

Operation of the *Environmental Bill of Rights, 1993*

1.0 Summary

The *Environmental Bill of Rights, 1993* (Act) recognizes the common goal of the people of Ontario of protecting, conserving and restoring the environment for the benefit of present and future generations. **Figure 1** lists the names of the 15 ministries that were subject to the Act in 2018/19 and how we refer to them in this report.

The Act provides a set of rights for the Ontario public and obligations for Ontario government ministries that are intended to work together to improve environmental protection. These obligations include requirements for ministries to:

- have a Statement of Environmental Values that explains how they consider the purposes of the 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 permits and approvals that may significantly affect the environment; and
- respond to applications from Ontarians asking them to review laws, policies, regulations, permits or approvals, or to investigate alleged contraventions of environmental laws, regulations or approvals.

Effective April 1, 2019, our Office became responsible for reporting annually on the operation of the Act. This responsibility includes reporting

on the public's use of its environmental rights and the government's compliance with the Act. We do so through this report, for the period from April 1, 2018, to March 31, 2019.

Appendix 1 identifies which of the Act's obligations each of the ministries in **Figure 1** must meet. Individual ministry report cards are contained in **Appendices 2 to 16** and highlight areas where ministries have met, partially met or did not meet their obligations under the Act or best practices in accordance with our agreed upon criteria in **Appendix 17**. **Figure 2** summarizes this year's report cards.

Appendix 18 provides a glossary of terms.

Overall Conclusion

Our work identified a number of areas where certain ministries did not comply with parts of the Act or best practices in 2018/19. Where ministries have not carried out their responsibilities consistent with the Act's purposes, it makes it more difficult for Ontarians to use their environmental rights and, in turn, support or contribute to government decisions about the environment.

We also concluded that the Environment Ministry did not lead by example in complying with the requirements of the Act. The Environment Ministry has the primary responsibility for protecting the environment in Ontario, and is responsible for administering the Act and its regulations, as well as for operating the Environmental Registry and, as of April 1, 2019, providing educational programs

Figure 1: The 15 Prescribed Ministries and How We Refer to Them in This ReportSource of data: O. Reg. 73/94, made under the *Environmental Bill of Rights, 1993* (Act)

Ministry ¹	How We Refer to It
Ministries with a High Level of Activity under the Act	
Environment, Conservation and Parks	Environment
Natural Resources and Forestry	Natural Resources
Ministries with a Medium Level of Activity under the Act	
Municipal Affairs and Housing	Municipal Affairs
Energy, Northern Development and Mines	Energy and Mines
Government and Consumer Services—Technical Standards and Safety Authority ²	Government Services
Agriculture, Food and Rural Affairs	Agriculture
Transportation	Transportation
Ministries with a Low Level of Activity under the Act	
Tourism, Culture and Sport ³	Tourism
Health and Long-Term Care ⁴	Health
Infrastructure	Infrastructure
Economic Development, Job Creation and Trade	Economic Development
Indigenous Affairs	Indigenous Affairs
Education	Education
Labour ⁵	Labour
Treasury Board Secretariat	Treasury Board

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

2. 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.

3. On October 21, 2019, the Ministry of Tourism, Culture and Sport was renamed the Ministry of Heritage, Sport, Tourism and Culture Industries. As this occurred after the end of the 2018/19 reporting year (i.e., after March 31, 2019), our findings in this report apply to the former Ministry of Tourism, Culture and Sport.

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 this occurred after the end of the 2018/19 reporting year (i.e., after March 31, 2019), our findings in this report apply to the former Ministry of Health and Long-Term Care.

5. On October 21, 2019, the Ministry of Labour was renamed the Ministry of Labour, Training and Skills Development. As this occurred after the end of the 2018/19 reporting year (i.e., after March 31, 2019), our findings in this report apply to the former Ministry of Labour.

about the Act. The Ministry works with the other ministries, providing education and advice and sharing information related to the Act. However, in 2018/19 we identified several significant issues with the way the Environment Ministry carried out its responsibilities under the Act.

In contrast, the Treasury Board Secretariat and the ministries of Economic Development and Indigenous Affairs ministries fully met their responsibilities under the Act. With the exception of needing to update its Statement of Environmental Values, the Transportation Ministry met all of its responsibilities. The Agriculture, Government

Services and Infrastructure ministries met almost all of their responsibilities.

Our specific findings are as follows:

Statements of Environmental Values

- **Statements of Environmental Values of 10 of the 15 prescribed ministries are not up-to-date, and therefore ministries may not be considering current priorities, including the government's priority to address climate change, each time they make a decision that affects the environment.** A Statement of Environmental Values (Statement) is a document required under the Act

Figure 2: Summary of Ministry Report Card Results for the 2018/19 Reporting Year under the *Environmental Bill of Rights, 1993*

Prepared by the Office of the Auditor General of Ontario

Legend: ○ Met criteria ● Partially met criteria ● Did not meet criteria

Prescribed Ministry ¹	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 ² are Informative	Proposals for Instruments ³ are Informative	Notice of Decision is Prompt	Decisions for PARs ² are Informative	Decisions for Instruments ³ are Informative	Proposals are Up-to-Date	Ministry Reviews to Extent Warranted	Ministry Investigates to Extent Warranted	Ministry Meets Timelines
Ministries with a High Level of Activity Under the Act													
Environment	●	○	●	●	○	●	●	○	○	●	●	○	●
Natural Resources	●	○	○	○	●	○	●	○	○	●	○	○	○
Ministries with a Medium Level of Activity Under the Act													
Municipal Affairs	●	○	○	○	●	●	○	○	○	○	●	—	○
Energy and Mines	○	○	○	●	○	○	●	○	●	●	—	—	—
Government Services	●	○	○	○	○	○	○	○	○	○	—	—	—
Agriculture	○	○	○	○	○	n/a	○	○	n/a	○	○	n/a	●
Transportation	●	○	—	—	—	n/a	○	○	n/a	○	—	n/a	—
Ministries with a Low Level of Activity Under the Act													
Tourism	●	—	—	—	—	n/a	—	—	n/a	○	n/a	n/a	n/a
Health	●	—	—	—	—	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	○	—	—	—	—	n/a	—	—	n/a	—	n/a	n/a	n/a

— The ministry did not execute any responsibilities under this category in this reporting year

n/a The ministry is not prescribed for this category

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 *Environmental Bill of Rights, 1993*.
2. Policies, acts and regulations.
3. Instruments include permits, licences, approvals, authorizations, directions and orders.

that explains how the Ministry will apply the purposes of the Act when making decisions that might significantly affect the environment, and guides ministry staff in how to integrate its environmental values with social, economic and scientific considerations each time they make an environmentally significant decision. The government's November 2018 draft Made-in-Ontario Environment Plan directed all ministries to update their Statements to reflect Ontario's environment plan, including to improve government's ability to consider climate change when making decisions and "make climate change a cross-government priority."

Using the Substantially Equivalent Section to Not Give Notice and Consult through the Environmental Registry

- **The Ontario Divisional Court concluded that the Environment Ministry should not have relied on the "substantially equivalent" exception provision of the Act when it repealed the cap and trade program.** In July 2018, the Environment Ministry revoked the Cap and Trade Program Regulation without first giving notice on the Environmental Registry or undertaking public consultation under the Act. The Ministry instead posted an "exception notice" on the Registry to inform the public of the decision, indicating that the recent Ontario election was a substantially equivalent process of public consultation. In October 2019, the majority of the Ontario Divisional Court concluded that the government's recent election did not relieve it of its obligation to follow the public consultation requirements set out in the Act, but did not declare the regulation unlawful.

Extending the Time to Comment on Proposals on the Environmental Registry

- **Although the Environment Ministry and Energy and Mines Ministry provided the minimum 30 days for the public to comment on three significant proposals, providing the public with additional time may have enabled the Ministry to have received more informed feedback.** The 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 the complexity of the matters, the level of public interest, or other factors. To meet the intent of the Act to permit informed public consultation—and to support better government decisions by ensuring ministries receive and consider informed feedback before making a decision—comment periods should be long enough to enable interested individuals to become aware of the proposal, have time to fully review and evaluate their content, and still have time to prepare and submit feedback by the submission deadline. The ministries posted three significant and complex proposals in 2018/19 that could have benefited from having more time to enable more informed consultation:
 - the Environment Ministry's proposal for the *Cap and Trade Cancellation Act, 2018*;
 - the Environment Ministry's proposal to change the regulation of sulphur dioxide emissions from petroleum facilities; and
 - the Energy and Mines Ministry's proposal to repeal the *Green Energy Act*.

Providing Informative Proposal Notices on the Environmental Registry

- **Many proposal notices posted on the Environmental Registry did not provide all**

of the information needed for the public to fully understand and to provide informed comments on the proposal. Eleven (or 52%) of the 21 proposal notices for policies, acts and regulations posted by the Natural Resources, Municipal Affairs, and Energy and Mines ministries in 2018/19 did not adequately describe important aspects of the proposal, such as the environmental implications of the proposal. Similarly, 53 (or 71%) of the 75 proposal notices we reviewed for permits and approvals posted by the Environment, Municipal Affairs, and Government Services ministries in 2018/19 did not adequately describe important aspects of the proposal. For example, in 76% of the proposals that we reviewed that were posted by the Technical Standards and Safety Authority (under the Government Services Ministry) to approve a variance from the Liquid Fuels Handling Code, the Authority did not explain which environmental and safety standards would not have to be met or why. In these cases, Ontarians were not given the full information needed to understand and provide informed input on the proposals.

Providing Prompt Notice of Decisions on the Environmental Registry

- **An average of six months was taken to notify the public of 57% of environmentally significant decisions that we reviewed made by four ministries.** The 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 a permit, licence or approval. Prompt notice is important for transparency and for the public’s right to appeal some permits and approvals, which is triggered by the posting of a decision notice. Several ministries—including the Natural Resources, Municipal Affairs, and Energy and Mines ministries—have adopted a service

standard to post decision notices within two weeks of making a decision. In 2018/19, these ministries, plus the Environment Ministry, collectively took more than two weeks to inform the public of 57% of their decisions that we reviewed. For example, the Natural Resources Ministry took over four years to post a decision notice about a Fisheries Management Plan.

Providing Informative Decision Notices on the Environmental Registry

- **Thirty-nine percent of decision notices for permits and approvals by the Natural Resources, Municipal Affairs, and Energy and Mines ministries that we reviewed did not provide all of the information necessary for the public to fully understand what decision they made.** The Energy and Mines Ministry was particularly deficient: 76% of its decision notices for permits and other approvals that we reviewed did not include details of its decision, nor links to the final (issued) permits or approvals. For example, its decision notices for issued mineral exploration permits often stated “permit issued,” but did not include any details that would allow readers to determine whether the permits were issued as proposed or with changes.

Keeping Proposals on the Environmental Registry Up-to-Date

- **A total of 165 proposal notices remained open on the Environmental Registry for over two years without an update or decision.** For the Registry to be an accurate and reliable source of information for Ontarians, proposal notices on it must be kept up to date. However, in some cases ministries abandon, transfer responsibility for, or make decisions about proposals without posting a decision notice on the Registry, or, 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, 2019, there were 165 proposal notices that had been on the Registry for two years or more with no update or decision notice. The Natural Resources Ministry, the Environment Ministry and the Energy and Mines Ministry were responsible for the majority of these notices (see **Figure 3**). Almost one-third of these notices were originally posted over 10 years ago; for example, the Environment Ministry has not updated its proposal for load reduction targets for pollutants in Lake Superior since it was posted in 1996.

Responding to Applications for Review

- **The Environment Ministry did not, to support its conclusion that a review of the regulation of industrial emissions of nitrogen dioxide and fine particulate matter was not necessary, provide evidence that the current regulatory framework sufficiently protects against environmental harm.** An environmental law charity asked the Environment Ministry to review its air standard for nitrogen dioxide, noting that the provincial standard is far less restrictive than the federal standard, and to develop a standard for industrial emissions of fine particulate matter. The applicant cited evidence that human exposure to these contaminants has cardiovascular, respiratory and other health impacts, as extreme as premature death. In denying the requested review, the Ministry did not provide evidence that the provincial standards are sufficient to protect against harm from nitrogen dioxide and fine particulate matter.
- **The Municipal Affairs Ministry did not, to support its conclusion that a review of the regulation of septic systems was not necessary or its conclusion that a review of the**

Figure 3: Proposal Notices That Had Been on the Environmental Registry for Over Two Years without a Decision or Update by Ministry as of March 31, 2019

Source of data: Environmental Registry

Ministry	# of Notices	% of Ministry's Total Open Proposal Notices
Natural Resources	92	40
Environment	44	6
Energy and Mines	26	19
Infrastructure	2	40
Municipal Affairs	1	2
Total	165	

rules for “habitat offsets” was not necessary, provide evidence that the current regulation and rules sufficiently protect against environmental harm. Two associations asked the Municipal Affairs Ministry to review the regulation of septic systems, and specifically, the need for stronger rules related to the inspection, maintenance and record-keeping of septic systems. There are over one million septic systems in Ontario, and the failure of any one of these systems can release untreated human sewage into the environment. In denying the requested review, the Ministry did not provide evidence that the current regulation of septic system is sufficient to protect against environmental harm of malfunctioning septic systems polluting water. In another case, two Ontario residents asked the Ministry to review the land use planning rules for habitat offsets for species of special concern. A habitat offset is replacement habitat created to compensate for the destruction of an original habitat in order to develop it. Habitat destruction is a significant threat to the survival of species. The applicants stated that the current rules for habitat offsets are not effective. The Ministry denied the request on the basis that it had reviewed the Provincial Policy Statement

in 2014, but did not provide evidence that the review had specifically examined the issue of habitat offsets, nor did it provide evidence that the existing regulatory framework is sufficient to protect the habitat of species of special concern when an offset habitat is created.

Meeting Timelines for Applications for Review

- **The Environment Ministry has not completed four of its nine applications for review by the date promised, leaving applicants in one case waiting more than nine years for a review to be completed.**

For four applications for review that were not completed as of March 31, 2019, the Environment Ministry missed the original deadline it told the applicants it would meet for completing the review, provided a revised deadline, which it then also did not meet, and has not provided a new deadline. These ongoing reviews are of: the Act itself (ongoing for over nine years); the rules governing the siting of landfills (ongoing for over six years); and two reviews related to pesticide use on golf courses (ongoing for over two years). Applications for review are used by the public to ask the government to better protect the environment. When a ministry agrees to undertake a review, the Act requires the ministry to complete the review “within a reasonable time.”

This report contains 34 recommendations, consisting of 42 actions, to address our findings.

OVERALL ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks is committed to preserving and protecting clean air, land, water, species at risk and their habitat, tackling climate change, and managing Ontario’s parks and conservation reserves, now and for future generations.

We are also committed to transparency and accountability—we recognize the importance

of consulting with the public on decisions that affect the environment, and we are committed to educating the public on their rights under the *Environmental Bill of Rights, 1993* (EBR).

We thank the Auditor General of Ontario and her team for their report and insights as to how we can improve our activities around the *Environmental Bill of Rights* and public participation in decisions about the environment.

The Ministry strives to provide overall leadership on environmental matters by modernizing the Environmental Registry to facilitate public engagement, fully meeting our obligations under the EBR and coordinating efforts with other ministries. As of April 1, 2019, the Ministry took on additional responsibilities under the Act, including providing education, outreach and training to the public.

Specifically, we are working diligently to complete applications for review in a prompt timeframe, and ensure information published on the registry is clear, accessible, accurate and timely.

We will continue to engage the people of Ontario in environmental decision-making processes including ongoing consultation on our Made-in-Ontario Environment Plan to help protect our air, land and water, address litter and reduce waste, support Ontarians to continue to do their share to reduce greenhouse gas emissions, and help communities and families prepare for climate change.

2.0 Background

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

The *Environmental Bill of Rights, 1993* (Act) recognizes that the provincial government has the primary responsibility for protecting the natural environment and the people of Ontario have the

right to participate in government decisions about the environment with the right to hold the government accountable for those decisions. The purposes of the 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 Act and its two regulations set out a number of requirements and rights that work together to help meet these purposes. These include:

- requirements for 15 ministries (the “prescribed ministries” in **Figure 1**) to develop and consider Statements of Environmental Values when making environmentally significant decisions;
- requirements for prescribed ministries to post on the Environmental Registry website proposed policies, acts, regulations and “instruments” (permits, licences and other approvals and orders) that are environmentally significant, and to consult on these proposals;
- the right of Ontarians to submit applications to a prescribed ministry asking it to review existing laws, policies or regulations, or the need for new ones in order to protect the environment (“applications for review”);
- the right of Ontarians to ask a ministry to investigate alleged contraventions of prescribed environmental laws (“applications for investigation”); and
- the right of Ontarians to seek permission to appeal (i.e., challenge) government decisions on certain permits, approvals and orders, the right to sue for harm to the environment or a public resource, and the right to employee protection for employees from reprisals from employers for exercising their environmental rights (i.e., “whistleblower” protection).

The Environment Ministry administers the Act’s two regulations that determine which ministries are subject to the Act (see **Appendix 1**), which

acts are subject to the Act (see **Appendix 19**), and which permits or other approvals are subject to the Act (see **Appendix 20**). The Ministry periodically makes amendments to these regulations and posts notice of changes on the Environmental Registry.

2.2 Legislative Changes in 2018/19

On December 6, 2018, the Legislative Assembly passed the *Restoring Trust, Transparency and Accountability Act*, which transferred some of the responsibilities of the former Environmental Commissioner of Ontario (ECO) to the Office of the Auditor General of Ontario. Our Office will now report annually on the operation of the Act. As well, we may review the government’s progress on activities to promote energy conservation and reduce greenhouse gas emissions, and will report on any other matters our Office considers appropriate. The *Restoring Trust, Transparency and Accountability Act* came into force on April 1, 2019.

With the transfer of responsibilities, the Act continues to be upheld by an independent, non-partisan Officer of the Legislative Assembly, now in the person of the Auditor General. Additionally, every power possessed by the Auditor General in carrying out her functions under the *Auditor General Act* now extends to her oversight of the Act (including, for example, the power to access all the information and records she needs to complete her audits).

The Auditor General appointed the first Commissioner of the Environment as part of our expanded responsibilities. The Commissioner of the Environment works as an Assistant Auditor General and reports to the Auditor General.

All public participatory rights and ministry obligations under the Act remain the same, with two exceptions:

- Beginning April 1, 2019, members of the public must submit applications for review and investigation directly to the ministry they are requesting carry out the review or investigation. Ministries must then send to

the applicants and our Office a copy of their decision to undertake or deny the application and their final decision summary of any undertaken review or investigation. Our Office is responsible for assessing the ministries' handling of the applications. (Prior to the transfer of responsibilities, members of the public submitted their applications to the former ECO, who then sent them to the ministry involved. Ministries were required to send to the applicants and the ECO a copy of their decision to undertake or deny the application and their final decision summary of any undertaken review or investigation.)

- The Environment Ministry is now responsible for educating the public about the Act, and posting notices of appeals and court actions on the Environmental Registry. These were both previously the responsibility of the ECO.

2.3 Statements of Environmental Values

The Act requires each prescribed ministry to develop and publish a Statement of Environmental Values (Statement). These Statements, which can be found on the Environmental Registry (see **Section 2.4**), are how ministries inform the public about their environmental responsibilities and values. Seven ministries (almost half of the prescribed ministries) have proposed or committed to conduct periodic reviews of their Statement every five years and to make any necessary amendments, which would ensure they reflect current responsibilities, priorities and values.

Ministries must consider their Statements each time they make a decision that might significantly affect the environment. While ministries are not required to prioritize environmental values over other values, the process of considering their Statements helps to make ministries more deliberate and transparent about their decisions when conflicting values compete.

2.4 The Environmental Registry

The Environmental Registry is a website that provides the public with access to information about environmentally significant proposals put forward by prescribed ministries. It also facilitates public engagement in the government's environmental decision-making. Through the Registry:

- Prescribed ministries post notices about environmentally significant policies, acts, regulations and instruments (permits and other approvals) they are proposing to put into effect or issue. (Ministries are not required to post notices for environmentally significant proposals where exceptions to the posting requirement apply. Some examples of exceptions include proposals that are predominantly financial or administrative in nature, or for permits and approvals that represent a step to implement a decision under the *Environmental Assessment Act*. They are also not required to post notices for environmentally significant measures found in budget bills.) See **Figure 4** for a description of the types of notices that are posted on the Registry.
- 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 consider these comments when making a decision on a proposal.
- Prescribed ministries post notices of their decisions on whether or not to proceed with their proposals as soon as reasonably possible

Figure 4: Types and Numbers of Notices Posted on the Environmental Registry, 2018/19

Source of data: *Environmental Bill of Rights, 1993* and Environmental Registry

Type of Notice	Requirements for Posting on the Environmental Registry under the <i>Environmental Bill of Rights, 1993</i> ¹	# of Notices Posted on the Environmental Registry in 2018/19
Policy, act or regulation notice	Ministries are required to give notice of and consult on: <ul style="list-style-type: none"> environmentally significant proposals for policies (s. 15); environmentally significant proposals for acts (s. 15); and environmentally significant proposals for regulations made under a prescribed act (s. 16; see Appendix 19 for prescribed acts). 	46 proposal notices
	Ministries must post notice of their decisions on these proposals, including an explanation of the effect of public comments (s. 36)	49 decision notices ²
Instrument notice	Five ministries must give notice of and consult on all proposals to issue, amend or revoke an instrument that is classified under Ontario Regulation 681/94 (s. 22; see Appendix 1 for the five ministries subject to this requirement and Appendix 20 for prescribed instruments).	1,455 proposal notices
	Ministries must post notice of their decisions on all instrument proposals, including an explanation of the effect of public comments (s. 36).	1,637 decision notices ²
Appeal notice	The Environment Ministry ³ 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 <i>Environmental Bill of Rights</i>) and applications to seek leave to appeal by third parties under the <i>Environmental Bill of Rights</i> (s. 47).	8 direct appeals and 5 applications for leave to appeal
Exception notice	In two circumstances, a ministry can forgo consulting the public on a proposal in the usual way, but it must instead post an “exception notice” to inform the public of the decision and explain why it did not post a proposal notice and consult the public. The two circumstances are: <ul style="list-style-type: none"> 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 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 <i>Environmental Bill of Rights</i> (s. 30). 	6
Information notice	This is the only notice type that is not required. Ministries can choose to use the Environmental Registry to share information that does not fall into any of the above notice categories—for example, a ministry’s annual report—as well as seek the public’s input on such matters. Ministries also use information notices to fulfill requirements of other laws to provide information to the public (s. 6).	157

1. The section of the *Environmental Bill of Rights, 1993*, that makes the requirement is indicated in parentheses at the end of each stated requirement.
 2. Includes decisions on proposal notices posted both in 2018/19 and in an earlier reporting year.
 3. 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.

after making a decision; these notices include an explanation of how the public comments affected the final decision.

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. This work was completed in April 2019.

Since the modernized Registry was not yet fully operational for all notice types during our reporting year of April 1, 2018, to March 31, 2019, reference to Environmental Registry notices in this report

refer to notices as they were posted on the old Registry (unless otherwise stated).

2.5 Applications from Ontario Residents to Ministries Requesting a Review or Investigation

The Act gives Ontarians the right to file 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”); and
- investigate an alleged contravention of an environmental law (“application for investigation”).

There must be at least two people 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. Ministries that receive an application must consider the request in accordance with the requirements of the 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.

2.5.1 Applications for Review

The Act prescribes nine ministries to accept applications for review (see **Appendix 1**). Specific laws must be prescribed under Ontario Regulation 73/94 in order for them and their regulations to be subject to applications for review (see **Appendix 19**). Similarly, permits and other approvals must be prescribed under Ontario Regulation 681/94 to be subject to applications for review (see **Appendix 20**).

The 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 do 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 submitted varies widely from year to year. Over the past five years, the average number of applications per year has been 12, and ministries have agreed to undertake 31% of the requested reviews (see **Figure 5**). Ministries concluded (denied or completed) 17 applications for review in 2018/19 (see **Figure 6**).

2.5.2 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 (see **Appendix 19**), or of a regulation or prescribed instrument (e.g., permit or other type of approval) under those laws. To date, most of the public’s requests for investigation have been made under the *Environmental Protection Act*.

