

# Amendments to *Yukon Oil and Gas Act and Disposition Regulations*



What we heard during the public review process.

October 2015



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## Executive Summary

The Government of Yukon conducted a review of proposed amendments to the *Oil and Gas Act* and *Disposition Regulations*. The proposed changes aim to achieve the following objectives:

1. Ensure Yukon remains able to attract and retain industry interest;
2. Strengthen the ability to protect people and the environment;
3. Improve transparency and clarity of information and processes; and
4. Make administrative updates to the legislation.

A discussion document was developed and used to facilitate feedback on the proposed policy changes during the public review process.

A total of 22 responses were received from industry, the public, interest groups, First Nations and other governments. This document presents a summary of the responses received organized under the four identified objectives.

Input received indicated support for the majority of the changes. Proposed amendments in support of attracting and retaining industry interest received mixed response.

There was agreement with proposed changes to strengthen the ability of Yukon government to protect people and the environment. A similar trend was observed in responses regarding proposed changes to improve transparency and clarity of information.

While the proposed change to the benefits agreement negotiation process was acknowledged as legitimate, it did not receive support from First Nations. Rather, First Nations proposed further dialogue to address this matter.

The administrative updates proposed were generally supported by respondents.

Several responses were received presented perspectives on the oil and gas industry that were beyond the scope of the public review and of the proposed legislative amendments. These are not included in this summary report.

This document will be used to inform the final iteration of the amendments to Yukon's *Oil and Gas Act* and *Disposition Regulations*



## Background

As outlined in the 2009 *Energy Strategy for Yukon*, the Government of Yukon recognizes the potential benefits of an active and responsibly regulated oil and gas industry in Yukon.

To achieve this, the Government of Yukon is regularly reviewing its legislation and proposing amendments to improve how the oil and gas industry is regulated in Yukon.

To promote economic prosperity and job creation, the Government of Yukon seeks to attract and retain interest in Yukon's oil and gas industry. Length of tenures and terms and conditions of dispositions are two areas where our competitive position can be enhanced.

Compared to Alberta or British Columbia, where tens of thousands of wells are drilled, only 76 oil and gas wells have been drilled in Yukon. To learn more about the potential for oil and gas resources in the territory, the Government of Yukon wants to encourage exploration activity while maintaining regulatory confidence. As more wells are drilled, more data is gathered on the geology and sub-surface. Better data helps companies focus on the areas with highest potential.

In a frontier jurisdiction such as Yukon, infrastructure, logistics and supply chains, access to markets, underlying geological knowledge, and skilled labour may be limited. These factors combined, along with regulatory delays, mean exploration activities require more time compared to areas with mature oil and gas industries, such as Alberta or British Columbia. Thus, permit conditions need to reflect the more challenging conditions found in a frontier jurisdiction such as Yukon.

The proposed changes aim to achieve the following objectives:

1. Ensure Yukon remains able to attract and retain industry interest;
2. Strengthen the ability to protect people and the environment;
3. Improve transparency and clarity of information; and
4. Make administrative updates to the legislation.

## Engagement Process

On July 16, 2015, the Government of Yukon announced the release of the Discussion Document on proposed amendments to the *Oil and Gas Act* and the *Oil and Gas Disposition Regulations* for public review. The public review period of 60 days concluded on September 14, 2015.

Feedback was solicited through a news release, direct communication with key stakeholders, and advertisements online and in local newspapers. The public review process was supported by documentation and information available on Energy, Mines and Resources' Oil and Gas website.

The discussion document, outlining prospective policy issues and a series of questions, was distributed through targeted mail outs and was posted on the public website. (See Appendix 2)



A total of 22 submissions were received via mail and e-mail from members of the public, industry, non-government environmental organizations, and other governments.

The questionnaire (See Appendix 2.) was completed by eight respondents. The remainder of written feedback was received in letters or e-mails.

Energy, Mines and Resources officials met with the Memorandum of Agreement Working Group on two occasions to present and discuss the proposed changes. A Memorandum of Agreement was signed by Government of Yukon, Council of Yukon First Nations and all Yukon First Nations including Kaska Tribal Council during the 1997 devolution of oil and gas responsibilities from then Indian Affairs and Northern Development Canada to the Government of Yukon. From this Memorandum of Agreement stems a working group consisting of representatives from the Government of Yukon and four Yukon First Nations.

Upon request, separate meetings were also held with First Nations in August 2015 where the amendments were presented and government officials responded to questions on key issues and priorities.

## What We Heard

This section summarizes the feedback received during the public review and is organized according to the four objectives outlined in the discussion document.

### Overall Comments

Most respondents indicated support for the proposed amendments. Several responses indicated that the proposed amendments were reasonable, and that robust regulations are necessary for the oil and gas industry. There was also acknowledgement that conditions in Yukon are more challenging for operators than in southern Canadian regions.

### Objective 1: Ensure Yukon Remains Able to Attract and Retain Industry Interest

#### Topic: Requiring a deposit to obtain an extension to the initial term of a permit

All respondents answering this question indicated support for the proposed change.

