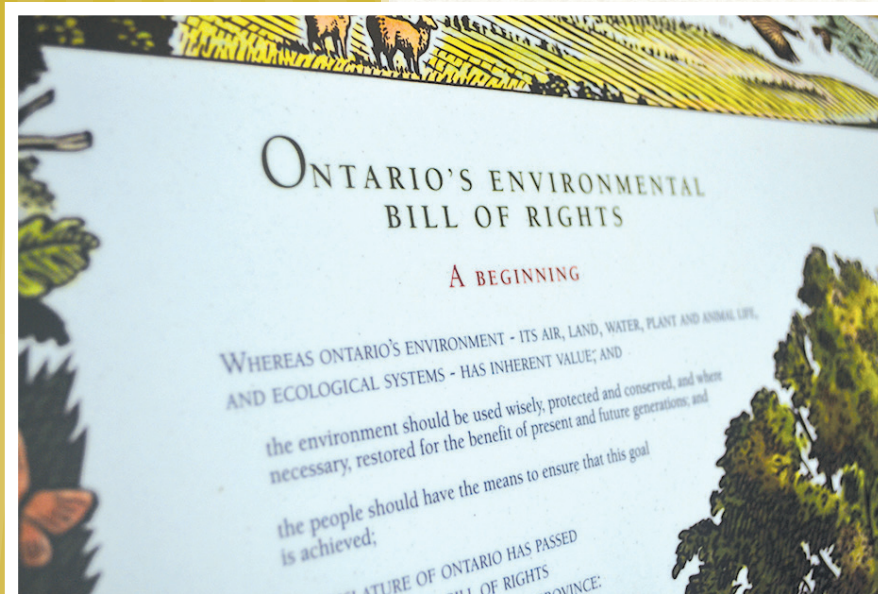




Office of the Auditor General of Ontario

Operation of the *Environmental Bill of Rights, 1993*



December 2023

Operation of the *Environmental Bill of Rights, 1993*

1.0 Summary

Public participation in environmental decision-making is at the heart of Ontario's *Environmental Bill of Rights, 1993* (EBR Act). Recognizing that the people of Ontario have a common goal to protect, conserve and restore the natural environment for the benefit of present and future generations, and that the people should have means to ensure that this goal is achieved, the government adopted the EBR Act 30 years ago to give Ontarians the right to participate in, and hold government accountable for, its environmentally significant decisions. It does so by:

- mandating that the government consider the environmental protection purposes of the EBR Act when it makes decisions that affect the environment;
- providing opportunities for Ontarians to comment on government proposals that could have a significant effect on the environment;
- providing public access to the justice system to protect the environment; and
- protecting employees who exercise their environmental rights in the workplace.

Appendix 1 shows a glossary of terms related to the EBR Act.

We have been responsible for reporting annually on the operation of the EBR Act since 2019, and this is our fifth report. It reports on the public's use of its environmental rights from April 1, 2022, to March 31, 2023,

and presents findings about the ministries' compliance with and implementation of the EBR Act, based on our criteria (set out in **Appendix 2**).

There are 18 ministries subject to the EBR Act. **Figure 1** lists how we refer to them in this report and **Appendix 3** identifies which of the Act's obligations each ministry must meet. The laws and instruments that are subject to the EBR Act are listed in **Appendices 4** and **5**, respectively.

We share our key findings on ministries' compliance with and implementation of the EBR Act in **Sections 4** to **10** and summarize them in **Figure 2**. These sections highlight areas in which ministries did not fully meet their obligations under the EBR Act based on our audit criteria, and set out our recommendations for more effectively implementing the EBR Act. Our findings on each individual prescribed ministry are presented in ministry report cards, along with a comparison with results from past years, in **Appendix 6**. We summarize ministries' progress in implementing processes to ensure their compliance with the EBR Act in **Section 11**. We report on action needed to keep the EBR Act's coverage up to date in **Section 12**. We followed up on the status of actions taken by ministries to put into practice recommendations from our past reports and include our findings in **Section 13**.

Overall Conclusions

Over the last five years, we have reported on and made recommendations to address problems with how

Figure 1: The Prescribed Ministries¹

Source of data: O. Reg. 73/94, made under the *Environmental Bill of Rights, 1993*, and government Orders-in-Council issued in 2022

| Ministry | How We Refer to Ministry |
|--|-----------------------------------|
| Environment, Conservation and Parks | Environment |
| Natural Resources and Forestry ² | Natural Resources |
| Municipal Affairs and Housing | Municipal Affairs |
| Mines ² | Mining |
| Public and Business Service Delivery—Technical Standards and Safety Authority ³ | Public Services – TSSA |
| Energy | Energy |
| Northern Development ² | Northern Development |
| Transportation | Transportation |
| Agriculture, Food and Rural Affairs | Agriculture |
| Tourism, Culture and Sport ⁴ | Tourism |
| Health | Health |
| Long-Term Care | Long-Term Care |
| Infrastructure | Infrastructure |
| Economic Development, Job Creation and Trade | Economic Development |
| Indigenous Affairs | Indigenous Affairs |
| Education | Education |
| Labour, Immigration, Training and Skills Development ⁵ | Labour |
| Treasury Board Secretariat | Treasury Board Secretariat |

1. Ministries are presented generally in order of the historical volume of their activities (or their predecessor ministries' activities) under the *Environmental Bill of Rights, 1993*.
2. In June 2022, the Ministry of Northern Development, Mines, Natural Resources and Forestry was divided into three separate ministries: the Ministry of Natural Resources and Forestry, the Ministry of Northern Development and the Ministry of Mines. In this report, we present our findings related to the work of each of the three ministries separately.
3. The Technical Standards and Safety Authority posts notices related to the *Technical Standards and Safety Act, 2000* on behalf of the Ministry of Public and Business Service Delivery.
4. Prior to June 2022, the Ministry of Tourism, Culture and Sport was named the Ministry of Heritage, Sport, Tourism and Culture Industries.
5. Prior to June 2022, the Ministry of Labour, Immigration, Training and Skills Development was named the Ministry of Labour, Training and Skills Development.

ministries have consulted the public about important environmental decisions and carried out their other EBR Act responsibilities. While we have seen some minor improvements over this time, we have continued to find significant problems each year, particularly with lack of consultation—or meaningful consultation—on important environmental decisions.

In 2022/23, the Ontario government failed to meaningfully follow the EBR Act when it made sweeping legislative and regulatory changes to meet its housing supply goals. In responding to a housing affordability crisis, the government, led by the

Municipal Affairs Ministry, made key changes quickly and without adequate public consultation. These changes affected conservation authorities, heritage protection, municipal parkland and infrastructure, wetlands, regional planning and planning appeal rights. They also opened up environmentally sensitive lands in the Greenbelt for housing development (but announced reversal of this decision 10 months later, in September 2023).

While the Municipal Affairs, Natural Resources and Environment Ministries gave notice of proposed changes through the Environmental Registry, their

Figure 2: Summary of Ministry Report Card Results under the *Environmental Bill of Rights, 1993* for 2022/23

Prepared by the Office of the Auditor General of Ontario

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

| Prescribed Ministry | 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 | Proposal Notices for PARs ¹ Are Informative | Proposal Notices for Instruments ² Are Informative | Comments Are Considered | Notice of Decision Is Prompt | Decision Notices for PARs ¹ Are Informative | Decision Notices for Instruments ² Are Informative | Proposal Notices Are Up-to-Date | Ministry Reviews to Extent Warranted | Ministry Investigates to Extent Warranted | Ministry Meets Timelines |
| Environment | ● | ○ | ● | ● | ● | ● | ● | ○ | ● | ● | ● | – | ○ | ● |
| Natural Resources | ○ | ● | ● | ● | ● | ○ | ● | ● | ○ | ● | ● | – | – | ● |
| Municipal Affairs | ○ | ● | ● | ● | ● | ○ | ● | ○ | ● | ● | ○ | – | – | – |
| Mining | ○ | ● | ○ | ○ | ● | ● | ○ | ● | – | ● | ● | – | – | – |
| Public Services – TSSA ³ | ○ | ○ | ○ | ○ | ○ | ○ | – | ○ | – | ○ | ○ | – | – | – |
| Energy | ○ | ○ | ● | ○ | ● | n/a | ○ | ○ | ○ | n/a | ○ | – | – | – |
| Northern Development | ○ | ○ | ○ | – | – | n/a | ○ | ○ | ○ | n/a | ○ | – | n/a | – |
| Transportation | ○ | ○ | ○ | ○ | ● | n/a | ○ | ○ | ○ | n/a | ○ | – | n/a | – |
| Agriculture | ○ | – | ○ | ○ | ○ | n/a | – | – | – | n/a | ● | – | n/a | – |
| Tourism | ○ | – | ○ | ○ | ○ | n/a | – | – | – | n/a | ○ | n/a | n/a | n/a |
| Health | ○ | – | ○ | – | – | n/a | – | – | – | n/a | – | – | n/a | – |
| Long-Term Care | ○ | – | ○ | – | – | n/a | – | – | – | n/a | – | – | n/a | – |
| Infrastructure | ○ | – | ○ | – | – | n/a | – | – | – | n/a | – | n/a | n/a | n/a |
| Economic Development | ● | – | ○ | – | – | n/a | – | – | – | n/a | – | n/a | n/a | n/a |
| Indigenous Affairs | ○ | – | ○ | – | – | n/a | – | – | – | n/a | – | n/a | n/a | n/a |
| Education | ○ | – | ○ | – | – | n/a | – | – | – | n/a | – | – | n/a | – |
| Labour | ● | – | ○ | – | – | n/a | – | – | – | n/a | – | n/a | n/a | n/a |
| Treasury Board Secretariat | ○ | – | ○ | ○ | ○ | n/a | ○ | ○ | ○ | n/a | – | n/a | n/a | n/a |

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

| Use of the Environmental Registry | | Education | | |
|--|---|--|---|---|
| Prompt Notice of Appeals and Leave to Appeal Applications Is Given | The Environmental Registry Platform Is Maintained Effectively | Assists Other Ministries in Providing Educational Programs about the EBR Act | Provides Educational Programs about the EBR Act to the Public | Provides General Information about the EBR Act to Those Who Wish to Participate in a Proposal |
| ● | ● | – | ● | ○ |

Note: Whether a ministry partially met or did not meet a criterion depends on the volume and significance of the issues we found.

1. Policies, acts and regulations.
2. Instruments include permits, licences, approvals, authorizations, directions and orders.
3. Technical Standards and Safety Authority.

chosen approach to consultation did not meet the minimum requirements of the EBR Act and did not respect the Act's purposes. For example:

- These Ministries posted four proposal notices for Bill 23, the *More Homes Built Faster Act, 2022*, but the bill was passed before the end of the public consultation period. This means these Ministries could not have considered all of the comments they received on Bill 23 before final decisions were made. Also, the housing-related proposal notices were posted one day after municipal elections were held across the province. Although these proposals significantly affect Ontario municipalities, many new municipal councils were not even sworn in, let alone able to submit comments, before some of the decisions were made.
- The Municipal Affairs Ministry's Greenbelt proposal notices lacked key information and, in some cases, included inaccuracies. Also, because of the short timeline for the Greenbelt changes, the Ministry could not complete a comprehensive analysis of all of the more than 35,000 comments in time to fully inform its decision-making. Before posting the proposal notices on the Environmental Registry, Ministry staff had cautioned political decision-makers that many stakeholders, including municipalities, would not be able to provide comprehensive responses in a 30-day window and that the proposed timeline to finalize changes to the Greenbelt immediately after the consultation period would not allow for substantive revisions to the proposal.
- The Natural Resources Ministry did not consult Ontarians about the repeal of the *Duffins Rouge Agricultural Preserve Act, 2005*, which was intended to permanently restrict the use of land in the Duffins Rouge Agricultural Preserve to agriculture. Instead, the Ministry relied on the Municipal Affairs Ministry's flawed Greenbelt consultation.

The actions taken by the government demonstrate its intent not to respect and use public consultation

as a source of input into its decision-making. Full and open consultation can give the government a better understanding of the costs, benefits and impacts of the proposals from commenters with different knowledge, experience and perspectives, as well as ideas for other—potentially more effective—approaches to achieve the government's policy aims. It can also lead to greater public acceptance of the government's decisions.

When municipalities, organizations and individuals take the time to comment on proposals, they expect and deserve that the ministry will give their thoughts, suggestions and expertise due consideration before making its final decision. This is each Ontarian's right under the EBR Act. But in these consultations, the government did not fulfill its obligations to the people of Ontario.

We also found other significant issues with ministries' implementation of the EBR Act in 2022/23. In particular:

- **The Energy Ministry again did not consult Ontarians about two environmentally significant policies.** In one case, in July 2023, the Ministry released a new energy plan called *Powering Ontario's Growth – Ontario's Plan for a Clean Energy Future*. This plan committed to supporting a new large-scale nuclear station, advancing three more small modular reactors, and developing new transmission lines in northern and eastern Ontario. However, the Ministry did not consult Ontarians about the overall plan or the specific projects under it. In a second case, in 2022, the Ministry modified its *Conservation and Demand Management Framework* for electricity conservation programs, adding new programs and expanding some existing ones, again without consulting the public.
- **Ontarians were not given clear or complete information about some proposals.** This year we again noted issues with proposal notices that ministries posted on the Environmental Registry. In particular, ministries did not always give clear or complete descriptions of their proposals, or of the environmental implications of the proposals. For example, we found:

- The Mining Ministry told the public that it did not expect any environmental impacts from proposed changes to the *Mining Act*. Subject to regulatory amendments still to be developed, these changes would end the Ministry's technical review of mine closure plans and replace it with upfront certification by a "qualified person," change the standards for mine rehabilitation and remediation, enable the Minister to issue orders allowing mining companies to defer parts of their closure plans, and allow for phased financial assurance. The Ministry did not explain in the proposal notices how it arrived at its conclusion that the proposed legislative amendments would have no environmental impacts.
- The Energy Ministry did not fully explain its proposal to create a voluntary Clean Energy Credits Registry, which would allow companies to buy credits for the electricity they use from the Ontario grid and claim that they use only "clean energy." Further, the Ministry did not explain whether or how the design of this Registry would help Ontario meet its climate goals or support investment in new non-emitting electricity generation.
- The Natural Resources Ministry knew there was a risk that changes to the *Conservation Authorities Act* and regulations in support of the government's Housing Supply Action Plan could have negative environmental impacts. However, it did not identify any potential environmental impacts in its proposal notice and told the public that the anticipated environmental consequences would be "neutral."
- **The Environment and Natural Resources Ministries again failed to respect the EBR Act's application timelines.** The EBR Act requires ministries to respond to applicants within specified timelines, but the Environment Ministry was 117 days late informing one set of applicants that

it would not undertake their requested investigation (taking 177 days to do so instead of the required limit of 60 days). This is similar to our findings in 2022. The Natural Resources Ministry also missed EBR Act deadlines in an ongoing application for investigation. The Environment Ministry also made no progress in completing a review of the EBR Act that it agreed to undertake in 2011—well over a decade ago.

- **The Environment Ministry, which is responsible for administering the EBR Act, is still not fulfilling all of its unique responsibilities.** In particular, the Ministry is obligated to provide educational programs to the public about the Act, but has done little since it was given this responsibility in 2019. In 2022/23, the Ministry offered no educational programs other than a series of social media posts repeated from 2021, and had no plans to offer anything else.

Despite these issues, our audit found some improvements by ministry staff in their day-to-day implementation of the EBR Act. In particular, several ministries have taken steps to increase staff awareness and understanding of the EBR Act by creating training materials and providing staff training, and have put in place new or updated procedures to help them implement the Act more effectively.

This report contains eight recommendations, with 13 action items, to address our audit findings.

OVERALL ENVIRONMENT MINISTRY RESPONSE

The government respects and takes our legal obligations under the *Environmental Bill of Rights, 1993* (EBR Act) seriously. The Ministry of the Environment, Conservation and Parks is committed to continuously improving our own performance at implementing the EBR Act, and the Ministry will also continue to support consistent and effective implementation of the EBR Act across government.

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

2.0 Background

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

The *Environmental Bill of Rights, 1993* (EBR Act) gives the people of Ontario rights that are formally protected by law. The EBR Act recognizes that, while the provincial government has the primary responsibility for protecting the natural environment, the people of Ontario have the right to participate in the government's decision-making about the environment and to hold the government accountable for those decisions.

The purposes of the EBR Act are to achieve the following by the means provided in the Act:

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

To that end, the EBR Act sets out requirements for Ontario government ministries and legal rights for Ontarians, including:

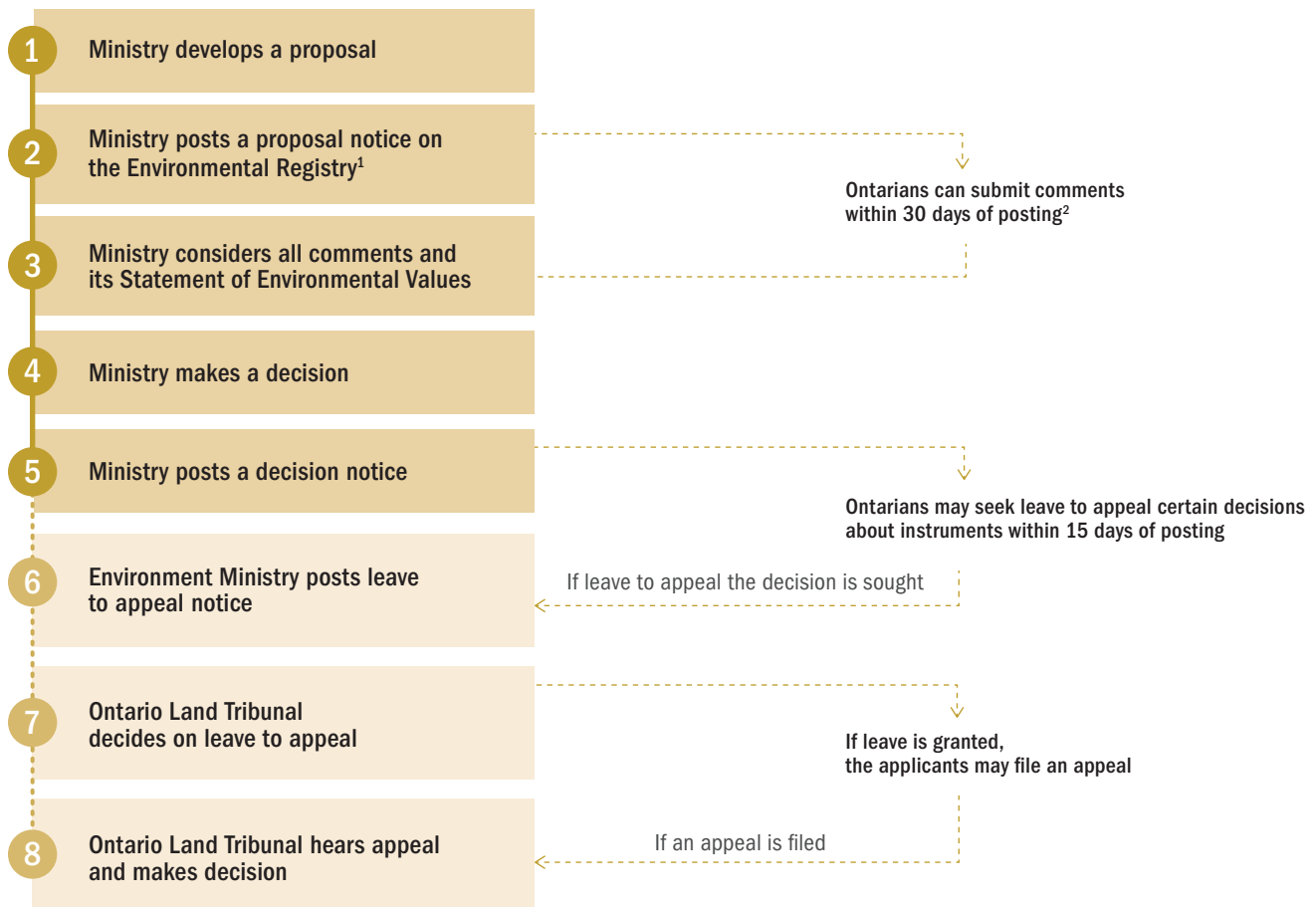
- **Statements of Environmental Values (Statements):** The EBR Act requires each of the 18 prescribed ministries (see **Figure 1**) to develop and publish a Statement that explains how the ministry considers the purposes of the EBR Act when it makes decisions that may significantly affect the environment. A Statement is meant to guide ministries in integrating environmental values with social, economic and scientific considerations as part of the decision-making process, which should lead to better outcomes for the environment. Under the EBR Act, the ministries must consider their Statements when making environmentally significant decisions.
- **Public notice and consultation through the Environmental Registry:** The EBR Act

establishes the Environmental Registry (ero.ontario.ca), a website that gives the public access to information about environmentally significant proposals and decisions made by government ministries, as well as other environmental matters. The EBR Act requires prescribed ministries to use the Environmental Registry to give notice and consult the public about proposed policies, acts, regulations and instruments (permits, licences, approvals, and other authorizations and orders) that are environmentally significant. Under the EBR Act, the ministries must consider the public's comments and give prompt notice of their decisions on the proposals, including an explanation of the effect of public participation, if any, on the decision. See **Figure 3** for a description of the EBR Act's public consultation process.

- **Applications for review:** The EBR Act gives residents of Ontario the right to submit applications to a prescribed ministry—asking it to review existing laws, policies, regulations or instruments, or review the need for new laws, policies or regulations—to protect the environment. A minister must consider the request according to factors set out in the EBR Act and determine whether the public interest warrants the requested review.
- **Applications for investigation:** The EBR Act gives residents of Ontario the right to ask a ministry to investigate alleged contraventions of certain environmental laws, regulations and instruments. A minister has a duty to investigate all matters raised in an application for investigation to the extent the minister considers necessary. A minister does not need to investigate if they find that the application is frivolous or vexatious, the alleged contravention is not serious enough to warrant an investigation, or the alleged contravention is not likely to cause harm to the environment. The minister is also not required to duplicate an ongoing or completed investigation.

Figure 3: Public Consultation Process under the *Environmental Bill of Rights, 1993*

Prepared by the Office of the Auditor General of Ontario



1. There are some exceptions to this requirement. For example, ministries are not required to post notices for proposals that form part of or give effect to a government budget, or for permits and approvals that represent a step to implement a decision made under the *Environmental Assessment Act*. This requirement also does not apply to proposals that are mostly financial or administrative.
2. Ministries must consider allowing more time for public consultation. More time should be given where, for example, the matter is complex, the level of public interest is high, or other factors warrant more time for informed public input.

- **Appeals, lawsuits and whistleblower protection:** The EBR Act gives residents of Ontario the right to seek leave to appeal (that is, permission to challenge) government decisions on certain instruments, as well as the right to sue for harm to the environment or a public resource. It also protects employees who exercise their environmental rights from employer reprisals (“whistleblower” protection).

Not all requirements of the EBR Act apply to every prescribed ministry. For example, the requirement to respond to applications for review applies to only 12

of the 18 prescribed ministries. (See **Appendix 3** for a summary of the requirements that apply to each prescribed ministry.)

There are two regulations under the EBR Act, which set out:

- which ministries are subject to the EBR Act requirements (see **Appendix 3**);
- which laws are subject to the EBR Act (see **Appendix 4**); and
- which instruments are subject to the EBR Act (see **Appendix 5**).

The Environment Ministry administers the EBR Act and its regulations.

2.2 Why the EBR Act Is Important for the People of Ontario

The EBR Act gives Ontarians special rights to participate in the government's environmental decision-making, with the goal of creating better protections for the environment.

When members of the public take part in government environmental decision-making, they can improve the quality of decisions—and the outcomes for the environment. Public feedback gives decision-makers more information and perspectives from different sources, including local and Indigenous traditional knowledge.

Other benefits of public participation can include greater transparency and government accountability for its decision-making, greater public awareness of issues and acceptance of decisions, and better implementation of decisions.

Since the EBR Act came into force in 1994, public consultation through the Environmental Registry has helped better inform and improve many government environmental decisions, ranging from broadscale decisions on provincial policies and laws (such as source water protection policies, transit planning guidelines and an overhaul of endangered species legislation) to more site-specific decisions (such as permits issued to companies allowing them to take water).

Similarly, Ontarians have successfully used the EBR Act's application for review process to prompt ministries to improve environmental laws and policies. For example, applications have led to stronger rules for rehabilitating aggregate pits and quarries, the development of a provincial agricultural soil health strategy, improved sewage management in provincial parks and an end to the hunting of snapping turtles (an at-risk species).

Since our last annual report, the EBR Act's application for investigation process enabled Ontarians to bring the Environment Ministry's attention to a warehouse that was not complying with its Environmental Compliance Approval for sewage works when washing vehicles in its parking lot. Their application led the

Ministry to take action to bring the company into compliance, helping to protect a local waterbody.

Also since our last report, the EBR Act's leave to appeal rights enabled one Ontario resident to challenge the Environment Ministry's decision to issue an approval for a solid waste transfer facility, due to the compliance history of the persons involved in operating the facility. This process led the Ministry to revoke the approval. Without the EBR Act, this Ontarian would not have had access to the Ontario Land Tribunal to voice their concerns.

2.2.1 Why Ministries Must Uphold Their EBR Act Requirements

For Ontarians to exercise their rights under the EBR Act, prescribed ministries must do their part, acting in the spirit of the EBR Act. When ministries do not comply with their obligations under the EBR Act, or when ministries make decisions in a way that goes against the purposes of the EBR Act, members of the public cannot fully exercise their rights to participate in environmental decision-making. Without meaningful public consultation, Ontario—the public, the ministries making the decisions and the environment—risks losing the potential benefits of that participation.

Consulting the public before making decisions can also save time and money. In some cases, a rush to pass or amend laws with minimal or no public consultation can delay putting the new provisions in action. For example, in 2020, the Municipal Affairs Ministry did not consult the public about increasing the Minister's powers related to zoning orders before the Legislature passed Bill 197. After Bill 197 was enacted, the Ministry opened up consultation on the use of these ministerial powers, stating it would consider the feedback and “determine whether changes should be made to the provisions of section 47 of the *Planning Act* enacted by Bill 197.” If the Ministry had consulted the public before enacting Bill 197, this feedback could have informed the Ministry's approach to zoning orders and determined the need for any legislative changes. Ministries' failure to consult under the EBR Act has also

resulted in lawsuits—in 2018 over the cancellation of the cap and trade program, and in 2020 over the enactment of Bill 197—requiring the ministries to spend time and money defending their actions in court.

Justice Corbett of the Divisional Court noted that the EBR Act “requires a government that has decided to do something that impacts on the environment to slow down its process, take the time for public participation and then consider what it wishes to do in light of the public input that it receives. The [EBR Act] would be rendered largely nugatory if a government could ignore its requirements because the government has already made up its mind, prior to public participation, and will not listen to or consider public input in respect to its proposal.”

2.3 Use of the EBR Act’s Tools in 2022/2023

Between April 1, 2022, and March 31, 2023:

- **Public notice and consultation through the Environmental Registry:** Ontario ministries used the Environmental Registry to consult the public about over 1,350 proposals for acts, policies, regulations and instruments that could have a significant effect on the environment (for details about the numbers and types of notices posted on the Environmental Registry in 2022/23, see **Appendix 7**). Members of the public submitted over 117,000 comments on proposals for the ministries to consider.
- **Applications for review and investigation:** Members of the public submitted three new applications for investigation to ask certain ministries to investigate alleged contraventions of environmental laws, and ministries concluded two of those, as well as two previously submitted applications. No new applications for review were submitted, and ministries did not conclude any reviews undertaken in previous years. (Details about the use of application rights in 2022/23, as well as summaries of all concluded applications, are found in **Appendices 8** and **9**.)

Our findings on the ministries’ handling of applications are detailed in **Section 9**.)

- **Appeals:** Members of the public filed six applications for leave to appeal (that is, permission to challenge) five Environment Ministry decisions to issue certain instruments. The Ontario Land Tribunal granted leave to two applicants for the same decision. It dismissed three applications without granting leave, finding in each case that the applicants had failed to satisfy the EBR Act leave to appeal test. The Tribunal refused to accept the sixth application because it was not filed by the statutory 15-day deadline. (See **Appendix 10** for further details about the use of appeal rights, as well as court actions and whistleblower protection in 2022/23.)

3.0 Audit Objective and Scope

Our audit objective was to assess whether the *Environmental Bill of Rights, 1993* (EBR Act) operated effectively during the 2022/23 reporting year (April 1, 2022, to March 31, 2023), including whether the ministries prescribed under the EBR Act:

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

The EBR Act requires us to report annually on the operation of the Act. This includes reporting on Ontarians exercising their rights (for example, using the Environmental Registry of Ontario and submitting applications for review and investigation) and prescribed ministries implementing the EBR Act.

