Yukon
Office of the Premier
Box 2703, Whitehorse, Yukon Y1A 2C6

December 12, 2012

The Honourable John Duncan, PC, MP
Minister of Aboriginal Affairs and Northern Development
Government of Canada
10 Wellington Street
Gatineau, PQ K1A 0H4

Dear Minister Duncan,

Re: Review of the *Yukon Environmental and Socio-economic Assessment Act* (YESAA)

Through recent correspondence and discussions with your officials, we understand that Canada is prepared to seek authority to make legislative amendments to YESAA. In anticipation of these changes, Yukon has prepared a formal proposal to provide input into this process (attached).

As demonstrated within this proposal, Yukon's interests focus on changes to the Act and regulations under the themes of: thresholds, clarification of roles and responsibilities, value and cost effectiveness, and a focus on regional strategic studies. These interests have arisen from our experience with YESAA, and much of this input was first introduced during the YESAA Five-year Review. Our submission identifies issues, discusses how these issues affect Yukon, and suggests potential amendments to improve the assessment system in Yukon. These suggestions are consistent with the federal *Responsible Resource Development Initiative* and the *Action Plan on Northern Regulatory Reform*.

Yukon is looking forward to engaging with Canada on legislative and regulatory change initiatives. As a party to the federal YESAA legislation and as the government responsible for Yukon's resources since devolution, we are eager to see an assessment regime that fosters responsible resource development while protecting and promoting the environmental and socio-economic well-being of the territory and its people. It is my priority to ensure that Yukon remains competitive through a prosperous and diversified economy while continuing to maintain and enhance the quality of Yukon's natural environment for present and future generations.

I look forward to our senior officials advancing the dialogue on specific YESAA amendments.

Sincerely,

Darrell Pasloski
Premier

encl.

YESAA Review Opportunity
Summary of Issues to submit to Canada
December 12, 2012

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Issue	Issue Description	Specific Suggestions	Key to Five-year Review documents
This column contains the section of Act or Regulations being addressed.	This column contains a description of the issue.	This column contains suggested amendment to the Act or regulations.	This column identifies where the item was identified in the 1. YESAA Five-year Review Draft Review Report March 31, 2012 (**Rec. #)** 2. Yukon Government's Submission into the Five-year Review of YESAA February 25, 2012 (**Item #)** 3. Or if it was identified after the Five-year Review (**Not in 5 YR**)

1. Statutory Amendments			
Issue	**Issue Description**	**Specific Suggestions**	**5-YR Review**
Act s. 2 (1) Interpretation "*authorization" & "proponents"* & **s. 49** *Emergencies exempted*	Two issues arise in relation to the definition of "authorization" and "proponent". One of the two is also related to section 49. a. Most Yukon regulatory legislation (e.g. *Waters Act, Environment Act and Quartz Mining Act)* authorises designated inspectors and/or officers to issue remedial orders or directions, subject to limitations set out in each statute. These orders and directions are required to ensure that action is taken to address an emerging or exigent situation that, if not addressed, may have adverse environmental and socio-economic effects. Some, but not all of these situations, may be considered as "emergencies" as described in s. 49 of YESAA. It is also unclear whether or not such orders fall within the scope of the definition of "authorization" as set out in s.2(1) [i.e. licence, permit or other form of approval]. If remedial orders and/or direction are considered to be "authorizations", then by virtue of the second phrase in the definition of "proponent" [i.e. a government agency … that proposes to require … under territorial law … that it be undertaken], the inspector would be the proponent and an assessment would be required prior to issuance of the order or direction. It is Yukon's view that such orders and directions were not intended to be captured by the YESAA process – either as activities or as emergencies. Ambiguities in YESAA create uncertainty for enforcement personnel, assessors, and the public. This issue should be addressed to ensure that remedial action can be directed/ordered as provided for in regulatory legislation without need for assessment of such action. b. Unlike the *Canadian Environmental Assessment Act* (CEAA) and most other environmental assessment legislation in Canada, which are built upon the need for regulatory authorizations or other similar government actions, YESAA is built upon activities. Thus, the definition of "authorization" is of key importance. As presently drafted, however, the term captures not only those licences and permits such as land use permits or mining production licences that are required to undertake	a. Clarify that orders, directions, and other similar remedial instruments that are issued pursuant to statutory authority to address emerging or exigent adverse environmental circumstances (i.e. reasonable measures to address potential danger to persons, property or the environment) are not subject to assessment under s.47 of YESAA and that inspectors or officers are not proponents of these undertakings and thus required to submit proposal for assessment prior to issuance of the order/direction. b. Delete the second phrase found in the definition of "proponent" (i.e. a government agency ….that proposes to require … under territorial law ... that it be undertaken) to ensure that inspectors or officers are not proponents in relation to remedial orders. This more limited definition would be more consistent with other environmental assessment legislation, including CEAA and the *Nunavut Planning and Project Assessment Act* (NPPAA). c. Clarify that "secondary permits" such as building permits, electrical permits and development permits are not captured within the definition of "authorization".	Rec. 12

