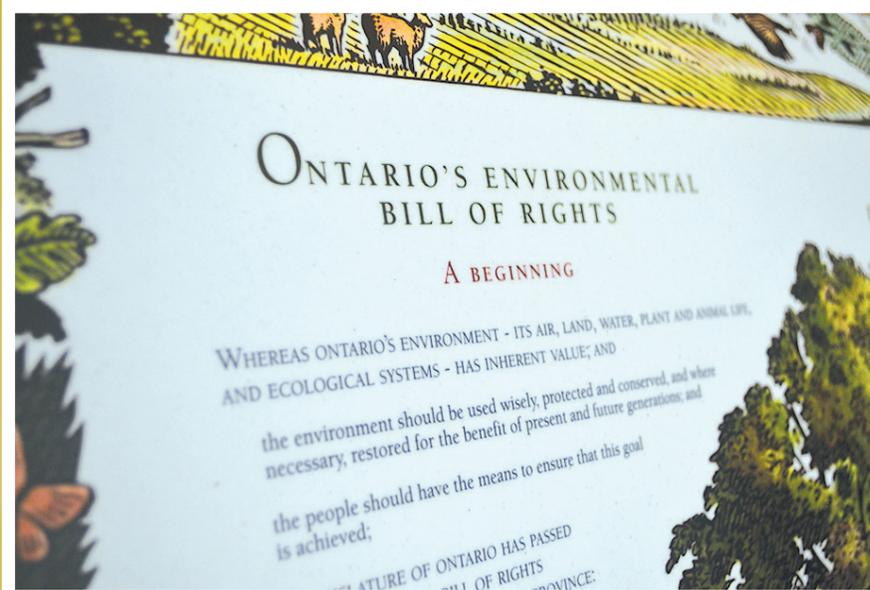




Office of the Auditor General of Ontario

Operation of the
*Environmental Bill
of Rights, 1993*



December 2022

Operation of the *Environmental Bill of Rights, 1993*

1.0 Summary

Thirty years ago, Ontario had laws in place to protect the environment, but there was growing public concern about whether those laws offered sufficient protection. Paired with this was diminishing public confidence in the government to protect and provide environmental sustainability. The *Environmental Bill of Rights, 1993* (EBR Act) was enacted in response to these concerns.

The EBR Act recognizes that, while the primary responsibility for protecting the environment lies with government, ordinary Ontarians should have a means to ensure that this is being achieved in an effective, timely, open and fair manner. The EBR Act gives each person the right to participate in, and hold government accountable for, its environmentally significant decisions, by:

- **Mandating that the government consider the environmental protection purposes of the EBR Act when it makes decisions that affect the environment.** Certain ministries must develop a “Statement of Environmental Values” that explains how they will consider the purposes of the EBR Act every time they make an environmentally significant decision.
- **Increasing opportunities for public participation in the government’s significant environmental decision-making.** Certain ministries are required to notify and consult the public through a website called the Environmental

Registry when developing or changing policies, laws and regulations, and issuing instruments (such as permits, licences, approvals and other authorizations and orders) that may significantly affect the environment. These ministries are also required to respond to applications from Ontarians asking them to review laws, policies, regulations, and instruments, or to investigate alleged contraventions of environmental laws, regulations or instruments.

- **Increasing public access to the justice system to protect the environment.** Ontarians have the right to seek leave (that is, request permission) to appeal certain decisions about environmentally significant legal instruments, and the right to sue for harm to the environment or a public resource.
- **Protecting employees who exercise their environmental rights in the workplace.** Ontarians have the right to protection from reprisals by their employers for exercising their environmental rights or for complying with, or seeking the enforcement of, environmental laws. (Otherwise known as “whistleblower” protection).

Appendix 1 of this report provides a glossary of terms related to the EBR Act.

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

consistent with the purposes of the EBR Act. This is our fourth report on the operation of the EBR Act. It assesses the public's use of its environmental rights for the period from April 1, 2021, to March 31, 2022, and presents findings about the ministries' compliance with and implementation of the EBR Act in 2021/22, in accordance with our criteria, as spelled 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.

Our findings on ministries' compliance with and implementation of the EBR Act are found in **Sections 5.0, 6.0 and 7.0**, and summarized by **Figure 2**. The report highlights areas in which ministries did not fully meet their obligations under the EBR Act in accordance with our audit criteria, and sets out our Office's recommendations for more effectively implementing the EBR Act. Our follow-up on the status of actions taken by ministries to implement specific recommendations from our past reports on the operation of the EBR Act is found in **Section 8.0**.

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 2021 and 2022

Ministry ¹	How We Refer to Ministry
Environment, Conservation and Parks	Environment
Natural Resources and Forestry ²	Natural Resources
Northern Development ²	Northern Development
Mines ²	Mining
Municipal Affairs and Housing	Municipal Affairs
Public and Business Service Delivery—Technical Standards and Safety Authority ³	Public Services – TSSA
Energy	Energy
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 under the *Environmental Bill of Rights, 1993*. Note that over the years some ministries have been added, reorganized and renamed, most recently during a Cabinet shuffle in June 2021 and again after the government's new Cabinet was announced in June 2022, as described in footnotes below.
2. During the 2021/22 reporting year, part of the former Ministry of Natural Resources and Forestry and part of the former Ministry of Energy, Northern Development and Mines was combined to form a single ministry called the Ministry of Northern Development, Mines, Natural Resources and Forestry. However, the Natural Resources and Forestry section and the Northern Development and Mines section continued to operate as separate entities. Subsequently, in June 2022, that Ministry 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 the Natural Resources and Forestry section and the Northern Development and Mines section separately.
3. In June 2022, the Ministry of Government and Consumer Services was renamed the Ministry of Public and Business Service Delivery. The Technical Standards and Safety Authority posts notices related to the *Technical Standards and Safety Act, 2000* on behalf of the Ministry.
4. In June 2022, the Ministry of Heritage, Sport, Tourism and Culture Industries was renamed the Ministry of Tourism, Culture and Sport.
5. In June 2022, the Ministry of Labour, Training and Skills Development was renamed the Ministry of Labour, Immigration, Training and Skills Development.

Overall Conclusions

Overall, our audit found some improvements in compliance with and implementation of the EBR Act on a day-to-day, ministry staff level in 2021/22. Some ministries have started taking steps to increase staff awareness and understanding of the EBR Act, and to implement new or updated procedures to ensure they comply with it. While ministries fully met our audit criteria in just 68% of cases and partially met criteria in 22% of cases, this represents an improvement of 5% and 2%, respectively, from 2020/21. Further, although ministries did not meet our criteria at all in 10% of cases, this was an improvement on the 17% that were wholly unmet in 2020/21.

We found that the Environment and Natural Resources Ministries handled most applications submitted under the EBR Act reasonably. Overall, the four ministries responsible for consulting Ontarians about environmentally significant permits and approvals, as well as the Technical Standards and Safety Authority, followed effective processes for ensuring they consulted Ontarians about permits and approvals when required.

Further, we learned that, in response to a recommendation in our 2020 report on the operation of the EBR Act, the Secretary of the Cabinet is updating its performance assessment process to incorporate ministries' reported compliance with legislative requirements, including the EBR Act, into their annual performance assessment and rating. Ministries will be required to report on their compliance with various laws as part of the government's Multi-Year Planning Process. Including ministries' compliance with the EBR Act in their overall performance assessments could ultimately lead to greater transparency and better environmental decision-making.

Despite these improvements, we found that major problems persisted in the operation of the EBR Act. Some ministries are deliberately ignoring Ontarians' legal rights to be informed and consulted on important environmental decisions. In 2021/22, Ontarians were not properly consulted about: significant changes to the *Planning Act*; two energy policies related to the use of small modular nuclear reactors and the development of

a low-carbon hydrogen economy; and proposed exemptions from the environmental assessment process for provincial parks and conservation reserves.

Further, most ministries still had instances in which they did not follow the Act's minimum legal requirements. We also found that, on occasion, ministry staff had brought EBR Act requirements to senior administrators' attention, or recommended best practices for implementing the EBR Act, but senior administrators, including in some cases the Minister's office, decided not to follow the EBR Act or staff's advice. For example, Environment Ministry staff raised concerns that a proposal notice posted on the Environmental Registry did not fully or accurately describe the proposal to exempt projects related to provincial parks and conservation reserves from environmental assessment. However, the Environment Minister's Office directed staff not to update or repost the proposal notice.

An enduring problem is that the Environment Ministry—the ministry responsible for administering the EBR Act—has still not made the EBR Act a priority. The Environment Ministry should be leading by example in complying with and implementing the EBR Act in a manner consistent with the Act's purposes. In our Office's last three reports, we found that the Ministry failed to provide such leadership. In 2021/22, this ministry has again, through its actions and inaction, failed to lead. In particular:

- **The Environment Ministry fully met just 33% of our criteria.** While this is an improvement over the 18% it achieved in 2020/21, the Ministry is still not demonstrating a strong performance of its EBR Act obligations.
- **The Environment Ministry has done little to educate Ontarians about the EBR Act.** In 2021 and 2022, surveys conducted for our Office to gauge Ontarians' awareness of their EBR Act rights found that over half of those surveyed had never heard of the EBR Act—and of those who had, only about one in 10 could name one of the rights provided by the Act. Despite being mandated by law since April 2019 to educate the public about the EBR Act, the Ministry has been slow to take action. The Ministry finalized a communications plan for the EBR Act in 2021,

but to date has only implemented the first phase of that plan: a series of unpaid social media posts in fall 2021 that present Ontarians' basic EBR rights. The Ministry had not acted on additional aspects of its communications plan and does not have a schedule for doing so.

- **The Environment Ministry has not ensured the EBR Act applies to all environmentally significant decisions, or implemented several other of our Office's past recommendations regarding the EBR Act.** When we followed up to see if the Ministry had taken action on the recommendations in our 2019 and 2020 reports, the Ministry advised us that it would not be implementing our recommended actions to help ensure the EBR Act applies to all environmentally significant decisions made by the government. Further, we found that the Ministry has so far made little progress implementing other recommendations that could improve environmental outcomes and further meet the intended purpose of the EBR Act.
- **As of September 2022, the Environment Ministry has still not carried out and completed its originally intended review of the EBR Act.** There has never been a comprehensive review of the EBR Act. In March 2011, in response to an EBR Act application, the Environment Ministry agreed to undertake a review of the Act. However, as of September 2022 it had not completed that review. In the course of our work over the last three years, our Office has identified several major issues hindering the effective operation of the Act; a review of the Act could lead to improvements that would provide greater transparency and accountability, more effective public consultation, and, ultimately, better protection for Ontario's natural environment.

Other significant findings include:

Ministries Again Chose Not to Follow EBR Act Requirements to Consult Ontarians About Several Environmentally Significant Proposals

- **The Municipal Affairs Ministry did not meaningfully consult Ontarians before**

implementing significant changes to the *Planning Act*, and was not transparent about the outcome. In March 2022, the Ministry introduced Bill 109, the *More Homes for Everyone Act, 2022*, in the Legislature. Bill 109 proposed significant changes to the *Planning Act*, including creating a new type of zoning order, at the request of a municipality, to which the Provincial Policy Statement, provincial plans and municipal official plans would not apply, and limiting the amount of parkland that a municipality can require a developer to provide for developments in transit-oriented communities. The Ministry posted a proposal notice for these changes on the Environmental Registry for the minimum 30-day public consultation period, but the bill received third reading and passed into law before that comment period had ended, cutting short by two weeks Ontarians' opportunity to provide feedback that could influence the outcome. After Bill 109 passed, the Ministry added text to the proposal notice stating that the bill had passed, but did not update the proposal notice in a timely and transparent way to inform Ontarians that, because the bill had passed, comments submitted would no longer be considered.

- **The Energy Ministry did not consult Ontarians about two major new environmental policies related to small modular nuclear reactors and building a low-carbon hydrogen economy.** The Ministry released two new environmentally significant policies without first posting proposal notices on the Environmental Registry to consult Ontarians, as required by the EBR Act. This ignored Ontarians' right to provide feedback on the proposals and the opportunity to potentially affect the outcomes. The Strategic Plan for the Deployment of Small Modular Reactors, released in March 2022, was agreed to by four provinces, including Ontario, and charts a path forward for the Ontario government to support the development and deployment of small modular nuclear reactors. The Low-Carbon Hydrogen Strategy, released in April 2022, identifies core objectives and immediate actions

to accelerate the development of a low-carbon hydrogen economy in the province, which is expected to create jobs, attract investment and reduce greenhouse gas emissions.

- **The Environment Ministry did not share key information with all Ontarians about a proposal to exempt projects related to provincial parks and conservation reserves from the *Environmental Assessment Act*.** In fall 2021, the Ministry realized that a proposal notice that it had posted on the Environmental Registry in July 2020, for a regulation to exempt activities in provincial parks and conservation reserves from the *Environmental Assessment Act*, did not accurately describe all aspects of what was proposed. In particular, the proposal indicated that only projects *in* parks would be exempted from the Act, whereas in fact projects *related* to parks would be exempted as well. The notice also erroneously indicated that exempted projects would instead be subject to a new Environmental Impact Assessment Policy. In fact, future park boundary changes (either expansions or reductions of park land) would not be subject to this new policy. However, when the Ministry discovered its mistake, it did not update the proposal notice or post a new one on the Environmental Registry—the means established by the EBR Act to consult all Ontarians in a transparent and accountable manner—to inform people of these omissions. Instead, the Ministry notified and consulted only with select stakeholders and commenters about the additional information. Without complete and accurate information about the proposal, Ontarians did not have an opportunity to participate meaningfully in decision-making about this proposal, as they are entitled to under the EBR Act.

Ministries Did Not Enable Meaningful Public Participation, or Transparency and Accountability

- **Ontarians were not given clear or complete information about many environmentally significant proposals and decisions.** Again this

year, we noted issues with both proposal and decision notices that ministries posted on the Environmental Registry. In particular, ministries did not always:

- provide clear or complete descriptions of their proposals and decisions;
- provide clear or complete descriptions of the environmental implications of proposals;
- include links or attachments to key documents or information relevant to the proposals or decisions; or
- clearly describe the effects of public participation on their decisions.

For example, the Environment Ministry did not explain the potential environmental implications of proposed changes to environmental assessment requirements for thermal treatment-based “advanced recycling” facilities. The Agriculture Ministry did not provide adequate information about the changes it proposed to its Nutrient Management Protocol, and did not provide a copy of the draft revised protocol for readers to review. The Natural Resources Ministry did not include links to the issued *Aggregate Resources Act* and *Niagara Escarpment Planning and Development Act* instruments in notices that we reviewed. The Mining Ministry did not adequately describe the effects of public participation in six decision notices about *Mining Act* instruments. Without accurate, clear, and complete information, Ontarians may not be able to fully understand the proposals and decisions, or provide informed and meaningful feedback.

- **Ontarians were not given timely notice of environmentally significant decisions for 20% of the ministry decisions we reviewed, and two ministries did not provide updated information about the status of some proposals.** Compared to last year, more ministries provided Ontarians with prompt notice of their environmentally significant decisions in 2021/22, and kept their notices on the Environmental Registry up to date. However, Ontarians were still not promptly informed of 20% of the notices that we reviewed. The Agriculture Ministry

and Mining Ministry in particular both posted over one-third of their decision notices that we reviewed more than two weeks after the decisions were made, and the Natural Resources Ministry posted over one-quarter of its decision notices that we reviewed more than two weeks after the decisions were made. Further, the Natural Resources Ministry did not keep 39 of its proposal notices on the Registry up to date, meaning that the notices had been on the Registry for over two years without a decision or an update to inform Ontarians of their status. The Environment Ministry had also still not updated its 2018 proposal notice for its Made-in-Ontario Environment Plan, and had not posted decision notices to inform Ontarians about the outcomes of two significant proposals: one relating to the *York Region Wastewater Act, 2021*, which passed into law in October 2021, and the other for Ontario's Low-Carbon Hydrogen Strategy, which was released by the Energy Ministry (following a transfer of responsibility) in April 2022.

The Environment Ministry Did Not Comply with the EBR Act in Its Handling of Two Applications for Investigation That Sought to Prevent Birds from Colliding with Buildings' Windows

- **The Environment Ministry did not adequately investigate alleged bird deaths from building collisions.** In 2021, Ontarians submitted two separate applications for investigation alleging that buildings in Ottawa discharged a contaminant (reflected light) into the environment, which attracted and killed hundreds of birds, including some at-risk species, each year, when they collided with building windows. The Ministry refused to investigate the allegations that the building owners had breached the *Environmental Protection Act*, stating that the allegations were not serious enough to warrant an investigation, and that non-regulatory tools such as education and outreach are a more proportionate response to address concerns related to the impacts of reflected light on birds. The Ministry stated

that it would investigate the allegations that two birds of threatened species were harmed or killed in contravention of the *Endangered Species Act, 2007*, but then did little in the five months before it completed its investigation. The Ministry did not conclude whether the *Endangered Species Act, 2007* was contravened, and merely stated again that it would use non-regulatory tools. However, the Ministry has not used any such non-regulatory tools to protect birds in Ontario from building strikes, and as of September 2022 had not reached out to the building owners in these cases to encourage them to implement voluntary measures to prevent bird strikes, even though it had committed to do so. This could include inexpensive mitigation measures such as installing bird-safe window films or other visual markers and coverings such as shades, shutters and screens, and reducing interior lighting outside of business hours. We found, based on our review of the Ministry's handling of this application and its processes more broadly, that the Ministry is not enforcing environmental laws to protect birds from building strikes.

- **The Environment Ministry did not respect the statutory deadline for making a decision.** The Ministry took 209 days (approximately seven months) to notify one set of applicants that it would not investigate their claims regarding bird strikes—149 days over, or over three times, the legislated 60-day deadline to do so, and longer than the 120-day deadline for a ministry to actually complete an investigation.

Based on our findings above, as well as from our past audits, we identified some key issues that have hindered the effective operation of the EBR Act.

This report contains 21 recommendations, with 32 action items, to address our audit findings.

OVERALL ENVIRONMENT MINISTRY RESPONSE

The government respects and takes our obligations under the *Environmental Bill of Rights*,

1993 seriously. The Ministry of the Environment, Conservation and Parks will continue to meet its legislative obligations under the EBR Act and to support its consistent and effective implementation, across government.

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

AUDITOR GENERAL RESPONSE

Our audit found that the Environment Ministry has not always implemented the EBR Act in a manner consistent with the Act's purposes. We continue to believe that the Environment Ministry, as the lead ministry under the EBR Act, should set an example for other prescribed ministries by implementing the EBR Act in a way that not only meets the Act's minimum legal requirements, but also respects the Act's purposes to protect the environment through increased transparency, accountability and meaningful public participation in government decisions that affect the environment.

2.0 Background

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

The *Environmental Bill of Rights, 1993* (EBR Act) grants Ontarians a number of legal rights that are formally enshrined in law. It recognizes that the people of Ontario have the right to participate in the government's decision-making about the environment, as well as the right to hold their government accountable for those decisions.

The purposes of the EBR Act are to:

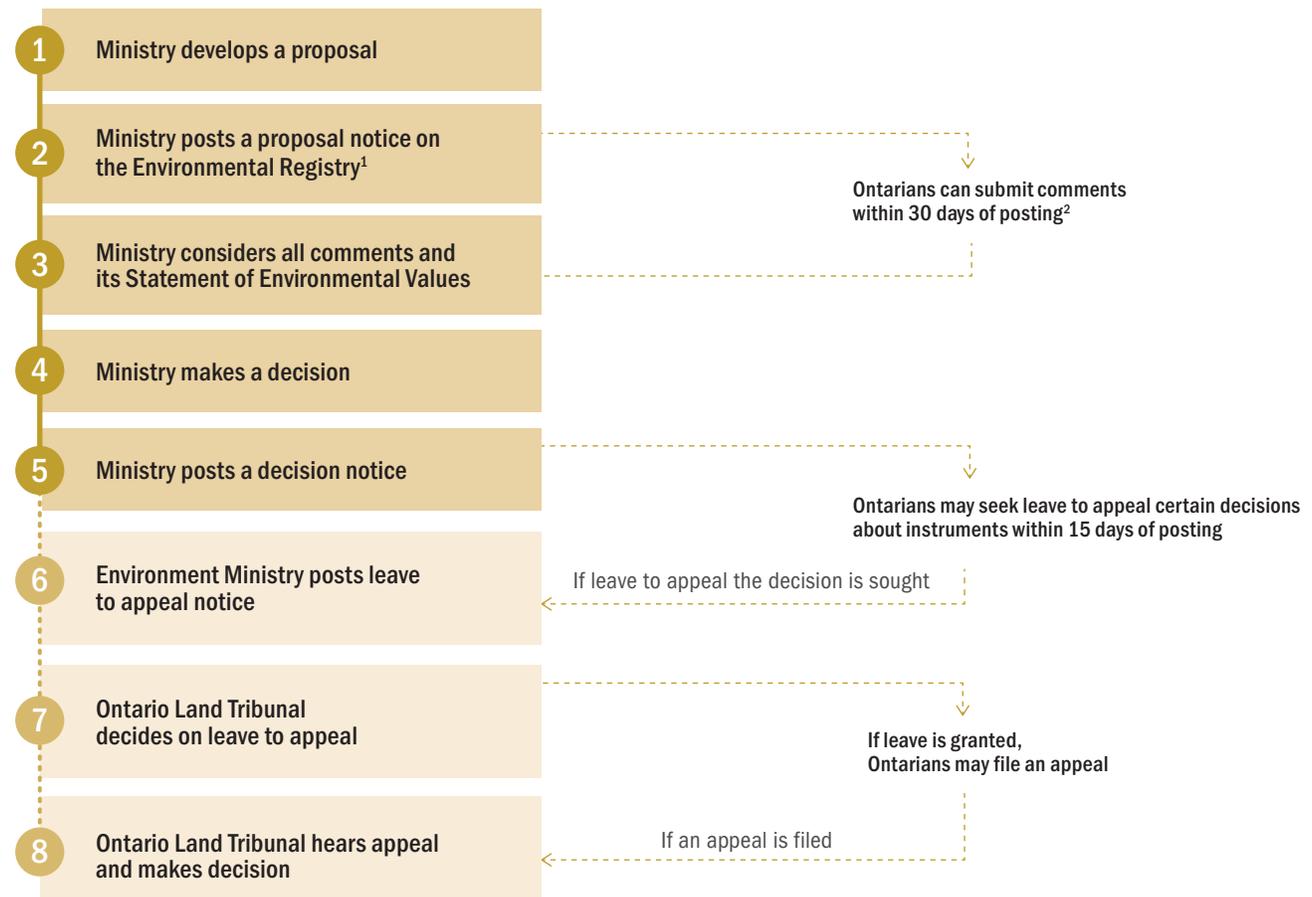
- protect, conserve and, where reasonable, restore the integrity of the environment;
- provide sustainability of the environment; and
- protect the right of Ontarians to a healthful environment.

To help meet these purposes, the EBR Act sets out a number of corresponding duties and entitlements for Ontario government ministries and for Ontarians. These include:

- **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 will take into consideration the purposes of the EBR Act when it makes decisions that may significantly affect the environment. The EBR Act then requires the ministries to consider their Statements when making environmentally significant decisions.
- **Public notice and consultation through the Environmental Registry:** The EBR Act requires prescribed ministries to use the Environmental Registry (ero.ontario.ca) to provide notice and consult the public about proposed policies, acts, regulations and instruments (permits, licences, approvals and other authorizations and orders) that are environmentally significant. Ministries are to consider the public's comments and to give prompt notice of their decisions on the proposals, including an explanation of the outcomes of public participation, if any, on the decision. **Figure 3** depicts the public consultation process associated with the EBR Act.
- **Applications for review:** The EBR Act gives Ontarians 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, in order to protect the environment.
- **Applications for investigation:** The EBR Act gives Ontarians the right to ask a ministry to investigate alleged contraventions of specific environmental laws, regulations and instruments.
- **Appeals, lawsuits and whistleblower protection:** The EBR Act gives Ontarians the right to seek permission to appeal (that is, challenge) government decisions on certain instruments,

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 should consider allowing more time in cases where, for example, the matter is complex, the level of public interest is high, or other factors warrant more time for informed public input.

as well as the right to sue for harm to the environment or a public resource. It also entitles employees to protection from employer reprisals for exercising their environmental rights (“whistleblower” protection).

Not all requirements of the EBR Act apply to every prescribed ministry. For example, the requirement to respond to applications for review only applies to 12 of the 18 prescribed ministries. The Environment Ministry administers the EBR Act and its two regulations, which set out: which ministries are subject to which of 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**).

2.2 Why the EBR Act Is Important for Ontarians

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

The Ontario Government uses various approaches for consulting on its initiatives. In addition to

consultation with Indigenous communities to fulfill its constitutional duty, consultation may include focused meetings with selected stakeholders, specialized working groups and online surveys. While these approaches are all good practice, none are a substitute for consultation through the Environmental Registry in accordance with the EBR Act. Consultation through the Registry is open to all Ontarians equally and comes with legal obligations for a ministry to provide adequate information about proposals, consider all comments, and explain to members of the public how their comments affected the decisions made.

Since the EBR Act came into force in 1994, public consultation through the Environmental Registry has helped 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 amendments to the *Mining Act*, to site-specific decisions such as permits to take water that are issued to companies.

Similarly, the EBR Act's application for review process has been successfully used by Ontarians 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.

Ontarians' ability to exercise their rights under the EBR Act depends, however, on prescribed ministries implementing the EBR Act effectively. When ministries do not comply with their obligations, or make decisions inconsistent with the purposes of the EBR Act, it becomes more difficult for members of the public to participate in environmental decision-making. The benefits of that participation risk not being realized, and the purposes of the EBR Act risk not being met.

