

Operation of the *Environmental Bill of Rights*

I'd like to talk to you about our audit of the **Operation of the *Environmental Bill of Rights***.

Under Section 51 (1) of Ontario's *Environmental Bill of Rights*, the Auditor General is required to report annually on the operation of this Act.

The *Environmental Bill of Rights*, or the EBR, is a law that recognizes that Ontarians have the right to know about and participate in government decisions that affect the environment. It also helps Ontarians hold the government accountable for those decisions.

Transparency and accountability in environmental decision-making is how the EBR helps to protect the environment.

The EBR requires a number of government ministries to post proposals – for environmentally significant policies, acts and regulations, as well as permits and approvals – on the online Environmental Registry. These ministries must post their proposals to the registry because many of the laws they are responsible for and many of the proposals they bring forward can have an effect on the environment. These proposals must be posted for at least 30 days, and ministries must allow the public to provide comments for at least 30 days.

When they make a decision about their proposal – whether to proceed or not, or whether the proposal will be changed – they are required to post the decision on the EBR for the public.

The EBR includes other environmental rights as well.

It enables the public to ask the government to investigate if they think a person or company is breaking an environmental law.

Ontarians can also ask the government to review the need for a new environmental law, or changes to existing laws.

Reviewing whether government ministries are performing their responsibilities under the EBR, including how they consult with Ontarians, and respond to Ontarians' requests, is a responsibility of my Office.

This work is performed by our environmental portfolio team led by my Assistant Auditor General, the Commissioner of the Environment, who also examines the impacts on Ontarians' rights and the environment when ministries make decisions that don't meet the purposes of the EBR Act to protect the environment.

In this audit, we looked at 18 ministries for the period from April 1, 2021 to March 31, 2022 to see if they were carrying out their EBR duties as required and in accordance with best practices.

Overall, the 18 prescribed ministries improved their compliance with the EBR Act from 2021.

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.

Despite these improvements, major problems persisted in the operation of the EBR Act in 2021/22. Some ministries again deliberately ignored the EBR Act when they did not consult Ontarians appropriately on environmentally significant initiatives.

For instance, in March 2022, the Ministry of Municipal Affairs and Housing opened public consultation on Bill 109, the *More Homes for Everyone Act, 2022*, which made environmentally significant changes to the *Planning Act* that could impact community greenspace. However, the Bill was passed into law two weeks before the required minimum 30-day consultation period ended. This limited Ontarians' rights to provide feedback and have their comments considered before the decision was made.

In addition, most ministries had instances when they did not follow the EBR Act's minimum legal requirements.

Overall, ministries fully met our audit criteria in 68% of cases and partially met them in 22% of cases.

Ontarians were not always given clear or complete information in notices posted on the Environmental Registry. And Ontarians were not given timely notice of 20% of the decisions we reviewed.

The Ministry of Natural Resources and Forestry did not keep 21% of its proposal notices on the Environmental Registry current.

For the fourth year in a row, the Ministry of the Environment, Conservation and Parks again did not provide leadership on the EBR Act to identify and assess gaps and issues that hinder the effective operation of the Act – a review that the Ministry agreed to do more than 10 years ago.

We found that the Environment Ministry still

- has not updated its Statement of Environmental Values,
- has done little to educate Ontarians about the EBR Act; and,
- does not plan to implement our Office's 2020 recommendation to take action to ensure that the EBR Act applies to all environmentally significant decisions made by the Province.

The Environment Ministry was also not transparent about the status of its 2018 Made-in-Ontario Environment Plan, despite evidence that the Ministry had implemented aspects of the Plan.

This report contains 21 recommendations including that the Ministry of the Environment, Conservation and Parks:

- complete its intended review of the EBR Act;
- develop and implement a strategic plan for providing leadership on EBR Act matters to ensure its effective operation across the government; and
- take necessary steps to obtain approval that may be needed on the Made-in-Ontario Environment Plan and post a decision on the Environmental Registry to inform the public of its decision to implement the plan.

We also 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 and
- posting act proposals on the Environmental Registry no later than the day the corresponding bills are introduced in the Legislature.

To read this report, you can visit our website at www.auditor.on.ca