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

Figure 5: Applications for Review by Reporting Year Received and the Ministries' Decision to Undertake or Deny, 2014/15–2018/19

Prepared by the Office of the Auditor General of Ontario

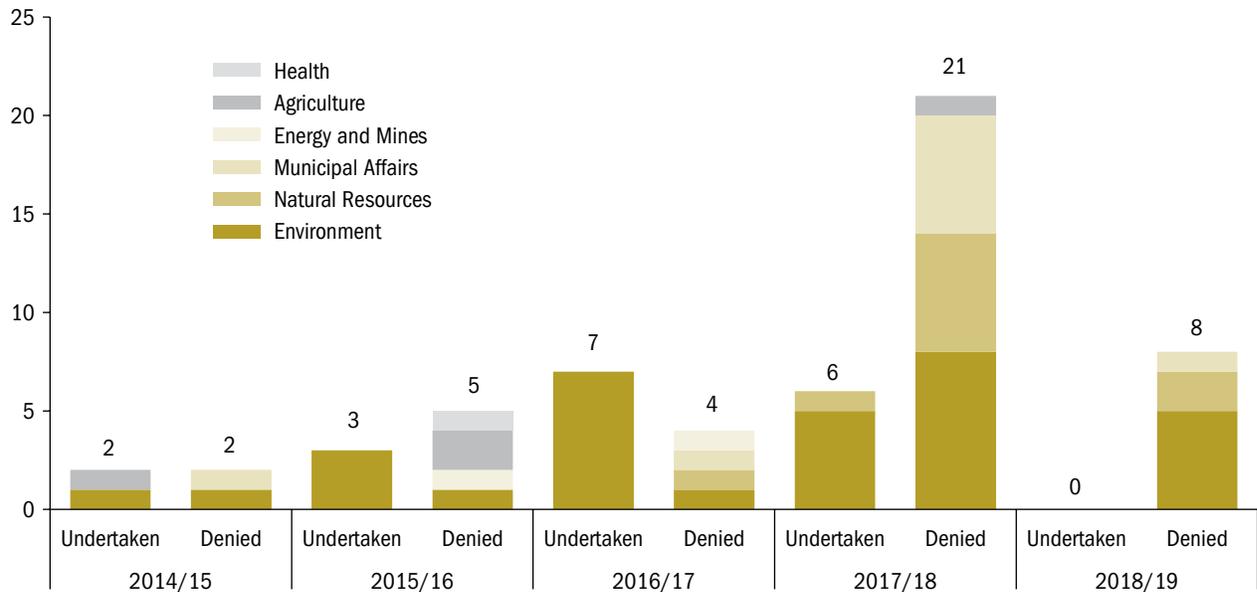


Figure 6: Applications for Review Concluded¹ in 2018/19

Prepared by the Office of the Auditor General of Ontario

Ministry ²	Applications Submitted in 2018/19		Applications Submitted in Previous Years		Total Applications Concluded in 2018/19
	Denied	Undertaken	Denied	Undertaken	
Environment	5	0	2	2	9
Natural Resources	2	0	2	0	4
Municipal Affairs	1	0	2	0	3
Agriculture	0	0	0	1	1
Total	8	0	6	3	17

1. An application has been “concluded” when the ministry has either (a) decided not to undertake the requested review (denied the application) and given notice of its decision to the applicants, or (b) decided to undertake the requested review, completed its review and given notice of the outcome of its review to the applicants.
2. In cases where an application is sent to more than one ministry, it is counted as a separate application for each ministry.

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

widely from year to year. Over the past five years, the average number of applications per year has been eight, and ministries have agreed to undertake 46% of the requested investigations (see **Figure 7**). Ministries concluded 11 applications for investigation in 2018/19 (see **Figure 8**).

Figure 7: Applications for Investigation by Reporting Year Received and the Ministries' Decision to Undertake or Deny, 2014/15–2018/19

Prepared by the Office of the Auditor General of Ontario

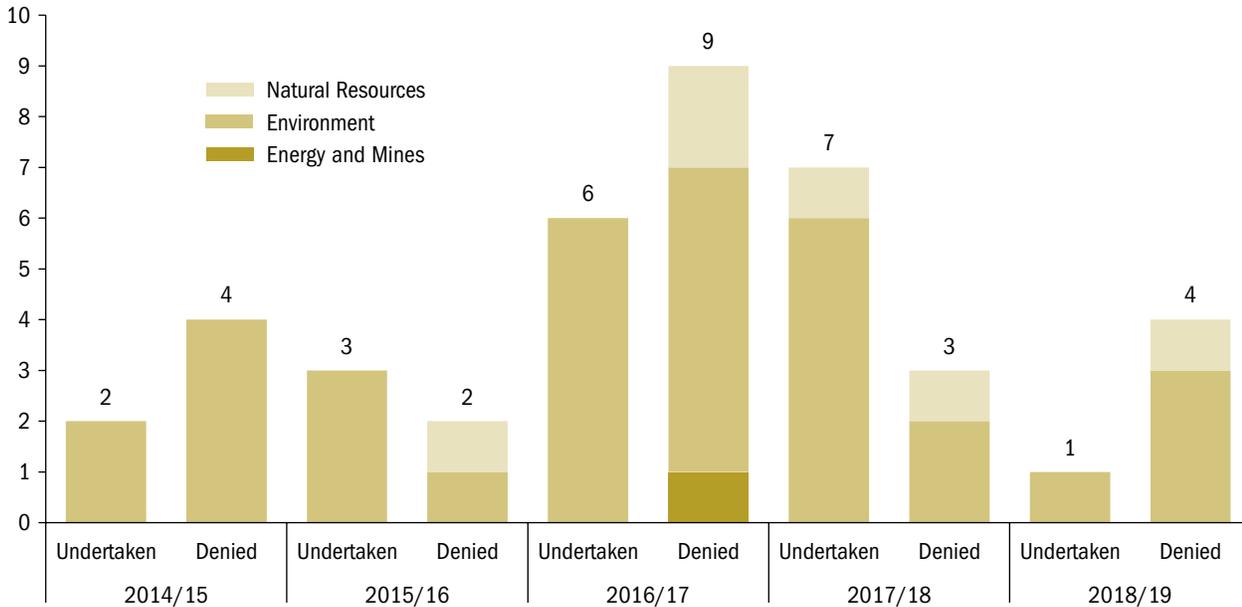


Figure 8: Applications for Investigation Concluded¹ in 2018/19

Prepared by the Office of the Auditor General of Ontario

Ministry ²	Applications Submitted in 2018/19		Applications Submitted in Previous Years		Total Applications Concluded in 2018/19
	Denied	Undertaken	Denied	Undertaken	
Environment	3	1	0	4	8
Natural Resources	1	0	1	1	3
Total	4	1	1	5	11

1. An application has been “concluded” when the ministry has either (a) decided not to investigate (denied the application) and given notice of its decision to the applicants, or (b) decided to investigate, completed its investigation and given notice of the outcome of its investigation to the applicants.

2. In cases where an application is sent to more than one ministry, it is counted as a separate application for each ministry.

2.6 The Right to Appeal Decisions about Permits, Orders, Licenses and Other Approvals

Many laws provide individuals and companies with a right to appeal government decisions affecting them, such as a decision to deny or amend permits and other approvals that they applied for or had previously obtained. A few laws also give other people (“third parties”) the right to appeal ministry decisions about instruments (permits, orders,

licenses and other approvals) issued to others (for example, to appeal the issuance of a renewable energy approval under the *Environmental Protection Act*). The Act expands on these rights by allowing broader third-party appeal rights.

The Act allows any resident of Ontario to “seek leave to appeal” (i.e., permission to challenge) decisions on many types of instruments. For example, a member of the public could use this right to challenge a decision by the Environment Ministry to

issue an approval for an industrial facility to operate or a permit to take water.

Ontario residents who wish to appeal a ministry's decision on a prescribed instrument must submit an application for leave to appeal to the appropriate appellate body (typically the Environmental Review Tribunal) within 15 days of the decision being posted on the Environmental Registry. To be granted leave to appeal, the applicant must successfully demonstrate to the appellate body that "there is good reason to believe" that the decision was not reasonable and that it could result in significant harm to the environment. If an applicant is granted leave to appeal, the instrument decision is "stayed" (put on hold), and the matter can proceed to a hearing, after which the appellate body will make a decision.

The number of applications for leave to appeal varies from year to year. Over the past 10 years, Ontarians have, on average, submitted five applications for leave to appeal each year, and have been granted leave to appeal 21% of the time. In 2018/19, members of the public filed five new applications for leave to appeal under the Act. These applications challenged a permit for a concrete company to take water, an environmental compliance approval for a waste disposal site, an approval for an asphalt plant, and two approvals for a poultry processing facility. Two of the five applications—those related to the approvals for a waste disposal site and an asphalt plant—were denied. Decisions on the other three applications were pending as of March 31, 2019.

2.7 Lawsuits and Whistleblower Protection

The Act provides rights for Ontarians to take court action against anyone harming a public resource or to seek damages for environmental harm caused by a public nuisance. The 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 received and closed one case related to the Act in 2018/19, which is the third case in the last five years.

3.0 Review Objective and Scope

Our review objective was to assess whether the 15 ministries prescribed under the *Environmental Bill of Rights, 1993* (Act) carried out their duties during the 2018/19 reporting year (April 1, 2018 to March 31, 2019) in accordance with the requirements and purposes of the Act and its regulations.

In planning our work, we identified the criteria we would use to evaluate ministry performance for each of their responsibilities under the Act. These criteria were established based on the requirements of the Act and best practices required for a ministry to fulfill its obligations in light of the Act's purposes. These criteria are outlined in **Appendix 17**. Senior management at each prescribed ministry reviewed and agreed with our review objective and associated criteria.

We conducted our review from April 2019 to October 2019. We obtained written representation from senior management at each prescribed ministry that, effective November 12, 2019, 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 work involved discussions with ministry staff at the Environmental Bill of Rights Office within the Environment Ministry, as well as staff at other prescribed ministries. We reviewed:

- ministries' measures to update their Statements of Environmental Values (Statements), as well as their documentation that showed how they considered their Statements for all decisions on policies, acts, regulations and select instruments;

- all notices for policies, acts and regulations posted on the Environmental Registry in 2018/2019, as well as a random sample of 25 instrument proposal notices and 25 instrument decision notices from each ministry that posts instrument notices;
- the Environmental Registry to identify all proposal notices that were posted more than two years earlier without an update or decision as of March 31, 2019;
- all relevant documentation for all applications for review and applications for investigation that ministries concluded—either denied or completed—in 2018/19 (this included reviewing the applicable laws, policies and regulations, as well as key scientific studies, reports and research relevant to the application subject, as appropriate); and
- the status of all applications for review where the ministry had agreed to undertake the review but had not yet delivered a final decision as of March 31, 2019.

We conducted our work and reported on the results of our examination in accordance with Canadian Standards on Assurance Engagements (CSAE) 3001—Direct Engagements and CSAE 3531—Direct Engagements to Report on Compliance issued by the Auditing and Assurance Standards Board of the Chartered Professional Accountants of Canada. This included obtaining a limited level of assurance on the compliance by all prescribed ministries with the *Environmental Bill of Rights, 1993* (the Act) for the period of April 1, 2018, to March 31, 2019. The interpretation of the significant provisions of the Act are described in **Appendix 17**.

Compliance with the Act is the responsibility of management. Management is also responsible for such internal control as management determines necessary to enable a prescribed ministry's compliance with the Act.

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 poli-

cies 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 Ministry of the Environment, Conservation and Parks

4.1 Overview

The Ministry of the Environment, Conservation and Parks has a high level of activity under the Act. The environment is central to its mandate and therefore the Ministry uses the Environmental Registry on a daily basis. See **Appendix 2** for the Ministry's report card for compliance with the Act. The Ministry was responsible for nine applications for review and eight applications for investigation concluded in 2018/19 (see **Appendix 21, Sections 1.1–1.9** and **2.1–2.8**).

4.2 Statement of Environmental Values Needs Updating

In 2017, the former Ministry of the Environment and Climate Change posted a proposal notice to update its Statement, which was last substantially updated in 2008, to incorporate the Ministry's new values, including to reduce greenhouse gas emissions, confirm that it must consider its Statement for permits, approvals and orders (in addition to policies, acts and regulations), and commit to reviewing its Statement every five years. However, the Ministry's Statement was never officially updated to reflect these changes.

Further, in June 2018, the Ministry was assigned new responsibilities, including the conservation of species at risk and the management of protected areas. The Ministry has not updated its Statement to include these new responsibilities. The Statement also does not provide Ministry staff with specific principles to guide decision-making related to them, such as values like the “conservation of biodiversity” that are found in the Statement of the Natural Resources Ministry, which was formerly responsible for these program areas.

The government’s November 2018 draft Made-in-Ontario Environment Plan directed all ministries to update their Statements to reflect Ontario’s environmental plan, including to improve government’s ability to consider climate change when making decisions and “make climate change a cross-government priority.”

RECOMMENDATION 1

So that the Ministry of the Environment, Conservation and Parks’ Statement of Environmental Values (Statement) reflects the Ministry’s current environmental values and responsibilities, we recommend that the Ministry review its Statement with public consultation through the Environmental Registry and update it to reflect its new responsibilities.

MINISTRY RESPONSE

The Ministry agrees that its Statement of Environmental Values (Statement), last updated in 2008, requires an update to reflect current values, priorities and responsibilities. The Ministry has initiated the process to update its Statement, which will be informed by the government’s Made-In-Ontario Environment Plan.

4.3 The Ontario Divisional Court Concluded that the Ministry Should Not Have Relied on the “Substantially Equivalent” Exception Provision to Public Consultation When Ending its Cap and Trade Program

On July 3, 2018, the Environment Ministry took the first step to end Ontario’s cap and trade program through the passing of O. Reg. 386/18, which revoked the Cap and Trade Program Regulation (O. Reg. 144/16) under the *Climate Change Mitigation and Low-carbon Economy Act, 2016*. Three days after the Ministry revoked the Cap and Trade Program Regulation, it posted an “exception notice” on the Environmental Registry to inform the public that the government had done so.

Normally, a ministry is required to:

- Post a proposal notice on the Environmental Registry for any proposed regulation under a prescribed act that could have a significant effect on the environment.
- Include a period of at least 30 days for the public to comment on the merits of a proposed regulation before a final decision is made.
- Take every reasonable step to ensure that it considers all public comments submitted during the comment period when making a decision on the proposal.
- Post a decision notice on the Registry that explains how it considered public comments in making its decision.

The Environment Ministry’s exception notice that was posted after revoking the Cap and Trade Program Regulation stated: “...the Minister was of the opinion that the recent Ontario election was a process of public participation that was substantially equivalent to the process required under [the Act] and that the environmentally significant aspects of the regulation were considered during that process because the government made a clear election platform commitment to end the cap and

trade program.” Under the Act, exceptions to the legal requirement to post proposals can be made if a Minister holds the opinion that “the environmentally significant aspects of a proposal for a policy, Act, regulation or instrument have already been considered in a process of public participation, under this Act, under another Act or otherwise, that was substantially equivalent to the process required in relation to the proposal under this Act.”

The legal question of whether the Environment Minister could rely on a recent general election as the basis for using the “substantially equivalent process” exception was the subject of a legal proceeding initiated by Greenpeace. In October 2019, the majority of the Ontario Divisional Court found that the government’s recent election did not relieve it from its obligation to follow the public consultation requirements set out in the Act, but it dismissed Greenpeace’s application to declare the regulation unlawful.

An application for review related to this matter was also submitted by the Canadian Environmental Law Association in July 2018 (see **Appendix 21, Section 1.6**).

RECOMMENDATION 2

To avoid the need for and cost of legal proceedings in the future, and to engage the public in the government’s environmentally significant decision-making, we recommend that the Ministry of the Environment, Conservation and Parks consistently consult with the public in accordance with the requirements under Part II of the *Environmental Bill of Rights, 1993*.

MINISTRY RESPONSE

The Ministry is aware of and understands its obligations under Part II of the *Environmental Bill of Rights, 1993* (EBR). While the Divisional Court dismissed the application for Judicial Review commenced by Greenpeace, the Ministry has reviewed the Court’s comments about the requirements of the EBR and will continue

to ensure that the required public process is undertaken for all proposals that are environmentally significant.

4.4 More Public Consultation Time May Have Provided the Ministry with More Informed Feedback on Two Significant Proposals

For all 19 proposal notices for policies, acts or regulations that the Ministry posted on the Environmental Registry in 2018/19, the Ministry provided between 30 to 60 days for public comment, meeting the minimum of 30 days for public comment required by the Act. While it met the minimum requirements, in two of those cases—for Bill 4, *Cap and Trade Cancellation Act, 2018* and a proposal to revise the regulation of sulphur dioxide emissions from petroleum facilities—the public could have benefited from having more time to comment, given the complexity and significance of the proposals.

For every proposal posted on the Registry, the Act requires ministries to consider, based on factors set out in the Act, providing additional time beyond 30 days “to permit more informed public consultation on the proposal.” A longer comment period may be warranted in particular for proposals that are complex or of high public interest.

Generally, to meet the spirit of the Act to permit informed public consultation—and to support more informed government decisions by ensuring ministries receive and consider all feedback (which can include valuable information and perspectives)—the comment period should be sufficient to enable interested members of the public to:

- become aware of the proposal;
- fully review and evaluate the content of the proposal and any supporting materials, which can be lengthy and technical (including, in some cases, obtaining the supporting materials from the ministry); and
- prepare and submit feedback on the proposal by the submission deadline.

The two proposals where more time could have been beneficial are noted in the following sections.

4.4.1 Bill 4, *Cap and Trade Cancellation Act, 2018*

In September 2018, the Ministry posted Bill 4, *Cap and Trade Cancellation Act, 2018*, for the minimum 30 days for public comment. This proposal (which followed the earlier revocation of the Cap and Trade Program Regulation described in **Section 4.3**) formally ended Ontario's cap and trade program and significantly changed the province's approach to addressing climate change. The proposal set out details related to the wind-down of the program, such as the retirement and cancellation of cap and trade allowances and credits, compensation related to allowances and credits, and legal matters.

The details and implications of ending the province's cap and trade program, including how it may affect previously planned low-carbon programs that were to be funded out of the revenues of the cap and trade program, as well as impacts to industrial emitters that had purchased carbon credits under the program and costs to the province, were complex. The proposal was of high public interest, as evidenced by the widespread media attention that it received.

While numerous individuals (11,222) commented during the consultation period, some commenters may have benefited from having more than 30 days to review the significant implications of the proposal and to prepare detailed, informed comments. In turn, the government may have received more informed feedback.

Historically, the Ministry typically provided the public at least 45 days (and often 60 or more days) to comment where legislative changes are involved. For example, the Ministry provided the public 45 days to comment on its proposal to repeal the *Toxics Reduction Act* in 2018, and provided 95 days to comment on its proposed *Waste-Free Ontario Act* in 2015. When we asked if the Ministry had considered allowing more than

30 days to comment on the cap and trade proposal, it felt that 30 days was sufficient.

If the Ministry had posted the proposal notice on the Registry on the same day that the bill was introduced, which has been common practice, the Ministry would have been able to provide a longer comment period and benefit from more feedback.

4.4.2 Regulation of Sulphur Dioxide Emissions from Petroleum Facilities

The Ministry posted a proposal in November 2018 to revise the regulation of sulphur dioxide (SO₂) emissions from Ontario petroleum facilities, providing the minimum 30 days for public comment. The Ministry proposed to delay certain regulatory requirements intended to reduce emissions of SO₂ from flaring (the burning off of excess chemical gases) until July 2023, while proposing alternate interim measures to reduce SO₂ emissions at petroleum facilities.

This proposal was complex, requiring substantial dedicated time to review and analyze what was being proposed and its implications. The proposal was of high interest to the Aamjiwnaang First Nation, as well as a number of stakeholders—including industry and environmental groups—due to the financial and technical implications for industry and due to the serious and ongoing pollution impacts from petroleum facilities to the Aamjiwnaang First Nation and others living near Sarnia's Chemical Valley. The proposal received 13 comments.

The Ministry told us that it had determined that a 30-day comment period would be appropriate because it had already been having discussions with industry and other parties over the previous two years about SO₂ sources and impacts. However, given this proposal's complexity and significant implications, other Ontarians with whom the Ministry did not meet could have benefited from more time to review and evaluate the proposal and to prepare comments, and the government may have received more informed feedback.

RECOMMENDATION 3

So that the Ministry of the Environment, Conservation and Parks can receive informed feedback on environmentally significant proposals posted on the Environmental Registry, we recommend that the Ministry extend the comment period beyond 30 days for significant and complex proposals to provide enough time to obtain more informed input from the public.

MINISTRY RESPONSE

The Ministry acknowledges its obligation to permit informed public consultation and will continue to ensure that it meets the engagement requirements as prescribed by the *Environmental Bill of Rights, 1993* (i.e., a minimum 30-day posting). This includes consideration of posting periods beyond 30 days (subject to existing exceptions under the Act), and extending the comment period as appropriate.

4.5 Environmental Implications for 72% of the Proposals for Permits and Approvals that We Reviewed Were Not Adequately Described

Eighteen (or 72%) of the 25 proposal notices for permits and approvals posted by the Ministry on the Environmental Registry in 2018/19 that we reviewed did not provide some of the information needed to fully understand the environmental implications of the proposal.

Specifically, for nine of the 15 notices that we reviewed that proposed issuing an environmental compliance approval for sewage, waste or air emissions (i.e., approvals issued by the Ministry under the *Environmental Protection Act* to regulate polluting activities), the Ministry did not describe the potential environmental risks associated with the activity to be approved, the terms of the proposed approval, and/or how these terms of the approval would address the potential environmental risks associated.

Similarly, none of the Ministry's other nine notices that we reviewed that proposed issuing a permit to take water under the *Ontario Water Resources Act* (including two notices for Category 3 permits to take water, which pose a higher risk to the environment) explained why the Ministry proposed to issue the permit despite the risks to the environment, or how the terms and conditions of the permit would address those risks.

The omission of information made it more difficult for the public to provide informed comment on the permits and approvals (such as being able to provide input on the appropriateness of specific terms and conditions of the permits) than if the Ministry had clearly explained how the risks to the environment would be managed.

RECOMMENDATION 4

So that the Ministry of the Environment, Conservation and Parks can receive informed feedback and so that the public can comment on environmentally significant ministry proposals for permits and approvals posted on the Environmental Registry, we recommend that the Ministry describe the environmental implications of each proposed permit or approval in the proposal notice, and explain how the proposal may address those potential risks to the environment.

MINISTRY RESPONSE

The Ministry agrees that it is important to provide appropriate information in its notices to allow the public to fully understand the environmental implications of proposed instruments. The Ministry will provide further training and guidance on the content to be included in notices, including the environmental implications and how the proposal may address risks.

4.6 Over Two Weeks Taken to Give Notice for 52% of the Decisions for Permits and Approvals that We Reviewed

Several ministries have adopted a service standard to post decision notices for permits and approvals within two weeks of making a decision; the Environment Ministry has not.

The Act requires ministries to post each decision 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 effect of public consultation, and so that the public may exercise its right to appeal decisions for permits and 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. In particular, delays in posting decision notices for permits and approvals allow individuals or companies to operate, sometimes for significant periods of time with potential impacts on the environment from their activities, before members of the public are made aware of or can appeal the issued approval.

The Ministry took more than two weeks to give notice for 13 of the 25 decisions for permits and approvals that our Office reviewed in 2018/19. Specifically, the Ministry took from 67 to 638 days to give notice of those decisions. For example, the Ministry took 303 days to post a decision notice for an environmental compliance approval for sewage, and 278 days to post a decision notice for an environmental compliance approval for air emissions.

When asked for the reason for the delay in posting decision notices, the Ministry told us the delays were due to IT issues, administrative errors, or that the reason was unclear. The Ministry told us that it has taken steps to prevent administrative errors in the future.

RECOMMENDATION 5

To give the public prompt notice of its environmentally significant decisions, we recommend that the Ministry of the Environment, Conservation and Parks:

- establish a service standard to post decision notices within two weeks of making a decision to issue or revoke a permit, licence or approval, and within two weeks from the date that a proposed act is passed, a regulation is filed, or a policy is implemented; and
- post all decision notices on the Environmental Registry as soon as reasonably possible, which should reasonably be within two weeks of making a decision to issue or revoke a permit, licence or approval, and within two weeks from the date that a proposed act is passed, a regulation is filed, or a policy is implemented.

MINISTRY RESPONSE

The Ministry is committed to posting all decision notices on the Environmental Registry as soon as reasonably possible. The Ministry will update Environmental Registry training resources to include consideration for posting decision notices on the Environmental Registry within two weeks of a decision being made.

4.7 Forty-Four Proposal Notices Were on the Environmental Registry for Over Two Years without a Decision or Update

The Ministry provided us with its internal guidance documents that established a Ministry-wide process in 2016 to address stale proposal notices and to prevent or limit future ones, directing staff to either close them with decision notices or update the proposals.

As of March 31, 2019, the Ministry had 44 proposal notices on the Environmental Registry

that were posted more than two years earlier and had not been either closed with a decision notice or updated within the last two years. Of these notices, 30 were originally posted more than 10 years earlier. They include a proposal from 1996 for a Lake Superior lakewide management plan (Stage 2: Load Reduction Targets) and a proposal from 1998 for a model sewer use bylaw. When proposal notices stay on the Registry for such long periods without a decision, the public has no way of knowing whether the Ministry is still actively considering them or has abandoned them, and if the latter, why.

When asked about the status of the Ministry's older proposal notices, the Ministry told us that it is currently reviewing the notices and plans to post decisions or updates for as many as possible by the end of 2019.

RECOMMENDATION 6

So that the Environmental Registry is a reliable source of information about the Ministry of the Environment, Conservation and Parks' decisions about the environment, we recommend that the Ministry bring and keep all of its proposal notices up to date, including posting decision notices for proposals that have been decided or that are otherwise no longer under consideration by the Ministry.

MINISTRY RESPONSE

The Ministry recognizes the importance of communicating decisions on proposals and is committed to providing timely information. As part of the modernization of the Environmental Registry, and in order to keep the Registry up to date, the Ministry is currently reviewing out-of-date proposal notices and plans to post decisions or updates imminently for as many of the remaining notices as possible.

4.8 Denial of a Request to Review Two Air Standards Did Not Provide Evidence that the Current Standards Are Adequate to Protect the Environment and Human Health

Overall, we found that the Ministry's handling of applications for review and investigation was appropriate. However, for one request, we found that the Ministry had not provided sufficient information to support its decision.

The Ministry denied an application asking it to review its air standard that limits industrial emissions of nitrogen dioxide (NO₂) and the need for an air standard to regulate industrial emissions of fine particulate matter (PM_{2.5}). The applicants raised concerns that the current regulation of these two air contaminants was inadequate to protect the environment and human health from industrial emissions of NO₂ and PM_{2.5} (see **Appendix 21, Section 1.5** for more details about the application and the Ministry's response).