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	assessable activities but also building permits, electrical permits and development permits. The reach is overly broad and although, by practice, these types of permits have not been considered to fall within the scope of the definition, the language of the definition leaves considerable room for debate as to whether these items are "authorizations" within the scope of YESAA.		
Act s. 2 (1) Interpretation "*heritage resource*"	The current definition of "heritage resources" in YESAA appears to be an amalgamation of the *Umbrella Final Agreement* (UFA)-defined terms "Heritage Resources" and "Historic Sites". This is not consistent with chapter 12 of the UFA which speaks only to significant adverse effects on Heritage Resources (e.g. 12.4.2.7). Further, given the complexity of the definition of Heritage Resources in the UFA (i.e. the definition of "Heritage Resources" relies upon a number of other terms that are defined in the UFA), ambiguities and uncertainties arise related to the scope and application of the definition.	Delete the definition of "heritage resources" and add "heritage resources" to the list of terms that have the same meaning in the UFA as identified in s.2 (2) of YESAA.	Rec. 17
Act s.6 *Application of CEAA*	Subsection 6(1) was included to confirm that projects that could, by operation of the law, be subject to assessment under YESAA and CEAA were only assessed under YESAA. Changes to CEAA since 2003 have eliminated the possibility of duplication such that this provision is not required. Subsection 6(2) was included to address the potential situation of a pipeline being constructed within the Foothills easement (i.e. Alaska Highway Pipeline). Considerable legal debate and analysis of this provision by Yukon, Canada and TransCanada Pipelines (Foothills) did not result in a definitive answer as to if, and in what manner, YESAA might apply to an assessment of this project. YESAA, generally speaking, does not "grandfather" any projects and is sufficiently robust to enable a multi-party assessment of such a project.	Delete s.6 such that CEAA does not apply in Yukon.	Item 4.1 Rec. 13
Act s. 8 *Board established*	Since devolution in 2003, Yukon has assumed administration and control over the land, water and resources across much of the Yukon. However, only one of three members of the Yukon Environmental and Socio-economic Assessment Board is appointed on the nomination of the territorial minister. Chapter 12 of the UFA outlines a board made up of 3 CYFN members and 3 government members (the aggregate of the Yukon and Federal nominees). Yukon believes that it	Amend s. 8 to confirm: a) Yukon nominates one member of Executive Committee, with appointment by the federal minister; and b) Yukon nominates one member to the Board, with appointment by the federal minister; and	Item 1.6 Rec. 10

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	should have greater representation on the Board to reflect the scope and magnitude of its responsibilities for land, water and resources in Yukon.	c) the federal minister appoints one member. An alternative is to increase the total membership of the Board by two additional members, one nominated by the Council of Yukon First Nations and one nominated by Yukon.	
Act s. 30 *Rules and By-Laws*	Designated Offices are both employees of the YESAB and independent with respect to the delegated decision-making authority provided to these offices under YESAA. Despite the independence, there is a need for consistency in approach and process across all of the Designated Offices (i.e. not in the decisions rendered as each decision should be made on its own merits but rather in consistency of process, scoping and information requirements for similar projects). At present, there is lack of accountability and clarity of process between the Designated Offices with respect to, for example, information requirements, scoping, information required prior to an assessment and recommended terms and conditions for the same sector. This raises procedural fairness issues for proponents. As a second issue, although assessments are to be conducted by independent bodies (i.e. Designated Offices, Executive Committee, panels) there is a need for the assessment regime to be responsive to government policies and objectives related to assessment. One means of ensuring this responsiveness is to enable the federal minister to issue policy directions to the Executive Committee, which the Designated Offices, the Executive Committee and panels must comply with. Such direction should not apply to proposals pending before any assessor or to assessments which have been completed but not yet issued.	Clarify of the relationship between the YESAB and the Designated Offices *vis a vis* directions provided by the YESAB to Designated Offices for the purposes of ensuring consistency between Designated Offices with respect to information requirements, scoping, and assessment guidelines. Add provision enabling the federal minister to issue policy direction to Designated Offices, the Executive Committee and panels. Such direction must be complied with but should not apply to the proposal pending before an assessor or assessment which has been completed by not yet issued.	Items 2.2, 2.3, 3.7. 3.8, 3.12 Rec. 8(a), 8(b)
Act s. 44 *Regional land use plans* & **s. 81 (2)** "*decision not in conformity with land use plan*"	Section 44 and subsection 81(2) appear to assume the ongoing existence of Regional Land Use Commissions after approval of regional land use plans. However, the UFA does not establish an ongoing role for the Commissions once they have recommended a regional land use plan and federal funding of these Commissions also ceases with recommendation of a plan. Yukon suggests that these provisions be expanded to	Amend s. 44 to enable the parties to an approved land use plan (i.e. the parties that approved the land use plan under chapter 11 of a Yukon First Nation Final Agreement) to identify another body or organization to carry	Item 1.4 Rec. 24

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	enable government and the affected Yukon First Nation to task the Yukon Land Use Planning Council with this function.	out the responsibilities of a Regional Land Use Planning Commission as set out in s.44 if the Regional Land Use Planning Commission ceases to exist.	
Act s.47 *Regulations identifying activities* & **s. 50** *Submission of Proposals* & **s. 51** *Determination of Scope*	Section 47 of YESAA establishes when an assessment is required; s.50 indicates whether a project proposal is to be submitted to a designated office or to the executive committee; and s.51 authorizes a designated office or the executive committee to include activities likely to be undertaken – in addition to activities identified in the proposal - within the scope of the assessment of the project. Two interpretations have emerged from these sections related to what is an "assessable activity". Yukon believes an assessment is required if an activity is on the list and an authorization is required to undertake the project. In other words, if a proponent submits a proposal for an activity that is to occur over a ten year period, and this activity is on the list (and not excepted) and, an authorization is required to undertake the activity, the assessment should be for a ten year period regardless of whether one ten-year authorization or ten one-year authorizations are issued (assuming no change to the project throughout the ten years). No distinction is made in s.47(2) as to whether the authorization is being issued for the first time or is a renewal of an authorization. YESAB's interpretation is that an assessment is required each and every time an authorization is required (i.e. a renewal of a licence for the same project). The latter interpretation often results in project proposals being changed by assessors – at least in terms of the length of time an activity will occur - under the authority of the scoping power. The revised scope reflects the term that an authorization will be in effect as set out in regulatory legislation (or some proxy if no term is set out in law). This approach requires an assessment each time an authorization is issued (or would be issued in the case of a proxy term) or renewed. One of the valuable features of the regime set out in YESAA was that assessments were based upon activities not regulatory authorization terms. A proponent could therefore	a. Clarify that project proposals are assessed on the basis of how they are proposed by a proponent, with the addition of any activities that may be **added** as a result of the powers given to assessors in s.51 to expand the scope of assessment to other activities (i.e. the fundamental attribute of how long the activity will be undertaken cannot be modified by the assessor as an aspect of scoping); b. Clarify that the concept of "requiring an authorization or disposition of land" set out in s.47(2)(b) does not mean that each time an authorization must be issued (or renewed) a new assessment is required unless the project as proposed by the proponent is limited to the duration of regulatory authorizations.	Item 3.5 Rec. 15(a), 15(b)