For the EBR Act to be effective, ministries must conduct their work with the Act’s purposes in mind. To meet our legislated reporting requirement, our audit assessed not only whether prescribed ministries complied with the minimum legal requirements of the EBR Act, but also whether the ministries contributed to

the effective operation of the Act by performing their duties, including exercising their discretion, in a way that was consistent with the Act's purposes.

In planning for our work, we identified the audit criteria (see **Appendix 2**) we would use to address our audit objective. These criteria were established based on a review of applicable legislation, policies and procedures, internal and external studies, and best practices. Senior management reviewed and agreed with the suitability of our objectives and associated criteria.

As an annual audit, our work followed up on many recommendations in our past reports related to compliance with and implementation of the EBR Act. We also followed up on recommendations made in our 2019, 2020 and 2021 reports that did not directly relate to compliance with and implementation of the EBR Act, to determine whether they were put into practice.

We conducted our audit between January 2023 and August 2023. We obtained written representation from ministries' senior management that, effective November 21, 2023, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusion of this report.

We conducted our audit work at our office in Toronto. Our work involved meetings, discussions and correspondence with staff at the Environment Ministry, including the Environmental Bill of Rights Office within the Environment Ministry, as well as staff at other prescribed ministries. During our audit, we assessed relevant information, including but not limited to:

- the public's and prescribed ministries' use of the EBR Act's tools, including use and operation of the Environmental Registry of Ontario (Registry);
- prescribed ministries' policies and procedures for complying with the EBR Act;
- documentation related to the coverage of the EBR Act under the Act's two regulations;
- documents and other information about environmentally significant proposals and

decisions that came to our attention for which ministries did not give appropriate notice on the Registry;

- all notices for policies, acts, regulations and a sample of notices for instruments, as well as all voluntary proposal and decision notices, bulletins, exception notices and appeal notices, posted on the Registry in 2022/23;
- ministries' documentation (where it existed) of how they considered their Statements of Environmental Values and public comments when making decisions about a sample of proposals for policies, acts, regulations and instruments;
- documentation related to applications for review and applications for investigation that were ongoing, or that ministries concluded (either denied or completed) in 2022/23, including materials submitted by the applicants, ministries' documentation related to their handling of and decisions on the applications, and other research as necessary;
- measures taken by the Environment Ministry to provide educational programs and general information about the EBR Act to the public, and to operate the Registry; and
- actions taken by the prescribed ministries in response to recommendations made in our 2019, 2020 and 2021 reports on the operation of the EBR Act.

We conducted our work and reported on the results of our examination in accordance with the applicable Canadian Standards on Assurance Engagements—Direct Engagements issued by the Auditing and Assurance Standards Board of the Chartered Professional Accountants of Canada. This included obtaining a reasonable level of assurance.

The Office of the Auditor General of Ontario applies the Canadian Standard on Quality Management and, as a result, maintains a comprehensive quality control system that includes documented policies and procedures with respect to compliance with rules

of professional conduct, professional standards and applicable legal and regulatory requirements.

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

4.0 No Meaningful Consultation on the Government's Proposals Intended to Increase Housing Supply

On October 25, 2022, the Ontario government released its third Housing Supply Action Plan (Housing Supply Action Plan 3.0), along with a sweeping series of changes to policies, acts and regulations to support its goal of increasing housing supply by 1.5 million new units by 2031. Forty-eight initiatives across multiple ministries were proposed to remove barriers, streamline approvals and unlock more lands for housing. Four ministries—Municipal Affairs, Natural Resources, Environment and the Ministry of Citizenship and Multiculturalism—collectively posted 14 proposal notices on the Environmental Registry of Ontario (Registry) for consultation related to these initiatives (see **Figure 4**). The legislative proposals were made through Bill 23, the *More Homes Built Faster Act, 2022*, which was introduced on October 25 and passed on November 28, 2022. (A timeline of actions is found in **Appendix 11**.)

Ten days after posting the 14 housing-related proposals, on November 4, 2022, the Municipal Affairs Ministry posted four more notices proposing changes to the Greenbelt (**Figure 5**). The Greenbelt is an area of about 2 million acres in southern Ontario that is protected from urban development. It includes the Niagara Escarpment, the Oak Ridges Moraine,

productive agricultural land, and natural features such as wetlands, forests, valleylands and wildlife habitat. The Greenbelt proposal notices included proposals to remove or re-designate 15 protected sites, including the Duffins Rouge Agricultural Preserve in Pickering as well as land within the Oak Ridges Moraine, to facilitate 50,000 houses to be built on the lands, and to add 13 urban river valley areas and a portion of the Paris Galt Moraine to the Greenbelt. The Greenbelt changes were adopted on December 14, 2022. In September 2023, the government announced it would reverse the changes it made to the Greenbelt 10 months earlier. (For more on the Greenbelt decisions, see our August 2023 *Special Report on Changes to the Greenbelt*.)

Although ministries posted a total of 18 proposal notices on the Environmental Registry related to the government's Housing Supply Action Plan 3.0 and Greenbelt changes, we found that the ministries did not meaningfully consult the public on these proposals. In particular, we found that:

- the ministries did not give the public complete or accurate information about individual proposals or about the combined effect of all the proposals (**Section 4.1**);
- the ministries did not give the public enough time to comment on the proposals (**Section 4.2**);
- the ministries did not meaningfully consider thousands of comments submitted by the public when they made their decisions on these proposals (**Section 4.3**); and
- the Natural Resources Ministry did not consult the public at all about the repeal of the *Duffins Rouge Agricultural Preserve Act, 2005* (**Section 4.4**).

Overall, we found that the government's approach to consultation on the housing and Greenbelt proposals, led by the Municipal Affairs Ministry, undermined Ontarians' ability to give informed feedback and to have that feedback meaningfully considered when ministries made their decisions. This approach goes against the EBR Act and its purposes.

Figure 4: Proposals in Support of the Housing Supply Action Plan 3.0 Posted on the Environmental Registry of Ontario on October 25, 2022

Prepared by the Office of the Auditor General of Ontario

| Ministry | Proposal | Environmental Registry Notice | Comment Period |
|---|--|-------------------------------|----------------|
| Legislative Proposals (in Bill 23, the <i>More Homes Built Faster Act</i>, 2022) | | | |
| Municipal Affairs | Amendments to the <i>Planning Act</i> , the <i>Development Charges Act, 1997</i> and the <i>City of Toronto Act, 2006</i> | 019-6172 019-6163 | 30 days* |
| Natural Resources | Amendments to the <i>Conservation Authorities Act</i> (and related regulations) | 019-6141 | 30 days* |
| Environment | New act – the <i>Supporting Growth and Housing in York and Durham Regions Act, 2022</i> | 019-6192 | 30 days* |
| Multiculturalism ¹ | Amendments to the <i>Ontario Heritage Act</i> | 019-6196 | 30 days* |
| Regulation Proposals | | | |
| Natural Resources | Changes to the regulation of development under the <i>Conservation Authorities Act</i> | 019-2927 | 66 days |
| Municipal Affairs | Proposed amendments to <i>Planning Act</i> regulation to improve clarity and consistency of inclusionary zoning rules | 019-6173 | 45 days |
| Municipal Affairs | Proposed changes to <i>Planning Act</i> regulation to support additional residential units | 019-6197 | 45 days |
| Policy Proposals | | | |
| Natural Resources | Amendments to the Ontario Wetland Evaluation System Manual (which determines what wetlands are considered to be provincially significant and protected from development under the Provincial Policy Statement) | 019-6160 | 30 days |
| Natural Resources | Review of Natural Heritage Policies (which are implemented through the <i>Planning Act</i> and the Provincial Policy Statement) | 019-6161 | 66 days |
| Municipal Affairs | Revocation of the Central Pickering Development Plan (which regulated development and protected agricultural and natural heritage lands in a part of Durham Region that included the Duffins Rouge Agricultural Preserve, which was also protected by the Greenbelt Plan at the time of this proposal) | 019-6174 | 30 days |
| Municipal Affairs | Review of the Provincial Policy Statement and A Place to Grow: Growth Plan for the Greater Golden Horseshoe | 019-6177 | 66 days |
| Municipal Affairs | Proposed changes to sewage systems and energy efficiency for the next edition of Ontario's Building Code | 019-6211 | 45 days |
| Municipal Affairs | Proposed revocation of the Parkway Belt West Plan | 019-6167 | 66 days |

* Subsequently extended to 45 days.

1. The Ministry of Citizenship and Multiculturalism is not a prescribed ministry under the *Environmental Bill of Rights, 1993*. The Ministry posted this proposal notice on the Environmental Registry of Ontario voluntarily.

Figure 5: Proposals for Changes to the Greenbelt Posted by the Municipal Affairs Ministry on the Environmental Registry of Ontario on November 4, 2022

Prepared by the Office of the Auditor General of Ontario

| Proposal | Environmental Registry Notice | Comment Period |
|--|-------------------------------|----------------|
| Amendments to the Greenbelt Plan | 019-6216 | 30 days |
| Amendments to the Greenbelt Boundary Regulation | 019-6217 | 30 days |
| Re-designation of land under the Oak Ridges Moraine Conservation Plan | 019-6218 | 30 days |
| Revocation of 2003 Minister's Zoning Order O. Reg. 154/03 (that restricted land use in the Duffins Rouge Agricultural Preserve to agricultural purposes) | 019-6238 | 30 days |

4.1 Ministries Did Not Give the Public Complete and Accurate Information about Housing and Greenbelt Proposals

The purpose of posting proposals on the Environmental Registry is to give Ontarians notice of, and sufficient information about, what a prescribed ministry is proposing to do. The notice should enable the public to:

- understand the rationale, substance and implications of what the ministry plans to do; and
- give informed comments for the ministry to consider when making a decision about the proposal.

However, we found that the housing and Greenbelt notices did not give Ontarians complete or accurate information about what the ministries were proposing, or the implications of the proposals.

4.1.1 Ministries Did Not Explain the Relationship Between, or the Combined Effect of, the Proposals

All of the housing-related Environmental Registry notices posted by the four ministries on October 25, 2022, contained identical introductory language about the government's housing goal and stated that the proposed changes supported that goal. None of the individual proposal notices explained the relationships between the proposals or identified the environmental

impacts that might result from carrying out the proposals, either individually or collectively, or how ministries would manage those impacts.

While the Municipal Affairs Ministry posted a bulletin (a voluntary notice for informational purposes) that listed all of the proposal notices related to the Housing Supply Action Plan, the bulletin did not give any further information about the relationship between the proposals or any anticipated impacts from the proposals considered together.

Similarly, the Greenbelt-related notices each included links to the other related proposals, but none directly explained the overall purpose of the changes, the planning controls that would apply once the Greenbelt protections were removed or the impacts of all of the changes together. Notably, the largest area removed from the Greenbelt was the Duffins Rouge Agricultural Preserve, a 4,700-acre area in Pickering, of which 76% was actively used for agriculture and 56% was designated as part of the Greenbelt's natural heritage system. These lands included wetlands, woodlands and habitat for species at risk (according to Parks Canada, 22 at-risk species have been observed within one kilometre of the Preserve). A 2003 Minister's Zoning Order had restricted land use in the Preserve to agricultural and conservation purposes, to help permanently protect the Preserve from development. However, the Registry notice that proposed revoking this Minister's Zoning Order did not explain that the revocation would remove protections from the Preserve or even refer to the Preserve by name.

4.1.2 Ministries Did Not Explain Potential Environmental Consequences of Proposals

For Ontarians to meaningfully comment on an environmentally significant proposal, they need sufficient information about:

- what a ministry is proposing;
- whether the proposal will benefit or harm the environment;
- what kinds of impacts are expected; and
- how the ministry would manage any negative impacts.

We found, however, that the housing and Greenbelt proposal notices did not give information about the potential environmental impacts (including benefits and risks) of the proposals. In particular, the ministries failed to identify the potential environmental risks or explain how they would manage negative impacts. We have detailed two examples below.

The Supporting Growth and Housing in York and Durham Regions Act, 2022

The *Supporting Growth and Housing in York and Durham Regions Act, 2022*, which was passed on November 28, 2022, prohibits York Region from building its preferred wastewater treatment project: a new water reclamation plant in the Lake Simcoe watershed (the Lake Simcoe option). Instead, the Act requires York and Durham Regions to expand the existing sewer system to collect and move sewage from communities in upper York Region to the existing Duffin Creek Water Pollution Control Plant in Durham Region for treatment and discharge into Lake Ontario (the Lake Ontario solution). We found that, in its proposal notice for this new law, the Environment Ministry did not give sufficient information to allow for meaningful public participation.

According to the Ministry, the proposed Lake Ontario solution would meet the timing needs for projected growth and “cut the project’s greenhouse gas emissions in half compared to the alternative Lake Simcoe option, and prevent additional phosphorus loads to Lake Simcoe while ensuring phosphorus discharges to Lake Ontario would be well within

protective limits.” However, in the proposal notice, the Ministry did not explain the basis for this conclusion or what measures would be required to keep discharges to Lake Ontario within protective limits. The Ministry did not give any information on the environmental risks to Lake Ontario, such as potential accumulation of excessive nutrients in the lake, which can harm organisms, reduce available oxygen and lead to a decline in certain species.

The proposal also did not explain the difference in the level of treatment between the two options. The Lake Ontario solution would require effluent to undergo a lower level of treatment (secondary treatment) before discharge to Lake Ontario, while the Lake Simcoe option would use a higher level of treatment (tertiary treatment). The Town of Ajax has stated that the lack of tertiary treatment is already negatively impacting water quality within the nearshore environment of Lake Ontario.

Also, stakeholders had previously raised concerns about constructing sewage infrastructure through the protected Oak Ridges Moraine and potential impacts to the moraine’s ecosystem. However, the Ministry’s proposal notice did not explain that the Lake Ontario solution would require constructing new infrastructure to move sewage through the moraine. The Ministry also did not address the potential ecosystem impacts of increasing the quantity of water moving between the Lake Ontario and Lake Simcoe watersheds.

Changes to the Ontario Wetland Evaluation System

On October 25, 2022, the Natural Resources Ministry proposed changes to the Ontario Wetland Evaluation System (OWES) through changes to the OWES Manual. The Manual sets out a method for evaluating wetlands, based on their ecological and societal functions, and establishing their boundaries. The evaluation assigns the wetland a score, which determines whether it will be identified as provincially significant and thereby protected from development in accordance with the Provincial Policy Statement issued under the *Planning Act*. In December 2022, the Ministry changed the OWES Manual to:

- remove consideration of wetland complexes, which can reduce the total size of the area evaluated, and therefore the potential points scored, for an individual wetland. (A wetland complex is a group of usually small wetland units that are functionally linked to one another and located within 750 metres of at least one other wetland unit in the complex);
- remove two categories that gave points to wetlands for providing habitat to endangered or threatened species for reproduction, migration, feeding or hibernation;
- apply the new criteria to re-evaluations of wetlands and wetland complexes already identified as provincially significant; and
- remove Ministry oversight of evaluations and approval of wetland status.

The Ministry's proposal notice understated the impacts of these changes. The Ministry stated that the impacts on business would be "neutral to positive" because the changes would offer greater certainty in how provincially significant wetlands are identified and streamline development decisions. The Ministry did not identify the potential environmental risks of changing the evaluation system, such as the potential loss of wetlands and the resulting impacts that may arise from wetland loss (such as reduced water filtration, loss of wildlife habitat and increased risk of flooding, with potential impacts on property and public safety).

The 23 conservation authorities and 35 municipalities that submitted comments on the proposal did not support the changes and, contrary to the Ministry's description of the impacts, many anticipated that significant negative impacts would result. These stakeholders have projected that the majority—in some areas, up to 98%—of the protected wetlands in southern Ontario would be at risk of losing protection from development as a result of the changes. They predicted that loss of protection would likely lead to additional costs to human health and safety, property and infrastructure, and increased loss of species-at-risk habitat. They also expressed concern that removing

the requirement for Ministry review and approval of all wetland evaluations would lead to inconsistent outcomes where evaluators interpret similar circumstances differently.

Internal Ministry documents acknowledged that, even under the existing policy framework, Ontario has continued to lose wetlands to accommodate land uses such as development and that changing the evaluation criteria to prohibit consideration of species-at-risk habitat and wetland complexes, and applying the new criteria to the re-evaluation of wetlands, may increase the number of re-evaluations of already protected wetlands and the potential for "different evaluation outcomes."

4.1.3 Municipal Affairs Ministry Gave Inaccurate and Incomplete Information in Proposal Notices Affecting the Greenbelt

As outlined in our *Special Report on Changes to the Greenbelt*, the Municipal Affairs Ministry included some inaccurate and incomplete information in the Greenbelt proposal notices posted on the Environmental Registry. For example:

- The Ministry listed five criteria in the Greenbelt notices that it said staff applied when selecting sites for removal from the Greenbelt. However, we found that Ministry staff did not assess the sites against two of those five criteria.
- In the proposal notice for revoking the Central Pickering Development Plan, originally posted on October 25, 2022, the Ministry stated that once this plan was revoked, the Duffins Rouge Agricultural Preserve would continue to be protected under both the Greenbelt Plan and the 2003 Minister's Zoning Order. However, at the time the Ministry posted that notice, it was preparing to remove both of those protections from the Preserve. Ten days later, the Ministry updated the notice and removed the promise of continued protection for the Preserve. The Ministry included a statement in the notice that the update was "due to proposed amendments

to the Greenbelt Plan,” but it did not add any information about the potential environmental impacts of this change, nor did it give more time for comment on the revised proposal.

Overall, none of the Greenbelt-related notices stated that the Greenbelt removals could be expected to have any environmental, agricultural or social impacts, or any negative economic impacts. The Ministry told the public that the regulatory impacts of the proposals would be “positive,” despite the Ministry’s awareness of the potential for significant negative impacts if the goal of the changes—housing development in protected agricultural and natural heritage systems—is realized. The Ministry did not, for example, identify that 13 of the 15 sites proposed to be removed or re-designated contained lands that were designated in whole or in part as “Specialty Crop” or “Natural Heritage System” areas, and that removing them could impact wetlands, species at risk and flooding. For more details about the environmental and agricultural risks associated with the changes, see **Section 4.7** in our *Special Report on Changes to the Greenbelt*.

4.2 Timing of the Consultations Undermined Meaningful Public Participation

4.2.1 Starting Consultations the Day after Municipal Elections Hindered Municipalities from Giving Feedback on Decisions that Directly Affected Them

The housing-related decisions made in November and December 2022 significantly affect Ontario municipalities. For example, the amendments to the *Planning Act* and *Development Charges Act, 1997* affect municipalities’ ability to recover infrastructure costs and acquire parkland by reducing or eliminating development charges, community benefit charges and parkland requirements for certain housing developments. The Association of Municipalities of Ontario estimated that the changes would reduce municipal resources available to service new development by \$5.1 billion over nine years. Other changes to the *Planning Act*, the

Conservation Authorities Act and the Ontario Wetland Evaluation System download new responsibilities onto local municipalities, which many municipalities have stated would require additional staff and resources to fulfill, and may increase future liabilities due to negative effects on local ecosystems.

Although these proposals significantly affected municipalities across the province, we found that the Municipal Affairs Ministry did not consult with municipalities about the housing proposals before posting them on the Environmental Registry for public consultation. Notably, the notices were posted on October 25, 2022—just one day after municipal elections were held across the province. The 30-day comment period was scheduled to end on November 24, 2022, but new municipal councils were not even sworn in until late November or early December, so many municipalities could not effectively participate in the consultations before decisions were made. On October 27, the Ontario Big City Mayors (mayors of Ontario cities with populations of 100,000 or more) told the Municipal Affairs Ministry that, because of the timing of the public consultation on the proposals, “it is impossible for most councils to be fully engaged in the legislative process for Bill 23, or even approve a council position in time to submit comments to the registries.”

The Ontario Big City Mayors, the Association of Municipalities of Ontario and several municipalities, including Toronto, Mississauga, Markham, York Region and Waterloo, asked the Ministry to allow more time to comment, and for the Ministry to consider the comments submitted, before passing the bill. Similarly, conservation authorities and municipalities asked the Natural Resources Ministry to reconvene the Conservation Authorities Working Group, which had reviewed previous regulation proposals, to allow for more in-depth analysis and discussion before moving forward with changes to the *Conservation Authorities Act* and regulations and changes to the Ontario Wetland Evaluation System.

While the ministries did extend the comment period for the five Bill 23 notices for 15 days on November 23 and 24 (see **Section 4.2.3**), the bill had already been referred for third reading, so there was no practical

opportunity to amend it before it was put to a vote. Bill 23 was enacted on November 28, 2022, meaning that the proposal for the bill was implemented well before the extended comment period ended.

4.2.2 Ministries Did Not Follow the EBR Act or Their Own Best Practices to Offer Longer Consultation

Under the EBR Act, a ministry must consider allowing more than 30 days to permit more informed public consultation on proposals, based on:

- the complexity of the matters;
- the level of public interest;
- the amount of time needed to make informed comment;
- any private or public interests affected by the timing; and
- any other relevant factors.

We found that all of the housing and Greenbelt proposals (**Figures 4 and 5**) met the above considerations: they were complex, had a high level of public interest, consisted of many interrelated proposals announced together and had potential for significant, province-wide environmental implications. Based on these factors, the Municipal Affairs, Natural Resources and Environment Ministries should have allowed more than 30 days for public comments.

In addition to the direction in the EBR Act itself, internal ministry guidance considers it a best practice to have a longer comment period in these circumstances. For example:

- the Municipal Affairs Ministry's guidance directs staff to provide longer than 30 days for "more complex and significant proposals." In addition, the Ministry had developed internal advice for the Minister's Office in 2020 that public consultation for Greenbelt amendments should include "posting on the Environmental Registry for a minimum of 45 days."
- the Natural Resources Ministry's guidance to staff indicates it is a best practice to give a longer comment period "if the proposal is significant, complex or contentious... [because such a

proposal] may attract a high level of public interest and may require more time for the public to make informed comments."

As discussed in our *Special Report on Changes to the Greenbelt*, the 30-day Greenbelt consultation period was much shorter than all earlier Greenbelt consultations. For example, amendments to the Greenbelt made in 2017 went through multi-year phased consultations, with three separate consultations through the Environmental Registry for 90 days, 174 days and 47 days, respectively. For those consultations, the Municipal Affairs Ministry allowed enough time for commenters to understand, analyze and respond to the proposals and for the Ministry to review and consider the comments before making a decision. By contrast, the fall 2022 removals of land from the Greenbelt had not been subject to any prior public notice or consultation, and the proposed removals were open for comment for only 30 days.

In another instance, the Natural Resources Ministry posted two notices on October 25, 2022, for proposals affecting the *Conservation Authorities Act* and regulations. One notice, for Bill 23 and related regulations, had a 30-day comment period; the other, for regulations affecting the development permit process, had a 66-day comment period. This latter notice attached information about "a tool proposed to be included in the *Conservation Authorities Act* through Bill 23" (in other words, the subject of the first notice) and requested "feedback on how [the tool] may be used in the future." The two different comment periods confused the process for the public to meaningfully comment on Bill 23. It would have been more effective for the Ministry to give the same 66-day consultation period for both notices.

4.2.3 Continuing the Comment Periods for Bill 23 after Third Reading Was Confusing and Effectively Meaningless

Debate on third reading of Bill 23 began in the Legislature on November 23, 2022, the day before the comment periods were scheduled to close. On that day and the next (see **Appendix 11** for the timeline), even

though there was no longer any practical opportunity to amend the bill, four ministries updated the five Bill 23 Environmental Registry notices to extend the comment period to December 9. We learned that the four ministries were directed to do this by the Municipal Affairs Minister's office, at the request of the Premier. Just days later, on November 28, the Legislative Assembly passed Bill 23 on third reading.

We have previously raised concerns about ministries inviting comments from the public after a decision has already been made. In our 2022 report, we found that the Municipal Affairs Ministry took a similar consultation approach on Bill 109, the *More Homes for Everyone Act, 2022*, which made environmentally significant amendments to the *Planning Act* to support the government's second Housing Supply Action Plan. In that case, the Ministry posted a proposal notice on the Environmental Registry for a 30-day public consultation period when the bill was introduced, but the bill received third reading two weeks before the end of the comment period. The Ministry kept the proposal notice open for comment for a further 10 days. In our 2022 report, we concluded that, "by continuing to solicit public comment after [third reading], the Ministry gave the false impression that there was still an opportunity to inform decision-making around Bill 109."

Under the EBR Act, a bill is considered implemented when it receives third reading, and the responsible ministry must give notice of the decision to implement the proposal "as soon as reasonably possible" after it is implemented. However, the notices for Bill 23 were not closed after third reading; they stayed open for public comment for another 11 days. Three of the four ministries updated their notices on November 28, November 29 and December 2 to say that Bill 23 had been enacted but that consultations would remain open so that public feedback "can help inform the implementation of this proposal as well as future initiatives." The Natural Resources Ministry did not update its notice for the *Conservation Authorities Act* amendments to include this wording but did keep consultation open until December 9.

The Registry notices had sought comments only on the provisions of Bill 23 itself, and did not propose

any options for implementation or identify any future initiatives the ministries were seeking comments on. With no amended or new proposals, it was not clear what the public was supposed to comment on after Bill 23 was enacted. Adding that wording to the notices and keeping them open for comments after November 28 was confusing and, like we found in our 2022 report regarding Bill 109, gave the false impression that there was still an opportunity to inform decision-making around Bill 23, even though at that point it was impossible for the comments to do so.

4.3 Ministries Did Not Consider All Submitted Comments When Making Decisions on Bill 23 and the Greenbelt Changes, Contrary to the EBR Act

The EBR Act requires a minister to take every reasonable step to ensure that all comments received on a proposal posted on the Environmental Registry are considered when a ministry makes its decision. Public feedback about environmentally significant proposals can inform—and improve—the ministry's decision-making, if the ministry meaningfully considers the comments before it makes a decision.

However, many comments on the Bill 23 proposals were received by the Municipal Affairs, Natural Resources and Environment Ministries after the bill received third reading on November 28, 2022. For example, 53% of the comments received by the Municipal Affairs Ministry through the Environmental Registry on the *Planning Act* and *Development Charges Act, 1997* proposal were submitted after November 28. For the *Conservation Authorities Act* amendments, more than 700 unique comments—that is, comments other than from a letter-writing campaign—were submitted to the Natural Resources Ministry, and one-third of them were submitted after November 28. Because the bill had already passed, these comments were not considered by the ministries when making the final decisions on Bill 23. Nevertheless, the Municipal Affairs Ministry stated in its decision notices for the two Bill 23 proposals that "consideration was given to

all comments received” in developing and finalizing the legislation. (As of September 2023, the Natural Resources and Environment Ministries have not yet posted their decision notices.)

The Municipal Affairs Ministry also did not take the time to fully consider all of the more than 35,000 comments submitted on the Greenbelt proposals—among the highest submitted on any proposal notice posted on the Environmental Registry in the past four years—when it made decisions on amending the Greenbelt boundary. As we noted in our *Special Report on Changes to the Greenbelt*, Ministry staff had cautioned political decision-makers even before posting the proposal notices on the Environmental Registry that they anticipated broad criticism on the consultation approach and the limited paths for engagement, and expected that many stakeholders, including municipalities, would not be able to provide comprehensive responses in a 30-day window. Staff warned that the proposed timelines to finalize changes to the Greenbelt were “very aggressive” and would not allow for substantive revisions to the proposal. Staff further noted that any analysis of comments by staff would be high level and likely only include a cursory review of submissions by impacted property owners, rather than a submission-by-submission review of the comments received. After the consultation period closed, Ministry staff could not complete a comprehensive analysis of all the comments in time to fully inform the decision, instead providing decision-makers with only a high-level summary of selected comments. The Ministry noted that this constraint was due to the limited time it had to review the large number of comments received. Feedback received on the proposals was overwhelmingly negative, but no changes were made to any of the Greenbelt proposals as a result of the consultation.

4.4 Natural Resources Ministry Did Not Consult the People of Ontario about Repealing Protection of the Duffins Rouge Agricultural Preserve

In addition to the other housing and Greenbelt initiatives, the Municipal Affairs Minister introduced Bill 39,

the *Better Municipal Governance Act, 2022*, on November 16, 2022. Bill 39 included, among other things, a new act that would repeal the *Duffins Rouge Agricultural Preserve Act, 2005*, which was the responsibility of the Natural Resources Ministry. Instead of consulting Ontarians about the repeal, the Natural Resources Ministry posted an exception notice (which explains that the Ministry has determined that public consultation on a matter is not needed) on the Environmental Registry on November 22, 2022. We found, however, that the circumstances of the proposed repeal did not meet the conditions set out in the EBR Act that allow a decision to be excepted from the Act’s public consultation requirements. Because the Ministry used an exception notice to inform Ontarians of the repeal, the public did not have an opportunity to comment on the proposed repeal or to have those comments considered before the *Duffins Rouge Agricultural Preserve Act, 2005* was repealed.

