Results-based Regulation: Code Performance Survey Summary

What We Heard – 2018 Survey Results

Saskatchewan

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Introduction

In July and August 2018, the Saskatchewan Ministry of Environment conducted an online survey to gain stakeholder insight into the performance of the results-based regulation (RBR) program. The survey helped determine the effectiveness of the RBR transition and whether improvements to the program were needed. This document is a summary of the feedback received from all stakeholders that participated in the survey.

Background

In 2008, the ministry initiated a comprehensive review of the province's existing regulatory model. This included benchmarking Saskatchewan against models in Alberta, British Columbia, Manitoba and Ontario. The review included extensive consultation with the public. More than 1,300 people participated in the original code review process, including over 350 face-to-face meetings. Although there was a broad range of interests represented, there was overall agreement on three statements:

- Effective environmental management is essential in an economy built on natural resources.
- The ministry's ability to be effective would be challenged by an increase in activities, advancements in environmental science and knowledge, and shrinking government resources.
- There is a need for innovation and to work differently to ensure environmental protection could keep pace with industry growth.

The recommendations were to modernize and streamline the legislation, develop a Saskatchewan Environmental Code (code) and foster the use of qualified persons and innovative environmental solutions. The ministry went further and embarked on extensive organizational changes. These changes included a review of business processes, introduction of online services, creation of a client service office, emphasis of improved access to knowledge and the establishment of working groups of private and public interests as development partners. These initiatives and partnerships, all undertaken simultaneously, were critical to the ministry's success in changing how it does business.

The ministry's new results-based regulatory model specifies the environmental outcome to be achieved, and largely leaves the determination of how it is to be achieved to the proponent. Results-based regulation is not deregulation, self-regulation, abdication of authority or responsibility by government, or an attempt to pave the way for unrestricted development. It establishes clear performance expectations while eliminating ineffectual scrutiny and attention to process, especially for routine, well-understood, and low-risk activities. It allows government resources to focus on the monitoring and compliance of activities that pose a higher risk to the environment and human health and safety.

The Survey – What We Heard

The survey was sent to 629 stakeholders by email, requesting feedback on their experience with the code. The email indicated that the feedback would be used to help establish a baseline for future assessments of code performance and client satisfaction, and contribute to continuous improvement of the code and supporting legislation.

In total, there were 125 responses. Out of those responses, 50 were completed and 75 had been partially completed.

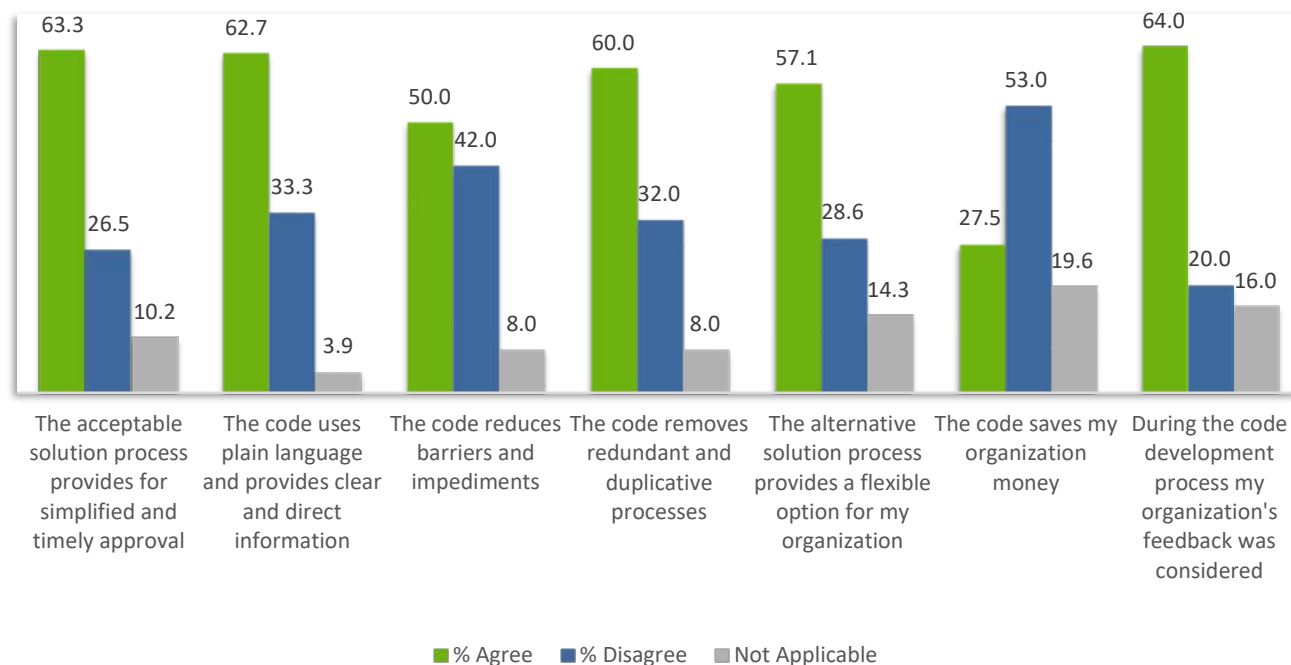The survey was divided into the following sections:
- reduction in regulatory red tape;
- effective communication;
- transparency, accountability and environmental stewardship;
- continuous improvement of results-based regulations;
- enhance environmental protection through monitoring, compliance and enforcement;
- future code development; and
- designated qualified persons.