Specific comments include:

- Yes, this is reasonable. The deposit will ensure specific intent, and discourage “hogging” the area to prevent other companies from having access.
- We have no objections to flexibility in the initial term of the permit and endorse deposits being held as surety that work proposed is completed.
- Tenure flexibility in the northern regime is absolutely critical for key, systemic reasons:
  - Shorter seasonal operating windows; weather
  - Remoteness; transportation logistics
  - Sourcing field services; services difficult to obtain at times, adding more time to critical path
  - Public participation in process; for example, information requests take up additional time



One respondent indicated that the deposit requirement in the legislation needed further refinement:

- We agree that an exploration permit holder should, in its sole discretion, be allowed to obtain an extension to the initial term of a permit. The extension should be for an additional one year period and multiple extensions should be allowed. The issue of whether the operator should be required to make a deposit in order to obtain an initial term extension is more difficult. Situations which would support an extension without the requirement of a deposit would include those where an extension is necessary for reasons outside the reasonable control of the permit holder or where the permit holder had previously made significant expenditures on its permit. Examples of matters which are outside the control of a permit holder include:
  - weather which causes a serious delay in areas where the operating season is restricted;
  - unanticipated delays in the regulatory permitting process;
  - policy changes implemented after the issuance of a permit which affect the ability of the permit holder to honour its commitments made at the time the permit was issued; and
  - delays in obtaining a final Benefits Agreement in a timely manner.

A deposit should also not be required if the permit holders expenditures to the time the initial term extension is requested have exceeded the amount of the work commitment.

If the reason for the initial term extension request is not justified, in the Government's view, then a modest deposit could be requested in order for the exploration permit holder to secure an extension. However, any deposit should be treated in a manner similar to those for deposits related to work commitments. If expenditures are made, any extension deposits should be returned to the permit holder.

**Topic: Extending the term of a permit**

The proposed amendment to enable a one-time extension of two years was unsupported by most of the responses received for a variety of reasons.

Some of the replies include the following:

- There has been no evidence produced that indicates ten years is insufficient.
- Given the realities of northern exploration, tenure extension should not be limited to merely a one-time two year extension, but should be a 'rolling process' contingent on operators activity and historical spending.
- No – does not fit reality; extend for proven remaining life of well or any number of extensions. In fact, why put a time limit? Just to ensure they are not squatting on reserves say licenses will be reviewed after 12 months if there is no production.
- We do not agree the aggregate term of a permit should be up to 12 years. The provisions for extension in section 35 adequately address causes of delays like harsh climate or technical issues.
- While we are supportive of the permit term extension procedure, we do not believe that it is appropriate for it to be limited to a "one time" extension nor be limited to a maximum two year period. As long as the permit holder can demonstrate a rational need for an extended permit term, there should be legislative provisions which allow the Government to grant any number of extensions of any duration. The capability to extend the overall term of an exploration permit should be available and there should be flexibility given to term of any extension since there is a spectrum of reasons that support a permit holder's request for a tenure extension. The implementation of a "one time" extension and "up to two years" does not provide adequate flexibility. There may be circumstances where it would be appropriate that an extension be given for only one year, or there could be circumstances that justify rolling extensions connected to ongoing activity (similar to the way mining claims can be continued), or even an indefinite extension (or stopping the tenure clock altogether) on issued permits to allow



sufficient time to conclude whatever process is need to resolve the matters that triggered the extension concern. The following are some reasons to support tenure extension and flexibility in the determining an appropriate length of the extension period:

- Impact assessment and regulatory process in the Yukon are not considered in terms of the time required to get through a given process. Similarly, both the quantity and the quality of supporting information that a proponent needs to supply to support an assessment and regulatory approval process varies from one process to another for like activities. Lastly, there is confusion due to regulatory overlap.
- New Government policies, such as a ban on hydraulic fracturing stimulation in the Eagle Plain area affect both an exploration permit holder's ability to honour its commitments which were made when the permits were awarded and to continue with a program of resource assessment. Similarly, changing regulatory standards, such as which has occurred in respect of offshore drilling in the Beaufort Sea, can result in the need to develop new technologies before any work can occur on the exploration permits. Permit holders should be able to either extend or suspend the tenure clock on permits that were issued prior to regulatory changes being implemented to cover the period needed to develop new technologies in order to comply with new regulations.
- It is not uncommon for weather to cause delays where an entire operating season is lost.
- It is not uncommon for specialty oil field services to not be available for work in the Yukon because of the challenges of remote operations.
- Delays getting legally required Benefits Agreements executed.

In addition to the foregoing, the rationale for extension to the term of an exploration permit can also be connected to the long lead times required to undertake a fulsome resource evaluation in an underexplored, remote region such as the Yukon. Tenure and tenure extension could be tied to initial spending commitments and ongoing capital spending. Exploration is a sequence of discrete activities that occur over a period of time and are based on encouragement learned from results as they become known. Resource plays in Western Canada often take more than a decade to evolve from identifying the geological concept to the point of establishing commercial operations and require large sums of monies to be invested. Land tenure needs to reflect these lead times and accommodate extensions as long as spending continues. Consideration should be given to establishing a maximum extension in the term of an exploration permit to 20 years, provided capital spending occurs over the extension period in conformity with interim milestones in order to support continuation, but also adjust to the time consuming approval processes required for activity to occur.

**Topic: Allowing expenditures to be applied against rent**

Most of the feedback regarding the proposed amendment granting the ability for operators to be able to apply expenditures against rent in the renewal term of their permit agreed that this was a good policy.

