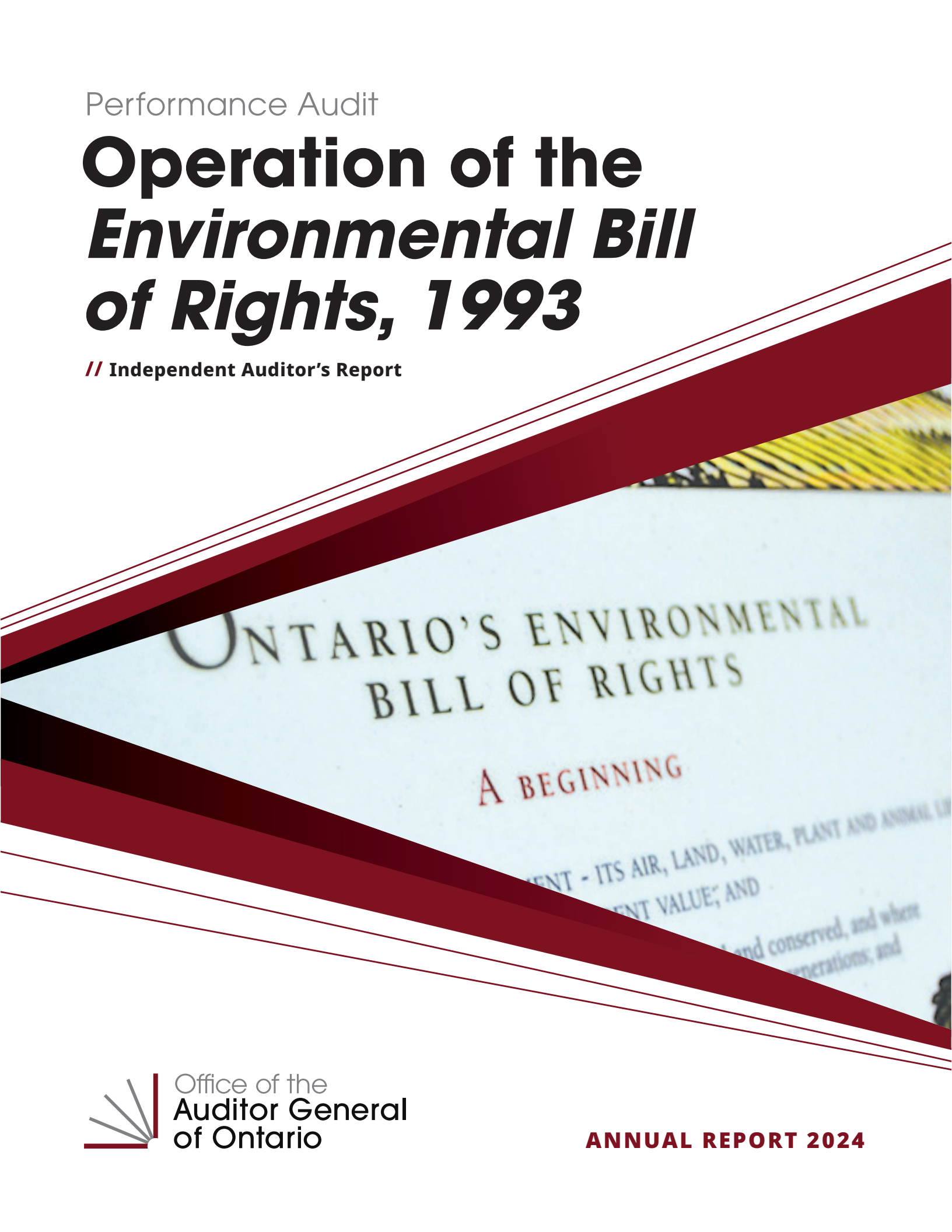


Performance Audit

Operation of the *Environmental Bill of Rights, 1993*

// Independent Auditor's Report

The background of the cover features a large, diagonal, maroon-colored graphic element that splits the page. Behind this graphic, a photograph of the cover of the 'Ontario's Environmental Bill of Rights' document is visible. The document cover has a light blue background with the title 'ONTARIO'S ENVIRONMENTAL BILL OF RIGHTS' in large, bold, black capital letters. Below the title, the subtitle 'A BEGINNING' is written in red capital letters. Further down, there is a line of text in black capital letters: 'MENT - ITS AIR, LAND, WATER, PLANT AND ANIMAL LI'. Below this, another line of text in black capital letters reads: 'ENT VALUE; AND'. At the bottom of the visible text on the document cover, there is a line of text in black capital letters: 'and conserved, and where' followed by 'generations, and'.

ONTARIO'S ENVIRONMENTAL
BILL OF RIGHTS

A BEGINNING

MENT - ITS AIR, LAND, WATER, PLANT AND ANIMAL LI
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1.0 Audit at a Glance

// Why We Did This Audit

- The Office of the Auditor General of Ontario is responsible for reporting annually on the operation of the *Environmental Bill of Rights, 1993* (EBR). This includes reporting on how well the government fulfills its obligations under the EBR.
- The EBR is intended to protect the environment by ensuring that Ontarians are informed about, and have an opportunity to participate in, the government's decisions that could significantly affect the environment, including those that impact air, land, water, plant life, animal life and ecological systems. The public's participation in the design and implementation of these initiatives can lead to better environmental outcomes.
- When the EBR operates effectively, it supports meaningful public participation in, and transparency and accountability for, the government's environmentally significant decisions.

// Our Conclusion

We found that, in 2023/24, the EBR was generally used to effectively notify and consult Ontarians about many environmentally significant proposals. Ministries used the Environmental Registry of Ontario to consult the public on 1,403 proposals for acts, regulations, policies and instruments (permits, licences, approvals, and other authorizations and orders). The public submitted more than 18,600 comments for ministries to consider. Ministries also generally responded reasonably to Ontarians' requests for reviews and investigations.

However, we found that ministries did not always meet their EBR obligations, and that several decisions were made in a way that goes against the EBR's purposes. For example, in two cases, the Province passed bills in the Legislature without the full benefits of public participation as required by the EBR. In a third, a ministry contravened EBR requirements based on direction from the Minister's Office to hold off on notifying applicants of a decision on an application for investigation. These actions not only undermine the public's ability to fully exercise their rights to participate in environmental decision-making, but also risk eroding the public's confidence that their EBR rights are being respected.

The ministries have or accepted all six recommendations.

// What We Found

Natural Resources Minister's Office Directed Staff to Not Meet EBR Deadline for an Application for Investigation

- The Ministry of Natural Resources (Natural Resources Ministry) was more than 10 months late in giving applicants notice of its decision on an EBR application. The applicants had asked the Ministry to investigate a coyote-hunting contest hosted by a store in Belleville in 2023.
- Natural Resources Ministry staff had followed the Ministry's internal procedures and delegated authority for making a decision, and were prepared to notify the applicants of the decision not to investigate by the EBR's legislated deadline (due 60 days after receiving the application). However, the Minister's Office directed Ministry staff to hold off on notifying the applicants of the decision, and only directed staff to release the notice 10 months later.

» **Recommendation 1**

Province Exempted Itself from Public Consultation When Passing the *Rebuilding Ontario Place Act, 2023*

- The Province passed the *Rebuilding Ontario Place Act, 2023* without consulting Ontarians under the EBR. The Act exempted the Ministry of Infrastructure from having to conduct this public consultation, even though the Ministry expected the Act to have environmentally significant implications.
- The Act exempts undertakings at Ontario Place from the *Environmental Assessment Act* and the *Ontario Heritage Act*.

» **Recommendation 2**

The Province Passed Two Bills Before EBR Consultation Periods Had Ended, and Without Ministries Considering the Public's Feedback

- The Province passed the *Official Plan Adjustments Act, 2023*, 11 days before the Ministry of Municipal Affairs and Housing's (Municipal Affairs Ministry's) public consultation on the Registry was scheduled to end, and without the Ministry having considered any of the comments submitted on the proposal. The Act reversed changes that the Province had previously made to 12 municipalities' official plans, which affect where housing and other development may occur.
- The Province passed changes to the *Niagara Escarpment Planning and Development Act* 13 days before the Natural Resources Ministry's public consultation on the

// What We Found

Registry was scheduled to end, and without the Ministry having considered any of the comments submitted on the proposal. The changes will allow the Minister to exempt certain classes of persons from needing a permit before undertaking development on the ecologically significant Niagara Escarpment.

- These ministries also inaccurately claimed to have considered all public comments in their decision-making.

» Recommendations 3 and 4

Even with Full Consultation Periods, Ministries Could Not Always Show They Considered the Public's Feedback When Making Decisions

- In addition to the cases mentioned above, we found cases in which the Natural Resources Ministry and the Ministry of Mines (Mining Ministry) could not show that they had met their EBR duty to consider the comments they received on certain environmentally significant proposals.

» Recommendation 5

Ontarians Not Consulted about the *Protecting Against Carbon Taxes Act, 2024* Due to Longstanding EBR Coverage Gap

- The *Protecting Against Carbon Taxes Act, 2024* has the potential to have significant environmental impacts. The Act places a restriction on establishing a carbon pricing program, such as through a cap and trade program or a carbon tax. Carbon pricing is a policy tool to lower carbon dioxide and other climate change-causing emissions. However, because the Ministry of Finance is not a prescribed ministry under the EBR, it did not have to consult Ontarians before the Province passed this Act.

Ministries Used Registry Notices to Promote Government Plans and Actions Rather than Strictly Inform the Public

- We found that some ministries used self-congratulatory and promotional wording in their proposal notices, seemingly trying to persuade rather than strictly inform the public about the proposals and their environmental implications.
- For example, a dozen proposal notices posted over the last two years on a variety of matters, including proposals posted that were not primarily related to housing development, such as proposals by the Natural Resources Ministry to change the

// What We Found

Ontario Wetland Evaluation System and the *Conservation Authorities Act*, all used the same boilerplate wording to promote the government's housing goals. The notices stated that "Ontario needs more housing, and we need it now. That's why the Ontario government is taking bold and transformative action to get 1.5 million homes built over the next 10 years." Five of these notices added: "These visionary changes will place Ontario at the forefront of housing policy in North America."

- Using self-congratulatory or promotional wording in proposal notices reduces the Registry to a platform for government promotion rather than an objective source of information for effective public notification and consultation, as was intended by the EBR.

» **Recommendation 6**

Some Proposal Notices Lacked Key Information for the Public to Fully Understand the Proposals

- 18% of the proposal notices we reviewed left out important information for the public to fully understand the proposals, including about their environmental implications.
- For example, the Ministry of Energy and Electrification (Energy Ministry) told the public that proposed amendments to the *Ontario Energy Board Act, 1998* that aimed to keep the upfront costs of new natural gas infrastructure lower "would have no impacts on the environment." The Ministry did not explain that the proposed changes had the potential to increase greenhouse gas emissions by encouraging the continued construction of new natural gas infrastructure and continuing Ontario's reliance on fossil fuels, instead of shifting to electricity.
- In other examples, the Ministry of the Environment, Conservation and Parks (Environment Ministry) did not mention the potential negative impacts of proposed changes to environmental approvals requirements. The Mining Ministry reported that the changes to Ontario's mining framework would have no environmental impacts or that the impacts would be neutral, but was not transparent about the potential environmental risks.

Some Decision Notices Lacked Key Information about the Decisions or about How Public Comments Affected Decision-Making

- 13% of the decision notices we reviewed failed to explain whether, and how, public feedback on the proposal affected the decision, which the EBR requires.

// What We Found

- 30% of the instrument decision notices we reviewed did not include copies of, or links to, the final issued instrument. Seeing the final issued instrument is important for the public to fully understand the decision, and in some cases to exercise their EBR appeal rights.

Environment Ministry's Statement of Environmental Values Does Not Reflect the Ministry's Current Name, Mandate or Government Priorities

- The content of the Environment Ministry's Statement of Environmental Values (SEV) was last updated in 2008 and does not reflect the Ministry's current name, mandate or government priorities. Consequently, when the Ministry considers its SEV when making decisions, it may not be considering its current mandate or balancing all relevant values and priorities, such as climate change.

Environment Ministry Is Still Doing Little to Educate the Public About the EBR Even Though It Has a Legal Obligation to Do So

- The Environment Ministry has been responsible for providing educational programs to the public about the EBR since 2019. The Ministry drafted a plan in 2020 to educate the public, including the use of social media to raise public awareness, incorporating general information about the EBR into news releases, developing education materials such as presentations and videos, and conducting research to gauge public awareness and understanding of the EBR. However, four years later, it has undertaken only the first phase of the plan by making a series of social media posts about the EBR.

The Environment and Natural Resources Ministries Made Little or No Progress Implementing Our Recommendations from 2022

- The Environment Ministry has made little progress implementing our recommended actions aimed at reducing the risk of birds being injured or killed by colliding into buildings.
- The Natural Resources Ministry will not take any action to close the gap in EBR coverage for Ontarians' requests for investigations related to the *Conservation Authorities Act*.



2.0 Background

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

The *Environmental Bill of Rights, 1993* (EBR) is a law that recognizes that, while the provincial government has the primary responsibility for protecting the natural environment, the people of Ontario have the right to participate in the government's decision-making about the environment, as well as the right to hold the government accountable for those decisions.

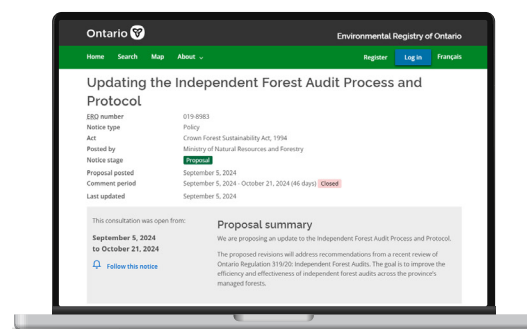
The EBR was created to help achieve the following purposes:

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

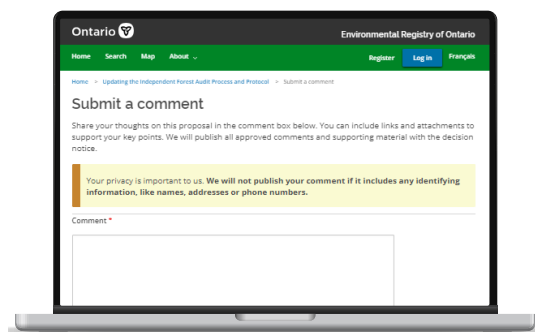
To that end, the EBR sets out legal requirements for prescribed Ontario government ministries (see [Appendix 1](#)), as well as legal rights for Ontarians, including:

Public notice and consultation through the Environmental Registry of Ontario:

- » The EBR establishes the Environmental Registry of Ontario (Registry) (ero.ontario.ca), a website that gives the public access to information about environmentally significant proposals and decisions made by government ministries, as well as other environmental matters.
- » Under the EBR, a proposal is environmentally significant when, if put in place, it could have a significant effect on the environment of Ontario, including the air, land, water, plant life, animal life and ecological systems.



- » The EBR requires prescribed ministries to use the Registry to give public notice about proposed acts, regulations, policies and instruments (permits, licences, approvals, and other authorizations and orders) that are environmentally significant, and to give the public at least 30 days to comment on the proposal.



- » Under the EBR, the ministries must consider the public's comments before making a decision on the proposals and then give prompt notice of their decisions, including explaining whether, and how, public feedback affected the decision.

Statements of Environmental Values (SEV):

- » The EBR requires each prescribed ministry to develop and publish an SEV that explains how the ministry considers the purposes of the EBR when it makes decisions that may significantly affect the environment.
- » An SEV is meant to guide ministries in integrating environmental values with social, economic and scientific considerations in their decision-making process, which should lead to better outcomes for the environment. Under the EBR, the ministries must consider their SEVs when making environmentally significant decisions.

