



Reflections

Section 51(1) of the *Environmental Bill of Rights* (EBR Act) states: “The Auditor General shall report annually to the Speaker of the Assembly with regard to the operation of this Act, and the Speaker shall lay the report before the Assembly as soon as reasonably possible.” In August 2019, I appointed Jerry DeMarco to my executive team as an Assistant Auditor General and the Commissioner of the Environment. Our environment team portfolio members consist of environmental experts and experienced auditors. We are pleased to release our **2020 Annual Report of Environmental Value-for-Money Audits and the Operation of the Environmental Bill of Rights as per the EBR Act**.

My Office became responsible for reporting annually on the operation of the EBR Act in April 2019. This includes reporting on the public’s use of its environmental rights, the government’s compliance with the EBR Act, including best practices, and whether the government’s environmentally significant decisions are consistent with the purposes of the EBR Act. After assuming this responsibility, it was surprising to observe the consistent and significant level of non-compliance with the EBR Act by the Ministry of the Environment, Conservation and Parks (Environment Ministry).

When it comes to the environment, most Ontarians would expect the Environment Ministry to lead by example in its compliance with the EBR Act. However, consistent with the findings of the former Office of the Environmental Commissioner of Ontario in previous years, we found that this is not the case. It is concerning for us to report on the Environment Ministry’s non-compliance given that it has had primary responsibility for protecting the environment, administering the EBR Act and maintaining Ontario’s Environmental Registry for over 25 years.

This year, our **Annual Report of Environmental Value-for-Money Audits and the Operation of the Environmental Bill of Rights** contains reports on the following three value-for-money audits, in addition to our legislatively mandated review of the operation of the EBR Act.

Conserving the Natural Environment with Protected Areas

The Environment Ministry and the Ministry of Natural Resources and Forestry (Natural Resources Ministry) share the responsibility for creating and managing protected areas in Ontario. These are places where nature is allowed to function relatively unaffected by human activities. In addition to conserving biodiversity, protected areas contribute to the economy, and protected areas like parks provide recreational opportunities to Ontarians, such as camping, hiking and canoeing. The COVID-19 pandemic has highlighted the importance of having these types of areas where people can enjoy nature.

Currently there are over 900 provincial parks, conservation reserves, wilderness areas and other protected areas in Ontario, 653 of which are managed by the province. These areas cover only 10.7% of Ontario as a whole and only 0.6% of southern Ontario.

Our audit found that the Environment Ministry and the Natural Resources Ministry need to do more to protect biodiversity in Ontario’s network of provincial parks, conservation reserves and other protected areas, especially in southern Ontario where biodiversity is most at risk. The Environment Ministry in particular does not know enough about the state of biodiversity within existing protected areas to demonstrate that it is compliant with its legislative responsibility to conserve biodiversity in

these areas. Protected areas are home to more than three-quarters of Ontario's species at risk, but the Environment Ministry has not collected sufficient information about species at risk, the extent and impact of invasive species, and the impact of hunting, fishing and trapping that may harm native species in provincial parks and conservation reserves. Also, many provincial park and conservation area management plans do not contain sufficient actions to protect biodiversity, such as actions that would prevent or mitigate harm from invasive species or address the potential impacts of hunting and fishing. This has primarily resulted from a lack of sufficient and a specific type of staff.

We also found that two wilderness areas were inappropriately open to commercial logging and another was open to claim staking for mining. The Natural Resources Ministry cancelled the planned logging and was taking action to cease the staking of claims for mining after we notified it of these situations.

Biodiversity loss has been ranked as a top-five risk—by likelihood and impact—to economies over the next decade. Unlike other provinces, Ontario does not have a long-term plan or target to expand its network of protected areas.

Reducing Greenhouse Gas Emissions from Energy Use in Buildings

Climate change impacts biodiversity and ecosystems, infrastructure, food and water supply, human health, tourism and the economy. Climate change has resulted from greenhouse gases released into the atmosphere through human activity. In 2018, Ontario established a target to reduce greenhouse gas emissions by 30% below 2005 levels by 2030. In Ontario, buildings are the third-largest source of emissions, after transportation and industry, contributing 40 megatonnes (Mt) or 24% of the provincial total. About 76% of these emissions result from the use of natural gas. Since 2005, natural gas use in the province overall has increased by 4%, but its use in buildings has increased by 15%.

This audit looked at how the Ministry of Municipal Affairs and Housing (Municipal Affairs Ministry, which administers the Ontario Building Code) was fulfilling its responsibility of overseeing programs to reduce energy use in buildings; how the Ontario Energy Board (OEB, which regulates natural gas utilities) was fulfilling its responsibility of promoting energy conservation and energy efficiency in accordance with provincial policy; and how the Ministry of Energy, Northern Development and Mines (Energy and Mines Ministry, which oversees the OEB) was fulfilling its responsibilities of overseeing two energy reporting programs and setting efficiency standards for appliances and products used in buildings.

Our audit concluded that although the ministries and the OEB are concerned in a general way with energy efficiency and reducing energy use, they do not focus specifically on reducing fossil fuel use or greenhouse gas emissions. As a result, they have not updated or put in place programs to support future reductions in building emissions. For instance, the Municipal Affairs Ministry did not adopt proposed changes to the Building Code's energy-efficiency requirements that could have helped to reduce energy use in buildings by 20%. It also does not assess compliance with the current Building Code's energy-efficiency requirements or assess whether past energy-efficiency updates have resulted in the intended energy-efficiency gains.