We heard that:

- Yukon needs to be in line with other jurisdictions to attract exploration and development.
- We do not object to expenditures being applied against the rent in the renewal term. So long as the goal of the regulation is achieved, this change may help the company but will not hurt the public purse.
- No. Keep it simple. Reduce the rent if need be; no need for proof of expenditures, etc.
- As a general comment, we believe that there should be no rent payable during either the initial or renewal term of an exploration permit. In a setting where the lead time to move from an exploration concept to production is long and rather uncertain, such as the Yukon, an operator's preference is to defer any requirements to pay lease rentals to the time that there is production and revenue generated in accordance with the production lease. From a competitive perspective, for the Yukon to attract and





retain industry interest in a setting of high cost and high uncertainty of outcome, establishing a regime that differentiates itself in terms of rental costs relative to other oil and gas jurisdictions will assist in attracting new participants. The oil and gas industry in the Yukon has not graduated to a stage of sustainability so opting for the lowest cost structure is strategically important – deferral of rentals to the production stage will assist. If the Yukon is not able to defer lease rentals to the time when there is production and revenue, then the ability to offset allowable expenditures against rent obligations is clearly appropriate. When developing any offset mechanism, a provision that allows banking of capital spending credits should be included. In other words, expenditures do not have to happen in the same period that rent is accruing or payable. Expenditure credits established in prior periods should be carried forward to future periods.

## **Objective 2: Strengthen the Ability to Protect People and the Environment**

### **Topic: Well abandonment**

The proposed amendments regarding well abandonment provisions include the following:

- a) Allowing the Government of Yukon to impose post-abandonment obligations on a licensee after the licence has been cancelled.
- b) Allow the Chief Operations Officer (COO) to order a well be re-abandoned in the interest of public and environmental safety.
- c) Allow for well abandonment cost recovery to apply to all possible wells.
- d) Allow Yukon government to recover re-abandonment costs from working interest owners.

All of the proposed changes outlined above were well-received.

Here are some of the comments received regarding well abandonment:

- The fees that may result from increasing regulations will ensure costs do not fall to taxpayers, but back to the companies responsible. More environmental protection will result from these changes.
- We agree with the proposed changes that ensure wells are properly abandoned to help protect the environment.

Some responses identified more work should be done on well abandonment provisions:

- We agree with increasing these requirements regarding well abandonment but are concerned that these increases may not go far enough. We suggest that a deposit be levied on companies that wish to abandon a well that, if it is abandoned with the possibility of re-working the well, covers the cost of permanent abandonment.
- Prior to any policy position on this, jurisdictions in Western Canada (BC, AB, Sask) should be studied to see how they mitigate risk with well closure costs so as to ensure the public does not have to foot the bill for such costs. Another example is the NWT with their posted bonds for environmental clean-up that are obtained while the licensee is operating and a going concern (Norman Wells). These jurisdictions (BC, AB, Sask) have robust models in place to not only ensure that licensees have the ability to cover their environmental liabilities while they are a going concern (ie Liability Management Ratio Model; Licensee Liability Rating) but there are also funds to cover bona fide orphans where the licensee goes bankrupt (Orphan Well Fund) as an Orphan Fund Levy is assessed each year to industry so as to once again, ensure that the public is protected financially from these environmental liabilities. Liability principles in *Alberta's Oil & Gas Conservation Act* would be a good starting point in an inter-jurisdictional analysis and conversation.



- We agree with increasing the requirements regarding well abandonment. We further recommend Yukon consider establishing an adequately resourced ‘pooled fund’ that companies contribute to, along the lines of the model used in Alberta.
- The questions of who may be responsible for continuing abandonment obligations in respect of a well and for how long are very complex and perhaps should be part of a broader discussion process. It is paramount that any changes made respecting increased responsibility for well abandonment obligations in the Yukon be consistent with steps taken in other oil and gas jurisdictions such as BC and Alberta. If the Government imposes requirements which place additional responsibility on the well licensee of working interest owners in the Yukon which go beyond the responsibilities imposed in other jurisdictions, the Yukon will be adding yet another hurdle to operating in the Yukon. Consideration could be given to establishing an industry wide fund, structured along the lines of orphan well funds that are in effect in Alberta, BC and Saskatchewan, to address situations where licenses and working interest owners cannot be found, but abandoned wells exhibit threats to public and environmental safety. This issue, as it relates to Yukon, is that there are only two operators at this time and it would be unfair for these two to carry the entire industry by themselves. Further discussion is needed to advance this concept.

**Topic: Provide the COO with the ability to cancel a licence as a consequence of contraventions to the act**

One respondent identified concerns with giving the Chief Operations Officer the ability to cancel a licence.

These concerns were:

- We are not aware that the lack of authority of the COO to cancel a licence has led to any inability of the COO to enforce compliance of oil and gas activities in the Yukon. With so little activity in the Yukon now, it is not clear that there is any delinquent behavior which needs to be curtailed with this new authority. Existing powers would appear to be adequate. Accordingly, we are not sure why this additional authority is required at this time. Cancellation of a well licence is an extreme consequence so if the COO is to be granted this power, it should only be used as a tool of last resort and other methods of ensuring compliance should be utilized first. Cancellation of a well licence should also not be an arbitrary decision to be implemented at the complete discretion of the COO without affording the well licensee full due process. A full due process procedure would require the well licensee to be fully informed of all facts available to the COO on which the decision to cancel the well licence is to be made, an opportunity for the well licensee to make its case and an appeal process from any decision for the COO to cancel a well licence.