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	submit a proposal for the entire activity they wish to undertaken and not be required to have the activity assessed each time an authorization needed to be renewed, unless there were changes to the project. The intent of section 47 was to identify what activities were subject to assessment and was not linked to the need for renewals. Yukon is concerned that YESAB's interpretation results in projects not being assessed as proposed by proponents and may mean that projects are not assessed for all stages of activity as the revised proposal frequently reflects an artificial lifespan for a project. Further, this approach may lead to multiple assessments during the life of a project despite the fact that the project does not change over the life of the project. Yukon believes the assessor has the authority to add activities – as provided for in s.51 – but not to omit any proposed activities or limit the assessment to prescribed regulatory authorization timelines. Clarity on the issue would ensure that assessments reflect what is proposed by a proponent, that all stages of an activity are assessed as early in the planning stages (as required by the purposes of YESAA), and would limit to the fullest extent possible the number of times an activity must be assessed before it is carried out. In this regard we note *Mining Watch Canada v Canada (Fisheries and Oceans)* [2010] 1 S.C.R. 6, 2010 SCC 2, which although based upon CEAA, confirms that a proposal is as submitted by a proponent and that an assessor, using its scoping powers, may add to the activities that may be included in the assessment but cannot otherwise alter the project from what is proposed by the proponent.		
Act s. 47 2(a) *Federal Funding*	Given the changes to CEAA this section may not be applicable.	Determine if federal funding trigger is still an appropriate trigger for assessment under YESAA.	Item 4.1 Rec. 13
Act s.54 *Suspension and Termination of Assessment*	Section 54 of YESAA provides that a proponent that intends not to proceed with a project is to give notice and upon receipt of that notice, assessments are to be discontinued. However, the statute does not establish what is to happen if a proponent does not provide information considered necessary by an assessor to complete an assessment. Rules have been established for all levels of assessment that speak to the	a. Clarify the consequence of a proponent failing to provide information upon request of an assessor (i.e. termination of assessment) b. Clarify that if an assessment is terminated,	Not in 5YR

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	termination of an assessment if the requested information is not provided. The rule-making powers however do not specifically address this issue and thus it remains unclear as to whether the assessors have the authority to terminate an assessment on this basis. Clarity on this point – and well as confirming that if an assessment is terminated due to failure to provide the information the proponent may submit a new project proposal – would be beneficial to proponents, assessors, government bodies and the public.	proponent may submit a new project proposal under the statute. See section 144 of *NPPAA* for example.	
Act s.56 *Conclusion of Evaluation* & **s. 58** *Conclusion of Screening* &**s.72(4)** *Conclusion of Panel Review*	The purposes of YESAA, set out in s.5(1), include requiring that their environmental and socio-economic effects be *considered* before projects are undertaken. This is supported by s.42(1) which provides that assessors, in conducting assessments, shall take a number of factors into *consideration*, including the significance of environmental and socio-economic effects that have occurred or might occur. These provisions are consistent with the UFA principles set out in chapter 12. The focus on "consider", "might occur" and "potential effects" contrasts with the requirements of sections 56, 58 and 72(4) which require an assessor *to determine* if a project w*ill* have significant adverse effects or not and, if so, whether these effects can be mitigated. Identification of potential adverse environmental effects is the hallmark of environmental assessment across Canada. It is conducted early in the planning stage, when not all information about a project is known, and with an eye to ensuring that projects are designed to address identified potential effects. The threshold of assessment is not that the effects *will* occur but rather that they *may* occur (i.e. they are "potential effects") and that in anticipation of the fact that they may occur, the project should be designed to include mitigation which should prevent the impact from occurring. To impose the standard of determining that effects "will occur" in an assessment frequently requires considerably more information than typically is available early in the planning stages of a project. Frequently the need to determine if effects will occur causes assessors to undertake responsibilities and functions more properly the jurisdiction of government regulators than assessors. In addition, it frequently sees the assessor asking for more information (and asking several times) both during the review of the proposal to see if the proposal is adequate and during the assessment process.	a. Align subsections 5(1) and 42(1) which refer to "consideration of effects" with sections 56, 58 and 72(4) which require an assessor to determine whether adverse effects "will" occur. b. Clarify that the basis of an assessor's recommendation is the purpose of assessment, i.e., to determine whether the project has the potential to result in significant adverse environmental or socio-economic effects and to identify mitigations to address these potential effects. See section 88 of *NPPAA,* which establishes the purposes of screening – whether a project has the *potential* to result in significant ecosystemic or socio-economic impacts – and section 91 which provides that the Board must make a determination that a project should be modified or abandoned if the Board is of the opinion that the project has the *potential* to result in unacceptable adverse ecosystemic or socio-economic impacts.	Item 3.9 Rec. 32