Applications for review:

- » The EBR gives residents of Ontario the right to submit applications to a prescribed ministry intended to protect the environment. Applicants may ask a ministry to review existing laws, policies, regulations or instruments, or review the need for new laws, policies or regulations.
- » A ministry must consider the request based on factors set out in the EBR and decide whether the public interest warrants the review, and then conduct the review if warranted.
- » The ministry must notify the applicants within 60 days whether it will undertake the requested review and, if it agrees to the review, it must complete the review "within a reasonable time" and give notice of its final decision within 30 days of completing the review.

Applications for investigation:

- » The EBR gives residents of Ontario the right to ask a ministry to investigate alleged contraventions of certain environmental laws, regulations and instruments.

- » A ministry must investigate all matters raised in an application for investigation to the extent that they consider necessary. A ministry does not need to investigate if they find that the application is frivolous or vexatious, the alleged contravention is not serious enough to warrant an investigation, or the alleged contravention is not likely to cause harm to the environment. The ministry also does not need to duplicate an ongoing or completed investigation.
- » If the ministry will not conduct the requested investigation, it must notify the applicants within 60 days. If the ministry accepts the application, it must complete the investigation within 120 days (or update the applicants on the expected time frame for completion), and then it must give notice of the final outcome within 30 days of completing the investigation.

Appeals:

- » The EBR gives residents of Ontario the right to seek leave, or permission, to appeal government decisions on certain instruments. An adjudicative body (in most cases, the Ontario Land Tribunal) decides whether to grant or deny leave to appeal. To be granted leave to appeal, the applicant must show that there is good reason to believe that the decision was not reasonable and that it could result in significant harm to the environment.

Lawsuits and whistleblower protection:

- » The EBR gives Ontario residents the right to sue for harm to the environment or a public resource.
- » The EBR protects employees who exercise their environmental rights, or who comply with or seek the enforcement of environmental laws, from employer reprisals.

The EBR applies only to ministries that are prescribed. See **Appendix 1** for a list of the prescribed ministries and their responsibilities. The EBR also applies only to regulations that are under a prescribed act and to prescribed instruments. See **Appendix 2** for a list of the prescribed acts, including which acts have instruments prescribed under them.

The Environment Ministry administers the EBR and its regulations. As administrator of the EBR, the Environment Ministry has additional duties beyond the general responsibilities of the other prescribed ministries (see **Section 5.7** for details).

2.2 Why the EBR Is Important for Ontarians

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

When members of the public take part in environmental decision-making, they can improve the quality of decisions, as well as the outcomes for the environment, by sharing different information, expertise and perspectives with decision-makers. Public participation can also lead to other benefits, including greater transparency for government decision-making, greater public awareness of issues and acceptance of decisions, and better implementation of decisions.

For the EBR to be effective, ministries must not only meet the Act's minimum requirements, but they must also act in the spirit of the EBR. When ministries do not meet their obligations under the EBR, or when ministries make decisions in a way that goes against the purposes of the EBR, members of the public cannot fully exercise their rights to participate in environmental decision-making. As Justice Corbett of the Divisional Court noted in 2019, "the EBR would be rendered largely nugatory if a government could ignore its requirements because the government has already made up its mind, prior to public participation, and will not listen to or consider public input in respect to its proposal."

Consulting the public before making decisions, and considering the public's feedback, can not only better inform and improve decisions, it can also save time and money. In some cases, a rush to pass or amend laws with little or no public consultation can result in inefficiencies and potential reversals.

For example, in 2022, the government, led by the Municipal Affairs Ministry, did not meaningfully consult the public about sweeping legislative and regulatory changes intended to increase Ontario's housing supply, including the removal of environmentally sensitive lands from the Greenbelt, a decision that was reversed 10 months later, through legislative changes to the *Greenbelt Act, 2005*. If there had been meaningful public consultation before these changes were made, the Ministry might have been able to avoid the costly impacts of the reversal.

Failures to consult under the EBR have also resulted in lawsuits that have required ministries to spend resources fighting them, including a 2018 lawsuit over the cancellation of the cap and trade program, and a 2020 lawsuit over the enactment of a bill to amend ministerial powers for zoning orders. In both cases, the courts found that the ministries had contravened the EBR.



3.0 Audit Objective and Scope

Our audit objective was to assess whether the Province of Ontario, including ministries prescribed under the EBR:

- » implemented the EBR effectively and in compliance with all requirements of the Act;
- » provided transparent and accountable environmental decision-making consistent with the purposes of the EBR; and
- » enabled the public to effectively exercise their rights under the EBR.

The EBR requires our Office to report annually on the operation of the EBR. This includes reporting on both the public's use of their EBR rights and the Province's implementation of its EBR responsibilities. Our audit scope focused on assessing whether prescribed ministries contributed to the effective operation of the Act, not only by meeting the minimum legal requirements of the EBR, but also by performing their duties and exercising their discretion in a way that is consistent with the EBR's purposes.

In past years, we assessed each prescribed ministry's individual compliance with the EBR. This year's audit took a different, more risk-based approach to assessing the Province's effectiveness in implementing the EBR.

Our audit scope for the 2023/24 reporting year (April 1, 2023–March 31, 2024) focused on those ministries that:

- » carry out a higher level of EBR responsibilities and activity;
- » have a greater potential environmental impact; and/or
- » have a history of poor EBR compliance.

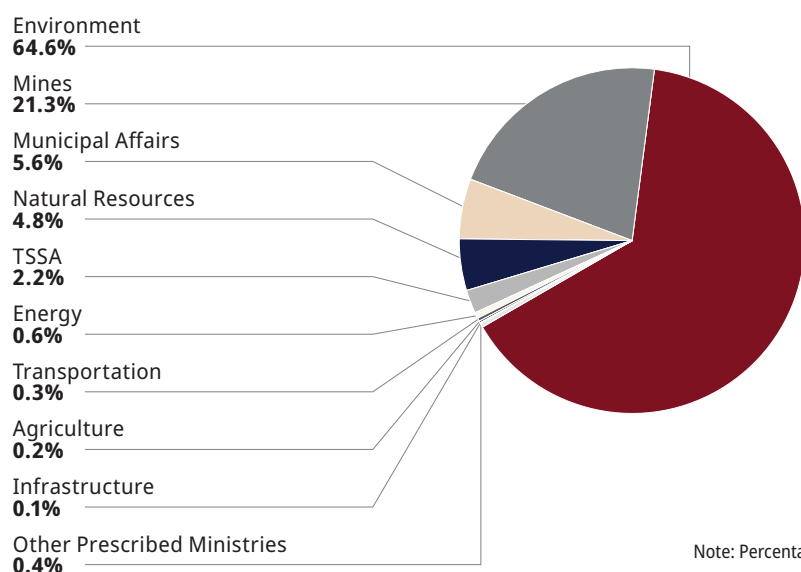
Using this approach, we identified nine auditees for this year:

1. Ministry of Agriculture, Food and Agribusiness (Agriculture Ministry)
2. Ministry of Energy and Electrification (Energy Ministry)
3. Ministry of the Environment, Conservation and Parks (Environment Ministry)
4. Ministry of Infrastructure (Infrastructure Ministry)
5. Ministry of Mines (Mining Ministry)
6. Ministry of Municipal Affairs and Housing (Municipal Affairs Ministry)
7. Ministry of Natural Resources (Natural Resources Ministry)
8. Ministry of Transportation (Transportation Ministry)
9. Technical Standards and Safety Authority (TSSA) (the TSSA has been delegated some of the key EBR responsibilities of the Ministry of Public and Business Service Delivery and Procurement, as they relate to liquid fuels under the *Technical Standards and Safety Act, 2000*)

These auditees collectively posted more than 99% of all notices on the Registry over the four years prior to this audit (see **Figure 1a**), and were the recipients of more than 90% of all recommendations made in past EBR reports since we began reporting on the operation of the EBR in 2019 (see **Figure 1b**).

Figure 1a: Share of Notices Posted on the Registry, by Ministry, 2019/20–2022/23

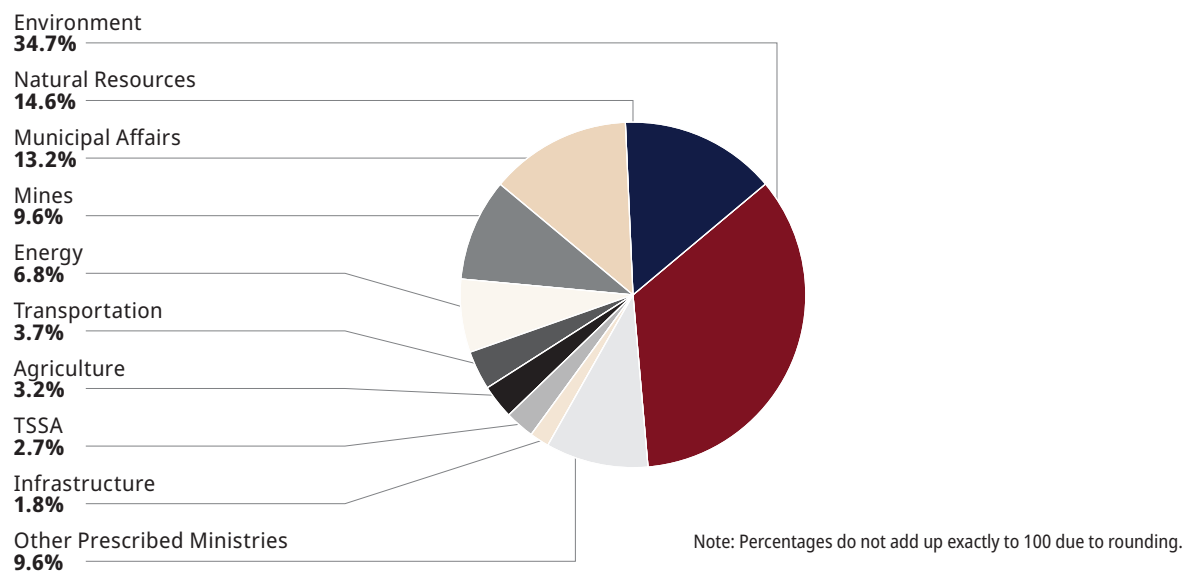
Source of data: Environmental Registry of Ontario data from the Ministry of the Environment, Conservation and Parks



Note: Percentages do not add up exactly to 100 due to rounding.

Figure 1b: Share of Auditor General of Ontario Recommendations Regarding the Operation of the EBR, by Ministry, 2018/19–2022/23

Prepared by the Office of the Auditor General of Ontario



We continue to monitor the other 10 prescribed ministries to identify any issues, and plan to include the other ministries in our audit scope on a rotating basis in future years.

Section 4 reports how often each of the EBR's tools were used in 2023/24 by ministries and members of the public. In **Section 5**, we present our audit findings about how effectively ministries applied the EBR's tools in 2023/24. In **Section 6**, we present our findings from our two- and five-year follow-ups with ministries to report on the status of actions they have taken to put into practice select recommendations from our past reports.

For more details, see our [Audit Criteria](#), [Audit Approach](#) and [Audit Opinion](#).



4.0 Use of the EBR’s Tools in 2023/24

4.1 Public Notice and Consultation

Between April 1, 2023, and March 31, 2024, Ontario ministries collectively used the Registry to consult the public under the EBR about 1,403 proposals for acts, regulations, policies and instruments that could have a significant effect on the environment. Ministries also gave notice of 1,267 decisions in 2023/24, including 1,264 regular decision notices and three decisions made relying on an exception under the EBR. **Figure 2** shows the total numbers and types of notices posted on the Registry in 2023/24 by all ministries. Members of the public submitted over 18,600 comments on proposals for the ministries to consider. For our assessment of the auditees’ performance against their EBR notice and consultation requirements, see **Sections 5.2, 5.3, 5.4 and 5.5.**

Figure 2: Numbers and Types of Notices Posted on the Registry in 2023/24

Source of data: Environmental Registry of Ontario data from the Ministry of the Environment, Conservation and Parks

Proposal notices		Decision notices	
Give notice of and invite public consultation on proposals for environmentally significant acts, regulations, policies and instruments (permits and approvals)		Describe decisions on environmentally significant acts, regulations, policies and instruments, and explain whether and how public consultation affected the decision	
Acts	14	Acts	13
Regulations	42	Regulations	23
Policies	23	Policies	28
Instruments	1,324	Instruments	1,200
Total	1,403	Total	1,264

Exception notices	
Required when ministries rely on certain exceptions under the EBR 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)	
Total	3

Appeal notices	
Posted on the Registry by the Environment Ministry to notify the public of direct appeals of instruments and of applications seeking leave to appeal instruments	
Direct appeals	0
Leave to appeal	4
Total	4

4.2 Statements of Environmental Values (SEVs)

For each of the 1,267 environmentally significant decisions subject to the EBR in 2023/24, each prescribed ministry needed to consider its SEV as part of its decision-making process. For our assessment of the auditees' SEV consideration, see **Section 5.6**.

4.3 Applications for Review and Investigation

In 2023/24, members of the public submitted two new applications for review; both were denied. In addition, two other applications for review that had been submitted in previous years were ongoing at the beginning of 2023/24; the Environment Ministry concluded one of these reviews (submitted in 2016), while the other (submitted in 2010) remained outstanding as of September 2024.

In addition, in 2023/24, members of the public submitted two new applications for investigation, each to multiple ministries. For the first application, the Environment Ministry agreed to undertake the requested investigation, and the Natural Resources and Municipal Affairs Ministries did not undertake it as the EBR did not apply. For the second, the Environment Ministry agreed to undertake the requested investigation, and the Natural Resources Ministry denied it. The Natural Resources

Ministry also denied one other ongoing application for investigation that had been submitted the previous year.

See **Appendix 3** for the list of all applications that were ongoing or concluded in 2023/24. For a summary of each application that was concluded in 2023/24, see **Appendix 4**. For details of our findings related to applications, see **Section 5.1**.

4.4 Appeals

Members of the public exercised their EBR rights by filing four applications for leave, or permission, to appeal decisions made by the Environment Ministry to issue certain instruments. The Ontario Land Tribunal, an independent adjudicative body, dismissed two of the applications without granting leave, finding in each case that the applicants had failed to meet the EBR test for leave to appeal. In another case, the Ministry revoked the approval that was being challenged, which ended the leave to appeal application but led to a new appeal being filed by the instrument-holder. The final leave to appeal application was withdrawn by the applicant. See **Appendix 5** for a list of leave to appeal applications and appeals filed in 2023/24.

4.5 Lawsuits and Whistleblower Protection

The Environment Ministry advised our Office that it did not receive notice of any actions for harm to a public resource in 2023/24.

The Ontario Labour Relations Board told our Office that no whistleblower complaints were filed under the EBR in 2023/24.



5.0 What We Found

5.1 Handling of Applications for Review and Investigation

When a ministry receives an application from the public requesting that it conduct a review or investigation, the ministry must follow the timelines set out in the EBR in responding to the application (see **Section 2.1**).

The EBR does not give ministries discretion to deviate from the EBR timelines. When ministries contravene the Act by failing to meet the timelines, it not only disrespects applicants' rights for timely resolution of their concerns, but also risks the public losing confidence in the EBR application process as a way to resolve environmental concerns.

In 2023/24, the Natural Resources Ministry missed the 60-day deadline for notifying applicants of its decision not to investigate in two applications, in one case by two weeks and in another case by almost a year (see **Section 5.1.1**).

The Ministry also missed the deadline to respond to two more applications submitted in 2023/24, by seven weeks and three weeks, respectively; however, as the Ministry responded to these applications after the end of our audit reporting period, we will assess their handling as part of our 2024/25 audit.

5.1.1 Natural Resources Minister's Office Directed Staff to Not Meet EBR Deadline for an Application for Investigation

The Natural Resources Ministry took almost a year (roughly 10 months past the statutory deadline) to advise the applicants in one case that it was denying their request for an investigation. We found that this significant delay was the result of the Minister's Office directing Ministry staff to hold off on sending the response.