2.3 Use of the EBR Act Tools in 2021/22

Use of the EBR Act tools—such as the number of proposals posted, public comments submitted and

applications for review and investigation submitted—varies from year to year due to a multitude of factors. For example, the timing within an election cycle may affect how many government decisions are made, or the passage of a significant new law may elicit an unusually high number of public comments. It is not possible to tell why more or fewer applications for investigation may be undertaken in a given year. The change could be because the ministry is being more responsive. Conversely, it could be that the public is identifying more environmental contraventions that are not being responded to by the ministry. Consequently, our Office does not report on, or draw conclusions about, year-over-year trends on usage of the EBR Act tools. We do, however, report on the use of tools in the current year of investigation so as to provide context and scope for the current year's audit findings.

In 2021/22, ministries posted 1,592 proposal notices on the Registry to give Ontarians notice of proposals for acts, policies, regulations and instruments that could have a significant effect on the environment. Ministries posted 1,455 decision notices on the Registry, which had received a total of 44,506 comments from members of the public (19,257 related to proposals for policies, acts and regulations, and 25,249 related to proposals for site-specific permits, licences and approvals). For a breakdown of the types and numbers of notices posted on the Environmental Registry in 2021/22, see **Appendix 6**.

Also in 2021/22, several Ontarians exercised their rights under the EBR Act to ask a ministry to review a policy, law, regulation or instrument, or to investigate an alleged contravention of an environmental law. Two new applications for review were submitted and eight new applications for investigation. Including those applications submitted and accepted by ministries in previous years, ministries concluded four applications for review and nine applications for investigation in 2021/22. **Section 6.0** provides these details, and **Appendices 7** and **8** summarize concluded applications for review and investigation, respectively.

Ontarians also invoked the EBR Act six times to apply for leave to appeal five Environment Ministry decisions in 2021/22. The Ontario Land Tribunal

dismissed five of the applications without granting leave, finding in each case that the applicants had failed to satisfy the EBR Act leave to appeal test. See **Appendix 9** for further details. The Tribunal refused to accept the sixth application, as it was not filed by the statutory deadline.

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 2021/22 reporting year (April 1, 2021 to March 31, 2022), including whether the ministries prescribed under the EBR Act:

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

The EBR Act requires our Office to report annually on the operation of the Act. 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 how the ministries implemented the Act, including exercising their discretion under the Act in a manner that was consistent with the Act's purposes, and contributing to its effective operation.

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.

We conducted our audit between January 2022 and July 2022. Our work mainly covered the period from April 1, 2021, to March 31, 2022, but addressed some additional issues that arose up to July 31, 2022. We also followed up on recommendations made in our 2019 and 2020 reports on the operation of the EBR

Act to determine whether they were implemented. We obtained written representation from ministries' senior management that, effective November 23, 2022, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusions of this report.

Our work involved discussions and correspondence with staff at the Environment Ministry, including the Environmental Bill of Rights Office within the Environment Ministry, as well as discussions and/or correspondence with staff at other prescribed ministries, and with some applicants of EBR Act applications. During our audit, we reviewed relevant information, including but not limited to:

- prescribed ministries' policies and procedures for complying with the EBR Act, including a detailed review of applicable ministries' procedures for complying with requirements related to instruments classified under the EBR Act;
- the public and prescribed ministries' use of the EBR Act's tools, including use and operation of the Environmental Registry of Ontario;
- environmentally significant proposals and decisions that came to our attention for which ministries did not give appropriate notice on the Environmental Registry;
- a sample of notices for policies, acts, regulations and instruments, as well as all voluntary proposal and decision notices, bulletins, exception notices and appeal notices, posted on the Environmental Registry in 2021/22;
- 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 all applications for review and applications for investigation that ministries concluded—either denied or completed—in 2021/22, including materials submitted by the applicants, ministries' documentation related to their handling of and decisions on the applications, and additional research as necessary;

- measures taken by the Environment Ministry to provide educational programs and general information about the EBR Act to the public; and
- actions taken by the prescribed ministries in response to selected recommendations made in our 2019 and 2020 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 Control and, as a result, maintains a comprehensive quality control system that includes documented policies and procedures with respect to compliance with rules of professional conduct, professional standards and applicable legal and regulatory requirements.

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

4.0 An Intended Review of the EBR Act Is Still Outstanding

In the course of our work over the last three years, the Office of the Auditor General of Ontario has identified several major issues hindering the effective operation of the EBR Act in meeting its intended purpose. These issues stem, at least in part, from the wording of the Act itself.

There has never been a comprehensive review of the EBR Act. In December 2010, Ontarians submitted an application under the EBR Act asking the Environment Ministry to review the EBR Act itself in order 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 required “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.”

The Ministry agreed to undertake a scoped review in March 2011, but did little until 2016, when the Ministry undertook consultation on the Environmental Registry to ask Ontarians about potential improvements to the Act. Despite public feedback from the consultation that identified issues, the Ministry never completed the review or took any action as a result of that consultation.

If and when a full review of the Act is conducted, to determine whether it is meeting its intended purpose, consideration of the following key issues, among others, would assist in this endeavour:

- Not all ministries that make environmentally significant decisions, or all environmentally significant acts, have been made subject to the EBR Act. While the EBR Act states that the Lieutenant Governor in Council (Cabinet) may make regulations to prescribe ministries and acts, it is silent about who is responsible for identifying which ministries and acts should be prescribed.
- Exceptions in the EBR Act permit prescribed ministries to shield some environmentally significant proposals from public participation, by negating the requirement for ministries to consult the public before making those decisions.
- The requirements associated with the Statements of Environmental Values are inadequate to ensure that they are meaningfully considered to improve environmental decision-making.
- Vaguely worded requirements in the EBR Act risk subjective interpretation and therefore inconsistent, and sometimes poor, implementation of various provisions. This prevents meaningful public participation.

- The EBR Act's stringent leave to appeal provisions limit Ontarians' ability to hold government accountable.
- The EBR Act requires the Environment Ministry to inform the public of appeals and leave to appeal applications only in the case where notice has been delivered directly to the Minister, which does not always occur.

Any proposal for amendments to the Act or its regulations must undergo public consultation on the Environmental Registry for a minimum of 30 days before the proposal can be implemented. Thus, under the EBR Act, Ontarians would need to be consulted regarding any changes to the EBR Act.

Improvements to the EBR Act and its regulations, along with development of new guidance and best practices, could lead to more consistent and effective operation of the Act by prescribed ministries, and, ultimately, to better protection of Ontario's natural environment. As of September 2022, the Environment Ministry had still not carried out to completion its originally intended review of the EBR Act.

In September 2022, the Law Commission of Ontario (an independent, non-government organization that provides advice to policy makers and others about law reform) released a consultation paper that also highlighted issues with the effectiveness of the EBR Act—including many that were raised in the 2010 application for review and that have been identified by our Office—and sought public input on the Act and how to improve environmental accountability in Ontario.

RECOMMENDATION 1

To enable more effective operation of the *Environmental Bill of Rights, 1993* (EBR Act), including better protection of the environment and greater transparency in and accountability for environmentally significant decision-making, we recommend that the Ministry of the Environment, Conservation and Parks:

- complete the intended review of the EBR Act to identify and assess gaps and issues that hinder the effective operation of the Act, including consideration of any new issues that have since been identified;
- take all steps necessary to implement any proposed amendments to the EBR Act and its regulations, with any modifications that are advisable based on the outcomes of public consultation; and
- develop and implement a strategic plan for providing leadership on EBR Act matters to ensure its effective operation, including the development of policies and best practices for all prescribed ministries to support consistent and effective implementation of the EBR Act, across government.

ENVIRONMENT MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation and will consider its approach to the review of the EBR Act, potential opportunities to modernize the Act, and the Ministry's overall strategic approach to support consistent and effective implementation of the EBR Act, across government.

5.0 Ministry Compliance with and Operation of the EBR Act

This section provides a summary of our overall findings regarding ministry compliance with and implementation of the EBR Act in 2021/22, with the exception of our findings regarding ministries' handling of applications, which are found in **Section 6.0**. Our specific findings related to individual prescribed ministries are presented in ministry report cards, along with a comparison with results from past years, found in **Appendix 10**.

5.1 Ministries Again Chose Not to Follow EBR Act Requirements to Consult Ontarians About Several Environmentally Significant Proposals

Public consultation is at the heart of the EBR Act and its purposes. 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 his or her power to consult Ontarians for a minimum of 30 days using the Environmental Registry before implementing an environmentally significant proposal. Further, the minister is required to take every reasonable step to ensure the public's comments are considered before making a decision.

Our Office found in 2019, 2020 and 2021 that some ministries deliberately did not consult Ontarians about major environmentally significant decisions. Again in 2022, we found that three ministries—Municipal Affairs, Energy, and Environment—did not notify and consult Ontarians in accordance with EBR Act requirements before making several significant decisions.

5.1.1 Municipal Affairs Ministry Did Not Meaningfully Consult Ontarians Before Implementing Environmentally Significant Changes to the *Planning Act*

On March 30, 2022, the Municipal Affairs Ministry introduced Bill 109, the *More Homes for Everyone Act, 2022*, in the Legislature. Bill 109 would make environmentally significant changes to the *Planning Act*. In particular, one proposed amendment would create a new type of minister's zoning order, at the request of a municipality, to which the Provincial Policy Statement, provincial plans and municipal official plans would not apply. This could mean, for example, that such an order could approve a development that was inconsistent with policies that aim to protect significant wetlands, woodlands or prime agricultural land. Another proposed amendment would limit the amount of parkland, or equivalent cash, that a municipality can require a developer to provide in an area designated by

the Province as a “high density transit-oriented community.” The City of Toronto has estimated that, on the basis of this amendment, it could see a reduction in parkland dedication by 33%, affecting the quality of life for city residents far into the future.

The Ministry posted a proposal notice on the Environmental Registry for the proposed *Planning Act* amendments on the day Bill 109 was introduced, together with four other related proposals, stating that they were open for public comment for 30 days, ending April 29, 2022. However, on April 14, 2022, Bill 109 received third reading and royal assent—two weeks before the end of the public comment period on the proposal. Under the EBR Act, a proposal for an act is “implemented” (that is, decided) when the bill receives third reading.

On April 15, 2022, the Ministry added text to the proposal notice that referred to the passage of Bill 109. However, the Ministry did not formally update the notice using the usual “Update” banner at the top of the notice, which meant that the notice was not moved to the top of the list of recent notices on the main page of the Registry, and interested Ontarians may not have been aware of the update. Further, the proposal notice remained “open” for public comment even though a decision had been made and there was no longer an opportunity for the public to influence decision-making on the proposal. By continuing to solicit public comment after April 15, the Ministry gave the false impression that there was still an opportunity to inform decision-making around Bill 109. Indeed, some Ontarians continued to submit comments on the proposed amendments through the Registry up until April 25, 2022, 10 days after the decision was made. While several commenters expressed concern about the passage of the bill before the comment period was over, other commenters may not have realized that there was no longer an opportunity for their comments to influence the outcome.

On April 22, 2022, our Office wrote to the Deputy Minister asking the Ministry to immediately close the comment function for the notice, inform the public that comments would no longer be considered (as a decision had already been made), and post a decision

notice that included a description of the effect, if any, of public participation on that decision. On April 26, 2022, the Ministry changed the notice from an “open” consultation to “closed” (still without a formal update). On April 27, 2022, the Ministry formally updated the notice.

On April 28, 2022, the Ministry posted a decision notice. Under “effects of consultation,” the decision notice stated: “In developing and finalizing the legislation, *consideration was given to all comments received*, including those received through other related consultations, comments received through the Regulatory Registry and through the Standing Committee process” [emphasis added]. However, the Ministry’s description of the effect of public comments on the decision was misleading. Only eight of the 32 comments submitted in response to the Registry notice were submitted before Bill 109 passed. Ministry staff summarized these comments received up to April 14 and the testimony given by those appearing before the Standing Committee. However, in making the decision, the Ministry could not have considered the remaining 24 (75%) comments submitted after Bill 109 passed.

Clearly the Ministry did not consult Ontarians about this proposal for the statutory minimum 30 days. Moreover, ministries are required to consider providing additional time for the public to comment on proposals in order to permit more informed consultation, and providing additional time for public consultation beyond the mandatory minimum was warranted in this case. The environmental significance of the proposed changes was great, and the proposal was part of a package of multiple, complex proposals, including a proposed guideline for the use of the new type of minister’s zoning order. Further, a high level of public interest in the proposal should have been anticipated, given that the Ministry’s previous consultation on exempting minister’s zoning orders from the requirement to be consistent with the Provincial Policy Statement garnered more than 10,000 comments. Several municipalities expressed concern that the 30-day comment period was insufficient to provide an informed response.

Further, the Ministry had not previously consulted the public through the Environmental Registry on the policy underlying these related proposals—the government’s housing plan, called the More Homes for Everyone Plan. The Ministry stated that the proposals were part of that plan, released the same day that Bill 109 was introduced in the Legislature. The More Homes for Everyone Plan was itself “built on recommendations from” a report by the Housing Affordability Task Force, which was released on February 8, 2022. The Ministry called the Task Force report the Province’s “long-term housing roadmap” that it was “committed to implementing.”

Our Office asked the Ministry for information about any steps the Minister took to ensure the public received notice of the proposed *Planning Act* changes in Bill 109 at least 30 days before the proposal was implemented. The Ministry responded: “While the Ministry posted Bill 109 on the [Environmental Registry] the day it was introduced for a 30-day consultation period, the passage of all Bills, including Bill 109, is determined by the will of the Legislature, not the Ministry or the Minister.”

It has been a standard practice for ministries to post proposal notices for acts on or after the day that the corresponding bill is introduced in the Legislature, which enables commenters to view and comment on the wording of the bill itself. However, by taking this approach, there is a risk the bill will pass before the 30-day EBR Act comment period has concluded, contravening the EBR Act and its intent to provide meaningful public consultation. In order to help alleviate this risk, ministries can take a staged approach to consultation on acts: first post a proposal with a discussion paper for early consultation that outlines potential options for a new act, prior to posting a proposal notice for the draft legislation when it is introduced.

Also, while individual ministers may not control the legislative agenda, prescribed ministries could inform the Legislature when a newly introduced bill is environmentally significant and therefore subject to the EBR Act. They could ask that third reading not be scheduled for such bills until Ontarians have been

provided the legislated minimum 30-day comment period (or longer, if additional time is warranted based on the factors outlined in the EBR Act), and the ministry has had a chance to review and consider all public comments. For the public's comments to influence the final decision, the ministry must have an opportunity to fully consider all comments before the bill is ordered for third reading, when it is still possible for the Minister to propose amendments to the bill before a decision is made.

On October 25, 2022, the Municipal Affairs Minister released a new government housing plan, called *More Homes Built Faster – Housing Supply Action Plan 2022-2023*. It also introduced Bill 23, the *More Homes Built Faster Act, 2022*, which would amend nine acts, including the *Planning Act*, *Development Charges Act, 1997*, *Ontario Heritage Act* and *Conservation Authorities Act*, to allow residential development approvals to proceed more quickly. The Ministry, together with the Natural Resources and Environment Ministries, also released proposals and discussion papers on a wide range of regulatory and policy initiatives that affect development. At the time of finalizing this report, Bill 23 had been referred to the Legislature's Standing Committee on Heritage, Infrastructure and Cultural Policy.

RECOMMENDATION 2

To provide Ontarians with a minimum of 30 days to comment on environmentally significant proposals for acts, and to provide prescribed ministries with sufficient time to consider any comments submitted before the proposals are implemented, as required by the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that, when the minister of any prescribed ministry introduces a bill in the Legislature that would implement an environmentally significant proposal for an act, the ministry formally in writing notify the Government House Leader that the bill is subject to the EBR Act, and therefore requires a legislated minimum 30 days for public comment on the bill through the Environmental Registry, and consideration of received comments.

RECOMMENDATION 3

To provide Ontarians with a minimum of 30 days to comment on environmentally significant proposals for acts, and to provide prescribed ministries with sufficient time to consider any comments submitted before the proposals are implemented, as required by the *Environmental Bill of Rights, 1993*, we recommend that all prescribed ministries take a staged approach to consulting Ontarians about proposals for acts, including:

- posting policy proposals on the Environmental Registry for early public consultation on the potential options for the new acts; and
- posting act proposals on the Environmental Registry no later than the day the corresponding bills are introduced in the Legislature.

MINISTRIES' RESPONSES

See **Appendix 11** for ministries' responses to **Recommendations 2 and 3**.

5.1.2 Energy Ministry Did Not Consult Ontarians About Two Environmentally Significant Policies Related to Small Modular Nuclear Reactors and Building a Low-Carbon Hydrogen Economy

In early 2022, the Ministry of Energy released two environmentally significant policies without having first consulted the public through the Environmental Registry.

The Strategic Plan for the Deployment of Small Modular Reactors, released in March 2022, was agreed to by four provinces, including Ontario. The Strategic Plan builds on earlier high-level commitments by the Province to support the development and deployment of small modular nuclear reactors ("SMRs"), including the Premier's signing of a Memorandum of Understanding with Saskatchewan and New Brunswick in 2019 and the Energy Ministry's commitments in the joint federal-provincial-stakeholder SMR Action Plan released in 2020. SMRs are not yet in use but could be

used to generate electricity, either as part of the established grid or in remote communities not connected to the grid. Ontario supports the use of SMRs as a potential source of energy that does not rely on fossil fuels. While SMR use could reduce greenhouse gas emissions, it could also have other environmental impacts from the mining and processing of fuel, hazardous releases, accidents and management of waste.

The Strategic Plan is Ontario's "path forward for the advancement of SMRs." It identifies five priority areas, including construction of an SMR by Ontario Power Generation at its Darlington site, and outlines the next steps the Province intends to take. While the Strategic Plan recognizes the importance of public engagement to build support for SMRs, the Ministry did not consult the public about the Strategic Plan itself. When we asked the Ministry for an explanation of its decision not to post a proposal on the Registry, we were told that posting was not required because the release of the Strategic Plan did not result in any changes to acts, regulations, policies or instruments that might affect the environment. Ministry staff characterized it as a "path forward for further work to enable future decision-making on SMR projects," and stated that the Province would carefully consider project risks and benefits before proceeding with individual, subsequent projects. The Ministry also noted that the impacts of SMRs would be considered by the Canadian Nuclear Safety Commission prior to issuing licences for any new nuclear facilities.

The Ministry's rationale for not consulting Ontarians about the SMR Strategic Plan is not consistent with the EBR Act. Under the EBR Act, a plan is considered to be a policy. The SMR Strategic Plan is therefore a new policy, and under the EBR Act, prescribed ministries are required to consult Ontarians about proposals for new policies that could have a significant effect on the environment—not just changes to existing acts, regulations or policies.

Separately, in April 2022, the Ministry released the Low-Carbon Hydrogen Strategy, which identifies objectives and immediate actions to accelerate the development of a low-carbon hydrogen economy in the

province. The Hydrogen Strategy includes actions to develop low-carbon hydrogen production using surplus electricity from nuclear and renewable sources. The Ministry expects the Hydrogen Strategy to create jobs, attract investment and reduce greenhouse gas emissions. Hydrogen could be used to replace carbon-based fuels for transportation, industry and heating buildings. This could help meet the Province's climate goals.

Initially, the Environment Ministry led development of the Hydrogen Strategy and, in November 2020, posted a discussion paper on the Environmental Registry as a voluntary "pre-consultation." The notice stated that EBR Act consultation was not required because no changes were being proposed at that time. The Ministry stated that the pre-consultation on the discussion paper would "inform the creation of Ontario's first-ever hydrogen strategy." However, neither the Environment Ministry nor the Energy Ministry subsequently consulted on the draft proposed Strategy itself before finalizing it, as required by the EBR Act.

The Hydrogen Strategy was developed through a working group comprised of 23 experts, with participation by different ministries, convened by the Environment Ministry in 2021. In late 2021, responsibility for the Hydrogen Strategy was transferred to the Energy Ministry. When we asked the Energy Ministry for an explanation of its decision to not post a proposal on the Registry to consult Ontarians about the Hydrogen Strategy, we were given essentially the same flawed explanation as we received for the SMR Strategic Plan: that posting was not required because the release of the Hydrogen Strategy did not result in any changes to acts, regulations, policies or instruments that might affect the environment. However, like the SMR Strategic Plan, the Hydrogen Strategy is itself a new environmentally significant policy that, under the EBR Act, the Ministry should have consulted Ontarians about before implementing.

The Energy Ministry told us that it has conducted several EBR Act training sessions for staff since March 2020, and the Ministry's training materials, including a process map, specifically address the need to determine whether a proposal for a policy may significantly

impact the environment, and the requirement to post environmentally significant proposals on the Environmental Registry. However, the Ministry could not provide our Office with any evidence to show that it considered whether the EBR Act applied to the SMR Strategic Plan or the Hydrogen Strategy before it released those policies.

Some ministries use a worksheet or checklist to guide and document their decisions about whether a particular policy requires posting under the EBR Act. The Energy Ministry developed a draft worksheet for this purpose but, as of September 2022, the Ministry was not using this worksheet.

RECOMMENDATION 4

So that Ontarians are consulted in accordance with the *Environmental Bill of Rights, 1993* (EBR Act) about environmentally significant policies, we recommend that the Ministry of Energy establish and follow processes for determining whether a Ministry proposal to make or amend a policy is an environmentally significant policy that is required to be posted for public consultation on the Environmental Registry in accordance with the EBR Act.

ENERGY MINISTRY RESPONSE

The Ministry thanks the Auditor General for these recommendations. The Ministry remains committed to meeting its obligations under the EBR Act and will post environmentally significant proposals on the Environmental Registry, as legislated under the EBR Act.

The Ministry will review and update its existing documentation, training and processes to help guide staff in determining whether a proposal to make or amend a policy is an environmentally significant policy required to be posted for consultation on the Environmental Registry.

The Ministry will also provide annual training to staff to help staff determine whether policies are environmentally significant and required to be posted for public consultation on the Environmental Registry in accordance with the EBR Act.

5.1.3 Environment Ministry Did Not Consult Ontarians Appropriately About a Regulation That Would Exempt Activities Affecting Provincial Parks and Conservation Reserves from the *Environmental Assessment Act*

In July 2020, the Environment Ministry posted a proposal notice for a regulation to exempt activities in provincial parks and conservation reserves from the *Environmental Assessment Act*. Instead, a new Environmental Impact Assessment Policy would set out criteria for evaluating project impacts and mitigation measures. The Environment Ministry received 102 comments through the Environmental Registry and by email about the proposal.

In fall 2021, Ministry staff realized that the proposal notice did not accurately describe all aspects of the proposal. In particular, the notice erroneously indicated that only projects *in* parks would be exempted from the *Environmental Assessment Act* but in fact projects *related* to parks would be exempted as well. In addition, the notice indicated that all projects now subject to existing assessment requirements would instead be subject to the new Environmental Impact Assessment Policy. In fact, however, future park boundary changes (either expansions or reductions of park land) would not be subject to the new policy. (The proposed new policy attached to the notice indicated that it would not apply to boundary changes, but this was not explained in the notice).

In January 2022, the Minister's Office directed staff not to repost the proposal on the Environmental Registry with the corrected and additional information, but instead to send emails only to Indigenous communities, government agencies and persons who had emailed their comments to the Environment Ministry in 2020 (but not those who submitted comments electronically on the Registry). Emails were sent on January 14, 2022, asking for comments on the updated proposal by February 28, 2022.

The erroneous and missing information in the proposal notice was significant enough to warrant the Ministry updating or reposting the proposal notice so that all Ontarians would be informed of the true nature

of the proposal and have an opportunity to comment on it. In deciding not to repost, the Ministry chose not to consult Ontarians in accordance with the EBR Act.

In April 2022, our Office wrote to the Deputy Minister to ask the Ministry to repost the proposal on the Registry to consult all Ontarians on the corrected information. The Ministry told us: “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.” As of September 2022, the Ministry had not reposted the proposal; nor had it made a decision on the original proposal.

RECOMMENDATION 5

So that all Ontarians have the opportunity to exercise their right to meaningfully comment on the Ministry of the Environment, Conservation and Parks’ proposal to exempt activities in provincial parks and conservation reserves from the *Environmental Assessment Act*, we recommend that the Ministry repost the proposal notice on the Environmental Registry for public comment with the complete and correct information.

ENVIRONMENT MINISTRY RESPONSE

The Ministry takes its obligations under the EBR Act seriously. The Ministry will continue to work to improve how it highlights the relevant details necessary to understand proposals so that Ontarians can provide meaningful comments.

5.2 Many Ministries Repeatedly Omitted Information in Environmental Registry Notices—Undermining Transparency, Accountability and Meaningful Public Participation

When reading proposal notices posted on the Environmental Registry, Ontarians may ask questions like: “Is this proposal good for the environment, or bad?”; “Why would the government propose an activity that

could cause environmental harm?”; “How will this fit in with other laws and policies?”; and “How is the ministry ensuring that any environmental harm that could be caused by this proposal is minimized?”

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

- a clear explanation of what is being proposed;
- an explanation of potential environmental implications of the proposal, both the anticipated benefits and the anticipated risks and impacts, and how the ministry intends to mitigate any negative impacts (or an explanation if the ministry does not anticipate any environmental impacts);
- information about any related proposals or decisions necessary to fully understand the current proposal;
- the geographic location to which 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.

When ministries do not provide sufficient information in a proposal notice, there is a risk that Ontarians will not be able to meaningfully participate in the government’s environmental decision-making, as intended by the EBR Act. In turn, the government misses out on the benefits of public participation, including improved environmental decisions and outcomes.