Of those who responded to the survey, all indicated that *The Environmental Management and Protection Act, 2010* applied to their organization, with 28 per cent indicating *The Forest Resources Management Act* also applied. No organization indicated that only *The Forest Resources Management Act* applied to them.

When asked if they were familiar with the objectives of the code, 98 per cent said yes and only two per cent said no.

Reduction in regulatory red tape

One of the goals of developing the code was to reduce red tape, which creates burdensome requirements that can impact economic competitiveness. The following series of questions are meant to help determine if the code is reducing red tape.

Chart categories (left to right):
- The acceptable solution process provides for simplified and timely approval — % Agree 63.3, % Disagree 26.5, Not Applicable 10.2
- The code uses plain language and provides clear and direct information — % Agree 62.7, % Disagree 33.3, Not Applicable 3.9
- The code reduces barriers and impediments — % Agree 50.0, % Disagree 42.0, Not Applicable 8.0
- The code removes redundant and duplicative processes — % Agree 60.0, % Disagree 32.0, Not Applicable 8.0
- The alternative solution process provides a flexible option for my organization — % Agree 57.1, % Disagree 28.6, Not Applicable 14.3
- The code saves my organization money — % Agree 27.5, % Disagree 53.0, Not Applicable 19.6
- During the code development process my organization's feedback was considered — % Agree 64.0, % Disagree 20.0, Not Applicable 16.0
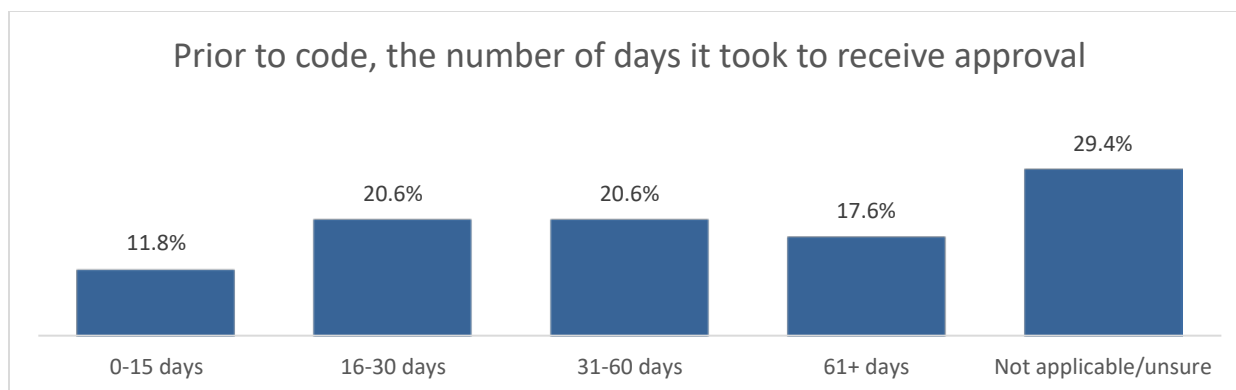
Legend: ■ % Agree ■ % Disagree ▦ Not Applicable

The above responses indicate the ministry is moving in the right direction, which corresponds to Saskatchewan's recent grade A ranking by the Canadian Federation of Independent Business in its 2019 Red Tape Report Card.