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Act s. 75-77 *Accept, reject or vary*	Section 75 authorizes a decision body to accept, reject or vary a recommendation from a designated office, a joint panel or a s.63 review panel. Section 76 authorizes a decision body to accept the recommendation of the executive committee or panel of the Board or refer it back for reconsideration. Subsection 77(3) authorizes a decision body to accept, reject or vary the reconsidered recommendation referred to in s.76. The basis of the acceptance, rejection or variation is not set out in the Act. It is also not set out in chapter 12 of the UFA. Establishing the basis of acceptance, rejection and variation would, however, assist in meeting the objectives of the statute. It would also clarify for all parties the relationship between the recommendation made by the assessors and the terms and conditions identified for the purposes of mitigation.	Include a provision that addresses the relationship between the recommendations and the associated terms and conditions and that confirms that the basis of accepting, rejecting or varying a term and condition as follows: a. accept the terms and conditions recommended by the assessor as part of their recommendation that the project proceed, where terms and conditions are identified; b. vary or reject those terms and conditions on one or more of the following grounds: i. the term or condition is insufficient, or more onerous than necessary, to adequately mitigate the adverse environmental or socio-economic effects of the project; or ii. the term or condition is so onerous that to impose them would undermine the viability of a project that is in the national or territorial interest.	Not in 5 YR
Act s.82-84 *Implementation*	The referenced provisions confirm that a federal agency, a territorial agency, and a first nation that is a decision body must take action so as to implement a decision document issued by it. However, the statute does not confirm that these bodies can – to the extent of its jurisdiction and authority – impose terms and conditions that are in addition to, or more stringent than the conditions set out in a decision document. Further it is not clear from the cited provisions – and hence was the subject of *Western Copper Corporation v Yukon Water Board,* 2011 YKSC 16 – that a proponent may only carry out a project subject to the terms and conditions set out in a decision document	Add two new provisions that a. confirm that a regulatory authority may impose conditions in an authorization in addition to or more stringent than the terms and conditions set out in a decision document; and b. confirm that a proponent may only carry out a project in accordance with a	Not in 5 YR

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	and to obtaining any licence, permit or other authorization required by law and by complying with any other requirements set out in such laws.	decision document and subject to obtaining any licence, permit or other authorization required by law and complying with such other laws. See s.111(3), paragraph 93(1)(a) and s.137(2) of *NPPAA* for example.	
Act s. 115 *Court referenced by Board*	Section 115 enables court references on questions of law or jurisdiction. All such references however must be made by the Board. It is not clear why the Board is the only party that can make the reference. The UFA does not speak to this issue. All of the parties identified in s.115 as having the authority to request a reference may be directly affected by a question of law or jurisdiction and thus should have the authority to refer a question of law or jurisdiction to the Supreme Court of Yukon.	Amend s. 115 to enable a decision body and a proponent to refer questions of law or jurisdiction directly to the Supreme Court of Yukon.	Item 1.8 Rec. 45
Act s. 122 *Regulation making authority*	Since devolution in 2003, Yukon has assumed administration and control over the land, water and resources across most of the Yukon. However, Yukon has no ability to amend the thresholds associated with listed activities (i.e. relationship between column 1 and column 2 of Schedule 1; Schedule 2 and Schedule 3) to reflect what it believes – as the body having authority over the activity - should be subject to assessment and should not. This limits Yukon's ability to address responsible development matters in Yukon. Yukon seeks to have the authority to, following consultation with first nations, to vary the regulations listing assessable activities as set out in s.122.	Add a provision that authorizes the territorial minister or Commissioner in Executive Council to vary the thresholds associated with activities listed in the *Assessable Activities, Exceptions and Executive Committee Projects Regulations.* a) If necessary, the authority could be limited to enable Yukon to only vary those activities that are listed in the regulations by increasing the scope or magnitude of the excepted activities. b) In other words, Yukon could only reduce the number of assessments. Changes to the regulations that would have the effect of increasing the number of assessments would remain with the Governor in Council as set out in s.122. See *Fisheries Act* and specifically the *Fishery*	Rec. 12 Rec. 30 Rec. 63

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		(General) Regulations, SOR/93053, s.6 for example. Alternatively, add a provision committing to a review of the regulations every three years to ensure that assessment standards are comparable to other jurisdictions and reflect responsible resource development.	
Act *Delegation to territorial minister*	Since 2003, the Yukon government has assumed the primary responsibility for land, water and resource management in Yukon. Assessment of proposed projects is key to the identification and understanding of the potential adverse environmental and socio-economic effects of projects that are subject to regulatory control by the Yukon government. However, Yukon has limited authority and jurisdiction under YESAA. One means of increasing Yukon's role in the assessment regime – within the scope of Yukon's jurisdiction – is delegation of some of the responsibilities of the federal minister to the Yukon minister. One example of this may be delegation of the responsibility to appoint members to the Yukon Environmental and Socio-economic Assessment Board.	Add a provision to enable the federal minister to delegate to the territorial minister any of the federal minister's powers, duties or functions under YESAA. Notice to first nations of such a delegation must be provided. See for example, s.9 of the *NPPAA.*	Not in 5YR
Act *Board Member Continuing to Act after expiry of term*	YESAA does not address situations where the term of a member of the Board and Executive Committee expires part way through a project screening or review. Addressing this issue would be avoid delays and inconsistency and correspond to recent changes to the *Yukon Surface Rights Board Act*.	Add a provision to authorize a member of the Board (and Executive Committee) to continue to act despite expiry of their term until project screenings and reviews are completed. See the *Yukon Surface Rights Board Act* and s.13 of the *NPPAA* for example.	Rec 11(c)
Act *Transboundary*	YESAA authorizes assessors to consider the effects of a project that may occur outside of Yukon. Paragraph 42(1)(e) suggests, but does not confirm, that alternatives to a project (i.e. activity proposed to occur in Yukon) or part of a project can be considered in the course of an assessment of a project by the assessors. This is of particular concern with respect to access routes - the relatively low level of infrastructure in Yukon combined with its rather large geography often means that projects can be accessed from outside the Yukon (i.e. British Columbia, Alberta or Northwest	Add a provision to clarify that assessors have the authority to consider alternatives to projects, or parts of projects, that may occur outside of Yukon in addition to considering project effects that may occur outside of Yukon.	Rec. 22

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	Territories). Assessors must have explicit authority to consider alternatives to projects, or parts of projects, which may occur outside of Yukon in addition to considering project effects that, may occur outside of Yukon. This item was identified in the YESAA Five-year Review: Issues and Recommendations Consolidated Table, May 12, 2011 under “other issues”.		

