



Office of the Auditor General of Ontario

To the Honourable Speaker
of the Legislative Assembly

In my capacity as the Auditor General, I am pleased to submit to you the 2021 *Annual Report of Environment Audits* of the Office of the Auditor General of Ontario to lay before the Assembly in accordance with the provisions of section 51(1) and section 51(2) of the *Environmental Bill of Rights, 1993*.

A handwritten signature in black ink, reading "Bonnie Lysyk".

Bonnie Lysyk, MBA, FCPA, FCA, LPA
Auditor General

November 2021
Toronto, Ontario

Reflections



Bonnie Lysyk
Auditor General of
Ontario



Dr. Tyler Schulz
Assistant Auditor General,
Commissioner of the
Environment

In 2021 and in the years to come, it will be important to move past the impacts of the COVID-19 pandemic toward economic recovery. However, economic recovery is about people, and we must not lose sight that our environment is the place we live. It is the air we breathe, the water we drink, the land we live on—where our children play and our food is grown.

Consequently, environmental awareness is an important part of our lives. The environment is key to sustaining a healthy economy by providing resources for economic growth and the means to effectively address and respond to natural hazards.

Conversely, if activities are not in place to maintain or restore the quality of the environment, environmental degradation can negatively impact, for example, human health, agriculture and biodiversity, and can contribute to climate change, removal of green cover, loss of landfill capacity, and an increase in the number of species at risk.

This year's *Annual Report of Environmental Audits* highlights many key risks to further degradation of the environment in Ontario, including:

- In the absence of substantive actions, the number of species at risk in Ontario will continue to grow,

and the condition of species and their habitats will continue to decline. In its responses to our audit recommendations on our report titled “Protecting and Recovering Species at Risk,” the Ministry of the Environment, Conservation and Parks (Environment Ministry) confirmed its lack of commitment to improve transparency, and its programs and processes to protect species at risk.

- Unless additional initiatives are undertaken to reduce and divert non-hazardous waste from landfills, Ontario’s existing landfills will be at capacity within the next 11 to 14 years.
- Between 2016 and 2020, there were over 40,000 reported spills in Ontario, over 90% of which were assessed by the Environment Ministry as having the risk of potentially negative impacts on human health and/or the environment. The Environment Ministry’s hazardous spill enforcement regime is not strong enough to bring entities into compliance in a timely manner or deter repeat violations.
- The Environment Ministry does not demonstrate, through leadership and actions, a commitment to upholding the *Environmental Bill of Rights, 1993* (EBR Act). Further, the EBR Act does not cover all environmentally significant ministry actions.

As we noted above, environmental awareness is important and transparency is a key pillar in government accountability. Related to this point, we noted the following:

- More than 20 years ago, our Office reported that the many ministry reports on the environment did not allow the public to evaluate the overall state of the environment. Little has changed since then. Currently, some ministries publish reports on some environmental topics. However, the province still does not provide state of the environment reporting to Ontarians, and a number of legislated deadlines for issuing already required environmental reports are being missed.

- The Environment Ministry has not regularly reported its progress in meeting waste diversion targets or the outcomes of actions to meet greenhouse gas emissions targets. Likewise, the Ministry of Northern Development, Mines, Natural Resources and Forestry does not release regular reports on progress conserving wetlands or adapting to climate change, nor has it attempted to assess the health of wild pollinator communities, despite their vital role for crop health and wild plant diversity. The province continues to regularly report on air quality, forests and protected areas. However, the Environment Ministry has stopped regularly reporting on the overall state of water quality in the province, when previously it had published comprehensive and accessible *Water Quality in Ontario* reports from 2009 and 2016.
- The Environment Ministry is required under the EBR Act to provide educational programs to Ontarians about their environmental rights under the EBR Act. However, this has not been done.
- There are about 8,000 reported spills per year of hazardous materials such as natural gas, and the likely harms in the short and longer terms remain uncommunicated to the public. The Environment Ministry does not tell Ontarians where a hazardous spill has occurred, who caused the spill, or what specific impacts a spill could have on human health and the environment.

The province's actions, as noted throughout our Report, do not always adhere to the scientific evidence and realities that should be considered when managing legislation and programs on environmental files. These programs need to be based on data and science, with a view to sustainability for future generations.

Based on our *Annual Report of Environment Audits*, we noted that it is important that the province:

- support and work with its environmental legislation rather than against it, strengthen rather than undermine its intents;
- remember sustainability and the longer term when decisions are made. Sound governance and oversight yield decisions that benefit the economy, the environment and society; and
- encourage environmental awareness through better public reporting on the environment—what the province is doing or not doing, and how this is impacting the natural world.

It is well worth remembering that protecting, conserving and restoring the environment requires a longer-term perspective. Whatever the politics of the day, elected governments are called upon to hold this longer-term perspective in sight. The actions they take, or fail to take, will be measured in the long run by future generations of Ontarians.



Bonnie Lysyk
Auditor General



Dr. Tyler Schulz
Assistant Auditor General,
Commissioner of the Environment

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.

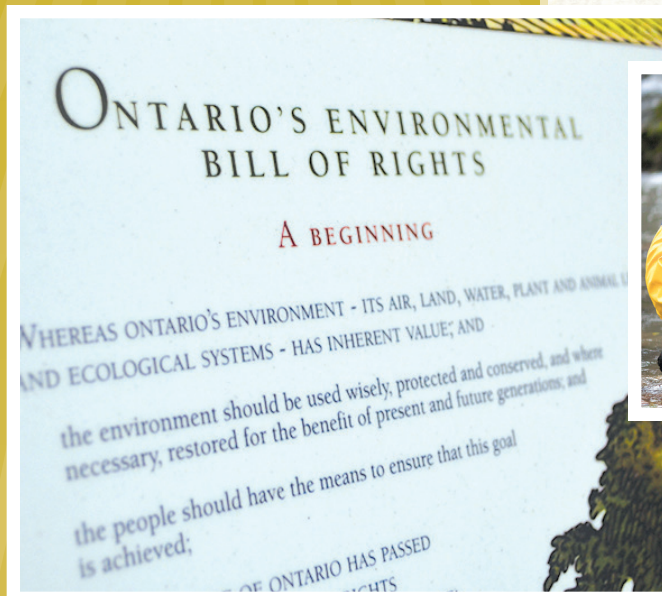
- The public, businesses and stakeholders are in the dark on the overall state of Ontario's environment and how it is changing over time because the province does not publicly report on it. While the three ministries publish reports and technical and scientific publications on some environmental topics, 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.



Office of the Auditor General of Ontario

Operation of the *Environmental Bill of Rights, 1993*



November 2021

Part I: Overview

1.0 Summary

Ontarians have a number of legal rights enshrined in provincial laws, including the rights in the *Environmental Bill of Rights, 1993* (EBR Act). These environmental rights are comparable to other legislated rights, such as the right to access government information, the right to receive public services in French, and the right to a safe and healthy workplace granted by other laws. Collectively, such laws aim to protect Ontarians' rights to be accommodated and to participate in government processes.

The EBR Act recognizes the common goal of the people of Ontario to protect, conserve and restore the environment for the benefit of present and future generations. The purposes of the EBR Act are to:

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

The EBR Act seeks to fulfill these purposes by enabling all Ontarians to participate in—and hold the government accountable for—its environmentally significant decisions. These important decisions can affect ecosystems, air quality, land use, climate, water, wildlife, plant life, and human health and well-being, among other things. To that end, the EBR Act provides rights for Ontarians and obligations for Ontario government ministries that are intended to work together to improve environmental protection.

These obligations include requirements for certain ministries to:

- have a Statement of Environmental Values that explains how they consider the purposes of the EBR Act when making decisions that may significantly affect the environment;
- notify and consult the public through a website called the Environmental Registry when developing or changing policies, laws and regulations, and issuing instruments (such as permits, licences, approvals, and other authorizations and orders) that may significantly affect the environment; and
- respond to applications from Ontarians asking them to review laws, policies, regulations, and instruments, or to investigate alleged contraventions of environmental laws, regulations or instruments.

The EBR Act also gives Ontarians greater access to the courts and tribunals for environmental matters, including the right to seek leave (that is, request permission) to appeal certain decisions about environmentally significant instruments, and the right to sue for harm to the environment or a public resource. Under the EBR Act, Ontarians also have the right to protection from reprisals by their employers for exercising their environmental rights (“whistle-blower” protection).

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. This is our third report on the operation of the EBR Act.

This report includes our Office's findings on the operation of the EBR Act since our last report, including the public's use of its environmental rights for the period from April 1, 2020, to March 31, 2021, and our findings about the ministries' compliance with and implementation of the EBR Act in 2020/21, in accordance with our criteria in **Appendix 1**.

Figure 1 lists the 16 ministries that were subject to the EBR Act in 2020/21 and how we refer to them in this report.

Appendix 2 identifies which of the EBR Act's obligations each of the ministries in **Figure 1** must meet.

Our findings on individual ministries' compliance with and implementation of the EBR Act are found in **Sections 6 – 20** (see **Figure 2** for a summary of our findings). These sections highlight areas in which ministries did not fully meet their obligations under the EBR Act in accordance with our audit criteria, and set out our Office's recommendations for achieving more effective implementation of the EBR Act. These sections also include ministry report cards that summarize our findings in 2020/21, and include a comparison with the results from our 2019 and 2020 reports.

Figure 1: The Prescribed Ministries in 2020/21 and How We Refer to Them in This Report

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

Ministry ¹	How We Refer to It
Environment, Conservation and Parks	Environment
Natural Resources and Forestry ²	Natural Resources
Municipal Affairs and Housing	Municipal Affairs
Energy, Northern Development and Mines ³	Energy and Mines
Government and Consumer Services—Technical Standards and Safety Authority ⁴	Government Services
Transportation	Transportation
Agriculture, Food and Rural Affairs	Agriculture
Heritage, Sport, Tourism and Culture Industries	Tourism
Health	Health
Long-Term Care	Long-Term Care
Infrastructure	Infrastructure
Economic Development, Job Creation and Trade	Economic Development
Indigenous Affairs	Indigenous Affairs
Education	Education
Labour, Training and Skills Development	Labour
Treasury Board Secretariat	Treasury Board Secretariat

1. Ministries are presented in descending order based on the total historical volume of their activities under the *Environmental Bill of Rights, 1993*.

2. On June 18, 2021, the Ministry of Natural Resources and Forestry merged with part of the then Ministry of Energy, Northern Development and Mines to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry (referred to in this report as the Northern Development and Natural Resources Ministry). Our assessment of EBR Act implementation and compliance was conducted for the period of April 1, 2020 to March 31, 2021, before these changes. As such, the results of our review are presented in this report for the then Ministry of Natural Resources and Forestry.

3. On June 18, 2021, the Ministry of Energy, Northern Development and Mines split: Northern Development and Mines merged with the then Ministry of Natural Resources and Forestry to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry (referred to in this report as the Northern Development and Natural Resources Ministry), and a new Ministry of Energy (referred to in this report as the Energy Ministry) was formed. Our assessment of EBR Act implementation and compliance was conducted for the period of April 1, 2020 to March 31, 2021, before these changes. As such, the results of our review are presented in this report for the then Ministry of Energy, Northern Development and Mines.

4. The Technical Standards and Safety Authority posts notices related to the *Technical Standards and Safety Act, 2000* on behalf of the Ministry of Government and Consumer Services.

Figure 2: Summary of Ministry Report Card Results for the 2020/21 Reporting Year under the *Environmental Bill of Rights, 1993* (EBR Act)

Prepared by the Office of the Auditor General of Ontario

Legend: ○ Met criteria — The ministry did not execute any responsibilities under this category in this reporting year
 ● Partially met criteria n/a The ministry is not prescribed for this category
 ● Did not meet criteria

Prescribed Ministry ¹	Statement of Environmental Values		Use of the Environmental Registry									Applications for Review and Applications for Investigation		
	Up-to-Date	Considered	Notice is Given	Comment Period Extended Based on Act	Proposals for PARs ² are Informative	Proposals for Instruments ³ are Informative	Comments are Considered	Notice of Decision is Prompt	Decision Notices for PARs ² are Informative	Decision Notices for Instruments ³ are Informative	Proposals are Up-to-Date	Ministry Reviews to Extent Necessary	Ministry Investigates to Extent Necessary	Ministry Meets Timelines
Environment	●	●	●	○	●	●	○	●	○	●	●	●	—	●
Northern Development and Natural Resources, and Energy ⁴	Natural Resources	○	○	●	○	●	○	○	●	●	●	—	—	—
	Energy and Mines	○	●	○	○	○	○	●	●	●	●	—	—	—
Municipal Affairs	○	●	●	○	●	○	○	●	●	●	○	—	—	—
Government Services/ TSSA ⁵	○	●	○	○	○	●	○	●	○	○	○	—	—	—
Transportation	○	●	●	○	○	n/a	○	●	●	n/a	○	—	n/a	—
Agriculture	○	●	○	○	○	n/a	○	●	●	n/a	○	—	n/a	—
Tourism	○	—	○	○	○	n/a	—	—	—	n/a	○	n/a	n/a	n/a
Health	○	—	○	○	○	n/a	—	—	—	n/a	○	—	n/a	—
Long-Term Care	○	—	○	○	○	n/a	—	—	—	n/a	○	—	n/a	—
Infrastructure	○	—	○	—	—	n/a	○	○	○	n/a	○	n/a	n/a	n/a
Economic Development	○	—	○	—	—	n/a	—	—	—	n/a	—	n/a	n/a	n/a
Indigenous Affairs	○	—	○	—	—	n/a	—	—	—	n/a	—	n/a	n/a	n/a
Education	○	—	○	○	○	n/a	○	○	○	n/a	—	—	n/a	—
Labour	●	—	○	—	—	n/a	—	—	—	n/a	—	n/a	n/a	n/a
Treasury Board Secretariat	○	—	○	—	—	n/a	—	—	—	n/a	—	n/a	n/a	n/a

Ministry of the Environment, Conservation and Parks — Report Card Results for Additional Requirements under the EBR Act

Use of the Environmental Registry		Education		
Prompt notice of appeals and leave to appeal applications is given	The Environmental Registry platform is maintained effectively	Assists other ministries in providing educational programs about the EBR Act	Provides educational programs about the EBR Act to the Public	Provides general information about the EBR Act to those who wish to participate in a proposal
●	●	—	●	●

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

1. Ministries are presented in descending order based on the total historical volume of their activities under the EBR Act.
2. Policies, acts and regulations.
3. Instruments include permits, licences, approvals, authorizations, directions and orders.
4. On June 18, 2021, the Ministry of Natural Resources and Forestry and the Ministry of Energy, Northern Development and Mines changed: Northern Development and Mines merged with Natural Resources and Forestry to form the Ministry of Northern Development, Mines, Natural Resources and Forestry (the Northern Development and Natural Resources Ministry), and a new Ministry of Energy (Energy Ministry) was formed. Our assessment of EBR Act implementation and compliance was conducted for the period of April 1, 2020, to March 31, 2021, before these changes. As such, the results of our review are presented in this report for the then Ministry of Natural Resources and Forestry and the then Ministry of Energy, Northern Development and Mines.
5. Technical Standards and Safety Authority.

Overall Conclusions

Ontario government ministries make many decisions every year on laws, policies, regulations and instruments that can have significant effects on the environment. The intent of the EBR Act is to give Ontarians the opportunity to know about and participate in the making of those decisions, and to ensure the government is transparent and accountable for them. When ministries carry out their work both in technical compliance with the EBR Act's processes and in the spirit of the Act, the EBR Act contributes to informed and improved decision-making that can lead to better outcomes for the environment.

In the three years that our Office has reported on the EBR Act, we have identified issues that have kept the EBR Act from operating effectively. First, we found that some ministries did not have—or did not follow—procedures to ensure they comply with the Act's requirements. We found that this has contributed to low overall ministry compliance with, and effective implementation of, the Act. In 2020/21, ministries met our audit criteria in just 63% of cases—similar to the 65% and 62% rates in 2019 and 2020, respectively. In particular, the Environment Ministry fully met just 18% of our criteria, and the former Natural Resources Ministry, the former Ministry of Energy, Northern Development and Mines and the Municipal Affairs Ministry each fully met 45% of our criteria.

Of particular concern, ministries are not notifying and consulting Ontarians about all of the environmentally significant decisions that they should be. Some ministries have deliberately avoided consulting the public about some proposals; even when this avoidance is legally valid, such actions to prevent the public from participating are inconsistent with the purpose and spirit of the EBR Act. For example, the Municipal Affairs Minister violated the EBR Act when he failed to consult on amendments to the *Planning Act* that enhanced powers regarding Minister's Zoning Orders. In addition, the Environment Ministry avoided consultation on major amendments to two

prescribed acts: the *Environmental Assessment Act* and the *Conservation Authorities Act*. In the first case, the Ministry included the amendments in an omnibus bill that retroactively exempted them from the EBR Act. In the second case, the amendments were included in an omnibus budget bill to exclude them from consultation under an EBR Act exception for proposals that form part of, or give effect to, a budget.

Further, when ministries do consult the public under the EBR Act, they are not always providing Ontarians with clear, accurate and complete information about their proposals and decisions, including the environmental implications, and they are not always providing notice in a timely manner. Both are needed for meaningful consultation and transparency.

Finally, the EBR Act's coverage does not currently extend to all environmentally significant government decisions. Environmentally significant decisions are being made either by ministries that are not subject to the Act or under laws that are not subject to the Act. As a result, Ontarians do not have any EBR Act rights in relation to those decisions.

We found that these issues, and other issues described in this report, stem at least in part from a lack of leadership from the Environment Ministry, which administers the EBR Act, and from a failure by individual prescribed ministries to prioritize their compliance with and implementation of the EBR Act. These findings point to a lack of commitment by prescribed ministries to not only meet the EBR Act's requirements in a technical way, but also consistently meet those requirements in a manner that achieves the purposes of the Act and respects Ontarians' rights. In our 2020 Report on the Operation of the EBR Act, we recommended that, to support improvement in EBR Act compliance, the Secretary of Cabinet incorporate compliance with the EBR Act into the annual performance reviews of Deputy Ministers of prescribed ministries; we will follow up on this recommendation in 2022.

Our specific findings are as follows:

The Environment Ministry, for the Third Year in a Row, Did Not Provide Leadership in Implementing the EBR Act

- **The Environment Ministry was not proactive in ensuring that environmentally significant decisions were made subject to the EBR Act.**

This year, we identified decisions that were not subject to the EBR Act's requirements despite their environmental significance. These include decisions made by one ministry that is not prescribed, decisions made under acts that are not prescribed, and decisions made in accordance with exceptions under the EBR Act:

- The Ministry of the Attorney General proposed legislation to amalgamate several tribunals that hear appeals and leave to appeal applications under many EBR-prescribed acts into a single tribunal known as the Ontario Land Tribunal. One effect of this change was to alter hearing procedures for many environmental matters. For example, persons permitted by the former Environmental Review Tribunal to participate in a hearing in person would only be able to present their views in writing. The bill also repealed the right to appeal to the minister under several environmental acts. The Ministry of the Attorney General, which is not prescribed under the EBR Act, did not post the bill for public consultation on the Environmental Registry.
- Three prescribed ministries proposed environmentally significant regulations under acts that are not prescribed under the EBR Act, including the *Drainage Act*, the *Highway Traffic Act* and the *Electricity Act, 1998*. In these cases, the ministries voluntarily consulted the public using the Environmental Registry, showing that they recognized the environmental significance of those decisions. However, because these acts are not prescribed, there is no guarantee that the public will be consulted on similar proposals under these acts in the future, and other EBR Act rights do not apply.

- Existing exceptions under the EBR Act excluded public consultation on important decisions. For example, the public was not consulted on permits, approvals and other authorizations that are usually subject to the public consultation requirements of the EBR Act for projects that are exempted from the *Environmental Assessment Act*, or on environmentally significant Minister's Zoning Orders made under the *Planning Act*; these orders do not undergo any other public consultation process.

- **The Environment Ministry undertook initiatives in a manner contrary to the spirit of the EBR Act.**

As in 2019 and 2020, we found that the Environment Ministry—the ministry responsible for administering the EBR Act—did not lead by example in its compliance with and implementation of the EBR Act.

