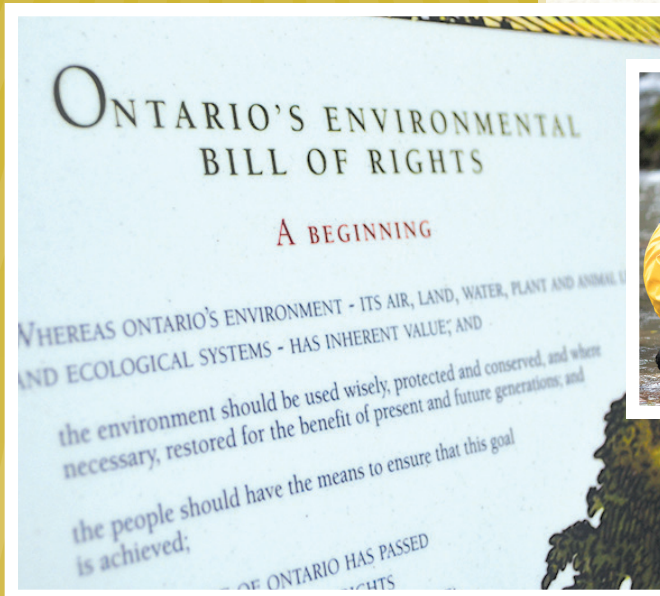




Office of the Auditor General of Ontario

Operation of the  
*Environmental  
Bill of Rights, 1993*



*November 2021*



# Part I: Overview

## 1.0 Summary

Ontarians have a number of legal rights enshrined in provincial laws, including the rights in the *Environmental Bill of Rights, 1993* (EBR Act). These environmental rights are comparable to other legislated rights, such as the right to access government information, the right to receive public services in French, and the right to a safe and healthy workplace granted by other laws. Collectively, such laws aim to protect Ontarians' rights to be accommodated and to participate in government processes.

The EBR Act recognizes the common goal of the people of Ontario to protect, conserve and restore the environment for the benefit of present and future generations. The purposes of the EBR Act are to:

- protect, conserve and, where reasonable, restore the integrity of the environment;
- provide sustainability of the environment; and
- protect the right of Ontarians to a healthful environment.

The EBR Act seeks to fulfill these purposes by enabling all Ontarians to participate in—and hold the government accountable for—its environmentally significant decisions. These important decisions can affect ecosystems, air quality, land use, climate, water, wildlife, plant life, and human health and well-being, among other things. To that end, the EBR Act provides rights for Ontarians and obligations for Ontario government ministries that are intended to work together to improve environmental protection.

These obligations include requirements for certain ministries to:

- have a Statement of Environmental Values that explains how they consider the purposes of the EBR Act when making decisions that may significantly affect the environment;
- notify and consult the public through a website called the Environmental Registry when developing or changing policies, laws and regulations, and issuing instruments (such as permits, licences, approvals, and other authorizations and orders) that may significantly affect the environment; and
- respond to applications from Ontarians asking them to review laws, policies, regulations, and instruments, or to investigate alleged contraventions of environmental laws, regulations or instruments.

The EBR Act also gives Ontarians greater access to the courts and tribunals for environmental matters, including the right to seek leave (that is, request permission) to appeal certain decisions about environmentally significant instruments, and the right to sue for harm to the environment or a public resource. Under the EBR Act, Ontarians also have the right to protection from reprisals by their employers for exercising their environmental rights (“whistle-blower” protection).

Since 2019, our Office has been responsible for reporting annually on the operation of the EBR Act, including reporting on the public's use of its environmental rights, the government's compliance with and implementation of the EBR Act, and whether the government's environmentally significant decisions are

consistent with the purposes of the EBR Act. This is our third report on the operation of the EBR Act.

This report includes our Office’s findings on the operation of the EBR Act since our last report, including the public’s use of its environmental rights for the period from April 1, 2020, to March 31, 2021, and our findings about the ministries’ compliance with and implementation of the EBR Act in 2020/21, in accordance with our criteria in **Appendix 1**.

**Figure 1** lists the 16 ministries that were subject to the EBR Act in 2020/21 and how we refer to them in this report.

**Appendix 2** identifies which of the EBR Act’s obligations each of the ministries in **Figure 1** must meet.

Our findings on individual ministries’ compliance with and implementation of the EBR Act are found in **Sections 6 – 20** (see **Figure 2** for a summary of our findings). These sections highlight areas in which ministries did not fully meet their obligations under the EBR Act in accordance with our audit criteria, and set out our Office’s recommendations for achieving more effective implementation of the EBR Act. These sections also include ministry report cards that summarize our findings in 2020/21, and include a comparison with the results from our 2019 and 2020 reports.

**Figure 1: The Prescribed Ministries in 2020/21 and How We Refer to Them in This Report**

Source of data: O. Reg. 73/94, made under the *Environmental Bill of Rights, 1993*

Ministry <sup>1</sup>	How We Refer to It
Environment, Conservation and Parks	Environment
Natural Resources and Forestry <sup>2</sup>	Natural Resources
Municipal Affairs and Housing	Municipal Affairs
Energy, Northern Development and Mines <sup>3</sup>	Energy and Mines
Government and Consumer Services—Technical Standards and Safety Authority <sup>4</sup>	Government Services
Transportation	Transportation
Agriculture, Food and Rural Affairs	Agriculture
Heritage, Sport, Tourism and Culture Industries	Tourism
Health	Health
Long-Term Care	Long-Term Care
Infrastructure	Infrastructure
Economic Development, Job Creation and Trade	Economic Development
Indigenous Affairs	Indigenous Affairs
Education	Education
Labour, Training and Skills Development	Labour
Treasury Board Secretariat	Treasury Board Secretariat

1. Ministries are presented in descending order based on the total historical volume of their activities under the *Environmental Bill of Rights, 1993*.

2. On June 18, 2021, the Ministry of Natural Resources and Forestry merged with part of the then Ministry of Energy, Northern Development and Mines to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry (referred to in this report as the Northern Development and Natural Resources Ministry). Our assessment of EBR Act implementation and compliance was conducted for the period of April 1, 2020 to March 31, 2021, before these changes. As such, the results of our review are presented in this report for the then Ministry of Natural Resources and Forestry.

3. On June 18, 2021, the Ministry of Energy, Northern Development and Mines split: Northern Development and Mines merged with the then Ministry of Natural Resources and Forestry to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry (referred to in this report as the Northern Development and Natural Resources Ministry), and a new Ministry of Energy (referred to in this report as the Energy Ministry) was formed. Our assessment of EBR Act implementation and compliance was conducted for the period of April 1, 2020 to March 31, 2021, before these changes. As such, the results of our review are presented in this report for the then Ministry of Energy, Northern Development and Mines.

4. The Technical Standards and Safety Authority posts notices related to the *Technical Standards and Safety Act, 2000* on behalf of the Ministry of Government and Consumer Services.

**Figure 2: Summary of Ministry Report Card Results for the 2020/21 Reporting Year under the *Environmental Bill of Rights, 1993* (EBR Act)**

Prepared by the Office of the Auditor General of Ontario

**Legend:** ○ Met criteria      – The ministry did not execute any responsibilities under this category in this reporting year  
 ● Partially met criteria      n/a The ministry is not prescribed for this category  
 ● Did not meet criteria

Prescribed Ministry <sup>1</sup>	Statement of Environmental Values		Use of the Environmental Registry									Applications for Review and Applications for Investigation			
	Up-to-Date	Considered	Notice is Given	Comment Period Extended Based on Act	Proposals for PARs <sup>2</sup> are Informative	Proposals for Instruments <sup>3</sup> are Informative	Comments are Considered	Notice of Decision is Prompt	Decision Notices for PARs <sup>2</sup> are Informative	Decision Notices for Instruments <sup>3</sup> are Informative	Proposals are Up-to-Date	Ministry Reviews to Extent Necessary	Ministry Investigates to Extent Necessary	Ministry Meets Timelines	
Environment	●	●	●	○	●	●	○	●	○	●	●	●	–	●	
Northern Development and Natural Resources, and Energy <sup>4</sup>	Natural Resources	○	○	●	○	●	○	○	●	●	●	●	–	–	–
	Energy and Mines	○	●	○	○	○	○	●	●	●	●	–	–	–	
Municipal Affairs	○	●	●	○	●	○	○	●	●	●	○	–	–	–	
Government Services/ TSSA <sup>5</sup>	○	●	○	○	○	●	○	●	○	○	○	–	–	–	
Transportation	○	●	●	○	○	n/a	○	●	●	n/a	○	–	n/a	–	
Agriculture	○	●	○	○	○	n/a	○	●	●	n/a	○	–	n/a	–	
Tourism	○	–	○	○	○	n/a	–	–	–	n/a	○	n/a	n/a	n/a	
Health	○	–	○	○	○	n/a	–	–	–	n/a	○	–	n/a	–	
Long-Term Care	○	–	○	○	○	n/a	–	–	–	n/a	○	–	n/a	–	
Infrastructure	○	–	○	–	–	n/a	○	○	○	n/a	○	n/a	n/a	n/a	
Economic Development	○	–	○	–	–	n/a	–	–	–	n/a	–	n/a	n/a	n/a	
Indigenous Affairs	○	–	○	–	–	n/a	–	–	–	n/a	–	n/a	n/a	n/a	
Education	○	–	○	○	○	n/a	○	○	○	n/a	–	–	n/a	–	
Labour	●	–	○	–	–	n/a	–	–	–	n/a	–	n/a	n/a	n/a	
Treasury Board Secretariat	○	–	○	–	–	n/a	–	–	–	n/a	–	n/a	n/a	n/a	

**Ministry of the Environment, Conservation and Parks – Report Card Results for Additional Requirements under the EBR Act**

Use of the Environmental Registry		Education		
Prompt notice of appeals and leave to appeal applications is given	The Environmental Registry platform is maintained effectively	Assists other ministries in providing educational programs about the EBR Act	Provides educational programs about the EBR Act to the Public	Provides general information about the EBR Act to those who wish to participate in a proposal
●	●	–	●	●

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

1. Ministries are presented in descending order based on the total historical volume of their activities under the EBR Act.
2. Policies, acts and regulations.
3. Instruments include permits, licences, approvals, authorizations, directions and orders.
4. On June 18, 2021, the Ministry of Natural Resources and Forestry and the Ministry of Energy, Northern Development and Mines changed: Northern Development and Mines merged with Natural Resources and Forestry to form the Ministry of Northern Development, Mines, Natural Resources and Forestry (the Northern Development and Natural Resources Ministry), and a new Ministry of Energy (Energy Ministry) was formed. Our assessment of EBR Act implementation and compliance was conducted for the period of April 1, 2020, to March 31, 2021, before these changes. As such, the results of our review are presented in this report for the then Ministry of Natural Resources and Forestry and the then Ministry of Energy, Northern Development and Mines.
5. Technical Standards and Safety Authority.

## Overall Conclusions

Ontario government ministries make many decisions every year on laws, policies, regulations and instruments that can have significant effects on the environment. The intent of the EBR Act is to give Ontarians the opportunity to know about and participate in the making of those decisions, and to ensure the government is transparent and accountable for them. When ministries carry out their work both in technical compliance with the EBR Act's processes and in the spirit of the Act, the EBR Act contributes to informed and improved decision-making that can lead to better outcomes for the environment.

In the three years that our Office has reported on the EBR Act, we have identified issues that have kept the EBR Act from operating effectively. First, we found that some ministries did not have—or did not follow—procedures to ensure they comply with the Act's requirements. We found that this has contributed to low overall ministry compliance with, and effective implementation of, the Act. In 2020/21, ministries met our audit criteria in just 63% of cases—similar to the 65% and 62% rates in 2019 and 2020, respectively. In particular, the Environment Ministry fully met just 18% of our criteria, and the former Natural Resources Ministry, the former Ministry of Energy, Northern Development and Mines and the Municipal Affairs Ministry each fully met 45% of our criteria.

Of particular concern, ministries are not notifying and consulting Ontarians about all of the environmentally significant decisions that they should be. Some ministries have deliberately avoided consulting the public about some proposals; even when this avoidance is legally valid, such actions to prevent the public from participating are inconsistent with the purpose and spirit of the EBR Act. For example, the Municipal Affairs Minister violated the EBR Act when he failed to consult on amendments to the *Planning Act* that enhanced powers regarding Minister's Zoning Orders. In addition, the Environment Ministry avoided consultation on major amendments to two

prescribed acts: the *Environmental Assessment Act* and the *Conservation Authorities Act*. In the first case, the Ministry included the amendments in an omnibus bill that retroactively exempted them from the EBR Act. In the second case, the amendments were included in an omnibus budget bill to exclude them from consultation under an EBR Act exception for proposals that form part of, or give effect to, a budget.

Further, when ministries do consult the public under the EBR Act, they are not always providing Ontarians with clear, accurate and complete information about their proposals and decisions, including the environmental implications, and they are not always providing notice in a timely manner. Both are needed for meaningful consultation and transparency.

Finally, the EBR Act's coverage does not currently extend to all environmentally significant government decisions. Environmentally significant decisions are being made either by ministries that are not subject to the Act or under laws that are not subject to the Act. As a result, Ontarians do not have any EBR Act rights in relation to those decisions.

We found that these issues, and other issues described in this report, stem at least in part from a lack of leadership from the Environment Ministry, which administers the EBR Act, and from a failure by individual prescribed ministries to prioritize their compliance with and implementation of the EBR Act. These findings point to a lack of commitment by prescribed ministries to not only meet the EBR Act's requirements in a technical way, but also consistently meet those requirements in a manner that achieves the purposes of the Act and respects Ontarians' rights. In our 2020 Report on the Operation of the EBR Act, we recommended that, to support improvement in EBR Act compliance, the Secretary of Cabinet incorporate compliance with the EBR Act into the annual performance reviews of Deputy Ministers of prescribed ministries; we will follow up on this recommendation in 2022.

Our specific findings are as follows:

### The Environment Ministry, for the Third Year in a Row, Did Not Provide Leadership in Implementing the EBR Act

- **The Environment Ministry was not proactive in ensuring that environmentally significant decisions were made subject to the EBR Act.**

This year, we identified decisions that were not subject to the EBR Act's requirements despite their environmental significance. These include decisions made by one ministry that is not prescribed, decisions made under acts that are not prescribed, and decisions made in accordance with exceptions under the EBR Act:

- The Ministry of the Attorney General proposed legislation to amalgamate several tribunals that hear appeals and leave to appeal applications under many EBR-prescribed acts into a single tribunal known as the Ontario Land Tribunal. One effect of this change was to alter hearing procedures for many environmental matters. For example, persons permitted by the former Environmental Review Tribunal to participate in a hearing in person would only be able to present their views in writing. The bill also repealed the right to appeal to the minister under several environmental acts. The Ministry of the Attorney General, which is not prescribed under the EBR Act, did not post the bill for public consultation on the Environmental Registry.
- Three prescribed ministries proposed environmentally significant regulations under acts that are not prescribed under the EBR Act, including the *Drainage Act*, the *Highway Traffic Act* and the *Electricity Act, 1998*. In these cases, the ministries voluntarily consulted the public using the Environmental Registry, showing that they recognized the environmental significance of those decisions. However, because these acts are not prescribed, there is no guarantee that the public will be consulted on similar proposals under these acts in the future, and other EBR Act rights do not apply.

- Existing exceptions under the EBR Act excluded public consultation on important decisions. For example, the public was not consulted on permits, approvals and other authorizations that are usually subject to the public consultation requirements of the EBR Act for projects that are exempted from the *Environmental Assessment Act*, or on environmentally significant Minister's Zoning Orders made under the *Planning Act*; these orders do not undergo any other public consultation process.
- **The Environment Ministry undertook initiatives in a manner contrary to the spirit of the EBR Act.** As in 2019 and 2020, we found that the Environment Ministry—the ministry responsible for administering the EBR Act—did not lead by example in its compliance with and implementation of the EBR Act.
  - In our 2020 report, we concluded that the Environment Ministry's decision in July 2020 (which falls within our 2020/21 reporting period) not to consult the public about amendments to the *Environmental Assessment Act*, and to retroactively deem the amendments to be exempt from the EBR Act's public consultation requirements: was not consistent with the purposes of the EBR Act; was not transparent; and risked undermining public confidence in the government's environmentally significant decisions. In this report, we again found that the Ministry did not consult the public about significant decisions, including extensive changes to the *Conservation Authorities Act* that were of high public interest.
  - In our 2020 report, we also found that the Environment Ministry's regulation to suspend public consultation under the EBR Act for a 10-week period during the COVID-19 emergency (O. Reg. 115/20) was overly broad and resulted in members of the public losing the right to seek leave to appeal (that is, challenge) 197 decisions on environmentally significant permits and approvals that were proposed during that time. In this report, we found

that, while ministries continued to consult the public during the exemption period, many of the notices and corresponding decisions they posted about proposals made during that period contained deficiencies (for example, not reporting how many comments were received, or the effects of public participation), leading to less transparency and accountability for those decisions. Further, the Ministry denied an EBR Act application asking it to review the exemption regulation, relying in part on a provision in the EBR Act that precludes review of a decision made in the last five years if it was made in a manner consistent with the EBR Act, even though the Environment Ministry did not consult the public before making the regulation. We concluded that the Ministry should have determined what steps were feasible to minimize the impacts of the exemption regulation on both the environment and Ontarians' rights under the EBR Act.

- **Even though required under the EBR Act, the Environment Ministry did not provide educational programs to Ontarians about their environmental rights under the EBR Act.** The realization of the benefits of the EBR Act depends on the public being aware of it and the rights it provides. In our 2020 report, we found that, while the Ministry provided information and links about the EBR Act and the public's rights on a webpage and on the Environmental Registry, the Ministry did not provide outreach educational programs to Ontarians about environmental rights in the EBR Act. In 2020/21, the Ministry drafted a communications plan to educate the public on the EBR Act, but the Ministry's processes for increasing public awareness and providing educational programs remained otherwise unchanged since our 2020 report.
- **The Environment Ministry did not promptly notify Ontarians in over half of leave to appeal applications and appeals of instrument decisions.** When Ontarians exercise their EBR Act right to seek leave (permission) to appeal

(challenge) a decision related to an instrument (an environmentally significant permit, licence, order, approval, or other authorization), or when an instrument holder appeals a decision about an instrument directly, they must give notice to the Environment Ministry, which must then post the notice on the Environmental Registry to inform Ontarians about the appeal. Failing to promptly post public notice of leave to appeal applications and appeals of environmentally significant decisions not only affects transparency, but also creates a risk that interested persons will lose the opportunity to participate in an appeal hearing. In 2020/21, the Environment Ministry did not give Ontarians prompt notice of one leave to appeal application and three appeals of decisions about environmentally significant instrument approvals, including an application for leave to appeal an approval for a hauled sewage disposal site.

- **The Environment Ministry Could Not Provide Documentation of Internal Controls to Ensure the Effective Operation of the Environmental Registry.** The Environment Ministry was unable to show that it had a number of information technology (IT) controls in place for the Registry. For example, the Ministry was unable to provide documentation to confirm that it has preventative controls to protect against unauthorized access to the Environmental Registry IT network. Such controls are necessary to ensure the secure and effective operation of the Registry, and to respond to incidents that could affect its operations.

### **Lack of EBR Act Training and Guidance for Staff Contributed to Ministries' Continued Non-Compliance with and Ineffective Implementation of the EBR Act**

- **Many prescribed ministries did not have—or did not follow—internal processes and procedures to ensure they complied with the EBR Act.** We found that some ministries did not have effective processes to identify which proposals are environmentally significant and require public consultation under the EBR Act, or to ensure they comply with the EBR Act's other requirements.



Other ministries had at least some written internal guidance, but did not always follow that guidance, leading to non-compliance and ineffective implementation of the EBR Act. Some ministries' processes for implementing EBR Act requirements were unwritten, informal, and housed within the minds of specific ministry staff, risking subjective interpretation and the loss of institutional knowledge with staff turnover. We also found that some ministries did not provide sufficient—or any—training for ministry staff on their EBR Act obligations or their processes for compliance and implementation.

### The Majority of Statements of Environmental Values Are Up to Date But Ministries Could Not Consistently Show that They Used their Statements of Environmental Values as Intended by the EBR Act

- **Most prescribed ministries now have either finalized or proposed up-to-date Statements of Environmental Values.** Required under the EBR Act, a Statement of Environmental Values (Statement) explains how a ministry will apply the purposes of the EBR Act when making decisions that might significantly affect the environment. Ministries are required to consider their Statements when making such decisions, to help ensure better outcomes for the environment. The government's November 2018 *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan* directed all ministries to update their Statements to reflect Ontario's environment plan, consider climate change when making decisions and “make climate change a cross-government priority.” In our 2019 and 2020 reports on the operation of the EBR Act, we recommended that ministries with outdated Statements publicly consult on their Statements and update them to reflect current responsibilities. Since our 2020 report, seven ministries (Infrastructure, Tourism, Education, Government Services, Health, Long-Term Care, and Transportation) finalized new or updated Statements, and the Environment Ministry posted a proposal for an updated Statement on the Environmental Registry. As of September 2021, the Labour Ministry was the only Ministry that did not have either an up-to-date Statement or a proposal for an updated statement on the Environmental Registry. However, as of late September 2021, the Environment Ministry had not finalized its updated Statement, more than nine months after posting the proposed update for public consultation.
- **Two ministries did not document their consideration of their Statements for nine environmental decisions that they made.** The Municipal Affairs Ministry could not provide documentation to show that it considered its Statement for seven (18%) of the 40 decisions about policies, regulations and instruments that we reviewed. Similarly, the Government Services Ministry could not provide documentation to show that it considered its Statement for either of the two decisions about regulations that it posted on the Environmental Registry. Without this documentation, it is unclear if or how these ministries considered the purposes of the EBR Act when making these decisions, or how they prioritized conflicting values, including environmental values, during their decision-making processes.
- **Six ministries provided undated documentation to show they considered their Statements, and some could not always confirm when they considered their Statements.** To be effective, consideration of a ministry's Statement must occur during the decision-making process, not after; for transparency, ministries should clearly document this timing. When we asked for documentation confirming that they considered their Statements for decisions posted on the Environmental Registry, six ministries (Environment, Natural Resources, Energy and Mines, Municipal Affairs, Transportation and Agriculture) provided documentation of their consideration, but 92 (52%) of the 176 consideration documents they provided were either not dated at all, or the documents were dated after the decision was already made. In some cases, the ministries were able to confirm that they did, in

fact, consider the Statement during the decision-making process, but in other cases the ministries could not provide any such documentation.

- **Four ministries' documentation did not show that they considered their Statements in a manner that would contribute to informed and improved decision-making.** Based on a sample of consideration documents provided, we found that four ministries' (Environment, Municipal Affairs, Technical Standards and Safety Authority and Transportation) consideration documents did not always reflect sufficient details, analysis or judgment to demonstrate that the ministries meaningfully considered their Statements in making the decisions. For example, the Municipal Affairs Ministry did not explain how it balanced principles of “increasing the supply of housing” and ensuring “well planned and healthy communities while protecting greenspace” when it adopted a new methodology that municipalities in the Greater Golden Horseshoe area must follow to identify the amount of land needed to accommodate forecast growth in housing and employment to the year 2051.

### Public Not Given Appropriate Notice of Several Environmentally Significant Proposals

- **Ontarians were not notified or consulted about major proposals by four ministries.** When ministries do not comply with the public participation requirements of the EBR Act, Ontarians lose their opportunity to comment on proposals that affect their environment, and the government loses potentially important information that is relevant for making sound decisions. In 2020/21, the Environment, Natural Resources, Municipal Affairs and Transportation ministries all made environmentally significant decisions—including some with province-wide environmental implications and high public interest—without first consulting the public in accordance with the EBR Act. For example, the Natural Resources Ministry did not consult the public about a regulation under the

*Conservation Authorities Act* that facilitated a development in a Provincially Significant Wetland.

- **Divisional Court found that the Municipal Affairs Minister acted unlawfully in failing to consult the public about amendments to the *Planning Act*.** In 2020, two separate applications for judicial review were filed against the Ontario government for failing to consult the public in accordance with the EBR Act about several schedules to the omnibus *COVID-19 Economic Recovery Act, 2020* (Bill 197) enacted in July 2020, which amended several acts. On September 3, 2021, the Divisional Court concluded that the Municipal Affairs Minister had acted “unreasonably and unlawfully” in failing to consult the public in accordance with the EBR Act on amendments to the *Planning Act* that affected Minister’s Zoning Order powers.

### Information Was Deficient in Many Proposal and Decision Notices on the Environmental Registry

- **Some Environmental Registry notices lacked key information required for transparency, accountability and public participation.** Again this year, we noted numerous issues with the notices that ministries posted on the Environmental Registry that could obstruct the public’s ability to provide informed and meaningful feedback. In particular, ministries did not always:
  - provide Ontarians with clear or complete descriptions of environmentally significant proposals or decisions;
  - provide Ontarians with clear or complete descriptions of the environmental implications of proposals;
  - include links or attachments to key documents that were relevant to the proposals or decisions; or
  - clearly describe the effects of public participation when giving notice of environmentally significant decisions.

For example, the Municipal Affairs Ministry posted a proposal notice for amendments to *A Place to Grow: Growth Plan for the Greater Golden*

*Horseshoe*. The Ministry told the public that a change was proposed to make it easier to establish new gravel pits or quarries closer to market, but not that the change would do so by removing an existing prohibition on establishing pits in the habitat of endangered and threatened species.

- **The Municipal Affairs and Natural Resources Ministries did not inform Ontarians correctly or at all about their right to seek leave to appeal certain instrument decisions.** In 2020/21, the Municipal Affairs Ministry posted seven decision notices on the Environmental Registry about approvals issued under the *Planning Act*. All of the decisions were made in 2018 and 2019, but the Ministry did not post decision notices until July 2020. By that time, the deadlines for appeals under the *Planning Act* had passed, and the Ministry stated in the decision notices that appeals were not allowed. However, Ontarians also had a right to seek leave to appeal those decisions under the EBR Act within 15 days of the decision notices being posted. The Municipal Affairs Ministry did not inform Ontarians about that right. The Ministry told our Office that the EBR Act leave to appeal right did not apply because the time to appeal under the *Planning Act* had passed and because no public comments were submitted on the proposals. This is not the case, and Ontarians did have a right to seek leave to appeal those decisions. Further, in nine decision notices posted for aggregate licences, the Natural Resources Ministry stated that Ontarians had 20 days to seek leave to appeal the decision—when the EBR Act requires that applications for leave to appeal be made no later than 15 days after a decision notice is posted—creating a risk that Ontarians relying on the notice could lose their right to seek leave to appeal.

### Ministries Did Not Give the Public Timely Notice of Many Decisions, and Did Not Give Accurate Updates in Some Proposal Notices on the Environmental Registry

- **Seven ministries did not give prompt notice of their environmentally significant decisions**

**in 33% of decisions that we reviewed.** The EBR Act requires ministries to give notice “as soon as reasonably possible” after they have passed an act, filed a regulation, implemented a policy, or decided to issue or revoke an instrument. Prompt notice is important for transparency and, in some cases, for the public’s right to seek leave to appeal instruments during a 15-day window after notices are posted. Several ministries have adopted a service standard to post decision notices within two weeks of making a decision, which our Office has identified as a best practice in our criteria. However, in 33% of the collective decisions we reviewed for seven ministries in 2020/21, the ministries took more than two weeks to inform the public of their decisions. For example, the Municipal Affairs Ministry took 523 days (almost a year and a half) to notify the public about its decision to approve a municipality’s official plan, and the Transportation Ministry took eight weeks to inform Ontarians about amendments made to the *Transit-Oriented Communities Act, 2020*.

- **As of March 31, 2021, a total of 27 notices for environmentally significant proposals on the Environmental Registry had not been updated in over two years, including the Made-In-Ontario Environment Plan.** For the Environmental Registry to be an accurate and reliable source of information for Ontarians, proposal notices posted there must be kept up to date. However, in some cases ministries abandon proposals, transfer responsibilities to other ministries, or make decisions about proposals without posting a decision notice on the Registry. In other cases, proposals remain under active consideration for years, but ministries do not update the proposal notices to let the public know that the proposal is still being considered. As of March 31, 2021, there were 27 proposal notices that had been on the Registry for two years or more with no update or decision notice—85 (76%) fewer than in March 31, 2020. The Natural Resources Ministry was responsible for 23 of those notices (see **Figure 3**), and five of those notices (22%) were

**Figure 3: Proposal Notices That Had Been on the Environmental Registry for Over Two Years Without a Decision or Update as of March 31, 2021, by Ministry, and Comparison with 2020**

Source of data: Environmental Registry

Ministry	# of Notices	% of Ministry's Total Open Proposal Notices	Change in # (and %)
Natural Resources <sup>1</sup>	23	12.2	-29 (56)
Environment	3	0.4	-40 (93)
Infrastructure	1 <sup>2</sup>	100	+1 (100)
Energy and Mines <sup>3</sup>	0	0	-13 (100)
Municipal Affairs	0	0	-3 (100)
Government Services	0	0	-1 (100)
<b>Total</b>	<b>27</b>		<b>-85 (76)</b>

1. On June 18, 2021, the Ministry of Natural Resources and Forestry merged with part of the then Ministry of Energy, Northern Development and Mines to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry (referred to in this report as the Northern Development and Natural Resources Ministry). Our assessment of implementation and compliance with the *Environmental Bill of Rights, 1993* was conducted for the period of April 1, 2020, to March 31, 2021, before these changes. As such, the results of our review are presented in this report for the then Ministry of Natural Resources and Forestry.
2. One open proposal that was posted by the former Ministry of Public Infrastructure Renewal in 2008 for amendments to its Class Environmental Assessment Document was not assigned to any ministry in the old Environmental Registry after that Ministry ceased to exist. During the migration of open proposal notices from the old Registry to the new Registry in 2020/21, this proposal notice was assigned to the Infrastructure Ministry, which is now responsible for posting a decision notice to bring the proposal to an end, so that the Environmental Registry is a reliable source of up-to-date information for the public.
3. On June 18, 2021, the Ministry of Energy, Northern Development and Mines split: Northern Development and Mines merged with the then Ministry of Natural Resources and Forestry to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry (referred to in this report as the Northern Development and Natural Resources Ministry), and a new Ministry of Energy (referred to in this report as the Energy Ministry) was formed. Our assessment of implementation and compliance with the *Environmental Bill of Rights, 1993* was conducted for the period of April 1, 2020, to March 31, 2021, before these changes. As such, the results of our review are presented in this report for the then Ministry of Energy, Northern Development and Mines.

originally posted more than 10 years ago, including a proposal for a licence for a forest resource processing facility posted in 2004. The Environment Ministry was responsible for three notices, including a proposal for its Made-in-Ontario Environment Plan posted in 2018; although the Environment Ministry has indicated that it has

implemented aspects of the plan since then, as of September 2021, the Ministry still had not posted a decision notice to inform the public that it had decided to implement the plan, or to explain the effect that the public's comments had on the Ministry's decision.

- **Some Updates to Proposal Notices Were Inaccurate.** The purpose of updating proposal notices that have been open on the Environmental Registry for more than two years is to provide Ontarians with current information on the status of the proposal and to ensure the Registry is a source of reliable information. For this to be achieved, updates must be both accurate and informative. However, we reviewed a sample of updated notices and found updates that ministries posted for open proposals that did not accurately reflect the status of each proposal, undermining the purpose of updating the notices and the reliability of the Registry as an information source. For example, on June 12, 2019, the Natural Resources Ministry posted an update to a proposal for a *Niagara Escarpment Plan* amendment that was originally posted in November 2012, to state that “there has been no change to the status of the proposal and it is still being considered.” In fact, the amendment file had been closed as of May 27, 2019.

This report contains 61 recommendations, with 93 action items, to address our audit findings. The Environment Ministry has not clearly indicated its agreement to implement seven of our recommendations (Recommendations 2, 3, 4, 5, 7, 12 and 13).

## OVERALL ENVIRONMENT MINISTRY RESPONSE

The government respects and takes our obligations under the *Environmental Bill of Rights, 1993* seriously. The Ministry of the Environment, Conservation and Parks is meeting its legislative obligations under the EBR Act, enabling Ontarians to participate in important environmental decisions.

For 2020-2021, the Ministry posted 2,136 notices about environmentally significant policies, acts, regulations, instruments, and other matters on the Environmental Registry and considered the public comments received as part of the decision-making process. The Ministry also engages the public, stakeholders, and Indigenous partners through a variety of other means, including dedicated outreach, focused consultation sessions, and specialized working groups to consult on proposals posted on the Environmental Registry of Ontario.

In 2020-21, the Ministry has also taken action to improve EBR related processes, including a 93% reduction in the number of outdated ministry notices on the Environmental Registry since 2020, concluded five outstanding reviews under Part IV of the EBR Act, and posted a proposal for updating to the Ministry's Statement of Environmental Values to the Environmental Registry for a 60-day public consultation.

We appreciate the Auditor's report and will consider these recommendations to inform further work in this area.

## AUDITOR GENERAL'S RESPONSE

The Auditor General acknowledges the actions the Ministry has taken to improve its EBR-related processes. We reiterate, however, that our audit found that the Environment Ministry has not always met even the minimum legal requirements of the EBR Act. We also found that the Ministry has not always implemented the EBR Act in a manner consistent with the Act's purposes.

We continue to believe that the Environment Ministry, as the lead ministry under the EBR Act, should set an example for other prescribed ministries. The Ministry should do so by implementing the EBR Act in a way that not only meets the Act's minimum legal requirements, but that also respects the Act's purposes: to provide Ontarians with transparency in and accountability for government environmental decision-making, and to

enable meaningful public participation in government decisions that affect the environment.

## 2.0 Background

### 2.1 Overview of the *Environmental Bill of Rights, 1993*

Ontarians have a number of legal rights enshrined in provincial laws. These include the rights in the *Environmental Bill of Rights, 1993* (EBR Act) to participate in the government's environmentally significant decision making. These various laws collectively aim to protect Ontarians' rights to be accommodated and participate in government processes.

The Human Rights Code (Code) is one example of rights legislation in Ontario. It protects all Ontarians against discrimination in areas such as employment, housing, and access to public services. Ontarians who assert their rights under the Code are protected from reprisals for doing so, and can apply to a dedicated adjudication body, the Human Rights Tribunal of Ontario, to determine whether their rights have been violated.

Other examples of legal rights for Ontarians include:

- the right under the *Freedom of Information and Protection of Privacy Act* to access information held by government institutions;
- the right under the *French Language Services Act* to receive public services in French;
- the right under the *Ontarians With Disabilities Act, 2001* for people with disabilities to enjoy equal opportunity and to participate fully in the life of the province through accommodation by the government, agencies, and public institutions; and
- workplace safety and employment rights under the *Occupational Health and Safety Act* and the *Employment Standards Act, 2000*, including protection against retaliation for exercising those rights.

The EBR Act recognizes that, while the provincial government has the primary responsibility for protecting the natural environment, the people of Ontario have the right to participate in government decisions about the environment, and the right to hold the government accountable for those decisions.

The purposes of the EBR Act are to:

- protect, conserve and, where reasonable, restore the integrity of the environment;
- provide for sustainability of the environment; and
- protect the right of Ontarians to a healthful environment.

The EBR Act and its two regulations set out a number of requirements for Ontario government ministries and rights for Ontarians that work together to help meet these purposes. These include:

- requirements for each of the 16 ministries (the “prescribed ministries,” see **Figure 1**) to develop and publish a Statement of Environmental Values that explains how the ministries consider the purposes of the EBR Act when they make decisions that may significantly affect the environment, and that the ministries must consider when making environmentally significant decisions;
- requirements for prescribed ministries to give notice and consult the public about proposed policies, acts, regulations and instruments (permits, licences, approvals and other authorizations and orders) that are environmentally significant, to consider the public’s comments, and to give prompt notice of their decisions on the proposals, including an explanation of the effect of public participation, if any, on the decision;
- the right of Ontarians to submit applications to a prescribed ministry asking it to review existing laws, policies, regulations or instruments, or the need for new laws, policies, or regulations in order to protect the environment (“applications for review”);
- the right of Ontarians to ask a ministry to investigate alleged contraventions of certain environmental laws, regulations and instruments (“applications for investigation”); and

- the right of Ontarians to seek permission to appeal (that is, challenge) government decisions on certain instruments, the right to sue for harm to the environment or a public resource, and employees’ right to protection from employer reprisals for exercising their environmental rights (“whistle-blower” protection).

The EBR Act also establishes the Environmental Registry ([ero.ontario.ca](http://ero.ontario.ca)), a website that provides the public with access to information about environmentally significant proposals and decisions made by government ministries, as well as other environmental matters. Prescribed ministries are required to use the Environmental Registry to give notice of and consult on environmentally significant proposals under the EBR Act (see **Figure 4**).

The Environment Ministry administers the EBR Act’s two regulations that determine which ministries are subject to EBR Act requirements (see **Appendix 2**); which acts are subject to the EBR Act (see **Appendix 3**); and which instruments are subject to the EBR Act (see **Appendix 4**). **Appendix 5** provides a glossary of terms.

Not all requirements of the EBR Act apply to every prescribed ministry. For example, the requirement to respond to applications for review only applies to nine of the 16 prescribed ministries (see **Appendix 2** for a summary of the requirements that apply to each prescribed ministry). Even if a requirement under the EBR Act applies to a ministry, such as the universal requirement to post notices of environmentally significant proposals for policies and acts on the Environmental Registry, a ministry may not need to act on that requirement in a given reporting year (for example, if that ministry did not release any environmentally significant proposals for policies or acts).

## 2.2 What Makes a Proposal Environmentally Significant?

The EBR Act applies to ministry proposals for policies, acts and regulations that “could, if implemented, have a significant effect on the environment.” It also applies

**Figure 4: Public Consultation Process Under the *Environmental Bill of Rights, 1993***

Prepared by the Office of the Auditor General of Ontario



to proposals for all classified instruments (that is, instruments listed on O. Reg. 681/94) because the responsible ministries have, by including them in the regulation, pre-determined them to be proposals with the potential to have a significant effect on the environment.

A proposal is environmentally significant if it has the potential to have an identifiable impact—whether positive or negative, direct or indirect—on the environment or human health. These impacts can relate to ecosystems, air quality, land use, climate,

water, wildlife, plant life, and other aspects and functions of the environment.

In some cases, the potential environmental impacts of a proposal may be evident to most people, such as a policy that allows harm to endangered species in return for payment; a regulation that sets or revises standards for mine rehabilitation; or an amendment to an act that changes the priority uses for water supplies during droughts. In other cases, the potential environmental impacts of a proposal may be less obvious or direct, such as regulating the

frequency of pollution monitoring and reporting (affecting knowledge, transparency and opportunities to remedy urgent problems), or changing how forecasts for certain types of land use are to be determined in municipal plans (potentially encouraging sprawl and resulting in the loss of agricultural land and natural heritage resources, as well as increasing greenhouse gas emissions from increased personal vehicle use).

The EBR Act lists the following factors for a ministry to consider when determining whether a proposal is environmentally significant:

- the extent and nature of the measures that might be required to mitigate or prevent any harm to the environment that could result from a decision whether or not to implement the proposal;
- the geographic extent, whether local, regional or provincial, of any harm to the environment that could result from a decision whether or not to implement the proposal;
- the nature of private and public interests, including governmental interests, involved in the decision whether or not to implement the proposal; and
- any other matter that the minister considers relevant.

When ministries determine a proposal to be environmentally significant, they are expected to follow the EBR Act requirements, including notifying and consulting the public, considering their Statements of Environmental Values, and explaining how the public comments they receive have affected their decisions. In some cases, when ministries determine that a proposal is not environmentally significant, they may still post the proposal on the Environmental Registry voluntarily to obtain feedback on the proposal. In other cases, when ministries conclude that a proposal is not environmentally significant, they do not follow the requirements.

Therefore, the criteria and decision-making process that ministries use to determine whether a proposed policy, act or regulation is environmentally significant matters greatly because it can determine whether the ministry follows relevant EBR Act

requirements, and whether Ontarians will be able to inform and improve the ministry's decision-making through the EBR Act's public participation rights.

## 2.3 Why the EBR Act, and its Effective Implementation, is Important for Ontarians

The *Environmental Bill of Rights, 1993* (EBR Act) gives Ontarians unique rights to participate in the government's environmental decision-making, with the purpose of leading to better protections for the environment.

Public participation in government environmental decision-making can improve the quality of decisions—and the outcomes for the environment—by providing decision-makers with additional information and perspectives from different sources, including local and Indigenous traditional knowledge. Other benefits of public participation can include greater government accountability for its decision-making, greater public awareness of issues and acceptance of decisions, and better implementation of decisions.

Since the EBR Act came into force in 1994, public consultation through the Environmental Registry has helped inform and improve many environmental decisions, including plans for provincial parks, requirements for source water protection planning, changes to the *Mining Act*, guidelines for transit planning, the management of waste, and many companies' permits to take water. In some cases, public comments have led to significant changes. For example, a proposal to permit new aggregate operations in the habitat of species at risk was cancelled, which avoided a new threat to species' recovery; and a proposal to change regulations regarding wolf and coyote hunting was similarly cancelled after public comments widely criticized the serious ecological consequences and refuted the justification that changes would help the moose population.

Ontarians have used the EBR Act's application for review process to ask prescribed ministries to



review many environmentally significant matters. For example, applicants have asked for: an overhaul of the *Endangered Species Act, 2007*; a review of how road salt is applied in Ontario; a new act to regulate the exploration and mining of uranium; a comprehensive land use planning system for Northern Ontario; and an act to protect cyclists and improve urban air quality. In some cases, applications under the EBR Act have led ministries to make significant changes. For example, applications have led to improvements in the rehabilitation of Ontario's aggregate pits and quarries, new requirements for an asphalt maker to better control emissions, the development of a provincial agricultural soil health strategy, improved sewage management in provincial parks, and an end to the hunting of snapping turtles (an at-risk species).

Challenges to instruments (permits, licences and other approvals) initiated by members of the public through the EBR Act's leave to appeal process have led administrative tribunals to order, based on the evidence, more stringent conditions on quarry operations, landfills, residential developments and industrial facilities. In one case, an appeal initiated through the EBR Act successfully challenged an approval permitting a cement plant to burn tires, bones and other wastes.

In 2020/21, Ontarians received notice on the Environmental Registry of over 1,400 ministry proposals for acts, policies, regulations and instruments that could have a significant effect on the environment, and members of the public formally submitted thousands of comments that the ministries must consider when making decisions about the proposals (for details about the use of the Environmental Registry in 2020/21, see **Appendix 6**).

Also in 2020/21, Ontarians exercised their rights under the EBR Act to ask the Environment Ministry to review its decision to suspend the EBR Act's public consultation provisions during the start of the COVID-19 pandemic in the spring of 2020, and to ask for a review of a trailer park's sewage works approval that was issued without first being posted on the Environmental Registry for public consultation

(for details of applications for review concluded in 2020/21, see **Appendix 7**).

Ontarians also used the EBR Act's leave to appeal rights in 2020/21 to successfully bring new information to the Environment Ministry's attention that led the Ministry to revoke an approval for a hauled sewage disposal facility. Another group of Ontarians also obtained the right to appeal a decision by the Environment Ministry to issue a permit to take water for an aggregate pit in Tiny Township because of their concerns about potential harm to local water resources (for details of applications for leave to appeal and appeals filed in 2020/21, see **Appendix 8**).

Ontarians' ability to exercise their rights under the EBR Act depends on prescribed ministries implementing the EBR Act effectively. When ministries do not comply with their obligations under the EBR Act, or when ministries make decisions in a way that is inconsistent with the purposes of the EBR Act, it may be more difficult for members of the public to exercise their rights to participate in environmental decision-making. As a result, the potential benefits of that participation—to the public and to the ministries making the decisions—are lost, and the purposes of the EBR Act are not met.

## 2.4 Legislative Changes to the EBR Act in 2020/21

In 2020/21, amendments were made to the *Environmental Bill of Rights, 1993* (EBR Act) and the regulations under it.

The legislative changes to the EBR Act resulted from amendments made to the *Environmental Assessment Act* in Schedule 6 of Bill 197, the *COVID-19 Economic Recovery Act, 2020*. These amendments:

- revised section 32 of the EBR Act to exclude more activities from EBR Act public consultation (this exception is discussed in **Section 4.5.1** of this report); and
- deemed the consultation requirements of the EBR Act not to have applied to the *Environmental Assessment Act* amendments in Bill 197 (the

process for the adoption of Bill 197 was discussed in **Chapter 1, Section 7.0** of our Office’s 2020 Report on the Operation of the EBR Act). See **Section 6.5** of this report for a discussion of this provision.

Additionally, a new regulation under the EBR Act, O. Reg. 115/20, titled “Temporary Exemptions Relating to Declared Emergency,” (the “exemption regulation”) was filed on April 1, 2020. This regulation temporarily exempted all proposals for acts, policies, regulations and permits and approvals from Part II of the EBR Act (which sets out the EBR Act’s public consultation requirements). It also exempted prescribed ministries from section 11 of the EBR Act. (Section 11 sets out the requirement for prescribed ministries to consider their Statements of Environmental Values when making environmentally significant decisions.) This exemption was in place for about 10 weeks; the exemption regulation was revoked on June 15, 2020.

The exemption regulation and its implications were discussed in **Chapter 1, Section 6.0** of our Office’s 2020 report on the operation of the EBR Act. See **Section 6.15.1** for a discussion of the impact of the exemption regulation, and **Section 6.15** for a discussion of the Environment Ministry’s handling of an application for review of the exemption regulation.

### 3.0 Audit Objective and Scope

Our audit objective was to assess whether the *Environmental Bill of Rights, 1993* (EBR Act) operated effectively during the 2020/21 reporting year (April 1, 2020, to March 31, 2021), including whether the ministries prescribed under the EBR Act:

- carried out their duties in accordance with the requirements and purposes of the EBR Act and its regulations; and
- have effective systems and processes in place that accord with the requirements and purposes of the EBR Act and its regulations.

The EBR Act requires our Office to report annually on the operation of the Act. The operation of the

EBR Act includes both the exercising of its rights by Ontarians (for example, the use of the Environmental Registry, and the submission of applications for review and investigation) and its implementation by prescribed ministries.

For the EBR Act to operate effectively, it must be implemented in a manner that is consistent with the purposes of the Act. To meet our legislated reporting requirement, our audit assessed not only whether prescribed ministries complied with the minimum legal requirements of the EBR Act, but also whether the ministries implemented the Act, including exercising their discretion under the Act, in a manner that was consistent with the Act’s purposes, contributing to the effective operation of the Act.

In planning for our work, we identified the audit criteria (see **Appendix 1**) we would use to address our audit objective. These criteria were established based on a review of applicable legislation, policies and procedures, and best practices.

We conducted our audit between January 2021 and September 2021. Our work mainly covered the period from April 1, 2020, to March 31, 2021, but addressed some additional issues that arose up to September 30, 2021. We also followed up on three recommendations made in our 2019/20 report on the operation of the EBR Act, to determine whether they were implemented. We obtained written representation from ministries’ senior management that, effective November 5, 2021, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusion of this report.

Our audit work was conducted at our office in Toronto. Our work involved reviewing relevant documents and data, and discussions and correspondence with staff at the Environmental Bill of Rights Office within the Environment Ministry, as well as staff at prescribed ministries (see **Appendix 1** for a description of what we reviewed).

We conducted our work and reported on the results of our examination in accordance with the applicable Canadian Standards on Assurance Engagements—Direct Engagements issued by the Auditing

and Assurance Standards Board of the Chartered Professional Accountants of Canada. This included obtaining a reasonable level of assurance.

The Office of the Auditor General of Ontario applies the Canadian Standards of Quality Control and, as a result, maintains a comprehensive quality control system that includes documented policies and procedures with respect to compliance with rules of professional conduct, professional standards and applicable legal and regulatory requirements.

We have complied with the independence and other ethical requirements of the Code of Professional Conduct of the Chartered Professional Accountants of Ontario, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

## 4.0 The EBR Act's Coverage

### 4.1 Overview

In order for Ontarians to put their EBR Act participation rights into practice, ministries and acts that affect the environment must be specifically brought under the EBR Act's umbrella, or "prescribed." It is therefore important that the EBR Act's regulations be kept up to date. In our 2020 Report on the Operation of the EBR Act, we recommended that the Environment Ministry review all ministries and acts to identify those that could have a significant effect on the environment, and take steps to bring them under the EBR Act.

The Ministry did not agree to this recommendation, claiming that it is the individual ministries' responsibility to determine whether they, or the acts they administer, should be subject to the EBR Act. We continue to believe that in order for the EBR Act to achieve its purposes, a government body needs to take the lead in identifying which ministries and acts could have significant effects on the environment, and to ensure that steps are taken to bring forward

changes needed to the regulations. As the ministry responsible for administering the EBR Act, the Environment Ministry should be taking the lead.

In January 2021, the Environment Ministry's Deputy Minister canvassed all deputy ministers for any proposed changes or updates to the regulations under the EBR Act, in anticipation of bringing forward a consolidated proposal for amendments to the regulations. It is a positive step that the Environment Ministry reached out to the deputy ministers of all ministries, and not just the deputy ministers of prescribed ministries as was the Ministry's previous practice; however, the Environment Ministry had not identified which additional ministries and acts could have significant effects on the environment, and should be prescribed.

As of September 2021, the EBR Act regulations had not been amended. In addition to potential amendments to add ministries and laws that should be made subject to the EBR Act, a number of amendments to the EBR Act's General Regulation are required to keep it up to date with changing ministry mandates and names.

In 2020/21, in the course of our audit, several gaps in the EBR Act's coverage came to our attention. In one instance, environmentally significant legislation was introduced by the Ministry of the Attorney General, which is not prescribed. Although we recommended the proposed act be posted on the Environmental Registry, the Ministry did not do so. In addition, we identified three non-prescribed acts under which ministries made environmentally significant decisions.

### 4.2 Instrument Classification Regulation Has Not Been Comprehensively Reviewed

In 2020/21, five ministries (Environment, Natural Resources, Energy and Mines, Municipal Affairs, and Government Services) were responsible for administering instruments (permits, licences, approvals and other authorizations) that are currently prescribed

under the Classification Regulation (O. Reg. 681/94) (in June 2021, the Natural Resources and Energy and Mines Ministries were changed to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry, and Ministry of Energy). This Regulation defines which instruments will be subject to the EBR Act's public consultation requirements because they can have potentially significant effects on the environment.

The EBR Act requires these ministries to review the Classification Regulation "from time to time" and determine whether there are new types of instruments with the potential for significant environmental effects that should be added to the regulation, or whether changes affecting already prescribed instruments mean they should be removed from, or reclassified in, the regulation. Such amendments would ensure that the public is consulted on all environmentally significant instrument proposals.

Ministries satisfy this requirement by responding to the Environment Ministry's periodic emails inviting them to propose amendments to the EBR Act's regulations, including the Classification Regulation. When the ministries receive this request, they canvass their program areas for any needed updates to the regulation. However, none of these ministries have established processes for periodic, comprehensive reviews of the instruments that they administer to ensure that all environmentally significant instruments are prescribed. Documentation we reviewed indicated that the Natural Resources Ministry had not undertaken a comprehensive review of its instruments since 2000. In 2020/21, that Ministry conducted an initial review of classified instruments and told us that it was working with the Environment Ministry on amendments to the Classification Regulation related to instruments issued under the *Aggregate Resources Act*, the *Lakes and Rivers Improvement Act* and the *Public Lands Act*.

## RECOMMENDATION 1

To adhere to the *Environmental Bill of Rights, 1993's* requirements, meet the public participation purposes of the Act, and provide Ontarians with increased transparency and accountability for environmentally significant ministry decisions, we recommend that the Ministry of the Environment, Conservation and Parks, the Ministry of Northern Development, Mines, Natural Resources and Forestry, the Ministry of Municipal Affairs and Housing and the Ministry of Government and Consumer Services, with the Technical Standards and Safety Authority, carry out a comprehensive review of the Classification Regulation (O. Reg. 681/94) and propose amendments as needed to add new instruments that could have significant environmental effects, or remove or reclassify existing instruments that no longer meet the criteria for classification.

### ENVIRONMENT MINISTRY'S RESPONSE

The Ministry agrees with the importance of keeping this regulation up to date. Under the EBR Act, individual ministries are responsible for determining whether the instruments they administer should be subject to the Act. The Ministry will continue to work with partner ministries to provide advice about the requirements of the EBR Act to help them determine whether updates are needed to the instruments prescribed under O. Reg. 681/94.

### NORTHERN DEVELOPMENT, MINES, NATURAL RESOURCES AND FORESTRY (NRF)'S RESPONSE

The Ministry agrees with this recommendation. The Ministry is committed to meeting its obligations of the EBR Act.

The Ministry will prepare a legislative schedule for comprehensive review of the Classification Regulation (O. Reg. 681/94).

## NORTHERN DEVELOPMENT, MINES, NATURAL RESOURCES AND FORESTRY (NDM)'S RESPONSE

The Ministry agrees with this recommendation. The Ministry is committed to meeting its obligations of the EBR Act.

The Ministry will create guidance materials to support review of Ministry classified instruments under O. Reg. 681/94 for future use; this would include a schedule of legislation for a comprehensive review to ensure that all environmentally significant instruments are prescribed.

## MUNICIPAL AFFAIRS MINISTRY'S RESPONSE

The Ministry agrees with this recommendation. The Ministry will carry out a comprehensive review of the EBR Act's Classification Regulation (O. Reg. 681/94 - Classification of Proposals for Instruments) and propose amendments to add new instruments, as needed, that could have significant environmental effects or propose the removal or reclassification of existing instruments that no longer meet the criteria for classification.

## GOVERNMENT SERVICES MINISTRY'S RESPONSE

The Ministry agrees with the Auditor General's assessment on the importance of the EBR Act and ensuring its regulations are reflective of instruments that could have significant environmental impacts. The Ministry will complete an assessment to determine if amendments are needed and will continue to work with the Ministry of the Environment, Conservation and Parks.

## TECHNICAL STANDARDS AND SAFETY AUTHORITY'S RESPONSE

TSSA undertook a review of O. Reg. 681/94 in August 2018 at the request of the Ministry of the Environment, Conservation and Parks. The Ministry of the Environment, Conservation and Parks,

working through the Ministry of Government and Consumer Services, asked if there were any changes to TSSA's classification. Since 2018 there have been no changes to the regulation and code cited in O. Reg. 681/94, namely O. Reg. 217/01 (Liquid Fuels) and the Liquid Fuels Handling Code, so TSSA believes a comprehensive review by TSSA is not needed at this time.