The *Duffins Rouge Agricultural Preserve Act, 2005* was one of several provincial-level controls intended to permanently protect the Preserve for agriculture. The Act had secured agricultural and conservation easements on lands in the Preserve, ensuring that, even if the lands were sold, they would continue to be used only for agriculture or natural heritage purposes. Repeal of the *Duffins Rouge Agricultural Preserve Act, 2005*, and the simultaneous removal of other controls that were in place to protect the Preserve—the 2003 Minister’s Zoning Order, the Central Pickering Development Plan and inclusion of the Preserve in the Greenbelt—were intended to facilitate development of Preserve lands.

On repealing the *Duffins Rouge Agricultural Preserve Act, 2005*, the Ministry relied on clause 30(1)(a) of the EBR Act for authority to post an exception notice rather than consult the public. This section allows a ministry to make a decision without first consulting the public when the environmentally significant aspects of the proposal “have already been considered in a process of public consultation” that was substantially equivalent to the process required under the EBR Act. In this case, the Natural Resources Ministry stated that the environmentally significant aspects of the repeal

proposal had been considered by the Municipal Affairs Ministry in its Greenbelt consultations.

However, at the time the Ministry posted the exception notice, the Greenbelt consultations were still open for public comment, so the environmentally significant aspects of the repeal proposal could not have “already been considered” when the Ministry decided not to consult the public about the repeal. Also, the Municipal Affairs Ministry had not included any specific reference to the *Duffins Rouge Agricultural Preserve Act, 2005*, the easements or the proposal to repeal the Act in its Greenbelt notices, so members of the public who reviewed those notices could not have known from their content that the Natural Resources Ministry intended to repeal the *Duffins Rouge Agricultural Preserve Act, 2005*.

Finally, as discussed in **Section 4.3**, following the end of the Greenbelt consultation, the Municipal Affairs Ministry did not meaningfully consider all of the comments it received when making its decisions. Because of its reliance on the Greenbelt consultation as the basis of its exception notice, the Natural Resources Ministry did not consider any of the comments submitted on the Greenbelt proposals before the enactment of Bill 39 on December 8, 2022.

RECOMMENDATION 1

So that Ontarians can meaningfully participate in environmentally significant decision-making, and so that the Ministry of Municipal Affairs and Housing, the Ministry of Natural Resources and Forestry, and the Ministry of the Environment, Conservation and Parks can benefit from informed feedback, we recommend that these ministries:

- when posting interrelated proposals on the Environmental Registry of Ontario (Registry), describe the relationship of the proposals, the role that each proposal plays in achieving any common objective, and the implications and expected environmental impacts of the proposals, individually and collectively, as well as add links to all related proposal notices in each notice;

- offer a comment period that allows enough time for Ontarians to review and understand the impacts of the proposals; and
- if notices are staggered or are revised after posting, transparently update the earlier proposal notices to include complete and accurate information and links.

MUNICIPAL AFFAIRS MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry will continue to review its training and procedures to highlight:

- when posting interrelated proposals on the Registry, to describe the relationship of the proposals, the role that each proposal plays in achieving any common objective, and the implications and expected environmental impacts of the proposals, individually and collectively, as well as add links to all related proposal notices in each notice;
- to offer a comment period that allows enough time for Ontarians to review and understand the impacts of the proposals; and
- if notices are staggered or are revised after posting, to transparently update the earlier proposal notices to include complete and accurate information and links.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry acknowledges this recommendation and is committed to its legal obligations under the *Environmental Bill of Rights, 1993* (EBR Act). The Ministry’s internal guidance and training provides direction on the content expected in Registry notices, including the best practice of linking related notices, describing the potential environmental effects, describing details of decisions, providing links to key supporting information in each notice where available, and direction on the number of days for public consultation. Additional

internal guidance is being developed to further support this recommendation.

ENVIRONMENT MINISTRY RESPONSE

The Ministry is committed to the effective operation of the EBR Act, including implementation of the provisions of the EBR Act related to public participation on proposals that could have a significant effect on the environment, and will consider ways to improve processes, training and guidance for staff in the three areas identified in this recommendation.

5.0 Energy Ministry Again Did Not Consult the Public about Decisions on Two Environmentally Significant Policies

The EBR Act sets out rules for how a ministry must consult the public about its environmentally significant proposals. In particular, the Act requires a minister to do everything in their power to consult Ontarians for a minimum of 30 days using the Environmental Registry before implementing an environmentally significant proposal. Further, the minister must take every reasonable step to ensure the public's comments are considered before making a decision.

This year, we found that the Energy Ministry again failed to consult the public before making two environmentally significant decisions, as set out below. In 2022, following a similar failure to consult, we recommended that the Ministry create and follow processes to determine whether a Ministry proposal to make or amend a policy must be posted for public consultation on the Environmental Registry. The Ministry agreed to review and update its existing documentation, training and processes to guide staff in making this determination. Since then, the Ministry finalized a worksheet to be used by staff to determine whether a specific proposal should be posted on the Environmental Registry.

The Ministry also updated its training materials and, in April 2023, it gave training to staff on the EBR Act. These changes could help ensure that, going forward, the Ministry is more consistent in its approach to public consultation on environmentally significant policy proposals.

5.1 Public Not Consulted on Powering Ontario's Growth – Ontario's Plan for a Clean Energy Future

In July 2023, the Energy Ministry released a new energy plan called Powering Ontario's Growth – Ontario's Plan for a Clean Energy Future (Clean Energy Plan) without first consulting Ontarians about the plan in accordance with the EBR Act. This document lays out the Province's plan to ensure enough clean power will be available to meet Ontario's future electricity needs. Among other initiatives, the Clean Energy Plan identifies the actions the Province is taking, including:

- advancing three small modular reactors at the Darlington nuclear site;
- supporting a new large-scale nuclear station at the Bruce nuclear site;
- working with the Independent Electricity System Operator (IESO) to assess potential long-duration energy storage projects;
- asking the IESO to plan for procurement of clean electricity resources, including wind, solar, hydroelectric, batteries and biogas; and
- developing new transmission lines in northern and eastern Ontario.

We asked the Ministry whether it had considered posting the new Clean Energy Plan on the Environmental Registry for public comment. The Ministry told us that its previous consultation on the IESO's *Pathways to Decarbonization* (Pathways) report served as consultation for the plan. The Ministry had attached the Clean Energy Plan, which it developed shortly after consultation on the Pathways report closed, to the decision notice for the Pathways posting, rather than as a new, separate proposal notice.

However, neither the proposal notice on the Pathways report, nor the Pathways report itself, outlined an energy plan or identified specific projects for public comment. Instead, the proposal notice stated that the Ministry was seeking feedback on the findings of the Pathways report and, in particular, the IESO's "no regret" recommendations (that is, actions the Province could pursue to keep its options open while being flexible enough to take advantage of emerging opportunities). The Pathways report itself had modelled two possible scenarios to decarbonize Ontario's electricity sector by 2035 or 2050 and recommended several "no regret" actions. One IESO recommendation was for the Ministry to begin work on planning and siting new resources such as energy storage, nuclear generation and waterpower facilities. The Registry notice asked what the public's expectations were for early engagement and consultations for the planning and siting of new facilities.

Further, it was not obvious from the proposal notice on the Pathways report that the Ministry intended not to consult further on a draft plan. The Registry notice was in a format typically seen as the first phase of a staged consultation process, asking general questions on the assumptions and scenarios in the Pathways report without proposing anything specific. The notice stated that initiatives such as the Pathways report would "help to inform the government's next steps towards its longer-term vision for an integrated energy system."

Simply attaching the Clean Energy Plan to the decision notice for the Pathways report consultation did not fulfill the Ministry's EBR Act requirement to consult the public on an environmentally significant policy. The Ministry could not show us any evidence that it had assessed its obligations under the EBR Act with respect to the Clean Energy Plan. Given the nature of the findings in the IESO Pathways report and the type of feedback sought in that Registry notice, we concluded that the Energy Ministry did not give Ontarians notice of, or get feedback on, the proposed elements of the Clean Energy Plan before the Ministry released it.

5.2 Public Not Consulted on Changes to Conservation and Demand Management Framework

In September 2022, following Cabinet approval, the Energy Ministry directed the IESO to make changes to the Ministry's Conservation and Demand Management (CDM) Framework, an environmentally significant policy. The Ministry did not consult the public about these changes; instead, it posted a bulletin on the Environmental Registry to inform the public of the changes only after it had made a decision.

The CDM Framework outlines electricity conservation programs and the programs' targets, eligibility and funding. CDM programs are intended to spur conservation and reduce both overall and peak demand for electricity, which can reduce greenhouse gas-emitting natural gas generation. As such, the design of the CDM Framework can have significant environmental impacts because it can influence how successful those programs are, both in the short and long term. According to the IESO, CDM is an increasingly valuable part of the electricity system "as a low-cost, non-emitting resource that can respond to changing system needs, and support broader economic development and decarbonization objectives."

The 2022 changes to the 2021–2024 CDM Framework added two new programs and expanded some existing ones. These changes are expected to result in peak demand savings of 285 megawatts, overall electricity savings of 1.1 terawatt hours and a reduction of 3 million tonnes of greenhouse gas emissions.

In the past, the Ministry has consulted on the CDM Framework through the Environmental Registry, though it has not done so consistently. For example, the Ministry consulted on the CDM Framework in 2014 and 2020, but not on changes to it in 2019 or 2022 (see **Figure 6**). We asked the Ministry why it did not consult the public on the 2022 amendments. The Ministry explained that it did not consider public consultation necessary because:

- the program changes did not represent a change in Ministry policy;

Figure 6: Timeline of Ministry of Energy Consultations on the Conservation and Demand Management (CDM) Framework (2014–2022)

Prepared by the Office of the Auditor General of Ontario

| Year | Ministry Action on CDM Framework | Environmental Registry Consultation |
|------|--|-------------------------------------|
| 2014 | Proposes Conservation First Framework (2015–2020) | Ministry consults the public |
| 2019 | Directs IESO to discontinue the 2015–2020 framework and replace it with an interim framework for 2019–2020 | No public consultation |
| 2020 | Proposes 2021–2024 CDM Framework | Ministry consults the public |
| 2022 | Amends the 2021–2024 CDM Framework | No public consultation |

- IESO had hosted a public forum for stakeholder feedback on its mid-term review of the 2021–2024 CDM Framework and used this feedback to inform the 2022 CDM program changes;
- it could not post “because action was taken in an expedited manner to authorize implementation of CDM program enhancements”; and
- the changes are “not expected to create any negative environmental impacts,” but rather are expected to “have a positive impact on the environment through reduced emissions of greenhouse gases and pollutants.”

These reasons are not consistent with the EBR Act because:

- While the amendments did not represent a change in the Ministry’s general policy on conservation, they did modify the CDM program. The EBR Act requires that environmentally significant amendments to policies—including programs—be posted for consultation.
- For the purposes of the EBR Act, the IESO’s stakeholder engagement is not equivalent to public consultation by the Ministry through the Environmental Registry.
- The wish to speed up a decision is not a permitted exception to consultation under the EBR Act, unless the delay involved in consulting would risk harming a person’s health or safety, the environment or property.
- The public has a right under the EBR Act to be consulted on all of the Ministry’s environmentally significant proposals, whether the

anticipated environmental impacts are positive or negative.

The Ministry’s response clearly acknowledged the environmental significance of the changes to the CDM framework, yet the Ministry did not consult Ontarians before making them.

RECOMMENDATION 2

So that Ontarians are consulted in accordance with the *Environmental Bill of Rights, 1993* (EBR Act) about environmentally significant proposals, we recommend that the Ministry of Energy establish and follow processes for consistent and early evaluation of proposals to determine their environmental significance and whether the proposals are required to be posted for public consultation on the Environmental Registry of Ontario in accordance with the EBR Act.

ENERGY MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation and is committed to maintaining compliance with the EBR Act. The Ministry’s consultation on *Pathways to Decarbonization* provided important public input that shaped the government’s response, *Powering Ontario’s Growth*, and the Ministry looks forward to continued engagement as it works toward integrated energy planning. In October 2023, the Ministry finalized and implemented an Environmental Registry of Ontario posting guide to be used by all staff. This

guide is in addition to the Ministry's existing regular EBR Act training and guidance. Taken together, these tools will help to ensure staff understand the Ministry's obligations under the EBR Act.

6.0 Ministries Did Not Give the Public Complete and Accurate Information in Environmental Registry Notices

For Ontarians to meaningfully comment on an environmentally significant proposal, they need sufficient information about what the ministry is proposing. Generally, a proposal notice should include:

- a clear and accurate explanation of what the ministry is proposing;
- an explanation of potential environmental implications of the proposal (including expected benefits, risks and impacts) and how the ministry intends to manage any negative impacts (or an explanation if the ministry does not expect any environmental impacts);
- information about any related proposals or decisions necessary to fully understand the proposal;
- the geographic location where the proposal would apply (if applicable); and
- links or attachments to key supporting information, such as draft policies, regulations or legislation, discussion papers, studies, maps or any other documentation necessary for a reader to understand the proposal.

Likewise, a decision notice should include:

- a clear and accurate description of the ministry's decision;
- an explanation of the effect, if any, of public participation on the ministry's decision-making; and
- links or attachments to any key supporting documents, such as the final policy, regulation, legislation, issued instrument, or other documentation necessary for the reader to understand the decision.

In each of our previous reports on the operation of the EBR Act, we found that some prescribed ministries did not give sufficient information in proposal and decision notices to allow for meaningful public participation or transparency and accountability. In 2023, we assessed a sample of proposal and decision notices posted by prescribed ministries and again found cases in which Ontarians were not given sufficient information. In particular, the Environment, Natural Resources, Municipal Affairs, Mining, Energy and Transportation Ministries posted notices on the Environmental Registry that were not sufficiently informative. The Environment and Municipal Affairs Ministries also included inaccurate information in some notices. For details, see individual ministry report cards in **Appendix 6**. We have shared our key findings related to Bill 23 in **Section 4.2** and have highlighted some additional findings below.

6.1 Mining Ministry's Proposal Notices Did Not Explain How Proposed Changes to the *Mining Act* Would Have No Anticipated Environmental Impacts

In March 2023, the Mining Ministry posted a series of five related proposal notices on amendments to the *Mining Act* and its regulations. In the three proposal notices for amendments to the Act, the Ministry told the public that the proposed changes would not have any impacts on the environment, without further explanation. In our Office's opinion, this lack of explanation in the proposal notices left a gap in information for members of the public, limiting their ability to provide more fully informed comments on the proposals.

The proposals were aimed at reducing administrative burden for both industry and Ministry staff related to mine development. Together, following the establishment of future regulatory requirements, the proposed changes would:

- end the Ministry's technical review of mine closure plans and replace it with upfront certification, by a "qualified person" employed by

- a mining company, that a closure plan complies with the regulatory requirements;
- change the definition of “rehabilitate” to give greater flexibility to industry by allowing alternate rehabilitation measures and post-closure land uses;
- change the standard for remediating mine waste or mine tailings sites, from ensuring the condition of the land is “improved” to ensuring the condition is “comparable to or better than” it was before the recovery;
- allow the Minister to issue a “conditional filing order” that allows for deferral of at least one of the required parts of the closure plan until a time specified in the order;
- allow for phased financial assurance; and
- shift the responsibilities of the Director of Mine Rehabilitation to the Minister.

The proposal notices stated that “there are no anticipated environmental impacts as a result of these proposed changes to the *Mining Act*,” but did not explain the Ministry’s rationale for why this would be the case.

Some stakeholders raised concerns that aspects of the proposals would weaken environmental safeguards for mines. For example, closure plans play a key role in managing environmental risks from mines. Mining companies must prepare closure plans before advanced exploration and mine development and operation take place. They document how the companies will manage and rehabilitate a site during active operations and after operations close down, and the costs of doing so. Properly developed closure plans can help ensure that mine sites will be safely closed and can minimize the risk of serious environmental impacts (such as from uncontrolled mine waste contaminating soil or water). To develop a closure plan, mining companies must prepare, among other things, technical studies that can take years to complete (due to the need to gather baseline data over multiple seasons). Replacing ministry review of closure plans with a qualified person employed by the mining company raises concerns about environmental impacts. For example, in 2016, British Columbia’s Auditor General found that

overreliance on qualified professionals was a significant factor in the Mount Polley mine disaster, which resulted in the release of tens of millions of cubic metres of wastewater and mine tailings into nearby waterbodies.

A regulation proposal notice that also discussed eliminating the Ministry’s technical review acknowledged that there are “risks associated with the elimination of a ministry technical review.” That notice described how it proposed to manage those risks through requirements for qualified persons under the *Mining Act*. While the Ministry told us that it concluded that the new framework will ensure that there is no change in environmental protection standards, it did not explain in all of the relevant proposal notices its analysis of the potential environmental impacts (risks and/or benefits) related to eliminating the Ministry technical review and replacing it with upfront certification by a qualified person.

During the course of our audit, the Ministry provided our Office with explanations for its conclusion that there would be no environmental impacts from various proposed changes to the *Mining Act*. The Ministry also noted that corresponding regulatory amendments are required before most of the changes would come into force, and that the Ministry would assess any potential environmental impacts as those regulations are being prepared. However, the Ministry did not include these explanations in the March 2023 proposal notices for the proposed *Mining Act* changes.

6.2 Energy Ministry Did Not Explain Environmental Implications of a Clean Energy Credits Registry

In August 2022, the Energy Ministry posted a notice on the Environmental Registry proposing legislative and regulatory amendments under the *Electricity Act*, 1998 to create a voluntary Clean Energy Credits Registry. This program allows large electricity consumers in Ontario to purchase a credit from the Independent Electricity System Operator (IESO) or a generator, including Ontario Power Generation, for each megawatt of electricity that they purchase from the provincial grid.

These credits will be registered in a database and can then be used as proof of a company's claim that it used 100% "clean" (that is, non-greenhouse gas emitting) electricity in its operations.

We found that the notice did not give specific information about many elements of the proposal. For example, the Minister had directed the IESO in January 2022 to research and report back with recommendations on the design of a registry, based on specified design principles given by the Ministry. The proposal notice repeated the Ministry's design principles, but did not refer to the IESO's feedback and recommendations. The notice also stated that the Ministry was considering certain changes, but that they did "not represent an exhaustive listing of the various elements of the proposal and other items may be added and these items may be amended as the Government deems necessary." The notice also identified elements of what the proposed registry "could require" but did not clearly state what the Ministry proposed it would require.

Moreover, the Ministry did not explain the potential environmental impacts of the proposal. The notice stated that a Clean Energy Credits Registry in Ontario could help businesses meet their sustainability goals, help ratepayers and support investment in new clean or renewable generation. However, as the registry was designed to be voluntary and to sell credits for electricity only from existing generation sources, and not from new clean generation, it was not clear how the proposal could have any impact on reducing electricity use or greenhouse gas emissions, or supporting investment in new non-emitting generation.

Many companies have made commitments to reduce their greenhouse gas emissions or become carbon neutral by a certain date. These companies can now use these credits to support their claims that they are making progress toward their corporate commitments, without having to make any operational changes. Without the credits, a company must report that it used the average amount of clean electricity in Ontario's grid. In 2018, the Ontario grid was about 93% clean (non-greenhouse gas emitting), but this dropped to 91% in 2021 and about 90% in 2022. The electricity sector's portion of clean energy is forecast to

further decline over the next decade, with greenhouse gases predicted to increase by 12 megatonnes due to the retirement of nuclear facilities and the addition of new natural gas generation.

Without providing more details in the notice, Ontarians may not have had enough information about the proposal and its implications to understand its impacts and provide informed comment. When the Ministry put forward specific legislative amendments in November 2022 and filed regulatory amendments in March 2023, it did not offer further public consultation on those proposals.

6.3 Natural Resources Ministry Did Not Explain Environmental Implications of Proposed Changes to Conservation Authorities Act and Regulations

On October 25, 2022, as part of the series of proposals for changes made by Bill 23, the *More Homes Built Faster Act, 2022*, the Natural Resources Ministry posted a notice on the Environmental Registry for proposed changes to the *Conservation Authorities Act* and regulations. The changes would allow certain developments authorized under the *Planning Act* to proceed without a conservation authority permit that addresses natural hazards, such as flooding. The changes limited the factors that conservation authorities may consider in their decisions on development permits to control natural hazards or protect public safety, which would limit their ability to minimize other negative impacts, such as habitat degradation or pollution. They also prohibited conservation authorities from reviewing or commenting on proposals or applications under certain legislation, including advising municipalities on development applications under the *Planning Act*, unless related to natural hazards or drinking-water source protection.

The Ministry's notice for these changes stated that the Ministry did not expect the changes would result in new costs for businesses or an increase in administrative burden to municipalities or conservation authorities. However, the notice did not describe any

potential environmental impacts of the changes, stating only that “anticipated environmental consequences... are neutral” because conservation authorities will continue to address natural hazard impacts of development. Commenters identified concerns about significant negative environmental impacts if the Ministry implements the proposal, and internal ministry documents showed that staff knew there was a risk of negative environmental impacts. However, the Ministry did not inform the public about any potential impacts or about the staff assessment.

6.4 Environment Ministry Mischaracterized Public Support for Regulatory Changes under the *Endangered Species Act*, 2007

In April 2022, the Environment Ministry posted a decision notice for regulatory amendments under the *Endangered Species Act*, 2007. The amendments would allow conditional exemptions from protections under the Act to also apply to newly listed species on the Species at Risk in Ontario List (SARO list), with some exclusions. The SARO list (in O. Reg. 230/08 under the Act) identifies the species that receive protection and recovery activities under the Act.

The decision notice stated that “there was general support for the extension of the regulation as proposed because engaging in an activity in accordance with a conditional exemption improves business certainty and efficiency, while continuing to provide protections for species and their habitat.” It also noted that “some commenters expressed concerns about exemptions for species on the SARO list [and] asserted that protection and recovery must be prioritized over cost savings to individuals, businesses and government.”

Despite the Ministry’s description of “general support” for the proposal, the Ministry’s internal analysis of the comments on the proposal showed that, of the 995 comments received, only two (0.2%) were in support of the proposal. When we asked the Ministry about this discrepancy, the Ministry told us that it did not intend for the wording in the decision notice to be a statement on quantitative support for the extension

of the regulation, but rather that support for the extension of exemptions was general (that is, not specific to the application of certain conditional exemptions to specific species).

The Ministry’s statement that there was “general support” for the extension with “some commenters” expressing concerns was misleading and goes against the EBR Act’s purposes of transparency and accountability.

6.5 Environment Ministry Again Chose Not to Correct Inaccurate Information in a Proposal Notice

In our 2022 report (**Section 5.1.3**), we found that the Environment Ministry had not properly consulted on a proposal to do two things:

- exempt projects related to provincial parks and conservation reserves from the *Environmental Assessment Act*; and
- replace the existing project evaluation process in the Class Environmental Assessment with an environmental impact assessment policy under the *Provincial Parks and Conservation Reserves Act*, 2006.

The Ministry had consulted on this proposal through the Environmental Registry in 2020, but, in 2021, Ministry staff realized that the notice did not accurately describe the proposal. Specifically, the notice did not explain that:

- the proposed exemption would not only apply to projects *in* provincial parks and conservation reserves, but would also apply to projects *related to* provincial parks and conservation reserves; and
- the new environmental impact assessment policy would not apply to all projects that had been covered by the Class Environmental Assessment.

In January 2022, the Ministry sent a letter of clarification and further opportunity to comment only to the government’s review team, Indigenous communities and organizations, and commenters who had provided contact details. It did not send the clarification or offer further opportunity to comment to everyone who had commented through the Registry, nor did it

revise the Registry notice to inform and further consult the public. We recommended that the Ministry repost the proposal notice on the Environmental Registry to enable full public comment on the complete and correct information. The Ministry told us that “the Ministry will consider your comments if the Ministry intends to pursue this proposal further, including your recommendation to update the Environmental Registry posting to provide more information and clarify the proposal.”

The Environment Ministry subsequently made changes to its proposed environmental impact assessment policy, and in July 2023, it posted a new proposal notice on the Registry for consultation on the changed policy. At that time, the Ministry updated the 2020 proposal notice to inform the public that it had revised the proposed environmental impact assessment policy and to direct readers to the new proposal notice. However, while updating the original notice, the Ministry did not correct the issues that it previously identified, nor did it offer any other opportunity for the public to comment on the correct details of the proposal to exempt parks projects from the *Environmental Assessment Act*.

The Ministry told us that it intentionally left the original notice unchanged, aside from the update banner and a link to the new proposal notice, “to allow the new proposal posting to speak for itself” and to allow people to “see what was originally proposed via the original posting, and compare it to the new proposal posting about the updated proposed policy.” The Ministry’s approach meant that the original proposal notice—which was still an active notice on the Registry—risked confusing members of the public, as it continued to contain inaccurate information. The new proposal notice clarifies the application of the proposed policy and consults Ontarians on the revised proposal, but the Ministry had still not informed the public that the exemption would apply not only to projects in provincial parks and conservation reserves, but also to projects *related* to them.

The Ministry told us that it did not intend to consult further on the exemption component of the original proposal. In September 2023, the Ministry posted a decision notice for the original proposal and corrected

the notice title at that time to indicate that the exemption applies to projects related to provincial parks and conservation reserves.

Ontarians were not meaningfully consulted on key aspects of this proposal. We continue to believe that, to give a meaningful opportunity to comment, in accordance with the EBR Act, the Ministry should have promptly corrected the errors in the original 2020 notice and provided an opportunity to comment on all of the correct and complete details of the proposal.

6.6 Mining, Environment and Natural Resources Ministries Continued to Post Instrument Notices Lacking Important Information

In our review of a sample of instrument notices on the Environmental Registry, we found that, consistent with our findings in 2022, three ministries—Mining, Environment and Natural Resources—again posted some proposal and decision notices that lacked important information.

6.6.1 Information Lacking in Instrument Proposal Notices

The Mining Ministry directs staff to include key supporting documentation about exploration permits, including Activities Information Sheets and Provincial Standards for Early Exploration, that would help readers understand the proposals. However, of the Ministry’s 10 instrument proposal notices that we reviewed, six (60%) were missing this information. One of the six proposal notices also did not include any information about the potential environmental impacts of the proposed exploration activities—such as descriptions of the “potential disturbance” from activities such as mechanized drilling, surface stripping and line cutting—which can enable more informed comments on the proposal.

Of the Environment Ministry’s 22 instrument proposal notices that we reviewed, we found that six (27%) did not describe the potential environmental impacts of the proposals, nor did they explain how the

proposed permits and approvals would manage the environmental risks. For example, the Ministry did not give any details about the terms of three environmental compliance approvals for air emissions that would address those emissions. As we have found in past years, the Ministry also did not always describe the category of proposed permits to take water, which would show the level of environmental risk associated with the proposed water taking.

6.6.2 Information Lacking in Instrument Decision Notices

Nine (90%) of the 10 Mining Ministry instrument decision notices that we reviewed did not adequately explain the effects of public participation on the decision, with seven of those cases simply stating that “comments received were considered in the decision.” In two cases, the Ministry stated that the comments received resulted in additional terms and conditions being placed on the permit, but did not give any details about the comments or the added terms and conditions.

We also found that the Environment and Natural Resources Ministries again did not include links to or copies of all types of final instruments in their decision notices. We have identified it as a best practice to include copies of issued instruments in decision notices. Doing so provides greater transparency and accountability for decision-making about permits and approvals that, in effect, allow certain parties to pollute or otherwise harm the environment. Further, for instruments that are subject to the EBR Act’s leave to appeal provisions, failure to include a copy of the instrument in a decision notice may hinder Ontarians’ ability to exercise their right to seek leave to appeal the decision, given the 15-day deadline to seek leave once the decision notice is posted.

Of an initial sample of 21 Environment Ministry notices that we reviewed, we found that five (24%) did not include copies of or links to the issued instruments, including three permits to take water that are subject to leave to appeal rights and two permits under

the *Endangered Species Act, 2007*. On review of another five randomly selected permits issued under the *Endangered Species Act, 2007*, we found that none included copies of the permits.

The Natural Resources Ministry did not include links to any of the instruments issued in decision notices that we reviewed, including licences under the *Aggregates Resources Act* and the *Crown Forest Sustainability Act, 1994*. Three of the aggregate licence decisions that we reviewed were subject to leave to appeal.