Two areas where the ministry will need to conduct further study include: reducing barriers and impediments, since this is somewhat contradictory to the general consesus that the code is reducing red tape, and finding out why only half of respondents felt the alternative solution provides flexible options.

The question needing the most examination regards the code saving an organization money. Approximately half of the respondents disagreed with this statement. However, this was also the question with the largest not-applicable response (19.6 per cent).

To help with providing timely approvals, respondents were asked how long approval took prior to the code coming into force (see following graph). The majority of responses indicate approvals previously took anywhere from 16 to 60 days.

Prior to code, the number of days it took to receive approval

Category	Percentage
0-15 days	11.8%
16-30 days	20.6%
31-60 days	20.6%
61+ days	17.6%
Not applicable/unsure	29.4%

With the addition of the code, when following the acceptable solutions, approvals take from one to two days. When proposing an alternative solution, the ministry is obligated to respond within 45 days or the proposal is deemed accepted.

Many respondents felt that the review or approval time was too long, but it was not clear if this was referring specifically to code-related approvals.

Opportunities

From the comments received in reduction of red tape, the following opportunities were identified for the ministry to explore:

- continuing with chapter development and exploring additional acceptable solutions for existing chapters;
- exploring ways to further reduce unneeded requirements; and
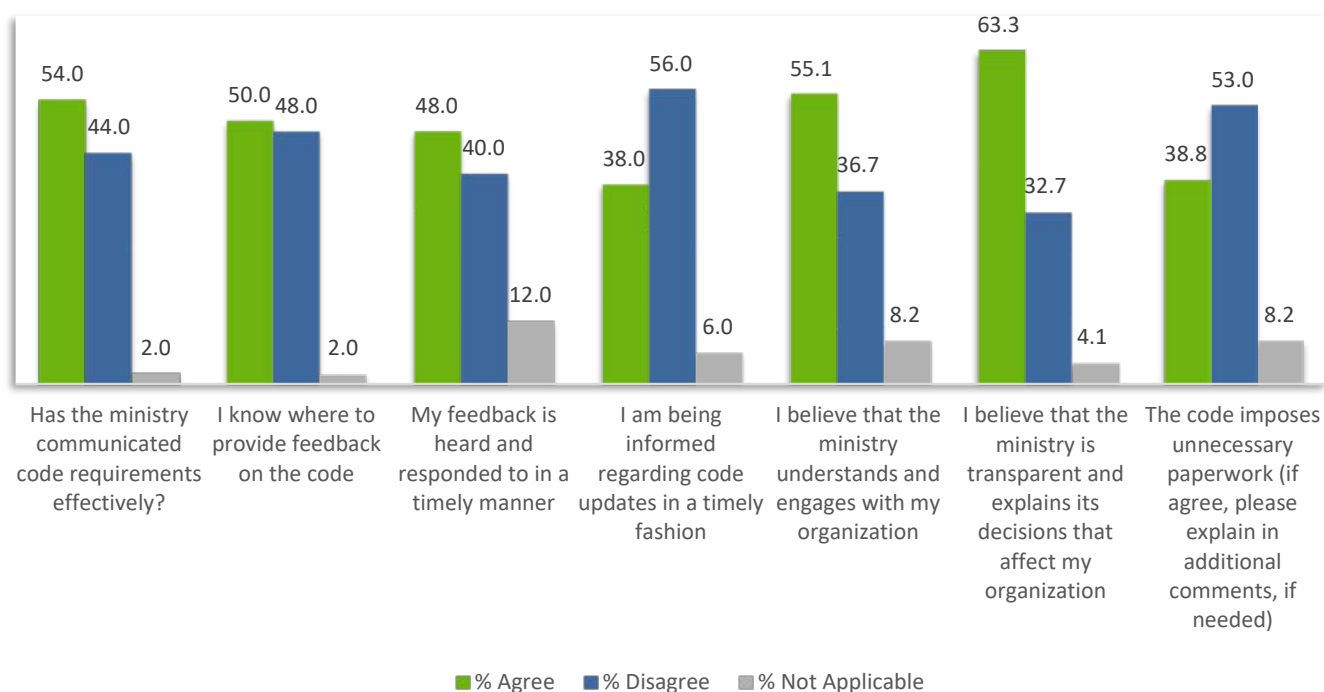- developing additional guidance documents.

