



Yukon *Environment Act* Final Audit Report

Fiscal Year 2012/13

Presented and approved by the Audit Committee
September 8, 2014

Yukon
Executive Council Office
Government Internal Audit Services

Table of Contents

LIST OF ACRONYMS	1
EXECUTIVE SUMMARY.....	2
1.0 INTRODUCTION	3
1.1 Legal basis for the Environment Act audit	3
1.2 Context	3
1.3 Intent	3
1.4 Audit Objective	3
1.5 Audit Process and Methodologies.....	4
1.6 Audit Criteria	6
1.7 Audit Limitation	7
2.0 FOLLOW-UP TO PREVIOUS AUDITS	7
2.1 Responses to Previous Recommendations	7
2.2 Update to Observations	10
2.2.1 Overarching Comments.....	10
2.2.2 Update on Foundational Challenges Identified in Previous Recommendations.....	10
2.3 Moving Forward	11
3.0 OBSERVATIONS AND RECOMMENDATIONS: AUTHORITIES FOR THE MANAGEMENT OF THE ENVIRONMENT.....	11
3.1 Clarity of Roles and Responsibilities.....	11
3.2 Public Body Oversight.....	11
3.3 Public Concern.....	12
3.4 Environmental Partnerships.....	12
4.0 OBSERVATIONS AND RECOMMENDATIONS: PERMIT SERVICE DELIVERY.....	13
4.1 Timeliness.....	13
4.2 Planning and Reporting	13
4.3 Human Resources.....	13
5.0 OBSERVATIONS AND RECOMMENDATIONS: COMPLIANCE PROMOTION AND ENFORCEMENT ...	14
5.1 Values and Ethics.....	14
5.2 Visibility and Impact	14
5.3 Training and Knowledge.....	15

5.4 Effectiveness and Efficiency of Penalties 15

5.5 Coordination of Inspection Roles and Responsibilities 16

6.0 SUMMARY OF RECOMMENDATIONS 17

6.1 Recommendations 17

7.0 CONCLUSION 18

8.0 MANAGEMENT ACTION PLAN 19

APPENDIX A 22

Environment Act Amendments 22

APPENDIX B 23

REFERENCES 23

LIST OF ACRONYMS

CS: Department of Community Services

CMI: Compliance, Monitoring and Inspection

EMR: Department of Energy, Mines and Resources

EPO: Environmental Protection Officer

FMO: Fire Marshal's Office

HPW: Department of Highways and Public Works

YCEE: Yukon Council on the Economy and the Environment

YICES: Yukon Intergovernmental Committee on Environmental Sustainability

EXECUTIVE SUMMARY

This report summarizes the sixth audit conducted pursuant to s. 39 of the Yukon *Environment Act* (the act). This audit is conducted every three years to assess the Yukon government's performance with respect to the act's efficiency and fairness. However, we need to recognize that the Yukon *Environment Act* was amended after this audit to address issues raised in previous audits (see Appendix A).

OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS

The 2006/09 audit found that no improvements had been made since the 2003/06 audit. The 2009/2012 audit found that some changes had been made since the 2006/09 report: publication of the Yukon State of Environment Report, improvements to risk-based inspections, and progress regarding other recommendations (see Table 2.1 B).

The 2009/12 audit has found that foundational elements in respect to governance, risk and control activities still need improvements, resulting in stakeholder's uncertainty and criticism about the clarity and auditor about consistency of operational activities under the act.

Additionally, this audit addressed the limitations of out-dated legislation. However, it recognized the significant and important work that is being conducted by Environment Yukon to modernize the act and regulations.

During the course of the audit it was noted that although the pace of improvements to processes has been slow, there is evidence of positive change. The establishment of some working groups and outreach to non-governmental organizations to communicate aspects of the act has had a positive impact on public education and on relationships with the business community.

The overarching observation made in this audit is that departments with the responsibility for permitting, monitoring and inspection under the act continue to take a segregated approach. To manage Yukon's environment efficiently and fairly, an integrated, risk-based approach built on strong governance and control structures is recommended. This will ensure that the Yukon government is performing well in relation to its responsibilities under the act.

This report focuses on the changes required to solidify the foundations of governance, risk and control to improve the Yukon government's performance in relation to the act. The report's conclusions were largely based on a review of the work currently underway by Environment Yukon to update the act and to address the foundational issues mentioned in previous audits that are most important to implementing clear, consistent and modernized operations.

1.0 INTRODUCTION

1.1 Legal basis for the Environment Act audit

Part 2 of Yukon's *Environment Act* ("the act") sets out the legal requirements and framework for the audit. An audit of the act is to be conducted with respect to the act's efficiency and fairness¹, is to be completed every three years and is to be made publicly available. The terms of reference are based on s. 39 of the act which requires the audit to include the following.

- (a) *the performance of the Government of Yukon in meeting its responsibilities under this act shall be subject to an audit with respect to its efficiency and fairness;*
- (b) *an audit shall be conducted by the Commissioner in Executive Council within two years of the date this section comes into force and every three years thereafter; and*
- (c) *a report of an audit shall be submitted to the Legislative Assembly.*

The scope of this audit included all aspects outlined by the act where performance in relation to efficiency and fairness would apply, while recognizing that several aspects of the act have been overtaken by updated legislation.

