

# Chapter 1

## Section 1.06

Ministry of the Environment, Conservation and Parks

# Environmental Assessments

Follow-Up on VFM Section 3.06, 2016 Annual Report

### RECOMMENDATION STATUS OVERVIEW

	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	1			1		
Recommendation 2	1			1		
Recommendation 3	1			1		
Recommendation 4	2	1	1			
Recommendation 5	2	1		1		
Recommendation 6	2	2				
Recommendation 7	1			1		
Recommendation 8	3		1	2		
Recommendation 9	2		1	1		
Recommendation 10	1			1		
Recommendation 11	2			2		
Recommendation 12	1			1		
<b>Total</b>	<b>19</b>	<b>4</b>	<b>3</b>	<b>12</b>	<b>0</b>	<b>0</b>
<b>%</b>	<b>100</b>	<b>21</b>	<b>16</b>	<b>63</b>	<b>0</b>	<b>0</b>

## Overall Conclusion

The Ministry of the Environment, Conservation and Parks, previously known as the Ministry of the Environment and Climate Change (Ministry), as of September 4, 2018, has implemented 21% of the actions we recommended in our 2016 Annual Report, all of which relate to practices at

the Ministry's regional offices. For example, the Ministry consulted with stakeholders to determine which areas of the streamlined assessment process require more guidance. The Ministry has also developed a risk analysis tool that regional staff can use to determine which streamlined assessments they should review. The Ministry also surveyed regional staff and incorporated their suggestions into updated internal procedures for reviewing

streamlined assessments and communicating with project owners.

The Ministry is in the process of implementing 16% of the actions we recommended in our audit. For example, it has begun analyzing and reviewing many of its guidance documents. In December 2017, it released guidance on incorporating climate change into environmental assessments, and it plans to release guidance on how to incorporate cumulative effects into comprehensive environmental assessments by March 2019. The Ministry has also improved its processes at its regional offices to better track the number of streamlined assessments. The Ministry is reviewing its compliance framework, including the appropriateness of penalties for project owners who do not submit the appropriate documentation, and is also reviewing the use of independent bodies in other jurisdictions, which will both be completed by December 2018.

Little or no progress has been made regarding 63% of the actions we recommended in our report. For example, we found that the time to complete the Ministry's reviews of bump-ups has increased from 213 days at the time of our 2016 audit to 273 days when we did our follow-up, and the Ministry is unable to determine when timelines will start to decrease. Also, the Ministry has not clarified the legislative criteria with which the Minister makes decisions on bump-up requests or whether to refer a project for a public hearing. The Ministry has not begun reviewing the *Environmental Assessment Act* to ensure that projects with the potential for significant negative impacts are assessed regardless of whether they are public- or private-sector projects, or to clarify what kinds of government plans and programs must undergo an environmental assessment. The Ministry plans to continue to work with Class EA project owners regarding updating the criteria of their Class EA documents used to determine the thoroughness of assessment each project receives; however, the Ministry is unable to determine when such changes will be made. The Ministry also has not provided any guidance to streamlined assessment project owners regarding

conducting cumulative effects assessments, and has not published a database of all environmental assessments for the public to access. The Ministry indicated that it expects to complete various reviews by the end of 2018. However, the Ministry was not able to provide dates when the results of any of these reviews would actually be implemented. These will include:

- reviewing the criteria that determine the thoroughness of assessment required for regulated Environmental Assessments (EAs), as well as the criteria for determining the categorization for Class EA projects;
- developing various internal mechanisms and processes, including service standards for reviewing bump-up requests;
- completing a review of its compliance framework; and
- conducting a feasibility study for performance measures for the program.

During the course of our follow-up work, the Ministry also indicated that it plans to perform an analysis of staffing needs at its regional offices in May 2019. The status of actions taken on each of our recommendations is described in this report.

## Background

An environmental assessment is a planning and decision-making process that evaluates the potential environmental impacts of a proposed project or plan. This process is required under the *Environmental Assessment Act* (Act), primarily for public-sector projects and plans.

The intent of the Act is to establish a process that identifies and resolves potential environmental problems before actual environmental damage occurs. The Ministry of the Environment, Conservation and Parks (Ministry) is responsible for administering the Act.