The Natural Resources Ministry has a delegated authority agreement in place, through which the Minister has delegated his or her authority for responding to EBR applications for investigation to the Deputy Minister, Assistant Deputy Minister, and applicable directors, managers and other Ministry staff. The delegated authority agreement states that “a person to whom authority is delegated does not need to obtain the minister’s concurrence before exercising a delegated power.” We found that this delegation of authority was not being followed, which led to the Ministry’s failure to meet the EBR application timeline of 60 days.

On March 1, 2023, the Natural Resources Ministry received an application asking it to investigate a coyote-hunting contest hosted by a store in Belleville, Ontario. The contest offered participants a chance to win cash and other prizes for hunted coyotes that they brought into the store. The applicants alleged that the contest contravened the *Fish and Wildlife Conservation Act, 1997*, which prohibits a person from inducing another person to hunt for gain, or from paying a bounty for hunting, except with Ministry authorization. For more details about this application and the Ministry’s decision, see **Appendix 4**.

Upon receiving the application, Ministry staff followed the appropriate steps based on the Ministry’s internal procedures. A three-director panel assessed the application and found that the contest was not likely to cause harm to the environment. Based on this assessment, the designated lead director decided that an investigation was not needed.

Program staff then prepared a Deputy Minister Information Briefing Note for the Deputy Minister’s awareness and confirmation. The briefing note showed the designated lead director’s decision not to investigate and clearly highlighted the statutory deadline for responding to the applicants. The Deputy Minister approved the briefing note before the EBR deadline to notify the applicants.

According to the delegated authority and the Ministry’s internal procedure, this should have been the final step before sending the decision notice to the applicants. However, in this case, the Deputy Minister’s office shared the briefing note with the Minister’s Office to obtain its “endorsement” to proceed. The Minister’s Office then directed Ministry staff not to release the notice of the decision to the applicants, instead directing that it be put on hold.

Ministry documents indicate that Ministry staff raised the application’s EBR deadline with the Minister’s Office, with a few exceptions, on a weekly basis between May 2023 and February 2024. However, the Minister’s Office did not give direction to release the decision until more than 10 months after the EBR’s legislated deadline. No one in the Ministry that we spoke with knew why the Minister’s Office had given direction to hold off on notifying the applicants.

Recommendation 1

We recommend that the Ministry of Natural Resources follow its delegated authority for responding to applications submitted under the *Environmental Bill of Rights, 1993*.

For the auditee’s response, see **Recommendations and Auditee Responses**.

5.2 Consultation and Consideration of Public Input

The EBR requires prescribed ministries to:

- » use the Registry to give the public notice about proposed acts, regulations, policies and instruments (permits, licences, approvals, and other authorizations and orders) that are environmentally significant;
- » give the public at least 30 days to comment on proposals (and consider giving more time based on certain factors); and
- » consider the public's comments before making a decision.

Over the past decade, we have found cases almost every year where ministries did not meet their EBR requirements to consult the public. In 2023/24, Ontarians were denied their EBR right to be consulted about three environmentally significant laws.

In one case, Ontarians were not consulted at all (see **Section 5.2.1**). In two other cases, ministries held incomplete consultation processes, starting the EBR consultation process on an environmentally significant proposal, but then making a decision on the proposal before the consultation period had ended (see **Sections 5.2.2** and **5.2.3**). In both cases, we found that the ministries did not consider the public's comments, even those submitted before the bills passed, before the decisions were made. The ministries also inaccurately claimed to have considered all public comments in their decision-making.

We found no incidents of this practice of incomplete consultation being used before 2021, but have found six cases over the past three reporting years, including the two cases this reporting year.

In several other cases this year, ministries consulted with the public, but could not show any evidence that they had considered the comments that they had received (see **Section 5.2.4**).

In addition, because the Ministry of Finance is not prescribed under the EBR, which is a longstanding gap in EBR coverage, the public was not consulted on one other environmentally significant law this year: the *Protecting Against Carbon Taxes Act, 2024* (see **Section 5.2.5**).

5.2.1 Province Exempted Itself from Public Consultation When Passing the *Rebuilding Ontario Place Act, 2023*

On December 5, 2023, the Province passed the *Rebuilding Ontario Place Act, 2023*, without first consulting Ontarians under the EBR, even though the Act is environmentally significant.

The Province exempted the *Rebuilding Ontario Place Act, 2023* from EBR consultation requirements. This meant that the Ministry of Infrastructure did not have to consult the public under the EBR or consider the public's feedback before the Act passed, even though an internal

Ministry document showed that the Ministry expected the Act to have environmentally significant implications.

The *Rebuilding Ontario Place Act, 2023*, which was included in Bill 154, the *New Deal for Toronto Act, 2023*, gives the Minister of Infrastructure order-making powers under the *Planning Act*, and states that the Minister's orders do not have to be consistent with policy statements or conform with any provincial plans. This means that the Minister could make decisions that go against policies that are intended to protect the natural environment, which would otherwise not be permitted.

The *Rebuilding Ontario Place Act, 2023* also exempts undertakings at Ontario Place, a park and entertainment/event venue in Toronto, from the *Environmental Assessment Act* and the *Ontario Heritage Act*. By exempting Ontario Place undertakings from the *Environmental Assessment Act*, the Province also removed the public's right to be consulted under that Act about redevelopment projects at Ontario Place.

The Ministry's rationale for the EBR exemption was that it did not have time to consult because the government had a tight timeline to have the Act in force by December 31 so it could meet lease obligations and critical project timelines of the Ontario Place redevelopment and avoid negative financial implications.

In the 30 years since the EBR has been in effect, this is only the second time that a government has passed legislation to exempt itself from the requirement to consult under the EBR. The first time was in 2020, when the government exempted itself from consulting on part of a bill that amended the *Environmental Assessment Act*. In that case, the Divisional Court ruled that exempting the bill from EBR consultation was legal. We found that the exemption, although legal, was still not consistent with the EBR's purposes, and we recommended that the responsible ministries avoid exempting future proposals from the EBR.

When ministries are developing bills to be introduced in the Legislature, they may build certain steps into the bill development process, such as policy analysis, legal review and developing a communication strategy. Building time for EBR consultation into the bill development process could avoid situations in the future where EBR consultation requirements cannot be met due to tight timelines.

Recommendation 2

We recommend that the Ministry of Infrastructure develop and implement processes to build sufficient time into its bill-development timelines to allow for full public consultation under the *Environmental Bill of Rights, 1993* on environmentally significant bills before they pass.

For the auditee's response, see [Recommendations and Auditee Responses](#).

5.2.2 Province Passed the *Official Plan Adjustments Act, 2023* Before the EBR Consultation Period Ended, Without Ministry Considering Public Comments

On November 16, 2023, the Municipal Affairs Ministry posted a proposal notice on the Registry for Bill 150, the *Planning Statute Law Amendment Act, 2023*, for a 30-day comment period ending December 16. Bill 150 enacted the *Official Plan Adjustments Act, 2023*, which reversed changes that the Province had previously made to 12 municipalities' official plans, and instead approved the official plans as they were originally adopted by the municipalities. The bill was environmentally significant as it reversed earlier urban boundary expansions. Urban boundaries affect where housing and other development may occur, such as by expanding into farmland or natural areas.

Bill 150 passed on December 5, 11 days before the public consultation period was scheduled to close. The Ministry updated the proposal notice on December 6 to say that Bill 150 had passed and invited the public to "consider submitting comments on other related postings and/or providing your comments directly to the Ministry." The comment function on the proposal notice for Bill 150 was removed on December 8.

The Ministry received 51 comments through the Registry as well as further comments submitted in other forums. Some commenters opposed the Province reversing its prior expansion of urban boundaries. Many commenters supported the proposal, with some noting that urban boundary decisions should be made by municipalities, and others stating a preference for reduced urban boundaries that support intensification over sprawl, which can result in the loss of farmland, wetlands, woodlots and greenspace. Some commenters provided comments specific to a particular official plan or property.

We noted that 12 (24%) of the 51 comments submitted through the Registry were submitted after December 5, the date that the bill passed. The Ministry posted a decision notice on the Registry on December 20, that stated: "Consideration was given to all comments received in developing and finalizing the legislation." However, comments submitted after December 5 could not have been considered by the Ministry in developing and finalizing the legislation.

Further, documents we reviewed showed that the Minister was not briefed on any comments on the proposal until after December 5, and so could not have considered any comments before the bill passed, including those submitted before December 5. The Ministry was not transparent about this in its decision notice.

In our 2022 report on the operation of the EBR, we recommended that when a bill that is subject to the EBR is introduced in the Legislature, ministers should formally notify the government House Leader (who sets the agenda in the Legislature) that the bill is subject to the EBR and must undergo full public consultation, including considering all received comments, before the bill passes.

At the time Bill 150 was moving through the Legislature, the Minister of Municipal Affairs and Housing was also the House Leader. Ministry documents showed that Ministry staff informed the Minister's Office, before Bill 150 was scheduled for third reading, that receiving third reading

before EBR consultation was complete would risk criticism that the government did not consult or consider public comments sufficiently before the bill passed. However, the House Leader, who was also the Minister of Municipal Affairs, scheduled the bill for third reading before the comment period was set to end on December 16.

The Ministry's actions run counter to statements made in the Legislature by the Municipal Affairs Minister and two other members of provincial parliament. On November 20, shortly after consultation began, these members promoted the EBR consultation on Bill 150, in one case referring to the 30-day consultation period as "a valuable window for public input and engagement in the legislative process" and stating that "this participatory approach exemplifies the province's commitment to transparency, comprehensiveness and the democratic shaping of policies that significantly impact the well-being and sustainability of our great province."

5.2.3 Province Passed Changes to *Niagara Escarpment Planning and Development Act* Before the EBR Consultation Period Ended, Without Ministry Considering Public Comments

On October 19, 2023, the Natural Resources Ministry posted a notice on the Registry for proposed changes to the *Niagara Escarpment Planning and Development Act* contained in Bill 139, the *Less Red Tape, More Common Sense Act, 2023*, for a 46-day consultation period ending on December 4. Among other things, the proposed changes would expand the Natural Resources Minister's regulation-making powers to allow exemptions for any class or classes of person from needing to obtain a permit before undertaking development on the Niagara Escarpment, a prominent forested ridge that is part of the UNESCO World Network of Biosphere Reserves.

Bill 139 passed on November 21, 13 days before the public consultation period closed. However, the Ministry did not update the proposal notice on or after November 21 to inform the public that the bill had passed, and the commenting function remained open until December 4, even though there was no longer an opportunity for commenters to inform decision-making on the bill.

Between October 19 and December 4, the Ministry received 18 comments. Some of the comments expressed concerns about the potential environmental impacts of the proposal. For example, some were concerned that the proposal would make it easier for developers to build on the Escarpment, overriding environmental protections and good planning. Others were concerned about giving the Minister unlimited discretion to grant exemptions.

When the Ministry posted a decision notice on December 21 to inform Ontarians that the bill had passed, it misreported the number and timing of the comments received:

- » The decision notice reported that 14 comments were submitted, but in fact 18 comments were submitted; and
- » The decision notice stated that all 14 comments were received between October 19 and November 21 (when the bill passed), but in fact nine (or half) of the 18 comments were

submitted after the bill had already passed. This included six comments that expressed concerns or requested more details about the proposed expansion of the Minister's regulation-making powers.

The Ministry's usual process for EBR consultation is for Ministry staff to review and analyze all comments, and to share their summary and analysis for decision-makers after the close of the comment period for consideration before a final decision is made. The wording of the decision notice implied that the Ministry had considered the comments that were submitted before November 21 in its decision-making. However, the documents we reviewed showed that the Ministry did not consider any of the public's comments until after the bill had already passed. All of the commenters had a right under the EBR for the Ministry to consider their feedback before making the decision to pass Bill 139.

The Ministry did not follow our recommendation made in 2022 (see **Section 5.2.2**) to notify the House Leader that this schedule in Bill 139 was subject to EBR public consultation requirements.

Recommendation 3

We recommend that the Ministry of Municipal Affairs and Housing and the Ministry of Natural Resources, when making a proposal for an environmentally significant act:

- take steps and make all possible efforts to post a proposal notice on the Environmental Registry for a minimum of 30 days for public consultation and to consider all comments received before making a decision on the proposal, as required by the *Environmental Bill of Rights, 1993* (EBR); and
- if, despite the ministry's efforts, the corresponding bill receives third reading in the Legislature before public consultation is complete, post a decision notice promptly after the decision was made that gives a transparent and accurate explanation of the consultation and decision-making timeline, the reason for the shortened consultation period, and the extent to which public comments were or were not considered in decision-making.

Recommendation 4

We recommend that the Ministry of the Environment, Conservation and Parks prepare and provide an information package for all members of provincial parliament that summarizes the public consultation requirements under the *Environmental Bill of Rights, 1993* (EBR) for acts, so that members of provincial parliament are made aware of a ministry's EBR obligations when an environmentally significant bill is introduced in the Legislature.

For the auditees' responses, see **Recommendations and Auditee Responses**.

5.2.4 Even with Full Consultation Periods, Ministries Could Not Always Show They Considered the Public's Feedback

Under the EBR, a ministry must take every reasonable step to ensure it considers all comments received on a proposal posted on the Registry when it makes a decision. By considering public feedback, ministries can gain a better understanding of the costs, benefits and impacts of the proposals from commenters with different knowledge, experience and perspectives, as well as ideas for other, potentially more effective, approaches to achieve the government's policy aims. This can lead to better decision-making and greater public acceptance of the government's decisions. Further, when members of the public take the time to comment on a proposal, they expect and deserve that the ministry will give their thoughts, suggestions and expertise due consideration before making a decision. This is each Ontarian's right under the EBR.

As noted in **Sections 5.2.2** and **5.2.3**, we found two cases this year where the Municipal Affairs and Natural Resources Ministries did not meet the EBR requirement to consider the public's comments before making environmentally significant decisions.

In addition, we found other cases in which ministries could not give us any documentation to show that they had met their EBR duty to consider the comments received. Without documentation, our Office has no way to determine whether ministries met this obligation. In particular:

- » The Natural Resources Ministry received 47 comments submitted through the Registry, as well as comments submitted through the *Aggregate Resources Act* consultation process, on an approval to change the site plan for a quarry in the County of Simcoe. The Ministry stated that all comments received on the application had been addressed. However, the Ministry had no documents showing that it had reviewed or considered the comments received through the Registry.
- » For two decisions by the Mining Ministry to issue mineral exploration permits under the *Mining Act*, Ministry staff could not provide any documentation to show that the Ministry had considered the comments when making the decisions to issue the permits. We made similar findings about the Ministry not documenting its consideration of comments in 2021 and 2022.

Recommendation 5

We recommend that the Ministries of Municipal Affairs, Natural Resources and Mines:

- update their internal processes so that the Ministries effectively manage and track all comments received through the Environmental Registry, by email and by mail; and
- consistently document their consideration of the comments in a transparent and accountable manner.

For the auditees' responses, see **Recommendations and Auditee Responses**.

5.2.5 Ontarians Were Not Consulted About the *Protecting Against Carbon Taxes Act, 2024* Due to Longstanding EBR Coverage Gap

In February 2024, the Province proposed a new law called the *Protecting Against Carbon Taxes Act, 2024*, which passed in May 2024. This Act requires that, before the government can introduce a carbon pricing program, such as through a cap and trade program or a carbon tax, it must hold a provincial referendum with more than 50 per cent of the votes cast by the public favouring the carbon pricing program.

This Act is environmentally significant because it places a restriction on establishing a carbon pricing program, which is a policy tool used to lower carbon dioxide and other climate change-causing emissions.

However, due to a longstanding gap in the EBR's coverage, the public was not consulted under the EBR about the *Protecting Against Carbon Taxes Act, 2024*. This is because the Ministry of Finance, which is responsible for this Act, is not prescribed under the EBR. Ministries that are not prescribed have no obligation to consult Ontarians on environmentally significant proposals for new acts or amendments to acts.