All other respondents indicated they support this as a good idea:

- Increased power to cover more potential hazards is a positive move.
- We agree that the regulator should be granted the power to cancel a lease or a permit or a license as a penalty for non-compliance with the relevant provisions of the regulations. By definition, these privileges are conditional and should be revocable.
- The ability of the regulator to enforce compliance is the backbone of any robust regulatory framework; but prior to instituting such discretionary powers in one office, existing tools and levers of enforcement should be explored in order to ensure due process and procedural balance.
- We support giving the COO the authority to ensure compliance through prescribed penalties and cancellation of the licence.



**Objective 3: Improve transparency and clarity of information and processes**

**Topic: Allow either the owner or non-owner the ability to initiate the dispute resolution process for the negotiation of benefits agreements**

This topic received mixed responses.

Some feedback indicated support for the proposal:

- Yes. Both parties should have the same rights in dispute resolutions.
- Both the owner and non-owner should be allowed to initiate the dispute resolution process. This clears up what was previously an unintended grey area. We assume this change is not intended to force First Nations to agree to benefits sharing agreements willy-nilly.
- Yes; this will give the Yukon Government more clarity to proceed on access & benefit agreements; would eliminate some ambiguity.
- We believe that a well-defined dispute resolution process for finalizing the provisions of a benefits agreement is of assistance. The dispute resolution process must provide for a cost effective and timely result and should be one that can only be invoked after negotiations have clearly failed. The ability to seek a dispute resolution process at too early of a stage may tend to frustrate the negotiation process and lead to an even longer timeline to achieve a final result. It should only be invoked to resolve outstanding issues and should not be used as a potential negotiation strategy.

Other feedback indicated opposition to the proposal:

- The proposed amendment to section 68 effectively gives Yukon Government the power to impose benefits agreements on affected First Nations. This undermines key provisions of the *Oil and Gas Act* in respect of intergovernmental collaboration and the right of Yukon First Nations to participate in the development of resources within First Nation traditional territories.
- We are concerned that such an amendment would allow the Yukon government to end the negotiation process relating to a benefits agreement with respect to Non-Settlement Land if it forms the opinion that it is not possible to reach consensus on the terms of the benefits agreement to be negotiated with the licensee and the non-owner. This means that the Minister would ultimately make the final determination respecting the contents of the benefits agreement.
- Such an amendment would be unacceptable since it would give a right to the Minister to unilaterally truncate the negotiation process and establish the contents of the benefits agreement relating to Non-Settlement Land. If the licensee knows that the Minister can simply end the negotiation process and impose a benefit agreement, the negotiation process may be compromised. For example, the licensee may not negotiate in good faith and address the Yukon First Nation's concern, if it knows that the Minister may simply impose a benefits agreement on the parties.
- In our view, such an amendment would be contrary to the original intention to establish a fair process for the negotiation of benefits plans without political interference and manipulation.

**Topic: Make more information publicly available**

There was overwhelming agreement on making more information publicly available.

Here is what we heard:

- More available information will help remove the secrecy behind the activities. The names, addresses and contact information for lease owners should be mandatory. Agreed that not all information should be publicly available.



- We agree that more non-commercially vital information, consistent with ATIPP, should be made available by government.
- Yes; as long as there is no risk to the competitive advantage held by operators which we are confident that the government would honor.
- Definitely. Transparency = good governance + allows public to help with due diligence and monitoring. All stratigraphy data should be given to the geological department to improve understanding too.
- We support the public availability of information, including:
  - a. whether the exploration/ development activity is for conventional or for unconventional reserves and
  - b. updated financial viability of project (to prevent Yukon businesses losing out when companies elect to restructure)
  - c. regular public updates on activity at current licensed sites e.g. Northern Cross, EFLO.
- We support an increase in transparency as it holds all parties involved in the oil and gas industry to account. In addition to the example provided in the discussion document of the name of the lease owner being made public we suggest other documents or information be included in what is allowed to be released. Information on infrastructure type and location, which includes wells and pipelines, should be released. Field summary reports and instances of non-compliance under the act should be released and should include this information on infrastructure noted above as this allows all stakeholders to examine what is and isn't working. This type of transparency will lead to better practices being used that do not lead to non-compliance. Alberta and BC provide a lot of information about the industry and we feel the Yukon should follow suit.
- Generally speaking, we would not be opposed to having information made publicly available if such information is a type that is routinely disclosed in other oil and gas producing jurisdictions such as BC and Alberta. There should also be appropriate hold periods for different types of information which establish a certain period of time during which the information will be kept confidential prior to it being available to the public.

**Topic: Add an ineligibility provision regarding who can hold a disposition**

Most respondents indicated support for addition of an ineligibility clause.