We found the same issue in each of our past reports and recommended that the Ministries include links to the final issued approvals for all instrument decision notices. We found this year that the Environment Ministry started to direct users to Access Environment to obtain copies of some permits to take water (decisions which are subject to leave to appeal rights). However, it did not do so in every case, requiring some users to contact the Ministry by email for a copy of the permit.

RECOMMENDATION 3

So that Ontarians can effectively participate in environmentally significant decision-making, and so that ministries’ environmentally significant decisions are transparent and accountable, we recommend that the Ministry of the Environment, Conservation and Parks, the Ministry of Natural Resources and Forestry, the Ministry of Municipal Affairs and Housing, the Ministry of Mines, the Ministry of Energy and the Ministry of Transportation:

- in every proposal notice that they post on the Environmental Registry of Ontario (Registry), include a complete and accurate description of the proposal details and a description of the potential environmental impacts of the proposal; and
- in every decision notice that they post on the Registry, include a complete and accurate description of the decision details and the effects of public participation on the ministry’s

decision-making, and include links to key supporting documentation.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry appreciates this recommendation and is committed to its legal obligations under the EBR Act. The Ministry's internal guidance and training provides direction to staff on the content of Registry notices, including the best practices of describing the details of each proposal and the potential environmental effects, describing details of decisions, and providing links to all key supporting information in each notice where available. Additional internal guidance is being developed to further support this recommendation.

The Ministry recently (2022) launched a new training module on the "Environmental Registry of Ontario and Public Participation in Government Decision-Making." The Ministry will continue to improve the Natural Resources Information Portal (NRIP) to modernize service delivery, help reduce burden on industry, create internal efficiencies and enable the public to view approvals on a variety of Ministry instruments. In the interim, Ministry decision notices will continue to identify a Ministry contact person who can provide copies of any supporting documentation upon request by the public if they are not available via a link.

MUNICIPAL AFFAIRS MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry will continue to review its training and procedures to highlight:

- in every proposal notice that it posts on the Registry, to include a complete and accurate description of the proposal details and a description of the potential environmental impacts of the proposal; and
- in every decision notice that it posts on the Registry, to include a complete and accurate description of the decision details and the

effects of public participation on the ministry's decision-making and include links to key supporting documentation.

MINING MINISTRY RESPONSE

The Ministry is committed to meeting its obligations under the EBR Act. The Ministry will review and consider the recommendation and provide consistency alongside other prescribed ministries when viable. This includes reviewing and improving processes, training and guidance for staff when preparing proposal and decision notices so that they include, as appropriate, complete and accurate descriptions of proposal and/or decision details, potential environmental impacts, the effects of public participation on the Ministry's decision-making, and links to key supporting documentation.

ENERGY MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation and is committed to maintaining compliance with the EBR Act. The Ministry is committed to ensuring that proposal and decision notices posted on the Registry are informative so the public can effectively participate in consultations on environmentally significant decisions. The Ministry will continue to highlight in ongoing staff guidance and training the inclusion in Registry notices of proposal and/or decision details, potential environmental impacts, the effects of public participation on the Ministry's decision-making, and links to key supporting documentation.

TRANSPORTATION MINISTRY RESPONSE

The Ministry agrees with the recommendation to include a description of the potential environmental impacts of the proposal in every proposal notice that the Ministry posts on the Registry. The Ministry will continue to address the recommendation with updates to internal guidance to staff and updates to internal Registry templates. Internal EBR Act guidance and training materials, including the draft

EBR Act LearnON Module, have been updated to emphasize the need to describe the decision details, potential environmental impacts, and effects of public participation in all Registry notices.

ENVIRONMENT MINISTRY RESPONSE

The Ministry is committed to the effective operation of the *Environmental Bill of Rights*, 1993 (EBR Act), including implementation of the provisions of the Act related to public participation on proposals that could have a significant effect on the environment. The Ministry will consider ways to improve processes, training and guidance for staff when preparing proposal and decision notices for publication on the Registry.

AUDITOR GENERAL RESPONSE

The Environment Ministry did not agree to commit to specifically include in its Registry notices a complete and accurate description of its proposals and their potential environmental impacts, or to include a complete and accurate description of the decision details, the effects of public participation on decision-making, and links to key supporting documentation, as recommended by our Office. The Ministry noted that these elements go beyond the requirements of the EBR Act.

We are disappointed that the Environment Ministry, as the ministry responsible for administering the EBR Act, and the ministry that has primary responsibility for protecting the environment in Ontario, did not agree to commit to taking reasonable actions that would better enable the people of Ontario to participate meaningfully in government decision-making that affects the environment.

We continue to believe that it is reasonable—and consistent with the purposes of the EBR Act—to expect a ministry, when giving notice of its environmentally significant proposals and decisions to the public, to give complete and accurate information about the proposals, their potential environmental impacts, and the decisions.

6.7 Municipal Affairs Ministry Did Not Accurately Inform Ontarians of Their Appeal Rights for Certain *Planning Act* Instruments

In November 2022, the *Planning Act* was amended by Bill 23, the *More Homes Built Faster Act*, 2022, to change who can appeal a consent decision (that is, the approval of the severance of land into smaller parcels). Previously, “any person or public body” had the right to appeal these decisions. The amendments made by Bill 23 allow only the applicant, the Minister, a public body or a “specified person” (which is primarily limited to utility providers) to appeal.

Consents that are approved by the Minister are classified instruments under the EBR Act’s regulation, so the Ministry must notify and consult the public about proposals for consents through the Environmental Registry. Even though members of the public no longer have a direct right to appeal decisions on these classified instruments under the *Planning Act*, residents of Ontario continue to have the right under the EBR Act to apply to the Ontario Land Tribunal for leave to appeal, but must do so within 15 days after notice of the decision is posted on the Registry.

We found that the Municipal Affairs Ministry has not updated its decision notices to reflect these changes to the public’s appeal rights. Between November 28, 2022 (when the changes came into effect) and March 31, 2023, the Ministry posted 16 decision notices on the Environmental Registry containing appeal information that was out of date. As of September 2023, the Ministry was still posting notices with the outdated appeal information. The notices continue to state that individuals have the right to appeal under the *Planning Act* within 20 days of the decision, even though this is no longer the case. While the notices state that there is an “additional leave to appeal right” under the EBR Act, they do not explain that right any further. The notices also do not explain that seeking leave to appeal under the EBR Act is now the only way for most members of the public to challenge such decisions, and that they must apply for leave within 15 days.

RECOMMENDATION 4

So that Ontarians are informed about their appeal rights under the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that the Ministry of Municipal Affairs and Housing update its decision notice template for approvals under section 53 of the *Planning Act* of consents in areas where there is no official plan in place, to provide a complete and accurate description of the right to apply for leave to appeal the decision under the EBR Act, as well as the appeal rights available under the *Planning Act*.

MUNICIPAL AFFAIRS MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry will work with the Ministry of the Environment, Conservation and Parks to update the Environmental Registry of Ontario decision notice template for the *Planning Act* instrument “Approval for a consent (subject to conditions) in an area where there is no official plan in place” to reflect current *Planning Act* appeal provisions and to more clearly address EBR Act leave to appeal provisions.

7.0 Natural Resources, Municipal Affairs and Mining Ministries Did Not Always Meaningfully Consider Their Statements of Environmental Values

In 2023, we found that the Natural Resources and Municipal Affairs Ministries had not considered their Statements of Environmental Values (Statements) in a meaningful way when making certain decisions about wetlands, housing and the Greenbelt, as set out below. We also found that the Mining Ministry did not meaningfully consider its Statement when making decisions about amendments to the *Mining Act*; see the Mining Ministry’s report card in **Appendix 6**.

7.1 Natural Resources Ministry Did Not Describe Environmental Risks in Its Consideration of a Decision Affecting Wetlands

When it made changes to Ontario’s wetlands evaluation process, the Natural Resources Ministry’s consideration of its Statement of Environmental Values failed to acknowledge that the changes could create any environmental risks.

As outlined in **Section 4.1.2**, the Natural Resources Ministry proposed changes to the Ontario Wetland Evaluation System (OWES) Manual in support of the Housing Supply Action Plan 3.0. The changes, approved in December 2022, removed criteria for evaluating wetland complexes and species at risk, allowed these new criteria to be applied in re-evaluations of wetlands and wetland complexes already identified as provincially significant, and removed oversight by the Ministry.

The Ministry received almost 15,000 comments on the proposed changes. Affected stakeholders, including every conservation authority that commented, challenged the scientific basis for the changes and predicted that significant negative impacts would result from putting the changes into effect, including a dramatic loss of protected wetlands.

Despite these warnings, the Ministry’s Statement consideration document stated that, in considering the changes to OWES, it “considered environmental, social and economic values, impacts and risk to ensure that wetlands could still contribute to the province’s biodiversity,” but that the changes to OWES “are not expected to have irreversible consequences as they are mainly administrative and will allow for social and economic opportunities” and that “no adverse effects are anticipated.”

The document also stated that “Ministry staff generally rely on the best available information that is available to them when making policy recommendations regarding natural resources.” However, the Ministry could not show us any analysis it had completed or relied on of the potential environmental risks of the changes.

7.2 Municipal Affairs Ministry Did Not Meaningfully Consider Its Statement When Making Housing and Greenbelt Decisions

The Municipal Affairs Ministry proposed changes to three acts in Bill 23, the *More Homes Built Faster Act, 2022*, and posted two proposal notices on the Environmental Registry for public consultation on these changes. As discussed in **Section 4.0**, the bill received third reading on November 28, 2022. The Ministry provided us with documentation to show that it had considered how its Statement applied to this decision, but the documentation was dated two weeks after third reading—in other words, after it had made the decision.

The Ministry's documentation of its consideration of its Statement for the three Greenbelt notices (the Plan amendments, the boundary regulation amendment and the Oak Ridges Moraine re-designation) did not fully address all of the relevant principles set out in the Statement. For example, the documents did not acknowledge the potential for any negative environmental impacts or impacts on agriculture due to removals from Greenbelt protection, nor did they show that the Ministry tried to balance any competing principles. Under the principle of "Ensuring Well-Planned and Healthy Communities while Protecting Greenspace," the documents listed only positive outcomes, stating that the changes "help effectively direct growth through the removal of lands to support needed housing, while also increasing protected greenspace by adding more lands to the Greenbelt than are being removed." However, by using an overall quantitative increase in the Greenbelt area as a basis to suggest that there will be no negative impacts, the Ministry oversimplified the impacts. As shown in **Section 4.7** of our *Special Report on Changes to the Greenbelt*, the Ministry did not consider or clearly understand the environmental and agricultural risks of the Greenbelt removals.

By contrast, the Ministry's consideration of its Statement for revoking the Central Pickering Development Plan, prepared at the same time, more frankly

discussed the social and economic benefits of increasing housing supply in the Duffins Rouge Agricultural Preserve while acknowledging the potential environmental and agricultural impacts. It stated that revoking the Plan, together with removing Greenbelt policies and revoking the Minister's zoning order specific to the area, "may result in a net loss of high-quality agricultural land and/or rural/open space. The proposal may also increase flood risks and impact the quality of local drinking water and ecosystems." This shows a more meaningful consideration of the Ministry's Statement as part of its decision-making.

RECOMMENDATION 5

To be more transparent and accountable to Ontarians about their decisions that affect the environment, and so that their consideration of their Statement of Environmental Values (Statement) contributes to better environmental decision-making, we recommend that the Ministry of Natural Resources and Forestry, the Ministry of Municipal Affairs and Housing, and the Ministry of Mines, whenever making a decision that might significantly affect the environment:

- always consider their Statement in a deliberate manner that shows analysis and judgment in balancing the Statement's principles; and
- clearly document that consideration during the decision-making process.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry acknowledges this recommendation and is committed to its legal obligations under the *Environmental Bill of Rights, 1993* (EBR Act) and to considering its Statement of Environmental Values when making decisions. The Ministry's internal guidance and training provide direction to staff on the relevant details necessary in decision notices. The Ministry has recently (2022) launched new training modules on the "Statement of Environmental Values" and "Public Participation

in Government Decision-Making” as they relate to our responsibilities under the EBR Act.

MUNICIPAL AFFAIRS MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry will continue to review its training and procedures, so that when-ever making a decision that might significantly affect the environment, the Ministry will:

- always consider its Statement in a deliberate manner that shows analysis and judgment in balancing the Statement’s principles; and
- clearly document that consideration during the decision-making process.

MINING MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to ensuring Ontarians understand environmentally significant decisions made by the Ministry. The Ministry will review its processes, including guidance and training materials that provide direction to staff on the processes and procedures to comply with the EBR Act. This includes guidelines for completing decision notices, addressing public comments received, if applicable, considering Statements in a deliberate manner during the decision-making process, and clearly documenting that consideration.

8.0 Environmental Registry Was a More Reliable Source of Timely Information, with Some Exceptions

8.1 Ministries Kept Registry Notices More Up to Date, but Natural Resources Ministry Still Had 20 Outdated Notices

For the Environmental Registry to be an accurate and reliable source of information for Ontarians, proposal

notices posted there must be kept up to date. Since we became responsible in 2019 for reporting annually on the operation of the EBR Act, we have monitored “open” proposal notices on the Environmental Registry (that is, those for which a decision notice has not been posted). At the end of each reporting period, we identify any that were posted more than two years earlier and had not been updated in that time. When we began our reporting in 2019, we found 165 such outdated notices on the Registry. Since then, prescribed ministries have made significant improvements to bring and keep notices up to date.

As of March 31, 2023, there were 30 outdated proposal notices on the Environmental Registry. This is 135 (or 82%) fewer than we found in 2019 and 12 (29%) fewer than we found in 2022. Of the 30 outdated notices (see **Figure 7**):

- The Natural Resources Ministry was responsible for 20 outdated notices, with one notice dating as far back as 2004. The Ministry has an internal process for identifying outdated Registry notices, which the Ministry followed in 2022/23, resulting in a 49% improvement since 2022. However, 11% of the Ministry’s total proposal notices on the Environmental Registry were still open, without either a decision notice or an update to explain the status of the proposals.
- The Environment Ministry was responsible for six outdated notices. While this was less than 1% of the Ministry’s open proposal notices, it is an increase of five notices since 2022 and includes important proposals, such as the 2018 Made-in-Ontario Environment Plan (see **Section 13.1.2**) and updates to the Ministry’s Statement of Environmental Values.
- The Mining Ministry was responsible for three of the outdated notices.
- The Agriculture Ministry was responsible for the remaining one.

Also, we found two proposal notices that, while open for less than two years and so not formally “outdated,” the Environment and Natural Resources Ministries had made decisions on, but had not posted decision notices many months later:

Figure 7: Ministries with Proposal Notices on the Environmental Registry of Ontario for More Than Two Years without a Decision or Update, as of March 31, 2023

Source of data: Environmental Registry of Ontario

| Ministry | # of Notices |
|-------------------|--------------|
| Natural Resources | 20 |
| Environment | 6 |
| Mining | 3 |
| Agriculture | 1 |
| Total | 30 |

- The Natural Resources Ministry posted a proposal notice for legislative and regulatory proposals affecting conservation authorities to support the Housing Supply Action Plan 3.0 (Environmental Registry #019-6141) in October 2022. The legislative amendments in Bill 23 were made in November 2022 and the regulations were filed in December 2022. However, as of September 2023, the Ministry had not posted a decision notice to inform Ontarians of the outcome or to explain how it considered the public's comments in making the decision.
- The Environment Ministry posted a proposal notice for the *Supporting Growth and Housing in York and Durham Regions Act, 2022* in October 2022 (Environmental Registry #019-6192), also as part of Bill 23. The bill passed in November 2022, but as of September 2023 the Environment Ministry had not posted a decision notice to inform Ontarians of the decision or to explain how it considered the public's comments in making the decision.

We found this same issue of the Environment Ministry delaying giving notice of its decisions in 2022. Leaving proposal notices on the Registry long after the Ministry has decided on them, without informing the public, is not consistent with the EBR Act requirement to give notice of decisions as soon as reasonably possible, or with the transparency and accountability purposes of the EBR Act.

We continue to believe that ministries should keep their proposal notices up to date.

8.2 Natural Resources and Mining Ministries Were Slow to Tell Ontarians about Some Environmentally Significant Decisions

As noted in **Section 8.1**, timely public notice of decisions is important for transparency and to provide accountability for the outcome of a proposal. Further, delays in posting decision notices for instruments allow activities with potential environmental impacts to continue—sometimes for long periods of time—before the public becomes aware of the approval or can seek to appeal it.

Each year, we review a sample of policy, act, regulation, instrument and exception notices, to assess how promptly ministries gave notice of their decisions on the Environmental Registry. Of the sample of notices that we reviewed in 2022/2023, we found that ministries gave Ontarians prompt notice (that is, notice within two weeks of the decision being made) in 82% of decisions—an increase from 80% in 2021/2022.

We found that the Natural Resources Ministry was the slowest in giving notice of its decisions, with 33% of the notices that we reviewed posted more than two weeks after the Ministry made its decisions—an increase from 26% in 2021/22. For example, the Ministry took:

- 285 days to tell the public that it had filed a regulation to regulate compressed air energy storage in porous rock reservoirs;
- 279 days to give notice that it had removed conditions from a licence to operate a quarry, including a requirement to rehabilitate the site by a specified deadline; and
- 440 and 470 days, respectively, to give notice that it had issued licences to extract aggregate from pits in the Township of Southgate and the Town of the Blue Mountains.

In all cases, members of the public had submitted comments on the proposals and clearly had an interest in finding out what the Ministry decided.

The Mining Ministry was the second slowest ministry in giving notice, posting 20% of its decision notices that we reviewed more than two weeks after the Ministry made its decisions. This is an improvement since 2021/22, when we found that the Ministry was late to post 39% of the decision notices that we reviewed.

However, in one case this year, the Mining Ministry posted an exception notice that was over two years late. The Ministry posted the exception notice to inform Ontarians that the Minister had directed ministry employees and agents to rehabilitate a mine hazard, relying on the EBR Act emergency exception to avoid first consulting the public. The rehabilitation measures were completed in November 2020, but the Ministry did not inform the public of its decision to issue the directions until February 2023.

Even when a ministry relies on an exception to consulting the public before making a decision, the ministry is required by the EBR Act to give notice to the public as soon as reasonably possible after it makes the decision. The Ministry told us that the delay in giving notice was due to staffing issues.

RECOMMENDATION 6

To give Ontarians prompt notice of environmentally significant decisions, we recommend that the Ministry of Natural Resources and Forestry and the Ministry of Mines post all decision notices, including exception notices, on the Environmental Registry of Ontario (Registry) within two weeks after they make a decision.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry is committed to its legal obligations under the *Environmental Bill of Rights, 1993* (EBR Act), appreciates this recommendation and is also committed to posting decision notices as soon as possible. The Ministry's internal guidance and training provides direction to staff, including the best practice of posting decision notices within two

weeks of the decision being made. The Ministry has reduced its outdated proposal notices by 49% since 2022, and will continue to review proposal notices and post decisions as soon as possible after a decision has been made. Where decision-makers continue to consider a proposal, the Ministry will post an update which may include informing the public that no decision has been made at this time on the proposal. Any update posted after a comment period has concluded will include a summary of comments received on the proposal and an indication of proposed next steps.

MINING MINISTRY RESPONSE

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

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

9.0 Environment and Natural Resources Ministries Still Not Respecting Application Timelines

9.1 Environment and Natural Resources Ministries Again Failed to Meet Deadlines to Respond to EBR Act Applications

When a ministry receives an application for investigation from the public, the ministry's handling of the application must comply with all of the timelines set out in the EBR Act. In particular, the ministry must:

- acknowledge receipt of the application to the applicants within 20 days;

- let the applicants know within 60 days of receiving the application if the ministry will not undertake the investigation;
- for undertaken investigations, complete the investigation within 120 days (or update the applicants on the expected time frame for completion); and
- give applicants notice of a ministry's final decision within 30 days of completing an undertaken investigation.

As in 2022, we again found this year that the Environment Ministry missed the 60-day deadline to tell the applicants about its decision not to undertake an investigation. The Ministry took 177 days to inform the applicants that it would not undertake an investigation of an alleged contravention of the *Environmental Protection Act* resulting from the discharge of gasoline vapours from a gas station in London. As it had done in 2022, the Ministry contacted the applicants 60 days after it received the application to inform them that it needed more time to review the request, and said it would “get back to [them] shortly on whether it will investigate” the allegations. The Ministry did not get back to the applicants until 117 days later (for a total of 177 days), almost triple the length of the statutory deadline.

The Natural Resources Ministry also failed to meet EBR Act timelines again in 2023. In 2022, we found that the Natural Resources Ministry had failed to complete a review within a reasonable time, as required by the EBR Act. This year, like the Environment Ministry, the Natural Resources Ministry did not meet statutory deadlines to respond to an application for investigation. The application, submitted in March 2023, alleged contraventions of the *Fish and Wildlife Conservation Act, 1997* related to a coyote hunting competition. The Ministry did not inform the applicants within 60 days of receiving the application that it would not undertake the investigation. The Ministry also did not complete the investigation, nor give the applicants an estimate of the time needed to complete it, within 120 days. In July 2023—more than 120 days after it received the application—the Ministry told us that it

had not yet made a decision whether to undertake the investigation and confirmed that it had communicated nothing to the applicants. As of September 2023, the Ministry still had not given notice of its decision.

The EBR Act does not allow ministers to deviate from the timelines set out in the Act. Ministries are contravening the EBR Act's requirements when they fail to meet the timelines set out in the Act. Missing these timelines disrespects applicants' rights for timely resolution of their concerns, as well as risks the public losing confidence in EBR Act applications as a way to resolve concerns about alleged contraventions. Further, the Natural Resources Ministry's failure to inform the applicants of the status of their application led the applicants to reasonably, but mistakenly, believe that the Ministry had undertaken an investigation.

We continue to believe this is an important issue and that the ministries should adhere to the timelines set out in the EBR Act.

9.2 Environment Ministry Has Still Not Completed the Review of the EBR Act That It Agreed to Undertake in 2011

There has never been a comprehensive review of the EBR Act since it came into force in 1994. In December 2010, an application submitted under the EBR Act asked the Environment Ministry to review the EBR Act itself to address, through statutory and/or regulatory changes, “significant shortcomings and ‘challenges’ within the current EBR regime.” The applicants noted that the EBR Act was generally sound, but that several key changes were needed “so that the statute can better deliver on its promises of conserving/restoring environmental integrity, ensuring environmental sustainability, and protecting the public right to a healthful environment.”

In March 2011, the Ministry agreed to undertake a scoped review. However, it did little until 2016, when the Ministry undertook public consultation through the Environmental Registry on potential improvements to the Act. Although the public feedback identified issues,

the Ministry never completed the promised review or took any action as a result of that consultation.

When a ministry determines that the public interest warrants conducting a review that has been requested under the EBR Act, the Act requires that the ministry conduct the review “within a reasonable time.” We have repeatedly found in our past reports that the Environment Ministry has not completed its review of the EBR Act within a reasonable time.

In 2022, we recommended, among other things, that the Ministry complete the intended review of the EBR Act to identify and assess gaps and issues that hinder its effective operation, including several major issues that we had found in our annual audits. However, as of September 2023, the Ministry had not taken any new steps toward completing the review, and did not have a target date for completion. We continue to recommend that the Ministry complete the intended review of the EBR Act and give notice of the outcome of the review to the applicants as required under the Act.

10.0 Environment Ministry Still Not Fully Carrying Out Its Unique EBR Act Responsibilities

In addition to its role as administrator of the EBR Act and its regulations, the Environment Ministry has some unique responsibilities under the Act, including:

- providing educational programs about the Act to the public, and providing general information about the Act to members of the public who wish to participate in environmental decision-making;
- posting notices on the Environmental Registry to inform Ontarians about applications for leave to appeal and appeals of instruments prescribed under the EBR Act; and
- operating the Environmental Registry.

As in past years, this year we found that the Ministry is still not fully carrying out these unique responsibilities, either effectively or at all.

10.1 Environment Ministry Still Failing to Educate Ontarians about the EBR Act

Ontarians cannot exercise their EBR Act rights if they are not aware of them. For the last three years, our Office has engaged a polling firm to survey Ontario residents about their awareness of the EBR Act and their rights under it. Again this year, the survey found that Ontarians’ awareness is low—over half (55%) of those surveyed had never heard of the EBR Act.

The Environment Ministry became responsible in 2019 for providing educational programs about the EBR Act to the public. We have found that the Ministry has done little to fulfill this obligation since then. The Ministry drafted a communications plan about the EBR Act in 2020, but as of 2022 only the first phase of that plan was under way (a series of social media posts about the EBR Act). We found that the Ministry had not made it a priority to educate Ontarians about the EBR Act.

In 2021, we also found that the Ministry’s EBR Act website needed updates, and that the Ministry lacked processes for providing general information about the EBR Act to Ontarians who ask for information. In particular, the Ministry did not have processes for telephone inquiries about the EBR Act to be directed to the correct office in the Ministry, or for the staff answering those telephone lines to give helpful and accurate information about the EBR Act.

This year, we found that the Ministry had developed and put in place some new processes for logging, tracking and responding to inquiries from the public about the EBR Act. It also created new guidance for Service Ontario staff to respond to EBR Act-related inquiries. The Ministry also made some updates to information on its EBR Act website.

However, we found that, other than a series of social media posts about the EBR Act between October and December 2022 (identical to those the Ministry posted in 2021), the Ministry did not offer any educational programs about the EBR Act to the public in 2022/23, nor did it have any plans to do so. The Ministry told us

in 2022 that it needed to conduct research to assess awareness and understanding of the EBR Act, identify knowledge gaps and determine where to target education campaigns before it could roll out the rest of its communications plan (including developing ongoing social media content and other educational materials on the EBR Act). We recommended that the Ministry undertake that research and put its full communications plan into action, and the Ministry agreed. However, as of September 2023, the Ministry had not conducted that research or undertaken any further aspects of its communications plan.

We continue to believe that the Environment Ministry should prioritize providing educational programs to the public to raise awareness and understanding of the EBR Act and its rights, including undertaking any research necessary for it to do so effectively.

10.2 Ontarians Were Again Not Given Prompt Notice of Leave to Appeal Applications

When a person seeks leave to appeal (that is, applies for permission to challenge) a ministry's decision on certain types of instruments (such as a decision to issue a permit, approval or licence), the person must send their application to:

- the tribunal responsible for hearing the appeal;
- the ministry official who issued the instrument; and
- the company or individual to whom the instrument was issued.

The EBR Act also requires the person to give notice to the Environment Minister, which can be done by email or mail. The Ministry then must promptly post the notice on the Environmental Registry. This process, if followed, ensures that Ontarians know of the application and can take steps to participate in the Ontario Land Tribunal's proceedings if they wish to do so.

Once notice of a leave to appeal application is provided to the Environment Minister, the Minister's Office informs the Ministry's Environmental Bill of Rights Office, which is responsible for preparing and posting appeal notices on the Registry. When the Ministry's

Environmental Bill of Rights Office becomes aware of an application for leave or an appeal, its practice is to ask applicants for certain details about the application and then include that information in the leave to appeal notice it places on the Registry.

Based on past practice, we consider notice to have been given promptly when it is given within the later of five business days from the date the Ministry receives notification, or one business day of the close of the appeal period. In each of our past reports since 2019, we have found that the Ministry had not given prompt notice of all appeals and leave to appeal applications. Although the Ministry has made some improvements, we found again in 2022/23 that Ontarians did not receive prompt notice.

10.2.1 Environment Ministry Did Not Give Ontarians Notice of Two Leave to Appeal Applications until after the Tribunal Had Made Its Decision

Of the five leave to appeal notices that the Ministry needed to post on the Environmental Registry in 2022/23, it posted just one notice within five business days of receiving notice of the application. In two cases, the Ministry asked the applicants for more information about the application and then posted the leave to appeal notices within five business days of receiving the requested information. In the remaining two cases, the Ministry did not post the notices until after the Tribunal had already issued its decisions on whether to grant leave to appeal—too late for members of the public to seek to participate. The Ministry told us that applicants do not always give notice to the Minister, and so the Environmental Bill of Rights Office (which prepares and posts the notices) is not informed of the appeals in a timely way, even though others in the Ministry are aware of the leave applications and responding to them before the Tribunal.

This is a continuing issue. In 2021, we stated that, where the Ministry is aware of a leave application, regardless of how it became aware, it should make every reasonable effort to ensure that Ontarians are given timely notice. We recommended that the

Ministry create additional processes to identify all leave applications and to post notices promptly. We also recommended that, in cases when applicants do not give details, the Ministry post a notice promptly and update it when the Ministry receives more information. In response, the Ministry told us that it would look for ways to better identify applications so it can post notices promptly.

