

Summaries

Operation of the *Environmental Bill of Rights*

The *Environmental Bill of Rights, 1993* (EBR Act) provides rights for Ontarians and obligations for 16 Ontario government ministries (prescribed ministries) that are intended to work together to protect, conserve and restore the environment. Since 2019, our Office has been responsible for reporting annually on the operation of the EBR Act, including reporting on the public's use of its environmental rights, the government's compliance with and implementation of the EBR Act, and whether the government's environmentally significant decisions are consistent with the purposes of the EBR Act.

We found that the Ministry of the Environment, Conservation and Parks (Environment Ministry), for the third year in a row, did not provide leadership in implementing the EBR Act.

Some of our significant findings include the following:

- The Environment Ministry did not proactively ensure that environmentally significant decisions were made subject to the EBR Act. In one case, the Ministry of the Attorney General did not notify or consult the public through the Environmental Registry regarding legislative changes to amalgamate several tribunals, including the

Environmental Review Tribunal, Local Planning Appeal Tribunal and the Mining and Lands Tribunal, into a single entity called the Ontario Land Tribunal. These tribunals hear appeals and leave to appeal applications under many EBR-prescribed acts, such as the *Environmental Protection Act*, the *Planning Act* and the *Mining Act*. The Ministry of the Attorney General is not a prescribed ministry under the EBR Act, and therefore was not required to post, and did not post, a notice of proposed environmentally significant changes on the Environmental Registry.

- In 2020/21, the Agriculture, Transportation and former Energy and Mines ministries, all prescribed ministries under the EBR Act, made environmentally significant decisions related to regulations under acts they administer that are not prescribed under the EBR Act. We believe it is important that the *Drainage Act*, the *Highway Traffic Act* and the *Electricity Act, 1998* be made prescribed acts so that Ontarians receive notice of and have the opportunity to provide comments on proposals for regulations under these acts that impact the environment.
- In our 2020 report on the operation of the EBR Act, we reported on the dramatic increase in the number of zoning orders made by the Municipal Affairs Minister since the start of 2020. Minister's Zoning Orders, made under section 47 of the

Planning Act, bypass the usual municipal planning process. Since we issued our 2020 report, more Minister's Zoning Orders have been made, many with the potential for significant environmental impacts. As well, the Municipal Affairs Ministry proposed an amendment to the *Planning Act* that applied retroactively, stating that past and future Minister's Zoning Orders do not need to be consistent with the Provincial Policy Statement, except within the Greenbelt Area. The Provincial Policy Statement sets out rules that, among other things, protect agricultural lands and natural heritage features from incompatible development. As the number of Minister's Zoning Orders, and the likelihood of significant environmental impacts, increases, it is consistent with the EBR Act's purpose that Ontarians be consulted on all Minister's Zoning Orders that could, if implemented, have a significant effect on the environment.

- Ministries that are prescribed under the EBR Act have certain legislated obligations. These obligations include developing a Statement of Environmental Values, considering that Statement when making decisions that could affect the environment, and consulting the public on environmentally significant proposals. While the Environment Ministry administers the EBR Act, each prescribed ministry is responsible for its own compliance with and implementation of the Act.

We found that the 16 prescribed ministries varied significantly in how they ensure they comply with the EBR Act, with some having no formal processes at all, and others having varying levels of internal processes and documented procedures. We also found that even if ministries have established formal processes, they did not always follow them, or monitor to ensure their staff complied with them.

Some of our specific findings on the ministries include the following:

- In our 2019 and 2020 reports, we found that the Environment Ministry's current Statement of

Environmental Values, which was last substantially updated in 2008, was outdated because it did not reflect the Ministry's current mandate or current matters, such as addressing climate change. In this report, we found that the Environment Ministry's proposal for a new Statement of Environmental Values is unlikely to improve decision-making about the environment. For example, it does not update the environmental principles that the Ministry must consider when making decisions to reflect the Ministry's current mandate (which, since 2018, includes responsibility for endangered species, parks and conservation authorities) or more modern environmental matters.