Some of their comments include:

- There is no way an official in the regulator field should be allowed to hold an interest in the industry they are charged with regulating.
- Yes. A “perceived conflict” becomes a real conflict, so this measure will help remove the potential for conflict. Good idea.
- We are aghast that currently there are no restrictions on such a blatant conflict of interest and hope that Yukon will rapidly join its sister jurisdictions in forbidding officials in the regulator from holding an interest in the industry they are charged with regulating. We respectfully suggest that the regulations be amended to proscribe Yukon public servants from any possibility they will personally profit from the decisions they take. In addition, there needs to be a “cooling off” period after any individual has left the public service before they can hold any shares or position in the industry they were regulating.
- Yes, we support such a provision and would be interested in the further clarification of reasoning to have it hinge on the entity being a private versus a public company.
- We agree an ineligibility provision should be added and recommend that this proposal be informed by a cross-jurisdictional scan and analysis of conflict of interest regulations across Canada (especially the north), and that other sectors than extractive industries (eg energy) be included in the analysis.



- We would not be opposed to the addition of an ineligibility provision, similar to those provisions of other jurisdictions in Canada.

One respondent suggested another approach:

- No but 100% for disclosure. Yes, if they are in a senior position or work for Dept. of Mines, etc. then they may hold too much influence/call for favors.

**Topic: Add the preconditions to cancellation of a disposition**

There was a mixed response to the proposed change to outline preconditions for allowing the cancellation of a disposition.

Some were supportive:

- Yes. If a corporation holds a disposition and is or becomes ineligible, there should be allowance for correction. Clear preconditions are of benefit to all concerned.
- Yes, if licensee's circumstances change then they have to reapply.
- We agree in principle to adding preconditions to the cancellation of a disposition as long as there are clear provisions for unforeseen matters of public interest to be represented among the preconditions. The ability to bar bad corporate citizens should be considered.
- We support having clear and precise preconditions which must be satisfied before the Minister is allowed to cancel a disposition. A cancellation of a disposition is a very significant action and should only be allowed if the permit holder is in violation of clear, documented requirements. Given the various structures utilized in the oil and gas industry today, the "legal entity" requirement should be carefully drafted so that partnerships, limited partnerships, trusts, and other organizational structures are recognized as being approved legal entities to hold a disposition.

Other respondents expressed concerns:

- Disagree, too nebulous
- We have not seen any rationale for the imposition of preconditions allowing the cancelling of a disposition. The range of conditions could be vast and unknowable; therefore we oppose this amendment.

**Objective 4: Administrative updates to the legislation**

**Topic: Fees**

The change proposes updating fees and removing unnecessary minor fees. This is consistent with the approach applied in other existing Government of Yukon legislation.

Comments received indicated support for this amendment:

- Yes. Definitely a good move, as fees need to be updated from time to time. This should not be viewed as a backward move.
- We agree that fees should be raised to cover the costs of administration. We further suggest that provision should be made to allow for future changes as costs are clarified and conditions change.
- Yes; as long as they are reasonable and commensurate with activity; competitive with other jurisdictions given the heightened level of 'cost of doing business' differentials in this current downturn in the oil and gas sector.



- We agree it is inefficient to administer nominal fees, and, without knowing the current balance between administrative costs and fees collected, recommend the fee structure be reviewed, with an explicit policy objective that industry demonstrates it is paying a fair share of costs – for example with mining, government spend inordinate amount of money in comparison to return to the public purse from royalties, licenses, etc. and absent any evidence-based economic analysis a true cost benefit impact assessment is not possible.
- If a fee is nominal, we would support their elimination. If the Government is proposing to significantly increase fees, particularly to the extent of recovering all administrative costs, we would suggest that the Government may wish to consider the impact of increased fees on the Government's Objective 1 of ensuring that the Yukon remains able to attract and retain industry interaction. The Yukon is already an extremely high cost basin and significantly increased fees would only exacerbate the problem. There is very little oil and gas activity now, so any increased fees to cover administrative costs could add an unfair additional burden on the small numbers of industry participants still interested in pursuing Yukon opportunities.

**Topic: Work deposit refunds**

The proposed change would allow for an application for refund of work deposits to be made at any time, thereby enabling operators to access their work deposits in a timely manner.

Respondents were mixed on this proposed change. Some indicated support:

- Yes; given today's very challenging economic environment where budgets and projects are being cut, any mechanism that can free up capital to be re-deployed will be of benefit to not only operators, but the jurisdiction itself as those monies can be re-invested.
- Yes. If they are legally entitled to a refund it is illegal to withhold it.
- We fully agree that operators should be able to access their work deposits as soon as the work is completed. Cash flow is important to permit holders and a refund of the work deposit should not have to wait until the end of the year in which the work is concluded to obtain a refund. Applications for refunds should be allowed to be made at any time and processed promptly. A single application for the refund of all work deposits associated with grouped permits should also be provided for.

Other respondents were not supportive of this change:

- Operators should not have access to their work deposits for at least 20 years ensuring that abandoned drill sites are being monitored by the companies that drilled the wells.
- No. Quarterly payments would be administratively more efficient.
- Disagree. The public at large, government and businesses are all accustomed to annual accounting. It is our opinion that allowing for companies to access deposits immediately a portion of work is done would place unnecessary demands on the Branch and would have no significant effect on the procedure of what is a multi-million dollar venture. We are concerned that any company unable to finance its operations without accessing its deposits a few weeks early will not have the resources to properly discharge its other obligations.
- We are concerned this proposal adds to administrative costs and burden for the government and sees no benefit to Yukoners for more than annual refunds to the operator. Disagree.