## 4.3 Legislative Amendments Brought Forward by the Ministry of the Attorney General Not Posted on the Environmental Registry

On February 16, 2021, the Attorney General introduced Bill 245, the *Accelerating Access to Justice Act, 2021*. The Bill included 11 schedules, two of which had potentially environmentally significant implications:

- Schedule 6 would enact the *Ontario Land Tribunal Act, 2021*, amalgamating several tribunals, including the Environmental Review Tribunal, Local Planning Appeal Tribunal and the Mining and Lands Tribunal, into a single entity called the Ontario Land Tribunal. These tribunals hear appeals and leave to appeal applications under many EBR-prescribed acts, such as the *Environmental Protection Act*, the *Planning Act* and the *Mining Act*.
- Schedule 6 would also change procedures that affect public participation in hearings on environmental matters under several prescribed laws administered by the Environment Ministry, the then Energy and Mines Ministry, and the Agriculture Ministry. For example, persons permitted by the former Environmental Review Tribunal to participate in a hearing in person would only be able to present their views in writing. Previously, environmental groups and community members often participated in environmental hearings as "participants" or "presenters" and were able to give oral evidence, submit documents and be questioned by the parties and by the tribunal. This

evidence is useful to the tribunal, which makes decisions in the public interest, to understand the context of the decision and any potential community impacts. The changes in Schedule 6 could indirectly affect the environment by limiting the Tribunal's opportunity to gain a comprehensive understanding of community impacts.

- Schedule 10 would repeal provisions in several EBR Act-prescribed acts that permitted an appeal of a tribunal decision to the minister on grounds other than a question of law if it is in the public interest. This route has been used by the public to attempt to stop a project or facility where the tribunal made factual errors or public policy considerations have changed.

The Ministry of the Attorney General is not a prescribed ministry under the EBR Act, and therefore was not required to post, and did not post, a notice of these proposed schedules on the Environmental Registry.

Our Office wrote to the Ministry of the Attorney General on March 9, 2021, recommending that the proposed schedules be posted. We also wrote to the Environment, Energy and Mines and Agriculture Ministries, copying the Ministry of the Attorney General, encouraging the prescribed ministries to work with the Ministry of the Attorney General to post the environmentally significant proposals on the Environmental Registry for public consultation (see **Appendix 9**).

In response to our letter, the Ministry of the Attorney General noted that the legislative process provided members of the public with significant opportunity to comment on Bill 245. By letter dated March 23, 2021, we responded that the legislative process does not provide the same opportunities for public consultation as those provided by the EBR Act, and emphasized the importance of assessing and taking into account all comments submitted by the public before finalizing the amendments (see **Appendix 9**).

The Ministry of the Attorney General had also stated in its response that it “understands and appreciates the importance of posting government

proposals that may have a significant effect on the environment on the Environmental Registry, and remains committed to considering this for proposals brought forward by our ministry that could have such an effect, as may be appropriate.” Bill 245 received royal assent on April 19, 2021. If the Ministry of the Attorney General was prescribed under the EBR Act, it would be required to consistently notify and consult Ontarians about its legislative proposals, such as Bill 245, that could have a significant effect on the environment, affording greater certainty for Ontarians.

## RECOMMENDATION 2

So that Ontarians have the opportunity to participate in environmentally significant decision-making by the Ministry of the Attorney General, we recommend that the Ministry of the Environment, Conservation and Parks work with the Ministry of the Attorney General to take steps to have the Ministry of the Attorney General prescribed under the *Environmental Bill of Rights, 1993*.

## ENVIRONMENT MINISTRY'S RESPONSE

The Ministry agrees that Ontarians should have an opportunity to participate in decisions that have significant impacts on the environment. Individual ministries are responsible for determining whether their ministry should be prescribed under the EBR Act. The Ministry looks forward to supporting the Ministry of the Attorney General as it considers its approach to this recommendation.

## MINISTRY OF THE ATTORNEY GENERAL'S RESPONSE

The Ministry of the Environment, Conservation and Parks is responsible for the administration of the *Environmental Bill of Rights, 1993* (EBR Act).

The EBR Act seeks to provide Ontarians with an opportunity to participate in and provide input on decisions that have a significant impact on

the environment. Ministries that are prescribed under the EBR Act include ministries whose core responsibilities may have a significant impact on the environment, for example, land use planning, conservation of heritage properties, management of natural resources, etc.

In general, the Ministry of the Attorney General's (Ministry's) core responsibilities are focused on the oversight and administration of all matters connected to the administration of justice in Ontario and are not directed at the environment.

The Ministry's mandate includes:

- upholding the rule of law;
- creating a fair and accessible justice system for all Ontarians;
- co-ordinating and administering court and tribunal services throughout Ontario;
- working to modernize the justice system and provide services that are more accessible, responsive and easy to use;
- building safe and prosperous communities across the province by increasing access to justice and responding to the evolving needs of Ontario; and
- providing legal advice to, and conducting litigation on behalf of, all government ministries and many agencies, boards and tribunals.

## AUDITOR GENERAL'S RESPONSE

The Auditor General continues to believe that proposals by the Ministry of the Attorney General have the potential to have a significant effect on the environment, even if the Ministry's core responsibilities are not generally directed at the environment. Prescribing the Ministry of the Attorney General would give Ontarians the right to be consulted when the Ministry makes proposals that could, if implemented, have a significant effect on the environment.

The Auditor General also continues to believe that the Ministry of the Environment, Conservation and Parks should provide leadership—not just

support—by taking steps to bring forward proposals to make the EBR Act applicable to all ministries and acts that involve decisions that affect the environment.

## 4.4 Ministries Made Environmentally Significant Decisions Under Acts That Are Not Prescribed Under the EBR Act

If a ministry is prescribed, but one of its acts is not also prescribed, the ministry is not required to consult the public about proposals for environmentally significant regulations (or amendments to regulations) under that act. Further, if an act is not prescribed, instruments under that act cannot be prescribed, and Ontarians do not have the right to submit applications for review or applications for investigation regarding that act. (A prescribed ministry is, however, required to consult on environmentally significant amendments to any act, and on proposals about any environmentally significant policies).

In 2020/21, the Agriculture, Transportation and former Energy and Mines Ministries, all prescribed ministries under the EBR Act, made environmentally significant decisions related to regulations under acts they administer that are not prescribed under the EBR Act.

In the cases that we identified, the prescribed ministries proactively posted proposals on the Environmental Registry even though they were not required to, signalling the ministries' acknowledgment of the environmental significance of the proposals and the benefits of public input into the ministries' decisions on those proposals. While we commend the ministries for voluntarily consulting the public on these proposals, we concluded that these acts govern matters that can significantly affect the environment and should therefore be prescribed under the EBR Act to ensure that Ontarians' legislated rights apply to these acts in the future.

#### 4.4.1 The *Drainage Act*

Control of water flow and drainage affects crop productivity, nutrient loss, soil erosion, habitat protection and flood control. The *Drainage Act* establishes a collaborative process for cost-sharing the construction and maintenance of municipal drains in rural areas. Approval of drain construction and maintenance is through municipal by-law in accordance with the process established in the *Drainage Act*; other approvals may be required under other acts and regulations. There are more than 45,000 kilometres of municipal drains servicing approximately 1.75 million hectares of cropland in Ontario.

In 2020/21, the Agriculture Ministry consulted the public for 60 days on a proposed regulation to implement amendments to the *Drainage Act*. The proposed regulation would make a number of changes to the approval processes for “minor” improvements, update design changes to an approved drain, and adopt an existing protocol for drain maintenance and repair. Environmental mitigation measures recommended in the *Drainage Act and Conservation Authorities Act Protocol* have been used under the *Conservation Authorities Act* to streamline permitting for drain maintenance and repair projects. Adoption of the protocol under the *Drainage Act* could enable its use for pre-approved designs for minor improvements to align with the *Conservation Authorities Act* permitting process.

In 2018, the former Environmental Commissioner of Ontario recommended that the *Drainage Act* be prescribed under the EBR Act.

### RECOMMENDATION 3

So that Ontarians receive notice of and have the opportunity to provide comments on proposals for regulations under the *Drainage Act* that could, if implemented, have a significant effect on the environment, and so that Ontarians can exercise all of the rights under the *Environmental Bill of Rights, 1993 (EBR Act)* in respect of the *Drainage Act*, we recommend that the Ministry of the Environment, Conservation and Parks work with

the Ministry of Agriculture, Food and Rural Affairs to take steps to have the *Drainage Act* prescribed under the EBR Act.

### ENVIRONMENT MINISTRY'S RESPONSE

The Ministry agrees that Ontarians should have an opportunity to participate in decisions that have significant impacts on the environment. Individual ministries are responsible for determining whether the acts they administer should be prescribed under the EBR Act. The Ministry looks forward to supporting the Ministry of Agriculture, Food and Rural Affairs as it considers its approach to this recommendation.

### AGRICULTURE MINISTRY'S RESPONSE

The Ministry does not accept the recommendation that the *Drainage Act* be prescribed under the EBR Act as it is not environmental legislation.

The *Drainage Act* establishes a collaborative process for the construction and maintenance of municipal drains in rural areas – focusing primarily on cost allocation amongst property owners. Decisions made under the *Drainage Act* are in relation to the apportionment of costs between private parties and the municipality as well as provincial grant programming. The decisions regarding where land drainage should be allowed, which have a potential environmental impact, are made through municipal planning and approvals processes in other legislation such as the *Planning Act* and the *Conservation Authorities Act* and potential environmental impacts are consulted on through those processes.

### AUDITOR GENERAL'S RESPONSE

The Auditor General continues to believe that proposals regarding the *Drainage Act* have the potential to have a significant effect on the environment. Prescribing the *Drainage Act* under the EBR Act would give Ontarians the right to be consulted about environmentally significant proposals for regulations under that act, as well as ensure



Ontarians can exercise other rights available under the EBR Act in respect of the *Drainage Act*.

The Auditor General also continues to believe that the Ministry of the Environment, Conservation and Parks should provide leadership—not just support—by taking steps to bring forward proposals to make the EBR Act applicable to all ministries and acts that involve decisions that affect the environment.

#### 4.4.2 The *Highway Traffic Act*

In 2020/21, the Transportation Ministry consulted the public on a new approach to regulating different sizes and styles of power-assisted bicycles, known as “e-bikes,” under the *Highway Traffic Act*. The Ministry posted several notices on the Environmental Registry seeking public input on the approach, a five-year pilot program for cargo e-bikes, amendments to the act and a new regulation. These initiatives could affect fossil fuel use and air emissions. Other recent proposals under the *Highway Traffic Act* that could have environmental effects include the use of high-occupancy vehicle lanes, speed limits, and alternative vehicle use. The Transportation Ministry also notified and/or consulted the public through the Registry on these proposals.

In 2019, the Environment Ministry consulted through the Environmental Registry on a series of changes to Ontario’s approach to motor vehicle emissions. It ended the emissions testing program for light duty vehicles known as “Drive Clean,” adopted new regulations applicable to heavy duty diesel commercial vehicles, and made legislative changes that, when proclaimed, will repeal part of the *Environmental Protection Act* and move responsibility for vehicle emissions to the *Highway Traffic Act* and the Transportation Ministry. Public comments on the consultations voiced a concern about the loss of public participation rights given that the *Highway Traffic Act* is not prescribed under the EBR Act. In response, the Environment Ministry promised: “Consideration will be given to making the applicable regulatory amendments prescribed under [the EBR Act] to ensure

that regulatory changes with environmental impacts related to motor vehicle emission testing would be posted on the [Environmental Registry] for a public comment period.” As of September 2021, the Environment Ministry had not yet done so.

### RECOMMENDATION 4

So that Ontarians receive notice of and have the opportunity to provide comments on proposals for regulations under the *Highway Traffic Act* that could, if implemented, have a significant effect on the environment, and so that Ontarians can exercise all of the rights under the *Environmental Bill of Rights, 1993* (EBR Act) in respect of the *Highway Traffic Act*, we recommend that the Ministry of the Environment, Conservation and Parks work with the Ministry of Transportation to take steps to have the *Highway Traffic Act* prescribed under the EBR Act.

### ENVIRONMENT MINISTRY’S RESPONSE

The Ministry agrees that Ontarians should have an opportunity to participate in decisions that have significant impacts on the environment. Individual ministries are responsible for determining whether the acts they administer should be prescribed under the EBR Act. The Ministry looks forward to supporting the Ministry of Transportation as it considers its approach to this recommendation. The Ministry of Transportation is currently consulting on an approach under Environmental Registry Proposal Notice #019-4277.

### TRANSPORTATION MINISTRY’S RESPONSE

The Ministry continues to assess consultation requirements for potentially environmentally significant proposals.

Under the Ministry’s “Modernizing Ontario’s Vehicle Inspection Program and integrating safety and emissions inspections for commercial vehicles,” Environmental Registry Proposal Notice

# 019-4277, the Ministry proposes amendments to Regulation 73/94 under the EBR Act, to require that future amendments to its proposed vehicle emissions regulation under section 75.1 of the *Highway Traffic Act* be posted to the Registry for public comment.

## AUDITOR GENERAL'S RESPONSE

The Auditor General continues to believe that proposals regarding the *Highway Traffic Act* have the potential to have a significant effect on the environment. The Ministry is taking a good first step with its proposal regarding the vehicle emissions regulation. However, prescribing the *Highway Traffic Act* under the EBR Act would give Ontarians the right to be consulted about all environmentally significant proposals for regulations under that act, as well as ensure Ontarians can exercise the other rights available under the EBR Act in respect of the *Highway Traffic Act*.

The Auditor General also continues to believe that the Ministry of the Environment, Conservation and Parks should provide leadership—not just support—by taking steps to bring forward proposals to make the EBR Act applicable to all ministries and acts that involve decisions that affect the environment.

### 4.4.3 The *Electricity Act, 1998*

On January 1, 2019, the Ontario government repealed the *Green Energy Act, 2009*, shifted select energy efficiency and conservation provisions to the *Electricity Act, 1998*, and revoked and implemented new associated regulations under the *Electricity Act, 1998*. The *Green Energy Act, 2009* had been prescribed under the EBR Act's General Regulation, as was its predecessor, the *Energy Efficiency Act*. However, the *Electricity Act, 1998* is not prescribed.

In 2020/21, the former Energy and Mines Ministry consulted through the Environmental Registry on several proposals related to matters under the *Electricity Act, 1998*, including regulations for efficiency

standards for products, changes to the framework for long-term energy planning and changes affecting renewable energy projects. These initiatives affect energy and water conservation and use and greenhouse gas emissions.

In June 2021, the Energy and Mines Ministry was changed and a separate Ministry of Energy (Energy Ministry) was created; the Energy Ministry is now responsible for administering the *Electricity Act, 1998*.

## RECOMMENDATION 5

So that Ontarians receive notice of and have the opportunity to provide comments on proposals for regulations under the *Electricity Act, 1998* that could, if implemented, have a significant effect on the environment, and so that Ontarians can exercise all of the rights under the *Environmental Bill of Rights, 1993* (EBR Act) in respect of the *Electricity Act, 1998*, we recommend that the Ministry of the Environment, Conservation and Parks work with the Ministry of Energy to take steps to have the *Electricity Act, 1998* prescribed under the EBR Act.

## ENVIRONMENT MINISTRY'S RESPONSE

The Ministry agrees that Ontarians should have an opportunity to participate in decisions that have significant impacts on the environment. Individual ministries are responsible for determining whether the acts they administer should be prescribed under the EBR Act. The Ministry looks forward to supporting the Ministry of Energy as it considers its approach to this recommendation.

## ENERGY MINISTRY'S RESPONSE

The Ministry agrees that Ontarians should receive notice for all proposals for regulations under the *Electricity Act, 1998* that could, if implemented, have a clear environmental significance, including energy efficiency and energy conservation initiatives. The Ministry will continue to make these determinations about environmental significance on a case-by-case basis.

Much of the *Electricity Act, 1998* deals with matters that are financial or administrative in nature so proposals are therefore posted on the provincial Regulatory Registry. These proposals would be inappropriate on the Environmental Registry. The Ministry believes that continuing to post proposal notices on a case-by-case basis, as a prescribed ministry, rather than prescribing the *Electricity Act, 1998*, is appropriate.

## AUDITOR GENERAL'S RESPONSE

The Auditor General continues to believe that proposals regarding the *Electricity Act, 1998* have the potential to have a significant effect on the environment. Prescribing the *Electricity Act, 1998* under the EBR Act would give Ontarians the right to be consulted about environmentally significant proposals for regulations under that act, as well as ensure Ontarians can exercise the other rights available under the EBR Act in respect of the *Electricity Act, 1998*.

The Auditor General also continues to believe that the Ministry of the Environment, Conservation and Parks should provide leadership—not just support—by taking steps to bring forward proposals to make the EBR Act applicable to all ministries and acts that involve decisions that affect the environment.

## 4.5 Exclusions from the EBR Act Prevent Ontarians From Participating in Decisions that Affect the Environment

We identified exclusions from the EBR Act's public participation requirements that prevent Ontarians from participating in decisions affecting the environment and that are unjustified in light of recent legislative and regulatory changes. These exclusions relate to instruments for projects that fall under the *Environmental Assessment Act*, but for which no public consultation is carried out, and to regulations for

Minister's Zoning Orders made under section 47 of the *Planning Act* by the Municipal Affairs Minister.

### 4.5.1 *Environmental Assessment Act* Exceptions from the EBR Act

If a project is approved under the *Environmental Assessment Act*, proposals for prescribed instruments (such as environmental compliance approvals, permits to take water, or permits under the *Endangered Species Act, 2007*) that are a step toward implementing the project are not required to be posted on the Environmental Registry for notice and comment. As a result, Ontarians are not provided the opportunity to seek leave (that is, permission) to appeal these decisions. These approvals were originally excepted from the EBR Act because consultation on them would have duplicated consultation under the environmental assessment process. Since then, however, environmental assessment in Ontario has evolved and the scope of public consultation on projects has changed. These changes have resulted in no, or very limited, public consultation on some projects through the environmental assessment process; in these cases, there is no duplication with the EBR Act and the EBR Act exception for instruments related to those projects is no longer justified.

This is not a new concern. In 2013, the former Environmental Commissioner of Ontario stated: "Shrouding these decisions from public scrutiny based on section 32 of the EBR is inconsistent with the goals of this legislation." This issue was also raised during consultations on the EBR Act undertaken by the Environment Ministry in 2016.

The EBR Act consultation exception applies broadly to projects that are either **approved** under or **exempted** from the *Environmental Assessment Act*. When a project or a class of projects is exempted from the *Environmental Assessment Act* without conditions requiring consultation and section 32 of the EBR Act applies, no public consultation is required on either the project or the instruments that implement it, and

the public has no ability under either act to challenge a ministry's decision.

The number of projects exempted from the *Environmental Assessment Act* has grown.

For example:

- In 2019, the *Environmental Assessment Act* was amended to exempt a large number of projects under the Class Environmental Assessments (Class EAs) that the Environment Ministry described as “low impact,” and to allow other projects to be exempted under the Class EAs. There are 10 approved Class EA documents for groups of activities, usually those that are carried out routinely and have predictable environmental effects that can be readily mitigated. Amongst other things, the Class EAs apply to activities related to municipal infrastructure and provincial transportation. Together with streamlined assessment processes for waste, electricity and transit projects, 95% of all the activities to which the *Environmental Assessment Act* applies fall within these processes. Class EAs and streamlined processes include different levels of public consultation.
- Changes to the EBR Act in 2020 expanded the consultation exception to cover projects that are exempted from the *Environmental Assessment Act* not just by regulation, but if provided for in a Class EA.
- In 2020, the Environment Ministry exempted forest management activities on Crown lands in an area that covers 40% of the province from the *Environmental Assessment Act*.
- In 2021, the Environment Ministry exempted Crown projects or activities related to land claims settlements and other agreements with Indigenous communities about land, including acquisitions and dispositions of land and Crown resources.

For some projects, processes have been streamlined and consultation requirements have been modified. For example, in 2020, the Environment Ministry modified the existing streamlined environmental assessment process for four priority transit projects in Toronto. This process requires the

proponent, Metrolinx, to consult Indigenous communities and interested persons “in the way the proponent considers appropriate” and to establish its own issues-resolution process.

In 2020, the Environment Ministry proposed more exemptions and streamlining of processes that would affect public consultation opportunities through environmental assessment processes and under the EBR Act. These included:

- exempting all projects and activities in provincial parks and conservation reserves;
- streamlining the process for 38 Ministry of Transportation highway improvement projects (in October 2021, the Environment Ministry gave notice that it had decided not to move forward with these exemptions);
- exempting the Bradford Bypass, a Ministry of Transportation 400-series highway through the Holland Marsh, subject to conditions (in October 2021, the Environment Ministry filed the exempting regulation);
- streamlining the Ministry of Transportation's process for Highway 413, linking Highways 401 and 400, through agricultural land and the Greenbelt;
- amending eight Class EAs to reduce the requirements for some types of projects and exempt some types of projects altogether. This would include amending the Natural Resources Ministry's Class EA for Resource Stewardship and Facility Development to exempt all authorizations under the *Endangered Species Act, 2007*.

In 2020, the *Environmental Assessment Act* was amended to significantly change Ontario's approach to environmental assessment. As of September 2021, these amendments had not yet been proclaimed in force. Once in place, the changes mean that the act will only apply to designated projects listed in one of two regulations—one for projects that will follow the comprehensive environmental assessment process and one for projects that will follow the streamlined environmental assessment process—rather than applying broadly to all public sector projects with exceptions.

Under this new approach, for projects that were exempted under the old approach but are not on the new project lists, the EBR Act consultation exception for implementing instruments will no longer apply. In other words, if a prescribed instrument is proposed to implement a project that is not included on the project lists, it will have to be posted on the Environmental Registry for public consultation unless the instrument is exempt from the requirement for posting.

This would restore an opportunity for public consultation on such instruments. However, according to documentation we reviewed, the Environment Ministry intends to “take action” to address instruments that will no longer be excepted from EBR Act consultation by section 32, either by reclassifying instruments in the EBR classification regulation or by adopting a regulation under the EBR to exempt instruments related to the types of projects that were once exempted from the *Environmental Assessment Act*.

## RECOMMENDATION 6

So that Ontarians are given notice of and consulted about environmentally significant proposals for instruments, we recommend that the Ministry of the Environment, Conservation and Parks review the exceptions in section 32 of the *Environmental Bill of Rights, 1993* (EBR Act), propose amendments to align that section with the purposes of the EBR Act, and consult the public about the proposed amendments in accordance with the EBR Act.

## MINISTRY RESPONSE

Public consultation remains a cornerstone of Ontario’s environmental assessment program. As the Ministry continues to modernize Ontario’s environmental assessment program, its decisions about exempting projects or groups of projects from environmental assessment requirements will be informed by consultation. As part of this initiative, the Ministry will consider how consultation

may be provided for through other mechanisms or processes, for those projects proposed to be exempt. As environmental assessment modernization activities continue, the changes being made will prompt the Ministry to examine section 32 of the EBR Act.

### 4.5.2 Minister’s Zoning Orders

In **Chapter 1, Section 7.2** our 2020 Report on the Operation of the EBR Act, we reported on the dramatic increase in the number of zoning orders made by the Municipal Affairs Minister since the start of 2020. Minister’s Zoning Orders, made under section 47 of the *Planning Act*, bypass the usual municipal planning process that requires public consultation and that permits appeals to the Ontario Land Tribunal. Although Minister’s Zoning Orders are regulations under the *Planning Act* and that Act is prescribed for the purposes of section 16 of the EBR Act, the EBR General Regulation (O. Reg. 73/94) currently exempts these orders from the EBR Act’s public consultation requirements. The *Planning Act* requires no notice or hearing prior to the making of such orders, but requires the Ministry to give notice within 30 days after the orders are made, and the Ministry’s practice has been to post bulletins on the Environmental Registry, with links to the regulations, to satisfy that requirement.

We reported that some of the Minister’s Zoning Orders issued in 2019/20 authorized large residential developments on lands previously zoned for agricultural, institutional or employment use, automobile dealerships on a rural site, and a large distribution facility on lands containing protected wetlands.

Since we issued our 2020 report:

- More Minister’s Zoning Orders have been made, many with the potential for significant environmental impacts. One example of a zoning order with the potential for significant environmental impacts would have permitted the development of a warehouse in a Provincially Significant Wetland in Pickering (discussed further in **Section 7.4**).

Although public consultation is not precluded by either the *Planning Act* or the General Regulation exclusion, the Municipal Affairs Minister did not consult the public on any of the zoning orders made since 2019.

- In December 2020, the *Conservation Authorities Act* was amended to require conservation authorities to grant permission to commence development if the development is authorized through a Minister's Zoning Order, subject to conditions the conservation authority may issue to mitigate adverse environmental effects. (As described in **Section 6.5**, the Environment Ministry proposed these amendments without providing an opportunity for public consultation through the EBR Act.)
- Starting in December 2020, the Municipal Affairs Ministry consulted the public through the Environmental Registry on the changes made in Bill 197 and already in force that enhanced the Minister's authority to control site plan matters or affordable housing when making a Minister's Zoning Order. Despite high public interest and recommendations from commenters, including municipalities, to limit or guide the Minister's discretion in using zoning orders, the Ministry stated that it would not propose any changes to the *Planning Act* as a result of this consultation.
- On the same day the Municipal Affairs Ministry stated that it would not propose changes to the *Planning Act* as a result of the consultation, it proposed an amendment to the Act that allows the Ministry even more discretion. The amendment, which applied retroactively, states that past and future Minister's Zoning Orders do not need to be consistent with the Provincial Policy Statement, except within the Greenbelt Area. The Provincial Policy Statement sets out rules that, among other things, protect agricultural lands and natural heritage features from incompatible development. All planning decisions by the province, municipalities, conservation authorities or the Ontario Land Tribunal have had to be consistent with these rules. However, this amendment means that the

Municipal Affairs Minister, while still required to consider matters of provincial interest, can make a zoning order that is not consistent with these rules, including those that prohibit development or site alteration in significant wetlands, woodlands and wildlife habitat, or that require the protection of prime agricultural areas for agricultural uses, without ever consulting the public.

- The Premier and the Municipal Affairs Minister have publicly indicated, including in the Legislature, that the government plans to continue to use Minister's Zoning Orders to achieve development aims.

As the number of Minister's Zoning Orders, and the likelihood of significant environmental impacts, increases, it would be consistent with the EBR Act's purpose for Ontarians to be consulted on all Minister's Zoning Orders that could, if implemented, have a significant effect on the environment.

## RECOMMENDATION 7

So that Ontarians have the opportunity to receive notice of and comment on environmentally significant proposals for Minister's Zoning Orders, we recommend that:

- the Ministry of the Environment, Conservation and Parks work with the Ministry of Municipal Affairs and Housing to take steps to have O. Reg. 73/94, the General Regulation made under the *Environmental Bill of Rights, 1993* (EBR Act), amended to revoke section 15.5, which exempts Minister's Zoning Orders from Part II of the EBR Act; and
- the Ministry of Municipal Affairs and Housing consult the public on all environmentally significant Minister's Zoning Orders in accordance with the requirements of Part II of the EBR Act.

## ENVIRONMENT MINISTRY'S RESPONSE

The Ministry agrees that Ontarians should have an opportunity to participate in decisions that have significant impacts on the environment. Individual ministries are responsible for determining whether

the acts or instruments they administer should be prescribed under the EBR Act. The Ministry looks forward to supporting the Ministry of Municipal Affairs and Housing as it considers its approach to this recommendation.

## **MUNICIPAL AFFAIRS MINISTRY'S RESPONSE**

The Ministry takes seriously its obligations under the EBR Act and will work to meet its consultation obligations under the Act.

The Minister has publicly stated that he expects that before a municipality requests an MZO, they do their due diligence which includes consultation in their communities, connecting with conservation authorities and engaging with potentially affected Indigenous communities. The Minister has also publicly stated that he expects that municipal requests for a zoning order include a supporting Council resolution. As Council meetings are generally open to the public, this expectation is meant to ensure public awareness of a request being made for the Minister to consider making a zoning order.

## **AUDITOR GENERAL'S RESPONSE**

The Auditor General continues to believe that proposals for Minister's Zoning Orders under the *Planning Act* have the potential to have a significant effect on the environment. Revoking the exemption for Minister's Zoning Orders under the EBR Act would give Ontarians the right to be consulted about environmentally significant proposals for Minister's Zoning Orders.

The Auditor General also continues to believe that the Ministry of the Environment, Conservation and Parks should provide leadership—not just support—by taking steps to bring forward proposals to make the EBR Act applicable to all ministries and acts that involve decisions that affect the environment.

## 5.0 Prescribed Ministries' Processes For Ensuring They Comply With the *Environmental Bill of Rights, 1993*

### 5.1 Overview

Ministries that are prescribed under the EBR Act have certain legislated obligations. These obligations include developing a Statement of Environmental Values, considering that Statement when making decisions that could affect the environment, and consulting the public on environmentally significant proposals.

While the Environment Ministry administers the EBR Act, each prescribed ministry is responsible for its own compliance with and implementation of the Act.

It is therefore important for prescribed ministries to have internal controls—processes, policies and procedures—to ensure they comply. At a minimum, prescribed ministries should ensure that all relevant staff are aware of the Ministry's EBR Act responsibilities, and have processes to identify when the EBR Act applies to their work. Ministries should also have written processes and procedures to guide their staff in carrying out the ministries' EBR Act obligations, and internal checks and balances to ensure that they have complied.

If staff within a prescribed ministry are not aware of the ministry's EBR Act obligations, cannot properly identify circumstances in which the EBR Act applies,

do not have clear guidance about how to comply, or do not follow existing guidance, there is a risk that the ministry will not comply consistently or at all with the EBR Act. As a result, Ontarians may be prevented from exercising their rights under the Act, and the Act's purposes—including transparency and accountability for environmental decision-making—might not be met.

Our reports on the operation of the EBR Act detail multiple examples where ministries failed to consistently comply with, and effectively implement, the EBR Act—issues that could be improved by developing and following documented processes.

### 5.2 Prescribed Ministries Did Not Have or Did Not Follow Effective Processes and Procedures for Ensuring They Comply with Their EBR Act Responsibilities

We found that the 16 prescribed ministries varied significantly in how they ensured they complied with the EBR Act, with some having no formal processes at all, and others having varying levels of internal processes and documented procedures. We also found that, even if ministries had established formal processes, they did not always follow them, or monitor to ensure their staff complied with them.

#### EBR Act Awareness

Ensuring that ministry staff are aware that the EBR Act applies to their ministry, and what that



means, is essential to ensuring the ministry complies with its EBR Act obligations.

Some ministries make staff aware of the EBR Act and the ministries' EBR Act responsibilities by providing some form of training, such as presentations and e-learning modules, although the training is not mandatory and is not always provided on a regular basis. For example, the Environment, Natural Resources, Municipal Affairs and Energy and Mines ministries all conducted some form of EBR Act training for staff since April 1, 2020. Some ministries make staff aware of the EBR Act through onboarding materials for new staff, circulating information about the EBR Act or posting materials on ministry intranet sites.

However, we found that eight ministries (Government Services, Tourism, Health, Long-Term Care, Infrastructure, Economic Development, Labour and Treasury Board Secretariat) did not provide any formal training to staff. Those ministries also did little or nothing to ensure staff were made aware of the EBR Act and the ministry's responsibilities under the Act.

The Economic Development Ministry told us that its Corporate Policy and Coordination Unit was available to provide advice and guidance to staff as needed, and that it was developing a policy training series for staff that would include training on the EBR Act, but this was delayed due to the COVID-19 pandemic. That Ministry developed an internal guidance document about the EBR Act in 2020/21, but this document was not circulated to staff and was available only upon request. The Ministry told us it planned to post this guidance document to its intranet in March 2021, but as of September 2021, the Ministry had not yet posted the document. The Treasury Board Secretariat told our Office that its staff are made aware of EBR obligations through two or three emails circulated per year to canvass staff about any upcoming policies or legislation that may be of environmental significance, and that new senior executives are informed of EBR Act responsibilities during onboarding. However, these emails and onboarding materials that we reviewed did not provide background information or an overview

about the EBR Act or the Ministry's specific responsibilities under the EBR Act.

In December 2020, the Deputy Minister of the Environment, Conservation and Parks drafted—but never finalized or sent—a letter to all staff in the Ministry outlining the Ministry's obligations under the EBR Act, the importance of ensuring that the Ministry complies with the Act, and resources available to assist staff in meeting their assigned responsibilities related to the Ministry's EBR Act obligations. The Ministry told us the Deputy Minister did not send the letter because the intention of the memo was to ensure awareness of protocols around EBR Act compliance to support our Office's audit of the operation of the Act, and that Ministry staff instead attended a presentation by our Office that included the necessary information about EBR Act protocols. However, our presentation to Ministry staff was to a select group of people on our Office's work (including reporting on the operations of the EBR Act)—not on how to comply with the Ministry's responsibilities under the EBR Act. Sending the letter would have ensured that all staff in the Ministry—not just those that attended the presentation by our Office—were aware of the Ministry's EBR Act obligations and how to ensure it complies.

### **Documented Policies and Procedures for Complying With and Implementing the EBR Act**

Seven ministries (Government Services, Tourism, Health, Long-Term Care, Infrastructure, Labour and Treasury Board Secretariat) did not have any formal internal processes, documented policies or procedures for ensuring ministry compliance with the EBR Act. Other ministries had at least some formal internal processes and documented procedures explaining, for example, how and when to consider their Statements of Environmental Values, how to draft and post notices on the Environmental Registry, and how to handle applications for review and investigation. The Treasury Board Secretariat told us in March 2021 that it was working on an internal process document, but as of October 2021 it had not been finalized or implemented.

Several ministries, such as the Health, Long-Term Care, Tourism, Infrastructure and Labour Ministries, told us that they relied on a small number of individual staff that have knowledge of and experience with the EBR Act to ensure the ministry complies. Even the Environment Ministry, which has several documented policies and procedures for complying with the EBR Act, relied solely on the expertise of certain staff when it came to posting appeal notices on the Environmental Registry, and responding to public inquiries about the EBR Act.

Relying on processes that are unwritten, informal, and housed within the minds of specific ministry staff risks inconsistent and incomplete implementation of EBR Act requirements, and loss of institutional knowledge with staff turnover or periods of absence. For example, the Infrastructure Ministry underwent organizational changes in 2020/21 that led to responsibility for EBR Act implementation being transferred to a different division in the Ministry. With staffing and organizational changes and no documented policies or procedures, the Ministry was left without a clear or complete understanding of its EBR Act responsibilities or how to comply. In March 2021, the Ministry provided our Office with documentation that showed it was considering options for improving its internal processes for compliance with the EBR Act, including staff education and awareness of the EBR Act. In June 2021, the Deputy Minister sent a memo to all staff outlining the Ministry's responsibilities under the EBR Act. The memo included a checklist to help staff determine when the EBR Act applies. The Deputy Minister directed staff to complete and attach the checklist to all applicable approvals packages.

Many ministries also told us that they rely on assistance from the Environment Ministry when environmental matters arise, or refer to an internal online resource centre related to the Environmental Registry and maintained by the Environment Ministry. Prescribed ministries also participate in an Inter-ministerial Committee, chaired by the Environment Ministry, that shares information about EBR Act issues and use of the Environmental Registry.

However, without processes to identify whether a matter is potentially subject to EBR Act requirements, or clear direction to seek assistance from the Environment Ministry in such a case, there is a risk that ministries will not identify environmentally significant proposals or comply with their EBR Act requirements. Further, the online resource centre provides guidance on the technical use of the Registry, but does not provide information or training on ministries' obligations under the EBR Act or how to comply. For example, the resource centre does not explain prescribed ministries' responsibilities for considering their Statements of Environmental Values when making environmentally significant decisions, or requirements for responding to applications for review or investigation submitted by the public.

Even when ministries had relatively extensive or detailed internal guidance, we found that in 2020/21 they did not always follow that guidance or comply with the EBR Act. For example, the Environment Ministry's written guidance directed staff to notify our Office (as required by the EBR Act) when it decides not to consult the public based on an exception in the Act. However, as we report in **Section 6.7**, the Ministry did not provide such notice for five of the six exception notices that it posted in 2020/21. The Natural Resources Ministry had an internal Statement of Environmental Values Implementation Guide that requires the Ministry's Statement consideration documents to be signed before corresponding decision notices are posted on the Environmental Registry. However, the Ministry did not always follow this internal guidance; Statement of Environmental Values consideration documents provided for six decisions for which the Ministry posted notices on the Registry in 2020/21 were not signed (see **Section 7.3**).

Similarly, several ministries, including the Environment, Natural Resources, Energy and Mines, and Municipal Affairs Ministries, had internal guidance directing staff to post decision notices on the Environmental Registry within two weeks of making decisions, but those ministries continued to post late notices in many cases in 2020/21. For example, as we

report in **Section 7.14**, the Energy and Mines Ministry posted over one-quarter of its decision notices more than two weeks after the decisions were made.

Central to complying with the EBR Act and meeting its purposes is ensuring that ministry staff consider whether a proposal by their ministry may be subject to the EBR Act. Few ministries have specific guidance for staff on such an assessment. For example, the Labour Ministry told us that it did not have processes to identify all of its proposals that may be subject to the EBR Act's requirements.

The Natural Resources Ministry had a relatively detailed guidance document that walked staff through a process for considering whether the EBR Act applies to a proposal, including whether any exceptions apply. However, as detailed in **Section 7.4**, in 2020/21, the Natural Resources Ministry nevertheless did not post an environmentally significant proposal for a regulation under the *Conservation Authorities Act*. Other ministries, such as the Education Ministry, directed staff to the factors in the EBR Act for determining whether a proposal is environmentally significant.

### Monitoring Compliance With the EBR Act

Having formal processes for complying with the EBR Act supported by documented policies and procedures can help ministries effectively implement the EBR Act. Monitoring, which can take the form of an internal and/or independent audit or evaluation, enables a ministry to assess whether it has complied with its processes and the EBR Act, and identify areas where improvement is needed.

We found that, overall, ministries lacked internal processes for monitoring their compliance with the EBR Act. Even ministries that provided guidance documents to staff on how to comply with the Act did not have formal processes for looking back to determine whether they did, in fact, comply with all EBR Act requirements. For example, the Energy and Mines Ministry had a process for performing semi-annual internal audits of its instrument notices, but not for other EBR Act requirements. We also found that the Government Services Ministry did not have

processes for ensuring that the Technical Standards and Safety Authority, to which the Ministry delegates its EBR Act obligations related to liquid fuels, complies with those obligations.

When asked for documentation related to their compliance with certain EBR Act requirements (such as considering their Statements of Environmental Values, considering the public's comments when making a decision, and determining whether the EBR Act applied to a proposal), several ministries, including the Environment, Natural Resources, Energy, Northern Development and Mines, Municipal Affairs, Government Services, Transportation, and Agriculture Ministries, were unable to confirm, or had difficulty readily confirming or verifying, that they had complied in some cases. For example, it took the Municipal Affairs Ministry over five weeks to provide documentation confirming that it had considered public comments when deciding on a proposed methodology to identify the land area needed in the Greater Golden Horseshoe area to accommodate forecasted housing and employment. Similarly, several ministries, including the Environment Ministry and Municipal Affairs Ministry, could not readily provide documentation showing they considered their Statements of Environmental Values for specific decisions.

Without effective internal processes, including written procedures and guidance, there is a risk that ministries will be unable to ensure and verify compliance with the EBR Act, or identify needed improvements in compliance with policies and processes.

## RECOMMENDATION 8

To identify and correct non-compliance with, and ineffective implementation of, the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that every ministry that is prescribed under the EBR Act review its existing processes and procedures, if any, for complying with the EBR Act and, to the extent that it has not already done so:

- develop and implement processes and procedures to train and update all relevant staff on the ministry's responsibilities under the EBR Act and when the EBR Act applies;

- establish, implement, and periodically review and update documented processes and procedures for complying with and implementing the EBR Act; and
- implement processes for monitoring the ministry's compliance with the EBR Act, and take corrective measures to address and prevent any non-compliance with the EBR Act.

See **Appendix 10** for ministry responses to **Recommendation 8**.

## 6.0 Ministry of the Environment, Conservation and Parks (Environment Ministry or Ministry)

### 6.1 Overview

The Environment Ministry administers laws and regulations related to air pollution, water quantity and quality, safe drinking water, climate change, contaminated lands, spills, waste management, pesticides, toxic substances, species at risk, protected areas, environmental assessment and conservation authorities. In late 2018, the Environment Ministry released its Made-in-Ontario Environment Plan, which sets out the Ontario government's plan for addressing the environmental challenges facing Ontario.

The Environment Ministry is responsible for administering the *Environmental Bill of Rights, 1993* (EBR Act) and its regulations, and for operating the Environmental Registry. The Environment Ministry is also responsible for providing educational programs about the EBR Act to the public, and for posting notices that the Ministry receives on the Environmental Registry of applications for leave to appeal and appeals of instruments prescribed under the EBR Act.

As administrator of the EBR Act, the Environment Ministry supports other prescribed ministries when implementing EBR Act requirements and using the Environmental Registry, and in bringing forward proposed amendments to the EBR Act's regulations. The Environment Ministry chairs an Inter-ministerial Committee for prescribed ministries, which meets monthly to share information about EBR Act issues and implementation, as well as use of the Environmental Registry, and maintains an intranet resource site about use of the Registry for prescribed ministries.

Under the EBR Act, the Environment Ministry is responsible for 17 prescribed acts, including the *Environmental Protection Act*, the *Environmental Assessment Act*, and the *Provincial Parks and Conservation Reserves Act, 2006*. The Ministry must consult the public about permits, licences, approvals and other authorizations and orders issued under six prescribed acts, such as environmental compliance approvals under the *Environmental Protection Act*, permits to take water under the *Ontario Water Resources Act*, and overall benefit permits under the *Endangered Species Act, 2007* (for more information about these permits and the protection of endangered species, see our 2021 report on **Protecting and Recovering Species at Risk**). The Environment Ministry can also receive applications for review and applications for investigation from the public.

In 2020/21, the Environment Ministry used the Environmental Registry to post 2,136 notices about environmentally significant policies, acts, regulations and instruments, and other matters. In 2020/21, the Environment Ministry also concluded five reviews that were the result of applications for review submitted in previous years, and concluded three additional applications for review that were submitted in 2020/21 (see **Appendix 7** for details of the concluded applications).

See **Section 6.2 (Figure 5)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21, and **Sections 6.3 to 6.18** for our detailed findings and recommendations.

## 6.2 Report Card on the Ministry of the Environment, Conservation and Parks' Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

**Figure 5: Ministry of the Environment, Conservation and Parks**

Prepared by the Office of the Auditor General of Ontario

- Legend:**
- Met criteria
  - Partially met criteria
  - Did not meet criteria
  - The ministry did not execute any responsibilities under this category in this reporting year
  - n/a The ministry is not prescribed for this category
  - Not assessed New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
<b>1. Statement of Environmental Values (Statement)</b>				
a. Statement is up-to-date	●	<b>Section 6.3</b> – The Ministry last substantively updated its Statement in 2008. In December 2020, the Ministry posted a proposal for an updated Statement that reflects changes to the Ministry's structure and mandate, and includes climate change as a government priority, therefore meeting our criteria. However, as of late September 2021, more than nine months had passed since the Ministry posted its proposal (the time frame allowed under the EBR Act for new Statements), and the Ministry had not finalized its Statement. Further, our Office has concerns with the proposed Statement, leading us to conclude that there is a need for a future broader review of prescribed ministries' Statements.	●	●
b. Statement is considered when making decisions	●	<b>Section 6.4</b> – The Ministry provided documentation of its consideration of its Statement for 44 decisions on policies, acts and regulations and a sample of 25 decisions about instruments. However, 34 consideration documents were undated, and one consideration document did not show that all relevant principles outlined in the Ministry's Statement were considered.	●	○
<b>2. Use of the Environmental Registry (Registry)</b>				
a. Notice of proposals is given as required by the EBR Act	●	<b>Sections 6.5 – 6.7</b> – The Ministry did not consult the public about major changes to two environmentally significant acts: the <i>Environmental Assessment Act</i> and the <i>Conservation Authorities Act</i> . The Ministry was also not transparent about its determination that the EBR Act did not apply to two proposals that it posted. Further, the Ministry did not notify our Office about five decisions that it made without public consultation under EBR Act exceptions.	●	●
b. Time to comment is extended based on the factors in the EBR Act	○	The Ministry met this criterion.	●	●
c. Proposal notices for policies, acts and regulations are informative	●	<b>Section 6.8</b> – The Ministry posted 36 proposal notices for policies, acts and regulations, and we reviewed a sample of 19 of those notices. We found that four (21%) of the proposals, all related to the <i>Environmental Assessment Act</i> , did not adequately describe the anticipated environmental impacts of the proposals. Three of those notices also did not provide sufficient information about the proposal and its purpose. Two of those notices, plus two other proposal notices, did not provide links or attachments to key supporting documentation about the proposals.	●	○

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
d. Proposal notices for instruments are informative	●	<b>Section 6.9</b> – The Ministry posted 902 proposal notices for instruments on the Registry, and we reviewed a sample of 25 of those notices. Six of the 25 notices (24%), all for permits to take water, did not include information that a reader would need to fully understand what was being proposed. The notices did not state the category of permit being proposed, which would indicate the level of environmental risk associated with the proposed water taking. It also came to our attention that the Ministry provided inaccurate information about site location in a proposal notice for an approval of a hauled sewage facility.	●	●
e. Received comments are reviewed and considered	○	We reviewed documentation related to the Ministry's consideration of comments submitted about a sample of four proposals about policies, acts and regulations and three proposals about instruments. The Ministry's consideration met this criterion.	Not assessed	Not assessed
f. Prompt notice of decisions is given	●	<b>Section 6.10</b> – The Ministry posted 61 decision notices for policies, acts and regulations, 960 decision notices for permits and approvals, and six exception notices on the Registry. The Ministry posted 26 (43%) of the 61 decision notices for policies, acts and regulations, four (16%) of the 25 decision notices for permits and approvals that we reviewed, and all six exception notices more than two weeks after the decisions were made. In total, 36 (39%) of 92 notices we reviewed were posted more than two weeks after the decisions were made.	●	●
g. Decision notices for policies, acts and regulations are informative	○	We reviewed a sample of 11 decision notices. The Ministry met this criterion.	○	○
h. Decision notices for instruments are informative	●	<b>Section 6.11</b> – The Ministry posted 960 decision notices for permits and approvals on the Registry, and we reviewed a sample of 25 notices. Five of the 25 (20%) notices did not include links to the issued permit or approval.	●	○
i. Proposal notices are up-to-date	●	<b>Section 6.12</b> – As of March 31, 2021, the Ministry had three proposal notices on the Environmental Registry that had not been updated within the preceding two years. In particular, the Ministry had not posted a decision notice about its Made-in-Ontario Environment Plan, which was proposed in 2018, even though the Ministry has since implemented various aspects of the plan. Further, in a sample of five open proposals that the Ministry updated, we found no evidence that four of these proposals were, in fact, still under review at the time they were updated.	●	●
j. Prompt notice of appeals and leave to appeal applications is given	●	<b>Section 6.13</b> – Ontarians submitted three leave to appeal applications under the EBR Act related to two decisions, but the Ministry did not give Ontarians prompt notice about one of those applications. The Ministry also did not give Ontarians prompt notice of three of four appeals of instruments that are subject to the EBR Act.	●	n/a
k. The Environmental Registry platform is maintained effectively	●	<b>Section 6.14</b> – The Ministry generally operated the Environmental Registry platform in a manner that enabled the public to access information about environmental matters and participate in environmental decision-making. However, the Ministry did not take steps to keep the Registry updated when relevant changes occurred, such as a change to the tribunal responsible for hearing leave to appeal applications, and changes to the structure and names of ministries. Further, the Ministry could not provide documentation to confirm that it has sufficient internal IT controls in place for the operation of the Registry.	○	n/a

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
<b>3. Applications for Review and Applications for Investigation</b>				
a. Ministry reviews all matters to the extent necessary	●	<b>Section 6.15</b> – The Ministry concluded eight applications for review in 2020/21, and handled seven of those applications reasonably. However, the Ministry did not provide a reasonable rationale for its decision to deny a requested review of the Ministry’s exemption regulation made under the EBR Act, O. Reg. 115/20, which suspended some of the public’s EBR Act rights for 10 weeks in 2020/21, during the early stages of the COVID-19 pandemic.	○	●
c. Ministry meets all timelines	●	<b>Section 6.16</b> – The Ministry concluded eight applications for review in 2020/21. The Ministry did not meet some legislated timelines for four of the reviews, and three of the reviews were not concluded within a reasonable time.	●	●
<b>4. Education</b>				
b. Environment Ministry provides educational programs about the EBR Act to the public	●	<b>Section 6.17</b> – In 2021, the Ministry drafted a communications plan to educate the public on the EBR Act, proposing a “digital first approach.” However, the Ministry’s processes for providing educational programs, which were limited to providing information and links about the EBR Act and the public’s rights on a webpage and on the Environmental Registry, and did not include any outreach, did not change in 2021.	●	n/a
c. Environment Ministry provides general information about the EBR Act to those who wish to participate in a proposal	●	<b>Section 6.18</b> – The list of ministries to which the EBR Act applies on the Ministry’s EBR Act website had not been updated to reflect changes. We also found that the Ministry did not have documented guidance for staff for handling emails and calls about the EBR Act from the public, and did not document or log telephone inquiries received about the EBR Act.	○	n/a

**Concluded Applications for Review by the Environment Ministry in 2020/21**

Application for Review	Year Submitted	Undertaken or Denied	Ministry Reviews All Matters to the Extent Necessary	Ministry Meets All Timelines
Review of the <i>Environmental Protection Act</i> and the Siting of Landfills	2013	Undertaken	○	●
Review of Deadlines for Annual Pesticides Reports from Golf Courses	2017	Undertaken	○	●
Review of the Monitoring of Pesticide Use on Golf Courses	2017	Undertaken	○	●
Review of a Waste Disposal Site Approval in the United Counties of Leeds and Grenville (A)	2017	Undertaken	○	●
Review of a Waste Disposal Site Approval in the United Counties of Leeds and Grenville (B)	2017	Undertaken	○	●
Review of Exemption Regulation O. Reg. 115/20 under the <i>Environmental Bill of Rights, 1993</i>	2020	Denied	●	○
Review of a Sewage Works Environmental Compliance Approval issued to a Development Corporation (A)	2020	Denied	○	○
Review of a Sewage Works Environmental Compliance Approval issued to a Development Corporation (B)	2020	Denied	○	○

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

### 6.3 Environment Ministry's Proposal for a New Statement of Environmental Values Unlikely to Improve Decision-Making About the Environment

The EBR Act requires every prescribed ministry to develop and publish a Statement of Environmental Values (Statement) that explains how the ministry will apply the purposes of the EBR Act when making decisions that might significantly affect the environment. The purpose of a Statement is to ensure that ministries consider the environmental impacts of their decisions, to inform and improve decision-making and to produce better outcomes for the environment.

In our 2019 and 2020 reports, we found that the Environment Ministry's current Statement of Environmental Values, which was last substantially updated in 2008, was outdated because it did not reflect the Ministry's current mandate or the government's current values, such as addressing climate change. Further, the Ministry's 2018 Made-in-Ontario Environment Plan directed all ministries to update their Statements to reflect Ontario's environment plan, to improve the government's ability to consider climate change when making decisions and to "make climate change a cross-government priority." We recommended that the Ministry review its Statement with public consultation through the Environmental Registry and update it so that it reflects the Ministry's current environmental values and responsibilities.

In December 2020, the Ministry posted a proposal for an updated Statement on the Environmental Registry for a 60-day public consultation period. While the proposed updated Statement addresses some of our Office's key concerns, including updating the description of the Ministry's mandate and responsibilities, and including climate change as a priority, we identified several issues with the proposed updated Statement, including, for example:

- while it states that the Ministry "is committed to taking every reasonable step to ensure that the ministry's [Statement] is considered when decisions that might significantly affect the environment are made in the Ministry," it

explicitly states that it will consider the Statement's principles "as it develops Acts, regulations and policies" but does not explicitly state that the Ministry will consider the Statement principles when it makes decisions about instruments (permits, approvals and other authorizations), even though a court decision in 2009 confirmed that it must do so;

- it does not update the environmental principles that the Ministry must consider when making decisions to reflect the Ministry's current mandate (which, since 2018, includes responsibility for species at risk, protected areas and conservation authorities) or more modern environmental values such as environmental justice; and
- some commitments have been weakened with the use of terms such as "strive" and "endeavour."

Documents that we reviewed showed that the Ministry explored several options for updating its Statement, including a broader, co-ordinated review with other prescribed ministries that would involve a more extensive overhaul of Statement principles. The Ministry ultimately selected a middle-of-the-road option that goes beyond strictly administrative updates, but does not include an extensive review or overhaul of the Statement.

As of late September 2021, more than nine months had passed since the Ministry posted its proposal (the time frame allowed under the EBR Act for new Statements), and the Ministry had not finalized its Statement.

As the Ministry responsible for administering the EBR Act, the Environment Ministry should be a leader for other ministries by setting a high standard for its Statement. Other ministries told our Office that they sought the Environment Ministry's advice about updating their Statements, or were waiting for the Environment Ministry to finalize its updated Statement before proposing or finalizing their own so that they could align their Statements with that of the Environment Ministry. A co-ordinated, cross-ministry review and modernization of Statement principles and values would help establish Statements that better inform the ministries' decision-making,



leading to improved outcomes for the environment, as intended.

### RECOMMENDATION 9

So that prescribed ministries' Statements of Environmental Values inform and improve the ministries' environmentally significant decision making, we recommend that the Ministry of the Environment, Conservation and Parks initiate and co-ordinate a broad review and modernization of Statements of Environmental Values, in collaboration with other prescribed ministries.

### MINISTRY RESPONSE

Under the EBR Act, each ministry prescribed under the Act is responsible for developing their own Statement of Environmental Values. The Ministry will continue to provide advice to other ministries on their Statements of Environmental Values when requested and will consider how additional support to other ministries could be provided.