The Ministry of Finance was included among the 14 ministries initially prescribed under the EBR in 1994. However, in 1995 the Ministry of Finance was unprescribed so that it was no longer subject to any EBR requirements. The Finance Minister at the time believed that the original decision to prescribe the Ministry under the EBR was inappropriate, as most of the Ministry's activities related to matters of a financial and administrative nature, and it relied on input from other ministries when it considered matters of environmental significance.

In 1996, the then Environmental Commissioner of Ontario released a special report expressing concern about this change, and called for the Ministry of Finance to be re-prescribed under the EBR. The report argued that, even though the Ministry of Finance's responsibilities are mainly financial in nature, some of its decisions may have environmentally significant effects.

The Ministry of Finance leads the Province's fiscal and economic policies. This role can include making decisions that affect the environment, which, if the Ministry were prescribed, would be subject to EBR consultation requirements. For example, the Ministry sets the formulas used by the Municipal Property Assessment Corporation to assess the tax rate for managed forest properties, which can influence property owners' decisions about maintaining forests on their property.

The Ministry is also responsible for the *Assessment Act*, which can influence land-use decisions by, for example, including incentives for land owners in the Conservation Land Tax Incentive Program under the Act to protect provincially important natural areas, including the habitat of endangered species.

As long as the Ministry of Finance is not prescribed under the EBR, there is a risk that Ontarians will continue to miss out on the opportunity to participate in some of the government's environmentally significant decision-making. Requiring the Ministry of Finance to consult

the public when making environmentally significant decisions would help ensure greater accountability and transparency in the Ministry's decision-making.

We note that prescribing the Ministry of Finance would be unlikely to impose an overly onerous burden on the Ministry, as the EBR already includes exemptions for financial and budget proposals. Recognizing the budget's special status and the need to keep its details confidential before the budget release day, the EBR specifically exempts proposals that form part of, or would give effect to, budgets or economic statements from EBR consultation requirements. The EBR also exempts any proposals for policies, acts or regulations that are "predominantly financial or administrative in nature" from consultation requirements.

The Ministry of Finance not being prescribed is just one of several gaps in EBR coverage that we have identified over the last five years. For example, we found that environmentally significant decisions were made by the Ministry of the Attorney General (see our 2021 report on the operation of the EBR, Section 4.3) and the Ministry of Citizenship and Multiculturalism (see our 2023 report on the operation of the EBR, Section 12.1.1), and recommended that they become prescribed.

The EBR is silent on who is responsible for identifying the ministries and laws that should be prescribed. In 2020, we recommended that the Environment Ministry:

- » review all ministries and laws to identify those that are environmentally significant; and
- » take steps to have any outstanding ministries and laws prescribed.

In response, the Environment Ministry stated that individual ministries are responsible for determining whether they, or acts they administer, should be subject to the EBR. The Ministry noted that it works with partner ministries on an annual basis to identify and bring forward any changes needed to the regulations. The Ministry indicated that it would continue to provide advice to partner ministries about the requirements of the EBR to help them determine whether a ministry or acts they administer should be prescribed.

We continue to assert that the Environment Ministry should take the lead on identifying, and taking steps to prescribe, any ministries that make environmentally significant decisions and laws under which environmentally significant decisions are made, as it is necessary for the effective operation of the EBR and the Ministry is best suited to carry out this function.

5.3 Registry Proposal Notices

The EBR requires a proposal notice to include a brief description of the proposal and “any other information that the minister giving the notice considers appropriate.” For a proposal notice to be effective, it should give sufficient information about both the proposal itself and its expected environmental implications so that the public can offer informed comments. More informed comments can help ministries make better informed decisions, with better potential outcomes for the environment.

We reviewed a sample of proposal notices posted on the Registry in 2023/24, covering a range of proposals for acts, regulations, policies and instruments posted across all auditees. Of the proposal notices we reviewed, 18% lacked key information for the public to fully understand the proposals or provide informed comments. In particular, many of these notices provided insufficient information about the proposal's expected environmental implications, only mentioning the benefits of the proposal without the potential environmental impacts.

5.3.1 Ministries Used Registry Notices to Promote Government Plans and Actions Rather Than Strictly Inform the Public

Ministries post proposal notices on the Registry to explain to the public what is being proposed. To enable effective EBR public consultation, a proposal notice should transparently and objectively explain the proposal, and provide a balanced description of the proposal's potential benefits and impacts.

Wording that is self-congratulatory, or that emphasizes the positive impacts of a proposal while downplaying, understating or remaining silent on potential environmental impacts, risks reducing the Registry to a platform for promoting government rather than being an objective source of information on which to foster effective public consultation.

While it is appropriate to explain the policy context for a proposal, we have found in recent years that the wording in Registry proposal notices is promoting the proposals (and in some cases, other unrelated government actions), and seemingly trying to persuade, rather than strictly inform the public about the proposed changes and the potential benefits and impacts of what is being proposed.

For example, we identified a dozen proposal notices posted by the Municipal Affairs, Environment and Natural Resources Ministries over the past two years that used the same boilerplate wording to promote the government's housing goals:

“Everyone in Ontario should be able to find a home that is right for them. But too many people are struggling with the rising cost of living and with finding housing that meets their family's needs. ... Ontario needs more housing, and we need it now. That's why the Ontario government is taking bold and transformative action to get 1.5 million homes built over the next 10 years.”

These notices included proposals posted by the Natural Resources Ministry on updating the Ontario Wetland Evaluation System and amending regulations under the *Conservation Authorities Act*, which are intended to protect and manage natural heritage features and natural resources, not to address the need for more housing.

Five of the proposal notices posted by the Municipal Affairs Ministry included the additional statement that “These visionary changes will place Ontario at the forefront of housing policy in North America.”

We found other examples of notices posted in 2023/24 that included self-congratulatory and promotional language that is more fitting in a government news release than in a Registry notice. For example, the Municipal Affairs Ministry’s proposal notice for amendments to the *Planning Act* opened with “Ontario continues to take action to tackle the province’s housing supply crisis. We have already introduced a range of measures to increase housing supply and we can see their growing and positive impact.”

In another example, the Transportation Ministry’s proposal notice to amend the *Public Transportation and Highway Improvement Act* opened with:

“The Government of Ontario:

[i]s helping to get shovels in the ground sooner on new roads, highways and public transit to reduce gridlock, help ensure we have housing for a growing population and move the province’s economy forward[;]

[b]elieves in supporting workers, families and businesses with policies that keep costs down and make life easier and more convenient, including banning new tolls on public highways.”

Recommendation 6

We recommend that the Ministries of Natural Resources, the Environment, Conservation and Parks, Municipal Affairs and Housing, and Transportation, when posting proposal notices on the Environmental Registry of Ontario, give an accurate and balanced description of the benefits and environmental risks associated with the proposal, devoid of unnecessary promotional or self-congratulatory wording.

For the auditees’ responses, see [**Recommendations and Auditee Responses**](#).

5.3.2 Energy Ministry Did Not Explain the Potential Environmental Implications of a Proposal to Keep the Cost of New Natural Gas Infrastructure Lower

On February 22, 2024, the Energy Ministry posted a proposal notice seeking comments on proposed amendments to the *Ontario Energy Board Act, 1998*. One of the key amendments in Bill 165 (the *Keeping Energy Costs Down Act, 2024*) aimed to keep the cost of new natural gas infrastructure lower by effectively reversing a December 2023 Ontario Energy Board (OEB) decision.

While the notice was clear that the Ministry proposed to reverse the OEB decision, it did not explain the proposal's potential environmental impacts. The proposal notice simply stated: "The proposed legislative amendments and potential subsequent regulations in this posting would have no impacts on the environment." The notice gave no support for this conclusion.

The OEB's historical practice has been to spread the costs for installing natural gas infrastructure over 40 years. Given global efforts to shift away from fossil fuel sources such as natural gas, the OEB's December 2023 decision required that residential and small-volume customers pay the full costs of installing natural gas connections upfront.

Among other things, the *Keeping Energy Costs Down Act, 2024*, effectively reversed the OEB's decision by giving the Minister time-limited authority to set the maximum number of years over which to spread the costs of new natural gas connections. This new authority was added with the goal to "foster affordable communities," indicating that the Minister would use this power to require the OEB to continue to spread out the costs for new natural gas infrastructure over 40 years, so that the upfront costs would remain lower.

These changes have the potential to encourage the continued construction of new natural gas infrastructure in Ontario instead of shifting from the use of fossil fuels to electricity. A continued reliance on natural gas would result in increased greenhouse gas emissions.

While ministries may make trade-offs between socio-economic priorities and environmental benefits, they should be transparent with Ontarians about a proposal's implications and trade-offs. It is not transparent to say that these changes will bring costs down but will not have any impacts on the environment.

Further, the proposal notice failed to explain that these changes were found in Bill 165 (the *Keeping Energy Costs Down Act, 2024*), which was introduced in the Legislative Assembly on the same day that the Ministry posted the proposal notice. Naming and providing a link to the bill would have made it easier for Registry users to review the specific wording of the amendments. By providing insufficient information, the Ministry risked preventing the public from fully understanding the proposal and its impacts.

We have previously found cases, in 2019, 2022 and again in 2023, where the Energy Ministry did not provide sufficient information in some proposal notices. We continue to recommend that the Energy Ministry include in its proposal notices all relevant details necessary to enable Ontarians to understand and provide meaningful comments on the proposals, including descriptions of their environmental implications.

5.3.3 Environment Ministry Did Not Mention Potential Negative Impacts of Proposed Changes to Environmental Approvals Requirements

In August 2023, the Environment Ministry posted four related proposal notices, seeking input on transitioning more activities from the requirement to obtain an individual approval to, instead, being able to register under the Environmental Activity and Sector Registry (EASR or permit-by-rule) framework. The proposal notices included one for the overarching policy proposal and three for specific proposals to shift approval requirements for some stormwater management systems, water takings and waste transportation systems.

In all four notices, the Ministry clearly explained what it was proposing and clearly described the potential benefits of the proposed changes, including reducing burdens for businesses and speeding up timelines to get projects going. But the Ministry did not explain the potential negative implications of the proposed changes in any of the notices. While the Ministry has the power to make decisions that have environmental impacts, it should be transparent with the public about a proposal's implications and trade-offs.

For example, the Ministry did not inform the public that transferring approval of the proposed activities to the EASR framework would mean the public would lose the EBR right to be notified of and consulted about the approval of the activities. In some cases, the public would also lose the right to seek leave to appeal.

Further, because the EASR framework allows businesses to register and immediately begin operating without any upfront Ministry review of the project (such as a review of the specific proponent's compliance history or of site-specific issues), these proposed changes create a risk that an activity that causes harm to the environment might proceed even though it might not have been permitted to do so under the individual approval process.

More specifically, the Ministry did not describe the potential negative impacts of the proposal to expand the types of water takings that may be registered through EASR rather than through an individual permit.

The proposal included removing the current limit for EASR registration of 400,000 litres of water per day for temporary construction site dewatering. Excessive dewatering can have negative environmental impacts, including potential depletion of groundwater resources. The proposal notice stated that “Removing the volumetric limit is not expected to change the effect of this type of water taking on the environment,” but did not explain why this would be the case.

The notice also did not explain how the EASR process would address the cumulative environmental risks of multiple water takings in one area, nor the rationale or impact of removing requirements to notify the local conservation authority of water takings.

We have made similar findings about the Environment Ministry not providing sufficient information in proposal notices every year since 2019. We continue to recommend that the Environment Ministry include in its proposal notices all relevant details necessary to enable Ontarians to understand and provide meaningful comments on the proposals, including descriptions of their environmental implications.

5.3.4 Environment Ministry Did Not Explain the Potential Impacts of the Proposed Protections for the Endangered Black Ash Tree

In September 2023, the Environment Ministry posted a notice on the Registry proposing regulations under the *Endangered Species Act, 2007* that set out how species protections and habitat protections under the Act would apply for the black ash, an endangered tree species. Though the Ministry explained how these protections would apply for the black ash, and how an exception to allow forestry operations would apply, it did not clearly explain the risks to the endangered black ash, nor explain the potential environmental impacts of the proposed regulation.

The notice’s regulatory impact statement stated only that: “This proposal is expected to reduce burden that would otherwise arise if these regulations were not put in place. The proposed regulations are expected to result in cost and time savings for individuals, businesses and government.” While the Ministry highlighted the expected benefits of the proposal, it did not mention any potential implications of the proposed terms of the regulation that would limit protections for the black ash, including:

- » the species protections would not apply to a large portion of black ash’s range, and there could be potential impacts from threats in those unprotected areas; the notice only explained that the protections would be limited to the areas of Ontario that have already been severely impacted by the emerald ash borer, the black ash’s primary threat;
- » implications associated with the species protections only applying to “healthy” trees of a certain size;

- » the determination of individual tree health (and, as a result, species protection) would be left entirely up to “qualified professionals” (which could include unregulated professionals such as forest technicians, arborists, horticulturists, botanists and entomologists), without Ministry oversight (although the Ministry has provided guidance on how they are to make this determination, and written documentation of health determinations must be submitted to the Ministry); and
- » implications associated with habitat protection being limited to only a 30-metre radius around a tree eligible for protection.

Further, the proposal notice included incomplete information about the state of black ash in Ontario. It stated: “Black Ash is currently abundant in Ontario, with a provincial population estimate of approximately 83 million trees. However, most of the Ontario Black Ash range is not currently affected by [emerald ash borer].” The notice failed to mention that the Committee on the Status of Species at Risk in Ontario publicly reported in 2020 that analyses suggest that 53% of the Ontario range of black ash is susceptible to invasion by emerald ash borer.

The notice also did not mention that the International Union for Conservation of Nature deems black ash to be a critically endangered species globally, or mention that about 25% of its global range is in Ontario.

5.3.5 Mining Ministry Was Not Transparent About Environmental Risks From Changes to the Mining Framework

In March 2023, the Mining Ministry started consulting the public through a series of proposal notices on changes to Ontario’s regulatory framework for mineral exploration and development, including changes to both the *Mining Act* and its regulations to implement the *Building More Mines Act, 2023*.

For EBR consultation to be effective, proposal notices should present factual information, including a balanced account of both the benefits and potential negative impacts or risks of proceeding with the proposals. But, in both our 2023 and 2024 audits, the Ministry reported throughout the consultation on the *Building More Mines Act, 2023* proposal notices that the proposed changes would have no environmental impacts, or that the impacts would be neutral. We found that the Ministry was not transparent about the potential environmental risks of the mining proposals, which may have prevented the public from providing fully informed comments. (See Section 6.1 of our 2023 report on the operation of the EBR for our findings from last year.)

The Ministry’s proposals were aimed at creating a more flexible regulatory framework that relies on the technical expertise of industry professionals and reduces administrative burden for both industry and Ministry staff related to mine development. Together, the proposed changes to the Act and regulations would, among other things:

- » end the Ministry's technical review of draft mine closure plans and replace it with upfront certification by a "qualified person" (employed or hired by a mining company) that a closure plan complies with the regulatory requirements; and
- » change the closure plan rehabilitation requirements.

The three March 2023 proposal notices for amendments to the Act stated that the proposed changes would not have any impacts on the environment, but did not include an explanation for the public to understand how the Ministry reached this conclusion.

The Ministry also posted a proposal notice in March 2023 for the proposed regulatory changes to the mine closure plan requirements. The notice stated that the environmental implications of the proposed changes "should be neutral," and that the risks associated with the changes would be mitigated by the strengthening of provisions in the regulation. When the Ministry posted a second proposal notice in September 2023 to consult further on these proposed regulatory changes, it included the same wording.

However, we found no evidence that, when the Ministry posted the proposal notices in March 2023, it had conducted the analysis necessary to support its claims about the environmental implications of the proposals. The Ministry did not undertake an analysis until summer 2023, after it had told the public through the notices that the changes to the Act had no environmental implications and that the environmental implications of the regulatory changes would be neutral. Further, as part of the summer 2023 analysis, the Ministry found that its earlier statement that the implications of its proposal to allow qualified persons to certify alternative rehabilitation measures "should be neutral" was, in fact, inaccurate.