1.2 Context

This is the fifth audit of the act performed by Government Audit Services and the sixth audit commissioned by the Yukon government since 1991. The audit focused on the period from October 1, 2009 to September 30, 2012. It is noted that there has been progress during the review period covered by this audit and consideration was given to developments up to July 2013.

In addition to revising the act, a number of high priority and relevant regulation amendments and development initiatives have been identified and are currently underway. Additionally, there were legislative changes and operational transfers during the review period. These will be discussed further in Sections 3.0 through 6.0.

1.3 Intent

In keeping with the spirit of the act, the primary intent of the audit was to identify how the Government of Yukon has performed in conserving the natural environment in accordance with the public trust in relation to efficiency and fairness, and how the Government of Yukon has performed in relation to ensuring that the objectives of the act have been met in relation to efficiency and fairness.

1.4 Audit Objective

The overall objective of the audit was to provide an opinion on whether the act and its supporting regulations had been administered and enforced with an acceptable degree of efficiency and fairness. In this context, progress was assessed on issues

¹ As in the previous audit, efficiency was defined in terms of how well resources were used to accomplish goals, including productivity and competence. Fairness was defined as whether there was just, unbiased, equal treatment of people's concerns according to due process and rules.

identified in prior audits, the current status of compliance with respect to efficiency and fairness, and the state of operations at the time of the audit.

1.5 Audit Process and Methodologies

This audit has three distinct but related parts:

- i. an audit of the degree of compliance by the Government of Yukon in carrying out its responsibilities for efficiency and fairness in relation to the act;
- ii. an audit of the performance of the Government of Yukon in carrying out its responsibilities for efficiency and fairness in relation to the act; and
- iii. an audit of the operations of the Government of Yukon in carrying out its responsibilities for efficiency and fairness in relation to the act.

The steps associated with the audit consisted of planning, examination and reporting, each of which is briefly discussed below.

Audit Planning: Proposed audit criteria, lines of inquiry and audit methodology were developed and summarized in a draft audit project plan. Preliminary meetings were held between department staff and Government Audit Services. The draft audit project plan was developed in collaboration with the Department of Environment and Government Audit Services and was signed between the two parties in February 2013.

Audit Examination: The methodologies used to gather information included interviews with a wide range of participants including management and frontline workers in the departments of Environment, Community Services, Energy, Mines and Resources, Justice, Executive Council Office and Highways and Public Works; non-governmental organizations; municipalities; federal agencies; and First Nation groups that participate directly in or are affected by the act. This list was not meant to be exhaustive but rather representative. All participants were invited to participate by:

- a. responding to a questionnaire tailored to the specific types of organizations targeted;
- b. submitting comments; and/or
- c. participating in an interview via phone or in person.

The auditor aimed to carry out 40 interviews to gain a variety of perspectives on the Yukon government's performance and to ensure enough interviews were relevant to the audit's scope. Of these 40 invitations:

- 30 (75%) were to a range of Yukon government branches involved in environmental affairs, science, technology, mining and environmental enforcement;

- 4 (10%) were to other governments, including municipal, federal and First Nations; and
- 6 (15%) were to non-governmental organizations including advocacy groups for environmental issues and mining interests.

A listing of all non-Yukon government organizations contacted is provided in **Table 1.5A**.

There were 33 responses to the 40 invitations, comprising either feedback or participation in a face to face interview (82%).

- 28 (93%) of the Yukon government branches contacted;
- 2 (50%) of other governments contacted; and
- 2 (50%) of non-governmental organizations contacted.

Interviews were declined based on availability to meet and relevance to the audit project work.

Table 1.5A: Listing of Resources Contacted for Audit Project Work Externally to the Yukon government

Name of Organization	Type of Organization
Canadian Parks and Wilderness Society	Non-governmental Organization
City of Whitehorse	Municipal Government
Council of Yukon First Nations	First Nations Organization
Environment Canada	Federal Government
Klondike Placer Miners' Association	Non-governmental Organization
Yukon Chamber of Mines	Non-governmental Organization
Yukon Conservation Society	Non-governmental Organization
Yukon Environmental and Socio-economic Assessment Board	Board
Yukon Fish and Wildlife Management Board	Board
Yukon Outfitters' Association	Non-governmental Organization

In addition to the information provided by the participants, sampling consisted of reviewing over 134 proponent permit files, 80 enforcement documents, and 4 court decisions; guidelines; guidance documents; training materials and records; background material and reports; previous audit reports on the act; and risk and planning documentation.

Due to inconsistencies in records management practices, data integrity and data quality issues among some areas involved in permitting and enforcement actions, the auditor was not able to determine the total population/number of all permits or enforcement files. Samples were selected based on risk criteria and, where population data were complete, a 10% sample size.

Wherever possible, opinions and perceptions were corroborated with written or other forms of evidence.

Audit Reporting: A draft of the audit report was provided to the Department of Environment and directly affected parties for fact checking. Comments received were considered and a final draft audit report was prepared and discussed with the departments of Environment, Community Services and Energy, Mines and Resources. The final report will be submitted to the Yukon Legislative Assembly.

1.6 Audit Criteria

Listed below are the audit criteria that were used to evaluate the Government of Yukon's performance under the act. These criteria represent a list of 'goal statements', developed by the auditor and agreed by the auditees that identify ideal conditions for proper conduct under the act. Audit evidence was used to assess:

- the degree to which these goals have been met;
- impediments to achieving the goals; and;
- measures that need to be in place to create conditions for success.