2. Regulatory Amendments			
Issue	**Issue Description**	**Specific Suggestions**	**5-YR Review**
Regulation **s. 1** *"contaminant"*	The definition of "contaminants" in the regulations refers to the *Contaminated Sites Regulation,* OIC 2002/171. Yukon presently does not have the means to amend the federal regulations and thus changes to Yukon's regulatory regime concerning contaminants and contaminated sites may result in gaps and uncertainties respecting assessment requirements should Yukon determine it must amend its regulatory approach to contaminants and contaminated sites. Reference to the *Environment Act* rather than the *Contaminated Sites Regulation* should lessen this concern.	Amend the definition of *"contaminant"* to have the same meaning as in the *Environment Act,* R.S.Y. 2002, c.76	Item 5.1.1 Rec. 12
Regulation **s. 1** "*land treatment facility*"	The latter part of the definition of "land treatment facility" is not required and not applicable to Yukon law, as set out in the *Environment Act*. It is not clear what i added by the latter part of the definition.	Amend the definition of *"land treatment facility"* to mean a facility designed and operated for the purpose of removing or reducing the concentration of a contaminant found in soil, sediment, snow or other similar material.	Item 5.1.2 Rec. 12
Regulation **s. 1** "*mapped community*	Under YESAA a "mapped community" *means a community in respect of which the boundaries are, for the purpose of this definition, shown on a map deposited with the Board by the territorial minister or the Regional Director General, Yukon Region of Department of Indian Affairs and Northern Development on, November 28, 2005*. Community boundaries for Carcross and Tagish have changed since November 28, 2005. These boundaries should be reflected *vis a vis* "mapped boundaries". The current definition does not allow for this change and does not accommodate similar future changes to these or other mapped community boundaries.	Add language to enable the updating of maps as community boundaries change over time. May be necessary to add notice requirement to ensure that changes to "mapped boundaries" are adequately communicated to users of YESAA.	Item 5.1.3 Rec. 12
Regulation **s. 2-4** *Activities and Exceptions*	Sections 2 through 4 of the Assessable Activities, Exceptions and Executive Committee Projects Regulations do not clearly explain how exceptions are to be applied or explain the relationship between specific and general exceptions. As a result, it is confusing as to how Schedule 2 relates to activities listed in Schedule 1 and makes it difficult for regulators to determine whether some projects require assessment or not.	Amend s. 2-4 to improve clarity.	Item 5.2 Rec. 12
Regulation **Schedule 1** **Part 1, Item 3** *Mines*	There is currently no specific exception related to mining activity. Mining projects can be modified significantly and insignificantly from an assessment perspective throughout the life of the project. To eliminate the need for assessments for minor modifications, a specific exception is proposed.	Add specific exception in Part 1, Item 3 Column 2 for modifications in relation to a mine that a) Does not increase the exterior dimensions or production capacity of a structure or	Rec. 12 Rec. 30

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		development by 10%, b) Does not alter the purpose or function of the structure, c) Is not being carried out in, on or within 30 m of a water body, and d) Is not likely to involve the release of a polluting substance into a water body.	
Regulation Schedule 1 Part 2, Item 4 *abattoirs*	There are no exceptions listed for abattoirs in column 2 of this item. Even the smallest scale of animal slaughter is subject to assessment if the activity is intended for anything but individual use.	Add an exception in column 2 of Part 2, Item 4 for abattoirs where the total annual slaughter weight does not exceed 15000 kg.	Item 5.3.1 Rec. 12
Regulation Schedule 1 Part 3, Item 1 *"…exploration or other activity in relation to exploration for oil and natural gas"*	Column 2 Specific Exception *2 (a) use of more than 50 kg of explosives in a 30-day period;"* There is concern that insignificant levels of activity for oil and gas projects are being captured by thresholds that are lower than those for similar activities in other Yukon industries, causing proponents to undergo a higher level of process than is necessary in relation to the level of activity being undertaken. The current exemption for use of explosives for oil and gas is 50 kg in any 30 day period.	Change from "use of more than 1000 kg of explosives in a 30-day period" to "use of more than 1000 kg of explosives in a 30-day period".	Item 5.3.1 Rec. 12
Regulation Schedule 1 Part 8, Item 2 "… contaminated site"	There is an inconsistency in the application of exceptions between Yukon and federal lands. The 3000m3 exception currently does not apply to materials from a site administered by the federal government, meaning that a single drum of contaminated soil from an RCMP station needs an assessment. This is unnecessary and delays remediation.	Replace the specific exception in column 2 of part 8, item 4 with the following : Removing, destroying, containing or any other activity intended to reduce the exposure of human beings, animals and plants to materials containing a contaminant found on a contaminated site if (a) the activity takes place at a site other than where the materials were found; or (b) if the activity takes place on the site where the materials were found, and involves less than 3000 m3 of those materials.	Item 5.3 Rec. 12
Regulation Schedule 1 Part 8, Item 4	The phrase "used exclusively for…" omits proponents doing multiple activities yet most proponents who handle special waste undertake multiple activities	Replace Part 8, Item 4 with the following wording: Column 1 - "On other than an Indian reserve,	Item 5.3 Rec. 12