The scope of environmental impacts under the Act is broad: in addition to the impact on

the natural environment, it includes human life, social, economic and cultural factors that influence a community.

The Act also allows for most environmental assessments to be streamlined—that is, subject to pre-set and less rigorous processes for projects considered to be routine and to have predictable and manageable environmental impacts. Three types of streamlined environmental assessment (EA) processes are outlined in regulations: transit, electricity projects and waste-management projects (these are known as regulated EAs). Eleven types of streamlined assessment processes (known as Class EAs) for groups or classes of projects such as municipal infrastructure projects, waterpower projects and public works projects, are outlined in documents prepared by government ministries, municipalities and not-for-profits representing groups that conduct certain projects on a regular basis. These Class EA documents are approved by the Ministry.

Overall, our 2016 audit found that Ontario's environmental assessment process needed to be modernized and aligned with best practices in Canada and internationally. Because the Act is 40 years old—and is, in fact, the oldest environmental assessment legislation in Canada—it fell short of achieving its intended purpose. For example:

- Ontario is the only Canadian jurisdiction in which environmental assessments are generally not required for private-sector projects. These projects—such as mining operations or chemical manufacturing facilities—proceed without an up-front evaluation of the environmental impacts of the project unless they either are required to undergo a federal environmental assessment or voluntarily agree to undergo a provincial environmental assessment.
- Environmental assessments were not completed for many significant government plans and programs. Although the Act applies to government proposals, plans and programs, only streamlined assessments had been

conducted, and only for forest-management plans. No other environmental assessments had been completed for any provincial government plan or program in the last two decades. This is because:

- The Act is not specific about the types of plans and programs that must be assessed. This means that determining whether a government plan—for example, the Province's Long-Term Energy Plan—requires an environmental assessment is open to interpretation by the provincial ministries and agencies that propose the plan.
- Other legislation undermines the role of environmental assessments by exempting certain plans and programs from requiring them. For example, the Climate Change Action Plan, transportation plans and the government's renewable energy program are exempt from requiring an environmental assessment.

Prior to passing the Act in 1976, the government emphasized the important role the public can play in identifying potential impacts, assessing their significance, and evaluating the advantages and disadvantages of a project or plan. However, the benefits of public input have not been realized. For example:

- Decisions regarding whether to grant public requests for more extensive consultation are at the Minister's discretion, with no clear criteria or an independent body to ensure objectivity. In the five-and-a-half years prior to our 2016 audit, the Minister denied all but one of the public requests to have 177 streamlined assessments bumped up to comprehensive assessments.
- The public was not informed about most projects. The majority of projects underwent the less rigorous streamlined environmental assessment process that included about 30 days of public consultation. The Ministry's website had only information about projects undergoing comprehensive environmental

assessments. Neither the project owners, referred to in the Act as proponents, nor the Ministry provided the public with information about streamlined assessments beyond this brief consultation period.

Neither the comprehensive nor the streamlined process was effectively or efficiently overseen by the Ministry. As a result, the public obtained minimal assurance that these processes were effective in preventing and/or mitigating the negative environmental impacts of projects.

Other significant observations included the following:

- The type of assessment required for a particular project was often not based on the project's potential environmental impact. For example, the basis for determining whether a comprehensive or a streamlined assessment was required for a particular project often depended on its size, scale and cost rather than its potential impact.
- The Ministry had no assurance that streamlined assessments were conducted properly because of its limited involvement. Many streamlined assessments were completed without the Ministry's knowledge—including, for example, 80% of those conducted by the Ministry of Transportation in the five years prior to our audit.
- Lengthy Ministry reviews of public requests to bump up streamlined assessments to comprehensive assessments caused unnecessary project delays. Multiple layers of reviews resulted in an average of seven months of delays, but did not substantively change the outcome of the review. Projects were delayed until all reviews were completed, which often resulted in financial and non-financial costs to project owners.
- Project owners were not required to consider the cumulative effects of other relevant activities, such as known future projects and those that were already occurring in the project area. This could result in projects going ahead

in areas that were already subject to significant environmental stresses.