We had similar findings in 2022 and 2023 where the Mining Ministry did not provide sufficient information in some proposal notices.

Mining is an inherently environmentally significant activity. One of the key purposes of Ontario's regulatory framework for mining is to ensure that mining takes place in a way that reduces its impacts on public health and safety and the environment. We continue to recommend that the Mining Ministry include in its proposal notices all relevant details necessary to enable Ontarians to understand and provide meaningful comments on the proposals, including descriptions of their environmental implications.

5.3.6 Municipal Affairs Ministry Did Not Explain Environmental Implications of Exempting Certain Approvals From Having to Align With Provincial Plans or Policies

In April 2023, the Municipal Affairs Ministry posted a proposal notice on the Registry seeking the public's feedback on proposed changes to the *Planning Act* that would, among other things, give the Municipal Affairs Minister new authority related to Minister's zoning orders (MZOs).

In this notice, the Ministry proposed to give the Minister the authority to exempt certain subsequent planning approvals, which are required to establish land uses that have already been permitted by MZOs, from having to align with provincial plans or policies.

The Ministry outlined the potential benefits of the proposed amendments, explaining that they were intended to tackle the province's housing supply crisis, and would "make life easier for both renters and home buyers." However, the Ministry did not explain the potential environmental implications of the proposal.

In particular, the Ministry did not explain that allowing planning approvals (such as plans of subdivision, consents, and site plan controls) to be exempt from the requirement to align with provincial plans or policies means that these approvals could be issued even if they are inconsistent with the Province's natural heritage policies and other plans and policies aimed at protecting the environment.

We have made similar findings about the Municipal Affairs Ministry not providing sufficient information in proposal notices every year since 2019. We continue to recommend that the Municipal Affairs Ministry include in its proposal notices all relevant details necessary to enable Ontarians to understand and provide meaningful comments on the proposals, including descriptions of their environmental implications.

5.4 Registry Decision Notices

Ministries post decision notices on the Registry to tell the public when they have made a decision on an environmentally significant proposal. The EBR requires a decision notice to inform the public of the decision, explain the effect, if any, of public participation on decision-making on the proposal, and to include “any other information that the minister considers appropriate.”

5.4.1 Some Decision Notices Did Not Include the Issued Instrument, Limiting the Public’s Ability to Fully Understand the Decisions

For decision notices to be informative, the notices should not only clearly explain to the public what was decided and the effect of public participation on the decision, but also include a copy of, or link to, the final approved instrument.

We reviewed a sample of instrument decision notices posted by auditees on the Registry in 2023/24. We found that 30% of the decision notices that we reviewed did not include copies of, or links to, the final issued instrument. Of these, 71% were posted by the Natural Resources Ministry. In particular, we found that none of the Natural Resources Ministry’s decision notices for instruments issued under the *Aggregate Resources Act* that we reviewed included a copy of the final approved instrument (for example, a licence or site plan).

Failing to include a copy of, or link to, the final issued instrument in a decision notice limits the public’s right to be fully informed about a ministry’s decision, including the terms and conditions of the issued instrument.

Further, when ministries do not include a copy of, or link to, the issued instrument, Ontarians risk not having timely access to the information they need to decide if they wish to exercise their EBR right to seek leave to appeal or the time to prepare and file their application to appeal before the 15-day deadline.

Of the instrument decision notices in our sample that did not include a copy of, or link to, the issued instrument, 33% were subject to EBR leave to appeal rights. This includes 40% of the notices posted by the Natural Resources Ministry.

We have made similar findings related to the Natural Resources Ministry’s instrument notices every year since 2019. The Ministry has been telling our Office since 2019 that it is working towards a new system to provide online access to approved *Aggregate Resources Act* licences to enable the public to view the approvals. In the interim, Ministry instrument decision notices advise the public that they can obtain copies of instruments on request from the contact listed in the notice.

As we recommended in our 2021 report on the operation of the EBR, the Ministry could instead, in the interim, include copies of issued approvals as attachments to decision notices posted on the Registry. We continue to believe that the Ministry should include copies of issued instruments, which would be more helpful for the public.

5.4.2 Some Decision Notices Did Not Fully Explain How Public Comments Affected Decision-Making

Of the sample of decision notices for acts, regulations, policies and instruments we reviewed, 13% failed to describe the effects of public participation on the decision-making.

In particular, we found that the Natural Resources Ministry did not describe how public comments affected the decision in several decision notices, including two notices related to changes to the *Oil, Gas and Salt Resources Act*, and one notice related to a regulation under the *Conservation Authorities Act*. In all of these cases, the Ministry summarized the comments received, but did not describe the effects of consultation on the decision-making, such as whether the Ministry made changes as a result of the comments received and, if so, what and why.

In another four decision notices by the Natural Resources Ministry for changes to a licence or site plan for a pit or quarry, the Ministry listed the general topics that commenters were concerned about (for example, natural heritage features, hydrogeological impacts, noise and hours of operation), and stated that it had addressed the concerns by revising the site plan and providing additional information. But the notices did not explain what the revisions were, or what additional information was added. Combined with the Ministry's failure to include copies of the approved site plans (see **Section 5.4.1**), this incomplete explanation makes it more difficult for the public to fully understand the effects of public participation on the decision.

In two decision notices for mineral exploration permits, the Mining Ministry stated only that "Comments were received and resulted in additional terms and conditions being placed on the permit." The notices did not explain the nature of the comments. While the issued permits were included with the decision notices and listed the terms and conditions, the Ministry did not explain the effects of consultation or which additional terms and conditions resulted from the comments. On reviewing an internal Ministry document, we learned that the additional conditions added to one of the permits were related to concerns about noise and the location of exploration trails. Including this information in the decision notice would have given the public a more transparent account of the effects of public participation on the final decision.

Similarly, a third decision notice by the Mining Ministry for a mineral exploration permit stated only that "Comments received were considered in the decision." The Ministry did not describe the nature of the received comments, or explain if any changes were made as a result of the comments. This statement was not informative, and did not meet the requirements of the EBR.

In addition to these examples, see also the issues set out in **Sections 5.2.2** and **5.2.3** regarding a Municipal Affairs Ministry decision and a Natural Resources Ministry decision.

We have made similar findings about some decision notices posted by the Mining, Natural Resources and Municipal Affairs Ministries in previous years. As we have recommended in our past reports, we maintain that ministries should include, in every decision notice they post on the Registry, a complete and accurate description of the effects of public participation on the ministry's decision-making.

5.5 Keeping Notices Up to Date

The EBR requires prescribed ministries to give notice of their decisions about proposals “as soon as reasonably possible.” A best practice recommended by the former Environmental Commissioner of Ontario and adopted by most prescribed ministries is to post a decision notice within two weeks of a decision being made.

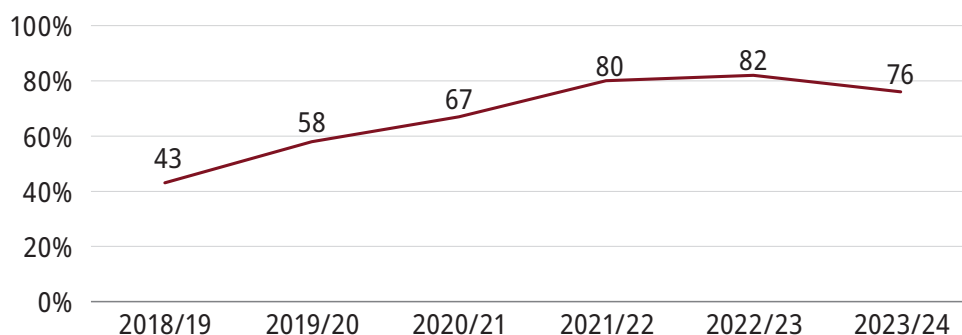
Further, for the Registry to be an effective and reliable source of information, where a proposal is under consideration for an extended period of time, ministries should also publish an update to inform the public of the status of the proposal.

5.5.1 Ministries Gave More Prompt Notice of Decisions, But Some Long Delays Persist

We found that, over the past five years, ministries have made progress in giving Ontarians prompt notice of their decisions. In 2023/24, ministries posted 76% of the decision notices we reviewed within two weeks of making a decision, up from 43% in 2018/19 (see **Figure 3**). However, this is a decrease from 2022/23, when ministries posted 82% of decision notices this promptly.

Figure 3: Percentage of Decision Notices Posted within Two Weeks of Decision*

Prepared by the Office of the Auditor General of Ontario



* Based on a sample of decision notices posted each reporting year, including a range of decisions for act, regulation, policy and instrument proposals.

While most delays were only a matter of days or weeks, some decision notices were extremely late. For example:

- » The Mining Ministry took almost four years to give notice that it had issued an order to a mining corporation requiring it to file a closure plan to rehabilitate a mine hazard.

- » The Environment Ministry took almost three years to give notice that it would not be implementing a guide related to its previously proposed process for requesting that a project be subject to an individual environmental assessment.
- » The Natural Resources Ministry took six months to give notice that it had issued a licence to extract aggregate from a pit in the Township of Laurentian Valley.

Long delays in posting decision notices weaken the public's EBR right to transparent and accountable decision-making. By not posting decision notices promptly, ministries undermine Ontarians' rights to be informed about what decision was made and how their and others' feedback affected the decision.

Further, for decisions to issue instruments (such as approvals or permits), a delay in posting a decision notice can delay the public's EBR right to seek to appeal the decision, which is triggered by the decision notice. This means a delay in posting the notice could, for example, allow a facility that has been issued an approval to emit air pollutants to operate for longer before an appeal may be granted. In a worst-case scenario, a delay could make an appeal application moot if environmental harm resulting from the approved activity has already occurred. In our sample of instrument decision notices this year, 15% were not posted promptly, and over half (55%) of these were subject to EBR leave to appeal rights.

For the second year in a row, we found that the Natural Resources Ministry was the slowest in giving notice of its decisions. In 2023/24, the Natural Resources Ministry posted 39% of the decision notices we reviewed more than two weeks after it made its decisions; this is an increase from 33% in 2022/23 and 26% in 2021/22.

We have repeatedly made similar findings for these ministries since 2019, including findings for the Natural Resources and Mining Ministries every year, and for the Environment Ministry in 2019, 2020 and 2021. We continue to recommend that ministries should have internal processes in place, and follow those processes, to post decision notices on the Registry within two weeks after they make a decision.

5.5.2 Ministries Left 43% More Outdated Notices on the Registry Than in 2022/23

To assess the reliability of information on the Registry, each year, our Office reviews the number of outdated notices (proposal notices that were posted more than two years earlier without either a decision notice or an update). We have found that ministries have significantly reduced the number of outdated notices on the Registry over the last 10 years, but that some issues remain.

At the end of the 2014/15 reporting year (March 31, 2015), ministries had more than 1,800 outdated notices on the Registry; some dating as far back as 1996. The notices had become outdated for a variety of reasons:

- » In many cases, ministries had made decisions on the proposals, but had neglected to post decision notices because they lacked effective processes for tracking the notices.
- » Other times, ministries had decided not to move forward with the proposals but failed to identify the need for decision notices.
- » In other cases, ministries were still considering the proposal, but had not posted an update to inform the public of this fact.

At the end of the 2023/24 reporting year, the number of outdated proposal notices on the Registry was just 43. While there is an overall positive trend, this is an increase from 2022/23, when there were only 30 outdated notices. Further, while the Environment Ministry has technically reduced the number of its outdated notices by publishing updates, some of those updates are not accurate or useful (see **Section 5.5.3**).

As in past years, the Natural Resources Ministry had more outdated notices than any other ministry (see **Figure 4**). We continue to recommend, as in past years, that all ministries bring and keep their proposal notices up to date.

Figure 4: Ministries with Outdated Notices as of March 31, 2024

Source of data: Environmental Registry of Ontario data from the Ministry of the Environment, Conservation and Parks

Ministry	# of Notices
Natural Resources	29
Municipal Affairs	6
Environment	3
Mining	3
Energy	1
Tourism*	1
Total	43

* The Ministry of Tourism, Culture and Gaming was not an auditee this reporting year, but was included in this table to provide a complete list of all outdated notices.

5.5.3 Environment Ministry's Updates to Older Notices Not Always Accurate

We found that the Environment Ministry is using boilerplate wording to update its older proposal notices. This wording is not always applicable to the notices being updated and is sometimes inaccurate. For example, the Ministry posted updates to many proposal notices for instruments (such as approvals for air, sewage and waste) stating that it was still considering comments

submitted to date, but the decision notices that followed stated that no comments were submitted.

In another example, in February 2024, the Ministry posted an update to a proposal notice that had been posted in October 2022, using its boilerplate wording to state “this file/application is still under active review. The ministry is reviewing the comments it has received to date.” However, the proposal had been decided 14 months earlier with the passage of the *More Homes Built Faster Act, 2022* in November 2022.

Similarly, in March 2024, the Ministry posted a decision notice for a proposed approval for a waste facility. The Ministry informed the public that the company had withdrawn its application in December 2021, and so no approval was issued. Not only did the Ministry take more than two years to give the public notice of the withdrawal, but the Ministry had updated the notice in September 2022 (after the application was withdrawn) with its boilerplate wording to say that the proposal was “still under active review” and that “the ministry is reviewing the comments it has received to date.” Finally, although the Ministry said that it was reviewing the comments received, it reported in the 2024 decision notice that no comments were submitted on the proposal.

Using this boilerplate wording risks confusing the public and diminishing their ability to rely on the Registry for accurate information. In our 2021 report on the operation of the EBR, we recommended that, when updating notices, the Environment Ministry post timely, accurate and informative updates about the current status of the proposals, including specific details about any ongoing work on that proposal and the Ministry’s expected timing for making a decision. We continue to support this recommendation.

5.6 Statements of Environmental Values (SEVs)

Under the EBR, each prescribed ministry must develop and publish a Statement of Environmental Values (SEV) that explains how the ministry considers the purposes of the EBR when it makes decisions that may significantly affect the environment. An SEV is meant to guide ministries in integrating environmental values with social, economic and scientific considerations as part of the decision-making process, which should lead to better decisions and outcomes for the environment.

The EBR states that ministries must consider their SEVs whenever they make environmentally significant decisions. To be transparent and accountable to the public, ministries should clearly document when and how they considered their SEVs during the decision-making process, while the decision-making is under way.

When a ministry does not consider its SEV, or cannot show that it did so through documentation, there is less transparency about how or if the ministry considered and prioritized conflicting values, including environmental values, when making the decision.

5.6.1 Ministries Could Not Always Show that They Considered Their SEVs Meaningfully, or at All, When Making Environmentally Significant Decisions

For SEV consideration to be effective, a ministry must undertake a genuine analysis of SEV principles and balancing of values relevant to the issue before it makes a decision. Considering how a decision met the ministry's SEV after the decision has already been made goes against the purposes of the EBR, and does not help inform decision-making or lead to better outcomes for the environment. Likewise, a hasty or superficial approach to SEV consideration during decision-making is unlikely to inform the decision in the manner intended by the EBR.

As in past years, we again found issues with some ministries' SEV consideration. In this year's audit, we requested proof of SEV consideration for a sample of decisions. For all of our requests, ministries were able to show documentation of their SEV consideration, or a reasonable explanation for not having documentation. However, we found that in 28% of cases, the ministries' documentation was either dated after their decision-making or did not reflect the analysis or judgment necessary to meaningfully inform decision-making.

In particular, the Environment, Natural Resources, Municipal Affairs and Mining Ministries all gave us documentation of SEV consideration for at least one of their decisions that was dated after their respective decisions were made. Notably, all four ministries have internal guidance for staff stating that they should consider their ministry's SEV, and document that consideration, before making a decision. Without SEV-consideration documentation that is dated before the corresponding decision, our Office has no way to verify whether the ministries met their obligation to consider their SEVs as part of their decision-making.