The Ministry is required to determine whether the public interest warrants a requested review and then to provide a statement of reasons to explain its decision whether to undertake the review. In this case, the Ministry concluded that undertaking the requested review was not in the public interest, but did not provide evidence that the existing regulation of industrial air standards for NO₂ and PM_{2.5} does, in fact, sufficiently protect the environment and human health. In particular:

- The Ministry's response did not explain why it considers Ontario's standard for NO₂ sufficient to protect against harm to human health and the environment, particularly in light of the fact that Ontario's industrial emission standard for NO₂ (as well as its ambient air quality criterion) remains twice as high as the World Health Organization's air quality guideline for NO₂, and more than three times higher than the new Canadian Ambient Air Quality Standard for NO₂ (to come into effect

in 2020), and in light of the absence of an annual standard for NO₂ to limit long-term exposure. Short- and long-term exposure to NO₂ is associated with a range of health risks, including serious respiratory problems.

- The Ministry's response did not specify when it intends to undertake a review of NO₂ (it referred to its practice of undertaking periodic reviews of contaminants and noted that it had prioritized the NO₂ air standard for updating within its standards-setting plan, but did not state any time frame for such a review). The Ministry told us that it will propose a timeline for this update as part of a new standards setting strategy that is currently in development.
- The Ministry's response did not include how—or if—it took into account newer studies about the impacts of PM_{2.5} that have become available since it concluded in 2012 that the regulatory framework for PM_{2.5} was adequate. For example, a 2017 report by the Organization for Economic Co-operation and Development found PM_{2.5} is “the most serious pollutant globally from a human health perspective,” and is associated with adverse cardiovascular and respiratory effects and premature death. A 2016 joint report by Public Health Ontario and Cancer Care Ontario called exposure to PM_{2.5} “a significant public health concern in Ontario,” and found that it is associated with 290 to 900 cancer cases per year.

Some parts of Ontario that have been identified by the Ministry as communities with particular air pollution challenges, such as the Hamilton and Sarnia areas, have pollution levels that have exceeded the Canadian Standards for annual PM_{2.5}. Given the Ministry's acknowledgement in its decision to deny this review that the primary contributors of NO₂ and PM_{2.5} in such communities are industrial sources, a review of Ontario's air standards for industrial emissions of NO₂, and of the lack thereof for industrial emissions of PM_{2.5}, would determine whether stronger standards are needed to alleviate

existing pollution problems. Further, given the Ministry's stated approach of focusing on regulating the precursors to PM_{2.5} rather than PM_{2.5} itself (because most PM_{2.5} is formed through reactions in the air of other contaminants like NO₂, rather than being emitted directly), a review of NO₂ standards could also be an important means to indirectly address PM_{2.5} levels.

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 (NO₂);
- based on the results of its review, update its standard for NO₂;
- assess the need for a standard for industrial emissions of fine particulate matter (PM_{2.5}); and
- if the assessment shows a need, establish a standard for industrial emissions of PM_{2.5}.

MINISTRY RESPONSE

The NO₂ standard has been prioritized for review. With respect to PM_{2.5}, the Ministry continues to track science related to PM_{2.5} in air and will take into account the information gathered during the upcoming federal review process for fine particulate matter.

The Ministry has a comprehensive approach for managing industrial and commercial sources of air pollutants to protect public health and the environment. Ontario's Local Air Quality Regulation has air standards for over 130 contaminants, including nitrogen oxides, suspended particulate matter, and precursors of fine particulates. These standards are periodically reviewed and updated as new scientific information becomes available.

4.9 Four of Nine Applications for Review Not Completed by the Date Promised—One Has Been Ongoing for Over Nine Years

As of March 31, 2019, the Ministry had not met its own deadlines for completing four of the Ministry's nine ongoing applications for review (see **Figure 9**). In each of these cases, the Ministry missed the original deadline it told the applicants it would meet for completing the review, and then provided a revised deadline, which it then also did not meet. The Ministry has not provided a new deadline for completing any of these reviews.

Applications for review are used by the public to ask a ministry to better protect the environment. When a ministry agrees to undertake a review, the Act requires the ministry to complete the review "within a reasonable time." The 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 complexity of the matter and other factors (such as a need to gather scientific or technical evidence before completing the review). Ministries have typically completed a review of a discrete or site-specific environmental issue (such as a review of a company's permit), on average, within six months, and of a complex or broad topic (such as a review of a province-wide policy), on average, within three years.

RECOMMENDATION 8

To adhere to the requirements of the *Environmental Bill of Rights, 1993* to complete reviews within a reasonable time, and to give applicants a timely outcome to their applications, we recommend that the Ministry of the Environment, Conservation and Parks provide a new reasonable completion date to each applicant and to complete each review by such time.

Figure 9: Applications for Review Submitted to the Environment Ministry that Were Ongoing as of March 31, 2019

Prepared by the Office of the Auditor General of Ontario

Topic of the Application for Review	Date Received by the Ministry	Status
Review of the <i>Environmental Bill of Rights, 1993</i>	Jan 18, 2010	Did not meet completion date. Promised completion date changed multiple times, most recently changed to 2018
Review of the <i>Environmental Protection Act</i> and the Siting of Landfills	Jul 15, 2013	Did not meet completion date. Promised completion date changed from October 2017 to December 2018
Review of the Lake Simcoe Protection Plan	Jul 15, 2016	Promised to begin review in spring 2019 as part of scheduled review of the Lake Simcoe Protection Plan
Review of Water Management to Improve Climate Resiliency	Sep 8, 2016	Promised completion date was originally January 2019, changed to January 2020
Review of the Monitoring of Pesticide Use on Golf Courses	May 4, 2017	Did not meet completion date. Promised completion date was originally June 30, 2018, changed to August 2018
Review of Deadlines for Annual Pesticide Reports from Golf Courses	May 4, 2017	Did not meet completion date. Promised completion date was originally June 30, 2018, changed to August 2018
Review of Water Quality in Muskrat Lake in the County of Renfrew	Jun 23, 2017	Promised completion date of March 31, 2019 (completed June 28, 2019)
Review of a Waste Disposal Site Approval in the United Counties of Leeds and Grenville	Sep 12, 2017	Promised completion date of May 31, 2019, changed to May 2020
Review of a Waste Disposal Site Approval in the United Counties of Leeds and Grenville	Dec 7, 2017	Promised completion date of May 31, 2019, changed to May 2020

MINISTRY RESPONSE

The Ministry agrees with the importance of providing applicants with timely decisions on applications for review. Some EBR applications raise complex matters requiring an integrated, multi-faceted response by government. The Ministry is committed to concluding outstanding applications for review as soon as reasonably possible, as per the EBR. The Ministry will provide updates to the applicants as work progresses.

4.10 Summaries of All Concluded Applications Should Be Provided to Educate the Public

Providing summaries of concluded applications for review and investigation is a demonstrable means to provide public education on how the Act functions, how the public may exercise its rights, and how the ministries handle applications for review and investigation. The former Office of the Environmental Commissioner provided summaries of concluded applications for review and investigation in executing its educational responsibility under the Act before the transfer of this responsibility to the Environment Ministry. This year, we have provided summaries in **Appendix 21** for all applications for review and investigation concluded in the 2018/19 reporting year. As of April 1, 2019, the Environment Ministry is responsible for providing educational programs to the public about the Act.

RECOMMENDATION 9

As part of the Ministry of the Environment, Conservation and Parks' mandate to provide education to the public about the *Environmental Bill of Rights, 1993*, we recommend that the Ministry post summaries of all completed applications for review and applications for investigation on the Environmental Registry annually.

MINISTRY RESPONSE

The Ministry is committed to educating the public about the *Environmental Bill of Rights, 1993*, including how the Act functions, how the public may exercise its rights and how the ministries handle applications for review and investigation. The Ministry will consider the Auditor General's recommendation and will collaborate with other prescribed ministries to develop a path forward.

5.0 Ministry of Natural Resources and Forestry

5.1 Overview

The Ministry of Natural Resources and Forestry regularly uses the Environmental Registry, as it is the lead provincial body for managing Ontario's Crown lands, forests, fish and wildlife. See **Appendix 3** for the Ministry's report card for compliance with the Act. The Ministry was responsible for four applications for review and three applications for investigation concluded in 2018/19 (see **Appendix 21, Sections 1.7, 1.10, 1.11 and 1.13, and Sections 2.4, 2.8 and 2.9**).

5.2 Statement of Environmental Values Needs Updating

The Ministry last updated its Statement in 2008. In March 2018, the Ministry posted a proposal notice for an updated Statement to incorporate the Ministry's new priorities, including adding a new commitment to incorporate climate change adaptation into natural resource management, a new commitment to review the Statement every five years and revising the principles set out in its Statement based on current natural resource management practices. However, the Ministry's Statement was never officially updated to reflect these changes.

Further, in June 2018, the Ministry stopped being responsible for species at risk and protected areas (these responsibilities were transferred to the Environment Ministry; see **Section 4.1**).

The government's November 2018 draft Made-in-Ontario Environment Plan directed all ministries to update their Statements to reflect Ontario's environmental plan, including to improve government's ability to consider climate change when making decisions and "make climate change a cross-government priority."

RECOMMENDATION 10

So that the Ministry of Natural Resources and Forestry's Statement of Environmental Values (Statement) reflects its current environmental values and responsibilities, we recommend that the Ministry review its Statement with public consultation through the Environmental Registry and update it to reflect its current responsibilities.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. Updates to the Ministry's Statement were proposed in March 2018. Although the Ministry's responsibilities changed in June 2018, the current Statement principles generally continue to reflect the priorities of the Ministry. The proposed updates are still under consideration.

5.3 Environmental Implications of Three Policy Proposals Were Not Adequately Described

The Ministry posted three proposal notices on the Environmental Registry in 2018/19 that did not adequately describe the environmental implications:

- The Ministry posted a proposal to establish a hunting season for double-crested cormorants that would allow a bag limit of 50 cormorants per day per hunter (or 14,550 cormor-

ants per season per hunter). The Ministry described the environmental implications of this proposal as "neutral" and stated that the "anticipated levels of harvest aren't expected to affect sustainability." It did not explain further or identify what the impact of the Ministry's projected reduction in the cormorant population would be on local cormorant colonies or the broader ecosystem effects.

- The Ministry posted a proposal in support of the province's review of the *Far North Act* "...with a view to reducing red tape and restrictions on important economic development projects in the Far North including the Ring of Fire, all-season roads and electrical transmission projects for communities." It did not explain the environmental implications of these proposed changes, including the effect of the proposal on the *Far North Act's* objective to protect at least 225,000 km² of the Far North in an interconnected network of protected areas.
- The Ministry posted a proposal to deregulate 172 hectares within West Montreal River Provincial Park, in order to transfer the land to the Matachewan First Nation as part of a treaty settlement. It did not explain the environmental implications of this proposal on the protected area. For example, the Ministry did not explain if any replacement lands were to be added to this protected area to maintain its ecological integrity.

In the absence of such details, readers of these proposals did not have all the facts needed about the environmental implications (positive or negative) to be fully informed and provide constructive input for the Ministry to consider.

RECOMMENDATION 11

So that the Ministry of Natural Resources and Forestry can receive informed feedback and so that the public can comment on environmentally significant ministry proposals, we

recommend that the Ministry describe the environmental implications of each proposal posted on the Environmental Registry.

MINISTRY RESPONSE

The Ministry is committed to full compliance with its legal obligations under the EBR. We will implement best practices, such as describing the potential environmental implications in each proposal notice. The Ministry has a series of internal procedures and templates to fulfil this mandate. We will review and where necessary update these procedures and templates to ensure they provide direction to staff.

5.4 Over Two Weeks Taken to Give Notice for 60% of the Decisions for Permits and Licences that We Reviewed

Several ministries—including the Natural Resources Ministry—have adopted a service standard to post decision notices within two weeks of making a decision. The Act requires ministries to post each decision 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 effect of public consultation, and so that the public may exercise its right to appeal licence decisions 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. In particular, delays in posting decision notices for some licences and approvals allow individuals or companies to operate, sometimes for significant periods of time, before members of the public are made aware of or can appeal the issued approval, potentially resulting in harm to the environment.

The Ministry took over two weeks to give notice for 15 (60%) of the 25 decisions on permits and licences that our Office reviewed in 2018/19. For example, the Ministry took 138 days to post a deci-

sion notice to inform the public that an application for a licence under the *Aggregate Resources Act* was withdrawn.

The Ministry also took over two weeks to give notice for three of its eight decisions on policies and regulations, taking:

- 1,521 days to post a decision notice for the Zone 5 Fisheries Management Plan;
- 1,012 days to post a decision notice for its Independent Forest Audit Modernization; and
- 123 days to post a decision notice for a land addition to Stoco Fen Provincial Park.

When we asked the Ministry about the delayed posting of some decision notices, it told us that it posts decision notices as soon as possible and as time and resources permit.

RECOMMENDATION 12

To give the public prompt notice of its environmentally significant decisions, we recommend that the Ministry of Natural Resources and Forestry post all decision notices on the Environmental Registry as soon as reasonably possible after making a decision, which should reasonably be within two weeks of making a decision as stipulated in its own service standard.

MINISTRY RESPONSE

The Ministry will ensure that prompt notice is provided to the public on the Environmental Registry. The Ministry will review its internal procedures to ensure that decision notices are posted as soon as reasonable possible, and within two weeks when possible, once a decision is made.

5.5 None of the Ministry's Notices for Permits and Licences that We Reviewed Provided Links to Final Documents

None of the 25 decision notices for permits or licences that were granted by the Ministry that we reviewed included links to the issued licence. Additionally, four of these notices did not provide adequate details about the decision, stating only that “approval was granted” with no further details. This may have impeded the ability of concerned citizens to fully understand what decision had been made.

Many of these cases involved licences under the *Aggregate Resources Act* relating to pits and quarries. The public has the right to challenge these licences (for example, if they are concerned about the operations harming the environment). It is therefore important that such decision notices on the Environmental Registry include complete details about the decision that was made (which may be most easily achieved by including a link to the final issued licence), so Ontarians can understand and exercise their right to challenge the activities occurring in their communities.

RECOMMENDATION 13

To give members of the public sufficient information about decisions on licences, permits and approvals, we recommend that the Ministry of Natural Resources and Forestry, for all decision notices:

- clearly describe the details of its decisions; and
- provide links to the final (issued) approval.

MINISTRY RESPONSE

The Ministry will review its procedures and processes to ensure that the details of all its environmentally significant decisions are described clearly. The Ministry's current system is not capable of providing the public with

online access to approved *Aggregate Resources Act* licences. The Ministry is working towards a new system that would enable this in the future. In the interim, ministry decision notices do identify a district contact person that can provide copies of the instrument upon request to the public.

5.6 Ninety-Two Proposal Notices Were on the Environmental Registry for Over Two Years without a Decision or Update

The Ministry's internal procedures state that it is good practice to update proposal notices that have been outstanding for over two years.

The Ministry had 92 proposal notices on the Environmental Registry that were posted more than two years earlier and had not yet been either closed with a decision notice or updated within the last two years. This represents 40% of the Ministry's total proposal notices that remained open on the Environmental Registry at the end of the reporting year. Twenty-one of those notices were originally posted more than 10 years earlier. They include a proposal to establish a new conservation reserve and add to existing protected areas, and a proposal to issue a forest resource processing facility licence, both of which were originally proposed in 2004 and last updated in 2006.

When proposal notices stay on the Registry for such long periods without a decision, the public has no way of knowing whether the Ministry is still actively considering them or has abandoned them, and if the latter, why.

The Ministry told us that some of the older proposals are no longer being considered, while a small number of others are still active, and that the Ministry anticipated posting decision notices or updates for those proposals shortly. The Ministry also told us that responsibility for a number of other older proposals related to provincial parks and conservation reserves was transferred to the Environment Ministry. However, the Ministry did not update the

proposals (or close them with a decision notice) to reflect that it no longer has responsibility for them. Consequently, the public has no way of knowing the status of the proposals—including whether either ministry is still actively considering them—years after the Ministry posted them.

RECOMMENDATION 14

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

MINISTRY RESPONSE

The Ministry will ensure that all outdated registry proposal notices are up to date. The Ministry has remedied the majority of outdated proposals. We are also taking steps to address the notices that the Environment Ministry is now responsible for and taking steps to avoid outdated notices in the future.

6.0 Ministry of Municipal Affairs and Housing

6.1 Overview

The Ministry of Municipal Affairs and Housing regularly uses the Environmental Registry, as it oversees land use planning decisions that determine the balance between socio-economic interests such as new housing developments and infrastructure projects and the preservation of the natural environment. See **Appendix 4** for the Ministry's report card for compliance with the Act. The Ministry was responsible for three applications

for review concluded in 2018/19 (see **Appendix 21, Sections 1.3, 1.8 and 1.13**).

6.2 Statement of Environmental Values Needs Updating

The Ministry last updated its Statement in 2008. Briefly in 2016, the Ministry separated into the Ministry of Municipal Affairs and the Ministry of Housing; while the ministries were separated, each posted a proposal notice to create its own up-to-date Statement, which also included new cross-government priorities, such as incorporating commitments to mitigate and adapt to climate change. However, later in 2018 the two ministries merged again, and the combined Ministry has not officially updated its Statement to reflect the earlier proposed changes.

Additionally, while its current Statement states that the Ministry will “support initiatives of other ministries” on climate change, the Statement does not reflect making climate change a cross-government priority for the Ministry itself, as directed in the government's November draft 2018 Made-in-Ontario Environment Plan.

RECOMMENDATION 15

So that the Ministry of Municipal Affairs and Housing's Statement of Environmental Values (Statement) reflects its current environmental values and responsibilities, we recommend that the Ministry review its Statement with public consultation through the Environmental Registry and update it to reflect its current responsibilities.

MINISTRY RESPONSE

The ministry is currently reviewing its Statement and aiming to post a proposal notice for an updated Statement on the Environmental Registry in fall 2019. This will include consideration of the government's Made-in-Ontario Environment Plan.

6.3 Environmental Implications of Six Proposals for Policies, Acts and Regulations Were Not Adequately Described

Six of the 10 proposal notices for policies, acts and regulations the Ministry posted on the Environmental Registry in 2018/19 did not describe the environmental implications of the proposal. For example, in the Ministry's proposals relating to a new economic development tool under the *Planning Act* (the "open-for-business planning by-law"), the Ministry did not explain the potential impacts to the environment of allowing a municipality to pass an open-for-business planning bylaw to which environmental protections found under various pieces of legislation, such as the *Clean Water Act, 2006*, and the *Greenbelt Act, 2005*, would not apply. In the absence of such information, readers of these proposals did not have all the facts needed about the implications of the proposal (positive or negative) to be fully informed and provide constructive input for the Ministry to consider.

6.4 Environmental Implications for 52% of the Proposals for Planning Approvals that We Reviewed Were Not Adequately Described

The Ministry's internal procedures direct that notices for approvals contain a detailed explanation of what it is proposing and why. For 13 (52%) of the 25 proposal notices for land use approvals that our Office reviewed from this Ministry, the proposal did not adequately describe the environmental implications. For example, the proposal to approve the new Official Plan for the Municipality of Sioux Lookout provided few details of what was being amended, no description of environmental implications and no links to supporting information. Without such detail, the public may not have had all of the information necessary to understand and provide informed input on the proposal.

RECOMMENDATION 16

So that the Ministry of Municipal Affairs and Housing can receive informed feedback and so that the public can comment on environmentally significant ministry proposals for planning approvals posted on the Environmental Registry, we recommend that the Ministry describe the environmental implications of each proposed planning approval in the proposal notice, and explain how the proposal may address those potential risks to the environment.

MINISTRY RESPONSE

The ministry agrees with this recommendation. We will review options on how the Ministry can enhance the information provided in instrument proposal notices.

6.5 Over Two Weeks Taken to Give Notice for 71% of the Decisions for Policies, Acts and Regulations

Several ministries—including the Municipal Affairs Ministry—have adopted a service standard to post decision notices within two weeks of making a decision. The Act requires ministries to post each decision 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 effect of public consultation. Timely notice is important for transparency and to provide accountability for the outcome of a proposal.

The Ministry posted five (71%) of the seven decision notices for policies, acts and regulations more than two weeks after the decision was made. For example, the Ministry took 514 days to post a decision notice after Schedule 4 of Bill 7 (*Promoting Affordable Housing Act, 2016*) received Third Reading, and took 668 days to give notice of a decision on a proposal for provisional consent (a time-limited approval with conditions) under the *Planning Act*.

The Ministry also posted 11 (44%) of the 25 decisions notices for planning approvals that we reviewed more than two weeks after the decision was made.

When asked for the reason for the delay in posting decision notices, the Ministry told us Bill 7 was interconnected with other notices, so it waited until all decisions had been made to post a decision. In other cases, the Ministry told us that the posting of decision notices was impacted by the timing and scope of other government priorities at the time. In the case of why it took 668 days to post one decision, the Ministry told us that it was overlooked and an error.

RECOMMENDATION 17

To give the public 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 reasonably possible after making a decision, which should reasonably be within two weeks of making a decision as stipulated in its own service standard.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. We will review options on how the Ministry can improve its timeliness in posting all decision notices.

6.6 One-Quarter of the Notices for Planning Approvals that We Reviewed Did Not Adequately Describe the Decision and None Provided Links to the Final Documents

Six of the 25 decision notices from the Ministry that our Office reviewed did not clearly explain what decision was made. In five of those notices, which all related to official plans, the Ministry stated that the plans were approved with a number of

modifications, but either did not explain at all, or adequately explain, what the modifications were. Also, none of the Ministry's decision notices for planning approvals that we reviewed included links to the final (issued) document, which also may have impeded the ability of concerned citizens to understand what decision had been made.

The Ministry told us that it is difficult to accurately and succinctly summarize the modifications of an entire official plan, and that the modifications are best read with the entirety of the official plan. In other words, it is best to read the entire plan to understand the modifications, and so the user of the Registry needs access to that plan. However, the Ministry also told us that it cannot provide a link to the final official plans in some cases because it does not post them anywhere online. This may make it difficult for people living in the municipalities whose official plans have been changed to know what those changes were and what the Ministry decided.

RECOMMENDATION 18

To give members of the public sufficient information about government decisions about planning approvals, we recommend that the Ministry of Municipal Affairs and Housing:

- clearly describe the details of its decisions; and
- provide links to the final (issued) approvals.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. We will review options on how the Ministry can enhance the information provided in the instrument decision notices.

6.7 Denial of a Request to Review the Regulation of Septic Systems Did Not Provide Sufficient Evidence that the Current Requirements Are Adequate to Protect the Environment

An application asking the Ministry to review the regulation of septic systems (i.e., small, on-site systems that collect and partially treat sewage from a home or business) was denied. Specifically, the applicants were concerned that the current requirements under the Ontario Building Code for the operation and maintenance of septic systems are not sufficient to protect the environment from potential harm, such as from malfunctioning systems contaminating water sources with untreated human sewage (see **Appendix 21, Section 1.3** for more details about the application and the Ministry's response; the application was also sent to the Environment Ministry, but the matter falls primarily under the jurisdiction of the Municipal Affairs Ministry).

The Ministry is required to determine whether the public interest warrants a requested review and then to provide a statement of reasons to explain its decision whether or not to undertake the review. In this case, the Ministry concluded that undertaking the requested review was not in the public interest, primarily because it had reviewed the matter 16 months earlier. Specifically, in October 2016, the Ministry posted a proposal notice on the Environmental Registry that proposed to include new requirements for regular inspections, pumping out of septic tanks and retention of maintenance records as part of a broader review of requirements under the Ontario Building Code.

However, the Ministry did not provide any information to explain to the applicants, nor to the public through the decision notice it later posted on the Environmental Registry for the proposal, why the Ministry had ultimately decided not to proceed with the proposed new requirements for septic systems. Further, the Ministry did not provide any information or evidence regarding the sufficiency

of the existing requirements under the Ontario Building Code to protect the environment from malfunctioning septic systems.

There are over one million septic systems in use in Ontario. When any one of these systems fails, it can release untreated human sewage into the surrounding soil, groundwater and surface water. Outside of a few areas in Ontario (i.e., the Lake Simcoe watershed and a few vulnerable zones within drinking-water source protection areas), there is little regulation and oversight of the ongoing maintenance and operation of septic systems to ensure proper performance. The lack of mandatory inspections or ongoing maintenance requirements outside these areas creates potential environmental risks from unaddressed faulty septic systems, including contributing to nutrient-related algae problems in Ontario lakes and rivers.

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.

MINISTRY RESPONSE

The Ministry will work with municipal stakeholders, conservation authorities and health units to assess the scope of the issue and identify potential next steps. The ministry will then take appropriate steps as identified through this process.

The Ontario Building Code includes provisions related to the operation and maintenance of small on-site sewage systems (including septic systems), and which authorize local sewage system maintenance inspection programs.

6.8 Denial of a Request to Review the Rules Governing Habitat Offsets Did Not Provide Sufficient Evidence that the Current Requirements Are Adequate to Protect Species at Risk

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) was denied. 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 that has been achieved through the creation of a habitat offset. The applicants used their municipality as an example, stating that their municipality had proposed an industrial development project that would harm new habitat for the golden-winged warbler that was to be established based on a previous habitat offset agreement (see **Appendix 21, Section 1.13** for more details about the application and the Ministry’s response; the application was also sent to the Natural Resources Ministry).

The Ministry concluded that undertaking the requested review was not in the public interest, based on the fact that it had completed a review of the Provincial Policy Statement in 2014. However, the Ministry did not provide any evidence to the applicants that its review of the Provincial Policy Statement 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.

When asked if it specifically considered this issue during the review of the Provincial Policy Statement, the Ministry told us that it would have considered any input on habitat offsets had anything been submitted by the public. The Ministry

stated that some municipalities and stakeholders had requested greater support and resources to help implement the significant wildlife habitat policies. The Ministry also told us that it reviewed and considered various parts of the Provincial Policy Statement related to significant wildlife habitat and species at risk but provided no evidence that the current requirements function effectively. The Ministry also stated that it is currently reviewing and consulting on proposed changes to the Provincial Policy Statement. Our Office notes that these changes would allow aggregate extraction operations (pits and quarries) to occur in significant wildlife habitat provided that a long-term rehabilitation plan can demonstrate no negative impacts.