We found that the Ministry has taken some steps but has not fixed the issue. In particular, the Environmental Bill of Rights Office is not being promptly notified when other Ministry staff receive an application, and the Ministry is responding to it at the Tribunal. We continue to believe that the Ministry should create a process for finding all leave applications to enable its Environmental Bill of Rights Office to consistently post all notices promptly.

10.2.2 Ontarians Were Not Given Any Notice of an Appeal of a *Planning Act* Decision Posted on the Registry

In 2022/23, we learned that an applicant seeking consent to sever land under the *Planning Act* had filed an appeal of the Municipal Affairs Ministry's refusal to grant the consent in March 2022, during our prior reporting period. Consents to sever land are subject to the EBR Act. The Municipal Affairs Ministry posted a proposal notice on the Environmental Registry for the proposed severance and received two comments from the public. It then decided to refuse to grant the severance in February 2022.

The Environment Ministry did not receive notice of the appeal, so it did not post a notice of the appeal on the Registry. We found that the Notice of Decision that the Municipal Affairs Ministry gave to the applicant refusing to grant the severance did not direct the appellant to send its notice of appeal to the Environment Ministry. The Ministry included this direction in the decision notice on the Environmental Registry, but if the applicant did not view the Registry notice, they may not have known that the EBR Act requires them to notify the Environment Minister of their appeal. The Tribunal heard the appeal in January and February

2023 and issued its decision to dismiss the appeal in May 2023.

The Natural Resources Ministry, Mining Ministry and Technical Standards and Safety Authority all also administer instruments that are subject to the EBR Act, some of which are appealable. As noted in **Section 10.2.1**, in 2021 we recommended that the Environment Ministry create processes to identify all appeals of EBR Act instruments that are filed, including appeals of instruments issued under acts administered by other prescribed ministries, so that Ontarians receive timely notice of all appeals. We continue to recommend that the Environment Ministry create such a process, so that it promptly learns of appeals of instrument decisions under other acts and gives notice to Ontarians before the Tribunal hears the appeal and makes its decision.

10.3 Two Weaknesses Make the Environmental Registry Less Effective

As we found in 2021/22, the Environment Ministry maintained the Environmental Registry so that it generally worked well to enable Ontarians to find information about environmentally significant matters. This enabled the public to participate in ministries' environmentally significant decision-making.

We also found that the Ministry has made improvements to the internal Registry system, responding in some cases to recommendations that we made in 2021. In particular, the Ministry made improvements to better manage Registry access by internal users and completed a process for more promptly making needed updates to the Registry in response to changes to prescribed ministries.

However, through our audit work this year, we found two weaknesses, outlined below, that risk making the operation of the Registry less effective.

10.3.1 Notices Can Be Changed without Telling the Public

When the Environmental Registry was modernized in 2019, a new feature was added that allows ministries

to post updates to Registry notices. Updates appear as a banner at the top of the notice, and the date that the notice was last updated is recorded. Ministries use the update tool for a few purposes. For example, ministries have updated notices to inform the public that they have made a correction or addition to a notice, added a link or extended the comment period. Ministries also regularly use this update function to let Ontarians know that they are still considering a proposal that has been on the Registry for a long time (see **Section 8.1**).

However, we learned this year that ministries did not always use this update function when they made changes to Registry notices. When ministries do not use the update function, it can be difficult to tell that a notice has been changed or what changes were made.

Further, when a notice is changed without being formally updated:

- no update banner is added to the notice to make it clear to the public that it has been changed or to explain the nature of the change; and
- no “updated” tag is added to the notice, which would have moved the notice to the top of the Registry’s list of recent notices, bringing users’ attention to the fact that the notice was changed. The “updated” tag would also trigger an email notification to any registered users of the Environmental Registry who had elected to “follow” the notice, alerting them to the change.

While the Environmental Registry system cannot be searched systematically to determine the extent of this risk, we identified three cases in which ministries had made substantive changes to notices in 2022/23 without formal updates:

- After the consultation period had already closed, the Mining Ministry changed four related proposal notices for mineral exploration permits to correct the claim numbers that show the precise location of the proposed mineral exploration activities. The Ministry did not make it clear to the public that it had made these corrections or restart the consultations to allow Ontarians to comment after it corrected the details about the claim numbers associated with the proposed exploration activity.

- The Environment Ministry changed a proposal notice for a permit to take water for an aggregate operation in Kingston, correcting the type of source from which water would be taken. The Ministry made this change after the consultation period had ended. In this case, the Ministry added text to the proposal notice explaining that it made the change, but it did not formally update the notice or restart the consultation to allow Ontarians to comment on the corrected details of the proposed water taking.
- In April 2022, 15 days into the 30-day public consultation on Bill 109, the *More Homes for Everyone Act, 2002*, the Municipal Affairs Ministry added text to the proposal notice, without using the update function, to state that the bill had passed. Passing the bill so early in the public consultation period made further consultation meaningless, as the proposal had already been implemented. We reported on this issue, and why it was inconsistent with EBR Act requirements or purposes, in our 2022 report.

Further, in the Mining Ministry and Environment Ministry cases, Ontarians were given incorrect information about substantive details of the proposals—precise location of the proposed activity, and water-taking source type, respectively—and were not given any further opportunity to comment after the details were corrected.

The Environment Ministry told us that prescribed ministry staff are instructed in Environmental Registry training to use the update function when necessary to change or update a notice, and that only a limited number of staff in each ministry have authority to publish notices. However, the Registry has no controls in place to prevent ministry staff with the authority to publish notices from making changes to their notices without using the update function. Further, the Ministry has no way to easily find notices that have been altered without a formal update.

In some cases, changes to a notice may be minor or inconsequential to the public’s participation rights. However, changing the substance of a proposal notice without clearly informing Ontarians and giving them

a chance to comment is inconsistent with the purposes and intent of the EBR Act.

10.3.2 Map-Based Searches Could Show Incomplete Results

The Environmental Registry includes a map-based search function that allows users to see instrument details on a map by entering a postal code, address or city. This function is useful as Ontarians may be interested in finding out what environmental activities are being proposed, or have been approved, in their communities, and in participating in decision-making around those approvals.

Some of the instrument notices that we assessed this year did not include a map link to the site location of the environmental activity in question. The Environment Ministry told us that ministry staff receive training on how to add a map link to a notice and are instructed to do so, but including a map link is not necessary to publish a notice on the Registry.

If a notice does not include a map link, it will not show up in the results of a map-based search. As such, members of the public that use the Environmental Registry's map-based search may not obtain complete results. This could lead to Ontarians missing opportunities to be informed about and comment on certain proposals, or to seek leave to appeal certain decisions.

In limited cases, a map link may not be applicable—for example, when a proposal is for approval of a mobile facility with no set location. However, for the Registry's map-based search function to be reliable, ministries should include map links in all instrument notices that have a site location associated with them.

RECOMMENDATION 7

So that Ontarians can rely on the Environmental Registry of Ontario (Registry) as a complete and accurate source of information about environmentally significant proposals and decisions, and to provide transparency and accountability for that information, we recommend that the Ministry of the Environment, Conservation and Parks

immediately develop and implement controls in the Registry system that:

- prevent internal users from making substantive changes to published notices without also including a formal public update explaining what changes have been made; and
- require, wherever applicable, that a map link to the site location related to a proposed instrument be included in the instrument notice when it is published on the Registry.

ENVIRONMENT MINISTRY RESPONSE

The Ministry is committed to delivering a high-quality Registry platform as the means of giving information about proposals, decisions and other actions that could affect the environment to the public as required by the *Environmental Bill of Rights, 1993* (EBR Act). To support this objective, the Ministry has a continuous, multi-year technical improvement model for the Registry system in place. The Ministry will consider what technical controls could be developed and implemented to address this recommendation as part of that rigorous multi-year enhancement process. The Ministry will also consider ways to provide additional training and guidance to system users across the Ontario Public Service on the appropriate use of the Registry's existing features.

11.0 Ministries Have Made Some Progress Implementing Processes for Meeting Their EBR Act Responsibilities

Prescribed ministries under the EBR Act have legal requirements intended to support public participation, transparency and accountability in government decisions that affect the environment. Internal controls—processes, policies and procedures—can help ensure that staff know their ministries' legal obligations under the EBR Act, that they know how to meet

these obligations and that they have processes to assess their effectiveness.

In 2021 we found that many prescribed ministries did not have sufficient internal controls to ensure they comply with the EBR Act. To help the ministries implement the EBR Act more effectively, we recommended in our 2021 report that every prescribed ministry review its existing processes and procedures, if any, for complying with and implementing the EBR Act and, to the extent that it had not already done so:

- create, follow, and periodically review and update documented processes;
- develop and follow processes to train and update all relevant staff on the ministry's responsibilities under the EBR Act and when the Act applies; and
- put processes in place for monitoring the ministry's past compliance with the EBR Act (to verify that ministry staff properly followed the ministry's processes and complied with EBR Act requirements), and take corrective measures to address and prevent any non-compliance.

Since 2021, ministries made varying progress toward following this recommendation (see **Appendix 12** for a description of progress by ministry).

Overall, we found the following:

- Almost all prescribed ministries made progress developing or updating (as applicable) written policies and procedures intended to ensure they comply with the EBR Act. However, the Indigenous Affairs Ministry has not finalized updates to its guidance materials, and the Labour Ministry has not yet circulated its draft procedures to staff.
- Most ministries provided training to make staff aware of the EBR Act and their responsibilities under the Act. However, three ministries—Health, Long-Term Care and Labour, which we identified in 2021 as not providing formal training—have still not put actions in place to ensure staff know their EBR responsibilities.
- Most ministries—except for the Mining, Municipal Affairs and Public Services Ministries and the Technical Standards and Safety Authority—have still not created processes for monitoring their

past compliance with the EBR Act. Examining past compliance is important because it allows a ministry to determine not only if it has met its legal requirements under the Act, but also to assess whether its EBR Act processes have been effective or if the ministry needs to make revisions to carry out its responsibilities more effectively. For example, the Mining Ministry conducts an annual internal audit of its instrument notices; findings from its audit can be used to train staff and improve drafting of future instrument notices. The Municipal Affairs Ministry circulates a bimonthly status table of its Registry notices to relevant Ministry divisions to gather information on whether EBR Act requirements are being met.

While ministries have made some good progress, more work needs to be done. So that the public's rights under the Act are respected and the purposes of the Act may be achieved, we continue to believe that all prescribed ministries should, on an ongoing basis:

- ensure that relevant staff are aware of, and know how to comply with, the ministries' EBR Act responsibilities; and
- have processes in place to monitor their past compliance.

12.0 Action Needed to Keep the EBR Act's Coverage Up to Date

For Ontarians to put their participation rights into practice, ministries, acts and instruments that affect the environment must be brought under the EBR Act by being “prescribed” by regulation. It is also important that any exceptions to consultation remain relevant and consistent with the Act's purposes.

This section both follows up on previous recommendations relating to keeping the EBR Act's coverage up to date as well as identifies new related issues that arose this past reporting year.

In January 2023, the Environment Ministry told prescribed ministries it expected to bring forward

regulatory amendments in fall 2023 and asked whether the ministries had amendments they wanted included. At the time of our audit, we had not been advised of any new ministries or acts, and had been advised of only one new instrument, proposed by ministries to become prescribed.

12.1 Action Needed to Make Additional Ministries Subject to the EBR Act

12.1.1 Prescribing the Ministry of Citizenship and Multiculturalism Is Needed to Fill a Gap in EBR Act Coverage

In summer 2022, the mandate of the Tourism Ministry, a ministry that is subject to the EBR Act, changed so that most of its responsibilities related to the *Ontario Heritage Act* were transferred to the Ministry of Citizenship and Multiculturalism (Multiculturalism Ministry), which is not subject to the EBR Act. The intent of prescribing the *Ontario Heritage Act* was to provide rights for Ontarians to participate in environmentally significant decisions and to request a review related to that Act. While the *Ontario Heritage Act* is prescribed for purposes of applications for review, neither of the ministries responsible for administering that Act (the Multiculturalism Ministry and the Tourism Ministry) are prescribed under that part of the EBR Act, resulting in a lack of clarity about responsibility for responding to any applications for review.

Since the transfer of responsibility, the Multiculturalism Ministry voluntarily used the Environmental Registry in October 2022, and again in October 2023, to consult Ontarians about proposed amendments to the *Ontario Heritage Act*. However, until the Ministry becomes prescribed, it is under no obligation to notify or consult Ontarians about future proposals.

We wrote to the Multiculturalism Ministry to urge it to become prescribed under the EBR Act so that Ontarians would continue to be able to exercise their EBR Act rights for environmentally significant decisions related to the *Ontario Heritage Act*. In response, the Ministry agreed to consider becoming prescribed. However,

we have since learned that the Ministry decided that it would not seek to be prescribed as part of the next planned amendments to the EBR Act regulations in fall 2023.

RECOMMENDATION 8

So that Ontarians can participate in all environmentally significant decision-making about the *Ontario Heritage Act* by the Ministry of Citizenship and Multiculturalism, we recommend that the Ministry of Citizenship and Multiculturalism work with the Ministry of the Environment, Conservation and Parks to take steps to have the Ministry of Citizenship and Multiculturalism prescribed under the *Environmental Bill of Rights, 1993*.

MINISTRY OF CITIZENSHIP AND MULTICULTURALISM RESPONSE

The Ministry of Citizenship and Multiculturalism and the Ministry of the Environment, Conservation and Parks will work together to explore appropriate next steps to consider this recommendation.

ENVIRONMENT MINISTRY RESPONSE

The Ministry will continue to work with the Ministry of Citizenship and Multiculturalism to explore appropriate next steps to consider this recommendation.

12.1.2 No Steps Taken to Prescribe the Ministry of the Attorney General

In **Section 4.3** of our 2021 report, we recommended that the Environment Ministry work with the Ministry of the Attorney General (Attorney General) to take steps to have that Ministry prescribed under the EBR Act. In February 2021, the Attorney General had introduced legislation that ultimately:

- amalgamated several tribunals that hear appeals affecting the environment into a single entity called the Ontario Land Tribunal (Tribunal);

- changed procedures at the Tribunal that affected public participation in hearings on environmental matters; and
- repealed provisions in several acts prescribed under the EBR Act that had permitted an appeal of a Tribunal decision to the minister.

These changes could indirectly affect the environment.

In its response to our recommendation, the Attorney General described its mandate and stated that its core responsibilities are focused on the oversight and administration of all matters connected to the administration of justice in Ontario and are not directed at the environment. The Environment Ministry subsequently wrote to the Attorney General to ask it to confirm that it did not wish to be prescribed under the EBR Act, and in February 2022 the Attorney General confirmed this. The Environment Ministry has taken no additional steps to discuss the EBR Act with the Attorney General or to make that Ministry subject to the EBR Act. Consequently, while other consultation opportunities may be available, Ontarians are still not entitled to be consulted under the EBR Act before the Attorney General makes decisions that could have a significant effect on the environment.

12.2 No Steps Taken to Make Additional Laws Subject to the EBR Act

In our 2021 report, we recommended that the Environment Ministry work with the Agriculture, Energy and Transportation Ministries to take steps to have the *Drainage Act*, the *Electricity Act, 1998* and the *Highway Traffic Act*, respectively, prescribed. At that time, each Ministry had voluntarily consulted on environmentally significant regulations under those acts. In response to our recommendation, the Agriculture Ministry stated that it did not accept the recommendation that the *Drainage Act* be prescribed, on the grounds that it is not environmental legislation. The Energy Ministry responded that it would continue to voluntarily consult on regulations under the *Electricity Act, 1998* that have

a clear environmental significance and would determine this on a case-by-case basis.

The Transportation Ministry responded that it continues to assess consultation requirements for environmentally significant proposals and proposed to have only section 75.1 of the *Highway Traffic Act* (regarding vehicle emissions) prescribed. This provision was added to the *Highway Traffic Act* when the vehicle emissions program was transferred from the *Environmental Protection Act* (which is administered by the Environment Ministry and subject to the EBR Act) to the *Highway Traffic Act* (which is administered by the Transportation Ministry and was not subject to the EBR Act). The EBR Act regulation was amended in March 2022 to reflect this change.

Shortly after the release of our report in December 2021, the Environment Ministry wrote to each of the ministries to confirm whether they would seek to have these acts prescribed. The ministries confirmed their positions had not changed. The Environment Ministry has taken no additional steps to discuss the EBR Act with the ministries or to prescribe those acts under the EBR Act. Consequently, Ontarians still do not have any right to participate in decision-making about environmentally significant proposals related to regulations under the *Drainage Act*, the *Electricity Act, 1998* or most of the *Highway Traffic Act*.

12.3 Some Action Has Been Taken to Update the List of Instruments Subject to the EBR Act

Five ministries (Environment, Natural Resources, Mining, Municipal Affairs and Public Services) are required to give notice and consult on proposed instruments that are prescribed in O. Reg. 681/94 (the Instrument Classification Regulation) under the EBR Act (Public Services has delegated this responsibility to the TSSA). The EBR Act requires these ministries to review the Instrument Classification Regulation “from time to time” and determine whether there are new types of instruments with the potential for significant environmental effects that should be added to the regulation, or whether changes affecting already

prescribed instruments mean they should be removed from, or reclassified in, the regulation. Such amendments would keep the EBR Act up to date and ensure that the public is consulted on all environmentally significant instrument proposals.

In our 2021 report, we recommended that the five ministries responsible for consulting Ontarians about instruments, and the TSSA, carry out a comprehensive review of the Instrument Classification Regulation and propose amendments as needed to add new instruments that could have significant environmental effects, or remove or reclassify existing instruments that no longer meet the criteria for classification. The Natural Resources, Mining, Municipal Affairs and Public Services Ministries agreed to review their classified instruments and determine whether amendments were required.

The Environment Ministry itself did not explicitly agree to review its instruments and did not carry out a comprehensive review of the Instrument Classification Regulation as recommended. Instead, it asked program areas within the Ministry whether they had any proposed amendments. The TSSA stated that it had undertaken a review of classified instruments in 2018 at the request of the Environment Ministry. It determined that, because there have been no subsequent changes to either the Liquid Fuels regulation or the Liquid Fuels Handling Code under which its classified instruments are issued, a further review was not needed, which is a reasonable approach.

Since 2021, the Natural Resources Ministry carried out a review of prescribed and new instruments under its legislation and identified some required amendments to bring its list of instruments up to date. As a first step, the Ministry put forward several administrative amendments, including changing outdated references and recognizing the 2022 transfer of responsibility for the *Conservation Authorities Act* from the Environment Ministry to the Natural Resources Ministry. These changes were included in a package of amendments to the regulations filed in November 2022. The Ministry noted that it intended to bring forward additional amendments related to instruments

under several acts, some of which will be substantive and will require public consultation. In March 2023, the Ministry posted a proposal notice on the Registry to add a new instrument under the *Invasive Species Act, 2015* to the Instrument Classification Regulation. No other proposals have yet been posted for public consultation.

The Mining Ministry told the Environment Ministry in 2022 that it intends to propose amendments to the Instrument Classification Regulation to correct references for some existing instruments resulting from previous *Mining Act* amendments—some dating from 2019—and to reflect its implementation of a new recovery-of-minerals permit regime, which is not yet in force. In February 2023, the Mining Ministry told the Environment Ministry that it would not move forward until pending amendments to the *Mining Act* were enacted. These amendments were enacted in May 2023, but only some provisions have been proclaimed in force and some supporting regulations filed. The Mining Ministry told us that it was aware that it needed to undertake a comprehensive review of its instrument classifications and would work closely with the Environment Ministry to determine whether to propose amendments to the EBR Act Instrument Classification Regulation.

The Municipal Affairs Ministry undertook a review of its instruments by asking Ministry divisions to consider if any act should be prescribed or any instrument should be included in the Instrument Classification Regulation. The Ministry advised the Environment Ministry and us that it has no proposed amendments to either EBR Act regulation at this time.

The Public Services Ministry asked the Environment Ministry to reflect the Ministry's name change in the November 2022 EBR Act regulation amendments. In 2023, the Ministry advised the Environment Ministry that, following some program changes, it was in the process of reviewing the acts and regulations it was now responsible for, and was targeting to have its analysis and any recommended updates completed in time for the Environment Ministry's expected amendment package in fall 2023.

12.4 No Steps Taken to Address Issues with Exceptions to Public Consultation

12.4.1 Municipal Affairs Ministry Has Not Taken Steps to Address Exception for Minister's Zoning Orders

In our 2021 report, we recommended that the Environment Ministry work with the Municipal Affairs Ministry to take steps to amend the EBR Act General Regulation to revoke section 15.5, which exempts Minister's Zoning Orders (MZOs) made under the *Planning Act* from the EBR Act's consultation requirements, and for the Municipal Affairs Ministry to consult the public on environmentally significant MZOs. However, the Ministry has not taken steps to address this recommendation. As noted in **Section 12.3**, the Ministry told us in 2023 that it will not propose any amendments to either EBR Act regulation at this time.

The Minister of Municipal Affairs and Housing has the power to issue MZOs to regulate the use of land in Ontario at the Minister's discretion. The *Planning Act* provides that the usual municipal zoning process—which requires public consultation, and also allows appeals to the Ontario Land Tribunal—does not apply to the issuance of MZOs. MZOs do not need to be consistent with the Provincial Policy Statement, except when applied to lands within the Greenbelt. This means that the Municipal Affairs Minister, while still required to consider matters of provincial interest, can make a zoning order—without ever consulting the public—that is inconsistent with provincial rules that prohibit development in significant wetlands, woodlands and wildlife habitat and that require the protection of prime agricultural lands for agricultural uses.

Since we made our recommendation in 2021, we continue to have concerns. Between January 2022 and July 2023, the Minister issued 49 new MZOs. Some of these had the potential for significant environmental impacts.

12.4.2 Environment Ministry Still Considering Steps to Address *Environmental Assessment Act* Exception

In our 2021 report, we recommended that the Environment Ministry review section 32 of the EBR Act. Section 32 provides an exception from the EBR Act consultation requirements for prescribed instruments that implement projects approved under, or exempted from, the *Environmental Assessment Act*. The Ministry responded that, as part of its environmental assessment modernization initiative, it would consider “how consultation may be provided for through other mechanisms or processes, for those projects proposed to be exempt. As environmental assessment modernization activities continue, the changes being made will prompt the Ministry to examine section 32 of the EBR Act.”

In June 2023, the Environment Ministry confirmed with us that it would be considering the section 32 exception as part of its environmental assessment modernization initiative, which was ongoing at the time of our audit.

13.0 Follow-up on 2021 Annual Report Recommendations and Continuous Follow-up

Our practice is to issue follow-up reports to assess progress made implementing the actions recommended in the reports we issued two years earlier, and to follow up continuously every year thereafter until the recommendations are fully implemented.

Since we report annually on the operation of the *Environmental Bill of Rights, 1993* (EBR Act), our findings generally constitute our follow-up on past recommendations by providing an update on the status of a ministry's compliance with and implementation of the EBR Act. We also assess relevant information about ministries' actions to implement those

recommendations, such as the development of new policies or guidance intended to achieve compliance with the EBR Act. For recommendations that are not directly related to compliance with and implementation of the requirements of the EBR Act, we follow our practice of assessing the status of actions taken by ministries to implement those recommendations two years after the recommendations were published.

Most of the recommendations in our 2021 report relate to compliance with and implementation of the EBR Act requirements, and are followed up through our regular annual audit of the operation of the EBR Act. However, there were five recommendations in our 2021 report that fell outside the scope of our regular audit and that warranted a separate follow-up. We report on the status of actions taken on those five recommendations here.

Further, one recommendation in our 2020 report and two recommendations in our 2019 report that did not relate directly to compliance with and implementation of the EBR Act remained outstanding. We reported on the status of those recommendations in the follow-up sections of our 2021 and 2022 reports, respectively. Because they were not fully implemented at that time, we continue to report on the status of those recommendations here.

13.1 Follow-up on Select 2021 Recommendations

13.1.1 Environment Ministry Will Not Implement Three Recommendations

The Environment Ministry told us that it will not implement three of the recommendations found in our 2021 report, each intended to promote transparency and accountability in, and improve, environmental decision-making.

Recommendation 9: Initiate and co-ordinate a broad review and modernization of Statements of Environmental Values, in collaboration with other prescribed ministries.

In 2021, we reported that the Environment Ministry, whose current Statement was last updated in 2008,

had posted a proposal for an updated Statement on the Environmental Registry of Ontario (Registry) for public comment. We noted several issues with the proposed updated Statement, including that some commitments in the proposed Statement were weakened, and the proposed Statement did not include updated environmental principles to reflect its mandate or more modern environmental values. We also noted that documents we reviewed explored the option of a broader, co-ordinated review with other prescribed ministries involving a more extensive overhaul of Statement principles. Given that other ministries had told us they sought the Environment Ministry's advice about updating their Statements, we recommended that the Ministry initiate and co-ordinate a broad review and modernization of Statements of Environmental Values, in collaboration with other prescribed ministries.

This year, the Ministry told us that it will not be implementing this recommendation, taking the position that each ministry prescribed under the EBR Act is responsible for developing their own Statement. The Ministry noted that it "continues to provide advice to other ministries on the [Statements] when requested and will consider how additional support to other ministries could be provided."

We continue to believe that a co-ordinated review and modernization of prescribed ministries' Statements could help establish Statements that better inform prescribed ministries' decision-making and could lead to improved outcomes for the environment, as intended.

Recommendation 11: Develop and implement updates to the Environmental Registry system templates for decision notices to include a specific section where prescribed ministries can attach, to every decision notice that they post on the Registry, documentation that shows how they considered their Statements of Environmental Values when they made those decisions.

In 2021, we found that the Environment Ministry's consideration of its Statement was inconsistently documented and not always meaningful. To maintain transparency and accountability, ministries should clearly document when and how they considered

their Statements every time they make environmentally significant decisions. We recommended that, to promote transparency and accountability for the Ministry's environmental decision-making and the EBR Act requirement, it consider its Statement when making such decisions. We also recommended that the Ministry update the Environmental Registry system templates for decision notices so that ministries can attach documentation that shows how they considered their Statements of Environmental Values when making each decision.

This year, the Ministry told us that it has no direction to change its policy on Statement documentation to require that documentation be attached to every decision notice. It told us that it had been "focused instead on making improvements to internal processes for documenting consideration of the [Statement] before a decision is made and will consider whether additional improvements to these internal processes may be needed." The Ministry also noted that the Registry already enables ministries to attach supporting materials to decision notices, and so no technical changes to the Registry would be needed to implement our recommendation.

We continue to believe that it would promote transparency and accountability for ministries to attach, to every decision notice posted on the Environmental Registry, documentation showing the public how they considered their Statement when making the decision.

Recommendation 26: Post periodic updates on the Environmental Registry about the status of all applications for review submitted to the Ministry.

In our 2021 report, we found that the Ministry had not completed three of the five reviews that it completed that year within a reasonable time, and that the Ministry had not met its own deadlines for completing the reviews, promising and then missing revised deadlines. We noted that, in the past, the Environment Ministry had a practice of periodically posting a notice on the Environmental Registry that gave a status update on applications for review submitted to the Ministry, and that resuming that practice could allow for greater transparency for applicants and the public, and greater

accountability for the Ministry's handling of applications for review.

This year, the Ministry told us that it would not implement this recommendation, essentially repeating the response that it gave to the recommendation in 2021. The Ministry told us that it is committed to meeting its obligations under the EBR Act and makes every effort to complete reviews in a timely manner, as well as to give updates to the applicants periodically, as required by the EBR Act.

We continue to believe that posting periodic updates on the Environmental Registry about the status of applications for review would provide greater transparency around and accountability for the Ministry's handling of EBR Act applications.

13.1.2 Environment Ministry Made Little or No Progress Implementing Two Recommendations, including Our Recommendation to Post a Decision Notice for Its 2018 Made-in-Ontario Environment Plan

The Environment Ministry told us that it made little or no progress implementing two recommendations from our 2021 report:

Recommendation 14: Follow the EBR Act consultation process for a proposal to update technical guidance for soil vapour intrusion assessment.

In 2021, we found that the Ministry had posted on the Environmental Registry a proposal for changes in a technical guidance document used in soil vapour intrusion assessments. These changes were proposed to reflect current science and updated guidance in other jurisdictions. The Ministry undertook the consultation voluntarily on the basis that the EBR Act did not apply to the proposal. However, the Ministry failed to provide any analysis to support its determination that the policy would not have a significant effect on the environment.

We found that the changes to the guidance were environmentally significant, and that the Ministry should have consulted the public in accordance

with the EBR Act. We recommended that, to meet the requirements of and intent and purpose of the EBR Act's public consultation provisions, the Ministry:

- consider all comments that it received as a result of the consultation;
- consider its Statement of Environmental Values in making the decision; and
- post a decision notice as soon as reasonably possible after making the decision, describing the decision and the effect of public participation, if any, on the decision.

