
Report on the Audit of the Yukon Government's Performance under the Environment Act

MARCH 2005

**GOVERNMENT OF YUKON
GOVERNMENT AUDIT SERVICES**

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AUDITOR'S REPORT

As required by Section 39 of the Yukon Environment Act (the *Act*), and as approved in the 2004-05 Internal Audit Plan, Government Audit Services carried out an audit of the Yukon Government's (YTG) performance in meeting its responsibilities under that Act. The purpose of the audit was to determine whether the YTG was meeting its responsibilities efficiently and fairly under the Act.

The scope of the audit covered the period from October 1, 2000 to September 30, 2003. The audit protocol used during the audit focused on those areas addressed by the Act that were deemed to be significant in terms of degree of environmental and business risk. A representative sample of activities related to the department's environmental performance was also examined along with management's response to actions taken to implement previous audit recommendations.

The audit was conducted in November 2004 and carried out in accordance with the Standards for the Professional Practice of Internal Auditing. The audit plan and approach initially proposed to YTG was adjusted by representatives of the Department of Environment. The plan, based on a sample of responsibilities (provisions) listed in the Act included audit criteria for each of the provisions selected for testing as well as the definitions for the criteria efficiency and fairness. The plan also identified those responsibilities that were considered to be essential to the protection of the environment.

The audit was conducted in accordance with the plan and included such tests and other procedures as considered necessary in the circumstances. In carrying out the audit, we relied on the records and files, information systems, interviews with staff of the Yukon Government, as well as one external stakeholder.

Based on the findings identified in Appendix A and B of this report, there is reasonable assurance that the Yukon Government's performance in meeting its responsibilities under the Act for the period under review was efficient and fair in all significant respects.

AUDIT SCOPE AND APPROACH

The provisions of Section 39(2) of the Environment Act generally identify the areas to be covered by the audit and the provisions of Section 39(3) establish a timeframe of every three years. The responsibility for conducting the audit rests with the Commissioner in Executive Council. To provide objectivity, audits conducted thus far have involved a third-party independent auditor. Under the direction of the Government Audit Services Branch, PricewaterhouseCoopers (PwC) led this engagement. It is the third audit commissioned by YTG since 1991.

The period within the audit scope was October 1, 2000 to September 30, 2003. The Act and regulations that were included in the scope were:

- Environment Act

Regulations which allow for a permit or agreement to be issued:

- Beverage Container Regulation
- Pesticides Regulations
- Special Waste Regulations
- Solid Waste Regulations
- Ozone Depleting Substances and other Halocarbons Regulation
- Contaminated Sites Regulation
- Designated Materials Regulations
- Storage Tank Regulations
- Air Emission Regulations

Regulations which do not allow for a permit or agreement to be issued:

- Spills Regulations
- Administrative Regulations
- Recycling Fund Regulation
- Yukon Council on the Economy and the Environment Regulations

The audit sample was selected from a listing of all permits and agreements issued under the regulations listed above during the period within the audit scope. There was activity under all regulations which are in this category. In addition, activities under regulations which do not allow for permit or agreement were also tested.

Employees from the following departments were included in the audit sample since they dealt directly with the Act and regulations:

- Department of Environment
- Department of Community Services
- Department of Energy, Mines and Resources
- Department of Economic Development
- Department of Finance
- Executive Council Office (Development Assessment Unit)

The audit was conducted through interviews with staff from the departments identified above and through review of documents related to the Act and regulations. We also interviewed the Acting Executive Director, Yukon Conservation Society during the process. This society deals with aspects of the environment within the mandate of the Act.

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

We would like to recognize the high level of cooperation provided by the staff and management of the Department of Environment, as well as the staff of other departments. Their cooperation was crucial to the success of the audit process.