## 6.4 Environment Ministry's Consideration of its Statement of Environmental Values Was Inconsistently Documented and Not Always Meaningful

Under the EBR Act, a ministry must consider its Statement of Environmental Values (Statement) when making an environmentally significant decision, not after. To maintain transparency and accountability, ministries should clearly document when and how they considered their Statements throughout the decision-making process.

In 2020/21, the Environment Ministry provided our Office with documents to show that it considered its Statement when it made decisions about 44 policies, acts and regulations, but 34 of the consideration

documents were not dated. Further, the Ministry provided consideration documents for 20 instrument decisions, but eight of those consideration documents were also not dated.

For a sample of these undated consideration documents, we asked the Ministry for documentation that would confirm when the consideration occurred. The Ministry told us that it considered its Statement during the decision-making process, before decisions were made (which is consistent with internal Ministry guidance), but did not have documentation to confirm this. In two cases, the Ministry told us the dates that the consideration documents were approved by senior management, and these dates were after the decisions were made.

We also undertook a detailed review of a sample of 15 Statement consideration documents provided by the Ministry. We found that the documentation provided for one decision (to issue an approval allowing the release of air pollution and noise) did not show that all relevant principles outlined in the Ministry's Statement were considered.

### RECOMMENDATION 10

To be transparent and accountable to Ontarians about its environmental decision-making, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider its Statement of Environmental Values whenever making a decision that might significantly affect the environment, we recommend that the Ministry of the Environment, Conservation and Parks:

- consider its Statement every time it makes a decision that might significantly affect the environment, in a manner that is deliberate and contributes to improved environmental decision-making;
- document that consideration concurrently with the decision-making; and
- clearly document the timing of its consideration.

## MINISTRY RESPONSE

The Ministry is committed to meeting its obligations under the EBR Act and continues to routinely consider its Statement of Environmental Values when making decisions that might significantly affect the environment. The Ministry has taken action to put in place improvements to processes for documenting this consideration by updating templates to ensure timing of its consideration is being captured and will consider whether additional improvements to these processes may be needed.

## RECOMMENDATION 11

To promote transparency and accountability for prescribed ministries' environmental decision-making and the *Environmental Bill of Rights, 1993* requirements to consider their Statements of Environmental Values (Statement) whenever making a decision that might significantly affect the environment, we recommend that the Ministry of the Environment, Conservation and Parks develop and implement updates to the Environmental Registry system templates for decision notices to include a specific section where prescribed ministries can attach, to every decision notice that they post on the Registry, documentation that shows how they considered their Statements when they made those decisions.

## MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry of the Environment, Conservation and Parks is committed to meeting its obligations under the EBR and continues to routinely consider its Statement of Environmental Values when making decisions that might significantly affect the environment. The Ministry has made improvements to processes for documenting this consideration and will consider whether

additional improvements to these processes and to the Environmental Registry may be needed.

## 6.5 The Environment Ministry Did Not Consult Ontarians About Major Changes to Two Environmentally Significant Acts

In 2019 and 2020, we recommended that the Ministry consult with the public on all environmentally significant proposals according to the requirements of the EBR Act. However, in 2020/21, the Environment Ministry did not consult Ontarians about major changes to two environmentally significant acts.

In the first example, the *COVID-19 Economic Recovery Act, 2020* (Bill 197), enacted on July 21, 2020, brought in sweeping changes to the *Environmental Assessment Act*, among a number of other significant legislative changes. The Environment Ministry had previously consulted on a high-level discussion paper about modernizing the environmental assessment process, and posted a bulletin for information purposes on the Environmental Registry on July 8, 2020, the day Bill 197 was introduced for first reading in the Legislature. However, the Ministry did not consult the public on the changes to the *Environmental Assessment Act*. Further, Bill 197 included an amendment to the EBR Act that retroactively deemed the *Environmental Assessment Act* amendments to be exempt from the public consultation requirements of the EBR Act.

We wrote to the Ministry prior to third reading of Bill 197 (see **Appendix 9**), recommending that the Ministry remove the schedule amending the *Environmental Assessment Act* from the bill and consult the public on the proposed amendments and accompanying regulations in order to comply with the Act. This was not done (see **Chapter 1, Section 7.3** of our 2020 report). We noted that consulting the public in accordance with the EBR Act would not have unreasonably delayed implementation of most of the amendments. Our report recommended that the Ministry consistently consult the public about

environmentally significant proposals and refrain from using legislative provisions that deem proposals to be exempt from the EBR Act.

Two separate applications for judicial review were filed against the Ontario government for failing to consult the public about Bill 197 in accordance with the EBR Act. One application, brought by three organizations (Earthroots, the Canadian Environmental Law Association, and Ontario Nature) and two individuals, argued that the government, represented by the Environment and Municipal Affairs ministries, failed or refused to comply with the EBR Act in adopting changes to the *Environmental Assessment Act* and the *Planning Act*, respectively. The other application, brought by two organizations (Greenpeace Canada and Western Canada Wilderness Committee), made similar arguments about those ministries and also about the Transportation and Agriculture Ministries regarding the adoption of the *Transit-Oriented Communities Act, 2020* and amendments to the *Drainage Act*, respectively.

The Divisional Court ruled that the EBR Act amendment that retroactively deemed the EBR Act not to apply to the *Environmental Assessment Act* amendments was legally valid. As a result, by relying on the retroactive exemption, the Environment Minister acted lawfully by not posting those amendments on the Environmental Registry. Still, our Office continues to believe that the Minister's use of the retroactive exemption in this case: was not consistent with the purposes of the EBR Act; was not transparent; and risked undermining public confidence in the government's environmentally significant decisions.

In the second example, the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* (Bill 229) was enacted on December 8, 2020. In addition to adopting the government's budget measures, this bill contained numerous schedules that enacted, amended and repealed a wide range of acts, including the *Conservation Authorities Act*.

On November 5, 2020, the date of first reading of the bill, the Environment Ministry posted a bulletin on the Environmental Registry giving the public notice that it was amending the *Conservation Authorities*

*Act*, but not providing an opportunity for the public to comment. In the bulletin, the Ministry stated that public consultation on the amendments was not required because section 33 of the EBR Act exempts a proposal from the requirements of the EBR Act if it "forms part of or gives effect to a budget or economic statement" presented in the Legislature. While the proposed amendments to the *Conservation Authorities Act* formed part of a budget bill, they did not form part of or give effect to the budget.

The *Conservation Authorities Act* amendments were environmentally significant. They modified the rules on appointments, changed the programs and services to be provided by authorities, and addressed investigations and the process for ministerial review and appeals of development decisions. Many of the provisions regarding programs and services had not been proclaimed as of September 2021. A new provision that came into force on royal assent removed an authority's discretion over whether to issue development permission for projects that are authorized by a Minister's Zoning Order, allowing it only the option of imposing conditions to mitigate environmental harm.

We again wrote to the Ministry expressing concern that environmentally significant amendments (see **Appendix 9**) to the *Conservation Authorities Act* were being made without public consultation, and stating that these amendments were entirely independent of, and did not give effect to, implementation of budget measures, and therefore should have been subject to public consultation under the EBR Act.

## RECOMMENDATION 12

To adhere to the requirements of the *Environmental Bill of Rights, 1993*, and to enable the public to participate in the Ministry of the Environment, Conservation and Parks' environmentally significant decisions, we recommend that, when there are environmentally significant proposals, the Ministry post the proposals on the Environmental Registry for a minimum of 30 days' public consultation.

## MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry is meeting its legal obligations under the EBR Act and will continue to post proposals for a minimum of 30 days public consultation when required to do so under the EBR Act.

## AUDITOR GENERAL'S RESPONSE

The Auditor General continues to believe that the Ministry's decisions to not consult Ontarians about major amendments to two environmentally significant laws in 2020/21 were not consistent with the EBR Act's purposes.

## 6.6 Environment Ministry Was Not Transparent About Why It Concluded That the EBR Act Did Not Apply to Two Proposals

Sometimes ministries post bulletins or proposal notices on the Environmental Registry to give notice to or consult the public even though posting is not required under the EBR Act. A proposal does not require posting if it is for a policy, act or regulation that is “predominantly financial or administrative in nature,” or if a ministry considers that the proposal would not, if implemented, have a significant effect on the environment. A proposal that is not for a policy, act, regulation or instrument is also not required to be posted. When ministries consult voluntarily on such proposals, public notice and consultation contributes to both ministry decision-making and transparency.

However, if a ministry determines that the EBR Act does not apply, the ministry is not bound by the usual public consultation requirements of the EBR Act. Even if the ministry posts a proposal voluntarily for public consultation, there is a risk that the ministry may not fulfil other required elements of the EBR Act consultation process, such as considering all of the public's comments prior to making a decision, providing an explanation of the effects of consultation on

the outcome, or considering the ministry's Statement of Environmental Values when making the decision. If the ministry does not have a clear process for determining whether the EBR Act applies to a proposal, there is also a risk of inconsistent interpretations of the EBR Act. For example, similar proposals may be treated differently, and the public may not be consulted—either at all, or in accordance with all EBR Act requirements—about some proposals that are, in fact, environmentally significant.

In 2020/21, prescribed ministries posted seven proposal notices for policies, acts and regulations on the Environmental Registry for public consultation that the ministries reasonably determined were not required to be posted under the EBR Act (not including proposals that were posted voluntarily between April 1 and June 14, 2021, that would normally have been required to be posted, but were exempt because Part II of the EBR Act was temporarily suspended during that time).

However, the Environment Ministry posted two additional voluntary proposals for policies that appeared to be environmentally significant, even though the Ministry concluded that the EBR Act did not apply to them. The Ministry did not clearly explain in the notices why it concluded that the EBR Act did not apply. When we asked the Ministry how it reached this conclusion in those cases, the Ministry provided explanations, but it was unable to provide documentation supporting its determinations.

In the first voluntary consultation, the Environment Ministry proposed a new approach to environmental compliance approvals for two types of municipal infrastructure: sanitary sewage collection systems and stormwater collection, treatment and disposal systems. The Ministry proposed to replace the many existing approvals with a single approval for each of the two systems in each municipality and to pre-authorize alterations and extensions to the systems without further approval by the Ministry. The proposal also included new standard design criteria, operational requirements and conditions that are intended to protect the environment and public

health and that will have to be met to get the new approval. Under the EBR Act, a “policy” includes guidance or criteria for how decisions will be made. We concluded that these design criteria, requirements and conditions were a policy that could have a significant impact on the environment because wastewater and stormwater systems can significantly affect the local environment and public health—for example, through bypasses and overflows in wet weather—if they are not appropriately designed, operated and monitored.

The Ministry stated in the proposal notice that it was not required to consult on this proposal according to the EBR Act because “[n]o changes to legislation are being proposed, and the changes are administrative.” We asked the Ministry to explain this conclusion further and the Ministry told us that the proposal contained no new acts, policies or regulations, and that consolidating approvals would not itself have an impact on the environment. The Ministry also told us that it had no formal documentation of its determination that the EBR Act did not apply.

In that case, the Ministry did fulfil all of the elements of the EBR Act consultation process, including considering the public’s comments prior to making a decision, providing an explanation of the effects of consultation on the outcome, and considering the Ministry’s Statement of Environmental Values when making the decision. However, there is a risk that the Ministry may not always do so when it determines that the EBR Act does not apply.

In the second voluntary consultation, the Environment Ministry proposed a policy about the clean-up and redevelopment of vacant or underused contaminated sites, often referred to as “brownfields,” under the Records of Site Condition provisions of the *Environmental Protection Act*. The policy would make substantive changes in a technical guidance document used in soil vapour intrusion assessments to reflect current science and updated guidance in other jurisdictions. The document identifies best practices and makes technical recommendations on how practitioners should carry out and document their assessments in accordance with the regulatory requirements.

The Ministry had consulted the public, through a regular proposal notice, on an earlier version of this document in 2013, and consulted with experts and stakeholders since then. The voluntary proposal notice posted on the Environmental Registry in 2021 did not clearly explain to the public why consultation was not required, stating only that the document provides technical guidance to practitioners and reflects “a ten-year development period in which the ministry constantly sought ... input from key experts and stakeholders.”

More than seven years had passed since the earlier public consultation, and we concluded that the latest changes to the document, intended to reflect recent changes in the science, constituted a new proposal that, given the nature of the guidance, could significantly affect the environment. However, the Ministry told us that it determined that this policy would not have a significant effect on the environment, but did not document its reasoning behind that determination. As of September 2021, the Ministry had not posted a decision notice about this proposal.

### RECOMMENDATION 13

So that the public is consistently consulted about the Ministry of the Environment, Conservation and Parks’ environmentally significant proposals to which the *Environmental Bill of Rights, 1993* (EBR Act) applies, and to provide transparency when the Ministry has determined the EBR Act does not apply, we recommend that the Ministry:

- establish clear guidance for Ministry staff on determining whether the EBR Act applies to a proposal, including guidance on determining whether a proposal could, if implemented, have a significant effect on the environment;
- in every case where it determines that the EBR Act does not apply to a proposal, clearly document the basis for that determination; and
- when the Ministry chooses to post a bulletin or to voluntarily consult the public about a proposal to which the Ministry has determined the EBR Act does not apply, clearly explain

in the bulletin or proposal notice the reason that public consultation under the EBR Act is not required.

## MINISTRY RESPONSE

The Ministry is meeting its legal obligations under the EBR Act with respect to posting requirements and strives to provide clear information to the public when posting notices on the Environmental Registry. Section 14 of the EBR Act provides clear guidance to assist ministries in determining when a proposal is environmentally significant.

## AUDITOR GENERAL'S RESPONSE

The Auditor General continues to believe that, when a ministry determines that the EBR Act does not apply to a proposal, the ministry should be transparent to the public about the basis for that determination. Our audit found that the Ministry posted two environmentally significant proposals in 2020/21 that it stated were not subject to the EBR Act (but about which the Ministry nevertheless sought the public's feedback), but the Ministry did not explain why it had concluded that these proposals were exempt from the EBR Act's consultation requirements.

## RECOMMENDATION 14

To adhere to the requirements of, and meet the intent and purpose of Part II of the *Environmental Bill of Rights, 1993* that can be avoided when a proposal is posted voluntarily, we recommend that the Ministry of the Environment, Conservation and Parks:

- consider all comments that it received as a result of its voluntary consultation about proposed updates to the Technical Guidance for Soil Vapour Intrusion Assessment (Environmental Registry #019-2557) when making a decision;

- consider its Statement of Environmental Values when making its decision about the proposal; and
- post a decision notice on the Environmental Registry as soon as reasonably possible after making the decision, describing the decision and the effect of public participation, if any, on the decision.

## MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. As with all proposals posted on the Environmental Registry, the Ministry will consider all comments received, as well as our Statement of Environmental Values, when posting a decision notice for the Technical Guidance for Soil Vapor Intrusion Assessment.

## 6.7 Environment Ministry Did Not Notify Our Office of Five Decisions Made Without Public Consultation Under EBR Act Exceptions

In 2020/21, the Environment Ministry posted six exception notices on the Environmental Registry to give notice to Ontarians that it had made decisions without first consulting the public on the Environmental Registry, but only notified our Office of one such decision.

The EBR Act sets out two exceptions in which a ministry may elect not to consult the public before making an environmentally significant decision that would normally be subject to the EBR Act's requirements:

- where the delay in waiting for public comment would result in danger to public health or safety, harm or serious risk to the environment, or injury or damage to property; and
- where the proposal will be, or has already been, considered in another public participation process that is substantially equivalent to the public participation process required under the EBR Act.

If a ministry decides not to consult the public based on one of those exceptions, the ministry must instead post a notice (called an “exception notice”) on the Environmental Registry to inform the public of the decision and explain why it did not first consult the public. The ministry must also notify the Auditor General of the decision.

The Environment Ministry gave our Office notice of a decision that it made without public consultation to issue a new approval for sewage work to replace and upgrade a failed subsurface disposal works. As required, the Ministry also posted an exception notice for the decision on the Environmental Registry, explaining that the delay that would occur by posting a proposal for the approval would have resulted in danger to the health or safety of any person using this facility, harm or serious risk of harm to the environment, and injury or damage or serious risk of injury or damage to the property, including the potential for release of raw sewage into the environment.

The Environment Ministry did not notify our Office of five other decisions where it was required to under the EBR Act, even though the Ministry’s internal guidance for staff notes the requirement to do so. The notices were related to decisions about:

- an emergency approval allowing a company to temporarily increase the tonnage of leaf and yard waste it receives at its waste disposal site to account for the higher quantities generated during the COVID-19 pandemic;
- an emergency approval allowing a company to temporarily store used engine oils at two waste transfer facilities after the COVID-19 pandemic forced the shutdown of its refining facility; and
- three emergency authorizations for the City of Temiskaming Shores to allow its sewage treatment facilities to accept leachate from a closed industrial landfill, to prevent the discharge of untreated leachate into the environment.

When the Environment Ministry does not notify the Auditor General that it has relied on an EBR Act exception to make an environmentally significant decision without first consulting the public, there is a risk that public notice on the Environmental Registry

may not be given promptly or at all, and less transparency and accountability for the Ministry’s decisions that affect the environment. As noted in **Section 6.10**, the Ministry took more than two weeks to give notice of all six exception decisions on the Environmental Registry. Two of the notices about emergency authorizations for the City of Temiskaming Shores were not posted until over a year after the authorizations were issued, and the Ministry took 17 weeks to post the exception notice about the emergency approval for a waste disposal site.

## RECOMMENDATION 15

To comply with the requirements of the *Environmental Bill of Rights, 1993* (EBR Act) and ensure the Auditor General is aware when the Ministry of the Environment, Conservation and Parks (Ministry) makes an environmentally significant decision without public consultation because of an exception under sections 29 or 30 of the EBR Act, we recommend that the Ministry notify the Auditor General through direct and timely correspondence of all such decisions.

## MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will work to improve its processes for ensuring timely notification to the Office of the Auditor General when the Ministry makes an environmentally significant decision without public consultation because of an exception under section 29 or 30 of the EBR Act.

## 6.8 Environment Ministry Did Not Provide Clear or Complete Descriptions of Four Proposals Related to the *Environmental Assessment Act*

We reviewed a sample of 19 proposal notices for policies, acts and regulations that the Environment Ministry posted on the Environmental Registry

and found that four (21%), all for proposed regulations under the *Environmental Assessment Act*, did not adequately describe the proposals or their environmental implications. For example, the Ministry proposed a regulation to adopt a streamlined environmental assessment process for the Ministry of Transportation’s Greater Toronto Area West Transportation Corridor, commonly referred to as new Highway 413. (This highway would link Highways 400 and 401 on a route through agricultural land and the Greenbelt, affecting approximately 85 watercourses, 220 wetlands, 680 hectares of habitat, and source water protection areas.) This undertaking had been following the comprehensive environmental assessment process when it was shelved by the previous government; it was then revived by the current government in 2019.

The proposal notice, which did not attach a copy of a draft regulation:

- identified certain studies and consultation that would still be required, but did not explain how this differed from the previous comprehensive process (by identifying, for example, what studies or consultation previously under way or expected would no longer be completed);
- did not identify the role, if any, of the Environment Ministry under the streamlined process;
- stated that the streamlined process would eliminate duplication with other planning and approvals processes, in order to shorten construction timelines, but did not identify which planning or approval process would not be followed, including in particular whether the regulation would require the Transportation Ministry to work with the Toronto and Region Conservation Authority; and
- stated that “protection of the environment remains a priority,” but did not identify any potential environmental impacts of the proposal, such as the impacts on watersheds or ecosystems of allowing bridges and other works to be constructed before final studies are completed.

The Environment Ministry also posted a notice proposing a regulation to exempt the 400-series highway known as the Bradford Bypass and 38

Transportation Ministry highway improvement projects from the *Environmental Assessment Act*. The Bradford Bypass would connect Highways 400 and 404 and would be routed through the Holland Marsh, a provincially significant wetland. The proposal would limit the studies required to be completed and would permit “early works”—that is, construction of bridges and other works—before completion of all the studies. Although the notice stated that the Transportation Ministry would be required to meet the conditions outlined in the exemption regulation and report annually on its progress in meeting those conditions, in the absence of the draft regulation, it was not clear what those conditions would be. The notice also stated that the exempted projects had previously completed part of the environmental assessment process and “their environmental impacts are well understood.” However, the notice did not detail what the anticipated environmental impacts might be, including those associated with early works.

For each of these regulatory proposals, the Environment Ministry told us it did not attach a draft regulation to the notice because the notice was only intended to solicit initial comments from the public, which could then help inform how the regulation could be developed. The Ministry also told us that it did not intend to post another notice for further consultation on either regulation once it is developed. In October 2021, the Ministry filed the exempting regulation for the Bradford Bypass.

When a ministry consults only on what might later be proposed in a general way, without further consultation on the details of the proposal, Ontarians may not have the opportunity to provide meaningful input. For Ontarians to provide informed feedback on a proposal they must be sufficiently informed about what is actually being proposed and the likely environmental implications. As a best practice, when consulting on regulation proposals using the Environmental Registry, a ministry should either provide details of the proposed regulation in the notice, or attach the draft regulation. For notices posted on the Regulatory Registry, used for new or amended regulations affecting businesses, the Ontario Regulatory Policy



requires the inclusion of a summary of the proposed regulatory measure and, “where possible, the draft regulatory text.” This practice ensures transparency and more informed consultation.

## RECOMMENDATION 16

As we recommended in 2020, so that Ontarians can better understand and provide informed comments on environmentally significant proposals, we recommend that the Ministry of the Environment, Conservation and Parks provide all relevant details about proposals, and describe their environmental implications, in each proposal notice posted on the Environmental Registry.

## MINISTRY RESPONSE

The Ministry is committed to ensuring the contents of its notices for proposals for policies, acts, regulations, and prescribed instruments enable Ontarians to understand what is being proposed. We strive to strike a balance of providing an accurate, detailed description of the proposal with the goal of communicating in an easy-to-understand, plain-language manner. The Ministry will continue to work to improve how it highlights the environmentally significant aspects of all of our proposals so that Ontarians can provide informed comments.

## 6.9 Environment Ministry Did Not Provide Clear Descriptions in Almost One-Quarter of Instrument Proposals Reviewed, and Provided Wrong Location in a Proposed Approval for a Sewage Disposal Facility

Again in 2020/21, 24% of the Ministry’s 25 instrument proposal notices that we reviewed did not include information that the public would need to comment on the proposal. Specifically, in six proposed permits to take water, the Ministry again did not describe the category of water taking being

proposed. The category is important information because it indicates the level of environmental risk associated with the permit. We identified this issue in 2019 and 2020, and recommended that the Ministry describe the environmental implications of each proposed permit or approval in the proposal notice. Although the Ministry agreed with our recommendations, it did not show improvement in 2020/21.

It also came to our attention that the Environment Ministry provided inaccurate information to the public in a proposal notice posted on the Environmental Registry about the site location for a proposed environmental compliance approval for a hauled sewage disposal facility.

The proposal notice, which was posted in October 2019, incorrectly indicated that the facility was to be located in Parry Sound. No public comments were submitted on the proposal with this incorrect location information. The decision notice for the approval, which was not posted until November 2020—eight months after the approval was issued—clarified that the facility would actually be located in Emsdale, Township of Perry, approximately 62 kilometres from Parry Sound.

When residents near the actual location discovered the error, many contacted the Ministry to express concern about the approval. Following the late posting of the decision notice, nearly 20 individuals, businesses and a residents’ association applied for leave to appeal the Ministry’s decision to issue the approval, arguing that significant errors in the approval process, including providing the wrong location in the proposal notice and failing to reopen the process for public comment after the Ministry was alerted about that error, made the decision unreasonable. Ultimately, the Ministry revoked the approval because of new information from the residents. (For details of this and other applications and appeals in 2020/21, see **Appendix 8**).

In order for members of the public to meaningfully participate in environmentally significant decisions about approvals, the information provided in proposal notices must be accurate. Location information for instruments (such as permits, licences and other

approvals) is particularly important, as members of the public may be most interested in commenting on proposals that would affect their communities.

## RECOMMENDATION 17

So that Ontarians can better understand proposals and provide informed comments on environmentally significant ministry proposals for permits and approvals posted on the Environmental Registry, we recommend that the Ministry of the Environment, Conservation and Parks:

- as we recommended in 2019 and 2020, describe the details and environmental implications of each proposed permit and approval in the proposal notice; and
- establish processes to ensure that the information included in all proposal notices is accurate, including location information for instrument proposals.

## MINISTRY RESPONSE

The Ministry is committed to ensuring the description of the details and environmental implications in instrument proposal notices enable Ontarians to understand what is being proposed. The Ministry will continue to work to update guidance for proponents and work with applicants to expand descriptions.

## 6.10 Environment Ministry Took Over Two Weeks to Post Notices for 39% of the Decisions We Reviewed; Two Decisions Made Without Public Input Were Posted More Than a Year Later

In 2019/20, we reported that the Environment Ministry took more than two weeks to post its decision in 49% of the notices we reviewed. We recommended that the Environment Ministry post all decision notices as soon as reasonably possible after making a decision, which should be within two weeks of

making a decision. The Environment Ministry agreed, and stated that it had updated its training resources for staff, communicating the best practice of posting decision notices within two weeks of making decisions.

In 2020/21, we reviewed a total of 92 decision notices posted by the Environment Ministry on the Environmental Registry: all 61 decision notices that it posted for policies, act and regulations; a sample of 25 of the 960 decision notices for instruments (permits, licences, approvals, and other authorizations and orders); and all six exception notices.

The Environment Ministry posted decision notices more promptly overall in 2020/21. However, of the 61 decision notices for policies, acts and regulations, 26 (43%) were posted more than two weeks after the decision was made. Of these notices, 11 were posted more than a year after the decisions were made. These included, for example, decisions on proposals to amend the *Conservation Authorities Act*, *Environmental Assessment Act* and the *Endangered Species Act, 2007*; these amendments were put into effect by the passage of the *More Homes, More Choice Act, 2019* more than a year before the Ministry posted the decision notices. Eleven decision notices that the Ministry posted were for older proposals that the Ministry was no longer considering, but that it had not closed with a notice to inform the public. For example, the Ministry posted decision notices for five unimplemented proposals to adopt certain Canadian Water Quality Guidelines as interim Provincial Water Quality Objectives that were posted in 2005.

The Ministry posted four (16%) of the 25 instrument decision notices we reviewed more than two weeks after the decisions were made, two of which were posted more than a year after the decisions were made, and all six exception notices more than two weeks after the decisions were made. Two of the six exception notices, which were for emergency authorizations for the City of Temiskaming Shores to allow its sewage treatment facilities to accept leachate from a closed industrial landfill, were posted more than a year after the decisions were made. When a ministry relies on an exception under the EBR Act to

not conduct public consultation, timely notice of the decision is particularly important to maintain transparency and accountability for the decision (for more details about exception notices posted in 2020/21, see **Section 6.7**).

The EBR Act requires ministries to post each decision notice and exception notice on the Registry “as soon as reasonably possible” after the decision is made. The purpose of this requirement is so that the public receives timely notice of decisions and the results of public consultation, and can exercise its right to seek leave (that is, request permission) to appeal decisions for instruments (such as permits, licences and other approvals) within a reasonable time frame after they are issued. Timely notice is important for transparency and to provide accountability for the outcome of a proposal. Delays in posting decision notices for instruments, for example, allow activities with potential environmental impacts to continue—sometimes for significant periods of time—before the public becomes aware of or can seek leave to appeal the approval.

### RECOMMENDATION 18

As we recommended in 2019 and 2020, to give Ontarians prompt notice of its environmentally significant decisions, we recommend that the Ministry of the Environment, Conservation and Parks post all decision notices on the Environmental Registry as soon as possible after making a decision, which should be no more than two weeks after making the decision, as stated in its own service standard.

### MINISTRY RESPONSE

The Ministry agrees that decision notices should be posted on the Environmental Registry as soon as reasonably possible after a decision has been made. The Ministry strives to post decision notices on the Registry within two weeks of a decision being made unless circumstances prevent it from reasonably doing so.

## 6.11 Environment Ministry Did Not Provide Copies of Final Permits in 20% of Instrument Decision Notices Sampled

In 2020, the Environment Ministry did not include copies of issued permits or approvals in 36% of its instrument decision notices. We recommended that the Ministry provide links to final issued approvals in its decision notices.

However, in 2020/21, we found that, again, the Environment Ministry did not always include copies of, or links to, the final permit or approval in the decision notice. We reviewed a sample of 25 notices about the Environment Ministry’s decisions to issue permits and approvals, and found that the Ministry did not include copies of, or links to, the final permits or approvals in five instrument decision notices (20%), four of which were for issued permits to take water.

Ontarians have the right to challenge the Ministry’s decisions about permits to take water using the third-party leave-to-appeal rights under the EBR Act. However, to be able to exercise this right, they need enough details about the decision to understand it. This may be most easily achieved by the Ministry including a copy of, or a link to, the final issued permit in every decision notice.

### RECOMMENDATION 19

As we recommended in 2020, to help people understand the Ministry of the Environment, Conservation and Parks’ decisions about instruments and exercise their rights to seek leave to appeal under the *Environmental Bill of Rights, 1993*, we recommend that the Ministry provide copies of, or links to, the final issued instruments in its decision notices.

### MINISTRY RESPONSE

The Ministry agrees that publicly sharing detailed permit information is important. The Ministry strives to include in the decision notice a copy of the final issued approval (if applicable) or the

details of the permit conditions. Copies of some issued permits and environmental compliance approvals are also available on the Ministry's public Access Environment website once the decision has been issued.

## 6.12 Environment Ministry Not Transparent About the Status of Some Proposals, Including Its Decision to Implement its Made-in-Ontario Environment Plan

For the Environmental Registry to be an accurate and reliable source of information for Ontarians, ministries must keep all proposal notices up to date by either posting decision notices promptly after decisions are made, or updating ongoing proposals to inform Ontarians about their status. As a best practice, ministries should update proposal notices that have been posted on the Environmental Registry for more than two years without a corresponding decision notice. When a proposal notice has been on the Registry for more than two years without a decision or update, we consider those proposal notices to be outdated.

In 2019 and 2020, the Environment Ministry had 44 and 43 outdated notices, respectively. Since then, the Ministry has posted updates or decision notices for most of these notices, reducing the total number of outdated notices by 93% since 2020 (see **Figure 3**). As of March 31, 2021, the Environment Ministry had three proposal notices on the Environmental Registry that had not been updated within the preceding two years—representing less than 1% of the Ministry's total open proposals.

### Updates to Proposals Were Not Informative

However, the Ministry was not transparent about the status of some of the open proposals that it updated. We asked the Ministry to confirm the status of a sample of five updated notices that stated that the proposals were “still under active review,” and that the Ministry was “reviewing the comments it

has received to date.” For four of these notices, the Ministry gave explanations about its ongoing consideration of the proposals, but we found no evidence that the proposals were still, in fact, under review at the time the notices were updated.

For example, the Ministry indicated in updates posted on March 31, 2021, that it was still actively considering three proposals (posted in 2003, 2004 and 2007) related to recycling. The Ministry told us that it could not post decision notices for these proposals prior to making a final decision on a new Blue Box regulation, because the policy areas in these proposals were reviewed during the development of that regulation. However, the Ministry did not provide any documentation to show that it did, in fact, specifically consider these proposals, or the comments that Ontarians submitted on them, as part of its development of the new Blue Box regulation. The proposal notice for this regulation, which was posted for public consultation between October and December 2020, did not make reference to the earlier proposals or provide links to them, even though the notice included a section with links to other related notices on the Registry. Further, while the Ministry posted a decision notice on the Blue Box regulation on June 3, 2021, it did not post decision notices for the three older notices until October 2021. The decision notices for each of those older notices identified the proposal notices as “outdated” notices that were “no longer pertinent or active.”

Even if the Ministry was considering the three older proposals in the context of the new Blue Box regulation, the updates that the Ministry posted to these proposal notices were neither informative nor transparent. In the updates, the Ministry could have explained that these proposals were being reviewed in the development of the new regulation, provided a link to the proposal notice for the Blue Box regulation, and provided the Ministry's anticipated timing for making a decision on the Blue Box regulation.

Similarly, the Ministry stated in an update posted on May 14, 2021, that it was still actively reviewing a proposal (originally posted in 2015) to exempt buildings that reflect light (which can harm flying birds)

from requiring an approval under the *Environmental Protection Act*. The Ministry told us that it was reconsidering this proposal in the context of potential amendments to streamline environmental permissions, but we did not find any evidence that this was the case. The Ministry did not include any information in the Environmental Registry update about its current work on the proposal, or anticipated timing for making a decision.

Adding updates to proposal notices that do not accurately reflect the current status of proposals, or that are not sufficiently informative, undermines the purpose of providing updates: to ensure the Registry is a reliable source of accurate and up-to-date information for the public.

### Lack of Transparency About Made-in-Ontario Environment Plan

Further, the Ministry has not been transparent about the status of its plan to address environmental challenges by protecting air, land and water, reducing litter and waste, reducing greenhouse gas emissions and preparing for climate change.

In November 2018, the Environment Ministry posted a policy proposal notice on the Environmental Registry for the *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan* (the Plan) for a 60-day public consultation period.

Since then, the Environment Ministry has indicated that it has implemented aspects of the Plan. For example, the Ministry has announced that initiatives such as reducing waste and expanding recycling services, improving public reporting of pollution, and improving water quality in Lake Erie are a key part of, and are delivering on commitments made in, its Made-in-Ontario Environment Plan. In 2019 and 2020, the Ministry released public updates on the Plan, outlining steps that had been taken, progress on commitments, accomplishments made, and next steps. However, as of September 2021—well over two years since it proposed the Plan—the Ministry still had not posted a decision notice on the Environmental Registry to inform the public that it had decided to implement the Plan.

The Environment Ministry told our Office that a decision notice had not yet been posted on the Environmental Registry because the Made-in-Ontario Environment Plan remains a draft; the Ministry had not yet taken the necessary steps to have the Plan approved. However, the Plan, which was attached to the 2018 proposal notice and is posted as the lead on the Ministry’s main webpage, is not marked “draft,” and the Ministry has not referred to the Plan as “draft” or explained that it is unfinalized in various communications to the public.

The EBR Act requires a ministry to post a decision notice on the Environmental Registry as soon as reasonably possible after it implements a proposal, and to explain the effect of public participation, if any, on the ministry’s decision. These requirements are intended to provide transparency and accountability to the public for ministry decisions that affect the environment. By leaving the proposal notice for the Made-in-Ontario Environment Plan open on the Environmental Registry since 2018 without an update or a decision notice, the Environment Ministry has not been transparent about the status of the Plan, and has not told Ontarians what effect, if any, the almost 1,400 public comments submitted on the proposal had on the Ministry’s decision to implement the Plan.

## RECOMMENDATION 20

So that the Environmental Registry is up-to-date and a reliable source of information about the Ministry of the Environment, Conservation and Parks’ decisions about the environment, we recommend that the Ministry:

- review all existing proposal notices on the Environmental Registry that it has updated to confirm the accuracy of the updates, and immediately correct any updates that are not accurate or up-to-date; and
- going forward, when it is necessary to update a proposal notice because it has been on the Environmental Registry for more than two years but has not yet been decided, post an accurate and informative update about the current status of the proposal, including

specific details about any ongoing work on that proposal, and the Ministry’s anticipated timing for making a decision.

## MINISTRY RESPONSE

The Ministry agrees with the importance of keeping the Environmental Registry up to date. The Ministry has a process in place to regularly identify proposal notices that remain open (i.e., without a decision) on the Environmental Registry and to post updates or decision notices on these proposals. The Ministry always strives to ensure any updates made to notices are accurate and informative and will continue to do so.

## RECOMMENDATION 21

So that the Environmental Registry is up to date and a reliable source of information about the Ministry of the Environment, Conservation and Parks’ decisions about the environment, and to provide transparency and accountability for its decision to implement its Made-in-Ontario Environment Plan, we recommend that the Ministry:

- take the necessary steps to obtain any approvals that may be needed on the Made-in-Ontario Environment Plan; and
- post a decision notice on the Environmental Registry to inform the public of its decision to implement the Made-in-Ontario Environment Plan, and to explain the effect, if any, of public participation on the Ministry’s decision, as required by the *Environmental Bill of Rights, 1993*.

## MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry will continue to develop its approach for posting a decision notice on the Environmental Registry regarding the Made-in-Ontario Environment Plan, including obtaining any approvals that may be needed.

## 6.13 Environment Ministry Did Not Have Effective Processes to Ensure Public is Notified About Appeals on Instrument Decisions

The EBR Act allows any resident of Ontario to ask for permission to challenge (“seek leave to appeal”) decisions on many types of instruments (for example, permits, licences, approvals and other authorizations and orders) in front of an administrative tribunal. For example, a member of the public could use this right to ask the tribunal to change or overturn a decision by the Environment Ministry to allow an industrial facility to discharge contaminants into the air. Decisions about those types of instruments can also be appealed (without first seeking permission) by the individuals and companies directly affected by them (“instrument holders”), such as a decision to deny a permit they applied for or a decision to include certain conditions in an approval issued to them, and, in some cases, by other people (“third parties”). As of June 1, 2021, all leave to appeal applications and direct appeals are heard by the Ontario Land Tribunal; prior to that date, most hearings occurred before the Environmental Review Tribunal or the Local Planning Appeal Tribunal. (See **Appendix 8** for a more detailed explanation of appeal rights and processes under the EBR Act, and appeals filed in 2020/21).

When a member of the public applies under the EBR Act for leave to appeal, and when an instrument holder directly appeals a decision about an instrument prescribed under the EBR Act, they must give notice to the Environment Ministry, and the Environment Ministry must post the appeal notice on the Environmental Registry to inform the public. Before April 1, 2019, the former Environmental Commissioner of Ontario had the responsibility for posting such appeal notices.

Giving prompt notice to the public of leave to appeal applications and appeals of environmentally significant decisions is important not only for transparency, but also because members of the public may wish to seek to participate in an appeal hearing. If

notice of an appeal is not given, or is given late, there is a risk that people who are interested in participating in the appeal hearing may lose that opportunity. There is also a risk that failure to give notice may delay the commencement of a hearing on a leave to appeal application or appeal by the tribunal. This is because the EBR Act provides that a hearing shall not proceed until 15 days after notice is given unless the tribunal considers it appropriate to proceed. The filing of an application for leave to appeal does not stay (suspend) the decision under appeal; therefore, a delay in a hearing of a leave to appeal application would mean that the approval that is being challenged because of potential harm to the environment may be in effect during any period of delay.

In 2020, we found that the Environment Ministry did not give Ontarians prompt notice about four leave to appeal applications and four appeals submitted in 2019/20. By the time the Ministry posted the notices, all but one of the leave to appeal applications had already been decided. The Ministry told our Office at the time that it did not always receive notice from the applicants or appellants, and that it had only recently established a process to post notices once it is notified by the tribunal about an appeal. In February 2021, the Ministry developed an internal best practices document for directing appeal notices received by the Minister's Office to the Ministry's Environmental Bill of Rights Office, which is responsible for posting the notices on the Environmental Registry.

However, in 2020/21, we found that the Environment Ministry again did not give Ontarians prompt notice of one application for leave to appeal (out of three applications made in 2020/21 related to two decisions), or of five direct appeals related to three decisions (out of six appeals filed in 2020/21 related to four decisions). The Environment Ministry posted a notice about an application for leave to appeal an approval for a hauled sewage disposal site in Emsdale, Township of Perry, 27 days after receiving notice that the application had been filed. The Environment Ministry also took 28 days to post a notice about a direct appeal by the instrument holder of its approval for a hauled sewage disposal site in the village of Moose

Creek, and, as of March 31, 2021, had not posted any notice about two direct appeals of a director's order under the *Environmental Protection Act*, or of two direct appeals of an amendment to the Municipality of Greenstone's official plan. It also came to our Office's attention that the Environment Ministry had not posted an appeal notice for an appeal of a *Planning Act* approval to amend the County of Hastings Official Plan that was initiated in 2019/20.

We asked the Ministry why these notices were posted late or not at all. Regarding the notices that were posted late, the Ministry told us that delays occur when applicants and appellants do not promptly notify the Minister or provide the necessary information about the application or appeal required under the EBR Act.

Regarding the appeals for which the Ministry did not post notices, Ministry staff in the Environmental Bill of Rights Office told us they were not aware of the appeals and had not received notice of them from the Minister's Office. However, other staff in the Environment Ministry—and, in the case of the *Planning Act* appeals, the Municipal Affairs Ministry—were aware of these appeals since the ministries were participating in the tribunal hearings for those appeals. The Ministry posted notices for those appeals in May 2021, after we brought them to its attention.

At the root of this issue is the Ministry's position that it has no responsibility for informing Ontarians about leave to appeal applications and appeals, other than to place notices on the Registry when they are delivered to the Ministry in strict accordance with the EBR Act. The Ministry told us: "appeal notices are an appellant/application driven process. The ministry only facilitates placing the notice on the registry, as required under ... the EBR Act." While correct, the Ministry's strict reading of the EBR Act to justify doing the bare minimum required is inconsistent with the purposes of the Act's notice provisions and with the Act's broader purposes of public participation, transparency and accountability. As administrator of the EBR Act, the Environment Ministry should be a champion of the Act and its purposes. Where the Ministry is aware of an appeal or application, regardless of how it

became aware, it should make every reasonable effort to ensure that Ontarians are given timely notice.

## RECOMMENDATION 22

So that Ontarians receive timely notice of all leave to appeal applications under the *Environmental Bill of Rights, 1993* (EBR Act) and appeals of instrument decisions that are subject to the EBR Act, we recommend that the Ministry of the Environment, Conservation and Parks (Ministry):

- establish additional processes to identify all leave-to-appeal applications and all appeals that are filed, including appeals of instruments issued under acts administered by other prescribed ministries;
- post notices about all leave-to-appeal applications and appeals (“appeal notices”) promptly on the Environmental Registry (ideally no later than five business days after the Ministry becomes aware of the application or appeal by any means);
- develop policies and procedures to guide Ministry staff when appeal notices are required to be posted on the Environmental Registry; and
- where leave-to-appeal and appeal details are not provided promptly by the applicants or appellants, promptly post appeal notices on the Environmental Registry to inform Ontarians of the leave-to-appeal application or appeal, with reference to the relevant Tribunal case number, and update the appeal notices if and when more information is provided.

## MINISTRY RESPONSE

The Ministry agrees that all appeal and leave to appeal notices should be posted on the Registry promptly on the appellants’ behalf and already does so when such notices are delivered to the Minister. The Ministry has no direct control over situations where an appellant doesn’t notify the Ministry, or situations where the Tribunal decides

to proceed with hearing an appeal without proper notice having been given for 15 days on the Registry, as required by the EBR Act. Recognizing these challenges, the Ministry will look for ways it can help better identify leave to appeal applications and appeals so that notices are posted promptly.

## 6.14 Environment Ministry Did Not Update the Environmental Registry with Relevant Changes, and Lacked Documentation of Some IT Controls for the Environmental Registry

The Environmental Registry was established under the EBR Act to provide a means of giving information about the environment to the public. For the Registry to meet this purpose, it must be operated and maintained in a way that enables Ontarians to readily and reliably access the information that they need to exercise their EBR rights. The Environment Ministry is responsible for operating the Registry.

In 2020/21, the Environment Ministry maintained and operated the Environmental Registry platform so that it generally worked well to provide information about environmentally significant matters, and to enable the public to participate in ministries’ environmentally significant decision-making. The Ministry’s work to move all legacy notices from the old Registry into a publicly accessible, searchable archive on the new Registry site will allow the public to continue to use the Environmental Registry as a source of historical information about decisions that affect the environment.

However, we found that the Ministry did not keep the Registry updated with changes related to the EBR Act. We also found that the Ministry could not provide documentation to show that it had sufficient internal IT controls for the operation of the Registry platform.



### Environmental Registry Not Updated to Reflect Relevant Changes or to Correct Misinformation on Leave to Appeal Deadlines

We found that the Environment Ministry did not prepare for or take prompt steps to update the Environmental Registry to reflect changes to the tribunals that hear leave to appeal applications and appeals of instrument decisions that are subject to the EBR Act. As of June 1, 2021, the Environmental Review Tribunal, Local Planning Appeal Tribunal, and others, were merged into a new, single tribunal called the Ontario Land Tribunal.

This change occurred as a result of Bill 245, the *Accelerating Access to Justice Act, 2021*, which received royal assent on April 19, 2021. However, after the new Ontario Land Tribunal took effect on June 1, 2021, Environmental Registry instrument decision notices continued to refer to the Environmental Review Tribunal and Local Planning Appeal Tribunal when providing information to the public about how to seek leave to appeal. When we followed up with the Environment Ministry, we were told that staff in the Ministry's Environmental Bill of Rights Office were not aware of the change in tribunals. The Ministry subsequently took steps to update decision notices posted on or after June 1, 2021, to reference the Ontario Land Tribunal and explain how to appeal. However, the Ministry told us in August 2021 that it was still researching technical options to change its notice templates to accommodate different content based on date range.

Further, on June 18, 2021, the Natural Resources Ministry merged with Northern Development and Mines (a portion of the Energy and Mines Ministry) to form a new Ministry of Northern Development, Mines, Natural Resources and Forestry. A new, separate Ministry of Energy was also formed (see **Section 7.1** for a description of these changes). Although the former Natural Resources and Energy and Mines ministries were prescribed ministries under the EBR Act, more than three weeks after these changes were announced, the Environmental Registry had not been updated to reflect the changes. In fact, while the Registry's search functions otherwise

accurately reflect prescribed ministries' names, background information in the "About" section of the Registry had also not been updated to reflect changes to ministry names and organizational structures; we found a similar issue with the Ministry's EBR Act webpage (see **Section 6.18**).

In August 2021, the Ministry told us that it had made the changes regarding the new Ministry of Northern Development, Mines, Natural Resources and Forestry and Ministry of Energy in the Environmental Registry's staging environment, but was awaiting approval of the changes from those ministries before they would be implemented. In late August 2021, the Environmental Registry's search function was updated to reflect the changes. However, background information in the "About" section of the Registry continued to identify the former ministries in a list of ministries prescribed under the EBR Act.

During our audit, we also became aware that the Natural Resources Ministry had posted 11 decision notices in 2020/21 about approvals for aggregate licences with incorrect information about the time Ontarians had to seek leave to appeal these licence decisions. (See **Section 7.8** for a discussion of the issue.) Upon follow-up with the Natural Resources Ministry, we learned that this error, which was incorporated in the Registry system's template for such decision notices, was included in decision notices for all appealable instrument decisions under the *Aggregate Resources Act* dating back to 2019. In November 2019, the Natural Resources Ministry alerted the Environment Ministry, as operator of the Registry, to the error and the posting of misinformation. However, the Environment Ministry did not correct the error, and the Natural Resources Ministry continued in 2020 and 2021 to post notices containing the misinformation.

Failing to keep the Environmental Registry up to date with relevant changes can create confusion for members of the public looking for information about the EBR Act or searching for, reading and commenting on notices. Further, failing to ensure that information about appeal rights in decision notices is accurate creates a risk that Ontarians seeking to apply

for leave to appeal decisions may not be able to exercise their rights. Both circumstances undermine the effective operations of the EBR Act.

### Insufficient Documentation of Internal IT Controls

We asked the Ministry about its internal information technology (IT) controls for operating the Environmental Registry. Internal controls are needed for the Ministry to be able to identify, document and manage risks to the secure and effective operation of the Registry, and to respond to any incidents that could affect the platform's operations.

We found that the Ministry was unable to show that it had a number of IT controls in place for the Registry. For example, the Ministry told us, but was unable to provide documentation to confirm:

- that there have been no cybersecurity hacks or breaches on the Environmental Registry website;
- that the Ministry has preventative controls, such as firewalls and intrusion detection/prevention systems, against unauthorized access to the Environmental Registry IT network;
- that the Ministry has a system or process to monitor for security events within the Environmental Registry network;
- that the Ministry has backup procedures to prevent the loss of Environmental Registry data;
- that the Ministry has key performance indicators to assess whether the Environmental Registry IT system is working as required; or
- the location(s) of the Environmental Registry server(s) (the Ministry told us that the servers are cloud-based and distributed across multiple North American data centres).

Finally, we found that the Environment Ministry does not have a process to verify that only ministry staff who require access have access to the Environmental Registry's internal site (for example, to draft or post notices). Instead, the Ministry relies on staff in the prescribed ministries to inform it when a staff member no longer requires access (for example, because the staff member's role within the ministry has changed, or they no longer work for that ministry).

We reviewed the Ministry's list of active internal users and found that it included staff who no longer worked for a prescribed ministry, and would therefore have no reason to access the Registry, or whose role in a prescribed ministry no longer required access to the Registry. The Ministry's lack of controls in this case risks the Registry's internal site being accessed for unauthorized purposes.

## RECOMMENDATION 23

To ensure the secure and effective operation of the Environmental Registry, we recommend that the Ministry of the Environment, Conservation and Parks:

- develop and implement processes and procedures to identify changes that could affect the operation of the *Environmental Bill of Rights, 1993* (EBR Act) and/or the Environmental Registry, and promptly update information on the Registry, including in notice templates, to reflect any such changes;
- correct the information given to seek leave to appeal under the EBR Act included in Registry templates for applicable future decision notices;
- promptly correct any errors in the information provided on the Registry or in the templates used for Registry notices upon becoming aware of them; and
- develop, implement and regularly update sufficient internal IT controls.

## MINISTRY RESPONSE

The Ministry agrees with the recommendation and is working with our IT partner (Land & Resources I&IT Cluster) to review, design, develop and update the Environmental Registry and associated internal IT controls. The Ministry will continue to work to improve and implement these processes.

## 6.15 Environment Ministry Did Not Provide Sufficient Information to Support Its Decision to Deny an Application for Review of a Regulation Temporarily Suspending EBR Act Rights

In 2020, in response to the COVID-19 pandemic and the state of emergency declared in Ontario, the Environment Ministry made a regulation under the EBR Act that relieved prescribed ministries of their responsibilities under the EBR Act to consult the public and consider their Statements of Environmental Values. The regulation, Temporary Exemptions Relating to Declared Emergency, O. Reg. 115/20 (the “exemption regulation”), came into effect on April 1, 2020.

The Ministry did not consult the public before adopting the exemption regulation, but posted a bulletin informing the public of the exemption regulation. The Ministry stated that the exemption regulation was necessary because the government needed to act quickly to address issues arising from the COVID-19 emergency.

We reported on the exemption regulation in **Chapter 1, Section 6.0** of our 2020 Report on the Operation of the EBR Act. We found that the exemption regulation was overly broad, exempting all proposals from EBR Act requirements—even those unrelated to the COVID-19 emergency. We also found that, even though it was repealed on June 15, 2020, the exemption regulation resulted in members of the public losing their right to seek leave to appeal ministries’ decisions on environmentally significant instruments (that is, permits, licences, approvals and other authorizations and orders) that were proposed during the exemption period and were not related to COVID-19. We had recommended that the Environment and Natural Resources Ministries repost those exempted instrument proposals that were still under consideration, which would have restored Ontarians’ leave to appeal rights for these instruments and respected the purposes of the EBR Act. Neither ministry agreed to do this.

On May 14, 2020, before the exemption regulation was repealed, an individual and an organization submitted an application to the Environment Ministry under the EBR Act, requesting a review of the exemption regulation. The EBR Act permits any two residents of Ontario to ask a prescribed ministry to review an existing policy, act, regulation or instrument in order to protect the environment; or to review the need for a new policy, act or regulation. The applicants asserted that, contrary to the EBR Act, the exemption regulation undermined public participation, environmental protection and government accountability, and that it was overly broad, taking away Ontarians’ legal rights, even for decisions unrelated to the emergency. The applicants asked the Ministry to:

- revoke the regulation;
- suspend proposals and restart notices following revocation;
- defer making decisions until after the emergency;
- require consideration of Statements of Environmental Values for all decisions; and
- review the need for new guidance on the use of exceptions in emergency situations.

The applicants noted that the exemption regulation was itself adopted without public notice or consultation, and therefore the “five-year rule” in section 68 of the EBR Act did not apply to prevent the Ministry from undertaking the review. Section 68 prohibits the Ministry from conducting a review of a decision made within the preceding five years, if the decision was made in a manner considered to be consistent with the intent and purpose of Part II of the EBR Act. Part II of the EBR Act sets out minimum levels of public participation before ministries make decisions on environmentally significant proposals.

On July 13, 2020, the Ministry denied the application for review. In denying the application, the Ministry concluded that section 68 of the EBR Act applied; in other words, that the decision to adopt the exemption regulation was made only months earlier in a manner consistent with Part II of the EBR Act. The Ministry, however, did not explain to the applicants its basis for that conclusion.

Given that the Ministry did not consult the public at all before making the exemption regulation, the basis for the Ministry's conclusion that the exemption regulation was made in a manner consistent with Part II of the EBR Act would likely not be clear to the applicants. Internal documentation that we reviewed did provide an explanation. It stated that the Minister complied with section 16 of the EBR Act, which requires that, for regulation proposals, the Minister must do "everything in his or her power to give notice of the proposal." The documentation stated that the Minister did everything in his power to post but, "given the context of the Emergency Declaration, was unable to post the proposal for public comment."

The Ministry also considered the merits of the application in accordance with the factors set out in section 67 (2) of the EBR Act. The Ministry concluded that, with revocation of the regulation, the public's rights under the EBR Act were restored so the public interest did not warrant a review. While this addressed one of the applicants' concerns, the Ministry did not address the loss of Ontarians' leave to appeal rights for proposals made during the exemption period.

In response to the applicants' request to repost notices, defer decisions and require consideration of Statements of Environmental Values, the Ministry noted that ministries had followed its directive to continue to consult on non-COVID proposals during the exemption period (however, our Office has found that transparency and accountability for some of those proposals decreased as a result of the exemption regulation; see **Section 6.15.1**). The Ministry concluded that there would be no harm to the environment if these requests were not granted; that to require these steps would create "regulatory uncertainty in the context of an ongoing emergency"; and that it was not in the public interest to redeploy Ministry resources to undertake these steps "at a time when the limited ministry resources available have been prioritized on responding to matters related to the COVID-19 emergency."