The audit expected to find that:

- authorities, responsibilities and accountabilities for managing the environment are clearly defined and communicated among all departments and external stakeholders identified under the act and regulations;
- reports and other commitments to the Yukon Legislative Assembly are being fulfilled in accordance with legislated timelines;
- mechanisms are in place to ensure the appropriate allocation of resources supporting the principles of efficiency and fairness in the implementation of the act and regulations;
- activities related to efficiency and fairness are administered as per legislated and regulatory requirements and on a risk-based approach;
- authorities, responsibilities and accountabilities for efficiency and fairness have been described in policy and procedures in support of the act and regulations;
- progress against legislated service delivery requirements are measured and reported on as a means to evaluate efficiency performance and improvements;

- controls for efficiency capture data that support operational goals, including productivity of processes activities, and competence documentation about human resources having the sufficient knowledge, skills and tools necessary to discharge their responsibilities;
- controls for fairness capture data that support the principle that decisions are unbiased, just and transparent, in accordance with legislative rules that are in place;
- departments assigned responsibilities under the act and regulations are effectively administering their oversight responsibilities for monitoring activities and resolving issues and disputes; and
- there is uniformity of practice in relation to fairness across departments that administer the regulations under the act.

1.7 Audit Limitation

Conditions have changed since the *Environment Act* was first created in 1991. Other acts, such as the *Yukon Environmental and Socio-economic Assessment Act*, have taken precedence over certain responsibilities and regulatory activities. These other acts were not reviewed as part of the audit.

2.0 FOLLOW-UP TO PREVIOUS AUDITS

2.1 Responses to Previous Recommendations

There were no new audit recommendations in the 2006/2009 audit report. The 2006/2009 provided status updates on the outstanding audit recommendations; 4 recommendations were outstanding from the 2003/2006 audit and 3 recommendations were outstanding from the 2000/2003 audit report. The 2009/2012 audit gathered evidence for progress made on these 7 audit recommendations and analyzed available information to make a qualitative determination of their current status. The criteria used for the analysis are summarized in **Table 2.1A**.

Of the 7 recommendations made in total in the two audits, 2 are considered closed, 4.5 are in progress and the department disagreed with .5 as indicated in **Table 2.1B**.

Table 2.1A- Implementation Status Criteria for Previous Audit Recommendations

Status	Criteria Used to Classify Status
Closed	Evidence indicates intent of recommendation was substantively addressed. Little if any additional program development is required, or original issue no longer exists and/or is no longer relevant.
In Progress	Evidence suggests that current efforts, once fully implemented, will substantively address the intent of this recommendation.
Unresolved	Evidence suggests that little progress has been made to address the intent of the recommendation.

Disagreed	The responsible party disagreed with the recommendation and it remains unresolved.
-----------	--

Table 2.1B - Status of Previous Audit Recommendations

Recommendation Number	Recommendation Context	Action Taken	Recommendation Status
2005 #B1	<i>The Department of Environment should ensure that it meets the legislated timelines for the Yukon Conservation Strategy and the Yukon State of the Environment Report</i>		
	Yukon Conservation Strategy	As previously reported in 2010, the most recent version of the Yukon Conservation Strategy is dated May 1990. The Yukon government has accepted that it will remain in default of the requirement to revise the strategy every three years, in anticipation of proposed amendments to the act. ²	In Progress
	Yukon State of the Environment Report	During the review period, Environment Yukon has published 3 reports, which is in accordance with the requirements under the act. As the data in these reports have been published several years following the year intended, Environment Yukon combined the 2012 report so subsequent reports can be publicly available in a timely manner. The interim State of the Environment Report (2012) includes data for 2009, 2010, and 2011. In this regard, Environment Yukon has fulfilled their obligations under the act.	Closed
2005 #B2	<i>The Yukon government should review the Environment Act in light of the substantial governance changes since 1991</i>	Environment Yukon has recently begun their review of the <i>Environment Act</i> and regulations through public consultations. However, Part 5 and 6 of the act are not listed in the first round of proposed amendments. As a result, these parts of the act continue to overlap with other legislation. As interviews with stakeholders indicated, when legislation overlaps this could cause inefficiencies and delays in the resolution of issues.	In Progress
2005 #B7	<i>The Department of Environment should review its policy for designating contaminated sites to ensure that it complies with the Contaminated Sites Regulation, is meeting the fairness criterion and the government's responsibilities with respect to prevention of environmental harm and freedom of information</i>		
	Policy	This was addressed in the previous audit.	Closed
	Public Registry	External stakeholders have told us that navigating through the Environment Yukon website or determining who to speak to when information is needed in relation to a contaminated site can be a cumbersome exercise. Environment Yukon noted that steps have been taken to ensure information pertaining to contaminated sites is accessible by contacting the department.	Disagreed
2008 #1	<i>The departments of Environment and Energy, Mines, and Resources should formalize a risk-based approach to inspection coverage.</i>	Compliance, Monitoring and Inspections currently uses a risk-based approach to determine inspection coverage.	Closed

² As of May 2014, amendments to the act have revised this requirement and it is now at the discretion of the Minister as to when the strategy may be revised.