We made 12 recommendations, consisting of 19 actions, to address our audit findings.

We received commitment from the Ministry that it would take action to address our recommendations.

## Status of Actions Taken on Recommendations

We conducted assurance work between March 29, 2018, and September 4, 2018. We obtained written representation from the Ministry of the Environment, Conservation and Parks that effective October 31, 2018, it has provided us with a complete update of the status of the recommendations we made in the original audit two years ago.

## Environmental Assessment Not Conducted for Many Private-Sector Projects in Ontario

### Recommendation 1

*The Ministry of the Environment and Climate Change should review and update the requirements in the Environmental Assessment Act to ensure that projects with the potential for significant negative impact are assessed, regardless of whether the project is initiated by the public or private sector.*

**Status: Little or no progress.**

### Details

We noted in our 2016 audit that Ontario's *Environmental Assessment Act* (Act) applies to all public-sector projects, but only to a small portion of private-sector projects. In Ontario, the only private-sector projects that require an environmental assessment are electricity, waste management, and large municipal infrastructure projects by private developers. Ontario is the only jurisdiction in Canada in which private-sector projects, such

as mining and chemical manufacturing, generally do not require a comprehensive environmental assessment. The Minister may designate a project to require an environmental assessment. However, since the Act came into force, of the 42 requests the Ministry had received to require an environmental assessment for private-sector projects not captured under the electricity or waste-management regulations, only seven had been granted.

Since our audit, the Ministry has not taken any steps to reform the Act. The Ministry informed us that it is waiting to review changes made by the federal government to a regulation under the *Canadian Environmental Assessment Act* that determines which projects must undergo a federal environmental assessment. The federal government began the review of the federal environmental assessment process in June 2016, and began the public consultation on regulations that determine what types of projects would require federal environmental assessments in February 2018. The federal government's new regulations are expected to be finalized in fall 2018, and the Ministry plans to report on lessons learned from the federal review by December 2018.

## Environmental Assessment Not Completed for Many Government Plans and Programs with Long-Term and Wide-Ranging Impacts

### Recommendation 2

*The Ministry of the Environment and Climate Change should review and clarify the intent of the Environmental Assessment Act (Act) regarding the types of government plans and programs that must undergo an environmental assessment.*

**Status: Little or no progress.**

#### Details

The Act applies not only to projects but also to plans and proposals related to public-sector activities. However, the Act is not specific on what types of plans or proposals must undergo an environmental

assessment. We noted in our 2016 audit that the only provincial plans to undergo assessments since the early 1990s were forest-management plans, which undergo streamlined assessments only. The International Association for Impact Assessment, the leading organization on best practices for environmental assessments, highlights the importance of assessments of plans with the potential to impact many people, such as transportation plans, expansion plans and energy plans.

At the time of our follow-up, the Ministry had not clarified which types of provincial government plans and programs must undergo an environmental assessment. The Ministry was waiting until the federal government completed its review of its environmental assessment process before considering long-term amendments to the provincial Act. The federal government proposed new legislation in February 2018. At the time of this follow-up, the Ministry had not determined when it would begin a review or reform of the provincial Act, although it noted that the Act was being considered for long-term improvements.

## Thoroughness of Environmental Assessment Not Based on Project's Environmental Risk

### Recommendation 3

*The Ministry of the Environment and Climate Change should review and revise its criteria for determining whether a comprehensive or streamlined environmental assessment is required to ensure that the thoroughness of assessment is commensurate with the project's risk and potential impact.*

**Status: Little or no progress.**

#### Details

During our 2016 audit, we noted that some of the criteria for determining whether a project would undergo a comprehensive or a streamlined assessment were based primarily on the size, scale and cost of the project. Other factors, such as level of public interest or concern, or the location of

a potential project, were not always considered. For example, a large landfill located in a remote and sparsely populated area that would therefore have little effect on human health would undergo a comprehensive assessment, but a small landfill in a heavily populated urban area would receive a streamlined assessment regardless of its potential for impact on the environment and human health.