The Municipal Affairs Ministry is responsible for the Provincial Policy Statement under the *Planning Act*, which provides the main direction for land use planning in many parts of Ontario. The Natural Resources Ministry serves a supporting role by producing supporting policies and technical guidance intended to protect significant wildlife habitat (and other natural heritage features). Ontario is experiencing an ongoing loss of biodiversity. The loss of wildlife habitat due to land development is a key contributor to the loss of both species at risk and biodiversity more generally. A review by the Ministry of the policies and rules for conserving the natural environment could determine if stronger or clearer rules are needed to help address this loss of biodiversity.

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.

MINISTRY RESPONSE

The Ministry is working with the Ministry of the Environment, Conservation and Parks—which

is the lead ministry responsible for policies dealing with wildlife habitat and species at risk protection—to determine how this issue was raised as part of the review of the Provincial Policy Statement (PPS), and consider the comments received. The PPS review involved a 90-day consultation that closed on October 21, 2019.

7.0 Ministry of Energy, Northern Development and Mines

7.1 Overview

The Ministry of Energy, Northern Development and Mines regularly uses the Environmental Registry in its role in regulating energy supply, mines and mineral development. See **Appendix 5** for the Ministry's report card for compliance with the Act.

7.2 More Public Consultation Time May Have Provided the Ministry with More Informed Feedback on One Significant Proposal

For two of the five proposal notices for policies, acts and regulations that the Ministry posted on the Environmental Registry in 2018/19, the Ministry provided 44 and 45 days for public comment, respectively. For the remaining three proposals, the Ministry provided 30 days for public comment. While it met the minimum legal requirements required by the Act for all three of those proposals, in one case—a proposal for Bill 34, the *Green Energy Repeal Act, 2018* posted in September 2018—both the public and the Ministry could have benefited from having more time to comment and receive feedback, given the complexity and significance of the proposal.

For every proposal posted on the Registry, the Act requires ministries to consider, based on factors set out in the Act, providing additional time beyond

30 days “to permit more informed public consultation on the proposal.” A longer comment period may be warranted in particular for proposals that are complex or of high public interest.

Generally, to meet the spirit of the Act to permit informed public consultation—and to support more informed government decisions by ensuring ministries receive and consider all feedback (which can include valuable information and perspectives)—the comment period should be sufficient to enable interested members of the public to:

- become aware of the proposal;
- fully review and evaluate the content of the proposal and any supporting materials, which can be lengthy and technical (including, in some cases, obtaining the supporting materials from the ministry); and
- prepare and submit feedback on the proposal by the submission deadline.

The Ministry's proposal for Bill 34, the *Green Energy Repeal Act, 2018*, was for significant, complex legislation that would: repeal the *Green Energy Act, 2009*, reintroduce some energy efficiency and conservation provisions in the Electricity Act, 1998, and make amendments to several other acts, including the *Environmental Protection Act* and the *Planning Act*. The proposal would make broad changes to renewable energy generation in Ontario, including restoring municipal planning authority over the siting of renewable energy generation facilities and providing for regulations to prohibit the approval of renewable energy projects where demand for electricity is not demonstrated.

Given the significance and complexity of the proposal, commenters may have benefited from having more than 30 days to review the proposal and to prepare detailed, informed comments. In turn, the Ministry may have received more informed feedback.

When asked if it considered allowing more than 30 days to comment, the Ministry told us that it chose to post for the minimum legal requirement and noted that public consultation also occurred as the Bill moved through the legislative process,

including public hearings held by the Standing Committee on Social Policy. While a public hearing in the Legislature is an important process, it serves a different purpose than public consultation under the Act. In addition, each process involves different rights. For example, under the Act, the Ministry must take every reasonable step to consider all public comments received and explain to the public the effect of the comments, if any, on the decision, while no such requirements exist for the Standing Committee process.

RECOMMENDATION 21

So that the Ministry of Energy, Northern Development and Mines can receive informed feedback on environmentally significant proposals posted on the Environmental Registry, we recommend that the Ministry extend the comment period beyond 30 days for significant and complex proposals to provide enough time to obtain more informed input from the public.

MINISTRY RESPONSE

The Ministry agrees with the recommendation. The Ministry routinely considers posting its proposals for longer than 30 days, as well as other opportunities available for public input.

7.3 Environmental Implications of a Proposed Act Were Not Adequately Described

The Ministry's internal procedures reflect our Office's criterion that proposal notices should enable the public to ascertain the environmental significance and/or potential environmental impacts of the proposal.

The Ministry posted one proposal notice in 2018/19 that did not adequately describe the environmental implications. The Ministry posted a proposal to enact Bill 32, the *Access to Natural Gas Act, 2018*, which would facilitate the expansion of natural gas distribution systems across Ontario, but

did not describe the environmental implications of this proposal. Specifically, the Ministry did not explain that expanding the use of natural gas would impact Ontario's greenhouse gas emissions and air pollution (by increasing or reducing emissions, depending on which energy sources it replaced).

In the absence of such information, readers of the proposal did not have all the facts needed about the environmental implications (positive or negative) to be fully informed and provide constructive input for the Ministry to consider.

RECOMMENDATION 22

So that the Ministry of Energy, Northern Development and Mines can receive informed feedback and so that the public can comment on environmentally significant Ministry proposals, we recommend the Ministry describe the environmental implications of each proposal posted on the Environmental Registry.

MINISTRY RESPONSE

The Ministry agrees with the Auditor General's recommendation and, to the extent that they are known at the time of posting, will describe the environmental implications of future proposals posted on the Environmental Registry.

7.4 Over Two Weeks Taken to Give Notice for All Regulation Decisions

The Act requires ministries to post each decision 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 effect of public consultation.

The Ministry took over two weeks to give notice for all of its seven regulation decisions. For example, two regulation decision notices were posted more than five months after the regulations had been filed.

The Ministry also did not provide the dates of its decisions in any of the 25 decision notices for permits and approvals that we reviewed, nor did it include links to the final documents, which would indicate the date they were issued and whether the notices were posted soon after the decision. The Ministry confirmed that 23 of these notices (92%) were posted more than two weeks after the decision was made.

When asked for the reason for its delay in posting decision notices, the Ministry told us that it has since developed better processes and guidance materials to ensure the timely posting of decisions on the Environmental Registry. The Ministry also told us that it is updating its internal procedures to include the date the decision was made and links to issued permits.

RECOMMENDATION 23

To give the public prompt notice of its environmentally significant decisions, we recommend that the Ministry of Energy, Northern Development and Mines post all decision notices on the Environmental Registry as soon as reasonably possible after making a decision, which should reasonably be within two weeks of making a decision.

MINISTRY RESPONSE

The Ministry agrees with the recommendation to always post decisions in a timely manner. The Ministry has developed better processes and guidance materials that have been distributed to staff to ensure the timely posting of the Ministry's decisions to the Environmental Registry.

7.5 Eighty Percent of Notices for Permits and Approvals that We Reviewed Did Not Adequately Describe the Decision and None Provided Links to the Permits

The Ministry's internal procedures reflect our Office's criterion that decision notices should describe in sufficient detail what was decided and why, including providing links to key documents.

Twenty of the 25 decision notices for permits and approvals (80%) posted by the Ministry that we reviewed did not provide sufficient information about what was decided. For example, 17 of the Ministry's decision notices for mineral exploration permits under the *Mining Act* did not provide details, often stating simply "permit issued." The notices did not make clear whether the permits were issued exactly as proposed or with changes. In two decision notices, the Ministry stated "permit issued with conditions," but did not explain what the conditions were. In another case, it was unclear what decision the Ministry had even made and whether it had approved or denied the proposed amendments to a mine's closure plan.

None of the Ministry's decision notices included links to the final (issued) permit. This lack of information may have impeded the public's ability to understand what decision had been made.

RECOMMENDATION 24

To give members of the public sufficient information about government decisions about licences, permits and approvals, we recommend that the Ministry of Energy, Northern Development and Mines:

- clearly describe the details of its decisions; and
- provide links to the final (issued) licences, permits or approvals.

MINISTRY RESPONSE

The Ministry agrees with the recommendation. While information is already provided about decisions made, the Ministry is working to update its procedure guidelines and decision posting templates to include a copy of the issued permit, and to provide more information in the decision summary, which would include the decision, instrument number, the address/location, the proponent name, and what is being proposed/decided.

7.6 Twenty-Six Proposal Notices Were on the Environmental Registry for Over Two Years without a Decision or Update

The Ministry's internal procedures acknowledge that notices that are not up to date undermine the public's confidence in the Environmental Registry as a reliable and useful source of information. The Ministry had 26 proposal notices on the Environmental Registry that were posted more than two years earlier and had not been either closed with a decision notice or updated within the last two years.

In addition, the Ministry was not clear about updates to notices that it may have made. Specifically, it added the words "notice updated 02-20-19" to 15 notices without providing any additional information. Without an informative update, Ontarians with an interest in these notices had no way of knowing what updates, if any, had actually been made to understand the current status of these proposals.

When asked if it was still actively considering its older proposals, the Ministry told us that some of the proposals are no longer under consideration and others are on hold due to concerns raised by an Indigenous community.

RECOMMENDATION 25

So that the Environmental Registry can be a reliable source of information about the Ministry of Energy, Northern Development and Mines' decisions about the environment, we recommend that the Ministry bring and keep all of its proposal notices up to date, including posting decision notices for proposals that have been decided or that are otherwise no longer under consideration by the Ministry.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and will improve its processes. The Ministry will update its procedure guidelines to ensure that proposal notices for applications on temporary hold are updated, or a decision notice is posted if the applicant has withdrawn their proposal.

8.0 Ministry of Government and Consumer Services—Technical Standards and Safety Authority

8.1 Overview

The Ministry of Government and Consumer Services has, for the most part, delegated responsibility for carrying out its obligations under the Act to the Technical Standards and Safety Authority. This body is a not-for-profit administrative authority that is responsible for administering regulations under the *Technical Standards and Safety Act, 2000*, on behalf of the Ministry. The Ministry (including the Technical Standards and Safety Authority) regularly uses the Environmental Registry, as part of its role in regulating technology, products and infrastructure that can create risks for public safety and the environment. See **Appendix 6** for the Ministry's report card for compliance with the Act.

8.2 Statement of Environmental Values Needs Updating

The Ministry last updated its Statement in 2009. The Ministry was assigned new responsibilities, including the addition of consumer services, in 2014. The Ministry has not updated its Statement to contain these new responsibilities. Additionally, the government’s November 2018 draft Made-in-Ontario Environment Plan directed all ministries to update their Statements to reflect Ontario’s environmental plan, including to improve government’s ability to consider climate change when making decisions and “make climate change a cross-government priority.”

RECOMMENDATION 26

So that the Ministry of Government and Consumer Services’ Statement of Environmental Values (Statement) reflects its current environmental values and responsibilities, we recommend that the Ministry review its Statement with public consultation through the Environmental Registry and update it to reflect its new responsibilities.

MINISTRY RESPONSE

The Ministry acknowledges the recommendation and plans to update our Statement of Environmental Values to reflect our new responsibilities.

8.3 Proposal Notices for 88% of Exemptions from the Liquid Fuels Handling Code that We Reviewed Did Not Adequately Describe What Was Being Proposed

In 19 (or 76%) of the 25 proposal notices that we evaluated, the Ministry proposed to allow exemptions from the Liquid Fuels Handling Code without explaining which requirements would not be followed, or why. Three other proposed exemptions (or 12%) of the reviewed notices did specify the

exemptions from Code requirements, but did not explain how the environmental risks of allowing a proponent to not follow a requirement of the Code would be addressed. The Ministry also used technical wording, jargon and unexplained acronyms in its proposal notices, making them difficult to understand. This lack of clear information made it more difficult for the public to provide informed comment than if the Ministry had explained how the risks to the environment would be managed.

RECOMMENDATION 27

So that the Ministry of Government and Consumer Services—Technical Standards and Safety Authority can receive informed feedback and so that the public can comment on environmentally significant proposals for approvals posted on the Environmental Registry, we recommend that the Ministry provide clear and easy-to-read descriptions of what is being proposed in the notices it posts on the Environmental Registry.

MINISTRY RESPONSE

The Technical Standards and Safety Authority agrees with and will carry out the recommendation. Going forward, we will ensure that the notices we post on the Environmental Registry provide clear and easy-to-read descriptions of what is being proposed, so that they are as understandable and accessible to the public as possible. We will ensure that any technical wording, jargon and acronyms are clearly explained.

9.0 Ministry of Agriculture, Food and Rural Affairs

9.1 Overview

The Ministry of Agriculture, Food and Rural Affairs occasionally uses the Environmental Registry as part of its role to ensure the sustainability of

agriculture in Ontario, including its impacts on the environment. See **Appendix 7** for the Ministry's report card for compliance with the Act.

9.2 Notice of Outcome of Review Was Delivered 21 Days Late

The Ministry was responsible for one application for review concluded in 2018/19 (see **Appendix 21, Section 1.12**). The Ministry provided its notice of outcome for this review 21 days late. The Ministry told us that this was due to an administrative oversight.

10.0 Ministry of Transportation

10.1 Overview

The Ministry of Transportation occasionally uses the Environmental Registry, but many transportation projects are subject to the *Environmental Assessment Act*, which has its own consultation processes, making these projects exempt from the consultation requirements of the Act. See **Appendix 8** for the Ministry's report card for compliance with the Act.

10.2 Statement of Environmental Values Needs Updating

The Ministry last updated its Statement in 2008. The government's November 2018 draft Made-in-Ontario Environment Plan directed all ministries to update their Statements to reflect Ontario's environmental plan, including to improve government's ability to consider climate change when making decisions and "make climate change a cross-government priority."

RECOMMENDATION 28

So that the Ministry of Transportation's Statement of Environmental Values (Statement) reflects its current environmental values and responsibilities, we recommend that the Ministry review its Statement with public consultation through the Environmental Registry and update it to reflect its new priorities.

MINISTRY RESPONSE

The Ministry recognizes the importance of considering environmental values within our Acts and Policies. We will, working with our partner ministries, continue to review our Statement of Environmental Values to ensure it reflects current government policies and priorities.

11.0 Ministry of Tourism, Culture and Sport

11.1 Overview

The Ministry of Tourism, Culture and Sport seldom uses the Environmental Registry as its programs rarely directly affect the environment. See **Appendix 9** for the Ministry's report card for compliance with the Act.

11.2 Statement of Environmental Values Needs Updating

The Ministry last updated its Statement of Environmental Values in 2008, when this Ministry was two separate ministries: the former Ministry of Culture and the former Ministry of Tourism. In 2010, these two ministries merged into one ministry, with further changes to its name and responsibilities in 2011. The Ministry's Statement was never officially updated to reflect these changes. Additionally, the government's November 2018 draft Made-in-Ontario Environment Plan directed

all ministries to update their Statements to reflect Ontario’s environmental plan, including to improve government’s ability to consider climate change when making decisions and “make climate change a cross-government priority.”

RECOMMENDATION 29

So that the Ministry of Tourism, Culture and Sport’s Statement of Environmental Values (Statement) reflects its current environmental values and responsibilities, we recommend that the Ministry review its Statement with public consultation through the Environmental Registry and update it to reflect its new responsibilities.

MINISTRY RESPONSE

The Ministry remains committed to meeting the objectives and requirements of the *Environmental Bill of Rights, 1993*, and accepts the recommendation to review and update the Statement of Environmental Values with public consultation using the Environmental Registry.

12.0 Ministry of Health and Long-Term Care

12.1 Overview

The Ministry of Health and Long-Term Care seldom uses the Environmental Registry as its programs rarely directly affect the environment. See **Appendix 10** for the Ministry’s report card for compliance with the Act. In June 2019, after the end of the 2018/19 reporting year, the Ministry split into the Ministry of Health and the Ministry of Long-Term Care.

12.2 Statement of Environmental Values Needs Updating

The Ministry last updated its Statement in 2008. The government’s November 2018 draft Made-in-Ontario Environment Plan directed all ministries to update their Statements to reflect Ontario’s environmental plan, including to improve government’s ability to consider climate change when making decisions and “make climate change a cross-government priority.”

RECOMMENDATION 30

So that the Ministry of Health’s Statement of Environmental Values (Statement) reflects its current environmental values and responsibilities, we recommend that the Ministry review its Statement with public consultation through the Environmental Registry and update it as needed.

MINISTRY RESPONSE

The Ministry agrees with the recommendation to update the Statement of Environmental Values and will endeavour to complete this work before the end of the 2019/20 fiscal year.

13.0 Ministry of Infrastructure

13.1 Overview

The Ministry of Infrastructure seldom uses the Environmental Registry as many projects are carried out by Infrastructure Ontario, which is not subject to the Act. See **Appendix 11** for the Ministry’s report card for compliance with the Act. Also, infrastructure projects are often subject to the *Environmental Assessment Act*, which has its own consultation processes, making these projects exempt from the consultation requirements of the Act.

13.2 Statement of Environmental Values Needs Updating

The former Ministry of Economic Development, Employment and Infrastructure last updated its Statement in 2015. In 2018, the Ministry, after it became a new, separated ministry, posted a proposal on the Environmental Registry for a new Statement to reflect its changed status and incorporate commitments to mitigate and adapt to climate change. However, the Ministry's Statement was never officially updated to reflect these changes.

Additionally, the government's November 2018 draft Made-in-Ontario Environment Plan directed all ministries to update their Statements to reflect Ontario's environmental plan, including to improve government's ability to consider climate change when making decisions and "make climate change a cross-government priority."

RECOMMENDATION 31

So that the Ministry of Infrastructure's Statement of Environmental Values (Statement) reflects its current environmental values and responsibilities, we recommend that the Ministry complete its public review of its Statement and update it to reflect its new responsibilities.

MINISTRY RESPONSE

The Ministry supports this recommendation. The Ministry will complete its public consultation on the Ministry's Statement through the Registry and, after considering any feedback received, will update the Statement to reflect the Ministry's current responsibilities and priorities.

13.3 Two Proposal Notices Were on the Environmental Registry for Over Two Years without a Decision or Update

As of March 31, 2019, the Ministry had two proposal notices on the Environmental Registry that

were posted more than two years earlier and had not been either closed with a decision notice or updated within the last two years (representing 40% of its five open proposal notices).

The Ministry posted a decision notice for one of the two proposals, for consultation on a municipal asset-management-planning regulation, in April 2019.

The Ministry told us that the other proposal, for proposed amendments to Regulation 334 under the *Environmental Assessment Act*, was no longer the Ministry's responsibility, as responsibility for government realty was transferred to the Government Services Ministry in June 2018. The proposal notice has remained on the Registry under the Infrastructure Ministry's name since July 2016. The Ministry did not update the proposal (or close it with a decision notice) to reflect that it no longer has responsibility for the proposal. Consequently, the public has no way of knowing the status of the proposal—including whether the Ministry is still actively considering it, has abandoned it, and if the latter, why—more than two years after the Ministry posted it.

RECOMMENDATION 32

So that the Environmental Registry is a reliable source of information about the Ministry of Infrastructure's decisions about the environment, we recommend that the Ministry bring and keep all of its proposal notices up to date, including posting decision notices for proposals that have been decided or that are otherwise no longer under consideration by the Ministry.

MINISTRY RESPONSE

The Ministry agrees that for the Registry to be a reliable source of information for Ontarians, proposal notices on the Registry must be kept up to date. The Ministry has now updated its older proposal notices and agrees to regularly review its notices on the Registry to ensure that all proposal notices are kept up to date by either

posting a decision notice if a proposal has been decided or providing an update.

14.0 Ministry of Economic Development, Job Creation and Trade

14.1 Overview

The Ministry of Economic Development, Job Creation and Trade seldom uses the Environmental Registry as its programs rarely directly affect the environment. The Ministry met the criteria for the responsibilities that it carried out in 2018/19. See **Appendix 12** for the Ministry's report card for compliance with the Act.

15.0 Ministry of Indigenous Affairs

15.1 Overview

The Ministry of Indigenous Affairs seldom uses the Environmental Registry as its programs rarely directly affect the environment. The Ministry met the criteria for the responsibilities that it carried out in 2018/19. See **Appendix 13** for the Ministry's report card for compliance with the Act.

16.0 Ministry of Education

16.1 Overview

The Ministry of Education seldom uses the Environmental Registry as curricula are not subject to the Act and its remaining programs rarely directly affect the environment. See **Appendix 14** for the Ministry's report card for compliance with the Act.

16.2 Statement of Environmental Values Needs Updating

The Ministry last updated its Statement in 2013. The government's November 2018 draft Made-in-Ontario Environment Plan directed all ministries to update their Statements to reflect Ontario's environmental plan, including to improve government's ability to consider climate change when making decisions and "make climate change a cross-government priority."

RECOMMENDATION 33

So that the Ministry of Education's Statement of Environmental Values (Statement) reflects its current environmental values and responsibilities, we recommend that the Ministry review its Statement with public consultation through the Environmental Registry and update it to reflect its new priorities.

MINISTRY RESPONSE

The Ministry agrees with the recommendation to update the Ministry's Statement of Environmental Values. We have begun the process of reviewing the Statement with the goal of finalizing our revised Statement by December 2020. The Ministry of Education remains committed to fulfilling our obligations under the *Environmental Bill of Rights*.

17.0 Ministry of Labour

17.1 Overview

The Ministry of Labour seldom uses the Environmental Registry as its programs rarely directly affect the environment. See **Appendix 15** for the Ministry's report card for compliance with the Act.

17.2 Statement of Environmental Values Needs Updating

The Ministry last updated its Statement in 2008. The government's November 2018 draft Made-in-Ontario Environment Plan directed all ministries to update their Statements to reflect Ontario's environmental plan, including to improve government's ability to consider climate change when making decisions and "make climate change a cross-government priority."

RECOMMENDATION 34

So that the Ministry of Labour's Statement of Environmental Values (Statement) reflects its current environmental values and responsibilities, we recommend that the Ministry review its Statement with public consultation through the Environmental Registry and update it to reflect its new priorities.

MINISTRY RESPONSE

The Ministry is currently undertaking an internal consultation on updating its Statement. Once the internal review is complete, the Ministry will upload the document to the Registry, and coordinate the public review and consideration of any feedback received through that process.

18.0 Treasury Board Secretariat

18.1 Overview

The Treasury Board Secretariat seldom uses the Environmental Registry as its programs rarely directly affect the environment. The Treasury Board met the criterion for the responsibility that it carried out in 2018/19. See **Appendix 16** for the Treasury Board's report card for compliance with the Act.

Appendix 1: Prescribed Ministry Responsibilities, 2018/19

Source of data: O. Reg. 73/94 and O. Reg. 681/94, made under the *Environmental Bill of Rights, 1993*

Ministry	Prepare and Consider SEV	Post Policies and Acts*	Post Regulations under Prescribed Acts*	Post Proposals for Prescribed Instruments	Respond to Applications for Review	Respond to Applications for Investigation
Environment, Conservation and Parks	✓	✓	✓	✓	✓	✓
Natural Resources and Forestry	✓	✓	✓	✓	✓	✓
Municipal Affairs and Housing	✓	✓	✓	✓	✓	✓
Energy, Northern Development and Mines	✓	✓	✓	✓	✓	✓
Government and Consumer Services	✓	✓	✓	✓	✓	✓
Agriculture, Food and Rural Affairs	✓	✓	✓		✓	
Transportation	✓	✓			✓	
Tourism, Culture and Sport	✓	✓	✓			
Health and Long-Term Care	✓	✓	✓		✓	
Infrastructure	✓	✓				
Economic Development, Job Creation and Trade	✓	✓				
Indigenous Affairs	✓	✓				
Education	✓	✓			✓	
Labour	✓	✓				
Treasury Board Secretariat	✓	✓				

* If they could have a significant effect on the environment if implemented.