2008 #2	<i>Energy, Mines, and Resources should develop an inspection process in the resource development sectors that would meet the requirements of the Environment Act.</i>	Compliance, Monitoring and Inspections have re-worked their information management infrastructure to capture their delegated responsibilities under the <i>Environment Act</i> .	In Progress
2008 #3	<i>The Yukon government should develop options to better administer the issuance and monitoring of storage tank permits to ensure that it complies with the Storage Tank Regulations.</i>	<p>During the current review period we found the Fire Marshal's Office still lacked dedicated resources to carry out its activities under the Storage Tank Regulations, which may have helped resolve the issues of efficiency highlighted in previous audit reports. We did not find any indication that Environment Yukon or Community Services had examined current processes to ensure consistent application of the regulation.</p> <p>As indicated in the interviews, storage tank permits are issued to all operating hard rock mines and many advanced exploration enterprises in oil, gas and minerals sector. However, these permits are not issued to small operators in the resource-based sectors such as mining, as there are other pieces of mining legislation that overlap with the storage tank regulations. As a result some miners do not hold storage tank permits under the <i>Environment Act</i>, but have other approval documentation. This overlap in legislation makes it difficult for the public to know which permits they need for their activities and causes inconsistency in the application of the law.</p>	In Progress
2008 #4	<i>The Yukon government should take the necessary steps to more visibly, or overtly, demonstrate compliance with Section 39 of the Environment Act.</i>	<p>There are processes in place that Yukon government uses to ensure s.39 of the act is applied. For example, every policy analysis presented to Cabinet for direction includes environmental implications and every project that is reviewed under YESAA requiring government approval takes into account the environmental implications (as well as social and economic implications).</p> <p>A green procurement policy was adopted in June 2010 to support the Climate Change Action Plan (2009). The current purchasing policy outlines that departments shall provide assurance that the supplier meets all applicable Yukon government environmental performance standards.</p> <p>During the review period, several steps have occurred to put the Yukon government in compliance with Section 39 of the act. In 2010, the Climate Change Secretariat was established which coordinates the Yukon government's response to climate change. Additionally, the Yukon Intergovernmental Committee on Environmental Sustainability (YICES), a multi-partnership group composed of varying levels of government, including the Climate Change Secretariat and Procurement Services (HPW) was established in 2011. During the review period, YICES members participated in a Green Procurement Workshop in 2011 to help them build a stronger procurement network and engaging in dialogue on sustainable purchasing ideas and actions.</p> <p>Finally, a Climate Change Action Plan progress report was published in 2012 that addressed action to incorporate environmental performance considerations into the government's procurement decisions in efforts to reduce greenhouse gas emissions.</p> <p>Since the beginnings of the Climate Change Secretariat, there has been progression in formalizing a governance structure. However, there is a risk that without a consistent governance framework and an established reporting mechanisms, that the momentum for green procurement may be lost. Additionally, there is a risk that without a framework to prioritize green procurement data, the Yukon government will not be able to fulfill its goals indicated in the Climate Change Action Plan.</p> <p>To ensure successes for green purchasing practices within the</p>	In Progress

		<p>Yukon government, Environment Yukon, in collaboration with Yukon Intergovernmental Committee on Environmental Sustainability and departments, should consider establishing green procurement guidelines to ensure that appropriate data can be collected that provides assurance that the Yukon government is meeting its commitments in the Climate Change Action Plan. Additionally, Environment Yukon, in collaboration with departments, should consider focusing data collection efforts on high risk areas identified through the Climate Change Action Plan.</p>	
--	--	--	--

2.2 Update to Observations

2.2.1 Overarching Comments

Departments charged with the responsibility for permitting, monitoring and inspection under the act continue to operate using a segregated approach.

During the audit, there was evidence to demonstrate that electronic permitting information is not readily accessible unilaterally among departments, which impacts the quality and breadth of inspection activities. Additionally, there was evidence to demonstrate that inspection activities in the departments of Environment and Community Services are not risk-based and are highly reactive in nature. This is an inefficient use of scarce human resources and demonstrates the need for integrated business intelligence.

There have been efforts on the part of Natural Resource Officers to educate resource-based operators about the requirements of the act and this has been accomplished through intergovernmental partnerships, meetings with external stakeholders and steps towards a comprehensive permit application package.

2.2.2 Update on Foundational Challenges Identified in Previous Recommendations

Foundational challenges identified in previous audits are still relevant and are impacting the efficiency and fairness of the act and regulations.

Until reforms are made to the *Environment Act* to ensure its relevance to today's environmental standards and consultation and approval practices, and to remove redundancies with other legislation, the Yukon government will continue to be non-compliant with this act. The risk associated with this non-compliance is that it undermines the public trust that is bestowed to the Yukon government and reduces public confidence in the Yukon government's ability to perform under the act.

Some of these foundational challenges were addressed by the Department of Environment through a public review and consultation held between August and October 2013 (see the updated *Environment Act* at <http://www.env.gov.yk.ca/environment-you/environment-act-public-review.php>).

2.3 Moving Forward

The foundational and business challenges discussed in this section are further referenced in other parts of this report as they also relate to other observations.

The remainder of this report focuses on lines of inquiry related to key observations and themes developed through the audit, excluding the foundational challenges identified above and in previous audit work. **Appendix A** provides a listing of the *Environment Act* amendments related to the past findings.

3.0 OBSERVATIONS AND RECOMMENDATIONS: AUTHORITIES FOR THE MANAGEMENT OF THE ENVIRONMENT

3.1 Clarity of Roles and Responsibilities

Management under the act is complex and requires stronger collaboration among departments which have delegated or shared responsibilities under the act.