- In our 2020 report, we concluded that the Environment Ministry's decision in July 2020 (which falls within our 2020/21 reporting period) not to consult the public about amendments to the *Environmental Assessment Act*, and to retroactively deem the amendments to be exempt from the EBR Act's public consultation requirements: was not consistent with the purposes of the EBR Act; was not transparent; and risked undermining public confidence in the government's environmentally significant decisions. In this report, we again found that the Ministry did not consult the public about significant decisions, including extensive changes to the *Conservation Authorities Act* that were of high public interest.
- In our 2020 report, we also found that the Environment Ministry's regulation to suspend public consultation under the EBR Act for a 10-week period during the COVID-19 emergency (O. Reg. 115/20) was overly broad and resulted in members of the public losing the right to seek leave to appeal (that is, challenge) 197 decisions on environmentally significant permits and approvals that were proposed during that time. In this report, we found

that, while ministries continued to consult the public during the exemption period, many of the notices and corresponding decisions they posted about proposals made during that period contained deficiencies (for example, not reporting how many comments were received, or the effects of public participation), leading to less transparency and accountability for those decisions. Further, the Ministry denied an EBR Act application asking it to review the exemption regulation, relying in part on a provision in the EBR Act that precludes review of a decision made in the last five years if it was made in a manner consistent with the EBR Act, even though the Environment Ministry did not consult the public before making the regulation. We concluded that the Ministry should have determined what steps were feasible to minimize the impacts of the exemption regulation on both the environment and Ontarians' rights under the EBR Act.

- **Even though required under the EBR Act, the Environment Ministry did not provide educational programs to Ontarians about their environmental rights under the EBR Act.** The realization of the benefits of the EBR Act depends on the public being aware of it and the rights it provides. In our 2020 report, we found that, while the Ministry provided information and links about the EBR Act and the public's rights on a webpage and on the Environmental Registry, the Ministry did not provide outreach educational programs to Ontarians about environmental rights in the EBR Act. In 2020/21, the Ministry drafted a communications plan to educate the public on the EBR Act, but the Ministry's processes for increasing public awareness and providing educational programs remained otherwise unchanged since our 2020 report.
- **The Environment Ministry did not promptly notify Ontarians in over half of leave to appeal applications and appeals of instrument decisions.** When Ontarians exercise their EBR Act right to seek leave (permission) to appeal

(challenge) a decision related to an instrument (an environmentally significant permit, licence, order, approval, or other authorization), or when an instrument holder appeals a decision about an instrument directly, they must give notice to the Environment Ministry, which must then post the notice on the Environmental Registry to inform Ontarians about the appeal. Failing to promptly post public notice of leave to appeal applications and appeals of environmentally significant decisions not only affects transparency, but also creates a risk that interested persons will lose the opportunity to participate in an appeal hearing. In 2020/21, the Environment Ministry did not give Ontarians prompt notice of one leave to appeal application and three appeals of decisions about environmentally significant instrument approvals, including an application for leave to appeal an approval for a hauled sewage disposal site.

- **The Environment Ministry Could Not Provide Documentation of Internal Controls to Ensure the Effective Operation of the Environmental Registry.** The Environment Ministry was unable to show that it had a number of information technology (IT) controls in place for the Registry. For example, the Ministry was unable to provide documentation to confirm that it has preventative controls to protect against unauthorized access to the Environmental Registry IT network. Such controls are necessary to ensure the secure and effective operation of the Registry, and to respond to incidents that could affect its operations.

Lack of EBR Act Training and Guidance for Staff Contributed to Ministries' Continued Non-Compliance with and Ineffective Implementation of the EBR Act

- **Many prescribed ministries did not have—or did not follow—internal processes and procedures to ensure they complied with the EBR Act.** We found that some ministries did not have effective processes to identify which proposals are environmentally significant and require public consultation under the EBR Act, or to ensure they comply with the EBR Act's other requirements.

Other ministries had at least some written internal guidance, but did not always follow that guidance, leading to non-compliance and ineffective implementation of the EBR Act. Some ministries' processes for implementing EBR Act requirements were unwritten, informal, and housed within the minds of specific ministry staff, risking subjective interpretation and the loss of institutional knowledge with staff turnover. We also found that some ministries did not provide sufficient—or any—training for ministry staff on their EBR Act obligations or their processes for compliance and implementation.

The Majority of Statements of Environmental Values Are Up to Date But Ministries Could Not Consistently Show that They Used their Statements of Environmental Values as Intended by the EBR Act

- **Most prescribed ministries now have either finalized or proposed up-to-date Statements of Environmental Values.** Required under the EBR Act, a Statement of Environmental Values (Statement) explains how a ministry will apply the purposes of the EBR Act when making decisions that might significantly affect the environment. Ministries are required to consider their Statements when making such decisions, to help ensure better outcomes for the environment. The government's November 2018 *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan* directed all ministries to update their Statements to reflect Ontario's environment plan, consider climate change when making decisions and “make climate change a cross-government priority.” In our 2019 and 2020 reports on the operation of the EBR Act, we recommended that ministries with outdated Statements publicly consult on their Statements and update them to reflect current responsibilities. Since our 2020 report, seven ministries (Infrastructure, Tourism, Education, Government Services, Health, Long-Term Care, and Transportation) finalized new or updated Statements, and the Environment Ministry posted a proposal for an updated Statement on the Environmental Registry. As of September 2021, the Labour Ministry was the only Ministry that did not have either an up-to-date Statement or a proposal for an updated statement on the Environmental Registry. However, as of late September 2021, the Environment Ministry had not finalized its updated Statement, more than nine months after posting the proposed update for public consultation.
- **Two ministries did not document their consideration of their Statements for nine environmental decisions that they made.** The Municipal Affairs Ministry could not provide documentation to show that it considered its Statement for seven (18%) of the 40 decisions about policies, regulations and instruments that we reviewed. Similarly, the Government Services Ministry could not provide documentation to show that it considered its Statement for either of the two decisions about regulations that it posted on the Environmental Registry. Without this documentation, it is unclear if or how these ministries considered the purposes of the EBR Act when making these decisions, or how they prioritized conflicting values, including environmental values, during their decision-making processes.
- **Six ministries provided undated documentation to show they considered their Statements, and some could not always confirm when they considered their Statements.** To be effective, consideration of a ministry's Statement must occur during the decision-making process, not after; for transparency, ministries should clearly document this timing. When we asked for documentation confirming that they considered their Statements for decisions posted on the Environmental Registry, six ministries (Environment, Natural Resources, Energy and Mines, Municipal Affairs, Transportation and Agriculture) provided documentation of their consideration, but 92 (52%) of the 176 consideration documents they provided were either not dated at all, or the documents were dated after the decision was already made. In some cases, the ministries were able to confirm that they did, in

fact, consider the Statement during the decision-making process, but in other cases the ministries could not provide any such documentation.

- **Four ministries' documentation did not show that they considered their Statements in a manner that would contribute to informed and improved decision-making.** Based on a sample of consideration documents provided, we found that four ministries' (Environment, Municipal Affairs, Technical Standards and Safety Authority and Transportation) consideration documents did not always reflect sufficient details, analysis or judgment to demonstrate that the ministries meaningfully considered their Statements in making the decisions. For example, the Municipal Affairs Ministry did not explain how it balanced principles of "increasing the supply of housing" and ensuring "well planned and healthy communities while protecting greenspace" when it adopted a new methodology that municipalities in the Greater Golden Horseshoe area must follow to identify the amount of land needed to accommodate forecast growth in housing and employment to the year 2051.

Public Not Given Appropriate Notice of Several Environmentally Significant Proposals

- **Ontarians were not notified or consulted about major proposals by four ministries.** When ministries do not comply with the public participation requirements of the EBR Act, Ontarians lose their opportunity to comment on proposals that affect their environment, and the government loses potentially important information that is relevant for making sound decisions. In 2020/21, the Environment, Natural Resources, Municipal Affairs and Transportation ministries all made environmentally significant decisions—including some with province-wide environmental implications and high public interest—without first consulting the public in accordance with the EBR Act. For example, the Natural Resources Ministry did not consult the public about a regulation under the

Conservation Authorities Act that facilitated a development in a Provincially Significant Wetland.

- **Divisional Court found that the Municipal Affairs Minister acted unlawfully in failing to consult the public about amendments to the *Planning Act*.** In 2020, two separate applications for judicial review were filed against the Ontario government for failing to consult the public in accordance with the EBR Act about several schedules to the omnibus *COVID-19 Economic Recovery Act, 2020* (Bill 197) enacted in July 2020, which amended several acts. On September 3, 2021, the Divisional Court concluded that the Municipal Affairs Minister had acted "unreasonably and unlawfully" in failing to consult the public in accordance with the EBR Act on amendments to the *Planning Act* that affected Minister's Zoning Order powers.

Information Was Deficient in Many Proposal and Decision Notices on the Environmental Registry

- **Some Environmental Registry notices lacked key information required for transparency, accountability and public participation.** Again this year, we noted numerous issues with the notices that ministries posted on the Environmental Registry that could obstruct the public's ability to provide informed and meaningful feedback. In particular, ministries did not always:
 - provide Ontarians with clear or complete descriptions of environmentally significant proposals or decisions;
 - provide Ontarians with clear or complete descriptions of the environmental implications of proposals;
 - include links or attachments to key documents that were relevant to the proposals or decisions; or
 - clearly describe the effects of public participation when giving notice of environmentally significant decisions.

For example, the Municipal Affairs Ministry posted a proposal notice for amendments to *A Place to Grow: Growth Plan for the Greater Golden*

Horseshoe. The Ministry told the public that a change was proposed to make it easier to establish new gravel pits or quarries closer to market, but not that the change would do so by removing an existing prohibition on establishing pits in the habitat of endangered and threatened species.

- **The Municipal Affairs and Natural Resources Ministries did not inform Ontarians correctly or at all about their right to seek leave to appeal certain instrument decisions.** In 2020/21, the Municipal Affairs Ministry posted seven decision notices on the Environmental Registry about approvals issued under the *Planning Act*. All of the decisions were made in 2018 and 2019, but the Ministry did not post decision notices until July 2020. By that time, the deadlines for appeals under the *Planning Act* had passed, and the Ministry stated in the decision notices that appeals were not allowed. However, Ontarians also had a right to seek leave to appeal those decisions under the EBR Act within 15 days of the decision notices being posted. The Municipal Affairs Ministry did not inform Ontarians about that right. The Ministry told our Office that the EBR Act leave to appeal right did not apply because the time to appeal under the *Planning Act* had passed and because no public comments were submitted on the proposals. This is not the case, and Ontarians did have a right to seek leave to appeal those decisions. Further, in nine decision notices posted for aggregate licences, the Natural Resources Ministry stated that Ontarians had 20 days to seek leave to appeal the decision—when the EBR Act requires that applications for leave to appeal be made no later than 15 days after a decision notice is posted—creating a risk that Ontarians relying on the notice could lose their right to seek leave to appeal.

Ministries Did Not Give the Public Timely Notice of Many Decisions, and Did Not Give Accurate Updates in Some Proposal Notices on the Environmental Registry

- **Seven ministries did not give prompt notice of their environmentally significant decisions**

in 33% of decisions that we reviewed. The EBR Act requires ministries to give notice “as soon as reasonably possible” after they have passed an act, filed a regulation, implemented a policy, or decided to issue or revoke an instrument. Prompt notice is important for transparency and, in some cases, for the public’s right to seek leave to appeal instruments during a 15-day window after notices are posted. Several ministries have adopted a service standard to post decision notices within two weeks of making a decision, which our Office has identified as a best practice in our criteria. However, in 33% of the collective decisions we reviewed for seven ministries in 2020/21, the ministries took more than two weeks to inform the public of their decisions. For example, the Municipal Affairs Ministry took 523 days (almost a year and a half) to notify the public about its decision to approve a municipality’s official plan, and the Transportation Ministry took eight weeks to inform Ontarians about amendments made to the *Transit-Oriented Communities Act, 2020*.

- **As of March 31, 2021, a total of 27 notices for environmentally significant proposals on the Environmental Registry had not been updated in over two years, including the Made-In-Ontario Environment Plan.** For the Environmental Registry to be an accurate and reliable source of information for Ontarians, proposal notices posted there must be kept up to date. However, in some cases ministries abandon proposals, transfer responsibilities to other ministries, or make decisions about proposals without posting a decision notice on the Registry. In other cases, proposals remain under active consideration for years, but ministries do not update the proposal notices to let the public know that the proposal is still being considered. As of March 31, 2021, there were 27 proposal notices that had been on the Registry for two years or more with no update or decision notice—85 (76%) fewer than in March 31, 2020. The Natural Resources Ministry was responsible for 23 of those notices (see **Figure 3**), and five of those notices (22%) were

Figure 3: Proposal Notices That Had Been on the Environmental Registry for Over Two Years Without a Decision or Update as of March 31, 2021, by Ministry, and Comparison with 2020

Source of data: Environmental Registry

Ministry	# of Notices	% of Ministry's Total Open Proposal Notices	Change in # (and %)
Natural Resources ¹	23	12.2	-29 (56)
Environment	3	0.4	-40 (93)
Infrastructure	1 ²	100	+1 (100)
Energy and Mines ³	0	0	-13 (100)
Municipal Affairs	0	0	-3 (100)
Government Services	0	0	-1 (100)
Total	27		- 85 (76)

1. On June 18, 2021, the Ministry of Natural Resources and Forestry merged with part of the then Ministry of Energy, Northern Development and Mines to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry (referred to in this report as the Northern Development and Natural Resources Ministry). Our assessment of implementation and compliance with the *Environmental Bill of Rights, 1993* was conducted for the period of April 1, 2020, to March 31, 2021, before these changes. As such, the results of our review are presented in this report for the then Ministry of Natural Resources and Forestry.
2. One open proposal that was posted by the former Ministry of Public Infrastructure Renewal in 2008 for amendments to its Class Environmental Assessment Document was not assigned to any ministry in the old Environmental Registry after that Ministry ceased to exist. During the migration of open proposal notices from the old Registry to the new Registry in 2020/21, this proposal notice was assigned to the Infrastructure Ministry, which is now responsible for posting a decision notice to bring the proposal to an end, so that the Environmental Registry is a reliable source of up-to-date information for the public.
3. On June 18, 2021, the Ministry of Energy, Northern Development and Mines split: Northern Development and Mines merged with the then Ministry of Natural Resources and Forestry to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry (referred to in this report as the Northern Development and Natural Resources Ministry), and a new Ministry of Energy (referred to in this report as the Energy Ministry) was formed. Our assessment of implementation and compliance with the *Environmental Bill of Rights, 1993* was conducted for the period of April 1, 2020, to March 31, 2021, before these changes. As such, the results of our review are presented in this report for the then Ministry of Energy, Northern Development and Mines.

originally posted more than 10 years ago, including a proposal for a licence for a forest resource processing facility posted in 2004. The Environment Ministry was responsible for three notices, including a proposal for its Made-in-Ontario Environment Plan posted in 2018; although the Environment Ministry has indicated that it has

implemented aspects of the plan since then, as of September 2021, the Ministry still had not posted a decision notice to inform the public that it had decided to implement the plan, or to explain the effect that the public's comments had on the Ministry's decision.

- **Some Updates to Proposal Notices Were Inaccurate.** The purpose of updating proposal notices that have been open on the Environmental Registry for more than two years is to provide Ontarians with current information on the status of the proposal and to ensure the Registry is a source of reliable information. For this to be achieved, updates must be both accurate and informative. However, we reviewed a sample of updated notices and found updates that ministries posted for open proposals that did not accurately reflect the status of each proposal, undermining the purpose of updating the notices and the reliability of the Registry as an information source. For example, on June 12, 2019, the Natural Resources Ministry posted an update to a proposal for a *Niagara Escarpment Plan* amendment that was originally posted in November 2012, to state that "there has been no change to the status of the proposal and it is still being considered." In fact, the amendment file had been closed as of May 27, 2019.

This report contains 61 recommendations, with 93 action items, to address our audit findings. The Environment Ministry has not clearly indicated its agreement to implement seven of our recommendations (Recommendations 2, 3, 4, 5, 7, 12 and 13).

OVERALL ENVIRONMENT MINISTRY RESPONSE

The government respects and takes our obligations under the *Environmental Bill of Rights, 1993* seriously. The Ministry of the Environment, Conservation and Parks is meeting its legislative obligations under the EBR Act, enabling Ontarians to participate in important environmental decisions.

For 2020-2021, the Ministry posted 2,136 notices about environmentally significant policies, acts, regulations, instruments, and other matters on the Environmental Registry and considered the public comments received as part of the decision-making process. The Ministry also engages the public, stakeholders, and Indigenous partners through a variety of other means, including dedicated outreach, focused consultation sessions, and specialized working groups to consult on proposals posted on the Environmental Registry of Ontario.

In 2020-21, the Ministry has also taken action to improve EBR related processes, including a 93% reduction in the number of outdated ministry notices on the Environmental Registry since 2020, concluded five outstanding reviews under Part IV of the EBR Act, and posted a proposal for updating to the Ministry's Statement of Environmental Values to the Environmental Registry for a 60-day public consultation.

We appreciate the Auditor's report and will consider these recommendations to inform further work in this area.

AUDITOR GENERAL'S RESPONSE

The Auditor General acknowledges the actions the Ministry has taken to improve its EBR-related processes. We reiterate, however, that our audit found that the Environment Ministry has not always met even the minimum legal requirements of the EBR Act. We also found that the Ministry has not always implemented the EBR Act in a manner consistent with the Act's purposes.

We continue to believe that the Environment Ministry, as the lead ministry under the EBR Act, should set an example for other prescribed ministries. The Ministry should do so by implementing the EBR Act in a way that not only meets the Act's minimum legal requirements, but that also respects the Act's purposes: to provide Ontarians with transparency in and accountability for government environmental decision-making, and to

enable meaningful public participation in government decisions that affect the environment.

2.0 Background

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

Ontarians have a number of legal rights enshrined in provincial laws. These include the rights in the *Environmental Bill of Rights, 1993* (EBR Act) to participate in the government's environmentally significant decision making. These various laws collectively aim to protect Ontarians' rights to be accommodated and participate in government processes.

The Human Rights Code (Code) is one example of rights legislation in Ontario. It protects all Ontarians against discrimination in areas such as employment, housing, and access to public services. Ontarians who assert their rights under the Code are protected from reprisals for doing so, and can apply to a dedicated adjudication body, the Human Rights Tribunal of Ontario, to determine whether their rights have been violated.

Other examples of legal rights for Ontarians include:

- the right under the *Freedom of Information and Protection of Privacy Act* to access information held by government institutions;
- the right under the *French Language Services Act* to receive public services in French;
- the right under the *Ontarians With Disabilities Act, 2001* for people with disabilities to enjoy equal opportunity and to participate fully in the life of the province through accommodation by the government, agencies, and public institutions; and
- workplace safety and employment rights under the *Occupational Health and Safety Act* and the *Employment Standards Act, 2000*, including protection against retaliation for exercising those rights.

The EBR Act 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 government decisions about the environment, and the right to hold the government accountable for those decisions.

The purposes of the EBR Act are to:

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

The EBR Act and its two regulations set out a number of requirements for Ontario government ministries and rights for Ontarians that work together to help meet these purposes. These include:

- requirements for each of the 16 ministries (the “prescribed ministries,” see **Figure 1**) to develop and publish a Statement of Environmental Values that explains how the ministries consider the purposes of the EBR Act when they make decisions that may significantly affect the environment, and that the ministries must consider when making environmentally significant decisions;
- requirements for prescribed ministries to give notice and consult the public about proposed policies, acts, regulations and instruments (permits, licences, approvals and other authorizations and orders) that are environmentally significant, to consider the public’s comments, and to give prompt notice of their decisions on the proposals, including an explanation of the effect of public participation, if any, on the decision;
- the right of Ontarians to submit applications to a prescribed ministry asking it to review existing laws, policies, regulations or instruments, or the need for new laws, policies, or regulations in order to protect the environment (“applications for review”);
- the right of Ontarians to ask a ministry to investigate alleged contraventions of certain environmental laws, regulations and instruments (“applications for investigation”); and

- the right of Ontarians to seek permission to appeal (that is, challenge) government decisions on certain instruments, the right to sue for harm to the environment or a public resource, and employees’ right to protection from employer reprisals for exercising their environmental rights (“whistle-blower” protection).

The EBR Act also establishes the Environmental Registry (ero.ontario.ca), a website that provides the public with access to information about environmentally significant proposals and decisions made by government ministries, as well as other environmental matters. Prescribed ministries are required to use the Environmental Registry to give notice of and consult on environmentally significant proposals under the EBR Act (see **Figure 4**).

The Environment Ministry administers the EBR Act’s two regulations that determine which ministries are subject to EBR Act requirements (see **Appendix 2**); which acts are subject to the EBR Act (see **Appendix 3**); and which instruments are subject to the EBR Act (see **Appendix 4**). **Appendix 5** provides a glossary of terms.

Not all requirements of the EBR Act apply to every prescribed ministry. For example, the requirement to respond to applications for review only applies to nine of the 16 prescribed ministries (see **Appendix 2** for a summary of the requirements that apply to each prescribed ministry). Even if a requirement under the EBR Act applies to a ministry, such as the universal requirement to post notices of environmentally significant proposals for policies and acts on the Environmental Registry, a ministry may not need to act on that requirement in a given reporting year (for example, if that ministry did not release any environmentally significant proposals for policies or acts).