Appendix 2: Ministry of the Environment, Conservation and Parks Compliance Report Card for the 2018/19 Reporting Year

Legend: Met criteria Partially met criteria Did not meet criteria

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input checked="" type="radio"/> Section 4.2 —The Ministry has not updated its Statement since 2008, despite subsequent changes to its responsibilities. The Statement also does not yet reflect new Ministry and government priorities, such as addressing climate change.
b. Statement is considered when making decisions	<input type="radio"/> The Ministry met this criterion.
2. Use of the Environmental Registry (Registry)	
a. Notice of proposals is given	<input checked="" type="radio"/> Section 4.3 —The Ministry appropriately posted 19 proposal notices for policies, acts and regulations, and 1,041 for permits and approvals on the Registry. However, the Ministry did not post a significant regulation ending the province's cap and trade program.
b. Time to comment is extended based on the factors in the Act	<input checked="" type="radio"/> Section 4.4 —The Ministry provided the statutory minimum of 30 days for the public to comment on two significant proposals for which the Ministry could have received more informed feedback if the public had more time to provide comments on: the proposal for Bill 4, the <i>Cap and Trade Cancellation Act, 2018</i> , and the new regulation for sulphur dioxide emissions from Ontario petroleum facilities.
c. Proposal notices for policies, acts and regulations are informative	<input type="radio"/> The Ministry posted 19 proposal notices for policies, acts and regulations on the Registry, which met this criterion.
d. Proposal notices for permits, approvals and orders are informative	<input type="radio"/> Section 4.5 —The Ministry posted 1,041 proposal notices for permits and approvals on the Registry, and we reviewed a sample of 25 notices. All 25 met the minimum information requirements; however, 18 notices (72%) did not provide information a reader would need to fully understand the environmental implications of the proposed approval, such as potential environmental risks associated with the activity to be approved, or how the terms and conditions of the permit or approval, if approved, would address those risks.
e. Prompt notice of decisions is given	<input type="radio"/> Section 4.6 - The Ministry posted 20 decision notices for policies, acts and regulations and 1,236 decision notices for permits and approvals on the Registry. The Ministry posted four (20%) of the 20 decision notices for policies, acts and regulations more than two weeks after the decision was made, and posted 13 (52%) of the 25 decision notices for permits and approvals that we reviewed more than two weeks after the decision was made.
f. Decision notices for policies, acts and regulations are informative	<input type="radio"/> The Ministry posted 20 decision notices for policies, acts and regulations on the Registry, which met this criterion.
g. Decision notices for permits, approvals and orders are informative	<input type="radio"/> The Ministry posted 1,236 decision notices for permits and approvals on the Registry. We reviewed a sample of 25 notices, which met this criterion.
h. Proposal notices are up-to-date	<input checked="" type="radio"/> Section 4.7 —As of March 31, 2019, the Ministry had 44 proposal notices that had been on the Registry for over two years without a decision or update.
3. Applications for Review and Applications for Investigation	
a. Ministry reviews all matters to the extent necessary	<input checked="" type="radio"/> Section 4.8 —The Ministry concluded nine applications for review in 2018/19 (see following table). However, in denying one significant application, the Ministry did not provide evidence that the existing regulation of industrial air standards for NO ₂ and PM _{2.5} sufficiently protects the environment and human health, to support its conclusion that the requested review was not necessary (see Appendix 7, Section 1.5).
b. Ministry investigates all matters to the extent necessary	<input type="radio"/> The Ministry concluded eight applications for investigation in 2018/19 (see following table), and the Ministry met this criterion for those applications.
c. Ministry meets all timelines	<input checked="" type="radio"/> Section 4.9 —The Ministry did not meet legislated timelines for two of its 17 concluded applications (see following table), providing its decision to deny an application to review the air standards for NO ₂ and PM _{2.5} 198 days late, and its decision to deny an application to establish a conservation reserve in the Township of Long seven days late. In addition, as of March 31, 2019, four of the Ministry's nine open applications for review were not completed by the date promised by the Ministry, and one has been ongoing for over nine years.

Concluded Applications for Review and Investigation by the Environment Ministry in 2018/19

Applications for Review	Undertaken or Denied	Ministry Reviews All Matters to the Extent Necessary	Ministry Meets All Timelines
Municipal Class Environmental Assessment Process	Undertaken	<input type="radio"/>	<input type="radio"/>
Approval to Address Odours from an Ethanol Plant in Hamilton	Undertaken	<input type="radio"/>	<input type="radio"/>
Regulation and Oversight for Onsite Septic Systems	Denied	<input type="radio"/>	<input type="radio"/>
Renewable Energy Approval in Prince Edward County	Denied	<input type="radio"/>	<input type="radio"/>
Regulation of Pollution from Nitrogen Dioxide (NO ₂) and Fine Particulate Matter (PM _{2.5})—Section 4.8	Denied	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Cancellation of Cap and Trade	Denied	<input type="radio"/>	<input type="radio"/>
Deer Hunt in Short Hills Provincial Park	Denied	<input type="radio"/>	<input type="radio"/>
Regulation of Recreational Open-Air Wood Burning	Denied	<input type="radio"/>	<input type="radio"/>
Need to Establish Conservation Reserve in the Township of Long	Denied	<input type="radio"/>	<input type="radio"/>

Applications for Investigation	Undertaken or Denied	Ministry Investigates All Matters to the Extent Necessary	Ministry Meets All Timelines
Odours from a Cosmetics Factory in Toronto	Undertaken	<input type="radio"/>	<input type="radio"/>
Water Taking at a Quarry in the Town of Greater Napanee	Undertaken	<input type="radio"/>	<input type="radio"/>
Operation of an Asphalt Plant in Horton Township	Undertaken	<input type="radio"/>	<input type="radio"/>
Wetland Drainage in the Township of West Lincoln	Undertaken	<input type="radio"/>	<input type="radio"/>
Pesticides in Ornamental Plants Sold by Retailers	Denied	<input type="radio"/>	<input type="radio"/>
Dust and Noise from Asphalt Equipment at a Quarry in Elginburg	Undertaken	<input type="radio"/>	<input type="radio"/>
Dust and Noise at a Metrolinx Site in Toronto	Denied	<input type="radio"/>	<input type="radio"/>
Wetland Drainage in Loyalist Township	Denied	<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.

Appendix 3: Ministry of Natural Resources and Forestry Compliance Report Card for the 2018/19 Reporting Year

Legend: Met criteria Partially met criteria Did not meet criteria

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input checked="" type="radio"/> Section 5.2 —The Ministry has not updated its Statement since 2008, despite subsequent changes to its responsibilities. The Statement also does not yet reflect new Ministry and government priorities, such as addressing climate change.
b. Statement is considered when making decisions	<input type="radio"/> The Ministry met this criterion. The Ministry provided documentation that it considered its Statement for all 17 decision notices for which it was requested.
2. Use of the Environmental Registry (Registry)	
a. Notice of proposals is given	<input type="radio"/> The Ministry posted six proposal notices for policies and acts, and 49 proposal notices for permits and licences on the Registry. 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 Act	<input type="radio"/> The Ministry met this criterion.
c. Proposal notices for policies, acts and regulations are informative	<input checked="" type="radio"/> Section 5.3 —The Ministry posted six proposal notices for policies and acts on the Registry. The Ministry did not adequately describe the environmental implications of three of those proposals: changes to the hunting season for double-crested cormorants, a review of the <i>Far North Act</i> , and deregulating part of a provincial park.
d. Proposal notices for permits, approvals and orders are informative	<input type="radio"/> The Ministry posted 49 proposal notices for permits and licences on the Registry. We reviewed a sample of 25 notices, which met this criterion.
e. Prompt notice of decisions is given	<input checked="" type="radio"/> Section 5.4 —The Ministry posted eight decision notices for policies, acts and regulations and 47 decision notices for permits and licences on the Registry. The Ministry posted three (38%) of the eight decision notices for policies, acts and regulations more than two weeks after the decision was made, and posted 15 (60%) of the 25 decision notices for permits and licences that we reviewed more than two weeks after the decision was made.
f. Decision notices for policies, acts and regulations are informative	<input type="radio"/> The Ministry posted eight decision notices for policies and regulations on the Registry, which met this criterion.
g. Decision notices for permits, approvals and orders are informative	<input type="radio"/> Section 5.5 —The Ministry posted 47 decision notices for permits and licences on the Registry, and we reviewed a sample of 25 notices. The Ministry did not adequately explain what decision was made in four (16%) of those decision notices, and did not include links to copies of the final (issued) permits or licences in any of the 25 decision notices that we reviewed.
h. Proposal notices are up-to-date	<input checked="" type="radio"/> Section 5.6 —As of March 31, 2019, the Ministry had 92 proposal notices that had been on the Registry for over two years without a decision or update.
3. Applications for Review and Applications for Investigation	
a. Ministry reviews all matters to the extent necessary	<input type="radio"/> The Ministry concluded four applications for review in 2018/19 (see following table), and the Ministry met this criterion for those applications.
b. Ministry investigates all matters to the extent necessary	<input type="radio"/> The Ministry concluded three applications for investigation in 2018/19 (see following table), and the Ministry met this criterion for those applications.
c. Ministry meets all timelines	<input type="radio"/> The Ministry met this criterion for all applications (see following table).

Concluded Applications for Review and Investigation by the Natural Resources and Forestry Ministry in 2018/19

Applications for Review	Undertaken or Denied	Ministry Reviews All Matters to the Extent Necessary	Ministry Meets All Timelines
Deer Hunt in Short Hills Provincial Park	Denied	<input type="radio"/>	<input type="radio"/>
The <i>Conservation Authorities Act</i> and the Expropriation of Private Land	Denied	<input type="radio"/>	<input type="radio"/>
Quarry Expansion in Burlington	Denied	<input type="radio"/>	<input type="radio"/>
Habitat Offsets for Species at Risk under the <i>Planning Act</i>	Denied	<input type="radio"/>	<input type="radio"/>

Applications for Investigation	Undertaken or Denied	Ministry Investigates All Matters to the Extent Necessary	Ministry Meets All Timelines
Wetland Drainage in the Township of West Lincoln	Denied	<input type="radio"/>	<input type="radio"/>
Harm to Species at Risk and their Habitat in South Frontenac	Undertaken	<input type="radio"/>	<input type="radio"/>
Wetland Drainage in Loyalist Township	Denied	<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.

Appendix 4: Ministry of Municipal Affairs and Housing Compliance Report Card for the 2018/19 Reporting Year

Legend: Met criteria Partially met criteria Did not meet criteria

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input checked="" type="radio"/> Section 6.2 —The Ministry's Statement has not been updated since 2008, and it does not yet reflect new Ministry and government priorities, such as addressing climate change.
b. Statement is considered when making decisions	<input type="radio"/> The Ministry met this criterion. The Ministry provided documentation that it considered its Statement for all 11 decision notices for which it was requested.
2. Use of the Environmental Registry (Registry)	
a. Notice of proposals is given	<input type="radio"/> The Ministry posted 10 proposal notices for policies, acts and regulations, and 61 proposal notices for planning approvals on the Registry. 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 Act	<input type="radio"/> The Ministry met this criterion.
c. Proposal notices for policies, acts and regulations are informative	<input checked="" type="radio"/> Section 6.3 —The Ministry posted 10 proposal notices for policies, acts and regulations on the Registry. The Ministry did not adequately describe the environmental implications of six of those proposals, including a proposal to allow municipalities to pass an open-for-business planning bylaw.
d. Proposal notices for permits, approvals and orders are informative	<input type="radio"/> Section 6.4 —The Ministry posted 61 proposal notices for planning approvals on the Registry, and we reviewed a sample of 25 notices. All 25 met the minimum information requirements; however, 13 notices (52%) did not provide information a reader would need to fully understand the proposal or its environmental implications.
e. Prompt notice of decisions is given	<input type="radio"/> Section 6.5 —The Ministry posted seven decision notices for policies, acts and regulations, and 59 decision notices for planning approvals on the Registry. The Ministry posted five (71%) of the seven decision notices for policies, acts and regulations more than two weeks after the decision was made, and posted 11 (44%) of the 25 decision notices for planning approvals that we reviewed more than two weeks after the decision was made.
f. Decision notices for policies, acts and regulations are informative	<input type="radio"/> The Ministry posted seven decision notices for policies, acts and regulations on the Registry, which met this criterion.
g. Decision notices for permits, approvals and orders are informative	<input type="radio"/> Section 6.6 —The Ministry posted 59 decision notices for planning approvals on the Registry, and we reviewed a sample of 25 notices. The Ministry did not adequately explain what decision was made in six (24%) of those decision notices, and did not include links to copies of the final (issued) planning approvals in any of the decision notices that we reviewed.
h. Proposal notices are up-to-date	<input type="radio"/> The Ministry met this criterion. As of March 31, 2019, the Ministry had a single proposal notice that had been on the Registry for over two years without a decision or update. This proposal notice represented 2% of the Ministry's total number of open proposal notices on the Registry.
3. Applications for Review	
a. Ministry reviews all matters to the extent necessary	<input checked="" type="radio"/> Sections 6.7 and 6.8 —The Ministry concluded three applications for review in 2018/19 (see following table). In denying two of the applications for review, the Ministry did not provide evidence that the current rules and requirements sufficiently protect against environmental harm.
c. Ministry meets all timelines	<input type="radio"/> The Ministry met this criterion for all applications (see following table).

Concluded Applications for Review by the Municipal Affairs and Housing Ministry in 2018/19

Applications for Review	Undertaken or Denied	Ministry Reviews All Matters to the Extent Necessary	Ministry Meets All Timelines
Regulation and Oversight for Onsite Septic Systems—Section 6.7	Denied	●	○
Habitat Offsets for Species at Risk under the <i>Planning Act</i> —Section 6.8	Denied	●	○
Regulation of Recreational Open-Air Wood Burning	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.

Appendix 5: Ministry of Energy, Northern Development and Mines Compliance Report Card for the 2018/19 Reporting Year

Legend: Met criteria Partially met criteria Did not meet criteria

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input type="radio"/> The former Ministry of Energy and the former Ministry of Northern Development and Mines last updated their Statements in 2013 and 2008, respectively. In June 2019, the Ministry posted a proposal for an updated Statement that reflects changes to the now-combined Ministry's mandate and new government priorities, such as addressing climate change. The proposal is still within the time frame allowed in the Act before being finalized.
b. Statement is considered when making decisions	<input type="radio"/> The Ministry met this criterion. The Ministry provided documentation that it considered its Statement for all 16 decision notices for which it was requested.
2. Use of the Environmental Registry (Registry)	
a. Notice of proposals is given	<input type="radio"/> The Ministry posted five proposal notices for policies, acts and regulations and 266 proposal notices for permits and approvals on the Registry. 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 Act	<input checked="" type="radio"/> Section 7.2 —The Ministry provided the statutory minimum of 30 days for the public to comment on a significant proposal—Bill 34, the <i>Green Energy Repeal Act, 2018</i> —for which the Ministry could have received more informed feedback if the public had more time to provide comments.
c. Proposal notices for policies, acts and regulations are informative	<input type="radio"/> Section 7.3 —The Ministry posted five proposal notices for policies, acts and regulations on the Registry. The Ministry did not adequately describe the environmental implications of one of those proposals: Bill 32, the <i>Access to Natural Gas Act, 2018</i> , which would facilitate the expansion of natural gas distribution systems across Ontario.
d. Proposal notices for permits, approvals and orders are informative	<input type="radio"/> The Ministry posted 266 proposal notices for permits and approvals on the Registry. We reviewed a sample of 25 notices, which met this criterion.
e. Prompt notice of decisions is given	<input checked="" type="radio"/> Section 7.4 —The Ministry posted seven decision notices for regulations and 255 decision notices for permits and approvals on the Registry. The Ministry posted all seven decision notices for regulations more than two weeks after the decision was made, and posted 23 (92%) of the 25 decision notices for permits and approvals that we reviewed more than two weeks after the decision was made.
f. Decision notices for policies, acts and regulations are informative	<input type="radio"/> The Ministry posted seven decision notices for regulations on the Registry, which met this criterion.
g. Decision notices for permits, approvals and orders are informative	<input checked="" type="radio"/> Section 7.5 —The Ministry posted 255 decision notices for permits and approvals on the Registry, and we reviewed a sample of 25 notices. The Ministry did not adequately explain what decision was made in 20 (80%) of those decision notices, and did not include copies of the final (issued) permits or approvals in any of the decision notices that we reviewed.
h. Proposal notices are up-to-date	<input checked="" type="radio"/> Section 7.6 —As of March 31, 2019, the Ministry had 26 proposal notices that had been on the Registry for over two years without a decision or update.

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.

Appendix 6: Ministry of Government and Consumer Services – Technical Standards and Safety Authority Compliance Report Card for the 2018/19 Reporting Year

Legend: Met criteria Partially met criteria Did not meet criteria

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input checked="" type="radio"/> Section 8.2 —The Ministry has not updated its Statement since 2009, despite subsequent changes to its responsibilities in 2014, including the addition of consumer services. The Statement also does not yet reflect new government priorities, such as addressing climate change.
b. Statement is considered when making decisions	<input type="radio"/> The Ministry met this criterion. The Ministry provided documentation that it considered its Statement for the two decision notices for which it was requested.
2. Use of the Environmental Registry (Registry)	
a. Notice of proposals is given	<input type="radio"/> The Ministry posted two proposal notices for regulations and 38 proposal notices for approvals on the Registry. 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 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 two proposal notices for regulations on the Registry, which met this criterion.
d. Proposal notices for permits, approvals and orders are informative	<input checked="" type="radio"/> Section 8.3 —The Ministry posted 38 proposal notices for approvals on the Registry, and we reviewed a sample of 25 notices. All 25 met the minimum information requirements; however, 22 notices (88%) did not provide information a reader would need to fully understand what was being proposed. For example, 19 of the notices proposed to approve variances from the Liquid Fuels Handling Code, but did not state which requirements of the Liquid Fuels Handling Code it proposed to allow to not be followed.
e. Prompt notice of decisions is given	<input type="radio"/> The Ministry posted one decision notice for a regulation and 40 decision notices for approvals, which met this criterion.
f. Decision notices for policies, acts and regulations are informative	<input type="radio"/> The Ministry posted one decision notice for a regulation on the Registry, which met this criterion.
g. Decision notices for permits, approvals and orders are informative	<input type="radio"/> The Ministry posted 40 decision notices for approvals. We reviewed a sample of 25 notices, which met this criterion.
h. Proposal notices are up-to-date	<input type="radio"/> The Ministry met this criterion. The Ministry had two open proposal notices as of March 31, 2019, both 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.

Appendix 7: Ministry of Agriculture, Food and Rural Affairs Compliance Report Card for the 2018/19 Reporting Year

Legend: Met criteria Partially met criteria Did not meet criteria

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input type="radio"/> In 2019, the Ministry updated its Statement, and it now reflects the Ministry's current responsibilities and new Ministry and government priorities, such as addressing climate change.
b. Statement is considered when making decisions	<input type="radio"/> The Ministry met this criterion. The Ministry provided documentation that it considered its Statement for the one decision notice for which it was requested.
2. Use of the Environmental Registry (Registry)	
a. Notice of proposals is given	<input type="radio"/> The Ministry posted one proposal notice for a regulation on the Registry. 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 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 regulation on the Registry, which met this criterion.
e. Prompt notice of decisions is given	<input type="radio"/> The Ministry posted one decision notice for a policy on the Registry, which met this criterion.
f. Decision notices for policies, acts and regulations are informative	<input type="radio"/> The Ministry posted one decision notice for a policy on the Registry, which met this criterion.
h. 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, 2019, all of which were either posted or updated within the last two years.
3. Applications for Review and Applications for Investigation	
a. Ministry reviews all matters to the extent necessary	<input type="radio"/> The Ministry concluded one application for review in 2018/19 (see following table), and the Ministry met this criterion for that application.
c. Ministry meets all timelines	<input checked="" type="radio"/> Section 9.2 —The Ministry provided its notice of outcome of its one application for review three weeks after the deadline in the Act.

Concluded Application for Review by the Agriculture, Food and Rural Affairs Ministry in 2018/19

Applications for Review	Undertaken or Denied	Ministry Reviews All Matters to the Extent Necessary	Ministry Meets All Timelines
Soil Health in Agriculture	Undertaken	<input 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.

Appendix 8: Ministry of Transportation Compliance Report Card for the 2018/19 Reporting Year

Legend: Met criteria Partially met criteria Did not meet criteria

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input checked="" type="radio"/> Section 10.2 —The Ministry's Statement has not been updated since 2008, and it does not yet reflect new government priorities, such as addressing climate change.
b. Statement is considered when making decisions	<input type="radio"/> The Ministry met this criterion. The Ministry provided documentation that it considered its Statement for all four decisions notices for which it was requested.
2. Use of the Environmental Registry (Registry)	
e. Prompt notice of decisions is given	<input type="radio"/> The Ministry posted four decision notices for policies on the Registry, which met this criterion.
f. Decision notices for policies, acts and regulations are informative	<input type="radio"/> The Ministry posted four decision notices for policies on the Registry, which met this criterion.
h. Proposal notices are up-to-date	<input type="radio"/> The Ministry had three open proposal notices as of March 31, 2019, 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.

Appendix 9: Ministry of Tourism, Culture and Sport Compliance Report Card for the 2018/19 Reporting Year

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input checked="" type="radio"/> Section 11.2 —The Ministry has not updated its Statement since 2008, despite subsequent changes to its responsibilities. The Statement also does not yet reflect new government priorities, such as addressing climate change.
2. Use of the Environmental Registry (Registry)	
h. Proposal notices are up-to-date	<input type="radio"/> The Ministry met this criterion. The Ministry had one open proposal notice on the Registry as of March 31, 2019, 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.

Appendix 10: Ministry of Health and Long-Term Care Compliance Report Card for the 2018/19 Reporting Year

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input checked="" type="radio"/> Section 12.2 —The Ministry has not updated its Statement since 2008, and it does not yet reflect new government priorities, such as addressing climate change.

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.

Appendix 11: Ministry of Infrastructure Compliance Report Card for the 2018/19 Reporting Year

Legend: Met criteria Partially met criteria Did not meet criteria

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input checked="" type="radio"/> Section 13.2 —The Ministry has not updated its Statement since 2015, despite subsequent changes to its responsibilities. The Statement also does not yet reflect new government priorities, such as addressing climate change.
2. Use of the Environmental Registry (Registry)	
a. Notice of proposals is given	<input type="radio"/> The Ministry posted one proposal notice for a policy on the Registry. 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 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.
h. Proposal notices are up-to-date	<input type="radio"/> Section 13.3 —The Ministry had two proposal notices, one for a policy and one for a regulation, that as of March 31, 2019, had been on the Registry for over two years without a decision or update. These proposal notices represented 40% of the Ministry's total open proposal notices.

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.

Appendix 12: Ministry of Economic Development, Job Creation and Trade Compliance Report Card for the 2018/19 Reporting Year

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input type="radio"/> The Ministry's Statement, which was last updated in 2017 (when the Ministry was the Ministry of Economic Development and Growth) 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. Statement is considered when making decisions	<input type="radio"/> The Ministry met this criterion. The Ministry provided documentation that it considered its Statement for the one decision notice for which it was requested.
2. Use of the Environmental Registry (Registry)	
a. Notice of proposals is given	<input type="radio"/> The Ministry posted one proposal notice for an act on the Registry. 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 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 an act on the Registry, which met this criterion.
h. 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, 2019, 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.

Appendix 13: Ministry of Indigenous Affairs Compliance Report Card for the 2018/19 Reporting Year

Legend: Met criteria Partially met criteria Did not meet criteria

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input type="radio"/> 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.
2. Use of the Environmental Registry (Registry)	
a. Notice of proposals is given	<input type="radio"/> The Ministry posted one proposal notice for a policy on the Registry. 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 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.
e. Prompt notice of decisions is given	<input type="radio"/> The Ministry posted one decision notice for a policy on the Registry, which met this criterion.
f. Decision notices for policies, acts and regulations are informative	<input type="radio"/> The Ministry posted one decision notice for a policy on the Registry, which met this criterion.

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.

Appendix 14: Ministry of Education Compliance Report Card for the 2018/19 Reporting Year

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input checked="" type="radio"/> Section 16.2 —The Ministry has not updated its Statement since 2013, and it does not yet reflect new government priorities, such as addressing climate change.

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.

Appendix 15: Ministry of Labour Compliance Report Card for the 2018/19 Reporting Year

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input checked="" type="radio"/> Section 17.2 —The Ministry has not updated its Statement since 2008, and it does not yet reflect new government priorities, such as addressing climate change.

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.

Appendix 16: Treasury Board Secretariat Compliance Report Card for the 2018/19 Reporting Year

Legend: Met criteria Partially met criteria Did not meet criteria

Criterion	OAGO Comments
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	<input type="radio"/> The Ministry last updated its Statement in 2017, and its Statement reflects the Ministry's responsibilities and new government priorities, such as addressing climate change.

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.

Appendix 17: Review Criteria

Prepared by the Office of the Auditor General of Ontario

Criterion	Requirement in <i>Environmental Bill of Rights, 1993</i>	What Our Office Looks For to Assess Compliance
1. Statement of Environmental Values (Statement)		
a. Statement is up-to-date	The ministry must have a Statement that explains how it will apply the purposes of the Act when making decisions that might significantly affect the environment, and how it will integrate consideration of the purposes of the Act with other considerations, including social, economic and scientific considerations. The ministry may amend its Statement from time to time. (Sections 7-10)	The ministry has a Statement that reflects its current values, priorities and responsibilities.
b. Statement is considered when making decisions	The ministry must take every reasonable step to consider its Statement whenever it makes a decision that might significantly affect the environment. (Section 11)	The ministry documents its consideration of its Statement of Environmental Values when making decisions that might significantly affect the environment.
2. Use of the Environmental Registry (Registry)		
a. Notice of proposals is given	The ministry must give notice on the Registry, for at least 30 days, of each proposed: <ul style="list-style-type: none"> act or policy if the proposal could have a significant effect on the environment and the public should have an opportunity to comment on the proposal before implementation (Sections 15 and 27); regulation under a prescribed act if the proposal could have a significant effect on the environment (Sections 16 and 27); and classified instrument (i.e., permit, approval or order) (Sections 22 and 27), unless an exception applies (Sections 15(2), 16(2), 29, and 30, 32 and 33). 	The ministry posts proposal notices for all of its environmentally significant proposals on the Registry, providing at least 30 days for public consultation, unless there is a valid exception under the Act.
b. Time to comment is extended based on the factors in the Act	The ministry must consider allowing more time to permit more informed public comment. In determining the length of time, the ministry must consider 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))	Ministry considers extending time to comment for all proposals, and extends the time to comment when warranted based on the factors set out in the Act.
c. Proposal notices for policies, acts, and regulations are informative	Each notice must include a brief description of the proposal. (Section 27(2))	The proposal notice includes a brief description of the proposal, including its purpose and its potential environmental implications, so that the public has the information needed to understand and meaningfully comment on the proposal.
d. Proposal notices for permits, approvals and orders are informative	Each notice must include a brief description of the proposal. (Section 27(2))	The proposal notice includes a brief description of the proposal, including its purpose and its potential environmental implications, so that the public has the information needed to understand and meaningfully comment on the proposal.