Under the act, the Government of Yukon shall conserve the natural environment in accordance with the public trust. In accordance with the *Government Organization Act*, Environment Yukon and Community Services have a shared responsibility to provide oversight of the administration of the act. This was confirmed by legal counsel at the Department of Justice.

It was noted that multiple Memoranda of Understanding and other administrative agreements between departments (namely between Environment Yukon and Fire Marshal's Office (FMO) at Community Services (CS); and Environment Yukon and Operations and Programs, Community Services) who perform activities under the act have not been reviewed in several years. These agreements should be reviewed periodically, for example when legislative changes occur or when changes in department structures occur, to ensure their relevance.

It was noted that as a result of these old agreements, there was a lack of collaboration and uniformity of performance information in each area for planning, managing and evaluating operations and activities under the act. This is limiting the Yukon government's ability to effectively plan and manage activities under the act and respond to issues promptly when they arise.

RECOMMENDATION #1: *Environment Yukon, in consultation with departments that hold responsibility under the act, should periodically review and update MOUs and agreements to ensure their relevancy and that collaboration is taking place.*

3.2 Public Body Oversight

The Yukon Council on the Economy and the Environment (the Council) remains non-operational since the last audit and the Yukon government is unable to satisfy s. 22 and s. 49 of the act.

It was noted in interviews with external stakeholders that the Council served as a useful body when it was operational, as there is no other formal body that provides the public with an opportunity to provide input or to challenge current government decision-making in regards to the environment.

Without an operational Council, the public interest may not be adequately represented and the public may not be sufficiently empowered or aware when decisions regarding the environment are made by the Yukon government.

3.3 Public Concern

There are limited examples of Yukoners exercising their environmental rights to file a formal complaint under the act (s.21) and there are also issues with processes that ensure resolution of complaints.

The extent to which Yukoners are aware of their rights is unknown, as the Environment Yukon website does not readily communicate to the public about their right to file a formal complaint or suggest who to contact in relation to complaints or concerns under the act.

In interviews with parties external to the Yukon government, some participants noted that the Environment Yukon website can be challenging to navigate and there is no help line or designated resource to deal with calls from the public efficiently.

During the review period, one complaint was filed that met the complaints criteria of Part 1 of the act (section 21). As the Yukon Council on the Economy and the Environment (YCEE) remains non-operational, the complaint was not sent to the YCEE for review, but was coordinated by the department. This complaint remains open as the complainant has yet to close the matter by indicating to the Department of Environment whether their concerns were addressed. This complaint has never been publicly reported because it remains open.

3.4 Environmental Partnerships

The Yukon government is actively cooperating with other jurisdictions and organizations on environmental issues.

The Yukon government is very active in participating in local, territorial and national committees relating to the environment. EMR has actively discussed the act with mining groups and companies and has organized events, demonstrating a commitment to collaboration in promoting the objectives of the act.

4.0 OBSERVATIONS AND RECOMMENDATIONS: PERMIT SERVICE DELIVERY

4.1 Timeliness

The vast majority of permit applications are processed in a timely manner.

For permits issued by Standards and Approvals, Environment, 99 per cent of the files reviewed demonstrated acceptable and efficient turnaround times. Of these permits, 100 per cent of the files demonstrated a quality assurance mechanism to ensure file completion.

For permits issued by the Fire Marshal's Office, Community Services, there were numerous instances whether either the permit or the application for the permit was missing on the file. This made it difficult to assess turnaround times. Where both documents were on file, which constituted 64 per cent of the sample, turnaround times were efficient.

4.2 Planning and Reporting

The permitting system is not electronically consolidated or harmonized and does not give a comprehensive view of the true performance of the Yukon government in terms of efficiency under the act.

No reports could be located that consolidated the number of permits issued under the act to proponents or provided a view of which permits proponents were missing based on their operations. In the absence of this information, the Yukon government lacks performance indicators to determine its overall efficiency, where it needs to allocate resources to improve its permitting system, where high risk proponents exist and how it can move towards continuous improvement.

It was noted that during the review period, multiple proponents lacked the necessary permits to perform their operations and the respective departments do not have the resources to manually follow up to ensure the proponent is in compliance.

RECOMMENDATION #2: *Departments involved in permitting activities under the act should harmonize or consolidate authorizations across the Yukon government to ensure uniformity of business practices and improve compliance with authorizations under the act.*

4.3 Human Resources

Inadequate human resources impact the Fire Marshal's Office's ability to carry out its permitting responsibilities under the act.

It was observed that not all units have a dedicated resource to manage permit information under the act. The Fire Marshal's Office still lacks a dedicated resource to carry out its activities under the Storage Tank Regulations. Although some

advancement in information management at the Fire Marshal's Office have progressed since the last audit, the absence of an additional resource does not give the current administrative role the flexibility to resolve ongoing information management issues and gaps.

5.0 OBSERVATIONS AND RECOMMENDATIONS: COMPLIANCE PROMOTION AND ENFORCEMENT

5.1 Values and Ethics

Environmental Protection Officers are operating in accordance with the act.

An Enforcement and Compliance policy was in effect during the review period and is used by individuals with an Environmental Protection Officer (EPO) designation. There was no indication during the review period that an EPO contravened any aspects of s.151 of the act. It was noted that Environment Yukon included this part of the act in their currently proposed amendments in relation to allowing EPOs to perform inspections under reasonable grounds for activities that do not necessarily need a permit.³

It was also noted that where environmental protection orders were issued, they were done so in accordance with the act.