Similarly, prescribed ministries must provide sufficient details about any decisions that they make about a proposal, and explain the effect, if any, that public participation had on the ministry’s decision. When a ministry does not provide sufficient information about its decisions, Ontarians are deprived of the transparency and accountability intended by the EBR Act.

In our 2019, 2020 and 2021 reports, we found that some prescribed ministries did not provide sufficient information in proposal and decision notices to allow for meaningful public participation or transparency

and accountability. In 2022, our assessment of a sample of proposal and decision notices posted by prescribed ministries again found cases in which Ontarians were not provided with sufficient information. In particular, nine ministries (Environment, Natural Resources, Mining, Municipal Affairs, Energy, Transportation, Agriculture, Health, and Long-Term Care) posted notices that were not sufficiently informative. For details, see individual ministry report cards in **Appendix 10**.

Examples of some of our key findings are set out below.

5.2.1 Environment Ministry Did Not Explain the Potential Environmental Implications of Proposed Changes to Environmental Assessment Requirements for Advanced Recycling Facilities

In January 2022, the Environment Ministry posted a proposal notice for amendments to a regulation under the *Environmental Assessment Act* to change the environmental assessment requirements that would apply to thermal treatment-based “advanced recycling” facilities that recover fuel or other materials, depending on the amount of waste processed and the recovery rate. Thermal treatment technologies rely on heat and pressure to break down hard-to-recycle plastics and other waste, but these materials can contain toxic substances and the breakdown processes can be energy-intensive and polluting. According to the Ministry, the changes would align the level of environmental assessment with the level of potential environmental impact. Under the proposal, some types of facilities that now undergo a streamlined assessment process would no longer be required to conduct any environmental assessment, while other types of facilities that now require a comprehensive assessment would instead undergo a less onerous streamlined process, if they meet the specified recovery rate. The largest facilities (those treating more than 1,000 tonnes of waste per day) would still require a comprehensive assessment. The notice indicated that environmental compliance approvals would continue to be required for all thermal treatment facilities.

The notice and attachments set out the anticipated benefits of the proposal but did not identify any potential environmental risks or negative impacts.

5.2.2 Mining Ministry Did Not Explain Its Decision, or the Effects of Consultation, on Its Proposal to Develop a Critical Minerals Strategy

In March 2021, the Mining Ministry posted a proposal notice for public comment, including a discussion paper, to gather information to “inform development of Ontario’s first-ever Critical Minerals Strategy.” The Ministry subsequently posted a decision notice in June 2021, which summarized the 40 comments received and stated that it would consider the comments as it prepares Ontario’s critical minerals strategy. The decision notice did not contain any decision.

The Ministry then posted a bulletin on the Environmental Registry in March 2022 about the release of a new critical minerals strategy. The bulletin noted that, in developing the strategy, the Ministry had considered the public consultation and written comments received in spring and summer of 2021. The Ministry did not, however, explain how public consultation affected the final outcome, as required by the EBR Act. In addition, the Ministry did not update the original decision notice with information about the new strategy, or a link to it.

5.2.3 Transportation Ministry Was Not Transparent About Its Decisions Related to Power-Assisted Bicycles (E-Bikes)

In 2021/22, the Transportation Ministry posted three notices on the Environmental Registry relating to e-bikes. E-bikes can provide an affordable and “green” alternative to cars as personal vehicles. How e-bikes are defined and regulated—such as rules about licensing, insurance, safety equipment and where each type of bike can be ridden—will influence the use of these vehicles, which can in turn affect air quality and greenhouse gas emissions.

In November 2020, the Ministry posted the first proposal notice seeking public feedback to inform the development of a regulation and policy framework for e-bikes, as well as a pilot program for cargo e-bikes.

Using a regulation under the *Highway Traffic Act*, the Ministry implemented a cargo e-bike pilot program starting March 1, 2021.

On April 26, 2021, two weeks before the Ministry posted a decision notice for the e-bike regulation, the Minister introduced Bill 282 in the Legislature, the *Moving Ontarians More Safely Act, 2021*, which included an amended definition of “power assisted bicycles” in the *Highway Traffic Act*. Also on April 26, 2021, the Ministry posted a proposal notice for Bill 282 on the Registry (the second proposal notice) for a 30-day comment period.

On May 13, 2021, the Ministry posted a decision notice for the November 2020 (first) proposal for the e-bike regulation. In the decision notice, the Ministry advised that, after analyzing the feedback received, it was updating its proposal to redefine e-bikes and would consult the public on a proposed definition for a further 30 days. Although the Ministry posted a new proposal notice (the third proposal notice) on the Environmental Registry the same day, including the definitions proposed in Bill 282, the decision notice on the first e-bike proposal did not include a link to the new (third) proposal.

The Standing Committee on General Government considered Bill 282 one day later, on May 14, 2021, and the Bill received third reading on May 31, 2022, before the end of the consultation on the third proposal. The decision notice for the Bill, posted on June 14, 2021, included a link to the third proposal notice but did not include a link to the Bill itself.

The Ministry’s approach to these decisions, and the timing of their posting, risked confusing Ontarians who wished to comment on the outstanding proposals, particularly those who wanted to comment on how e-bikes would be defined, which affects how e-bikes are treated under the *Highway Traffic Act*. The Ministry did not explain in its decision notices how the three proposals or decisions related to one another. In addition, because of the timing of the posting of these notices and the absence of cross-referencing links, it is unclear how comments on the third e-bike proposal, which remained an open proposal on the Registry as of September 2022, would be considered, or for what purpose.

5.2.4 Agriculture Ministry Did Not Provide the Public with Sufficient Details of Proposed Changes under the *Nutrient Management Act*

The Agriculture Ministry posted a proposal notice in June 2021 for two changes to its nutrient management framework under the *Nutrient Management Act, 2002*:

- a change to the nutrient management regulation to remove the five-year expiry on farmers’ Agricultural Operation Planning certification, which is needed to prepare nutrient management strategies and plans; and
- changes to the Nutrient Management Protocol, which sets out the detailed requirements of what must be included in nutrient management strategies and plans.

Certain agricultural operations are required to develop and implement nutrient management strategies and plans to prevent adverse impacts on the environment, including water resources, from the management of manure and other organic materials. All nutrient management strategies must be approved by the Ministry. The proposed changes in the regulation would mean that farmers would not have to re-certify before revising their nutrient management strategies and plans. However, the notice did not clearly explain the potential environmental implications of not requiring farmers to receive up-to-date training on current regulatory requirements, techniques and research on best practices to prevent adverse impacts on water resources.

Further, the rules in the Nutrient Management Protocol have implications on how well nutrients are managed to minimize impacts on water resources. In this case, the proposed changes to the rules were administrative in nature. However, neither the proposal notice, nor the discussion paper that was attached to the notice, provided sufficient information for the public to understand the proposed changes or to be able to make informed comments. More than half of the commenters on the proposal had asked the Ministry for an opportunity to review the draft revised protocol, which had not been included with the notice, before they could comment on it.

Our review of Ministry documents found that the Ministry had considered reposting the proposal notice to include the draft revised protocol, but opted instead to email a copy of it to the stakeholders who requested to review it. The Ministry did so even though it had determined that reposting the notice would still have allowed it to meet its target date for implementing the changes, and even though it recognized that some members of the public might perceive the option of selective consultation as unfair.

5.2.5 Three Ministries Posted Instrument Notices Lacking Sufficient Information

In our review of a sample of instrument notices on the Environmental Registry, we found that three ministries—Mining, Environment and Natural Resources—posted notices that lacked important information.

Of the Mining Ministry’s 10 proposal notices for instruments under the *Mining Act* that we reviewed, three (30%) had insufficient details about the proposals for the public to be able to provide meaningful comment. In one, no information was included about the purpose or content of the proposed mine closure plan or the anticipated environmental impacts. Two other proposal notices (one for amendments to a closure plan and another for a proposed mineral exploration permit) also did not describe the environmental impacts. By contrast, other similar notices did describe the potential environmental disturbance that would result from the proposed exploration activities.

Further, of the Mining Ministry’s 10 decision notices for *Mining Act* approvals that we reviewed, six (60%) did not adequately describe the effects of public participation. In three cases, the Ministry stated only that “comments received were considered in the decision.” Also, although the Ministry told us that it considered the comments received through the EBR Act consultation process, it could not provide evidence that it had considered comments received when making two of those decisions.

Of the Environment Ministry’s 20 proposal notices for instruments that we reviewed, six (30%) did not

adequately explain the anticipated risks to the environment of issuing the instruments, or how the Ministry intended to mitigate those risks through conditions in the instruments. For example, as we found in past years regarding permits to take water, the Ministry either did not state the category of water taking, which would indicate the level of environmental risk associated with the proposed water taking, or did not explain how the conditions of the proposed permit would mitigate any such risk. In one of the proposals, the Ministry also did not adequately describe what was being proposed.

We also found that the Environment Ministry continued to fail to provide links to, or copies of, issued permits in its decision notices for permits to take water. Interested members of the public had to request copies through a link to a Ministry email address provided in the notices. Issued permits to take water are available on the Ministry’s Access Environment website, but the Ministry does not explain this in its decision notices, nor provide links to the permits, which would enable Ontarians who have an interest in the permits, and who may wish to seek leave to appeal a decision about such a permit, to readily access the permits themselves.

Similarly, the Natural Resources Ministry did not include links to, or copies of, the final instruments for any of the 11 decision notices for instruments that we reviewed, which included 10 approvals issued under the *Aggregate Resources Act* and one amendment to the Niagara Escarpment Plan. Providing the final instruments makes a ministry’s decision transparent to Ontarians and aids those with leave to appeal rights. We identified the same issue in 2019, 2020 and 2021, and recommended that the Ministry provide links to the final issued approval for all decision notices. In all three years, the Ministry told us that it was working to develop an information portal that would “enable the public to view approvals on a variety of Ministry instruments.” In 2021, the Ministry stated that, in the interim, it would not include copies as attachments to decision notices posted on the Registry, but that it would continue to provide copies on request.

RECOMMENDATION 6

So that Ontarians can better understand and provide informed comments on all environmentally significant proposals posted on the Environmental Registry, and to comply with the requirements of the *Environmental Bill of Rights, 1993*, we recommend that the Ministry of the Environment, Conservation and Parks, Ministry of Natural Resources and Forestry, Ministry of Mines, Ministry of Municipal Affairs and Housing, Ministry of Energy, and Ministry of Agriculture, Food and Rural Affairs review their processes and update or develop, as applicable, and implement internal guidance and training materials that require proposal notices to include all relevant details necessary to enable Ontarians to understand and provide meaningful comments on the proposal, including descriptions of their environmental implications, and attachments or links to key supporting information.

ENVIRONMENT MINISTRY RESPONSE

The Ministry is committed to ensuring the contents of its notices enable Ontarians to understand what is being proposed. We strive to strike a balance between providing an accurate, detailed description of the proposal, and communicating in an easy-to-understand, plain-language manner. The Ministry will continue to consider how it highlights the relevant details of proposals so that Ontarians can understand them and provide meaningful comments.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to full compliance with its obligations under the EBR Act.

The Ministry's internal guidance and training provide direction to staff on the relevant details necessary in Environmental Registry notices, including describing the environmental effects.

The Ministry also developed and recently (2022) launched a new training module on the "Environmental Registry of Ontario and Public Participation in Government Decision Making."

MINING MINISTRY RESPONSE

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

The Ministry will review its processes and update internal guidance and training materials, as necessary.

The Ministry has recently updated our templated forms to ensure that we include all relevant details on our proposal notices, which is necessary to enable Ontarians to understand and provide meaningful comments on the proposal, including descriptions of their environmental implications, and attachments or links to key supporting information.

The Ministry is committed to providing ongoing training once per year minimum.

MUNICIPAL AFFAIRS MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry will continue to review its training and procedures to require proposal notices to include all relevant details necessary to enable Ontarians to understand and provide meaningful comments on the proposal, including descriptions of their environmental implications, and attachments or links to key supporting information.

ENERGY MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry remains committed to meeting its obligations under the EBR Act. The Ministry will review and update its existing documentation, training and processes to guide staff on developing proposal notices that include

the necessary level of detail and linkages to enable Ontarians to understand and provide meaningful comments on the proposal.

AGRICULTURE MINISTRY RESPONSE

The Ministry is currently reviewing and updating internal guidance and training materials to support Ministry staff in preparing posting materials for the Environmental Registry to enable meaningful consultation. For example, the Ministry could include in its Environmental Registry proposal templates a requirement to include a description of potential environmental impacts.

RECOMMENDATION 7

So that Ontarians can better understand environmentally significant decisions made by prescribed ministries and the effect of public participation, if any, on these decisions, and so that ministries' environmentally significant decisions are transparent and accountable, we recommend that the Ministry of the Environment, Conservation and Parks, Ministry of Natural Resources and Forestry, Ministry of Mines, Ministry of Energy, Ministry of Transportation, Ministry of Health and Ministry of Long-Term Care review their processes, and update or develop, as applicable, and implement internal guidance and training materials that:

- require decision notices posted on the Environmental Registry to clearly describe the details of each decision, and to provide links to all key supporting information, including links to any issued instruments or related proposals and decisions; and
- require decision notices to clearly describe the effects, if any, of public participation on the ministry's decision.

ENVIRONMENT MINISTRY RESPONSE

The Ministry is committed to ensuring the contents of its decision notices enable Ontarians to understand the details of what has been decided and the effects of public participation on the Ministry's

decision. We strive to strike a balance between providing an accurate, detailed description of the decision, and communicating in an easy-to-understand, plain-language manner. The Ministry will continue to consider how it highlights the relevant details of its decisions to help the public understand the decisions, and the effect of public participation on its decision-making.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to full compliance with its obligations under the EBR Act.

The Ministry's internal guidance and training provide direction to staff on the content expected in Environmental Registry notices, including the best practice of describing the environmental effects,

describing details of decisions, and providing links to all key supporting information in each notice, where possible.

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 that can provide copies of any instruments upon request by the public if they are not available via a link.

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, guidance and training materials that provide direction to staff on the processes and procedures to comply with the EBR Act. This includes the guidelines for completing decision notices and addressing public comments received, if applicable.

ENERGY MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry remains committed to meeting its obligations under the EBR Act. The Ministry will review and update its existing documentation, training and processes to guide staff in developing decision notices that include the necessary level of detail, linkages and the effects of public participation to enable Ontarians to understand the decisions.

TRANSPORTATION MINISTRY RESPONSE

The Ministry agrees with this recommendation to publish environmentally significant decisions that are both transparent and accountable. The Ministry will review internal processes and training materials to support this recommendation.

HEALTH MINISTRY RESPONSE

The Ministry is committed to ensuring its public decision notices for its environmentally significant decisions are clear and strike the right balance on being informative and accessible. As the Ministry leverages the Ministry of the Environment, Conservation and Parks (Environment Ministry's) EBR Act training materials, the Ministry will also consult with the Environment Ministry on this recommendation.

LONG-TERM CARE MINISTRY RESPONSE

The Ministry is committed to ensuring its public decision notices for its environmentally significant decisions are clear and strike the right balance on being informative and accessible. As the Ministry leverages the Ministry of the Environment, Conservation and Parks (Environment Ministry's) EBR Act training materials, the Ministry will also consult with the Environment Ministry on this recommendation.

5.3 Three Ministries and the TSSA Could Not Show That They Considered Their Statements of Environmental Values in a Manner that would Contribute to Improved Decision-Making

The EBR Act requires ministries to consider their Statements of Environmental Values whenever they make decisions that might significantly affect the environment. To ensure that this requirement is met, many ministries have Statement consideration document templates that must be completed each time they make an environmentally significant decision. Documenting how the ministry considered its Statement for each decision, at the time the decision is made, provides transparency and accountability for the decisions. However, we found cases where three ministries—the Mining, Tourism and Energy Ministries—as well as the Technical Standards and Safety Authority (TSSA), did not show that they adequately considered their Statements when making decisions.

The Mining Ministry provided documentation to show it considered its Statement when making six of the seven decisions about which we enquired. However, it did not have any documentation to show that it considered its Statement when deciding to amend a closure plan under the *Mining Act*.

The Tourism Ministry posted one decision notice on the Registry for a new regulation under the *Ontario Heritage Act* that implemented changes to that Act made in 2019. When our Office asked for evidence that it had considered its Statement during decision-making, the Ministry provided documentation acknowledging its obligation to consider its Statement, and noted that it already considered its Statement when it made the 2019 decision to amend the Act. However, this is not the same as actually considering the Statement in the context of the specific decision being made. The Ministry's Statement commits it to “document how the SEV [Statement] was considered each time a decision is posted on the Environmental Bill of Rights Registry,” which is consistent with the EBR Act's requirements.

The Energy Ministry provided Statement consideration documentation for all five decisions that we requested. However, the documentation for two of the decisions was not dated, and the Ministry could not show that it had considered its Statement before the decisions were made, as intended by the EBR Act so that consideration of the Statement contributes to informed decision-making.

The TSSA provided consideration documents for 10 decisions that we requested regarding approvals for liquid fuel variances under the *Technical Standards and Safety Act, 2000*. The documents did not explain why some principles did not apply, even though the consideration form instructs the person completing the form to include this explanation. We identified this issue in our 2021 report on the operation of the EBR Act, and the TSSA told us that, going forward, it would provide an explanation when it determined that a Statement principle was not relevant to a particular variance decision. It did not do so.

RECOMMENDATION 8

To be transparent and accountable to Ontarians about their decisions that affect the environment, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider their Statements of Environmental Values (Statements) whenever making a decision that might significantly affect the environment, we recommend that the Ministry of Mines, Ministry of Tourism, Culture and Sport, Ministry of Energy and the Technical Standards and Safety Authority review and increase staff awareness of their existing internal processes and guidance, or develop and implement new internal processes and guidance, as applicable, that require consideration of their Statement every time they make a decision that might significantly affect the environment, in a manner that is deliberate, reflects analysis and judgment in balancing the Statement's principles, contributes to improved environmental decision-making, and that requires clear documentation of that consideration concurrently with decision-making.

MINING MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to being fully transparent and accountable to Ontarians. The Ministry will review its internal guidance and training materials to assess the need for any updates and/or new internal processes and guidance as applicable, as well as provide training to increase staff awareness of existing internal processes and guidelines.

TOURISM MINISTRY RESPONSE

The Ministry agrees with this recommendation and with the requirement to consider its Statement of Environmental Values when making decisions that might significantly affect the environment. Through consultation with the Ministry of the Environment, Conservation and Parks, the Ministry is working towards development and implementation of guidance to ensure ongoing compliance with the EBR Act, including training and increasing staff awareness. These processes and procedures will ensure the Ministry considers, and documents, its Statement of Environmental Values when making a decision that might significantly affect the environment.

ENERGY MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry remains committed to meeting its obligations under the EBR Act. The Ministry will review and update existing documentation, training and processes to guide staff in considering the Ministry's Statement of Environmental Values in a timely, deliberate and transparent manner for decisions that might significantly affect the environment.

TECHNICAL STANDARDS AND SAFETY AUTHORITY RESPONSE

The TSSA agrees with the recommendation. The TSSA will avoid using the term "N/A" in the form

documenting consideration of the Ministry's Statement of Environmental Values (Statement). Instead, the TSSA will more clearly describe how the Statement principles were considered, or, if applicable, why a Statement principle was considered not relevant to a decision or otherwise could not be taken into consideration for a decision. The TSSA has already begun the task of increasing staff awareness of existing internal processes and guidance documents related to the EBR Act Statement process and will monitor staff progress going forward.

5.4 More Ministries Gave Ontarians Prompt Notice of Environmentally Significant Decisions, but Agriculture, Mining and Natural Resources Ministries Still Slow to Give Notice

When a prescribed ministry makes a decision about a proposal posted for public consultation on the Environmental Registry, the EBR Act requires the ministry to post a decision notice “as soon as reasonably possible” after that decision is made (that is, after a policy is implemented, a bill for a proposed act receives third reading, a regulation is filed, or an instrument is issued). Ministries are similarly required to post exception notices “as soon as reasonably possible” after they make an environmentally significant decision without public consultation. Our Office considers notice to have been given “as soon as reasonably possible” if it is posted within two weeks of the decision being made.

Timely public notice of decisions is important for transparency and to provide accountability for the outcome of a proposal. Delays in posting decision notices for instruments, for example, allow activities with potential environmental impacts to continue—sometimes for significant periods of time—before the public becomes aware of the approval, or can seek leave 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. Of

the sample of notices that we reviewed in 2021/2022, we found that Ontarians were given prompt notice of 80% of decisions. This is an improvement from 2020/2021, in which ministries only gave prompt notice 67% of the time.

The Agriculture Ministry, however, gave prompt notice of only two (50%) of the four decisions that it made in 2021/22, despite having internal guidance that staff should post decision notices within two weeks after a decision is made. (Similarly, in 2020/21, this ministry was late giving notice about the two environmentally significant decisions it made). For example, the Agriculture Ministry did not give Ontarians notice that the Rules of Procedure of the Agriculture, Food and Rural Affairs Tribunal had been updated until 46 days (over six weeks) later. In December 2021, after the Ministry posted both of its late decision notices, the Ministry provided three training sessions to 75 staff members that included direction to post decision notices within two weeks of a decision date.

Similarly, seven (or 39%) of the Mining Ministry's decision notices that we reviewed were not posted promptly. The Ministry posted six of its eight decision notices for policies, acts and regulations and one of the 10 decision notices for permits and approvals more than two weeks after the decisions were made. The latter was a decision that had been made almost a year and a half earlier by the Director of Mine Rehabilitation to file a closure plan under the *Mining Act*.

Despite having an internal service standard to post decision notices within two weeks, the Natural Resources Ministry posted three (38%) of its eight decision notices for policies, acts and regulations more than two weeks after the decisions were made. The Ministry likewise posted two (18%) of the 11 decision notices for permits and approvals that we reviewed more than two weeks after it made those decisions. One was about an *Aggregate Resources Act* licence that had been issued almost 35 weeks before; another was about a Niagara Escarpment Plan amendment that had been made a year and a half earlier. In total, five (26%) of the Natural Resources Ministry's decision notices that we reviewed were not posted promptly.

RECOMMENDATION 9

To give Ontarians prompt notice of environmentally significant decisions, we recommend that the Ministry of Agriculture, Food and Rural Affairs, the Ministry of Mines, and the Ministry of Natural Resources and Forestry develop or update, as applicable, service standards to require all decision notices to be posted on the Environmental Registry within two weeks after a decision is made, and take steps to make relevant ministry staff aware of the service standards.

AGRICULTURE MINISTRY RESPONSE

The Ministry will strive to ensure that all decisions are posted to the Environmental Registry within two weeks after a decision is made. The Ministry is currently reviewing and updating internal guidance and training materials, which includes service standards, to support Ministry staff in preparing posting materials for the Environmental Registry.

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

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry agrees with this recommendation, and is committed to posting decision notices as soon as reasonably possible.

The Ministry's internal guidance (e.g., templates and best practices bulletin) and training provides direction to staff; this includes the best practice of posting decision notices within two weeks of the decision being made.

5.5 Except for Natural Resources and Environment Ministries, Most Ministries Kept Proposal Notices Up to Date

For the Environmental Registry to be an accurate and reliable source of information for Ontarians, proposal notices posted there must be kept up to date. However, in some cases ministries abandon proposals, transfer responsibilities to other ministries, or make decisions about proposals without posting a decision notice on the Registry. In other cases, proposals remain under consideration for years but ministries do not update the proposal notices to let the public—including people that took the time to submit comments on the proposals when they were originally posted—know what is going on.

Since our Office became responsible in 2019 for reporting annually on the operation of the EBR Act, we have monitored the number of “open” proposal notices on the Environmental Registry (i.e., those for which a decision notice had 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. Since 2019, when we found 165 such outdated notices on the Registry, prescribed ministries have made significant improvements, bringing and keeping many more notices up to date. Even so, after reducing the overall number of outdated notices in 2020 and 2021, the number increased in 2022.

As of March 31, 2022, there were 42 outdated proposal notices on the Environmental Registry. This is 123 (or 75%) fewer than we found in 2019, but represents an increase of 15 (56%) since 2021.

Of the 42 outdated notices, the Natural Resources Ministry was responsible for 39 of them (see **Section 5.5.1**), the Mining Ministry was responsible for two, and the Environment Ministry was responsible for one (see **Figure 4**). In addition, we identified two other significant open proposal notices by the Environment Ministry that, while open for less than two years and so not formally counted as “outdated,” had been decided and should have been updated promptly (see **Section 5.5.2**). Other ministries have, for the most part, brought and kept their proposal notices on the Environmental Registry up to date.

Figure 4: Ministries with Proposal Notices on the Environmental Registry for over Two Years without Decision or Update, as of March 31, 2022

Source of data: Environmental Registry

Ministry	# of Notices
Natural Resources	39
Mining	2
Environment	1
Total	42

5.5.1 Natural Resources Ministry Did Not Keep 21% of Its Open Proposal Notices Current

The Natural Resources Ministry had 39 outdated proposal notices as of March 31, 2022, dating as far back as 2004. This represents 21% of the Ministry's total open proposal notices, and an increase of 16 outdated notices from one year earlier. Information we reviewed showed that at least 16 of the Ministry's outdated proposal notices had either been decided or were no longer under consideration as of March 31, 2022, but the Ministry had not posted decision notices, or updated the notices for proposals that it was still considering. The Natural Resources Ministry has an internal process for identifying Registry notices that require decisions or updates, and the Ministry followed this process in 2021/22. Unfortunately, it did not update the outdated notices it had identified.