CONCLUSION

The Yukon Government was found to be meeting its responsibilities in an efficient and fair manner with respect to the:

- Beverage Container Regulation
- Recycling Fund Regulation
- Designated Materials Regulations
- Administrative Regulations
- Air Emissions Regulations
- Storage Tank Regulations
- Spills Regulations

The government could improve its efficiency or fairness in meeting its responsibilities with respect to the:

- Contaminated Sites Regulation
- Solid Waste Regulations
- Pesticides Regulations
- Special Waste Regulations
- Ozone Depleting Substances and other Hydrocarbon Regulation
- Yukon Council on the Economy and the Environment Regulations

The most significant findings, exceptions and recommendations contained in this report have been reviewed with YTG staff. During the course of the audit we noted many positive environmental management practices and areas where Government staff members excel in terms of efficiency and fairness. For example:

- During the process of creating new regulations, the Department of Environment consulted and informed the public through newspaper and radio advertisements. In addition, local newspapers were solicited to write articles on new regulations (e.g. Designated Materials Regulation) in order to maximize public attention to them.
- The Department of Environment is in the process of completing a detailed database of potentially contaminated sites. The information and search capabilities of this database will enable efficient administration of these types of sites.

Appendix A

STATUS OF PREVIOUS AUDIT RECOMMENDATIONS

The discussion of YTG's response to previous audit recommendations will, in some cases, overlap with observations made in the next appendix of this report. The findings presented here are meant to maintain the distinction between addressing the previous audit recommendations and meeting responsibilities under the Act.

It should be noted that the report on the June 2002 audit of the Environment Act was not released until July 2003, and at a time when the leadership of the Department of Environment was in transition. For this reason, we did not expect to find much action would have been taken by management to implement the audit recommendations contained in the previous audit report.

1997 Audit Recommendations Documented in the 2000 Audit Report

Recommendation #A1 – Section 159

The Department of Environment should give interpretation to Section 110(1) and 159 (1) of the Environment Act, as previously recommended.

The 1997 and 2000 audit reports stated that although YTG has developed an Operations Manual that contains procedures and guidelines for enforcing compliance with the Act, interpretations or guidelines for the terms “significant impairment”, “irreparable damage” and “actual or imminent harm” were not included. The reports went on to say that guidelines could help provide staff with some understanding about the subject matter and the precautions that should be taken if a situation of a questionable nature were to occur. The management response documented in the 2000 audit report noted that the Operational Manual is continually updated as sections are proclaimed and resources become available.

Current Status

No action has been taken on this recommendation during the period within the audit scope (October 1, 2000 to September 30, 2003). The Department of Environment should formally determine their response to this recommendation.

Management Response

The Department has forwarded the report's suggested plan of action to Justice for a legal opinion on the issue of whether to define these terms in the Operations Manual, Enforcement and Compliance Policy and Orders Administrative Manual. If legal advice suggests this is advisable, the Department will include an interpretation of the terms in the revisions to the documents.

2000 Audit Recommendations

Recommendation #A2 – Contaminated Sites Regulation

The Government of the Yukon should review its current resource allocation to the Environmental Protection and Assessment Branch. The review should determine whether or not the lack of dedicated resources available for the regulation of contaminated sites is the root cause of only five sites being listed in the registry or designated as contaminated sites.

The 2000 audit report noted that the Environmental Protection & Assessment Branch had approximately 85 files containing varying amounts of technical information on potentially contaminated sites. The report mentioned that some of these sites may have contamination above the criteria of the Contaminated Sites Regulation, while others may not. The issue most commonly noted was that documentation was sometimes incomplete with respect to follow-up information requested by YTG on contaminated sites. Therefore, it was unclear as to how some cases were resolved or if investigations were undertaken.

The management response documented in the 2000 audit report noted that the Department of Environment would review the adequacy of the operations and maintenance budget for Environmental Protection and Assessment.

Current Status

During the period under audit (October 1, 2000 to September 30, 2003), there were no additional sites added to the public registry of designated contaminated sites. The Department of Environment hired one staff member to deal with sites acquired through the Yukon Northern Affairs Program Devolution Transfer Agreement at April 1, 2003, which may or may not have met the definition of a contaminated site.

(See Appendix B of the current audit findings for 2000-03, Recommendation #B7 for further discussion on contaminated sites.)