In 2023, the Ministry told us that a final decision about the updated technical guidance was pending. The Ministry stated that it is reviewing the comments it has received, but did not provide documentation of this. It also stated that it would consider its Statement and post a decision notice on the Registry once the final decision is made. The Ministry had updated the proposal notice in March 2023 to state that the proposal is still under active review.

As of September 2023, the Ministry had not posted a decision notice.

Recommendation 21: Notify Ontarians of its decision regarding the Made-in-Ontario Environment Plan.

In November 2018, the Environment Ministry posted a policy proposal notice on the Environmental Registry for Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan (the Environment Plan) for a 60-day public consultation period. Since then, the Environment Ministry has indicated that it has implemented aspects of the Environment Plan, but it has not posted a decision notice on the Registry to inform the public of its decision.

In 2021, we recommended that, to provide transparency and accountability for its decision to implement its Environment Plan, the Ministry take the necessary steps to obtain any approvals that may be needed on the Environment Plan, and post a decision notice on the Environmental Registry to inform the public of its decision and explain the effect of public participation on the Ministry's decision. In our 2022 report, we noted that the Ministry had posted an Emissions

Scenario document on the Registry in April 2022 that outlined actions that differed from those found in the Environment Plan, and found that it was unclear how the Emissions Scenario related to the climate change content of the Environment Plan. We wrote to the Environment Ministry in April 2022 to recommend that the Ministry use the Environmental Registry to clarify for Ontarians the relevance of the Emissions Scenario, how it relates to the Environment Plan and the status of the still-open proposal notice for the Environment Plan. In our 2022 report, we again recommended that the Ministry take the necessary steps to obtain approvals needed on the Environment Plan and post a decision notice on the Registry.

On follow-up in 2023, the Ministry stated that it "will continue to develop its approach for posting a decision notice on the Environmental Registry regarding the Made-in-Ontario Environment Plan," but it could not give an estimate of the date that our recommendation would be implemented. As of September 2023, the Ministry had not posted a decision notice.

We continue to believe that, to provide transparency and accountability for its decisions, the Environment Ministry should immediately post a decision notice on the Environmental Registry to inform Ontarians of its decision to implement the Environment Plan, the current status of the Environment Plan and how the March 2022 Emissions Scenario relates to the Environment Plan. The Ministry should also explain the effect of public participation on its decision, in accordance with the EBR Act.

13.2 Follow-up on Select 2019 and 2020 Recommendations

13.2.1 Secretary of the Cabinet Fully Implemented Changes to Performance Reviews to Encourage Compliance with the EBR Act

After finding numerous instances of non-compliance with, and poor implementation of, the EBR Act by prescribed ministries in both our 2019 and 2020 reports, we noted that there were no internal oversight mechanisms in the prescribed ministries to ensure compliance

with the EBR Act at the executive level. We believed that increased compliance would be more likely to be achieved if deputy ministers—the most senior public servants in ministries—were held accountable for their ministries’ compliance records by the Province’s chief public servant: the Secretary of the Cabinet. Therefore, in our 2020 report, we recommended that, to support prescribed ministries’ improvement of their compliance with the requirements of the EBR Act, the Secretary of the Cabinet incorporate compliance with the Act into the annual performance reviews of deputy ministers of prescribed ministries.

We followed up on this recommendation in our 2022 report and found that the Secretary of the Cabinet was in the process of implementing this recommendation. Specifically, the Secretary of the Cabinet was in the process of incorporating ministries’ legislative compliance, including with the EBR Act, into ministries’ reporting requirements in the Multi-Year Planning Process. The Secretary advised us that each ministry’s reported compliance with legislative requirements, including the EBR Act, will be considered in connection with the ministry’s annual performance assessment and rating. Further to this, each deputy minister’s performance rating is based on a combination of their ministry’s performance assessment and their personal assessment. The Secretary told us that this process would be implemented for the 2022/2023 performance assessment, which ended on March 31, 2023.

On follow-up this year, we found that the Secretary of the Cabinet had fully implemented our recommendation. The Strategic Planning Process (SPP) report template that deputy ministers are required to complete was updated to require each deputy minister to confirm that their ministry is in compliance with the EBR Act. The SPP report informs the President of the Treasury Board and the Premier’s evaluation of ministries’ performances. Deputy ministers’ annual performance is assessed by the Treasury Board/Management Board of Cabinet based in part on their ministries’ performance.

However, we reviewed the SPP report templates submitted to the Treasury Board Secretariat by prescribed ministries in October and November 2022, and we question whether the updated SPP report will, in effect, hold deputy ministers accountable for their ministries’ compliance with the EBR Act or lead to improvements.

We found that some ministries had changed the template to limit their attestations to apply as of the date of the attestation, while others changed the template to limit their attestation to “substantial compliance” with the EBR Act (the template required attestation of compliance). Two ministries signed the template, but did not complete it to attest to their compliance. Several deputy ministers attested that their ministries were in compliance with the EBR Act, even though our 2022 report, released in early December 2022 and reviewed by the ministries in the months prior to its release, had found that those ministries had not complied with the Act. Only one ministry attested that it was not in compliance with the EBR Act, citing the findings in our 2022 report and outlining the actions under way to move the ministry toward compliance.

13.2.2 Environment Ministry Made Little Progress in Updating Its Air Standard for Nitrogen Dioxide

In 2018, applicants had requested that the Ministry review the air standard limit for industrial emissions of nitrogen dioxide (NO₂), based on concerns about inadequate protection of the environment and human health. This request was denied. In our 2019 review, we found that the Environment Ministry gave insufficient information to support its decision to deny this application for review. To reduce harmful concentrations of air pollution from industrial sources, particularly in areas with high concentrations of pollutants, we recommended that the Environment Ministry review its standard for NO₂ and, based on the results of its review, update the standard (see **Recommendation 7** in our 2019 report).

When we followed up in 2022, we found that the Environment Ministry had completed a review of the NO₂ regulatory framework, which included assessing the need to update the NO₂ industrial emission standard (see **Section 8.2.1** of our 2022 report). The Ministry told us in 2022 that it was reviewing the latest jurisdictional benchmarks on NO₂ to inform potential future updates to ambient or regulatory benchmarks. At the time, the Ministry anticipated completing this review by December 2022. However, in April 2023, the Ministry told us that it now expects to complete the review by December 2023.

In our 2019 report, we had recommended that the Ministry's review determine whether stronger NO₂ standards are needed to alleviate pollution problems in communities experiencing higher concentrations of pollutants, commonly known as "air pollution hot spots." During our follow-up in 2022, the Ministry acknowledged that "the close proximity of some communities to industrial sources may need action by industry to have a greater local impact." We continue to recommend that the Ministry update its standards or develop an alternate approach to regulating industrial emissions of NO₂ in air pollution hot spots.

13.2.3 Municipal Affairs Ministry Again Made Little Progress Addressing the Risk of Pollution from Malfunctioning Septic Systems

In our 2019 report, we found that the Municipal Affairs Ministry gave insufficient information to support its decision denying a request to review the regulation of septic systems. The applicants were concerned that Ontario Building Code (Building Code) requirements for the operation and maintenance of septic systems—small, on-site systems that collect and partially treat sewage from a home or business—are insufficient to protect the environment from potential harm, such as contaminating water sources with untreated human sewage in the case of malfunctioning systems. In denying the application, the Ministry did not give the applicants any information to explain why it had decided not to proceed with previously proposed new

requirements for septic systems, nor did it show that existing requirements under the Building Code are sufficient to protect the environment.

To address the risk of pollution from malfunctioning septic systems, we recommended that the Municipal Affairs Ministry review the effectiveness of the Building Code requirements governing the operation and maintenance of septic systems and, based on the results of its review, update these Building Code requirements (see **Recommendation 19** in our 2019 report). In response to our recommendation, the Ministry indicated that it would work with municipal stakeholders, conservation authorities and health units to assess the scope of the issue and identify potential next steps, and then take appropriate actions identified through this process.

However, we found that the Ministry has still not taken any steps to review the effectiveness of the Building Code requirements governing the operation and maintenance of septic systems.

In August 2020, the Ministry signed a binding agreement with the federal and other provincial and territorial governments to harmonize the Building Code with the National Construction Codes, in line with commitments made under the Canadian Free Trade Agreement. The Ministry advised us that, although requirements related to small septic systems are not included in the National Construction Codes, updates to Ontario's septic system requirements, if any, would occur during the harmonization of the Building Code with the National Construction Codes.

From October to December 2022, the Ministry consulted the public through the Environmental Registry on 14 industry-led septic system proposals to amend Ontario's Building Code. The Ministry told us in April 2023 that it is reviewing the results of that consultation to identify any potential amendments to septic system requirements, and that it is preparing for the next edition of the Building Code by putting proposed changes through the standard development and review process. The Ministry told us that it expects to file the amendments in winter 2024 and that they would come into effect in spring 2024.

As we noted in our 2022 report, it is sensible to consider and include any updates to Ontario's septic system requirements when the Ministry amends the Building Code as part of the broader harmonization exercise. However, to maximize the benefits of that exercise, we continue to believe that the Ministry should also review the effectiveness of Ontario's septic system requirements to inform its review of the Building Code and to identify any updates to these requirements necessary to protect the environment from potential harm.

Appendix 1: Glossary

Prepared by the Office of the Auditor General of Ontario

| Term | Definition |
|--|---|
| Act | Also known as a law, legislation or statute, an act is adopted by the provincial legislature (or federal parliament) to delineate binding rights, obligations and rules. |
| Application for investigation | A right under Part V of the <i>Environmental Bill of Rights, 1993</i> , allowing two residents of Ontario 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 Part IV of the <i>Environmental Bill of Rights, 1993</i> , allowing two residents of Ontario 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. |
| Bulletin | Bulletins (formerly called Information Notices) are posted on the Environmental Registry by prescribed ministries to share information about an activity or other matter that they are not required to post under the <i>Environmental Bill of Rights, 1993</i> . In some cases, bulletins are also used when other legislation requires a ministry to give notice of something using the Environmental Registry. |
| Environmental compliance approval | A type of instrument under the <i>Environmental Protection Act</i> and the <i>Ontario Water Resources Act</i> that is issued by the Environment Ministry and obtained by proponents who seek to undertake certain activities related to air, noise, waste and sewage. |
| Environmental Registry | A website (ero.ontario.ca) maintained by the Environment Ministry, and used by prescribed ministries, to provide information about the environment to the public, including notices about proposals and decisions that could affect the environment, pursuant to the <i>Environmental Bill of Rights, 1993</i> . The Environmental Registry is searchable and includes an archive of previous consultations. |
| Environmentally significant | Under the EBR Act, a proposal or decision is environmentally significant when, if implemented, it could have a significant effect on the environment (including air, land, water, plant life, animal life and ecological systems) of Ontario. |
| 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 <i>Environmental Bill of Rights, 1993</i> . |
| Instrument | A permit, licence, approval, authorization, direction or order issued under the authority of an act or regulation. Instruments subject to the <i>Environmental Bill of Rights, 1993</i> are identified and classified in O. Reg. 681/94. |
| Leave to appeal | Permission to challenge. Under the <i>Environmental Bill of Rights, 1993</i> , residents of Ontario 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 (in most cases, the Ontario Land 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 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. |

| Term | Definition |
|--|--|
| Permit to take water | An instrument under the <i>Ontario Water Resources Act</i> issued by the Environment Ministry that allows a person, company or municipality to remove water from groundwater or surface water sources. |
| Policy | Written rules or direction followed by a ministry, including but not limited to programs, plans, objectives, strategies, guidelines and criteria. |
| Prescribed ministry | A government ministry that is required under O. Reg. 73/94 to carry out responsibilities under the <i>Environmental Bill of Rights, 1993</i> . |
| Regulation | Binding rules made by Cabinet, a minister or designated official under the authority granted in an act. |
| Statement of Environmental Values | A policy that guides prescribed ministries when they make decisions that might affect the environment. Each prescribed ministry is required to have one. A ministry's Statement explains how the ministry should apply the purposes of the <i>Environmental Bill of Rights, 1993</i> when it makes decisions that might significantly affect the environment and how the ministry will consider the purposes of the Act along with other considerations, including social, economic and scientific considerations, that are part of decision-making in the ministry. |
| Voluntary consultation notice | A notice for a proposal that a prescribed ministry posts on the Environmental Registry for public comment but which the ministry is not required to post. |

Appendix 2: Audit Criteria for Assessing Prescribed Ministries' Compliance with and Implementation of the *Environmental Bill of Rights, 1993*

Prepared by the Office of the Auditor General of Ontario

Audit Criteria:

1. Processes are in place to effectively and periodically review the lists of ministries, acts and instruments¹ prescribed under the *Environmental Bill of Rights, 1993* (EBR Act), and, where needed, update the general and classification regulations so that they include all ministries whose activities are environmentally significant, and all acts and instruments that could have a significant effect on the environment.
2. Processes are in place for prescribed ministries to ensure that significant environmental decisions made by the ministries accord with the requirements and purposes of the EBR Act, its regulations and other relevant legislation.
3. Prescribed ministries have complied with the requirements of the EBR Act and its regulations, and have implemented the EBR Act in a manner consistent with the purposes of the EBR Act, in accordance with the table below. Prescribed ministries have processes in place to achieve compliance and effective implementation.

Sub-Criteria for Assessing Prescribed Ministries' Compliance with and Effective Implementation of the EBR Act

| Sub-Criterion | Relevant Provision(s) in the <i>Environmental Bill of Rights, 1993</i> |
|--|---|
| 1. Statement of Environmental Values (Statement) | |
| a. Statement is up-to-date | The minister ² shall prepare a Statement that explains how the ministry will apply the purposes of the EBR Act when making decisions that might significantly affect the environment, and how it will integrate consideration of the purposes of the EBR Act with such considerations, including social, economic and scientific considerations. The minister may amend the ministry's Statement from time to time (sections 7–10). |
| b. Statement is considered when making decisions | The minister shall take every reasonable step to consider the ministry's Statement whenever it makes a decision that might significantly affect the environment (section 11). |
| 2. Use of the Environmental Registry (Registry) | |
| a. Notice of proposals is given as required by the EBR Act | <p>The minister shall give notice on the Environmental Registry, for at least 30 days, of each proposed:</p> <ul style="list-style-type: none"> • act or policy if the minister considers that the proposal could have a significant effect on the environment and the minister considers that the public should have an opportunity to comment on the proposal before implementation (section 15 and subsection 27(1)); • regulation under a prescribed act if the minister considers that the proposal could have a significant effect on the environment (section 16 and subsection 27(1)); and • classified instrument¹ (section 22 and subsection 27(1)), unless: <ul style="list-style-type: none"> ▪ an exception applies to the proposal under sections 29 or 30, and the minister decides not to give notice of the proposal; or ▪ an exception applies to the proposal under subsections 15(2), 16(2) or 22(3), or sections 32 or 33 (subsections 15(2), 16(2), and 22(3), and sections 29, 30, 32 and 33). <p>If the minister decides not to post a proposal on the Environmental Registry for public consultation because an exception under section 29 (emergencies) or section 30 (other processes) applies to the proposal, the minister shall give notice of the decision to the public and to the Auditor General as soon as reasonably possible after the decision is made. The notice shall include a brief statement of the minister's reasons for the decision and any other information about the decision that the minister considers appropriate (sections 29, 30 and 31).</p> |

| Sub-Criterion | Relevant Provision(s) in the <i>Environmental Bill of Rights, 1993</i> |
|--|--|
| b. Time to comment is extended based on the factors in the EBR Act | The minister shall consider allowing more time to permit more informed public comment. In determining the length of time, the minister shall consider the following factors: the proposal's complexity, the level of public interest, the period of time the public may require to comment, any private or public interest and any other factor the minister considers relevant (sections 17 and 23 and subsection 8(6)). |
| c. Proposal notices for policies, acts and regulations are informative | Each notice shall include a brief description of the proposal (subsection 27(2)). |
| d. Proposal notices for instruments ¹ are informative | Each notice shall include a brief description of the proposal (subsection 27(2)). |
| e. Received comments are reviewed and considered | A minister that gives notice of a proposal under sections 15, 16 or 22 shall take every reasonable step to ensure that all comments relevant to the proposal that are received as part of the public participation process described in the notice of the proposal are considered when decisions about the proposal are made in the ministry (subsection 35(1)). |
| f. Prompt notice of decisions is given | <p>The minister shall give notice on the Environmental Registry of a decision on each proposed policy, act or regulation as soon as reasonably possible after it is implemented (subsections 36(1) and 1(6)). The minister shall give notice on the Environmental Registry of a decision whether or not to implement a proposal for an instrument¹ as soon as reasonably possible after a decision is made (subsections 36(1) and 1(7)).</p> <p>If, in the minister's opinion, a decision not to post a proposal on the Environmental Registry for public consultation because an exception under section 29 (emergencies) or section 30 (other processes) applies to the proposal, the minister shall give notice of the decision to the public and to the Auditor General as soon as reasonably possible after the decision is made (sections 29 and 30).</p> |
| g. Decision notices for policies, acts and regulations are informative | Each decision notice shall explain what decision was made and include a brief description of the effect, if any, of public participation on the ministry's decision-making on the proposal, and any other information that the minister considers appropriate (section 36). |
| h. Decision notices for instruments ¹ are informative | Each decision notice shall explain what decision was made and include a brief description of the effect, if any, of public participation on the ministry's decision-making on the proposal, and any other information that the minister considers appropriate (section 36). |
| i. Proposal notices are up-to-date | The Environmental Registry is to provide a means of giving information about the environment to the public, which includes information about decisions that could affect the environment (section 6). |
| j. Prompt notice of appeals and leave to appeal applications is given | The Environment Minister shall promptly place on the Environmental Registry notices of appeals and applications for leave to appeal that it receives from an appellant or applicant related to certain decisions to issue, amend or revoke instruments ¹ classified under O. Reg. 681/94 (subsection 47(3)). |
| k. The Environmental Registry platform is maintained effectively | <p>The Environment Minister shall operate the Environmental Registry, the purpose of which is to give information about the environment to the public, including, but not limited to, information about:</p> <ul style="list-style-type: none"> proposals, decisions and events that could affect the environment; actions brought under Part VI; and things done under the EBR Act (sections 5 and 6, and O. Reg. 73/94, section 13). |

| Sub-Criterion | Relevant Provision(s) in the <i>Environmental Bill of Rights, 1993</i> |
|--|--|
| 3. Applications for Review and Applications for Investigation | |
| a. Ministry reviews all matters to the extent necessary | <p>The minister shall consider each application for review in a preliminary way to determine whether the public interest warrants the review. The minister may consider:</p> <ul style="list-style-type: none"> • the ministry's Statement of Environmental Values; • the potential for environmental harm if the review is not done; • whether the matter is already periodically reviewed; • any social, economic, scientific or other evidence the minister considers relevant; • submissions from other persons the minister considers might have a direct interest in the matters raised in the application; • the resources required to conduct the review; and • any other matter the minister considers relevant (subsection 67(2)). <p>In addition, when determining whether the public interest warrants a review of an existing policy, act, regulation or instrument that is the subject of an application for review, the minister may consider:</p> <ul style="list-style-type: none"> • the extent to which members of the public had an opportunity to participate in the development of the policy, act, regulation or instrument; and • how recently the policy, act, regulation or instrument was made, passed or issued (subsection 67(3)). <p>The minister shall not determine that the public interest warrants a review of a decision that was made during the five years preceding the date of the application for review if the decision was made in a manner that the minister considers consistent with the intent and purpose of public participation under the EBR Act. This prohibition does not apply where it appears to the minister that there is social, economic, scientific or other evidence that failure to review the decision could result in significant environmental harm and if that evidence was not taken into account when the decision was made (section 68).</p> <p>The ministry shall provide a brief statement of reasons for its decision to accept or deny the review (section 70).</p> <p>For undertaken reviews, the ministry shall give notice of the outcome that states what action, if any, the ministry has or will take as a result of the review (section 71).</p> |
| b. Ministry investigates all matters to the extent necessary | <p>The minister shall investigate all alleged contravention(s) set out in the application to the extent that the minister considers necessary. The minister may deny a request for investigation if:</p> <ul style="list-style-type: none"> • the minister considers that the application is frivolous or vexatious; • the minister considers that the alleged contravention is not serious enough to warrant an investigation; • the minister considers that 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>If the minister decides that an investigation is not warranted, the minister shall provide a brief statement of the reasons for the decision not to investigate unless there is an ongoing investigation in relation to the alleged contravention (subsections 78(1) and (2)).</p> <p>For completed investigations, the minister shall give notice of the outcome that states what action, if any, the minister has or will take as a result of the investigation (section 80).</p> |

| Sub-Criterion | Relevant Provision(s) in the <i>Environmental Bill of Rights, 1993</i> |
|---|--|
| c. Ministry meets all timelines | <p>A minister who receives an application for review or an application for investigation shall acknowledge receipt of the application to the applicants within 20 days of receipt (section 65 for reviews and subsection 74(5) for investigations).</p> <p>The minister shall notify the applicants and the Auditor General of a decision to undertake or deny the requested review within 60 days of receipt (section 70).</p> <p>A minister that determines that the public interest warrants a review must conduct the review within a reasonable time (subsection 69(1)).</p> <p>The minister shall give notice of the outcome of the review to the applicants and the Auditor General within 30 days of completing the review (subsection 71(1)).</p> <p>If the minister decides not to investigate, the minister shall notify the applicants, the alleged contraveners and the Auditor General of this decision within 60 days of receiving the application (subsection 78(3)).</p> <p>If the minister undertakes an investigation, the minister must, within 120 days of receiving the application, either:</p> <ul style="list-style-type: none"> • complete the investigation; or • give a written estimate of the time required to complete it, and then complete the investigation within the estimated time frame or provide a new estimated timeline (section 79). <p>The minister shall give notice to the applicants, the alleged contraveners and the Auditor General of the outcome of the investigation within 30 days of completing the investigation (subsection 80(1)).</p> |
| 4. Providing Educational Programs and Information about the Act (Environment Ministry only) | |
| a. When requested, Environment Ministry helps other ministries provide educational programs | At the request of a minister, the Environment Minister shall assist the other ministry in providing educational programs about the EBR Act (subsection 2.1(a)). |
| b. Environment Ministry provides educational programs about the EBR Act to the public | The Environment Minister shall provide educational programs about the EBR Act to the public (subsection 2.1(b)). |
| c. Environment Ministry provides general information about the EBR Act to those who wish to participate in a proposal | The Environment Minister shall provide general information about the EBR Act to members of the public who wish to participate in decision-making about a proposal as provided in the EBR Act (subsection 2.1(c)). |

1. The term "instrument" in this document has the same meaning as "instrument" in the EBR Act and includes any document of legal effect issued under an act, such as a permit, licence, approval, authorization, direction or order.
2. Note that references to a minister in this document mean any minister of a ministry prescribed under the EBR Act. The document refers to the Environment Minister (see **section 4** of this table) for specific responsibilities that apply only to that Minister. Note also that a minister may delegate their powers or duties under the EBR Act.

Appendix 3: Responsibilities of Each Prescribed Ministry, 2022/23

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

| Ministry | Prepare and Consider Statement of Environmental Values | Consult on Policies and Acts ¹ | Consult on Regulations under Prescribed Acts ¹ | Consult on Prescribed Instruments (Permits and Approvals) | Respond to Applications for Review | Respond to Applications for Investigation |
|-----------------------------------|--|---|---|---|------------------------------------|---|
| Environment | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Natural Resources | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Municipal Affairs | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Mining | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Public Services ² | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Energy | ✓ | ✓ | ✓ | | ✓ | |
| Northern Development ³ | ✓ | ✓ | | | ✓ | |
| Transportation | ✓ | ✓ | ✓ | | ✓ | |
| Agriculture | ✓ | ✓ | ✓ | | ✓ | |
| Tourism | ✓ | ✓ | ✓ | | | |
| Health | ✓ | ✓ | ✓ | | ✓ | |
| Long-Term Care | ✓ | ✓ | | | ✓ | |
| Infrastructure | ✓ | ✓ | | | | |
| Economic Development | ✓ | ✓ | | | | |
| Indigenous Affairs | ✓ | ✓ | | | | |
| Education | ✓ | ✓ | | | ✓ | |
| Labour | ✓ | ✓ | | | | |
| Treasury Board Secretariat | ✓ | ✓ | | | | |

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

2. The Public Services Ministry's responsibilities related to liquid fuels under the *Technical Standards and Safety Act, 2000* are carried out by the Technical Standards and Safety Authority.

3. In June 2022, a new separate Ministry of Northern Development was created. Northern Development was formerly part of the Ministry of Northern Development, Mines, Natural Resources and Forestry, a prescribed ministry. In November 2022, O. Reg. 73/94, the prescribing regulation under the EBR Act, was updated to prescribe the new ministry.

Appendix 4: Prescribed Acts under the *Environmental Bill of Rights, 1993*

Source of data: O. Reg. 73/94 and O. Reg. 681/94, made under the *Environmental Bill of Rights, 1993* and government Orders-in-Council issued in 2022.

| 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 Energy | | | |
| <i>Ontario Energy Board Act, 1998</i> | Y ² | Y ² | N |
| Ministry of the Environment, Conservation and Parks | | | |
| <i>Clean Water Act, 2006</i> | Y | Y | N |
| <i>Endangered Species Act, 2007</i> | Y ³ | Y ³ | Y |
| <i>Environmental Assessment Act</i> | Y | Y | Y |
| <i>Environmental Bill of Rights, 1993</i> | Y | Y | N |
| <i>Environmental Protection Act</i> | Y | Y | Y |
| <i>Great Lakes Protection Act, 2015</i> | Y | Y | N |
| <i>Kawartha Highlands Signature Site Park Act, 2003</i> | N | Y | Y |
| <i>Lake Simcoe Protection Act, 2008</i> | Y | Y | N |
| <i>Ontario Water Resources Act</i> | Y | Y | Y |
| <i>Pesticides Act</i> | Y | Y | Y |
| <i>Provincial Parks and Conservation Reserves Act, 2006</i> | Y | Y | Y |
| <i>Resource Recovery and Circular Economy Act, 2016</i> | Y | Y | N |
| <i>Safe Drinking Water Act, 2002</i> | Y | Y | Y ⁴ |
| <i>Waste Diversion Transition Act, 2016</i> | Y | Y | N |
| <i>Water Opportunities Act, 2010</i> | Y | Y | N |
| Ministry of Health | | | |
| <i>Health Protection and Promotion Act</i> | Y ⁵ | Y ⁵ | N |
| Ministry of Mines | | | |
| <i>Mining Act</i> | Y | Y | Y |
| Ministry of Municipal Affairs and Housing | | | |
| <i>Building Code Act, 1992</i> | Y ⁶ | Y ⁶ | N |
| <i>Greenbelt Act, 2005</i> | Y ³ | Y | N |
| <i>Oak Ridges Moraine Conservation Act, 2001</i> | Y ³ | Y | Y ⁴ |
| <i>Places to Grow Act, 2005</i> | Y | Y | N |
| <i>Planning Act</i> | Y | Y | Y ⁴ |

| 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>Conservation Authorities Act</i> ⁷ | Y | Y | Y |
| <i>Crown Forest Sustainability Act, 1994</i> | Y | Y | Y |
| <i>Far North Act, 2010</i> | Y | Y | Y |
| <i>Fish and Wildlife Conservation Act, 1997</i> | Y | Y | Y |
| <i>Invasive Species Act, 2015</i> | Y | Y | Y |
| <i>Lakes and Rivers Improvement Act</i> | Y | Y | Y |
| <i>Mining Act</i> | Y | Y | Y |
| <i>Niagara Escarpment Planning and Development Act</i> | Y | Y | Y |
| <i>Oil, Gas and Salt Resources Act</i> | Y | Y | Y |
| <i>Public Lands Act</i> | Y | Y | Y |
| Ministry of Public and Business Service Delivery | | | |
| <i>Technical Standards and Safety Act, 2000</i> | Y ⁸ | Y ⁸ | Y ⁸ |
| Ministry of Tourism, Culture and Sport | | | |
| <i>Ontario Heritage Act</i> ⁹ | Y | Y ¹⁰ | N |
| Ministry of Transportation | | | |
| <i>Highway Traffic Act</i> | Y ¹¹ | N | N |

1. Limited to disposal of deadstock.

2. Limited to certain regulations related to electricity licensing.

3. With some exceptions.

4. Limited to certain instruments.

5. Limited to small drinking-water systems.

6. Limited to septic systems.

7. As of August 29, 2022, the Minister of the Environment, Conservation and Parks' duties, functions and responsibilities under the *Conservation Authorities Act* were transferred to the Minister of Natural Resources and Forestry; prior to that date, the Environment and Natural Resources Ministries both had responsibilities under that Act.

