;
 - voluntarily determining a site as contaminated; and
 - issuing a certificate of compliance.
- Establishing a clear authorization process for remediating a contaminated site and allowing some restricted activities on a contaminated site.
- Updating contaminant standards and spill reporting thresholds to reflect the latest science, Canada-wide standards, and operational practices.
- Establishing the authority to develop a protocol for construction specifications for Remediation Facilities, and
- Updating terms used in the regulation to align with the Act and with other Canadian jurisdictions.

Technical amendments the *Environment Act*

The new Contaminants Regulation requires legislated authority to enforce. To finalize the new Contaminants Regulation, the *Environment Act* and the 2014 *Environment Act* require technical amendments. While the government collects your feedback on a new Contaminants Regulation, these technical amendments are moving forward to ensure the new Contaminants Regulation is backed by the necessary authorities in the *Environment Act*.

Background

The regulatory regime for contaminated sites and spills sets out the standards and processes for protecting human health and the environment from harmful contaminants in soil and water. It applies to all land in the territory, including Settlement Land, leased or owned mine sites, commercial sites, industrial sites and private land.

The current *Contaminated Sites Regulation* was established in 1996 and amended in 2002. Since the last amendment, new national standards have been developed and

scientific knowledge of emerging contaminants of concern and contaminated sites has improved.

One of the most important questions for stakeholders through this engagement will be whether the Government of Yukon should match the British Columbia (BC) regulatory regime or the Canadian Council of Ministers of the Environment (CCME) numerical standards and analyses requirements. Yukon's current *Contaminated Sites Regulation* is based upon BC's previous regulation, circa 2002.

Discussion paper format

This paper provides an overview of a number of different aspects of the proposed Contaminants Regulation, including a comparison to other Canadian standards and regulations as well as discussion questions to focus stakeholder input and responses to potential concerns.

This discussion paper is divided into two parts:

- **Section 1:** Focuses on key aspects of the new Contaminants Regulation where the government requires stakeholder input to make a decision.
- **Section 2:** Shares more information about the proposed direction for the new Contaminants Regulation based on feedback received in 2018. The government is aiming to confirm stakeholders are still in favour of this direction or if stakeholders have any further feedback.

1. Issues requiring stakeholder input

1.1 Updated Standards

We are seeking stakeholder input on which standards the Yukon should adopt in the new contaminants regime. The Yukon's current standards are based on BC's previous regulations circa 2002. The proposed regulation aims to update the standards we follow.

In the 2018 engagement, feedback supported adopting BC standards instead of CCME standards. Both BC and CCME have updated select numerical standards since 2018.

The government is seeking your input on whether to adopt the CCME or BC standards. Your input will help inform the choice of standards used in the new Contaminants Regulation.

New changes from previous regulation:

Standards for contaminants will be added or updated to reflect new national standards and the latest scientific knowledge. Changes will include:

- Update and addition of standards for several important contaminants, including salt, MTBE, PFAS, and carcinogenic PAHs;
- Adoption of the Canada-Wide Standards for Petroleum Hydrocarbons in Soil. These standards will consider site-specific factors and will provide a standardized approach for hydrocarbon contaminated sites across Canada;
- Inclusion of standards for hydrocarbon vapours in soil;
- Inclusion of standards for contaminants in sediment; and
- Enhanced clarity regarding how the standards currently applied to Agricultural Land will also apply to Wilderness Land (i.e. land in a largely natural condition). Applying this standard helps minimize the risk of contaminants entering the food chain, whether through wildlife or crops.

Updated standards and related analytical requirements will be based on either:

- 1) BC’s Contaminated Sites Regulations, incorporated as static values as near to implementation of the Yukon new Regulation as possible; or,
- 2) CCME standards incorporated by reference.

Option 1 requires static values because the BC *Contaminated Sites Regulation* is not available in French, and so would need to be translated and incorporated at time of implementation of the new Regulation. As such, these standards would not change or evolve along with scientific understanding of contaminants or changes to regulatory regimes of other jurisdictions. This is currently the case with the existing *Contaminated Sites Regulation* in the Yukon.