"Approvals take too long."

"Remove legal survey for corrective actions."

"More guidance documents."

Effective communication

When implementing a new way of doing business, it is important to ensure that changes and expectations are clearly described. The following questions help determine if the ministry is communicating effectively.

Chart legend: ■ % Agree ■ % Disagree ■ % Not Applicable

Values shown in the chart:

Question	% Agree	% Disagree	% Not Applicable
Has the ministry communicated code requirements effectively?	54.0	44.0	2.0
I know where to provide feedback on the code	50.0	48.0	2.0
My feedback is heard and responded to in a timely manner	48.0	40.0	12.0
I am being informed regarding code updates in a timely fashion	38.0	56.0	6.0
I believe that the ministry understands and engages with my organization	55.1	36.7	8.2
I believe that the ministry is transparent and explains its decisions that affect my organization	63.3	32.7	4.1
The code imposes unnecessary paperwork (if agree, please explain in additional comments, if needed)	38.8	53.0	8.2

The above responses indicate the ministry could do a better job at effectively communicating requirements. Over half of respondents felt that they were not being informed about code updates in a timely fashion.

Opportunities

From the comments received, the following opportunities were identified for the ministry to explore:
- options to better inform and communicate changes;
- ways to ensure consistent messaging and feedback is provided;
- ensuring most up-to-date information is online; and
- ensuring web links are updated and working.

"In general the ministry has done a good job communicating large changes, but has neglected to inform people of small, but important ones."
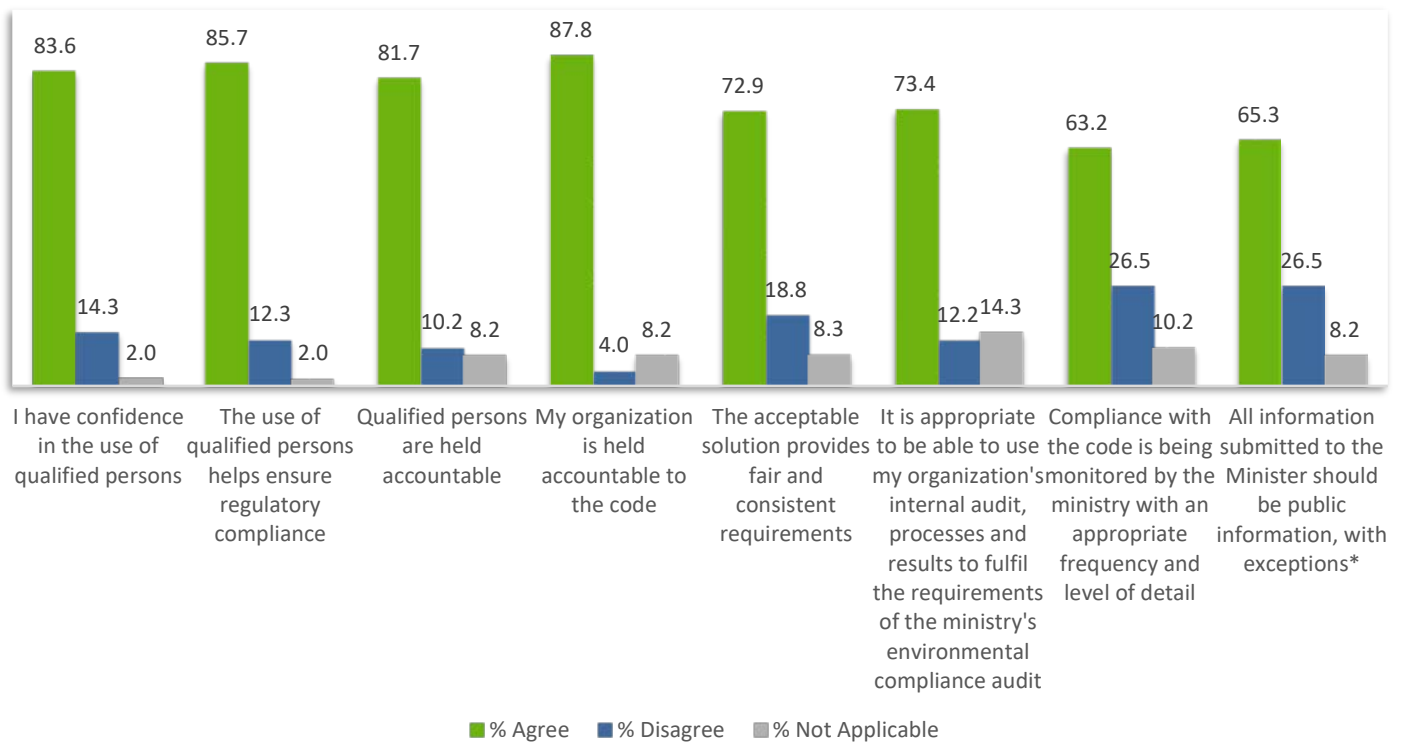
"More consultations on changes are needed."