In addition to these timing issues, we also found that the Environment Ministry's SEV documentation for some decisions did not account for all relevant principles in their SEV, or did not reflect a balancing of principles. In particular:

- » In the Ministry's SEV consideration document for its decision on regulating black ash and its habitat under the *Endangered Species Act, 2007*, the Ministry did not explain how it followed a precautionary approach in its decision-making. The Ministry noted that it considered scientific advice provided in the recovery strategy for black ash, but did not explain how its approach is science based (for more details about this decision, see **Section 5.3.4**).
- » The Ministry's SEV consideration for its regulatory decision on the move to a project list approach for comprehensive environmental assessment under the *Environmental Assessment Act* similarly did not explain how the move to a project list approach, which will allow more projects to follow a streamlined environmental assessment instead of a more detailed comprehensive approach, follows a precautionary approach.
- » The Ministry's SEV consideration for an environmental compliance approval for sewage did not follow the Ministry's usual template, and contained only generic wording applicable to all sewage approvals, with no indication that the SEV principles were considered in the context of the specific approval.

Similarly, we found that the Mining Ministry's SEV consideration for regulatory amendments to implement the *Building More Mines Act, 2023* did not reflect the analysis necessary to meaningfully inform decision-making. The SEV consideration document stated that the impacts of the regulations were expected to be neutral, but did not explain how the new regulation would "balanc[e] environmental values and other relevant considerations by comparing environmental impacts with other impacts to communities, to Ontarians, and to future generations of Ontarians," or how the decision was evidence based, as outlined in its SEV (for more details about this decision, see **Section 5.3.5**).

We have made similar findings about each of these ministries in one or more years since 2020. As we have recommended in past years, we maintain that, whenever making a decision that might significantly affect the environment, prescribed ministries should always consider their SEVs in a manner that shows analysis and judgment in balancing the SEV's principles, and clearly document that consideration during the decision-making process.

5.6.2 Environment Ministry's SEV Does Not Reflect Ministry's Current Name, Mandate or Government Priorities

Once a newly prescribed ministry has finalized its SEV, there is no legal duty to periodically review the SEV; the EBR states only that the minister may amend the SEV from time to time. So that their SEVs remain relevant and consistent with the ministries' current mandates and government

priorities, some ministries have committed to periodically review their SEVs and update them as necessary. An up-to-date SEV can more meaningfully inform a ministry's decision-making.

For example, the government's November 2018 Made-in-Ontario Environment Plan included 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 action included updating SEVs "to reflect Ontario's environment plan."

As we have found in our previous five reports on the operation of the EBR, the Environment Ministry's SEV has not been updated since 2008, other than a minor update in 2015 to reflect the Ministry's name change at that time. Its SEV does not reflect its current name, mandate or government priorities. For example, in 2018, the Environment Ministry became responsible for administering the *Endangered Species Act, 2007* and for managing the province's parks and conservation reserves, but its SEV does not reflect these responsibilities. Its SEV also does not make any reference to climate change or the government's current priority to consider climate change in decision-making.

In December 2020, the Ministry posted a proposal on the Registry for an updated SEV, but as of July 2024, it had not finalized its new SEV. As a result, when the Ministry considers its SEV when making decisions, it may not be considering and balancing all relevant values and priorities.

As the Ministry responsible for administering the EBR and educating the public about their rights under it, the Environment Ministry is setting a poor example by failing to keep its SEV up to date.

The Ministry should review its SEV with public consultation through the Registry, and update it to reflect its current mandate and priorities, as we recommended in 2019, 2020 and 2021.

5.7 The Environment Ministry's Additional EBR Duties

The Environment Ministry is responsible for administering the EBR. The Ministry has some unique duties under the EBR in addition to the responsibilities shared with other prescribed ministries. In particular, the Ministry is responsible for:

- » providing educational programs to the public about the EBR;
- » operating the Registry platform; and
- » posting notices on the Registry when members of the public exercise their EBR right to submit applications for leave to appeal decisions about environmentally significant approvals, and when approval holders appeal ministry decisions about EBR-prescribed permits and approvals.

In this year's audit, we found ongoing issues with the Ministry's execution of its duties to provide educational programs to the public (**Section 5.7.1**), and to give prompt notice of leave to appeal applications and appeals (**Section 5.7.2**).

This year, we did not find any new issues with the operation of the Registry platform that risked preventing the public from being able to find information about environmentally significant proposals and decisions, or providing comments on proposals.

5.7.1 Environment Ministry Still Doing Little to Educate the Public About the EBR Even Though It Has a Legal Obligation to Do So

In 2019, the Environment Ministry was given the responsibility of educating the public about their rights under the EBR, including providing educational programs. Five years later, we found that the Ministry is still not fulfilling this responsibility.

In 2020, the Ministry drafted a communications plan to educate the public on the EBR. This plan focused on using the Ministry's social media, as well as that of other ministries or organizations, to help raise public awareness of the EBR and educate Ontarians on their rights and how they can participate in government decision-making. The plan also included actions to:

- » incorporate general information about the EBR into news releases;
- » develop education materials such as presentations and videos; and
- » conduct research through polls or surveys to gauge public awareness and understanding of the EBR.

Four years later, the Ministry has undertaken only the first phase of this plan by making a series of social media posts about the EBR on Facebook, LinkedIn and X, as well as providing basic information about the EBR on an Ontario.ca webpage and on the Registry.

In 2022, the Ministry told us that, before it could roll out the rest of its communications plan, it needed to conduct research to assess public awareness and understanding of the EBR, identify knowledge gaps and figure out where to target education campaigns. However, as of July 2024, the Ministry has not conducted that research, nor has the Ministry undertaken any other aspects of its EBR communications plan in 2023/24. Further, the Ministry does not have any specific funds budgeted for educational programs about the EBR.

By comparison, other ministries or bodies that are responsible for laws that give the public specific rights provide accessible information and education to the public. For example:

- » The Ministry of Labour, Immigration, Training and Skills Development offers public education about the *Employment Standards Act, 2000* and the *Occupational Health and Safety Act*, even though it has no legal requirement to do so. For example, the Ministry provides a comprehensive online guide, as well as a manual and several other tools, to inform the public of rules that employers must follow and to help the public understand their rights.
- » The Ontario Human Rights Commission holds training events, offers an eLearning program, posts webinars, and has published curricula for educators to teach students about human rights and the Ontario Human Rights Code.
- » The Information and Privacy Commissioner has published various educational products to inform Ontarians about their rights to request access to information and to promote compliance with Ontario's access and privacy laws, such as factsheets, videos, webinars, podcasts and resource guides for teachers.

The Environment Ministry continues to fail to provide educational programs about the EBR to the public, even though it has a legal obligation to do so. We have repeatedly recommended in past reports that the Ministry develop and follow a plan for offering educational programs about the EBR to a broad range of Ontarians. We continue to assert that the Environment Ministry should prioritize providing educational programs to the public to raise awareness and understanding of the EBR and its rights, including undertaking any research necessary for the Ministry to do so effectively.

5.7.2 Environment Ministry Continued Efforts to Post Appeal Notices More Promptly

When the Environment Ministry gives the public prompt notice that someone has challenged a ministry decision on an environmental approval, whether through the EBR's right to seek leave to appeal or a direct right of appeal under another act, it ensures that Ontarians can find out about

the leave applications and appeals in time to follow, or potentially participate in, the Ontario Land Tribunal's proceedings.

Any person seeking leave to appeal a ministry's decision under the EBR must send their application to the responsible tribunal, the ministry that issued the instrument and the instrument holder. To notify the public of the application, the person must also give notice to the Environment Ministry, which must place the notice on the Registry.

The former Office of the Environmental Commissioner of Ontario, which posted appeal notices on the Registry until that responsibility was transferred to the Environment Ministry in 2019, set a best practice of posting notice of appeals within five business days of receiving the appeal.

Since 2020, our Office has repeatedly found that the Environment Ministry has not given prompt notice of leave applications and appeals. The Ministry told us this is because its Environmental Bill of Rights Office is not always informed when leave applications and appeals are filed. In 2020, 2021 and 2022, we made recommendations aimed at ensuring the Ministry gives prompt notice to the public of leave applications and appeals, including, in 2021, that the Ministry set up effective processes for being informed of all new leave applications and appeals.

In 2024, the Environment Ministry did not give Ontarians prompt notice of two of the four leave applications that were filed, and did not give prompt notice of the single appeal until more than eight months after the appeal was filed.

However, building on work that began in 2023, the Environment Ministry told us in May 2024 that it is finalizing a new process so that staff in the Environmental Bill of Rights Office are informed promptly when leave applications and appeals are filed. If put in place, the process should result in Ontarians being given prompt notice.



6.0 Two- and Five-Year Follow-up on Annual Report Recommendations

Our Office's practice is to issue follow-up reports to assess progress ministries have made implementing the actions recommended in the reports we issued two years earlier. For any recommendations or parts of recommendations that were not fully implemented after two years, we follow up again five years after we made the recommendations.

Since we report annually on the operation of the EBR, our findings generally constitute our follow-up on past recommendations by providing an update on the status of a ministry's compliance with and implementation of the EBR. We also assess information about ministries' actions to implement those recommendations, such as the development of new policies or guidance intended to help ministries meet their EBR requirements. For recommendations that are not directly related to compliance with and implementation of the requirements of the EBR, we follow our practice of assessing the status of actions taken by ministries to implement those recommendations two years after the recommendations were published.

Most of the recommendations in our 2022 report related to compliance with and implementation of EBR requirements, and are followed up through our regular annual audit of the operation of the EBR. However, there were three recommendations in our 2022 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 three recommendations here.

Two recommendations in our 2019 report that did not relate directly to compliance with and implementation of the EBR remained outstanding or partially outstanding. We reported on the status of those recommendations in the follow-up sections of our 2021, 2022 and 2023 reports, respectively. Because they were not fully implemented at that time, we report on the status of those recommendations here as part of our five-year follow-up.

6.1 Two-Year Follow-up on Select 2022 Recommendations

6.1.1 Environment Ministry Made Little or No Progress Reducing the Risk of Birds Being Injured or Killed by Colliding into Buildings

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.

Status:  Little or no progress.

Details

In our follow-up, we found that the Ministry had made little progress on this recommendation. The Ministry explained that it had taken a “communicating for compliance” (education and outreach) approach to encourage building owners to put measures in place to reduce the risk of bird strikes. This included sending two building owners in Ottawa (KRP Properties and GWL Realty Advisors) bird-safe design guidelines and standards, and encouraging them to review information on the *Endangered Species Act, 2007*.

The Ministry told us that the federal government (Environment and Climate Change Canada) decided in 2022 that it would take the lead on the matter, as the Ministry’s compliance activities may duplicate the federal agency’s investigation and compliance work under the federal *Species at Risk Act*. However, Environment and Climate Change Canada’s compliance work relates to bird strikes at these two specific Ottawa District properties only, and does not reduce the risk of bird strikes across Ontario more broadly, particularly of birds that are not listed as species at risk.

A 2013 Ontario Court of Justice decision found that reflected light emitted from a building, which can result in bird strikes and deaths, is a contaminant. Discharging a contaminant that can or may result in an adverse effect is prohibited under the *Environmental Protection Act* without prior Ministry approval. Following this decision, in 2015, the Ministry proposed to exempt reflected light from the requirement to obtain such an approval (see Environmental Registry #012-3605).

Almost a decade later, the Ministry has still not made that regulatory change or posted a decision notice for its proposal on the Registry. The Ministry told us in June 2022 that it has limited resources and capacity, so it prioritizes issues that pose the most significant risk to the environment and public health of the people of Ontario.

Until the Ministry closes the regulatory gap created by the 2013 court decision, or requires all buildings in Ontario that reflect light to obtain an approval, it is not actively enforcing the *Environmental Protection Act* when bird injuries or deaths result from colliding with reflective buildings.

6.1.2 Natural Resources Ministry Will Not Close Gap in EBR Coverage for Investigations Related to the *Conservation Authorities Act*

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.

Status:  Will not be implemented.

Details

In our follow-up, the Natural Resources Ministry told us that it will not be taking steps to enable it to investigate alleged contraventions of the *Conservation Authorities Act*, the Act's regulations, or the approvals and permits issued under the Act. As a result, a gap remains for Ontarians who seek an investigation under the EBR of violations of the development permit regulations or permits issued under the Act. We stand by our recommendation for the Natural Resources Ministry to identify and take any steps necessary to close this gap.

The Natural Resources Minister has limited responsibility for administering the *Conservation Authorities Act*, with power to issue only select instruments under this Act. The Ministry does not have jurisdiction to enforce the Act's development permit regulations or the development permits themselves. Instead, enforcement is the responsibility of conservation authorities, who are not prescribed under the EBR.

In addition, a further gap that prevents EBR investigations under the *Conservation Authorities Act* is the fact that development permits are not prescribed under the EBR. This means that Ontarians do not have a right to ask for an investigation of a contravention of such a permit.

As far back as 1999, the former Environmental Commissioner of Ontario recommended that the Natural Resources Ministry consider options for closing the gap in EBR coverage of the *Conservation Authorities Act*.

Options to close the gap could include:

- delegating to conservation authorities the Natural Resources Minister’s EBR responsibilities for responding to applications for investigation of contraventions of the *Conservation Authorities Act*; and
- working with the Environment Ministry to have *Conservation Authorities Act* permits added to the list of prescribed instruments under the EBR.


In our follow-up, the Ministry stated that no further action is required to enable it to investigate alleged contraventions of the *Conservation Authorities Act* consistent with the EBR, even though the Ministry has denied EBR applications for investigation of alleged contraventions of this Act as far back as 1999 by asserting that it does not have the power to investigate.

We will continue to assess the Ministry’s handling of received applications, and we urge the Ministry to take steps so that Ontarians’ allegations of non-compliance with the *Conservation Authorities Act*, and its regulations and permits, can be investigated under the EBR.

6.1.3 Environment Ministry Is Reviewing the Effectiveness of Using Habitat Offsets to Mitigate Habitat Loss for Species at Risk, While Municipal Affairs Ministry Has Made Little or No Progress

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.

Status:  **Environment Ministry – In the process of being implemented.**

 **Municipal Affairs Ministry – Little or no progress.**

Details

In our follow-up, the Environment Ministry told us that it is inventorying and reviewing habitat offsets. It expects to finish the inventory by December 2024. The Ministry told us that, within budgetary and staffing realities, it will create an evaluation tool to assess habitat offsets, which will help guide future plans for setting criteria to develop habitat offsets and compensation to help recovery for impacted species at risk. The Ministry also noted that it will give advice as needed to the Municipal Affairs Ministry as it reviews and updates performance indicators to measure the effectiveness of the provincial land-use policy framework.

For its part, the Municipal Affairs Ministry said that there is an opportunity for it to be advised by and work with the Environment Ministry to review the species-at-risk policies in land-use plans, such as the Greenbelt Plan and the Oak Ridges Moraine Conservation Plan, as part of the next 10-year review, subject to government direction. However, the Ministry stated that any proposed

policy change would need to be initiated and led by the Environment Ministry as the primary ministry responsible for species at risk and the *Endangered Species Act, 2007*.

While the Environment and Natural Resources Ministries, as the provincial leads on species at risk and natural heritage, have the expertise and capacity to assess the effectiveness of using habitat offsets, the Municipal Affairs Ministry has a responsibility for developing and implementing provincial land-use plans that could include the use of habitat offsets.

For example, in October 2022, the Municipal Affairs Ministry posted a proposal notice on the Registry notifying the public that it was undertaking a housing-focused policy review of A Place to Grow: Growth Plan for the Greater Golden Horseshoe and the Provincial Policy Statement, seeking input on the creation of a province-wide land-use planning policy framework. The proposal notice set out the core elements of this new land-use planning policy framework. One of those elements was streamlining policy direction for natural heritage and providing more options intended to reduce development impacts, including offsetting and compensation.