Option 1: British Columbia Contaminated Sites Regulation incorporated as static values

Potential Advantages	Potential Disadvantages
<ul style="list-style-type: none">• Stakeholder familiarity with analyses (e.g. LEPH/HEPH vs F1-F4)• No increased cost associated with requirement for grain size analysis.• All regulations and standards contained within a single document.	<ul style="list-style-type: none">• Existing standards will become outdated.• Regulatory amendment is required for any updates or addition of new contaminants.• Long intervals between opportunities to update (see: 2002 to 2024).

<ul style="list-style-type: none"> • Robust regulatory regime currently. • Reduced work-load required to maintain up to date knowledge of regulations. • Lessened potential for errors in decision making with consistent regulations. 	
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Option 2 allows for incorporation of CCME standards by reference; which means that the new Regulation would evolve simultaneously with changes made to the CCME.

Option 2: incorporate CCME standards by reference

Potential Advantages	Potential Disadvantages
<ul style="list-style-type: none"> • Existing standards will be continuously updated and new regulated contaminants of concern included without need for amendment to the new Regulation. • Robust regulatory regime. • Differentiation between fine and coarse-grained soils. 	<ul style="list-style-type: none"> • Less stakeholder familiarity with analyses (e.g. LEPH/HEPH vs F1-F4) • Increased cost associated with requirement for grain size analysis. • Usability; regulations and standards dispersed across many documents. • Increased work-load requirement for users to stay up to date and informed of any changes to regulations. • Potential for errors in decision making due to assumptions, outdated regulatory information, or reliance on outdated documents.

Discussion question to stakeholders:

Q1.1 Would you prefer the updated standards adhere to the BC Contaminated Sites Regulation or CCME regulations and why?

Further background: answers to questions you may have:

Q. Are there any other regulatory regimes being considered? Why or why not?

- A. The BC *Contaminated Sites Regulation* and CCME were identified as the most robust, relevant and easily implemented. We are happy to consider other options if there is consensus among stakeholders.

2. Overview of other proposed changes to the contaminants regime

Below is an overview of proposed changes the government is planning to the contaminants regime based on 2018 feedback. The government is checking in with stakeholders to confirm stakeholders are still in favour of this direction or if stakeholders have any further feedback.

Review the sections below to learn about the proposed changes. You can share additional feedback if you think the government needs to make additional considerations before finalizing the new Contaminants Regulation.

2.1 Transfer of Responsibility

Under the 2014 *Environment Act* amendments - which are yet to come into force, responsibility for contamination can be voluntarily transferred from a property owner to a third party. Transfer of responsibility will be beneficial for property owners wishing to sell a contaminated site and for development of brownfield properties.

In 2018, we heard that there was support for a new Contaminants Regulation to allow agreements to be made to transfer the responsibility of a contaminated site.

The proposed new Contaminants Regulation:

The proposed new regulation will:

- provide details regarding the transfer of responsibility process.
- include the type of information needed for a transfer of responsibility agreement. For example, this may include the signature of the owner and third party and copies of applicable site assessments and designations of contamination.

Discussion question to stakeholders:

Q1.2 Do you agree with the proposal for the new regulation to provide detail regarding the transfer of responsibility process? If not, please provide an explanation.

Further background – answers to questions you may have:

Q. Will the government have any oversight or dictate sale conditions/impact on sale price/etc.?

A. No, conditions/sale price/etc. will be determined by the involved parties. YG will only document and manage the transfer of liability between parties.

Q. What is stopping the owner of a badly contaminated site from selling the lot and transferring liability to a shell corporation which could then declare bankruptcy, thereby eliminating the original owner's liability?

A. Our intention is to incorporate wording into the new Regulation and associated protocols to reduce the likelihood of this scenario. The government would also review the status of both parties prior to completing a liability transfer.

2.2 Designation of a Contaminated Site

The 2014 amendments to the *Environment Act* modernized the process for designating a site as contaminated. In addition, property owners can now voluntarily request that their site be designated as contaminated to support an application for a Certificate of Compliance or to transfer responsibility to a third party.