- Under the EBR Act, the Environment Ministry is required to provide educational programs about the EBR Act to the public, but it is still not doing so. For Ontarians to exercise their rights under the EBR Act, they first need to know that these rights exist. We engaged a polling firm to survey Ontario residents to gauge their awareness of their legislated environmental rights under the EBR Act. This survey of 1,000 Ontarians found that over half of those surveyed (52%) had never heard of the Act. While 47% of those surveyed said they were aware of the EBR Act, only one in ten could name one of the rights provided under the Act.
- On November 30, 2020, the Natural Resources Ministry posted a new proposal notice on the Environmental Registry for amendments to the *Far North Act, 2010*. The new proposal would change the Act to "amend or delete provisions that are perceived as hindering economic development" and enhance collaboration between the province and Indigenous communities on land-use planning. Despite potentially far-reaching implications for natural heritage and climate resilience, the Natural Resources Ministry did not explain the potentially significant environmental impacts of these changes.

Hazardous Spills

A hazardous spill is a discharge of a substance to air, land or water that can pose a threat to human health and the environment. Spills can take many forms, such as a breach of a pipeline during excavation spilling natural gas into the air, a spill from a crashed truck or train carrying hazardous substances, or an accidental spill of an industrial storage container that leaks dangerous chemicals into a nearby stream. Thousands of such spills are recorded in Ontario annually—73,000 between 2011 and 2020.

In some cases, spilling substances may be a normal part of industrial operations. These spills are contained to prevent harm to human health or the environment and are therefore not required to be reported to the Ministry of the Environment, Conservation and Parks (Environment Ministry). These contained spills are not part of the subject of this report.

The Environment Ministry is mandated to protect Ontario's air, land and water, leading to healthier communities and economic prosperity. The Environment Ministry is responsible for putting measures in place to prevent the risk of hazardous spills harming human health and the environment. These measures involve various regulatory and compliance activities, such as ensuring companies properly plan to prevent and respond to spills, regulating their operating activities to ensure they reduce the risk of spilling hazardous substances, and ensuring their compliance with these rules through inspections and enforcement.

Overall, our audit found that the Environment Ministry does not conduct adequate regulatory activities to reduce the risk of occurrence of the most common sources of spills (natural gas transmission and distribution pipelines, electricity transmission and distribution transformers, and residential fuel tanks) impacting human health and the environment. We also found that its enforcement regime does not effectively ensure compliance with the regulations that do exist. Other provincial government regulators, such as the Technical Standards and

Safety Authority, do not have a mandate to protect the environment by preventing spills.

The Environment Ministry does not disclose sufficient information to the public about the quantity of hazardous spills and the harm they cause, to inform people of the impacts on their local community and across Ontario.

The Environment Ministry is also not recovering its costs from responding to spills, resulting in taxpayers and not the polluters paying for spills. Of the over 73,000 spills that occurred in the province between 2011 and 2020, the Environment Ministry attempted to recover response costs from a spiller only three times.

Some of our significant findings included the following:

- Thousands of spills are caused by entities not subject to spill prevention and contingency planning requirements under O. Reg. 224/07 of the *Environmental Protection Act* (Act). The requirements for having spill prevention and contingency plans in place under O. Reg. 224/07 (Spill Prevention and Contingency Plans) only apply to industrial facilities. Between 2016 and 2020, these industrial facilities were responsible for a minority (7% or 2,842) of the 40,349 reported spills. The Environment Ministry does not require spill prevention and contingency plans for high-risk sources such as oil and natural gas transmission and distribution pipelines, electricity transmission substations, fuel delivery trucks and bulk fuel storage facilities.
- Despite requirements in the Act, spillers are not always immediately notifying the Environment Ministry of spills. Between 2016 and 2020, 3,746 (or 9%) of the 40,349 reported spills were not reported until the following day, and 505 took more than 10 days to report. Further, the Environment Ministry did not always penalize spillers for failing to report spills in a timely manner. The Environment Ministry often learns of spills from first responders, such as firefighters and police officers, the municipality or members of the public.