At the same time, in October 2022, the Natural Resources Ministry also consulted on a process that could allow for development in natural heritage features (wetlands, woodlands and other natural wildlife habitat) through the use of offsets, among other things.

6.2 Five-Year Follow-up on Select 2019 Recommendations

6.2.1 Environment Ministry Working to Address Air Pollution from Industrial Sources

Recommendation 7

To reduce concentrations of, and harm from, air pollution from industrial sources, particularly in areas with high concentrations of pollutants, we recommend that the Ministry of the Environment, Conservation and Parks:

- based on the results of its review, update its standard for NO₂.

Status:  In the process of being implemented.

Details

The Ministry had previously told us that it continues to consider appropriate tools for addressing nitrogen dioxide (NO₂) sources and driving air quality improvement. The Ministry had said that changing the air quality standard, which focuses on industrial emissions, is likely not the most effective way to lower ambient NO₂ concentrations. However, the Ministry stated that it was reviewing the latest jurisdictional benchmarks on NO₂ to inform potential future updates to ambient or regulatory benchmarks. In our follow-up, we found that the Ministry expects to finish this review by summer 2024, and will determine potential updates to existing NO₂ criteria, and tools for managing NO₂, when the review is finished.

6.2.2 Municipal Affairs Ministry Will Not Review the Effectiveness of the Ontario Building Code's Septic System Requirements

Recommendation 19

To address the risk of pollution from malfunctioning septic systems, we recommend that the Ministry of Municipal Affairs and Housing:

- review the effectiveness of the Ontario Building Code requirements governing the operation and maintenance of septic systems; and
- based on the results of its review, update the Ontario Building Code requirements governing the operation and maintenance of septic systems.

Status:  Will not be implemented.

Details

The latest edition of the Building Code was filed in April 2024, and will be in effect as of January 1, 2025. It has several updated requirements for septic systems. For example, the updates include changes to septic tanks, filter beds and dispersal beds.

In our follow-up, the Ministry noted that, through each new Building Code cycle, in consultation with municipalities, industry and the building sector, the Ministry seeks feedback on all aspects of the Building Code to assess effectiveness, health and safety, and innovation and, where necessary, to consider improved technology standards. The Ministry noted that it had reviewed several Building Code requirements for septic systems in the context of policy direction from the government.

However, we found no evidence that the Ministry had actually reviewed the effectiveness of the Building Code requirements governing the operation and maintenance of septic systems, or that the updates to Code requirements were informed by any such review.

We stand by our recommendation for the Ministry to review the effectiveness of Building Code requirements for septic systems, and to update the Code based on the results of that review.

Recommendations and Auditee Responses

Recommendation 1

We recommend that the Ministry of Natural Resources follow its delegated authority for responding to applications submitted under the *Environmental Bill of Rights, 1993*.

Ministry of Natural Resources' Response

The Ministry of Natural Resources agrees with this recommendation and is committed to following consistent and efficient processes to ensure that EBR obligations for all applications submitted under the *Environmental Bill of Rights, 1993* are met.

The Ministry is updating its internal guidance pertaining to EBR investigations with the aim of ensuring that the Ministry has clear guidance on these responsibilities.

Recommendation 2

We recommend that the Ministry of Infrastructure develop and implement processes to build sufficient time into its bill-development timelines to allow for full public consultation under the *Environmental Bill of Rights, 1993* on environmentally significant bills before they pass.

Ministry of Infrastructure's Response

The Ministry accepts the recommendation and will work to include adequate time for comprehensive public consultation as part of future bill development for all environmentally significant bills.

Recommendation 3

We recommend that the Ministry of Municipal Affairs and Housing and the Ministry of Natural Resources, when making a proposal for an environmentally significant act:

- take steps and make all possible efforts to post a proposal notice on the Environmental Registry for a minimum of 30 days for public consultation and to consider all comments received before making a decision on the proposal, as required by the *Environmental Bill of Rights, 1993* (EBR); and
- if, despite the ministry's efforts, the corresponding bill receives third reading in the Legislature before public consultation is complete, post a decision notice promptly after the decision was made that gives a transparent and accurate explanation of the consultation and decision-making timeline, the reason for the shortened consultation

period, and the extent to which public comments were or were not considered in decision-making.

Ministry of Municipal Affairs and Housing's Response

The Ministry will review its training and procedures to highlight the following when making a proposal for an environmentally significant act:

- to take steps and make all possible efforts to post a proposal notice on the Environmental Registry for a minimum of 30 days for public consultation and to consider all comments received before making a decision on the proposal; and
- if the corresponding bill receives third reading in the Legislature before public consultation is complete, to post a decision notice promptly after the decision was made that gives a transparent and accurate explanation of the consultation and decision-making timeline, the reason for the shortened consultation period, and the extent to which public comments were considered in decision-making.

Ministry of Natural Resources' Response

The Ministry agrees with this recommendation. The Ministry is committed to enabling appropriate public input on all its proposals posted to the Environmental Registry. The Ministry continues to seek a co-ordinated approach to consultation on proposed legislation introduced in the Legislature and proposal notices on the Environmental Registry.

Recommendation 4

We recommend that the Ministry of the Environment, Conservation and Parks prepare and provide an information package for all members of provincial parliament that summarizes the public consultation requirements under the *Environmental Bill of Rights, 1993* (EBR) for acts, so that members of provincial parliament are made aware of a ministry's EBR obligations when an environmentally significant bill is introduced in the Legislature.

Ministry of the Environment, Conservation and Parks' Response

The Ministry thanks the Auditor General for this recommendation. The Ministry is committed to providing timely and accurate information on the *Environmental Bill of Rights, 1993* in response to formal inquiries from members of provincial parliament (MPPs), upon request. The Ministry will continue to respond to such requests or facilitate responses from other ministries to assist in MPPs' understanding of EBR obligations.

Recommendation 5

We recommend that the Ministries of Municipal Affairs, Natural Resources and Mines:

- update their internal processes so that the Ministries effectively manage and track all comments received through the Environmental Registry, by email and by mail; and
- consistently document their consideration of the comments in a transparent and accountable manner.

Ministry of Municipal Affairs and Housing's Response

The Ministry will review its internal procedures to:

- improve the management and tracking of all comments received through the Environmental Registry, by email and by mail; and
- consistently document the consideration of comments in a transparent and accountable manner.

Ministry of Natural Resources' Response

The Ministry agrees with this recommendation. The Ministry is committed to its legal obligations under the EBR and will work to consistently, effectively and transparently address all comments provided through the Environmental Registry. The Ministry has internal guidance and provides regular training on each stage of the Environmental Registry consultation process.

The Ministry will undertake to review this guidance and training to ensure that its consideration of comments received through the Environmental Registry consultation period is consistently documented when the Ministry is making a final decision, including in those cases where additional consultation processes exist.

Ministry of Mines' Response

The Ministry agrees with this recommendation and confirms that it is our practice to manage and track all comments, as well as to document how public input is considered in a transparent and accountable manner. The Ministry will review and update its guidance and training materials to ensure staff have a clear understanding of these established procedures.

Recommendation 6

We recommend that the Ministries of Natural Resources, the Environment, Conservation and Parks, Municipal Affairs and Housing, and Transportation, when posting proposal notices on the Environmental Registry of Ontario, give an accurate and balanced description of the benefits and environmental risks associated with the proposal, devoid of unnecessary promotional or self-congratulatory wording.

Ministry of Natural Resources' Response

The Ministry agrees with this recommendation. The Ministry is committed to ensuring all its notices posted to the Environmental Registry highlight the potential benefits and impacts of the proposal. The Ministry will provide internal guidance and training to ensure that Ministry proposals are factual, clear and transparent.

Ministry of the Environment, Conservation and Parks' Response

The Ministry is committed to ensuring the content of its notices is clear and informative to enable Ontarians to understand what is being proposed. We will continue to work to ensure that we are providing accurate, detailed descriptions of these proposals that are at the same time written in an easy-to-understand, plain-language manner. The Ministry will continue to highlight relevant details of proposals and to educate Ministry staff on legislated posting requirements so that Ontarians can understand them and provide meaningful comments.

Ministry of Municipal Affairs and Housing's Response

The Ministry will review its training and procedures to give an accurate and balanced description of the benefits and environmental risks associated with the proposal while minimizing unnecessary promotional or self-congratulatory wording in proposal notices on the Environmental Registry.

Ministry of Transportation's Response

The Ministry is committed to posting proposal notices on the Environmental Registry of Ontario that give an accurate and balanced description of the benefits and environmental risks associated with the proposal. The Ministry will review and enhance guidance and internal support, as appropriate, to address the recommendation.

Audit Criteria

In planning our work, we identified the audit criteria we would use to address our audit objectives (outlined in **Section 3**). These criteria were established based on a review of applicable legislation, policies and procedures, internal and external studies, and best practices. Senior management at all nine auditees reviewed and agreed with the suitability of our objectives and associated criteria:

1. Prescribed ministries have up-to-date Statements of Environmental Values (SEVs). Ministries take every reasonable step to consider their SEV whenever they make environmentally significant decisions, in a manner that informs their decision-making, in accordance with the requirements and purposes of the EBR.
2. Prescribed ministries consult the public using the Environmental Registry when making any environmentally significant decisions that are subject to the EBR, in accordance with the requirements and purposes of the EBR, including:
 - consulting about all proposals for policies, acts, regulations and instruments that are subject to EBR consultation and that are not subject to an exception under the EBR;
 - giving accurate descriptions of proposals and their anticipated environmental implications if known, and including, where feasible, links or attachments to key supporting information, so that commenters have the information that is necessary to provide informed comment;
 - extending the time to comment where warranted based on the factors set out in the EBR to allow the public to provide informed comments before the ministry makes a decision;
 - taking every reasonable step to consider all relevant comments submitted on a proposal as part of the ministry's decision-making process; and
 - giving clear and accurate descriptions of decisions, including: where appropriate, links or attachments to key supporting information; and a brief explanation of the effect of public participation on the ministry's decision.
3. Prescribed ministries ensure that the Environmental Registry is a reliable source of information, by:
 - keeping their proposal notices on the Environmental Registry up to date;
 - giving prompt notice to the public on the Environmental Registry when they make environmentally significant decisions subject to the EBR; and
 - when relying on an exception to consultation under the EBR that requires notice, giving prompt notice of the use of exception.
4. Prescribed ministries handle applications for review and investigation in accordance with the requirements and purposes of the EBR. In particular they:
 - consider the factors in the EBR when determining whether the public interest warrants undertaking a requested review; and when a ministry agrees to conduct a review, review all of the key issues raised in the application as agreed to, consistent with the EBR's purposes and requirements;

- investigate alleged contraventions to the extent that is necessary, unless the Minister determines that an investigation is not warranted, consistent with the EBR's purposes and requirements;
 - are transparent in their notices to applicants about their consideration of applications and the basis for their decision-making regarding applications; and
 - meet all EBR timelines.
5. The Ministry of the Environment, Conservation and Parks effectively executes its additional responsibilities in accordance with the requirements and purposes of the EBR, as follows:
- a. providing educational programs about the EBR to members of the public about their EBR rights, and ensuring the public has ready access to information about the EBR that enables Ontarians to understand and exercise their rights under it;
 - b. operating the Environmental Registry in a manner that ensures it can be used by the public to find information about the government's environmentally significant proposals and decisions, and that enables the public to provide comments on proposals; and
 - c. ensuring that the public receives prompt notice of leave to appeal applications made under the EBR and appeals of decisions about instruments that are subject to the EBR once the ministry receives these notices from applicants and appellants.
6. Processes are in place to effectively and periodically review the lists of ministries, acts and instruments prescribed under the EBR, 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, so that the EBR's purposes may be achieved.

Audit Approach

We conducted our audit between January 2024 and October 2024. We obtained written representation from each ministry's management that, effective November 27, 2024, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusion of this report.

As part of our audit work, we had meetings and discussions with staff at auditees as needed, and assessed relevant documents and information, relating to:

- ministries' and the public's use of the EBR tools, including the use and operation of the Environmental Registry of Ontario (Registry);
- ministries' proposal notices, decision notices, bulletins, voluntary notices, exception notices and appeal notices posted on the Registry in 2023/24;
- ministries' consideration of public comments and their Statements of Environmental Values when making decisions about environmentally significant proposals;
- environmentally significant proposals and decisions that came to our attention for which ministries did not give notice on the Registry;
- applications for review and applications for investigation that were submitted, denied, completed or ongoing in 2023/24, including materials submitted by the applicants, relevant ministry documentation and other research as necessary;
- ministries' policies and procedures for complying with the EBR; and
- measures taken by the Environment Ministry to provide educational programs and general information about the EBR to the public, and to operate the Registry.

As an annual audit, our work also followed up on many recommendations from past reports related to implementation of the EBR. We also separately followed up on other recommendations made in past EBR reports that did not directly relate to regular operation of the EBR, to determine whether they were implemented.

Audit Opinion

To the Honourable Speaker of the Legislative Assembly:

We conducted our work for this audit and reported on the results of our examination in accordance with Canadian Standard on Assurance Engagements 3001—*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 Canadian Standards on Quality Management and, as a result, maintains a comprehensive system of quality management 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.

We believe the audit evidence we have obtained is sufficient and appropriate to provide a basis for our conclusions.

December 3, 2024



Shelley Spence, FCPA, FCA, LPA

Auditor General
Toronto, Ontario

Glossary

Term	Definition
Act	Also known as a law, legislation or statute, an act is adopted by the provincial legislature or federal parliament to set out binding rights, obligations and rules.
Application for investigation	A right under Part V of the EBR allowing two residents of Ontario to formally ask a prescribed ministry to investigate an alleged contravention of an act, regulation or instrument that has the potential to harm the environment.
Application for review	A right under Part IV of the EBR allowing two residents of Ontario to formally ask a prescribed ministry (or ministries) to review (and potentially amend) an existing policy, act, regulation or instrument, or review the need to create a new policy, act or regulation.
Consultation	A legally required process under the EBR, where prescribed ministries use the Registry to give public notice about proposed acts, regulations, policies and instruments that are environmentally significant, and to give the public at least 30 days to comment on the proposal. The ministries must consider the public's comments before making a decision on the proposals and then give prompt notice of their decisions, including explaining whether, and how, public feedback affected the decision.
Decision notice	A notice posted on the Registry by a prescribed ministry to notify the public that it has made a decision whether to proceed with a proposal for a policy, act, regulation or instrument. A decision notice must explain what effect, if any, the public's comments on the proposal had on the ministry's final decision.
Environmental Registry of Ontario (Registry)	A website (ero.ontario.ca) maintained by the Ministry of the Environment, 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 EBR. The Registry is searchable and includes an archive of previous consultations.
Environmentally significant	Under the EBR, a proposal or decision is environmentally significant when, if implemented, it could have a significant effect on the environment (including air, land, water, plant life, animal life and ecological systems) of Ontario.
Instrument	A permit, licence, approval, authorization, direction or order issued under the authority of an act or regulation. Instruments subject to the EBR are identified and classified in O. Reg. 681/94.
Leave to appeal	Permission to challenge. Under the EBR, residents of Ontario may seek leave to appeal the decisions of prescribed ministries to issue certain types of instruments. An adjudicative body (in most cases, the Ontario Land Tribunal) decides whether to grant or deny leave to appeal.
Proposal notice	A notice posted on the 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.
Prescribed	Set out in a regulation. For example, the EBR applies only to prescribed ministries, laws and instruments, meaning ministries and laws that are listed in O. Reg. 73/94, and to instruments that are listed in O. Reg. 681/94.

Term	Definition
Statement of Environmental Values (SEV)	The EBR requires each prescribed ministry to develop and publish an SEV that explains how the ministry considers the purposes of the EBR when it makes decisions that may significantly affect the environment. An SEV is meant to guide ministries in integrating environmental values with social, economic and scientific considerations in their decision-making process, which should lead to better outcomes for the environment. Under the EBR, the ministries must consider their SEVs when making environmentally significant decisions.