2. Regulatory Amendments			
"…construction, operation, modification, decommissioning or abandonment of, or other activity in relation to, a facility used exclusively for the treatment, incineration, disposal, recycling or storage of special waste"	There is inconsistency in the units used in the act and units used by permit holders. For example, volume and quantity, not weight, are the industry standards when determining the amount of liquid or automotive batteries being stored.	construction, operation, modification, decommissioning or abandonment of, or other activity in relation to, a facility used for the treatment, incineration, disposal, recycling or storage of special waste" Column 2 - "On other than an Indian reserve, construction, operation, modification, decommissioning or abandonment of, or other activity in relation to, a facility used for the treatment, incineration, disposal, recycling or storage of special waste, if; (a) the facility treats, incinerates, disposes or recycles, and in the case of a modification continues to treat, incinerate, dispose or recycle, less than i) 20,000L/year of waste oil, (ii) 500t/year of waste automotive batteries (iii) 10t/year of special waste, other than waste oil or waste automotive batteries, generated as a result of the repair and maintenance of motor vehicles, or (iv) 5 t/year of special waste not described in subparagraphs (i), (ii) and (iii); and (b) the facility handles, and in the case of a modification continues to handle, less than (i) 20,000L/year of waste oil, (ii) 500t/year of waste automotive batteries (iii) 10t/year of special waste, other than waste oil or waste batteries, generated as a result of the repair and maintenance of motor vehicles, or (iv) 5 t/year of special waste not described in subparagraphs (i), (ii) and (iii)."	

2. Regulatory Amendments			
Regulation Schedule 1 Part 8, Item 6 *"…construction, operation, modification, decommissioning or abandonment of equipment for the incineration of special waste, excluding waste oil"*	There is inconsistency between sections of the Regulations. The format for the exception for the incineration of waste oil differs from other exceptions because it is included in the activity in Column 1 rather than in Column 2.	Replace Part 8, Item 6 with the following wording: Column 1 - On other than an Indian reserve, construction, operation, modification, decommissioning or abandonment of equipment for the incineration of special waste. Column 2 - On other than an Indian reserve, construction, operation, modification, decommissioning or abandonment of equipment approved for the incineration of waste oil	Item 5.3 Rec. 12
Regulation Schedule 1 Part 8, Item 8 *"…construction, operation, modification, decommissioning or abandonment of, or other activity, in relation to a solid waste facility"*	The activity does not encompass private, commercial or other types of dumps. Despite the apparent intent to capture solid waste disposal facilities, the exception exempts any solid waste disposal facility that also operates an incinerator with a burning capacity of less than 100kg/day. The current activity and specific exception are disconnected. Solid waste disposal and solid waste incineration are two distinct activities. Also, manufacturers don't specify daily burning capacity as suggested in this section (usually specify hourly capacity).	Remove column 2 of Part 8, Item 8 and replace column 1 with the following wording: Column 1 - On other than an Indian reserve, construction, operation, modification, decommissioning or abandonment of, or other activity in relation to, a site or area used for the disposal of solid waste.	Item 5.3 Rec. 12
Regulation Schedule 1 Part 13, Item 3 *"Earth drilling using power-driven machinery, other than that*	The YESAB regulations contain some low activity thresholds under which an assessment is required, causing YESAB Designated Offices to perform information gathering and analysis that, in other jurisdictions, would likely be performed by statutory decision makers and/or permitting authorities outside a formal assessment. This activity trigger is capturing projects like the establishment of a fence in the	Add exceptions for a) earth drilling within a public road right of way; and b) earth drilling within a municipality.	Item 5.3.1 Rec. 12

2. Regulatory Amendments			
for the extraction of groundwater"	heavily developed industrial area of a municipality or the establishment of a single power pole. The assessment of this type of project where there is no perceived potential for adverse environmental or socio-economic impact does not add value to the implementation of the project and creates a significant amount of unnecessary work. It also requires time, effort and resources that could be more efficiently and effectively expended on more complicated projects. Projects within municipalities are subject to the Official Community Planning process (OCP). The Official Community Plan and Zoning Bylaw control what can take place on land within the municipality including appropriate land-uses and development regulations.		
Regulation Schedule 1 Part 13, Item 7 *"Construction or modification of an aboveground storage system for dangerous goods…*	The wording in Part 13, Item 7 does not include operation, decommissioning and abandonment as other activities do.	Suggest adding "operation, decommissioning, abandonment" to part 13 item 7.	Rec. 12
Regulation Schedule 1 Part 13, Item 8 *"On other than crown land and settlement land… storage tank systems for petroleum products"*	YESAA triggers vary significantly depending on who owns the land and do not correlate with the likelihood of adverse effects. The regulations do not encourage proponents to store fuel in single larger capacity containers with leak containment as opposed to individual single walled small drums which have more potential risk for adverse effects. An unintended consequence is proponents making multiple trips to re-stock fuel supplies to avoid assessment, which increases risk due to increased transport. Interpreting and applying Items 9 and 10 is confusing. It is difficult to understand the application of a "storage facility" versus "storage in a container" and whether volumes are total volumes or volumes of a single container.	Combine 8, 9 & 10 into one. Column 1 - Construction, operation, modification or decommissioning of a storage facility for petroleum products. Column 2 - Fuel storage in one or more containers where the total capacity remains 50,000L or less and not more than 4,000L is stored in single walled containers.	Item 5.3.1 Rec. 12