Criterion	Requirement in <i>Environmental Bill of Rights, 1993</i>	What Our Office Looks For to Assess Compliance
e. Prompt notice of decisions is given	The ministry must give notice on the Registry of its decision on each proposed policy, act or regulation “as soon as reasonably possible” after it is implemented (Section 36(1) and 1(6)). The ministry must give notice on the Registry of its decision whether or not to implement a proposal for a permit, approval or order (instrument) “as soon as reasonably possible” after a decision is made. (Section 36(1) and 1(7))	The ministry posts a decision notice on the Registry, which is typically no more than two weeks after making a decision.
f. Decision notices for policies, acts and regulations are informative	Each notice must advise the public what was decided. The ministry must take every reasonable step to consider all relevant comments received from the public, and include a brief description in the notice of the effect (if any) of the comments on the ministry’s decision. (Sections 35 and 36)	The decision notice enables the public to understand what was decided and the effect of public comments.
g. Decision notices for permits, approvals and orders are informative	Each notice must advise the public what was decided. The ministry must take every reasonable step to consider all relevant comments received from the public, and include a brief description in the notice of the effect (if any) of the comments on the ministry’s decision. (Sections 35 and 36)	The decision notice enables the public to understand what was decided and the effect of public comments.
h. 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)	The ministry identifies proposals that have remained open on the Registry for over two years, and posts: <ul style="list-style-type: none"> • decision notices on decided proposals (including proposals that were withdrawn, cancelled or abandoned); and • updates for proposals that remain under consideration by the ministry, with information about the status of the proposal.

3. Applications for Review and Applications for Investigation

a. Ministry reviews all matters to the extent necessary	<p>The ministry must consider each application for review in a preliminary way to determine whether the public interest warrants the review. The ministry may consider:</p> <ul style="list-style-type: none"> • its statement of environmental values; • the potential for environmental harm if the review is not done; • whether the matter is already periodically reviewed; • relevant social, economic, scientific or other evidence; • submissions from other persons with a direct interest; • the staffing and time to do the review; and • how recently the ministry made or reviewed the law, policy, regulation or approval in question, and whether the ministry consulted the public when it did so. (Section 67) <p>The ministry must deny a request to review a decision that was made in the last five years if the ministry had consulted the public on that decision in a manner consistent with the Act, unless there is evidence that significant environmental harm will occur if the review is not done and that evidence was not taken into account when the decision was made. (Sections 68)</p>	<p>Where the ministry denies a request for review, it provides a statement of reasons to support its conclusion that a review is not warranted.</p> <p>Where the ministry decides to complete a review, the ministry reviews the matter to the extent necessary. The ministry states what action, if any, the minister has taken or proposes to take as a result of the review.</p>
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Criterion	Requirement in <i>Environmental Bill of Rights, 1993</i>	What Our Office Looks For to Assess Compliance
	<p>The ministry must provide a brief a statement of reasons for its decision to accept or deny the review. (Section 70)</p> <p>For undertaken reviews, the ministry must give notice of the outcome that states what action, if any, the ministry has or will take as a result of the review. (Section 71)</p>	
<p>b. Ministry investigates all matters to the extent necessary</p>	<p>The ministry must investigate all alleged contravention(s) set out in the application “to the extent that the ministry considers necessary.” The ministry may deny a request for investigation if:</p> <ul style="list-style-type: none"> • the application is frivolous or vexatious; • the alleged contravention is not serious enough to warrant an investigation; • the alleged contravention is not likely to cause harm to the environment; or • the requested investigation would duplicate an ongoing or completed investigation. (Section 77) <p>The ministry must provide a brief a statement of the reasons for its decision not to investigate. (Section 78(1))</p> <p>For completed investigations, the ministry must give notice of the outcome that states what action, if any, the ministry has or will take as a result of the investigation. (Section 80)</p>	<p>Where the ministry decides not to investigate, it provides reasons to support its conclusion that an investigation is not necessary.</p> <p>Where the ministry undertakes a requested investigation, the ministry investigates the matter to the extent necessary. The ministry states what action(s) the minister has taken as a result of the investigation.</p>
<p>c. Ministry meets all timelines</p>	<p>The ministry must acknowledge receipt of the application to the applicants within 20 days of receipt. (Section 65 for reviews and Section 74(5) for investigations)</p> <p>The ministry must notify the applicants and the Auditor General of its decision to undertake or deny the requested review within 60 days of receipt. (Section 70)</p> <p>The ministry must conduct each undertaken review “within a reasonable time.” (Section 69(1))</p> <p>The ministry must give notice of the outcome of the review to the applicants and the Auditor General within 30 days of completing the review. (Section 71(1))</p> <p>If the ministry decides not to investigate, it must notify the applicants, the alleged contraveners and the Auditor General of this decision within 60 days of receiving the application. (Section 78(3))</p> <p>If the ministry undertakes an investigation, it must, within 120 days of receiving the application, either:</p> <ul style="list-style-type: none"> • complete the investigation; or • give a written estimate of the time required to complete it, and then complete the investigation within the estimated timeframe or provide a new estimated timeline. (Section 79) <p>The ministry must notify the applicants, the alleged contraveners and the Auditor General of the outcome of the investigation within 30 days of completing the investigation. (Section 80(1))</p>	<p>The ministry also notifies the Auditor General that it has received the application within 20 days of receipt.</p> <p>The ministry provides an anticipated completion date to applicants and the Auditor General, and if this date changes, the ministry communicates the new date, with an explanation for the delay. The ministry completes the review within a reasonable time based on the complexity of the matter.</p>

Appendix 18: Glossary of Terms

Prepared by the Office of the Auditor General of Ontario

Act: Also known as a law, legislation or statute, an act is made by the provincial (or federal) government to delineate rules about specific situations.

Application for Investigation: A right under the *Environmental Bill of Rights, 1993* (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.

Application for Review: A right under the *Environmental Bill of Rights, 1993* (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.

Environmental Compliance Approval: A type of approval under the *Environmental Protection Act* and the *Ontario Water Resources Act* issued by the Environment Ministry and obtained by proponents that seek to undertake certain activities related to air, noise, waste and sewage.

Environmental Registry: 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 *Environmental Bill of Rights, 1993*. The Environmental Registry of Ontario (ero.ontario.ca) became the official Environmental Registry in April 2019. The previous site (ebr.gov.on.ca) remains online for archival purposes.

Exception notice: 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 *Environmental Bill of Rights, 1993*.

Information notice: Information notices (called Bulletins on the new Environmental Registry of Ontario) are used by prescribed ministries to voluntarily share information about any activity or other matter that they are not required to post under the *Environmental Bill of Rights, 1993*. In some cases, Information Notices are also used when legislation other than the *Environmental Bill of Rights, 1993* requires a prescribed ministry to give notice of something using the Environmental Registry (for example, the *Clean Water Act* requires the Environment Ministry to give notice of approved source protection plans using the Environmental Registry).

Instrument: A permit, licence, approval, authorization, direction or order issued under the authority of an act or regulation.

Leave to appeal: Permission to challenge. Under the *Environmental Bill of Rights, 1993*, 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 Environmental Review Tribunal.

Notice (general): A posting on the Environmental Registry to inform the public of environmentally significant activities that prescribed ministries are considering or carrying out.

Notice—Proposal: 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.

Notice—Decision : 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.

Permit to Take Water: An approval under the *Ontario Water Resources Act* that allows a person or organization to take water from the environment.

Policy: A written set of rules or direction by a ministry.

Prescribed ministry: A government ministry that is required under O. Reg. 73/94 to carry out responsibilities under the *Environmental Bill of Rights, 1993*.

Public interest: The welfare or well-being of the general public and society.

Public consultation: Under the *Environmental Bill of Rights, 1993*, a prescribed ministry providing an opportunity for the public to submit comments or feedback on proposed acts, regulations, policies or instruments. A minimum of 30 days must be allowed for this process, and it takes place through the Environmental Registry.

Regulation: A regulation deals with topics related to the act under which it is made; the purpose of a regulation is to provide details to give effect to the act.

Statement of Environmental Values: All prescribed ministries are required under the *Environmental Bill of Rights, 1993* to publicly consult on and implement a policy that guides the ministry when it makes any decision that might affect the environment. A Statement of Environmental Values describes how the prescribed ministry will integrate environmental values with social, economic and scientific considerations when making a decision.

Appendix 19: Prescribed Acts under the *Environmental Bill of Rights*

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
Ministry of Agriculture, Food and Rural Affairs			
<i>Food Safety and Quality Act, 2001</i>	Y ¹	N	N
<i>Nutrient Management Act, 2002</i>	Y	Y	N
Ministry of the Environment, Conservation and Parks			
<i>Clean Water Act, 2006</i>	Y	Y	N
<i>Climate Change Mitigation and Low-carbon Economy Act, 2016</i> (Repealed in November 2018)	Y	Y	N
<i>Conservation Authorities Act</i>	Y	Y	Y
<i>Endangered Species Act, 2007</i>	Y ²	Y ²	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>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 ⁷
<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 ³	Y ³	N
Ministry of Energy, Northern Development and Mines			
<i>Green Energy Act, 2009</i> (Repealed in January 2019)	Y	Y	Y
<i>Mining Act</i>	Y	Y	Y
<i>Ontario Energy Board Act</i>	Y ³	Y ³	N
Ministry of Government and Consumer Services			
<i>Technical Standards and Safety Act, 2000</i>	Y ⁴	Y ⁴	Y ⁴
Ministry of Health and Long-Term Care			
<i>Health Protection and Promotion Act</i>	Y ⁵	Y ⁵	N
Ministry of Municipal Affairs and Housing			
<i>Building Code Act</i>	Y ⁶	Y ⁶	N
<i>Greenbelt Act, 2005</i>	Y ²	Y	N
<i>Oak Ridges Moraine Conservation Act, 2001</i>	Y ²	Y	Y ⁷
<i>Places to Grow Act, 2005</i>	Y	Y	N
<i>Planning Act</i>	Y	Y	Y ⁷

Act	Ministry to Post Notices for Regulations under the Act	Subject to Applications for Review	Subject to Applications for Investigation
Ministry of Natural Resources and Forestry			
<i>Aggregate Resources Act</i>	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>Kawartha Highlands Signature Site Park Act, 2003</i>	N	Y	Y
<i>Lakes and Rivers Improvement Act</i>	Y	Y	Y
<i>Niagara Escarpment Planning and Development Act</i>	Y	Y	Y ¹
<i>Oil, Gas and Salt Resources Act</i>	Y	Y	Y
<i>Public Lands Act</i>	Y	Y	Y
Ministry of Tourism, Culture and Sport			
<i>Ontario Heritage Act</i>	Y	N	N

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.

Appendix 20: Permits and Other Approvals (Instruments) Subject to the *Environmental Bill of Rights, 1993*

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

Classification of a pesticide

Reclassification or declassification of a pesticide

Agreement with a body responsible for managing a natural resources management project that would allow a prescribed 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**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

Forest resource processing facility licence

Far North Act

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

Ministry of Energy, Northern Development and Mines***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

Acknowledgment of receipt by Director of closure plan for advanced exploration or commencing mine production

Acknowledgment of receipt by Director of certified closure plan

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 certified 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

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

Appendix 21: Concluded Applications for Review and Investigation

Prepared by the Office of the Auditor General of Ontario

This appendix provides a summary of each application that was concluded (i.e., the review or investigation was either denied or, if undertaken, was completed) between April 1, 2018 and March 31, 2019.

1.0 Applications for Review

1.1 Review of the Municipal Class Environmental Assessment Process

What the Applicants Asked For

In February 2017, two associations—the Residential and Civil Construction Alliance of Ontario and the Municipal Engineers Association (Ontario)—submitted an application asking the Environment Ministry to review the *Environmental Assessment Act* and the regulations, policies and guidance documents associated with the Municipal Class Environmental Assessment process (Municipal Class EA). The Municipal Class EA applies to infrastructure projects such as roads, water and wastewater projects. The applicants stated that a review was warranted so that projects can be completed in a timely, efficient and effective manner.

The *Environmental Assessment Act* requires those proposing certain projects to do an assessment of the potential environmental effects of the project before it begins. The Municipal Class EA sets out a standardized process for a particular class of projects that are routine and have predictable environmental effects, so that the proponents do not have to complete a full environmental assessment. The Environment Ministry, which is the approval body under the *Environmental Assessment Act*, last approved changes to the Municipal Class EA in 2015.

The reasons the applicants wanted a review included the delays and costs involved in the Municipal Class EA process, the fact that the Environ-

ment Ministry committed to update the process but had not done so, and past recommendations by the former Environmental Commissioner of Ontario (ECO) and our Office on the subject. The applicants stated that the Ministry should conduct the review to:

- minimize project delays resulting from Part II order requests submitted by the public (i.e., requests to the Ministry to require a project to undergo a higher level of assessment), including exempting the lowest-risk projects (known as Schedule A and A+ projects) from the Part II order process, delegating the responsibility for decision-making from the Minister to a Director to speed up the process, and standardizing the information required to support a Part II order request;
- improve transparency and access to information by posting relevant documents for each Municipal Class EA project on the Environmental Registry, including those relating to Part II order requests for the projects;
- better harmonize the Municipal Class EA and the *Planning Act* processes, including their public consultation processes, to avoid duplication and inconsistent conclusions;
- provide guidance on scoping reports for medium- and high-risk projects (known as Schedule B and C projects) to address the increasing costs of completing such reports, as well as provide guidance on addressing climate change concerns in a cost-efficient and timely manner; and
- provide more timely responses to proposed changes to the Municipal Class EA.

Review Undertaken by the Environment Ministry

In April 2017, the Ministry agreed to undertake the requested review and committed to complete it by the end of December 2018. In January 2019, the Ministry provided notice of its completed review to the applicants. The Ministry stated that it had worked with the Municipal Engineers Association, as well as held seven engagement sessions with municipalities from March to May 2018, to inform the review. The Ministry stated that it had already taken the following measures to address some of the issues raised by the applicants:

- The Ministry reviewed statistics for Part II order requests submitted between 2012 and 2017, and found that only two of 117 pertained to the lowest-risk categories of projects. Given their infrequency, having the Minister decide these requests would likely not slow down the process; nevertheless, in April 2017, the Ministry delegated the Minister's authority for deciding on Part II orders for lowest-risk projects to the Director.
- As of July 2018, the Ministry required the public to use a new form to submit a Part II order request, which the Ministry stated would ensure that it had all of the information needed to properly evaluate the request in a timely manner.

The Ministry also stated that it would release a discussion paper in spring 2019 for public comment on revitalizing the environmental assessment program. The Ministry stated that this discussion paper would consider: measures to improve transparency of documentation relating to Municipal Class EA projects; exempting projects in the lowest-risk categories from environmental assessment requirements altogether (and thus Part II order requests); and other potential changes, such as the scope of supporting reports. The Ministry stated that it would continue to work closely with the Municipal Engineers Association to consider amendments to the Municipal Class EA.

Our Office noted that, in April 2019, the Ministry posted a discussion paper on modernizing Ontario's environmental assessment program on the Environmental Registry for public comment. On the same day, the Ministry posted a second proposal notice to introduce amendments to the *Environmental Assessment Act* to exempt the lowest-risk projects in the Municipal Class EA from environmental assessment requirements, as well as amendments to set time limits on both requesting Part II orders and issuing decisions.

1.2 Review of an Approval to Address Odours from an Ethanol Plant in Hamilton

What the Applicants Asked For

In February 2017, two Hamilton area residents living near Canadian Liquids Processors Limited—a company in Hamilton that converts sub-standard sugar and alcohol-based liquid goods to ethanol—submitted an application requesting a review of the company's Environmental Compliance Approval (approval). The applicants stated that the approval (issued in December 2013) was not protective enough of human health, and that operations under the approval resulted in odour emissions that caused unacceptable disruptions and discomfort in their daily lives, especially during the warmer months of 2015 and 2016. They stated that there were at least 12 days in June to August 2016 when they and other local residents had to stay indoors with their windows closed and were unable to do any outdoor activities due to odours. The applicants asserted that the odours caused difficulty breathing, burning throats and watering eyes.

Review Undertaken by the Environment Ministry

The Ministry undertook this review in April 2017 and provided notice of its outcome in May 2018. In

its review, the Ministry considered the compliance history of the company, the company's application for a new approval submitted in December 2017, and comments submitted during the Environmental Registry consultation on the proposed new approval. The Ministry concluded that the conditions in the company's previous approval from 2013, as well as those in its December 2017 approval application, were inadequate to minimize odours from the facility.

The Ministry outlined the company's compliance history as of 2012, including the Ministry's site visits and the various odour abatement measures that it had required. Specifically, the Ministry found that the company had stored waste in areas and volumes contrary to its waste approval in 2012, and again in 2015. The Ministry also found in February 2017 that the company had ceased operating equipment outlined in the approval, and had failed to prepare an operations and maintenance manual as required by the approval. The Ministry noted that it had received numerous odour complaints through 2015 and 2016, and confirmed the company was contributing to the odours. Based on a site inspection and the results of an odour survey, the Ministry issued two Provincial Officer's Orders in March 2017 (shortly after receiving the application for review) requiring the company to implement odour abatement measures, and prepare best management practices and procedures to address odour sources.

In December 2017, the company submitted an application to amend its air approval to incorporate these odour abatement measures. The company had also applied for a new approval for its waste handling in 2016, which the Ministry had not yet approved.

During the review of the 2017 approval application, the Ministry concluded that the company must take a variety of measures to reduce odour sources, such as reduce outside waste piles, clean up liquid ("leachate") that has seeped out, and create a proper ventilation system with odour removal equipment.

Consequently, in May 2018, the Ministry issued an amended air approval with several new conditions to help reduce odour emissions from all possible sources. The new air approval requires the company to: submit a plan detailing preventive actions; install odour control equipment; conduct source testing to ensure the equipment is effective; and record odour complaints and take appropriate action to resolve them. The Ministry also updated the company's approval for waste disposal, adding conditions to prevent standing water on the site to further avoid fugitive odour emissions (leaks and other unintended releases).

1.3 Review of the Regulation and Oversight for Septic Systems

What the Applicants Asked For

In February 2018, the Ontario Onsite Wastewater Association and the Federation of Ontario Cottagers' Association submitted an application requesting a review of the rules for onsite septic systems (i.e., smaller sewage collection systems with a capacity of less than 10,000 litres/day that are located on the same property as the home or building that they serve). These smaller, onsite systems are regulated by the Municipal Affairs Ministry under the Ontario Building Code, whereas larger sewage systems are regulated by the Environment Ministry under the *Ontario Water Resources Act*.

Septic systems collect and partially treat wastewater from a home or business. There are over 1 million septic systems in use in Ontario. When any one of these systems fails, it can release untreated human sewage into the surrounding environment, which can contaminate nearby water bodies, with pathogens, nutrients and other pollutants. Regular inspections can identify faulty or leaking systems, which can then be repaired or replaced before the system causes water pollution problems. Septic systems that are pumped out to remove accumulated solids and generally well maintained

can reduce the potential of leaking pollutants into the soil, groundwater and surface water.

The applicants asked the Municipal Affairs Ministry to review the portion of the Ontario Building Code that sets out the requirements for the operation and maintenance of septic systems, asserting that the current requirements are not sufficient to protect the environment and public health. The applicants also asked the Environment Ministry to consider the need for new regulatory provisions under the *Ontario Water Resources Act* to govern the operation and maintenance of septic systems.

The applicants asserted that a lack of information about septic systems—such as installation permits and maintenance records—prevents the government from being able to verify the functioning of these systems. The applicants provided statistics from a survey of septic systems in Ontario that showed that 41% of the inspected systems had a major deficiency, and 65% of those deficient systems were over 30 years old (i.e., near or past their life expectancy). The applicants also provided data to show that most septic systems lacked any documentation, including the age of the system. Accordingly, they asserted that imposing requirements for provincial tracking of all septic systems (such as through a central registry of permits and other records) would enable the government to track and verify septic systems. This would, in turn, enable the government to better identify and address malfunctioning septic systems, and ultimately reduce environmental harm.

The applicants also argued for mandatory re-inspections for all septic systems throughout Ontario to ensure proper performance. Since 2012, the Ontario Building Code has required five-year re-inspection programs for septic systems in parts of the Lake Simcoe watershed and in areas where source protection committees have identified septic systems as a significant threat to municipal drinking-water sources. Municipalities, conservation authorities and boards of health may establish inspection programs elsewhere, but there is no requirement to do so. In most areas of Ontario,

after the initial installation-related permit inspection, systems may be used for decades without any maintenance or inspection requirements.

Finally, the applicants requested that the government assess the appropriateness of transferring the oversight of septic systems from the Municipal Affairs Ministry to the Environment Ministry. The applicants noted that the Environment Ministry already regulates large sewage systems and argued that its mandate and programs are better suited to carrying out the ongoing oversight of septic systems.

Review Denied by the Municipal Affairs Ministry and the Environment Ministry

In April 2018, both ministries denied the application, stating that the public interest did not warrant the requested review.

The Municipal Affairs Ministry stated that the Ontario Building Code already undergoes regular review with public consultation. Specifically, the Ministry reviewed the Ontario Building Code in October 2016 and had consulted through the Environmental Registry on proposed changes to provisions relating to the operation and maintenance of septic systems (among other changes). This included proposals to require the pumping out of septic tanks on a set frequency, regular inspections of septic systems, and the keeping of maintenance records. However, the Ministry did not move forward with these proposals. The Ministry stated in its decision notice to the applicants that the current maintenance and operational requirements and the scope of mandatory inspection programs under the Ontario Building Code meet the Ministry's commitment to support a "regulatory system that enhances environmental integrity and resource conservation."

The Environment Ministry similarly concluded that denying the request to review the need for new regulatory provisions under the *Ontario Water Resources Act* would not result in harm to human health and the environment, as septic systems

are already regulated under the Ontario Building Code. To the extent that the issues raised in the application fall under its jurisdiction, the Environment Ministry stated that it would consider the applicants' concerns in future reviews of the source protection plans under the *Clean Water Act* and the upcoming review of the Lake Simcoe Protection Plan, anticipated to begin in 2019. The Ministry committed, as part of these future reviews, to assess the effectiveness of current mandatory inspection programs, as well as consider the need for new reporting requirements for sewage systems within the Lake Simcoe watershed.

Finally, the Environment Ministry stated that transferring responsibility to it for overseeing the operation and maintenance of septic systems under the *Ontario Water Resources Act*, while leaving responsibility for permit and design requirements with the Municipal Affairs Ministry, would lead to regulatory confusion and inefficiencies.

See **Section 6.7** of our report for more information.

1.4 Review of a Renewable Energy Approval in Prince Edward County

What the Applicants Asked For

In March 2018, two groups—the Alliance to Protect Prince Edward County and Prince Edward County Field Naturalists—submitted an application requesting a review of White Pines Wind Inc.'s renewable energy approval issued in July 2015 for a wind turbine project in Prince Edward County. The applicants asserted that the project would cause irreparable harm to migratory birds and species at risk, such as Blanding's turtles and little brown bats.

The Alliance to Protect Prince Edward County, along with two other parties, had previously appealed the approval to the Environmental Review Tribunal in 2015. In 2017, the Tribunal ruled that the approval, as issued, would cause serious harm to the little brown bat and Blanding's

turtle. The Tribunal ordered several modifications to the approval to mitigate harm from the project's operations.

The applicants argued that, despite the Tribunal's decision:

- the company was misapplying the Tribunal's requirement to implement measures to protect the Blanding's turtle habitat by treating only a small part of the project area as turtle habitat, rather than the entire project site;
- the company had added a new concrete production plant, which had not been part of the original environmental impact study and would result in trucking routes that would fragment Blanding's turtle habitat;
- the company had not proposed mitigation measures to protect the turtles if they emerge before May 1 or remain past October 15 (i.e., the period defined in the approval as the turtle's active season), despite evidence that, in recent years, Blanding's turtles have emerged from hibernation before April 30;
- the approval had not been updated to include the Tribunal's recommendations in respect of migratory birds; and
- the project's mitigation plan had not been updated to address changes made to the project stemming from the Tribunal's decision to change the number of turbines.

Review Denied by the Environment Ministry

The Ministry concluded in May 2018 that the public interest did not warrant the requested review given that a decision on the project was made within the last five years, with public participation, and there was no new evidence that a failure to review the decision could result in significant harm to the environment. The Ministry stated that there was some information included in the application that was not available to it at the time it had issued the renewable energy approval in 2015, but that information was subsequently considered by the Tribunal in its 2017 ruling.

Our Office notes that, after the Ministry rendered its decision on this application, the province passed the *White Pines Wind Project Termination Act, 2018* in July 2018 that cancelled this renewable energy project.

1.5 Review of the Regulation of Pollution from Nitrogen Dioxide and Fine Particulate Matter

What the Applicants Asked For

In May 2018, Ecojustice, an environmental law charity, submitted an application on behalf of two members of the public that asked the Environment Ministry to review Ontario's regulatory and policy framework relating to air emissions standards for nitrogen dioxide (NO₂) and fine particulate matter (PM_{2.5}). Specifically, the applicants asked the Ministry to review:

- the standard for NO₂ set out in Schedule 3 of O. Reg. 419/05 (Air Pollution—Local Air Quality), under the *Environmental Protection Act*;
- Ontario's Ambient Air Quality Criteria (AAQC) for NO₂; and
- the lack of a legally binding standard or AAQC for PM_{2.5}.

A standard under O. Reg. 419/05 puts a legal limit on the concentration of a contaminant that any one regulated facility may emit into the air. By contrast, an AAQC specifies a desirable concentration of a contaminant in the air and is used to assess general air quality in a community. At the federal level, Canadian Ambient Air Quality Standards (Canadian Standards) are objectives for managing air quality across Canada; in communities where the Canadian Standards are exceeded, such as the Hamilton and Sarnia areas in Ontario, provincial ministers of the environment are expected to take action.

The applicants stated that Ontario's standard and AAQC for NO₂ are both outdated. Both are more than three times higher than the Canadian Standards for NO₂, which the federal government

adopted in 2017 and will take effect in 2020, and are twice as high as the World Health Organization air quality guideline for NO₂. Further, the Environment Ministry sets limits only on short-term NO₂ emissions and does not have an annual standard for NO₂ to limit long-term exposure.