The proposed new Contaminants Regulation:

The proposed new regulation will include provisions to provide additional clarity and transparency to the designation process for a contaminated site. These may include but are not limited to:

- maintaining the current process to require notification to responsible parties and owners or occupiers of the affected lands.
- including the option to notify other parties.
- establishing timelines for provision of comments during the designation process.

Discussion question to stakeholders:

Q1.3 Do you agree with the proposal to provide clarity and transparency regarding designation of a contaminated site? If not, please provide an explanation.

Further background: answers to questions you may have:

Q. Will my neighbour or any other member of the public be able to apply to YG to “voluntarily” designate my site as contaminated?

A. No, only the owner of a site will be able to apply to have a site designated as contaminated.

2.3 Changes to Permitted Activities (including remediation)

Under the 2014 *Environment Act* amendments, cleanup of a contaminated site (remediation) must be done according to the regulations unless oversight is provided under a direction or an order. The 2014 *Environment Act* streamlined the regulatory process for responsible parties and property owners wishing to clean up historical contamination.

Currently, remediation activities are regulated through multiple permits and authorizations (e.g., relocation permits, ministerial authorizations, risk-based restoration permits).

In 2018, we heard there was support for remediation requirements to be clearly outlined and permits issued for remediation activities.

The proposed new Contaminants Regulation:

The proposed new regulation will:

- Replace multiple authorizations with a single remediation permit, so persons choosing to cleanup contaminated sites will experience less “red tape”.
- Enhance transparency in the early stages of remediation to increase the likelihood of successful remediation, thereby reducing costs.
- Require a remediation permit when cleanup of a site is initiated voluntarily.
- Create efficiencies by exempting the requirement to obtain a relocation permit (currently required to move contaminated materials) in most circumstances, allowing for site remediation to be completed more quickly.

Discussion question to stakeholders:

Q1.4 Do you agree with the proposal to establish a single authorization process to undertake remediation activities on a contaminated site? If not, please provide an explanation.

Further background: answers to questions you may have:

Q. Can I still apply for only a relocation permit/Ministerial authorization/risk-based restoration permit?

- A. No, all activities previously addressed by various permits will be regulated by the new “remediation permit”. However, the new remediation permit will be customized to each job and will be no more onerous to apply for and administer.

2.4 Allowing certain restricted activities

Currently, a site assessment and remedial action plan (formerly called a plan of restoration) is required before undertaking certain restricted activities on designated contaminated sites. However, these types of restricted activities may be required to assess a site *prior* to remediation, or for general site maintenance purposes.

The proposed new Contaminants Regulation:

- The changes proposed in the new regulation include: Enabling an environmental protection officer or environmental protection analyst to authorize some restricted activities to allow owners and users of contaminated sites the flexibility to undertake site maintenance (e.g., construct a building, install a water well) while ensuring they are protected from potential contaminant exposure. This also allows restricted activities related to site improvements and site assessment to be distinguished from restricted activities related to remediation of a site.

Discussion question to stakeholders:

Q1.5 Do you agree with the proposal to authorize certain restricted activities on a contaminated site prior to remediation? If not, please provide an explanation.

Further background: answers to questions you may have:

Q. How do these authorizations relate to other regulations (i.e. Worker's Safety and Compensation Act Public Health and Safety Act)?

- A. All other relevant regulations still apply and must be adhered to in addition to any authorizations given under the new Contaminated Sites Regulation.

2.5 Certificate of Compliance with Conditions

The 2014 amended *Environment Act* allows the Minister to issue certificates of compliance with conditions. A certificate of compliance with conditions will allow property owners wishing to conduct a risk assessment as a remedial option more flexibility for long-term planning for their site, including selling their property.

The proposed new Contaminants Regulation:

- Based on what we heard in 2018, the proposed regulation will expand on the process for issuing certificates of compliance with conditions to provide more flexibility to property owners for long term planning, including the option to sell their property.

Discussion question to stakeholders:

Q1.6 Do you agree with the proposal to further expand on the process for issuing certificates of compliances with conditions? If not, please provide an explanation.

Further background: answers to questions you may have:

Q1. What are some examples of potential conditions placed on a certificate of compliance?