2.2 What Makes a Proposal Environmentally Significant?

The EBR Act applies to ministry proposals for policies, acts and regulations that “could, if implemented, have a significant effect on the environment.” It also applies

Figure 4: Public Consultation Process Under the *Environmental Bill of Rights, 1993*

Prepared by the Office of the Auditor General of Ontario



to proposals for all classified instruments (that is, instruments listed on O. Reg. 681/94) because the responsible ministries have, by including them in the regulation, pre-determined them to be proposals with the potential to have a significant effect on the environment.

A proposal is environmentally significant if it has the potential to have an identifiable impact—whether positive or negative, direct or indirect—on the environment or human health. These impacts can relate to ecosystems, air quality, land use, climate,

water, wildlife, plant life, and other aspects and functions of the environment.

In some cases, the potential environmental impacts of a proposal may be evident to most people, such as a policy that allows harm to endangered species in return for payment; a regulation that sets or revises standards for mine rehabilitation; or an amendment to an act that changes the priority uses for water supplies during droughts. In other cases, the potential environmental impacts of a proposal may be less obvious or direct, such as regulating the

frequency of pollution monitoring and reporting (affecting knowledge, transparency and opportunities to remedy urgent problems), or changing how forecasts for certain types of land use are to be determined in municipal plans (potentially encouraging sprawl and resulting in the loss of agricultural land and natural heritage resources, as well as increasing greenhouse gas emissions from increased personal vehicle use).

The EBR Act lists the following factors for a ministry to consider when determining whether a proposal is environmentally significant:

- the extent and nature of the measures that might be required to mitigate or prevent any harm to the environment that could result from a decision whether or not to implement the proposal;
- the geographic extent, whether local, regional or provincial, of any harm to the environment that could result from a decision whether or not to implement the proposal;
- the nature of private and public interests, including governmental interests, involved in the decision whether or not to implement the proposal; and
- any other matter that the minister considers relevant.

When ministries determine a proposal to be environmentally significant, they are expected to follow the EBR Act requirements, including notifying and consulting the public, considering their Statements of Environmental Values, and explaining how the public comments they receive have affected their decisions. In some cases, when ministries determine that a proposal is not environmentally significant, they may still post the proposal on the Environmental Registry voluntarily to obtain feedback on the proposal. In other cases, when ministries conclude that a proposal is not environmentally significant, they do not follow the requirements.

Therefore, the criteria and decision-making process that ministries use to determine whether a proposed policy, act or regulation is environmentally significant matters greatly because it can determine whether the ministry follows relevant EBR Act

requirements, and whether Ontarians will be able to inform and improve the ministry's decision-making through the EBR Act's public participation rights.

2.3 Why the EBR Act, and its Effective Implementation, is Important for Ontarians

The *Environmental Bill of Rights, 1993* (EBR Act) gives Ontarians unique rights to participate in the government's environmental decision-making, with the purpose of leading to better protections for the environment.

Public participation in government environmental decision-making can improve the quality of decisions—and the outcomes for the environment—by providing decision-makers with additional information and perspectives from different sources, including local and Indigenous traditional knowledge. Other benefits of public participation can include greater government accountability for its decision-making, greater public awareness of issues and acceptance of decisions, and better implementation of decisions.

Since the EBR Act came into force in 1994, public consultation through the Environmental Registry has helped inform and improve many environmental decisions, including plans for provincial parks, requirements for source water protection planning, changes to the *Mining Act*, guidelines for transit planning, the management of waste, and many companies' permits to take water. In some cases, public comments have led to significant changes. For example, a proposal to permit new aggregate operations in the habitat of species at risk was cancelled, which avoided a new threat to species' recovery; and a proposal to change regulations regarding wolf and coyote hunting was similarly cancelled after public comments widely criticized the serious ecological consequences and refuted the justification that changes would help the moose population.

Ontarians have used the EBR Act's application for review process to ask prescribed ministries to

review many environmentally significant matters. For example, applicants have asked for: an overhaul of the *Endangered Species Act, 2007*; a review of how road salt is applied in Ontario; a new act to regulate the exploration and mining of uranium; a comprehensive land use planning system for Northern Ontario; and an act to protect cyclists and improve urban air quality. In some cases, applications under the EBR Act have led ministries to make significant changes. For example, applications have led to improvements in the rehabilitation of Ontario's aggregate pits and quarries, new requirements for an asphalt maker to better control emissions, the development of a provincial agricultural soil health strategy, improved sewage management in provincial parks, and an end to the hunting of snapping turtles (an at-risk species).

Challenges to instruments (permits, licences and other approvals) initiated by members of the public through the EBR Act's leave to appeal process have led administrative tribunals to order, based on the evidence, more stringent conditions on quarry operations, landfills, residential developments and industrial facilities. In one case, an appeal initiated through the EBR Act successfully challenged an approval permitting a cement plant to burn tires, bones and other wastes.

In 2020/21, Ontarians received notice on the Environmental Registry of over 1,400 ministry proposals for acts, policies, regulations and instruments that could have a significant effect on the environment, and members of the public formally submitted thousands of comments that the ministries must consider when making decisions about the proposals (for details about the use of the Environmental Registry in 2020/21, see **Appendix 6**).

Also in 2020/21, Ontarians exercised their rights under the EBR Act to ask the Environment Ministry to review its decision to suspend the EBR Act's public consultation provisions during the start of the COVID-19 pandemic in the spring of 2020, and to ask for a review of a trailer park's sewage works approval that was issued without first being posted on the Environmental Registry for public consultation

(for details of applications for review concluded in 2020/21, see **Appendix 7**).

Ontarians also used the EBR Act's leave to appeal rights in 2020/21 to successfully bring new information to the Environment Ministry's attention that led the Ministry to revoke an approval for a hauled sewage disposal facility. Another group of Ontarians also obtained the right to appeal a decision by the Environment Ministry to issue a permit to take water for an aggregate pit in Tiny Township because of their concerns about potential harm to local water resources (for details of applications for leave to appeal and appeals filed in 2020/21, see **Appendix 8**).

Ontarians' ability to exercise their rights under the EBR Act depends on prescribed ministries implementing the EBR Act effectively. When ministries do not comply with their obligations under the EBR Act, or when ministries make decisions in a way that is inconsistent with the purposes of the EBR Act, it may be more difficult for members of the public to exercise their rights to participate in environmental decision-making. As a result, the potential benefits of that participation—to the public and to the ministries making the decisions—are lost, and the purposes of the EBR Act are not met.

2.4 Legislative Changes to the EBR Act in 2020/21

In 2020/21, amendments were made to the *Environmental Bill of Rights, 1993* (EBR Act) and the regulations under it.

The legislative changes to the EBR Act resulted from amendments made to the *Environmental Assessment Act* in Schedule 6 of Bill 197, the *COVID-19 Economic Recovery Act, 2020*. These amendments:

- revised section 32 of the EBR Act to exclude more activities from EBR Act public consultation (this exception is discussed in **Section 4.5.1** of this report); and
- deemed the consultation requirements of the EBR Act not to have applied to the *Environmental Assessment Act* amendments in Bill 197 (the

process for the adoption of Bill 197 was discussed in **Chapter 1, Section 7.0** of our Office's 2020 Report on the Operation of the EBR Act). See **Section 6.5** of this report for a discussion of this provision.

Additionally, a new regulation under the EBR Act, O. Reg. 115/20, titled "Temporary Exemptions Relating to Declared Emergency," (the "exemption regulation") was filed on April 1, 2020. This regulation temporarily exempted all proposals for acts, policies, regulations and permits and approvals from Part II of the EBR Act (which sets out the EBR Act's public consultation requirements). It also exempted prescribed ministries from section 11 of the EBR Act. (Section 11 sets out the requirement for prescribed ministries to consider their Statements of Environmental Values when making environmentally significant decisions.) This exemption was in place for about 10 weeks; the exemption regulation was revoked on June 15, 2020.

The exemption regulation and its implications were discussed in **Chapter 1, Section 6.0** of our Office's 2020 report on the operation of the EBR Act. See **Section 6.15.1** for a discussion of the impact of the exemption regulation, and **Section 6.15** for a discussion of the Environment Ministry's handling of an application for review of the exemption regulation.

3.0 Audit Objective and Scope

Our audit objective was to assess whether the *Environmental Bill of Rights, 1993* (EBR Act) operated effectively during the 2020/21 reporting year (April 1, 2020, to March 31, 2021), including whether the ministries prescribed under the EBR Act:

- carried out their duties in accordance with the requirements and purposes of the EBR Act and its regulations; and
- have effective systems and processes in place that accord with the requirements and purposes of the EBR Act and its regulations.

The EBR Act requires our Office to report annually on the operation of the Act. The operation of the

EBR Act includes both the exercising of its rights by Ontarians (for example, the use of the Environmental Registry, and the submission of applications for review and investigation) and its implementation by prescribed ministries.

For the EBR Act to operate effectively, it must be implemented in a manner that is consistent with the purposes of the Act. To meet our legislated reporting requirement, our audit assessed not only whether prescribed ministries complied with the minimum legal requirements of the EBR Act, but also whether the ministries implemented the Act, including exercising their discretion under the Act, in a manner that was consistent with the Act's purposes, contributing to the effective operation of the Act.

In planning for our work, we identified the audit criteria (see **Appendix 1**) we would use to address our audit objective. These criteria were established based on a review of applicable legislation, policies and procedures, and best practices.

We conducted our audit between January 2021 and September 2021. Our work mainly covered the period from April 1, 2020, to March 31, 2021, but addressed some additional issues that arose up to September 30, 2021. We also followed up on three recommendations made in our 2019/20 report on the operation of the EBR Act, to determine whether they were implemented. We obtained written representation from ministries' senior management that, effective November 5, 2021, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusion of this report.

Our audit work was conducted at our office in Toronto. Our work involved reviewing relevant documents and data, and discussions and correspondence with staff at the Environmental Bill of Rights Office within the Environment Ministry, as well as staff at prescribed ministries (see **Appendix 1** for a description of what we reviewed).

We conducted our work and reported on the results of our examination in accordance with the applicable Canadian Standards on Assurance Engagements—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 the Canadian Standards of Quality Control and, as a result, maintains a comprehensive quality control system 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.

4.0 The EBR Act's Coverage

4.1 Overview

In order for Ontarians to put their EBR Act participation rights into practice, ministries and acts that affect the environment must be specifically brought under the EBR Act's umbrella, or "prescribed." It is therefore important that the EBR Act's regulations be kept up to date. In our 2020 Report on the Operation of the EBR Act, we recommended that the Environment Ministry review all ministries and acts to identify those that could have a significant effect on the environment, and take steps to bring them under the EBR Act.

The Ministry did not agree to this recommendation, claiming that it is the individual ministries' responsibility to determine whether they, or the acts they administer, should be subject to the EBR Act. We continue to believe that in order for the EBR Act to achieve its purposes, a government body needs to take the lead in identifying which ministries and acts could have significant effects on the environment, and to ensure that steps are taken to bring forward

changes needed to the regulations. As the ministry responsible for administering the EBR Act, the Environment Ministry should be taking the lead.

In January 2021, the Environment Ministry's Deputy Minister canvassed all deputy ministers for any proposed changes or updates to the regulations under the EBR Act, in anticipation of bringing forward a consolidated proposal for amendments to the regulations. It is a positive step that the Environment Ministry reached out to the deputy ministers of all ministries, and not just the deputy ministers of prescribed ministries as was the Ministry's previous practice; however, the Environment Ministry had not identified which additional ministries and acts could have significant effects on the environment, and should be prescribed.

As of September 2021, the EBR Act regulations had not been amended. In addition to potential amendments to add ministries and laws that should be made subject to the EBR Act, a number of amendments to the EBR Act's General Regulation are required to keep it up to date with changing ministry mandates and names.

In 2020/21, in the course of our audit, several gaps in the EBR Act's coverage came to our attention. In one instance, environmentally significant legislation was introduced by the Ministry of the Attorney General, which is not prescribed. Although we recommended the proposed act be posted on the Environmental Registry, the Ministry did not do so. In addition, we identified three non-prescribed acts under which ministries made environmentally significant decisions.

4.2 Instrument Classification Regulation Has Not Been Comprehensively Reviewed

In 2020/21, five ministries (Environment, Natural Resources, Energy and Mines, Municipal Affairs, and Government Services) were responsible for administering instruments (permits, licences, approvals and other authorizations) that are currently prescribed

under the Classification Regulation (O. Reg. 681/94) (in June 2021, the Natural Resources and Energy and Mines Ministries were changed to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry, and Ministry of Energy). This Regulation defines which instruments will be subject to the EBR Act's public consultation requirements because they can have potentially significant effects on the environment.

The EBR Act requires these ministries to review the Classification Regulation "from time to time" and determine whether there are new types of instruments with the potential for significant environmental effects that should be added to the regulation, or whether changes affecting already prescribed instruments mean they should be removed from, or reclassified in, the regulation. Such amendments would ensure that the public is consulted on all environmentally significant instrument proposals.

Ministries satisfy this requirement by responding to the Environment Ministry's periodic emails inviting them to propose amendments to the EBR Act's regulations, including the Classification Regulation. When the ministries receive this request, they canvass their program areas for any needed updates to the regulation. However, none of these ministries have established processes for periodic, comprehensive reviews of the instruments that they administer to ensure that all environmentally significant instruments are prescribed. Documentation we reviewed indicated that the Natural Resources Ministry had not undertaken a comprehensive review of its instruments since 2000. In 2020/21, that Ministry conducted an initial review of classified instruments and told us that it was working with the Environment Ministry on amendments to the Classification Regulation related to instruments issued under the *Aggregate Resources Act*, the *Lakes and Rivers Improvement Act* and the *Public Lands Act*.

RECOMMENDATION 1

To adhere to the *Environmental Bill of Rights, 1993's* requirements, meet the public participation purposes of the Act, and provide Ontarians with increased transparency and accountability for environmentally significant ministry decisions, we recommend that the Ministry of the Environment, Conservation and Parks, the Ministry of Northern Development, Mines, Natural Resources and Forestry, the Ministry of Municipal Affairs and Housing and the Ministry of Government and Consumer Services, with the Technical Standards and Safety Authority, carry out a comprehensive review of the Classification Regulation (O. Reg. 681/94) and propose amendments as needed to add new instruments that could have significant environmental effects, or remove or reclassify existing instruments that no longer meet the criteria for classification.

ENVIRONMENT MINISTRY'S RESPONSE

The Ministry agrees with the importance of keeping this regulation up to date. Under the EBR Act, individual ministries are responsible for determining whether the instruments they administer should be subject to the Act. The Ministry will continue to work with partner ministries to provide advice about the requirements of the EBR Act to help them determine whether updates are needed to the instruments prescribed under O. Reg. 681/94.

NORTHERN DEVELOPMENT, MINES, NATURAL RESOURCES AND FORESTRY (NRF)'S RESPONSE

The Ministry agrees with this recommendation. The Ministry is committed to meeting its obligations of the EBR Act.

The Ministry will prepare a legislative schedule for comprehensive review of the Classification Regulation (O. Reg. 681/94).

NORTHERN DEVELOPMENT, MINES, NATURAL RESOURCES AND FORESTRY (NDM)’S RESPONSE

The Ministry agrees with this recommendation. The Ministry is committed to meeting its obligations of the EBR Act.

The Ministry will create guidance materials to support review of Ministry classified instruments under O. Reg. 681/94 for future use; this would include a schedule of legislation for a comprehensive review to ensure that all environmentally significant instruments are prescribed.

MUNICIPAL AFFAIRS MINISTRY’S RESPONSE

The Ministry agrees with this recommendation. The Ministry will carry out a comprehensive review of the EBR Act’s Classification Regulation (O. Reg. 681/94 - Classification of Proposals for Instruments) and propose amendments to add new instruments, as needed, that could have significant environmental effects or propose the removal or reclassification of existing instruments that no longer meet the criteria for classification.

GOVERNMENT SERVICES MINISTRY’S RESPONSE

The Ministry agrees with the Auditor General’s assessment on the importance of the EBR Act and ensuring its regulations are reflective of instruments that could have significant environmental impacts. The Ministry will complete an assessment to determine if amendments are needed and will continue to work with the Ministry of the Environment, Conservation and Parks.

TECHNICAL STANDARDS AND SAFETY AUTHORITY’S RESPONSE

TSSA undertook a review of O. Reg. 681/94 in August 2018 at the request of the Ministry of the Environment, Conservation and Parks. The Ministry of the Environment, Conservation and Parks,

working through the Ministry of Government and Consumer Services, asked if there were any changes to TSSA’s classification. Since 2018 there have been no changes to the regulation and code cited in O. Reg. 681/94, namely O. Reg. 217/01 (Liquid Fuels) and the Liquid Fuels Handling Code, so TSSA believes a comprehensive review by TSSA is not needed at this time.

4.3 Legislative Amendments Brought Forward by the Ministry of the Attorney General Not Posted on the Environmental Registry

On February 16, 2021, the Attorney General introduced Bill 245, the *Accelerating Access to Justice Act, 2021*. The Bill included 11 schedules, two of which had potentially environmentally significant implications:

- Schedule 6 would enact the *Ontario Land Tribunal Act, 2021*, amalgamating 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*.
- Schedule 6 would also change procedures that affect public participation in hearings on environmental matters under several prescribed laws administered by the Environment Ministry, the then Energy and Mines Ministry, and the Agriculture Ministry. For example, persons permitted by the former Environmental Review Tribunal to participate in a hearing in person would only be able to present their views in writing. Previously, environmental groups and community members often participated in environmental hearings as “participants” or “presenters” and were able to give oral evidence, submit documents and be questioned by the parties and by the tribunal. This

evidence is useful to the tribunal, which makes decisions in the public interest, to understand the context of the decision and any potential community impacts. The changes in Schedule 6 could indirectly affect the environment by limiting the Tribunal's opportunity to gain a comprehensive understanding of community impacts.

- Schedule 10 would repeal provisions in several EBR Act-prescribed acts that permitted an appeal of a tribunal decision to the minister on grounds other than a question of law if it is in the public interest. This route has been used by the public to attempt to stop a project or facility where the tribunal made factual errors or public policy considerations have changed.

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 these proposed schedules on the Environmental Registry.

Our Office wrote to the Ministry of the Attorney General on March 9, 2021, recommending that the proposed schedules be posted. We also wrote to the Environment, Energy and Mines and Agriculture Ministries, copying the Ministry of the Attorney General, encouraging the prescribed ministries to work with the Ministry of the Attorney General to post the environmentally significant proposals on the Environmental Registry for public consultation (see **Appendix 9**).

In response to our letter, the Ministry of the Attorney General noted that the legislative process provided members of the public with significant opportunity to comment on Bill 245. By letter dated March 23, 2021, we responded that the legislative process does not provide the same opportunities for public consultation as those provided by the EBR Act, and emphasized the importance of assessing and taking into account all comments submitted by the public before finalizing the amendments (see **Appendix 9**).

The Ministry of the Attorney General had also stated in its response that it “understands and appreciates the importance of posting government

proposals that may have a significant effect on the environment on the Environmental Registry, and remains committed to considering this for proposals brought forward by our ministry that could have such an effect, as may be appropriate.” Bill 245 received royal assent on April 19, 2021. If the Ministry of the Attorney General was prescribed under the EBR Act, it would be required to consistently notify and consult Ontarians about its legislative proposals, such as Bill 245, that could have a significant effect on the environment, affording greater certainty for Ontarians.

RECOMMENDATION 2

So that Ontarians have the opportunity to participate in environmentally significant decision-making by the Ministry of the Attorney General, we recommend that the Ministry of the Environment, Conservation and Parks work with the Ministry of the Attorney General to take steps to have the Ministry of the Attorney General prescribed under the *Environmental Bill of Rights, 1993*.

ENVIRONMENT MINISTRY'S RESPONSE

The Ministry agrees that Ontarians should have an opportunity to participate in decisions that have significant impacts on the environment. Individual ministries are responsible for determining whether their ministry should be prescribed under the EBR Act. The Ministry looks forward to supporting the Ministry of the Attorney General as it considers its approach to this recommendation.

MINISTRY OF THE ATTORNEY GENERAL'S RESPONSE

The Ministry of the Environment, Conservation and Parks is responsible for the administration of the *Environmental Bill of Rights, 1993* (EBR Act).

The EBR Act seeks to provide Ontarians with an opportunity to participate in and provide input on decisions that have a significant impact on

the environment. Ministries that are prescribed under the EBR Act include ministries whose core responsibilities may have a significant impact on the environment, for example, land use planning, conservation of heritage properties, management of natural resources, etc.