In our 2019, 2020 and 2021 reports on the operation of the EBR Act, we recommended that the Natural Resources Ministry bring and keep all of its proposal notices up to date, including posting decision notices for proposals that have been decided or are no longer under consideration in the Ministry. The Ministry agreed, but has continued to leave many of its older proposals on the Registry without any update about their status.

RECOMMENDATION 10

So that the Environmental Registry is up to date and a reliable source of information about the Ministry of Natural Resources and Forestry's proposals

and decisions about the environment, we recommend that the Ministry:

- bring and keep all its proposal notices up to date, including posting decision notices for proposals that have been decided or that are no longer under consideration by the Ministry, just as we recommended in our 2019, 2020 and 2021 annual reports on the operation of the *Environmental Bill of Rights, 1993* (EBR Act); and
- review its internal procedures for keeping notices on the Environmental Registry up to date and revise those procedures as necessary to ensure that decision notices or updates are posted in a timely manner.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry agrees with this recommendation and will continue to review its Environmental Registry notices and keep notices up to date to maintain them as a reliable source of information.

The Ministry continues to reduce outdated notices on the Environmental Registry. In 2019 the Ministry had 92 outdated notices that were reduced in 2020 to 52, and then reduced again in 2021 to 23 outdated notices.

5.5.2 Environment Ministry Has Still Not Posted a Decision Notice for Its Made-in-Ontario Environment Plan, and Did Not Give Timely Notice of Two Other Significant Decisions

In our 2021 report on the operation of the EBR Act, we found that the Environment Ministry had not been transparent with Ontarians about the status of its 2018 proposal for a Made-in-Ontario Environment Plan, despite evidence that the Ministry had implemented aspects of the Plan. We recommended that the Ministry post a decision notice for the 2018 proposal, informing Ontarians about its decision and the effect of public participation on that decision. As of September 2022, the Ministry had not posted a decision notice or update to the 2018 proposal notice.

On April 8, 2022, the Ministry posted a document titled “Ontario Emissions Scenario as of March 25, 2022” as supporting material to a bulletin posted on the Environmental Registry. The actions outlined in the Emissions Scenario differ from those found in the Environment Plan, and it is unclear how the Emissions Scenario relates to the climate change content of the Environment Plan, leading to further public uncertainty about the status of the Made-in-Ontario Environment Plan.

Our Office wrote to the Environment Ministry in April 2022, recommending 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 open proposal for the Environment Plan it posted in 2018.

Further, we identified two significant proposals for which decisions had been made but the Ministry had not posted decision notices to inform Ontarians of these outcomes. Leaving proposal notices on the Registry long after they are decided is not consistent with the transparency and accountability purposes of the EBR Act. In the first instance, in November 2020, the Ministry posted a voluntary proposal notice for pre-consultation on a low-carbon hydrogen strategy. Ultimately, responsibility for that strategy was transferred to the Energy Ministry in October 2021, and the Energy Ministry released the final strategy in April 2022 (without consulting Ontarians; see **Section 5.1.2**). However, the Environment Ministry did not post a decision notice about its November 2020 proposal to inform Ontarians of the outcome or to explain how it considered the public’s feedback. When we asked about this in August 2022, the Ministry told our Office that the Energy Ministry became responsible for posting a decision notice when responsibility for the strategy was transferred to it. In mid-September 2022, the Energy Ministry finally posted a decision notice.

Similarly, in June 2021, the Ministry posted a proposal notice on the Environmental Registry for Bill 306, the *York Region Wastewater Act, 2021*. The intent of the bill was to prevent the Minister from making a decision that he would otherwise be required to make under the *Environmental Assessment Act* about York Region’s

preferred “sewage solution” for its future growth areas. This pause in decision-making was to allow time for the Ontario government to appoint an advisory panel to look into the issue. Bill 306 would also prohibit legal proceedings against the government arising out of the bill.

The Legislature was prorogued in September 2021 and Bill 306 died on the order paper. When it was subsequently re-introduced in October 2021 in the new legislative session, as Bill 5, the Environment Ministry posted an exception notice on the basis that the contents of the bill had already gone through EBR Act public consultation as Bill 306. Bill 5 passed into law in October 2021.

Our Office wrote to the Environment Ministry to confirm that we would review its use of an exception notice for Bill 5. We concluded that the use of the exception notice was reasonable, but the Ministry’s approach to the *York Region Wastewater Act, 2021* was not entirely transparent. Given the Ministry had consulted on the previous Bill 306 and avoided further consultation on Bill 5 on that basis, the Ministry should have informed Ontarians when Bill 5 was introduced by updating the proposal notice for Bill 306.

While the Ministry helpfully updated the exception notice to inform Ontarians when Bill 5 received third reading, it was not until October 6, 2022, almost a year later, that the Ministry posted a decision notice for its proposal for Bill 306 to inform Ontarians that the bill was reintroduced as Bill 5, or that Bill 5 had passed into law. Until then, the Ministry had not told Ontarians what effect public participation on Bill 306 had, if any, on the Ministry’s decision regarding Bill 5.

On October 25, 2022, the Municipal Affairs Minister introduced Bill 23, which would amend nine acts and enact a new law, the *Supporting Growth and Housing in York and Durham Regions Act, 2022*. This Act would terminate the *Environmental Assessment Act* process regarding York Region’s preferred sewage solution, require York Region to instead pursue construction of expanded access to the Duffin Creek Water Pollution Control Plant in Durham Region, exempt that project from the *Environmental Assessment Act*, and establish an alternative process for that project’s approval. The new act would also repeal the *York*

Region Wastewater Act, 2021. At the time of finalizing this report, Bill 23 had been referred to the Legislature's Standing Committee on Heritage, Infrastructure and Cultural Policy.

RECOMMENDATION 11

So that the Environmental Registry is up to date and a reliable source of information about the Ministry of the Environment, Conservation and Parks' decisions about the environment, and to provide transparency and accountability for its decisions, we recommend that the Ministry:

- take the necessary steps to obtain any approvals that may be needed on the Made-in-Ontario Environment Plan (Plan); and
- post a decision notice on the Environmental Registry to inform the public of its decision to implement the Plan, the current status of the Plan, and how the March 25, 2022 Emissions Scenario relates to the Plan, and explain the effect, if any, of public participation on the Ministry's decision, as required by the *Environmental Bill of Rights, 1993*.

ENVIRONMENT MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry will continue to consider its approach for posting a decision notice on the Environmental Registry regarding the Made-in-Ontario Environment Plan.

5.6 Environment Ministry Still Not Showing Leadership on EBR Act Matters

The Environment Ministry is responsible for administering the EBR Act and its regulations. It has, therefore, some unique responsibilities under the Act, including responsibilities to operate the Environmental Registry, to provide educational programs about the Act to the public, and to give notice of any appeals of environmentally significant permits and approvals.

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

As administrator of the EBR Act, the Environment Ministry has a responsibility to lead by example in EBR Act matters, including in its implementation of the Act. However, the Ministry does not have a strategic plan for providing leadership on EBR Act matters to ensure its effective operation (we recommend that the Ministry develop one in **Section 4.0** of this report). As in past years, we found this year that the Ministry did not set an example for other ministries. While the Ministry made some improvements, it fully met only six of 18 (33%) of our audit criteria—the worst of any ministry—as shown in the Ministry's report card found in **Appendix 10** and discussed in other subsections of this report. In particular, the Ministry:

- had still not updated its Statement of Environmental Values (see **Section 5.7**);
- deliberately did not consult Ontarians appropriately about a proposed environmentally significant regulation (see **Section 5.1.3**);
- failed to provide accurate or sufficient information to the public about some environmentally significant proposals and decisions (see **Section 5.2**);
- was not transparent with the public about the status of its Made-in-Ontario Environment Plan, and did not notify Ontarians about the outcomes of two significant proposals (see **Section 5.5.2**); and
- did not fully comply with the EBR Act in its handling of four of eight applications for investigation (see **Section 6.2**), and had still not completed a review of the EBR Act itself that the Ministry had agreed to undertake in 2011 (see **Section 4.0**).

Further, we found that the Ministry did not show leadership in carrying out its unique obligations under the EBR Act relating to educating the public about the EBR Act (see **Section 5.6.1**), operating the Environmental Registry (see **Section 5.6.2**), and giving the public notice of appeals (see **Section 5.6.3**).

5.6.1 Environment Ministry Undertook Some Public Outreach on the EBR Act, But Has Not Made Educational Programs a Priority

Ontarians cannot exercise their EBR Act rights if they are not aware of them. In 2021, our Office engaged a polling firm to survey 1,000 Ontario residents about their awareness of the EBR Act and their rights under it. The survey found that over half of those surveyed (52%) had never heard of the EBR Act, and that approximately one in 10 of those who were aware of the EBR Act could name one of the rights provided under it. Further, 84% of those surveyed said they did not know anything about the Environmental Registry, and only 6% identified the Environment Ministry as the appropriate entity to contact for information about their EBR Act rights.

This year, we engaged the same polling firm to repeat the survey, and it found no improvement in Ontarians' awareness of the EBR Act. Of 1,002 Ontario residents surveyed, again over half of them (54%) had never heard of the EBR Act, and approximately one in 10 of those who were aware of the EBR Act could correctly name an EBR Act right. Similarly, 87% had never heard of the Environmental Registry, and only 4% identified the Environment Ministry as the appropriate entity to contact for information about their EBR Act rights.

Since April 2019, the Environment Ministry has been legally responsible for educating people about the EBR Act. However, in our 2020 report on the operation of the EBR Act, we found that the Ministry did not have a plan to educate Ontarians about the EBR Act and their rights under it. During our 2021 audit, the Ministry shared with our Office a draft communications plan it had developed, which takes a “digital first approach.”

This year, we found that the Ministry had finalized its communications plan and implemented its first phase. This involved a rollout of five unpaid social media posts on various channels in late fall 2021 to educate Ontarians about their basic EBR rights, including a video.

As of September 2022, the Ministry had not yet implemented other components of its communications plan, such as leveraging partner channels (ministries and partner organizations) to reach more Ontarians through social media, and creating ongoing monthly social media content. The Ministry told us that rolling out further aspects of the plan, or exploring other potential approaches to educational programming not included in the plan, but that our Office believes could increase public awareness of EBR rights (such as webinars, presentations, online training courses, high school curricula, university lectures, printed materials, television, newspapers, radio ads or billboards), first requires research to assess current awareness and understanding of the EBR Act to identify knowledge gaps and where to target education, and to ensure communications tactics have the most effective reach and are most cost-effective.

More than three years after the Ministry became responsible for educating the public about the EBR Act, the Ministry has not yet conducted that research. Despite having a specific legislated mandate to provide educational programs about the EBR Act, the Environment Ministry has not prioritized this responsibility among its many other communication roles.

RECOMMENDATION 12

So that Ontarians are aware of their environmental rights and how to exercise them, and to meet the Ministry's educational responsibility under of the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that the Ministry of the Environment, Conservation and Parks:

- undertake the research necessary to assess current awareness and understanding of the EBR Act, identify knowledge gaps, and determine where to target campaigns; and
- fully implement its communications plan.

ENVIRONMENT MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry is committed to ensuring Ontarians are aware of their environmental rights and how to exercise them and is continuing to develop and implement its public education approach.

5.6.2 Environmental Registry Platform Operated Well, but Mislabeling of *Mining Act* Notices May Have Hampered Ontarians' Use of EBR Act Rights

In 2021/22, the Environment Ministry maintained and operated the Environmental Registry platform so that it generally worked well to provide information about environmentally significant matters. This enabled the public to participate in ministries' environmentally significant decision-making.

We did identify one issue with the operation of the Registry that may have created a problem for Ontarians to find information and to exercise their EBR Act rights. In August 2021, the Environment Ministry made updates to the Registry to reflect a June 2021 ministry reorganization. Part of the former Energy and Mines Ministry became the new Ministry of Energy, and the other part (Northern Development and Mines) merged with the Natural Resources Ministry to form the Ministry of Northern Development, Mines, Natural Resources and Forestry. When the updates to the Registry were made, however, all notices related to the *Mining Act*, which were previously assigned to the former Energy and Mines Ministry, were inadvertently, through human error, transferred to the Ministry of Energy instead of to the Ministry of Northern Development, Mines, Natural Resources and Forestry, which was responsible for the *Mining Act*. Subsequently, posted *Mining Act* notices were mislabelled as having been posted by the Ministry of Energy.

The Ministry of Northern Development, Mines, Natural Resources and Forestry discovered the issue and alerted the Environment Ministry in late January 2022, approximately five months after the error was introduced. While the Environment Ministry took

immediate steps to identify the affected notices, it took the Ministry until the end of March 2022 to correct 982 affected notices because the error needed to be corrected manually.

During the approximately seven-month period when *Mining Act* notices were mislabelled, Ontarians interested in *Mining Act*-related proposals may have lost the opportunity to be informed of and comment on the proposals, and notified of subsequent decisions, if they searched the Environmental Registry for notices posted by the Ministry of Northern Development, Mines, Natural Resources and Forestry.

In May 2022, the Environment Ministry told our Office that it was working on developing a process to handle changes to prescribed ministries to avoid this type of error from occurring in the future.

In June 2022, the Ministry of Northern Development, Mines, Natural Resources and Forestry changed again, to form three separate ministries: the Ministry of Northern Development; the Ministry of Mines; and the Ministry of Natural Resources and Forestry. Three other ministries also had changes made to their names at that time. The Environment Ministry finished updating the Environmental Registry to reflect all of these changes in early October 2022. In the course of this update, Environment Ministry staff identified the necessary steps for engaging with the affected ministries whose names and mandates changed, to ensure individual notices were transferred to the appropriate new ministries. Ministry staff told us that, as a result, the Ministry should be able to update the Registry more quickly when such changes occur in the future.

RECOMMENDATION 13

So that Ontarians can readily locate notices on the Environmental Registry about matters that interest them and exercise their rights under the *Environmental Bill of Rights, 1993*, we recommend that:

- the Ministry of the Environment, Conservation and Parks establish formal processes to engage with affected ministries and update the Environmental Registry system promptly and accurately when changes to prescribed ministries occur; and

- the Ministry of Mines establish and implement processes to verify that the content of notices it publishes on the Environmental Registry, including the “Posted by” field, is accurate.

ENVIRONMENT MINISTRY RESPONSE

The Ministry has identified the necessary steps to engage with impacted ministries to plan prompt and accurate updates to the Environmental Registry system when changes to prescribed ministries occur, and will work to formalize and implement this process when future changes occur.

MINING MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to meeting its obligations of the EBR Act. The Ministry will develop a quality check and assurance process to periodically review active postings (scheduled with a second reviewer) as an additional part of the standard operating procedure for creating and managing Environmental Registry notices in order to verify and ensure that the content of published notices is accurate.

5.6.3 Environment Ministry Showed Improvement in Notifying Ontarians of Leave to Appeal Applications, but Notice Was Still Not Prompt

The EBR Act requires that anyone who is appealing or applying for leave to appeal (that is, permission to challenge) a ministry decision on certain types of instruments (such as a decision to issue a permit, approval or licence) give notice to the public of their appeal or application for leave to appeal (see **Appendix 9** for more information). The individual must deliver notice to the Environment Minister and the Ministry must then “promptly place” notice on the Environmental Registry.

Our Office considers prompt posting to be within five business days from the date the Ministry receives notice of the application or appeal, or within one business day from the expiry of the appeal period,

whichever comes later. We define prompt placement based on the past practice of the former Office of the Environmental Commissioner of Ontario, which was responsible for posting appeal notices before that responsibility was transferred to the Environment Ministry in 2019.

Prompt posting of appeal notices promotes transparency and is especially important to those who may wish to participate in the hearing; without prompt public notice of an appeal the risk is that interested people lose the opportunity to seek to participate in the hearing. In addition, failure to give notice could delay the commencement of a hearing because the EBR Act specifies that a hearing shall not proceed until after notice is given (unless the appellate body—in most cases the Ontario Land Tribunal—considers it appropriate to proceed). Finally, because submitting a leave to appeal application does not automatically suspend a ministry’s decision under appeal (and therefore does not stop the instrument holder from engaging in the approved activity), any delay in hearing an application means that a decision being challenged because it has the potential for significant environmental harm continues in effect during the period of delay.

In 2021/22, the Environment Ministry posted five notices for six new applications for leave to appeal on the Environmental Registry (one notice was related to two separate applications seeking to appeal the same instrument). There were no new appeals of EBR Act classified instruments in 2021/22, but the Ministry did post three notices for appeals of two EBR Act classified instruments that had been filed with the Tribunal in the previous reporting year; we reported on these in our Office’s *2021 Annual Report*.

The Ministry did not post any of the notices within five business days of receiving them; however, four of the five were posted within an average of nine business days, and no more than 11 business days. Even though this did not meet our five-day criterion, it represents an improvement over previous years, when in some cases it took a month or more after the Ministry received notice of an appeal or application to post an appeal notice. This year, one notice was not posted until 60 business days after the Ministry received notice. The

Ministry explained that this was due to the applicants failing to respond to emails from the Ministry asking for more information. In our 2021 report on the operation of the EBR Act, we recommended that, where leave to appeal and appeal details are not provided promptly by the applicants or appellants, the Ministry still promptly post notice of the appeals on the Registry, and then update the appeal notices if and when more information is provided.

RECOMMENDATION 14

So that Ontarians receive timely notice of all appeals and leave to appeal applications of decisions on instruments that are subject to the requirements of the *Environmental Bill of Rights, 1993*, we continue to recommend that the Ministry of the Environment, Conservation and Parks establish internal processes and guidance that require all appeals and leave to appeal applications to be posted no later than five business days after the Ministry becomes aware by any means of the appeals or applications.

ENVIRONMENT MINISTRY RESPONSE

The Ministry agrees that notices of all appeals and leave to appeal applications subject to the EBR Act should be posted on the Registry promptly, on receipt of the notice from appellants and applicants, and will consider further opportunities to improve our internal processes to support notices being posted promptly.

AUDITOR GENERAL RESPONSE

The Auditor General continues to believe that Ontarians should receive prompt notice of *all* appeals and leave to appeal applications related to instrument decisions that are subject to the EBR Act, not just those for which the Ministry receives direct notice from appellants and applicants. It is consistent with the purposes of the EBR Act, and within the Environment Ministry's power, for this Ministry to establish processes to ensure that it is

made aware of, and gives prompt notice of, all such appeals and leave to appeal applications.

5.7 Environment and Labour Ministries Made No Progress in Updating their Statements of Environmental Values

Under the EBR Act, each of the prescribed ministries must develop and publish a Statement of Environmental Values (Statement) that explains how the ministry considers the purposes of the EBR Act when it makes decisions that may significantly affect the environment. The ministries must then consider the Statement each time they make an environmentally significant decision.

The government's November 2018 Made-in-Ontario Environment Plan included actions to "make climate change a cross-government priority." Specifically, the plan identifies an action to "improve [the government's] ability to consider climate change when [making] decisions about government policies and operations by developing a Climate Change Governance Framework." This would include updating Statements of Environmental Values "to reflect Ontario's environment plan."

In our 2019 and 2020 reports on the operation of the EBR Act, we recommended that ministries with outdated Statements publicly consult on their Statements and update them to reflect current responsibilities and government priorities, including addressing climate change.

In 2021, we found that the majority of ministries' Statements were up to date, with the exception of the Labour and Environment Ministries. In 2022, we found that the Labour Ministry had still not updated its Statement. Its current Statement, which was last updated in 2008, does not reflect its current mandate or new government priorities, such as addressing climate change. In May 2022, the Ministry told our Office that it was on the Ministry's agenda for summer or fall of 2022.

In 2021, we also found that the Environment Ministry has still not finalized updates to its Statement, which was last updated in 2008. In December 2020,

the Ministry posted a proposal notice on the Environmental Registry for an updated Statement that reflects the Ministry's current structure and mandate, as well as climate change as a government priority. However, our Office identified concerns with the proposed updated Statement (see **Section 6.3** of our 2021 report on the operation of the EBR Act). As of September 2022, the Ministry had not finalized its updated Statement.

These ministries need to review their Statements with public consultation through the Environmental Registry and update them to reflect new mandates and priorities, as recommended in 2019, 2020 and 2021.

6.0 Applications for Review and Investigation under the EBR Act

The EBR Act gives all Ontarians the right to ask a prescribed ministry to:

- review an existing law, policy, regulation or instrument (such as a permit or approval) or review the need to create a new law, policy or regulation in order to protect the environment (called an “application for review”); and
- investigate an alleged contravention of an environmental law (called an “application for investigation”).

A ministry that receives an application must consider the request according to the requirements of the EBR Act, determine whether to undertake or deny the requested review or investigation, and provide a notice of its decision with the reasons to the applicants and our Office. When a ministry agrees to undertake a review or investigation, it must also provide a notice of the outcome to the applicants and our Office.

Twelve ministries are required to accept applications for review under the EBR Act (see **Appendix 3**). Specific laws must be prescribed under Ontario Regulation 73/94 in order for them and their regulations to be subject to applications for review (see **Appendix 4**). Similarly, permits and other approvals must be prescribed under Ontario Regulation 681/94 to be subject to applications for review (see **Appendix 5**).

Applications for Review in 2021/22

In 2021/22, the Environment Ministry received two new applications for review, and denied both. During this time frame, the Environment Ministry and the Natural Resources Ministry also each concluded a review they had undertaken in 2017/18. No other ministries received or concluded any applications for review in 2021/22. Two reviews that had been requested in previous years remain ongoing with the Environment Ministry (see **Figure 5**).

The EBR Act outlines the following factors that ministries may consider to determine whether a requested review is warranted:

- the potential for environmental harm if the ministry does not undertake the review;
- whether the government already periodically reviews the matter;
- any relevant social, economic, scientific or other evidence;
- the staffing and time needed to do the review; and
- how recently the ministry made or reviewed the relevant law, policy, regulation or instrument, and whether the ministry consulted the public when it did so.

Our Office assessed the ministries' handling of each concluded application in accordance with the above criteria. We determined that the ministries handled all concluded applications for review reasonably, but the ministries did not complete some of them within a reasonable time (see **Section 6.1.1**)

Summaries of the four applications for review that were concluded in 2021/22 are found in **Appendix 7**.

6.1.1 Environment Ministry and Natural Resources Ministry Did Not Complete Some Reviews Within a Reasonable Time

When a ministry agrees to undertake a review, the EBR Act requires the ministry to complete the review “within a reasonable time.” However, the EBR Act does not specify what a reasonable length of time to complete a review might be, as it varies from case to case,

Figure 5: Applications for Review in 2021/22

Prepared by the Office of the Auditor General of Ontario

Responsible Ministry	Brief Description of Application	Year Submitted	Undertaken or Denied	Status as of March 31, 2022	Our Evaluation*
Environment	Review of the <i>Environmental Bill of Rights, 1993</i>	2010/11	Undertaken	Ongoing	n/a
Environment	Review of the Lake Simcoe Protection Plan	2016/17	Undertaken	Ongoing	n/a
Environment	Review of water management policies	2016/17	Undertaken	Concluded	Reasonable
Natural Resources	Review of an <i>Aggregate Resources Act</i> licence	2017/18	Undertaken	Concluded	Reasonable, but not concluded within a reasonable time
Environment	Review of an air emissions approval for an asphalt plant in Toronto	2021/22	Denied	Concluded	Reasonable
Environment	Review of the EBR Act “five year rule”	2021/22	Denied	Concluded	Reasonable

□ - applications we have not evaluated as they were ongoing (a notice of decision had not yet been delivered) as of March 31, 2022.

* Our evaluation served to determine whether the ministry handled the application in accordance with the requirements of the *Environmental Bill of Rights, 1993*, as set out in audit criteria 3 a. and c. (Appendix 2). We did not evaluate or reach conclusions about the merits of any policy decisions made as a result of undertaken reviews, as that is outside of the scope of this audit.

based on its complexity and other factors, such as a need to gather scientific or technical evidence before completing the review. Ministries typically complete reviews of discrete or site-specific environmental issues, such as a review of a company’s permit, within approximately six months. Complex or broad topics, such as a review of a province-wide policy, are typically reviewed within approximately three years.

The Natural Resources Ministry was responsible for one review that was not completed within a reasonable time. The applicants had submitted an application for review of an *Aggregate Resources Act* licence in November 2017, and the Ministry decided to undertake a scoped review in January 2018. The Ministry reasonably delayed its review until it received an additional study regarding impacts of a potential expansion of aggregate operations on at-risk species, in December 2018. However, even though the Ministry’s review was a desktop exercise involving document review, the Ministry did not conclude the process until June 2021, more than two-and-a-half years after receiving the outstanding study. The Ministry told our Office that the file sat dormant for so long due to a lack of capacity in the Ministry.

As noted in **Section 4.0**, the Environment Ministry is responsible for another application for review, of the EBR Act itself. This one has been ongoing for over a decade. The applicants submitted their application for review in December 2010, and the Ministry agreed to undertake the review in 2011. It did little else until 2016, when it undertook consultation on the Environmental Registry to ask Ontarians about potential improvements to the Act. But that consultation did not lead to any further action by the Ministry. As of September 2022, the Ministry had not completed the review. Staff confirmed to us that they had not undertaken recent work on the review, nor did they have any work underway or planned, or an anticipated completion date.

The EBR Act states that a minister may develop plans and set priorities for the reviews required to be conducted under the EBR Act by his or her ministry. Making such a plan and setting priorities could assist the ministry in determining a reasonable length of time to complete a given review. Up until January 2018, the Environment Ministry posted quarterly updates about the status of its EBR Act reviews on the Environmental Registry; periodically updating the Ministry’s plans

to reflect the current status of reviews and priorities, and sharing those updates with applicants, could also increase Ministry accountability for completing undertaken reviews.