8. Limited to liquid fuels handling.

9. As of August 29, 2022, the Ministry of Tourism, Culture and Sport's responsibilities under the *Ontario Heritage Act* were transferred to the Ministry of Citizenship and Multiculturalism, except in respect of certain responsibilities related to museums.

10. While the *Ontario Heritage Act* is prescribed for purposes of applications for review, neither of the ministries responsible for administering that Act (the Ministry of Citizenship and Multiculturalism and the Ministry of Tourism, Culture and Sport) are prescribed under Part IV of the EBR Act, resulting in a lack of clarity regarding responsibility for responding to any applications for review (see **Section 12.1.1** of this report).

11. Limited to governing emissions.

Appendix 5: 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 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

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

Ministry of the Environment, Conservation and Parks
Ontario Water Resources Act

Permit 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

Director's order designating an area as an "area of public water service" or an "area of public sewage service"

Pesticides Act

Add or remove an active ingredient from a prescribed list

Agreement with a body responsible for managing a natural resources management project that would allow an unlisted pesticide to be used

Emergency notice

Stop order

Control order

Order to repair or prevent damage

Safe Drinking Water Act, 2002

Approval of a municipal drinking water system

Drinking water works permit

Municipal drinking water licence

Order or notice with respect to a drinking water system (drinking water health hazard)

Ministry of Natural Resources and Forestry
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

Ministry of Natural Resources and Forestry***Conservation Authorities Act***

Approval for the sale, lease or other disposition of land by a conservation authority

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 a conservation authority to reimburse costs

Minister's requirement for the council of a municipality to carry out flood control operations

Minister's requirement for the council of a municipality to follow the Minister's instructions for the operation of a water control structure

Minister takes over the operation of a water control structure and requires council of a municipality to reimburse costs

Crown Forest Sustainability Act, 1994

Forest resource processing facility licence

Far North Act, 2010

Minister's order approving a land use plan

Order to amend the boundaries of a planning area after a community-based land use plan is approved

Exception order by the Lieutenant Governor in Council for development where there is a community based land use plan

Fish and Wildlife Conservation Act, 1997

Authorization to release wildlife or an invertebrate

Aquaculture licence

Lakes and Rivers Improvement Act

Minister's order to repair, improve or remove an unapproved dam

Minister's order to rectify a problem related to a dam

Minister's order to do what the Minister considers necessary related to a dam to further purposes of the Act

Minister's order to owner of a dam to provide a fishway

Minister's order to regulate the use of a lake or river or the use and operation of a dam

Minister's order to take steps to maintain, raise or lower the water level on a lake or river

Minister's order to take steps to remove any substance or matter from a lake or river

Niagara Escarpment Planning and Development Act

Declaration that a bylaw, improvement or other development or undertaking of a municipality is deemed not to conflict with the Niagara Escarpment Plan

Minister's 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 to inject a substance

Suspension or cancellation of a permit to inject a substance

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 where there is no official plan in place

Ministry of 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

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 Public and Business Service Delivery***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 6: Ministry Report Card Results under the *Environmental Bill of Rights, 1993* for 2022/23

Prepared by the Office of the Auditor General of Ontario

The report cards below summarize our findings with respect to each prescribed ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2022/23 reporting year.

Whether a ministry partially met or did not meet a criterion depends on the volume and significance of the issues we found.

Ministry of the Environment, Conservation and Parks

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|--|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | The Ministry has not updated its Statement since 2008, and its existing Statement does not reflect its current name, mandate or government priorities, such as addressing climate change. In December 2020, the Ministry posted a proposal on the Environmental Registry for an updated Statement, but as of September 2023 it had not finalized its new Statement. The Ministry told us that it was not currently working on or planning any work on updating its Statement. | ● | ● | ● | ● | ● |
| b. Statement is considered when making decisions | Criterion met. | ○ | ● | ● | ○ | ○ |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | The Ministry did not consult the public in accordance with the EBR Act on the proposed <i>Supporting Growth and Housing in York and Durham Regions Act, 2022</i> . See Section 4.2.3 . | ● | ● | ● | ● | ● |
| b. Time to comment is extended based on the factors in the EBR Act | The Ministry did not allow enough time for informed public comment on its proposal for the <i>Supporting Growth and Housing in York and Durham Regions Act, 2022</i> . See Section 4.2.2 . | ● | ● | ○ | ○ | ● |
| c. Proposal notices for policies, acts and regulations are informative | The Ministry posted 12 new proposal notices and substantially updated one more. Of the 13 proposal notices, six (46%) did not explain the potential environmental impacts of the proposal either clearly or at all. See Section 4.1.2 . Further, the Ministry again chose not to correct inaccurate information in a proposal notice to exempt projects related to provincial parks and conservation reserves from the <i>Environmental Assessment Act</i> . See Section 6.5 . | ○ | ● | ● | ● | ● |
| d. Proposal notices for instruments are informative | The Ministry posted 818 proposal notices for permits and approvals. We assessed a sample of 22 notices and found that six (27%) did not describe the proposals, their expected environmental impacts, or how the proposed permits and approvals would manage environmental risks sufficiently to enable meaningful comment. See Section 6.6.1 . | ● | ● | ● | ● | ● |
| e. Received comments are reviewed and considered | The Ministry did not consider all comments submitted on a proposal for the York Durham sewer system project before the decision was made through the passage of Bill 23. See Section 4.3 . | Not assessed | Not assessed | ○ | ○ | ● |

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|---|---|--------------|--------------|--------------|--------------|--------------|
| f. Prompt notice of decisions is given | Criterion met. | ● | ● | ● | ○ | ○ |
| g. Decision notices for policies, acts and regulations are informative | The Ministry posted 15 decision notices for policies, acts and regulations. The description of public comments in one decision notice, for amendments to the general regulation made under the <i>Endangered Species Act, 2007</i> , was misleading. See Section 6.4 . | ○ | ○ | ○ | ○ | ● |
| h. Decision notices for instruments are informative | The Ministry posted 928 decision notices for instruments. Of 26 notices that we reviewed, we found that 10 (38%) did not include copies of or links to the issued instruments. See Section 6.6.2 . | ○ | ● | ● | ● | ● |
| i. Proposal notices are up-to-date | As of March 31, 2023, the Ministry was responsible for six outdated proposal notices on the Environmental Registry—five more than in 2022. Further, the Ministry has not posted a decision notice for new legislation regarding wastewater treatment services for York Region, even though the bill received third reading in November 2022. See Section 8.1 . | ● | ● | ● | ● | ● |
| j. Prompt notice of appeals and leave to appeal applications is given | The Ministry posted five appeal notices on the Environmental Registry, but only one was posted within five business days of receiving notice of the application, which our Office has identified as a best practice. See Section 10.2.1 . | n/a | ● | ● | ● | ● |
| k. The Environmental Registry platform is maintained effectively | The Ministry maintained the Environmental Registry well and has made some improvements to the Registry's internal controls. However, we found two weaknesses related to changing notice content and map-based searches. See Section 10.3 . | n/a | ○ | ● | ● | ● |
| 3. Applications for Review¹ and Applications for Investigation | | | | | | |
| b. Ministry investigates to extent warranted | The Ministry concluded three applications for investigation. Criterion met (see Concluded Applications for Investigation by the Environment Ministry in 2022/23 table below). | ○ | — | — | ● | ○ |
| c. Ministry meets all timelines | Of the three applications for investigations that it concluded, the Ministry did not meet the legal deadline to give one set of applicants notice of its decision not to undertake an investigation (see Concluded Applications for Investigation by the Environment Ministry in 2022/23 table below). Further, the Ministry still has not completed a review of the EBR Act that it agreed to undertake in 2011. See Sections 9.1 and 9.2 . | ● | ● | ● | ● | ● |
| 4. Education | | | | | | |
| a. Environment Ministry provides educational programs about the EBR Act to the public | Other than a series of social media posts about the EBR Act between October and December 2022, the Ministry did not provide any educational programs to the public about the EBR Act in 2023. See Section 10.1 . | n/a | ● | ● | ● | ● |
| b. Environment Ministry provides general information about the EBR Act to those who wish to participate in a proposal | Criterion met. | n/a | ○ | ● | ● | ○ |

1. The Environment Ministry did not conclude any applications for review in 2022/23 (that is, the Ministry did not deny any requests for a review or give notice of completion of any undertaken reviews).

Concluded Applications for Investigation by the Environment Ministry in 2022/23

Legend: ○ Met criterion
● Did not meet criterion

| Application for Investigation | Year Submitted | Undertaken or Denied | Ministry Investigates to the Extent Necessary | Ministry Meets All Timelines |
|---|----------------|----------------------|---|------------------------------|
| Investigations of bird collisions and deaths due to reflected light from buildings in Ottawa ² | 2021 | Undertaken in part | ● | ○ |
| Investigation of alleged discharge of wastewater into a storm sewer from a truck-washing operation at a food distribution warehouse | 2022 | Undertaken | ○ | ○ |
| Investigation of alleged discharge of gasoline vapours from a fuel tank refilling operation | 2022 | Denied | ○ | ● |
| Investigation of alleged discharge of contaminants to water from planned subdivision infrastructure | 2022 | Denied | ○ | ○ |

2. This application was concluded in April 2022. We reported on the Environment Ministry's handling of this application in our 2022 report on the operation of the EBR Act because it was related to another application for investigation that was completed in 2021/22.

Ministry of Natural Resources and Forestry³

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|---|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ● | ○ | ○ | ○ | ○ |
| b. Statement is considered when making decisions | The Ministry did not meaningfully consider its Statement when it made a decision to update Ontario's Wetland Evaluation System. See Section 7.1 . | ○ | ○ | ○ | ○ | ● |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | The Ministry did not consult the public in accordance with the EBR Act on two environmentally significant decisions: the repeal of the <i>Duffins Rouge Agricultural Preserve Act, 2005</i> (see Section 4.4) and proposed amendments to the <i>Conservation Authorities Act</i> and regulations (see Section 4.2.3). | ○ | ● | ● | ○ | ● |
| b. Time to comment is extended based on the factors in the EBR Act | The Ministry did not allow enough time for informed public comment on its proposal for changes to Ontario's Wetland Evaluation System—one of more than 14 related proposals posted on the Environmental Registry on October 25, 2022—given its high level of public interest and environmental significance. See Section 4.2.2 . | ○ | ● | ○ | ○ | ● |
| c. Proposal notices for policies, acts and regulations are informative | The Ministry posted 11 proposal notices for policies, acts and regulations. Four of those notices did not describe the potential environmental implications of the proposals, including a proposal for changes to the <i>Conservation Authorities Act</i> and its regulations. See Section 6.3 . | ● | ● | ● | ● | ● |
| d. Proposal notices for instruments are informative | Criterion met. | ○ | ○ | ○ | ○ | ○ |

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|---|--------------|--------------|--------------|--------------|--------------|
| e. Received comments are reviewed and considered | The Ministry did not consider all comments submitted on a proposal for amendments to the <i>Conservation Authorities Act</i> before the decision was made through the passage of Bill 23. See Section 4.3 . | Not assessed | Not assessed | ○ | ○ | ● |
| f. Prompt notice of decisions is given | We reviewed a sample of 34 decision notices and two exception notices, and found that 11 decision notices and one exception notice (33%) were not posted within two weeks after the decision was made. See Section 8.2 . | ● | ● | ● | ● | ● |
| g. Decision notices for policies, acts and regulations are informative | Criterion met. | ○ | ○ | ● | ● | ○ |
| h. Decision notices for instruments are informative | The Ministry posted 41 decision notices for permits and approvals, and we reviewed a sample of 10 notices. None of the decision notices that we reviewed included links to the issued instruments. See Section 6.6.2 . | ● | ● | ● | ● | ● |
| i. Proposal notices are up-to-date | As of March 31, 2023, the Ministry was responsible for 20 outdated proposal notices on the Environmental Registry, which was 11% of the Ministry's open proposal notices. Further, as of September 2023, the Ministry had not posted a decision notice for legislative and regulatory proposals affecting conservation authorities, even though they had been decided more than nine months earlier. See Section 8.1 . | ● | ● | ● | ● | ● |
| 3. Applications for Review⁴ and Applications for Investigation | | | | | | |
| c. Ministry meets all timelines | The Ministry did not meet the statutory deadlines for responding to an application for investigation submitted in March 2023. See Section 9.1 . | ○ | — | — | ● | ● |

3. Between June 18, 2021, and June 24, 2022, the Natural Resources Ministry was part of the Ministry of Northern Development, Mines, Natural Resources and Forestry (the former Ministry). The results included in this report card for 2021 and 2022 show the results for the Natural Resources section of the former Ministry.
4. The Natural Resources Ministry did not conclude any applications for review in 2022/23 (that is, the Ministry did not deny any requests for a review or give notice of completion of any undertaken reviews).

Ministry of Municipal Affairs and Housing

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|--|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ● | ○ | ○ | ○ | ○ |
| b. Statement is considered when making decisions | The Ministry did not consider its Statement before making two decisions. Also, it did not consider all relevant principles of its Statement when making three other decisions. See Section 7.2 . | ○ | ● | ● | ○ | ● |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | The Ministry did not consult the public in accordance with the EBR Act on proposed <i>Planning Act</i> changes in Bill 109 (see our 2022 report on the operation of the EBR Act) or on two proposals for amendments in Bill 23. See Section 4.2.3 . | ○ | ○ | ● | ● | ● |

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|--|--------------|--------------|--------------|--------------|--------------|
| b. Time to comment is extended based on the factors in the EBR Act | The Ministry led the government's housing-related consultations on more than 14 proposals posted on the Environmental Registry, as well as four proposals for changes to the Greenbelt. The Ministry did not allow enough time for informed public comment in light of the number and complexity of the proposals, the high level of public interest and the proposals' environmental significance. See Section 4.2.2. | ○ | ○ | ○ | ● | ● |
| c. Proposal notices for policies, acts and regulations are informative | The Ministry posted 13 proposal notices for policies, acts and regulations on the Registry. Twelve notices were for proposals in support of the Ministry's Housing Supply Action Plan 3.0, including four for changes to the Greenbelt. Nine notices (69%) did not identify or assess any potential environmental impacts of implementing the proposals. The Ministry did not provide complete or fully accurate information in notices for changes to the Greenbelt. See Section 4.1. | ● | ● | ● | ● | ● |
| d. Proposal notices for instruments are informative | Criterion met. | ● | ○ | ○ | ○ | ○ |
| e. Received comments are reviewed and considered | The Ministry did not consider all comments received on its proposals for Bill 109, Bill 23 or changes to the Greenbelt. See Section 4.3. | Not assessed | Not assessed | ○ | ○ | ● |
| f. Prompt notice of decisions is given | Criterion met. | ● | ● | ● | ○ | ○ |
| g. Decision notices for policies, acts and regulations are informative | The Ministry posted 12 decision notices for policies, acts and regulations on the Registry. Two decision notices related to Bill 23 were inaccurate, stating under the "Effects of public consultation" heading that all comments were considered even though the bill passed before the end of the comment period. See Section 4.3. Similarly, the decision notice for Bill 109 stated that all comments were considered even though 75% of the comments were submitted after the bill received third reading. We reported on this in our 2022 report on the operation of the EBR Act. | ○ | ● | ● | ○ | ● |
| h. Decision notices for instruments are informative | The Ministry posted 16 decision notices for consents for severance of land that did not accurately describe the public's rights to appeal the decisions. See Section 6.7. | ● | ● | ● | ○ | ● |
| i. Proposal notices are up-to-date | Criterion met. | ○ | ● | ○ | ○ | ○ |

Ministry of Mines⁵

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|---|----------------|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ○ | ○ | ○ | ○ | ○ |

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|---|--------------|--------------|--------------|--------------|--------------|
| b. Statement is considered when making decisions | The Ministry did not meaningfully consider its Statement for three decisions about <i>Mining Act</i> amendments. In each case, the Ministry indicated that the environmental factors were not applicable to its consideration. The Ministry should have documented its consideration of the environmental factors in its Statement and explained, based on that consideration, how the Ministry assessed the impacts of the proposed amendments on the environment. For details of those decisions, see Section 6.1. | ○ | ○ | ● | ● | ● |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | ○ | ○ | ○ | ○ | ○ |
| b. Time to comment is extended based on the factors in the EBR Act | Criterion met. | ● | ○ | ○ | ○ | ○ |
| c. Proposal notices for policies, acts and regulations are informative | The Ministry posted seven proposal notices. Three proposal notices (43%), all related to the <i>Mining Act</i> , stated that “there are no anticipated environmental impacts as a result of these proposed changes to the <i>Mining Act</i> ” but did not explain the Ministry’s rationale for why this would be the case. See Section 6.1. | ● | ○ | ○ | ● | ● |
| d. Proposal notices for instruments are informative | The Ministry posted 325 proposal notices for permits and approvals under the <i>Mining Act</i> . Of the 10 notices we reviewed, six (60%) either did not include links to supporting documentation or contained broken links. One of these notices did not describe the potential environmental impacts of the proposal. See Section 6.6.1. | ○ | ○ | ○ | ● | ● |
| e. Received comments are reviewed and considered | Criterion met. | Not assessed | Not assessed | ● | ● | ○ |
| f. Prompt notice of decisions is given | We reviewed a sample of 14 decision notices and one exception notice, and found that three of those notices (20%) were not posted within two weeks of the decisions being made. In particular, the exception notice was posted more than two years after the completion of the work required by the instrument. See Section 8.2. | ● | ● | ● | ● | ● |
| h. Decision notices for instruments are informative | The Ministry posted 327 decision notices for permits and approvals under the <i>Mining Act</i> . Of the 10 notices we reviewed, nine (90%) did not sufficiently describe the effect of public participation on the decision. In seven of those cases, the ministry merely stated that “comments received were considered in the decision.” See Section 6.6.2. | ● | ● | ● | ● | ● |
| i. Proposal notices are up-to-date | As of March 31, 2023, the Ministry was responsible for three outdated proposal notices on the Environmental Registry (all <i>Mining Act</i> instrument notices), which was 2% of the Ministry’s open proposal notices. This is an increase compared to 2022, when the Ministry had two outdated proposals. See Section 8.1. | ● | ● | ● | ○ | ● |

5. Until June 24, 2022, the Ministry of Mines was part of the Ministry of Northern Development, Mines, Natural Resources and Forestry, and before June 18, 2021, it was part of the Ministry of Energy, Northern Development and Mines. The results included in this report card for 2019–2022 show the results for those predecessor Ministries in those years, as applicable.

Ministry of Public and Business Service Delivery – Technical Standards and Safety Authority (TSSA)

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|---|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ● | ● | ○ | ○ | ○ |
| b. Statement is considered when making decisions | Criterion met. Based on a sample of consideration documents that we requested regarding 10 decisions about approvals for liquid fuel variances under the <i>Technical Standards and Safety Act, 2000</i> , the TSSA's documentation of its consideration improved over the 2022/23 reporting period. In more recent documentation, the Ministry started to provide explanations when it determined that certain Statement principles were not relevant to the decision, consistent with a recommendation made in our 2022 report. | ○ | ○ | ● | ● | ○ |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | ○ | ○ | ○ | ○ | ○ |
| b. Time to comment is extended based on the factors in the EBR Act | Criterion met. | ○ | ○ | ○ | ○ | ○ |
| c. Proposal notices for policies, acts and regulations are informative | Criterion met. | ○ | – | ○ | – | ○ |
| d. Proposal notices for instruments are informative | Criterion met. | ● | ● | ● | ○ | ○ |
| f. Prompt notice of decisions is given | Criterion met. | ○ | ○ | ● | ○ | ○ |
| h. Decision notices for instruments are informative | Criterion met. | ○ | ○ | ○ | ○ | ○ |
| i. Proposal notices are up-to-date | Criterion met. | ○ | ○ | ○ | ○ | ○ |

Ministry of Energy⁶

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|---|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ○ | ○ | ○ | ○ | ○ |
| b. Statement is considered when making decisions | Criterion met. | ○ | ○ | ● | ● | ○ |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | The Ministry did not consult the public through the Environmental Registry on a new clean energy plan or on amendments to the electricity Conservation and Demand Management Framework. See Section 5. | ○ | ○ | ○ | ● | ● |
| b. Time to comment is extended based on the factors in the EBR Act | Criterion met. | ● | ○ | ○ | ○ | ○ |
| c. Proposal notices for policies, acts and regulations are informative | The Ministry posted six proposal notices for policies and regulations. Four of the notices either did not adequately describe the proposal or did not describe the potential environmental impacts. See Section 6.2. | ● | ○ | ○ | ● | ● |
| e. Received comments are reviewed and considered | Criterion met. | Not assessed | Not assessed | ● | ○ | ○ |
| f. Prompt notice of decisions is given | Criterion met. | ● | ● | ● | ○ | ○ |
| g. Decision notices for policies, acts and regulations are informative | Criterion met. | ○ | ● | ● | ● | ○ |
| i. Proposal notices are up-to-date | Criterion met. | ● | ● | ● | ○ | ○ |

6. Until June 18, 2021, the Ministry of Energy was part of the Ministry of Energy, Northern Development and Mines. The results included in this report card for 2019 and 2020 show the results for the Ministry of Energy, Northern Development and Mines.

Ministry of Northern Development⁷

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|---|----------------|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ○ | ○ | ○ | ○ | ○ |

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|----------------|--------------|--------------|--------------|--------------|--------------|
| b. Statement is considered when making decisions | Criterion met. | ○ | ○ | ● | ● | ○ |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | ○ | ○ | ○ | ○ | ○ |
| b. Time to comment is extended based on the factors in the EBR Act | Criterion met. | ● | ○ | ○ | ○ | ○ |
| e. Received comments are reviewed and considered | Criterion met. | Not assessed | Not assessed | ● | ● | ○ |
| f. Prompt notice of decisions is given | Criterion met. | ● | ● | ● | ● | ○ |
| g. Decision notices for policies, acts and regulations are informative | Criterion met. | ○ | ● | ● | ● | ○ |

7. On June 24, 2022, the Ministry of Northern Development, Mines, Natural Resources and Forestry was divided to form three separate ministries: the Ministry of Natural Resources and Forestry; the Ministry of Northern Development; and the Ministry of Mines. The results for 2022 show our findings for the Ministry of Northern Development and the Ministry of Mines, combined. The results for 2019, 2020 and 2021 show our findings for the previous Ministry of Energy, Northern Development and Mines.

Ministry of Transportation

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|----------------|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ● | ● | ○ | ○ | ○ |
| b. Statement is considered when making decisions | Criterion met. | ○ | ○ | ● | ○ | ○ |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | — | ○ | ● | ○ | ○ |
| b. Time to comment is extended based on the factors in the EBR Act | Criterion met. | — | ○ | ○ | ○ | ○ |

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|--|--------------|--------------|--------------|--------------|--------------|
| c. Proposal notices for policies, acts and regulations are informative | The Ministry posted two policy proposal notices on the Registry, neither of which included any information about their environmental implications. For example, the Ministry's proposal notice for building electric vehicle charging infrastructure was completely silent on the environmental implications of the program, even though internal Ministry documentation states that the aim of the program is to reduce Ontario's transportation greenhouse gas emissions. See Section 6 . | — | ○ | ○ | ○ | ● |
| e. Received comments are reviewed and considered | Criterion met. | Not assessed | Not assessed | ○ | ○ | ○ |
| f. Prompt notice of decisions is given | Criterion met. | ○ | ○ | ● | ○ | ○ |
| g. Decision notices for policies, acts and regulations are informative | Criterion met. | ○ | ○ | ● | ● | ○ |
| i. Proposal notices are up-to-date | Criterion met. | ○ | ○ | ○ | ○ | ○ |

Ministry of Agriculture, Food and Rural Affairs

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|---|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ○ | ○ | ○ | ○ | ○ |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | ○ | ○ | ○ | ○ | ○ |
| b. Time to comment is extended based on the factors in the EBR Act | Criterion met. | ○ | ○ | ○ | ○ | ○ |
| c. Proposal notices for policies, acts and regulations are informative | Criterion met. | ○ | ● | ○ | ● | ○ |
| i. Proposal notices are up-to-date | As of March 31, 2023, the Ministry had one outdated proposal notice, which was 50% of its total open proposal notices. See Section 8.1 . | ○ | ○ | ○ | ○ | ● |

Ministry of Tourism, Culture and Sport

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|----------------|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ● | ○ | ○ | ○ | ○ |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | — | ○ | ○ | ○ | ○ |
| b. Time to comment is extended based on the factors in the EBR Act | Criterion met. | — | ○ | ○ | ○ | ○ |
| c. Proposal notices for policies, acts and regulations are informative | Criterion met. | — | ○ | ○ | ○ | ○ |
| i. Proposal notices are up-to-date | Criterion met. | ○ | — | ○ | ○ | ○ |

Ministry of Health

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|----------------|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ● | ○ | ○ | ○ | ○ |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | — | ○ | ○ | ○ | ○ |

Ministry of Long-Term Care

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|----------------|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ● | ○ | ○ | ○ | ○ |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | — | ○ | ○ | ○ | ○ |

Ministry of Infrastructure

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|----------------|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ● | ○ | ○ | ○ | ○ |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | ○ | ○ | ○ | ○ | ○ |

Ministry of Economic Development, Job Creation and Trade

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|---|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | The Ministry's Statement was last updated in November 2017, and the Ministry's mandate has changed since then, most recently with the removal of red tape reduction from the Ministry's responsibilities. The Ministry's current Statement specifies that it will review the Statement and make any necessary amendments every five years. In June 2023, the Ministry told our Office it intends to consult the public on a proposal for an updated Statement in the coming months. | ○ | ○ | ○ | ○ | ● |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | ○ | ○ | ○ | ○ | ○ |

Ministry of Indigenous Affairs

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|----------------|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ○ | ○ | ○ | ○ | ○ |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | ○ | ○ | ○ | ○ | ○ |

Ministry of Education

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|----------------|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ● | ● | ○ | ○ | ○ |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | ○ | ○ | ○ | ○ | ○ |

Ministry of Labour, Immigration, Training and Skills Development

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|---|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | The Ministry has not updated its Statement since 2008, and its existing Statement does not reflect its current name, mandate or government priorities, such as addressing climate change. In May 2022, the Ministry told us that updating its Statement was on the Ministry's agenda for summer or fall of 2022, but as of September 2023 the Ministry had not proposed updates to its Statement. | ● | ● | ● | ● | ● |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | — | ○ | ○ | ○ | ○ |

Treasury Board Secretariat

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

| Criterion | OAGO Comments | 2019 Results | 2020 Results | 2021 Results | 2022 Results | 2023 Results |
|--|----------------|--------------|--------------|--------------|--------------|--------------|
| 1. Statement of Environmental Values (Statement) | | | | | | |
| a. Statement is up-to-date | Criterion met. | ○ | ○ | ○ | ○ | ○ |
| 2. Use of the Environmental Registry (Registry) | | | | | | |
| a. Notice of proposals is given as required by the EBR Act | Criterion met. | — | ○ | ○ | ○ | ○ |
| b. Time to comment is extended based on the factors in the EBR Act | Criterion met. | — | — | — | — | ○ |
| c. Proposal notices for policies, acts and regulations are informative | Criterion met. | — | — | — | — | ○ |
| e. Received comments are reviewed and considered | Criterion met. | Not assessed | Not assessed | — | — | ○ |
| f. Prompt notice of decisions is given | Criterion met. | — | — | — | — | ○ |
| g. Decision notices for policies, acts and regulations are informative | Criterion met. | — | — | — | — | ○ |

Appendix 7: Number of Notices Posted on the Environmental Registry in 2022/23

Prepared by the Office of the Auditor General of Ontario, based on data from the Environmental Registry of Ontario and the Ministry of the Environment, Conservation and Parks

| | | | |
|--|--------------|---|--------------|
| Proposal notices | | Decision notices | |
| Give notice of and invite public consultation on proposals for environmentally significant policies, acts, regulations and instruments (permits and approvals). | | Describe decisions on environmentally significant policies, acts, regulations and instruments, as well as describe the impact, if any, of public consultation. | |
| Policies | 27 | Policies | 20 |
| Acts | 8 | Acts | 6 |
| Regulations | 22 | Regulations | 25 |
| Instruments | 1,299 | Instruments | 1,383 |
| Total | 1,356 | Total | 1,434 |
| Voluntary consultation notices | | Bulletins | |
| Give notice of and invite consultation on proposals that are not required by the EBR Act to be posted, but for which a ministry chooses to consult with the public. | | Used to provide information that ministries are not required to post under the EBR Act and information that ministries are required to post under other laws. | |
| Proposals | 24 | Total | 97 |
| Decisions | 31 | Appeal notices | |
| Total | 55 | Placed on the Registry by the Environment Ministry to notify the public of direct appeals of instruments and of applications seeking leave to appeal instruments. | |
| Exception notices | | Direct appeals | 0 |
| Required when ministries rely on certain exceptions under the EBR Act that excuse the ministry from following the usual public consultation requirements, including: when the proposal has already been considered in another public participation process (equivalent consultation); or when the delay to consult would result in danger to health and safety or serious risk to the environment or damage to property (emergencies). | | Leave to appeal | 5 |
| Equivalent consultation | 2 | Total | 5 |
| Emergencies | 1 | | |
| Total | 3 | | |

Appendix 8: Applications for Review in 2022/23

Prepared by the Office of the Auditor General of Ontario

In our 2022/23 reporting year, no new applications for review were submitted, but the Environment Ministry continued to be responsible for two applications for review that were submitted in earlier reporting years (2010/11 and 2016/17). The Ministry had agreed to undertake those still-ongoing reviews. As reported in each of our earlier reports, the Ministry has not concluded one of those ongoing applications, detailed below, within a reasonable time.

| Responsible Ministry | Brief Description of Application | Year Submitted | Undertaken or Denied | Status as of March 31, 2023 |
|----------------------|--|----------------|----------------------|--|
| Environment | Review of the <i>Environmental Bill of Rights</i> , 1993 | 2010/11 | Undertaken | Ongoing Ministry has not completed within a reasonable time |
| Environment | Review of the Lake Simcoe Protection Plan | 2016/17 | Undertaken | Ongoing Review undertaken in conjunction with the 10-year review of the Lake Simcoe Protection Plan, which is ongoing |

Appendix 9: Applications for Investigation in 2022/23

Prepared by the Office of the Auditor General of Ontario

In 2022/23, Ontarians submitted three applications for investigation: two were submitted to the Environment Ministry, and one was submitted to the Natural Resources Ministry. The Environment Ministry denied both of the applications it received, and the Natural Resources Ministry had not yet made a decision, as of September 2023, whether to undertake the investigation, in contravention of the EBR Act timelines for responding to an application (see **Section 9.1** of this report). Two individuals tried to submit another application in 2022/23, but the Environment Ministry returned it to the applicants as incomplete because the applicants had not made a sworn statement of the allegations, as required by the EBR Act, and had alleged contraventions of laws that are not subject to the EBR Act. The applicants did not resubmit an application.