Management Response

The Department acknowledges the need to review its resource allocation with respect to contaminated sites. A new position was created in 2001 to help administer sites acquired by YTG through devolution. That position is tasked with completing an inventory and classification of contaminated sites. Additionally, the Department

with assistance from the Departments of Finance and Highways and Public Works is seeking approval for resources to investigate, assess and remediate sites for which YTG is the responsible party.

Recommendation #A3 – Storage Tank Regulations

The Government of the Yukon should ensure that there are regular inspections of permitted operations and enforcement of permit requirements as required under the Storage Tank Regulations.

The 2000 audit report noted that up to September 30, 2000, no inspections of operating storage tank facilities had been conducted since 1997. It also indicated that permits were issued when applications were incomplete or were issued after work was complete. The management response documented in the 2000 audit report noted that *“inspections are on-going and all renewal permitting requires an inspection...approximately 50 service providers will be renewing permits this year and each will undergo an inspection. There have been no problems with storage tanks since the writing of the 2000 Audit Report.”*

Current Status

During the audit, five permit files were reviewed and no issues were observed. Inspections on storage tank facilities were carried out during the period within the audit scope. This recommendation has, therefore, been addressed.

Recommendation #A4 - Storage Tank Regulations

The Department of Environment should assess environmental risks associated with storage tank systems not subject to regulation as articulated in Section 5(2) of the Storage Tank Regulations.

Section 5.2 of the said regulations state that *“No person shall alter, construct, cause to construct or operate an aboveground storage tank system for petroleum products having a capacity greater than 4,000 litres, except as authorized by a permit issued under these regulations”*.

Current Status

The Department of Environment undertook a review and public consultation of this section of the regulation when the regulations were first drafted and enacted in 1997. It was decided at that time to leave some types and sizes of tanks out of the regulatory process because they do not present significant environmental risks and because banks and insurance companies have controls in place related to storage tanks less than 4,000 litres. Further, the regulations are consistent with other Canadian jurisdictions and in concert with the National Fire Code, which imposes installation and testing standards on smaller storage tank systems. This recommendation has, therefore, been addressed.

Recommendation #A5 – Spills Regulation

The Spills Regulations should be reviewed in conjunction with the Contaminated Sites Regulation with a view to developing guidelines to assist in defining when a spill should become a contaminated site.

Current Status

In 2002 the Department amended the Contaminated Sites Regulation to include wording which allows for Environmental Protection Officers to authorize a person to relocate contaminants without a permit. By taking this action it strengthened the powers of Environmental Protection Officers to direct the relocation of materials from a spill site in order to reduce the immediate danger in public health and the environment.

A “spill site” becomes a “contaminated site” when it meets the criteria of a contaminated site under the Contaminated Sites Regulation. The guideline that determines and defines when a site becomes contaminated also applies to spills. This recommendation has, therefore, been addressed.

Recommendation #A6 - Audit Standard

With a view to ensuring that future audits can, in fact, assess the government’s performance under Section 39 (1-b) of the Environment Act, procedures and practices should be formalized that, when audited, would provide evidence that environmental considerations are integrated into the decision-making process.

The 2000 audit report acknowledged that Cabinet submissions now include a section dealing with “Environmental Considerations”. The management response to this report also noted that the Department of Environment had prepared a presentation for the government’s Policy Review Committee (PRC) to initiate a discussion on how to implement Section 39.

Current Status

With the devolution of powers from the federal government on April 1, 2003, the Yukon established, under the Yukon Environmental Assessment Act (YEAA), its first formal environmental assessment process which applies to regulatory resource decisions by government. This interim process must factor in sustainable development considerations including environmental issues into all decision-making.

The Department of Environment has yet to make its presentation to the PRC on how to implement Section 39 of the Act.