RECOMMENDATION 15

To provide transparency and accountability to Ontarians who submit applications for review, we recommend that the Ministry of the Environment, Conservation and Parks and the Ministry of Natural Resources and Forestry:

- develop plans and set priorities for conducting the reviews that they agree to undertake;
- periodically update their plans and priorities for conducting reviews; and
- provide regular updates to applicants on the status of reviews.

ENVIRONMENT MINISTRY RESPONSE

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

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to full compliance with its obligations under the EBR Act.

The Ministry has reviewed and updated its processes for applications for review and investigation under the EBR Act and will update them as needed. Both processes have clear direction on conducting either a review or an investigation and setting them as priorities.

6.2 Applications for Investigation in 2021/22

Applications for investigation are a way for members of the public to formally request an investigation if they believe that someone has broken an environmental

law. Generally, members of the public make this request when they believe that the government is not doing enough—or anything—about an environmental problem.

Ontarians can request an investigation of an alleged contravention of any of 19 different prescribed laws (see **Appendix 4**), or of a regulation or prescribed instrument (e.g., permit or other type of approval) under those laws.

A minister has a duty to investigate all matters raised in an application for investigation to the extent the minister considers necessary. A minister is not required to investigate where an application is determined to be frivolous or vexatious, when the alleged contravention is not serious enough to warrant an investigation, or when 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.

In 2021/22, Ontarians submitted eight applications for investigation: seven were submitted to the Environment Ministry, and one to the Natural Resources Ministry. The Environment Ministry denied four of the applications and undertook three (two in part). Two of those investigations were ongoing at the end of the reporting year. Since the Ministry concluded one shortly after, in April 2022, we included it in our review. In 2021/22, the Environment Ministry also concluded two investigations that it had agreed to undertake in 2019/20. The Natural Resources Ministry denied the one application that it received in 2021/22. No other ministries received or had any ongoing applications for investigation in 2021/22 (**Figure 6**).

Our Office assessed the ministries' handling of each of the nine concluded applications. We determined that the ministries handled six of those applications reasonably, but that the Environment Ministry did not investigate the other three applications to the extent necessary (see **Sections 6.2.1** and **6.2.2**). Further, we found that the Natural Resources Ministry did not follow the EBR Act's confidentiality requirements (see **Section 6.2.4**), and that the Environment Ministry did not meet the statutory timelines for two applications (see **Section 6.2.5**).

Figure 6: Applications for Investigation in 2021/22

Prepared by the Office of the Auditor General of Ontario

Responsible Ministry	Brief Description of Alleged Contraventions	Year Submitted	Undertaken or Denied	Status as of March 31, 2022	Our Evaluation ¹
Environment	Adverse effects of noise and dust from a quarry in Renfrew County	2019/20	Undertaken	Concluded	Unreasonable
Environment	Subsurface contamination in soil and groundwater in Ottawa	2019/20	Undertaken	Concluded	Reasonable
Environment	Adverse noise effects from equipment used to deter birds from Niagara farm crops	2021/22	Denied	Concluded	Reasonable
Environment	Bird collisions and deaths due to reflected light from buildings in Ottawa	2021/22	Denied	Concluded	Unreasonable
Environment	Bird collisions and deaths due to reflected light from buildings in Ottawa	2021/22	Undertaken in part	Concluded in April 2022 ²	Unreasonable
Environment	Contravention of the <i>Endangered Species Act, 2007</i> by a condominium developer	2021/22	Undertaken in part	Concluded	Reasonable
Natural Resources	Contravention of the <i>Conservation Authorities Act</i> and the conditions in a permit issued under that act by a condominium developer	2021/22	Denied	Concluded	Reasonable
Environment	Contravention of the conditions of a permit to take water by a quarry operator	2021/22	Denied	Concluded	Reasonable
Environment	Contravention of the <i>Environmental Assessment Act</i> by the Town of Erin regarding development of a wastewater treatment plant	2021/22	Denied	Concluded	Reasonable
Environment	Contravention of an environmental compliance approval from truck-washing wastewater into a storm sewer	2021/22	Undertaken	Ongoing (completion date: August 31, 2022)	n/a

□ - application we have not evaluated as it was ongoing (a notice of decision had not yet been delivered) as of March 31, 2022.

1. Our evaluation served to determine whether the ministry handled the application in accordance with EBR Act requirements, as set out in audit criteria 3 b. and c. (Appendix 2).
2. This application was ongoing as of the end of the report year (a notice of decision had not yet been delivered), but was concluded shortly after and was related to another application concluded in 2021/22, and so we included our evaluation of it in this year's report.

We assessed the ministries' handling of the applications for investigation that were concluded in 2021/22 (including the investigation concluded in April 2022). Our findings are set out below, and summaries of the applications are found in **Appendix 8**.

6.2.1 Environment Ministry Not Enforcing Environmental Laws to Help Prevent Birds from Colliding with Buildings

In 2021, Ontarians submitted two separate applications for investigation pertaining to bird collisions

with buildings in Ottawa. The first application, about a building complex owned by KRP Properties (KRP), was submitted in May 2021. The second application, about a building owned by GWL Realty Advisors (GWL), was submitted in September 2021.

In both applications, the applicants alleged that the buildings owned by KRP and GWL were discharging a contaminant (reflected light) into the natural environment, causing hundreds of bird deaths per year. Both applications also alleged that birds belonging to species identified as at-risk under the *Endangered Species Act, 2007* had been killed. Species of special concern

(including wood thrush, Canada warbler, peregrine falcon, and eastern wood-pewee) were identified at the KRP property and species of special concern and threatened species (including the threatened chimney swift and eastern whip-poor-will) were identified at the GWL property.

The applicants pointed to a 2013 Ontario Court of Justice decision, *Podolsky vs Cadillac Fairview Corp.*, which found that reflections of light from buildings that cause bird injuries and deaths constitute contaminants that cause an adverse effect. This decision meant that, under the *Environmental Protection Act*, emitting reflected light from a building is now prohibited without a prior approval from the Environment Ministry. Following the *Podolsky* decision, the Environment Ministry proposed in 2015 to exempt reflected light from the requirement to obtain an approval to discharge a contaminant under the *Environmental Protection Act*. However, the Ministry has not made that regulatory change and has not posted a decision notice for its proposal on the Environmental Registry. The Ministry told us in June 2022 that it has been focused on other priorities.

In November 2021, the Environment Ministry denied the KRP application altogether, and denied the GWL application in part. For both applications, it concluded that the alleged contraventions under the *Environmental Protection Act* were not serious enough to warrant an investigation. The Ministry stated that non-regulatory tools such as education and outreach were a more proportionate response to address concerns related to reflected light on birds. The Ministry further stated that it intended to reach out to the building owners in this case “to strongly encourage them to review and implement mitigation measures outlined [in existing guidance].” This could include inexpensive mitigation measures such as installing bird-safe window films or other visual markers and coverings such as shades, shutters and screens, and reducing interior lighting outside of business hours. Bird-safe window films are in use in many buildings in Ontario and have been demonstrated to reduce bird collisions at a relatively low cost.

The Ministry concluded that an investigation of the KRP *Endangered Species Act, 2007* allegations was not warranted because only species of special concern were identified in that application (the *Endangered Species Act, 2007* prohibition on killing or harming species does not apply to species of special concern). The Ministry agreed to undertake the requested investigation into alleged contravention of the *Endangered Species Act, 2007* by GWL because those allegations included two birds of threatened species and the *Endangered Species Act, 2007* prohibits the killing or harming of threatened species.

In April 2022, the Ministry provided its decision on the completed investigation of the *Endangered Species Act, 2007* allegations related to GWL. In its brief decision notice, the Ministry did not explain what its investigation had entailed, or what it had concluded, and offered no judgment on whether the *Endangered Species Act, 2007* had been contravened. The Ministry stated:

“The ministry has concluded its investigation under the EBR. The ministry intends to conduct outreach and education activities with GWL Realty Advisors to provide information on the [*Endangered Species Act, 2007*] and local species at risk so that the company can review and voluntarily implement mitigation measures outlined for existing buildings in the CSA Bird-friendly Building Design standard A460 and Ottawa’s Bird Safe Design Guidelines.”

We learned that the Ministry’s investigation was limited to confirming with a biologist that the photographs of birds included in the application were indeed of threatened species, and reviewing the *Endangered Species Act, 2007* legislative framework. The Ministry did not make any site visits or take any steps to confirm whether GWL caused the alleged bird strikes, whether incidents were ongoing, or whether the company had taken reasonable care to prevent the incidents.

As of September 2022, the Environment Ministry had not yet reached out to KRP and GWL to educate the companies and encourage them to implement voluntary measures, despite bird migrations traditionally occurring in April–June annually. The Ministry did not

have any documented plan or timeline for outreach as of September 2022. Further, the Ministry has not committed to taking any action if the companies do not voluntarily implement measures in response to outreach. In such a case, it “will then assess whether any further abatement or enforcement actions are warranted,” the Ministry told our Office.

Based on our assessment of the Ministry’s handling of these applications, we concluded that the Environment Ministry’s denial of an investigation of the *Environmental Protection Act* allegations was not reasonable, and that the Ministry did not fully investigate the *Endangered Species Act, 2007* allegations to the extent necessary, in contravention of the EBR Act. In particular:

- In deciding not to undertake an investigation of the alleged contraventions of the *Environmental Protection Act*, the Ministry did not explain to the applicants how it reached the conclusion that the deaths of 966 birds at KRP in 2020 and 349 at GWL in 2020 was not serious enough to warrant an investigation. The Ministry did not provide any documentation to our Office of the basis for this determination. In *Podolsky*, the 826 birds killed in 2010 was deemed to be serious. The judge stated: “To be clear, I do not view the death and injury of hundreds if not thousands of migrating birds as a matter of merely trivial or minimal import.”
- The Ministry did not provide a rationale for its determination that undertaking outreach and education about voluntary actions was a more proportionate response in lieu of an investigation into the *Environmental Protection Act* allegations. The Ministry could not provide our Office with any studies regarding the effectiveness of education and outreach in prompting building owners to implement voluntary measures that mitigate bird strikes. The Ministry had not conducted this type of outreach with buildings to prevent bird strikes. The applicants provided evidence that they had already reached out to KRP and GWL, and that management at GWL had not implemented voluntary measures,

while KRP implemented a limited number of them.

- The Ministry did not provide any information to the applicants about the process or outcome of its investigation into the *Endangered Species Act, 2007* allegations. The extent of the Ministry’s investigation was not sufficient to make a conclusive determination as to whether the threatened birds were harmed or killed as a result of a collision with the GWL building.

Based on the Ministry’s handling of these applications, our discussions with the Ministry and our review of the Ministry’s minimal documentation regarding its limited investigation, we found that the Ministry is choosing not to enforce environmental laws to protect birds, including at-risk species, from collisions with buildings due to reflected light.

RECOMMENDATION 16

To minimize the risk of birds, including at-risk species of birds, from being injured or killed as a result of collisions with buildings, we recommend that the Ministry of the Environment, Conservation and Parks:

- take necessary steps to ensure that building owners implement measures to minimize the risk of bird strikes; and
- effectively enforce the *Environmental Protection Act*, *Endangered Species Act, 2007*, and other laws as applicable, when bird injuries or deaths have resulted from collisions with buildings.

ENVIRONMENT MINISTRY RESPONSE

The Ministry takes the protection of the environment seriously and relies on a range of resources and tools to respond to incidents where environmental harm is alleged to have occurred. The Ministry will continue to respond to allegations of non-compliance, including with respect to the *Endangered Species Act, 2007*, and follow-up in accordance with the Ministry’s compliance policy. In addition, the Ministry finalized and sent outreach and education materials to GWL Realty

Advisors and KRP Properties on October 14, 2022. Ministry staff will follow up on what steps have been taken to make their buildings safer for local and migratory birds.

6.2.2 Environment Ministry Did Not Investigate Alleged Adverse Effects from a Quarry to the Extent Necessary

In February 2020, two Ontarians submitted an application for investigation alleging that the operator of a quarry in Renfrew County, as well as a general contractor and construction company that brings in and operates rock-crushing and processing machinery at the quarry site, caused or permitted the discharge of contaminants. Specifically, the applicants alleged that noise and dust were causing adverse effects, contrary to the *Environmental Protection Act* and O. Reg. 419/05, the air pollution regulation under that act.

The applicants reside near the quarry and claimed that for many years they had experienced impacts from “voluminous amounts of dust” from the quarry. They stated that dust was deposited on their home, vehicles and property, often a half-inch deep, and that they could not enjoy the use of their yard, forced to keep their windows shut at all times. The applicants also stated that they experienced coughing, choking, and difficulty breathing when exposed to the dust in the air, and that their grandchildren, who have allergies sensitive to the dust, could no longer visit.

The applicants also claimed that there were several sources of excessive noise at the quarry, including vehicles and equipment, and that the quarry operators conducted operations outside of permitted hours.

In April 2020, the Environment Ministry agreed to undertake an investigation, and originally planned to complete it by the end of November 2020. However, the quarry was shut down for periods of 2020, so the investigation was extended into 2021.

In July 2021, the Ministry gave notice to the applicants of the outcome of its completed investigation. As a result of its investigation, the Ministry concluded that the quarry operator, contractor and construction company had not contravened the *Environmental Protection Act* or the regulation.

The Ministry had conducted four site visits to observe the operations on-site to verify allegations of dust. The Ministry also conducted screening-level noise assessments during September 2020, November 2020 and June 2021.

During its site visits, the Ministry did not observe dust leaving the site in the frequency or quantity that would represent an adverse effect. Further, the Ministry concluded, based on the noise assessments, that the noise levels produced by the quarry and other onsite operations were at or near the recommended guidelines for a rural setting, and though noise levels occasionally marginally exceeded the guidelines, they did not represent an adverse effect. In its decision summary, the Ministry noted that a reasonable balance should be struck between conflicting property uses, and that an adverse effect occurs when an excessive use of one’s property causes substantial inconvenience beyond what others in the vicinity can be expected to bear.

However, a Ministry technician’s internal review of the noise assessment results noted that most of the time periods flagged by the applicants showed noise levels that exceeded the guidelines that the Ministry was using for the screening assessment. The technician also noted that the noise from the quarry was “audible at volumes and times of the day that were potentially disruptive.” The documentation from the noise screening in June 2021 also showed that noise levels would “frequently jump to regular daytime levels at approximately 5:00-5:30 a.m. every day of the monitoring period,” despite the operating hours of the facility beginning at 7:00 a.m. The Ministry technician noted that they could not confirm that the site was compliant with the noise guidelines under normal operations. They noted that an acoustic audit conducted by an independent third-party noise consultant would more adequately measure noise emissions and impacts from the site.

We concluded that the Ministry did not fully investigate this matter to the extent necessary. Given the results of the screening level noise assessment, the early morning noise levels and the Ministry technician’s observations that noise from the quarry operations could be potentially disruptive, the Ministry should

have investigated further, including by conducting an assessment with a noise engineer and conducting an acoustic audit.

RECOMMENDATION 17

To fulfill its duty under the *Environmental Bill of Rights, 1993* to investigate matters to the extent necessary when Ontarians submit applications for investigation, we recommend that, when confronted with uncertain results from a preliminary noise assessment, the Ministry of the Environment, Conservation and Parks undertake additional investigation, including requiring the alleged contravener to obtain an acoustic audit conducted by an independent, third-party noise engineer.

ENVIRONMENT MINISTRY RESPONSE

The Ministry agrees with the importance of investigating all matters to the extent necessary when Ontarians submit Applications for Investigation. Going forward, the Ministry will consider the Auditor General's recommendation regarding the need to undertake additional investigation in some cases.

6.2.3 Request to Investigate Alleged Contravention of a Permit Issued Under the *Conservation Authorities Act* Highlights Gap in EBR Act Rights

In September 2021, two associations submitted an application for investigation to the Natural Resources Ministry, alleging several contraventions. The application claimed a developer had violated the conditions in a permit issued by a conservation authority, which is an offence under the *Conservation Authorities Act* (see **Appendix 8** for a more detailed summary of the application). The permit, issued by the Cataraqui Region Conservation Authority, authorized site alteration and construction of a condominium development next to a wetland.

The Ministry denied the application on the grounds that it does not have jurisdiction over decisions made

by the conservation authority under the *Conservation Authorities Act*, or authority to investigate and enforce permit violations. Instead, that act gives enforcement jurisdiction to individual conservation authorities. The Ministry's rationale for its refusal to conduct an EBR Act investigation in these circumstances is reasonable, but highlights a gap for Ontarians seeking to exercise their EBR Act rights.

The EBR Act gives Ontarians the right to ask the minister responsible for the administration of the *Conservation Authorities Act* to investigate contraventions of that act. The Natural Resources Minister is responsible for administering the Act as it applies to development affecting watercourses, wetlands and natural hazards, and has authority to issue certain instruments under the Act, but does not have jurisdiction to enforce the development permit regulations or the development permits themselves. Rather, conservation authorities are responsible for enforcement—but they are not currently prescribed under the EBR Act. As a result, Ontarians who have asked the Natural Resources Ministry for an investigation of alleged contraventions of development permit regulations, and permits issued under them, have been denied their requests by the Ministry on the basis of its lack of jurisdiction.

This issue has arisen several times since the EBR Act came into force. As far back as 1999, the former Office of the Environmental Commissioner of Ontario recommended that the Natural Resources Ministry consider options for rectifying the gap. One suggested option was to delegate to conservation authorities the Natural Resources Minister's EBR Act responsibilities for responding to applications for investigation of contraventions of the *Conservation Authorities Act*. The Environmental Commissioner made the same recommendation again in 2006. To date, however, the Ministry has done nothing to address this gap.

Moreover, even though development permits issued under the *Conservation Authorities Act* regulations can have environmentally significant impacts, they have not been prescribed under the EBR Act, which means that Ontarians do not have a right to ask for an investigation of a contravention of such a permit. As

such, even if the Natural Resources Ministry had the necessary enforcement powers under the *Conservation Authorities Act*, it would not have had a duty to investigate the alleged contravention of the permit in this case. In our 2021 report on the operation of the EBR Act, we recommended that ministries conduct a comprehensive review of the list of existing prescribed instruments and propose to add any new instruments that could have significant environmental effects. As we noted, the Natural Resources Ministry has not undertaken such a review since 2000. As this application illustrates, it would be appropriate for the Ministry, as part of that review, to consider whether permits and other instruments issued under the *Conservation Authorities Act* should be prescribed.

Had the conservation authority either been prescribed under the EBR Act or been delegated the responsibility to respond to the application, and had development permits been prescribed under the EBR Act, the conservation authority would have had a duty to investigate the allegations made in this application to the extent it considered necessary and to notify the applicants of the outcome of any investigation.

In the absence of this duty, it would be good practice for the Natural Resources Ministry to alert the conservation authority to the concerns raised in the application, so the conservation authority could look into the issues further itself.

RECOMMENDATION 18

So that Ontarians are able to meaningfully exercise their right to request an investigation of alleged contraventions of the *Conservation Authorities Act* under the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that the Ministry of Natural Resources and Forestry identify and take any necessary steps to enable it to investigate alleged contraventions of the *Conservation Authorities Act* to the extent necessary, in accordance with Part V of the EBR Act.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry is committed to full compliance with its obligations under the EBR Act.

Each conservation authority implements their regulation based on applicable provincial legislation, regulatory requirements, and technical standards. Conservation authorities also have board-approved policies or guidelines that outline further detail on how they administer regulations locally. Individuals who have been denied a permit, or who object to conditions placed on a permit, can first appeal the denial or conditions to the conservation authority board, and if still unsatisfied, can appeal the denial or conditions to the Ontario Land Tribunal. The Minister may, at any time, require a conservation authority to provide the Minister with any information related to the operation of the conservation authority and programs and services that it provides, and where deemed necessary, appoint one or more investigators to investigate an authority's operations, programs and services.

Where an alleged contravention of a prescribed Act of the Ministry, including the *Conservation Authorities Act*, is alleged to the Minister, as the Minister responsible for the administration of the Act, the Minister carries out the investigation in accordance with the statutory requirements set out in the EBR Act.

AUDITOR GENERAL RESPONSE

The Auditor General thanks the Ministry for clarifying its authority to investigate alleged contraventions of the *Conservation Authorities Act* in accordance with the statutory requirements set out in the EBR Act. However, we note that, for the application for investigation discussed here, the Ministry did not undertake an investigation, on the basis that the issues raised related to matters within the

sole jurisdiction of the conservation authority. The Auditor General will continue to assess the Ministry's handling of received applications alleging contraventions of the *Conservation Authorities Act*.

6.2.4 Natural Resources Ministry Mistakenly Disclosed Personal Information About Applicants

When Ontarians submit applications for review or investigation under the EBR Act, the Act protects them from having their names, addresses or other personal information disclosed by the ministry. Without such protection, Ontarians may be reluctant to submit applications requesting reviews of environmental approvals, or investigations of alleged contraventions of environmental laws, out of concern for potential reprisals from the approval holders or alleged contraveners.

In 2021/22, it came to our attention that, in the course of the Natural Resources Ministry's handling of an application for investigation, the Ministry had disclosed the names and addresses of the applicants to the alleged contravener, in contravention of the EBR Act. Specifically, the Ministry sent a copy of its decision letter to the applicants, which included the applicants' names and addresses, to the alleged contravener as well.

We brought the matter to the Ministry's attention in December 2021. The Ministry confirmed that the disclosure of the applicants' personal information was made in error. The Ministry told our Office that it would review and update its protocols for handling applications to ensure such an error does not happen again. The Ministry also confirmed that, upon learning of the disclosure, it followed its privacy breach response protocol, including informing the Information and Privacy Commissioner of the breach. In August 2022, the Ministry confirmed that it had updated its internal protocols to strengthen guidance regarding protection of personal information received through the EBR Act applications process.

RECOMMENDATION 19

To adhere to the requirements of the *Environmental Bill of Rights, 1993* (EBR Act), and to protect the personal information of people who submit applications for review and applications for investigation under the EBR Act, we recommend that the Ministry of Natural Resources and Forestry ensure that all relevant staff are aware of and understand the updated protocols so that the names, addresses or other personal information of applicants in any notices given under Parts IV and V of the EBR Act are not inadvertently disclosed.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to full compliance with its obligations under the EBR Act.

The Ministry's updated processes for applications for review and applications for investigation under the EBR Act, which strengthened sections on confidentiality requirements and protection of personal information, will be implemented upon receiving any future applications for review and applications for investigation.

All relevant staff are aware of and have been advised of the importance of adherence to the updated protocols so that information about applicants is not inadvertently disclosed in any notices given under Parts IV and V of the EBR Act.

6.2.5 Environment Ministry Did Not Meet Statutory Timelines in Two of Seven Applications for Investigation Concluded in 2021/22

When a ministry receives an application from the public, the Ministry must comply with a number of timelines set out in the EBR Act in its handling of the application. In particular, the Ministry must:

- acknowledge receipt of an application within 20 days;
- for reviews, provide a preliminary decision on whether the ministry will undertake a requested review within 60 days;
- for investigations, notify an applicant if the ministry will not undertake a requested investigation within 60 days;
- for undertaken investigations, complete the investigation within 120 days (or update the applicant on the anticipated time frame for completion);
- provide notice of a ministry's final decision within 30 days of completing an undertaken review or investigation.

In 2021/22, of the seven applications for investigations that it concluded, the Environment Ministry did not meet legislated timelines in two cases.

In the first case, the Ministry missed the 20-day deadline to acknowledge receipt of a request to investigate noise from equipment used to protect a Niagara farmer's crops from birds. The application was received on April 1, 2021 but was misplaced by the Ministry at a central mailing location set up during a provincial COVID-19 stay-at-home order. The application was only located after the applicants followed up with the Ministry. The Ministry was 19 days late in acknowledging receipt of the application. The Ministry met subsequent EBR Act timelines for the handling of that application.

In the second case, the Ministry failed to meet the legislated 60-day deadline to notify applicants that it would not be undertaking their requested investigation of bird collisions with buildings in Ottawa. Instead, on the 60th day after receiving the application, the Ministry informed the applicants that it required more time to make a decision, even though the EBR Act does not provide for such an exercise of discretion. The Ministry then failed to notify the applicants of its decision not to undertake an investigation until another 149 days had passed, in clear contravention of EBR Act requirements.

RECOMMENDATION 20

To adhere to the requirements of the *Environmental Bill of Rights, 1993* and to provide accountability to Ontarians who submit applications for investigation, we recommend that the Ministry of the Environment, Conservation and Parks review its processes for intake, processing and distribution of received applications, and revise those processes as necessary to ensure received applications are not misplaced.

ENVIRONMENT MINISTRY RESPONSE

The Ministry agrees with this recommendation and will consider ways to improve its processes for the intake, processing, and distribution of received applications.

7.0 Public Consultation on Permits, Approvals and Other Instruments Working Well

More than 90% of the notices posted on the Environmental Registry every year relate to the many approvals, licences, permits, and orders (referred to as “instruments” under the EBR Act) that ministries issue as part of their core work. A ministry's decision to issue or amend an instrument can affect the interests of neighbouring individuals or a local community. For example, the location and capacity of a facility that receives hauled sewage may affect local water quality or generate odours. Or the conditions in a water taking permit of an industrial plant may affect the groundwater available to nearby landowners or a municipality in times of drought. The EBR Act gives Ontarians the right to comment on and seek leave to appeal (challenge) ministries' decisions about many instrument types.