In general, the Ministry of the Attorney General's (Ministry's) core responsibilities are focused on the oversight and administration of all matters connected to the administration of justice in Ontario and are not directed at the environment.

The Ministry's mandate includes:

- upholding the rule of law;
- creating a fair and accessible justice system for all Ontarians;
- co-ordinating and administering court and tribunal services throughout Ontario;
- working to modernize the justice system and provide services that are more accessible, responsive and easy to use;
- building safe and prosperous communities across the province by increasing access to justice and responding to the evolving needs of Ontario; and
- providing legal advice to, and conducting litigation on behalf of, all government ministries and many agencies, boards and tribunals.

AUDITOR GENERAL'S RESPONSE

The Auditor General continues to believe that proposals by the Ministry of the Attorney General have the potential to have a significant effect on the environment, even if the Ministry's core responsibilities are not generally directed at the environment. Prescribing the Ministry of the Attorney General would give Ontarians the right to be consulted when the Ministry makes proposals that could, if implemented, have a significant effect on the environment.

The Auditor General also continues to believe that the Ministry of the Environment, Conservation and Parks should provide leadership—not just

support—by taking steps to bring forward proposals to make the EBR Act applicable to all ministries and acts that involve decisions that affect the environment.

4.4 Ministries Made Environmentally Significant Decisions Under Acts That Are Not Prescribed Under the EBR Act

If a ministry is prescribed, but one of its acts is not also prescribed, the ministry is not required to consult the public about proposals for environmentally significant regulations (or amendments to regulations) under that act. Further, if an act is not prescribed, instruments under that act cannot be prescribed, and Ontarians do not have the right to submit applications for review or applications for investigation regarding that act. (A prescribed ministry is, however, required to consult on environmentally significant amendments to any act, and on proposals about any environmentally significant policies).

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.

In the cases that we identified, the prescribed ministries proactively posted proposals on the Environmental Registry even though they were not required to, signalling the ministries' acknowledgment of the environmental significance of the proposals and the benefits of public input into the ministries' decisions on those proposals. While we commend the ministries for voluntarily consulting the public on these proposals, we concluded that these acts govern matters that can significantly affect the environment and should therefore be prescribed under the EBR Act to ensure that Ontarians' legislated rights apply to these acts in the future.

4.4.1 The *Drainage Act*

Control of water flow and drainage affects crop productivity, nutrient loss, soil erosion, habitat protection and flood control. The *Drainage Act* establishes a collaborative process for cost-sharing the construction and maintenance of municipal drains in rural areas. Approval of drain construction and maintenance is through municipal by-law in accordance with the process established in the *Drainage Act*; other approvals may be required under other acts and regulations. There are more than 45,000 kilometres of municipal drains servicing approximately 1.75 million hectares of cropland in Ontario.

In 2020/21, the Agriculture Ministry consulted the public for 60 days on a proposed regulation to implement amendments to the *Drainage Act*. The proposed regulation would make a number of changes to the approval processes for “minor” improvements, update design changes to an approved drain, and adopt an existing protocol for drain maintenance and repair. Environmental mitigation measures recommended in the *Drainage Act and Conservation Authorities Act Protocol* have been used under the *Conservation Authorities Act* to streamline permitting for drain maintenance and repair projects. Adoption of the protocol under the *Drainage Act* could enable its use for pre-approved designs for minor improvements to align with the *Conservation Authorities Act* permitting process.

In 2018, the former Environmental Commissioner of Ontario recommended that the *Drainage Act* be prescribed under the EBR Act.

RECOMMENDATION 3

So that Ontarians receive notice of and have the opportunity to provide comments on proposals for regulations under the *Drainage Act* that could, if implemented, have a significant effect on the environment, and so that Ontarians can exercise all of the rights under the *Environmental Bill of Rights, 1993* (EBR Act) in respect of the *Drainage Act*, we recommend that the Ministry of the Environment, Conservation and Parks work with

the Ministry of Agriculture, Food and Rural Affairs to take steps to have the *Drainage Act* prescribed under the EBR Act.

ENVIRONMENT MINISTRY'S RESPONSE

The Ministry agrees that Ontarians should have an opportunity to participate in decisions that have significant impacts on the environment. Individual ministries are responsible for determining whether the acts they administer should be prescribed under the EBR Act. The Ministry looks forward to supporting the Ministry of Agriculture, Food and Rural Affairs as it considers its approach to this recommendation.

AGRICULTURE MINISTRY'S RESPONSE

The Ministry does not accept the recommendation that the *Drainage Act* be prescribed under the EBR Act as it is not environmental legislation.

The *Drainage Act* establishes a collaborative process for the construction and maintenance of municipal drains in rural areas – focusing primarily on cost allocation amongst property owners. Decisions made under the *Drainage Act* are in relation to the apportionment of costs between private parties and the municipality as well as provincial grant programming. The decisions regarding where land drainage should be allowed, which have a potential environmental impact, are made through municipal planning and approvals processes in other legislation such as the *Planning Act* and the *Conservation Authorities Act* and potential environmental impacts are consulted on through those processes.

AUDITOR GENERAL'S RESPONSE

The Auditor General continues to believe that proposals regarding the *Drainage Act* have the potential to have a significant effect on the environment. Prescribing the *Drainage Act* under the EBR Act would give Ontarians the right to be consulted about environmentally significant proposals for regulations under that act, as well as ensure

Ontarians can exercise other rights available under the EBR Act in respect of the *Drainage Act*.

The Auditor General also continues to believe that the Ministry of the Environment, Conservation and Parks should provide leadership—not just support—by taking steps to bring forward proposals to make the EBR Act applicable to all ministries and acts that involve decisions that affect the environment.

4.4.2 The *Highway Traffic Act*

In 2020/21, the Transportation Ministry consulted the public on a new approach to regulating different sizes and styles of power-assisted bicycles, known as “e-bikes,” under the *Highway Traffic Act*. The Ministry posted several notices on the Environmental Registry seeking public input on the approach, a five-year pilot program for cargo e-bikes, amendments to the act and a new regulation. These initiatives could affect fossil fuel use and air emissions. Other recent proposals under the *Highway Traffic Act* that could have environmental effects include the use of high-occupancy vehicle lanes, speed limits, and alternative vehicle use. The Transportation Ministry also notified and/or consulted the public through the Registry on these proposals.

In 2019, the Environment Ministry consulted through the Environmental Registry on a series of changes to Ontario’s approach to motor vehicle emissions. It ended the emissions testing program for light duty vehicles known as “Drive Clean,” adopted new regulations applicable to heavy duty diesel commercial vehicles, and made legislative changes that, when proclaimed, will repeal part of the *Environmental Protection Act* and move responsibility for vehicle emissions to the *Highway Traffic Act* and the Transportation Ministry. Public comments on the consultations voiced a concern about the loss of public participation rights given that the *Highway Traffic Act* is not prescribed under the EBR Act. In response, the Environment Ministry promised: “Consideration will be given to making the applicable regulatory amendments prescribed under [the EBR Act] to ensure

that regulatory changes with environmental impacts related to motor vehicle emission testing would be posted on the [Environmental Registry] for a public comment period.” As of September 2021, the Environment Ministry had not yet done so.

RECOMMENDATION 4

So that Ontarians receive notice of and have the opportunity to provide comments on proposals for regulations under the *Highway Traffic Act* that could, if implemented, have a significant effect on the environment, and so that Ontarians can exercise all of the rights under the *Environmental Bill of Rights, 1993* (EBR Act) in respect of the *Highway Traffic Act*, we recommend that the Ministry of the Environment, Conservation and Parks work with the Ministry of Transportation to take steps to have the *Highway Traffic Act* prescribed under the EBR Act.

ENVIRONMENT MINISTRY’S RESPONSE

The Ministry agrees that Ontarians should have an opportunity to participate in decisions that have significant impacts on the environment. Individual ministries are responsible for determining whether the acts they administer should be prescribed under the EBR Act. The Ministry looks forward to supporting the Ministry of Transportation as it considers its approach to this recommendation. The Ministry of Transportation is currently consulting on an approach under Environmental Registry Proposal Notice #019-4277.

TRANSPORTATION MINISTRY’S RESPONSE

The Ministry continues to assess consultation requirements for potentially environmentally significant proposals.

Under the Ministry’s “Modernizing Ontario’s Vehicle Inspection Program and integrating safety and emissions inspections for commercial vehicles,” Environmental Registry Proposal Notice

019-4277, the Ministry proposes amendments to Regulation 73/94 under the EBR Act, to require that future amendments to its proposed vehicle emissions regulation under section 75.1 of the *Highway Traffic Act* be posted to the Registry for public comment.

AUDITOR GENERAL'S RESPONSE

The Auditor General continues to believe that proposals regarding the *Highway Traffic Act* have the potential to have a significant effect on the environment. The Ministry is taking a good first step with its proposal regarding the vehicle emissions regulation. However, prescribing the *Highway Traffic Act* under the EBR Act would give Ontarians the right to be consulted about all environmentally significant proposals for regulations under that act, as well as ensure Ontarians can exercise the other rights available under the EBR Act in respect of the *Highway Traffic Act*.

The Auditor General also continues to believe that the Ministry of the Environment, Conservation and Parks should provide leadership—not just support—by taking steps to bring forward proposals to make the EBR Act applicable to all ministries and acts that involve decisions that affect the environment.

4.4.3 The *Electricity Act, 1998*

On January 1, 2019, the Ontario government repealed the *Green Energy Act, 2009*, shifted select energy efficiency and conservation provisions to the *Electricity Act, 1998*, and revoked and implemented new associated regulations under the *Electricity Act, 1998*. The *Green Energy Act, 2009* had been prescribed under the EBR Act's General Regulation, as was its predecessor, the *Energy Efficiency Act*. However, the *Electricity Act, 1998* is not prescribed.

In 2020/21, the former Energy and Mines Ministry consulted through the Environmental Registry on several proposals related to matters under the *Electricity Act, 1998*, including regulations for efficiency

standards for products, changes to the framework for long-term energy planning and changes affecting renewable energy projects. These initiatives affect energy and water conservation and use and greenhouse gas emissions.

In June 2021, the Energy and Mines Ministry was changed and a separate Ministry of Energy (Energy Ministry) was created; the Energy Ministry is now responsible for administering the *Electricity Act, 1998*.

RECOMMENDATION 5

So that Ontarians receive notice of and have the opportunity to provide comments on proposals for regulations under the *Electricity Act, 1998* that could, if implemented, have a significant effect on the environment, and so that Ontarians can exercise all of the rights under the *Environmental Bill of Rights, 1993* (EBR Act) in respect of the *Electricity Act, 1998*, we recommend that the Ministry of the Environment, Conservation and Parks work with the Ministry of Energy to take steps to have the *Electricity Act, 1998* prescribed under the EBR Act.

ENVIRONMENT MINISTRY'S RESPONSE

The Ministry agrees that Ontarians should have an opportunity to participate in decisions that have significant impacts on the environment. Individual ministries are responsible for determining whether the acts they administer should be prescribed under the EBR Act. The Ministry looks forward to supporting the Ministry of Energy as it considers its approach to this recommendation.

ENERGY MINISTRY'S RESPONSE

The Ministry agrees that Ontarians should receive notice for all proposals for regulations under the *Electricity Act, 1998* that could, if implemented, have a clear environmental significance, including energy efficiency and energy conservation initiatives. The Ministry will continue to make these determinations about environmental significance on a case-by-case basis.

Much of the *Electricity Act, 1998* deals with matters that are financial or administrative in nature so proposals are therefore posted on the provincial Regulatory Registry. These proposals would be inappropriate on the Environmental Registry. The Ministry believes that continuing to post proposal notices on a case-by-case basis, as a prescribed ministry, rather than prescribing the *Electricity Act, 1998*, is appropriate.

AUDITOR GENERAL'S RESPONSE

The Auditor General continues to believe that proposals regarding the *Electricity Act, 1998* have the potential to have a significant effect on the environment. Prescribing the *Electricity Act, 1998* under the EBR Act would give Ontarians the right to be consulted about environmentally significant proposals for regulations under that act, as well as ensure Ontarians can exercise the other rights available under the EBR Act in respect of the *Electricity Act, 1998*.

The Auditor General also continues to believe that the Ministry of the Environment, Conservation and Parks should provide leadership—not just support—by taking steps to bring forward proposals to make the EBR Act applicable to all ministries and acts that involve decisions that affect the environment.

4.5 Exclusions from the EBR Act Prevent Ontarians From Participating in Decisions that Affect the Environment

We identified exclusions from the EBR Act's public participation requirements that prevent Ontarians from participating in decisions affecting the environment and that are unjustified in light of recent legislative and regulatory changes. These exclusions relate to instruments for projects that fall under the *Environmental Assessment Act*, but for which no public consultation is carried out, and to regulations for

Minister's Zoning Orders made under section 47 of the *Planning Act* by the Municipal Affairs Minister.

4.5.1 *Environmental Assessment Act* Exceptions from the EBR Act

If a project is approved under the *Environmental Assessment Act*, proposals for prescribed instruments (such as environmental compliance approvals, permits to take water, or permits under the *Endangered Species Act, 2007*) that are a step toward implementing the project are not required to be posted on the Environmental Registry for notice and comment. As a result, Ontarians are not provided the opportunity to seek leave (that is, permission) to appeal these decisions. These approvals were originally excepted from the EBR Act because consultation on them would have duplicated consultation under the environmental assessment process. Since then, however, environmental assessment in Ontario has evolved and the scope of public consultation on projects has changed. These changes have resulted in no, or very limited, public consultation on some projects through the environmental assessment process; in these cases, there is no duplication with the EBR Act and the EBR Act exception for instruments related to those projects is no longer justified.

This is not a new concern. In 2013, the former Environmental Commissioner of Ontario stated: "Shrouding these decisions from public scrutiny based on section 32 of the EBR is inconsistent with the goals of this legislation." This issue was also raised during consultations on the EBR Act undertaken by the Environment Ministry in 2016.

The EBR Act consultation exception applies broadly to projects that are either **approved** under or **exempted** from the *Environmental Assessment Act*. When a project or a class of projects is exempted from the *Environmental Assessment Act* without conditions requiring consultation and section 32 of the EBR Act applies, no public consultation is required on either the project or the instruments that implement it, and

the public has no ability under either act to challenge a ministry's decision.

The number of projects exempted from the *Environmental Assessment Act* has grown.

For example:

- In 2019, the *Environmental Assessment Act* was amended to exempt a large number of projects under the Class Environmental Assessments (Class EAs) that the Environment Ministry described as “low impact,” and to allow other projects to be exempted under the Class EAs. There are 10 approved Class EA documents for groups of activities, usually those that are carried out routinely and have predictable environmental effects that can be readily mitigated. Amongst other things, the Class EAs apply to activities related to municipal infrastructure and provincial transportation. Together with streamlined assessment processes for waste, electricity and transit projects, 95% of all the activities to which the *Environmental Assessment Act* applies fall within these processes. Class EAs and streamlined processes include different levels of public consultation.
- Changes to the EBR Act in 2020 expanded the consultation exception to cover projects that are exempted from the *Environmental Assessment Act* not just by regulation, but if provided for in a Class EA.
- In 2020, the Environment Ministry exempted forest management activities on Crown lands in an area that covers 40% of the province from the *Environmental Assessment Act*.
- In 2021, the Environment Ministry exempted Crown projects or activities related to land claims settlements and other agreements with Indigenous communities about land, including acquisitions and dispositions of land and Crown resources.

For some projects, processes have been streamlined and consultation requirements have been modified. For example, in 2020, the Environment Ministry modified the existing streamlined environmental assessment process for four priority transit projects in Toronto. This process requires the

proponent, Metrolinx, to consult Indigenous communities and interested persons “in the way the proponent considers appropriate” and to establish its own issues-resolution process.

In 2020, the Environment Ministry proposed more exemptions and streamlining of processes that would affect public consultation opportunities through environmental assessment processes and under the EBR Act. These included:

- exempting all projects and activities in provincial parks and conservation reserves;
- streamlining the process for 38 Ministry of Transportation highway improvement projects (in October 2021, the Environment Ministry gave notice that it had decided not to move forward with these exemptions);
- exempting the Bradford Bypass, a Ministry of Transportation 400-series highway through the Holland Marsh, subject to conditions (in October 2021, the Environment Ministry filed the exempting regulation);
- streamlining the Ministry of Transportation's process for Highway 413, linking Highways 401 and 400, through agricultural land and the Greenbelt;
- amending eight Class EAs to reduce the requirements for some types of projects and exempt some types of projects altogether. This would include amending the Natural Resources Ministry's Class EA for Resource Stewardship and Facility Development to exempt all authorizations under the *Endangered Species Act, 2007*.

In 2020, the *Environmental Assessment Act* was amended to significantly change Ontario's approach to environmental assessment. As of September 2021, these amendments had not yet been proclaimed in force. Once in place, the changes mean that the act will only apply to designated projects listed in one of two regulations—one for projects that will follow the comprehensive environmental assessment process and one for projects that will follow the streamlined environmental assessment process—rather than applying broadly to all public sector projects with exceptions.

Under this new approach, for projects that were exempted under the old approach but are not on the new project lists, the EBR Act consultation exception for implementing instruments will no longer apply. In other words, if a prescribed instrument is proposed to implement a project that is not included on the project lists, it will have to be posted on the Environmental Registry for public consultation unless the instrument is exempt from the requirement for posting.

This would restore an opportunity for public consultation on such instruments. However, according to documentation we reviewed, the Environment Ministry intends to “take action” to address instruments that will no longer be excepted from EBR Act consultation by section 32, either by reclassifying instruments in the EBR classification regulation or by adopting a regulation under the EBR to exempt instruments related to the types of projects that were once exempted from the *Environmental Assessment Act*.

RECOMMENDATION 6

So that Ontarians are given notice of and consulted about environmentally significant proposals for instruments, we recommend that the Ministry of the Environment, Conservation and Parks review the exceptions in section 32 of the *Environmental Bill of Rights, 1993* (EBR Act), propose amendments to align that section with the purposes of the EBR Act, and consult the public about the proposed amendments in accordance with the EBR Act.

MINISTRY RESPONSE

Public consultation remains a cornerstone of Ontario’s environmental assessment program. As the Ministry continues to modernize Ontario’s environmental assessment program, its decisions about exempting projects or groups of projects from environmental assessment requirements will be informed by consultation. As part of this initiative, the Ministry will consider how consultation

may be provided for through other mechanisms or processes, for those projects proposed to be exempt. As environmental assessment modernization activities continue, the changes being made will prompt the Ministry to examine section 32 of the EBR Act.

4.5.2 Minister’s Zoning Orders

In **Chapter 1, Section 7.2** 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 that requires public consultation and that permits appeals to the Ontario Land Tribunal. Although Minister’s Zoning Orders are regulations under the *Planning Act* and that Act is prescribed for the purposes of section 16 of the EBR Act, the EBR General Regulation (O. Reg. 73/94) currently exempts these orders from the EBR Act’s public consultation requirements. The *Planning Act* requires no notice or hearing prior to the making of such orders, but requires the Ministry to give notice within 30 days after the orders are made, and the Ministry’s practice has been to post bulletins on the Environmental Registry, with links to the regulations, to satisfy that requirement.

We reported that some of the Minister’s Zoning Orders issued in 2019/20 authorized large residential developments on lands previously zoned for agricultural, institutional or employment use, automobile dealerships on a rural site, and a large distribution facility on lands containing protected wetlands.

Since we issued our 2020 report:

- More Minister’s Zoning Orders have been made, many with the potential for significant environmental impacts. One example of a zoning order with the potential for significant environmental impacts would have permitted the development of a warehouse in a Provincially Significant Wetland in Pickering (discussed further in **Section 7.4**).

Although public consultation is not precluded by either the *Planning Act* or the General Regulation exclusion, the Municipal Affairs Minister did not consult the public on any of the zoning orders made since 2019.

- In December 2020, the *Conservation Authorities Act* was amended to require conservation authorities to grant permission to commence development if the development is authorized through a Minister's Zoning Order, subject to conditions the conservation authority may issue to mitigate adverse environmental effects. (As described in **Section 6.5**, the Environment Ministry proposed these amendments without providing an opportunity for public consultation through the EBR Act.)
- Starting in December 2020, the Municipal Affairs Ministry consulted the public through the Environmental Registry on the changes made in Bill 197 and already in force that enhanced the Minister's authority to control site plan matters or affordable housing when making a Minister's Zoning Order. Despite high public interest and recommendations from commenters, including municipalities, to limit or guide the Minister's discretion in using zoning orders, the Ministry stated that it would not propose any changes to the *Planning Act* as a result of this consultation.
- On the same day the Municipal Affairs Ministry stated that it would not propose changes to the *Planning Act* as a result of the consultation, it proposed an amendment to the Act that allows the Ministry even more discretion. The amendment, which applied retroactively, states 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. All planning decisions by the province, municipalities, conservation authorities or the Ontario Land Tribunal have had to be consistent with these rules. However, this amendment means that the

Municipal Affairs Minister, while still required to consider matters of provincial interest, can make a zoning order that is not consistent with these rules, including those that prohibit development or site alteration in significant wetlands, woodlands and wildlife habitat, or that require the protection of prime agricultural areas for agricultural uses, without ever consulting the public.