The applicants were also concerned that the Environment Ministry has neither a legally binding standard nor AAQC for PM_{2.5}. The Ministry does have a 24-hour limit for PM_{2.5} listed in its AAQCs, but does not consider the limit to be a true AAQC, treating it as a less authoritative guide for decision-making. The federal government, by contrast, adopted 24-hour and annual Canadian Standards for PM_{2.5} in 2012. The applicants argued that the lack of standards for PM_{2.5} makes it more difficult to take compliance and enforcement actions against facilities that emit significant levels of the contaminant.

The applicants asserted that the Ministry's weaker standards and AAQC for NO₂ and lack of standards and AAQC for PM_{2.5} pose serious risks to human health. They cited evidence that health risks associated with short- and long-term exposure to NO₂ include a range of adverse respiratory effects, and that PM_{2.5} is associated with adverse cardiovascular and respiratory effects and premature death. The applicants noted recent studies have found that there is no safe level of exposure to PM_{2.5}. For example, a 2017 report by the Organisation for Economic Co-operation and Development found that PM_{2.5} is "the most serious pollutant globally from a human health perspective." The applicants also cited a 2016 joint report by Public Health Ontario and Cancer Care Ontario that called exposure to PM_{2.5} "a significant public health concern in Ontario," and found that it is associated with 290 to 900 cancer cases per year.

The applicants stated that health risks from NO₂ and PM_{2.5} are particularly serious for people living in close proximity to major emitters, such as those in communities near Chemical Valley in the Sarnia area and in Hamilton's industrial core, as well as children, the elderly and people with asthma.

The applicants recommended that the Ministry update its standard and AAQC for NO₂, and establish a legally binding standard and AAQC for PM_{2.5}, with the effect of at least matching the Canadian Standards. The applicants also stated that, given the health effects associated with long-term exposure to NO₂, the government should consider introducing an annual standard for NO₂ that is in accordance with the Canadian Standards. The applicants stated that “updated and new Ontario standards should be set at concentrations that are protective of the environment and human health, including individuals who are biologically more vulnerable to air pollutants.”

Review Denied by the Environment Ministry

The Ministry denied this application in November 2018 (more than four months after the 60-day timeline required under the Act), concluding that, based on its consideration of the factors in the Act, the public interest did not warrant a review.

The Ministry stated that the *Environmental Protection Act*, along with its associated regulations and compliance and enforcement tools, provide a variety of approaches to address concerns about air quality. The Ministry stated that O. Reg. 419/05 has standards that address NO₂ and the precursors to PM_{2.5} from industrial and commercial facilities, “providing a level of protection for human health.” The Ministry explained that it does not set standards for PM_{2.5} in O. Reg. 419/05 because the majority of PM_{2.5} is formed by other contaminants in the air, rather than being emitted directly. Instead, the Ministry sets health-based air standards for the key contaminants that contribute to PM_{2.5}, such as sulphur dioxide, nitrogen oxides, volatile organic compounds and metals.

The Ministry noted that O. Reg. 419/05 is just one part of its approach to managing air quality. The Ministry also supports community-based activity to help address transportation and residential sources of those contaminants, which form the majority of the province’s NO₂ and PM_{2.5} emissions

but are not regulated under O. Reg. 419/05. The Ministry stated that all sources need to be considered when undertaking actions to improve air quality.

The Ministry stated that it has already prioritized the NO₂ air standard for updating in its standards-setting plan (a plan that identifies which of the 130 regulated contaminants should be prioritized for updating). The review of the NO₂ air standard was to be informed by a national process, which the Ministry noted occurred in the 2017 Canadian Standards, but the Ministry did not explain what, if any, steps it would take now that the national process is complete. The Ministry noted that it engages stakeholders and the public in consultation processes when updating or adding new air standards under O. Reg. 419/05. The Ministry also stated that it completed a review of the effectiveness of its policy framework for PM_{2.5} in 2012 (in response to an earlier application for review) and found it to be effective.

Finally, the Ministry acknowledged that, while the majority of the province’s NO₂ and PM_{2.5} come from transportation and residential sources, in some communities the primary contributors of these contaminants are industrial/commercial sources. The Ministry highlighted work that it has undertaken in Hamilton and in the Sarnia area to address community concerns with air pollution, such as supporting community-based initiatives in Hamilton and developing the Sarnia Air Action Plan.

See **Section 4.8** of our report for more information.

1.6 Review of the Cancellation of Cap and Trade

What the Applicants Asked For

On July 18, 2018, two representatives of the Canadian Environmental Law Association, a non-profit organization, submitted an application asking the Environment Ministry to review O. Reg. 386/18

(Prohibition against the Purchase, Sale and other Dealings with Emissions Allowances and Credits), the regulation that revoked O. Reg. 144/16 (Cap and Trade Program), under the *Climate Change Mitigation and Low-carbon Economy Act, 2016*. The revocation of that regulation effectively ended Ontario's cap-and-trade program.

The applicants stated that a review was necessary because abolishing the cap-and-trade program was “contrary to the public interest and may cause or contribute to significant harm to the environment and human health and safety, particularly since the provincial government has not announced any alternative programs that will be undertaken in order to reduce greenhouse gas emissions and transition Ontario to a resilient low-carbon economy.”

The applicants also stated that a review was necessary because the Ministry did not notify or consult the public before making the regulation, contrary to its duties under the *Environmental Bill of Rights, 1993* (Act) to allow public participation in environmentally significant matters. Instead, it posted an exception notice on the Environmental Registry on July 6, 2018. The notice asserted that the Ministry was not required to consult the public on O. Reg. 386/18 because the regulation's effect of ending cap and trade was a matter that had already been considered during the recent Ontario election. The Ministry stated that the election was a public participation process substantially equivalent to the process required under the Act.

The applicants disagreed that a provincial election replicates the public consultation provisions under the Act. They asserted that the Minister's decision not to post the regulation on the Environmental Registry for public consultation “cannot be justified under any of the statutory exceptions to public participation under the [Act].”

The applicants contended that, to comply with the Act, the Ontario government must:

- immediately revoke O. Reg. 386/18;
- provide the public with an appropriate opportunity to comment on any future regulatory proposals under the *Climate Change Mitiga-*

tion and Low-carbon Economy Act, 2016, by giving notice on the Environmental Registry; and

- consider the public's comments before making any decisions about the future of the cap-and-trade program.

On July 25, 2018—after the applicants submitted the application for review—the government introduced Bill 4 (*The Cap and Trade Cancellation Act, 2018*) in the Ontario Legislature to repeal the *Climate Change Mitigation and Low-carbon Economy Act, 2016*, to end Ontario's cap-and-trade program. On September 11, 2018, six weeks after Second Reading on Bill 4 had commenced, the Ministry posted Bill 4 on the Environmental Registry for a 30-day public comment period. Members of the public submitted 11,222 comments on Bill 4. The *Cap and Trade Cancellation Act, 2018*, received Royal Assent on October 31, 2018.

Review Denied by the Environment Ministry

The Ministry denied this application for review on September 21, 2018. The Ministry concluded that the public interest did not warrant a review because, at the time of the Ministry's decision, another public consultation for the matters raised in the application was in the process of happening (that which was going on for the 30 days after Bill 4 was posted on the Environmental Registry on September 11, 2018). The Ministry stated that the resources to conduct the requested review therefore “would be duplicative or unnecessary.”

The Ministry stated that, in any event, it was required to deny the request for review based on section 68(1) of the Act, which precludes a ministry from undertaking a review of a decision made within the last five years if the decision was made in a manner consistent with the purpose and intent of Part II of the Act (which sets out requirements for public participation in government decision-making). In other words, a ministry can not undertake a review of a matter if, at some point in the last five years, the public already had the opportunity to

participate in the decision-making process around it, and if that opportunity to participate was consistent with the notice and public consultation requirements of the Act.

Our Office notes that in September 2018, Greenpeace filed an application for judicial review of the repeal of O. Reg. 144/16 (Cap and Trade Program). Greenpeace asserted that the Ministry's use of an exception notice was unreasonable and that a provincial election was not a substantially equivalent process to the Act. In October 2019, the Ontario Divisional Court found that the government's recent election did not relieve it from its obligation to follow the public consultation requirements set out in the Act.

See **Section 4.3** of our report for more information.

1.7 Review of the Deer Hunt in Short Hills Provincial Park

What the Applicants Asked For

In September 2018, the Animal Alliance of Canada, a non-profit organization, requested a review of all relevant acts, regulations and policies relating to the archery deer hunt that has been carried out since 2013 in Short Hills Provincial Park by the Haudenosaunee (the Six Nations of the Grand River). The applicants specifically requested that the government review the *Environmental Assessment Act*, and any other relevant law or regulation, to require an environmental assessment of the First Nation's deer hunt in Short Hills Provincial Park to determine the impacts of the hunt on the park environment.

The applicants stated that the deer hunt by the Haudenosaunee, which is facilitated by ministry staff, is foremost a resource management project with the objective of reducing the deer herd within the provincial park. The Ministry's estimates of deer population and density from 2018, included in the application, estimated that there are 600 to 700 deer in the park, which is approximately 15 times the density that the park can ecologically support.

The applicants stated that the hunt is damaging the park and it has been ineffectual in reducing the number of deer, and that the park's deer population is not overabundant. The applicants argued that, in effect, the Ministry is sidestepping doing an environmental assessment by depending on the First Nation to reduce deer numbers. To support their claims of damage to the park environment, the applicants provided photographic evidence of damage from passenger and all-terrain vehicles.

Review Denied by the Natural Resources Ministry and the Environment Ministry

This application was sent to both the Natural Resources Ministry and the Environment Ministry. The ministries provided a consolidated response to the applicants in November 2018 denying the request for a review.

The ministries stated that the Haudenosaunee have a treaty right to hunt in southwestern Ontario, including Short Hills Provincial Park. The Natural Resources Ministry was notified by the Haudenosaunee that this right would be exercised and, accordingly, Ontario Parks' role was then to ensure public safety and monitor the hunt. The ministries stated that this archery hunt was not undertaken by or on behalf of the government, and for that reason the *Environmental Assessment Act* did not apply.

The ministries stated that there is a distinction between a deer herd reduction (which occurs in other provincial parks) and a harvest, or hunt, by a First Nation (such as this case). The goal of a deer herd reduction program is for Ontario Parks to actively manage a deer population to ensure that the impacts to a park ecosystem from deer browsing do not significantly affect vegetation regeneration. The deer hunts in Short Hills Provincial Park have been initiated by the Haudenosaunee in exercising their treaty rights and, thus, are not a deer herd reduction program.

The ministries stated that Ontario Parks carried out a number of activities to ensure public safety during the deer hunt, including responding to

public complaints and reports of trespassing, as well as moving deer to the gathering area when doing so promotes the safety of the hunters. Further, staff collected data from harvested deer to assess the health and status of the deer population in the park. The ministries stated that only staff are permitted to operate passenger and all-terrain vehicles in the park, and that these vehicles are used to assist in the safety and efficiency of the hunt. Further, Ontario Parks has no conservation concerns with the Haudenosaunee's deer hunt based on the size of the deer population in the park.

1.8 Review of the Regulation of Recreational Open-Air Wood Burning

What the Applicants Asked For

In November 2018, two members of the public from southwestern Ontario requested a review of the need for a new provincial policy or regulation to prohibit recreational open-air wood burning within 220 metres of any residence, school, daycare centre, health-care facility, playground or playing field. Further, the applicants requested that all existing municipal bylaws and policies that allow recreational open-air wood burning in such areas be revoked.

The applicants stated that recreational open-air wood burning emits pollutants that have adverse effects on both the environment and human health. The applicants also asserted that the government's Air Quality Health Index is based on a limited number of air monitoring stations that do not adequately capture air-quality data at the local level. Further, the applicants stated that municipal approvals for recreational open-air wood burning are based on fire safety considerations rather than environmental and human health protection.

Review Denied by the Environment Ministry and the Municipal Affairs Ministry

The Environment Ministry and the Municipal Affairs Ministry both denied the application, determining that the public interest did not warrant a review, in December 2018 and January 2019 respectively. The ministries noted that open-air burning is regulated by municipalities under the *Municipal Act, 2001*, and the *City of Toronto Act, 2006*. These acts afford broad powers to municipalities to pass bylaws, including those affecting the environment and the health, safety and well-being of persons in their jurisdiction. Further, both ministries noted that the 2016 guidance developed by the Canadian Council of Ministers of the Environment, which has been provided to municipalities, sets out "best practices to help ensure residential, agricultural, and ecological open-air burning activities are conducted in a responsible manner, thereby minimizing potential adverse human health and environmental impacts."

1.9 Review of the Need to Establish a Conservation Reserve in the Township of Long

What the Applicants Asked For

In November 2018, the Member of Provincial Parliament for Algoma-Manitoulin and a member of the public submitted an application for review asking the Environment Ministry to create a conservation reserve in the Township of Long on the north shore of Lake Huron. The applicants stated that this area comprises a wetland complex (a group of functionally linked wetlands) that provides habitat to a large population of Blanding's turtles and other species at risk. The applicants asserted that the turtles may be harmed by a proposed aggregate operation (a quarry) at the site. Conservation reserves are a type of regulated protected area in which this type of aggregate operation is prohibited.

Blanding's turtles are regulated as a threatened species. Threatened species are at-risk plants

or animals whose status may worsen to become endangered if steps are not taken to address the factors threatening them. Habitat destruction is a significant threat to the survival of this species at risk. Additionally, Blanding's turtles are susceptible to severe population declines even when just a few of them die.

The applicants stated that a research study conducted by Laurentian University and the Northern Ontario School of Medicine, initiated in 2017 and ongoing, of the area of Crown land where the quarry is proposed has led to the discovery of a potentially significant population of Blanding's turtles. This study estimates that the local population may exceed 100 mature individuals, at a density of approximately 0.7 turtles per hectare. The applicants stated that this wetland complex provides critical habitat for the species as it provides a combination of overwintering, nesting and seasonal habitats. The applicants asserted that the ongoing results of this scientific research are grounds for this site to be regulated as a protected area.

Review Denied by the Environment Ministry

The Environment Ministry denied this application in February 2019. The Ministry's response, which was co-written with the Natural Resources Ministry, concluded that the public interest does not warrant a review because the potential for harm is "nil or negligible."

The ministries stated that Blanding's turtles and their habitat are protected under the *Endangered Species Act, 2007*, which will continue to protect Blanding's turtles from being killed or having their habitat destroyed regardless of future land uses.

The ministries noted that the *Aggregate Resources Act* and its standards require that an impact assessment report be prepared to determine any negative effects as part of a quarry's approvals process. This report would identify proposed measures to prevent, mitigate or remedy any harm. The ministries also stated that a disposition of Crown land

for a quarry is screened by the Natural Resources Ministry under its class environmental assessment.

The ministries stated that the Natural Resources Ministry screens any request to establish a conservation reserve as a Crown land-use-planning decision, and can choose to consider it immediately, defer it, refer it to another process, request additional information or reject it. In this case, the Ministry rejected the request, stating that such a land-use change "would not be considered consistent with broader government policy" as the issues raised are "better suited for the *Endangered Species Act, 2007* and are not within the scope of [C]rown land use planning."

The ministries stated that the "representative land values" raised in this application (that is, threatened species and their habitat) are too small or dispersed to warrant the establishment of a new protected area. They stated that such representative land values already receive protection in Matinenda Provincial Park, north of this site. Finally, they stated that land-use planning done in the 1970s and the 1990s led to this area of Crown land currently being managed primarily for commercial forestry; other permitted land uses include aggregate extraction, mineral exploration and development, commercial tourism and commercial power generation.

1.10 Review of a Quarry Expansion in Burlington

What the Applicants Asked For

In February 2018, two representatives of the Burlington Green Environmental Association, a non-profit charity, submitted an application requesting that the Natural Resources Ministry review the licence and site plan conditions for an aggregate (quarry) operation run by Meridian Brick Canada Ltd. in Burlington. The applicants were concerned about the impacts of the proposed expansion of quarrying, including the loss of trees, the loss of habitat for species at risk, and the loss of a carbon

sink to mitigate against (or reduce) the effects of climate change.

This site has been actively quarried for almost a century, and was licenced under the *Pits and Quarries Control Act* in 1972. In 2015, the company proposed to quarry a new area, referred to as the East Cell Quarry Lands. The applicants asserted there are important woodlands and multiple species at risk on the site.

This application was the second from these applicants asking for a review relating to the East Cell Quarry Lands. In February 2018, the applicants requested that the Municipal Affairs Ministry issue a Ministerial Zoning Order to either rezone parts of the East Cell Quarry Lands or create a temporary moratorium on aggregate extraction until the environmental features of the area are evaluated. The Municipal Affairs Ministry denied that review in April 2018.

In response to another application for review submitted by different applicants (Tyandaga Environmental Coalition Inc.) in November 2017, the Natural Resources Ministry has been reviewing the aggregate licence and related site plan for this property, examining issues at the site relating to regulated species at risk and noise mitigation measures. Our Office will report on the outcome of that review once it is completed.

Review Denied by the Natural Resources Ministry

In April 2018, the Ministry denied the application, concluding that the public interest does not warrant a review. The Ministry stated that the licence for the site, which authorizes tree removal, is in good standing. The Ministry also noted that it has amended the site plan several times to include more up-to-date environmental and rehabilitation requirements. The current site plan, which the Ministry approved in 2010, requires final rehabilitation to 100% forest cover.

The Ministry also stated that operations must comply with the *Endangered Species Act, 2007*, and

that the Ministry is in the process of conducting a separate application for review related to species at risk and this site. Lastly, the Ministry stated that it will continue to incorporate climate change adaptation and mitigation through its broader programs, planning and policies.

1.11 Review of the Conservation Authorities Act and Expropriation of Private Land

What the Applicants Asked For

In May 2018, two residents living near Hamilton submitted an application asking the Natural Resources Ministry to review the *Conservation Authorities Act* and its provision on expropriations. This section says that, through the *Expropriations Act*, conservation authorities have the right to acquire property belonging to others to achieve any purpose that falls within their statutory responsibilities. The applicants were concerned about a specific case involving the expropriation of 387 ft² of land by the Hamilton Conservation Authority to enlarge a hiking trail access point for safety purposes.

Review Denied by the Natural Resources Ministry

The Ministry denied this application in July 2018, concluding that a failure to do the review would not result in significant harm to the environment. The Ministry stated that the *Conservation Authorities Act* recently underwent a review that involved significant public input. It noted that the legal purpose of conservation authorities is to provide programs and services related to “the conservation, restoration, development and management of natural resources,” which includes recreational programs and services, and that they may expropriate land to that end. The Ministry stated that the *Expropriations Act*, which applies to conservation authorities, provides a process of

notification and opportunity for the landowner to request a hearing before the Local Planning Appeal Tribunal before a decision is made on whether the expropriation is allowed.

1.12 Review of Soil Health in Agriculture

What the Applicants Asked For

In January 2015, two members of the public with expertise in sustainable agriculture requested that the Agriculture Ministry review the need for a new policy, act, regulation or program to encourage farmers to adopt sustainable soil management practices. The applicants were concerned that, without adequate government supports and incentives, many farmers would continue to engage in practices that compromise soil health and the environment. They provided numerous studies to demonstrate the importance of healthy soil for productive agriculture as well as for improved water quality, erosion reduction, disease suppression, and climate change mitigation and adaptation.

The applicants stated that the review should consider financial measures, such as property tax incentives, to motivate farmers to engage in farming practices that are good for soil. The applicants also discussed methods for monitoring soil management, the need for reliable soil-quality indicators, and the potential of other activities and programs to achieve soil health.

Review Undertaken by the Agriculture Ministry

In March 2015, the Ministry undertook the review. The Ministry agreed that decreased soil quality puts the productive capacity of Ontario's agri-food system at increased risk. The Ministry acknowledged that poorer-quality soils can impact water quality and increase greenhouse gas emissions, and are less resilient to climate change impacts such as extreme weather.

As part of the review, the Ministry established a working group of stakeholders to provide input and consulted the public using the Environmental Registry. The Ministry ultimately released a document called *New Horizons: Ontario's Agricultural Soil Health and Conservation Strategy* in April 2018. The strategy is a long-term framework that sets a vision, goals and objectives for research, investments and activities until 2030. The strategy provides actions to meet the goals, including putting in place financial incentives for soil care, as well as methods to measure progress.

The strategy directs the Ministry to establish a collaborative group to deliver long-term oversight of the strategy's implementation, including overseeing the development of an implementation plan. The strategy states, "This group's purpose and objectives, membership and roles, and operating guidelines, as well as a schedule for regular review and progress reporting will be established. Once established, the group will develop annual work plans, to include delivery by partners, based on the actions and phasing outlined in the Strategy."

Our Office followed up with the Ministry after this application was concluded. As of August 2019, the Ministry had not yet established the collaborative group to oversee the strategy's implementation, so an implementation plan had not yet been developed. The Ministry told us that it planned to establish the group in fall 2019.

1.13 Review of Habitat Offsets for Species at Risk under the *Planning Act*

What the Applicants Asked For

In March 2018, two residents of Brockville submitted an application requesting a new policy to clarify the rules, processes and responsibilities that apply to the use of habitat "offsets" for species at risk. This is the practice of developers obtaining approval for projects that destroy significant wildlife habitat by creating new habitat as a substitute,

or offset, for the habitat to be destroyed. The applicants stated that this review was needed because the Provincial Policy Statement under the *Planning Act*, as well as the *Endangered Species Act, 2007*, inadequately protect the golden-winged warbler from development. The golden-winged warbler is a species of special concern, which means that, while it is not currently endangered or threatened, it may become so due to a combination of its biological characteristics and identified threats. This species does not receive protection under the *Endangered Species Act, 2007*. Specifically, the applicants were concerned that their municipality has proposed an industrial development project that overlaps with a previously established habitat offset and has not addressed how it will compensate for the lost warbler habitat.

The applicants stated that sites where the golden-winged warblers are found are considered to be “significant wildlife habitat.” The *Provincial Policy Statement, 2014*, prohibits development and site alteration in significant wildlife habitat unless the developer demonstrates that “there will be no negative impacts on the natural features or their ecological functions.” One mechanism that is used to allow development in significant wildlife habitat is to propose to create new habitat as an offset for habitat that will be destroyed. However, the applicants expressed concern that the current rules are ineffective.

The applicants stated that there was a need for clearer offset rules relating to legal authorities, eligibility criteria, verification, duration of offsets, monitoring and reporting, and public notice and right to comment. The applicants stated that such clearer rules are needed to ensure that the developers proposing offset projects demonstrate that there will be no negative impacts on natural features or their ecological functions whenever habitat offsets are used to bring planning decisions into effect.

Review Denied by the Natural Resources Ministry and the Municipal Affairs Ministry

In May 2018, both ministries concluded that the public interest does not warrant undertaking this review.

The Natural Resources Ministry’s denial of the application stated that the Municipal Affairs Ministry has the primary responsibility for municipal land-use-planning decisions. The Ministry also explained that the protections in the *Endangered Species Act, 2007*, do not apply to species of special concern (such as the golden-winged warbler), only threatened and endangered species. The Ministry acknowledged that its role is to provide technical guidance to the Municipal Affairs Ministry and municipalities to support the implementation of the Provincial Policy Statement. The Ministry provided examples of various guidance documents that contain advice, recommendations and best management practices, but explained that these are all only advisory in nature. The Ministry noted that the primary requirement within these guides is for planning authorities to gather a comprehensive understanding of ecological systems before making decisions that could cause negative environmental impacts. The Ministry argued that this requirement, in combination with the technical guidance and advice it provides to municipal planning authorities, is sufficient direction for planning authorities to protect species of special concern.

The Municipal Affairs Ministry declined to undertake the review on the basis that the Provincial Policy Statement had undergone a comprehensive review that was completed in 2014. The Ministry also stated that municipalities are the primary implementers of provincial land-use-planning policies, and the *Planning Act* requires decisions to be consistent with the Provincial Policy Statement.

See **Section 6.8** of our report for more information.

2.0 Applications for Investigation

2.1 Investigation of Odours from a Cosmetics Factory in Toronto

What the Applicants Asked For

In September 2017, two Toronto residents living near a cosmetic products factory owned by Lush Manufacturing Ltd. submitted an application for investigation alleging that its facilities were discharging airborne contaminants that caused adverse effects, in violation of the *Environmental Protection Act*. The alleged adverse effects included material discomfort and the loss of enjoyment of property. The facilities are located in a mixed residential and industrial neighbourhood in Toronto.

The applicants stated that they experienced persistent odours from the facility, which resulted in nausea, burning sensations in their noses and throats, and itchy and irritated eyes. They also stated that the emissions caused disruptions to daily life, including not being able to open windows or use their yards. The applicants kept pollution journals that documented the time, extent, and impact of odour occurrences.

The applicants acknowledged that the company had taken steps to mitigate odour impacts, including installing generators, charcoal filters and air purifiers to neutralize and reduce odours, decreasing exhaust, installing cladding and sealing the building to reduce fugitive emissions (leaks and other unintended releases), and acquiring a new building across the street and further from homes to relocate the most odourous processes. However, the applicants stated that odour impacts did not decrease in frequency or severity as a result of these measures. They also argued that the new and amended Environmental Compliance Approvals (approvals) for the facilities, when issued, should contain stringent, effective and enforceable conditions to prevent the continuation of odour impacts.

Investigation Undertaken by the Environment Ministry

The Environment Ministry agreed in November 2017 that an investigation was warranted. The Ministry issued the notice of outcome of its investigation in May 2018.