The Ministry did not explain to the applicants its rationale for concluding that implementing their

requests would create "regulatory uncertainty." Internal documentation that we reviewed noted that there is no retroactive regulation-making authority under the EBR Act, and indicated that the Ministry concluded that retroactively reinstating leave-to-appeal rights about decisions that had already been made and potentially implemented "would result in regulatory uncertainty, and it is unclear whether there would be any legal or practical efficacy in doing so."

The only explanation that the Ministry provided the applicants regarding its conclusion that there would be no harm to the environment if the steps were not taken was that "all other applicable legislation under which decisions were made remained in effect, including legislation that is intended to protect the environment." The Ministry did not explain, for example, how removing Ontarians' right to seek leave to appeal ministry decisions about permits and approvals that authorize such things as the emission of contaminants to air and water would not harm the environment; such challenges are only permitted to be made when the person seeking leave to appeal can demonstrate that the decision to issue the instrument could result in significant harm to the environment.

In response to the applicants' request for new guidance about the use of exceptions under the EBR Act, the Ministry again concluded that there would be no harm to the environment if new guidance were not developed and that it would not be in the public interest to redeploy Ministry resources to undertake the work. The Ministry also noted that the Environment Ministry's Environmental Bill of Rights Office "provides support and guidance to all prescribed decision makers in respect of how to apply the exceptions in the [EBR Act]."

Under Part IV of the EBR Act, a ministry is required to determine whether the public interest warrants a requested review and then to provide a statement of reasons to the applicants to explain its decision. When a ministry does not clearly explain the basis of its decision to deny a requested review, it undermines the transparency of its decision and provides applicants little confidence that their request was fully considered. In this case, the applicants raised

reasonable arguments for the Ministry to conduct the review, and raised a reasonable argument as to why the five-year rule in section 68 of the EBR Act did not apply. However, the Ministry did not provide the applicants sufficient information or a convincing rationale to support its conclusions and its decision to deny the request.

As we noted in our 2020 report, the Ministry could have taken steps to minimize the impacts of the exemption regulation, including re-posting any instrument proposals that were still under consideration in order to restore leave-to-appeal rights for decisions on those proposals. This would not have required retroactive changes to decisions already made. Recognizing that the Ministry would have to temporarily redeploy some staff to respond to the COVID-19 pandemic, the Ministry should still have determined what steps were feasible to minimize the impacts of the exemption regulation on both the environment and Ontarians' rights under the EBR Act.

Further, the Ministry's reliance on section 68 of the EBR Act to deny the review was not reasonable. In this case, the Ministry provided no opportunity for public participation before making the exemption regulation, on the basis that it was not in the Minister's power to do so given the urgent need to respond to the COVID-19 emergency. However, to then state that the decision to make the exemption regulation was made in a manner "consistent with Part II" in order to avoid undertaking a review of that decision on which Ontarians were not consulted is inconsistent with the purposes of the EBR Act.

## RECOMMENDATION 24

To adhere to the requirements of the *Environmental Bill of Rights, 1993*, and to provide greater transparency and accountability to applicants who have requested reviews of environmental matters, we recommend that the Ministry of the Environment, Conservation and Parks provide a clear and detailed explanation when it makes a decision that the public interest does not warrant a requested review.

## MINISTRY RESPONSE

The Ministry will continue to provide clear and detailed explanations when it makes a decision that the public interest does not warrant a requested review, in full compliance with its legal obligations under the EBR Act.

### 6.15.1 Transparency and Accountability for Some Environmentally Significant Decisions Decreased Because of the Exemption Regulation

As noted in **Section 6.15**, while the public consultation requirements of Part II of the EBR Act were suspended because of O. Reg. 115/20, Temporary Exemptions Relating to Declared Emergency (the "exemption regulation"), the Environment Ministry nevertheless directed prescribed ministries to continue to:

- post non-COVID-19-related proposals for public consultation for at least 30 days on the Environmental Registry;
- consider comments received during public consultation;
- give notice of decisions made about proposals (although ministries were directed to use bulletins instead of regulation decision notices for this purpose); and
- consider their Statements of Environmental Values when making decisions, "where feasible."

The Environment Ministry gave this direction "in order to maintain transparency of government decision-making throughout this state of emergency."

While the exemption regulation was in effect from April 1, 2020 until the regulation revoking it came into force on June 15, 2020, prescribed ministries did continue to post proposal notices for public consultation on the Environmental Registry: two proposals for policies, two proposals for regulations and 262 proposals for instruments. Since then, the ministries have posted bulletins on the Environmental Registry to give notice whenever they make decisions about proposals that were posted during the exemption period.

Our Office reviewed a sample of those proposal notices and corresponding bulletins to determine whether the purposes of the EBR Act were met in relation to those proposals, even though the public's rights under the EBR Act were suspended.

Generally, we found that prescribed ministries followed the Environment Ministry's directive, and that the posting of notices on the Environmental Registry, and ministries' consideration of their Statements of Environmental Values, continued as usual. During the exemption period, Ontarians were given notice of and the opportunity to comment on 266 proposals that they may not have even known about if the ministries had ceased to post notices altogether while the public's consultation rights were suspended.

However, we also found that many of the notices related to proposals made during the exemption period did not fully meet the Environment Ministry's directive. The use of bulletins instead of regular decision notices—to avoid including the usual information about leave-to-appeal rights, which did not apply to instrument proposals posted during the exemption period—contributed to this problem.

First, we found that proposal notices we reviewed were inconsistent and, in some cases, unhelpful in how they informed Ontarians when a decision was made. For example:

- Most proposal notices were updated to provide the Environmental Registry numbers for corresponding bulletin decisions, but many did not link directly to those decisions, requiring members of the public to search for the bulletin number in order to view the decision, even though the Environment Ministry instructed ministries to include links between proposals and bulletin decisions.
- Two of the nine Energy and Mines Ministry's proposals were not updated to indicate that a decision had been made, and did not provide a bulletin decision number, so that a user may not know that the proposal had been decided.

- One Technical Standards and Safety Authority policy proposal notice included a link to the corresponding bulletin decision, but did not indicate that a decision was made.

Second, we found that bulletins giving notice of decisions were inconsistent in their content, sometimes leaving out key information. For example:

- Of the sample of 24 bulletin decisions posted by the Environment Ministry that we reviewed, one did not attach copies of the 75 comments submitted on a regulation decision, although the notice did provide a summary of the comments and the Ministry's response to those comments. The Ministry also did not provide copies of the issued approvals for three decisions (13%) on approval types for which the Ministry usually does provide copies of the approvals.
- In two of eight bulletin decisions posted by the Municipal Affairs Ministry that we reviewed, the Ministry did not report how many comments were received or the effects of public participation. One of the eight bulletins did not include a copy of the one comment submitted. Although seven of the eight bulletins were for decisions that would ordinarily be subject to leave to appeal under the EBR Act, those seven bulletins did not explain that the usual EBR Act leave-to-appeal rights did not apply.
- The then Energy and Mines Ministry did not describe the effects of public participation (other than, in some cases, stating that comments were considered) in five of the nine (56%) decision notices that we reviewed. In three of those cases, copies of the comments were also not provided.
- Eleven of the 15 decision bulletins posted by the Technical Standards and Safety Authority did not report how many comments were submitted on the proposal or the effect of public participation, and did not explain that the usual EBR Act leave-to-appeal rights did not apply to those decisions.

Although it was the Environment Ministry that issued the directive and provided guidance to other ministries (through its Inter-ministerial Committee) about posting proposals and decision notices to the Registry during the exemption period, we identified some additional issues that were unique to that Ministry. In particular:

- While the other ministries provided evidence that they considered their Statements of Environmental Values in the sample of decisions that we reviewed, the Ministry could only provide evidence that it considered its Statement of Environmental Values for four of the five decisions for which we requested proof. Further, two of the consideration documents that the Ministry did provide were not dated, and the Ministry could not provide documentation to confirm that the Statement was considered before the decisions were made.
- While other ministries generally gave prompt notice of decisions, the Environment Ministry posted 15 of the 24 (63%) bulletins for instrument decisions that we reviewed more than two weeks after the decision was made (compared with 16% of a sample of regular instrument decision notices in 2020/21). Eleven (46%) of these were posted more than two months after the decisions were made, including a notice of a Certificate of Property Use that was posted over 10 months after it was issued, and notices about a permit to take water and an environmental compliance approval for air emissions that were both posted over eight months after the approvals were issued.

In short, we concluded that, overall, while ministries continued to consult the public on proposals made during the exemption period, there was less transparency and accountability for decision-making on proposals posted during that time than would normally have been the case.

## 6.16 Environment Ministry Did Not Meet Timelines in Five of the Eight Applications for Review Concluded in 2020/21

When a prescribed ministry receives an application for review under the EBR Act, the ministry must follow certain legislated timelines in handling the application, including:

- acknowledging receipt of the application within 20 days of receiving the application;
- determining whether the public interest warrants the requested review and giving notice of its decision whether to conduct a review within 60 days of receiving the application (known as the “preliminary decision”);
- if the ministry decides to conduct the requested review, completing the review “within a reasonable time”; and
- if the ministry decides to conduct the requested review, giving notice of the outcome of the review within 30 days of completing the review.

In 2020/21, the Environment Ministry concluded eight applications for review initiated under the EBR Act (that is, it completed and gave notice to the applicants of the final outcome). Five were reviews that the Environment Ministry had agreed to conduct in past reporting years, while three were for new applications for review submitted in 2020/21 that the Ministry denied.

Of the five reviews that it concluded in 2020/21, the Environment Ministry did not meet the legislated timeline to provide a preliminary decision within 60 days for two of the reviews, when the Ministry initially considered whether to conduct the reviews. In the first case, the Ministry was two weeks late giving notice to the applicants that it would undertake a review of the Ministry’s guidance on landfill siting in hydrogeologically unsuitable areas. The Ministry had notified the applicants that it required more time to deliver its preliminary decision, but the EBR Act does not provide discretion for the Ministry to extend

the 60-day timeline. In the second case, the Ministry was over a month late providing its preliminary decision to the applicants of one of the requests for review of the then 19-year-old environmental compliance approval for a never-constructed landfill in the United Counties of Leeds and Grenville in eastern Ontario, known as the ED-19 landfill.

The Environment Ministry also missed the deadline for providing a notice of outcome to the applicants of three completed reviews. For both applications regarding the approval for the ED-19 landfill, the Ministry did not deliver its notice of outcome until over two months after the environmental compliance approval for the landfill was revoked—the latest date on which the Ministry could be considered to have completed its review of the approval. Similarly, the Environment Ministry did not provide a notice of outcome to the applicants in its review of the reporting deadline for pesticide use on golf courses until six months after the regulatory amendments under the *Pesticides Act* that related to the applicants' request were made.

In addition to not meeting the legislated timelines for these applications, we concluded that three of the five reviews conducted were not completed within a reasonable time, as required by the EBR Act: the review of guidance on landfill siting, which was requested in 2013, and two reviews related to pesticide use on golf courses, which were both submitted in 2017. The EBR Act does not specify what a reasonable length of time to complete a review might be, as it varies from case to case, based on the review's complexity and other factors, such as a need to gather scientific or technical evidence before completing the review. In each of these three cases, the Ministry had not met its own deadlines for completing the reviews, promising and then missing revised deadlines.

When ministries do not adhere to the specific timelines for handling applications for review under the EBR Act, or complete undertaken reviews within a reasonable time, the Ministry's accountability may be diminished, implementation of reforms may be delayed, and Ontarians' confidence in the EBR Act and its tools as an effective means of influencing

environmental decision-making may be undermined. In our 2019 and 2020 reports on the operation of the EBR Act, we recommended that the Ministry provide reasonable completion dates to applicants and complete the reviews by that time.

In the past, the Environment Ministry had a practice of periodically posting a notice on the Environmental Registry that provided a status update on applications for review submitted to the Ministry. Resuming that practice could allow for greater transparency for applicants and the public, and greater accountability for the Ministry's handling of applications for review.

For details about the eight applications that the Environment Ministry concluded in 2020/21, see **Appendix 7**.

## RECOMMENDATION 25

To adhere to the requirements of the *Environmental Bill of Rights, 1993* and to provide accountability to Ontarians who submit applications for review, we recommend that the Ministry of the Environment, Conservation and Parks meet all legislated timelines for all applications for review submitted, and complete all undertaken reviews within a reasonable time.

## MINISTRY RESPONSE

The Ministry agrees with this recommendation and makes every attempt to complete reviews in a timely manner. The Ministry made significant progress by completing five reviews in 2020/21, as well as considering whether to undertake three new applications for review, and will continue to work to conclude all outstanding reviews within a reasonable time.

## RECOMMENDATION 26

To adhere to the requirements of the *Environmental Bill of Rights, 1993* to complete reviews within a reasonable time, and to provide greater



transparency and accountability, we recommend that the Ministry of the Environment, Conservation and Parks post periodic updates on the Environmental Registry about the status of all applications for review submitted to the Ministry.

## MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry makes every attempt to complete reviews in a timely manner, as well as to provide updates to the applicants periodically, as required by the EBR Act.

### 6.17 Environment Ministry Did Not Provide Educational Programs to Ontarians About Environmental Rights in the EBR Act

For Ontarians to exercise their rights under the EBR Act, they first need to know that these rights exist. We engaged a polling firm to survey Ontario residents to gauge their awareness of their legislated environmental rights under the EBR Act. This survey of 1,000 Ontarians found that over half of those surveyed (52%) had never heard of the Act. While 47% of those surveyed said they were aware of the EBR Act, only one in ten could name one of the rights provided under the Act. The remaining 1% preferred not to answer. Similarly, 84% of those surveyed said they did not know anything about the Environmental Registry. Only 6% of those surveyed identified the Environment Ministry as the appropriate entity to contact for information about their EBR Act rights.

Under the EBR Act, the Environment Ministry is required to provide educational programs about the EBR Act to the public, but it is still not doing so. As reported in our 2020 report, the Ministry had not started providing educational programs to Ontarians about their rights in the EBR Act. In response, the Ministry indicated that it was committed to enhancing its education to Ontarians about the EBR and how to exercise their rights.

While the Ministry provides information and links about the EBR Act and the public's rights under it on a webpage ([www.ontario.ca/page/environmental-bill-rights](http://www.ontario.ca/page/environmental-bill-rights)) and on the Environmental Registry, we found that the Ministry did little in 2020/21 to actively reach out and educate the public, and did not have any specific funds budgeted for educational programs.

The Ministry has drafted a communications plan to educate the public on the EBR Act. This draft plan proposes a “digital-first approach” that uses the Ministry's existing social media channels (for example, Facebook, Twitter, LinkedIn, Instagram) and partner channels (for example, ministries, partner organizations) to help raise public awareness of the EBR Act and educate Ontarians on their rights and how they can participate in government decision-making. The draft plan also proposes incorporating general information about the EBR Act into news releases, and conducting research (through polls or surveys) to gauge public awareness and understanding of the EBR Act.

To be effective, educational programs should be accessible and reach a broad range of Ontarians, and enable members of the public to access the information they need to meaningfully exercise their rights under the EBR Act. Not all Ontarians actively engage in social media, and so a variety of approaches may be needed to educate them about the EBR Act. These could include in-person and online presentations to communities and organizations, and the dissemination of printed materials.

By comparison, even though it has no statutory requirement to do so, the Ministry of Labour, Training and Skills Development provides public education programs about the legislation it administers, including the *Employment Standards Act, 2000* and the *Occupational Health and Safety Act*. For example, the Labour Ministry provides a comprehensive online guide to inform the public of rules that employers must follow, and to help the public understand their rights under the *Employment Standards Act, 2000*. This guide is accompanied by a number of educational resources, including educational videos, in-person and virtual information sessions, downloadable

posters, and guidance in 20 languages. In another example, the Ontario Human Rights Commission, which is required to develop and conduct public information and education programs on the Ontario Human Rights Code, holds training events, provides an eLearning program, posts recorded webinars, and has developed a publicly available curriculum for educators to teach students about human rights and the Ontario Human Rights Code in schools.

## RECOMMENDATION 27

As we recommended in 2020, so that Ontarians are aware of their environmental rights and how to exercise them, and to meet the Ministry's educational responsibility under of the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that the Ministry of the Environment, Conservation and Parks develop and implement a comprehensive plan for providing educational programs about the EBR Act to a broad range of Ontarians.

## MINISTRY RESPONSE

The Ministry is committed to educating Ontarians about the EBR Act and is continuing to develop and implement plans to improve the Ministry's educational programs to inform Ontarians about how to exercise their rights under the EBR Act.

## 6.18 Environment Ministry's EBR Act Website Needed Updates, and Ministry Did Not Have Processes for Ensuring General Information About the EBR Act is Provided When Ontarians Call for Information

Under the EBR Act, the Environment Ministry must provide general information about the Act to members of the public who wish to participate in decision-making about a proposal. To fulfill this requirement, information that the Ministry provides to the public should be accurate, helpful and

timely, and provided in accordance with Ontario government standards.

To satisfy this requirement, the Environment Ministry does two things:

- it maintains a webpage on its website that provides an overview of the EBR Act and the public's rights under the EBR Act, and how to exercise those rights; and
- it responds to email and telephone inquiries from the public about the EBR Act. The Ministry's EBR Act website provides a link to Ministry contact information, including telephone numbers and an option to send an email to the Ministry. The Environmental Registry also includes a "contact us" feature that allows members of the public to provide feedback to the Ministry about the Registry, or to send an email directly to the Ministry's Environmental Bill of Rights Office.

The Ministry also routinely takes steps to ensure relevant stakeholder groups, members of the public and Indigenous communities are made aware of various proposal, information and decision notices posted on the Environmental Registry through direct outreach (for example, letters to stakeholders or communities). Some notices are also promoted through news releases and social media posts.

We reviewed the Environment Ministry's EBR Act website, and found that it did provide general information about the EBR Act and how Ontarians can exercise their rights under the Act. However, the list of prescribed ministries on the website mirrored O. Reg 73/94 (the General Regulation under the EBR Act), which had not been updated to reflect the separation of the Ministry of Health and the Ministry of Long-Term Care, which occurred on June 20, 2019, or the revised names of the Ministry of Tourism, Culture and Sport and the Ministry of Labour. As of September 2021, the website also did not reflect the new Northern Development and Natural Resources Ministry or the new Energy Ministry created in June 2021.

Referring to the list of prescribed ministries in O. Reg. 73/94 when several of those ministries no longer exist under those names may be confusing to the public and hinder their ability to exercise their

rights. For example, members of the public who wish to submit an application for review under the EBR Act could have difficulty determining to which ministry or ministries they should submit their application. Explanatory text on the Ministry's EBR Act website to clearly inform Ontarians about which current ministries are subject to the EBR Act's requirements would help avoid confusion and better assist them in exercising their rights under the Act.

We also reviewed the Ministry's handling of email inquiries, and found that the Ministry generally responded to those inquiries helpfully, accurately and in a timely manner. However, the Environment Ministry was unable to provide details from any telephone calls that it received about the EBR Act in 2020/21, as it did not keep any records of calls received. While the Ministry maintains a database to record and track email inquiries about the EBR Act, it does not have a database or management system to track and allow the analysis of the number, subject, status or outcome of telephone inquiries. Without records of such calls, the Ministry cannot determine if it is effectively complying with its EBR Act obligation to provide general information to members of the public who wish to participate in environmental decision-making.

Further, the Ministry does not have processes in place to ensure that any calls about the EBR Act received by the Ministry's or government's general inquiry telephone lines would either be directed to the appropriate office in the Ministry, or that the staff answering those telephone lines would be equipped to provide helpful and accurate information about the EBR Act.

The Ministry also told us that it does not have any documented staff guidance on handling emails and calls from the public about the EBR Act. The Ministry told us that its process is for general inquiries about the EBR Act to be directed to the Ministry's Environmental Bill of Rights Office, where staff have expertise about the EBR Act and how it works.

However, we tested how calls to the Ministry's and government's general inquiry lines about EBR Act matters are handled, and found that staff responding to these calls did not reliably or consistently refer us to

knowledgeable staff or provide information regarding the EBR Act.

Our Office called Service Ontario and the Environment Ministry's general inquiry lines as "secret shoppers" with questions about Ontarians' environmental rights. When we called Service Ontario at various times of the day, 10 (91%) of 11 times we got a busy recording and the call was disconnected. When our Office connected with a Service Ontario agent on the eleventh call, we were directed to the general inquiry number for the Air Quality Health Index (a specialized program, unrelated to the EBR Act, that provides Ontarians with real-time air pollution data), and to the Environment Ministry's general inquiry line.

We called the Environment Ministry's general inquiry line six times, asking either a general question about Ontarians' "environmental rights," about the EBR Act itself, or about specific processes in the EBR Act. In all cases we were directed to the Ministry's environmental permissions branch, which handles permits and approvals under general environmental legislation. In some cases, that branch further directed us to the EBR Act on the government's e-laws website and to the Ministry's EBR website. In one of those calls, we were also given a general explanation of the EBR Act's right to comment on proposal notices posted on the Environmental Registry. While the information provided in these cases was more helpful than in our other calls, only once were we referred to the Environmental Bill of Rights Office—and in that case, we were told to call a staff member who was on leave at the time.

Based on the process described by the Ministry, it was reasonable to expect that in each of our calls we would be directed to staff in the Ministry's Environmental Bill of Rights Office. This was not consistently the case. From our testing, we find little assurance that Ontarians seeking information about their environmental rights – or matters that may be subject to the EBR Act – will receive helpful and informative assistance from the Ministry.

Having documented procedures and guidance for its staff and for other government staff that operate

general inquiry telephone lines would help the Ministry ensure that Ontarians who wish to be informed about the EBR Act, or to exercise their environmental rights, are consistently provided with the information they need to do so.

## RECOMMENDATION 28

So that Ontarians can reliably access accurate and timely general information about the *Environmental Bill of Rights, 1993* (EBR Act), and so that the Ministry of the Environment, Conservation and Parks can monitor its compliance with the EBR Act in handling inquiries from the public, we recommend that the Ministry:

- regularly update the EBR Act website to clearly inform Ontarians about the existing ministries that are subject to the EBR Act's requirements;
- maintain records of telephone calls received from members of the public with inquiries about the EBR Act;
- develop written guidance for Ministry staff on responding to public inquiries about the EBR Act; and
- establish processes and procedures for ensuring that public inquiries about the EBR Act received by the Ministry's and the government's general inquiry telephone lines and email accounts are directed to Ministry staff who are knowledgeable about the EBR Act, and for keeping records of such inquiries and the Ministry's handling of them.

## MINISTRY RESPONSE

The Ministry agrees with the recommendation and will consider ways to improve processes, procedures, guidance, and record keeping related to responding to public inquiries and keeping the public informed about the EBR Act.

## 7.0 Ministry of Natural Resources and Forestry (Natural Resources Ministry) and Ministry of Energy, Northern Development and Mines (Energy and Mines Ministry)

### 7.1 Changes to Natural Resources and Energy and Mines Ministries in June 2021

The Ministry of Natural Resources and Forestry and the Ministry of Energy, Northern Development and Mines were both prescribed ministries under the EBR Act during our assessment of EBR Act implementation and compliance for the period of April 1, 2020, to March 31, 2021.

However, on June 18, 2021, those ministries changed. Northern Development and Mines merged with Natural Resources and Forestry to form the Ministry of Northern Development, Mines, Natural Resources and Forestry (the Northern Development and Natural Resources Ministry), and a separate Ministry of Energy (Energy Ministry) was formed.

The results of our audit for 2020/21 are presented below for the work of the former Ministry of Natural Resources and Forestry and the former Ministry of Energy, Northern Development and Mines, as they were at the time of our audit. However, our recommendations are directed to the ministries as they exist now: as the new Northern Development and Natural Resources Ministry and the new Energy Ministry.

In 2022, we will audit and issue individual report cards for the Northern Development and Natural Resources Ministry's and the Energy Ministry's compliance with and implementation of the EBR Act.

## 7.2 Overview of the Former Ministry of Natural Resources and Forestry (Natural Resources Ministry)

The former Natural Resources Ministry had primary responsibility for natural resources management in Ontario, including developing and implementing policy regarding:

- forest management, support for and oversight of the forest industry;
- aggregate, oil, gas and salt resources;
- species conservation and biodiversity;
- Ontario’s Crown lands and waters, fish and wildlife;
- natural resources monitoring, mapping and research;
- community-based land use planning in the Far North;
- Niagara Escarpment planning; and
- public safety, flood control and natural hazard emergency response.

The Natural Resources Ministry was also responsible for promoting economic growth and job creation in the forestry, aggregates and fishery sectors, and providing science support for species at risk and parks to the Environment Ministry.

The Natural Resources Ministry was responsible for nine laws that are prescribed under the EBR Act, including the *Fish and Wildlife Conservation Act, 1997*, the *Crown Forest Sustainability Act, 1994*, and the *Invasive Species Act, 2015*. The Ministry also shares responsibility with the Environment Ministry for the *Conservation Authorities Act*. The Ministry was required to consult the public about instruments (permits, licences, approvals and other authorizations and orders) issued under nine prescribed acts, such as licences issued under the *Aggregate Resources Act*. The Natural Resources Ministry was also subject to receiving applications for review and applications for investigation from the public.

In 2020/21, the Natural Resources Ministry used the Environmental Registry to post 133 notices about environmentally significant policies, acts, regulations and instruments, and other matters.

See **Section 7.3 (Figure 6)** for the former Natural Resources Ministry’s report card on compliance with and implementation of the EBR Act in 2020/21, and **Sections 7.4 – 7.9** for our detailed findings and recommendations.

## 7.3 Report Card on the Former Natural Resource Ministry’s Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry’s compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

**Figure 6: Ministry of Natural Resources and Forestry**

Prepared by the Office of the Auditor General of Ontario

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
<b>1. Statement of Environmental Values (Statement)</b>				
a. Statement is up-to-date	○	In October 2020, the Ministry finalized a new Statement that reflected the Ministry’s responsibilities and government priorities, such as addressing climate change.	○	●

- Legend:**
- Met criteria
  - Partially met criteria
  - Did not meet criteria
  - The ministry did not execute any responsibilities under this category in this reporting year
  - n/a The ministry is not prescribed for this category
  - Not assessed New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
b. Statement is considered when making decisions	<input type="radio"/>	The Ministry provided documentation to show it considered its Statement for all 18 decisions that it made on policies, acts and regulations, and for a sample of 25 instrument decisions. Six of the consideration documents were not dated, but the Ministry was able to provide documentation to confirm that consideration occurred at the time of decision-making.	<input type="radio"/>	<input type="radio"/>
<b>2. Use of the Environmental Registry (Registry)</b>				
a. Notice of proposals is given as required by the EBR Act	<input checked="" type="radio"/>	<b>Section 7.4</b> - The Ministry did not notify or consult the public about a regulation, O. Reg. 159/21 made under the <i>Conservation Authorities Act</i> , that enabled development in a provincially significant wetland. It also came to our attention that the Ministry had not notified or consulted the public about the decision to no longer give effect to an environmentally significant policy, <i>A Wetland Conservation Strategy for Ontario: 2017-2030</i> , which occurred after the change in government in 2018.	<input checked="" type="radio"/>	<input type="radio"/>
b. Time to comment is extended based on the factors in the EBR Act	<input type="radio"/>	The Ministry met this criterion.	<input checked="" type="radio"/>	<input type="radio"/>
c. Proposal notices for policies, acts and regulations are informative	<input checked="" type="radio"/>	<b>Section 7.5</b> - The Ministry posted nine proposal notices this year. One of the proposal notices (11%), regarding proposed changes to the <i>Far North Act, 2010</i> , did not provide information a reader would need to fully understand the environmental implications of the proposed changes.	<input checked="" type="radio"/>	<input checked="" type="radio"/>
d. Proposal notices for instruments are informative	<input type="radio"/>	The Ministry posted 50 proposal notices for permits and approvals on the Registry. We reviewed a sample of 25 proposal notices, and the Ministry met this criterion.	<input type="radio"/>	<input type="radio"/>
e. Received comments are reviewed and considered	<input type="radio"/>	We reviewed documentation related to the Ministry's consideration of comments submitted about three proposals for policies and regulations, and two proposals for instruments. The Ministry's consideration met this criterion.	Not assessed	Not assessed
f. Prompt notice of decisions is given	<input checked="" type="radio"/>	<b>Section 7.6</b> - The Ministry posted 18 decision notices for policies, acts and regulations, and 38 decision notices for permits and approvals on the Registry. The Ministry posted four (22%) of the 18 decision notices for policies, acts and regulations more than two weeks after the decisions were made, and posted six (24%) of the 25 decision notices for permits and approvals that we reviewed more than two weeks after the decisions were made. In total, 10 (23%) of the 43 notices we reviewed were posted more than two weeks after the decisions were made.	<input checked="" type="radio"/>	<input checked="" type="radio"/>
g. Decision notices for policies, acts and regulations are informative	<input checked="" type="radio"/>	<b>Section 7.7</b> - The Ministry posted 18 decision notices on the Registry for policies, acts and regulations. One decision notice, for amendments to the <i>Crown Forest Sustainability Act, 1994</i> , did not adequately describe the decision that was made or describe the effects of public participation on the decision.	<input type="radio"/>	<input type="radio"/>
h. Decision notices for instruments are informative	<input checked="" type="radio"/>	<b>Section 7.8</b> - The Ministry posted 38 decision notices for permits and approvals on the Registry. We reviewed a sample of 25 notices, and none of those notices provided a link and/or attachment to the final approval issued. Further, nine decision notices for Class A Aggregate Licences we reviewed included incorrect information about the time within which a leave to appeal application must be made.	<input checked="" type="radio"/>	<input checked="" type="radio"/>
i. Proposal notices are up-to-date	<input checked="" type="radio"/>	<b>Section 7.9</b> - As of March 31, 2021, the Ministry had 23 proposal notices that had been on the Environmental Registry for over two years without a decision or update, representing 12% of the Ministry's open proposals on the Registry. Further, we found that the Ministry updated two other proposal notices with inaccurate information about the proposals' status, and we did not find evidence that two other updated proposals were, in fact, still being considered.	<input checked="" type="radio"/>	<input checked="" type="radio"/>

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

## 7.4 Natural Resources Ministry Did Not Notify or Consult Ontarians about Two Decisions Related to Wetlands, as Required Under the EBR Act

In 2020, we found that the Natural Resources Ministry had not consulted the public about two environmentally significant policy decisions (one for changes to Ontario’s approach to cage aquaculture, and one for Ontario’s Flooding Strategy). The Ministry posted bulletins about the decisions instead. We recommended that the Ministry consistently consult the public about its environmentally significant proposals in accordance with the EBR Act, and the Ministry agreed, stating “[t]he Ministry will ensure that required public consultation is undertaken for all proposals that are environmentally significant.”

However, this year we again found that the Ministry did not consult the public on an environmentally significant proposal. In October 2020, the Municipal Affairs Minister issued a Zoning Order authorizing the development of a warehouse on lands that are designated as a Provincially Significant Wetland and Significant Wildlife Habitat, part of the Lower Duffins Creek wetland complex in Pickering. (There was no opportunity for public comment through the Environmental Registry on that Order because, as discussed in **Section 4.5.2** of this report, Minister’s Zoning Orders are exempted from public consultation under the EBR Act.) In December 2020, Bill 229 (the budget measures bill discussed in **Section 6.5**) made changes to the *Conservation Authorities Act* that prevent conservation authorities from refusing to grant development permission for any project authorized under a Minister’s Zoning Order, regardless of the environmental impacts.

Under the new provisions, conservation authorities can impose conditions on projects (such as flood control, erosion control, or the conservation of land) to help minimize adverse impacts on the environment, public health or safety, or property. Before development can commence, conservation authorities

are also required to enter into agreements with developers to compensate (financially or through on-the-ground actions) for ecological and other impacts resulting from the project. Changes to the Act also authorized the Natural Resources Minister to make regulations “requiring that the permission be granted within a specified time after the application is submitted.” (There was no public consultation on those changes.)

The developer applied to the Toronto and Region Conservation Authority for development permission on February 16, 2021. As part of its review of the proponent’s application, the conservation authority identified potential conditions that could mitigate the anticipated adverse environmental impacts and compensate for the ecological impacts of removing the wetland. The developer disputed those conditions and requested a hearing before the authority’s Board of Directors. Before the hearing could be held, on March 4, 2021, the Natural Resources Minister filed a regulation (O. Reg. 159/21), without first consulting the public on the Environmental Registry, requiring the Toronto and Region Conservation Authority to grant, within a week, the permission to allow development to start on the site by March 12, 2021.

The conservation authority held a hearing on March 12, 2021, and issued the permission on the same day, meeting the provincially mandated deadline, even though the authority stated publicly that it would not otherwise have done so. The conservation authority noted that issuing such permission “conflicts with [its] mandate to further the conservation, development, and management of natural resources in watersheds within our jurisdiction.”

Even though the *Conservation Authorities Act* is prescribed under the EBR Act’s General Regulation for the purposes of consulting the public on environmentally significant proposals about regulations, and the regulation appeared to have potential for a significant effect on the environment, the Ministry did not give notice of the proposed regulation and did not consult Ontarians about the proposal.

We asked the Ministry why it did not do so, and the Ministry told us that “setting a timeline to

issue a permit was not considered environmentally significant.”

In some circumstances, merely setting a deadline to issue a permit might not be environmentally significant. However, in circumstances where a short deadline is imposed and a conservation authority is left without sufficient time to exercise its professional judgment in reviewing an application, designing adequate conditions, negotiating with a developer, and issuing a permit with written reasons, while meeting its obligation to afford a fair hearing to the developer, there could very well be a significant effect on the environment. Here, the environmental impacts of the development were significant locally and regionally. The conservation authority’s staff report prepared for the hearing makes clear that staff did not agree that the developer’s initial proposal for ecological compensation would adequately compensate for the habitat being lost and noted that the developer’s submitted plans were insufficient to adequately address stormwater, erosion and sediment control. At the time of the hearing, conservation authority staff indicated that further investigation and analysis was required to ensure adequate compensation for the lost wetland. Imposing a short deadline on the issuance of a permit in these circumstances was environmentally significant.

Following issuance of the permit and media reports regarding public concerns with the potential environmental implications of the proposed development, the prospective warehouse tenant abandoned the site as a possible location and Pickering City Council voted to ask the Municipal Affairs Minister to amend the zoning order. On July 2, 2021, the Municipal Affairs Minister removed the Provincially Significant Wetland portion of the site from the zoning order.

Also, during the course of another audit carried out by our Office in 2020/21, the Natural Resources Ministry informed us that the direction and targets found in *A Wetland Conservation Strategy for Ontario: 2017-2030*—an environmentally significant policy—have not been in effect since the change in government in 2018. The Ministry did not notify

or consult the public through the Environmental Registry on its decision to archive the strategy and no longer give effect to the direction and targets in it. As a result, wetland researchers, stakeholders and the public were unaware that the strategy had been archived and its targets were no longer in effect.

## RECOMMENDATION 29

As we recommended in 2020, to ensure that Ontarians can take part, and the government has the benefit of Ontarians’ insights and opinions about the government’s environmentally significant decision-making, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry consistently consult with the public according to the requirements under Part II of the *Environmental Bill of Rights, 1993*.

## MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to meeting its obligations under Part II of the EBR Act. The Ministry will ensure that required public consultation is undertaken for all proposals that are environmentally significant.

## 7.5 Natural Resources Ministry Did Not Fully Inform Ontarians of the Environmental Implications of Proposed Changes to the *Far North Act, 2010*

In 2019, the Natural Resources Ministry had consulted through the Environmental Registry on a proposal to repeal the *Far North Act, 2010* in order to “reduce red tape and restrictions on economic development projects,” including in the Ring of Fire, a region in Northern Ontario with significant chromate and other metal deposits where the government is encouraging economic development. (The *Far North Act, 2010* outlines the framework for land use planning in Ontario’s Far North, which is done jointly



between Indigenous communities and the province.) In addition to the Registry notice, the Ministry had consulted directly with Indigenous communities and organizations and other stakeholders. Based on the feedback it received, the Ministry decided to withdraw its proposal to repeal the *Far North Act, 2010*.

On November 30, 2020, the Ministry posted a new proposal notice on the Environmental Registry for amendments to the *Far North Act, 2010*. The new proposal would change the *Far North Act, 2010* to “amend or delete provisions that are perceived as hindering economic development” and enhance collaboration between the province and Indigenous communities on land use planning. Despite potentially far-reaching implications for natural heritage and climate resilience, the Ministry did not explain the potentially significant environmental impacts of these changes. One specific change would remove a commitment to protect 225,000 square kilometres as a planning objective and replace it with an objective to protect areas of cultural value as well as ecological systems, which is “intended to promote economic growth in the Far North by creating a balance between designated protected areas and areas for development.” The notice is silent on the possible impacts of such a significant change to the province’s conservation goals in the Far North, leaving Ontarians without necessary facts to make meaningful comments.

### RECOMMENDATION 30

As we recommended in 2019 and 2020, so that Ontarians can understand and provide more informed feedback to the Ministry of Northern Development, Mines, Natural Resources and Forestry on environmentally significant proposals, we recommend that the Ministry clearly and fully describe the environmental implications of each proposal posted on the Environmental Registry.

### MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to full compliance with its legal

obligations under the EBR Act. The Ministry’s internal guidance and training provide direction to staff on the appropriate content expected in Registry notices. This includes the best practice of describing the environmental effects in each notice where possible.

## 7.6 Natural Resources Ministry Took Over Two Weeks to Post 23% of the Decision Notices We Reviewed, Including Six Weeks to Post Decision to Update Ontario’s Tree Seed Transfer Policy

In 2019, we found that the Natural Resources Ministry took more than two weeks to give notice of 60% of the decisions we reviewed, and in 2020, 52%. We recommended that the Ministry follow its internal service standard of giving notice of all decisions within two weeks of the decision being made.

In 2020/21, we saw some improvement on timelines. The Natural Resources Ministry posted 56 decision notices on the Registry: 18 decision notices for policies, acts and regulations; and 38 decision notices for instruments. We reviewed all decision notices for policies, acts and regulations, and a sample of 25 of the 38 decision notices for instruments.

Of the 43 decision notices we reviewed, 10 (or 23%) were posted more than two weeks after the decision was made. Of the 18 decision notices for policies, acts and regulations, four (22%) of the notices were posted more than two weeks after the decision was made. For example, the Ministry took 42 days (six weeks) to notify the public about a decision to update Ontario’s Tree Seed Transfer Policy, which provides guidance on selecting tree seeds that will be well adapted to their environment in order to maintain healthy and diverse forests.

Of the 25 decision notices for *Aggregate Resources Act* instruments we reviewed, six (24%) were posted more than two weeks after the decision was made.

## RECOMMENDATION 31

As we recommended in 2019 and 2020, to give Ontarians prompt notice of its environmentally significant decisions, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry post all decision notices on the Environmental Registry as soon as possible after making a decision, which should be no more than two weeks after making the decision, as stated in its own service standard.

## MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to posting decision notices as soon as reasonably possible. The Ministry's internal guidance (e.g., templates and best practices bulletin) and training provides direction to staff on the appropriate timing for Registry decision notices. This includes the best practice of posting within two weeks of the decision being made.

### 7.7 Natural Resources Ministry Did Not Clearly Describe Decision to Exempt Forest Operations on Crown Land from the *Endangered Species Act, 2007*, or the Effects of Public Participation

The Natural Resources Ministry included amendments to the *Crown Forest Sustainability Act, 1994* in the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* (Bill 229)—discussed in **Section 6.5** above—which came into effect December 8, 2020. The Ministry had posted a policy proposal notice for changes to the *Crown Forest Sustainability Act, 1994* in December 2019, and posted a decision notice on the Environmental Registry for that proposal on December 21, 2020, stating that the amendments made by Bill 229 implemented that policy proposal.

In our 2020 Report on the Operation of the EBR Act, we found that the proposal notice did not clearly tell the public what the Ministry intended to do, what the impacts on species at risk might be, or how the Ministry intended to protect species at risk in the future if forest operations were to be permanently exempted from the *Endangered Species Act, 2007*. We recommended that the Ministry repost the proposal, with revised wording to address the identified deficiencies, including more accurate and complete information on species at risk, and consult the public on the specific legislative changes being proposed. We stated that reposting “could enable better public understanding of the proposal and provide the Ministry with the benefit of more informed public comment, demonstrating the Ministry’s commitment to meaningful public participation and the purposes of the EBR Act.” (See our 2020 Report on the Operation of the EBR Act, **Chapter 1, Section 8.0.**)

The changes to the *Crown Forest Sustainability Act, 1994* made by Bill 229 added a new section providing that the prohibitions in the *Endangered Species Act, 2007* on killing or harming a species at risk or damaging or destroying its habitat do not apply to a person who does those acts while conducting forest operations in a Crown forest in accordance with an approved forest management plan. Another new provision removed the authority of the Environment Minister to make a species protection order or habitat protection order to stop an activity that will have a significant adverse effect on a protected species or its habitat when such forest operations are the cause. Finally, the amendments gave the Lieutenant Governor in Council the power to make regulations “respecting forest operations that may impact species at risk” including requiring actions to avoid or minimize impacts to a species at risk or assist with its recovery.

Neither the proposal notice nor the decision notice outlined these details for the public. In the decision notice, the Ministry provided a high-level description of the decision, stating only that changes were made to the *Crown Forest Sustainability Act, 1994* “so that duplicative authorizations or a regulatory exemption

under the *Endangered Species Act, 2007* (ESA) would no longer be needed for forest operations conducted in Crown forests in accordance with an approved forest management plan” and the act was amended “to implement the proposal as described.” Neither of the notices described any of the actual changes made.

In the “effects of consultation” section of the decision notice, the Ministry referred to comments made on the proposal notice and stated that the presentations made to the Standing Committee on Finance and Economic Affairs during its consideration of Bill 229 were also considered. The Ministry noted that comments included both support for the proposal as well as concerns. The notice states: “we will continue to incorporate species at risk direction into existing forest management guides, as appropriate, based on science and other information.” However, the Ministry did not describe what effect the public’s comments had, if any, on the final decision.

Because the decision notice did not include complete or detailed information about the amendments, this description was not transparent and did not give Ontarians the information they needed to fully understand the decision, the impacts on species at risk or how public consultation influenced the decision.

### RECOMMENDATION 32

To help Ontarians understand the Ministry of Northern Development, Mines, Natural Resources and Forestry’s environmentally significant decisions and the effect of public comments on those decisions, we recommend that the Ministry clearly describe the decisions and the effect, if any, of public participation on the Ministry’s decision-making in future decision notices as required under the *Environmental Bill of Rights, 1993*.

### MINISTRY RESPONSE

The Ministry agrees with this recommendation and will continue to commit to full compliance with its legal obligations under the EBR Act. The Ministry’s internal guidance (e.g., templates and best practices bulletin) and training provides

direction to staff on the appropriate information for Registry notices.

## 7.8 None of the Natural Resources Ministry’s Decision Notices for Instruments that We Reviewed Provided Links to Final Documents, and Decision Notices for Aggregate Licences Included Incorrect Information about Appeal Rights

The Natural Resources Ministry posted 38 decision notices for instruments on the Registry. We reviewed a sample of 25 decision notices (all for approvals under the *Aggregate Resources Act*), and found that none provided a link to, or attachment of, the final issued approvals.

Members of the public have the right under the EBR Act to challenge decisions about some instrument types issued under the *Aggregate Resources Act* if they are concerned about operations harming the environment. As a result, it is important that decision notices on the Environmental Registry include links to or attachments with the final issued licences so that Ontarians can understand and exercise their right to challenge these activities in their communities.

The 25 decision notices we reviewed invited viewers to contact the Ministry office to obtain copies of licences or to view copies of approved site plans. However, the need to make such an arrangement could present a barrier to some individuals, particularly if there is a delay in obtaining or viewing the document and a member of the public wishes to seek leave to appeal a decision.

We identified the same issue in 2019 and 2020, and recommended that the Ministry provide links to the final issued approval for all decision notices. In both 2019 and 2020, the Ministry told us that it is working to develop an information portal that would “enable the public to view approvals on a variety of Ministry instruments.” In 2020, the Ministry stated:

“through 2021/22 the Ministry will continue its efforts to enable public access to aggregate licence and permit approvals as well. In the interim, Ministry decision notices will continue to identify a district contact person that can provide copies of the licence upon request by the public.” As of September 2021, aggregate licence and permit approvals were still not available on the information portal.

Further, of the 25 instrument decision notices we reviewed, 11 were for decisions to issue Class A Aggregate Licences, that is, licences to extract more than 20,000 tonnes of aggregate from a pit or quarry every year. In nine of those notices, the Ministry identified the opportunity for the public to seek leave to appeal the decisions, stating that Ontarians had 20 days to begin the appeal process. (In the other two notices we reviewed, the Ministry indicated that the licences had been appealed under the *Aggregate Resources Act*, so no further appeal mechanism was available.) However, under the EBR Act, a leave to appeal application must be made no later than 15 days after a decision notice is posted, not 20.

When we asked about this discrepancy, the Ministry acknowledged that the information in the notices was incorrect. We learned that this error, which was incorporated in the Registry system’s template for such decision notices, was included in decision notices for all types of appealable instrument decisions under the *Aggregate Resources Act* dating back to 2019. The Ministry told us that it identified the problem in November 2019 and asked the Environment Ministry, as operator of the Environmental Registry, to correct it. However, the Environment Ministry did not resolve the issue, and the Natural Resources Ministry continued posting decision notices containing the misinformation in 2020 and 2021, without alerting readers to the error or providing the correct deadline for submitting a leave to appeal application.

Although in practice most licence appeals follow the *Aggregate Resources Act* process, the EBR Act leave to appeal process is independent of this. Providing incorrect information about the timeframe in which a

leave application must be made creates the risk that a person relying on that information will lose their right to seek leave to appeal.

### RECOMMENDATION 33

To give Ontarians easy access to and accurate and sufficient information about decisions on instruments and the right to seek leave to appeal certain decisions, we recommend that:

- until the Ministry of Northern Development, Mines, Natural Resources and Forestry’s Natural Resources Information Portal provides public access to approvals issued under the *Aggregate Resources Act*, the Ministry include copies of issued approvals as attachments to decision notices posted on the Environmental Registry about those approvals; and
- the Ministry clearly and correctly explain the EBR Act leave-to-appeal right, and how to exercise that right, in applicable instrument decision notices.

### MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to support efforts to improve the Natural Resources Information Portal (NRIP) to modernize service delivery, help reduce burden on industry, create internal efficiencies and enable the public to view approvals on a variety of Ministry instruments.

In the interim, while the Ministry will not include copies of issued approvals as attachments to decision notices posted on the Environmental Registry, the decision notices will continue to identify a Ministry contact person that can provide copies of the licence upon request by the public.

The Ministry will continue to improve the Environmental Registry system programming to have the leave-to-appeal clearly and correctly display the 15-day timeframe.

## 7.9 Natural Resources Ministry Did Not Post Decisions or Updates for 23 Proposal Notices on the Environmental Registry for Over Two Years

For the Environmental Registry to be an accurate and reliable source of information for Ontarians, ministries must keep all proposal notices up to date by either posting decision notices promptly after decisions are made, or updating ongoing proposals to inform Ontarians about the proposals' status. As a best practice, ministries should update proposal notices that have been posted on the Environmental Registry for more than two years without a corresponding decision notice. When a proposal notice has been on the Registry for more than two years without a decision or update, we consider those proposal notices to be outdated.

In 2019 and 2020, the Natural Resources Ministry had 92 and 52 outdated notices, respectively. Since then, the Natural Resource Ministry and other ministries have posted updates or decision notices for many older notices, reducing the total number of outdated notices by 76% since 2020 (see **Figure 3**).

However, as of March 31, 2021, the Natural Resources Ministry still had 23 proposal notices on the Environmental Registry that had been posted more than two years earlier, and had not been either closed with a decision notice or updated in the last two years. This represents 12% of the Ministry's total proposal notices that were open on the Environmental Registry at the end of the reporting year.

Three of the proposals were for instruments, including a proposal for a licence for a forest resource processing facility posted in 2004, a proposal for the designation of a zone under the *Public Lands Act* posted in 2007, and a proposal for a licence under the *Aggregate Resources Act* that was posted in 2018. One proposal was for a regulation under the *Far North Act, 2010* that was posted in 2013, and the remaining proposals were for policies dating as far back as 2004.

Further, we learned that the Ministry updated some proposal notices with inaccurate information about the proposals' status. We asked the Ministry to confirm the status of a sample of five updated proposal notices that the Ministry had stated were "still being considered." The Ministry provided documentation to show that two of the proposals were still being considered, but we did not find evidence that two other proposals were, in fact, still being considered. In the fifth case, we learned that the update did not accurately reflect the proposal's status. In that case, the Natural Resources Ministry posted an update in June 2019 to a proposal for a Niagara Escarpment Plan amendment that was originally posted in November 2012, to state that "there has been no change to the status of the proposal and it is still being considered." In fact, the amendment file had been closed as of May 27, 2019, but the public was not told about this outcome and the inaccurate update remained on the Registry as of September 2021, undermining the purpose of updating notices to maintain the reliability of the Registry as an information source.

It also came to our attention that the Ministry had updated another proposal notice in 2020/21 with inaccurate information. The Ministry posted an update to a proposal for a licence under the *Aggregate Resources Act* in January 2021, stating that the proposal was still being considered; however, the proponent (that is, the person applying for the licence) had actually withdrawn the application in May 2020.

### RECOMMENDATION 34

As we recommended in 2019 and 2020, so that the Environmental Registry is up to date and a reliable source of information about the Ministry of Northern Development, Mines, Natural Resources and Forestry's decisions about the environment, we recommend that the Ministry bring and keep all its proposal notices up to date, including posting decision notices for proposals that have been decided or that are no longer under consideration by the Ministry.

## MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review all outdated Registry proposal notices and bring them up to date. The Ministry will continue its process of remediating proposals that were outdated as of March 31, 2021. The Ministry will continue to monitor proposal notices on the Environmental Registry and address outdated notices by posting decision notices or status updates.

## RECOMMENDATION 35

So that the Environmental Registry is up-to-date and a reliable source of information about the Ministry of Northern Development, Mines, Natural Resources and Forestry's decisions about the environment, we recommend that the Ministry:

- review all existing proposal notices on the Environmental Registry that it has updated to confirm the accuracy of the updates, and immediately correct any updates that are not accurate or up-to-date; and
- going forward, when it is necessary to update a proposal notice because it has been on the Environmental Registry for more than two years but has not yet been decided, post an accurate and informative update about the current status of the proposal, including specific details about any ongoing work on that proposal, and the Ministry's anticipated timing for making a decision.

## MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review the Environmental Registry for up-to-date and correct information. The Ministry will continue to monitor proposal notices on the Environmental Registry and address outdated notices by posting decision notices or accurate status updates.

## 7.10 Overview of the Former Ministry of Energy, Northern Development and Mines (Energy and Mines Ministry)

The Energy and Mines Ministry was responsible for developing policies and programs about energy supply and electricity pricing, transmission and distribution systems, climate change adaptation, long-term energy planning, energy conservation, and energy performance standards for equipment and products. The Ministry oversaw the Ontario Energy Board (OEB) and the Independent Electricity System Operator (IESO); it also represented the provincial government in dealings with Hydro One and Ontario Power Generation (OPG). The Energy and Mines Ministry administered the *Mining Act*, regulating mineral exploration and development in the province, and was responsible for the Ontario Geological Survey, which collects and disseminates geoscience information for all parts of Ontario. The Energy and Mines Ministry also led and co-ordinated programs for northern and Indigenous economic development, including the Growth Plan for Northern Ontario and the Ring of Fire.

The Energy and Mines Ministry was responsible for two laws that are prescribed under the EBR Act: the *Mining Act* and the *Ontario Energy Board Act, 1998*. The Ministry was required to consult the public about instruments (that is, permits, licences, approvals and other authorizations and orders) issued under the *Mining Act*, such as exploration permits and approvals to rehabilitate mine hazards. The Energy and Mines Ministry was also subject to receiving applications for review and applications for investigation from the public.

In 2020/21, the Energy and Mines Ministry used the Environmental Registry to post 701 notices about environmentally significant policies, acts, regulations and instruments.

See **Section 7.11 (Figure 7)** for the former Energy and Mines Ministry's report card on compliance with and implementation of the EBR Act in 2020/21, and **Sections 7.12 – 7.17** for our detailed findings and recommendations.



Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
g. Decision notices for policies, acts and regulations are informative	●	<b>Section 7.15</b> – One of the Ministry’s nine decision notices, for a guidance document related to site boundary and land tenure in mine closure plans, did not explain what the Ministry decided to do.	●	○
h. Decision notices for instruments are informative	●	<b>Section 7.16</b> – We reviewed a sample of 25 instrument decision notices. The Ministry did not explain what the Ministry decided to do in one decision notice, and the Ministry did not attach copies of the issued permits to two of the instrument decision notices that we reviewed.	●	●
i. Proposal notices are up-to-date	●	<b>Section 7.17</b> – As of March 31, 2021, the Ministry did not have any proposal notices that had been on the Registry for over two years without a decision notice or an update; a reduction of 13 from the same time a year earlier. However, we found that the Ministry posted an update to a proposal in 2020 that had, in fact, been decided over a year earlier.	●	●

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

## 7.12 Energy and Mines Ministry Considered its Statement of Environmental Values After the Fact for A Decision Regarding Net Metering, and Could Not Confirm That It Considered Its Statement at the Time That It Made Two Other Decisions

The Energy and Mines Ministry provided documentation to show that it considered its Statement regarding nine decisions about policies, acts and regulations and a sample of 25 instruments. Of the nine consideration documents for policies, acts and regulations, five were not dated, and four were dated after the decision was already made. One consideration document for an instrument decision was also dated after the decision was made.

We followed up with the Ministry about eight of these documents. While the Ministry confirmed that it considered its Statement for five decisions throughout the decision-making process, it could not provide documentation confirming that was the case for three others, including the instrument decision.

For two of those decisions, the consideration documents provided were dated several years after the

decisions were made, corresponding more closely to the dates that late decision notices were posted on the Environmental Registry for those decisions. In the first case, the Ministry made a decision regarding a proposal related to net metering in October 2005, but did not post a decision notice on the Registry until March 2021 (more than 15 years later); the documentation of the Ministry’s consideration of its Statement for that decision was also dated March 2021, and the Ministry confirmed to our Office that its consideration occurred on that date. In the second case, the Ministry made a decision regarding the repeal of the *Green Energy Act, 2009* in December 2018, but did not post a decision notice on the Registry until March 2021; again, the Ministry’s consideration document was dated March 2021. The Ministry provided documents to show that it considered environmental factors when making the decision, but the documentation did not show deliberate consideration of the Ministry’s Statement principles.