"Inconsistent and contradictory messages."

"Website is outdated or links are broken."

Transparency, accountability and environmental stewardship

One of the core principles of the results-based model is to increase transparency in all processes and information. The following series of questions gauge how the ministry is doing in meeting this core principle.

	I have confidence in the use of qualified persons	The use of qualified persons helps ensure regulatory compliance	Qualified persons are held accountable	My organization is held accountable to the code	The acceptable solution provides fair and consistent requirements	It is appropriate to be able to use my organization's internal audit, processes and results to fulfil the requirements of the ministry's environmental compliance audit	Compliance with the code is being monitored by the ministry with an appropriate frequency and level of detail	All information submitted to the Minister should be public information, with exceptions*
% Agree	83.6	85.7	81.7	87.8	72.9	73.4	63.2	65.3
% Disagree	14.3	12.3	10.2	4.0	18.8	12.2	26.5	26.5
% Not Applicable	2.0	2.0	8.2	8.2	8.3	14.3	10.2	8.2

*public Information includes data, test results, reports, returns, records and responses.

This series of questions scored quite positive overall. More than 80 per cent had confidence in the use of qualified persons and felt that qualified persons were held accountable and ensured regulatory compliance. Over 87 per cent felt that their organizations were held accountable to the code.

Opportunities

From the comments received in this section, the following opportunities were identified for the ministry to explore:
- continuing to allow external audits to be used to meet environmental compliance audits;
- reducing/removing audit frequencies for those facilities with internal audits;
- continuing to develop process for public access to information with certain exceptions;
- shortening timelines for alternative solutions approvals; and
- continuing to move forward with development of the Impacted Sites Registry.

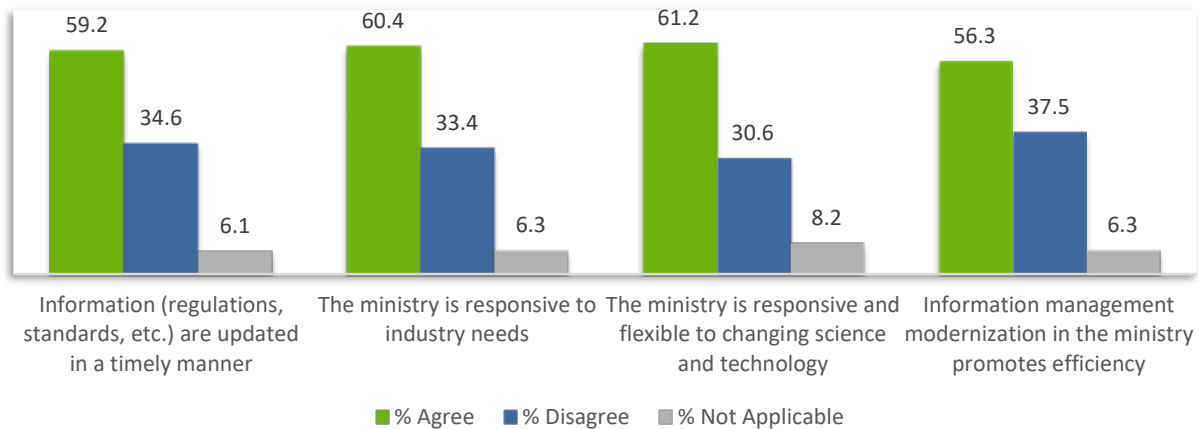"Audit processes for external certification should be recognized by ministry."