- The Premier and the Municipal Affairs Minister have publicly indicated, including in the Legislature, that the government plans to continue to use Minister's Zoning Orders to achieve development aims.

As the number of Minister's Zoning Orders, and the likelihood of significant environmental impacts, increases, it would be consistent with the EBR Act's purpose for Ontarians to be consulted on all Minister's Zoning Orders that could, if implemented, have a significant effect on the environment.

RECOMMENDATION 7

So that Ontarians have the opportunity to receive notice of and comment on environmentally significant proposals for Minister's Zoning Orders, we recommend that:

- the Ministry of the Environment, Conservation and Parks work with the Ministry of Municipal Affairs and Housing to take steps to have O. Reg. 73/94, the General Regulation made under the *Environmental Bill of Rights, 1993* (EBR Act), amended to revoke section 15.5, which exempts Minister's Zoning Orders from Part II of the EBR Act; and
- the Ministry of Municipal Affairs and Housing consult the public on all environmentally significant Minister's Zoning Orders in accordance with the requirements of Part II of the EBR Act.

ENVIRONMENT MINISTRY'S RESPONSE

The Ministry agrees that Ontarians should have an opportunity to participate in decisions that have significant impacts on the environment. Individual ministries are responsible for determining whether

the acts or instruments they administer should be prescribed under the EBR Act. The Ministry looks forward to supporting the Ministry of Municipal Affairs and Housing as it considers its approach to this recommendation.

MUNICIPAL AFFAIRS MINISTRY'S RESPONSE

The Ministry takes seriously its obligations under the EBR Act and will work to meet its consultation obligations under the Act.

The Minister has publicly stated that he expects that before a municipality requests an MZO, they do their due diligence which includes consultation in their communities, connecting with conservation authorities and engaging with potentially affected Indigenous communities. The Minister has also publicly stated that he expects that municipal requests for a zoning order include a supporting Council resolution. As Council meetings are generally open to the public, this expectation is meant to ensure public awareness of a request being made for the Minister to consider making a zoning order.

AUDITOR GENERAL'S RESPONSE

The Auditor General continues to believe that proposals for Minister's Zoning Orders under the *Planning Act* have the potential to have a significant effect on the environment. Revoking the exemption for Minister's Zoning Orders under the EBR Act would give Ontarians the right to be consulted about environmentally significant proposals for Minister's Zoning Orders.

The Auditor General also continues to believe that the Ministry of the Environment, Conservation and Parks should provide leadership—not just support—by taking steps to bring forward proposals to make the EBR Act applicable to all ministries and acts that involve decisions that affect the environment.

Part II:

Ministry Operations

5.0 Prescribed Ministries' Processes For Ensuring They Comply With the *Environmental Bill of Rights, 1993*

5.1 Overview

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.

It is therefore important for prescribed ministries to have internal controls—processes, policies and procedures—to ensure they comply. At a minimum, prescribed ministries should ensure that all relevant staff are aware of the Ministry's EBR Act responsibilities, and have processes to identify when the EBR Act applies to their work. Ministries should also have written processes and procedures to guide their staff in carrying out the ministries' EBR Act obligations, and internal checks and balances to ensure that they have complied.

If staff within a prescribed ministry are not aware of the ministry's EBR Act obligations, cannot properly identify circumstances in which the EBR Act applies,

do not have clear guidance about how to comply, or do not follow existing guidance, there is a risk that the ministry will not comply consistently or at all with the EBR Act. As a result, Ontarians may be prevented from exercising their rights under the Act, and the Act's purposes—including transparency and accountability for environmental decision-making—might not be met.

Our reports on the operation of the EBR Act detail multiple examples where ministries failed to consistently comply with, and effectively implement, the EBR Act—issues that could be improved by developing and following documented processes.

5.2 Prescribed Ministries Did Not Have or Did Not Follow Effective Processes and Procedures for Ensuring They Comply with Their EBR Act Responsibilities

We found that the 16 prescribed ministries varied significantly in how they ensured they complied 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 had established formal processes, they did not always follow them, or monitor to ensure their staff complied with them.

EBR Act Awareness

Ensuring that ministry staff are aware that the EBR Act applies to their ministry, and what that

means, is essential to ensuring the ministry complies with its EBR Act obligations.

Some ministries make staff aware of the EBR Act and the ministries' EBR Act responsibilities by providing some form of training, such as presentations and e-learning modules, although the training is not mandatory and is not always provided on a regular basis. For example, the Environment, Natural Resources, Municipal Affairs and Energy and Mines ministries all conducted some form of EBR Act training for staff since April 1, 2020. Some ministries make staff aware of the EBR Act through onboarding materials for new staff, circulating information about the EBR Act or posting materials on ministry intranet sites.

However, we found that eight ministries (Government Services, Tourism, Health, Long-Term Care, Infrastructure, Economic Development, Labour and Treasury Board Secretariat) did not provide any formal training to staff. Those ministries also did little or nothing to ensure staff were made aware of the EBR Act and the ministry's responsibilities under the Act.

The Economic Development Ministry told us that its Corporate Policy and Coordination Unit was available to provide advice and guidance to staff as needed, and that it was developing a policy training series for staff that would include training on the EBR Act, but this was delayed due to the COVID-19 pandemic. That Ministry developed an internal guidance document about the EBR Act in 2020/21, but this document was not circulated to staff and was available only upon request. The Ministry told us it planned to post this guidance document to its intranet in March 2021, but as of September 2021, the Ministry had not yet posted the document. The Treasury Board Secretariat told our Office that its staff are made aware of EBR obligations through two or three emails circulated per year to canvass staff about any upcoming policies or legislation that may be of environmental significance, and that new senior executives are informed of EBR Act responsibilities during onboarding. However, these emails and onboarding materials that we reviewed did not provide background information or an overview

about the EBR Act or the Ministry's specific responsibilities under the EBR Act.

In December 2020, the Deputy Minister of the Environment, Conservation and Parks drafted—but never finalized or sent—a letter to all staff in the Ministry outlining the Ministry's obligations under the EBR Act, the importance of ensuring that the Ministry complies with the Act, and resources available to assist staff in meeting their assigned responsibilities related to the Ministry's EBR Act obligations. The Ministry told us the Deputy Minister did not send the letter because the intention of the memo was to ensure awareness of protocols around EBR Act compliance to support our Office's audit of the operation of the Act, and that Ministry staff instead attended a presentation by our Office that included the necessary information about EBR Act protocols. However, our presentation to Ministry staff was to a select group of people on our Office's work (including reporting on the operations of the EBR Act)—not on how to comply with the Ministry's responsibilities under the EBR Act. Sending the letter would have ensured that all staff in the Ministry—not just those that attended the presentation by our Office—were aware of the Ministry's EBR Act obligations and how to ensure it complies.

Documented Policies and Procedures for Complying With and Implementing the EBR Act

Seven ministries (Government Services, Tourism, Health, Long-Term Care, Infrastructure, Labour and Treasury Board Secretariat) did not have any formal internal processes, documented policies or procedures for ensuring ministry compliance with the EBR Act. Other ministries had at least some formal internal processes and documented procedures explaining, for example, how and when to consider their Statements of Environmental Values, how to draft and post notices on the Environmental Registry, and how to handle applications for review and investigation. The Treasury Board Secretariat told us in March 2021 that it was working on an internal process document, but as of October 2021 it had not been finalized or implemented.

Several ministries, such as the Health, Long-Term Care, Tourism, Infrastructure and Labour Ministries, told us that they relied on a small number of individual staff that have knowledge of and experience with the EBR Act to ensure the ministry complies. Even the Environment Ministry, which has several documented policies and procedures for complying with the EBR Act, relied solely on the expertise of certain staff when it came to posting appeal notices on the Environmental Registry, and responding to public inquiries about the EBR Act.

Relying on processes that are unwritten, informal, and housed within the minds of specific ministry staff risks inconsistent and incomplete implementation of EBR Act requirements, and loss of institutional knowledge with staff turnover or periods of absence. For example, the Infrastructure Ministry underwent organizational changes in 2020/21 that led to responsibility for EBR Act implementation being transferred to a different division in the Ministry. With staffing and organizational changes and no documented policies or procedures, the Ministry was left without a clear or complete understanding of its EBR Act responsibilities or how to comply. In March 2021, the Ministry provided our Office with documentation that showed it was considering options for improving its internal processes for compliance with the EBR Act, including staff education and awareness of the EBR Act. In June 2021, the Deputy Minister sent a memo to all staff outlining the Ministry's responsibilities under the EBR Act. The memo included a checklist to help staff determine when the EBR Act applies. The Deputy Minister directed staff to complete and attach the checklist to all applicable approvals packages.

Many ministries also told us that they rely on assistance from the Environment Ministry when environmental matters arise, or refer to an internal online resource centre related to the Environmental Registry and maintained by the Environment Ministry. Prescribed ministries also participate in an Inter-ministerial Committee, chaired by the Environment Ministry, that shares information about EBR Act issues and use of the Environmental Registry.

However, without processes to identify whether a matter is potentially subject to EBR Act requirements, or clear direction to seek assistance from the Environment Ministry in such a case, there is a risk that ministries will not identify environmentally significant proposals or comply with their EBR Act requirements. Further, the online resource centre provides guidance on the technical use of the Registry, but does not provide information or training on ministries' obligations under the EBR Act or how to comply. For example, the resource centre does not explain prescribed ministries' responsibilities for considering their Statements of Environmental Values when making environmentally significant decisions, or requirements for responding to applications for review or investigation submitted by the public.

Even when ministries had relatively extensive or detailed internal guidance, we found that in 2020/21 they did not always follow that guidance or comply with the EBR Act. For example, the Environment Ministry's written guidance directed staff to notify our Office (as required by the EBR Act) when it decides not to consult the public based on an exception in the Act. However, as we report in **Section 6.7**, the Ministry did not provide such notice for five of the six exception notices that it posted in 2020/21. The Natural Resources Ministry had an internal Statement of Environmental Values Implementation Guide that requires the Ministry's Statement consideration documents to be signed before corresponding decision notices are posted on the Environmental Registry. However, the Ministry did not always follow this internal guidance; Statement of Environmental Values consideration documents provided for six decisions for which the Ministry posted notices on the Registry in 2020/21 were not signed (see **Section 7.3**).

Similarly, several ministries, including the Environment, Natural Resources, Energy and Mines, and Municipal Affairs Ministries, had internal guidance directing staff to post decision notices on the Environmental Registry within two weeks of making decisions, but those ministries continued to post late notices in many cases in 2020/21. For example, as we

report in **Section 7.14**, the Energy and Mines Ministry posted over one-quarter of its decision notices more than two weeks after the decisions were made.

Central to complying with the EBR Act and meeting its purposes is ensuring that ministry staff consider whether a proposal by their ministry may be subject to the EBR Act. Few ministries have specific guidance for staff on such an assessment. For example, the Labour Ministry told us that it did not have processes to identify all of its proposals that may be subject to the EBR Act's requirements.

The Natural Resources Ministry had a relatively detailed guidance document that walked staff through a process for considering whether the EBR Act applies to a proposal, including whether any exceptions apply. However, as detailed in **Section 7.4**, in 2020/21, the Natural Resources Ministry nevertheless did not post an environmentally significant proposal for a regulation under the *Conservation Authorities Act*. Other ministries, such as the Education Ministry, directed staff to the factors in the EBR Act for determining whether a proposal is environmentally significant.

Monitoring Compliance With the EBR Act

Having formal processes for complying with the EBR Act supported by documented policies and procedures can help ministries effectively implement the EBR Act. Monitoring, which can take the form of an internal and/or independent audit or evaluation, enables a ministry to assess whether it has complied with its processes and the EBR Act, and identify areas where improvement is needed.

We found that, overall, ministries lacked internal processes for monitoring their compliance with the EBR Act. Even ministries that provided guidance documents to staff on how to comply with the Act did not have formal processes for looking back to determine whether they did, in fact, comply with all EBR Act requirements. For example, the Energy and Mines Ministry had a process for performing semi-annual internal audits of its instrument notices, but not for other EBR Act requirements. We also found that the Government Services Ministry did not have

processes for ensuring that the Technical Standards and Safety Authority, to which the Ministry delegates its EBR Act obligations related to liquid fuels, complies with those obligations.

When asked for documentation related to their compliance with certain EBR Act requirements (such as considering their Statements of Environmental Values, considering the public's comments when making a decision, and determining whether the EBR Act applied to a proposal), several ministries, including the Environment, Natural Resources, Energy, Northern Development and Mines, Municipal Affairs, Government Services, Transportation, and Agriculture Ministries, were unable to confirm, or had difficulty readily confirming or verifying, that they had complied in some cases. For example, it took the Municipal Affairs Ministry over five weeks to provide documentation confirming that it had considered public comments when deciding on a proposed methodology to identify the land area needed in the Greater Golden Horseshoe area to accommodate forecasted housing and employment. Similarly, several ministries, including the Environment Ministry and Municipal Affairs Ministry, could not readily provide documentation showing they considered their Statements of Environmental Values for specific decisions.

Without effective internal processes, including written procedures and guidance, there is a risk that ministries will be unable to ensure and verify compliance with the EBR Act, or identify needed improvements in compliance with policies and processes.

RECOMMENDATION 8

To identify and correct non-compliance with, and ineffective implementation of, the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that every ministry that is prescribed under the EBR Act review its existing processes and procedures, if any, for complying with the EBR Act and, to the extent that it has not already done so:

- develop and implement processes and procedures to train and update all relevant staff on the ministry's responsibilities under the EBR Act and when the EBR Act applies;

- establish, implement, and periodically review and update documented processes and procedures for complying with and implementing the EBR Act; and
- implement processes for monitoring the ministry's compliance with the EBR Act, and take corrective measures to address and prevent any non-compliance with the EBR Act.

See **Appendix 10** for ministry responses to **Recommendation 8**.

6.0 Ministry of the Environment, Conservation and Parks (Environment Ministry or Ministry)

6.1 Overview

The Environment Ministry administers laws and regulations related to air pollution, water quantity and quality, safe drinking water, climate change, contaminated lands, spills, waste management, pesticides, toxic substances, species at risk, protected areas, environmental assessment and conservation authorities. In late 2018, the Environment Ministry released its Made-in-Ontario Environment Plan, which sets out the Ontario government's plan for addressing the environmental challenges facing Ontario.

The Environment Ministry is responsible for administering the *Environmental Bill of Rights, 1993* (EBR Act) and its regulations, and for operating the Environmental Registry. The Environment Ministry is also responsible for providing educational programs about the EBR Act to the public, and for posting notices that the Ministry receives on the Environmental Registry of applications for leave to appeal and appeals of instruments prescribed under the EBR Act.

As administrator of the EBR Act, the Environment Ministry supports other prescribed ministries when implementing EBR Act requirements and using the Environmental Registry, and in bringing forward proposed amendments to the EBR Act's regulations. The Environment Ministry chairs an Inter-ministerial Committee for prescribed ministries, which meets monthly to share information about EBR Act issues and implementation, as well as use of the Environmental Registry, and maintains an intranet resource site about use of the Registry for prescribed ministries.

Under the EBR Act, the Environment Ministry is responsible for 17 prescribed acts, including the *Environmental Protection Act*, the *Environmental Assessment Act*, and the *Provincial Parks and Conservation Reserves Act, 2006*. The Ministry must consult the public about permits, licences, approvals and other authorizations and orders issued under six prescribed acts, such as environmental compliance approvals under the *Environmental Protection Act*, permits to take water under the *Ontario Water Resources Act*, and overall benefit permits under the *Endangered Species Act, 2007* (for more information about these permits and the protection of endangered species, see our 2021 report on **Protecting and Recovering Species at Risk**). The Environment Ministry can also receive applications for review and applications for investigation from the public.

In 2020/21, the Environment Ministry used the Environmental Registry to post 2,136 notices about environmentally significant policies, acts, regulations and instruments, and other matters. In 2020/21, the Environment Ministry also concluded five reviews that were the result of applications for review submitted in previous years, and concluded three additional applications for review that were submitted in 2020/21 (see **Appendix 7** for details of the concluded applications).

See **Section 6.2 (Figure 5)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21, and **Sections 6.3 to 6.18** for our detailed findings and recommendations.

6.2 Report Card on the Ministry of the Environment, Conservation and Parks' Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 5: Ministry of the Environment, Conservation and Parks

Prepared by the Office of the Auditor General of Ontario

Legend: ○ Met criteria — The ministry did not execute any responsibilities under this category in this reporting year
 ● Partially met criteria n/a The ministry is not prescribed for this category
 ● Did not meet criteria Not assessed New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date	●	Section 6.3 – The Ministry last substantively updated its Statement in 2008. In December 2020, the Ministry posted a proposal for an updated Statement that reflects changes to the Ministry's structure and mandate, and includes climate change as a government priority, therefore meeting our criteria. However, as of late September 2021, more than nine months had passed since the Ministry posted its proposal (the time frame allowed under the EBR Act for new Statements), and the Ministry had not finalized its Statement. Further, our Office has concerns with the proposed Statement, leading us to conclude that there is a need for a future broader review of prescribed ministries' Statements.	●	●
b. Statement is considered when making decisions	●	Section 6.4 – The Ministry provided documentation of its consideration of its Statement for 44 decisions on policies, acts and regulations and a sample of 25 decisions about instruments. However, 34 consideration documents were undated, and one consideration document did not show that all relevant principles outlined in the Ministry's Statement were considered.	●	○
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act	●	Sections 6.5 – 6.7 – The Ministry did not consult the public about major changes to two environmentally significant acts: the <i>Environmental Assessment Act</i> and the <i>Conservation Authorities Act</i> . The Ministry was also not transparent about its determination that the EBR Act did not apply to two proposals that it posted. Further, the Ministry did not notify our Office about five decisions that it made without public consultation under EBR Act exceptions.	●	●
b. Time to comment is extended based on the factors in the EBR Act	○	The Ministry met this criterion.	●	●
c. Proposal notices for policies, acts and regulations are informative	●	Section 6.8 – The Ministry posted 36 proposal notices for policies, acts and regulations, and we reviewed a sample of 19 of those notices. We found that four (21%) of the proposals, all related to the <i>Environmental Assessment Act</i> , did not adequately describe the anticipated environmental impacts of the proposals. Three of those notices also did not provide sufficient information about the proposal and its purpose. Two of those notices, plus two other proposal notices, did not provide links or attachments to key supporting documentation about the proposals.	●	○

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
d. Proposal notices for instruments are informative	●	Section 6.9 – The Ministry posted 902 proposal notices for instruments on the Registry, and we reviewed a sample of 25 of those notices. Six of the 25 notices (24%), all for permits to take water, did not include information that a reader would need to fully understand what was being proposed. The notices did not state the category of permit being proposed, which would indicate the level of environmental risk associated with the proposed water taking. It also came to our attention that the Ministry provided inaccurate information about site location in a proposal notice for an approval of a hauled sewage facility.	●	●
e. Received comments are reviewed and considered	○	We reviewed documentation related to the Ministry's consideration of comments submitted about a sample of four proposals about policies, acts and regulations and three proposals about instruments. The Ministry's consideration met this criterion.	Not assessed	Not assessed
f. Prompt notice of decisions is given	●	Section 6.10 – The Ministry posted 61 decision notices for policies, acts and regulations, 960 decision notices for permits and approvals, and six exception notices on the Registry. The Ministry posted 26 (43%) of the 61 decision notices for policies, acts and regulations, four (16%) of the 25 decision notices for permits and approvals that we reviewed, and all six exception notices more than two weeks after the decisions were made. In total, 36 (39%) of 92 notices we reviewed were posted more than two weeks after the decisions were made.	●	●
g. Decision notices for policies, acts and regulations are informative	○	We reviewed a sample of 11 decision notices. The Ministry met this criterion.	○	○
h. Decision notices for instruments are informative	●	Section 6.11 – The Ministry posted 960 decision notices for permits and approvals on the Registry, and we reviewed a sample of 25 notices. Five of the 25 (20%) notices did not include links to the issued permit or approval.	●	○
i. Proposal notices are up-to-date	●	Section 6.12 – As of March 31, 2021, the Ministry had three proposal notices on the Environmental Registry that had not been updated within the preceding two years. In particular, the Ministry had not posted a decision notice about its Made-in-Ontario Environment Plan, which was proposed in 2018, even though the Ministry has since implemented various aspects of the plan. Further, in a sample of five open proposals that the Ministry updated, we found no evidence that four of these proposals were, in fact, still under review at the time they were updated.	●	●
j. Prompt notice of appeals and leave to appeal applications is given	●	Section 6.13 – Ontarians submitted three leave to appeal applications under the EBR Act related to two decisions, but the Ministry did not give Ontarians prompt notice about one of those applications. The Ministry also did not give Ontarians prompt notice of three of four appeals of instruments that are subject to the EBR Act.	●	n/a
k. The Environmental Registry platform is maintained effectively	●	Section 6.14 – The Ministry generally operated the Environmental Registry platform in a manner that enabled the public to access information about environmental matters and participate in environmental decision-making. However, the Ministry did not take steps to keep the Registry updated when relevant changes occurred, such as a change to the tribunal responsible for hearing leave to appeal applications, and changes to the structure and names of ministries. Further, the Ministry could not provide documentation to confirm that it has sufficient internal IT controls in place for the operation of the Registry.	○	n/a