2. Regulatory Amendments			
Regulation Schedule 1 Part 13, Item 9 *"…the establishment of a petroleum fuel storage facility"*	See above (Part 13, Item 8)	See above (Part 13, Item 8)	Item 5.3.1 Rec. 12
Regulation Schedule 1 Part 13, Item 10 *"…the storage of petroleum fuel in a container"*	See above (Part 13, Item 8)	See above (Part 13, Item 8)	Item 5.3.1 Rec. 12
Regulation Schedule 1 Part 13, Item 11 *"hydraulic prospecting, moving earth or clearing land using a stationary power-driven machine…"*	The YESAB regulations contain low activity thresholds under which an assessment is required, causing YESAB Designated Offices to perform information gathering and analysis that, in other jurisdictions, would likely be performed by regulatory authorities. This activity captures very minor projects such as fences, single power poles and paving of driveways where there is no value added by an environmental and socio-economic assessment. This activity trigger also captures projects such as schools, community centres and hospitals. Projects within municipalities include are projects are subject to the Official Community Planning process (OCP). The Official Community Plan and Zoning Bylaw control what can take place on land within the municipality including appropriate land-uses and development regulations. The assessment of this type of project where there is no perceived potential for adverse environmental or socio-economic impact does not add value to the implementation of the project and creates a significant amount of unnecessary work. It also requires time, effort and resources that could be more efficiently and effectively expended on more complicated projects.	Combine Part 13, Items 11 and 12, as follows: Column 1 - On Crown land or settlement land, hydraulic prospecting, moving earth or clearing land using a power-driven machine. Column 2 – On Crown land or settlement land, moving earth using a power-driven machine a) within the right of way of a public road; b) within municipalities; c) from an area less than 0.5 ha; d) of an amount less than 50m3	Item 5.3.1 Rec. 12

2. Regulatory Amendments			
Regulation Schedule 1 Part 13, Item 12 *"moving earth or clearing land using a self-propelled power-driven machine"*	See above (Part 13, Item 11)	See above (Part 13, Item 11)	Item 5.3.1 Rec. 12
Regulation Schedule 1 Part 13, Item 18 *"… cutting standing or fallen trees or removing fallen or cut trees"*	YESAA came into effect before the *Forest Resources Act* was enacted. The new forestry regime provides for strategic and site planning, compliance and enforcement, a suite of standards, and sustainable harvest levels. Timber Harvest Plans address soil conservation, riparian management, historic resource management, wildlife mitigations and cumulative effects. Planning and allocation of rights to forest resources are subject to a planning and review process as set out in the *Forest Resources Act.* There is concern that an assessment under YESAA duplicates processes contained within the *Forest Resources Act* resulting in redundant efforts and costs by Yukon government, YESAB and proponents. Including exceptions for smaller scale timber harvesting activities in areas where a Timber Harvest Plan is in place would reduce duplication of effort by YESAB, thereby reducing costs. This method of incorporating the provisions of the *Forest Resources Act* would also reduce timelines for proponents. Forestry projects often include more than one activity from Schedule 1, Part 13. Silviculture and the development of a Forest Resources Road (defined in the *Forest Resources Act*) can be captured by Part 13 Items 11, 12 and/or 13. In order to except a forestry project of 20,000m3 or less timber, on Crown land, in a *Forest Resources Act* approved Timber Harvest Plan, all of these activities would need specific exceptions.	Amend the specific exception for Part 13, Item 18 as follows: • On Crown land, within an approved Timber Harvest Plan pursuant to the Forest Resources Act, cutting 20,000 m3 or less of standing or fallen trees and removing that amount of fallen or cut trees. • On Crown land and settlement land, cutting 1,000m3 or less of standing or fallen trees and removing that amount of fallen or cut trees. Suggest one of several approaches to except forestry activities that may be triggered by other items: a. add a section similar to section 1(2) of the Assessable Activities, Exceptions and Executive Committee Project Regulations to confirm that part 13 of Schedule 1 does not apply to activities (i.e. cutting standing or fallen trees or removing fallen or cut trees) on Crown land or for a Timber Harvest Plan or b. include specific exceptions excepting 20,000m3 or less forestry projects on Crown land for each related activity (Part 13 Items 11-13); or	Items 1.1.1, 1.1.2, 1.9.2, 5.3.1 Rec. 12

2. Regulatory Amendments			
		c. include a general exception in Schedule 2 excepting 20,000m3 or less <u>forestry projects</u> within an approved Timber Harvest Plan on Crown land.	
Regulation Schedule 1 Part 13, Item 19 *"Starting an open fire to burn forest debris that has been piled or gathered using machinery"*	The assessment of this type of project where there is no perceived potential for adverse environmental or socio-economic impact does not add value to the implementation of the project and creates a significant amount of unnecessary work. It also requires time, effort and resources that could be more efficiently and effectively expended on more complicated projects.	Delete Part 13, Item 19.	Item 5.3.1 Rec. 12
Regulation Schedule 1 Part 13, Item 30 *"Application of a control product…"*	As written, this excludes *Bacillus sphaericus*, which targets a particular species of mosquito. Pesticide products using bacteria of the genus of *Bacillus* as the active ingredient should be exempted in the same manner as *B. thuringiensis*, as they work in the same manner with studies demonstrating a low potential (similar to *B. thuringiensis*) for negative impacts to human health of the environment.	Amend the specific exception associated with Part 13, item 30 to include all pesticide products with bacteria of the genus *Bacillus* as the active ingredient.	Item 5.3 Rec. 12
Regulations Schedule 2 Modifications *General exception for modification industrial development, municipal or community undertaking…*	The current general exception list identifies a number of modifications that can be made to activities without need for further assessment. This list should be expanded to include modifications of industrial developments and municipal and community undertakings to eliminate the need for assessments for minor modifications.	Add new Schedule 2 general exception: Modification of an industrial development, municipal or community undertaking that : a) Does not increase the exterior dimensions or production capacity of a structure or development by 10%, b) Does not alter the purpose or function of the structure, c) Is not being carried out in, on or within 30 m of a water body, and d) Is not likely to involve the release of a polluting substance into a water body.	Item 3.6, 5.4, 5.5 Rec. 12