In April 2018, the Ministry began reviewing the criteria for determining the thoroughness of assessment for the three regulated EAs that apply to electricity generation, waste management and public transit projects. The Ministry expects to complete its review by December 2018. At the time of our follow-up, the Ministry could not provide a time frame by which it expected to propose any potential changes.

Only minor changes have been made to Class EA criteria. Since our audit, the Ministry met four times between February 2017 and February 2018 with the Class EA document owners—including government ministries, municipalities and one not-for-profit organization—responsible for creating the Ministry-approved Class EA documents that outline the process for conducting streamlined assessments for projects ranging from municipal infrastructure to transportation to forest management. The Ministry requested that these Class EA document owners review their respective Class EA documents and identify potential project types that should require a more thorough or less thorough assessment based on their potential for negative environmental impacts. One Class EA was amended in October 2017 to include a new category for lower-risk projects, and two further Class EA document owners have submitted similar changes and are awaiting Ministry approval. However, the other project owners indicated that they did not believe changes to the criteria in their Class EA documents were necessary. The Ministry explained that it will work with project owners to amend their Class EA documents during their five year review process, but that the ability to make final changes resides with the document owners. These five year reviews

will occur at different dates for each Class EA, with the earliest being December 2018 and the latest being January 2022.

## Ministry Has Little Information on the Volume or Quality of Streamlined Assessments

### Recommendation 4

*To ensure that the Ministry of the Environment and Climate Change (Ministry) has an opportunity to provide input on projects undergoing streamlined assessments, it should:*

- *clearly communicate publicly the requirement to notify the Ministry of the start and completion of environmental assessments;*

**Status: Fully implemented.**

### Details

In our 2016 audit, we found that more than 95% of projects assessed in Ontario undergo streamlined environmental assessments. The project owners are generally required to inform the Ministry when starting and when completing their streamlined assessments, but we found that the Ministry was not aware of all projects. For example, the Ministry was aware of only 20% of the streamlined environmental assessments the Ministry of Transportation had completed from 2010 to 2015, and only 6% of the streamlined assessments Infrastructure Ontario had completed in that time frame.

In March 2017, the Ministry reminded Class EA document owners of their responsibility to inform regional offices of streamlined assessments. Then, by comparing the number of projects reported in an EA document owner's annual report to the assessment notices it received from the project owner during the year, the Ministry determined in June 2017 that one of the Class EA document owners had not reported all streamlined assessments it conducted in 2016. The Ministry informed us that it has conducted this exercise for five Class EA document holders so far, and plans to do so on all future annual reports received.

In May 2018, the Ministry updated its internal practices to begin tracking streamlined assessment notices, and plans to begin comparing this data to that in the annual reports submitted to the Ministry by the other Class EA project owners. By conducting this analysis, the Ministry will be able to identify projects that the owner had omitted from its annual report, as well as projects about which the project owner had not notified the appropriate regional office, and follow up on them, as they did with the one project owner in June 2017. The Ministry anticipates using the new internal tracking system to compare with Class EA document owners' annual reports in May 2019.

Also in May 2018, the Ministry implemented a new notification system with additional requirements for project owners to submit a standardized project information form through the Ministry's website. The Ministry also created regional email addresses for project owners to send their project information forms.

- *assess the appropriateness of penalties for project owners, particularly for municipalities or private-sector project owners, that do not adequately inform the Ministry at all required stages of an environmental assessment.*

**Status: In the process of being implemented by December 2018.**

#### Details

Our 2016 audit noted that if the Ministry did not know when streamlined assessments were occurring, it could not ensure that they were being completed correctly. We noted an example where the Ministry became aware of a road-widening project only after a Conservation Authority submitted a bump-up request. After becoming involved, the Ministry required the project owner to conduct a wildlife road-crossing safety plan, monitor for species-at-risk, and minimize impacts to sensitive areas by consulting with the Ministry of Natural Resources. Without the bump-up request, the Ministry would not have known about the project or been able to provide input for further studies.

The Ministry plans to conduct an analysis on the appropriateness of penalties for project owners that do not inform it at required stages of an environmental assessment through its overall review of the framework for environmental assessments, which it expects to complete in December 2018. Until then, the Ministry plans to continue to use existing tools for outreach, education and compliance.