"Making information available to the public would speed up transactions."

"Some information needs to remain confidential."

"Ministry is slow to accept alternative solutions."

Continuous improvement of results-based regulations

The move to a results-based regulatory framework was a big change in how the ministry does business but there is always room for improvement. The following questions help guide where the ministry can make improvements.

59.2	60.4	61.2	56.3
34.6	33.4	30.6	37.5
6.1	6.3	8.2	6.3
Information (regulations, standards, etc.) are updated in a timely manner	The ministry is responsive to industry needs	The ministry is responsive and flexible to changing science and technology	Information management modernization in the ministry promotes efficiency

■ % Agree ■ % Disagree ■ % Not Applicable

The responses in this section are generally positive, but there is definitely room for improvement.

For all four questions, the majority of respondents felt that information is updated in a timely matter, the ministry is responsive to industry needs and is flexible to changing science and technology, and the work done on modernizing the information management process promotes efficiency.

Opportunities

From the comments received in this section, the following opportunities were identified for the ministry to explore:

- providing mechanisms to intake suggestions for continuous improvement;
- providing workshops and/or online courses;
- reviewing discharge and discovery reporting tables and fix errors;
- removing repetitive sections; and
- upgrading the portal.
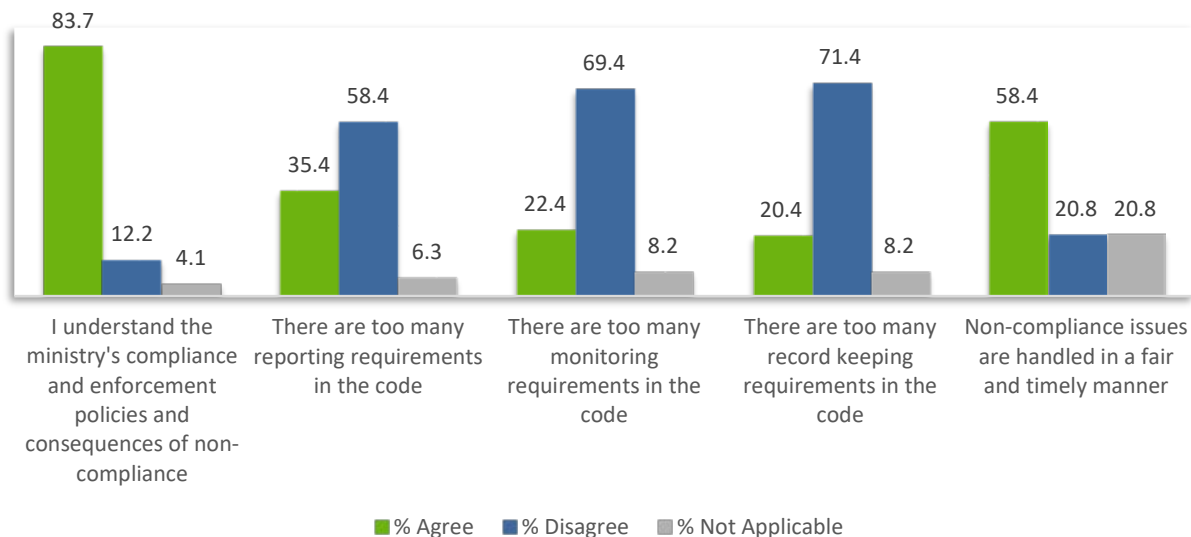
"Provide workshops and online courses to learn about code."

"Fix discharge and discovery Tables."

"Remove repetitive sections."

"Portal is not user friendly."

Enhance environmental protection through monitoring, compliance and enforcement

The code establishes the results-based objectives and strives to remove unnecessary requirements, especially for routine, well understood, and low-risk activities. It allows government resources to be focused on the monitoring and compliance of activities that pose a higher risk to the environment and human health and safety. The following questions help guide the ministry to make improvements.

When asked if they understood the ministry's compliance and enforcement policies and the consequences of noncompliance, a large majority agreed. When asked if there were too many requirements for reporting, monitoring and record keeping, the majority of respondents disagreed. Over half of respondents felt that non-compliance issues were handled in a fair and timely manner.