There were several examples of efforts on the part of all EPOs to gain voluntary compliance from proponents. However, multiple discrepancies were noted, such as giving longer timelines for compliance to public sector proponents than private sector proponents. This could create the perception that enforcement activities are not consistent and it could undermine the efforts of EPOs, making their role an ineffective deterrent for safeguarding the natural environment.

RECOMMENDATION #3a): *Environment Yukon, in consultation with departments, should develop guidelines and standards for managing non-conformance for all proponents to the act which would enable consistent practice for EPOs.*

5.2 Visibility and Impact

Designated Environmental Protection Officers do not take a uniform approach to corrective action and follow up across the Yukon government when a proponent has been non-compliant under the act.

It was noted that there are no unified, established guidelines or standards for EPOs on turnaround times for corrective action or follow-up to assess proponent compliance or performance. Although there was evidence on file that demonstrated that proponents took reasonable measures to mitigate further impact on the

³ This proposed amendment was altered to clarify the need for owner's consent or a warrant to undertake inspections on lands and activities that did not necessarily have a permit.

environment and that the Yukon government eventually followed up, timelines varied and some follow-up did not occur for consecutive years. The absence of guidelines and standards may allow proponents to continue to operate in non-compliance with aspects of the act as well as risk continued environmental contamination.

RECOMMENDATION #3b): *Environment Yukon, in consultation with departments, should develop guidelines and standards for spill response, corrective action and follow-up timelines to ensure consistent practice and measures for continuous improvement.*

5.3 Training and Knowledge

Some training for designated Environmental Protection Officers occurs. However, the costs are not shared and there is a lack of refresher sessions.

Designated EPOs who are employed by Environment Yukon undergo extensive training. However, designated EPOs outside Environment Yukon only receive basic training. Training records indicate that all employees who operated under the act during the review period had received proper training.

It was noted that some designated EPOs do not readily reference the act when they are documenting the files. It may imply that they have lost some of the knowledge they learned when they were designated. Furthermore, more training needs to occur overall, for example so that all designated EPOs have the same information and knowledge when policy or procedures change.

It was noted that given the breadth of the act, in addition to several other acts they enforce, designated EPOs may not be considered subject matter experts on the act. The impact of minimal training for some designated EPOs may lead to limited application and understanding of the act, possibly leading to an increased risk that non-compliances under the act go unnoticed.

Finally, it was noted that there is limited training available for air emissions inspection. The training for some designated EPOs is based on risk analysis. That means not all designated EPOs receive training. There is a risk that non-compliance under the Air Emissions Regulations may be occurring and there are no controls to address the risk.

RECOMMENDATION #4: *The Yukon government should develop a training plan for designated EPOs as well as allocate financial resources and a cost sharing formula for the development of refresher and air emissions training for designated EPOs.*

5.4 Effectiveness and Efficiency of Penalties

The current process for escalating non-compliance to penalties and offences is inefficient.

There were multiple examples to demonstrate the efforts of Environment Yukon to take non-compliant proponents to court. It was noted that some proponents have been non-compliant in multiple cases, and some have been taken to court on more than one occasion. It was also noted that there are no administrative penalties prescribed in the act as a non-judicial way of dealing with offenders and repeat offenders. This means that developing and following-up on a case to ensure a conviction under the act is a time-consuming process that may take years before it reaches the courts system. The time it takes to prepare a prosecution case is highly dependent on the nature of the case and staffing constraints. This impacts the organization financially and operationally, and meanwhile the natural environment continues to be contaminated.

RECOMMENDATION #5a): *The Yukon government should consider using s.167 of the act by requiring repeat non-compliant proponents to provide financial assurances through the security provision of the act which will better protect taxpayers' rights, safeguard the environment and increase voluntary compliance.*

RECOMMENDATION #5b): *The Yukon government should consider developing administrative penalties for non-compliant proponents to reduce the number of lengthy legal proceedings and deter non-compliance.*

5.5 Coordination of Inspection Roles and Responsibilities

Environmental inspection and enforcement is a multi-department responsibility. The limited human resources in Environment Yukon, the size of Yukon and the lack of a comprehensive risk-based approach to inspection and enforcement create a challenging inspection regime.

Currently, only Environment, Energy, Mines and Resources and the Fire Marshal's Office in Community Services have designated EPOs under the act. Operations and Programs in Community Services, which manages the designated materials, beverage container and recycling fund regulations, do not have monitoring or inspection authorities.

In addition to carrying out inspection activities under the act, Energy, Mines and Resources also has a mandate to carry out inspections under other legislation, such as mining activities. Environment and Energy, Mines and Resources have attempted to overcome any negative perceptions and challenges associated with Energy, Mines and Resource's involvement in both the mining and environmental enforcement operations by working together in the field to improve familiarity, build better relationships and improve access to activities subject to inspection. This continued, synergistic relationship will ensure that scarce staffing resources are managed efficiently and that non-compliance is addressed collaboratively.

It was noted that there was good co-operation between inspectors to facilitate effective inspection. However, it was also noted that risk-based inspection activities

are only occurring in Compliance Monitoring and Inspection and Conservation Officer Services. Not all inspection activities in departments are risk-based and where inspection activities are risk-based, this information is not shared among departments or readily available electronically for all EPOs and EPO designates. Furthermore, it was noted that since the administrative transfer of the beverage container, designated materials and recycling fund operations, no inspection or enforcement activities have taken place. The risk associated with this transfer is that non-compliance under these regulations is not being actively monitored and therefore the level of risk associated with these activities is not known.