To be an effective part of environmental decision-making, consideration of a ministry’s Statement must occur during the decision-making process; considering how a decision conforms to a ministry’s Statement after the decision is already made does not comply with the requirements or intent of the EBR Act.



## RECOMMENDATION 36

To be transparent and accountable to Ontarians about their environmental decision-making, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider their Statements of Environmental Values whenever making a decision that might significantly affect the environment, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry and the Ministry of Energy:

- consider their Statements during the decision-making process; and
- clearly document the timing of their consideration of their Statements.

### NORTHERN DEVELOPMENT, MINES, NATURAL RESOURCES AND FORESTRY MINISTRY'S RESPONSE

The Ministry agrees with this recommendation and will review its internal guidance and training materials to improve documentation on when and how its Statement of Environmental Values is considered.

### ENERGY MINISTRY'S RESPONSE

The Ministry takes its responsibilities under the EBR Act seriously and uses the Statement of Environmental Values (Statement) as a guiding document when developing policy. Consideration of the Statement is integral to the policy development process, and is typically part of the process from the initial inception of the policy until the final decision is made. In the future the Ministry will ensure that the date the summary document, which sets out how the Statement was considered, is approved aligns with the date of the decision. The Ministry agrees to clearly document the timing of our considerations of our Statement in the future.

## 7.13 Energy and Mines Ministry Could Not Show How It Considered the Public's Comments When It Made Two Instrument Decisions

When a ministry is required under the EBR Act to consult the public about an environmentally significant proposal, the ministry is also required to “take every reasonable step to ensure that all comments relevant to the proposal that are received as part of the public participation process... are considered when decisions about the proposal are made in the ministry.” The purpose of the EBR Act is to protect the environment by enabling public participation in environmental decision-making, on the basis that the public's feedback about environmentally significant proposals has the potential to inform—and, ultimately, improve—the ministry's decision-making.

For a sample of six decisions that it posted on the Environmental Registry in 2020/21, we asked the Ministry for any documentation that it had to show that it had considered the public's comments when it made the decisions.

For two policy decisions and two act decisions, the Ministry provided documentation, such as comment summaries and analyses, that showed how the Ministry had reviewed and deliberated about the public's comments in making its decisions.

However, for two decisions about *Mining Act* instruments, the Ministry could not provide any documentation to demonstrate that the Ministry considered the public's comments in making the decisions. For one decision to issue a mineral exploration permit, the Ministry directed our Office to the information provided under “Effects of Consultation” in the decision notice posted on the Environmental Registry, which included only a brief and vague statement about the primary concerns of commenters, and some general information about how early exploration activities are completed to minimize effects on the natural environment and public safety. The Ministry did not provide a comments summary or any documentation to demonstrate that the Ministry read,

analyzed or reflected on the 504 comments submitted about that proposal before making its decision.

For a second decision, about an amendment to a mine closure plan, the Ministry again could not provide any documentation to show that the 11 comments submitted about the proposal were reviewed and considered by the Ministry.

### RECOMMENDATION 37

To adhere to the requirements of the *Environmental Bill of Rights, 1993*, and to meet its purposes, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry consider all comments submitted about its proposals posted on the Environmental Registry in a manner that contributes to informed and improved environmental decision-making.

### MINISTRY RESPONSE

The Ministry is committed to meeting its obligations under the EBR Act and considers all comments submitted. The Ministry will review its internal guidance, training and procedural materials to determine if updates are required to improve the documentation of how comments have been considered.

## 7.14 Energy and Mines Ministry Took Over Two Weeks to Post 26% of Decisions We Reviewed; Some Were Over a Year Late

In our 2020 report, we found that the Ministry took over two weeks to give notice of 27% of the decisions that we reviewed.

In 2020/21, the Energy and Mines Ministry posted nine decision notices for policies, acts and regulations and 268 decision notices for instruments on the Environmental Registry. Of the nine decision notices for policies, acts and regulations, seven (78%) were posted more than two weeks after the decision was

made, including four notices (44%) for decisions that the Ministry had made more than a year earlier. For example, the Ministry took 838 days (over two years) to post a decision notice on the Environmental Registry to notify the public about its decision to repeal the *Green Energy Act, 2009*, which was enacted with the intent of fostering the growth of renewable energy projects, energy conservation and energy efficiency.

Of the 25 decision notices for instruments we reviewed, the Ministry posted two (8%) more than two weeks after the decisions were made. In total, nine (26%) of the 34 notices we reviewed were posted more than two weeks after the decisions were made.

### RECOMMENDATION 38

As recommended in 2019 and 2020, to give Ontarians prompt notice of their environmentally significant decisions, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry and the Ministry of Energy post all decision notices on the Environmental Registry as soon as possible after making a decision, which should be no more than two weeks after making the decision, as stated in the former Ministry of Energy, Northern Development and Mines' service standard.

### NORTHERN DEVELOPMENT, MINES, NATURAL RESOURCES AND FORESTRY MINISTRY'S RESPONSE

The Ministry agrees with this recommendation and will continue to improve upon its procedures to ensure decisions are posted to the Registry in a timely manner. The Ministry has progressively improved its decision posting practices, reducing the number of late notices.

The Ministry's internal guidance and training provides direction to staff on the appropriate timing for Registry decision notices. This includes the Auditor General's best practice service standard of posting within two weeks of the decision being made.

## ENERGY MINISTRY'S RESPONSE

The Ministry agrees with this recommendation and will continue to improve upon its procedures to ensure decisions are posted to the Registry in a timely manner. The Ministry has progressively improved its decision posting practices, reducing the number of late notices.

The Ministry's internal guidance and training provides direction to staff on the appropriate timing for Registry decision notices. This includes the Auditor General's best practice service standard of posting within two weeks of the decision being made.

### 7.15 Energy and Mines Ministry Did Not Explain What It Decided About Proposed Guidance to Support Development of Mine Closure Plans

The former Energy and Mines Ministry posted nine decision notices for policies, acts and regulations on the Environmental Registry in 2020/21. While most of the notices met our criteria, one of the decision notices, for a proposed guidance document to prepare mine closure plans, the *Closure Plan Boundary & Land Tenure Guideline*, did not explain at all what decision was made. The decision summary referred only to the fact that one comment was submitted about the proposal, and the decision details section described what was proposed in the September 2016 proposal notice, restating the purpose and intent of the proposal, but not confirming what the Ministry decided to do. While a copy of the *Closure Plan Boundary & Land Tenure Guideline* was attached in the "supporting materials" section of the notice, so that a reader might conclude that the Ministry decided to finalize the proposed guidance, the notice did not include the information required for Ontarians to readily understand what decision was made.

## RECOMMENDATION 39

So that Ontarians can understand environmentally significant decisions made by the Ministry of Northern Development, Mines, Natural Resources and Forestry, we recommend that the Ministry clearly describe the details of each decision posted on the Environmental Registry.

## MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to improve upon its procedures to ensure the details of each decision are clearly described.

### 7.16 Energy and Mines Ministry's Decision Notice About a Mineral Exploration Permit Did Not Explain What the Decision Was, and Two Notices Did Not Include Links to the Final Issued Permits

The former Energy and Mines Ministry posted 268 decision notices for instruments on the Environmental Registry in 2020/21, and we reviewed a sample of 25. While most of the notices that we reviewed met our criteria, one of the decision notices, regarding a mineral exploration permit under the *Mining Act*, did not include the information required for Ontarians to readily understand what decision was made.

Both the decision summary and the decision details section of the decision notice restated what was proposed in the January 2021 proposal notice, but did not explain what the Ministry decided to do. In the section of the decision notice describing the effects of consultation, the Ministry stated, "No comments were received to impact the decision to issue," so that a reader could ultimately ascertain that the final decision was to issue the permit if they read that

section of the notice. Nevertheless, the content of the decision notice would not enable Ontarians to readily understand the Ministry's decision.

Further, this decision notice and one other instrument decision notice that we reviewed did not contain a copy of, or link to, the final issued approval, which would have helped Ontarians better understand the decision.

We identified this issue in 2019 and 2020, and recommended that the Ministry provide links to the final issued approval for all decision notices. In 2020, the Ministry told us that it developed and implemented a new template for decision notices for permits and approvals, and that it provided training to staff on the use of this new process document, which instructs staff to attach a copy of the final approval document in the decision notices. In 2020, the Ministry stated it has “started to attach copies of issued permits to decision notices, and will continue to ensure the implementation of [this] template into processes to ensure adoption of this recommendation.”

## RECOMMENDATION 40

To give members of the public easy access to and enough information about decisions on instruments, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry:

- clearly describe the details of each decision posted on the Environmental Registry; and
- as recommended in 2019 and 2020, include copies of, or links to, issued approvals in decision notices posted on the Environmental Registry about those approvals, consistent with the former Ministry of Energy, Northern Development and Mines' own service standard.

## MINISTRY RESPONSE

The Ministry agrees with the recommendation. As noted in the 2020 report, the Ministry developed and implemented a new template for decision notices for permits and approvals in 2020 and

training was provided on the use of this new process document. This template requires a copy of the final approval document in the decision notices and to clearly note the details of the final decision in the posting. The Ministry continues to attach copies of issued permits to decision notices and will continue to ensure the implementation of our template into our processes to ensure our adoption of this recommendation.

## 7.17 Energy and Mines Ministry Kept Its Proposal Notices Up to Date, But Posted an Update to a Proposal That Had Been Decided Over a Year Earlier

For the Environmental Registry to be an accurate and reliable source of information for Ontarians, ministries must either post decision notices promptly after decisions are made, or update ongoing proposals to inform Ontarians about the proposals' status.

In 2020, we found that the Energy and Mines Ministry was responsible for 13 proposal notices that had been on the Registry for more than two years without a decision or an update. The Ministry improved in 2020/21; as of March 31, 2021, the Ministry had posted either decision notices or updates for all of those proposals, and had kept its other proposals up-to-date.

However, we reviewed a sample of the Energy and Mines Ministry's updated proposal notices, and found that in September 2020, the Ministry posted an update to a proposal notice for a mineral exploration permit under the *Mining Act* that, in fact, had been withdrawn in August 2019, over a year earlier. The update stated, in part, “terminated per email from GSRC, unpublished,” but did not clearly explain the status of the proposal. The Ministry should have posted a decision notice (not an update) promptly after the proposed permit was withdrawn in August 2019. We brought this notice to the Ministry's attention in June 2021, and the Ministry posted a decision notice 13 days later.

Since 2018, the Ministry has directed staff to review instrument notices on a quarterly basis and produce a report identifying proposals that require a decision notice or an update; however, the Ministry could not provide copies of any such reports.

## RECOMMENDATION 41

So that the Environmental Registry is up-to-date and a reliable source of information about the Ministry of Northern Development, Mines, Natural Resources and Forestry's decisions about the environment, we recommend that the Ministry:

- review all existing proposal notices on the Environmental Registry that it has updated to confirm the accuracy of the updates, and immediately correct any updates that are not accurate or up-to-date; and
- going forward, when it is necessary to update a proposal notice because it has been on the Environmental Registry for more than two years but has not yet been decided, post an accurate and informative update about the current status of the proposal, including specific details about any ongoing work on that proposal, and the Ministry's anticipated timing for making a decision.

## MINISTRY RESPONSE

The Ministry agrees with the recommendation. The Ministry will ensure information on the Registry is up to date and accurate.

## 8.0 Ministry of Municipal Affairs and Housing (Municipal Affairs Ministry or Ministry)

### 8.1 Overview

The Municipal Affairs Ministry frequently makes decisions that affect the environment, as it develops policies and laws concerning municipal finance and governance, and land use planning and growth management. It also makes decisions that determine the balance between socio-economic interests (such as new residential or commercial developments and infrastructure projects) and the preservation of agricultural land and management and conservation of natural resources and cultural heritage.

Through its work administering and updating the Ontario Building Code and making green investments into social housing retrofits, the Municipal Affairs Ministry also plays a role in energy conservation and reduction of greenhouse gas emissions.

The Municipal Affairs Ministry is responsible for five laws that are prescribed under the EBR Act, including the *Planning Act*, the *Building Code Act, 1992* and the *Places to Grow Act, 2005*. The Ministry must consult the public about instruments (that is, permits, licences, approvals and other authorizations and orders) issued under three prescribed acts, such as *Planning Act* approvals by the Minister of Official Plans and plans of subdivision and consents where there is no Official Plan in place. The Municipal Affairs Ministry may also receive applications for review and applications for investigation from the public.

In 2020/21, the Municipal Affairs Ministry used the Environmental Registry to post 144 notices about environmentally significant policies, acts, regulations and instruments.

See **Section 8.2 (Figure 8)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21, and **Sections 8.3 to 8.10** for our detailed findings and recommendations.



Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
g. Decision notices for policies, acts and regulations are informative	●	<b>Sections 8.7 – 8.8</b> – The Ministry posted 15 decision notices on the Registry for policies, acts and regulations. In a decision notice regarding consultation on the enhanced powers for Minister’s Zoning Orders (MZOs) under the <i>Planning Act</i> enacted by Bill 197, the Ministry was not transparent about its plans to make additional legislative changes to the act’s MZO provisions. Further, seven (47%) of the 15 notices did not adequately describe the effects of public participation on the final decision.	●	○
h. Decision notices for instruments are informative	●	<b>Sections 8.9 – 8.10</b> – The Ministry posted 35 decision notices for permits and approvals on the Registry, and we reviewed a sample of 25 notices. Thirteen of 25 (52%) did not provide links to the final approvals issued under the <i>Planning Act</i> . Further, we found that the Ministry did not inform the public about the EBR Act right to seek leave to appeal decisions about seven <i>Planning Act</i> approvals.	●	●
i. Proposal notices are up-to-date	○	The Ministry met this criterion. The Ministry had 30 open proposal notices as of March 31, 2021, all of which were either posted or updated within the last two years.	●	○

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

### 8.3 Municipal Affairs Ministry Could Not Show That It Considered Its Statement of Environmental Values at All for Seven Environmentally Significant Decisions, or That Consideration Always Occurred Before – Not After – It Made Decisions

In 2019/2020, we found that the Ministry did not provide our Office with any documentation to demonstrate that it considered its Statement of Environmental Values when making environmentally significant decisions posted that year. The Ministry told us that it did not document Statement consideration because it had not yet finalized its new Statement (the new Statement was finalized in February 2020). We recommended that the Ministry consider its updated Statement at the time it makes an environmentally significant decision, and document that consideration concurrently with the decision-making, and the Ministry agreed.

However, this year, we identified several issues with the Municipal Affairs Ministry’s compliance with the requirement to consider its Statement.

First, the Municipal Affairs Ministry could not provide documentation to demonstrate that it considered its Statement of Environmental Values in five of its decisions about policies and regulations that it posted in 2020/21. The Ministry also did not provide

documentation for two decisions about *Planning Act* approvals. Without documentation, it is unclear and unconfirmed if or how the Ministry considered the purposes of the EBR Act when it made these environmentally significant decisions, or how it prioritized conflicting values, including environmental values, during the decision-making process.

Second, the documentation that the Ministry did provide to confirm that it considered its Statement for five decisions about policies, acts and regulations and for 22 decisions about instruments was dated after the decisions were made—in many cases months later—while one document was undated. We followed up with the Ministry about a sample of five of those documents, and while the Ministry was able to provide additional documentation showing that the Ministry did consider its Statement before four of the decisions were made, the Ministry could not provide such documentation for one policy decision.

In fact, ministry correspondence that we reviewed about that policy decision, for Proposed Modifications to the Innisfil Heights Strategic Settlement Employment Area, confirmed that the Ministry created the documentation to show it considered its Statement almost seven months after the Ministry made the decision and posted a decision notice on the Registry, for the purposes of showing our Office “how the decision relates to the [Municipal Affairs Ministry’s Statement].” The EBR Act requires prescribed ministries to consider their Statements when they are

making decisions, not after; the purpose of considering the Statement is to ensure that ministries take environmental values into account when making decisions, so that better outcomes are achieved for the environment. Explaining how the Statement relates to a decision after the decision was already made does not comply with the EBR Act and is not consistent with the Act's purposes.

A Ministry staff presentation document dated May 2020 states that consideration forms will be completed for all notices for policies, acts, regulations and instruments. It states that “the form [for policies, acts and regulations] should be started **before** the posting of the proposal notice on the [Registry] and finalized once the decision notice is posted.” The Ministry did not always follow this direction. The document also states that “this form [for instrument decisions] should be completed **after** the [Environmental Registry] decision notice has been posted.” This guidance is problematic; under the EBR Act, consideration of a ministry's Statement is tied to decision-making, not to posting a decision notice on the Registry. To ensure that its Statement is considered during the decision-making process (and not after), the Ministry should require staff to document the consideration at that time.

Finally, we reviewed a sample of 10 of the consideration documents provided by the Ministry and concluded that the Ministry's consideration for three decisions was not sufficiently detailed and did not reflect analysis and judgment in explaining the overall balancing of principles in the Statement. For example, the Ministry adopted a new market-demand-driven “land needs assessment methodology” that municipalities within the Greater Golden Horseshoe area must follow to identify the amount of land required to accommodate forecasted growth in housing and employment to the year 2051. This area must then be incorporated into municipal planning documents and will influence the expansion of settlement boundaries into agricultural and natural heritage areas. The consideration document emphasized that the methodology will give municipalities tools to ensure

adequate housing, meeting the principle of increasing the supply of housing. With respect to the principle of ensuring “well planned and healthy communities while protecting greenspace,” the consideration document stated only that the proposal aligns with policies in the Growth Plan. It did not address how the new methodology, which many of the public comments received by the Ministry argued will accelerate sprawl, supports the protection of agricultural land, greenspace and natural heritage resources. How the Ministry balanced these principles in reaching its decision is not evident from the consideration document.

The EBR Act requirement for prescribed ministries to consider their Statements when they make decisions that might significantly affect the environment is intended to ensure that environmental principles are weighed and considered during the decision-making process, to contribute to informed and improved decision-making. Without documentation of a thoughtful analysis of the Statement's principles in the context of the decision in question, it is not clear whether the Ministry has considered its Statement in a manner that meets the EBR Act's purposes.

## RECOMMENDATION 42

To be transparent and accountable to Ontarians about its environmental decision-making, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider its Statement of Environmental Values (Statement) whenever making a decision that might significantly affect the environment, we recommend that the Ministry of Municipal Affairs and Housing update and implementation processes and procedures for staff to:

- consider its Statement every time that it makes a decision that might significantly affect the environment, in a manner that is deliberate and contributes to improved environmental decision-making;
- consider its Statement, and document that consideration, concurrently with the decision-making; and



- clearly document the timing of its consideration.

## MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures and consider additional guidance/supports to assist staff in considering its Statement of Environmental Values as part of the decision-making process.

### 8.4 Municipal Affairs Ministry Did Not Consult Ontarians About Changes to the *Planning Act* and *Planning Act* Approvals

In 2020/21, the Municipal Affairs Ministry made changes to the *Planning Act* and to environmentally significant approvals issued under the *Planning Act* without first undertaking public consultation under the EBR Act.

#### Amendments to the *Planning Act* made by Bill 197

In July 2020, the Municipal Affairs Ministry proposed amendments to the *Planning Act* as part of the *COVID-19 Economic Recovery Act, 2020* (Bill 197). The Municipal Affairs Ministry did not consult the public about these amendments.

The amendments expanded the Minister's powers with respect to Minister's Zoning Orders. Minister's Zoning Orders bypass local planning authorities and requirements for public consultation and appeal rights.

Our Office wrote to the Municipal Affairs Ministry prior to third reading of Bill 197 stating that the proposed changes were environmentally significant and that, as a prescribed ministry under the EBR Act, it was required to post a notice of the proposed changes and consult the public through the Environmental Registry (see **Appendix 9**). The Ministry did not do so.

We reported on Bill 197 and the changes that it made to the *Planning Act* in **Chapter 1, Section 7.0** of our 2020 Report on the Operation of the EBR Act.

As noted in **Section 6.5**, two separate applications for judicial review were filed against the Ontario government for failing to consult the public about Bill 197 in accordance with the EBR Act, including arguments that the Municipal Affairs Minister failed or refused to comply with the EBR Act in adopting changes to the *Planning Act*. On September 3, 2021, the Divisional Court released its decision on these applications. The Court concluded that the Municipal Affairs Minister had acted unreasonably and unlawfully in failing to post the amendments to the *Planning Act* affecting Minister's Zoning Order powers in accordance with the EBR Act. The Court noted that the Minister had failed to follow the EBR Act despite a recommendation from the Auditor General to do so. The Court also held that the Municipal Affairs Ministry's "after-the-fact" consultation on the Environmental Registry (see **Section 8.5**) did not satisfy the requirements of the EBR Act. Even though the Minister argued that a court order stating that the Minister's actions were unlawful would have no practical effect, the Court accepted the applicants' argument that such an order serves the purpose of holding the Minister accountable and emphasizing the importance of respecting the public consultation provisions of the EBR Act.

#### Amendments to *Planning Act* Approvals for Consent to Sever Land

Under the EBR Act, the Municipal Affairs Ministry is required to give notice of and consult the public about proposals for certain types of approvals under the *Planning Act*, including consent to "sever" land (that is, divide into separate lots) where there is no municipal official plan in place.

Under the *Planning Act*, the Minister may amend the conditions of a provisional consent to sever land at any time before final consent is given. Notice must be given of amendments, other than minor ones, but only after the amendment has been made. This notice triggers a right to appeal the amended conditions

to the Ontario Land Tribunal. However, the EBR Act requires ministries to consult the public about proposals for amendments to prescribed approvals unless the Minister considers that the potential environmental effect of the amendments is insignificant.

In 2020/21, we identified five cases in which the Ministry did not consult the public about proposals for environmentally significant amendments to provisional consents before making the amendments. In these cases, the Ministry consulted the public before giving provisional consent and posted decision notices, but then later updated the decision notices with information about environmentally significant amendments that had already been made without further consultation.

For example, in January 2020 the Ministry posted decision notices on the Environmental Registry for two related provisional consents to create easements for access to cottage lots. In April 2021, the Ministry updated the decision notices to state that the consents had been amended to add new conditions—a requirement to develop and comply with an effectiveness monitoring and contingency plan about rare aquatic plants and to monitor and document erosion of a sand spit for several years following construction.

We asked the Ministry why it did not post proposal notices to consult the public about these new conditions, and the Ministry told us that it did not do so because the changes to the conditions of approval were not major, and “a change in conditions is not a change in the decision to grant conditional approval in the first place, but a change in how the decision is implemented.” However, the Ministry could not provide us with any documentation about its determination that it was not required to post proposals for amendments to provisional consents under the EBR Act. Even if the amendments are changes in conditions that are not considered “major” under the *Planning Act*, the EBR Act has a different standard. It requires the Ministry to consult the public about proposed amendments to prescribed instruments, including approvals under the *Planning Act*, if the amendments could have anything beyond an insignificant effect on the environment. Prescribed ministries

routinely consult the public in accordance with the EBR Act about proposals for changes to the conditions of existing approvals under other legislation. Amendments that, if implemented, would protect rare aquatic plants and prevent erosion are environmentally significant amendments.

In another case, a provisional consent was amended to delete a condition requiring a noise, dust and odour study, and to add a condition requiring a restrictive covenant affecting the use of the retained land. The Ministry posted a proposal notice for public consultation on the amended conditions in May 2019. However, the subsequent decision notice, posted in July 2020, indicated that the amendments had already been made in April 2019, before the proposal notice was even posted for public consultation. The *Planning Act* deadline to appeal the amended conditions was May 8, 2019, over three weeks before the end of the consultation period for the amendments.

We asked the Ministry why it posted this notice to consult the public about proposed amendments after the amendments had already been made, but the Ministry did not provide an explanation for that timing. Instead, the Ministry explained that posting the proposal for consultation was not “strictly necessary” and that “an updated decision notice would have been sufficient.” For the EBR Act’s purposes to be met, public consultation must occur while a proposal is still under consideration by the Ministry, so that the Ministry can take any feedback from the public into account when making the decision.

### RECOMMENDATION 43

To engage the public in the government’s environmentally significant decision-making, we recommend that the Ministry of Municipal Affairs and Housing consistently consult with the public according to the requirements of Part II of the *Environmental Bill of Rights, 1993*.

### MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training

and procedures for complying with Part II of the EBR Act.

## 8.5 Municipal Affairs Ministry Did Not Clearly Describe the Environmental Implications of 67% of Proposals for Acts and Policies

We reviewed the six proposal notices for policies and acts that the Municipal Affairs Ministry posted on the Environmental Registry in 2020/21, and found that four (67%) did not provide sufficient information about the environmental implications of the proposals to enable meaningful public participation. One of the notices also did not describe the proposal in sufficient detail, and three did not provide links or attachments to key supporting documentation related to the proposal.

In particular, two of the proposal notices (described below) lacked essential details about the environmental implications of the proposals; without these details, Ontarians did not have all of the facts needed to be fully informed, making it more difficult to provide constructive input for the Ministry to consider in reaching a decision about the proposal.

We also identified this issue with the Municipal Affairs Ministry's proposals in our 2019 and 2020 reports on the operation of the EBR Act, and recommended that the Ministry describe the environmental implications of every proposal posted on the Environmental Registry. However, the Ministry has not taken steps to address this recommendation.

### Proposed Amendments to the Growth Plan for the Greater Golden Horseshoe

The Ministry proposed amendments to *A Place to Grow: Growth Plan for the Greater Golden Horseshoe* (Growth Plan), consulting Ontarians on the amendments at the same time it consulted on a new land needs assessment methodology for the Growth Plan. The Growth Plan applies to municipalities in the Greater Golden Horseshoe; those municipalities

must amend their official plans to conform with its provisions.

The proposal notice provided details about parts of the proposed amendments, including extending growth forecasts that municipalities are required to use in growth planning to the year 2051, enabling municipalities to convert employment lands to non-employment uses within major transit station areas, and changes in transition rules. The notice did not describe the potential environmental implications of any of the changes, which could include the promotion of sprawl or the loss of agricultural lands and natural heritage features.

Under the heading “Mineral Aggregate Operations,” the notice did not describe the change being proposed, and instead stated: “Mineral aggregate resources play a crucial role in the development of housing and municipal infrastructure. Ensuring adequate aggregate resources are available is critical to achieving the success of [the Growth Plan]. The proposed changes would make it easier to establish new mineral aggregate operations closer to market throughout the [Greater Golden Horseshoe] outside of the Greenbelt.” The proposal did not explain that the proposed amendments would permit the establishment of aggregate operations in the habitat of endangered and threatened species within the Natural Heritage System of the plan area.

The notice provided a link to a summary that stated only that “the proposed change to the [Growth] Plan's aggregates policies would be more permissive of new aggregate operations, wayside pits, and quarries within the Natural Heritage System for the Growth Plan. This change will not impact the Greenbelt.” This summary also did not explain what was meant by “more permissive,” or the impact of more permissive policies on species at risk.

The Ministry was not transparent about the impacts of the proposed changes regarding mineral aggregate operations in either the notice or the summary.

This failure to provide essential information about the change being proposed made it more difficult for Ontarians to understand the implications of the

proposal and provide informed comments. Environmental organizations identified and publicized the issue and, as a result of the negative feedback received, the Ministry did not go forward with that part of the proposal.

### Proposed Implementation of Provisions in the *Planning Act* that Provide the Minister Enhanced Authority to Address Certain Matters as Part of a Zoning Order

In December 2020, five months after enacting changes to the *Planning Act* to add “enhanced authority” for Minister’s Zoning Orders (MZOs)—without public consultation, as discussed in **Section 8.4** above—the Municipal Affairs Ministry posted a proposal notice and consulted the public after the fact about the enhanced authority. The ministry did not propose a new policy, but asked for feedback on whether changes should be made to expand, repeal or adjust the new provisions, and for feedback on how to implement the enhanced authority.

The notice for this after-the-fact consultation claimed that the enhanced authority could “help to overcome potential barriers and development delays” for priority developments such as long-term care homes and affordable housing. However, beyond stating that the enhanced authority would not apply to lands within the Greenbelt, the notice did not identify any potential environmental impacts of the use of this new authority or outline any Ministry policy for avoiding or mitigating adverse environmental impacts from the use of this authority.

The enhanced authority specifically permits the minister to override municipalities and direct site plans. Site plans are used to determine certain development matters (such as drainage, site access and layout, landscaping and sustainable design) that affect the surrounding community, municipal infrastructure, transportation design and environmental protection, and are supported by detailed technical studies. Identifying potential environmental effects of the Minister taking over this role would have provided essential contextual information for those commenting on the proposal.

## RECOMMENDATION 44

As we recommended in 2019 and 2020, so that Ontarians can better understand and provide informed comments on environmentally significant proposals, we recommend that the Ministry of Municipal Affairs and Housing describe the environmental implications of each proposal posted on the Environmental Registry.

## MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures for setting out the environmental implications of each proposal posted on the Environmental Registry.

## 8.6 Municipal Affairs Ministry Took Over Two Weeks to Post Almost One-Third of Decisions We Reviewed; Some Were Posted More than a Year Later

In 2019, the Ministry told us that, to ensure decisions are posted as soon as reasonably possible, staff are advised that decision notices should be posted within two weeks of decisions being made; this direction is reflected in the Ministry’s internal guidance documents. However, in our 2019 and 2020 reports, we identified this same issue with decision notices being posted more than two weeks after decisions were made. In response to our recommendation in 2020 that the Ministry follow its service standard of posting decision notices within two weeks, the Ministry told us that it would continue to improve its timeliness in posting all decision notices.

In 2020/21, the Municipal Affairs Ministry posted 15 decision notices for policies, acts and regulations, and 35 decision notices for instruments on the Environmental Registry. The Ministry posted 12 (30%) of the 40 notices that we reviewed more than two weeks after the decisions were made.

Of the 15 decision notices for policies, acts and regulations, seven (47%) of the notices were posted more than two weeks after the decision was made, including four that were posted more than a year after the decision was made. For example, the Ministry notified Ontarians about its decision to implement Ontario's Housing Supply Action Plan 566 days (approximately a year and a half) after making the decision.

For amendments to the *Development Charges Act, 1997*, and related amendments to the General Regulation under that act, the Ministry told us that the decision notices were posted after all of the amendments had come into effect. However, under the EBR Act, notice must be given as soon as reasonably possible after a proposal is "implemented." For acts, implementation is defined in the EBR Act as when a bill receives third reading; for regulations, implementation is when regulations are filed. Posting decision notices in a timely way is important to help the public stay informed about the progress of a ministry's decision-making.

We reviewed a sample of 25 instrument decision notices posted by the Ministry, and found that five (20%) of those decision notices, all for *Planning Act* approvals, were posted more than two weeks after the Ministry had made a decision. For example, the Ministry took 523 days to notify the public about the approval for an official plan for the City of Elliot Lake.

## RECOMMENDATION 45

To give Ontarians prompt notice of its environmentally significant decisions, we recommend that the Ministry of Municipal Affairs and Housing post all decision notices on the Environmental Registry as soon as possible after making a decision, which should be no more than two weeks after making the decision, as stated in its own service standard.

## MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures for posting all decision notices.

## 8.7 Municipal Affairs Ministry Was Not Transparent About Its Decision Regarding Enhanced Powers for Municipal Zoning Orders

In December 2020, the Municipal Affairs Ministry posted a proposal notice to consult the public about the enhanced authority for Minister's Zoning Orders (MZOs) that had already been added through amendments to the *Planning Act* in July 2020. The Ministry asked Ontarians for feedback on whether changes should be made to expand, repeal or adjust the new provisions, and for feedback on how to implement the enhanced authority (for more details of this after-the-fact consultation, see **Section 8.5**).

The Ministry received 507 comments on the proposal. The decision notice stated that a substantial number of comments were unrelated to the enhanced authority and thus not within the scope of the consultation. Many commenters raised concerns with the dramatic increase in the use of MZOs for developments, several of which have the potential for significant adverse environmental impacts. Many of the commenters did address the enhanced authority, including some that raised questions about the Ministry's capacity to take on this responsibility, and that recommended that the provisions be repealed or adjusted.

The Ministry was aware that the most common suggestions were to increase transparency and public consultation in the MZO process, to ensure MZOs conform to local official plans and provincial plans and policies, including the Provincial Policy Statement, and to establish criteria for when MZO use is appropriate.

In the decision notice, posted in March 2021, the Ministry stated that "no legislative changes to the enhanced authority are being proposed." The Ministry did not tell the public that, on the same day the decision notice was posted, the Ministry introduced other legislative changes to the power to make MZOs under the *Planning Act* in Schedule 3 of Bill 257, the *Supporting Broadband and Infrastructure Expansion Act, 2021*. As discussed in **Section 4.5.2**, those

amendments specified that the Provincial Policy Statement does not apply—and has never applied—to an MZO, except an MZO affecting lands in the Greenbelt.

Even though the Ministry was aware that most commenters on the enhanced authority proposal were concerned about the Minister’s use of enhanced authority in the use of MZOs generally, the Ministry did not refer to Bill 257 or include a link to the bill or the proposal notice for the proposed amendments to the *Planning Act* in this decision notice. The Ministry told us it did not consider the two proposals to be directly related.

Yet, the Ministry co-ordinated the timing of the enhanced authority decision with the preparation and introduction of Bill 257. The Ministry was not transparent about this to the public.

## RECOMMENDATION 46

To be transparent and accountable in its decision-making, and so that Ontarians can meaningfully participate in decisions that affect the environment, we recommend that the Ministry of Municipal Affairs and Housing provide all relevant information in its notices, including information about and links to related proposals.

## MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures for information in its notices, including information about and links to related proposals.

## 8.8 Ministry Did Not Sufficiently Explain the Effect of Public Participation in Seven Decision Notices for Policies, Acts and Regulations

In our 2020 Report on the Operation of the EBR Act, we found that the Municipal Affairs Ministry did not describe the effects of public participation on its final decisions adequately or at all in four decision notices we assessed. At a minimum, a decision notice posted on the Environmental Registry should enable the public to understand the effect of any comments on the final decision, including any changes to the proposal that were made as a result of the public’s comments, or whether the proposal remained unchanged. Simply stating that the public’s comments were considered, or that changes were made to the proposal as a result of public feedback (without describing the changes) does not meet the requirements of the EBR Act to explain the effect of public participation on the Ministry’s decision-making.

This year, we reviewed 15 decision notices posted by the Municipal Affairs Ministry, and found that, again, seven (47%) did not adequately describe the effects of public participation on the final decision.

In some notices, the Ministry summarized the comments received, and in some cases it specifically stated that the comments were considered, but then did not describe the effect of the comments, if any, on the final outcome. In other cases, the Ministry stated that it made changes as a result of public participation, but did not explain what those changes were.

For example, the Ministry did not explain how public consultation affected the outcome of two important decisions made in 2020/21, as described below.

### Increasing Housing Supply in Ontario

In 2018, the Municipal Affairs Ministry consulted through the Environmental Registry, and more broadly through other measures, on a policy proposal

called “Increasing Housing Supply in Ontario,” which led to the adoption of the Housing Supply Action Plan in May 2019. The decision notice for the policy, which was not posted until November 2020, stated that the Action Plan is “complemented by” the *More Homes, More Choice Act, 2019*, which “addresses affordability in the housing market by unlocking the development of different kinds of housing through changes to a number of pieces of legislation.”

In describing how public consultation affected the outcome, the Ministry stated in the decision notice that the Ministry received more than 2,000 submissions, that “feedback emphasized the importance of protecting environmentally sensitive areas, including the Greenbelt, cultural heritage assets, and key employment and agricultural lands,” and that comments also emphasized that government should focus development in areas with existing services. The notice stated: “these priorities have been reflected in the Housing Supply Action Plan and the *More Homes, More Choice Act, 2019*,” yet the decision notice did not describe how those priorities were, in fact, reflected in the plan and legislation.

#### Modifications to Innisfil Heights Strategic Settlement Employment Area

In late 2019, the Ministry consulted on a proposed expansion of the boundary of the Innisfil Heights Strategic Settlement Employment Area, identified under *A Place to Grow: Growth Plan for the Greater Golden Horseshoe* to add approximately 243 hectares to the area. On May 7, 2020, the Ministry posted a decision notice, advising that the Minister had issued a revised boundary. Regarding the effect of public participation on the outcome, the notice reported that three comments were received. One comment raised concerns about the adequacy of sewage and water servicing and potential impacts on Lake Simcoe. The notice only stated that the received feedback “elicited mixed results. All feedback was taken into consideration by the Minister in making this decision.” The Ministry did not provide an explanation regarding what concerns were raised, or how the comments affected the Ministry’s final decision.

### RECOMMENDATION 47

As we recommended in 2020, to help Ontarians understand the Ministry of Municipal Affairs and Housing’s environmentally significant decisions and the effect of public comments on those decisions, we recommend that the Ministry clearly describe the effect, if any, of public participation on the Ministry’s decision-making on every proposal, including whether participation led to any changes to the proposal.

### MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures for addressing public comments in decisions.

## 8.9 Municipal Affairs Ministry Did Not Provide Copies of Issued Approvals to the Public in Over Half of Decision Notices Reviewed

In 2020/21, the Municipal Affairs Ministry posted 35 decision notices for *Planning Act* approvals on the Environmental Registry. Of the 25 decision notices we reviewed, 13 (or 52%) of the notices did not provide copies of, or links to, the final approvals issued under the *Planning Act*. Not providing the final approvals makes it more difficult for members of the public to understand the decisions that were made.

For example, for eight of the decision notices for approvals of new or amended official plans, we found that the Ministry did not include copies of the official plans or other supporting documents in the decision notices.

So that Ontarians can understand ministry decisions and, where applicable, exercise their right to challenge the activities that affect the environment in their communities, it is important that decision notices include adequate details about a decision. This may be easily achieved by including

an attachment or a link to the final issued permit or approval.

In our 2020 Report on the Operation of the EBR Act, we found that the Municipal Affairs Ministry had not provided links to final approvals in 88% of the decision notices that we reviewed. We recommended that the Ministry provide links to final issued approvals.

### RECOMMENDATION 48

So that Ontarians can better understand environmentally significant ministry decisions for approvals posted on the Environmental Registry, and, when applicable, exercise their appeal rights, we recommend that the Ministry of Municipal Affairs and Housing provide links to final issued approvals.

### MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures for providing links to final decisions for approvals posted on the Environmental Registry.

## 8.10 Municipal Affairs Ministry Posted Seven Decision Notices Late, then Misinformed Ontarians About Their Appeal Rights

In the course of our audit, we identified seven decision notices that the Municipal Affairs Ministry posted for approvals issued under the *Planning Act* that did not inform the public of their right to seek leave to appeal those decisions.

Under the EBR Act, third parties—including any member of the public—have a right to seek leave to appeal (that is, ask permission to challenge) ministry decisions about certain instruments (such as permits, licences, approvals and other authorizations and orders). Leave-to-appeal applications are made to an independent administrative tribunal (the Ontario Land Tribunal), which decides whether or not to

grant permission for the applicants to proceed with an appeal. When ministries post decision notices on the Environmental Registry for instrument decisions to which the leave-to-appeal right applies, the decision notice usually informs the public of that right. Anyone who wishes to seek leave to appeal must do so within 15 days of the day the Ministry posts the decision notice (for more details about the EBR Act leave-to-appeal rights, see **Appendix 8**).

Approvals under the *Planning Act* for official plans, subdivisions and consents by the Minister to “sever” land (that is, divide into separate lots) in an area where there is no municipal official plan in place are subject to public consultation under the EBR Act. The *Planning Act* has its own appeal process that allows third parties (such as interested members of the public) to directly appeal these approvals, without first seeking leave; therefore, anyone who wishes to challenge such a decision would typically follow that route since the EBR Act requires third parties to first seek leave to appeal.

However, in July 2020 the Municipal Affairs Ministry posted seven decision notices on the Environmental Registry for consents that had been issued much earlier, in 2018 and 2019. Many of the approvals permitted new lots for cottages, camps or lodges in remote areas, allowing road access and servicing, which could affect natural heritage and water resources, as well as create conflicts with other uses of the area. In the “Appeal” section of those decision notices, the Ministry stated “appeals are not allowed” and, variably, “the appeal period has lapsed;” “the appeal period has passed” and “this decision has passed the appeal date.” These statements appear to refer to the *Planning Act* right of appeal.

However, as noted above, the EBR Act leave-to-appeal right is distinct and only arises when notice of a decision is posted on the Environmental Registry. Therefore, although the decisions on the consents were made in 2018 and 2019, Ontarians were still entitled to seek leave to appeal those decisions within 15 days after the notices of the decisions were posted on the Environmental Registry in 2020. Usually, when the Municipal Affairs Ministry posts a decision notice



for an appealable instrument, it explains the *Planning Act* appeal right and states: “there is an additional ‘leave to appeal’ right under the *Environmental Bill of Rights*.” In these seven cases, however, the Ministry did not inform Ontarians of the EBR Act leave to appeal right, and specifically stated that appeals were not allowed.

When we asked the Ministry why none of these decision notices identified the right to seek leave to appeal under the EBR Act, the Ministry told us that it did not do so “since the decisions were posted after the last day of appeal under the *Planning Act* had passed.” The Ministry referred to the EBR Act provision that states that a person may only seek leave to appeal a decision if “another person has a right under another Act to appeal.” The Ministry also stated that “no comments were received. Therefore, it would appear that no person had the right to seek leave to appeal the decision,” referring to the section of the EBR Act that states that a person must have an interest in the decision to seek leave to appeal. However, the Ministry could not provide any documentation to support its determination that leave to appeal rights did not apply.

The Ministry’s surprising interpretation of this provision would mean that prescribed ministries could defeat Ontarians’ EBR Act leave-to-appeal rights by simply delaying the posting of decision notices about instruments until after the time to initiate a direct appeal had passed. Further, while the EBR Act states that submitting a comment is evidence that a person has an interest in the decision, the right to seek leave to appeal is not dependent on comments having been submitted. The Ministry’s interpretation, which is inconsistent with practice in the over 25 years since the EBR Act came into force, undermines the purposes of the EBR Act of providing Ontarians with rights to participate in environmental decision-making, and to challenge decisions they believe could cause harm to the environment. In fact, in 2020/21, Ontarians applied for leave to appeal an Environment Ministry decision to issue an approval for a hauled sewage site that was issued in March 2020, but for which the Ministry did not post a decision notice until

November 2020. The approval holder’s right to appeal the decision had long passed, but Ontarians’ right to seek leave to appeal the decision arose when the decision notice was posted on the Environmental Registry (for more details about that leave to appeal application, see **Appendix 8**).

The third-party right under the EBR Act to seek leave to appeal is a powerful and important tool that Ontarians can use to protect the environment by raising concerns about ministry decisions. Giving timely notice to the public of environmentally significant decisions supports the objectives of transparency and ministry accountability, and ensures that leave-to-appeal rights may be exercised within a reasonable time frame after instruments are issued. In the cases that we identified this year, the Municipal Affairs Ministry did not give timely notice of its decisions, nor did it inform Ontarians of their right—which they did have—to seek leave to appeal those decisions once notice was given.

## RECOMMENDATION 49

So that Ontarians are informed of, and have the opportunity to exercise, their right to seek leave to appeal certain decisions about *Planning Act* approvals that are subject to the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that the Ministry of Municipal Affairs and Housing:

- provide training and guidance materials about the EBR Act’s leave-to-appeal rights to Ministry staff responsible for drafting and posting instrument notices on the Environmental Registry; and
- clearly explain in applicable instrument decision notices that the EBR Act leave-to-appeal right applies, and how to exercise that right.

## MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures materials about the EBR Act’s leave-to-appeal rights to Ministry staff responsible

for drafting and posting instrument notices on the Environmental Registry.

## 9.0 Ministry of Government and Consumer Services (Government Services Ministry or Ministry) – Technical Standards and Safety Authority (TSSA)

### 9.1 Overview

Environmental aspects of the Government Services Ministry’s work include its oversight of liquid fuels handling, programs related to procurement, surplus assets and electrical and electronic equipment management, digital services, management of Ontario’s public real estate portfolio, and administration of the Public Work Class Environmental Assessment.

The Ontario government has delegated responsibility for enforcing provincial safety regulations and enhancing public safety in several sectors to the Technical Standards and Safety Authority (TSSA). These sectors include the transportation, storage, handling and use of fuels (such as gasoline, diesel,

propane, natural gas, digester and landfill gas and hydrogen). The TSSA, a not-for-profit administrative authority that administers regulations under the *Technical Standards and Safety Act, 2000*, reports to and is overseen by the Government Services Ministry.

The *Technical Standards and Safety Act, 2000* and its Liquid Fuels regulation are subject to EBR Act requirements to the extent that they relate to fuel handling. Under the EBR Act, the Government Services Ministry and the TSSA must consult the public about proposals to issue variances from the prescribed requirements of the Liquid Fuels Handling Code and the Liquid Fuels regulation under the *Technical Standards and Safety Act, 2000*. The Government Services Ministry may also receive applications for review and applications for investigation from the public.

In 2020/21, the Government Services Ministry and the TSSA collectively used the Environmental Registry to post 95 notices about environmentally significant policies, regulations and instruments, including a proposal by the Government Services Ministry for an updated Statement of Environmental Values.

See **Section 9.2 (Figure 9)** for the Ministry’s report card on compliance with and implementation of the EBR Act in 2020/21, and **Sections 9.3 to 9.5** for our detailed findings and recommendations.

### 9.2 Report Card on the Government Services Ministry’s Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry’s compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

**Figure 9: Ministry of Government and Consumer Services – Technical Standards and Safety Authority (TSSA)**

Prepared by the Office of the Auditor General of Ontario

- Legend:** ○ Met criteria      – The ministry did not execute any responsibilities under this category in this reporting year  
 ● Partially met criteria      n/a The ministry is not prescribed for this category  
 ● Did not meet criteria      Not assessed      New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
<b>1. Statement of Environmental Values (Statement)</b>				
a. Statement is up-to-date	○	The Ministry posted a proposal for a new Statement in February 2021 that reflects the Ministry’s current responsibilities and new Ministry and government priorities, such as addressing climate change. In July 2021, the Ministry finalized its new Statement.	●	●

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
b. Statement is considered when making decisions	●	<b>Section 9.3</b> – The Ministry did not provide proof that it considered its Statement for either of the decisions that it posted in 2020/21. The TSSA provided consideration documents for all 25 decisions that we requested regarding approvals for liquid fuel variances under the <i>Technical Standards and Safety Act, 2000</i> , but the consideration documents were not detailed and did not reflect analysis and judgment in considering the Statement’s principles.	○	○
<b>2. Use of the Environmental Registry (Registry)</b>				
a. Notice of proposals is given as required by the EBR Act	○	No issues came to our attention about environmentally significant proposals that were not posted on the Registry.	○	○
b. Time to comment is extended based on the factors in the EBR Act	○	The Ministry met this criterion.	○	○
c. Proposal notices for policies, acts and regulations are informative	○	The Ministry and the TSSA each posted one proposal notice on the Registry, both of which met this criterion.	–	○
d. Proposal notices for instruments are informative	●	<b>Section 9.4</b> – The TSSA posted 40 proposal notices for permits and approvals on the Registry, and we reviewed a sample of 25 notices, which generally met this criterion. However, none of the proposal notices that we reviewed included contact information so that members of the public could get in touch with the TSSA with any questions about the proposals.	●	●
e. Received comments are reviewed and considered	○	We reviewed documentation related to the Ministry’s consideration of comments submitted about one proposal for a regulation. The Ministry’s consideration met this criterion.	Not assessed	Not assessed
f. Prompt notice of decisions is given	●	<b>Section 9.5</b> – The Ministry and the TSSA posted three decision notices for policies, acts and regulations and the TSSA posted 32 notices for permits and approvals on the Registry. The Ministry posted two (66%) of the three decision notices for policies, acts and regulations long after the decisions were made. One decision notice was posted over 10 months after the decision was made, and the other more than four years after the decision was made.	○	○
g. Decision notices for policies, acts and regulations are informative	○	The Ministry posted two decision notices for regulations and the TSSA posted one policy decision notice. The TSSA’s decision notice regarding the <i>Fuel Oil Code Adoption Document, 2020</i> was posted prematurely, as a final decision was not yet made. The TSSA told our Office that it would update the decision notice once the Fuel Oil Code Adoption document was finalized, including an explanation of the effects of public participation on the decision.	–	○
h. Decision notices for instruments are informative	○	The TSSA posted 32 decision notices for permits and approvals on the Registry, and we reviewed a sample of 25 notices, which met this criterion. However, as noted above regarding instrument proposals and in <b>Section 9.4</b> , the decision notices did not provide contact information so that members of the public could get in touch with the TSSA with any questions about the decisions.	○	○
i. Proposal notices are up-to-date	○	The Ministry met this criterion. The Ministry and the TSSA had a total of 19 open proposal notices as of March 31, 2021, all of which were posted within the last two years.	○	○

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

### 9.3 Government Services Ministry Could Not Show That It Considered Its Statement of Environmental Values for Either of the Two Decisions Posted, and TSSA Consideration Documents Were Not Sufficiently Detailed

The Government Services Ministry could not provide documentation to demonstrate that it considered its Statement of Environmental Values for either of the two regulation decisions that it posted in 2020/21. Both decisions were to amend Regulation 334 under the *Environmental Assessment Act*, to support the efficient disposal of government property, and to reflect the updated responsibility for government realty.

Without this documentation, it is unclear to the public if or how the Ministry considered the purposes of the EBR Act when making those decisions, or how the Ministry prioritized conflicting values, including environmental values, during its decision-making process.

The Ministry told us that it did not have a process for formally documenting its consideration of its Statement, and that each decision “is reviewed and analyzed on a case-by-case basis.” The Ministry stated that it was working on finalizing a checklist and a new process for the Ministry to guide consideration of its Statement.

The TSSA provided consideration documents for all of the sample of 25 decisions that we requested regarding approved liquid fuel variances under the *Technical Standards and Safety Act, 2000* (that is, permission to not comply with specific requirements of the Liquid Fuels Handling Code). While many of the documents included some consideration, some lacked detail and were often identical to the proposal information. All 25 documents we reviewed indicated that some principles did not apply, but did not explain why, even though the consideration form itself directs the person completing the form to describe “why consideration of the purpose is not

relevant to this decision.” The EBR Act requirement for prescribed ministries to consider their Statements when they make decisions that might significantly affect the environment is intended to ensure that environmental principles are weighed and considered during the decision-making process, and to contribute to informed and improved decision-making. Without documenting a thoughtful analysis of the Statement’s principles in the context of the decision in question, it was not clear whether the TSSA has considered its Statement in a manner that meets the EBR Act’s purposes.

The TSSA told us that it indicated in its consideration documents that Statement principles did not apply where it “determined that site-specific, technical safety variances may have little or only indirect environmental significance, or there was no clear connection between technical code variances for devices and components and the five main purposes of the EBR Act.” The TSSA confirmed that, going forward, when it determines that a Statement principle is not relevant to a particular variance decision or that a decision likely has no environmental impact, it will provide an explanation of that determination.

#### RECOMMENDATION 50

To be transparent and accountable to Ontarians about its environmental decision-making, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider its Statement of Environmental Values whenever making a decision that might significantly affect the environment, we recommend that the Ministry of Government and Consumer Services consider its Statement every time that it makes a decision that might significantly affect the environment, and document that consideration concurrently with the decision-making.

#### MINISTRY RESPONSE

The Ministry acknowledges this recommendation and agrees with the importance of considering the Statement of Environmental Values while

making decisions that might significantly affect the environment.

## RECOMMENDATION 51

To be transparent and accountable to Ontarians about its environmental decision-making, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider its Statement of Environmental Values whenever making a decision that might significantly affect the environment, we recommend that the Technical Standards and Safety Authority consider the Ministry of Government and Consumer Services' Statement every time it makes a decision that might significantly affect the environment in a manner that is deliberate and contributes to improved environmental decision-making, and document that consideration.

## TECHNICAL STANDARDS AND SAFETY AUTHORITY'S RESPONSE

TSSA will consider the Ministry of Government and Consumer Services' Statement every time it makes a decision that might significantly affect the environment. When TSSA believes there is no likely environmental impact, we will indicate as much and/or signal that the variance in question meets an equivalent level of safety as the code. TSSA welcomes the Auditor General's guidance on how to best provide explanations where the environmental link is not always immediately clear.

## 9.4 Technical Standards and Safety Authority Did Not Provide Contact Information in Notices About Liquid Fuels Approvals

All proposal and decision notices posted on the Environmental Registry include a section titled "Connect with us." In that section, ministries typically provide the phone number and email address of the individual staff member responsible for the proposal notice (a best practice) or, at a minimum, contact information for the ministry branch responsible for the proposal. Providing this information ensures that members of the public have someone that they can contact with any questions about the information in notices, or requests for additional information or supporting materials.

Of the 50 instrument proposal and decision notices the TSSA posted in 2020/21 that we reviewed, we found that the TSSA left the contact section blank in all of them, providing no means for anyone reading the notices to contact an informed TSSA staff member with any questions about the proposals or decisions. Further hindering public participation, in the "supporting materials" section, the notices stated that, due to the COVID-19 pandemic, it was not possible to view supporting materials in person, directing the public to instead "reach out to the Contact listed in this notice to see if alternate arrangements can be made"—despite the fact that there was no contact person listed.

It is particularly important that the TSSA provide contact information in its Registry notices because, unlike ministries, TSSA staff telephone numbers are not included in the publicly available online Ontario employee and organization directory.

## RECOMMENDATION 52

To enable Ontarians to contact the Technical Standards and Safety Authority (TSSA) with any questions or requests for information about notices that the TSSA posts on the Environmental Registry, we recommend that the TSSA include,

in every notice that it posts, the names, telephone numbers and email addresses of the TSSA personnel responsible for the notices.

### TECHNICAL STANDARDS AND SAFETY AUTHORITY'S RESPONSE

TSSA agrees with this recommendation. TSSA will include the contact information of the TSSA staff responsible for the notices that TSSA posts on the Environmental Registry.

## 9.5 Government Services Ministry Gave Significantly Late Notice of Two Decisions

In 2020/21, the Government Services Ministry posted two decision notices for regulations; both were for amendments to Regulation 334 under the *Environmental Assessment Act*, and both were posted long after the decisions were made.