As well, the Energy and Mines Ministry has made little progress on building-related initiatives in the Made-in-Ontario Environment Plan (such as developing measures to encourage more use of renewable natural gas), and has not developed a new long-term energy plan to align with the province's target for reducing greenhouse gas emissions. Further, the OEB's delay in developing a new natural gas conservation framework to guide utilities may also result in lost opportunities to reduce building emissions. This will likely impact Ontario's ability to achieve the emissions reductions from natural gas conservation estimated in the Environment Plan. Natural gas conservation accounts for 18% (or 3.2 Mt) of the estimated reductions needed to achieve Ontario's 2030 target.

Setting Indicators and Targets, and Monitoring Ontario's Environment

Decision-makers and the public, who both bear responsibility for protecting the environment, need an adequate picture of the state of the environment. That is, they need to know whether the environment is improving or deteriorating, and what environmental problems and risks exist. This knowledge can be obtained only through thorough monitoring of Ontario's environment, natural resources, wildlife and agriculture. It is equally important that the knowledge gained is clearly reported to the public.

This audit focused on the three ministries that, in legislation, regulations, policies and programs, share the responsibility of protecting, conserving and sustaining Ontario's environment, natural resources and agriculture. These are the Environment Ministry, the Natural Resources Ministry, and the Ministry of Agriculture, Food and Rural Affairs (Agriculture Ministry).

Our audit found that the Environment Ministry had extensive air and water monitoring programs that respond to legislative and regulatory requirements, inter-jurisdictional agreements and other commitments. However, we found that the three ministries have not put into place effective systems and processes for setting targets for certain aspects of Ontario's environment, carrying out effective monitoring practices for the achievement of those targets, and ensuring the quality of environmental data and the sharing of that data.

Targets are not in place for: conserving water; decreasing hazardous and toxic substances in products; improving the water quality of lakes (other than Lake Simcoe and Lake Erie); protecting and recovering species at risk; protecting and restoring aquatic ecosystems; protecting the Niagara Escarpment; preventing and controlling the spread of invasive species; improving the health of Ontario's soil; and improving the health of Ontario's pollinators.

Our audit also noted that there is no long-term, broad-scale monitoring of Ontario's biodiversity. Without this, harmful impacts on species, habitats and ecosystems could be occurring without being detected. As well, monitoring protocols and programs have not been developed by the Environment Ministry for several endangered species. We found that monitoring protocols had not been developed and implemented for 12 (or 75%) of 16 species in our sample, despite this being identified as a high-priority action as long as 10 years ago. Further, the Environment Ministry does not have a monitoring program to systematically monitor native species, invasive species and other aspects of ecological integrity across its network of protected areas. About 160 (or 49%) of the 328 provincial parks that have management plans lack monitoring directions of any kind.

Insect pollination is needed for at least 30 economically important crops in Ontario, including many fruits and vegetables. While the Agriculture Ministry has a beehive inspection program that could be expanded, it does not monitor wild pollinator health. As well, little progress has been made developing Ontario-specific indicators and monitoring of soil health.

The Natural Resources Ministry released a data management policy in April 2019 requiring the preparation of data management plans to support data collection. However, we found that few of the three ministries' environment monitoring programs had plans.

Operation of the *Environmental Bill of Rights*

The *Environmental Bill of Rights* (EBR Act) enables Ontarians to participate in, and hold the government accountable for, important decisions that affect air, water, land, natural resources, plant and animal life, ecological systems and community well-being. The EBR Act specifies rights for the Ontario public and obligations for Ontario government ministries that, if used and followed, are to improve environmental protection.

From our work this year, we found that while some ministries took positive action to respond to recommendations in our 2019 report and made improvements in their compliance with certain criteria, ministries' compliance with the EBR Act worsened overall. When ministries do not carry out their EBR Act responsibilities in a way that is consistent with the EBR Act's purposes, the public loses the opportunity to meaningfully participate in the ministries' environmental decision-making, and the government does not benefit from receiving the public's feedback.

This year, we found that the Environment Ministry and some other ministries made decisions that were not consistent with the purposes of the EBR Act, were not transparent and risked undermining public confidence in the government's environmentally significant decisions. For example:

- In 2019, the Environment Ministry did not provide the public with sufficient information and time before significant amendments were made to the *Endangered Species Act, 2007* that reduced legal protection for species at risk and were inconsistent with the Ministry's objectives to improve outcomes for those species.
- In 2019, the Natural Resources Ministry and the Environment Ministry published six related proposals for significant changes to how Crown land is managed for commercial forestry, but did not clearly explain the impact of those proposals to Ontarians, which would be the loss of any statutory requirement to protect species at risk from commercial forestry operations on Crown land in an area covering about 40% of the province.
- In April 2020, the Environment Ministry used a regulation to suspend the public consultation requirements of the EBR Act from April 1 to June 15 to allow the government to act quickly to address issues arising from the COVID-19 pandemic. While this was understandable under the circumstances, only nine of 276 exempted proposals during that period were urgent and related to COVID-19.

As well, members of the public lost their right to seek leave to appeal 197 of 263 proposed permits and approvals posted variously by the Environment Ministry, the Natural Resources Ministry, the Municipal Affairs Ministry, and the Technical Standards and Safety Authority. These permits and approvals would allow certain activities to occur in communities across Ontario, such as allowing industrial plants to pollute the air and water, and allowing companies to pump or remove water from the ground, lakes and rivers.

- In July 2020, the Environment Ministry and the Municipal Affairs Ministry did not post planned changes to the *Environmental Assessment Act* and the *Planning Act* to the Environmental Registry for public comment, thus depriving Ontarians of their right to participate in environmentally significant decisions.

While there are recommendations for a number of ministries in these reports, most of them are directed to the Environment Ministry and the Natural Resources Ministry. Their responses, included in this report, indicate their intent to implement many of the recommendations. Our work on the operation of the EBR Act next year will provide an update on compliance with the Act. Follow-up work on the other three reports will be conducted and reported in 2022.

Sincerely



Bonnie Lysyk
Auditor General



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