## Other Comments and Concerns

The majority of the written feedback received addressed and responded directly to the content of the discussion document.

However, there were a few comments submitted regarding the engagement process itself:

- The engagement period was too short.
- The material presented was too technical in nature for the public to participate in discussion.
- A number of respondents requested the ability to review draft legal text of the, rather than the proposed policy changes.

Some additional comments received were beyond the scope of the proposed amendments found within the discussion document.

These include:

- The proposed amendments to Yukon's oil and gas tenure provisions as set out in the discussion document will not address fundamental issues that have arisen with respect to land tenure in the Yukon.
- We recommend that the government should consider a variety of disposition mechanisms to cover the spectrum of its sedimentary basins based on relative exploration maturity. The entire land tenure and permitting mechanism should also be reconsidered to see if a different structure can be developed which better recognizes the challenges of undertaking oil and gas activities in a region where the industry is still in its infancy.

## Next Steps

The feedback and suggestions received during the engagement process have been summarized within this report and will be used to inform the final version of the policy.



## Appendix 1

### List of organizations contacted during public review process

Acho Dene Koe First Nation  
Association of Yukon Communities  
Canadian Association of Petroleum Producers  
Carcross/Tagish First Nation  
Champagne and Aishihik First Nations  
City of Whitehorse  
Council of Kaska Chiefs  
Council of Yukon First Nations  
EFLO Energy Yukon  
First Nation of Na-Cho Nyäk Dun  
Gwich'in Tribal Council  
Inuvialuit Regional Corporation  
Kaska Dena Council  
Kluane First Nation  
Kwanlin Dün First Nation  
Liard First Nation  
Little Salmon/Carmacks First Nation  
Northern Cross Yukon  
Petroleum Services Association of Canada  
Ross River Dena Council  
Selkirk First Nation  
Ta'an Kwäch'än Council  
Taku River Tlingit First Nation  
Teslin Tlingit Council  
Tetlit Gwich'in Council  
Town of Watson Lake  
Tr'ondëk Hwëch'in  
Vuntut Gwitchin First Nation  
White River First Nation  
Whitehorse Chamber of Commerce  
Yukon Chamber of Commerce  
Yukon Chamber of Mines  
Yukon Conservation Society  
Yukon Development Corporation  
Yukon Environmental and Socio-Economic Assessment Board  
Yukon Land Use Planning Council  
Yukon Oil and Gas Advisory Committee





## Appendix 2

### Discussion document and questionnaire for public review process

#### **Discussion Document on proposed amendments to the *Oil and Gas Act* and the *Oil and Gas Disposition Regulations***

##### **Background**

The Government of Yukon recognizes the potential benefits of an active and responsibly regulated oil and gas industry in Yukon. Recently, one exploration company spent over \$100 million dollars on drilling and seismic exploration activity over a three-year period. To promote economic prosperity and job creation, Yukon must attract and retain interest in Yukon's oil and gas industry. Length of tenures and terms and conditions of rent paid on dispositions are two areas where we can enhance our competitive position.

Compared to Alberta or British Columbia, where tens of thousands of wells are drilled, there have been 76 oil and gas wells drilled in Yukon. To learn more about the potential of oil and gas resources in the territory, Yukon government wants to encourage exploration activity while maintaining regulatory confidence. As more wells are drilled, more data is gathered on the geology and sub-surface. Better data helps companies focus on the areas with highest potential.

In a frontier jurisdiction such as Yukon, infrastructure, logistics and supply chains, access to markets, underlying geological knowledge and skilled labour may be limited. These factors combined means exploration activities require more time compared to areas, such as Alberta or British Columbia, with a mature oil and gas industry. Thus, permit conditions need to reflect the more challenging conditions found in a frontier jurisdiction such as Yukon.

As a result of these current circumstances, the Government of Yukon is considering amendments to the *Oil and Gas Act* and the *Oil and Gas Disposition Regulations*.

The proposed changes outlined in this document aim to achieve the following objectives:

1. Ensure Yukon remains able to attract and retain industry interest;
2. Strengthen the ability to protect people and the environment;
3. Improve transparency and clarity of information and processes; and
4. Make administrative updates to the legislation.

This discussion document is to help explain the proposed amendments and seek your feedback. The document is divided into the four objectives listed above and explains in detail the rationale behind the proposed changes. Separate areas have been provided for outlining your response.



**Objective 1:           Ensure Yukon Remains Able to Attract and Retain Industry Interest**

**Topic: Extending term of a permit**

Under the *Oil and Gas Act* (OGA), the most common dispositions are permits and leases. An oil and gas permit, in concert with regulatory approvals, grants the right to explore and drill for oil and gas in a defined area. Once oil or gas reserves are proven, a production lease for a specific smaller area within the permit may be issued. The term of a permit is usually set at a maximum of 10 years (section 31(2) OGA). Once a permit is issued, there is currently no way to change the length of term in an existing permit except in a few exceptional and restricted circumstances (sections 28(d) and 35 OGA).