## Oversight of Streamlined Assessments Hampered by Lack of Resources and Direction

### Recommendation 5

*To ensure that the Ministry of the Environment and Climate Change provides useful feedback on streamlined environmental assessments for higher-risk projects, it should:*

- *develop risk-based criteria to be used to determine which streamlined environmental assessments should be reviewed;*

**Status: Fully implemented.**

#### Details

We found in our 2016 audit that, of the 1,200 streamlined assessments received in the preceding five years, the Ministry was unable to determine how many had been reviewed by staff in the five regional offices. We studied a sample of these streamlined assessments and noted that regional staff had reviewed about half of them. We also found that the Ministry head office had not provided any guidelines to regional staff to ensure that the projects being reviewed had the highest risks. Instead, staff indicated that they used their judgment to determine which projects should be reviewed. We noted inconsistencies across the types of projects reviewed at the regions. For example, one region noted that it had received internal direction not to review assessments for transportation projects, whereas another noted that it generally did not review any assessments regarding the right to use Crown land. Other regions did not specify

any particular types of projects to be excluded from reviews.

In October 2017, the Ministry updated its internal guidelines to include a requirement for staff to screen assessments based on the risks posed by the project. In March 2018, the Ministry provided staff with a screening tool and procedures to follow when screening the assessments. The tool is a scoring matrix that provides a consistent method for rating a project's potential risk. Staff began using these risk-screening tools in May 2018.

- *assess its current staffing levels at all regional offices and determine the amount of resources necessary to conduct required reviews.*

**Status: Little or no progress.**

#### Details

We found in our 2016 audit that staffing levels varied at the Ministry's five regional offices. Between one and three staff were responsible for reviewing environmental assessments, and their caseload of active projects ranged from three to 20 projects per person. The Ministry had not assessed the resources needed at its various regional offices.

The Ministry has not made any changes to staffing allocations since our audit. While the Ministry regularly conducts strategic and operational planning, in which it identifies key goals and outcomes for a given year, we noted that it had not yet assessed its regional resource needs based on the number of streamlined assessment notices received. At the time of our follow-up, regional offices continued to have between one and three staff each to review streamlined assessments, with a caseload of five to 35 active projects per person. During the course of our follow-up, the Ministry indicated that it would assess the staffing resources in May 2019.

## Streamlined Assessments Not Always Done Properly

### Recommendation 6

*To ensure that streamlined assessments are conducted properly, the Ministry of the Environment and Climate Change should:*

- *consult with stakeholders to determine which areas of the streamlined assessment process require further guidance to be provided;*

**Status: Fully implemented.**

#### Details

Our review of streamlined assessment files during our 2016 audit indicated that project owners did not always complete them properly. In three-quarters of the files we reviewed, regional staff identified deficiencies, such as inadequate consultation with the public and Indigenous communities, lack of details to support the project owner's assessment of the environmental impact, and additional measures needed to mitigate the impact on the environment. Our survey of municipalities found that half of the municipalities that responded did not have the internal expertise to conduct environmental assessments, and many noted that Ministry guidance would be helpful.

In March 2017, the Ministry began consultations and asked the various Class EA project owners for feedback regarding areas where they needed further guidance. Project owners requested further guidance regarding climate change, cumulative effects, Indigenous consultations, and the bump-up request process. Project owners also requested that the Ministry update its Code of Practice for completing Class EAs.

In July 2017, the Ministry updated the information it provides to project owners to indicate what they are required to provide to the Ministry following a bump-up request. In December 2017, the Ministry also published new guidance on its website on how to incorporate the impacts of climate change in streamlined assessments. It expected to finish reviewing all of its current guidance documents

by December 2018. However, the Ministry was not able to provide an estimated time for updating these documents after the review.

- *provide clear direction to staff at the regional offices regarding their responsibilities to provide advice to stakeholders.*

**Status: Fully implemented.**

#### Details

In our 2016 audit we found that regional staff often lacked direction from the Ministry's head office in Toronto on how to complete reviews and communicate with project owners.