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
3. Applications for Review and Applications for Investigation				
a. Ministry reviews all matters to the extent necessary	●	Section 6.15 – The Ministry concluded eight applications for review in 2020/21, and handled seven of those applications reasonably. However, the Ministry did not provide a reasonable rationale for its decision to deny a requested review of the Ministry's exemption regulation made under the EBR Act, O. Reg. 115/20, which suspended some of the public's EBR Act rights for 10 weeks in 2020/21, during the early stages of the COVID-19 pandemic.	○	●
c. Ministry meets all timelines	●	Section 6.16 – The Ministry concluded eight applications for review in 2020/21. The Ministry did not meet some legislated timelines for four of the reviews, and three of the reviews were not concluded within a reasonable time.	●	●
4. Education				
b. Environment Ministry provides educational programs about the EBR Act to the public	●	Section 6.17 – In 2021, the Ministry drafted a communications plan to educate the public on the EBR Act, proposing a “digital first approach.” However, the Ministry's processes for providing educational programs, which were limited to providing information and links about the EBR Act and the public's rights on a webpage and on the Environmental Registry, and did not include any outreach, did not change in 2021.	●	n/a
c. Environment Ministry provides general information about the EBR Act to those who wish to participate in a proposal	●	Section 6.18 – The list of ministries to which the EBR Act applies on the Ministry's EBR Act website had not been updated to reflect changes. We also found that the Ministry did not have documented guidance for staff for handling emails and calls about the EBR Act from the public, and did not document or log telephone inquiries received about the EBR Act.	○	n/a

Concluded Applications for Review by the Environment Ministry in 2020/21

Application for Review	Year Submitted	Undertaken or Denied	Ministry Reviews All Matters to the Extent Necessary	Ministry Meets All Timelines
Review of the <i>Environmental Protection Act</i> and the Siting of Landfills	2013	Undertaken	○	●
Review of Deadlines for Annual Pesticides Reports from Golf Courses	2017	Undertaken	○	●
Review of the Monitoring of Pesticide Use on Golf Courses	2017	Undertaken	○	●
Review of a Waste Disposal Site Approval in the United Counties of Leeds and Grenville (A)	2017	Undertaken	○	●
Review of a Waste Disposal Site Approval in the United Counties of Leeds and Grenville (B)	2017	Undertaken	○	●
Review of Exemption Regulation O. Reg. 115/20 under the <i>Environmental Bill of Rights, 1993</i>	2020	Denied	●	○
Review of a Sewage Works Environmental Compliance Approval issued to a Development Corporation (A)	2020	Denied	○	○
Review of a Sewage Works Environmental Compliance Approval issued to a Development Corporation (B)	2020	Denied	○	○

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

6.3 Environment Ministry's Proposal for a New Statement of Environmental Values Unlikely to Improve Decision-Making About the Environment

The EBR Act requires every prescribed ministry to develop and publish a Statement of Environmental Values (Statement) that explains how the ministry will apply the purposes of the EBR Act when making decisions that might significantly affect the environment. The purpose of a Statement is to ensure that ministries consider the environmental impacts of their decisions, to inform and improve decision-making and to produce better outcomes for the environment.

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 the government's current values, such as addressing climate change. Further, the Ministry's 2018 Made-in-Ontario Environment Plan directed all ministries to update their Statements to reflect Ontario's environment plan, to improve the government's ability to consider climate change when making decisions and to "make climate change a cross-government priority." We recommended that the Ministry review its Statement with public consultation through the Environmental Registry and update it so that it reflects the Ministry's current environmental values and responsibilities.

In December 2020, the Ministry posted a proposal for an updated Statement on the Environmental Registry for a 60-day public consultation period. While the proposed updated Statement addresses some of our Office's key concerns, including updating the description of the Ministry's mandate and responsibilities, and including climate change as a priority, we identified several issues with the proposed updated Statement, including, for example:

- while it states that the Ministry "is committed to taking every reasonable step to ensure that the ministry's [Statement] is considered when decisions that might significantly affect the environment are made in the Ministry," it

explicitly states that it will consider the Statement's principles "as it develops Acts, regulations and policies" but does not explicitly state that the Ministry will consider the Statement principles when it makes decisions about instruments (permits, approvals and other authorizations), even though a court decision in 2009 confirmed that it must do so;

- 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 species at risk, protected areas and conservation authorities) or more modern environmental values such as environmental justice; and
- some commitments have been weakened with the use of terms such as "strive" and "endeavour."

Documents that we reviewed showed that the Ministry explored several options for updating its Statement, including a broader, co-ordinated review with other prescribed ministries that would involve a more extensive overhaul of Statement principles. The Ministry ultimately selected a middle-of-the-road option that goes beyond strictly administrative updates, but does not include an extensive review or overhaul of the Statement.

As of late September 2021, more than nine months had passed since the Ministry posted its proposal (the time frame allowed under the EBR Act for new Statements), and the Ministry had not finalized its Statement.

As the Ministry responsible for administering the EBR Act, the Environment Ministry should be a leader for other ministries by setting a high standard for its Statement. Other ministries told our Office that they sought the Environment Ministry's advice about updating their Statements, or were waiting for the Environment Ministry to finalize its updated Statement before proposing or finalizing their own so that they could align their Statements with that of the Environment Ministry. A co-ordinated, cross-ministry review and modernization of Statement principles and values would help establish Statements that better inform the ministries' decision-making,

leading to improved outcomes for the environment, as intended.

RECOMMENDATION 9

So that prescribed ministries' Statements of Environmental Values inform and improve the ministries' environmentally significant decision making, we recommend that the Ministry of the Environment, Conservation and Parks initiate and co-ordinate a broad review and modernization of Statements of Environmental Values, in collaboration with other prescribed ministries.

MINISTRY RESPONSE

Under the EBR Act, each ministry prescribed under the Act is responsible for developing their own Statement of Environmental Values. The Ministry will continue to provide advice to other ministries on their Statements of Environmental Values when requested and will consider how additional support to other ministries could be provided.

6.4 Environment Ministry's Consideration of its Statement of Environmental Values Was Inconsistently Documented and Not Always Meaningful

Under the EBR Act, a ministry must consider its Statement of Environmental Values (Statement) when making an environmentally significant decision, not after. To maintain transparency and accountability, ministries should clearly document when and how they considered their Statements throughout the decision-making process.

In 2020/21, the Environment Ministry provided our Office with documents to show that it considered its Statement when it made decisions about 44 policies, acts and regulations, but 34 of the consideration

documents were not dated. Further, the Ministry provided consideration documents for 20 instrument decisions, but eight of those consideration documents were also not dated.

For a sample of these undated consideration documents, we asked the Ministry for documentation that would confirm when the consideration occurred. The Ministry told us that it considered its Statement during the decision-making process, before decisions were made (which is consistent with internal Ministry guidance), but did not have documentation to confirm this. In two cases, the Ministry told us the dates that the consideration documents were approved by senior management, and these dates were after the decisions were made.

We also undertook a detailed review of a sample of 15 Statement consideration documents provided by the Ministry. We found that the documentation provided for one decision (to issue an approval allowing the release of air pollution and noise) did not show that all relevant principles outlined in the Ministry's Statement were considered.

RECOMMENDATION 10

To be transparent and accountable to Ontarians about its environmental decision-making, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider its Statement of Environmental Values whenever making a decision that might significantly affect the environment, we recommend that the Ministry of the Environment, Conservation and Parks:

- consider its Statement every time it makes a decision that might significantly affect the environment, in a manner that is deliberate and contributes to improved environmental decision-making;
- document that consideration concurrently with the decision-making; and
- clearly document the timing of its consideration.

MINISTRY RESPONSE

The Ministry is committed to meeting its obligations under the EBR Act and continues to routinely consider its Statement of Environmental Values when making decisions that might significantly affect the environment. The Ministry has taken action to put in place improvements to processes for documenting this consideration by updating templates to ensure timing of its consideration is being captured and will consider whether additional improvements to these processes may be needed.

RECOMMENDATION 11

To promote transparency and accountability for prescribed ministries' environmental decision-making and the *Environmental Bill of Rights, 1993* requirements to consider their Statements of Environmental Values (Statement) whenever making a decision that might significantly affect the environment, we recommend that the Ministry of the Environment, Conservation and Parks develop and implement updates to the Environmental Registry system templates for decision notices to include a specific section where prescribed ministries can attach, to every decision notice that they post on the Registry, documentation that shows how they considered their Statements when they made those decisions.

MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry of the Environment, Conservation and Parks is committed to meeting its obligations under the EBR and continues to routinely consider its Statement of Environmental Values when making decisions that might significantly affect the environment. The Ministry has made improvements to processes for documenting this consideration and will consider whether

additional improvements to these processes and to the Environmental Registry may be needed.

6.5 The Environment Ministry Did Not Consult Ontarians About Major Changes to Two Environmentally Significant Acts

In 2019 and 2020, we recommended that the Ministry consult with the public on all environmentally significant proposals according to the requirements of the EBR Act. However, in 2020/21, the Environment Ministry did not consult Ontarians about major changes to two environmentally significant acts.

In the first example, the *COVID-19 Economic Recovery Act, 2020* (Bill 197), enacted on July 21, 2020, brought in sweeping changes to the *Environmental Assessment Act*, among a number of other significant legislative changes. The Environment Ministry had previously consulted on a high-level discussion paper about modernizing the environmental assessment process, and posted a bulletin for information purposes on the Environmental Registry on July 8, 2020, the day Bill 197 was introduced for first reading in the Legislature. However, the Ministry did not consult the public on the changes to the *Environmental Assessment Act*. Further, Bill 197 included an amendment to the EBR Act that retroactively deemed the *Environmental Assessment Act* amendments to be exempt from the public consultation requirements of the EBR Act.

We wrote to the Ministry prior to third reading of Bill 197 (see **Appendix 9**), recommending that the Ministry remove the schedule amending the *Environmental Assessment Act* from the bill and consult the public on the proposed amendments and accompanying regulations in order to comply with the Act. This was not done (see **Chapter 1, Section 7.3** of our 2020 report). We noted that consulting the public in accordance with the EBR Act would not have unreasonably delayed implementation of most of the amendments. Our report recommended that the Ministry consistently consult the public about

environmentally significant proposals and refrain from using legislative provisions that deem proposals to be exempt from the EBR Act.

Two separate applications for judicial review were filed against the Ontario government for failing to consult the public about Bill 197 in accordance with the EBR Act. One application, brought by three organizations (Earthroots, the Canadian Environmental Law Association, and Ontario Nature) and two individuals, argued that the government, represented by the Environment and Municipal Affairs ministries, failed or refused to comply with the EBR Act in adopting changes to the *Environmental Assessment Act* and the *Planning Act*, respectively. The other application, brought by two organizations (Greenpeace Canada and Western Canada Wilderness Committee), made similar arguments about those ministries and also about the Transportation and Agriculture Ministries regarding the adoption of the *Transit-Oriented Communities Act, 2020* and amendments to the *Drainage Act*, respectively.

The Divisional Court ruled that the EBR Act amendment that retroactively deemed the EBR Act not to apply to the *Environmental Assessment Act* amendments was legally valid. As a result, by relying on the retroactive exemption, the Environment Minister acted lawfully by not posting those amendments on the Environmental Registry. Still, our Office continues to believe that the Minister's use of the retroactive exemption in this case: was not consistent with the purposes of the EBR Act; was not transparent; and risked undermining public confidence in the government's environmentally significant decisions.

In the second example, the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* (Bill 229) was enacted on December 8, 2020. In addition to adopting the government's budget measures, this bill contained numerous schedules that enacted, amended and repealed a wide range of acts, including the *Conservation Authorities Act*.

On November 5, 2020, the date of first reading of the bill, the Environment Ministry posted a bulletin on the Environmental Registry giving the public notice that it was amending the *Conservation Authorities*

Act, but not providing an opportunity for the public to comment. In the bulletin, the Ministry stated that public consultation on the amendments was not required because section 33 of the EBR Act exempts a proposal from the requirements of the EBR Act if it "forms part of or gives effect to a budget or economic statement" presented in the Legislature. While the proposed amendments to the *Conservation Authorities Act* formed part of a budget bill, they did not form part of or give effect to the budget.

The *Conservation Authorities Act* amendments were environmentally significant. They modified the rules on appointments, changed the programs and services to be provided by authorities, and addressed investigations and the process for ministerial review and appeals of development decisions. Many of the provisions regarding programs and services had not been proclaimed as of September 2021. A new provision that came into force on royal assent removed an authority's discretion over whether to issue development permission for projects that are authorized by a Minister's Zoning Order, allowing it only the option of imposing conditions to mitigate environmental harm.

We again wrote to the Ministry expressing concern that environmentally significant amendments (see **Appendix 9**) to the *Conservation Authorities Act* were being made without public consultation, and stating that these amendments were entirely independent of, and did not give effect to, implementation of budget measures, and therefore should have been subject to public consultation under the EBR Act.

RECOMMENDATION 12

To adhere to the requirements of the *Environmental Bill of Rights, 1993*, and to enable the public to participate in the Ministry of the Environment, Conservation and Parks' environmentally significant decisions, we recommend that, when there are environmentally significant proposals, the Ministry post the proposals on the Environmental Registry for a minimum of 30 days' public consultation.

MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry is meeting its legal obligations under the EBR Act and will continue to post proposals for a minimum of 30 days public consultation when required to do so under the EBR Act.

AUDITOR GENERAL'S RESPONSE

The Auditor General continues to believe that the Ministry's decisions to not consult Ontarians about major amendments to two environmentally significant laws in 2020/21 were not consistent with the EBR Act's purposes.

6.6 Environment Ministry Was Not Transparent About Why It Concluded That the EBR Act Did Not Apply to Two Proposals

Sometimes ministries post bulletins or proposal notices on the Environmental Registry to give notice to or consult the public even though posting is not required under the EBR Act. A proposal does not require posting if it is for a policy, act or regulation that is “predominantly financial or administrative in nature,” or if a ministry considers that the proposal would not, if implemented, have a significant effect on the environment. A proposal that is not for a policy, act, regulation or instrument is also not required to be posted. When ministries consult voluntarily on such proposals, public notice and consultation contributes to both ministry decision-making and transparency.

However, if a ministry determines that the EBR Act does not apply, the ministry is not bound by the usual public consultation requirements of the EBR Act. Even if the ministry posts a proposal voluntarily for public consultation, there is a risk that the ministry may not fulfil other required elements of the EBR Act consultation process, such as considering all of the public's comments prior to making a decision, providing an explanation of the effects of consultation on

the outcome, or considering the ministry's Statement of Environmental Values when making the decision. If the ministry does not have a clear process for determining whether the EBR Act applies to a proposal, there is also a risk of inconsistent interpretations of the EBR Act. For example, similar proposals may be treated differently, and the public may not be consulted—either at all, or in accordance with all EBR Act requirements—about some proposals that are, in fact, environmentally significant.

In 2020/21, prescribed ministries posted seven proposal notices for policies, acts and regulations on the Environmental Registry for public consultation that the ministries reasonably determined were not required to be posted under the EBR Act (not including proposals that were posted voluntarily between April 1 and June 14, 2021, that would normally have been required to be posted, but were exempt because Part II of the EBR Act was temporarily suspended during that time).

However, the Environment Ministry posted two additional voluntary proposals for policies that appeared to be environmentally significant, even though the Ministry concluded that the EBR Act did not apply to them. The Ministry did not clearly explain in the notices why it concluded that the EBR Act did not apply. When we asked the Ministry how it reached this conclusion in those cases, the Ministry provided explanations, but it was unable to provide documentation supporting its determinations.

In the first voluntary consultation, the Environment Ministry proposed a new approach to environmental compliance approvals for two types of municipal infrastructure: sanitary sewage collection systems and stormwater collection, treatment and disposal systems. The Ministry proposed to replace the many existing approvals with a single approval for each of the two systems in each municipality and to pre-authorize alterations and extensions to the systems without further approval by the Ministry. The proposal also included new standard design criteria, operational requirements and conditions that are intended to protect the environment and public

health and that will have to be met to get the new approval. Under the EBR Act, a “policy” includes guidance or criteria for how decisions will be made. We concluded that these design criteria, requirements and conditions were a policy that could have a significant impact on the environment because wastewater and stormwater systems can significantly affect the local environment and public health—for example, through bypasses and overflows in wet weather—if they are not appropriately designed, operated and monitored.

The Ministry stated in the proposal notice that it was not required to consult on this proposal according to the EBR Act because “[n]o changes to legislation are being proposed, and the changes are administrative.” We asked the Ministry to explain this conclusion further and the Ministry told us that the proposal contained no new acts, policies or regulations, and that consolidating approvals would not itself have an impact on the environment. The Ministry also told us that it had no formal documentation of its determination that the EBR Act did not apply.

In that case, the Ministry did fulfil all of the elements of the EBR Act consultation process, including considering the public’s comments prior to making a decision, providing an explanation of the effects of consultation on the outcome, and considering the Ministry’s Statement of Environmental Values when making the decision. However, there is a risk that the Ministry may not always do so when it determines that the EBR Act does not apply.

In the second voluntary consultation, the Environment Ministry proposed a policy about the clean-up and redevelopment of vacant or underused contaminated sites, often referred to as “brownfields,” under the Records of Site Condition provisions of the *Environmental Protection Act*. The policy would make substantive changes in a technical guidance document used in soil vapour intrusion assessments to reflect current science and updated guidance in other jurisdictions. The document identifies best practices and makes technical recommendations on how practitioners should carry out and document their assessments in accordance with the regulatory requirements.

The Ministry had consulted the public, through a regular proposal notice, on an earlier version of this document in 2013, and consulted with experts and stakeholders since then. The voluntary proposal notice posted on the Environmental Registry in 2021 did not clearly explain to the public why consultation was not required, stating only that the document provides technical guidance to practitioners and reflects “a ten-year development period in which the ministry constantly sought ... input from key experts and stakeholders.”

More than seven years had passed since the earlier public consultation, and we concluded that the latest changes to the document, intended to reflect recent changes in the science, constituted a new proposal that, given the nature of the guidance, could significantly affect the environment. However, the Ministry told us that it determined that this policy would not have a significant effect on the environment, but did not document its reasoning behind that determination. As of September 2021, the Ministry had not posted a decision notice about this proposal.

RECOMMENDATION 13

So that the public is consistently consulted about the Ministry of the Environment, Conservation and Parks’ environmentally significant proposals to which the *Environmental Bill of Rights, 1993* (EBR Act) applies, and to provide transparency when the Ministry has determined the EBR Act does not apply, we recommend that the Ministry:

- establish clear guidance for Ministry staff on determining whether the EBR Act applies to a proposal, including guidance on determining whether a proposal could, if implemented, have a significant effect on the environment;
- in every case where it determines that the EBR Act does not apply to a proposal, clearly document the basis for that determination; and
- when the Ministry chooses to post a bulletin or to voluntarily consult the public about a proposal to which the Ministry has determined the EBR Act does not apply, clearly explain

in the bulletin or proposal notice the reason that public consultation under the EBR Act is not required.

MINISTRY RESPONSE

The Ministry is meeting its legal obligations under the EBR Act with respect to posting requirements and strives to provide clear information to the public when posting notices on the Environmental Registry. Section 14 of the EBR Act provides clear guidance to assist ministries in determining when a proposal is environmentally significant.

AUDITOR GENERAL'S RESPONSE

The Auditor General continues to believe that, when a ministry determines that the EBR Act does not apply to a proposal, the ministry should be transparent to the public about the basis for that determination. Our audit found that the Ministry posted two environmentally significant proposals in 2020/21 that it stated were not subject to the EBR Act (but about which the Ministry nevertheless sought the public's feedback), but the Ministry did not explain why it had concluded that these proposals were exempt from the EBR Act's consultation requirements.