Five ministries—Environment, Natural Resources, Mining, Municipal Affairs, and Public Services (whose responsibilities related to instruments are delegated to the Technical Standards and Safety Authority (TSSA)—are required to give notice and consult Ontarians through the Environmental Registry before they issue, amend or revoke certain types of instruments. For some instrument types (Class II proposals under the EBR Act), ministries must give additional notice, and also consider providing enhanced consultation and additional time to comment.

The specific types of instruments that must be posted on the Registry are identified in the EBR Act's Classification Regulation (see **Appendix 5**). These include, for example, environmental compliance approvals and permits to take water issued by the Environment Ministry, aggregate quarry licences issued by the Natural Resources Ministry, mineral exploration permits issued by the Mining Ministry, approvals by the Municipal Affairs Minister of official plans and official plan amendments, and variances from the Liquid Fuels Handling Code issued by the TSSA.

The EBR Act identifies some exceptions to the requirement to consult Ontarians about proposals for classified instruments. In particular, ministries are not required to post proposals for amendments to or revocations of existing instruments if the potential effects are not environmentally significant. The Act also provides exceptions for proposals for instruments that would be a step toward implementing an undertaking or project approved under or exempted from the *Environmental Assessment Act*, or approved by a decision made by a tribunal after affording an opportunity for public participation. The EBR Act also allows exceptions for emergencies and for cases where there was public participation substantially equivalent to that provided by the EBR Act; ministries must give notice to Ontarians through the Environmental Registry and notify the Auditor General when they make use of those latter exceptions.

As part of our annual audits of the operation of the EBR Act, we assess samples of instrument notices to determine whether they are sufficiently informative to enable public participation, whether ministries

considered public comments submitted on proposals, whether ministries properly considered their Statements when making decisions, and whether Ontarians were given prompt notice of decisions (see **Section 5.0** for our findings in 2021/22).

In 2021/22, we also conducted a more detailed audit of ministries' and the TSSA's compliance with the EBR Act's instrument requirements to assess:

- whether ministries and the TSSA had effective processes and procedures in place to ensure they comply with EBR Act requirements for consulting Ontarians about proposals for instruments;
- whether ministries and the TSSA consulted Ontarians about all instrument types that they should have, and in accordance with EBR Act requirements, as well as whether ministries' approaches for applying, and documenting their use of, exceptions to posting requirements for instruments were reasonable; and
- whether Ontarians were being properly informed of their EBR Act leave to appeal rights associated with instruments.

Our audit work included reviewing Ministry documents and data, reviewing data and information from the Environmental Registry of Ontario, and interviewing ministry staff involved with issuing classified instruments and their ministries' compliance with EBR Act requirements for instruments.

We found that, overall, the four ministries and the TSSA had effective processes and procedures in place to guide staff in applying EBR Act requirements in their work, that EBR Act requirements to post classified instruments on the Environmental Registry were generally being followed, and that Ontarians were being properly informed of their leave to appeal rights.

Details of our assessment are set out below.

7.1 Ministries Have Effective Processes in Place for Complying with EBR Act Requirements About Instruments

Our Office assessed whether the four prescribed ministries and the TSSA have established procedures for staff

to follow in making determinations on whether instruments should be posted on the Environmental Registry. We also asked ministries about their procedures and practices for co-ordinating public consultation required by the acts under which instruments are issued as well as consultation required by the EBR Act.

We found that the four ministries and the TSSA have written procedures and training to guide staff in following the requirements of the EBR Act and consulting the public when they are required to do so. For instruments that are issued regularly by the ministries, these procedures are well integrated into instrument decision-making processes.

We also found that, where possible, ministries co-ordinate EBR Act consultation with consultation requirements under other legislation, such as the *Niagara Escarpment Planning and Development Act*, the *Aggregate Resources Act* and the *Mining Act*, which can serve to fulfill ministry obligations to provide additional consultation on some instruments.

7.2 Ministries and the TSSA Consulted Ontarians About Most Proposals for Instruments When Required by the EBR Act

We reviewed information and data and spoke with ministry staff to determine whether the ministries were consulting Ontarians as required under the EBR Act for all types of classified instruments that they issue.

We found that, except for the Environment Ministry, prescribed ministries and the TSSA routinely post proposal notices on the Environmental Registry for all proposals they make to issue or amend classified instruments (where amendments are environmentally significant), and do not often rely on exceptions in the EBR Act.

The Environment Ministry relies heavily on the exceptions in the EBR Act that allow it to not undertake consultation. The most common reason the Environment Ministry gives for not consulting under the EBR Act is that the proposed instrument (usually an environmental compliance approval or a permit to take water) is for a project that was subject to the *Environmental Assessment Act*. While relying on this exception

is permissible under the EBR Act, our Office has identified problems with this exception, as it prevents Ontarians from participating in many environmentally significant instrument decisions; see **Section 4.5** of our 2021 report on the operation of the EBR Act, and **Section 4.0** of this report.

We also found that ministries provide additional notice as required for Class II instruments. For example, the Environment Ministry's guidance instructs staff to post all proposal notices for Class II instruments on the Environmental Registry for 45 days, or for 30 days plus additional consultation, and provides that enhanced consultation may be required or recommended for contentious proposals.

7.3 Ministries and the TSSA are Correctly Informing Ontarians of Leave to Appeal Rights

Under the EBR Act, whenever a person applying for an instrument for which notice is required to be given on the Environmental Registry has the right to appeal the ministry's decision about the instrument, the public also has a corresponding right to seek leave to appeal the decision. Ministries inform Ontarians of their leave to appeal rights as applicable when they post decision notices.

In our 2021 report on the operation of the EBR Act, our Office found that the Municipal Affairs and Natural Resources Ministries had provided inaccurate information about the public's leave to appeal rights and deadlines in their decision notices regarding certain *Planning Act* and *Aggregate Resources Act* instruments. These ministries have since addressed the issues we identified. We found that the ministries and TSSA are correctly informing Ontarians of their leave to appeal rights. Further, ministry guidance and training documents that we reviewed identify when leave to appeal rights apply to the instrument types that staff issue on a regular basis. For example, the Natural Resources Ministry's staff guidance for instruments issued under the *Aggregate Resources Act* contains a chart that identifies the instruments that may be appealed and those that may not.

8.0 Follow-up on 2020 Annual Report Recommendations and Continuous Follow-up

Most of the recommendations in our 2020 report on the operation of the EBR Act relate to compliance with and implementation of the EBR Act requirements and are covered in our regular annual audit of the operation of the EBR Act. However, there were four recommendations in our 2020 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 four recommendations here.

Similarly, three recommendations in our 2019 report on the operation of the EBR Act did not relate to the operation of the EBR Act, but arose from issues raised in applications for review submitted under the EBR Act. We reported on the status of actions taken on those recommendations in the follow-up section of our 2021 report. As they were not implemented at that time, we continue to report on the status of those recommendations here.

8.1 Follow-up on Select 2020 Recommendations

8.1.1 Secretary of the Cabinet in Process of Implementing Changes to Performance Reviews to Encourage Compliance with the EBR Act

Status: In the process of being implemented by March 31, 2023.

In both our 2019 and 2020 reports we identified many instances in which prescribed ministries did not fully meet their obligations under the EBR Act. We found that there were no internal oversight mechanisms in the prescribed ministries to help ensure compliance with the EBR Act at the executive level. We noted that increased compliance would be more likely to be achieved if Deputy Ministers—the most senior civil servants in ministries—were held accountable for their ministries' compliance records by the province's chief

civil servant: the Secretary of the Cabinet. We therefore recommended, to improve compliance with the EBR Act, that the Secretary of the Cabinet incorporate compliance with the EBR Act into the annual performance reviews of Deputy Ministers of prescribed ministries. (See **Recommendation 1** in Chapter 1 of our 2020 report on the operation of the *Environmental Bill of Rights, 1993*).

In our follow-up, we found that the Secretary of the Cabinet is 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 bonus is based on a combination of their ministry's performance assessment and their personal assessment. The Secretary told us that this process will be implemented for the 2022/2023 performance assessment, which ends on March 31, 2023.

8.1.2 Environment Ministry Still Not Providing Leadership in Ensuring the EBR Act Applies to all Environmentally Significant Decisions Made by Government

Status: Little or no progress.

In our 2020 report, we identified several ministries and agencies that make environmentally significant decisions—such as Metrolinx and the Ontario Energy Board—and laws that may significantly affect the environment—such as the *Drainage Act* and the *Electricity Act, 1998*—that are not prescribed under the EBR Act. Likewise, in 2021, we identified environmentally significant decisions made that year that were not subject to EBR Act requirements because they were made by non-prescribed ministries, such as the Ministry of the Attorney General, or under non-prescribed acts, such as the *Highway Traffic Act*. For Ontarians to be able to participate in the government's environmental decision-making—and better

protect the environment—all ministries and laws that could significantly affect the environment should be prescribed under the EBR Act. However, the Environment Ministry, which is the administrator of the EBR Act, told us that it did not review ministry mandates or analyze laws to determine whether they need to be prescribed. Rather, the Ministry regularly invited existing prescribed ministries to identify any laws that they wanted to have prescribed, and would provide support to other ministries that wanted to be prescribed under the EBR Act. Leaving it up to individual ministries does not ensure that the EBR Act would apply to all ministries and laws under which environmentally significant decisions could be made.

We therefore recommended in our 2020 report that the Environment Ministry undertake a review to identify all government ministries and laws that could have a significant effect on the environment, and to take steps to have such government ministries and laws prescribed under the EBR Act. We further recommended that the Environment Ministry establish a process for regularly reviewing newly created ministries and newly passed laws, as well as ministries whose mandates have changed and laws that have been amended, to identify ministries and laws that could have a significant effect on the environment, and to take steps to have such ministries and laws prescribed under the EBR Act (see **Recommendations 2 and 3** in Chapter 1 of our 2020 report on the operation of the *Environmental Bill of Rights, 1993*).

Information that the Environment Ministry provided to us as part of our follow-up indicated that it will not be implementing these recommendations. The Ministry reiterated its position that, under the EBR Act, individual ministries are responsible for determining whether they, or the laws they administer, should be subject to the EBR Act. The Ministry stated that it continues to provide advice to partner ministries to help them determine whether they or laws they administer should be prescribed. The Ministry also noted that it works with the partner ministries on a regular basis to bring forward any changes needed to the list

of prescribed ministries and laws under the EBR Act, including changes to ministry names and new laws. In April 2022, the Ministry told us that, almost a year after ministry names and mandates were changed in June 2021, it is working with partner ministries to propose administrative updates to the regulations under the EBR Act to address the changes. Administrative amendments to the regulations were filed on November 7, 2022.

Our Office notes that the Environment Ministry's administrative role to bring forward amendments to the regulations under the EBR Act has not been acted upon to help ensure that all ministries and laws that should be prescribed are prescribed. As the administrator of the Act, and the lead ministry on environmental matters, the Environment Ministry is best placed to take the lead in assessing new ministries, ministries whose mandates have changed, and any new or amended laws, for their environmental significance; to identify those that should be prescribed; and to make appropriate proposals to Cabinet.

The Auditor General continues to believe that, for the purposes of the EBR Act to be achieved, the Environment Ministry or another appropriate body needs to take a leadership role in proactively identifying appropriate ministries and laws that should be prescribed in the regulation under the EBR Act, and take steps to have those ministries and laws prescribed.

8.1.3 Environment Ministry and Natural Resources Ministry Continued to Deprive Ontarians of Their Appeal Rights Based on Temporary COVID-19-Related Exemptions, Despite No Connection to COVID-19

Status: Little or no progress.

In March 2020, in response to the COVID-19 pandemic and the related state of emergency, the Environment Ministry made a regulation under the EBR Act—O. Reg. 115/20, Temporary Exemptions Relating to Declared Emergency—that broadly relieved ministries of

their EBR Act responsibilities to consult the public using the Environmental Registry before making environmentally significant decisions. This exemption was made to apply regardless of whether ministry proposals were COVID-related. The regulation was in effect for over 10 weeks, from April 1 to June 15, 2020.

What this meant is members of the public lost their right to seek leave (permission) to appeal 197 ministry decisions on environmentally significant permits and approvals. While we acknowledge that ministries could, and did, still voluntarily post proposal notices and consult Ontarians about non-COVID-19-related proposals during the 10-week exemption period, the exemption regulation had the effect of denying Ontarians their rights under the EBR Act to seek leave to appeal the decisions about 197 permits and approvals proposed during the exemption period, including those that were, or will be, decided after the exemption period ended.

Therefore, to restore Ontarians' leave to appeal rights, we recommended that the Environment Ministry and the Natural Resources Ministry repost those proposals that were subject to the exemption and that were still under consideration. (See **Recommendation 5** of the 2020 report on the operation of the EBR Act.) In our follow-up, we found that neither the Environment Ministry nor the Natural Resources Ministry had reposted, or will repost, those proposals. Doing so would have restored Ontarians' leave to appeal rights under the EBR Act.

Both Ministries asserted to us that they had fully complied with their legal obligations under the EBR Act. They pointed out that they had voluntarily posted and consulted on the proposals despite the regulation's exemptions.

Our Office does not dispute this. Nonetheless, the Ministries are continuing to not allow Ontarians to file leave to appeal applications if and when any decisions are made about these proposals. No valid rationale has been provided for continuing to exempt these decisions from appeal.

8.2 Follow-up on Select 2019 Recommendations

8.2.1 Environment Ministry Has Made Progress Reviewing Air Standards, but is Not Updating the Standards or Taking Other Steps to Address Air Pollution Hotspots

Status: In the process of being implemented by 2024.

In 2018, applicants had requested that the Ministry review the air standard limit for industrial emissions of nitrogen dioxide (NO₂) and review the need for an air standard to regulate industrial emissions of fine particulate matter (PM_{2.5}), 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 had provided insufficient information to support its decision to deny this application for review related to standards for two air contaminants.

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 its standard for NO₂; and
- assess the need for a standard for industrial emissions of PM_{2.5} and, if the assessment shows a need, establish a standard for industrial emissions of PM_{2.5}.

(See **Recommendation 7** in our 2019 report on the operation of the EBR Act).

Air Standard for Nitrogen Dioxide (NO₂)

In following up, 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.

The Ministry had previously conducted an internal review in 2015 to assess the health risks of NO₂ and,

based on this review, contributed to the development of the Canadian Ambient Air Quality Standards for ambient NO₂. These standards are non-enforceable objectives for background air quality that are intended to drive improvement across Canada. Background air quality is impacted by not only industrial emissions, but also other sources of pollution, including transportation emissions and transboundary pollution. Ambient air quality objectives can provide useful guidance for determining appropriate industrial emission standards.

In 2020, the Canadian Ambient Air Quality Standards for NO₂ came into effect. The Ministry stated that it supported these NO₂ targets, to reduce risks of adverse effects, based on the Ministry's 2015 internal review of the toxicology of NO₂.

In 2021, the Ministry determined that the NO₂ Canadian Ambient Air Quality Standards had been met at all of Ontario's designated ambient air monitoring stations in 2020. Additionally, the Ministry told us that it regularly tracks air quality trends and key sources of NO₂ in Ontario and that, between 2010 to 2019, average annual NO₂ concentrations across the province had decreased by 22%. The Ministry also noted that transportation emissions are a dominant source of NO₂.

The Ministry advised us that it continues to consider appropriate tools for addressing NO₂ sources and driving air quality improvement. The Ministry noted, for example, that it is taking actions, including working with the Transportation Ministry as it delivers diesel commercial vehicle emissions testing, to address emissions from heavy-duty vehicles. The Ministry indicated that changing the air quality standard, which focuses on industrial emissions, is likely not the most effective way to lower ambient NO₂ concentrations at this time. However, the Ministry stated that it is reviewing the latest jurisdictional benchmarks on NO₂ to inform potential future updates to ambient or regulatory benchmarks. The Ministry anticipates completing this review by December 2022.

In our 2019 report, we recommended that the Ministry's review should determine whether stronger NO₂ standards are needed to alleviate pollution problems in communities experiencing higher concentrations

of pollutants, commonly known as "air pollution hotspots." During our follow-up, the Ministry acknowledged that "the close proximity of some communities to industrial sources may need action by industry to have a greater local impact." The Office of the Auditor General of Ontario continues to recommend that the Ministry update its standards or develop an alternate approach to regulating industrial emissions of NO₂ in air pollution hotspots.

Air Standard for Fine Particulate Matter (PM_{2.5})

In our follow-up, the Ministry advised us that, in May 2020, it had updated its Ambient Air Quality Criteria list, incorporating the Canadian Ambient Air Quality Standards for PM_{2.5}. The Ministry's Ambient Air Quality Criteria are not standards that industrial emitters are required to meet by regulation, but rather levels that are used to assess general air quality.

The Ministry is currently participating in a federal-provincial-territorial initiative launched in 2021 to update the current Canadian Ambient Air Quality Standards for PM_{2.5}. The Ministry told us that new standards will potentially be established in 2023, for implementation in 2025, but that this timeline may change. The Ministry stated that it will consider the science review undertaken as part of this initiative, as well as the scientific basis of new benchmarks for PM_{2.5} released by the World Health Organization in September 2021, to inform the potential adoption or development of new provincial benchmarks for PM_{2.5}.

The Ministry advised us that it is not, however, establishing a standard for industrial emissions of PM_{2.5} because it considers it more feasible to focus on regulating the precursor contaminants that react to form PM_{2.5} in the atmosphere, such as sulphur dioxide, ammonia, and nitrogen oxides. Given that PM_{2.5} is not only directly emitted but also forms in the atmosphere from emitted precursors, and given the challenges in estimating PM_{2.5} emissions from industrial sources, this is a sensible approach. The Ministry's updated air standards for sulphur dioxide, a major precursor of PM_{2.5}, take effect in 2023. However, in 2021/22 the Ministry exempted two industrial sectors that are major

sources of sulphur dioxide emissions (nickel smelters in Sudbury and petroleum facilities in Sarnia, Nanticoke and Mississauga) from meeting the new, more stringent standards for sulphur dioxide coming into effect in 2023. Instead, the Ministry made new regulations requiring further actions by those sectors to reduce emissions, improve monitoring, and improve air quality reporting to surrounding communities. These requirements for further actions will come into effect over several years.

8.2.2 Municipal Affairs Ministry Has Not Taken Steps to Review the Adequacy of the Current Regulation of Septic Systems to Protect the Environment

Status: Little or no progress.

In our 2019 review, we found that the Municipal Affairs Ministry provided insufficient information to support its decision denying a request to review the regulation of septic systems. 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 provide the applicants with 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 on the

operation of the EBR Act). In response to our recommendation, the Ministry indicated that it would work with municipal stakeholders, conservation authorities and health units to assess the scope of the issue and identify potential next steps, and then take appropriate steps identified through this process.

When we followed up though, we found that the Ministry had not taken any steps to review the effectiveness of the Building Code requirements governing the operation and maintenance of septic systems. In August 2020, the Ministry had 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.

It is reasonable to include any updates to Ontario's septic system requirements at the same time as the Ministry amends the Building Code as part of the broader harmonization exercise. On October 25, 2022, the Ministry posted a proposal for consultation on potential amendments to septic system requirements for the next edition of the Building Code. The Ministry stated it will review the results of this consultation to inform the drafting of revised Building Code requirements. However, the Ministry did not review the effectiveness of Ontario's septic system requirements to address the risk of pollution from malfunctioning systems.

While municipalities (and other principal authorities) have been delegated responsibility for inspecting and enforcing compliance with the Building Code within their specific areas of jurisdiction, the Ministry, as the administrator of the *Building Code Act, 1992*, is uniquely positioned to assess and ensure that the Act, and how it is administered across the province, is effective.

8.2.3 Municipal Affairs Ministry Did Not Review the Adequacy of the Current Rules Governing Habitat Offsets to Protect Species at Risk

Status: No longer applicable.

In our 2019 review, we found that the Municipal Affairs Ministry provided insufficient information to support its decision to deny a request to review rules governing habitat offsets for species at risk. The applicants were concerned that provisions in the Provincial Policy Statement, which prohibit development in significant wildlife habitat unless the developer demonstrates that “that there will be no negative impacts,” do not in fact adequately protect habitat.

Habitat offsets are sometimes used for projects that destroy significant wildlife habitat. A developer may seek approval for development by promising to create new habitat as a substitute (or “offset”). We found that the Ministry did not provide evidence to the applicants that the existing regulatory framework is sufficient to protect habitat for species at risk when that habitat is created as an offset.

To address the risks of loss of wildlife habitat and biodiversity, we recommended that the Municipal Affairs Ministry review the effectiveness of protecting habitat for species at risk using habitat offsets as part of its then-current (2019) review of the Provincial Policy Statement. (See **Recommendation 20** in our 2019 report on the operation of the EBR Act).

In our follow-up, we found that the Ministry had not reviewed the effectiveness of protecting habitat for species at risk that was created as an offset, as part of its review of the Provincial Policy Statement. The Ministry concluded its review and released a new Provincial Policy Statement in 2020.

The Municipal Affairs Ministry told us that responsibility for such a review belongs with the Environment Ministry, the ministry responsible for the Province’s policies related to species at risk. The Municipal Affairs Ministry informed us that, in the Environment Ministry’s comments and recommended changes to the Provincial Policy Statement, it did not bring forward or recommend any related to wildlife habitat.

The Municipal Affairs Ministry also stated that, while it consulted the public on proposed changes to the Provincial Policy Statement in 2019, it received limited stakeholder feedback on the issue of habitat offsets. Based on this feedback, the Ministry made minor housekeeping changes to definitions relating to the habitat of endangered species and threatened species, but neither the Municipal Affairs Ministry nor the Environment Ministry has ever assessed the effectiveness of habitat offsets in protecting species at risk habitat.

In our Office’s 2021 report, *Protecting and Recovering Species at Risk*, we found that the Environment Ministry had not assessed the effectiveness of overall benefit permits, which are issued for activities that may have unavoidable adverse effects on species at risk or their habitat. Conditions for this type of permit include the requirement to achieve an overall benefit, making the species better off than before the activity, within a reasonable time. For example, a condition could include creating more habitat than what is permitted to be destroyed. To improve the status of species at risk affected by overall benefit permit approvals under the *Endangered Species Act, 2007*, we recommended that the Environment Ministry evaluate the outcomes to species at risk from issuing overall benefit permits to confirm that required conditions are making species better off. In response, the Ministry agreed that the evaluation of the outcomes to species at risk from issuing overall benefit permits is important and would undertake such work considering budgetary and staffing realities.

On October 25, 2022, the Municipal Affairs Ministry posted a proposal notice notifying the public that it was undertaking a policy review to address housing. This housing-focused policy review includes seeking public input on how to create a streamlined province-wide land-use planning policy framework that enables municipalities to approve housing faster and increase housing supply. The proposed framework could allow for development in natural heritage features (wetlands, woodlands, and other natural wildlife habitat) through the use of offsets, among other things. The Natural

Resources Ministry also posted a discussion paper to inform development of a new ecological offsetting policy that would be implemented through the new land-use planning framework. However, neither the Municipal Affairs Ministry, nor the Environment Ministry, have provided evidence that they have reviewed the effectiveness of the use of offsets to protect species at risk habitat.

While the 2019 review of the Provincial Policy Statement has concluded, we maintain that the Municipal Affairs Ministry and the Environment Ministry, should review the effectiveness of protecting habitat for species at risk through the use of habitat offsets (for example, by consulting with the Natural Resources Ministry and working with a university to research the issue).

RECOMMENDATION 21

To support efforts to protect species at risk, we recommend that the Ministry of Municipal Affairs and Housing and the Ministry of the Environment, Conservation and Parks work together to review the effectiveness of using habitat offsets to mitigate habitat loss for species at risk.

ENVIRONMENT MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry will continue to implement and enforce the *Endangered Species Act, 2007* (including with respect to overall benefit permits and conditions within them to create or restore habitat to replace impacted habitat). As indicated in response to the Auditor General's 2021 report, *Protecting and Recovering Species at Risk*, the Ministry agrees that evaluating the outcomes to species at risk from issuing overall benefit permits

is important, and will undertake such evaluation within budgetary and staffing realities. The Ministry will provide advice as needed to the Ministry of Municipal Affairs and Housing as it considers an approach to assessing the effectiveness of offsets as a tool in municipal planning decisions.

MUNICIPAL AFFAIRS MINISTRY RESPONSE

The Municipal Affairs Ministry thanks the Auditor General for this recommendation. The rules and procedures governing authorizations and permitting related to habitat protections for species at risk are found within the Environment Ministry's *Endangered Species Act, 2007* and associated regulations. The Provincial Policy Statement, 2020 (PPS) policies related to protections for habitat of endangered and threatened species fall within the Environment Ministry's mandate, and defer to the *Endangered Species Act, 2007*.

On October 25, 2022, the Ontario government introduced the *More Homes Built Faster Act, 2022* and Ontario's newest Housing Supply Action Plan, *More Homes Built Faster*, the Province's plan to address housing. As part of this initiative, the Municipal Affairs Ministry is undertaking a housing-focused policy review of *A Place to Grow* and the Provincial Policy Statement, seeking input on how to create a streamlined province-wide land use planning policy framework that enables municipalities to approve housing faster and increase housing supply. As part of this review, we will be working with our partner ministries, including the Environment Ministry, to determine what policies that fall under their mandates are needed to guide land-use planning in the future.