The length of term of a permit is determined by considering the amount of time companies require to explore and prove a resource. If a term is too short, there will not be sufficient time for a company to explore for oil and gas. Conversely, if the term is too long, a company may not have incentive to actively work towards proving a resource, and the rights to certain lands are not available for other companies to acquire and explore.

Under the current regime, operators typically receive 10-year permits comprised of two terms – an initial term of six years followed by a renewal term of four years. An operator may receive an extension to their initial term, but this will result in a corresponding reduction in the length of the renewal term. Extensions to the initial term of a permit will effectively delay the start of the renewal term, as well as postpone payment of rent.

**Proposed changes:**

The first proposed change will require a deposit be paid to secure an extension to the initial term. This deposit will be refunded when the renewal term is initiated. The requirement for a deposit to obtain an extension to the initial term will encourage continued activity on the disposition.

The second proposed change will enable an existing permit to be extended by two years, but this can only be granted one time for any permit.

**Question #1:**

***Should an operator be able to obtain an extension on their initial term, with the requirement that a deposit be paid? Why or why not?***

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**Question #2:**

***Do you think that a one-time extension of up to two years should be available? Why or why not?***

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**Objective 1:           Ensure Yukon Remains Able to Attract and Retain  
Industry Interest**

**Topic: Rent**

Under the *Oil and Gas Disposition Regulations*, companies are required to pay rent as outlined in their permit but only during the renewal phase of the permit. Rent is determined by policy. The *Oil and Gas Disposition Regulations* also outline that if a permit is issued, a work deposit must be provided to Yukon government. This deposit will be held as security for carrying out the work commitment made by the company. A schedule of allowable expenditures forms part of the permit and describes in general terms the kind of expenditures that may be approved as allowable expenditures. As allowable expenditures are incurred during the initial term of a permit, the work deposit is refundable in accordance with section 12 of the *Disposition Regulations*.

The overall policy objective of this proposal is to facilitate activity that generates greater knowledge of Yukon’s resources while potentially achieving production of the resource. The greatest benefits to Yukon residents and governments are achieved during production.

**Proposed changes:**

Allowable expenditures may be applied against work deposits in the initial term. The proposed change will authorize allowable expenditures to be applied against rent in the renewal term. The ability to claim allowable expenditures against rent in the second term encourages activity and keeps the regime competitive with other jurisdictions such as NWT where this allowed.

**Question #3:**

***Should operators be able to apply expenditures against rent in the renewal term of their permit? Why or why not?***

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## **Objective 2: Strengthen the Ability to Protect People and the Environment**

### **Topic: Well Abandonment**

In the oil and gas industry, abandonment is the term used for properly preparing a well to be closed permanently. The activities associated with abandonment are typically:

- Safely and permanently plugging wells;
- Removal of well equipment, production tanks and associated installations; and
- Remediation of the surface.

The act and regulations work together to ensure financial liability for the protection of people and the environment remains with industry.

### **Proposed changes:**

There are a number of proposed changes regarding well abandonment:

- a) The current legislation does not allow Yukon government to impose post-abandonment obligations on the licensee after the licence has been cancelled. The proposed change will ensure that liability for the well continues after the licence is cancelled.
- b) There is no ability for the Chief Operations Officer (COO), Yukon government's oil and gas regulator, to issue an order to re-abandon a well in the interest of public or environmental safety. The proposed change will give the COO the authority to order a well be re-abandoned.
- c) Recovery of well abandonment costs currently only applies to leases, though wells may be drilled on several types of dispositions. The proposed change will broaden the provision to cover all possible wells.
- d) The legislation allows Yukon government to recover re-abandonment costs from licensees but there is no corresponding provision for working interest owners. The proposed change will enable recovery of costs from both licensees and working owners.

### **Question #4:**

***Do you agree with increasing these requirements regarding well abandonment? Why or why not?***

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**Objective 2: Strengthen the Ability to Protect People and the Environment**

**Topic: Ensure the regulator has the right enforcement tools**

The Chief Operations Officer (COO) is Yukon government’s primary regulator of oil and gas activities under the act. The COO requires more diverse and appropriate tools to ensure the safety of people and protection of the environment. The COO’s job is to ensure an activity is done safely, with minimal risk to people and the environment, and that the oil and gas is not wasted.

Currently, contraventions to the act may occur through lack of action which is difficult to address through the current wording of the provision which deals with “activities and facilities”. The COO requires the authority to act on any contravention under their jurisdiction, and not be limited to activities and facilities.

For example, broadening the powers to cancel a well licence as a consequence of a contravention of the act is a strong tool for the COO to use to achieve compliance. This would not let the operator or owners avoid liability, but would give them incentive to comply rather than lose access to the well.

**Proposed changes:**

The COO currently has the ability to impose prescribed penalties, but is not able to cancel a licence. The proposed change will authorize the COO to cancel a licence as a consequence of contraventions to the act.

**Question #5:**

*Should the COO be granted this expanded authority to ensure compliance? Why or why not?*

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**Objective 3: Improve Transparency and Clarity of Information and Processes**

**Topic: Benefit Agreement Dispute Resolution**

The act outlines a process for creating a benefits agreement between the company, Government of Yukon and First Nations in whose Traditional Territory the proposed activity is located. For the purposes of these benefits agreements, if the project is on Category a Settlement Land, the First Nation is the owner and Yukon government is the non-owner. If the project is on Yukon land, the owner is Yukon government and the affected First Nation is the non-owner.