In other jurisdictions, laws have been implemented that allow government officials who see something during an inspection that is beyond their mandate to enforce to inform the responsible authority. This information may contribute to a greater government-wide approach to efficiency and effectiveness in terms of compliance and enforcement.

RECOMMENDATION #6: *The Yukon government should consider developing a comprehensive risk-based approach to compliance and enforcement to optimize the effectiveness and efficiency of inspection activities under the act.*

6.0 SUMMARY OF RECOMMENDATIONS

6.1 Recommendations

The following new recommendations were made in this audit:

Recommendation Number (Location in Report)	Recommendations
Recommendation 1 (Section 3.1)	<i>Environment Yukon, in consultation with departments that hold responsibility under the act should periodically review and update MOUs and agreements to ensure their relevancy and collaboration.</i>
Recommendation 2 (Section 4.2)	<i>Departments involved in permitting activities under the act should harmonize or consolidate authorizations across the Yukon government to ensure uniformity of business practice and improve compliance with authorizations under to the act.</i>
Recommendation 3a) (Section 5.1)	<i>Environment Yukon, in consultation with departments, should develop guidelines and standards for managing non-conformance for all proponents to the act which would enable consistent practice for EPOs; and</i>
Recommendation 3b) (Section 5.2)	<i>Environment Yukon, in consultation with departments, should develop guidelines and standards for spill response, corrective action, and follow-up timelines to ensure consistent practice and measures for continuous improvement.</i>
Recommendation 4 (Section 5.3)	<i>The Yukon government should develop a training plan for designated EPOs as well as allocate financial resources and a cost sharing formula to the development of refresher and air emissions training for designated EPOs.</i>

Recommendation 5a) (Section 5.4)	<i>The Yukon government should consider using s.167 of the act by requiring repeat non-compliant proponents to provide financial assurances through the security provision of the act which will better protect taxpayer rights, safeguard the environment and increase voluntary compliance.</i>
Recommendation 5b) (Section 5.4)	<i>The Yukon government should consider developing administrative penalties for non-compliant proponents to reduce the number of lengthy legal proceedings and deter non-compliance.</i>
Recommendation 6 (Section 5.5)	<i>The Yukon government should consider developing a comprehensive risk-based approach to compliance and enforcement to optimize the effectiveness and efficiency of inspection activities under the act.</i>

7.0 CONCLUSION

The Yukon government can improve its performance under the act in relation to efficiency and fairness by making the recommended changes.

Operational, legal and environmental risks are identified in this report. If departments implement an integrated, collaborative approach, current practice can be formalized and a unified framework can be established for monitoring and enforcement activities under the act.

In this audit, it was found that authorities, responsibilities and accountabilities for the management of the environment are not clearly defined and communicated among all departments, even though they are described in policies and procedures. Additionally, there is inconsistency in oversight responsibilities for monitoring activities and some enforcement and inspection is not taking place.

Some reports and other requirements by the Yukon Legislative Assembly are not being delivered within legislated timelines. If they are no longer meaningful, these legislated requirements may be changed through future amendments to *the act*.⁴

Some units have mechanisms in place to ensure the appropriate allocation of human resources and some activities are administered using a risk-based approach. The value of a risk-based approach is that this will help determine where resources are needed and is proactive rather than reactive.

Service delivery requirements are not always measured and reported on, which does not allow for quality assurance, evaluation or performance reporting. Some controls capture data that can support operational goals. However, not all staff who operate under the act have the sufficient knowledge, skills and tools to carry out their responsibilities. In the absence of complaints data or established procedures for

⁴ Recent amendments to the act have created a situation where the Yukon government is no longer in non-compliance with these commitments (Appendix A).

follow-up and even though some controls for fairness exist, it is challenging to provide an overall opinion on fairness.

8.0 MANAGEMENT ACTION PLAN

Recommendations	Management Response/Action	Target Date	Position(s) Responsible
<p>1. <i>Environment Yukon, in consultation with departments that hold responsibility under the act, should periodically review and update MOUs and agreements to ensure their relevancy and collaboration.</i></p>	<p><i>Agree, Disagree or Partially Agree</i> Agree CS: To review the MOU with Environment. Decisions will be made in order to positively impact most of the issues identified within this audit. Environment: MOUs requiring updates will be identified and revised. EMR: CMI performs a periodic review of its long-term agreements</p>	<p><i>June, 2015</i> <i>March 31, 2016</i> <i>N/A</i></p>	<p><i>DM</i> <i>Director, EPB</i></p>
<p>2. <i>Departments involved in permitting activities under the act should harmonize or consolidate authorizations across the Yukon government to ensure uniformity of business practice and improve compliance with authorizations under the act.</i></p>	<p><i>Agree, Disagree or Partially Agree</i> Partially Agree Environment and EMR: Several efforts have been made to harmonize these activities, beginning in 2006. The results to date have been the MOA on inspections and a consolidated application for <i>Environment Act</i> permits. Work needs to be done (including with the Yukon Water Board) in an overall effort to harmonize permitting activities. Work is ongoing on issuing “authorization packages”.</p>	<p><i>March 31, 2016</i></p>	<p><i>Director, EPB</i></p>
<p>3. <i>a) Environment Yukon, in consultation with departments, should develop guidelines and standards for managing non-conformance for all proponents to the act which would enable consistent practice for EPOs.</i> <i>b) Environment Yukon, in consultation with departments, should develop guidelines and standards for spill response, corrective action, and follow-up</i></p>	<p><i>Agree, Disagree or Partially Agree</i> a) Agree Environment: We are reviewing the Enforcement and Compliance Policy and if it is updated it will be distributed again to all EPOs.</p> <p><i>Agree, Disagree or Partially Agree</i> b) Partially Agree Environment: It will not be possible to create firm timelines that are identical or appropriate for all proponents at all sites because the circumstances of each spill or non-compliance incident are unique. However, general timelines for EPOs</p>	<p><i>March 2015</i></p>	<p><i>Director, COSB</i> <i>Director, EPB</i></p>