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 made by the provincial (or federal) parliament to delineate rules about specific situations.
Application for Investigation	A right under the <i>Environmental Bill of Rights, 1993</i> (under Part V), allowing two members of the public to formally ask a prescribed ministry to investigate an alleged contravention of an act, regulation or instrument that has the potential to harm the environment.
Application for Review	A right under the <i>Environmental Bill of Rights, 1993</i> (under Part IV), allowing two members of the public to formally ask a prescribed ministry (or ministries) to review (and potentially amend) an existing policy, act, regulation or instrument, or review the need to create a new policy, act or regulation.
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 approval under the <i>Environmental Protection Act</i> and the <i>Ontario Water Resources Act</i> issued by the Environment Ministry and obtained by proponents that seek to undertake certain activities related to air, noise, waste and sewage.
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> .
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, or are required to be considered under another act, 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.
Leave to appeal	Permission to challenge. Under the <i>Environmental Bill of Rights, 1993</i> , members of the public may seek leave to appeal the decisions of prescribed ministries to issue certain types of instruments. The decision whether to grant or deny leave to appeal is made by the adjudicative body that would hear the appeal, such as the Ontario Land Tribunal.
Notice (general)	A posting on the Environmental Registry to inform the public of environmentally significant activities that prescribed ministries are considering or carrying out.
Notice—Proposal	A notice posted on the Environmental Registry by a prescribed ministry to notify the public that it is considering creating, issuing or making changes to an environmentally significant policy, act, regulation or instrument, and to seek the public's comments on the proposal.
Notice—Decision	A notice posted on the Environmental Registry by a prescribed ministry to notify the public that it has made a decision whether or not to proceed with a proposal for a policy, act, regulation or instrument. A decision notice must explain what effect, if any, the public's comments on the proposal had on the ministry's final decision.
Permit to Take Water	An approval under the <i>Ontario Water Resources Act</i> that allows a person or organization to take water from groundwater or surface water sources.
Policy	A written set of rules or direction 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> .

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	
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 sections 15(2), 16(2), 22(3), 32 or 33. (subsections 15(2), 16(2), 22(3), 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, 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 section 15, 16 or 22 shall take every reasonable step to ensure that all comments relevant to the proposal that are received as part of the public participation process described in the notice of the proposal are considered when decisions about the proposal are made in the ministry. (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. <p>(sections 5 and 6, and O. Reg. 73/94, section 13)</p>

Sub-Criterion	Relevant Provision(s) in the <i>Environmental Bill of Rights, 1993</i>
3. Applications for Review and Applications for Investigation	
<p>a. Ministry reviews all matters to the extent necessary</p>	<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. (section 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> <hr/> <p>The ministry shall provide a brief a statement of reasons for its decision to accept or deny the review. (section 70)</p> <hr/> <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>
<p>b. Ministry investigates all matters to the extent necessary</p>	<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) <hr/> <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> <hr/> <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> <hr/> <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> <hr/> <p>A minister that determines that the public interest warrants a review must conduct the review within a reasonable time. (subsection 69(1))</p> <hr/> <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> <hr/> <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> <hr/> <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) <hr/> <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. (Section 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 and includes a permit, licence, approval, authorization, direction or order issued under an act.
2. Note that references to a minister in this document mean any minister of a ministry prescribed under the EBR Act. The document refers to the Environment Minister (see section 4 of this table) for specific responsibilities that only apply to that Minister. Note also that a minister may delegate his or her powers or duties under the EBR Act.

Appendix 3: Responsibilities of Each Prescribed Ministry, 2021/22

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 2021 and 2022.

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	✓	✓	✓	✓	✓	✓
Mining	✓	✓	✓	✓	✓	✓
Northern Development ²	✓	✓			✓	
Municipal Affairs	✓	✓	✓	✓	✓	✓
Public Services ³	✓	✓	✓	✓	✓	✓
Energy	✓	✓	✓		✓	
Agriculture	✓	✓	✓		✓	
Transportation	✓	✓	✓		✓	
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. 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.

3. 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.

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 2021 and 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>Toxics Reduction Act, 2009</i>	Y	Y	Y
<i>Waste Diversion Transition Act, 2016</i>	Y	Y	N
<i>Water Opportunities Act, 2010</i>	Y	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>Niagara Escarpment Planning and Development Act</i>	Y	Y	Y ⁴
<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	N	N
Ministry of Transportation			
<i>Highway Traffic Act</i>	Y ¹⁰	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. Limited to governing emissions.

Appendix 5: Instruments (permits and other approvals) Subject to the *Environmental Bill of Rights, 1993*

Source of data: O. Reg. 681/94, made under the *Environmental Bill of Rights, 1993* and government Orders-in-Council issued in 2021 and 2022

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 sulphur dioxide alert

Certificate of Property Use

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

Permits to take water

Permit authorizing a new transfer or an increased transfer

Director's order prohibiting or regulating sewage discharges

Director's order for measures to alleviate effects of impairment of quality of water

Director's order for unapproved sewage works

Director's order to stop or regulate discharge of sewage into sewer works

Direction to maintain or repair sewage or water works

Director's report to a municipality respecting sewage works or water works

Direction for sewage disposal

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

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 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

Ministry of Natural Resources and Forestry

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

Fish and Wildlife Conservation Act, 1997

Authorization to release wildlife or an invertebrate

Aquaculture licence

Lakes and Rivers Improvement Act

Order to repair or remove dam

Order to rectify a problem

Order to do what a minister considers necessary to further purposes of the *Lakes and Rivers Improvement Act*

Order to provide a fishway

Order to regulate the use of a lake or river or the use and operation of a dam

Order to take steps to maintain, raise or lower the water level on a lake or river

Order to take steps to remove any substance or matter

Niagara Escarpment Planning and Development Act

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

Order amending a local plan to make it conform to the Niagara Escarpment Plan

Approval of an amendment to the Niagara Escarpment Plan

Oil, Gas and Salt Resources Act

Permit to inject a substance other than oil, gas or water into a geological formation in connection with a project for enhancing oil or gas recovery

Amendment, suspension, revocation or addition of a term, condition, duty or liability imposed on a permit

Suspension or cancellation of a permit

Public Lands Act

Designation of an area as a planning unit

Permit to erect a building or structure or make an improvement on private land if the building, structure or improvement will be located within 20 metres of the edge of a body of water

Ministry of 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

Ministry of Mines

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 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 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: Number of Notices Posted on the Environmental Registry in 2021/22

Prepared by the Office of the Auditor General of Ontario, based on data from the Environmental Registry 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	26	Policies	25
Acts	10	Acts	10
Regulations	42	Regulations	49
Instruments	1,483	Instruments	1,345
Total	1,561	Total	1,429
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	31	Total	197
Decisions	26		
Total	57		
Exception notices		Appeal notices	
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).		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.	
Equivalent consultation	4	Direct appeals	3 ¹
Emergencies	3	Leave to appeal	5 ²
Total	7	Total	8

1. These appeals were filed in 2020/21, but the Environment Ministry did not post notices until 2021/22. Two of these notices were related to separate appeals of the same decision.
2. One of these notices was related to two separate applications seeking leave to appeal the same decision.

Appendix 7: Summary of Applications for Review Concluded in 2021/2022

Prepared by the Office of the Auditor General of Ontario

1. Review of Water Management Policies (Environment Ministry)

What the Applicants Asked For

In September 2016, two Ontarians asked the Environment Ministry to review the *Ontario Water Resources Act*, and the regulations under that act that regulate water taking permits and fees, to consider changes to improve the climate resiliency of Ontario's water management programs.

Review Undertaken by the Environment Ministry, and Handled Reasonably

In November 2016, the Environment Ministry decided to undertake the review, aligning it with other ongoing work related to the Ministry's water taking program, including a moratorium on new and expanded takings for groundwater by water bottling companies and a corresponding review of the Ministry's water quantity management framework. The Ministry's review included an assessment of the state of water resources in key areas of Ontario and the effect that water takings, population growth and climate change may have on those resources. The review included assessments by independent, third-party experts.

The Ministry concluded the review in April 2021. The review contributed to several changes to the Province's water taking program. After consulting the public through the Environmental Registry, the Ministry updated Ontario's Water Quantity Management Framework. Changes included: requiring water bottling companies to have the support of host municipalities; establishing priorities of water use; putting in place a more flexible approach for assessing and managing multiple water takings in areas of the province where water sustainability is a concern; and making water taking data available to the public.

2. Review of an *Aggregate Resources Act* Licence (Natural Resources Ministry)

What the Applicants Asked For

In November 2017, an environmental group and an individual Ontarian asked the Natural Resources Ministry to review the licence and site plan issued to Meridian Brick under the *Aggregate Resources Act* for its quarry in Burlington.

The applicants claimed that the quarry lands where Meridian Brick was planning to expand its operations (the "East Cell Quarry") contain several regulated endangered species, including the Jefferson salamander, American Columbo, eastern flowering dogwood and mottled dusky wing butterfly. The applicants also claimed that no natural heritage study or environmental assessment of the quarry lands had taken place. They raised concerns about the proximity of the East Cell Quarry to homes and the potential noise and dust impacts to local residents.

Review Undertaken by the Natural Resources Ministry, and Handled Reasonably but Not Completed Within a Reasonable Time

In January 2018, the Natural Resources Ministry agreed to partially undertake the review with regard to the endangered species and noise impacts. The Ministry stated that it would not review the need for a natural heritage study or environmental assessment, as these are not required due to the legacy provisions of the former *Pits and Quarries Control Act*, under which the quarry was licensed in 1972.

The Natural Resources Ministry concluded its review in June 2021. The Ministry reviewed scientific assessments, including multiple surveys designed to

monitor endangered salamander populations and other records related to the presence of the endangered species in the quarry expansion area, as well as the company's plans to mitigate effects of future operations on those species. The Ministry also conducted a compliance inspection in December 2020 and confirmed that the East Cell Quarry was compliant with the rules governing aggregate licences, with no extractive operations initiated as of that date. The Environment Ministry reviewed noise assessments of the quarry conducted on behalf of the company in 2015 and 2019, and concluded in 2019 that the reports showed quarrying operations would comply with applicable noise limits.

In its notice of decision sent to the applicants, the Ministry noted that the company was aware of its responsibility to amend the site plan, with the Ministry's approval, prior to undertaking operations in the East Cell Quarry, to align proposed future operations with the recommendations arising from reports prepared to address the *Endangered Species Act, 2007* and noise. The Ministry stated that it would continue to conduct compliance inspections and respond to inquiries and complaints regarding the operations.

Our Office found that the amount of time the Ministry took to complete this review was not reasonable, and did not comply with the EBR Act (see **Section 6.1.1** of this report).

3. Review of an Air Emissions Approval for an Asphalt Plant in Toronto (Environment Ministry)

What the Applicants Asked For

In September 2021, two Ontarians asked the Environment Ministry to review the environmental compliance approval for air emissions and noise issued under the *Environmental Protection Act* to Ingram Asphalt, an asphalt manufacturing plant and portable aggregate crushing plant in Toronto.

The applicants alleged that the asphalt plant is not a legal land use and does not comply with Ontario's D-6 guideline, which guides land use decisions to avoid negative impacts from conflicting neighbouring land uses. They also alleged that the approval does not comply with Ministry standards and that the facility produces significant emissions, strong odours and dust, causing adverse effects to people living and working in the vicinity of the facility.

Review Reasonably Denied by the Environment Ministry

In October 2021, the Environment Ministry denied the application for review. The Ministry concluded that the public interest did not warrant the requested review, because the Ministry had reviewed and amended the company's environmental compliance approval, with consultation on the Environmental Registry, in 2019. Section 68 of the EBR Act provides that a Ministry shall not undertake a review requested under the EBR Act of a decision that was made in the preceding five years, if the decision was made in a manner consistent with the public consultation provisions of the EBR Act. The 2019 amendments reflected improvements to the asphalt company's operations intended to minimize dust, odour and noise impacts of the facility. The Ministry concluded that the application did not provide any social, economic, scientific or other evidence demonstrating that failure to undertake the review would result in significant harm to the environment.

The Ministry stated that modelling submitted by the asphalt plant in 2019 demonstrated compliance with the air standards at the property line, meeting the requirements of Ontario's air pollution regulation for local air quality. The Ministry also noted that compliance with municipal zoning bylaws is not within the Ministry's jurisdiction, but confirmed that Ingram Asphalt "operates in an area appropriately zoned employment/industrial by the City of Toronto." The Ministry also noted that the D-6 land

use compatibility guideline does not apply to approval decisions where a facility already exists and there is no new land use approval for which approval is sought. The Ministry noted that the Environmental Review Tribunal (now the Ontario Land Tribunal) had found, and the Ontario Divisional Court upheld, that the D-6 guideline did not apply to Ingram Asphalt's air emissions approval.

The Ministry advised the applicants that it “remains engaged in ensuring the facility's compliance” with its approval. Our Office subsequently learned from the Ministry that, since the approval was amended in 2019, the Ministry has made over 20 visits to the site, and has not found evidence of adverse effects. The Ministry told us that it had followed up on complaints related to minor operational issues, and the company resolved them in a timely manner. In September 2022, the Ministry followed up with one of the applicants to confirm that, based on its comprehensive review of updated emissions modeling at the facility in 2022, the Ministry “has no concerns for adverse effects caused by the facility's emission to nearby receptors.”

4. Review of the EBR Act “Five Year Rule”

What the Applicants Asked For

In November 2021, two Ontarians asked the Environment Ministry to review section 68 of the EBR Act. Section 68 provides that a Ministry shall not undertake a review requested under the EBR Act of a decision that was made in the preceding five years, if the decision was made in a manner consistent with the public consultation provisions of the EBR Act (the “five year rule”). The five year rule does not apply if there is social, economic, scientific or other evidence, which had not been taken into account when the decision was made, that failure to review the decision could result in significant harm to the environment.

The applicants claimed that the Ministry's decision to deny a previous application for review under the EBR Act based on the five year rule did not protect them or the environment.

Review Reasonably Denied by the Environment Ministry

In January 2022, the Environment Ministry denied the application for review, stating that the public interest did not warrant a review. The Ministry stated that the application, which was almost entirely focused on the outcome of a previous EBR application for review, failed to provide social, economic, scientific or other evidence demonstrating that a failure to review section 68 of the EBR could result in significant harm to the environment.

Appendix 8: Summary of Applications for Investigation Concluded in 2021/2022

Prepared by the Office of the Auditor General of Ontario

1. Investigation of Alleged Adverse Effects of Noise and Dust from a Quarry in Renfrew County (Environment Ministry)

What the Applicants Asked For

In February 2020, two Ontarians submitted an application alleging that the operator of a quarry in Renfrew County, as well as a general contractor and construction company that brings in and operates rock crushing and processing machinery at the quarry site, have caused or permitted the discharge of contaminants, specifically noise and dust, causing adverse effects, contrary to the *Environmental Protection Act* and O. Reg. 419/05, the air pollution regulation under that Act.

The applicants reside near the quarry site and claimed that, for many years, they (and other local residents) have experienced impacts caused by “voluminous amounts of dust” from the quarry. They stated that dust is deposited on their home, vehicles and property, often a half-inch deep, and that they cannot enjoy the use of their yard and are forced to keep their windows shut at all times. They also stated that they experience coughing and choking, and difficulty breathing, when exposed to the dust in the air, and that their grandchildren, who have allergies making them sensitive to the dust, can no longer visit.

The applicants further claimed that there are several sources of excessive noise at the quarry, including vehicles and equipment, and that the quarry operators conduct operations outside of permitted hours.

Investigation Undertaken by the Environment Ministry, but Ministry’s Handling of Application Was Not Reasonable

In April 2020, the Environment Ministry agreed that an investigation was warranted. The Ministry originally anticipated that it would complete the investigation

by November 2020, but extended the date to June 30, 2021.

In July 2021, the Ministry provided its notice of outcome. As a result of its investigation, the Ministry concluded that the quarry operator, contractor and construction company had not contravened the *Environmental Protection Act* or O. Reg. 419/05.

The Ministry conducted four site visits and undertook noise monitoring on the applicants’ property. The Ministry concluded that the levels of noise produced by the quarry and other onsite operations were at or near the recommended guidelines for a rural setting but were not recorded at levels that would represent an adverse effect. The Ministry also stated that dust was not observed leaving the site at a frequency or quantity that would represent an adverse effect.

Our Office found that the Ministry did not investigate this matter to the extent necessary, as required by the EBR Act. See **Section 6.2.2** of this report.

2. Investigation of Subsurface Contamination in Soil and Groundwater in Ottawa (Environment Ministry)

What the Applicants Asked For

In December 2019, two Ontarians submitted an application for investigation alleging that a previous owner of a site in Ottawa (the “Site”) that abuts the applicants’ property contravened various sections of the *Environmental Protection Act*, including discharging or permitting the discharge of a contaminant likely to cause adverse effects. Specifically, the applicants alleged that the Site was the source of chlorinated solvent contamination of the soil and groundwater on their property.

The Ministry was already aware of the soil and groundwater contamination at both the applicants’ property and the Site, as well as at a third adjacent property. The Site has had multiple owners since its

development between 1958–1965, and potentially contaminating activities had historically operated at the property.

Investigation Undertaken and Reasonably Handled by the Environment Ministry

The Environment Ministry undertook the investigation in February 2020 and extended the investigation in April 2020, September 2020, and July 2021 to allow for additional investigation work to be conducted.

As part of its investigation, the Ministry reviewed its previous findings and technical reviews regarding the properties in question. The Ministry had been aware of contamination in the vicinity of the Site since 2010, and had been requesting additional environmental site assessments since then to better define the environmental conditions of the properties and identify potential source areas. The Ministry also obtained information regarding the environmental conditions of other properties in the vicinity. Further, in 2020 and 2021, the Ministry required the owners of the three impacted properties—the applicants' property, the Site, and the third adjacent property—to conduct two rounds of supplemental environmental monitoring at their properties. The Ministry's technical staff with expertise in assessing contaminated sites reviewed this information as part of the investigation.

In March 2022, the Ministry provided its notice of outcome. The Ministry determined that the previous owners of the Site had not contravened the *Environmental Protection Act*. Based on the information obtained and considered through its investigation, the Ministry stated that it could not identify a specific discharge event or a specific source of the contamination. The Ministry noted that “the long history of potentially contaminating property uses in the vicinity... greatly complicated the identification of the source or sources of the contamination” on the properties in question. Therefore, the Ministry stated that it had insufficient evidence to conclude that the previous owner of the Site had discharged a contaminant or spilled a pollutant in contravention of the *Environmental Protection Act*. The Ministry noted that the natural migration of

contamination from one property to another is not considered a contravention.

In its decision notice, the Ministry noted that where it is not possible to determine who discharged contamination or when a contravention may have occurred, the Ministry will often issue preventative measure orders to address any potential adverse effects.

3. Investigation of Alleged Adverse Noise Effects from Equipment Used to Deter Birds from Niagara Farm Crops (Environment Ministry)

What the Applicants Asked For

In April 2021, two Ontarians submitted an application alleging that their neighbour, a grape grower in the Niagara Region, was discharging noise from a propane-powered bird cannon that was causing adverse effects, contrary to the *Environmental Protection Act*.

Bird cannons are designed to emit loud noises intended to scare away birds from the crops. The applicants alleged that repeated, constant and high-volume exposure was negatively affecting their family and business.

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

In May 2021, the Environment Ministry denied the application, stating that an investigation would duplicate ongoing work that the Ministry was conducting through its Niagara District Office's abatement response. The EBR Act provides that a Ministry is not required to undertake a requested investigation if it would duplicate an ongoing investigation.

The investigation already being conducted was concluded in September 2021, and the Ministry determined that the use of a bird cannon did not represent an adverse effect. The Ministry found that noise levels were below what would be expected to be a concern for health impacts, and were consistent with Agriculture Ministry guidelines and the character of the neighbourhood, which is primarily agricultural, and with the devices in use at many local vineyards. However,

during a discussion as part of that investigation, the Ministry proposed, and the neighbour agreed, to level the bird cannon platform to ensure full rotation and firing direction of the device so that it did not point directly at the applicants' home continuously. The level platform and full rotation of the bird cannon was confirmed by the Ministry during subsequent site visits.

While we concluded that the Ministry's decision to deny this application was reasonable as undertaking the investigation would have been a duplication of the Ministry's ongoing investigation, the Ministry missed the 20-day statutory deadline to acknowledge to the applicants that it had received the application. See **Section 6.2.5** of this report.

4. Investigations of Alleged Bird Collisions and Deaths Due to Reflected Light from Buildings in Ottawa (Environment Ministry)

What the Applicants Asked For

In 2021, Ontarians submitted two separate applications pertaining to bird collisions with buildings in Ottawa. The first application, about a building complex owned by KRP Properties, was submitted in May 2021. The second application, about a building owned by GWL Realty Advisors, was submitted in September 2021.

In both applications, the applicants alleged that the buildings were discharging a contaminant (reflected light) into the natural environment, causing hundreds of bird deaths per year, which represents an adverse effect under the *Environmental Protection Act*.

In addition, both applications alleged that bird species identified as at-risk under the *Endangered Species Act, 2007* had been killed, including species of special concern at the KRP property (including wood thrush, Canada warbler, peregrine falcon, and eastern wood-pewee), and species of special concern and threatened species at the GWL property (including the threatened chimney swift and eastern whip-poor-will).

Investigation Undertaken in Part by the Environment Ministry, but Ministry's Handling of These Applications Was Not Reasonable

In November 2021, the Environment Ministry denied the KRP application altogether, as well as the allegations relating to adverse effects under the *Environmental Protection Act* in the GWL application, stating that the allegations were not serious enough to warrant an investigation. The Ministry stated that non-regulatory tools such as education and outreach are a more proportionate response to address concerns related to reflected light on birds. The Ministry stated that it intended to reach out to the building owners "to strongly encourage them to review and implement mitigation measures outlined [in existing guidance]."

The Environment Ministry agreed to undertake an investigation into the alleged contravention of the *Endangered Species Act, 2007* by GWL Realty, because those allegations included threatened species, which are protected under section 9 of the *Endangered Species Act, 2007* (species of special concern are not).

In April 2022, the Ministry concluded the investigation and delivered a notice of decision to the applicants. The Ministry's investigation was limited to determining that the photographs of birds included in the application were of a threatened species, and reviewing the legislative framework. The Ministry did not conclude whether the *Endangered Species Act, 2007* was contravened. The Ministry instead stated again that it would reach out to the building owner and ask them to implement voluntary prevention measures.

We concluded that the Ministry's handling of these applications was not reasonable; see **Section 6.2.1** of this report. Further, the Ministry missed the 60-day statutory deadline to notify the applicants of the first application that it would not be undertaking an investigation. See **Section 6.2.5** of this report.

5. Investigations of Alleged Contravention of the *Endangered Species Act, 2007*, the *Conservation Authorities Act*, and the conditions in a permit issued under the *Conservation Authorities Act* by a Condominium Developer (Environment Ministry and Natural Resources Ministry)

What the Applicants Asked For

In July 2021, two Ontario associations submitted an application alleging that Magenta Waterfront Development Corporation (Magenta), a developer of a condominium project in South Frontenac Township, had since 2015 contravened the terms of a development permit issued by the Cataraqui Region Conservation Authority, which is an offence under the *Conservation Authorities Act*. The applicants also raised concerns that the conservation authority failed to enforce or revoke the permit. They also criticized the advice that the conservation authority offered to the municipality regarding the development.

The applicants further alleged that Magenta contravened the *Endangered Species Act, 2007* (ESA) and/or a permit under that act when it:

- undertook road development at the site;
- removed shoreline vegetation in an ecologically sensitive area; and
- partially constructed a walking bridge.

The applicants claimed that each of these activities contravened sections 9 and 10 of the ESA, by killing or harming two species designated as threatened under that act—the gray ratsnake (Frontenac Axis population) and the Blanding’s turtle—and damaging or destroying their habitats.

The application was originally sent to the Environment Ministry, which is responsible for matters under the *Endangered Species Act, 2007*. The application was sent to the Natural Resources Ministry, which is responsible for matters under the *Conservation Authorities Act*, in September 2021.

Investigation Undertaken in Part and Handled Reasonably by the Environment Ministry

In September 2021, the Environment Ministry denied the request to investigate the alleged contraventions of the *Endangered Species Act, 2007* (ESA) related to road development in 2016, as it would duplicate a previous EBR Act investigation about these allegations that found no contraventions of the ESA. However, the Ministry agreed to investigate the allegations of contraventions related to shoreline vegetation removal and construction of the walking bridge.

The Ministry completed the investigation in December 2021. Based on a review of the EBR application and its supporting evidence, historical and current information about the area, the Ministry’s ESA policy framework and discussions with a biologist from the Natural Resources Ministry, the Ministry concluded that there was insufficient evidence to substantiate the allegations in the application. The Ministry concluded that shoreline vegetation removal occurred but due to a lack of information about the status and condition of the area prior to the vegetation removal, and the amount of time that had elapsed since the vegetation removal had occurred, it was unable to assess whether the vegetation removal contravened the ESA. At the time of its investigation, the Ministry believed that the vegetation removal had occurred in March 2018; however, after it concluded the application, it learned from the applicants that the removal had occurred even earlier, in the summers of 2016 and 2017.

The Ministry also concluded that there was not sufficient evidence to determine whether Magenta contravened the ESA when it constructed the walking bridge in 2018. In particular, the Ministry stated it was not able to determine whether the species were present during the construction.

The Ministry noted that there was no contravention of a permit under the ESA because no permit was in force at the time the vegetation removal and bridge construction took place.

In October of 2018, the Ministry issued an overall benefit permit for the development. The permit

authorizes the developer to harm the Blanding's turtle and gray ratsnake and damage their habitat, provided it complies with specified mitigation measures such as limiting the time of year vegetation may be cleared and limiting speed limits on access roads, and conditions imposed in the permit to provide an overall benefit for the species.