RECOMMENDATION 14

To adhere to the requirements of, and meet the intent and purpose of Part II of the *Environmental Bill of Rights, 1993* that can be avoided when a proposal is posted voluntarily, we recommend that the Ministry of the Environment, Conservation and Parks:

- consider all comments that it received as a result of its voluntary consultation about proposed updates to the Technical Guidance for Soil Vapour Intrusion Assessment (Environmental Registry #019-2557) when making a decision;

- consider its Statement of Environmental Values when making its decision about the proposal; and
- post a decision notice on the Environmental Registry as soon as reasonably possible after making the decision, describing the decision and the effect of public participation, if any, on the decision.

MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. As with all proposals posted on the Environmental Registry, the Ministry will consider all comments received, as well as our Statement of Environmental Values, when posting a decision notice for the Technical Guidance for Soil Vapor Intrusion Assessment.

6.7 Environment Ministry Did Not Notify Our Office of Five Decisions Made Without Public Consultation Under EBR Act Exceptions

In 2020/21, the Environment Ministry posted six exception notices on the Environmental Registry to give notice to Ontarians that it had made decisions without first consulting the public on the Environmental Registry, but only notified our Office of one such decision.

The EBR Act sets out two exceptions in which a ministry may elect not to consult the public before making an environmentally significant decision that would normally be subject to the EBR Act's requirements:

- where the delay in waiting for public comment would result in danger to public health or safety, harm or serious risk to the environment, or injury or damage to property; and
- where the proposal will be, or has already been, considered in another public participation process that is substantially equivalent to the public participation process required under the EBR Act.

If a ministry decides not to consult the public based on one of those exceptions, the ministry must instead post a notice (called an “exception notice”) on the Environmental Registry to inform the public of the decision and explain why it did not first consult the public. The ministry must also notify the Auditor General of the decision.

The Environment Ministry gave our Office notice of a decision that it made without public consultation to issue a new approval for sewage work to replace and upgrade a failed subsurface disposal works. As required, the Ministry also posted an exception notice for the decision on the Environmental Registry, explaining that the delay that would occur by posting a proposal for the approval would have resulted in danger to the health or safety of any person using this facility, harm or serious risk of harm to the environment, and injury or damage or serious risk of injury or damage to the property, including the potential for release of raw sewage into the environment.

The Environment Ministry did not notify our Office of five other decisions where it was required to under the EBR Act, even though the Ministry’s internal guidance for staff notes the requirement to do so. The notices were related to decisions about:

- an emergency approval allowing a company to temporarily increase the tonnage of leaf and yard waste it receives at its waste disposal site to account for the higher quantities generated during the COVID-19 pandemic;
- an emergency approval allowing a company to temporarily store used engine oils at two waste transfer facilities after the COVID-19 pandemic forced the shutdown of its refining facility; and
- three emergency authorizations for the City of Temiskaming Shores to allow its sewage treatment facilities to accept leachate from a closed industrial landfill, to prevent the discharge of untreated leachate into the environment.

When the Environment Ministry does not notify the Auditor General that it has relied on an EBR Act exception to make an environmentally significant decision without first consulting the public, there is a risk that public notice on the Environmental Registry

may not be given promptly or at all, and less transparency and accountability for the Ministry’s decisions that affect the environment. As noted in **Section 6.10**, the Ministry took more than two weeks to give notice of all six exception decisions on the Environmental Registry. Two of the notices about emergency authorizations for the City of Temiskaming Shores were not posted until over a year after the authorizations were issued, and the Ministry took 17 weeks to post the exception notice about the emergency approval for a waste disposal site.

RECOMMENDATION 15

To comply with the requirements of the *Environmental Bill of Rights, 1993* (EBR Act) and ensure the Auditor General is aware when the Ministry of the Environment, Conservation and Parks (Ministry) makes an environmentally significant decision without public consultation because of an exception under sections 29 or 30 of the EBR Act, we recommend that the Ministry notify the Auditor General through direct and timely correspondence of all such decisions.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will work to improve its processes for ensuring timely notification to the Office of the Auditor General when the Ministry makes an environmentally significant decision without public consultation because of an exception under section 29 or 30 of the EBR Act.

6.8 Environment Ministry Did Not Provide Clear or Complete Descriptions of Four Proposals Related to the *Environmental Assessment Act*

We reviewed a sample of 19 proposal notices for policies, acts and regulations that the Environment Ministry posted on the Environmental Registry

and found that four (21%), all for proposed regulations under the *Environmental Assessment Act*, did not adequately describe the proposals or their environmental implications. For example, the Ministry proposed a regulation to adopt a streamlined environmental assessment process for the Ministry of Transportation's Greater Toronto Area West Transportation Corridor, commonly referred to as new Highway 413. (This highway would link Highways 400 and 401 on a route through agricultural land and the Greenbelt, affecting approximately 85 watercourses, 220 wetlands, 680 hectares of habitat, and source water protection areas.) This undertaking had been following the comprehensive environmental assessment process when it was shelved by the previous government; it was then revived by the current government in 2019.

The proposal notice, which did not attach a copy of a draft regulation:

- identified certain studies and consultation that would still be required, but did not explain how this differed from the previous comprehensive process (by identifying, for example, what studies or consultation previously under way or expected would no longer be completed);
- did not identify the role, if any, of the Environment Ministry under the streamlined process;
- stated that the streamlined process would eliminate duplication with other planning and approvals processes, in order to shorten construction timelines, but did not identify which planning or approval process would not be followed, including in particular whether the regulation would require the Transportation Ministry to work with the Toronto and Region Conservation Authority; and
- stated that “protection of the environment remains a priority,” but did not identify any potential environmental impacts of the proposal, such as the impacts on watersheds or ecosystems of allowing bridges and other works to be constructed before final studies are completed.

The Environment Ministry also posted a notice proposing a regulation to exempt the 400-series highway known as the Bradford Bypass and 38

Transportation Ministry highway improvement projects from the *Environmental Assessment Act*. The Bradford Bypass would connect Highways 400 and 404 and would be routed through the Holland Marsh, a provincially significant wetland. The proposal would limit the studies required to be completed and would permit “early works”—that is, construction of bridges and other works—before completion of all the studies. Although the notice stated that the Transportation Ministry would be required to meet the conditions outlined in the exemption regulation and report annually on its progress in meeting those conditions, in the absence of the draft regulation, it was not clear what those conditions would be. The notice also stated that the exempted projects had previously completed part of the environmental assessment process and “their environmental impacts are well understood.” However, the notice did not detail what the anticipated environmental impacts might be, including those associated with early works.

For each of these regulatory proposals, the Environment Ministry told us it did not attach a draft regulation to the notice because the notice was only intended to solicit initial comments from the public, which could then help inform how the regulation could be developed. The Ministry also told us that it did not intend to post another notice for further consultation on either regulation once it is developed. In October 2021, the Ministry filed the exempting regulation for the Bradford Bypass.

When a ministry consults only on what might later be proposed in a general way, without further consultation on the details of the proposal, Ontarians may not have the opportunity to provide meaningful input. For Ontarians to provide informed feedback on a proposal they must be sufficiently informed about what is actually being proposed and the likely environmental implications. As a best practice, when consulting on regulation proposals using the Environmental Registry, a ministry should either provide details of the proposed regulation in the notice, or attach the draft regulation. For notices posted on the Regulatory Registry, used for new or amended regulations affecting businesses, the Ontario Regulatory Policy

requires the inclusion of a summary of the proposed regulatory measure and, “where possible, the draft regulatory text.” This practice ensures transparency and more informed consultation.

RECOMMENDATION 16

As we recommended in 2020, so that Ontarians can better understand and provide informed comments on environmentally significant proposals, we recommend that the Ministry of the Environment, Conservation and Parks provide all relevant details about proposals, and describe their environmental implications, in each proposal notice posted on the Environmental Registry.

MINISTRY RESPONSE

The Ministry is committed to ensuring the contents of its notices for proposals for policies, acts, regulations, and prescribed instruments enable Ontarians to understand what is being proposed. We strive to strike a balance of providing an accurate, detailed description of the proposal with the goal of communicating in an easy-to-understand, plain-language manner. The Ministry will continue to work to improve how it highlights the environmentally significant aspects of all of our proposals so that Ontarians can provide informed comments.

6.9 Environment Ministry Did Not Provide Clear Descriptions in Almost One-Quarter of Instrument Proposals Reviewed, and Provided Wrong Location in a Proposed Approval for a Sewage Disposal Facility

Again in 2020/21, 24% of the Ministry’s 25 instrument proposal notices that we reviewed did not include information that the public would need to comment on the proposal. Specifically, in six proposed permits to take water, the Ministry again did not describe the category of water taking being

proposed. The category is important information because it indicates the level of environmental risk associated with the permit. We identified this issue in 2019 and 2020, and recommended that the Ministry describe the environmental implications of each proposed permit or approval in the proposal notice. Although the Ministry agreed with our recommendations, it did not show improvement in 2020/21.

It also came to our attention that the Environment Ministry provided inaccurate information to the public in a proposal notice posted on the Environmental Registry about the site location for a proposed environmental compliance approval for a hauled sewage disposal facility.

The proposal notice, which was posted in October 2019, incorrectly indicated that the facility was to be located in Parry Sound. No public comments were submitted on the proposal with this incorrect location information. The decision notice for the approval, which was not posted until November 2020—eight months after the approval was issued—clarified that the facility would actually be located in Emsdale, Township of Perry, approximately 62 kilometres from Parry Sound.

When residents near the actual location discovered the error, many contacted the Ministry to express concern about the approval. Following the late posting of the decision notice, nearly 20 individuals, businesses and a residents’ association applied for leave to appeal the Ministry’s decision to issue the approval, arguing that significant errors in the approval process, including providing the wrong location in the proposal notice and failing to reopen the process for public comment after the Ministry was alerted about that error, made the decision unreasonable. Ultimately, the Ministry revoked the approval because of new information from the residents. (For details of this and other applications and appeals in 2020/21, see **Appendix 8**).

In order for members of the public to meaningfully participate in environmentally significant decisions about approvals, the information provided in proposal notices must be accurate. Location information for instruments (such as permits, licences and other

approvals) is particularly important, as members of the public may be most interested in commenting on proposals that would affect their communities.

RECOMMENDATION 17

So that Ontarians can better understand proposals and provide informed comments on environmentally significant ministry proposals for permits and approvals posted on the Environmental Registry, we recommend that the Ministry of the Environment, Conservation and Parks:

- as we recommended in 2019 and 2020, describe the details and environmental implications of each proposed permit and approval in the proposal notice; and
- establish processes to ensure that the information included in all proposal notices is accurate, including location information for instrument proposals.

MINISTRY RESPONSE

The Ministry is committed to ensuring the description of the details and environmental implications in instrument proposal notices enable Ontarians to understand what is being proposed. The Ministry will continue to work to update guidance for proponents and work with applicants to expand descriptions.

6.10 Environment Ministry Took Over Two Weeks to Post Notices for 39% of the Decisions We Reviewed; Two Decisions Made Without Public Input Were Posted More Than a Year Later

In 2019/20, we reported that the Environment Ministry took more than two weeks to post its decision in 49% of the notices we reviewed. We recommended that the Environment Ministry post all decision notices as soon as reasonably possible after making a decision, which should be within two weeks of

making a decision. The Environment Ministry agreed, and stated that it had updated its training resources for staff, communicating the best practice of posting decision notices within two weeks of making decisions.

In 2020/21, we reviewed a total of 92 decision notices posted by the Environment Ministry on the Environmental Registry: all 61 decision notices that it posted for policies, act and regulations; a sample of 25 of the 960 decision notices for instruments (permits, licences, approvals, and other authorizations and orders); and all six exception notices.

The Environment Ministry posted decision notices more promptly overall in 2020/21. However, of the 61 decision notices for policies, acts and regulations, 26 (43%) were posted more than two weeks after the decision was made. Of these notices, 11 were posted more than a year after the decisions were made. These included, for example, decisions on proposals to amend the *Conservation Authorities Act*, *Environmental Assessment Act* and the *Endangered Species Act*, 2007; these amendments were put into effect by the passage of the *More Homes, More Choice Act*, 2019 more than a year before the Ministry posted the decision notices. Eleven decision notices that the Ministry posted were for older proposals that the Ministry was no longer considering, but that it had not closed with a notice to inform the public. For example, the Ministry posted decision notices for five unimplemented proposals to adopt certain Canadian Water Quality Guidelines as interim Provincial Water Quality Objectives that were posted in 2005.

The Ministry posted four (16%) of the 25 instrument decision notices we reviewed more than two weeks after the decisions were made, two of which were posted more than a year after the decisions were made, and all six exception notices more than two weeks after the decisions were made. Two of the six exception notices, which were for emergency authorizations for the City of Temiskaming Shores to allow its sewage treatment facilities to accept leachate from a closed industrial landfill, were posted more than a year after the decisions were made. When a ministry relies on an exception under the EBR Act to

not conduct public consultation, timely notice of the decision is particularly important to maintain transparency and accountability for the decision (for more details about exception notices posted in 2020/21, see **Section 6.7**).

The EBR Act requires ministries to post each decision notice and exception notice on the Registry “as soon as reasonably possible” after the decision is made. The purpose of this requirement is so that the public receives timely notice of decisions and the results of public consultation, and can exercise its right to seek leave (that is, request permission) to appeal decisions for instruments (such as permits, licences and other approvals) within a reasonable time frame after they are issued. Timely notice is important for transparency and to provide accountability for the outcome of a proposal. Delays in posting decision notices for instruments, for example, allow activities with potential environmental impacts to continue—sometimes for significant periods of time—before the public becomes aware of or can seek leave to appeal the approval.

RECOMMENDATION 18

As we recommended in 2019 and 2020, to give Ontarians prompt notice of its environmentally significant decisions, we recommend that the Ministry of the Environment, Conservation and Parks post all decision notices on the Environmental Registry as soon as possible after making a decision, which should be no more than two weeks after making the decision, as stated in its own service standard.

MINISTRY RESPONSE

The Ministry agrees that decision notices should be posted on the Environmental Registry as soon as reasonably possible after a decision has been made. The Ministry strives to post decision notices on the Registry within two weeks of a decision being made unless circumstances prevent it from reasonably doing so.

6.11 Environment Ministry Did Not Provide Copies of Final Permits in 20% of Instrument Decision Notices Sampled

In 2020, the Environment Ministry did not include copies of issued permits or approvals in 36% of its instrument decision notices. We recommended that the Ministry provide links to final issued approvals in its decision notices.

However, in 2020/21, we found that, again, the Environment Ministry did not always include copies of, or links to, the final permit or approval in the decision notice. We reviewed a sample of 25 notices about the Environment Ministry’s decisions to issue permits and approvals, and found that the Ministry did not include copies of, or links to, the final permits or approvals in five instrument decision notices (20%), four of which were for issued permits to take water.

Ontarians have the right to challenge the Ministry’s decisions about permits to take water using the third-party leave-to-appeal rights under the EBR Act. However, to be able to exercise this right, they need enough details about the decision to understand it. This may be most easily achieved by the Ministry including a copy of, or a link to, the final issued permit in every decision notice.

RECOMMENDATION 19

As we recommended in 2020, to help people understand the Ministry of the Environment, Conservation and Parks’ decisions about instruments and exercise their rights to seek leave to appeal under the *Environmental Bill of Rights*, 1993, we recommend that the Ministry provide copies of, or links to, the final issued instruments in its decision notices.

MINISTRY RESPONSE

The Ministry agrees that publicly sharing detailed permit information is important. The Ministry strives to include in the decision notice a copy of the final issued approval (if applicable) or the

details of the permit conditions. Copies of some issued permits and environmental compliance approvals are also available on the Ministry's public Access Environment website once the decision has been issued.

6.12 Environment Ministry Not Transparent About the Status of Some Proposals, Including Its Decision to Implement its Made-in-Ontario Environment Plan

For the Environmental Registry to be an accurate and reliable source of information for Ontarians, ministries must keep all proposal notices up to date by either posting decision notices promptly after decisions are made, or updating ongoing proposals to inform Ontarians about their status. As a best practice, ministries should update proposal notices that have been posted on the Environmental Registry for more than two years without a corresponding decision notice. When a proposal notice has been on the Registry for more than two years without a decision or update, we consider those proposal notices to be outdated.

In 2019 and 2020, the Environment Ministry had 44 and 43 outdated notices, respectively. Since then, the Ministry has posted updates or decision notices for most of these notices, reducing the total number of outdated notices by 93% since 2020 (see **Figure 3**). As of March 31, 2021, the Environment Ministry had three proposal notices on the Environmental Registry that had not been updated within the preceding two years—representing less than 1% of the Ministry's total open proposals.

Updates to Proposals Were Not Informative

However, the Ministry was not transparent about the status of some of the open proposals that it updated. We asked the Ministry to confirm the status of a sample of five updated notices that stated that the proposals were “still under active review,” and that the Ministry was “reviewing the comments it

has received to date.” For four of these notices, the Ministry gave explanations about its ongoing consideration of the proposals, but we found no evidence that the proposals were still, in fact, under review at the time the notices were updated.

For example, the Ministry indicated in updates posted on March 31, 2021, that it was still actively considering three proposals (posted in 2003, 2004 and 2007) related to recycling. The Ministry told us that it could not post decision notices for these proposals prior to making a final decision on a new Blue Box regulation, because the policy areas in these proposals were reviewed during the development of that regulation. However, the Ministry did not provide any documentation to show that it did, in fact, specifically consider these proposals, or the comments that Ontarians submitted on them, as part of its development of the new Blue Box regulation. The proposal notice for this regulation, which was posted for public consultation between October and December 2020, did not make reference to the earlier proposals or provide links to them, even though the notice included a section with links to other related notices on the Registry. Further, while the Ministry posted a decision notice on the Blue Box regulation on June 3, 2021, it did not post decision notices for the three older notices until October 2021. The decision notices for each of those older notices identified the proposal notices as “outdated” notices that were “no longer pertinent or active.”

Even if the Ministry was considering the three older proposals in the context of the new Blue Box regulation, the updates that the Ministry posted to these proposal notices were neither informative nor transparent. In the updates, the Ministry could have explained that these proposals were being reviewed in the development of the new regulation, provided a link to the proposal notice for the Blue Box regulation, and provided the Ministry's anticipated timing for making a decision on the Blue Box regulation.

Similarly, the Ministry stated in an update posted on May 14, 2021, that it was still actively reviewing a proposal (originally posted in 2015) to exempt buildings that reflect light (which can harm flying birds)

from requiring an approval under the *Environmental Protection Act*. The Ministry told us that it was reconsidering this proposal in the context of potential amendments to streamline environmental permissions, but we did not find any evidence that this was the case. The Ministry did not include any information in the Environmental Registry update about its current work on the proposal, or anticipated timing for making a decision.

Adding updates to proposal notices that do not accurately reflect the current status of proposals, or that are not sufficiently informative, undermines the purpose of providing updates: to ensure the Registry is a reliable source of accurate and up-to-date information for the public.

Lack of Transparency About Made-in-Ontario Environment Plan

Further, the Ministry has not been transparent about the status of its plan to address environmental challenges by protecting air, land and water, reducing litter and waste, reducing greenhouse gas emissions and preparing for climate change.

In November 2018, the Environment Ministry posted a policy proposal notice on the Environmental Registry for the *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan* (the Plan) for a 60-day public consultation period.

Since then, the Environment Ministry has indicated that it has implemented aspects of the Plan. For example, the Ministry has announced that initiatives such as reducing waste and expanding recycling services, improving public reporting of pollution, and improving water quality in Lake Erie are a key part of, and are delivering on commitments made in, its Made-in-Ontario Environment Plan. In 2019 and 2020, the Ministry released public updates on the Plan, outlining steps that had been taken, progress on commitments, accomplishments made, and next steps. However, as of September 2021—well over two years since it proposed the Plan—the Ministry still had not posted a decision notice on the Environmental Registry to inform the public that it had decided to implement the Plan.

The Environment Ministry told our Office that a decision notice had not yet been posted on the Environmental Registry because the Made-in-Ontario Environment Plan remains a draft; the Ministry had not yet taken the necessary steps to have the Plan approved. However, the Plan, which was attached to the 2018 proposal notice and is posted as the lead on the Ministry's main webpage, is not marked "draft," and the Ministry has not referred to the Plan as "draft" or explained that it is unfinalized in various communications to the public.

The EBR Act requires a ministry to post a decision notice on the Environmental Registry as soon as reasonably possible after it implements a proposal, and to explain the effect of public participation, if any, on the ministry's decision. These requirements are intended to provide transparency and accountability to the public for ministry decisions that affect the environment. By leaving the proposal notice for the Made-in-Ontario Environment Plan open on the Environmental Registry since 2018 without an update or a decision notice, the Environment Ministry has not been transparent about the status of the Plan, and has not told Ontarians what effect, if any, the almost 1,400 public comments submitted on the proposal had on the Ministry's decision to implement the Plan.