In our follow-up, we found that the Ministry surveyed regional staff in March 2017 about what challenges regional staff faced, gaps in their internal manual that should be addressed, how to improve communication between the regional and headquarter offices, and what types of tools would be helpful. The Ministry incorporated recommendations from this survey into the October 2017 update of its internal manual. Some changes included creating a shared file for regional staff to use, a list of commonly asked questions to help ensure consistent responses, and guidance on the various reporting requirements of the different types of streamlined assessments.

## Lengthy Ministry Reviews of Bump-Up Requests Cause Unnecessary Project Delays

### Recommendation 7

*The Ministry of the Environment and Climate Change should improve the timeliness of its process for reviewing bump-up requests to ensure that its review does not cause unnecessary delays to projects.*

**Status: Little or no progress.**

#### Details

Members of the public can request the Minister bump up the level of assessment for a project from streamlined to comprehensive. We noted in our 2016 audit that these bump-up requests must be

approved or denied by the Minister and required multiple levels of review. Bump-up reviews were targeted to be completed within 45 to 66 days. However, we noted that the average time to complete a bump-up request review between April 2010 and January 2016 was 213 days, with only eight of 177 reviews completed within the target time frame. We found that the delays caused by the levels of review resulted in increased costs and inefficiencies for project owners.

Since our audit, the average time for the Ministry to review bump-up requests has increased. Between January 2016 and June 2018, the Ministry received 73 bump-up requests. It took an average of 274 days to review each request.

The Ministry however, has taken steps to improve the bump-up process. In June 2017, the Ministry began to host formal meetings between bump-up requesters and project owners to help the two parties communicate throughout the process. At the time of this follow-up, the Ministry had hosted seven such meetings. In April 2018, the Minister delegated the responsibility for approving or denying bump-up requests to a Director, but only for projects categorized as having the lowest likelihood of having negative effects; for example, installing traffic control signs or constructing bicycle lanes on an existing road.

In February 2018, the Ministry published draft guidance on the bump-up process for public consultation on the Environmental Registry to ensure that bump-up requesters provide adequate information in their initial requests. However, due to the complexity of responses received, the Ministry does not have an expected date to finalize this guidance. In July 2018, the Ministry amended the regulation regarding bump-up requests to require that requesters use standardized forms.

The Ministry planned to update its timeline targets for reviewing bump-up requests related to municipal Class EA projects in October 2018, and to identify further recommendations for improvement based on feedback from stakeholders in December 2018. The updated timeline targets will

be longer than the current targets. The Ministry is not yet able to determine when it will be able to achieve improved timelines for reviewing bump-up requests.

## Impacts of Projects Are Assessed in Isolation

### Recommendation 8

*To ensure that the cumulative effects of projects are assessed to prevent or minimize environmental damage, the Ministry of the Environment and Climate Change should finalize its guideline for assessing the cumulative effects of projects as soon as possible. The guideline should:*

- apply to both comprehensive and streamlined environmental assessments;
- identify specific factors that must be considered when assessing cumulative effects;

**Status:** In the process of being implemented by March 2019 for comprehensive assessments. Little or no progress for streamlined assessments.

### Details

Cumulative effects are the combined impact of past, present and planned future activities in an area, including both human-initiated activities and natural processes. We noted in our 2016 audit that while the Ministry encouraged project owners to consider cumulative effects, which may result in the identification of further mitigation measures, it was not a requirement in comprehensive assessments. Streamlined assessments are also not required to assess cumulative effects, other than projects related to provincial parks and activities on Crown land. Cumulative effects assessments are required in Alberta, British Columbia, Saskatchewan, and the Northwest and Yukon territories, as well as by the federal government. At the time of our audit, the Ministry indicated that it was committed to incorporating cumulative effects assessments into the environmental assessment process, and noted that it expected to complete draft guidance

in 2017 and post it to the Environmental Registry for comments.

We found in our follow-up that, in November 2017, the Ministry developed draft guidance for assessing cumulative effects in comprehensive assessments. The Ministry expected to post the guidance document, which indicates that specific factors should be considered, to the Environmental Registry by March 2019.