The Ministry posted a decision notice informing the public about amendments to support the efficient disposal of government property more than 10 months after the amending regulation was filed. The Ministry also posted a decision notice about amendments to reflect the updated responsibility for government realty more than four years after the amending regulation was filed; our Office had identified that proposal as outdated (i.e., originally posted more than two years earlier without a decision or update) in our 2019 and 2020 reports. It was appropriate for the Ministry to bring the Environmental Registry up to date by posting this decision notice; however, Ontarians were not given prompt notice of this decision.

Members of the public submitted comments on the first proposal. Ontarians were entitled under the EBR Act to receive prompt notice of these decisions, and of the effect that public participation had on the decisions.

Unlike some other prescribed ministries, the Government Services Ministry does not have an internal

service standard for posting decision notices on the Environmental Registry as soon as reasonably possible after making a decision.

### RECOMMENDATION 53

To give Ontarians prompt notice of its environmentally significant decisions, we recommend that the Ministry of Government and Consumer Services establish and consistently follow a service standard to post decision notices no more than two weeks after making a decision.

### MINISTRY'S RESPONSE

The Ministry acknowledges this recommendation and agrees that decisions should be posted on the Environmental Registry in a timely manner. The Ministry will consider service standards when reviewing its policies and practices.

## 10.0 Ministry of Transportation (Transportation Ministry or Ministry)

### 10.1 Overview

The Transportation Ministry is responsible for long-range transportation planning, transit policy, the planning, design, construction and maintenance of provincial highways, road user safety, vehicle standards and heavy diesel vehicle emissions. These activities have environmental impacts including greenhouse gas emissions, air pollutants, wildlife mortality and ecological effects. However, major transportation projects may be subject to the *Environmental Assessment Act*, which has its own consultation processes, making these projects exempt from the consultation requirements of the EBR Act.

None of the laws that the Transportation Ministry administers are prescribed under the EBR Act. However, the Transportation Ministry must consult the public on proposals for environmentally

significant laws and policies. The Transportation Ministry may also receive applications for review from the public.

In 2020/21, the Transportation Ministry used the Environmental Registry to post eight notices about environmentally significant policies, acts and

regulations, including a proposal for an updated Statement of Environmental Values.

See **Section 10.2 (Figure 10)** for the Ministry’s report card on compliance with and implementation of the EBR Act in 2020/21, and see **Sections 10.3 to 10.6** for our detailed findings and recommendations.

## 10.2 Report Card on the Transportation Ministry’s Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry’s compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

**Figure 10: Ministry of Transportation**

Prepared by the Office of the Auditor General of Ontario

<b>Legend:</b>	<input type="radio"/> Met criteria	– The ministry did not execute any responsibilities under this category in this reporting year
	<input type="radio"/> Partially met criteria	n/a The ministry is not prescribed for this category
	<input checked="" type="radio"/> Did not meet criteria	Not assessed New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
<b>1. Statement of Environmental Values (Statement)</b>				
a. Statement is up-to-date	<input type="radio"/>	The Ministry posted a proposal for an updated Statement in March 2021 that reflects the Ministry’s current responsibilities and new Ministry and government priorities, such as addressing climate change. The Ministry finalized its updated Statement and posted a decision notice on the Environmental Registry in October 2021.	<input type="radio"/>	<input checked="" type="radio"/>
b. Statement is considered when making decisions	<input type="radio"/>	<b>Section 10.3</b> – The Ministry provided documentation of its consideration of its Statement for all four decisions that it posted in 2020/21. None of the documents were dated, but the Ministry was able to provide documentation to confirm that consideration occurred at the time of decision-making. However, one of the documents was not sufficiently detailed and did not reflect analysis and judgment in considering the Statement’s principles.	<input type="radio"/>	<input type="radio"/>
<b>2. Use of the Environmental Registry (Registry)</b>				
a. Notice of proposals is given as required by the EBR Act	<input checked="" type="radio"/>	<b>Section 10.4</b> – The Ministry did not consult the public about a new act, the <i>Transit-Oriented Communities Act, 2020</i> , which authorizes the Lieutenant Governor in Council to designate any land as “transit-oriented community land,” facilitating high-density development on the designated lands.	<input type="radio"/>	–
b. Time to comment is extended based on the factors in the EBR Act	<input type="radio"/>	The Ministry met this criterion.	<input type="radio"/>	–
c. Proposal notices for policies, acts and regulations are informative	<input type="radio"/>	The Ministry posted four proposal notices on the Registry, all of which met this criterion.	<input type="radio"/>	–
e. Received comments are reviewed and considered	<input type="radio"/>	We reviewed documentation related to the Ministry’s consideration of comments submitted about two proposal notices for policies. The Ministry’s consideration met this criterion.	Not assessed	Not assessed

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
f. Prompt notice of decisions is given		<b>Section 10.5</b> - The Ministry posted four decision notices. One (25%), for Bill 222 - <i>Ontario Rebuilding and Recovery Act, 2020</i> , was posted eight weeks after the decision was made.		
g. Decision notices for policies, acts and regulations are informative		<b>Section 10.6</b> - The Ministry posted four decision notices, of which two (50%), including notices for the Third Party Advertising Along Provincial Highways and the Greater Golden Horseshoe Transportation Plan, did not describe the effects of public participation on the final decision.		
i. Proposal notices are up-to-date		The Ministry met this criterion. The Ministry had four open proposal notices as of March 31, 2021, all of which were posted within the last two years.		

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

### 10.3 Transportation Ministry Considered Its Statement of Environmental Values in Four Decisions, But Did Not Document the Timing of Its Consideration, and Did Not Thoroughly Document Its Consideration for One Decision

The Ministry provided documents to show how it considered its Statement of Environmental Values for all four decisions that it posted in 2020/21. However, none of the documents were dated, making it difficult to determine if the Ministry considered its Statement when making the decisions (and not after), as required by the EBR Act. When we asked about the timing of its consideration, the Ministry was able to provide us with additional documents to confirm that it had considered the Statement at the time of decision-making.

Three of the consideration documents were sufficiently detailed and reflected judgment and analysis in considering the Statement's principles in the context of the decisions. However, the fourth consideration document, for amendments to the Ministry's Corridor Signing Policy related to third-party advertising along provincial highways, was not sufficiently detailed. The consideration document did not demonstrate a thoughtful analysis of the relevant principles in the context of the decision in question.

The EBR Act requirement for prescribed ministries to consider their Statements when they make decisions that might significantly affect the environment

is intended to ensure that environmental principles are weighed and considered during the decision-making process, and to contribute to informed and improved decision-making. Without documenting a thoughtful analysis of the Statement's principles in the context of its decisions, it is not clear whether the Ministry has considered its Statement in a manner that meets the EBR Act's purposes.

#### RECOMMENDATION 54

To be transparent and accountable to Ontarians about its environmental decision-making, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider its Statement of Environmental Values whenever making a decision that might significantly affect the environment, we recommend that the Ministry of Transportation:

- consider its Statement every time that it makes a decision that might significantly affect the environment, in a manner that is deliberate and contributes to improved environmental decision-making;
- document that consideration concurrently with the decision-making; and
- clearly document the timing of its consideration.

#### MINISTRY'S RESPONSE

The Ministry considers its Statement of Environmental Values (Statement) for all proposal notices when a decision is made that might significantly affect the environment.



Internal ministry processes require early consideration and documentation and the Statement consideration template has been updated to include a date for greater transparency and accountability.

## 10.4 Transportation Ministry Did Not Consult Ontarians About the *Transit-Oriented Communities Act, 2020*

In 2020/21, the Transportation Ministry proposed a new act, the *Transit-Oriented Communities Act, 2020*, included in Bill 197, the *COVID-19 Economic Recovery Act, 2020*, which was tabled on July 8, 2020 and which received royal assent on July 21, 2020. As part of the Ontario government's program to expand transit in Toronto and the Greater Toronto Area, this act, along with the *Building Transit Faster Act, 2020*, provided the Ontario government with the tools to expedite the planning, design and construction process for priority transit projects and communities connected to them.

As a prescribed ministry under the EBR Act, the Transportation Ministry is required to consult the public on proposed acts that could have a significant effect on the environment. The Ministry did not consult the public on the *Transit-Oriented Communities Act, 2020*, informing our Office that it did not consider the EBR Act to be applicable to this proposal. However, the Ministry could not provide us with any documentation demonstrating the basis for that conclusion, or even demonstrating that it had considered the potential environmental implications of the act prior to including it in Bill 197.

Following the adoption of Bill 197, a judicial review application was filed arguing that the Transportation Minister violated her obligation under the EBR Act to consult the public on the *Transit-Oriented Communities Act, 2020*, as well as Bill 197's amendments to the *Public Transportation Act* and *Highway Improvement Act*, both of which removed the requirement for a hearing of necessity for expropriations under those acts. On September 3, 2021, the

Divisional Court found that the legislative provisions eliminating hearings of necessity for transit projects and public highways could not have a significant impact on the environment because the primary purpose of those hearings was to assess the necessity of an expropriation from a technical perspective, not to determine environmental impacts more broadly. As a result, the proposals to eliminate those hearings did not require posting in accordance with the EBR Act.

The Ministry states that the Divisional Court's decision reinforces the Ministry's position that the proposal for the *Transit-Oriented Communities Act, 2020* as a whole was not environmentally significant and did not need to be posted for public consultation under the EBR Act. However, the court referred only to the environmental significance of hearings of necessity, and not to the significance of the broader authority in the Act. Specifically, the *Transit-Oriented Communities Act, 2020* also authorizes the Lieutenant Governor in Council to designate any land as "transit-oriented community land" if it is of the opinion that the land may be required to support a transit-oriented community project. This is a development project "of any nature or kind and for any usage" that is connected with a station or on a designated corridor as part of the development of one of four "priority transit projects" in the Greater Toronto Area. The legislation does not provide for how the usual municipal planning process will be modified to accommodate this accelerated development. This is the subject of negotiations between Ontario and affected municipalities.

The overall intention of facilitating high-density, mixed-used private development close to transit stations is to support investment in transit and increase ridership, which could have positive environmental impacts. Adding increased density or new permitted land uses to a community, particularly where this has not otherwise been planned for by a municipality, and without adequate protection of environmental, heritage and other values could also have significant negative environmental impacts.

Following enactment on July 21, 2020, the *Transit-Oriented Communities Act, 2020* was amended by the *Ontario Rebuilding and Recovery Act, 2020*

to allow the Lieutenant Governor in Council to prescribe any other provincial transit project as a “priority transit project” for the purpose of designating transit-oriented community lands. For those amendments, the Transportation Ministry appropriately posted a proposal notice on the Environmental Registry on October 23, 2020, consulted the public, considered the comments and considered its Statement of Environmental Values. The Transportation Ministry told our Office that it expects responsibility for administering some or all of the *Transit-Oriented Communities Act, 2020* will be transferred from the Transportation Ministry to the Infrastructure Ministry in late 2021 or early 2022.

The EBR Act requires prescribed ministries to consult the public when they make proposals for policies and acts that could, if implemented, have a significant effect on the environment. The government’s plan to expand transit, including the facilitation of transit-oriented communities, has the potential for significant environmental impacts, both positive and negative. Ontarians have the right to be given notice of and consulted on the environmentally significant elements of transportation planning. In this case, given the environmentally significant implications of designating transit-oriented communities, our Office believes that the Ministry should have notified and consulted the public on the proposed original *Transit-Oriented Communities Act, 2020* in accordance with the purposes of the EBR Act.

### RECOMMENDATION 55

To ensure that Ontarians can take part in environmentally significant decision-making, and the government has the benefit of Ontarians’ insights and opinions, we recommend that the Ministry of Transportation consistently consult with the public according to the requirements under Part II of the *Environmental Bill of Rights, 1993*.

### MINISTRY RESPONSE

The Ministry will consult with the public according to the requirements under Part II of the

EBR Act. The Ministry will assess consultation requirements for potentially environmentally significant proposals.

The Ministry is committed to work to ensure requirements under Part II of the EBR Act are met.

## 10.5 Transportation Ministry Took Eight Weeks to Inform Ontarians About Amendments Made by the *Ontario Rebuilding and Recovery Act, 2020*

In 2020/21, the Transportation Ministry posted four decision notices on the Environmental Registry. The Ministry posted one of the notices eight weeks after the decision was made.

The decision was about the enactment of Bill 222, the *Ontario Rebuilding and Recovery Act, 2020*, which amended the *Building Transit Faster Act, 2020* and the *Transit-Oriented Communities Act, 2020* in order to accelerate the delivery of provincial priority transit projects and transit-oriented communities. Under the EBR Act, the decision was made when Bill 222 received third reading in the Legislature on December 3, 2020; however, the Ministry did not post a decision notice on the Environmental Registry to inform the public about the decision and explain the effects of public consultation on the decision until January 28, 2021.

The Transportation Ministry’s internal guidance instructs staff to post decision notices on the Environmental Registry within two weeks of the decision date, but that direction was not followed in this case.

### RECOMMENDATION 56

To give Ontarians prompt notice of its environmentally significant decisions, we recommend that the Ministry of Transportation post all decision notices on the Environmental Registry as soon as possible after making a decision, which should be no more than two weeks after making the decision, as stated in its own service standard.

## MINISTRY RESPONSE

The Ministry welcomes this recommendation and will post notices of its environmentally significant decisions as soon as reasonably possible as required under the EBR Act.

The Ministry has established an internal two-week best practice and will make every effort to meet this best practice.

### 10.6 Transportation Ministry Did Not Describe Effects of Public Participation in Two of Its Four Decision Notices

One of the core components of public consultation under the EBR Act is the public's right to be informed about the effect of public participation on a ministry's final decision about an environmentally significant proposal. At a minimum, a decision notice posted on the Environmental Registry should enable the public to understand the effect of any comments on the final decision, including any changes to the proposal that were made as a result of the public's comments, or whether the proposal remained unchanged. Simply stating that the public's comments were considered, or that changes were made to the proposal as a result of public feedback (without describing the changes) does not meet the requirements of the EBR Act to explain the effect of public participation on the Ministry's decision-making.

Of the four decision notices for policies, acts and regulations posted by the Transportation Ministry in 2020/21, two (50%) did not describe the effects of public participation on the Ministry's decisions. Both

decisions were environmentally significant and garnered significant public interest, with 1,663 survey results for the *Greater Golden Horseshoe Transportation Plan* and 216 comments for a proposal about third-party advertising along provincial highways.

The decision notice for the *Greater Golden Horseshoe Transportation Plan* stated that "results from previous surveys and comments along with extensive stakeholder input received to date has informed the development of a comprehensive range of transportation planning goals and objectives to provide guiding direction for the plan," and the decision notice for third-party advertising along provincial highways reported that some commenters opposed the proposal while others supported it. However, the Ministry did not explain what effect, if any, public participation had on the outcome of either of those decisions, as required by the EBR Act.

## RECOMMENDATION 57

To adhere to the requirements of the *Environmental Bill of Rights, 1993* and to help people understand the Ministry of Transportation's environmentally significant decisions and the effect of public comments on those decisions, we recommend that the Ministry clearly describe the effect, if any, of public participation on the Ministry's decision-making for every proposal, including whether participation led to any changes to the proposal.

## MINISTRY RESPONSE

The Ministry welcomes this recommendation. The Ministry will ensure relevant comments on the posted proposal notices are considered and will include a description as to how they were considered.

## 11.0 Ministry of Agriculture, Food and Rural Affairs (Agriculture Ministry or Ministry)

### 11.1 Overview

The Agriculture Ministry is responsible for a range of environmentally significant policies affecting nutrient management, drainage, pesticide use, water quality and quantity, climate change mitigation and adaptation, renewable energy, organic waste, soil health and pollinator health.

The Agriculture Ministry is responsible for two acts that are prescribed under the EBR Act: The *Nutrient Management Act, 2002* and the *Food Safety and Quality Act, 2001* (in a limited capacity related to the disposal of deadstock). The Agriculture Ministry may also receive applications for review from the public.

In 2020/21, the Agriculture Ministry used the Environmental Registry to post five notices about environmentally significant policies, acts, and regulations.

In 2020/21, an application for judicial review argued that the government, represented by the Agriculture Ministry, failed or refused to comply with the EBR Act in adopting changes to the *Drainage Act* that were made by Bill 197, the *COVID-19 Economic Recovery Act, 2020*. The Divisional Court held that the Agriculture Ministry had complied with the EBR Act by consulting the public on the amendments through a discussion paper posted on the Environmental Registry in early 2020, and that the Ministry considered its Statement of Environmental Values when making the decision.

See **Section 11.2 (Figure 11)** for the Ministry's report card on compliance with and implementation of the EBR Act, and see **Sections 11.3 to 11.5** for our detailed findings and recommendations.

### 11.2 Report Card on the Agriculture Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

**Figure 11: Ministry of Agriculture, Food and Rural Affairs**

Prepared by the Office of the Auditor General of Ontario

**Legend:** ○ Met criteria      — The ministry did not execute any responsibilities under this category in this reporting year  
 ● Partially met criteria      n/a The ministry is not prescribed for this category  
 ● Did not meet criteria      Not assessed      New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
<b>1. Statement of Environmental Values (Statement)</b>				
a. Statement is up-to-date	○	In 2019, the Ministry updated its Statement, and it reflects the Ministry's current responsibilities and new Ministry and government priorities, such as addressing climate change.	○	○
b. Statement is considered when making decisions	●	<b>Section 11.3</b> - The Ministry provided documentation of its consideration of its Statement for both of the decisions that it posted in 2020/21. However, neither of the documents were dated, and the Ministry was unable to provide documentation to confirm that consideration occurred when one of the decisions was made.	○	○

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
<b>2. Use of the Environmental Registry (Registry)</b>				
a. Notice of proposals is given as required by the EBR Act	<input type="radio"/>	No issues came to our attention about environmentally significant proposals that were not posted on the Registry.	<input type="radio"/>	<input type="radio"/>
b. Time to comment is extended based on the factors in the EBR Act	<input type="radio"/>	The Ministry met this criterion.	<input type="radio"/>	<input type="radio"/>
c. Proposal notices for policies, acts and regulations are informative	<input type="radio"/>	The Ministry posted two proposal notices for a policy and regulation on the Registry, both of which met this criterion.	<input checked="" type="radio"/>	<input type="radio"/>
e. Received comments are reviewed and considered	<input type="radio"/>	We reviewed documentation related to the Ministry's consideration of comments submitted about one proposal notice for an act. The Ministry's consideration met this criterion.	Not assessed	Not assessed
f. Prompt notice of decisions is given	<input checked="" type="radio"/>	<b>Section 11.4</b> – The Ministry posted two decision notices in 2020/21, both of which were posted more than two weeks after the decisions were made. Specifically, the Agrifood Renewable Natural Gas for Transportation Demonstration Program decision notice was posted 916 days after the decision was made, and the <i>Drainage Act</i> decision notice was posted 37 days after the decision was made.	<input type="radio"/>	<input type="radio"/>
g. Decision notices for policies, acts and regulations are informative	<input checked="" type="radio"/>	<b>Section 11.5</b> – The Ministry posted two decision notices. A decision notice about amendments to the <i>Drainage Act</i> did not clearly describe the decision, or include links to relevant documents that would help a reader fully understand the decision.	<input type="radio"/>	<input type="radio"/>
i. Proposal notices are up-to-date	<input type="radio"/>	The Ministry met this criterion. The Ministry had four open proposal notices as of March 31, 2021, all of which were either posted or updated within the last two years.	<input type="radio"/>	<input type="radio"/>

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

### 11.3 Agriculture Ministry Did Not Document When It Considered its Statement of Environmental Values in Its Decision About an Agrifood Renewable Natural Gas for Transportation Pilot Project

The Agriculture Ministry provided documentation of its consideration of its Statement for both decisions that it posted on the Environmental Registry in 2020/21. However, neither of the consideration documents were dated, making it difficult to determine if the Ministry considered its Statement when making the decisions (and not after), as required by the EBR Act. The Ministry was able to provide additional documentation for a decision regarding the *Drainage Act* that confirmed that consideration had occurred before the final decision was made, but

could not provide additional documentation to confirm the timing of its consideration regarding a decision about the Agrifood Renewable Natural Gas for Transportation Demonstration Program.

The EBR Act requirement for prescribed ministries to consider their Statements when they make decisions that might significantly affect the environment is intended to ensure that environmental principles are weighed and considered during the decision-making process, to contribute to informed and improved decision-making.

The Agriculture Ministry told us: “OMAFRA has improved its Environmental Registry processes such that [it is] now able to provide documentation of consideration of the [Statement] at the ERO proposal notice stage rather than at the decision notice stage.” This change in process should provide greater transparency about the Ministry's consideration of its Statement.

## RECOMMENDATION 58

To be transparent and accountable to Ontarians about its environmental decision-making, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider its Statement of Environmental Values whenever making a decision that might significantly affect the environment, we recommend that the Ministry of Agriculture, Food and Rural Affairs clearly document the timing of its consideration of its Statement.

## MINISTRY RESPONSE

As part of the Ministry's efforts to improve compliance with the EBR Act, the Ministry is currently in the process of amending its Statement of Environmental Values (Statement) Consideration Documentation. This will include amending the Statement Consideration Documentation to clearly document the timing of consideration of the Statement.

## 11.4 Agriculture Ministry Was Late Informing Ontarians About the Two Environmentally Significant Decisions It Made

Both of the decision notices that the Agriculture Ministry posted on the Environmental Registry in 2020/21 were posted more than two weeks after the decisions were made.

The Ministry posted its decision on the implementation of the Agrifood Renewable Natural Gas for Transportation Demonstration Program, two-and-a-half years after the decision was made. This pilot program, developed under the previous government's Climate Change Action Plan, was intended to test the agri-food sector's interest in the production and use of renewable natural gas as transportation fuel instead of diesel fuel, to help the sector transition to

a lower-carbon economy. The proposal notice for the program was posted in May 2017, and the program was established in September 2017. By the time a decision notice was posted on April 1, 2020, the program had already been terminated.

The Ministry posted a decision notice about amendments to the *Drainage Act* 37 days after the amendments were made when Bill 197, the *COVID-19 Economic Recovery Act, 2020*, received third reading.

The Agriculture Ministry's internal guidance on compliance with the EBR Act directs staff to post decision notices within two weeks of the decision date, if possible, but this guidance was not followed in 2020/21.

## RECOMMENDATION 59

To give Ontarians prompt notice of its environmentally significant decisions, we recommend that the Ministry of Agriculture, Food and Rural Affairs post all decision notices on the Environmental Registry as soon as possible after making a decision, which should be no more than two weeks after making the decision, as stated in its guidance to staff.

## MINISTRY RESPONSE

The Ministry agrees that Ontarians should have prompt notice of the government's environmentally significant decisions.

As part of the commitment to develop a process to train and update all relevant staff on the ministry's responsibilities under the EBR Act, the Ministry will continue to support staff on the requirement to post a decision notice as soon as possible, noting the expectation that the decision notice be posted within two weeks.

In addition, the Ministry will continuously review and update internal processes to support posting a decision notice within two weeks of a decision being made.

## 11.5 Agriculture Ministry Did Not Clearly Describe Decision About Amendments to the *Drainage Act*, or Provide Links to Key Supporting Documents

The Agriculture Ministry posted two decision notices on the Environmental Registry in 2020/21: one for the implementation of the Agrifood Renewable Natural Gas for Transportation Demonstration Program and one for changes to the *Drainage Act*.

While the Agrifood Renewable Natural Gas for Transportation Demonstration Program decision notice met our criteria, the *Drainage Act* amendment decision notice posted in August 2020 did not clearly describe the decision that was made in the appropriate section. The decision summary indicated that the Ministry was “implementing changes to the *Drainage Act*”; however, in the decision details section, the Ministry described what was proposed in the January 2020 proposal notice without indicating that the Ministry had decided to proceed with those amendments.

The decision notice also did not explain that the amendments were made through Bill 197, the *COVID-19 Economic Recovery Act, 2020*, or when the amendments were made. Only in the description of the effect of public participation, later in the notice, did the Ministry state that “a decision was made to proceed with the proposed legislative amendments as they were posted.” This was not made clear in the decision summary or decision details.

Further, in our 2020 Report on the Operation of the EBR Act, we found that the amended *Drainage Act* proposal notice did not include a link to the *Drainage Act*, which would have helped members of the public to better access and understand information about the proposal. We recommended that the Ministry provide links in Environmental Registry notices to all key supporting information, including all relevant acts. The decision notice for the *Drainage Act* amendments, posted in August 2020, also did

not include any supporting links. There was public interest in this decision, evidenced by the 76 comments submitted on the proposal. Providing links to the *COVID-19 Economic Recovery Act, 2020*, which made the amendments, and to the *Drainage Act* itself, could have helped members of the public interested in the decision better understand what changes were made to the legislation. Following our Office’s recommendation in our 2020 report, the Ministry included supporting links in a related *Drainage Act* regulatory proposal posted in December 2020.

### RECOMMENDATION 60

So that Ontarians can better understand environmentally significant decisions made by the Ministry of Agriculture, Food and Rural Affairs (Ministry), we recommend that the Ministry:

- clearly describe the details of each decision posted on the Environmental Registry, including the decision date; and
- provide links to all key supporting information, including links to all relevant acts, in each decision notice.

### MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to ensuring the public has appropriate information about government proposals that might be environmentally significant so that they may participate in the government decision-making process.

The Ministry has revised internal processes following the release of the Auditor General’s 2020 report on the operation of the EBR Act to ensure all key supporting information, including links to all relevant acts, are included in proposal notices.

The Ministry will update training materials and templates to ensure decision notices clearly describe the details of each decision and the date the decision was made.







## 14.0 Ministry of Long-Term Care (Long-Term Ministry or Ministry)

### 14.1 Overview

In 2019/20, the former Ministry of Health and Long-Term Care split into two ministries: the Ministry of Health and the Ministry of Long-Term Care. In 2020/21 our Office reviewed the Health Ministry and the Long-Term Care Ministry as separate prescribed ministries. The Long-Term Care Ministry develops policy and provides planning and funding for the establishment, upgrading and operation of

long-term care facilities. The Ministry sets standards for long-term care homes, issues and renews licences, and inspects homes to ensure compliance with provincial policy, legislation and regulations.

In 2020/21, the Long-Term Care Ministry used the Environmental Registry to post one notice about an environmentally significant policy: a proposal for a new Statement of Environmental Values for the Ministry. In August 2021, the Ministry posted a decision notice on the Registry with its finalized updated Statement.

See **Section 14.2 (Figure 14)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21.

### 14.2 Report Card on the Long-Term Care Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

#### Figure 14: Ministry of Long-Term Care

Prepared by the Office of the Auditor General of Ontario

<b>Legend:</b>	<input type="radio"/> Met criteria	– The ministry did not execute any responsibilities under this category in this reporting year
	<input type="radio"/> Partially met criteria	n/a The ministry is not prescribed for this category
	<input checked="" type="radio"/> Did not meet criteria	

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
<b>1. Statement of Environmental Values (Statement)</b>				
a. Statement is up-to-date	<input type="radio"/>	The Ministry finalized a new Statement in August 2021, and it reflects the Ministry's current responsibilities and new Ministry and government priorities, such as addressing climate change.	<input type="radio"/>	<input checked="" type="radio"/>
<b>2. Use of the Environmental Registry (Registry)</b>				
a. Notice of proposals is given as required by the EBR Act	<input type="radio"/>	No issues came to our attention about environmentally significant proposals that were not posted on the Registry.	<input type="radio"/>	–
b. Time to comment is extended based on the factors in the EBR Act	<input type="radio"/>	The Ministry met this criterion.	–	–
c. Proposal notices for policies, acts and regulations are informative	<input type="radio"/>	The Ministry posted one proposal notice for a policy on the Registry, which met this criterion.	–	–
i. Proposal notices are up-to-date	<input type="radio"/>	The Ministry met this criterion. The Ministry had one open proposal notice as of March 31, 2021, which was posted within the last two years.	–	–

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

## 15.0 Ministry of Infrastructure (Infrastructure Ministry or Ministry)

### 15.1 Overview

The Infrastructure Ministry’s work—including infrastructure planning and delivery, managing the implementation of the *Infrastructure for Jobs and Prosperity Act, 2015*, and provincial asset management planning—can have a significant bearing on environmental issues ranging from land use planning to climate change.

The Infrastructure Ministry oversees two agencies, Waterfront Toronto and Infrastructure Ontario. The Ministry works with the federal government to deliver funding for investments in public transit, green infrastructure, and community infrastructure, including wastewater. The Ministry also invests in expansion of broadband and cellular infrastructure and provides funding to stakeholders who directly manage infrastructure projects.

Some of the Infrastructure Ministry’s projects are carried out by Infrastructure Ontario, which is

not subject to the EBR Act. Further, some Ministry projects are subject to a Class Environmental Assessment, while transportation, transit and municipal infrastructure projects funded by the Ministry are carried out by other public entities that must meet the requirements of the *Environmental Assessment Act*. Projects under the *Environmental Assessment Act* are not subject to the EBR Act, and related approvals are exempt from the consultation requirements of the EBR Act.

The Infrastructure Ministry is not responsible for any laws that are prescribed under the EBR Act.

In 2020/21, the Infrastructure Ministry used the Environmental Registry to post one notice about an environmentally significant policy: a decision notice for an updated Statement of Environmental Values for the Ministry. This policy was in response to our 2019 and 2020 reports on the operation of the EBR Act, in which we recommended that the Ministry update its Statement to reflect its current environmental values and responsibilities.

See **Section 15.2 (Figure 15)** for the Ministry’s report card on compliance with and implementation of the EBR Act in 2020/21.

### 15.2 Report Card on the Infrastructure Ministry’s Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry’s compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

**Figure 15: Ministry of Infrastructure**

Prepared by the Office of the Auditor General of Ontario

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
<b>1. Statement of Environmental Values (Statement)</b>				
a. Statement is up-to-date	<input type="radio"/>	In March 2021, the Ministry finalized a new Statement, and it reflects the Ministry’s current responsibilities and new Ministry and government priorities, such as addressing climate change.	<input type="radio"/>	<input checked="" type="radio"/>

- Legend:**
- Met criteria
  - Partially met criteria
  - Did not meet criteria
  - The ministry did not execute any responsibilities under this category in this reporting year
  - n/a The ministry is not prescribed for this category
  - Not assessed New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
<b>2. Use of the Environmental Registry (Registry)</b>				
a. Notice of proposals is given as required by the EBR Act	○	No issues came to our attention about environmentally significant proposals that were not posted on the Registry.	○	○
e. Received comments are reviewed and considered	○	We reviewed documentation related to the Ministry's consideration of comments submitted about one proposal notice for a policy. The Ministry's consideration met this criterion.	Not assessed	Not assessed
f. Prompt notice of decisions is given	○	The Ministry met this criterion.	●	–
g. Decision notices for policies, acts and regulations are informative	○	The Ministry posted one decision notice for a policy on the Registry, which met this criterion.	○	–
i. Proposal notices are up-to-date	○	The Ministry met this criterion. However, due to the migration of proposal notices from the former Environmental Registry to the new Environmental Registry of Ontario, a historical proposal notice posted and left open by the former Ministry of Public Infrastructure and Renewal in 2008 was newly assigned to the Infrastructure Ministry in 2020/21. The Ministry is now responsible for closing the notice so that the Environmental Registry is a reliable source of up-to-date information for the public.	○	●

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

## 16.0 Ministry of Economic Development, Job Creation and Trade (Economic Development Ministry or Ministry)

### 16.1 Overview

The Economic Development Ministry includes divisions that work with stakeholders to modernize and streamline regulations (including environmental regulations), reduce regulatory burdens on businesses, manage government approvals for omnibus red tape reduction bills, and oversee the development of regulatory compliance modernization initiatives.

The Economic Development Ministry is not responsible for any laws that are prescribed under the EBR Act.

In 2020/21, the Economic Development Ministry used the Environmental Registry to post two bulletins

(notices that are posted for information purposes only) to give the public notice of omnibus bills introduced by the Associate Minister of Small Business and Red Tape Reduction. Those omnibus bills proposed environmentally significant amendments to acts administered by other prescribed ministries, and for which the responsible ministries posted individual proposal notices on the Registry for public consultation. These bulletins included links to the relevant individual proposal notices. This approach was reasonable, as it ensured that the public received notice of the bill, but that comments would be directed to the ministries responsible for the environmentally significant proposals contained in the bill.

See **Section 16.2 (Figure 16)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21.



## 17.2 Report Card on the Indigenous Affairs Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

### Figure 17: Ministry of Indigenous Affairs

Prepared by the Office of the Auditor General of Ontario

**Legend:** ○ Met criteria      – The ministry did not execute any responsibilities under this category in this reporting year  
 ● Partially met criteria      n/a The ministry is not prescribed for this category  
 ● Did not meet criteria

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
<b>1. Statement of Environmental Values (Statement)</b>				
a. Statement is up-to-date	○	The Ministry's Statement, which was last updated in 2018 (when the Ministry was the Ministry of Indigenous Relations and Reconciliation) reflects the Ministry's current responsibilities and new government priorities, such as addressing climate change. However, the Statement does not reflect the Ministry's current name.	○	○
<b>2. Use of the Environmental Registry (Registry)</b>				
a. Notice of proposals is given as required by the EBR Act	○	No issues came to our attention about environmentally significant proposals that were not posted on the Registry.	○	○

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

## 18.0 Ministry of Education (Education Ministry or Ministry)

### 18.1 Overview

The Education Ministry provides tools and resources to school boards to assist them in making decisions on energy consumption and management, including tracking energy performance, assisting in applying for incentives to implement energy-efficient equipment, and providing information on best practices, products and services. These initiatives support the province's Made-in-Ontario Environment Plan.

The Education Ministry also plays a role in educating youth on the importance of the environment and in preparing them to be environmentally responsible citizens. The Ministry's 2009 policy framework, *Acting Today, Shaping Tomorrow*, commits the Ministry to helping realize the vision that "Ontario's

education system will prepare students with the knowledge, skills, perspectives, and practices they need to be environmentally responsible citizens."

The Ministry is not responsible for any laws that are prescribed under the EBR Act. However, the Ministry may receive applications for review from the public.

In 2020/21, the Education Ministry posted a proposal notice and a decision notice on the Environmental Registry for revisions to the Ministry's Statement of Environmental Values. These notices were in response to our Office's 2019 and 2020 reports on the operation of the EBR Act, in which we recommended that the Ministry update its Statement to reflect its current environmental values and responsibilities.

See **Section 18.2 (Figure 17)** for the Ministry's report card on compliance with and implementation of the EBR Act.



## 19.0 Ministry of Labour, Training and Skills Development (Labour Ministry or Ministry)

### 19.1 Overview

The Ministry of Labour, Training and Skills Development delivers public services in four primary areas of responsibility: employment and workforce development, occupational health and safety, employment standards, and labour relations.

### 19.2 Report Card on the Labour Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

The Labour Ministry is not responsible for any laws that are prescribed under the EBR Act, and does not receive applications for review or investigation from the public.

In 2020/21, the Ministry did not post any notices on the Environmental Registry.

See **Section 19.2 (Figure 17)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21, and **Section 19.3** for our detailed finding and recommendation.

#### Figure 19: Ministry of Labour, Training and Skills Development

Prepared by the Office of the Auditor General of Ontario

**Legend:** ○ Met criteria      – The ministry did not execute any responsibilities under this category in this reporting year  
 ● Partially met criteria      n/a The ministry is not prescribed for this category  
 ● Did not meet criteria

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
<b>1. Statement of Environmental Values (Statement)</b>				
a. Statement is up-to-date	●	<b>Section 19.3</b> – The Ministry has not updated its Statement since 2008, and its current statement does not reflect its current mandate or new government priorities, such as addressing climate change. The Ministry has been working on updating its Statement but as of September 2021 the Ministry had not posted the draft Statement on the Environmental Registry for public consultation.	●	●
<b>2. Use of the Environmental Registry (Registry)</b>				
a. Notice of proposals is given as required by the EBR Act	○	No issues came to our attention about environmentally significant proposals that were not posted on the Environmental Registry.	○	–

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.



### 19.3 Labour Ministry's Statement of Environmental Values Needs Updating

The Labour Ministry's Statement was last updated in 2008. Since then, the Ministry's mandate has changed, including assuming responsibilities from the former Ministry of Training, Colleges and Universities in 2019. Further, the government's Made-in-Ontario Environment Plan (2018) directed all ministries to update their Statements to reflect Ontario's environmental plan, to improve government's ability to consider climate change when making decisions and "make climate change a cross-government priority."

In 2019 and 2020, we reported that the Ministry did not have an up-to-date Statement, and recommended that it review and update its Statement. In early 2020, the Ministry confirmed that it was working on a draft updated Statement to be finalized in October 2020, but it did not meet this internal deadline. In early 2021, the Ministry confirmed that it was still working on updating its Statement. However, as of September 2021 it had not posted a proposal to update its Statement on the Environmental Registry.

#### RECOMMENDATION 61

As we recommended in 2019 and 2020, so that the Ministry of Labour, Training and Skills Development's Statement of Environmental Values (Statement) reflects its current environmental values and responsibilities, we recommend that the Ministry complete its review of its Statement with public consultation through the Environmental Registry and update it to reflect its new priorities.

#### MINISTRY RESPONSE

The Ministry of Labour, Training and Skills Development will continue its work on updating its Statement. A draft updated Statement was prepared March 2020 but work on it was put on hold because of COVID-19.

## 20.0 Treasury Board Secretariat

### 20.1 Overview

The Treasury Board Secretariat's role is primarily financial, administrative and operational across the Ontario government. The Treasury Board Secretariat is responsible for the corporate rules for procurement across the Ontario Public Service and broader public sector.

The Treasury Board Secretariat is not responsible for any prescribed acts under the EBR Act, and does not receive applications for review or investigation.

In 2020/21, the Treasury Board Secretariat did not post any notices on the Environmental Registry.

See **Section 20.2 (Figure 20)** for the Treasury Board Secretariat's report card on compliance with and implementation of the EBR Act.



## Part III: Follow-up

Ministry of the Environment, Conservation and Parks  
Ministry of Municipal Affairs and Housing

# Operation of the *Environmental Bill of Rights, 1993*

Follow-Up on Chapter 2, Volume 2, *2019 Annual Report*

### RECOMMENDATION STATUS OVERVIEW

	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
<b>Ministry of the Environment, Conservation and Parks</b>						
Recommendation 7	4		2	2		
<b>Ministry of Municipal Affairs and Housing</b>						
Recommendation 19	2			2		
Recommendation 20	1			1		
<b>Total</b>	<b>7</b>		<b>2</b>	<b>5</b>	<b>0</b>	<b>0</b>
<b>%</b>	<b>100</b>	<b>0</b>	<b>29</b>	<b>71</b>	<b>0</b>	<b>0</b>

## Background

For many years, our Office has issued follow-up reports two years after publication of the original report to assess the progress made in implementing the actions we recommended.

As our Office reports annually on the operation of the *Environmental Bill of Rights, 1993* (EBR Act), our findings in our annual reports constitute our follow-up on past recommendations by providing an update on the status of a ministry's compliance with and implementation of the EBR Act. We also assess and report on relevant information about ministries'

actions to implement those recommendations, such as the development of new policies or guidance intended to achieve compliance with the EBR Act.

For specific recommendations that are not directly related to compliance with and implementation of the requirements of the EBR Act, we will follow our Office's practice of following up on the status of actions taken by ministries to implement those recommendations two years after the recommendations were published.

Many of the recommendations in our 2019 report, *Operation of the Environmental Bill of Rights, 1993*, relate to compliance with and implementation of the requirements of the EBR Act that are already covered by our continuous, annual audit of the operation of

the EBR Act. However, three recommendations in our 2019 report are not directly related to compliance with or implementation of the EBR Act, but arise from issues raised in applications for review submitted under the EBR Act. We report on the status of actions taken on those three recommendations here.

## Status of Actions Taken on Recommendations

We conducted assurance work between April 2021 and August 2021. We obtained written representation from the Environment Ministry and the Municipal Affairs Ministry that effective November 5, 2021, they had provided us with a complete update of the status of the recommendations we made in the original review two years ago.

### Denial of Request to Review Two Air Standards Did Not Provide Evidence that Current Standards Are Adequate to Protect the Environment and Human Health

#### Recommendation 7

*To reduce concentrations of, and harm from, air pollution from industrial sources, particularly in areas with high concentrations of pollutants, we recommend that the Ministry of the Environment, Conservation and Parks:*

- review its standard for nitrogen dioxide ( $NO_2$ );
- based on the results of its review, update its standard for  $NO_2$ ;

**Status:** Little or no progress.

#### Details

In our 2019 review, we found that the Environment Ministry provided insufficient information to support its decision denying an application for review related to standards for two air contaminants. Raising concerns about inadequate protection of the environment and human health, the applicants requested a review

of the Ministry's air standard limit for industrial emissions of nitrogen dioxide ( $NO_2$ ) and of the need for an air standard to regulate industrial emissions of fine particulate matter ( $PM_{2.5}$ ). The Ministry responded that its air standards are periodically reviewed and updated as new scientific information becomes available, and the  $NO_2$  standard had been prioritized for review.

In our follow-up, we found that, while the Ministry had conducted some work in 2015 to help support future decision-making and standard-setting related to  $NO_2$ , the Ministry still had not set any time frame for undertaking its prioritized review of  $NO_2$ , nor developed a new standards-setting strategy. By December 2021, the Ministry expects to conduct a preliminary review of Canadian Ambient Air Quality Standards attainment in Ontario to inform any update of key  $NO_2$  benchmarks. The Ministry then expects to determine the benchmarks needed to manage  $NO_2$  sources by December 2022. This may include updates to the  $NO_2$  standard.

- assess the need for a standard for industrial emissions of fine particulate matter ( $PM_{2.5}$ );
- if the assessment shows a need, establish a standard for industrial emissions of  $PM_{2.5}$ .

**Status:** In the process of being implemented by 2023.

#### Details

As discussed above, in our 2019 review, we found that the Environment Ministry provided insufficient information to support its decision denying an application for review requesting a review of the need for an air standard to regulate industrial emissions of  $PM_{2.5}$ .

In our follow-up, the Ministry indicated to us that, in May 2020, it had updated its Ambient Air Quality Criteria list, incorporating the Canadian Ambient Air Quality Standards for  $PM_{2.5}$ . The Ministry's Ambient Air Quality Criteria are not standards that are required to be met by regulation, but rather levels that are used to assess general air quality. The Ministry indicated that it is participating in a federal-provincial-territorial initiative launching in 2021 to update the current Canadian Ambient Air Quality Standards for  $PM_{2.5}$ , and will consider the science

review undertaken as part of this initiative to inform the potential adoption or development of provincial benchmarks for this standard. However, the Ministry does not expect to establish a provincial standard for industrial emissions of PM<sub>2.5</sub>, because it considers it more feasible to focus on regulatory air standards for the precursor contaminants that react to form PM<sub>2.5</sub> in the atmosphere, such as sulphur dioxide, ammonia, and nitrogen oxides. Given that PM<sub>2.5</sub> is not only directly emitted but also forms in the atmosphere from emitted precursors, and given the challenges in estimating PM<sub>2.5</sub> emissions from industrial sources, this is a sensible approach. The Ministry's updated air standards for sulphur dioxide, a major precursor of PM<sub>2.5</sub>, take effect in 2023.

## Denial of Request to Review the Regulation of Septic Systems Did Not Provide Sufficient Evidence that Current Requirements Are Adequate to Protect the Environment

### Recommendation 19

*To address the risk of pollution from malfunctioning septic systems, we recommend that the Ministry of Municipal Affairs and Housing:*

- *review the effectiveness of the Ontario Building Code requirements governing the operation and maintenance of septic systems; and*
- *based on the results of its review, update the Ontario Building Code requirements governing the operation and maintenance of septic systems.*

**Status:** Little or no progress.

### Details

In our 2019 review, we found that the Municipal Affairs Ministry provided insufficient information to support its decision denying a request to review the regulation of septic systems (that is, small, on-site systems that collect and partially treat sewage from a home or business). Specifically, the applicants were concerned that Ontario Building Code (Building Code) requirements for the operation and

maintenance of septic systems are insufficient to protect the environment from potential harm, such as from malfunctioning systems contaminating water sources with untreated human sewage. In denying the application, the Ministry did not provide the applicants any information: to explain why it had decided not to proceed with previously proposed new requirements for septic systems; or to support the sufficiency of existing requirements under the Building Code to protect the environment from malfunctioning septic systems. In response to our recommendation, the Ministry indicated that it would work with municipal stakeholders, conservation authorities and health units to assess the scope of the issue and identify potential next steps, and then take appropriate steps identified through this process.

In our follow-up, we found that the Ministry had not taken any steps to review the effectiveness of the Building Code requirements governing the operation and maintenance of septic systems. We learned that updates to Ontario's septic system requirements, if any, would occur during the harmonization of the Building Code with the National Construction Codes. In August 2020, the Minister of Municipal Affairs and Housing signed a binding agreement with the federal and other provincial and territorial governments to further harmonize the Building Code with the National Construction Codes, in line with commitments made under the Canadian Free Trade Agreement. Although the small, on-site septic systems that the Building Code regulates are not included in the National Construction Codes, the Ministry indicated that updates to Building Code requirements for small septic systems, in consultation with the Environment Ministry, may occur when amendments to the Building Code are made as part of the harmonization exercise. As part of the harmonization exercise, the Ministry will conduct a review of the Building Code. On October 20, 2021, the Ministry posted a notice on Ontario's Regulatory Registry for a first round of consultation on its review of the Building Code, including some Ontario-only updates. The Ministry told us that it plans two more rounds of consultations. One is planned for winter of 2022, which would

include the new 2020 National Construction Codes alignment proposals. The last round of consultations, on additional Ontario-only proposals, including septic systems, is scheduled for fall of 2022 or early winter 2023. The Ministry anticipates that Ontario's next Building Code will be in place by the end of 2023.

It is sensible to consider and include any updates to Ontario's septic system requirements when the Ministry amends the Building Code as part of the broader harmonization exercise. To maximize the benefits of that exercise, we believe that the Ministry should also review the effectiveness of Ontario's septic system requirements to inform its review of the Building Code and to identify any necessary updates to these requirements.

## Denial of Request to Review the Rules Governing Habitat Offsets Did Not Provide Evidence that Current Requirements Are Adequate to Protect Species at Risk

### Recommendation 20

*To address the risks of loss of wildlife habitat and biodiversity, we recommend that the Ministry of Municipal Affairs and Housing review the effectiveness of protecting habitat for species at risk that was created as an offset, as part of its current review of the Provincial Policy Statement.*

**Status:** Little or no progress.

### Details

In our 2019 review, we found that the Municipal Affairs Ministry provided insufficient information to support its decision to deny a request to review the rules governing habitat offsets for species at risk (that is, the practice of developers obtaining approval for projects that destroy significant wildlife habitat by creating new habitat as a substitute, or an offset). The applicants were concerned that provisions in the Provincial Policy Statement under the *Planning Act*, which prohibit development in significant wildlife habitat unless the developer demonstrates that “that there will be no negative impacts,” do not in fact adequately

protect habitat when attempted through the creation of a habitat offset. Under the Provincial Policy Statement, development and site alteration is not permitted in the habitat of endangered and threatened species (the most at-risk species), except in accordance with provincial and federal requirements.

The Ministry denied the request based on the fact that it had completed a review of the Provincial Policy Statement in 2014. However, the Ministry did not provide the applicants any evidence that the 2014 review had examined habitat offsets. Further, the Ministry did not provide any evidence that the existing regulatory framework is sufficient to protect habitat for species at risk that was created as an offset.

In our follow-up, we found that the Ministry did not review the effectiveness of protecting habitat for species at risk that was created as an offset, as part of its 2019 review of the Provincial Policy Statement. The Ministry told us that responsibility for such a review belongs with the Environment Ministry, which did not recommend any changes related to endangered species policy in the Provincial Policy Statement.

The Municipal Affairs Ministry consulted the public on proposed changes to the Provincial Policy Statement, 2014 between July and October 2019 as part of a review of the Provincial Policy Statement. The Ministry informed us that, during this review, the Environment Ministry—which is responsible for the province's policies related to species at risk—did not bring forward any changes to the Provincial Policy Statement related to wildlife habitat and biodiversity. Moreover, the Municipal Affairs Ministry received limited stakeholder feedback on the issue of habitat offsets. Based on this feedback, the Ministry made minor housekeeping changes to definitions relating to the habitat of endangered species and threatened species, but neither the Municipal Affairs Ministry nor the Environment Ministry assessed the effectiveness of habitat offsets in protecting species at risk habitat.

The new Provincial Policy Statement, 2020 was released on February 28, 2020, with an effective date of May 1, 2020.

## Appendix 1: Audit Criteria for Assessing Prescribed Ministries' Compliance with and Implementation of the *Environmental Bill of Rights, 1993*

Prepared by the Office of the Auditor General of Ontario

The *Environmental Bill of Rights, 1993* (EBR Act) requires our Office to report annually on the operation of the Act. The operation of the EBR Act includes both the exercising of its rights by Ontarians (for example, the use of the Environmental Registry, and the submission of applications for review and investigation) and its implementation by prescribed ministries.

For the EBR Act to operate effectively, it must be implemented in a manner that is consistent with the purposes of the Act. Our audit included an assessment of not only whether prescribed ministries complied with the minimum legal requirements of the EBR Act, but also whether the ministries implemented the Act, including exercising their discretion under the Act, in a manner that was consistent with the Act's purposes, contributing to the effective operation of the Act. The audit criteria that we used to address our audit objective are as follows.

### Audit Criteria

1. Processes are in place to effectively and periodically review the lists of ministries, acts and instruments<sup>1</sup> prescribed under the *Environmental Bill of Rights, 1993* (EBR Act), and, where needed, update the general and classification regulations so that they include all ministries whose activities are environmentally significant, and all acts and instruments<sup>1</sup> that could have a significant effect on the environment.
2. Processes are in place for prescribed ministries to ensure that significant environmental decisions made by the ministries accord with the requirements and purposes of the EBR Act, its regulations and other relevant legislation.
3. Prescribed ministries have complied with the requirements of the EBR Act and its regulations, and have implemented the EBR Act in a manner consistent with the purposes of the EBR Act, in accordance with the table below. Prescribed ministries have processes in place to achieve compliance and effective implementation.