Management Response

Since the Environment Act was put in place in 1991, there have been significant changes to how the Yukon government considers environmental matters when making decisions. These changes when combined with YEAA and the requirement for departments to consider environmental issues in their Cabinet submissions will all work to provide evidence that the government is fulfilling its obligations under Section 39 of the Environment Act. For example, the final Agreements with First Nations, which are now in effect, have requirements for the Yukon government to consider conservation and sustainable development principles when making recommendations or decisions. Specifically, the agreements create a new development assessment process under the Yukon Environment and Socio-economic Assessment Act (YESAA) whereby the environmental and socio-economic effects of a wide range of development activities are carefully assessed and considered before a project is approved. Full implementation of the YESAA is expected in 2005 when activities begin to be assessed under the new process.

Another change that may have an impact on environmental decisions will be the Integrated Resource Management Strategy that was approved by the Government in January 2005. The purpose of this strategy is to review the internal decision-making processes and management information systems for natural resources and ensure that environmental, social and economic issues are considered in an integrated fashion. Full implementation of the strategy is expected by 2008.

Recommendation #A7 – Interim Report (State of the Yukon Environment)

With a view to ensuring that YTG is able to meet its commitments under Sections 48 and 50 of the Environment Act, dedicated resources should be assigned for the preparation of the Yukon State of the Environment reports and interim reports.

Current Status

Section 48(1) of the Environment Act requires that the Minister submit to the Legislative Assembly a “Yukon State of the Environment Report” within three years of the date of the previous report. The previous report is dated June 2000, indicating that the next report should be presented to the Legislative Assembly by June 2003.

While completing this audit, the Yukon State of the Environment Report was tabled during the 31st Legislature, December 14, 2004. As of February 28, 2005, the interim report has not yet been presented to the Legislative Assembly

Management Response

The “2003 Interim Yukon State of the Environment Report” will be tabled during the same legislative session.

(See management response to Recommendation #B1 under Appendix B for further discussion on Reports to the Legislative Assembly).

Recommendation #A8 – Enforcement of Act

The Department of Environment should undertake a review of sections of the Environment Act dealing with the Enforcement and Compliance Policy of the Act. The review should ensure that the objectives of the Act are fully met with particular emphasis on the powers of the Environmental Protection Officers and their ability to generate information on sites currently not under a permit.

The management response shown in the 2000 audit report noted that the powers of the Environmental Protection Officers have been reviewed and necessary amendments to the Act to address the recommendation have been identified. Once given approval, such amendments would ensure the enforcement and inspections powers of the Act can be met.

Current Status

The identified amendments to the Environment Act were not made during the period under audit scope.

Management Response

(See management response to Recommendation #B2 under Appendix B of the current findings for 2000-03 for discussion on changes to the Environment Act).

APPENDIX B

CURRENT FINDINGS AND RECOMMENDATIONS

This appendix of the report deals with the current review of the Yukon Government's performance relating to the enforcement of certain regulations under the Environment Act and sections of the Act where issues of efficiency or fairness were identified during the audit.

Our findings and recommendations with respect to opportunities for improvement to the Environment Act and regulations are summarized below:

1. Sections 45(2) and 48(1) – Reports to the Legislative Assembly

Section 45(2) of the Environment Act requires that the Minister present a revision to the Yukon Conservation Strategy to the Legislative Assembly every three years after the presentation of the first revision. Section 48(1) of the Environment Act requires that the Minister submit to the Legislative Assembly a Yukon State of the Environment Report within three years of the date of the previous report.

Finding

The Yukon Conservation Strategy and the Yukon State of the Environment Report have not been presented to the Legislative Assembly within the timelines mandated by Sections 45(2) and 48(1) of the Environment Act. The most recent version of the Yukon Conservation Strategy is dated May 1990, indicating that the next version should be presented to the Legislative Assembly by May 1993. This report was not presented by this time. The Department of Environment is not currently working on a draft revision.

As mentioned earlier, the Yukon State of the Environment Report which should have been presented to the Legislative Assembly June 2003 was tabled eighteen months later at the 31st Legislative Assembly in December 2004.

Recommendation#B1

The Department of Environment should ensure that they meet the legislated timelines for the Yukon Conservation Strategy and the Yukon State of the Environment Report.