Opportunities

From the comments received in this section, the following opportunities were identified for the ministry to explore:
- handling non-compliance in a timely manner;
- working with content and advisory committees to ensure adequate reporting requirements;
- informing and communicating requirements or changes more effectively;
- ensuring ministry's compliance framework is being followed; and
- developing incentive options.

"Non-compliance issues are not handled in a timely manner."

"An incredible increase on reporting and monitoring with no reasoning as to why those requirements have been implemented."

"Ministry has no comprehension of the needs of industry and take very strong compliance and enforcement position."

Future code development

The following recommendations for new code chapters were put forward:
- landfills;
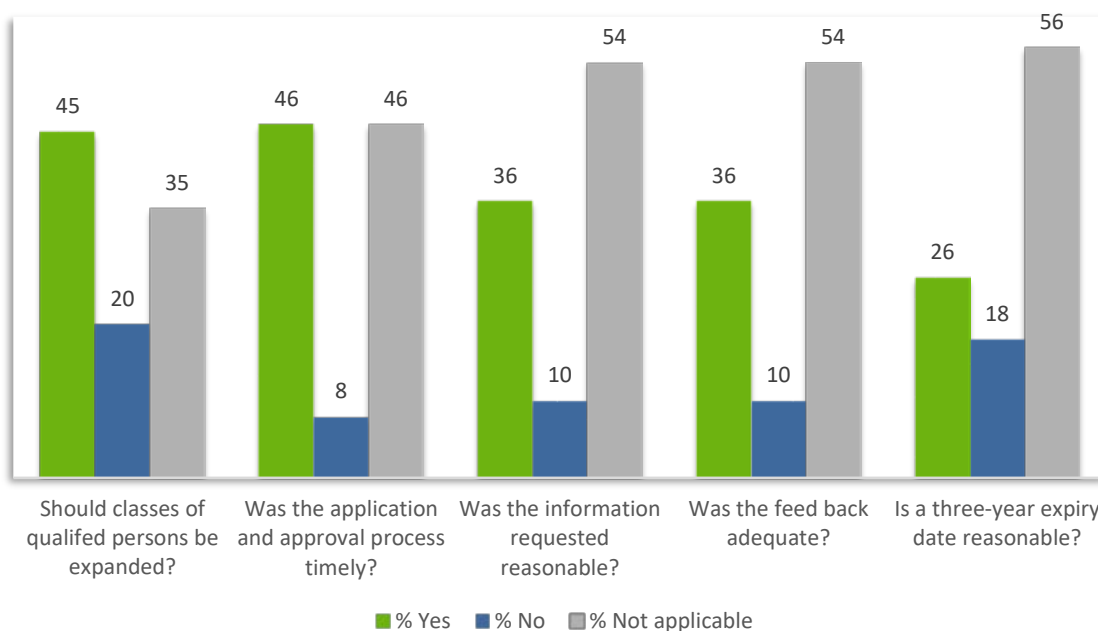- hazardous substances, waste and storage; and
- linear development.

There were also numerous requests for more acceptable solutions for existing chapters and more results-based chapters. Respondents would also like to see continued updates to major regulations such as *The Hazardous Substance Waste Dangerous Goods Regulations*. One respondent suggested the ministry look at developing a smart phone or tablet app.

The general consensus is that the development model used for the first edition of the code, with participation from all stakeholders, was appropriate.

The ministry will explore better ways to communicate and provide information on updates to existing chapters and code development.

Qualified persons

In relation to the Saskatchewan Environmental Code, qualifed persons provide opinions, design facilities and act in a supervisory role to sign off as the qualified person for overall responsibility on project plans where detail within the plan may require numerous persons with various competencies. The following questions were posed to qualified persons.

Not all chapters require qualified persons and most acceptable solutions do not need a qualified person, so it was expected that there would be a high proportion of respondents to which these questions did not apply.