In 2022/23, the Environment Ministry also concluded two investigations that it had agreed to undertake in 2021/22. One of the applications was concluded in April 2022, and we evaluated the Ministry's handling of that application in our 2022 report, along with a similar application that was concluded in 2021/22.

We assessed the Environment Ministry's handling of each of the other three applications for investigation concluded in 2022/23. We determined that, in each case, the Ministry investigated to the extent warranted, as required under the EBR Act. However, we found that the Ministry did not meet a statutory timeline for one application (see **Section 9.1** of this report).

For summaries of the applications for investigation that were concluded in 2022/23, see below.

| Responsible Ministry | Brief Description of Application | Year Submitted | Undertaken or Denied | Status as of March 31, 2023 | Our Evaluation |
|----------------------|--|----------------|---|-----------------------------|--|
| Environment | Bird collisions and deaths due to reflected light from buildings in Ottawa | 2021/22 | Undertaken in part | Concluded | Unreasonable ¹ |
| Environment | Discharge of wastewater into a storm sewer from a truck-washing operation at a food distribution warehouse | 2021/22 | Undertaken | Concluded | Reasonable |
| Environment | Discharge of gasoline vapours from a fuel tank refilling operation | 2022/23 | Denied | Concluded | Reasonable (but missed statutory deadline for providing notice of decision, see Section 9.1) |
| Environment | Discharge of contaminants to water from planned subdivision infrastructure | 2022/23 | Denied | Concluded | Reasonable |
| Natural Resources | Contravention of the <i>Fish and Wildlife Conservation Act, 1997</i> by a store hosting a coyote hunting competition | 2022/23 | Outstanding as of August 2023, in contravention of statutory requirements (see Section 9.1) | Ongoing | n/a ² |

1. This application was concluded (that is, a notice of decision was delivered) in April 2022. We reported on the Environment Ministry's handling of this application in **Section 6.2.1** of our 2022 *Annual Report on the Operation of the Environmental Bill of Rights, 1993* because it was related to another application for investigation completed in 2021/22.

2. We have not fully evaluated the Ministry's handling of this application because it was ongoing as of the end of our reporting year (March 31, 2023).

1. Investigation of Alleged Discharge of Wastewater into a Storm Sewer from a Truck-Washing Operation at a Food Distribution Warehouse (Environment Ministry)

What the Applicants Asked For

In February 2022, two Ontarians submitted an application for investigation to the Environment Ministry alleging that Sysco Canada Inc. (Sysco) was permitting truck wash water, which contained soap, to flow into the company's stormwater management works (comprising a dry pond and storm sewers), which eventually discharged into McEwan Creek. The truck washing was taking place at Sysco's food distribution warehouse in Ottawa. The applicants alleged that this violated the *Ontario Water Resources Act* and the company's environmental compliance approval for its stormwater management works, and could impair water quality in the Creek. The applicants claimed that the washing was done by Professional Mobile Wash (a company that cleans vehicles and buildings), which cleaned trucks and trailers at the Sysco site. The applicants alleged that foaming wastewater could be seen entering gutters and flowing into the dry pond on the site.

Investigation Undertaken by the Environment Ministry, and Handled Reasonably

In April 2022, the Environment Ministry informed the applicants that it had concluded that an investigation was warranted. Over the course of the investigation, the Ministry conducted one inspection visit and two further site visits (one unannounced). The Ministry confirmed that wash water was entering the dry pond, in contravention of Sysco's environmental compliance approval. However, the Ministry found insufficient evidence to conclude that impairment of water quality had occurred within or beyond the dry pond, so it found no contravention of the *Ontario Water Resources Act*.

In response to the Ministry's confirmation that Sysco contravened its environmental compliance approval, and to prevent discharge of wash water into the dry pond and storm sewer, Sysco and Professional Mobile Wash committed to:

- installing absorbent booms/socks weighed down by gravel bags;
- covering manholes on the property;
- only conducting washing in certain areas of the parking lot, farther away from the manholes and dry pond;
- not conducting any washing during rain events;
- using a portable vacuum to recover wash water;
- taking the recovered wash water to the Professional Mobile Wash facility for treatment and discharge to the municipal sanitary sewer; and
- blocking the concrete outlet to the dry pond during washing to prevent discharge.

The Ministry confirmed in June 2022 that these changes had been made and were effective at preventing wash water from entering the dry pond or any part of the stormwater management works. Further, shortly thereafter, Professional Mobile Wash, on behalf of Sysco, submitted a new standard operating procedure to the Ministry. The Ministry confirmed that the standard operating procedure "reflects the companies' intent to implement the vacuuming and outlet blockage measures during future washing activities."

The Ministry notified the applicants of the outcome of its investigation in September 2022. The Ministry stated that it was satisfied with the voluntary actions that the companies had taken to address the contravention, and noted that future contraventions of the *Ontario Water Resources Act*'s prohibition against discharging polluting materials to water are unlikely to occur with the addition of the wash water control measures. The Ministry stated that it would not be pursuing further enforcement action.

2. Investigation of Alleged Discharge of Gasoline Vapours from a Fuel Tank Refilling Operation in London (Environment Ministry)

What the Applicants Asked For

In May 2022, two Ontarians submitted an application for investigation alleging that a service station in London had contravened the *Environmental Protection Act*. The service station operates a gasoline station and

a convenience store, with three gas pumps and two underground storage tanks.

The applicants alleged that gasoline vapours from the service station's storage tank vent pipes were being discharged onto residential property when tanker trucks refilled the station's underground storage tanks. The applicants claimed that there was a strong odour of gasoline inside a neighbouring residence, even with doors and windows closed, causing discomfort. The applicants also alleged that the resident's pet cats were being made sick by the vapours from the gas station. The applicants noted that more than 40 previous complaints over several years had been made about this issue to both the Technical Standards and Safety Authority (TSSA) and the Environment Ministry.

Investigation Reasonably Denied by the Environment Ministry, but Ministry Did Not Meet Statutory Deadline for Providing a Response

In November 2022, the Environment Ministry determined that an investigation was not necessary, as it would duplicate ongoing work by the Ministry's London District Office. The Ministry stated that it had been aware of issues with the site since 2018, and was already actively involved in compliance and enforcement activities related to those allegations.

The Ministry's work included obtaining confirmation from the TSSA that it had not identified any compliance issues with the fuel equipment or the refilling of the underground tanks at the site. The Ministry also conducted site visits in 2019, 2021 and 2022. During earlier site visits, Ministry staff had observed gasoline vapours escaping the vents during refilling of the underground tanks, but after about one minute, no vapours or odours were noted for the remainder of refilling. On two dates in September 2022, Ministry staff used an optical gas imaging camera to assist with visualizing potential emissions and confirmed that fuel vapours and odours were discharging out of vent pipes during refilling.

As a result of these observed discharges, in late September 2022, the Ministry asked the service station to retain a qualified professional to assess the site's vapour control system to determine whether it was operating as designed and to conduct any necessary equipment tests and inspections.

In November 2022, the Ministry informed the applicants of its decision not to investigate. In its decision notice, the Ministry told the applicants that it was reviewing the vapour control assessment report to determine appropriate next steps. The Ministry acknowledged the applicants' concerns and assured them that, if it determines that there has been a contravention of the *Environmental Protection Act* or its regulations, the Ministry would follow its compliance policy and use compliance tools as appropriate. The Ministry also informed the applicants that it would remain in contact with them to provide updates on compliance activities.

When we followed up with the Ministry, we learned that, in January 2023, the Ministry asked the service station to retain a qualified person to prepare a report outlining recommended options for preventing or reducing the discharge of vapour emissions from the vents at the site. Based on that report, in April 2023, the service station agreed to install pressure/vacuum valves on the gasoline tanks (which can increase the effectiveness of the vapour recovery system during refuelling) and to conduct refilling at night to minimize gasoline vapour impacts. As of July 2023, the Ministry told us that it remained engaged with the gas station as it awaited the installation of the pressure/vacuum valves.

While the Ministry's decision not to undertake this application was reasonable given that it was already aware of and actively assessing the allegations, the Ministry missed the 60-day deadline under the EBR Act to give the applicants notice of its decision, instead taking 177 days to give notice. See **Section 9.1**.

3. Investigation of Alleged Discharge of Contaminants to Water from Planned Subdivision Infrastructure (Environment Ministry)

What the Applicants Asked For

In June 2022, an individual and a corporation submitted an application for investigation to the Environment Ministry alleging contraventions of the *Ontario Water Resources Act*, *Clean Water Act, 2006* and *Planning Act* by Thomas Cavanagh Construction Limited and the Town of Carleton Place. The applicants alleged that the water infrastructure for a planned residential subdivision in the town was poorly designed and would release dangerous contaminants (in particular, harmful strains of *E. coli*) into the Mississippi River and the local drinking water supply, impairing the quality of these waters.

The applicants alleged that the water distribution system would contain dead ends, which would cause water to stagnate, leading to a build-up of contaminants. They also asserted that the stormwater and sewage system would use a force main (pressurized sewer pipe) and storage tank, which could overflow into the river adjacent to the town's drinking-water intake protection zone. They asserted that, in approving the designs, the Town failed to follow policies in its official plan and the Mississippi-Rideau Source Protection Plan.

Investigation Reasonably Denied by the Environment Ministry

In August 2022, the Environment Ministry notified the applicants of its decision that an investigation was not warranted. The Ministry noted that there must be an actual discharge for there to be a contravention of the *Ontario Water Resources Act*. As the subdivision infrastructure was still under construction and not yet

operational, no discharge could occur at the time. The Ministry stated that the application alleged a future discharge but that there was no allegation that a discharge had occurred or was occurring. The Ministry also noted that the *Clean Water Act, 2006* and *Planning Act* are not prescribed acts under the EBR Act and that an application for investigation can be submitted only for alleged contraventions of prescribed acts. It also noted that the sections of those Acts that the applicants alleged were contravened are not offence provisions. The Ministry reasonably concluded that there was no legal basis to pursue the allegations described in the application.

The Ministry further noted that it was confident that, once the sewage and stormwater facilities were completed, they would not result in discharges that would impair water quality. The Ministry issued two environmental compliance approvals in 2021: one for the sewage collection works and one for the stormwater management works. According to the Ministry, it conducted a detailed technical review before issuing the approvals. The Ministry stated that its review confirmed that the proposed works were designed in accordance with provincial design guidelines and regulations and—if constructed as designed and approved, and operated in accordance with terms and conditions in the approvals—it would have a very low risk of causing environmental harm.

The Ministry confirmed that it “will continue to exercise its regulatory authority over the design, approval, construction and operation of the stormwater management system, sewage works and drinking water systems at the ... subdivision” and that, “as the works are commissioned and put into service, [it] will ensure that the owner/operator take all necessary precautions and actions to protect the health of homeowners and, where necessary, reduce the potential for any environmental impacts to the Mississippi River which serves as the [town's] drinking water source.”

Appendix 10: Appeals, Court Actions and Whistleblowers, 2022/23

Prepared by the Office of the Auditor General of Ontario

Appeals

Many laws provide individuals and companies with a right to appeal government decisions that directly affect them, such as denial of a permit they applied for or amendment of a permit that they had previously obtained. A few laws also give other people (“third parties”) the right to appeal ministry decisions about instruments that are applied for by, or issued to, others (for example, under the *Planning Act*, to appeal a site-specific official plan amendment or zoning bylaw amendment). The *Environmental Bill of Rights, 1993* (EBR Act) expands on these rights.

The EBR Act allows any resident of Ontario to “seek leave to appeal” (that is, apply for permission to challenge) decisions on many types of instruments. For example, a community member could use this right to challenge the decision of the Environment Ministry to allow an industrial facility to discharge contaminants into the air.

Ontario residents who wish to appeal a ministry’s decision to issue or amend an instrument must first submit an application for leave to appeal to an independent appellate body (in most cases, the Ontario Land Tribunal (Tribunal)) within 15 days of

the decision notice being posted on the Environmental Registry. The Tribunal will determine whether to grant leave by applying the criteria in the EBR Act. Under these criteria, to be granted leave to appeal, the applicant must show they have an interest in the matter and must also demonstrate that it appears “there is good reason to believe” that the decision was not reasonable and could result in significant harm to the environment. If the Tribunal grants leave to appeal, the ministry’s decision is stayed (that is, put on hold), the applicants may file an appeal and the matter can proceed to a hearing, after which the Tribunal will determine the outcome.

Leave to Appeal Applications in 2022/23

In 2022/23, Ontarians filed six applications for leave to appeal EBR Act-classified instruments with the Tribunal. Two of these applications sought leave to appeal the same instrument. The Tribunal ruled on five of the applications. The other application was filed with the Tribunal after the 15-day appeal period closed, so it was not accepted for processing.

Of the five applications considered by the Tribunal, leave to appeal was granted in two cases, both for the

Leave to Appeal Applications Filed Under the *Environmental Bill of Rights, 1993* in 2022/23

Source of data: Environmental Registry and Ontario Land Tribunal

| Subject | Environmental Registry Number | Status/Outcome |
|---|-------------------------------|--|
| Permit to Take Water – approval of new permit for pit and quarry dewatering purposes in Port Colborne | 019-3778 | Leave denied |
| Environmental Compliance Approval (sewage) – approval for the establishment of sewage works to serve a wedding venue in Caledon | 019-3696 | Leave denied |
| Environmental Compliance Approval (waste) – approval for a hauled sewage disposal site in Haliburton County | 019-1101 | Leave denied |
| Certificate of Property Use – issued for the intended future uses of a property in Guelph (two separate applications for leave to appeal filed and two appeal notices posted) | 019-4692 | Leave granted in both cases |
| Permit to Take Water – approval of a new permit for construction dewatering in Port Elgin | 019-5018 | Not filed within 15 days; not accepted and no decision |

same instrument: a certificate of property use issued by the Environment Ministry to the City of Guelph. Both applicants subsequently filed appeals and the hearing of the appeals has been scheduled.

The Tribunal refused to grant leave to appeal regarding the three other applications, finding in each case that the applicants had failed to satisfy the EBR Act leave to appeal test.

Direct Appeals in 2022/23

No direct appeals of classified instruments in 2022/23 came to our attention.

Appeal Notices on the Environmental Registry

The Environment Ministry is responsible for posting notices on the Environmental Registry about leave to appeal applications made by third parties. The Environment Ministry is also responsible for posting notices of any direct appeals (usually instrument-holder appeals) of decisions related to instruments that are subject to the EBR Act. For the details of our review of the Environment Ministry's compliance with this requirement, see **Section 10.2** of this report.

Lawsuits and Whistleblower Protection

The EBR Act provides rights to:

- take court action against anyone who contravenes an act, regulation or approval and thereby causes significant harm to a public resource; or
- seek damages for environmental harm caused by a public nuisance.

To bring an action for harm to a public resource, an Ontario resident must first apply to a ministry to conduct an investigation and either:

- not receive a response within a reasonable time; or
- receive a response that is not reasonable.

The person bringing such an action must give public notice by delivering notice to the Environment Ministry, which then is required to post the notice on the

Environmental Registry. The Environment Ministry advised our Office that it did not receive notice of any actions for harm to a public resource in 2022/23.

The EBR Act also provides protection for employees ("whistleblowers") who suffer reprisals from their employers for exercising their environmental rights or for complying with, or seeking the enforcement of, environmental rules. The Ontario Labour Relations Board told our Office that it received one reprisal complaint filed under the EBR Act in 2022/23, but the Board terminated the application for failure to state a *prima facie* case (that is, upon initial examination, it is self-evident that a case exists), as it determined that there was nothing in the application that indicated that the applicant was seeking to enforce their rights under the EBR Act.

Appendix 11: Timeline of Environmental Registry of Ontario Consultations on Government Proposals Intended to Increase Housing Supply

Prepared by the Office of the Auditor General of Ontario

| Date (2022) | Timeline for Legislative and Regulatory Actions | Timeline for Environmental Registry Consultation |
|-------------|---|---|
| Oct 25 | Minister of Municipal Affairs and Housing introduces Bill 23 , the <i>More Homes Built Faster Act, 2022</i> , for first reading | Ministry of Municipal Affairs and Housing (Municipal Affairs Ministry), Ministry of Natural Resources and Forestry (Natural Resources Ministry), Ministry of the Environment, Conservation and Parks (Environment Ministry) and Ministry of Citizenship and Multiculturalism (Multiculturalism Ministry) ¹ collectively post five proposal notices relating to Bill 23 (see Figure 4) for 30 days (ending Nov 24) Municipal Affairs Ministry and Natural Resources Ministry collectively post nine proposal notices for related policies and regulations (see Figure 4) for 30 to 66 days |
| Oct 31 | Legislative Assembly carries Bill 23 for second reading and refers bill to the Standing Committee on Heritage, Infrastructure and Cultural Policy (Standing Committee) | |
| Nov 4 | | Municipal Affairs Ministry posts four proposal notices relating to changes to the Greenbelt (see Figure 5) for 30 days (ending Dec 4) Municipal Affairs Ministry updates the Oct 25 proposal notice for the Revocation of the Central Pickering Development Plan (comment period not extended) |
| Nov 9–17 | Standing Committee holds hearings on Bill 23 | |
| Nov 16 | Minister of Municipal Affairs and Housing introduces Bill 39 , the <i>Better Municipal Governance Act, 2022</i> , for first reading | |
| Nov 21 | Standing Committee considers Bill 23 clause by clause; government submits amendments | |
| Nov 22 | Standing Committee reports Bill 23 as amended, and Legislative Assembly orders it for third reading | Natural Resources Ministry posts an exception notice for the repeal of the <i>Duffins Rouge Agricultural Preserve Act, 2005</i> (Schedule 2 to Bill 39) |
| Nov 23 | Legislative Assembly begins third reading debate of Bill 23 ; it concludes second reading on Bill 39 and refers it to the Standing Committee | Municipal Affairs Ministry, Natural Resources Ministry and Environment Ministry all update their proposal notices on Bill 23 to extend comment period to Dec 9 |
| Nov 24 | Legislative Assembly concludes debate on third reading of Bill 23 , but defers the vote | Multiculturalism Ministry updates its proposal notice on Bill 23 to extend comment period to Dec 9 Comment periods close for Proposed Revocation of the Central Pickering Development Plan (#019-6174) and Proposed Updates to the Ontario Wetland Evaluation System Manual (#019-6160) |
| Nov 28 | Legislative Assembly carries Bill 23 on third reading and Lieutenant Governor gives royal assent | Municipal Affairs Ministry updates its proposal notices on Bill 23 to say that the bill had passed but the comment period would stay open |

| Date (2022) | Timeline for Legislative and Regulatory Actions | Timeline for Environmental Registry Consultation |
|-------------|---|--|
| Nov 29 | | Multiculturalism Ministry updates its proposal notice on Bill 23 to say that the bill had passed but the comment period would stay open |
| Dec 2 | | Environment Ministry updates its proposal notice on Bill 23 to say that the bill had passed but the comment period would stay open |
| Dec 4 | | Comment period closes for the Nov 4 Greenbelt proposals |
| Dec 6 | Standing Committee reports back on Bill 39 without amendment; Legislative Assembly begins third reading debate | |
| Dec 8 | Legislative Assembly carries Bill 39 on third reading and Lieutenant Governor gives royal assent | |
| Dec 9 | | Comment period closes for all Bill 23 notices |
| Dec 14 | Cabinet approves the Greenbelt Plan Amendment and the Revocation of the Central Pickering Development Plan | |
| | Municipal Affairs Ministry files regulations on the Greenbelt boundary amendments , the Oak Ridges Moraine Conservation Plan amendment and the Revocation of Minister's Zoning Order | |
| Dec 15 | Lieutenant Governor proclaims the <i>Duffins Rouge Agricultural Preserve Repeal Act, 2022</i> in force | |
| Dec 28 | Natural Resources Ministry files regulations under Conservation Authorities Act (related to Bill 23) | |

1. The Ministry of Citizenship and Multiculturalism is not a prescribed ministry under the *Environmental Bill of Rights, 1993*. The Ministry posted one proposal notice related to amendments to the *Ontario Heritage Act* on the Registry voluntarily.

Appendix 12: Ministry Progress on Recommendation 8 from the 2020/21 Report on the Operation of the *Environmental Bill of Rights, 1993*

Prepared by the Office of the Auditor General of Ontario

| Ministry | Findings in 2020/2021 Report | What the Ministry Has Done since 2021 |
|---|--|---|
| Environment | <ul style="list-style-type: none"> Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> Updated and developed new written processes and procedures Delivered training to staff No progress for monitoring past compliance |
| Natural Resources | <ul style="list-style-type: none"> Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> Updated written processes and procedures Delivered training to staff No progress for monitoring past compliance |
| Municipal Affairs | <ul style="list-style-type: none"> Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> Updated written processes and procedures Delivered training to staff Circulates a bimonthly notice status table to gather information on whether EBR Act requirements are being met |
| Mining | <ul style="list-style-type: none"> Had a process for performing internal audits of its instrument notices, but not for other EBR Act requirements | <ul style="list-style-type: none"> Updated written processes and procedures Delivered training to staff No progress for monitoring past compliance with other EBR Act requirements (beyond its internal audit of instrument notices) |
| Public Services | <ul style="list-style-type: none"> Did not have any formal internal processes, documented policies or procedures Did not provide any formal training to staff Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> Developed a Standard Operating Procedure, with a checklist, for complying with the EBR Act Developed and shared training materials with staff, and offered training on request Developed a tracking tool for managing Environmental Registry postings |
| Technical Standards and Safety Authority (TSSA) | <ul style="list-style-type: none"> Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> Developed guidance, including an EBR Obligations Chart and a checklist for posting on the Environmental Registry Delivered training on the EBR Act to staff Established a quarterly review of all EBR-eligible decisions to monitor past compliance with posting requirements; TSSA advised our Office that it was working on formalizing this process. TSSA also implemented an internal quality assurance process to periodically review Statement of Environmental Values consideration to ensure compliance |
| Energy | <ul style="list-style-type: none"> Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> Updated written processes and procedures Delivered training to staff No progress for monitoring past compliance |
| Northern Development | <ul style="list-style-type: none"> Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> Updated written processes and procedures Did not provide any training for staff between April 1, 2022, and March 31, 2023 No progress for monitoring past compliance |

| Ministry | Findings in 2020/2021 Report | What the Ministry Has Done since 2021 |
|----------------|--|--|
| Transportation | <ul style="list-style-type: none"> Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> Updated written guidance and templates Developed new training materials including a module for their internal training website. The module will be available to staff by end of fiscal year 2023/2024 Ministry has established a tracking system for monitoring progress in implementing the Auditor General's past recommendations to improve future compliance, but no progress for monitoring past compliance |
| Agriculture | <ul style="list-style-type: none"> Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> Updated written processes and procedures Delivered training to staff No progress for monitoring past compliance |
| Tourism | <ul style="list-style-type: none"> Did not have any formal internal processes, documented policies or procedures Did not provide any formal training to staff Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> Created and circulated guidance materials for Ministry staff including an overview of the EBR Act and a template for documenting consideration of the Ministry's Statement of Environmental Values Developed updated training materials for staff, and held a staff training session in fall 2023 No progress for monitoring past compliance |
| Health | <ul style="list-style-type: none"> Did not have any formal internal processes, documented policies or procedures Did not provide any formal training to staff Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> Created and posted guidance on the Ministry's intranet site No progress on staff training. The Ministry told our Office that it does not independently train staff on the EBR Act; while it has resources available on its intranet site, there is no process in place to make staff aware of these resources No progress for monitoring past compliance. The Ministry told our Office that as part of the annual Certificate of Assurance process, it attests to monitoring compliance with the EBR Act, but did not provide any documentation that demonstrated how it monitors past compliance |
| Long-Term Care | <ul style="list-style-type: none"> Did not have any formal internal processes, documented policies or procedures Did not provide any formal training to staff Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> Created and posted guidance on the Ministry's intranet site No progress on staff training. The Ministry told our office that it does not independently train staff on the EBR Act; while it has resources available on its intranet site, there is no process in place to make staff aware of these resources No progress for monitoring past compliance. The Ministry told our Office that as part of the annual Certificate of Assurance process, it attests to monitoring compliance with the EBR Act, but did not provide any documentation that demonstrated how it monitors past compliance |
| Infrastructure | <ul style="list-style-type: none"> Did not have any formal internal processes, documented policies or procedures Did not provide any formal training to staff Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> Developed and updated a checklist to assist staff in determining whether a policy, act or regulation needs to be posted on the Environmental Registry Briefed executive leadership team on EBR responsibilities; Deputy Minister periodically sent out a reminder to all staff on the Ministry's obligations under the EBR Act No progress for monitoring past compliance. The Ministry told our office that as part of the annual Certificate of Assurance process, it attests to monitoring compliance with the EBR Act, but did not provide any documentation that demonstrated how it monitors past compliance |

| Ministry | Findings in 2020/2021 Report | What the Ministry Has Done since 2021 |
|----------------------------|--|---|
| Economic Development | <ul style="list-style-type: none"> • Did not provide any formal training to staff • Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> • Updated its overview document on the EBR Act and the Environmental Registry and posted it on its intranet site • Developed a training deck in January 2023 and circulated it to staff, and posted an internal guidance document on its intranet page • No progress for monitoring past compliance |
| Indigenous Affairs | <ul style="list-style-type: none"> • Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> • In 2022, the Ministry told our Office it was working on updating and finalizing draft guidance materials related to the EBR Act, but as of September 2023, the Ministry has not finalized these documents • In 2021, the Ministry told our Office it was working with the Environment Ministry to execute new training sessions, but as of September 2023, the Ministry has held no sessions • No progress for monitoring past compliance |
| Education | <ul style="list-style-type: none"> • Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> • Updated processes and developed new procedures • Updated training materials in January 2023 and provided training to directors • No progress for monitoring past compliance |
| Labour | <ul style="list-style-type: none"> • Did not have any formal internal processes, documented policies or procedures • Did not provide any formal training to staff • Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> • Began drafting guidance and procedures, but as of September 2023, had not finalized or circulated the materials to staff • No progress providing training to ensure staff are aware of the EBR Act and their obligations under it • No progress for monitoring past compliance |
| Treasury Board Secretariat | <ul style="list-style-type: none"> • Did not have any formal internal processes, documented policies or procedures • Did not provide any formal training to staff • Did not have a process for monitoring past compliance | <ul style="list-style-type: none"> • Developed a checklist for determining whether a proposal needs to be posted on the Environmental Registry • Developed training materials about the EBR Act and provided training to relevant staff and senior management in March 2022, and posted its new guidance materials on its intranet site • No progress for monitoring past compliance |



Office of the Auditor General of Ontario

20 Dundas Street West, Suite 1530
Toronto, Ontario
M5G 2C2
www.auditor.on.ca