The Ministry first received odour complaints about the facilities in fall 2014. At that time, it asked the company to apply for an amended approval to address the odour issues. Ministry staff visited the facilities 40 times between fall 2014 and May 2018, both during and after business hours (23 visits preceded its receipt of the application, and 17 occurred after). The Ministry stated that during site visits its staff confirmed the presence of odours from the facilities, but not at the (subjective) threshold for an “adverse effect” under the *Environmental Protection Act*.

The Ministry had identified other compliance issues prior to receiving the application. In September 2017, Ministry staff found that the company was operating outside its permitted operating hours. In October 2017, the Ministry issued a Provincial Officer’s Order requiring the company to adhere to the operating hours specified in its approval. When the company contravened the order the next day, the Ministry referred the matter to its enforcement branch, which is responsible for determining if charges will be laid.

After receiving this application for review, the Ministry issued a second Provincial Officer’s Order in April 2018, requiring the company to apply for an approval for its new facility across the street from the original location, apply for an amendment to the approval for the original facility to include requirements to reduce odour emissions, and cease discharging emissions at both facilities outside its permitted operating hours.

Ultimately, the Ministry’s notice of outcome concluded that the company had not committed offences in relation to odour emissions. The Ministry stated that it was continuing to take action to

ensure the company reduced its odour emissions and did not operate outside of the permitted hours.

The Ministry noted that the company was required to complete source testing under a “worst case scenario” in support of its approval application. The Ministry stated that once it received the company’s new approval applications and source-testing results, it would conduct a thorough review and would only issue the approvals if the company demonstrated that it “can operate in accordance with ministry requirements and in a manner that limits its potential to adversely impact the surrounding environment.”

Our Office followed up with the Ministry after this application was concluded. The Ministry provided our Office with a chronology and description of its site visits, which included an additional 13 site visits after the notice of outcome, between May 2018 and July 2019. Resulting from what it found on these site visits, the company worked with the Ministry to undertake a number of voluntary odour control measures. The company submitted its applications for approvals in August 2018 and the Ministry ultimately issued new approvals for both facilities in May 2019. As of August 2019, there was an active case before the courts related to a January 28, 2019, charge in which the Environment Ministry charged the company with six violations under the *Environmental Protection Act*. The charges relate to failing to comply with a Ministry approval, including requirements relating to hours of operation. The Ministry also issued a provincial offences ticket to the company on October 18, 2018, for failing to comply with a condition of its approval.

2.2 Investigation of Water Taking at a Quarry in the County of Hastings

What the Applicants Asked For

In February 2018, two County of Hastings’ residents living near a quarry owned by C.H. Demill Holdings Inc. requested that the Environment Ministry investigate alleged contraventions in 2016 of the condi-

tions of the company’s water-taking permit (permit) and environmental compliance approval (approval). The permit was issued under the *Ontario Water Resources Act* and the approval was issued under the *Environmental Protection Act*. The quarry has been in operation for approximately 80 years and is licenced under the *Aggregate Resources Act* to excavate below the water level of a shallow aquifer (an underground layer of rock, gravel, sand or silt that contains water). To enable extraction, the company has a permit to dewater the quarry and an approval to discharge the pumped-out water into a nearby creek. The permit includes restrictions on when and how much water the company may remove, with extra restrictions during drought conditions, to minimize impacts on the area’s groundwater supply.

The applicants asserted that in 2016, the company:

- first, repeatedly violated a condition in its approval that allows the company to discharge pumped-out water into a creek, but only a minimum of 48 hours after the end of a rain event that produces runoff;
- second, violated the permit and approval by pumping higher volumes than permitted following a storm; and
- third, violated the condition in its permit that restricted pumping volumes during a low-water advisory (i.e., to take no more water than the amount of rain that fell onsite the preceding day). The Quinte Conservation Authority issued such an advisory in summer 2016, and the applicants alleged that the water taken by the company exceeded this allowed amount.

The applicants expressed concern that the company’s water-taking potentially interferes with local groundwater resources, especially during drought conditions, as local residential properties and farms rely on private wells. They also expressed concern about the potential impacts of the pumped-out water discharged into the local creek.

Investigation Undertaken by the Environment Ministry

The Environment Ministry agreed in May 2018 that an investigation was warranted and provided its notice of outcome in August 2018.

The Ministry concluded that there were some instances of non-compliance in 2016:

- With regard to the first allegation, the Ministry stated that the non-compliance resulted from a discrepancy between the company's permit and its approval. The permit had been amended by the Environmental Review Tribunal, following an appeal hearing in 2015, to alter requirements for pumping out water to prevent flooding. But the approval, which was not amended, had conflicting requirements so that the company could not comply with both. The Ministry amended the approval to resolve the discrepancy.
- With regard to the second allegation, the Ministry found no evidence that the company pumped higher volumes than permitted following a storm.
- With regard to the third allegation, the Ministry determined that there were instances where the company had pumped more water out of the quarry than fell during the previous day. However, the Ministry stated that the total volume pumped out in the days following the rain was less than the total volume of rain that entered the quarry and that the actions of the company were reasonable given the heavy rain conditions. The Ministry therefore concluded that the company's water-taking did not violate the intent of the permit and there were no resulting harmful impacts.

The Ministry stated that groundwater levels have stabilized after many years of quarrying below the level of the shallow aquifer, and that the water being pumped out of the quarry is predominantly precipitation and snowmelt. Ministry staff have also followed up on local complaints regarding impacts to well water quality and quantity, but they have

not substantiated any impacts. The Ministry noted that the company's permit and approval include requirements to conduct groundwater and surface water monitoring to identify any potential water quality or quantity impacts, and to take steps if any are identified. The Ministry determined that the company complied with these requirements and did not identify any impacts to local water quality or quantity in 2016. Finally, the Ministry stated it would continue to conduct site inspections to assess compliance with the company's approval and permit.

2.3 Investigation of the Operation of an Asphalt Plant in Horton Township

What the Applicants Asked For

In March 2018, two residents of Horton Township in eastern Ontario requested that the Environment Ministry investigate the operation at a nearby site owned by the Miller Group Inc. of a portable asphalt plant and a permanent asphalt plant (both of which prepare hot mix asphalt for paving) and an aggregate washing plant (which removes silt, clay and other matter from the aggregates).

The applicants alleged that the two asphalt plants' operations caused adverse effects of noise, dust and odour between 2015 and 2018. Specifically, the applicants alleged contraventions of the *Environmental Protection Act's* requirements for air approvals and prohibition against discharges of contaminants that cause adverse effects; regulations under the *Environmental Protection Act* for the operation of hot mix asphalt facilities; and the company's environmental compliance approvals (approvals) for the operation of a portable and a permanent hot mix asphalt plant.

The applicants also alleged contraventions of the *Ontario Water Resources Act*, which prohibits discharging any material into water that may impair the quality of the water and require approval of sewage works. The applicants alleged that the

aggregate washing plant was taking water from a nearby water body and discharging the wastewater back into the water body, despite the fact that the washing plant is meant to be a closed-loop system (without any discharge to the environment). The applicants also alleged contraventions of the company's permit to take water.

Investigation Undertaken by the Environment Ministry

In June 2018, the Ministry undertook the investigation and in September 2018 provided notice of the outcome of the investigation. The Ministry stated that it had received numerous complaints over the years about the site from these applicants and that it had completed over 70 inspections, surveys and assessments of the site's operation between 2012 and 2018.

With regard to the allegations of noise, dust and odour impacts, the Ministry found that, overall, the company was in compliance with the *Environmental Protection Act* and its approvals. The Ministry did identify, however, that the company had failed to provide a consolidated manual for inspection, preventative maintenance and operations, as required by a previous inspection. The Ministry extended the due date for the company to provide this manual from September 21, 2018, to November 30, 2018.

The Ministry concluded, based on its previous inspection findings and site visits dating back to 2014, that the company's aggregate washing plant complied with its permit. The Ministry was satisfied that the washing facility did not pose a significant risk to groundwater or surface water on- or off-site.

The Ministry did determine that, as of 2017, the aggregate washing plant required a sewage approval because the system, even though it is closed-loop, contains sewage; the *Ontario Water Resources Act* requires an approval for any sewage system, unless the system has a capacity of less than 10,000 litres per day, which this company did not. The Ministry allowed the company to continue operating but directed it to submit an approval

application by November 30, 2018. The Ministry posted a proposal notice for the new approval on the Environmental Registry in January 2019 and posted a decision notice granting the new approval in May 2019.

2.4 Investigation of Wetland Drainage in the Township of West Lincoln

What the Applicants Asked For

In March 2018, two property owners submitted an application alleging that various authorities contravened several laws by constructing a drainage works that resulted in the draining, flooding and/or contamination of a provincially significant wetland on their property. Specifically, the applicants asserted that the Niagara Peninsula Conservation Authority, the Natural Resources Ministry, the Environment Ministry, and the Township of West Lincoln contravened the following laws: the *Conservation Authorities Act* (and a relevant regulation under it), the *Environmental Protection Act*, the *Pesticides Act*, and the *Environmental Assessment Act* (as well as two other laws not subject to applications for investigation).

The applicants claimed that, in 2012, the township constructed a drainage works in a roadside ditch within the buffer zone of a provincially significant wetland. They stated that the drainage works resulted in flooding on their property. They asserted that, instead of constructing the drainage work, clearing an existing driveway culvert would have allowed water to flow to its natural outlet.

The applicants further alleged that neighbouring landowners had installed agricultural tile drains without proper approvals. They alleged that these drains had caused drastic changes to water levels, causing flooding on their land and loss of wildlife habitat. They asserted that the wetlands are being degraded from water level changes and from fertilizer, manure and pesticide runoff as a result of the flooding.

The applicants had previously submitted a similar application for investigation in 2015 to the Natural Resources Ministry and the Environment Ministry, alleging contraventions of the *Environmental Protection Act*, the *Pesticides Act* and the *Ontario Water Resources Act*. The Natural Resources Ministry denied the application but the Environment Ministry undertook an investigation. The Environment Ministry conducted two site inspections and reviewed the neighbouring agricultural practices but did not find any contraventions.

Investigation Undertaken by the Environment Ministry and Denied by the Natural Resources Ministry

The application was sent to the Natural Resources Ministry, which administers parts of the *Conservation Authorities Act*, and to the Environment Ministry, which administers the other acts cited by the applicants.

The Natural Resources Ministry denied this application, stating that the Niagara Peninsula Conservation Authority has the primary responsibility for administering and enforcing the applicable requirements under the *Conservation Authorities Act* and its regulations.

The Environment Ministry agreed that an investigation was warranted in May 2018 and provided notice of its outcome in September 2018. The Ministry concluded that there were no contraventions of the *Environmental Protection Act*, the *Pesticides Act*, or the *Environmental Assessment Act*. The Ministry contacted the applicants and verified that there had been no change in the supporting information provided by them since their 2015 application. To cover most of the applicants' concerns, the Ministry reiterated the outcomes from the earlier investigation, including:

- explaining that the *Environmental Protection Act* provisions for spills do not apply to normal agricultural runoff and that the neighbouring farm practices are considered normal;

- explaining that drainage design is regulated under the *Drainage Act*, which is not subject to applications for investigation, but that the applicants could follow up with the Agriculture Ministry and their township to discuss their drainage concerns; and
- stating that the *Pesticides Act* had not been contravened, as the Ministry did not observe or find evidence of the discharge of any pesticide outside of normal practices.

The one new allegation in the 2018 application was that the Township of West Lincoln had contravened the *Environmental Assessment Act* by not undertaking an environmental assessment prior to doing work on the roadside ditch. The Ministry explained that this work falls under the *Drainage Act* and does not require an environmental assessment.

2.5 Investigation of Pesticides in Ornamental Plants Sold by Retailers

What the Applicants Asked For

In April 2018, Friends of the Earth Canada, a non-governmental charitable organization, submitted an application alleging that three Ottawa area garden centres operated by Home Depot, Lowe's, and Canadian Tire, respectively, were selling ornamental flowering plants that contained residues of several pesticides known as "Class 9" pesticides under O. Reg. 63/09 of the *Pesticides Act*. The applicants' main allegation was that this violated the *Pesticides Act*, which prohibits anyone from using, or permitting the use of, Class 9 pesticides for cosmetic purposes.

The applicants purchased flowers at the three garden centres and had samples from them analyzed by the University of Guelph's Agriculture and Food Laboratory. The samples were found to contain residues of five Class 9 pesticides, at levels that the applicants alleged were above scientific standards for harm. Two of these pesticides were systemic pesticides, which are absorbed by plants

and spread throughout the entire plant to deter pests. The applicants expressed concern about the effects of these pesticides on human health and the environment, and in particular their effects on pollinators.

To support their request for an investigation, the applicants provided evidence of the alleged contraventions, including photographs, receipts, a summary of the sampling procedure and lab results. The applicants also provided a clause-by-clause analysis of the relevant provisions of the *Pesticides Act* to demonstrate the applicability of this law to the sale of ornamental plants.

Investigation Denied by the Environment Ministry

In June 2018, the Environment Ministry denied the application. The Ministry explained its interpretation of each provision of the *Pesticides Act* raised by the applicants and concluded that the alleged activities do not constitute a violation of any of those provisions. Under the Ministry's interpretation of the *Pesticides Act*, a flowering plant containing a pesticide residue does not constitute a "pesticide," and therefore, the *Pesticides Act*'s prohibition against the use of Class 9 pesticides would not apply to the use of an ornamental plant that contains residue of a pesticide. Moreover, even if a plant containing pesticide residue was considered a pesticide, the Ministry said that the act of selling such plants would not constitute the "use" or "discharge" (or permitting the use or discharge) of a pesticide.

The Ministry also confirmed that the horticultural operations that supplied the ornamental plants to the retailers, if located in Ontario, are permitted to use Class 9 pesticides because Ontario agricultural operations are exempt from the cosmetic pesticides ban.

2.6 Investigation of Dust and Noise from Asphalt Equipment at a Quarry in Elginburg

What the Applicants Asked For

In August 2018, two Elginburg residents living beside an aggregate operation (quarry) run by Cruickshank Construction Limited submitted an application requesting that the Environment Ministry investigate the quarry. They alleged that the company was non-compliant with conditions in its approvals for operating a permanent hot mix asphalt plant, a portable hot mix asphalt plant and a portable crushing plant. The applicants had numerous concerns relating to noise and dust, and the daily timing of various activities on the site. The applicants stated that dust from the quarry was impacting their health and the noise was affecting their enjoyment of their property.

The quarry operates under multiple approvals from the Environment Ministry, as well as an aggregate licence from the Natural Resources Ministry under the *Aggregate Resources Act*. It has been in operation for more than 50 years.

The applicants filed an application for review in 2016 asking the Environment Ministry to review the approvals. The Ministry undertook that review, which included an assessment of related compliance activities. The Ministry's response to that application outlined its prior enforcement activity, including its referral of some issues to its investigations and enforcement branch, and noted that all previously identified instances of non-compliance had been resolved.

Investigation Undertaken by the Environment Ministry

In November 2018, the Environment Ministry agreed that an investigation was warranted and provided notice of its outcome in February 2019. The Ministry examined the company's compliance from 2016 onward, given the review it had undertaken

in 2016, and provided an overview of the site from 2016 to the present:

- In March 2016, the company submitted an application for an amendment to its approval for the permanent hot mix asphalt plant, which was issued in 2013. The company requested approval of a previously installed burner, ventilation changes to the asphalt plant and longer operating hours. The Ministry issued a notice of refusal because the company had not provided a requested site-wide acoustic assessment report with a detailed noise abatement action plan.
- In March 2017, the Ministry discovered that an exhaust fan for the asphalt plant's ventilation system had been installed without its approval. The Ministry referred this matter to its investigations and enforcement branch, which issued a warning letter to the company.
- In April 2017, the company submitted another application for an amended approval, again requesting approval of the previously installed burner and ventilation changes to the hot mix asphalt plant dryer, as well as permission to operate the permanent hot mix asphalt plant seven days a week, up to 24 hours per day. The Ministry requested a site-wide assessment report to identify emissions from all operations at the site, including from a ready-mix concrete batch plant also located on the site.
- In June 2018, a different company became the owner and operator of the site, and withdrew the amendment application. The new company continues to operate the permanent hot mix asphalt plant under the authority of the original 2013 approval, which places conditions on the plant's operations, maintenance, noise and fugitive dust, and includes reporting requirements.

The Ministry provided a detailed accounting of how it responded to public complaints from November 2016 to July 2018, including site visits and com-

pany record reviews, and summarized the actions of the original owner to address complaints.

The Ministry explained that it had also conducted unannounced site visits at the quarry approximately once per week between June 2018 and October 2018, to make observations with respect to truck traffic, noise and dust issues. Ministry staff did not observe any non-compliance or other issues at these site visits.

In response to the applicants' concerns that the company was operating outside of the hours permitted by the municipal noise bylaw, the Ministry clarified that provincial approvals take precedence over municipal noise bylaws. It explained that the site plan issued by the Natural Resources Ministry authorizes certain round-the-clock operations at the quarry if the market demands, which may include the use of the portable hot mix asphalt plant if other conditions are met. However, the Environment Ministry's approvals still restricted crushing operations and the operation of the permanent hot mix asphalt plant to between 7 a.m. and 7 p.m. The Ministry stated that it had issued a ticket for one incident of non-compliance in September 2017 when the permanent hot mix asphalt plant operated for 22 minutes past 7 p.m.

The Ministry committed to continue site visits at the quarry and to follow up on all public complaints. The Ministry also committed to continue to work with the new company on the submission of a new application for an approval amendment, which must include a site-wide acoustic (noise) assessment.

2.7 Investigation of Dust and Noise at a Metrolinx Site in Toronto

What the Applicants Asked For

In December 2018, two Toronto residents living near a Metrolinx works yard submitted an application requesting that the Environment Ministry investigate Metrolinx and one of its contractors for noise and dust emissions. This works yard is

used to store concrete, soil and gravel for a rail-line construction project, and for emergency maintenance and repair work. The applicants asserted that they have been adversely affected by noise and dust from the site, which has caused health impacts and loss of enjoyment of property.

Investigation Denied by the Environment Ministry

In February 2019, the Ministry concluded that an investigation was not warranted, as the Ministry was already actively investigating issues at this site. The Ministry reported that it had received approximately 25 complaints from six complainants between April 2018 and November 2018 about this site. The Ministry stated that it conducted nine site visits between May 2018 and January 2019, and confirmed that the operations at the works yard and the associated truck traffic had noise and dust impacts on the neighbouring community.

In April 2018, the Ministry requested that Metrolinx develop and implement a dust management plan to address dust discharges from the works yard, as well as set hours of operation that are compatible with the neighbouring residential community (in other words, that it not operate on evenings and weekends). Metrolinx initially provided the Ministry with generic operating procedures, which the Ministry considered to be insufficient. In June 2018, Metrolinx provided the Ministry with a new dust plan, which the Ministry again considered to be insufficient; the Ministry confirmed the plan's inadequacy after conducting site visits.

In July 2018, Metrolinx informed the Ministry that it would take the following measures to minimize dust from the works yard: lower the soil piles from 20 feet to 12 feet, cover the soil piles located close to the residential area with tarps, cover the road areas within the yard with crushed asphalt material as an interim measure prior to paving and periodically spray water on the crushed asphalt. The Ministry shared these measures with local resi-

dents. It then conducted a site visit that determined that the mitigation measures remained insufficient.

In December 2018, Metrolinx informed the Ministry that it was proposing to take further action, including retaining a qualified expert to revise the contractors' mitigation plan to the satisfaction of the Ministry, holding the contractor accountable for complying with the terms of the mitigation plan and establishing a one-window Metrolinx contact for the submission of all community concerns about usage of the site. In January 2019, Metrolinx advised the Ministry of further actions to be taken, including building a noise wall and submitting a revised dust and noise mitigation plan to the Ministry by February 2019. The Ministry committed to considering mandatory abatement measures if the issues remain unresolved.

Our Office followed up with the Ministry after this application was concluded. Metrolinx submitted revised mitigation plans in February, March and May 2019 but the Ministry found them to be lacking in detail. As of August 2019, the Ministry told us that no new mitigation plans have been submitted as the dust issues have been abated due to numerous on-site actions.

2.8 Investigation of Wetland Drainage in Loyalist Township

What the Applicants Asked For

In January 2019, two property owners submitted an application requesting that the Environment Ministry and the Natural Resources Ministry investigate the drainage of a wetland in Loyalist Township, near Kingston. The applicants alleged that in February 2012, the Cataraqui Regional Conservation Authority authorized either Hydro One or Loyalist Township to install a four-foot steel culvert that drained water from a provincially significant wetland, in contravention of the *Conservation Authorities Act* and its regulations.

The applicants also alleged that the parties did not have the necessary approvals for the culvert

under the *Endangered Species Act, 2007*, and the *Fish and Wildlife Conservation Act, 1997* to alter a beaver dam. They asserted that the culvert damaged the wetland and the habitats of endangered species. They also asserted that the installation of the culvert contravened the *Canadian Environmental Protection Act, 1999*; however, this federal law is not subject to applications for investigation under the *Environmental Bill of Rights, 1993*.

Investigation Denied by the Environment Ministry and the Natural Resources Ministry

In March 2019, both the Environment Ministry, which administers the *Endangered Species Act, 2007*, and some parts of the *Conservation Authorities Act*, and the Natural Resources Ministry, which administers the *Fish and Wildlife Conservation Act* and other parts of the *Conservation Authorities Act*, denied this application. Both ministries concluded that there were no contraventions of the various laws.

The Natural Resources Ministry stated that the Cataraqui Regional Conservation Authority has the authority to approve an application to interfere with a wetland under Ontario Regulation 148/06 (Cataraqui Region Conservation Authority: Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses). The Ministry explained that the culverts were blocked by beaver debris and activity, impeding the flow of water and affecting Hydro One's access to the overhead transmission line to carry out emergency maintenance. Hydro One had requested permission from the conservation authority in 2012 to replace the culvert due to the blockage, and the conservation authority granted it as part of emergency repairs and to provide access to the site.

The Ministry stated that the removal of a beaver dam in this context was conducted for the protection of Hydro One's property, and therefore Hydro One was not required to obtain the Ministry's authorization for removal of a beaver dam under the *Fish and Wildlife Conservation Act, 1997*. The Ministry also reviewed other parts of this legislation

and determined that there were no contraventions. Similarly, the Environment Ministry determined that there were no contraventions of the *Endangered Species Act, 2007*.

2.9 Investigation of Harm to Species at Risk and their Habitat in South Frontenac

What the Applicants Asked For

In January 2018, two South Frontenac residents requested that the Natural Resources Ministry investigate alleged contraventions of the *Endangered Species Act, 2007*. The applicants alleged that in 2012 and 2016, Magenta Waterfront Development engaged in road development, blasting and extensive clearing on a site in the Township of South Frontenac, north of Kingston, without the Ministry's approval. They asserted that these activities may have harmed or killed species at risk, including gray ratsnakes, Blanding's turtles, butternut trees, eastern whip-poor-wills and little brown bats. The applicants also asserted that the company may have damaged or destroyed the habitat of these species.

Investigation Undertaken by the Natural Resources Ministry

The Ministry decided in March 2018 that this investigation was warranted and provided notice of its outcome in June 2018. The Ministry divided its investigation into two phases: phase one examined the company's initial access road development in April 2012, and phase two examined further work that took place on the property in April 2016. The Ministry ultimately concluded that there were no contraventions of the *Endangered Species Act, 2007*, during either phase.

The Ministry stated that, based on an environmental impact assessment that had been prepared by the company's consultant in 2012, there were no documented occurrences of species at risk on the site prior to construction of the initial access road in

the same year. Accordingly, the Ministry concluded that it was not possible for it to prove species or their habitats were present and harmed. Additionally, some of the species in question were not afforded protection under the *Endangered Species Act, 2007*, at that time, and moreover, the five-year limitation period for prosecuting offences under this Act had passed.

For the activities in 2016, the Ministry stated that it was contacted by concerned members of the public in April 2016. The Ministry stated, however, that it was not invited onto, nor could it access, the privately owned land in question. It was therefore unable to confirm if any development activities had occurred. The Ministry did nevertheless inform the company and its consultant about the consequences of contravening the *Endangered Species Act, 2007*.

In May 2016, the company's consultant submitted information about species at risk on the site to the Ministry; the Ministry responded that impacts to the species at risk on the site could not be avoided, and it would work with the company on applying for an "overall benefit" permit (a permit that authorizes a party to engage in an activity otherwise prohibited by the *Endangered Species Act, 2007*).

In June 2016, members of the public again contacted the Ministry with concerns that habitat was allegedly damaged by this company's development activity.

In August 2016, the Ministry advised the company that it would have to obtain an overall benefit permit for the gray ratsnake and Blanding's turtle

before any activities that might impact these species or their habitat could take place. Later that month, the company invited the Ministry onto the site.

In September 2016, the Ministry received an application for an overall benefit permit from the company. The Ministry reviewed the information it received from the company in support of the application and concluded that impacts from the company's proposed development activities on butternut trees, bats and eastern whip-poor-wills would not contravene the *Endangered Species Act, 2007*. However, the Ministry determined that the impacts on Blanding's turtles and gray ratsnakes (Frontenac Axis population) require a permit.

In November 2017, the proposed overall benefit permit for the development was posted on the Environmental Registry for a 30-day consultation period. Forty-six public comments were received by the Ministry, many raising concerns about the proposed permit, including that there were additional species at risk potentially present on the site, the permit's conditions for achieving the overall benefit were inadequate and there would be potential impacts to adjacent lands. In October 2018, the Ministry issued an overall benefit permit to the company.

Our Office notes that the Ministry's response to the applicants was unclear and that the *Endangered Species Act, 2007*, authorizes Ministry staff to enter and inspect a site if they obtain a warrant; it also allows inspections without a warrant in "exigent circumstances" or to determine compliance with a permit, order, agreement or regulation.