Recommendations	Management Response/Action	Target Date	Position(s) Responsible
<i>timelines to ensure consistent practice and measures for continuous improvement.</i>	to reference in preparing orders and following up on instances of non-compliance would be useful and may be incorporated into an updated Enforcement and Compliance Policy. New spill response standard operating procedures are expected to be approved by the Yukon Spills Committee in July 2014.	March 2015	Director, COSB Director, EPB
4. <i>The Yukon government should develop a training plan for designated EPO as well as allocate financial resources and a cost sharing formula to the development of refresher and air emissions training for designated EPOs.</i>	<p><i>Agree, Disagree or Partially Agree</i> Partially Agree: Environment and EMR: It is not expected that EPOs should become subject-matter experts; there are other resources within and outside government that can, and do, contribute expertise when required.</p> <p><i>All EPOs are trained to a basic level according to the training plan for EPOs. It is agreed that follow-up training would be beneficial, particularly for EPOs who do not use the act on a regular basis. However, the allocation of costs among departments for this training (initial and refresher) is an internal issue.</i> <i>Update the EPO training plan to schedule periodic refresher sessions.</i></p>	January 2016	Director, EPB
5. a) <i>The Yukon government should consider utilizing s.167 of the act by requiring repeat non-compliant proponents to provide financial assurances through the security provision of the act which will better protect taxpayer rights, safeguard the environment, and increase voluntary compliance.</i> b) <i>Yukon government should consider developing administrative penalties for non-compliant proponents to reduce the number of</i>	<p><i>Agree, Disagree or Partially Agree</i></p> <p>a) Agree Environment and EMR: Discuss mechanisms and get input from Justice and/or Finance. It is understood that other branches (e.g., EMR – Minerals) already require security so a similar mechanism may be applicable for proponents under the <i>Environment Act</i>.</p> <p><i>Agree, Disagree or Partially Agree</i> b) Agree Environment and EMR: Recognize the potential need to expand and update the existing applicable sections of some administrative penalties included in the <i>Summary Convictions Act and Regulations</i>, to function as an effective deterrent. It would require legislative amendments. Legal analysis to be conducted considering the development of administrative</p>	<p>January 2016</p> <p>January 2016</p>	<p>Director, COSB Director, EPB</p> <p>Director, COSB Director, EPB</p>

Recommendations	Management Response/Action	Target Date	Position(s) Responsible
<i>lengthy legal proceedings and deter non-compliance.</i>	penalties. The government may also consider allowing staff other than in the Conservation Officer Services Branch (e.g., Monitoring and Inspections) to issue tickets under the <i>Summary Convictions Act</i> .		
6. <i>The Yukon government should consider developing a comprehensive risk-based approach to compliance and enforcement to optimize the effectiveness and efficiency of inspection activities under the act.</i>	<i>Agree, Disagree or Partially Agree</i> Agree Environment and EMR: To better integrate the risk-based inspections and enforcement activities /methodology being carried out by all relevant agencies. To support activities with electronic file-sharing and record-keeping that are consistent across departments.	March 2017	Director, EPB Director, COSB

I recommend this Management Response and Action Plan for approval by the Audit Committee

Original signed by:
Director,
Government Internal Audit Services

I approve the above Management Response and Action Plan

Original signed by:
Deputy Minister,
Environment

Original signed by:
Deputy Minister,
Energy, Mines and Resources

Original signed by:
Deputy Minister,
Community Services

The Management Response and Action Plan for the Audit of the Yukon Environment Act were approved by the Audit Committee on September 8, 2014.

APPENDIX A

Environment Act Amendments

Act Amendment	Recommendation	Status
The Yukon Council on the Economy and the Environment will be established by Ministerial Order.	2005 #B1	Closed
Revision to the Yukon Conservation Strategy will be determined by the Minister.	2005 #B1	Closed
Provide a regulatory framework that enables the development and remediation of a contaminated site.	2005 #B7	Closed

APPENDIX B

REFERENCES

- Yukon *Environment Act* (1991)
- Report on Government of Yukon's Performance under the *Environment Act* (2003/06)
- Report on Government of Yukon's Performance under the *Environment Act* (2006/09)
- Office of the Auditor General. (1999.) A Strategic Approach to Auditing for the Environment and Sustainable Development.
- Office of the Auditor General. (2011.) 4th E Practice Guide: Integrating Environmental Considerations in Performance Audit Work.
- Environment Canada. (2009.) Evaluation of the Enforcement Program.
- Government of the Northwest Territories. (2011.) Environmental Audit.