### Sub-Criteria for Assessing Prescribed Ministries' Compliance with and Effective Implementation of the EBR Act

Sub-criterion	Relevant Provision(s) in the <i>Environmental Bill of Rights, 1993</i>
<b>1. Statement of Environmental Values (Statement)</b>	
a. Statement is up-to-date	The Minister <sup>2</sup> shall prepare a Statement that explains how the ministry will apply the purposes of the EBR Act when making decisions that might significantly affect the environment, and how it will integrate consideration of the purposes of the EBR Act with other considerations, including social, economic and scientific considerations. The Minister may amend the ministry's Statement from time to time. (Sections 7-10)
b. Statement is considered when making decisions	The Minister shall take every reasonable step to consider the ministry's Statement whenever it makes a decision that might significantly affect the environment. (Section 11)
<b>2. Use of the Environmental Registry (Registry)</b>	
a. Notice of proposals is given as required by the EBR Act	<p>The Minister shall give notice on the Environmental Registry, for at least 30 days, of each proposed:</p> <ul style="list-style-type: none"> <li>• act or policy if the Minister considers that the proposal could have a significant effect on the environment and the Minister considers that the public should have an opportunity to comment on the proposal before implementation (Sections 15 and 27(1));</li> <li>• regulation under a prescribed act if the Minister considers that the proposal could have a significant effect on the environment (Sections 16 and 27(1)); and</li> <li>• classified instrument<sup>1</sup> (Sections 22 and 27(1)), unless: <ul style="list-style-type: none"> <li>• an exception applies to the proposal under Sections 29 or 30, and the Minister decides not to give notice of the proposal; or</li> <li>• an exception applies to the proposal under Sections 15(2), 16(2), 22(3), 32 or 33. (Sections 15(2), 16(2), 22(3), 29, 30, 32 and 33).</li> </ul> </li> </ul> <p>If the Minister decides not to post a proposal on the Environmental Registry for public consultation because an exception under Section 29 (emergencies) or Section 30 (other processes) applies to the proposal, the Minister shall give notice of the decision to the public and to the Auditor General as soon as reasonably possible after the decision is made. The notice shall include a brief statement of the Minister's reasons for the decision and any other information about the decision that the Minister considers appropriate. (Sections 29, 30 and 31).</p>

Criterion	Relevant Provision(s) in the <i>Environmental Bill of Rights, 1993</i>
b. Time to comment is extended based on the factors in the EBR Act	The Minister shall consider allowing more time to permit more informed public comment. In determining the length of time, the Minister shall consider the following factors: the proposal's complexity, the level of public interest, the period of time the public may require to comment, any private or public interest, and any other factor the Minister considers relevant. (Sections 17, 23 and 8(6))
c. Proposal notices for policies, acts, and regulations are informative	Each notice shall include a brief description of the proposal. (Section 27(2))
d. Proposal notices for instruments <sup>1</sup> are informative	Each notice shall include a brief description of the proposal. (Section 27(2))
e. Received comments are reviewed and considered	A Minister that gives notice of a proposal under section 15, 16 or 22 shall take every reasonable step to ensure that all comments relevant to the proposal that are received as part of the public participation process described in the notice of the proposal are considered when decisions about the proposal are made in the ministry. (Section 35(1))
f. Prompt notice of decisions is given	<p>The Minister shall give notice on the Environmental Registry of a decision on each proposed policy, act or regulation as soon as reasonably possible after it is implemented (Sections 36(1) and 1(6)). The Minister shall give notice on the Environmental Registry of a decision whether or not to implement a proposal for an instrument<sup>1</sup> as soon as reasonably possible after a decision is made. (Sections 36(1) and 1(7))</p> <p>If in the Minister's opinion, a decision not to post a proposal on the Environmental Registry for public consultation because an exception under Section 29 (emergencies) or Section 30 (other processes) applies to the proposal, the Minister shall give notice of the decision to the public and to the Auditor General as soon as reasonably possible after the decision is made. (Sections 29 and 30)</p>
g. Decision notices for policies, acts and regulations are informative	Each decision notice shall explain what decision was made, and include a brief description of the effect, if any, of public participation on the ministry's decision-making on the proposal, and any other information that the Minister considers appropriate. (Section 36)
h. Decision notices for instruments <sup>1</sup> are informative	Each decision notice shall explain what decision was made, and include a brief explanation of the effect, if any, of public participation on the ministry's decision-making on the proposal, and any other information that the Minister considers appropriate. (Section 36)
i. Proposal notices are up-to-date	The Environmental Registry is to provide a means of giving information about the environment to the public, which includes information about decisions that could affect the environment. (Section 6)
j. Prompt notice of appeals and leave to appeal applications is given	The Environment Minister shall promptly place on the Environmental Registry notices of appeals and applications for leave to appeal that it receives from an appellant or applicant related to certain decisions to issue, amend or revoke instruments <sup>1</sup> classified under O. Reg. 681/94. (Section 47(3))
k. The Environmental Registry platform is maintained effectively	<p>The Environment Minister shall operate the Environmental Registry, the purpose of which is to provide a means of giving information about the environment to the public, including, but not limited to, information about:</p> <ul style="list-style-type: none"> <li>• proposals, decisions and events that could affect the environment;</li> <li>• actions brought under Part VI; and</li> <li>• things done under the EBR Act.</li> </ul> <p>(Sections 5 and 6, and O. Reg. 73/94, Section 13)</p>
<b>3. Applications for Review and Applications for Investigation</b>	
a. Ministry reviews all matters to the extent necessary	<p>The Minister shall consider each application for review in a preliminary way to determine whether the public interest warrants the review. The Minister may consider:</p> <ul style="list-style-type: none"> <li>• the ministry's statement of environmental values;</li> <li>• the potential for environmental harm if the review is not done;</li> <li>• whether the matter is already subject to periodic review;</li> <li>• any social, economic, scientific or other evidence the Minister considers relevant;</li> <li>• submissions from other persons the Minister considers might have a direct interest in the matters raised in the application;</li> <li>• the resources required to conduct the review; and</li> <li>• any other matter the Minister considers relevant. (Section 67(2))</li> </ul> <p>In addition, when determining whether the public interest warrants a review of an existing policy, act, regulation or instrument that is the subject of an application for review, the Minister may consider:</p> <ul style="list-style-type: none"> <li>• the extent to which members of the public had an opportunity to participate in the development of the policy, act, regulation or instrument, and</li> <li>• how recently the act, regulation or instrument was made, passed or issued. (Section 67(3))</li> </ul>



Criterion	Relevant Provision(s) in the <i>Environmental Bill of Rights, 1993</i>
	The Minister shall not determine that the public interest warrants a review of a decision that was made during the five years preceding the date of the application for review if the decision was made in a manner that the Minister considers consistent with the intent and purpose of public participation under the EBR Act. This prohibition does not apply where it appears to the Minister that there is social, economic, scientific or other evidence that failure to review the decision could result in significant environmental harm and if that evidence was not taken into account when the decision was made. <b>(Section 68)</b>
	The ministry shall provide a brief statement of reasons for its decision to accept or deny the review. <b>(Section 70)</b>
	For undertaken reviews, the ministry shall give notice of the outcome that states what action, if any, the ministry has or will take as a result of the review. <b>(Section 71)</b>
	b. Ministry investigates all matters to the extent necessary
c. Ministry meets all timelines	If the Minister decides that an investigation is not warranted, the Minister shall provide a brief statement of the reasons for the decision not to investigate unless there is an ongoing investigation in relation to the alleged contravention. <b>(Section 78(1) and (2))</b>
	For completed investigations, the Minister shall give notice of the outcome that states what action, if any, the Minister has or will take as a result of the investigation. <b>(Section 80)</b>
	A Minister who receives an application for review or an application for investigation shall acknowledge receipt of the application to the applicants within 20 days of receipt. <b>(Section 65 for reviews and Section 74(5) for investigations)</b>
	The Minister shall notify the applicants and the Auditor General of a decision to undertake or deny the requested review within 60 days of receipt. <b>(Section 70)</b>
	A Minister that determines that the public interest warrants a review must conduct the review within a reasonable time. <b>(Section 69(1))</b>
	The Minister shall give notice of the outcome of the review to the applicants and the Auditor General within 30 days of completing the review. <b>(Section 71(1))</b>
	If the Minister decides not to investigate, the Minister shall notify the applicants, the alleged contraveners and the Auditor General of this decision within 60 days of receiving the application. <b>(Section 78(3))</b>
	<p>If the Minister undertakes an investigation, the Minister must, within 120 days of receiving the application, either:</p> <ul style="list-style-type: none"> <li>• complete the investigation; or</li> <li>• give a written estimate of the time required to complete it, and then complete the investigation within the estimated time frame or provide a new estimated timeline. <b>(Section 79)</b></li> </ul>
The Minister shall give notice to the applicants, the alleged contraveners and the Auditor General of the outcome of the investigation within 30 days of completing the investigation. <b>(Section 80(1))</b>	

Criterion	Relevant Provision(s) in the <i>Environmental Bill of Rights, 1993</i>
<b>4. Providing Educational Programs and Information about the EBR Act (Environment Ministry only)</b>	
a. When requested, Environment Ministry helps other ministries provide educational programs	At the request of a Minister, the Environment Minister shall assist the other ministry in providing educational programs about the EBR Act. <b>(Section 2.1 (a))</b>
b. Environment Ministry provides educational programs about the EBR Act to the public	The Environment Minister shall provide educational programs about the EBR Act to the public. <b>(Section 2.1 (b))</b>
c. Environment Ministry provides general information about the EBR Act to those who wish to participate in a proposal	The Environment Minister shall provide general information about the EBR Act to members of the public who wish to participate in decision-making about a proposal as provided in the EBR Act. <b>(Section 2.1 (c))</b>

1. The term “instrument” in this document has the same meaning as “instrument” in the EBR Act and includes any document of legal effect issued under an act and includes a permit, licence, approval, authorization, direction or order issued under an act.
2. Note that references to a Minister in this document mean any Minister of a ministry prescribed under the EBR Act. The document refers to the Environment Minister (see section 4 of this table) for specific responsibilities that only apply to that Minister. Note also that a Minister may delegate his or her powers or duties under the EBR Act.

## Appendix 2: Responsibilities of Each Prescribed Ministry under the *Environmental Bill of Rights, 1993, 2020/21*

Source of data: O. Reg. 73/94 and O. Reg. 681/94, made under the *Environmental Bill of Rights, 1993*

Ministry	Prepare and Consider Statement of Environmental Values	Consult on Policies and Acts*	Consult on Regulations under Prescribed Acts*	Consult on Prescribed Instruments (Permits and Approvals)	Respond to Applications for Review	Respond to Applications for Investigation
Environment	✓	✓	✓	✓	✓	✓
Natural Resources <sup>1</sup>	✓	✓	✓	✓	✓	✓
Municipal Affairs	✓	✓	✓	✓	✓	✓
Energy and Mines <sup>2</sup>	✓	✓	✓	✓	✓	✓
Government Services <sup>3</sup>	✓	✓	✓	✓	✓	✓
Agriculture	✓	✓	✓		✓	
Transportation	✓	✓			✓	
Tourism	✓	✓	✓			
Health <sup>4</sup>	✓	✓	✓		✓	
Long-Term Care <sup>4</sup>	✓	✓	✓		✓	
Infrastructure	✓	✓				
Economic Development	✓	✓				
Indigenous Affairs	✓	✓				
Education	✓	✓			✓	
Labour	✓	✓				
Treasury Board	✓	✓				

\* If they could have a significant effect on the environment if implemented.

1. On June 18, 2021, the Ministry of Natural Resources and Forestry merged with part of the then Ministry of Energy, Northern Development and Mines to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry. As of September 2021, O. Reg. 73/94 has not been amended to reflect this change; here we list the responsibilities of the former Ministry of Natural Resources and Forestry.
2. On June 18, 2021, the Ministry of Energy, Northern Development and Mines split: Northern Development and Mines merged with the then Ministry of Natural Resources and Forestry to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry, and a new Ministry of Energy was formed. As of September 2021, O. Reg. 73/94 has not been amended to reflect this change; here we list the responsibilities of the former Ministry of Energy, Northern Development and Mines.
3. The Technical Standards and Safety Authority posts notices related to the *Technical Standards and Safety Act, 2000* on behalf of the Ministry of Government and Consumer Services.
4. On June 20, 2019, the Ministry of Health and Long-Term Care was split into the Ministry of Health and the Ministry of Long-Term Care. As of September 2021, O. Reg. 73/94 has not been amended to reflect this change; here we list the responsibilities of the former Ministry of Health and Long-Term Care.

## Appendix 3: Prescribed Acts under the *Environmental Bill of Rights, 1993, 2021*

Source of data: O. Reg. 73/94 and O. Reg. 681/94, made under the *Environmental Bill of Rights, 1993*

Act	Ministry to Post Notices for Regulations under the Act	Subject to Applications for Review	Subject to Applications for Investigation
<b>Ministry of Agriculture, Food and Rural Affairs</b>			
<i>Food Safety and Quality Act, 2001</i>	Y <sup>1</sup>	N	N
<i>Nutrient Management Act, 2002</i>	Y	Y	N
<b>Ministry of the Environment, Conservation and Parks</b>			
<i>Clean Water Act, 2006</i>	Y	Y	N
<i>Conservation Authorities Act</i>	Y	Y	Y
<i>Endangered Species Act, 2007</i>	Y <sup>2</sup>	Y <sup>2</sup>	Y
<i>Environmental Assessment Act</i>	Y	Y	Y
<i>Environmental Bill of Rights, 1993</i>	Y	Y	N
<i>Environmental Protection Act</i>	Y	Y	Y
<i>Great Lakes Protection Act, 2015</i>	Y	Y	N
<i>Kawartha Highlands Signature Site Park Act, 2003</i>	N	Y	Y
<i>Lake Simcoe Protection Act, 2008</i>	Y	Y	N
<i>Ontario Water Resources Act</i>	Y	Y	Y
<i>Pesticides Act</i>	Y	Y	Y
<i>Provincial Parks and Conservation Reserves Act, 2006</i>	Y	Y	Y
<i>Resource Recovery and Circular Economy Act, 2016</i>	Y	Y	N
<i>Safe Drinking Water Act, 2002</i>	Y	Y	Y <sup>7</sup>
<i>Toxics Reduction Act, 2009</i>	Y	Y	Y
<i>Waste Diversion Transition Act, 2016</i>	Y	Y	N
<i>Water Opportunities Act, 2010</i>	Y <sup>3</sup>	Y <sup>3</sup>	N
<b>Ministry of Energy, Northern Development and Mines*</b>			
<i>Mining Act</i>	Y	Y	Y
<i>Ontario Energy Board Act, 1998</i>	Y <sup>3</sup>	Y <sup>3</sup>	N
<b>Ministry of Government and Consumer Services</b>			
<i>Technical Standards and Safety Act, 2000</i>	Y <sup>4</sup>	Y <sup>4</sup>	Y <sup>4</sup>
<b>Ministry of Health</b>			
<i>Health Protection and Promotion Act</i>	Y <sup>5</sup>	Y <sup>5</sup>	N
<b>Ministry of Municipal Affairs and Housing</b>			
<i>Building Code Act, 1992</i>	Y <sup>6</sup>	Y <sup>6</sup>	N
<i>Greenbelt Act, 2005</i>	Y <sup>2</sup>	Y	N
<i>Oak Ridges Moraine Conservation Act, 2001</i>	Y <sup>2</sup>	Y	Y <sup>7</sup>
<i>Places to Grow Act, 2005</i>	Y	Y	N

Act	Ministry to Post Notices for Regulations under the Act	Subject to Applications for Review	Subject to Applications for Investigation
<i>Planning Act</i>	Y	Y	Y <sup>7</sup>
<b>Ministry of Natural Resources and Forestry**</b>			
<i>Aggregate Resources Act</i>	Y	Y	Y
<i>Conservation Authorities Act</i> <sup>6</sup>	Y	Y	Y
<i>Crown Forest Sustainability Act, 1994</i>	Y	Y	Y
<i>Far North Act, 2010</i>	Y	Y	Y
<i>Fish and Wildlife Conservation Act, 1997</i>	Y	Y	Y
<i>Invasive Species Act, 2015</i>	Y	Y	Y
<i>Lakes and Rivers Improvement Act</i>	Y	Y	Y
<i>Niagara Escarpment Planning and Development Act</i>	Y	Y	Y <sup>7</sup>
<i>Oil, Gas and Salt Resources Act</i>	Y	Y	Y
<i>Public Lands Act</i>	Y	Y	Y
<b>Ministry of Heritage, Sport, Tourism and Culture Industries</b>			
<i>Ontario Heritage Act</i>	Y	N	N

\* On June 18, 2021, the Ministry of Energy, Northern Development and Mines split: Northern Development and Mines merged with the then Ministry of Natural Resources and Forestry to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry, and a new Ministry of Energy was formed. However, as of September 2021, O. Reg. 73/94 had not been amended to reflect this change; here we list the prescribed acts for which the former Ministry of Energy, Northern Development and Mines was responsible during our assessment of implementation and compliance with the *Environmental Bill of Rights, 1993* from April 1, 2020, to March 31, 2021.

\*\* On June 18, 2021, the Ministry of Natural Resources and Forestry merged with part of the then Ministry of Energy, Northern Development and Mines to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry. However, as of September 2021, O. Reg. 73/94 had not been amended to reflect this change; here we list the prescribed acts for which the former Ministry of Natural Resources and Forestry was responsible during our assessment of implementation and compliance with the *Environmental Bill of Rights, 1993* from April 1, 2020, to March 31, 2021.

1. Limited to disposal of deadstock.
2. With some exceptions.
3. For parts of the Act.
4. Limited to fuel handling.
5. Limited to small drinking-water systems.
6. Limited to septic systems.
7. Limited to certain instruments under the Act.
8. Shared responsibility with the Ministry of the Environment, Conservation and Parks.

## Appendix 4: Instruments (Permits and Other Approvals) Subject to the *Environmental Bill of Rights, 1993, 2020/21*

Source of data: O. Reg. 681/94, made under the *Environmental Bill of Rights, 1993*

This is an overview summary for information purposes. Some licences, approvals, authorizations, directions or orders (collectively referred to as “instruments”) are prescribed in only limited circumstances. For the full list of instruments subject to the *Environmental Bill of Rights, 1993*, see O. Reg. 681/94 (Classification of Proposals for Instruments).

### Ministry of the Environment, Conservation and Parks

#### *Conservation Authorities Act*

Approval for the sale, lease or other disposition of land by a conservation authority

#### *Endangered Species Act, 2007*

Stewardship agreement

Amendment to a stewardship agreement

Permit for activities necessary for the protection of human health or safety

Permit for species protection or recovery

Permit for activities with conditions that should achieve overall benefit or that will result in a significant social or economic benefit to Ontario

Amendment of a permit

Revocation of a permit

#### *Environmental Protection Act*

Director’s order to suspend or remove a registration from the Environmental Activity and Sector Registry

Approval to use a former waste disposal site for a different use

Director’s control order

Director’s stop order

Director’s approval of a control/preventative program

Director’s order for remedial work

Director’s order for preventative measures

Environmental Compliance Approval (waste management system/waste disposal site)

Environmental Compliance Order (air)

Environmental Compliance Order (sewage works)

Order for removal of waste

Order for conformity with the Act for waste disposal site

Renewable Energy Approval

Minister’s directions in respect of a spill

Minister’s order to take actions in respect of a spill

Director’s order for performance of environmental measures

Director’s order to comply—Schedule 3 standards

Approval of a site-specific standard

Director’s order to take steps related to a site-specific standard

Approval of a registration for a technical standard for air pollution (industry standard)

Approval of a registration in respect of an equipment standard

Minister’s orders regarding curtailment based on the Air Pollution Index

Declaration of or termination of a sulfur dioxide alert

Certificate of Property Use

#### ***Ontario Water Resources Act***

Permits to take water

Permit authorizing a new transfer or an increased transfer

Director's order prohibiting or regulating sewage discharges

Director's order for measures to alleviate effects of impairment of quality of water

Director's order for unapproved sewage works

Director's order to stop or regulate discharge of sewage into sewer works

Direction to maintain or repair sewage or water works

Director's report to a municipality respecting sewage works or water works

Direction for sewage disposal

Directions for measures to be taken if a well produces water that is not potable

Director's order designating an area as an "area of public water service" or an "area of public sewage service"

#### ***Pesticides Act***

Add or remove an active ingredient from a prescribed list

Agreement with a body responsible for managing a natural resources management project that would allow an unlisted pesticide to be used

Emergency notice

Stop order

Control order

Order to repair or prevent damage

#### ***Safe Drinking Water Act, 2002***

Approval of a municipal drinking water system

Drinking water works permit

Municipal drinking water licence

Order or notice with respect to a drinking water system (drinking water health hazard)

#### **Ministry of Natural Resources and Forestry<sup>1</sup>**

#### ***Aggregate Resources Act***

Approval of a licensee's amendment to a site plan

Revocation of an aggregate licence

Aggregate permit

Written notice of relief to a licensee/permittee from compliance with any part of the regulations under the Act

A Minister's determination of the natural edge of the Niagara Escarpment

Class A or B aggregate licences

Amendment to an aggregate licence to add, rescind or vary a condition of the licence

Amendment to an aggregate licence to vary or eliminate a condition to the licence if the effect will be to authorize an increase in the number of tonnes of aggregate to be removed

Requirement that a licensee amend its site plan

#### ***Conservation Authorities Act***

Minister's requirement that a conservation authority carry out flood control operations

Minister's requirement that a conservation authority follow the Minister's instructions for the operation of a water control structure

Minister takes over the operation of a water control structure and requires conservation authority to reimburse costs

Minister's requirement for the council of a municipality to carry out flood control operations

Minister's requirement for the council of a municipality to follow the Minister's instructions for the operation of a water control structure

Minister takes over the operation of a water control structure and requires council of a municipality to reimburse costs

***Crown Forest Sustainability Act, 1994***

Forest resource processing facility licence

***Far North Act, 2010***

Minister's order approving a land use plan

Order to amend the boundaries of a planning area after a community based land use plan is approved

Exempting order

Exception order

***Fish and Wildlife Conservation Act, 1997***

Authorization to release wildlife or an invertebrate

Aquaculture licence

***Lakes and Rivers Improvement Act***

Order to repair or remove dam

Order to rectify a problem

Order to do what Minister considers necessary to further purposes of the Act

Order to provide a fishway

Order to regulate the use of a lake or river or the use and operation of a dam

Order to take steps to maintain, raise or lower the water level on a lake or river

Order to take steps to remove any substance or matter

***Niagara Escarpment Planning and Development Act***

Declaration that a by-law, improvement or other development or undertaking of a municipality is deemed not to conflict with the Niagara Escarpment Plan

Order amending a local plan to make it conform to the Niagara Escarpment Plan

Approval of an amendment to the Niagara Escarpment Plan

***Oil, Gas and Salt Resources Act***

Permit to inject a substance other than oil, gas or water into a geological formation in connection with a project for enhancing oil or gas recovery

Amendment, suspension, revocation or addition of a term, condition, duty or liability imposed on a permit

Suspension or cancellation of a permit

***Public Lands Act***

Designation of an area as a planning unit

Permit to erect a building or structure or make an improvement on private land if the building, structure or improvement will be located within 20 metres of the edge of a body of water

**Ministry of Municipal Affairs and Housing**

***Building Code Act, 1992***

A ruling that relates to the construction, demolition, maintenance or operation of a sewage system

***Oak Ridges Moraine Conservation Act, 2001***

Minister's order to amend a municipality's Official Plan

Minister's order to amend a municipality's zoning bylaw

Approval by the Minister of an Official Plan amendment

Approval by the Minister of a zoning bylaw amendment



**Planning Act**

Approval by the Minister of an Official Plan

Approval by the Minister of an Official Plan amendment

Approval by the Minister for a consent in an area where there is no Official Plan in place

Approval by the Minister of a plan of subdivision in an area where there is no Official Plan in place

**Ministry of Energy, Northern Development and Mines<sup>2</sup>****Mining Act**

Consent to undertake surface mining within 45 metres of a highway or road limit

Sale or award by the Minister of surface rights

Reinstatement of a licence of occupation that was previously terminated

Permission to test mineral content

Disposition Order directing that buildings, structures, machinery, chattels, personal property, ore, mineral slimes or tailings do not belong to the Crown

Issuance of an exploration permit

Lease of surface rights

Minister's direction to include reservations or provisions

Permission to cut and use trees on mining lands

Approval to rehabilitate a mine hazard

Confirmation of filing by Director of closure plan for advanced exploration or commencing mine production

Director's order requiring a proponent to file amendments to a closure plan

Director's order requiring changes to a filed closure plan or to amendments to a closure plan

Director's order requiring the performance of a rehabilitation measure

Director's order requiring a proponent to file a closure plan to rehabilitate a mine hazard

Proposal for the Crown to enter lands to rehabilitate a mine hazard site

Minister's order directing a proponent to rehabilitate a hazard that may cause immediate and dangerous adverse effect

Minister's direction to employees and agents to do work to prevent, eliminate and ameliorate adverse effect

Minister's decision to alter or revoke a decision of the Mining and Lands Tribunal<sup>3</sup>

Director's order requiring a proponent to comply with the requirements of a closure plan or to rehabilitate a mine hazard in accordance with the prescribed standards

Director's decision to have the Crown rehabilitate after proponent non-compliance with order

Issuance or validation by the Minister of an unpatented mining claim, licence of occupation, lease or patent

Minister's acceptance of a surrender of mining lands

**Ministry of Government and Consumer Services****Technical Standards and Safety Act, 2000**

Director's variance from section 9 of O. Reg. 217/01 (Liquid Fuels) (permission to use equipment that is not approved)

Director's variance from any of the prescribed clauses of the Liquid Fuels Handling Code

1. On June 18, 2021, the Ministry of Natural Resources and Forestry merged with part of the then Ministry of Energy, Northern Development and Mines to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry. However, as of September 2021, O. Reg. 681/94 had not been amended to reflect this change; here we list the classified instruments for which the former Ministry of Natural Resources and Forestry was responsible during our assessment of implementation and compliance with the *Environmental Bill of Rights, 1993* from April 1, 2020, to March 31, 2021.
2. On June 18, 2021, the Ministry of Energy, Northern Development and Mines split: Northern Development and Mines merged with the then Ministry of Natural Resources and Forestry to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry, and a new Ministry of Energy was formed. However, as of September 2021, O. Reg. 681/94 had not been amended to reflect this change; here we list the classified instruments for which the former Ministry of Energy, Northern Development and Mines was responsible during our assessment of implementation and compliance with the *Environmental Bill of Rights, 1993* from April 1, 2020, to March 31, 2021.
3. This provision of the *Mining Act* was repealed effective June 1, 2021. As of September, 2021, O. Reg. 681/94 had not been updated to reflect this change.

## Appendix 5: Glossary

Prepared by the Office of the Auditor General of Ontario

Term	Definition
<b>Act</b>	Also known as a law, legislation or statute, an act is made by the provincial (or federal) government to delineate rules about specific situations.
<b>Application for Investigation</b>	A right under the <i>Environmental Bill of Rights, 1993</i> (under Part V), allowing two members of the public to formally ask a prescribed ministry to investigate an alleged contravention of an act, regulation or instrument that has the potential to harm the environment.
<b>Application for Review</b>	A right under the <i>Environmental Bill of Rights, 1993</i> (under Part IV), allowing two members of the public to formally ask a prescribed ministry (or ministries) to review (and potentially amend) an existing policy, act, regulation or instrument, or review the need to create a new policy, act or regulation.
<b>Bulletin</b>	Bulletins (called Information Notices on the old Environmental Registry) are used by prescribed ministries to share information about any activity or other matter that they are not required to post under the <i>Environmental Bill of Rights, 1993</i> . In some cases, Bulletins are also used when legislation other than the <i>Environmental Bill of Rights, 1993</i> requires a prescribed ministry to give notice of something using the Environmental Registry (for example, the <i>Clean Water Act, 2006</i> requires the Environment Ministry to give notice of approved source protection plans using the Environmental Registry).
<b>Environmental compliance approval</b>	A type of approval under the <i>Environmental Protection Act</i> and the <i>Ontario Water Resources Act</i> issued by the Environment Ministry and obtained by proponents that seek to undertake certain activities related to air, noise, waste and sewage.
<b>Environmental Registry</b>	A website maintained by the Environment Ministry, and used by all prescribed ministries, to provide information about the environment to the public, including notices about proposals and decisions that could affect the environment, pursuant to the <i>Environmental Bill of Rights, 1993</i> . The Environmental Registry of Ontario (ero.ontario.ca) became the official Environmental Registry in April 2019. Notices from the previous registry (ebr.gov.on.ca) have been transferred to the Environmental Registry and archived. On March 31, 2021, the previous site was decommissioned.
<b>Exception notice</b>	A notice posted on the Environmental Registry to inform the public about an environmentally significant decision that was made without public consultation, for one of two reasons: 1) there was an emergency, and the delay required to consult the public would result in danger to public health or safety, harm or serious risk to the environment or injury or damage to property; or 2) the environmentally significant aspects of the proposal had already been considered in a process of public participation substantially equivalent to the process required under the <i>Environmental Bill of Rights, 1993</i> .
<b>Instrument</b>	A permit, licence, approval, authorization, direction or order issued under the authority of an act or regulation.
<b>Leave to appeal</b>	Permission to challenge. Under the <i>Environmental Bill of Rights, 1993</i> , members of the public may seek leave to appeal the decisions of prescribed ministries to issue certain types of instruments. The decision whether to grant or deny leave to appeal is made by the adjudicative body that would hear the appeal, such as the Ontario Land Tribunal.
<b>Notice (general)</b>	A posting on the Environmental Registry to inform the public of environmentally significant activities that prescribed ministries are considering or carrying out.
<b>Notice—Proposal</b>	A notice posted on the Environmental Registry by a prescribed ministry to notify the public that it is considering creating, issuing or making changes to an environmentally significant policy, act, regulation or instrument, and to seek the public's comments on the proposal.

Term	Definition
<b>Notice—Decision</b>	A notice posted on the Environmental Registry by a prescribed ministry to notify the public that it has made a decision whether or not to proceed with a proposal for a policy, act, regulation or instrument. A decision notice must explain what effect, if any, the public's comments on the proposal had on the ministry's final decision.
<b>Permit to take water</b>	An approval under the <i>Ontario Water Resources Act</i> that allows a person or organization to take water from groundwater or surface water sources.
<b>Policy</b>	A written set of rules or direction by a ministry.
<b>Prescribed ministry</b>	A government ministry that is required under O. Reg. 73/94 to carry out responsibilities under the <i>Environmental Bill of Rights, 1993</i> .
<b>Public interest</b>	The welfare or well-being of the general public and society.

## Appendix 6: The Environmental Registry, 2020/21

Prepared by the Office of the Auditor General of Ontario

The Environmental Registry ([ero.ontario.ca](http://ero.ontario.ca)) is a website established under the *Environmental Bill of Rights, 1993* (EBR Act), that provides the public with access to information about environmentally significant proposals and decisions made by government ministries, as well as other environmental matters. It also enables public engagement in the government's environmental decision-making.

Through the Registry:

- Prescribed ministries under the EBR Act post notices about environmentally significant policies, acts, regulations and instruments (permits, licences, approvals, and other authorizations and orders) they are proposing to put into effect, issue, amend or revoke. This requirement does not apply to proposals that are mostly financial or administrative. There are also some exceptions to the posting requirement; for example, ministries are not required to post notices for proposals for permits and approvals that represent a step to implement a project approved under or exempted from the *Environmental Assessment Act*, or for environmentally significant measures that form part of or give effect to a provincial budget.
- Prescribed ministries provide the public a minimum of 30 days to comment on proposals, or longer in cases where the matter is complex, the level of public interest is high or other factors

warrant more time for informed public input. Notices for policies, acts and regulations are often of broad interest to all Ontarians, while notices for site-specific permits to authorize activities or orders to require actions are typically of greatest interest to nearby residents who may be directly impacted by the activities.

- The public can submit comments, and the ministries must consider these comments when making a decision on a proposal.
- Prescribed ministries must post notices of their decisions on whether or not to proceed with their proposals as soon as reasonably possible after making a decision. These notices must include an explanation of how the public comments affected the final decision. In 2020/21, ministries posted decision notices on the Registry for proposals about which members of the public had submitted a total of 114,209 comments (106,428 related to proposals for policies, acts and regulations, and 7,781 related to proposals for site-specific permits, licences and approvals).

In 2020/21, the Environmental Registry received 409,439 visits.

The following table describes the types of notices that are posted on the Environmental Registry, and the numbers of notices posted in 2020/21.

### Types and Numbers of Notices Posted on the Environmental Registry, 2020/21

Source of data: *Environmental Bill of Rights, 1993*, Ministry of the Environment, Conservation and Parks, and Environmental Registry

Type of Notice	Requirements for Posting on the Environmental Registry under the <i>Environmental Bill of Rights, 1993</i> (EBR Act) <sup>1</sup>	# of Notices Posted on the Environmental Registry in 2020/21
Policy, act or regulation notice	Ministries are required to give notice of and consult on: <ul style="list-style-type: none"> <li>• environmentally significant proposals for policies (s. 15);</li> <li>• environmentally significant proposals for acts (s. 15); and</li> <li>• environmentally significant proposals for regulations made under a prescribed act (s. 16).</li> </ul>	81 proposal notices <sup>2</sup>
	Ministries must post notice of their decisions on these proposals, including an explanation of the effect of public comments (s. 36)	114 decision notices

Type of Notice	Requirements for Posting on the Environmental Registry under the <i>Environmental Bill of Rights, 1993 (EBR Act)</i> <sup>1</sup>	# of Notices Posted on the Environmental Registry in 2020/21
Instrument notice	Five ministries must give notice of and consult on all proposals to issue, amend or revoke an instrument (e.g., permit, approval, licence, order) that is classified under Ontario Regulation 681/94 (s. 22).	1,365 proposal notices <sup>3</sup>
	Ministries must post a notice of their decisions on all instrument proposals, including an explanation of the effect of public comments (s. 36).	1,313 decision notices
Exception notice	In four circumstances, a ministry can forgo consulting the public on a proposal in the usual way. For two of these four situations it must instead post an “exception notice” to inform the public of the decisions and explain why it did not post a proposal notice and consult the public. The two circumstances are: <ul style="list-style-type: none"> <li>• where the delay in waiting for public comment would result in danger to public health or safety, harm or serious risk to the environment, or injury or damage to property (s. 29); and</li> <li>• where the proposal will be, or has already been, considered in another public participation process that is substantially equivalent to the public participation process required under the EBR Act (s. 30).</li> </ul>	6
Appeal notice	The Environment Ministry <sup>4</sup> must post notices to inform the public of any appeal of an instrument, including both direct appeals (where such right is given by a law other than the EBR Act) and applications to seek leave to appeal by third parties under the EBR Act (s. 47).	8 notices for direct appeals and 7 notices for applications for leave to appeal
Bulletins (formerly referred to as Information Notices)	This is a notice type that is not required under the EBR Act (these notices were formerly called “Information Notices”). Ministries can choose to post bulletins on the Environmental Registry to share information that does not fall into any of the above notice categories—for example, a ministry’s annual report. Ministries also use bulletins to fulfill requirements of other laws to provide notice or information to the public. Bulletins are not used for public consultation (s. 6).	297 <sup>5</sup>
Voluntary consultation notices	This is another notice type that is not required under the EBR Act. Ministries can choose to use the Environmental Registry to consult with the public on any proposal that is not subject to the public consultation requirements of the EBR Act. These voluntary consultations are posted using regular proposal notices and decision notices, but include a banner explaining that the consultation is not subject to the requirements of the EBR Act.	9 proposal notices and 6 decision notices for policies, acts and regulations 9 proposal notices and 18 decision notices for instruments

1. The section of the EBR Act is indicated in parentheses at the end of each stated requirement.

2. Four of the 81 proposal notices were posted between April 1, 2020, and June 14, 2021, when O. Reg. 115/20, Temporary Exemptions Relating to Declared Emergency was in effect. During that time, the EBR Act’s Part II requirements for public consultation about environmentally significant proposals were suspended, and therefore the EBR Act did not require that proposal notices be posted during that time. Despite the regulation, prescribed ministries were directed to continue to post proposal notices for non-COVID-19 related proposals.

3. Of the 1,365 proposal notices, 262 were posted between April 1, 2020, and June 14, 2021, when O. Reg. 115/20, Temporary Exemptions Relating to Declared Emergency, was in effect. During that time, the EBR Act’s Part II requirements for public consultation about environmentally significant proposals were suspended, and therefore the EBR Act did not require that proposal notices be posted during that time. Despite the regulation, prescribed ministries were directed to continue to post proposal notices for non-COVID-19 related proposals.

4. The responsibility to post appeal notices was transferred to the Environment Ministry as of April 1, 2019; these notices were previously posted by the Environmental Commissioner of Ontario.

5. Nine of the 297 bulletins were posted to give notice of urgent, COVID-19-related decisions that were made without public consultation in accordance with O. Reg. 115/20, Temporary Exemptions Relating to Declared Emergency, and 184 were posted to give notice of decisions for proposals that were posted for public consultation while O. Reg. 115/20 was in effect.

Under the EBR Act, the Environment Ministry is responsible for operating and maintaining the Environmental Registry. In 2016, the Ministry began modernizing the Environmental Registry to make it easier for the public to understand and navigate, and on April 24, 2019, the new Environmental Registry ([ero.ontario.ca](http://ero.ontario.ca)) officially replaced the old (legacy) Registry.

In 2020/21, the Environment Ministry undertook a project to transfer all remaining notices from the legacy Registry to the new Environmental Registry system, so that the new Environmental Registry would serve as the single source for Ontarians to search for and access Environmental Registry notices. Older, historical notices (including most policy, act and regulation decisions posted before 2016, and most instrument decisions posted before 2019, as well as older exception, appeal and information notices) were transferred to a beta (testing) version of a searchable archive site on the new Environmental Registry. The legacy Registry was decommissioned on March 31, 2021.

## Appendix 7: Applications for Review and Applications for Investigation, 2020/21

Prepared by the Office of the Auditor General of Ontario

### Background

The *Environmental Bill of Rights, 1993* (EBR Act) gives Ontarians the right to submit an application to a prescribed ministry asking it to:

- review an existing law, policy, regulation or instrument (such as a permit or approval) or review the need to create a new law, policy or regulation in order to protect the environment (“application for review”); or
- investigate an alleged contravention of an environmental law, regulation or instrument (“application for investigation”).

There must be at least two persons resident in Ontario making an application. Applicants can act on their own behalf as individuals or as representatives of organizations or corporations.

Applicants can range from community residents to students to environmental activists to not-for-profit organizations to corporations or industry groups. A ministry that receives an application must consider the request according to the requirements of the EBR Act, determine whether to undertake or deny the requested review or investigation, and provide a notice of its decision with the reasons to the applicants and our Office. When a ministry agrees to undertake a review or investigation, it must also provide a notice of the outcome of that review or investigation to the applicants and our Office.

### Applications for Review

Ten ministries are required to accept applications for review under the EBR Act (see **Appendix 2**). Specific acts must be prescribed under Ontario Regulation 73/94 under the EBR Act in order for them and their regulations to be subject to applications for review (see **Appendix 3**). Similarly, permits and other approvals must be prescribed under Ontario Regulation 681/94 under the EBR Act to be subject to applications for review (see **Appendix 4**).

The EBR Act directs ministries to consider the following factors to determine if a requested review is warranted:

- the potential for environmental harm if the ministry does not undertake the review;
- whether the government already periodically reviews the matter;
- any relevant social, economic, scientific or other evidence;
- the staffing and time needed to do the review; and
- how recently the ministry made or reviewed the relevant law, policy, regulation or instrument, and whether the ministry consulted the public when it did so.

The number of applications for review submitted varies from year to year. In the five years prior to this reporting year, the average number of applications for review submitted per year was 10, and ministries agreed to undertake 33% of the requested reviews (as shown in the bar graph on the next page).

The Environment Ministry received three new applications for review in 2020/21. Two applications related to the same decision, to approve a sewage works, and the third related to the adoption of the exemption regulation (O. Reg. 115/20) under the EBR Act in April 2020. All three applications were denied.

In 2020/21, the Environment Ministry also concluded five applications for review that were submitted in a previous year and that the ministry had agreed to undertake (as shown in Applications for Review Concluded in 2020/21, on the next page). Two of these related to the use of pesticides on golf courses, one regarding the timing of annual reports and the other regarding the monitoring of surface waters near golf courses. Two reviews, submitted to the Ministry in 2017, related to the 1998 pre-construction approval for a landfill that was ultimately never built. The fifth, submitted to the Ministry in 2013, addressed the rules for the siting of landfills in hydrogeologically complex settings.

No other ministries received or concluded any applications in 2020/21. At the end of 2020/21, the Environment Ministry had three reviews that it had agreed to undertake but that it had not concluded, and the Natural Resources Ministry had one review underway that it had not concluded (see Applications for Review That Were Ongoing as of March 31, 2021, on the next page).

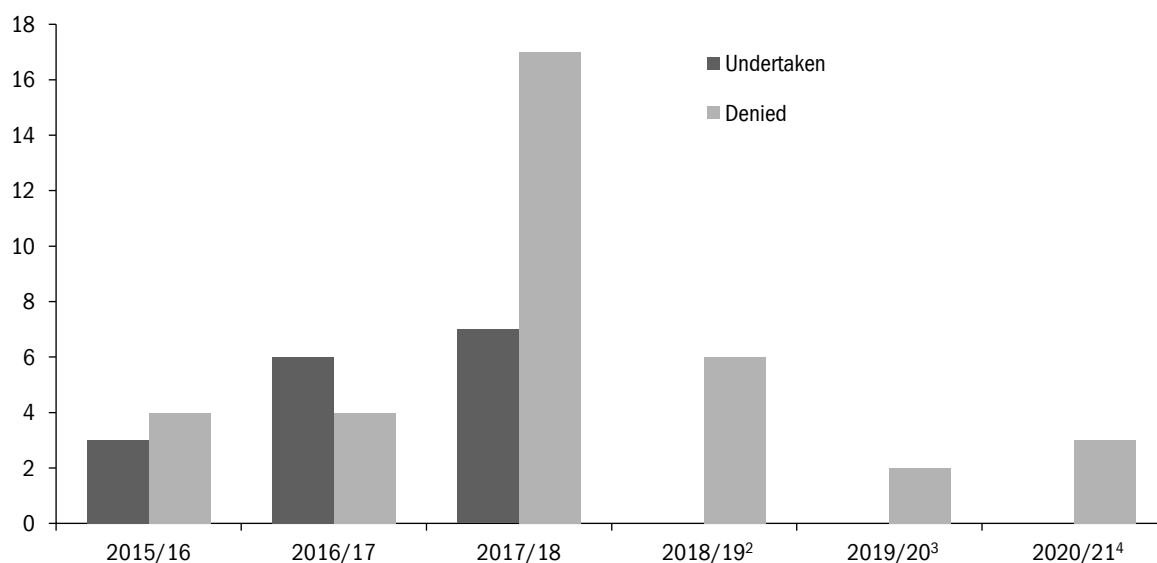
Our Office reviewed the Environment Ministry's handling of the eight applications for review that it concluded in 2020/21 and determined that the Ministry handled seven of those applications reasonably, but did not provide a reasonable rationale for

its decision not to undertake a requested review of the Ministry's exemption regulation made under the EBR Act, O. Reg. 115/20, which suspended some of the public's EBR Act rights for ten weeks in 2020/21. For the details of our review of the Environment Ministry's handling of these applications, see the Ministry's report card in **Section 6.2** of this Report.

For a summary of the applications for review that were concluded in 2020/21, see the section in this Appendix titled Concluded Applications for Review in 2020/21.

## Applications for Review by Reporting Year Received and Ministries' Decisions to Undertake or Deny,<sup>1</sup> 2015/16–2020/21

Prepared by the Office of the Auditor General of Ontario



- Some applications for review were sent to multiple ministries. An application sent to multiple ministries is recorded here as one application. An application is recorded here as "undertaken" if any of the ministries to which an application was sent undertook the review.
- Three of the six applications for review submitted in 2018/19 were unreasonably denied according to the requirements of the EBR Act.
- Both applications for review submitted in 2019/20 were reasonably denied according to the requirements of the EBR Act.
- Two applications for review submitted in 2020/21 were reasonably denied according to the requirements of the EBR Act; one was not.

## Applications for Review Concluded<sup>1</sup> in 2020/21

Prepared by the Office of the Auditor General of Ontario

	Applications Submitted in 2020/21		Applications Submitted in Previous Years		Total Applications Concluded in 2020/21
	Denied	Undertaken	Denied	Undertaken	
Environment Ministry	3 <sup>2</sup>	0	0	5	<b>8</b>

- An application has been "concluded" when the ministry has either (a) decided not to undertake the requested review (denied the application), or (b) decided to undertake the requested review, completed its review and given notice of the outcome of its review to the applicants.
- Two applications were reasonably denied according to the requirements of the EBR Act; one was not.



## Applications for Review That Were Ongoing as of March 31, 2021

Prepared by the Office of the Auditor General of Ontario

Ministry	Topic of the Application for Review	Date Received by the Ministry	Status
Environment	Review of the <i>Environmental Bill of Rights, 1993</i>	Jan 18, 2010	Ongoing
Environment	Review of the Lake Simcoe Protection Plan	Jul 15, 2016	Ongoing
Environment	Review of Water Management to Improve Climate Resiliency	Sep 8, 2016	Notice of completion sent April 30, 2021
Natural Resources	Review of an Aggregate Licence and Site Plan	Nov 22, 2017	Notice of completion sent June 4, 2021

## Applications for Investigation

Applications for investigation are a way for members of the public to help ensure that the government upholds its environmental laws. Ontarians can formally request an investigation if they believe that someone has broken an environmental law.

Generally, members of the public make this request when they believe that the government is not doing enough—or anything—about a problem.

Ontarians can request an investigation of an alleged contravention of any of 19 different prescribed laws, or of a regulation or prescribed instrument (e.g., permit or other type of approval) under those laws.

A minister has a duty to investigate all matters raised in an application for investigation to the extent the minister considers necessary. A minister is not required to investigate where an application is frivolous or vexatious, the alleged contravention is not serious enough to warrant an investigation, or the alleged contravention is not likely to cause harm to the environment. The minister is also not required to duplicate an ongoing or completed investigation.

Similar to applications for review, the number of applications for investigation submitted varies from year to year. In the five years prior to this reporting year, the average number of applications for investigation submitted per year has been seven, and ministries have agreed to undertake 66% of the requested investigations (as shown in the following bar graph).

In 2020/21, Ontarians did not submit any applications for investigation. Two applications for

investigation that were submitted to the Environment Ministry in 2019/20 were ongoing at the end of the 2020/21 reporting year. No other ministries had any ongoing applications for investigation in 2020/21.

## Concluded Applications for Review in 2020/21

The following is a summary of each of the applications for review that was concluded (that is, the review was either denied or, if undertaken, was completed) between April 1, 2020, and March 31, 2021.

For the details of our review of these applications, see **Sections 6.15 and 6.16** (Environment Ministry).

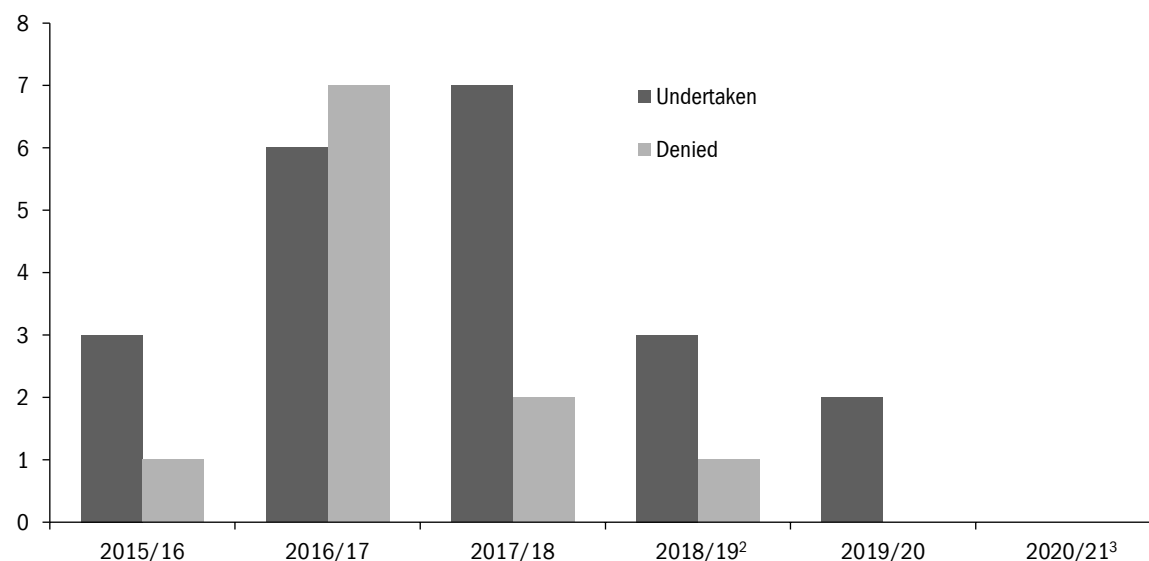
### 1. Request for a Review of the EBR Act Temporary Exemption Regulation

#### What the Applicants Asked For

On April 1, 2020, the Environment Ministry filed a regulation, Temporary Exemptions Relating to Declared Emergency, O. Reg. 115/20, made under the EBR Act (the “exemption regulation”). The exemption regulation exempted all proposals for acts, regulations, policies and instruments from Part II of the EBR Act during the period from the filing of the regulation until 30 days following the termination of the COVID-19 emergency that was declared on March 17, 2020, under the *Emergency Management and Civil Protection Act*, and subsequently extended. The exemption regulation also

## Applications for Investigation by Reporting Year Received and Ministries' Decisions to Undertake or Deny,<sup>1</sup> 2015/16–2020/21

Prepared by the Office of the Auditor General of Ontario



1. Some applications for investigation were sent to multiple ministries. An application is recorded here as “undertaken” if any of the ministries to which an application was sent undertook the investigation.

2. In 2018/19, one application for investigation was appropriately denied according to the requirements of the EBR Act.

3. In 2020/21, no applications for investigation were submitted to any prescribed ministry.

provided that **section 11** of the EBR Act (requiring consideration of a ministry’s Statement of Environmental Values when making decisions) did not apply to ministries prescribed under O. Reg. 73/94 of the EBR Act during the same period. (We reported on the suspension of EBR Act rights through the exemption regulation in our Office’s 2020 Report on the Operation of the EBR Act. See **Chapter 1, Section 6.0** of that report for our findings and recommendations.)

In May 2020, an individual and an association submitted an application to the Environment Ministry asking it to review the exemption regulation. The applicants submitted that the exemption regulation was overly broad because it exempted all proposals, even those unrelated to the COVID-19 emergency. The effect of this broad exemption was, according to the applicants, that: residents of Ontario would not be legally entitled to have notice of, nor have means to participate in, government decisions that could have a significant impact on the environment; prescribed ministries would not be required to consider their

Statements of Environmental Values when making decisions that could significantly affect the environment; and the public would have no right to seek leave to appeal decisions about instruments that were proposed during the exemption period.

The applicants sought to have the Minister:

- revoke the exemption regulation;
- deal with new proposals related to the COVID-19 emergency under section 29 of the EBR Act (which applies to emergency exceptions to the requirements of Part II) and develop a new policy on the use of section 29;
- defer proposals for acts or regulations until 30 days after the repeal of the exemption regulation;
- extend or suspend public comment periods for the duration of the exemption period and restart following revocation;
- require prescribed ministries to defer making decisions on any proposals that were posted on the Environmental Registry before or during the exemption period (or that would have been posted

before the exemption regulation applied) until 30 days following revocation; and

- require prescribed ministries to continue to apply their Statements of Environmental Values to all decisions made before revocation of the exemption regulation.

The applicants further argued that, because the exemption regulation was adopted without any public notice or consultation, section 68 of the EBR Act could not apply. Section 68 states that a minister shall not determine that the public interest warrants a review of a decision made within the last five years, if the decision was made in a manner that the minister considers consistent with the intent and purpose of Part II of the EBR Act.

### Review Denied by the Environment Ministry

On July 13, 2020, the Environment Ministry denied the application, concluding that **section 68** of the EBR Act applied. That is, because the decision to make the exemption regulation was made within the five years before the applicants submitted their application for review and because, in the opinion of the Ministry, the decision was made in a manner that is consistent with Part II of the EBR Act, the Ministry was prohibited from reviewing the decision. Even so, the Ministry did consider the merits of the application in accordance with the factors set out in **section 67** of the EBR Act to determine whether the public interest warranted a review of the matters raised by the applicants, and concluded that it was not in the public interest to conduct a review.

The Ministry noted that, because the exemption regulation was revoked on June 15, 2020, part of the applicants' request had already been implemented. With respect to the request for the need for a new policy on the use of emergency exceptions, the Ministry concluded that there would be no harm to the environment if the review was not conducted. The Ministry stated that its Environmental Bill of Rights Office already provides support and guidance to prescribed ministries in how to apply the EBR Act exceptions. In addition, the Ministry concluded that it would not be in the public interest to redeploy

Ministry resources to this review, at a time when its limited resources have been prioritized to respond to matters relating to the COVID-19 emergency.

With respect to the other requests (to defer decisions and extend consultation periods, require consideration of Statements of Environmental Values and restore leave to appeal rights), the Ministry concluded that the public interest did not warrant the review. It stated that all rights and obligations under Part II of the EBR Act were restored upon revocation of the exemption regulation, and that during the exemption period ministries were directed to post all non-urgent and non-COVID-related proposals for a minimum 30-day public comment period and to consider their Statements of Environmental Values when making decisions, while, for COVID-related decisions, ministries were directed to inform the public and consider their Statements of Environmental Values where feasible. The Ministry concluded that the actions sought by the applicants could create significant "regulatory uncertainty" in the context of an ongoing emergency, and that there would be no harm to the environment if these steps were not taken.

We concluded that the Environment Ministry did not provide a clear and convincing rationale for denying this request for a review, and that the Ministry should have determined what steps were feasible to minimize the impacts of the exemption regulation on both the environment and Ontarians' rights under the EBR Act.

We also concluded that the Ministry's reliance on the five-year rule to deny the review was not reasonable in the circumstances, and was not consistent with the purposes of the EBR Act (see **Section 6.15** of this report).

## 2. Requests for a Review of an Environmental Compliance Approval for Sewage Works (Two Applications)

### What the Applicants Asked For

On December 19, 2018, the Environment Ministry issued an environmental compliance approval for

sewage works (“sewage works approval”) to Macey Bay Developments Corp. to service a trailer park development in the Township of Georgian Bay. The development had been the subject of a hearing before the Ontario Municipal Board in 2017. The Ontario Municipal Board’s decision approved the planning and zoning for the site, conditional on site plan approval by the local township, and conditional on other approvals, including those for water and sewage works by the Environment Ministry. The Environment Ministry’s 2018 decision to issue the sewage works approval was made without first posting a proposal notice for public consultation on the Environmental Registry.

Two sets of applicants submitted applications to the Environment Ministry requesting a review of this sewage works approval. One application was submitted by a municipality and an individual in October 2020; the other was submitted by two individuals in November 2020. The first application focused on the lack of opportunity for public input on the sewage works approval. The second application repeated that concern, but also argued that the approved sewage works would be inadequate to service the development, that there was no appropriate phosphorus management, and that the system was located without a sufficient setback from the adjacent Provincially Significant Wetland. These applicants argued that the approved sewage works would result in serious harm to species at risk and waters in the wetland and Severn Sound. The applicants alleged that relevant technical information had not been considered by the Environment Ministry in evaluating the design of the sewage works.

In 2019, an environmental organization that had participated in the Ontario Municipal Board hearing brought a judicial review application seeking to quash the sewage works approval on the grounds that the Environment Ministry failed to comply with the EBR Act prior to issuing it. The second application for review asked the Ministry to defer its consideration of the application for review until the court had reached its decision on the judicial review.

### Reviews Denied by the Environment Ministry

The Environment Ministry denied both applications. In denying the first application, the Ministry relied on **section 68** of the EBR Act. As noted earlier, **section 68** provides that a minister shall not determine that the public interest warrants a review of a decision made within the last five years, if the decision was made in a manner that the minister considers consistent with the intent and purpose of Part II of the EBR Act. The Environment Ministry concluded that the decision to issue the sewage works approval was made during the five years preceding the application and, in the Ministry’s opinion, the decision was made in a manner that was consistent with the intent and purpose of Part II of the EBR Act. The Ministry stated that the Director who approved the sewage works approval did not post a proposal notice on the Environmental Registry because it was his opinion that issuance of the approval was a step towards implementing a project—the trailer park—that had been approved by a tribunal—the Ontario Municipal Board—after affording an opportunity for public participation. Under **section 32(1)(a)** of the EBR Act, a ministry is not required to post a proposal for an approval on the Environmental Registry for public consultation in those circumstances. For this project, while the Ministry did not consult the public on the sewage works application, it did consult the public on the project’s permit to take water and on an overall benefit permit issued under the *Endangered Species Act, 2007*.

In responding to the second application, the Environment Ministry refused to defer its decision on whether to undertake the review until the court had resolved the judicial review application, relying on the EBR Act requirement that the Ministry determine whether to undertake a requested review within 60 days of receiving the application. The Environment Ministry again relied, in part, on section 68 of the EBR Act to deny the second application.

In June 2021, the Ontario Divisional Court released its decision on the judicial review. The court found that the Environment Ministry’s decision to rely on section 32(1)(a) of the EBR Act when it did not

post a proposal notice for the sewage works approval was reasonable in the particular circumstances of the case. The court interpreted the EBR Act to say that, for the Ministry to be able to rely on this section, the opportunity for public participation at a tribunal has to be “relevant” to the later decision the Ministry makes. The court said there has to be a “nexus” between what was considered at the tribunal hearing and the application filed with the Environment Ministry. Further, the Minister (or a delegate) must review the record of the tribunal proceeding to assess the scope and content of the opportunity for public participation before he or she can determine whether the prior process involved an appropriate opportunity for public participation.