2. Regulatory Amendments			
Regulation Schedule 2 *General exception for activities within a municipality*	While environmental assessments should not always be limited to activities occurring outside of developed areas, Yukon questions the need to assess many of the activities listed in the *Assessable Activities, Exceptions and Executive Committee Projects Regulations* when these activities are proposed to occur – or the effects of which will occur only - in developed areas such as municipalities. Inclusion of these activities has led to a number of assessments of schools, correctional facilities, local trail networks and other similar structures and facilities. The assessments, typically, add very little value and yet can add significantly to the cost and time associated with undertaking these municipal infrastructure projects. This said, Yukon continues to think that some activities – such as storage of bulk fuel, production of nuclear or other forms of electric power, industrial developments and the construction and operation of some solid and special waste management facilities – proposed to occur within a municipality should be subject to assessment given the potential adverse environmental and socio-economic effects frequently associated with these activities. The Official Community Plan and Zoning Bylaw control what can take place on land within the municipality including appropriate land-uses and development regulations. May need to cross reference with Schedule 1, Part 13, Item 27 and other sections that refer to municipalities.	Add exception in Schedule 2 as follows: Construction, operation, modification, abandonment or decommissioning of a structure, facility or installation or the provision of a service within a municipality, that is not anticipated to have significant adverse environmental or socio-economic effects outside of the municipality and does not involve the bulk storage of fuel, the production of nuclear or other forms of electric power, industrial development or the disposal of solid or special waste in a facility located within a municipality. Alternatively, add this exception the definition of 'project' in the YESAA.	Rec. 12
Regulation Schedule 2 Item 2 "Construction of a building if the building has a footprint of < than 100 m2 and a height of < than 5 m"	The YESAB regulations contain some low activity thresholds under which an assessment is required, causing YESAB Designated Offices to perform information gathering and analysis that, in other jurisdictions, would likely be performed by statutory decision makers and/or permitting authorities outside a formal assessment. The assessment of this type of project where there is no perceived potential for adverse environmental or socio-economic impact does not add value to the implementation of the project and creates a significant amount of unnecessary work. It also requires time, effort and resources that could be more efficiently and effectively expended on more complicated projects. Projects within municipalities include are projects are subject to the Official Community Planning process (OCP).	Add a Schedule 2 exception for construction of a building within a municipality.	Item 5.3.1 Rec. 12

2. Regulatory Amendments			
Regulation **Schedule 3** **Items 3,6,7,11,12** *Mining*	There is a concern that Executive Committee screening levels are capturing routine mining projects of relatively small or mid-sized operations. The current threshold which requires mid-size or small mines to undergo a lengthy Executive Committee review makes it difficult for a mid-sized operation to be responsive and take advantage of capital quickly. An operating mine may not have the reserves available to continue operations while waiting for a 2 year assessment process of an expansion. As a result, a mining operation may break their project into a number of smaller projects so that they fall under the current threshold. It is also important to note that the Designated Office is capable of assessing small and mid-size mine developments comprehensively. In terms of added value to having these mines reviewed by the Executive Committee, other than greater obligations on consultation and requirements for baseline and other forms of information, there is no difference in the quality of assessment. In terms of benefit to industry, however, the reduced timelines under the Designated Office process ensures a responsive assessment regime, and especially as noted above, can directly impact the economic viability of an operating mine. In terms of comparability with other jurisdictions, the YESAB Executive Committee thresholds are lower than mining projects triggered under CEAA and a number of provincial assessment regimes. Many provincial jurisdictions only assess very large scale regionally significant mines.	Amend Schedule 3 as follows as follows: Item 3: Construction and decommissioning of a metal mine, other than a gold mine, with an ore production capacity of 3000 t/day or more; or a gold mine with an ore production capacity of 600 t/day or more. Item 4: 1500 t/day and 3000t/day total capacity. Item 5: 300 t/day and 600t/day total capacity Item 8: 3000t/day for expansion and 6000 t/day for total capacity Item 11: Construction and decommissioning of a metal mill with an ore input capacity of 4000 t/day not covered by Item 3. Item 12: Expansion of a metal mill that increases ore input capacity by 50% or more, or by 2000t/day or more, and increases the ore input capacity or 4000 t/day or more, and not covered by Items 4 and 5.	Rec. 12 Rec. 30
Regulation **Schedule 3**	Schedule 1 lists “modification” as one of the phases of an activity. Schedule 3 does not use the word “modification” but refers to “expansion”. The difference between “modification” and “expansion” is not evident and introduces uncertainty.	Amend Schedule 3, Items 5, 8, 12, 23, 26, 40, 42, 44, 48, and 60 to replace “expansion” with “modification”.	Rec. 12 Rec. 30
Regulation **Schedule 3** **Item 25** *Energy*	The Schedule 3 Executive Committee thresholds for electrical generating stations are significantly lower than those observed for other jurisdictions. Many projects could be adequately assessed by a Designated Office.	Amend Schedule 3, Item 25 as follows: (a) Hydroelectric production capacity of 5 MW; (b) Fossil-fuel-fired (except coal)production capacity of 50 MW; (c) Coal-fired production capacity of 5 MW; (d) Wood-fired production capacity of 50 MW.	Rec. 12 Rec. 30

2. Regulatory Amendments			
Regulation **Schedule 3** **Item 26** *Energy expansion*	If Schedule 3 Item 25 is amended, Item 26 will need to be amended to maintain consistency change in threshold levels. See above.	Harmonize with thresholds above.	Rec. 12 Rec. 30
Regulation **Schedule 3** **Item 34** *Construction of a bridge…*	Bridges can be adequately assessed by the Designated Offices.	Remove Item 34 from Schedule 3	Rec. 12 Rec. 30
Regulation **Schedule 3** **Item 49** *The deposit of waste into surface water…*	Item b in Schedule 3 Item 49 can be adequately assessed by the Designated Offices.	Remove part (b) from Item 49 Schedule 3.	Item 5.5 Rec. 12 Rec. 30
Regulation **Schedule 3** **Item 55** **Forestry**	The threshold for forestry projects assessable at the Executive Committee level is too low. The amount of forest planning and the level of detail provided to YESAB from the Forest Management Branch as part of the assessment is often similar for DO and EC level projects and are not necessarily dependent on the volume of timber harvested.	Remove Item 55 from Schedule 3.	Item 5.5 Rec. 12 Rec. 30