Appendix 1: Responsibilities of Each Prescribed Ministry

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

Ministry ¹	Prepare and Consider SEVs	Consult on Policies and Acts ²	Consult on Regulations under Prescribed Acts ²	Consult on Prescribed Instruments (Permits and Approvals)	Respond to Applications for Review	Respond to Applications for Investigation
Ministry of the Environment, Conservation and Parks	✓	✓	✓	✓	✓	✓
Ministry of Mines	✓	✓	✓	✓	✓	✓
Ministry of Municipal Affairs and Housing	✓	✓	✓	✓	✓	✓
Ministry of Natural Resources	✓	✓	✓	✓	✓	✓
Ministry of Energy and Electrification	✓	✓	✓		✓	
Ministry of Transportation	✓	✓	✓		✓	
Ministry of Agriculture, Food and Agribusiness	✓	✓	✓		✓	
Ministry of Infrastructure	✓	✓				
Ministry of Public and Business Service Delivery and Procurement ³	✓	✓	✓	✓	✓	✓
Ministry of Tourism, Culture and Gaming	✓	✓	✓			
Ministry of Economic Development, Job Creation and Trade	✓	✓				
Ministry of Health	✓	✓	✓		✓	
Ministry of Northern Development	✓	✓			✓	
Ministry of Long-Term Care	✓	✓			✓	
Ministry of Education	✓	✓			✓	
Treasury Board Secretariat	✓	✓				
Ministry of Indigenous Affairs and First Nations Economic Reconciliation	✓	✓				
Ministry of Labour, Immigration, Training and Skills Development	✓	✓				

1. Ministries are listed in descending order based on their share of notices posted on the Registry from 2019/20 to 2022/23. On June 6, 2024 (after our reporting year), the Province changed the names of multiple ministries. This appendix lists the auditees using their current names.

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

3. The Technical Standards and Safety Authority (TSSA) has been delegated some of the key EBR responsibilities of the Ministry of Public and Business Service Delivery and Procurement, as they relate to liquid fuels under the *Technical Standards and Safety Act, 2000*. This includes consulting the public about proposals for variances under the Liquid Fuels Handling Code and regulation.

Appendix 2: Prescribed Acts under the EBR

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

Act	Has Instruments that Are Subject to the EBR	Subject to Applications for Review	Subject to Applications for Investigation
Ministry of Agriculture, Food and Agribusiness			
<i>Food Safety and Quality Act, 2001</i> ¹			
<i>Nutrient Management Act, 2002</i>		✓	
Ministry of Energy and Electrification			
<i>Ontario Energy Board Act, 1998</i> ²		✓ ²	
Ministry of the Environment, Conservation and Parks			
<i>Clean Water Act, 2006</i>		✓	
<i>Endangered Species Act, 2007</i> ³	✓	✓ ³	✓
<i>Environmental Assessment Act</i>		✓	✓
<i>Environmental Bill of Rights, 1993</i>		✓	
<i>Environmental Protection Act</i>	✓	✓	✓
<i>Great Lakes Protection Act, 2015</i>		✓	
<i>Kawartha Highlands Signature Site Park Act, 2003</i> ⁴		✓	✓
<i>Lake Simcoe Protection Act, 2008</i>		✓	
<i>Ontario Water Resources Act</i>	✓	✓	✓
<i>Pesticides Act</i>	✓	✓	✓
<i>Provincial Parks and Conservation Reserves Act, 2006</i>		✓	✓
<i>Resource Recovery and Circular Economy Act, 2016</i>		✓	
<i>Safe Drinking Water Act, 2002</i>	✓	✓	✓ ⁵
<i>Waste Diversion Transition Act, 2016</i>		✓	
<i>Water Opportunities Act, 2010</i>		✓	
Ministry of Health			
<i>Health Protection and Promotion Act</i> ⁶		✓ ⁶	
Ministry of Mines			
<i>Mining Act</i>	✓	✓	✓

Act	Has Instruments that Are Subject to the EBR	Subject to Applications for Review	Subject to Applications for Investigation
Ministry of Municipal Affairs and Housing			
<i>Building Code Act, 1992</i> ⁷	✓	✓ ⁷	
<i>Greenbelt Act, 2005</i> ²		✓	
<i>Oak Ridges Moraine Conservation Act, 2001</i> ³	✓	✓	✓ ⁵
<i>Places to Grow Act, 2005</i>		✓	
<i>Planning Act</i>	✓	✓	✓ ⁵
Ministry of Natural Resources			
<i>Aggregate Resources Act</i>	✓	✓	✓
<i>Conservation Authorities Act</i>	✓	✓	✓
<i>Crown Forest Sustainability Act, 1994</i>	✓	✓	✓
<i>Far North Act, 2010</i>	✓	✓	✓
<i>Fish and Wildlife Conservation Act, 1997</i>	✓	✓	✓
<i>Invasive Species Act, 2015</i>		✓	✓
<i>Lakes and Rivers Improvement Act</i>	✓	✓	✓
<i>Niagara Escarpment Planning and Development Act</i>	✓	✓	✓
<i>Oil, Gas and Salt Resources Act</i>	✓	✓	✓
<i>Public Lands Act</i>	✓	✓	✓
Ministry of Public and Business Service Delivery and Procurement			
<i>Technical Standards and Safety Act, 2000</i> ⁸	✓	✓ ⁸	✓ ⁸
Ministry of Tourism, Culture and Gaming			
<i>Ontario Heritage Act</i> ⁹		✓ ¹⁰	
Ministry of Transportation			
<i>Highway Traffic Act</i> ¹¹			

1. Limited to disposal of deadstock.

2. Limited to certain regulations related to electricity licensing.

3. With some exceptions.

4. Not prescribed for purposes of consulting about regulations.

5. Limited to certain instruments.

6. Limited to small drinking-water systems.

7. Limited to septic systems.

8. Limited to liquid fuels handling.

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

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

11. Limited to governing emissions.

Appendix 3: Ongoing and Concluded Applications for Review and Investigation, 2023/24¹

Prepared by the Office of the Auditor General of Ontario

Description	Ministry	Decision	Status
Applications for Review			
Submitted in 2023/24			
Review of the <i>Safe Drinking Water Act, 2002</i> and Ontario Drinking Water Quality Standards (O. Reg. 169/03) regarding lead in drinking water	Environment	Denied	Concluded after the 2023/24 reporting year (<i>will be assessed in 2024/25 report</i>)
Review of the <i>Fish and Wildlife Conservation Act, 1997</i> and O. Reg. 668/98 regarding train and trial facilities (areas where wildlife are kept captive to teach dogs hunting skills)	Natural Resources	Denied	Concluded after the 2023/24 reporting year (<i>will be assessed in 2024/25 report</i>)
Previously Submitted (ongoing at the beginning of 2023/24)			
Review of the Lake Simcoe Protection Plan (submitted in 2016/17)	Environment	Undertaken	Concluded in 2023/24 (see Appendix 4)
Review of the EBR (three related applications submitted between 2009/10 and 2012/13)	Environment	Undertaken	Ongoing ²
Applications for Investigation			
Submitted in 2023/24			
Alleged contravention of several acts and regulations by the Township of King in approving the construction of a long-term care home on ecologically sensitive land (the Oak Ridges Moraine)	Natural Resources	Not undertaken ³	Concluded in 2023/24 (see Appendix 4)
	Municipal Affairs	Not undertaken ⁴	Concluded in 2023/24 (see Appendix 4)
	Environment	Undertaken	Concluded after the 2023/24 reporting year (<i>will be assessed in 2024/25 report</i>)
Alleged contravention of several acts and regulations by the Municipality of Callander, the North Bay–Mattawa Conservation Authority and several private citizens in failing to protect a wetland and regulated watercourses during construction projects	Natural Resources	Denied	Concluded after the 2023/24 reporting year (<i>will be assessed in 2024/25 report</i>)
	Environment	Undertaken	Ongoing (Ministry committed to complete the investigation by November 22, 2024)

Description	Ministry	Decision	Status
Previously Submitted (ongoing at the beginning of 2023/24)			
Alleged contravention of the <i>Fish and Wildlife Conservation Act, 1997</i> by a store hosting a coyote-hunting contest (submitted in 2022/23)	Natural Resources	Denied	Concluded in 2023/24 (see Appendix 4)

1. April 1, 2023, to March 31, 2024.
2. This application has been ongoing since 2011, when the Environment Ministry first agreed to conduct the review. The Ministry did some work in 2016 (when it consulted the public on potential improvements to the EBR) but, at the time of our audit, the Ministry has not taken any new steps to finish the review. The EBR requires ministries that are conducting an EBR review to conduct the review “within a reasonable time.” Our Office has reported on the lengthy delay in completing this review in past reports on the operation of the EBR.
3. The Ministry did not undertake the application as it was not responsible for administering any of the acts, regulations or instruments allegedly contravened.
4. The Ministry did not undertake the application as none of the acts, regulations or instruments allegedly contravened are prescribed under the EBR.

Appendix 4: Summary of Applications Concluded in 2023/24

Prepared by the Office of the Auditor General of Ontario

Applications for Review

1. Review of the Lake Simcoe Protection Plan (Environment Ministry)

What the Applicants Asked For

- In July 2016, two Ontarians asked the Environment Ministry to review policies related to water quantity within the Lake Simcoe Protection Plan (the Plan). The applicants asked for the review because they were concerned about the potential impact of commercial water taking operations on groundwater levels in the Lake Simcoe watershed.
- Specifically, the applicants asked the Ministry to:
 - change the designation of one of the policies relating to water quantity in the Plan so that the policy would have legal effect and decisions to issue certain permits would have to conform with this policy; and
 - consider adding a new policy in the Plan that would prohibit commercial water taking within the Lake Simcoe watershed.

Review Undertaken by the Environment Ministry

- In September 2016, the Ministry informed the applicants that it accepted the requested review and would consider the issues raised by the applicants as it conducted the 10-year review of the Plan.
- The 10-year review of the Plan was scheduled to start in 2019, but was delayed until December 2020.
- In February 2024, the Ministry notified the applicants that it had completed its review.
- In carrying out the review, the Ministry stated that it had considered:
 - Ontario's framework for managing water conservation and water taking;
 - the Ministry's 10-year review of the Plan and comments received as part of that consultation process, including comments and recommendations from the Lake Simcoe Coordinating Committee and the Lake Simcoe Science Committee; and
 - the Ministry's 2016–2021 water quantity management review, which had included a review of policies, programs and science related to managing water takings across the province, and which resulted in changes to Ontario's water quantity management framework.

- Based on these reviews, the Ministry concluded that:
 - water taking and water conservation are not significant issues in the Lake Simcoe watershed; and
 - there are no water bottling operations in the Lake Simcoe watershed.
- As such, the Ministry concluded that there was no need to change the designation of the water quantity policy or add a policy relating to commercial water taking in the Plan.

Applications for Investigation

1. Investigation of alleged contravention of hunting laws by a store hosting a coyote-hunting contest (Natural Resources Ministry)

What the Applicants Asked For

- In March 2023, two Ontarians submitted an application for investigation to the Natural Resources Ministry asking the Ministry to investigate a coyote-hunting contest hosted by a store in Belleville, Ontario throughout February 2023. Participants had a chance to win cash and other prizes based on the weight of hunted coyotes they brought in to the store.
- The applicants alleged that the contest contravened the *Fish and Wildlife Conservation Act, 1997* (the Act), which states that except with authorization of the minister, a person shall not induce another person to hunt for gain, or pay a bounty for hunting.
- The applicants noted that coyotes are a keystone species that play an important role in ecosystems throughout Ontario, and were concerned that encouraging the killing of more coyotes through the contest could have impacts on other species where the contest takes place. They also alleged that the contest could result in the incidental killing of the threatened Eastern Wolf (also known as the Algonquin Wolf).

Investigation Denied by the Natural Resources Ministry

- In March 2024, the Natural Resources Ministry gave the applicants notice of the Ministry's decision that the requested investigation would not be conducted.
- The Ministry stated that it determined that the alleged contraventions are not likely to cause harm to the environment, and therefore concluded, in accordance with Section 77 of the EBR, that an investigation was not warranted.

- The Ministry concluded that harvesting of coyotes by hunters or trappers participating in the contest was not likely to cause harm to the environment. In particular, the Ministry concluded that the contest was not likely to cause harm to coyote populations because “the harvest level is subject to the seasons, limits, and licensing requirements provided under the [*Fish and Wildlife Conservation Act*],” or to Eastern Wolves because there is no open season for harvesting coyotes in areas where Eastern Wolves are known to occur.
- The Natural Resources Ministry notified the applicants that it was denying their request for an investigation in March 2024, more than 10 months after the statutory deadline.

2. Investigation of alleged contraventions of several laws in approving a construction project on ecologically sensitive land (Environment Ministry, Municipal Affairs Ministry, Natural Resources Ministry)

What the Applicants Asked For

- In January 2024, two Ontarians submitted an application for investigation to the Environment, Municipal Affairs and Natural Resources Ministries alleging that the Township of King contravened several acts and regulations when it approved the construction of a long-term care home on ecologically sensitive land within the Oak Ridges Moraine.
- Specifically, the applicants alleged that the approval contravened:
 - the *Environmental Protection Act* and *Ontario Water Resources Act* (administered by the Environment Ministry);
 - O. Reg 140/02 under the *Oak Ridges Moraine Conservation Act, 2001*, and the Provincial Policy Statement under the *Planning Act* (administered by the Municipal Affairs Ministry); and
 - the federal *Fisheries Act*.
- The applicants alleged that, in issuing the site plan approval and building permit for the project, the Township of King:
 - had not properly assessed and considered the negative effects of the project on the surrounding sensitive kettle lakes and provincially significant wetlands; in particular, the applicants alleged that the plans for the project involved discharging stormwater contaminated with salt and groundwater contaminated with phenols into the lakes and wetlands;
 - was mistaken to accept the proponent’s attestation that a long-term care facility was already operating on the site, arguing that the proponents had provided inadequate information on previous site use; and
 - had not sought the independent expert opinions required to properly assess the application.

Investigation Not Undertaken by the Municipal Affairs and Natural Resources Ministries, and Undertaken by the Environment Ministry

- In March 2024, both the Municipal Affairs and the Natural Resources Ministries notified the applicants that they would not be undertaking the requested investigation.
 - The Municipal Affairs Ministry stated that the alleged contraventions described in the application for which that Ministry would be responsible are not prescribed for applications for investigation under the EBR.
 - The Natural Resources Ministry stated that it is not responsible for administering any of the acts or regulations cited in the application, and therefore is unable to investigate.
- On June 18, 2024 (after the end of our reporting year), the Environment Ministry notified the applicants that it had completed its investigation. We will assess the Environment Ministry's handling of this application in 2024/25.

Appendix 5: Leave to Appeal Applications and Appeals Filed in 2023/24

Prepared by the Office of the Auditor General of Ontario

Type of Instrument	Instrument Description	Registry #	Status/Outcome
Leave to Appeal Applications			
Environmental compliance approval (waste)	Allows a facility to receive and transfer contaminated soil	019-5393	Approval revoked by the Environment Ministry; proponent subsequently appealed the revocation (see appeal below)
Environmental compliance approval (air)	Replaces the previous air approvals at a hot mix asphalt plant, and approves new emissions sources from the plant	019-5565	Dismissed
Environmental compliance approval (air)	Approves a pilot project to produce hydrogen gas at a steel manufacturing facility	019-7370	Dismissed
Permit to take water	Permits a well for industrial-aggregate washing purposes	019-7446	Applicant withdrew their application after the Environment Ministry issued an amended permit
Appeals			
Environmental compliance approval (waste)	Revokes the approval noted in the leave to appeal application above to receive and transfer contaminated soil	019-7212	Appeal withdrawn



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