The Ministry has not taken any action to develop guidance for streamlined environmental assessments. As noted under the first action item of **Recommendation 6**, Class EA project owners requested that the Ministry provide further guidance on considering cumulative effects when they were consulted in spring 2017.

- include direction for Ministry staff to ensure they weigh the cumulative impact of projects in their decision-making process.

**Status:** Little or no progress.

### Details

We found in 2016 that Ministry staff did not always consider cumulative effects in their review of projects because they were not required to. For the 20 individual environmental assessments approved in the year prior to our audit, only six of the project owners assessed cumulative effects. We also reviewed a sample of Class EAs and did not find any evidence that cumulative effects were included in the regional staff's reviews of projects.

At the time of our follow-up, the Ministry had not yet established timelines for staff training regarding cumulative effects because the guidance was still in draft form. The Ministry informed us that it will develop a plan for staff training after it finalizes its cumulative effects draft guidelines in March 2019.

## No Clear Criteria or Independent Body to Ensure Decisions about Public Requests Are Made Objectively

### Recommendation 9

To ensure that decisions regarding environmental assessments are appropriate and transparent, the Ministry of the Environment and Climate Change should:

- clarify the criteria for ministerial decision-making regarding public requests for a comprehensive assessment or a public hearing;

**Status: Little or no progress.**

### Details

In Ontario, public requests to either bump up a streamlined assessment to a comprehensive assessment or to refer an environmental assessment to a public hearing are all decided by the Minister. In our 2016 audit, we noted that the Minister denied all but one bump-up request in a five-and-a-half year period prior to our audit, and all 190 hearing requests related to four projects. We noted that the Minister's decision-making process was not based on any objective criteria, but rather on subjective measures such as whether the request had "merit and substance," if it was "being pursued to delay the implementation of the project," or whether the hearing would "be a wise use of resources."

Since our audit, the Ministry has not developed any objective criteria to ensure that the Minister's decisions to deny or approve bump-up requests or refer a project to a public hearing are transparent. The Ministry has created guidance for citizens who wish to issue a bump-up request, and has updated the table given to project owners stating the type of information they need to provide that will be used in the Minister's decision-making process. We noted, however, the criteria used to make the decision has not changed since our 2016 audit. The Ministry has indicated that this would require legislative changes to the Act, and that only after completing a review of its environmental assess-

ment Codes of Practice in December 2018 will it be able to determine what changes are required.

- assess whether to appoint an independent body to provide objective advice on project-specific and systemic issues as needed, especially for projects considered to significantly impact the environment.

**Status: In the process of being implemented by December 2018.**

### Details

In our 2016 audit, we found that the Environmental Assessment Advisory Panel noted in its 2005 review of the environmental assessment program that it had concerns about the lack of an independent advisory body. From 1983 to 1995, an arms-length advisory body called the Environmental Assessment Advisory Committee provided independent advice to the Minister on contentious projects and, in general, on environmental assessment areas in need of reform. In 1996, this committee was disbanded, and the Environmental Assessment Board was created. In 2000, the board was renamed the Environment Review Tribunal and gained jurisdiction over other environmental acts. Its independent board chair was replaced with a provincial public servant. The Minister has only referred two projects since 1998 to the Environmental Review Tribunal, which mostly reviews other types of environmental approvals.

Since our audit, the Ministry has received over 630 requests for two environmental assessments to be referred to the Environmental Review Tribunal. However, neither project was referred to it.

In August 2018, the Ministry informed us that it planned, by December 2018, to analyze situations in other jurisdictions where independent bodies provided objective advice.

## Public Not Fully Informed about Projects

### Recommendation 10

*To enable the public to fully participate in the environmental assessment process, the Ministry of the Environment and Climate Change should update its website so that the public has access to all relevant information, including the status, for all environmental assessments.*

**Status: Little or no progress.**

### Details

At the time of our 2016 audit, we noted that the lack of a centralized online database of streamlined assessments made it difficult for the public to remain fully informed. Instead of an online system, the public was notified through direct mail and notices in local newspapers. Comprehensive assessment information on the Ministry website was also limited. If the public wished to see detailed information, they had to make a formal request for it at the Ministry's head office in Toronto. The Ministry's website did not have information on how to complete such requests.