The current process needs to be clarified to ensure there continues to be full and fair consideration of all views and the process advances without unnecessary delays.

**Proposed changes:**

The benefits agreement provisions, which were formed through a collaborative process with First Nations, were not intended to delay the process of negotiation. The proposed change, to allow either the owner or non-owner to initiate the dispute resolution process, will apply equally to situations where either Yukon or a First Nation government is the owner.

**Question #6:**

***Do you agree that either the owner or non-owner should be able to initiate the dispute resolution process? Why or why not?***

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**Objective 3: Improve Transparency and Clarity of Information and Processes**

**Topic: Improving transparency**

Section 103 of the act protects the confidentiality of much of the information submitted under the *Oil and Gas Act*. Section 103 also provides for the regulations to specify information which does not need to be kept confidential. In an effort to be more transparent, it is proposed that Yukon government be allowed to release some information collected under the act and regulations. For example, the release of names of the lease owners is not allowed even though it is standard practice in all other Canadian jurisdictions.

**Proposed changes:**

The act contains a general prohibition against the disclosure of information obtained by Yukon government. The proposed change will make the terminology in the regulations consistent with that of the act.

The proposed change will uphold the spirit of transparency, by identifying which documents can be made publicly available without risk to the competitive advantage held by operators, while fulfilling Yukon's responsibilities under the *Access to Information and Protection of Privacy Act*.



**Question #7:**

***Do you agree with making more information publicly available? Why or why not?***

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**Objective 3: Improve Transparency and Clarity of Information and Processes**

**Topic: Eligibility to hold a disposition**

Currently, the regulations are silent on when a corporation is ineligible to hold a disposition due to potential conflict of interest between the regulator and the holder of the disposition. Such provisions are necessary to prohibit a corporation from holding a disposition if a Yukon public servant is an officer or director or the holder of its shares unless the shares are listed on a recognized stock exchange.

**Proposed amendment:**

This proposed change is the addition of an ineligibility provision, similar to provisions of other jurisdictions in Canada.

**Question #8:**

***Do you think an ineligibility provision should be added? Why or why not?***

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**Objective 3: Improve Transparency and Clarity of Information and Processes**

**Topic: Cancellation of a disposition**

If a corporation holds a disposition when it is ineligible to do so, the Minister has the authority to cancel or transfer it to an eligible corporation. However, the preconditions to the exercise of the Minister's power are not defined.



**Proposed amendment:**

The proposed change is to outline the preconditions allowing the cancellation a disposition such as failure of a corporation to maintain their status as a legal entity.

**Question #9:**

*Do you think that preconditions to cancellation of a disposition should be added? Why or why not?*

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**Objective 4: Administrative Updates to the Legislation**

**Topic: Service fees**

Legislation requires updating from time to time. For example, some of the service fees charged under Schedule 1 of the *Oil and Gas Disposition Regulations* are so low that administration of the fee can cost more than the fee itself.

**Proposed changes:**

The proposed change will update fees and remove unnecessary minor fees. This is consistent with the approach applied in other Yukon government legislation.

**Question #10:**

*Do you think fees should be updated to save Yukon government the cost of administration of nominal fees? Why or why not?*

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**Objective 4: Administrative Updates to the Legislation**

**Topic: Work deposit refunds**

Work deposits are made in advance of the initial term of the permit and are based on projected expenditures during that particular term. Currently, an application for refund of all or part of a work deposit may only be made at the end of any year during an initial term. This can result in extended periods before an operator can obtain refunds for completed work.





Refunding work deposits more frequently allows for the proponent to immediately re-invest those funds in additional exploration work.

Also, operators may apply to the Minister to “group” permits if the underlying geology is similar. This would allow the operator to drill one well to represent the geology of all the grouped permits rather than drilling a well on each permit. The regulations are silent on work deposit refunds for grouped permits.

**Proposed changes:**

The proposed change will allow for an application for refund of work deposits to be made at any time, thereby enabling operators to access their work deposits in a timely manner. The proposed amendments will also address work deposit refunds for grouped permits.

**Question #11:**

***Do you think that operators should be able to access their work deposits once work is completed? Why or why not?***

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Please use this space for any other comments or concerns on the proposed amendments to the *Oil and Gas Act* and the *Oil and Gas Disposition Regulations*:

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Thank you for participating and sharing your feedback.



## Submitting Feedback

This is 60-day public consultation with a deadline for comments to be submitted **by 5 pm PDT Monday, September 14, 2015.**

**Please note:** By participating in this public consultation process and submitting comments, you agree that the Yukon government may publish your comments and disclose any personal information these comments contain.

Comments received during the consultation will be compiled and considered in the development of amendments to the *Oil and Gas Act* and *Oil and Gas Disposition Regulations*. A post-consultation report will also be created.

If you wish to have your comments attributed to yourself, you must explicitly indicate so by submitting your contact information below. Please leave blank if you do not want your comments publically attributed to you.

Please submit your contact information here:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

If you have any questions about the collection of this information, please call 867-393-7042 or 1-800-661-0408, ext. 7042.

Your feedback can be submitted to the Oil and Gas Resources Branch by:

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