Investigation Reasonably Denied by the Natural Resources Ministry, but Identified an Issue with the Effective Operation of the EBR Act

The Natural Resources Ministry denied the request to investigate the alleged contraventions of the *Conservation Authorities Act* and permit. The Ministry concluded that it did not have jurisdiction to conduct the requested investigation, as these allegations fall under the jurisdiction of the conservation authority.

The Ministry noted that “the [conservation authority] is well staffed and has the technical experience in hazard management to assess impacts to natural hazards, as provided for in the [*Conservation Authorities Act* and regulation], and to determine when to take steps to enforce its decisions at its discretion.”

The *Conservation Authorities Act* makes it an offence to develop land if it affects watercourses, wetlands or natural hazards without a permit issued by a conservation authority, or to violate the conditions of such a permit. The Act gives the responsibility for enforcement of these requirements to conservation authorities, not to the Ministry. However, the Ministry's response to this application highlights a longstanding issue regarding the effective operation of the EBR Act. See **Section 6.2.3** of this report.

6. Investigation of Alleged Contravention of the Conditions of a Permit to Take Water by a Quarry Operator (Environment Ministry)

What the Applicants Asked For

In July 2021, two Ontario associations submitted an application alleging that the operator of Long's Quarry in Hastings County contravened its permit to take water for dewatering the quarry, issued under the

Ontario Water Resources Act. The applicants alleged that the quarry: extracted more water than permitted in a period of a low water advisory in 2019; conducted unauthorized water takings; and did not comply with precipitation recording requirements. The applicants alleged that the company had a history of non-compliance with its permit to take water.

Investigation Reasonably Denied by the Environment Ministry

The Environment Ministry denied the application for investigation in September 2021. The Ministry concluded that an investigation was not required because the alleged contravention was not likely to cause harm to the environment. The Ministry stated that surface and groundwater monitoring programs have shown there were no negative impacts to the nearby creek or to residential wells from the water taking. The Ministry also noted that a hydrological review of the site suggested that “water pumped from the quarry is predominantly surface run-off/rainwater,” and concluded that the discharge of pump water into the creek is beneficial to the watershed.

Further, the Ministry stated that an investigation would duplicate a similar EBR Act investigation into alleged contraventions of the permit to take water for Long's Quarry conducted in 2018. The EBR Act provides that in such circumstances, a Ministry is not required to investigate. The Ministry's 2018 investigation had found that although the company had contravened some conditions of its permit, there were no demonstrated environmental impacts from the company's water taking. The Ministry noted that the 2019 allegations were identical to those alleged in 2018, and while the company again had not strictly complied with all permit requirements in 2019, the Ministry concluded that if it conducted the requested investigation, the outcome would be identical.

The Ministry stated that it was “already engaged with this file,” and would continue to conduct site visits and inspections at the site to assess the company's compliance with the permit.

The Ministry also noted that it was reviewing the company's application to renew its permit to take

water, and that the review would include improved conditions to achieve greater compliance. Public consultation on the proposed renewal had already occurred through the Environmental Registry. Subsequent to this application being concluded, the Ministry renewed the permit and posted a decision notice on the Registry. Ontarians applied for leave to appeal that decision on the grounds that a new condition in the permit could result in significant harm to the environment, but the Ontario Land Tribunal dismissed the application (see **Appendix 9**).

7. Investigation of Alleged Contravention of the *Environmental Assessment Act* by the Town of Erin Regarding Development of a Wastewater Treatment Plant (Environment Ministry)

What the Applicants Asked For

In August 2021, two Ontario associations submitted an application alleging that the Town of Erin had contravened the *Environmental Assessment Act* by failing to issue an addendum to its Environmental Study Report for its new wastewater treatment plant once the final project site was chosen. The Town had stated that it would do so in its Environmental Study Report. The applicants claimed that failing to issue an addendum to the report deprived the community of the opportunity to be consulted on this project.

The applicants also alleged that there was no evidence that the Town had completed studies, including an arborist report, bird surveys, and species at risk report, despite commitments from the Town to do so, and that an archaeological study and report warranted public review.

Investigation Reasonably Denied by the Environment Ministry

In October 2021, the Environment Ministry denied the application for investigation, determining that an investigation was not warranted. The Ministry stated that there was no requirement for the Town of Erin to prepare an addendum, and its failure to do so is

therefore not a contravention of the *Environmental Assessment Act*. The Ministry noted that, based on its review, “there was a misapprehension as to the requirements of the Municipal Class [Environmental Assessment]” which applied to the project. The Ministry stated that the Environmental Study Report met the requirements of the Municipal Class Environmental Assessment and the *Environmental Assessment Act*.

Regarding the allegedly outstanding studies and reports, the Ministry stated that the additional studies noted in the Environmental Study Report are only required to be completed prior to the implementation of the project and are not necessarily captured in the Environmental Study Report itself. The Ministry stated that it was reviewing the species at risk report for birds and trees, and is continuing to engage with the Town to ensure that the necessary bird studies are completed and relevant protocols followed. As such, the Ministry concluded that the alleged contraventions are not serious enough to warrant an investigation, and not likely to cause harm to the environment.

Finally, the Ministry concluded that an arborist report is not required as no at-risk tree species were identified. As well, it stated that the archaeological assessment is not a requirement of the Municipal Class Environmental Assessment process, and therefore the allegation related to that assessment is not a contravention that can be investigated.

Appendix 9: Appeals, Court Actions and Whistleblowers, 2021/22

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, permission to challenge) decisions on many types of instruments. For example, a community member could use this right to challenge a decision by the Environment Ministry to allow an industrial facility to discharge contaminants into the air.

Ontario residents who wish to appeal a 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, within 15 days of the decision’s posting on the Environmental Registry. The Tribunal will

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

Leave to Appeal Applications in 2021/22

In 2021/22, Ontarians submitted six applications for leave to appeal, related to five Environment Ministry decisions. The Tribunal dismissed five applications without granting leave to appeal, 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, as it was not filed by the statutory deadline (see table below).

Direct Appeals in 2021/22

In 2021/22, no direct appeals of classified instruments came to our attention.

Leave to Appeal Applications Filed Under the *Environmental Bill of Rights, 1993* in 2021/22

Source of data: Environmental Registry and Ontario Land Tribunal

Subject	Environmental Registry Number	Status/Outcome
Environmental Compliance Approval (air) – amended approval to expand the use of certain wastes as alternative fuels in cement production (two applications submitted)	019-2055	Leave denied
Environmental Compliance Approval (air) – approval for a mobile ready-mix concrete batching plant	019-2291	Leave denied
Environmental Compliance Approval (air and noise) – approval for a metal recycling facility	019-2424	Leave denied
Permit to Take Water – conditions to the renewal of a permit for operation of a quarry	019-2326	Leave denied
Environmental Compliance Approval (waste) – approval for the transfer of hauled sewage waste to a temporary storage lagoon	019-3990	Not filed within 15 days; no decision on the merits

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 direct appeals (usually instrument-holder appeals) of decisions related to instruments for which notice was required to be given under the EBR Act. For the details of our review of the Environment Ministry's compliance with this requirement, see **Section 5.6.3** of this report.

Lawsuits and Whistleblower Protection

The EBR Act provides rights for Ontarians: to take court action against anyone who contravenes an act, regulation or approval and thereby causes significant harm to a public resource; or to seek damages for environmental harm caused by a public nuisance. To bring an action for harm to a public resource, an Ontario

resident must first apply to 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; this is done 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 2021/22.

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 2021/22, but the Board determined it to have been filed erroneously, as it actually pertained to an allegation of reprisal under a different statute.

Criterion	OAGO Comments	2019 Results	2020 Results	2021 Results	2022 Results
h. Decision notices for instruments are informative	The Ministry posted 912 decision notices for instruments. In our sample of 20, the Ministry included copies of most issued permits and approvals in its notices, but did not provide a link to one issued permit to take water. Further, in a sample of an additional 18 decision notices for permits to take water, links to the issued permits were not included and Ontarians were instead required to request a copy from the Ministry. See Section 5.2.5 .	○	●	●	●
i. Proposal notices are up-to-date	One proposal notice the Ministry posted in November 2018, for the Made-in-Ontario Environment Plan, remains open four years later and has not been updated. This represents less than 1% of the Ministry's total open proposal notices, an improvement since 2021. However, our 2021 report recommended the Ministry post a decision notice because it has implemented aspects of the Plan. As of September 2022, the Ministry had not done so. Further, we identified two significant decisions that had been made but Ontarians were still not given notice many months later. See Section 5.5.2 .	●	●	●	●
j. Prompt notice of appeals and leave to appeal applications is given	The Ministry posted notices related to the six applications for leave to appeal submitted in 2021/22. None were posted within five business days of receipt of the applications, which our Office has identified as best practice. See Section 5.6.3 .	n/a	●	●	●
k. The Environmental Registry platform is maintained effectively	The Ministry generally maintained and operated the Environmental Registry well. However, the Ministry made an error updating the ownership of 982 <i>Mining Act</i> notices. For about seven months notices were mislabelled. See Section 5.6.2 .	n/a	○	●	●
3. Applications for Review and Applications for Investigation					
a. Ministry reviews all matters to the extent necessary	The Ministry concluded three applications for review. Criterion met.	●	○	●	○
b. Ministry investigates to extent warranted	The Ministry concluded eight applications for investigation (one shortly after the end of the reporting year). The Ministry met this criterion for five of those applications, but did not investigate three matters to the extent necessary. See Sections 6.2.1 and 6.2.2 .	○	—	—	●
c. Ministry meets all timelines	The Ministry did not meet legislated timelines in two applications concluded in 2021/22. In one of these, it took 209 days to notify the applicants that it would not undertake the requested application, missing the 60-day deadline by 149 days. Further, the Ministry has not completed a review of the EBR Act itself that it agreed to undertake in 2011. See Section 6.2.5 .	●	●	●	●
4. Education					
a. Environment Ministry provides educational programs about the EBR Act to the public	In 2021/22, the Ministry finalized its communications plan for educating the public about the EBR Act. It implemented the first phase of the plan: a series of unpaid social media posts, including a video, on various channels in November and December 2021. However, it has taken no further steps to roll out other aspects of its plan, and has not prioritized educating Ontarians about the EBR Act among its other communication roles. See Section 5.6.1 .	n/a	●	●	●
b. Environment Ministry provides general information about the EBR Act to those who wish to participate in a proposal	In 2020/21, we found that the Ministry had not kept the list of prescribed ministries up to date on the EBR Act website, did not have documented guidance for staff for handling emails and calls about the EBR Act from the public, and did not document or log telephone inquiries received about the EBR Act. In 2021/22, the Ministry added a note to its website explaining that the list of ministries was outdated but did not say which ministries were currently subject.	n/a	○	●	●

Concluded Applications for Review by the Environment Ministry in 2021/22

Application for Review	Year Submitted	Undertaken or Denied	Ministry Reviews All Matters to the Extent Necessary	Ministry Meets All Timelines
Review of Water Management Policies	2016	Undertaken	<input type="radio"/>	<input type="radio"/>
Review of an Approval for Air Emissions from an Asphalt Plant in Toronto	2021	Denied	<input type="radio"/>	<input type="radio"/>
Review of the EBR Act "Five Year Rule"	2021	Denied	<input type="radio"/>	<input type="radio"/>

Concluded Applications for Investigation by the Environment Ministry in 2021/22

Application for Investigation	Year Submitted	Undertaken or Denied	Ministry Investigates All Matters to the Extent Necessary	Ministry Meets All Timelines
Investigation of Noise and Dust from a Quarry in Renfrew County	2020	Undertaken	<input checked="" type="radio"/>	<input type="radio"/>
Investigation of Subsurface Contamination in Ottawa	2019	Undertaken	<input type="radio"/>	<input type="radio"/>
Investigation of Noise from Equipment Used to Protect a Farmer's Crop from Birds in Niagara	2021	Denied	<input type="radio"/>	<input checked="" type="radio"/>
Investigations of Bird Collisions and Deaths Due to Reflected Light from Buildings in Ottawa (First application)	2021	Denied	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Investigations of Bird Collisions and Deaths Due to Reflected Light from Buildings in Ottawa (Second application)	2021	Undertaken in Part	<input checked="" type="radio"/>	<input type="radio"/>
Investigation of Alleged Contraventions by a Developer of a Condominium Project of the <i>Endangered Species Act, 2007</i> and the <i>Conservation Authorities Act</i>	2021	Undertaken in Part	<input type="radio"/>	<input type="radio"/>
Investigation of Alleged Contravention by a Quarry Operator of the Conditions of its Permit to Take Water	2021	Denied	<input type="radio"/>	<input type="radio"/>
Investigation of Alleged Contravention of the <i>Environmental Assessment Act</i> by the Town of Erin	2021	Denied	<input type="radio"/>	<input type="radio"/>

Criterion	OAGO Comments	2019 Results	2020 Results	2021 Results	2022 Results
3. Applications for Review and Applications for Investigation					
a. Ministry reviews all matters to the extent necessary	The Ministry concluded one application for review. Criterion met.	○	—	—	○
b. Ministry investigates to extent warranted	The Ministry concluded one application for investigation. Criterion met. However, the Ministry mistakenly disclosed personal information about the applicants in contravention of the EBR Act. See Section 6.2.4 .	○	—	—	○
c. Ministry meets all timelines	The Ministry did not complete its review of an <i>Aggregate Resources Act</i> licence within a reasonable time. Application was submitted in November 2017 but after receiving documentation required to undertake the review in December 2018, the Ministry allowed the application to sit dormant for about two years. The Ministry concluded its review in June 2021. See Section 6.1.1 .	○	—	—	●

1. On June 18, 2021 (during this reporting year), the former Ministry of Natural Resources and Forestry merged with part of the former Ministry of Energy, Northern Development and Mines to form a new Ministry of Northern Development, Mines, Natural Resources and Forestry (the Combined Ministry), which had the responsibilities of the former Ministry of Natural Resources and Forestry, as well as the northern development and mines-related responsibilities of the former Ministry of Energy, Northern Development and Mines. However, the Natural Resources and Forestry section and the Northern Development and Mines section continued to operate as separate entities within the Combined Ministry. For purposes of this report card, we have considered the compliance with and implementation of the EBR Act of the Natural Resources and Forestry section of the Combined Ministry separately. On June 24, 2022 (after this reporting year), the Combined Ministry changed again, to form three new ministries: the Ministry of Natural Resources and Forestry; the Ministry of Northern Development; and the Ministry of Mines.

Concluded Applications for Review by the Natural Resources Ministry in 2021/22

Application for Review	Year Submitted	Undertaken or Denied	Ministry Reviews All Matters to the Extent Necessary	Ministry Meets All Timelines
Review of an <i>Aggregate Resources Act</i> Licence	2017	Undertaken	○	●

Concluded Applications for Investigation by the Natural Resources Ministry in 2021/22

Application for Investigation	Year Submitted	Undertaken or Denied	Ministry Investigates All Matters to the Extent Necessary	Ministry Meets All Timelines
Investigation of Alleged Contraventions by a Developer of a Condominium Project of the <i>Endangered Species Act, 2007</i> and the <i>Conservation Authorities Act</i>	2021	Denied	○	○

Criterion	OAGO Comments	2019 Results	2020 Results	2021 Results	2022 Results
h. Decision notices for instruments are informative	The Ministry posted 304 decision notices for permits and approvals under the <i>Mining Act</i> . Of the 10 notices we reviewed, six (60%) did not adequately describe the effects of public participation. In three cases the Ministry stated only that “comments received were considered in the decision.” While the Ministry provided copies of the final issued permits and approvals, it would not be clear to a reader whether any changes were made as a result of feedback from the public.	●	●	●	●
i. Proposal notices are up-to-date	The Ministry was responsible for two outdated proposal notices on the Environmental Registry (both <i>Mining Act</i> instrument notices), representing just 1% of its open proposal notices.	●	●	●	○

2. On June 18, 2021 (during this reporting year), the former Ministry of Natural Resources and Forestry merged with part of the former Ministry of Energy, Northern Development and Mines to form a new Ministry of Northern Development, Mines, Natural Resources and Forestry (the Combined Ministry), which had the responsibilities of the former Ministry of Natural Resources and Forestry, as well as the northern development and mines-related responsibilities of the former Ministry of Energy, Northern Development and Mines. However, the Natural Resources and Forestry section and the Northern Development and Mines section continued to operate as separate entities within the Combined Ministry. For purposes of this report card, we have considered the compliance with and implementation of the EBR Act of the Northern Development and Mines section of the Combined Ministry separately. On June 24, 2022 (after this reporting year), the Ministry changed again, to form three new ministries: the Ministry of Natural Resources and Forestry; the Ministry of Northern Development; and the Ministry of Mines.

Ministry of Municipal Affairs and Housing

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

Criterion	OAGO Comments	2019 Results	2020 Results	2021 Results	2022 Results
1. Statement of Environmental Values (Statement)					
a. Statement is up-to-date	Criterion met. The Ministry last updated its Statement in 2020, and it reflects the Ministry’s responsibilities and new government priorities, such as addressing climate change.	●	○	○	○
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 posted a proposal notice for Bill 109, which made environmentally significant amendments to the <i>Planning Act</i> , for a 30-day comment period, but the bill received third reading before the comment period concluded. The Ministry added text to the proposal notice stating that the bill had passed, but was not transparent with Ontarians about the opportunity to comment, or the effects of public participation on its decision. See Section 5.1.1 .	○	○	●	●
b. Time to comment is extended based on the factors in the EBR Act	The Ministry posted five related housing proposals, including a proposal for Bill 109, which made environmentally significant amendments to the <i>Planning Act</i> , for the statutory minimum 30-day public comment period (although consultation on Bill 109 was ultimately cut short). Given the high public interest in and complexity of the related proposals, the Ministry could have received more informed feedback if the public had more time to comment. See Section 5.1.1 .	○	○	○	●

Criterion	OAGO Comments	2019 Results	2020 Results	2021 Results	2022 Results
c. Proposal notices for policies, acts and regulations are informative	The Ministry posted 12 proposal notices for policies, acts and regulations. Two related housing proposal notices, including a proposal for Bill 109, which made environmentally significant amendments to the <i>Planning Act</i> , including amendments that created a new type of zoning order, at the request of a municipality, and a proposed guideline for the use of that type of order, did not describe the anticipated environmental impacts of the proposals. The proposal notice for Bill 109 did not explain that, if the bill passed, policies designed to protect natural heritage would not operate under the proposed new type of minister's zoning order, and the maximum amount of parkland that a developer must provide to a municipality for developments in transit-oriented communities would be reduced. Similarly, while the draft guideline attached to the proposal notice for the guideline referred to how and where the proposed new minister's zoning order may be used, and the requirement to submit a plan for mitigating potential environment impacts, neither it nor the notice described what the potential impacts to the environment might be. See Section 5.2 .	●	●	●	●
d. Proposal notices for instruments 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.	○	●	●	○
h. Decision notices for instruments are informative	Criterion met.	●	●	●	○
i. Proposal notices are up-to-date	Criterion met.	○	●	○	○

Appendix 11: Ministry Responses to Recommendations 2 and 3

Prepared by the Office of the Auditor General of Ontario

Below are the responses provided by the prescribed ministries to Recommendations 2 and 3, found in **Section 5.1.1** of this report.

RECOMMENDATION 2

To provide Ontarians with a minimum of 30 days to comment on environmentally significant proposals for acts, and to provide prescribed ministries with sufficient time to consider any comments submitted before the proposals are implemented, as required by the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that, when the minister of any prescribed ministry introduces a bill in the Legislature that would implement an environmentally significant proposal for an act, the ministry formally in writing notify the Government House Leader that the bill is subject to the EBR Act and therefore requires a legislated minimum 30 days for public comment on the bill through the Environmental Registry and consideration of received comments.

RECOMMENDATION 3

To provide Ontarians with a minimum of 30 days to comment on environmentally significant proposals for acts, and to provide prescribed ministries with sufficient time to consider any comments submitted before the proposals are implemented, as required by the *Environmental Bill of Rights, 1993*, we recommend that all prescribed ministries take a staged approach to consulting Ontarians about proposals for acts, including:

- posting policy proposals on the Environmental Registry for early public consultation on the potential options for the new acts; and
- posting act proposals on the Environmental Registry no later than the day the corresponding bills are introduced in the Legislature.

Ministry	Response
Ministry of the Environment, Conservation and Parks	The Ministry thanks the Auditor General for these recommendations and agrees that ensuring adequate time for consultation is important. Legislative timelines are set by the Government House Leader. The Ministry already makes every effort to ensure proposals for acts are posted for a minimum of 30 days on the Environmental Registry prior to implementation, where appropriate. Phased consultation approaches are also used, where appropriate.
Ministry of Natural Resources and Forestry	The Ministry agrees that the Environmental Registry consultation process applicable to proposals for acts is important, and makes every effort to post notices for a minimum of 30 days on the Environmental Registry where appropriate. Legislative timelines are set by the Government House Leader. The Ministry is committed to meeting its obligations of the EBR Act.
Ministry of Northern Development	The Ministry is committed to meeting its obligations of the EBR Act and will follow the Act's requirements as closely as possible. The Ministry will work to provide consistency alongside other prescribed ministries in implementing these recommendations when viable.
Ministry of Mines	The Ministry is committed to meeting its obligations of the EBR Act and will follow the Act's requirements as closely as possible. The Ministry will work to provide consistency alongside other prescribed ministries in implementing these recommendations when viable.
Ministry of Municipal Affairs and Housing	The Ministry thanks the Auditor General for these recommendations. The Ministry of Municipal Affairs and Housing takes seriously its obligations under the <i>Environmental Bill of Rights, 1993</i> . Accordingly, the Ministry has generally posted proposed legislation on the Environmental Registry of Ontario for public comment on the same day that the legislation is introduced in the Legislative Assembly of Ontario.

Ministry	Response
Ministry of Public and Business Service Delivery	The Ministry agrees that Ontarians should be provided the opportunity to participate in decisions that have significant impacts on the environment and is committed to meeting its obligations under the EBR Act. The Ministry will engage the Ministry of the Environment, Conservation and Parks regarding a consistent approach for the Auditor General's recommendations.
Ministry of Energy	The Ministry thanks the Auditor General for these recommendations. The Ministry remains committed to meeting its obligations under the EBR Act. The Ministry will continue to make every effort to ensure proposals for acts are posted for a minimum of 30 days on the Environmental Registry prior to implementation, and to phased consultations approaches, where appropriate.
Ministry of Transportation	The Ministry acknowledges the value of the EBR Act and Environmental Registry consultations. The Ministry will review these recommendations with other prescribed ministries.
Ministry of Agriculture, Food and Rural Affairs	<p>The Ministry appreciates the Auditor General's recommendations and agrees that adequate time for public consultation is important. The Ministry makes every effort to meet the requirements for posting on the Environmental Registry, including to meet the required timelines for posting, to ensure adequate public consultation. This also includes communicating relevant timelines to decision-makers as part of the decision-making process.</p> <p>The Ministry is currently reviewing and updating internal guidance and training materials to support Ministry staff in preparing posting materials for the Environmental Registry in support of Recommendation 3, where appropriate and feasible to do so.</p>
Ministry of Tourism, Culture and Sport	The Ministry acknowledges the importance of meeting the requirements of the EBR Act in order to give the public the opportunity to participate in government decision-making. The Ministry will consider the recommendations and will engage with the Ministry of the Environment, Conservation and Parks regarding a consistent approach.
Ministry of Health	The Ministry is committed to meeting its obligations under the EBR Act, including the requirement for a minimum 30-day public consultation period on environmentally significant proposals. The Ministry will consult with the Ministry of the Environment, Conservation and Parks, seeking advice on a consistent approach, across prescribed ministries, for considering these recommendations.
Ministry of Long-Term Care	The Ministry is committed to meeting its obligations under the EBR Act, including the requirement for a minimum 30-day public consultation period on environmentally significant proposals. The Ministry will consult with the Ministry of the Environment, Conservation and Parks, seeking advice on a consistent approach, across prescribed ministries, for considering these recommendations.
Ministry of Infrastructure	The Ministry recognizes that these recommendations can support the Ministry's commitment to meeting its obligations under the EBR Act. The Ministry will consider the staging of consultation on a case-by-case basis, as appropriate.
Ministry of Economic Development, Job Creation and Trade	The Ministry remains committed to meeting its obligations under the EBR Act and within the legislative process. The Ministry will engage with the Ministry of the Environment, Conservation and Parks to consider these recommendations.
Ministry of Indigenous Affairs	The Ministry is committed to meeting its obligations under the EBR Act when posting environmentally significant proposals for acts, as applicable. Although the EBR is not the primary vehicle utilized to consult and engage with Indigenous communities, the Ministry generally supports approaches that increase engagement time periods for Indigenous communities and organizations.
Ministry of Education	The Ministry remains committed to fulfilling its obligations under the EBR Act. The Ministry will work with other prescribed ministries to review the recommendations and determine a consistent approach across prescribed ministries. The Ministry also agrees that consulting Ontarians is important and will update the already existing process of posting proposals for consultation to reflect the staged approach.

Ministry	Response
Ministry of Labour, Immigration, Training and Skills Development	As the Ministry is developing its “policies and procedures” manual (Recommendation 8 from the Auditor General’s 2020/21 Value-for-Money Audit of the Operation of the <i>Environmental Bill of Rights, 1993</i>), the Ministry will consider incorporating references to this recommendation.
Treasury Board Secretariat	The Treasury Board Secretariat (TBS) is committed to meeting its obligations under the EBR Act. This includes requirements for public consultations on environmentally significant proposals. As these recommendations apply to all prescribed ministries, TBS will consult with the Ministry of the Environment, Conservation and Parks to synergize on a consistent approach.



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