- A. Many conditions are possible which would be similar to those found in current risk-based remediation permits. These may include, but are not limited to:
- maintaining an impermeable cap of specified depth over contaminated material;
 - prohibition against in-ground gardens for consumable plants; and
 - prohibitions against installation of drinking water wells.

2.6 Remedial Action Plan

The current regulatory regime does not contain guidance for what is to be included in a remedial action plan (previously known as a “plan of restoration”). A remedial action plan describes how a contaminated site is proposed to be remediated.

The proposed new Contaminants Regulation:

- The proposed new regulation will contain additional guidance to all parties as to what is to be included in the remedial action plan (site-specific and restoration standards will continue to be part of remediation). Working pro-actively with involved parties to develop a remedial action plan will help ensure contamination is remediated to below the standards and avoid unnecessary costs and delays.

Discussion question to stakeholders:

Q1.7 Do you agree with the proposal to further expand on remedial action plan requirements? If not, please provide an explanation.

Further background: answers to questions you may have:

Q. Will a remedial action plan be required for all remediations?

- A. Not necessarily, emergency and simple remediations may be exempt, at the discretion of an environmental protection analyst.

2.7 Site Investigation and Site Assessment

The current regulatory regime does not reflect the modern parameters for an acceptable site investigation and assessment. Site investigations and site assessments ensure potential effects on human health and the environment can be fully understood and that off-site impacts are addressed by the responsible party.

The proposed new Contaminants Regulation:

- The proposed new regulation would expand on site investigation and site assessment requirements to align the Yukon with other jurisdictions and industry practices.

Discussion question to stakeholders:

Q1.8 Do you agree with the proposal to further expand on site investigation and site assessment requirements? If not, please provide an explanation.

Further background: answers to questions you may have:

Q. Will this result in longer, more costly remediations?

- A. This change is not expected to increase costs or the time it takes to remediate a site. Site investigation and assessment is already an important aspect of remediations in the Yukon, this will only codify it.

2.8 Relocation Permit Exemption

Under the current regulatory regime, a permit is required prior to relocating contaminated material from a site, even when the material is the subject of another authorization. Establishing an exemption in the regulation for a relocation permit in these cases would remove unnecessary time delays on those wanting to proceed with remediation work and eliminate “red tape”.

The proposed new Contaminants Regulation:

- The proposed new regulation will establish an exemption for a relocation permit to remove unnecessary delays on those wanting to proceed with remediation work when the contaminated material is subject of another authorization.

Discussion question to stakeholders:

Q1.9 Do you agree with the on the proposal to establish an exemption for a relocation permit when the activity is already authorized under another authorization? If not, please provide an explanation.

Further background: answers to questions you may have:

Q. Would this remove safeguards that ensure proper documentation of the relocation of contaminated materials from a site to another site?

A. No, this option would only be implemented in instances where tracking and confirmation of relocation and remediation were addressed in other authorizations.

2.9 Protocol for Remediation Facility Construction

The current regulatory regime lacks authorization to develop a protocol with respect to construction specifications for Land Treatment Facilities, where materials contaminated with petroleum hydrocarbons are remediated. The new Regulation would authorize development of a protocol for construction specifications for Land Treatment Facilities. This would formalize what is currently required in the permitting process and align the Yukon with similar requirements in other Canadian jurisdictions.

Proposed new Contaminants Regulation:

- The proposed new regulation will authorize development of a protocol for construction specifications for Land Treatment Facilities.

Discussion question to stakeholders:

Q1.10 Do you have any feedback on the proposal to develop a protocol outlining construction criteria for all new Land Treatment Facilities in Yukon?

Further background: answers to questions you may have:

Q. Will this result in more lengthy remediation facility applications and/or more costly construction?

- A. No, the Government of Yukon already requires that construction specifications be supplied and reviewed; this change simply gives us the ability to write a legally binding protocol detailing the process.

Q. What is a remediation facility?

- A. Remediation facility is the new term for what are currently called Land Treatment Facilities. The new Regulation is changing the name for various reasons, most notable to increase clarity of function and align terminology with other parts of the regulation (i.e. remediation facilities remediate more than soil/land and land is not a defined term.)