Management Response

The Department acknowledges that revisions to the Yukon Conservation Strategy are overdue. Section 45 of the Environment Act is on the list of proposed amendments to the Act; specifically, the need for review of the Strategy every three years. The Department has been in discussion with key stakeholders (e.g., the Canadian Parks and Wilderness Society (CPAWS)) on the requirements for a revised Yukon Conservation Strategy and are scheduled to meet in May 2005. In the meantime, the Department will remain non-compliant with Section 45(2).

2. Parts 5 and 6 of the Environment Act

Part 5 of the Environment Act on Integrated Resource Planning and Management provides for a comprehensive basis for integrated land use and natural resource planning and management in the Yukon. Part 6 on Development Approvals and Permits was created to provide a framework for making economic decisions while supporting sustainable development and integrating the conservation of the natural environment. It also established a unified permit application and approval process.

Finding

There have been many substantial legislative changes impacting the Environment Act since it was originally enacted by the Yukon Government in 1991. For example, the Yukon Northern Affairs Program Devolution Transfer Agreement and the Umbrella Final Agreement framework came into effect during the period within the audit scope. Since the implementation of these agreements critical parts of the Environment Act, such as Part 5 and Part 6 are no longer being used by the Yukon government. The processes that were covered under these Parts are now covered under other legislation; for example, development assessment is covered under Chapter 12 of the Umbrella Final Agreement.

Recommendation#B2

The Yukon Government should review the Environment Act in light of the substantial governance changes since 1991.

In terms of the efficiency criteria, the Government of Yukon should review all legislation enacted and amend the current legislation so that processes such as Parts 5 and 6 of the Environment Act are enacted under only the appropriate act. There should be no confusion in people's mind as to who is responsible for these processes or where they lie under legislation. In addition, for the fairness criteria, the public should be able to review the current legislation and be able to understand under which act certain processes are actually implemented.

Management Response

The Department agrees with this recommendation. We regularly take notice of changes that are required under the Act, as part of its continuing administration. Presently, we have identified over 50 amendments to the Act and its regulations. While many of these proposed amendments are considered minor in nature, several others are significant and long overdue for change. We are proposing to begin the process of reviewing the Environment Act in its entirety. This process may involve public consultations starting in 2006-07.

The Department has begun internal work to estimate the time, effort, scope of the review and steps involved in amending the Act. It is anticipated that such work will be conducted under the auspices of a contract to answer the aforementioned questions and draft a “White Paper” on the review.

3. Section 136, 159, and 160 – Environmental Protection Orders

Section 136 of the Act refers to the issuance of environmental protection orders on spills. Section 159 and 160 refer to environmental protection orders issued by an Environmental Protection Officer when there is reason to believe that a development or activity may cause or is likely to cause “irreparable damage” to the natural environment or “actual or imminent harm” to public health or safety.

Finding

Environmental protection orders are not issued by Department of Environment staff because of a 2001 court decision. On February 15, 2001 a Supreme Court of the Yukon decision granted the application of a Respondent to quash an environmental protection order issued by the Deputy Minister that was effective July 1, 2000. One of the reasons for the decision was that the Court found that the process for issuing the environmental protection order was not in accordance with the principles of natural justice as the Respondent was not given appropriate opportunities to make representations to the Deputy Minister prior to the issuance of the environmental protection order.

A manual was drafted (Administrative Procedures Manual – Issuance of Orders under the Environment Act) on March 31, 2002. However, it has not yet been endorsed by senior managers within the Department of Environment or the Department of Justice. In the absence of clear Department of Environment policy or guidelines for issuing environmental protection orders, the Department of Environment staff do not issue orders under Sections 136, 159 or 160 of the Environment Act.

There are other sections of the Environment Act that the Environmental Protection Officers can use to achieve the same results; however, they require the Department

of Environment to recover costs from the individual after the Department has paid for the cost of remediation. There is no increased risk or danger to public safety or health as a result of this issue. For the efficiency criteria, the Department of Environment should ensure that they can utilize the sections of the Environment Act as enacted.