After our audit, the Ministry consulted with the Class EA project owners in March 2017 on how best to inform the public about streamlined assessments. One project owner, the Ministry of Natural Resources and Forestry, committed to posting all notices of streamlined assessments on its public website by 2019. Since our audit, no other project owners have begun publishing streamlined assessment information on their websites.

The Ministry is still determining internally how best to show this information to the public. Through consultation, the Ministry identified that the Environmental Registry would be the best platform for an online database. The Environmental Registry is currently undergoing updates, which will "go live" in March 2019. The Ministry informed us that after these are initiated, it would then require more time to finalize its plan on how to include a database of environmental assessments onto the updated Environmental Registry.

## No Way of Knowing if Assessments Were Effective

### Recommendation 11

*To assess the effectiveness of environmental assessments, the Ministry of the Environment and Climate Change should ensure that it:*

- *receives and analyzes information about the actual impact of all assessed projects in the project stages that follow the environmental assessment;*
- *compares project impact information with the impacts described in the environmental assessment and follows up on any significant discrepancies.*

**Status: Little or no progress.**

### Details

When we did our audit in 2016, the Ministry did not have measures in place to assess whether or not environmental assessments had been successful in preventing or mitigating negative environmental impacts of projects. While the Ministry's environmental field inspectors were responsible for enforcing the Act, they did not regularly inspect project sites to determine that commitments made by project owners in environmental assessments were completed. In the five years leading up to our audit, the Ministry only inspected one project that had undergone a comprehensive assessment and none that had undergone a streamlined assessment.

We also found that comprehensive assessment project owners, who are all required to submit information on the impact of their projects on the environment, were not doing so consistently. For example, we found that the project owner of a landfill expansion approved in 2010 did not submit any annual reports for four years. When the reports were submitted, they showed that the project owner had only taken one-third of the required water samples.

Our follow-up found that, in fall 2017, the Ministry created a work plan to review in order to determine whether there is a gap in the Ministry's

compliance strategy. The Ministry plans to review the linkages between environmental assessments and environmental approvals (those required under the *Environmental Protection Act* if anyone wishes to discharge contaminants into the natural environment) to identify gaps between the processes and propose steps to address them. The Ministry plans to also examine its current compliance monitoring program and environmental assessment audit program to determine areas where improvements can be made. The Ministry anticipates that these reviews and the gap analysis, which it had not begun at the time of our follow-up, will be completed in December 2018. At the time of our follow-up, the Ministry could not provide a time frame by which it expects to implement changes to its processes to ensure that it receives appropriate information to determine project impacts.

### Assessments Are Costly and Time-Consuming but Ministry Lacks Performance Measures against Which to Evaluate Their Results

#### Recommendation 12

*To assess the effectiveness of environmental assessments, the Ministry of the Environment and Climate Change should develop measurable performance indicators against which it can evaluate its delivery of the environmental assessment program.*

**Status: Little or no progress.**

#### Details

To be completed, environmental assessments require significant resources in terms of time, money and effort. Despite this, our 2016 audit

found that the Ministry did not track and report on performance measures to ensure the process was efficient and resulted in improved environmental planning. In contrast, we found that British Columbia's Environmental Assessment Office tracked and reported on how many projects were completed within their legislated timeline, how many compliance inspections were completed, and the percentage of compliance reports that staff reviewed within six weeks. We also noted that the Canadian Environmental Assessment Agency tracked and reported on the percentage of environmental assessments completed within their legislated timelines, and the percentage of projects where measures were effective at mitigating environmental impacts.

Our follow-up found that, in fall 2017, the Ministry began reviewing potential performance measures, including reviewing case studies in other jurisdictions and determining its short-, medium- and long-term goals for the program. This review resulted in its developing priority performance measures for the program, which were circulated in spring 2018. The measures include looking at the percentage of projects that had deficiencies in the first submission, percentage of projects that included adequate consultation, percentage of projects completed in compliance with their commitments and conditions of approval, and timeliness of completing environmental assessment reviews. The Ministry expects to complete a feasibility analysis of these performance measures by December 2018, but could not provide us with a date by which it expects to implement them.