



Volume 2, Chapter 2—Operation of the *Environmental Bill of Rights, 1993* Compliance Review for the 2018/19 Reporting Year

Why We Did This Audit

- The *Environmental Bill of Rights, 1993* (Act) requires our Office to report annually on the operation of the Act. This report covers the period from April 1, 2018, to March 31, 2019.
- The Act applies to 15 government ministries. It provides for accountability and transparency in the ministries' environmental decision-making.

Why It Matters

- The *Environmental Bill of Rights, 1993* provides rights for the public and obligations for 15 Ontario government ministries that are intended to work together to protect, conserve and restore the environment for the benefit of present and future generations.
- When ministries carry out their responsibilities consistent with the Act's purposes, Ontarians can use their environmental rights to participate meaningfully in environmental decision-making and support better government decisions about the environment.

What We Found

- Ten of the 15 ministries, including the Environment Ministry, do not have an up-to-date Statement of Environmental Values. The government's November 2018 draft Made-in-Ontario Environment Plan directed all ministries to update their Statements to reflect this plan, including to make climate change a cross-government priority.
- Although the Environment Ministry and the Energy and Mines Ministry provided the minimum 30 days for the public to comment on three significant and complex proposals, providing the public with additional time may have enabled the Ministry to have received more informed feedback.
- Over half of the proposal notices posted on the Environmental Registry that we reviewed did not provide all of the information needed to enable the public to fully understand and knowledgeably comment on the proposals. Similarly, 39% of the decision notices that we reviewed for permits, licences and approvals posted by the Natural Resources, Municipal Affairs and Energy and Mines ministries provided insufficient information to enable the public to fully understand the decision or the details of the approval.
- Four ministries took an average of six months to notify the public of 57% of their decisions that we reviewed, reducing accountability and, in some cases, delaying the public's right to challenge those decisions.
- Five ministries, including the Environment Ministry, have a total of 165 proposal notices that have remained open on the Environmental Registry for over two years without a decision or an update explaining their status, making the Environmental Registry a less reliable source of information for the public.
- The Environment Ministry denied a public request to review the regulation of nitrogen dioxide and fine particulate matter. However, the Ministry did not provide evidence that the current rules sufficiently protect against harm to human health and the environment to support its decision to deny the review.
- The Municipal Affairs Ministry denied public requests to review the regulation of septic systems and to review the rules for habitat offsets. However, the Ministry did not provide evidence that the current rules in either case sufficiently protect against environmental harm to support its decisions to deny these reviews.
- The Environment Ministry has not completed four of its nine ongoing reviews that it agreed to undertake as a result of public requests made under the *Environmental Bill of Rights, 1993*, by the date promised, leaving applicants in one case waiting more than nine years for a review to be completed.
- The Ontario Divisional Court concluded that the Environment Ministry should not have relied on the "substantially equivalent" exception provision of the Act when it repealed the cap and trade program without public consultation.

Conclusions

- The Environment Ministry—which has the primary responsibility for protecting the environment in Ontario, and is responsible for administering the Act and its regulations, as well as for operating the Environmental Registry and providing education about the Act—needs to lead by example in complying with the requirements of the Act.
- The ministries' various non-compliance with their duties under the Act or best practices makes it more difficult for Ontarians to use their environmental rights and support better government decisions about the environment.