Recommendation#B3

The process for issuing environmental protection orders under Sections 136, 159 and 160 of the Environment Act should be reviewed based on the 2001 Supreme Court of the Yukon decision. In addition, clear guidelines should be approved by the Department of Environment which will define the process by which environmental protection orders may be issued.

Management Response

The Department agrees with this recommendation. It has received a legal opinion that suggests remedies for issuing environmental protection orders. The department is reviewing the legal opinion with the idea of formalizing a new process for issuing orders under the Act.

4. Part 13 of the Environment Act

Enforcement of the Environment Act and its regulations is entrusted to the Environmental Protection Officers as prescribed under Part 13. Such officers may, at any reasonable time, inspect a development, activity or other thing, which is subject of a permit, order, or direction.

Finding

When the Yukon Northern Affairs Program Devolution Transfer Agreement came into effect on April 1, 2003, the Department of Energy, Mines and Resources Natural Resource Officers, who were formerly employees of the federal government under Indian and Northern Affairs Canada, were given continued jurisdiction over land use issues including mining sites. However, under the Environment Act they are not designated as Environment Protection Officers.

Many of the mining sites have permits issued under the Environment Act and its regulations, and many regulations under the Environment Act now apply to mining sites. The Department of Energy, Mines and Resources' Natural Resource Officers are not designated as Environmental Protection Officers under the Environment Act for purposes of inspecting and enforcing these permits and regulations.

It would be appropriate for the Natural Resource Officers to continue to inspect mines if they have sufficient training and knowledge of the Environment Act and its

regulations. The Natural Resource Officers must then be designated as Environmental Protection Officers under the Environment Act. There is the potential for an increased risk and danger to public safety and health if the Natural Resource Officers can not utilize powers under the Environment Act; for example, with regard to spills which occur at a mining site.

Recommendation#B4

The Department of Environment and the Department of Energy, Mines and Resources should discuss the implications of the Natural Resource Officers not being designated as Environment Protection Officers under the Environment Act and take appropriate action.

Management Response

The Department agrees with this recommendation. Progress is being made in designating Natural Resource Officers and Environmental Protection Officers under the Environment Act. We will work with the Department of Energy, Mines and Resources under the Integrated Resources Management Strategy to clarify and establish clearer relationships and responsibilities for the inspection and enforcement authorities.

5. Section 151(1) – Inspection of Regulated Activities

Section 151(1) identifies the duties or actions that can be performed by Environmental Protection Officers when conducting an inspection under Part 13 of the Environment Act.

Finding

During the period under review the Monitoring and Inspections Section of the Department of Environment did not have a system for monitoring the level to which they met the annual Inspection Plan. This Plan, as developed by the Monitoring and Inspection Section, documents all inspections intended for the current year. No comparison of planned activities in the Plan versus actual performance of inspections is performed by the group for all regulated activities. There is no other group within the Department of Environment that monitors if inspections planned for the year are being performed. Therefore, if a permit is on a one year inspection cycle the Monitoring and Inspections Section does not know if this cycle is being met. This could result in an increased risk to public safety and health because the permit holder may not be inspected on a regular basis and therefore a permit violation would not be noticed.

For example on the Inspection Plan, it was noted that there were planned inspections for permits issued under the Air Emission, Ozone Depleting Substances and Other Halocarbons and Pesticide Regulations. However, no inspections were performed on permits issued under these Regulations during the period under audit. The Department indicated that this was because of a time lag which results with new regulations; for example, the training of staff to perform the inspections. This time lag was confirmed with the review of the training log for the inspection staff.

Since the Department of Environment no longer has a formal Environment Management System in place it is important that other systems in place (e.g. the Inspection Plan) are followed.

Recommendation#B5

Compliance with the Inspection Plan should be monitored on an annual basis.

Management Response

We agree with the audit recommendation. Internal practices have been changed so that the Inspection Plan can be monitored for progress.