Qualified persons are generally associated with a profession and/or professional body of practice. Examples may include:
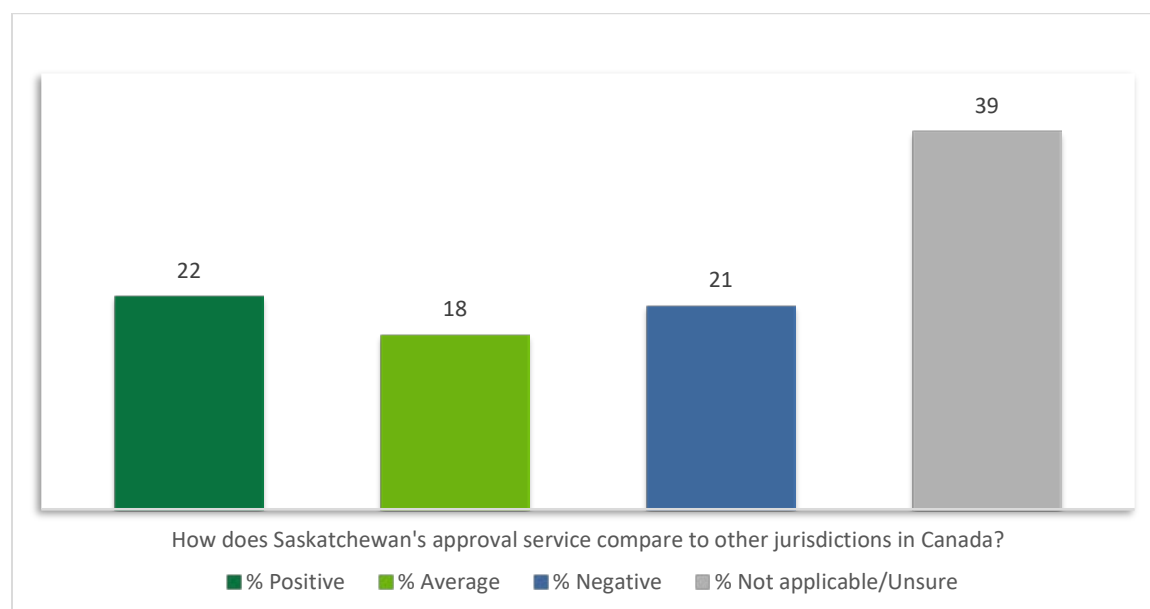- applied science technologist;
- professional agrologist;
- professional engineer/geoscientist; or
- professional forester.

To the survey question "should classes of qualified persons be expanded" to include other professionals, 45 per cent of respondents said yes. Suggested professions included chemists, environmental professionals from ECO Canada, landfill operators and shoreline cleanup and assessment technique professionals.

The qualified person designation process requires those wishing to apply for designation to answer a series of questions specifying the activity for which they want to be designated, their education and experience. The vast majority of those felt that the approval process was timely and the information requested was reasonable.

Not everyone who applies becomes a designated qualified person, or there are cases where restrictions are placed on their designation. In either case, the applicant is provided with reasons for the decision. The survey included a question about the feedback these applicants would have received when their application was either denied or restricted, and more than 75 per cent of them thought the feedback they received was adequate.

A three-year expiry date is included on designated qualified persons and more than half of respondents felt that three years was a reasonable time frame.

How does Saskatchewan's approval service compare to other jurisdictions in Canada?

■ % Positive   ■ % Average   ■ % Negative   ■ % Not applicable/Unsure

In comparison to other jurisdictions regarding Saskatchewan's approval service, there was a close split between positive and negative. The respondents who indicated "not applicable/unsure" (39 per cent) is likely the result of individuals or organizations that do not work outside the province of Saskatchewan.

Opportunities

From the comments received in this section, the following opportunities were identified for the ministry to explore:

- reviewing the process for designating qualified persons as it relates to Tier 3 risk assessment;
- reviewing and approving alternative solutions; and
- providing options for single qualified person certificate submissions.

> "The definition of qualified person for risk assessments appears arbitrary and artificially limiting."
>
> "Ministry does not accept alternative solutions posed by qualified persons without review, questions, and approval."
>
> "Multiple qualified person certificates are seemingly required."

Next Steps

The comments received in the survey have provided valuable feedback and direction. The ministry will use the survey results while working with the Saskatchewan Environmental Code Advisory Committee to explore ways to implement positive change to the results-based framework and associated documents.

The need to improve on communications is a high priority. The ministry will continue to work on improving its online system and will explore ways to improve communication.

The Ministry of Environment would like to thank everyone who took the time to respond to the survey, as well as the numerous individuals, organizations, companies and associations that helped get us to where we are today. We are still relatively new to this way of doing business, but we must take the time to look at how we can improve our services and support to ensure this program continues to be successful for the future growth and environmental health of the province.