The court found that, because the Ontario Municipal Board had heard substantial expert evidence regarding the sewage works and because there was no significant change in the works when the final design was later submitted to the Environment Ministry, it was reasonable for the Environment Ministry to rely on section 32(1)(a) and not consult through the Environmental Registry on the sewage works approval.

For the second application, the Ministry also considered the submissions and supporting documents provided by the applicants in a preliminary way, in accordance with section 67 of the EBR Act. One of the Ministry’s technical staff was asked to review the documents and determine whether all the material was considered when the approval was issued, whether the material would have changed the outcome of the decision and whether anything in the material warranted a review of the approval. He responded to all of the 29 points raised by the applicants and concluded that the documents disclosed no reason to revisit the approval. Based on this review, the Ministry concluded that the documents did not contain evidence demonstrating that failure to review the sewage works approval could result in significant harm to the environment.

We concluded that it was reasonable for the Environment Ministry to reach its determination that the public interest did not warrant a review.

### 3. Review of the Deadline for Golf Courses Reporting Annual Pesticide Use

#### What the Applicants Asked For

In May 2017, a watershed foundation and an individual submitted four applications for review to the Environment Ministry related to the use of pesticides on golf courses. The Ministry denied two of the applications and agreed to undertake two reviews.

The first application asked the Ministry to review the General Regulation under the *Pesticides Act* (O. Reg. 63/09) regarding the timing of annual reports on golf course pesticide use. These reports identify the active ingredients applied, as well as the purposes, the total quantities and the locations of pesticide use. The regulation required that these reports be prepared by June 30 each year and be made available for public inspection by December 1 of the year following the year of use. The applicants asked that the regulation be changed to require “more timely” reporting.

The applicants argued that the timing of the annual report meant that public reporting could be as much as 20 months after a pesticide was applied, which, they submitted, was “far too late for any meaningful corrective action.” They proposed that golf courses be required to report pesticide use no later than five days after each application.

#### Review Undertaken by the Environment Ministry

In June 2017, the Environment Ministry determined that a review of the timing of the annual reports was warranted. Initially, the Ministry estimated that the review would be completed within a year. This was extended several times and in October 2020, the Ministry notified the applicants of the completion of the review.

In carrying out the review, the Ministry consulted with golf course operators and with the Integrated Pest Management Council of Canada, which accredits golf courses. (Golf courses must maintain this accreditation annually to be able to use particular pesticides.) The Ministry proposed to change the General Regulation to require annual reports to be

prepared by January 31 in the year following use and to be made available, including posting on the golf course's website, once prepared. The Environment Ministry included this change in a proposal for a suite of amendments to the *Pesticides Act* and the General Regulation, which the Ministry posted for comment on the Environmental Registry from October 28 to December 12, 2019. The regulatory amendments were made in April 2020, and came into force on May 1, 2020.

Although the Ministry adopted the change regarding annual reports sought by the applicants, it did not impose an obligation on golf courses to report each application of pesticide within five days. The Ministry noted that reporting on use to the public was adopted as part of the cosmetic pesticide ban for the purpose of transparency, and not for the purpose of compliance. The Ministry stated that reporting on each use would not assist its inspection and compliance activities.

We concluded that the Environment Ministry reviewed this matter to the extent necessary; however, the Ministry did not complete the review within a reasonable time, and did not give the applicants notice of the outcome of the review within the legislated timeline (see **Section 6.16** of this report).

## 4. Review of Pesticides Monitoring in Surface Waters Near Golf Courses

### What the Applicants Asked For

This is the second review regarding golf course pesticide use the Environment Ministry agreed to undertake in 2017. This application requested a review of the need for routine monitoring of surface waters for the pesticides that are commonly used at golf courses. In previous years, the applicant watershed foundation had monitored local streams near some golf courses and detected pesticides that could have toxic effects on aquatic life.

### Review Undertaken by the Environment Ministry

In June 2017, the Environment Ministry determined that a review of the need for routine monitoring of pesticides in watercourses flowing from golf courses was warranted. The applicants were advised of the completion of the review on March 18, 2021. The Ministry advised the applicants that “a comprehensive, provincial monitoring requirement for surface waters around golf courses (by the Ministry or by Golf Course Operators) is not supported by the science at this time.”

In carrying out the review, the Ministry undertook an assessment of pesticides used in Ontario and Quebec, a literature review of pesticide monitoring in surface waters near golf courses, and a jurisdictional scan of ecological standards, and compiled the findings into a technical report that was provided to the applicants. The report found that routine monitoring for all golf courses is not required by law in other jurisdictions, but limited monitoring is required to attain certain golf course certification and is carried out in some watersheds in Ontario. The Environment Ministry routinely monitors surface waters for a limited number of pesticides in partnership with the Agriculture Ministry and conservation authorities.

The Ministry surveyed scientific studies that had monitored the occurrence and impact of golf course pesticides in watercourses, including the applicant's monitoring reports. It noted that the most comprehensive studies had been done in Quebec. These studies found that some pesticides, primarily fungicides (which are 90% of the pesticides used by golf courses in Canada), were regularly detected in nearby watercourses but that there was a low frequency of exceedances of ecological criteria, in the range of 0 to 1%. The Ministry reviewed pesticide use at golf courses over a five-year period and found that only two of the 39 pesticides used in Ontario might be of potential concern because of their occurrence, persistence or toxicity, and these were investigated further. The report concluded that the exceedances identified represented a worst case, from single events, and did not represent long-term ambient conditions. The report concluded: “Overall, the Ministry's review does

not support a conclusion that golf course pesticide use under Ontario regulatory conditions ... is causing significant risk to aquatic health.”

The Ministry admitted that there are knowledge gaps. The Ministry noted that relatively few comprehensive studies of the downstream ecological impacts due to golf course pesticides have been carried out, and that there are limitations to its understanding of impacts due to lack of analytical methods or water quality standards for some pesticides. However, the Ministry concluded that there was not enough evidence of concern to justify undertaking a special survey now. Rather, the Ministry stated that it will share its findings with its partners and track scientific research and monitoring results to “help address gaps in our knowledge and inform our research and monitoring programs.”

We concluded that the Environment Ministry reviewed this matter to the extent necessary; however, the Ministry did not complete the review within a reasonable time (see **Section 6.16** of this report).

## 5. Review of the Environmental Compliance Approval issued to the United Counties of Leeds and Grenville (ED-19 Landfill) (Two Applications)

### What the Applicants Asked For

In 1998, the Environment Ministry issued both an approval under the *Environmental Assessment Act* and an environmental compliance approval under the *Environmental Protection Act*, permitting the United Counties of Leeds and Grenville to establish and operate a landfill in the Township of Edwardsburgh/Cardinal to meet the waste management needs of area municipalities. Known as the “ED-19 Landfill,” the planned facility was never built. However, because there were no expiry dates on the approvals, they remained valid. In recent years, the United Counties began publicly discussing contracting with a private firm to establish the landfill and transferring the approvals to that firm.

In September and December 2017, two applications were submitted to the Environment Ministry asking it to review the environmental compliance approval for the ED-19 Landfill. Two local residents submitted one application; the other was submitted by a local resident and a local group. The second application included detailed expert reports to support the applicants’ submissions.

The local group, among others, also submitted a request to the Environment Minister to exercise his discretion under the *Environmental Assessment Act* to reconsider and revoke the approval issued under that act.

The two applications for review raised similar concerns. They argued that there had been significant changes to conditions on the site over the almost 20 years since the approvals were issued. In addition, they noted, the environmental compliance approval did not comply with current landfilling standards and that the landfill design and environmental compliance approval conditions were incomplete, deficient and ineffective and would not prevent adverse environmental impacts. The applicants also requested that all future environmental assessment approvals have expiry dates.

### Review Undertaken by the Environment Ministry

In November 2017 (for the first application) and March 2018 (for the second), the Environment Ministry determined that the public interest warranted a review of the environmental compliance approval. Also in November 2017, the Ministry suspended conditions in the environmental compliance approval that would allow the landfill to be established, pending the United Counties carrying out studies of current environmental conditions at the site to confirm that the conditions, assumptions and circumstances made in the environmental assessment were still applicable and that the proposed landfill design was still appropriate. The United Counties appealed this suspension order to the Environmental Review Tribunal, and the Ministry told the applicants it would not be able to complete the reviews until after the Tribunal proceedings were

resolved. The Tribunal's final decision was issued in January 2019 but the local group appealed the Tribunal's decision to the Minister; as a result, the Ministry extended the timeline for completion of the reviews to May 31, 2020.

In December 2019, the Environment Minister advised the United Counties, the local group and others that he had decided to revoke the *Environmental Assessment Act* approval for the ED-19 Landfill. The Minister based his decision on a review of the environmental assessment studies, changes in regulations and guidance, and the parties' submissions, and on the Ministry's technical evaluation of current environmental information, including information gathered on a site visit by Ministry staff. On March 16, 2020, the Director revoked the environmental compliance approval. The Ministry advised the applicants of the outcome of the reviews on June 3, 2020.

Subsequently, the *Environmental Assessment Act* was amended to provide that, if an approval does not include an expiry date, approval under the act will expire after 10 years if the undertaking has not been substantially commenced by that time. (As of September 2021, this provision had not yet been proclaimed in force.)

We concluded that the Environment Ministry reviewed this matter to the extent necessary; however, the Ministry did not meet the legislated timeline for providing a preliminary decision to one set of applicants, and did not give the applicants notice of the outcome of the review within the legislated timeline (see **Section 6.16** of this report).

## 6. Review of Hydrogeologically Unsuitable Sites for Landfilling

### What the Applicants Asked For

In 2013, two organizations and an Indigenous community submitted an application to the Environment Ministry asking the Ministry to review and amend the *Environmental Protection Act* to add provisions to prohibit landfills on sites that are "hydrogeologically

unsuitable." The application also asked the Ministry to amend the act to prohibit landfill proponents whose applications have been refused approval because of a site's hydrogeological unsuitability (under the *Environmental Protection Act* or the *Environmental Assessment Act*) from re-applying for approval of a new or expanded landfill at the same or a nearby location.

The applicants argued that, by not prohibiting landfills on all such sites in the province, the existing regulatory regime "has allowed (if not emboldened) proponents to continue proposing new or expanded landfills at fractured bedrock locations or other hydrogeologically questionable sites."

The applicants' concerns related to groundwater impacts from contaminants leaching from landfills in such locations. To illustrate the environmental problems that can arise, the applicants pointed to their long history with the Richmond Landfill in Greater Napanee, which had been established on a site underlain by fractured bedrock. The applicants had opposed the proposed expansion of the Richmond Landfill, which was ultimately turned down by the Environment Ministry.

### Review Undertaken by the Environment Ministry

In 2013, the Environment Ministry refused to undertake a review of the *Environmental Protection Act*, concluding that its "site-specific assessment process" allows it to have "sufficient understanding of the risks and suitability of the associated mitigation measures, to determine whether a particular site is suitable for the landfill proposed." The Ministry concluded that a "prohibition on landfill siting in statute is not required." Nevertheless, the Ministry undertook "to conduct a review of guidance materials related to the ministry's landfill approvals processes, to determine if changes could be made to further enhance the level of protection to human health and the environment."

To carry out the review, the Ministry formed a cross-divisional Technical Working Group, which compiled a jurisdictional review, comparing Ontario's processes, guidance and standards to



other jurisdictions in Canada, the United States and internationally. The Ministry also hired a consultant to undertake a review of the state of the science. These reports were provided to the applicants in March 2017. Based on these studies, the Technical Working Group recommended the development of supplemental technical guidance. There were internal Ministry delays in moving this work forward, but in December 2020, the Ministry advised the applicants that the review was completed, and provided them with a copy of the draft guidance document. The Ministry stated that it intends to post the draft guide on the Environmental Registry for public consultation. As of August 2021, the draft guide was undergoing further internal review and approval, and had not yet been posted.

In concluding the review, the Ministry found that:

- Ontario's geology is extremely variable and province-wide requirements are not supportable. Instead, the Ministry addresses groundwater protection and other environmental concerns on a site-specific basis through the environmental assessment and environmental compliance approval processes.
- "Ontario's approvals process, including site assessment, engineering design, monitoring and contingency plan requirements, is comparable to other leading jurisdictions ... with a robust scientific approach to landfill design and approval with an emphasis on environmental protection."
- The Reasonable Use Guideline protects groundwater in all hydrogeological settings; it indicates that disposal sites should be located where their impact can be limited and recognizes that there are hydrogeological environments less suitable for landfilling that would require extensive engineering mitigation controls to protect groundwater and surface water.

The draft guide does not contain new policies or requirements, but combines and summarizes information from a range of existing documents. The Ministry stated that the draft guide is intended to assist proponents in identifying hydrogeologically vulnerable environments and to "stress that

significant justification would be required to support development of a landfill in bedrock areas rather than opting for alternatives that would not require landfill development" in those areas. According to the Ministry, it will also promote early identification of hydrogeologically vulnerable environments during the environmental assessment process, which occurs before the environmental compliance approval process.

We concluded that the Environment Ministry reviewed this matter to the extent necessary; however, the Ministry did not meet the legislated timelines for providing a preliminary decision to the applicants, and did not complete the review within a reasonable time (see **Section 6.16** of this report).

## Appendix 8: Appeals, Court Actions and Whistleblowers, 2020/21

Prepared by the Office of the Auditor General of Ontario

### Appeals

Many laws provide individuals and companies with a right to appeal government decisions directly affecting them, such as denial of a permit they applied for or amendment of a permit or other approval that they had previously obtained. A few laws also give other people (“third parties”) the right to appeal decisions about instruments (permits, licences, approvals and other authorizations and orders) that are applied for by, or issued to, others (for example, under the *Planning Act*, to appeal a site-specific official plan amendment or zoning by-law amendment). The *Environmental Bill of Rights, 1993* (EBR Act) expands on these rights.

The EBR Act allows any resident of Ontario to seek “leave to appeal” (that is, permission to challenge) decisions on many types of instruments from an administrative tribunal. For example, a member of the public could use this right to challenge a decision by the Environment Ministry to allow an industrial facility to discharge contaminants into the air.

Ontario residents who wish to appeal a decision must first submit an application for leave to appeal to an independent appellate body, the Ontario Land Tribunal, within 15 days of the decision’s posting on the Environmental Registry. The tribunal will determine whether leave should be granted by applying the criteria in the EBR Act. To be granted leave to appeal, the applicant must show they have an interest in the matter and must also demonstrate that it appears “there is good reason to believe” that the decision was not reasonable and could result in significant harm to the environment. If an applicant is granted leave to appeal by the tribunal, the decision is “stayed” (that is, put on hold), and the matter can proceed to a hearing, after which the tribunal will make a decision.

The number of applications for leave to appeal filed under the EBR Act varies from year to year. In the five years prior to this reporting year, Ontarians submitted an average of about four per year. Of those,

one was withdrawn. Of the 21 decisions made during that period, leave was granted in two cases (10%).

### Leave to Appeal Applications in 2020/21

In 2020/21, members of the public submitted three applications for leave to appeal, related to two Environment Ministry decisions, to the Environmental Review Tribunal, now the Ontario Land Tribunal (as seen in the table below).

In the first case, in December 2020, nearly 20 individuals, businesses and a residents’ association applied for leave to appeal the Ministry’s decision to issue an environmental compliance approval (“approval”) for a hauled sewage disposal facility in Emsdale, Township of Perry. The applicants argued that the Environment Ministry had made procedural errors when it posted the proposal notice for the approval on the Environmental Registry with the wrong location information and had also made substantive errors in approving the facility. The Environment Ministry noted that, during its review of the leave to appeal application, new information about a water supply well close to the site was brought to its attention, requiring further information and assessment. As a result, the ministry revoked the approval. This led the Environmental Review Tribunal to dismiss the application for leave to appeal.

In the second case, in January 2021, Tiny Township and the Federation of Tiny Township Shoreline Associations each applied for leave to appeal the Environment Ministry’s decision to renew a water taking permit issued to CRH Canada Group Inc. for its aggregate operation in the township. The Environmental Review Tribunal considered the two applications together and, in April 2021, granted both applicants leave to appeal the permit in its entirety. The Tribunal found that there was good reason to believe that no reasonable person, having regard to several principles in the Environment Ministry’s Statement of Environmental Values, could have made the

renewal decision and that there was good reason to believe that the decision could result in significant harm to local water resources. The appeal has been commenced by the applicants and was ongoing as of September 2021.

### Direct Appeals in 2020/21

In 2020/21, six direct appeals related to four decisions that were subject to the EBR Act came to our Office's attention (as seen in the table below). These included:

- In June 2020, the Environment Ministry issued an environmental compliance approval for a hauled sewage disposal site in the village of Moose Creek. The instrument holder appealed a condition in the approval that limited the maximum rate of sewage spreading on land at the site. The status of this appeal is now listed as “closed.”
- The Environment Ministry amended the environmental compliance approval of a company operating an animal by-product processing facility in Moorefield, in the Township of Mapleton, in October 2020. The approval holder appealed a number of conditions in the amended approval relating to odour management. Prior to the Environmental Review Tribunal's pre-hearing conference in February 2021, the parties agreed to settle some of the issues in dispute. At the pre-hearing conference, a municipality and two associations were granted presenter status. As of September 2021, this appeal was ongoing.
- A Director's Order issued under the *Environmental Protection Act* required five companies to plan and carry out work delineating the extent of ground-water impacts and assessing the potential risks of certain fuel-related contaminants to receptors in a residential neighbourhood in Oakville. Two of the companies appealed the Director's Order in October 2020. The Environmental Review Tribunal dismissed the appeal of one company on jurisdictional grounds. As of September 2021, the second appeal was ongoing; in April 2021, the tribunal issued an order staying some of the

requirements of the Director's Order pending the outcome of the appeal. The appellant was required to retain a consultant to design and submit a work plan to delineate the contamination, but was not required to carry out the delineation work until final resolution of the appeal.

- In June 2020, two companies appealed to the Local Planning Appeal Tribunal, now the Ontario Land Tribunal, under the *Planning Act* the Municipal Affairs Minister's approval with a modification of the Municipality of Greenstone's Official Plan Amendment No. 8. The Official Plan Amendment, together with a zoning bylaw amendment, would permit the development of lands for a gold mine. At the tribunal's first case management conference, held in February 2021, it granted party status to the municipality and to an Indigenous community. In May 2021, one of the appellants withdrew. The remaining parties reached a settlement and the appeal was dismissed by the Ontario Land Tribunal.

### Appeal Notices on the Environmental Registry

The Environment Ministry is responsible for posting notices on the Environmental Registry about leave to appeal applications made by third parties. The Environment Ministry is also responsible for posting notices of any direct appeals (usually instrument-holder appeals) of decisions related to instruments that are subject to the EBR Act. For the details of our review of the Environment Ministry's compliance with this requirement, see **Section 6.13** of this report.

### Lawsuits and Whistleblower Protection

The EBR Act provides rights for Ontarians to: take court action against anyone who contravenes an act, regulation or approval and thereby causes significant harm to a public resource; or to seek damages for environmental harm caused by a public nuisance. To bring an action for harm to a public resource, an Ontario resident must first apply to

## Leave to Appeal Applications Filed Under the *Environmental Bill of Rights, 1993*, and Appeals of Instrument Decisions Subject to the *Environmental Bill of Rights, 1993* in 2020/21

Source of data: Environmental Registry and Ontario Land Tribunal

Subject	Appeal Type	Environmental Registry Number	Status/Outcome
Issuance of an environmental compliance approval for a hauled sewage (septage) disposal site in Emsdale, Township of Perry	Leave to Appeal	019-0808	Application dismissed by the Environmental Review Tribunal after the Environment Ministry revoked the environmental compliance approval
Ten-year renewal of a permit to take water for purposes of aggregate washing at an aggregate pit in the Township of Tiny (Two applications submitted)	Leave to Appeal	013-2282	Leave to appeal granted to both applicants by the Environmental Review Tribunal; appeal commenced; as of September 2021, this appeal was ongoing before the Ontario Land Tribunal
Issuance of an environmental compliance approval for a hauled sewage disposal site in Moose Creek	Appeal	019-1219	Tribunal case status listed as “closed”
Amendment to an environmental compliance approval for an animal by-product processing facility in Moorefield, Township of Mapleton	Appeal	019-1537	As of September 2021, this appeal was ongoing before the Ontario Land Tribunal
Director’s Order requiring delineation of groundwater impacts and the potential risks of fuel-related contaminants	Appeal	019-1070	As of September 2021, this appeal was ongoing before the Ontario Land Tribunal
Minister’s approval of Municipality of Greenstone Official Plan Amendment No. 8 to permit development of a gold mine	Appeal	019-1010	Settlement reached; zoning by-law amended; official plan amendment appeal dismissed by the Ontario Land Tribunal

a ministry to conduct an investigation under the EBR Act and either: not receive a response within a reasonable time; or receive a response that is not reasonable. The person bringing such an action must give public notice; this is done by delivering notice to the Environment Ministry, which is then required to post the notice on the Environmental Registry. The Environment Ministry advised our Office that it did not receive notice of any actions for harm to a public resource in 2020/21.

The EBR Act also provides protection for employees (“whistleblowers”) who suffer reprisals from their employers for exercising their environmental rights or for complying with, or seeking the enforcement of, environmental rules. The Ontario Labour Relations Board did not receive any cases related to the EBR Act in 2020/21.

## Appendix 9: Letters from the Auditor General to Ministries Regarding *Environmental Bill of Rights, 1993 Matters*

Prepared by the Office of the Auditor General of Ontario

### Letter to Deputy Minister of Municipal Affairs and Housing from Auditor General of Ontario, regarding Bill 197, the *COVID-19 Economic Recovery Act, 2020 (page 1 of 1)*



Office of the Auditor General of Ontario  
Bureau de la vérificatrice générale de l'Ontario

July 17, 2020

Ms. Kate Manson-Smith  
Deputy Minister  
Ministry of Municipal Affairs & Housing  
College Park, 17th Flr, 777 Bay St.  
Toronto, ON M7A 2J3

Dear Ms. Manson-Smith:

I am writing to you regarding Bill 197, the *COVID-19 Economic Recovery Act, 2020* (Bill 197).

Bill 197 is an environmentally significant proposal within the meaning of the *Environmental Bill of Rights, 1993* (EBR Act). It includes at least two schedules that propose to make environmentally significant changes to acts, including Schedule 17, which proposes to amend the *Planning Act* and the *More Homes, More Choice Act, 2019*, for which your Ministry is responsible.

Under section 15 and 1(6) (b) of the EBR Act, the Ministry of Municipal Affairs and Housing is required to post proposal notices on the Environmental Registry for a minimum of 30 days to allow the public to comment on environmentally significant proposals for acts being considered by the Ministry. The EBR Act requires a minimum of 30 days of public consultation before third reading. The EBR Act is not just about process but is intended to lead to better outcomes for the environment and Ontarians.

Under the *Auditor General Act* and the EBR Act, we are required to comment on acts of non-compliance with the EBR Act. The Ministry should post a proposal notice for Schedule 17 of Bill 197 on the Environmental Registry prior to third reading to provide for full public notice and comment on the environmentally significant aspects of the proposal.

I have also written to the Ministry of the Environment, Conservation and Parks, to indicate that under the EBR Act they are required to post a proposal notice on the Environmental Registry for the proposed amendments to the *Environmental Assessment Act* contained in Schedule 6 of Bill 197.

If you would like to discuss this further, please call me at [REDACTED].

Sincerely,

Bonnie Lysyk  
Auditor General of Ontario

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- c. The Honourable Steve Clark, Minister, Ministry of Municipal Affairs and Housing  
Alex Beduz, Chief of Staff, Ministry of Municipal Affairs and Housing  
Serge Imbrogno, Deputy Minister, Ministry of Environment, Conservation & Parks  
The Honourable Jeff Yurek, Minister, Ministry of the Environment, Conservation and Parks  
Liam O'Brien, Chief of Staff, Ministry of the Environment, Conservation and Parks

**Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 197, the COVID-19 Economic Recovery Act, 2020 (page 1 of 4)**



Office of the Auditor General of Ontario  
Bureau de la vérificatrice générale de l'Ontario

July 17, 2020

Mr. Serge Imbrogno  
Deputy Minister  
Ministry of the Environment, Conservation and Parks  
College Park, 5th Floor, 777 Bay St.  
Toronto, ON M7A 2J3

Dear Mr. Imbrogno:

I am writing to you regarding Bill 197, the *COVID-19 Economic Recovery Act, 2020* (Bill 197).

Schedule 6 of Bill 197 would make amendments to the *Environmental Assessment Act* that would significantly affect not only the environment and public participation rights, but also government transparency and accountability in environmental decision-making.

We note that the passing of Bill 197 would retroactively override the *Environmental Bill of Rights* process. Under the *Auditor General Act* and the *Environmental Bill of Rights, 1993* (EBR Act), we are required to comment on acts of non-compliance with the EBR Act. The override of the EBR Act using retroactive legislation is precedent setting and can undermine public confidence in government transparency and decision-making.

Based on the content of Bill 197, it is unclear whether the regulations when written will align with the recommendations made by our Office in our 2016 report on environmental assessment. These recommendations were intended to help achieve the objectives of the *Environmental Assessment Act*, which remain to provide for the protection, conservation, and wise management of Ontario's environment.

**Purposes of the *Environmental Bill of Rights* and the *Environmental Assessment Act***

The purpose of the EBR Act is to better protect the environment by enabling Ontarians to participate in the government's decisions that affect the environment, and to ensure government transparency and accountability for its environmental decision-making. Likewise, the *Environmental Assessment Act* was designed to ensure the protection, conservation and wise use of the environment prior to proceeding with activities that could harm the environment. Public consultation provides government with more information to make better decisions, and supports government transparency and accountability.

These Acts are not just about process but are intended to lead to better outcomes for the environment and Ontarians.

**No public consultation on Bill 197 under the EBR Act**

Schedule 6 of Bill 197 makes significant changes to the province's approach to environmental assessments. This is an environmentally significant proposal that is subject to the EBR Act. The EBR Act requires the Ministry of the Environment, Conservation and Parks to consult the public for a minimum of 30 days before third reading on the Schedule 6 amendments

As such, in order to comply with the EBR Act, the Environment Ministry should post Schedule 6 on the Environmental Registry prior to receiving third reading.

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**Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 197, the COVID-19 Economic Recovery Act, 2020 (page 2 of 4)**

Mr. Serge Imbrogno  
Page 2  
July 17, 2020

The practical effect of Schedule 6 on environmental assessments is unclear and dependent on the development and implementation of regulations. Removing Schedule 6 from Bill 197 and complying with the EBR Act—by tabling a separate bill and posting proposed accompanying regulations on the Environmental Registry—would not unreasonably delay the ultimate implementation of a new environmental assessment regime. Doing so would convey the government’s support for the EBR Act and meaningful public consultation on important environmental issues.

**Public participation implications of proposed amendments to the environmental assessment process**

- If the Bill 197 amendments are enacted, public participation requirements may be prescribed by regulation, but the bill provides no assurance that opportunities for public participation will be included in the new streamlined process, and no minimum requirements for public participation.
- Section 32 of the EBR Act is intended to avoid duplication in public participation by exempting projects that undergo public consultation through the existing *Environmental Assessment Act*. Bill 197 proposes to expand exempted projects to include those that follow a new streamlined process. However, without the regulations that would accompany Schedule 6 being available, it is unclear whether projects that follow the newly proposed streamlined process will be subject to any type of public participation.
- Under the existing *Environmental Assessment Act*, any person with environmental concerns about a specific project may request that a project that would normally go through a streamlined process be “bumped-up” to go through a more rigorous, comprehensive environmental assessment process. Bill 197 proposes to limit bump-up requests to those with potential impacts on Indigenous rights. However, there may be other reasons why a more rigorous, comprehensive environmental assessment process is warranted.

**Implementation of recommendations in 2016 Environmental Assessment report**

In our 2016 Environmental Assessment report, we made several relevant recommendations (see Attachment A). Based on our review of Bill 197, and because the accompanying regulations are not yet available, we are unable to confirm whether our recommendations will be implemented.

If you would like to discuss this further, please call me at [REDACTED].

Sincerely,



Bonnie Lysyk  
Auditor General of Ontario

- c. The Honourable Jeff Yurek, Minister of the Environment, Conservation and Parks  
Liam O’Brien, Chief of Staff, Ministry of the Environment, Conservation and Parks  
Kate Manson-Smith, Deputy Minister, Ministry of Municipal Affairs & Housing  
The Honourable Steve Clark, Minister, Ministry of Municipal Affairs and Housing  
Alex Beduz, Chief of Staff, Ministry of Municipal Affairs and Housing

Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 197, the COVID-19 Economic Recovery Act, 2020 (page 3 of 4)

**Attachment A – Bill 197, Schedule 6 Proposed Amendments in Relation to the Most Relevant Recommendations from 2016 Environmental Assessment Report**

Recommendations from 2016 Environmental Assessment Report	Bill 197, Schedule 6 Proposed Amendments	OAGO Comment
<p><b>Recommendation 1:</b> Review and update the <i>Environmental Assessment Act</i> to ensure that projects with the potential for significant negative impact are assessed, regardless of whether the project is initiated by the public or private sector.</p> <p><b>Recommendation 2:</b> Review and clarify the intent of the <i>Environmental Assessment Act</i> regarding the types of plans and programs that must undergo an environmental assessment.</p>	<p>“Project” is redefined as an “enterprise or activity, or a proposal, plan or program in respect of an enterprise or activity.”</p> <p>A regulation—to be developed at a later date—will designate the types of projects that will be required to undergo an environmental assessment.</p>	<p>Bill 197 does not include information on the criteria that the Ministry will use to determine which projects will be designated, and whether private projects will be considered for designation.</p>
<p><b>Recommendation 3:</b> Review and revise the criteria for determining whether a comprehensive or streamlined process is required to ensure that the thoroughness of the assessment is commensurate with the project’s risk and potential impact.</p>	<p>A regulation—to be developed at a later date—will prescribe which process must be followed for certain types of projects for which an environmental assessment is required.</p>	<p>Bill 197 does not include information on the criteria that the Ministry will use to determine whether projects must follow a comprehensive or streamlined environmental assessment process.</p>
<p><b>Recommendation 4:</b> Clearly communicate the requirement to notify the Ministry of the start and completion of environmental assessments; and assess the appropriateness of penalties for project owners that do not adequately inform the Ministry at all required stages of an environmental assessment.</p> <p><b>Recommendation 5:</b> Develop risk-based criteria to be used to determine which streamlined environmental</p>	<p>A regulation—to be developed at a later date—will establish a standard streamlined environmental assessment process.</p>	<p>Bill 197 does not include information on the nature and extent of the Ministry’s oversight role in streamlined environmental assessments.</p>



Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 197, the *COVID-19 Economic Recovery Act, 2020* (page 4 of 4)

Recommendations from 2016 Environmental Assessment Report	Bill 197, Schedule 6 Proposed Amendments	OAGO Comment
assessments should be reviewed [by the Ministry].		
<p><b>Recommendation 7:</b> Improve the timeliness of its process for reviewing bump-up requests to ensure that its review does not cause unnecessary delays to projects.</p> <p><b>Recommendation 9:</b> Clarify the criteria for ministerial decision-making regarding public requests for a comprehensive assessment or a public hearing; and assess whether to appoint an independent body to provide objective advice on project-specific and systemic issues as needed, especially for projects considered to significantly impact the environment.</p>	<p>The Minister will have the authority to require that a project undergo a comprehensive environmental assessment.</p> <p>Members of the public may request that a project that would normally require a streamlined assessment to undergo a comprehensive assessment only if the project may impact Indigenous rights.</p>	<p>It is unclear whether the proposed amendments in Bill 197 will address the issue regarding the timeliness of the Ministry's review of bump-up requests.</p> <p>The proposed amendments significantly narrows the criteria for making bump-up requests. However, there may be other reasons, beyond potential impacts on Indigenous rights, why a more rigorous, comprehensive environmental assessment process is warranted.</p>

**Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 229, the *Protect, Support and Recover from COVID-19 Act, 2020* (page 1 of 3)**



Office of the Auditor General of Ontario  
Bureau de la vérificatrice générale de l'Ontario

November 20, 2020

Mr. Serge Imbrogno  
Deputy Minister  
Ministry of the Environment, Conservation and Parks  
College Park, 5th Floor, 777 Bay St.  
Toronto, ON M7A 2J3

Dear Mr. Imbrogno:

I am writing to you regarding Bill 229, the *Protect, Support and Recover from COVID-19 Act, 2020* (Bill 229) that contains important environmentally significant amendments. It is in the public interest that these proposals be posted on the Environment Registry in accordance with the *Environmental Bill of Rights, 1993* (EBR Act). The relevant issues noted in our 2018 audit of the Niagara Peninsula Conservation Authority (NPCA) are also included in this letter for your consideration.

It is our Office's view that Schedule 6 of Bill 229 proposes significant amendments to the *Conservation Authorities Act* (CA Act) that would significantly affect the oversight and operations of conservation authorities.

Based on the content of Bill 229, we are concerned that many of the proposed amendments do not align with the objectives of the CA Act—for conservation authorities to further the conservation, restoration, development and management of natural resources in watersheds in Ontario. Some of the amendments also go against recommendations made by my Office in our 2018 special audit of the NPCA related to governance, controlling development in flood-and erosion-prone areas, and enforcement. These recommendations were accepted by the NPCA and your Ministry and were intended to help conservation authorities achieve the objectives of the CA Act. In fact, the NPCA has indicated to us, that in particular, they have seen positive changes resulting from their governance changes.

#### **Governance of Conservation Authorities**

Bill 229 amendments, if enacted, would require that conservation authority board members be municipal councillors. The amendments would also replace an unproclaimed section of the Act, which requires Board members to “act honestly and in good faith *with a view to furthering the objects of the authority*” with a requirement for Board members to “act honestly and in good faith and ... shall generally *act on behalf of their respective municipalities*.” This amendment essentially redirects Board members' fiduciary duty from the conservation authority to the municipality they represent.

Many of the operational issues we identified in our 2018 special audit stemmed from the

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**Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 229, the *Protect, Support and Recover from COVID-19 Act, 2020* (page 2 of 3)**

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broader governance issue of Board members having the authority to generally act on behalf of their respective municipalities. We raised concerns that NPCA Board members who were elected officials (mayors and councillors), and whose municipal priorities include facilitating economic development in their municipalities, could be in actual or perceived conflict-of-interest situations because those priorities may not be consistent with those of the conservation authority. We highlighted instances where NPCA Board members had difficulties balancing their competing municipal and NPCA interests, compromising their ability to make objective decisions in the NPCA's best interest.

**Controlling development in natural hazard areas**

Bill 229 amendments would give the Minister of the Environment, Conservation and Parks the power to issue permits allowing development in or near watercourses, wetlands, erosion- and flood-prone areas, and along the Great Lakes shorelines. In our 2018 audit, we highlighted the importance of restricting development in these hazardous areas to protect people and prevent costly property and infrastructure damage.

Bill 229 amendments state that the Minister's decision shall be based on the same criteria that conservation authorities must use in deciding whether to issue a permit. These criteria include whether the activity is not likely to: affect the control of flooding, erosion, pollution, or the conservation of land; and create conditions that, in the event of a natural hazard, might jeopardize public safety or result in property damage. However, it is unclear how these criteria will be applied in the Minister's review without local watershed knowledge and expertise. This knowledge and expertise has been delegated to conservation authorities.

**Enforcement**

Amendments to the Act in 2017 included a provision that would have allowed conservation authority enforcement officers to issue stop work orders to individuals engaging in activities that may be or are in contravention of the CA Act. Eliminating this provision would limit the conservation authorities' ability to take progressive enforcement action to enforce the CA Act. In our 2018 audit, we highlighted the importance of taking timely and progressive action after conservation authorities receive reports of potential or actual violations of the Act.

**No public consultation on Bill 229 under the *Environmental Bill of Rights, 1993***

The proposed amendments to the CA Act are environmentally significant. The *Environmental Bill of Rights, 1993* (EBR Act) requires that the Ministry consult the public about proposals for environmentally significant acts for a minimum of 30 days, and consider the comments received when making a final decision.

Your Ministry's Bulletin posted on the Environmental Registry (#019-2646) cited the exception in section 33 of the EBR Act to justify the lack of public consultation. The exception in section 33 is restricted to proposals that "form part of or give effect to a

Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 229, the *Protect, Support and Recover from COVID-19 Act, 2020* (page 3 of 3)

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budget.” We note that Bill 229 is entitled: “An Act to implement Budget measures and to enact, amend and repeal various statutes,” which discloses that some parts of the bill are about implementing budget measures while other parts are not. It is my Office’s view that Schedule 6 is entirely independent of and does not form part of or give effect to the 2020 Budget. Two sections of the budget relate to conservation authorities. The first relates to continued participation in the National Disaster Mitigation Program, which appears to require no legislative amendments to carry out. The second is simply the annex, which describes, among other things, what is in the budget bill.

In any event, section 33 does not prevent your Ministry from electing to post the proposal for public consultation. In this regard, I wish to reemphasize the point I made earlier this week in the context of my latest report on the Operation of the *Environmental Bill of Rights*—that your ministry can do more in leading by example in furthering public participation and the purposes of the EBR Act.

For these reasons, I want to reemphasize that if the Ministry supports the intent of the EBR Act and intends to comply with it, we believe that the proposed amendments to the CA Act should be posted on the Environmental Registry for public consultation. Equally important, any such input should be objectively assessed prior to finalizing the amendments.

If you would like to discuss this further, please call me at [REDACTED]

Sincerely,



Bonnie Lysyk  
Auditor General of Ontario

- c. The Honourable Jeff Yurek, Minister of the Environment, Conservation and Parks
- Liam O’Brien, Chief of Staff, Ministry of the Environment, Conservation and Parks
- The Honourable Rod Phillips, Minister of Finance
- Andrew Sidnell, Chief of Staff, Ministry of Finance
- Greg Orencsak, Deputy Minister, Ministry of Finance

Letter to Deputy Attorney General from Auditor General of Ontario, regarding Bill 245, the *Accelerating Access to Justice Act, 2021* (page 1 of 2)



Office of the Auditor General of Ontario  
Bureau de la vérificatrice générale de l'Ontario

March 9, 2021

Mr. David Corbett  
Deputy Attorney General  
Ministry of the Attorney General  
McMurtry-Scott Building  
11<sup>th</sup> Floor, 720 Bay Street  
Toronto, ON M7A 2S9

Dear Mr. Corbett:

I am writing to you regarding Bill 245, the *Accelerating Access to Justice Act, 2021* (Bill 245), which contains potentially environmentally significant amendments. It is our Office's view that Schedules 6 and 10 of Bill 245 propose amendments to tribunal practices and procedures that have the potential to affect environmental hearing and appeal rights. As such, it is in the public interest that these proposed amendments be posted for public consultation on the Environment Registry.

For example, it is our understanding that the proposed changes would affect the nature of public participation in Environmental Review Tribunal hearings (e.g., by limiting submissions from persons who are not a “party” to a proceeding to in writing only). Historically, unrepresented environmental groups and community members have participated in environmental hearings as “participants” or “presenters,” having the opportunity to give oral evidence, submit documents and be questioned by the parties and by the Environmental Review Tribunal. This evidence can be useful to the tribunal when making decisions in the public interest. As the outcomes of tribunal decisions under EBR-prescribed acts can affect the environment, sometimes significantly, limiting the evidence heard by the amalgamated Ontario Land Tribunal could have significant environmental implications.

Furthermore, proposed changes to several EBR-prescribed acts would remove an opportunity for members of the public to appeal tribunal decisions to a Minister. Affected acts would include the *Environmental Protection Act, Mining Act, Nutrient Management Act, 2002, Ontario Water Resources Act, Pesticides Act, Resource Recovery and Circular Economy Act, 2016, Safe Drinking Water Act, 2002*, and *Toxics Reduction Act, 2009*. The elimination of such appeals could affect the public's ability to raise legitimate environmental and public policy concerns about a tribunal decision, thereby indirectly contributing to potential environmental impacts.

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**Letter to Deputy Attorney General from Auditor General of Ontario, regarding Bill 245, the *Accelerating Access to Justice Act*, 2021 (page 2 of 2)**

Mr. David Corbett  
Page 2  
March 9, 2021

We understand that Bill 245 was proposed by the Ministry of the Attorney General, which is not a prescribed ministry under the EBR. Nevertheless, if the government supports the intent of the EBR, we believe that the proposed amendments in Bill 245 that affect environmental hearing and appeal rights under EBR-prescribed acts should be posted on the Environmental Registry for public consultation. Equally important, any such input should be objectively assessed, and every reasonable step taken to ensure all comments are considered prior to finalizing the amendments.

If you would like to discuss this further, please call me at [REDACTED]

Sincerely,



Bonnie Lysyk  
Auditor General of Ontario

c: Serge Imbrogno, Deputy Minister, Ministry of the Environment, Conservation and Parks  
John Kelly, Deputy Minister, Ministry of Agriculture, Food and Rural Affairs  
Stephen Rhodes, Deputy Minister, Ministry of Energy, Northern Development and Mines

**Letter to Deputy Ministers of the Environment, Conservation and Parks; Agriculture, Food and Rural Affairs; and Energy, Northern Development and Mines from Auditor General of Ontario, regarding Bill 245, the *Accelerating Access to Justice Act, 2021* (page 1 of 1)**



Office of the Auditor General of Ontario  
Bureau de la vérificatrice générale de l'Ontario

March 10, 2021

Mr. Serge Imbrogno, Deputy Minister  
Ministry of the Environment, Conservation  
and Parks  
College Park  
5th Floor, 777 Bay Street  
Toronto, ON M7A 2J3

Mr. Stephen Rhodes, Deputy Minister  
Ministry of Energy, Northern Development  
and Mines,  
10<sup>th</sup> Floor, 77 Grenville Street  
Toronto, ON M7A 2C1

Mr. John Kelly, Deputy Minister  
Ministry of Agriculture, Food & Rural Affairs  
11<sup>th</sup> Floor, 77 Grenville Street  
Toronto, ON M7A 1B3

Dear Mr. Imbrogno, Mr. Rhodes and Mr. Kelly:

I am writing to you regarding Bill 245, the *Accelerating Access to Justice Act, 2021* (Bill 245), which contains potentially environmentally significant amendments. It is our Office's view that Bill 245 proposes amendments to tribunal practices and procedures and appeal rights that have the potential to affect the environment. As such, it is in the public interest that these proposed amendments be posted for public consultation on the Environment Registry.

For example, proposed changes to several environmentally significant acts would remove the opportunity for parties (who may be members of the public) to appeal tribunal decisions to a Minister. Affected acts would include the *Environmental Protection Act*, *Mining Act*, *Nutrient Management Act, 2002*, *Ontario Water Resources Act*, *Pesticides Act*, *Resource Recovery and Circular Economy Act, 2016*, *Safe Drinking Water Act, 2002*, and *Toxics Reduction Act, 2009*. The elimination of such appeals could affect the public's ability to raise legitimate environmental and public policy concerns about a tribunal decision, thereby indirectly contributing to potential environmental impacts.

Although it is the Ministry of the Attorney General (a non-prescribed ministry) that introduced Bill 245, your ministries administer the affected acts. In keeping with the purposes of the EBR, we believe that the proposed amendments in Bill 245 that affect environmental appeal rights under these environmentally significant acts should be posted on the Environment Registry for public consultation. I encourage you to work with the Ministry of the Attorney General in this regard. Equally important, any such input should be objectively assessed, and every reasonable step taken to ensure all comments are considered prior to finalizing the amendments.

If you would like to discuss this further, please call me at [REDACTED].

Sincerely,

Bonnie Lysyk  
Auditor General of Ontario

c.: Mr. David Corbett, Deputy Attorney General, Ministry of the Attorney General

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**Letter to Deputy Attorney General from Auditor General of Ontario, regarding Bill 245, the *Accelerating Access to Justice Act*, 2021 (page 1 of 1)**



Office of the Auditor General of Ontario  
Bureau de la vérificatrice générale de l'Ontario

March 23, 2021

Mr. David Corbett  
Deputy Attorney General  
Ministry of the Attorney General  
McMurtry-Scott Building  
11<sup>th</sup> Floor, 720 Bay Street  
Toronto, ON M7A 2S9

Dear Mr. Corbett:

Thank you for your response to my March 9<sup>th</sup> letter regarding Bill 245, the *Accelerating Access to Justice Act*, 2021 (Bill 245).

In your letter, you indicated that the legislative process provides members of the public with significant opportunity to comment on Bill 245. While the legislative process does provide opportunity for public consultation, it does not replace or reproduce the same opportunities provided for public consultation as those provided in the *Environmental Bill of Rights* (EBR Act).

The EBR Act requires prescribed ministries to provide a minimum of 30 days for the public to comment on environmentally significant proposals, but also requires ministries to consider providing more time "to permit more informed public consultation" on proposals based on how complex they are, the level of public interest, or other factors warrant more time for informed public input.

It is our understanding that Bill 245 was referred to the Standing Committee on the Legislative Assembly on March 2, 2021, with public hearings held nine and 10 days later (March 11 and March 12, 2021), and written submissions accepted until March 12, 2021.

Further, under the EBR, the responsible ministry must then consider the public's comments when making its final decision, and post a decision notice explaining the effect of any public comments on the decision.

In keeping with the purposes of the EBR, it would be reasonable that proposed amendments in schedule 6 and 10 of Bill 245 be posted on the Environmental Registry for public consultation. Equally important, is that any input could be assessed, and every reasonable step taken to ensure all comments are considered prior to finalizing the amendments.

If you would like to discuss this further, please call me at [REDACTED].

Sincerely,

Bonnie Lysyk  
Auditor General of Ontario

c: Serge Imbrogno, Deputy Minister, Ministry of the Environment, Conservation and Parks  
John Kelly, Deputy Minister, Ministry of Agriculture, Food and Rural Affairs  
Stephen Rhodes, Deputy Minister, Ministry of Energy, Northern Development and Mines

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## Appendix 10: Ministry Responses to Recommendation 8

Prepared by the Office of the Auditor General of Ontario

Below are the responses provided by the prescribed ministries to Recommendation 8, found in section 5.2 of this report.

### Recommendation 8

To identify and correct non-compliance with, and ineffective implementation of, the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that every ministry that is prescribed under the EBR Act review its existing processes and procedures, if any, for complying with the EBR Act and, to the extent that it has not already done so:

- develop and implement processes and procedures to train and update all relevant staff on the ministry's responsibilities under the EBR Act and when the EBR Act applies;
- establish, implement, and periodically review and update documented processes and procedures for complying with and implementing the EBR Act; and
- implement processes for monitoring the ministry's compliance with the EBR Act, and take corrective measures to address and prevent any non-compliance with the EBR Act.

Ministry	Response
<b>Ministry of the Environment, Conservation and Parks</b>	The Ministry agrees that compliance with the EBR Act is important. The Ministry works annually with the Auditor General to review compliance with the EBR Act and identify areas where processes, procedures, training, monitoring, and compliance could be improved, and will continue to do so.
<b>Ministry of Northern Development, Mines, Natural Resources and Forestry (Natural Resources and Forestry)</b>	<p>The Ministry agrees with this recommendation and is committed to full compliance with its legal obligations under the EBR Act.</p> <p>The Ministry's internal guidance and training provide direction to staff on the processes and procedures to comply with the EBR Act. This includes the best practice of describing the environmental effects in each notice where possible.</p> <p>The Ministry will review its internal guidance and training materials to assess the need for any updates, including compliance measures.</p>
<b>Ministry of Northern Development, Mines, Natural Resources and Forestry (Northern Development and Mines)</b>	<p>The Ministry agrees with this recommendation and is actively committed to full compliance with its legal obligations under the EBR Act.</p> <p>The Ministry's internal guidance and training provide direction to staff on the processes and procedures to comply with the EBR Act. This includes the best practice of describing the environmental effects in each notice where possible.</p> <p>The Ministry will review its internal guidance and training materials to assess the need for any updates, including compliance measures.</p>
<b>Ministry of Energy</b>	<p>The Ministry agrees with this recommendation and is actively committed to full compliance with its legal obligations under the EBR Act.</p> <p>The Ministry's internal guidance and training provide direction to staff on the processes and procedures to comply with the EBR Act. This includes the best practice of describing the environmental effects in each notice where possible.</p> <p>The Ministry will review its internal guidance and training materials to assess the need for any updates, including compliance measures.</p>

Term	Description
<b>Ministry of Municipal Affairs and Housing</b>	<p>The Ministry agrees with this recommendation.</p> <p>The Ministry will continue to review its training and procedures to:</p> <ul style="list-style-type: none"> <li>• train and update all relevant staff on the Ministry’s responsibilities under the EBR Act and when the EBR Act applies;</li> <li>• establish, implement, periodically review and update documented processes and procedures for complying with and implementing the EBR Act; and</li> <li>• implement process for monitoring the Ministry’s compliance with the EBR Act and take corrective measures to address and prevent any non-compliance with the EBR Act.</li> </ul>
<b>Ministry of Transportation</b>	<p>The Ministry welcomes this recommendation and acknowledges the importance of this recommendation to ensure effective implementation of the EBR Act. The Ministry has standards, processes and awareness training in place and periodically conducts reviews and updates as required.</p>
<b>Ministry of Government and Consumer Services</b>	<p>The Ministry acknowledges the importance of the EBR Act and agrees with the Auditor General’s recommendation. The Ministry has undertaken a review of its current processes and practices.</p>
<b>Technical Standards and Safety Authority</b>	<p>TSSA will undertake a review of its existing processes and procedures for complying with the EBR Act, including instituting a periodic review of those processes and procedures and implementing processes for monitoring compliance with the EBR Act. The timeframe for implementation is two years.</p>
<b>Ministry of Agriculture, Food and Rural Affairs</b>	<p>The Ministry agrees that compliance with and effective implementation of the EBR Act is important to give the public the opportunity to participate in government decision-making. In support of the Ministry’s commitment to its requirements under the EBR Act, the Ministry will:</p> <ul style="list-style-type: none"> <li>• develop a process to train and update all relevant staff on the Ministry’s responsibilities under the EBR Act and when the EBR Act applies;</li> <li>• establish, implement, review and update processes and materials for complying with the EBR Act; and</li> <li>• implement processes for monitoring compliance and take corrective measures to address non-compliance with the EBR Act.</li> </ul>
<b>Ministry of Heritage, Sport, Tourism and Culture Industries</b>	<p>The Ministry appreciates this recommendation and recognizes that Ontario’s EBR Act has an important role in provincial environmental protection and conservation. The Ministry will ensure its processes and procedures continue to comply with the EBR Act. The Ministry is working towards developing, implementing, and reviewing additional processes and procedures to ensure its ongoing compliance with the EBR Act, including training and updating all relevant staff on the Ministry’s responsibilities under the EBR Act and when the EBR Act applies.</p>
<b>Ministry of Health</b>	<p>The Ministry accepts this recommendation. Ministry staff will work with the Ministry of the Environment, Conservation and Parks to ensure a consistent approach, where appropriate, for low-volume EBR ministries like the Ministry of Health.</p>
<b>Ministry of Long-Term Care</b>	<p>The Ministry accepts this recommendation. Ministry staff will work with the Ministry of the Environment, Conservation and Parks to ensure a consistent approach, where appropriate, for low-volume EBR ministries like the Ministry of Long-Term Care.</p>

Term	Description
<b>Ministry of Infrastructure</b>	<p>The Ministry agrees with this recommendation.</p> <p>The Ministry has established processes and procedures for compliance with and implementation of the EBR Act and will periodically review them.</p> <p>The Ministry will look to develop processes for monitoring the Ministry's compliance with the EBR Act and take measures to address non-compliance.</p>
<b>Ministry of Economic Development, Job Creation and Trade</b>	<p>The Ministry agrees with the Auditor General's recommendation, and is committing to complying with the recommendation within one year.</p> <p>In October 2021, the Ministry made our internal guidance document about the EBR Act available to all Ministry staff through a dedicated policy toolkit intranet page. Staff from the Corporate Policy and Coordination Unit will regularly work with divisions to ensure compliance with the EBR (e.g., by providing advice, guidance and learning resources on the EBR Act requirements).</p> <p>The Ministry will periodically review and update documented processes and procedures to ensure compliance with the EBR Act, as well as continue to monitor the Ministry's compliance with the Act and ensure that non-compliance is prevented.</p>
<b>Ministry of Indigenous Affairs</b>	<p>The Ministry is presently working with the Ministry of the Environment, Conservation and Parks to execute new training sessions for Ministry staff on their responsibilities under the EBR Act and how the EBR Act applies to their work. The Ministry also plans to seek the Ministry of the Environment, Conservation and Parks' support in updating existing training materials.</p> <p>The Ministry is beginning the process of updating its Statement of Environmental Values (Statement) and will include the revised Ministry name at that time. The Ministry will also continue reviewing and revising the Internal Staff Guide. This Guide helps staff determine when their work may be subject to the EBR Act and require Statement consideration and posting on the Environmental Registry. This Guide is to be included as part of new staff orientation packages and is shared periodically when it is revised.</p> <p>The Ministry is continuing the process of revising its Statement of Environmental Values Consideration Form (the Form) to be used during proposal development. The Form requires staff to consider certain principles of environmental protection as outlined in the Ministry's Statement in the context of the proposal/decision. Staff must provide a rationale describing how each principle was considered. If a principle is not applicable, staff must outline why it is not applicable to the proposal/decision or why it is not possible to take it into account at this time.</p>
<b>Ministry of Education</b>	<p>The Ministry supports the recommendation:</p> <ul style="list-style-type: none"> <li>• The Ministry will review and update the existing staff-training processes and procedures on the Ministry's responsibilities under the EBR Act and monitor its implementation;</li> <li>• The Ministry will review the already established and implemented EBR Act compliance processes and procedures and continue to monitor;</li> <li>• The Ministry will review and update the existing compliance-monitoring processes to prevent any non-compliance with the EBR Act.</li> </ul>
<b>Ministry of Labour, Training and Skills Development</b>	<p>The Ministry will develop processes and procedures for complying with this recommendation and will complete this work within a two-year timeline.</p>
<b>Treasury Board Secretariat</b>	<p>The Ministry will ensure that relevant ministry staff are aware of the Ministry's EBR responsibilities.</p> <p>The Treasury Board Secretariat has prepared a draft, documented, internal process and is seeking review and guidance from the Ministry of the Environment, Conservation and Parks before finalizing and implementing this guidance.</p>



## Office of the Auditor General of Ontario

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