6. Issuance of Permits under Regulation

Under the Environment Act's regulations the maximum allowed period under which a permit can be issued is three years.

Finding

Several permits were issued for a period in excess of the three year maximum allowed for under the Environment Act regulations, Section 8(2) of the Solid Waste Regulations, Section 6(5) of the Ozone Depleting Substances and Other Halocarbons Regulation, Section 8(3) of the Special Waste Regulations and Section 15(3) of the Pesticide Regulations. In 11 of the 72 permits sampled (15%), the permit was longer than three years. In all cases, the period over the three year limit did not exceed two months.

Recommendation#B6

The Department of Environment should ensure that all permits issued are for a period less than or equal to three years as allowed for under the Environment Act Regulations.

Management Response

In response to the recommendation, steps were taken during the audit to ensure that permits do not extend beyond their maximum periods.

7. Contaminated Sites Regulation

There are five contaminated sites on the designated contaminated sites listing with no additional sites being added during the period within the audit scope; however, the list of potential sites grew from 82 to 104. The Department of Environment still monitors the 104 sites which are deemed to be contaminated sites as defined under Section 2(1) of the regulations, but not “designated” as such.

Finding

Section 114(2) of the Environment act states that the Minister “may” designate sites as contaminated; therefore, the Department of Environment is not in violation of the Environment Act. Yet, Section 114(1) of the Environment Act states that the Minister shall establish a public registry of contaminated sites. The problem here is that there are no rules or criteria that establish when a contaminated site becomes a “designated” contaminated site. Secondly, the fairness criterion is not being met because the public might assume that because the Department of Environment has established a public registry that it would contain all sites that meet the definition of a contaminated site.

When a direct request for information is received from the public on a specific site which is included in the list of 104 potentially contaminated sites, the Department of Environment releases information. The fairness criterion is not being met because the Department of Environment provides the information on sites which are not on the public registry of designated contaminated sites.

Recommendation#B7

The Department of Environment should review its policy for designating contaminated sites to ensure that it complies with the Contaminated Sites Regulation, and is meeting the fairness criterion and the government’s responsibilities with respect to prevention of environmental harm and freedom of information.

Management Response

The Department agrees with this recommendation and is in the process of changing the policy on designation of sites.

8. General Observation – Environmental Management System

During the 1997 audit, evidence was available to indicate that the Department of Environment had initiated a process titled “*Review of the Environmental Management System for the Environment Act*”. The Department released its first and second reports on March 31, 2000 and December 31, 2001, respectively. These documents were based on a framework for developing an environmental management system for the Environment Act following the five pillars of the ISO 14001 Standard.

A database had also been developed that tracked performance by each section of the Act, identifying commitments that had been fulfilled and those which needed attention.

Finding

The Department of Environment stopped using the environmental management system (EMS) during the period under audit. The EMS was developed as a result of the first 1997 audit. It was dropped because the EMS champion left the Department of Environment. A full EMS was not developed, instead gap analyses were performed in March 2000 and December 2001 to determine which elements of ISO 14001 were implemented in the Department of Environment, which elements were partially implemented and which elements were not implemented.

No initiative was put in place to implement those elements which were identified as partially implemented or not implemented. During the period applicable to the current audit, a full assessment of ISO 14001 implementation was not carried out, but observations during the audit indicate that the current status of ISO 14001 implementation would appear to be similar to that described in the gap analyses reports of March 31, 2000 and December 31, 2001.

Recommendation#B8

The Department of Environment should review the EMS gap analyses that were previously performed in 2000 and 2001 to determine if there are parts of ISO 14001 that could be utilized to the benefit of the Department. If the Department of Environment determines that it should implement an EMS, then it should focus on those areas that would be most useful in helping the Department meet its goals; for example, internal audit; documentation of operational processes; establishment and monitoring of objectives and targets; formal determination of training needs and provision and recording of training; document control system; and corrective and preventive action.

Management Response

The Environmental Programs Branch has undertaken an annual work planning exercise to identify risk areas under the Environment Act and to identify actions and responses to mitigate those risks.