- The Environment Ministry does not independently confirm that spillers have sufficiently remediated the environment after a spill.

Non-Hazardous Waste Reduction and Diversion in the Industrial, Commercial and Institutional (IC&I) Sector

The Ministry of the Environment, Conservation and Parks (Ministry) is responsible for regulating the management of waste in Ontario. According to the Ministry, approximately 12 million tonnes of non-hazardous waste (referred to as “waste” in this report) is generated in Ontario each year, although other data sources indicate it may be closer to 15 million tonnes.

Approximately 40% of Ontario’s waste is generated inside the home, known as residential waste, which is collected and managed by municipalities. The other 60% of waste is generated outside the home, by almost 1.6 million businesses and institutions known as the IC&I sector. We found that more than 98% of industrial, commercial and institutional (IC&I) establishments are not required to recycle.

The IC&I sector includes:

- industrial facilities, such as manufacturers;
- commercial businesses, such as retail stores, restaurants, hotels and offices;
- institutions, such as schools, colleges, universities and hospitals; and
- construction and demolition projects.

Our audit found that improving waste management in the IC&I sector holds the key to meeting the province’s waste goals, as well as to avoiding Ontario’s looming landfill shortage. Yet, we found that the Ministry has not taken concrete actions to drive a reduction in the amount of IC&I waste generated and disposed to put Ontario on track to meet its targets.

Our detailed findings include the following:

- Waste management companies often send IC&I source-separated materials intended for diversion to landfill. We found that waste collectors take roughly half of the IC&I source-separated recycling that they collect to transfer stations, but

only 34% of the transfer stations we examined transfer loads of IC&I recycling to facilities that sort and process the materials. The other 66% of the transfer stations accept the IC&I recycling as garbage, which they mostly send to landfill. We also found that waste collectors take about one-fifth of collected IC&I organic waste directly to landfill.

- Establishments do not have access to information about waste industry activities to verify where recyclables are taken or to make informed decisions when contracting waste services. The Ministry does not compile or publish information about waste management companies’ operations, such as their diversion rates, the types of materials they divert, or what they do with the materials they handle.
- Ontario has not implemented key tools used in other jurisdictions to overcome barriers to IC&I waste diversion and encourage waste reduction. We found that several interrelated barriers—high costs, high contamination of IC&I waste, and weak end markets—prevent or hinder waste management companies from diverting more IC&I waste. For example, we found that it can cost up to six times more to divert IC&I mixed recyclables than to dispose them in landfill.
- The list of materials that establishments must collect to be recycled has not been updated in over 25 years, and excludes now common materials, such as coffee cups, compostable packaging and most plastics.
- Large IC&I establishments and condo and apartment buildings may not know that they must meet organic waste targets by 2025. Organic waste, such as food waste, soiled paper and compostable packaging, makes up about one-quarter of total IC&I waste, but it is not included in the Source Separation Regulation as waste that establishments must divert. The Ministry introduced the Organic Waste Policy in 2018 to address this gap. At the time of our audit, the Ministry had not taken steps needed to effectively promote this policy.

Protecting and Recovering Species at Risk

Species at risk are the plants, mammals, birds, fish and other organisms that are in danger of extinction and being lost forever. From the polar bear, Algonquin wolf and golden eagle, to the spotted turtle, monarch butterfly and drooping trillium, at-risk species are the most vulnerable species to threats, and need protection and conservation efforts to recover.

The Ministry of the Environment, Conservation and Parks (Environment Ministry) is responsible for administering the *Endangered Species Act, 2007* (Act). Prior to April 2019, the Ministry of Northern Development, Mines, Natural Resources and Forestry (Natural Resources Ministry) administered the Act. Our audit examined whether the Environment Ministry (and previously the Natural Resources Ministry) is effectively and efficiently protecting and recovering species at risk and their habitats. Our audit found that the Environment Ministry is failing in its mandate to protect species at risk and its actions have not been sufficient to improve the state of these species and their habitats.

The following are some of our specific significant findings.

- The Environment Ministry does not have a long-term strategic plan to improve the status of species at risk. Other jurisdictions identify priority species, habitats and threats in their strategic plans, with associated actions and timelines. The Ministry also has not established a performance measurement framework to evaluate whether its species at risk program is making species better off.
- The current process for appointments to the Environment Minister's species at risk advisory committee is not transparent. The Species at Risk Program Advisory Committee (Advisory Committee) was established under the Act to advise the Minister on a broad range of species at risk matters related to the implementation of the Act. Members who work for industry associations or companies now account for 10 of the 15 (or 67%) members. Half of these 10 are

registered lobbyists. Seven new members were appointed by the Minister in 2019 and 2020, yet the Environment Ministry could not explain how they were identified, screened and chosen. Additionally, the Advisory Committee did not prepare annual reports describing its activities for 2017/18 or 2018/19.

- Recovery strategies are prepared by experts to provide independent scientific advice to inform the government's actions to protect and recover a species. Delays in preparing them result in delays in conservation action. Required recovery strategies have been completed for 154 species (or 90%), but they are delayed for six endangered and 11 threatened species. Fourteen recovery strategies have been delayed because the Environment Ministry plans to adopt the federal recovery strategies for these species and is waiting for the federal government to complete these strategies.
- Approvals are not assessed for how they cumulatively affect species at risk and their habitats. The Environment Ministry does not assess the total impact of all agreements, permits and conditional exemptions over time on regulated species. Instead, approvals are considered in isolation. Yet the cumulative effects of multiple stressors—particularly those involving habitat loss—pose a significant threat to species.

Reporting on Ontario's Environment

Decision-makers, businesses, municipalities, citizen groups, and the public need a timely and clear overall picture of the state of the environment—such as knowledge of whether our air, water, soil, and the health of wildlife populations are getting better or worse. Understandable and easily accessible environmental reporting can serve to make Ontarians aware of environmental conditions, benefits, problems and risks.

At the provincial level, responsibility for monitoring, reporting on and improving the state of Ontario's environment and natural resources falls primarily to the Ministry of the Environment, Conservation and

Parks (Environment Ministry) and the Ministry of Northern Development, Mines, Natural Resources and Forestry (Natural Resources Ministry). The Ministry of Agriculture, Food and Rural Affairs (Agriculture Ministry) has a key role in monitoring, reporting on, and improving the environmental sustainability of Ontario's agriculture.

Our audit found that the three ministries are not adequately reporting to the public on the overall state of the environment and natural resources, providing progress reports on meeting environmental goals and targets, or meeting legislated deadlines and policy commitments for public reporting.

Our significant findings include the following.

- The public, businesses and stakeholders are in the dark on the overall state of Ontario's environment and how it is changing over time because the province does not publicly report on it. While the three ministries publish reports and technical and scientific publications on some environmental topics, there is no regular reporting on the overall state of the environment. More than 20 years ago, our Office noted that the numerous ministry reports and information sources on the environment did not allow the public to easily and effectively evaluate the overall state of the environment. Little has changed since then.
- Ministries are not always meeting legislated deadlines and policy commitments to report on issues related to the environment, and are not held accountable. For example, the Environment Ministry is late releasing the 2019 Great Lakes progress report, which is required under the *Great Lakes Protection Act, 2015*. Ministries face no consequences for failing to meet reporting requirements and commitments.
- The three ministries are not taking advantage of the Environmental Registry to inform the public of the release of all their reports that relate to the environment. Under the *Environmental Bill of Rights, 1993*, the Environmental Registry (a website maintained by the Environment Ministry since 1994) is to provide a “means of giving

information about the environment to the public.” However, ministries are not fully using this centralized source of public information to notify the public of all their environmental reports. Some of the reports that have not been posted include the *Air Quality in Ontario* reports and *Water Quality in Ontario* reports.