RECOMMENDATION 20

So that the Environmental Registry is up-to-date and a reliable source of information about the Ministry of the Environment, Conservation and Parks' decisions about the environment, we recommend that the Ministry:

- review all existing proposal notices on the Environmental Registry that it has updated to confirm the accuracy of the updates, and immediately correct any updates that are not accurate or up-to-date; and
- going forward, when it is necessary to update a proposal notice because it has been on the Environmental Registry for more than two years but has not yet been decided, post an accurate and informative update about the current status of the proposal, including

specific details about any ongoing work on that proposal, and the Ministry's anticipated timing for making a decision.

MINISTRY RESPONSE

The Ministry agrees with the importance of keeping the Environmental Registry up to date. The Ministry has a process in place to regularly identify proposal notices that remain open (i.e., without a decision) on the Environmental Registry and to post updates or decision notices on these proposals. The Ministry always strives to ensure any updates made to notices are accurate and informative and will continue to do so.

RECOMMENDATION 21

So that the Environmental Registry is up to date and a reliable source of information about the Ministry of the Environment, Conservation and Parks' decisions about the environment, and to provide transparency and accountability for its decision to implement its Made-in-Ontario Environment Plan, we recommend that the Ministry:

- take the necessary steps to obtain any approvals that may be needed on the Made-in-Ontario Environment Plan; and
- post a decision notice on the Environmental Registry to inform the public of its decision to implement the Made-in-Ontario Environment Plan, and to explain the effect, if any, of public participation on the Ministry's decision, as required by the *Environmental Bill of Rights, 1993*.

MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry will continue to develop its approach for posting a decision notice on the Environmental Registry regarding the Made-in-Ontario Environment Plan, including obtaining any approvals that may be needed.

6.13 Environment Ministry Did Not Have Effective Processes to Ensure Public is Notified About Appeals on Instrument Decisions

The EBR Act allows any resident of Ontario to ask for permission to challenge ("seek leave to appeal") decisions on many types of instruments (for example, permits, licences, approvals and other authorizations and orders) in front of an administrative tribunal. For example, a member of the public could use this right to ask the tribunal to change or overturn a decision by the Environment Ministry to allow an industrial facility to discharge contaminants into the air. Decisions about those types of instruments can also be appealed (without first seeking permission) by the individuals and companies directly affected by them ("instrument holders"), such as a decision to deny a permit they applied for or a decision to include certain conditions in an approval issued to them, and, in some cases, by other people ("third parties"). As of June 1, 2021, all leave to appeal applications and direct appeals are heard by the Ontario Land Tribunal; prior to that date, most hearings occurred before the Environmental Review Tribunal or the Local Planning Appeal Tribunal. (See **Appendix 8** for a more detailed explanation of appeal rights and processes under the EBR Act, and appeals filed in 2020/21).

When a member of the public applies under the EBR Act for leave to appeal, and when an instrument holder directly appeals a decision about an instrument prescribed under the EBR Act, they must give notice to the Environment Ministry, and the Environment Ministry must post the appeal notice on the Environmental Registry to inform the public. Before April 1, 2019, the former Environmental Commissioner of Ontario had the responsibility for posting such appeal notices.

Giving prompt notice to the public of leave to appeal applications and appeals of environmentally significant decisions is important not only for transparency, but also because members of the public may wish to seek to participate in an appeal hearing. If

notice of an appeal is not given, or is given late, there is a risk that people who are interested in participating in the appeal hearing may lose that opportunity. There is also a risk that failure to give notice may delay the commencement of a hearing on a leave to appeal application or appeal by the tribunal. This is because the EBR Act provides that a hearing shall not proceed until 15 days after notice is given unless the tribunal considers it appropriate to proceed. The filing of an application for leave to appeal does not stay (suspend) the decision under appeal; therefore, a delay in a hearing of a leave to appeal application would mean that the approval that is being challenged because of potential harm to the environment may be in effect during any period of delay.

In 2020, we found that the Environment Ministry did not give Ontarians prompt notice about four leave to appeal applications and four appeals submitted in 2019/20. By the time the Ministry posted the notices, all but one of the leave to appeal applications had already been decided. The Ministry told our Office at the time that it did not always receive notice from the applicants or appellants, and that it had only recently established a process to post notices once it is notified by the tribunal about an appeal. In February 2021, the Ministry developed an internal best practices document for directing appeal notices received by the Minister's Office to the Ministry's Environmental Bill of Rights Office, which is responsible for posting the notices on the Environmental Registry.

However, in 2020/21, we found that the Environment Ministry again did not give Ontarians prompt notice of one application for leave to appeal (out of three applications made in 2020/21 related to two decisions), or of five direct appeals related to three decisions (out of six appeals filed in 2020/21 related to four decisions). The Environment Ministry posted a notice about an application for leave to appeal an approval for a hauled sewage disposal site in Emsdale, Township of Perry, 27 days after receiving notice that the application had been filed. The Environment Ministry also took 28 days to post a notice about a direct appeal by the instrument holder of its approval for a hauled sewage disposal site in the village of Moose

Creek, and, as of March 31, 2021, had not posted any notice about two direct appeals of a director's order under the *Environmental Protection Act*, or of two direct appeals of an amendment to the Municipality of Greenstone's official plan. It also came to our Office's attention that the Environment Ministry had not posted an appeal notice for an appeal of a *Planning Act* approval to amend the County of Hastings Official Plan that was initiated in 2019/20.

We asked the Ministry why these notices were posted late or not at all. Regarding the notices that were posted late, the Ministry told us that delays occur when applicants and appellants do not promptly notify the Minister or provide the necessary information about the application or appeal required under the EBR Act.

Regarding the appeals for which the Ministry did not post notices, Ministry staff in the Environmental Bill of Rights Office told us they were not aware of the appeals and had not received notice of them from the Minister's Office. However, other staff in the Environment Ministry—and, in the case of the *Planning Act* appeals, the Municipal Affairs Ministry—were aware of these appeals since the ministries were participating in the tribunal hearings for those appeals. The Ministry posted notices for those appeals in May 2021, after we brought them to its attention.

At the root of this issue is the Ministry's position that it has no responsibility for informing Ontarians about leave to appeal applications and appeals, other than to place notices on the Registry when they are delivered to the Ministry in strict accordance with the EBR Act. The Ministry told us: "appeal notices are an appellant/application driven process. The ministry only facilitates placing the notice on the registry, as required under ... the EBR Act." While correct, the Ministry's strict reading of the EBR Act to justify doing the bare minimum required is inconsistent with the purposes of the Act's notice provisions and with the Act's broader purposes of public participation, transparency and accountability. As administrator of the EBR Act, the Environment Ministry should be a champion of the Act and its purposes. Where the Ministry is aware of an appeal or application, regardless of how it

became aware, it should make every reasonable effort to ensure that Ontarians are given timely notice.

RECOMMENDATION 22

So that Ontarians receive timely notice of all leave to appeal applications under the *Environmental Bill of Rights, 1993* (EBR Act) and appeals of instrument decisions that are subject to the EBR Act, we recommend that the Ministry of the Environment, Conservation and Parks (Ministry):

- establish additional processes to identify all leave-to-appeal applications and all appeals that are filed, including appeals of instruments issued under acts administered by other prescribed ministries;
- post notices about all leave-to-appeal applications and appeals (“appeal notices”) promptly on the Environmental Registry (ideally no later than five business days after the Ministry becomes aware of the application or appeal by any means);
- develop policies and procedures to guide Ministry staff when appeal notices are required to be posted on the Environmental Registry; and
- where leave-to-appeal and appeal details are not provided promptly by the applicants or appellants, promptly post appeal notices on the Environmental Registry to inform Ontarians of the leave-to-appeal application or appeal, with reference to the relevant Tribunal case number, and update the appeal notices if and when more information is provided.

MINISTRY RESPONSE

The Ministry agrees that all appeal and leave to appeal notices should be posted on the Registry promptly on the appellants’ behalf and already does so when such notices are delivered to the Minister. The Ministry has no direct control over situations where an appellant doesn’t notify the Ministry, or situations where the Tribunal decides

to proceed with hearing an appeal without proper notice having been given for 15 days on the Registry, as required by the EBR Act. Recognizing these challenges, the Ministry will look for ways it can help better identify leave to appeal applications and appeals so that notices are posted promptly.

6.14 Environment Ministry Did Not Update the Environmental Registry with Relevant Changes, and Lacked Documentation of Some IT Controls for the Environmental Registry

The Environmental Registry was established under the EBR Act to provide a means of giving information about the environment to the public. For the Registry to meet this purpose, it must be operated and maintained in a way that enables Ontarians to readily and reliably access the information that they need to exercise their EBR rights. The Environment Ministry is responsible for operating the Registry.

In 2020/21, the Environment Ministry maintained and operated the Environmental Registry platform so that it generally worked well to provide information about environmentally significant matters, and to enable the public to participate in ministries’ environmentally significant decision-making. The Ministry’s work to move all legacy notices from the old Registry into a publicly accessible, searchable archive on the new Registry site will allow the public to continue to use the Environmental Registry as a source of historical information about decisions that affect the environment.

However, we found that the Ministry did not keep the Registry updated with changes related to the EBR Act. We also found that the Ministry could not provide documentation to show that it had sufficient internal IT controls for the operation of the Registry platform.

Environmental Registry Not Updated to Reflect Relevant Changes or to Correct Misinformation on Leave to Appeal Deadlines

We found that the Environment Ministry did not prepare for or take prompt steps to update the Environmental Registry to reflect changes to the tribunals that hear leave to appeal applications and appeals of instrument decisions that are subject to the EBR Act. As of June 1, 2021, the Environmental Review Tribunal, Local Planning Appeal Tribunal, and others, were merged into a new, single tribunal called the Ontario Land Tribunal.

This change occurred as a result of Bill 245, the *Accelerating Access to Justice Act, 2021*, which received royal assent on April 19, 2021. However, after the new Ontario Land Tribunal took effect on June 1, 2021, Environmental Registry instrument decision notices continued to refer to the Environmental Review Tribunal and Local Planning Appeal Tribunal when providing information to the public about how to seek leave to appeal. When we followed up with the Environment Ministry, we were told that staff in the Ministry's Environmental Bill of Rights Office were not aware of the change in tribunals. The Ministry subsequently took steps to update decision notices posted on or after June 1, 2021, to reference the Ontario Land Tribunal and explain how to appeal. However, the Ministry told us in August 2021 that it was still researching technical options to change its notice templates to accommodate different content based on date range.

Further, on June 18, 2021, the Natural Resources Ministry merged with Northern Development and Mines (a portion of the Energy and Mines Ministry) to form a new Ministry of Northern Development, Mines, Natural Resources and Forestry. A new, separate Ministry of Energy was also formed (see **Section 7.1** for a description of these changes). Although the former Natural Resources and Energy and Mines ministries were prescribed ministries under the EBR Act, more than three weeks after these changes were announced, the Environmental Registry had not been updated to reflect the changes. In fact, while the Registry's search functions otherwise

accurately reflect prescribed ministries' names, background information in the "About" section of the Registry had also not been updated to reflect changes to ministry names and organizational structures; we found a similar issue with the Ministry's EBR Act webpage (see **Section 6.18**).

In August 2021, the Ministry told us that it had made the changes regarding the new Ministry of Northern Development, Mines, Natural Resources and Forestry and Ministry of Energy in the Environmental Registry's staging environment, but was awaiting approval of the changes from those ministries before they would be implemented. In late August 2021, the Environmental Registry's search function was updated to reflect the changes. However, background information in the "About" section of the Registry continued to identify the former ministries in a list of ministries prescribed under the EBR Act.

During our audit, we also became aware that the Natural Resources Ministry had posted 11 decision notices in 2020/21 about approvals for aggregate licences with incorrect information about the time Ontarians had to seek leave to appeal these licence decisions. (See **Section 7.8** for a discussion of the issue.) Upon follow-up with the Natural Resources Ministry, we learned that this error, which was incorporated in the Registry system's template for such decision notices, was included in decision notices for all appealable instrument decisions under the *Aggregate Resources Act* dating back to 2019. In November 2019, the Natural Resources Ministry alerted the Environment Ministry, as operator of the Registry, to the error and the posting of misinformation. However, the Environment Ministry did not correct the error, and the Natural Resources Ministry continued in 2020 and 2021 to post notices containing the misinformation.

Failing to keep the Environmental Registry up to date with relevant changes can create confusion for members of the public looking for information about the EBR Act or searching for, reading and commenting on notices. Further, failing to ensure that information about appeal rights in decision notices is accurate creates a risk that Ontarians seeking to apply

for leave to appeal decisions may not be able to exercise their rights. Both circumstances undermine the effective operations of the EBR Act.

Insufficient Documentation of Internal IT Controls

We asked the Ministry about its internal information technology (IT) controls for operating the Environmental Registry. Internal controls are needed for the Ministry to be able to identify, document and manage risks to the secure and effective operation of the Registry, and to respond to any incidents that could affect the platform's operations.

We found that the Ministry was unable to show that it had a number of IT controls in place for the Registry. For example, the Ministry told us, but was unable to provide documentation to confirm:

- that there have been no cybersecurity hacks or breaches on the Environmental Registry website;
- that the Ministry has preventative controls, such as firewalls and intrusion detection/prevention systems, against unauthorized access to the Environmental Registry IT network;
- that the Ministry has a system or process to monitor for security events within the Environmental Registry network;
- that the Ministry has backup procedures to prevent the loss of Environmental Registry data;
- that the Ministry has key performance indicators to assess whether the Environmental Registry IT system is working as required; or
- the location(s) of the Environmental Registry server(s) (the Ministry told us that the servers are cloud-based and distributed across multiple North American data centres).

Finally, we found that the Environment Ministry does not have a process to verify that only ministry staff who require access have access to the Environmental Registry's internal site (for example, to draft or post notices). Instead, the Ministry relies on staff in the prescribed ministries to inform it when a staff member no longer requires access (for example, because the staff member's role within the ministry has changed, or they no longer work for that ministry).

We reviewed the Ministry's list of active internal users and found that it included staff who no longer worked for a prescribed ministry, and would therefore have no reason to access the Registry, or whose role in a prescribed ministry no longer required access to the Registry. The Ministry's lack of controls in this case risks the Registry's internal site being accessed for unauthorized purposes.

RECOMMENDATION 23

To ensure the secure and effective operation of the Environmental Registry, we recommend that the Ministry of the Environment, Conservation and Parks:

- develop and implement processes and procedures to identify changes that could affect the operation of the *Environmental Bill of Rights, 1993* (EBR Act) and/or the Environmental Registry, and promptly update information on the Registry, including in notice templates, to reflect any such changes;
- correct the information given to seek leave to appeal under the EBR Act included in Registry templates for applicable future decision notices;
- promptly correct any errors in the information provided on the Registry or in the templates used for Registry notices upon becoming aware of them; and
- develop, implement and regularly update sufficient internal IT controls.

MINISTRY RESPONSE

The Ministry agrees with the recommendation and is working with our IT partner (Land & Resources I&IT Cluster) to review, design, develop and update the Environmental Registry and associated internal IT controls. The Ministry will continue to work to improve and implement these processes.

6.15 Environment Ministry Did Not Provide Sufficient Information to Support Its Decision to Deny an Application for Review of a Regulation Temporarily Suspending EBR Act Rights

In 2020, in response to the COVID-19 pandemic and the state of emergency declared in Ontario, the Environment Ministry made a regulation under the EBR Act that relieved prescribed ministries of their responsibilities under the EBR Act to consult the public and consider their Statements of Environmental Values. The regulation, Temporary Exemptions Relating to Declared Emergency, O. Reg. 115/20 (the “exemption regulation”), came into effect on April 1, 2020.

The Ministry did not consult the public before adopting the exemption regulation, but posted a bulletin informing the public of the exemption regulation. The Ministry stated that the exemption regulation was necessary because the government needed to act quickly to address issues arising from the COVID-19 emergency.

We reported on the exemption regulation in **Chapter 1, Section 6.0** of our 2020 Report on the Operation of the EBR Act. We found that the exemption regulation was overly broad, exempting all proposals from EBR Act requirements—even those unrelated to the COVID-19 emergency. We also found that, even though it was repealed on June 15, 2020, the exemption regulation resulted in members of the public losing their right to seek leave to appeal ministries’ decisions on environmentally significant instruments (that is, permits, licences, approvals and other authorizations and orders) that were proposed during the exemption period and were not related to COVID-19. We had recommended that the Environment and Natural Resources Ministries repost those exempted instrument proposals that were still under consideration, which would have restored Ontarians’ leave to appeal rights for these instruments and respected the purposes of the EBR Act. Neither ministry agreed to do this.

On May 14, 2020, before the exemption regulation was repealed, an individual and an organization submitted an application to the Environment Ministry under the EBR Act, requesting a review of the exemption regulation. The EBR Act permits any two residents of Ontario to ask a prescribed ministry to review an existing policy, act, regulation or instrument in order to protect the environment; or to review the need for a new policy, act or regulation. The applicants asserted that, contrary to the EBR Act, the exemption regulation undermined public participation, environmental protection and government accountability, and that it was overly broad, taking away Ontarians’ legal rights, even for decisions unrelated to the emergency. The applicants asked the Ministry to:

- revoke the regulation;
- suspend proposals and restart notices following revocation;
- defer making decisions until after the emergency;
- require consideration of Statements of Environmental Values for all decisions; and
- review the need for new guidance on the use of exceptions in emergency situations.

The applicants noted that the exemption regulation was itself adopted without public notice or consultation, and therefore the “five-year rule” in section 68 of the EBR Act did not apply to prevent the Ministry from undertaking the review. Section 68 prohibits the Ministry from conducting a review of a decision made within the preceding five years, if the decision was made in a manner considered to be consistent with the intent and purpose of Part II of the EBR Act. Part II of the EBR Act sets out minimum levels of public participation before ministries make decisions on environmentally significant proposals.

On July 13, 2020, the Ministry denied the application for review. In denying the application, the Ministry concluded that section 68 of the EBR Act applied; in other words, that the decision to adopt the exemption regulation was made only months earlier in a manner consistent with Part II of the EBR Act. The Ministry, however, did not explain to the applicants its basis for that conclusion.

Given that the Ministry did not consult the public at all before making the exemption regulation, the basis for the Ministry's conclusion that the exemption regulation was made in a manner consistent with Part II of the EBR Act would likely not be clear to the applicants. Internal documentation that we reviewed did provide an explanation. It stated that the Minister complied with section 16 of the EBR Act, which requires that, for regulation proposals, the Minister must do "everything in his or her power to give notice of the proposal." The documentation stated that the Minister did everything in his power to post but, "given the context of the Emergency Declaration, was unable to post the proposal for public comment."

The Ministry also considered the merits of the application in accordance with the factors set out in section 67 (2) of the EBR Act. The Ministry concluded that, with revocation of the regulation, the public's rights under the EBR Act were restored so the public interest did not warrant a review. While this addressed one of the applicants' concerns, the Ministry did not address the loss of Ontarians' leave to appeal rights for proposals made during the exemption period.

In response to the applicants' request to repost notices, defer decisions and require consideration of Statements of Environmental Values, the Ministry noted that ministries had followed its directive to continue to consult on non-COVID proposals during the exemption period (however, our Office has found that transparency and accountability for some of those proposals decreased as a result of the exemption regulation; see **Section 6.15.1**). The Ministry concluded that there would be no harm to the environment if these requests were not granted; that to require these steps would create "regulatory uncertainty in the context of an ongoing emergency"; and that it was not in the public interest to redeploy Ministry resources to undertake these steps "at a time when the limited ministry resources available have been prioritized on responding to matters related to the COVID-19 emergency."

The Ministry did not explain to the applicants its rationale for concluding that implementing their

requests would create "regulatory uncertainty." Internal documentation that we reviewed noted that there is no retroactive regulation-making authority under the EBR Act, and indicated that the Ministry concluded that retroactively reinstating leave-to-appeal rights about decisions that had already been made and potentially implemented "would result in regulatory uncertainty, and it is unclear whether there would be any legal or practical efficacy in doing so."

The only explanation that the Ministry provided the applicants regarding its conclusion that there would be no harm to the environment if the steps were not taken was that "all other applicable legislation under which decisions were made remained in effect, including legislation that is intended to protect the environment." The Ministry did not explain, for example, how removing Ontarians' right to seek leave to appeal ministry decisions about permits and approvals that authorize such things as the emission of contaminants to air and water would not harm the environment; such challenges are only permitted to be made when the person seeking leave to appeal can demonstrate that the decision to issue the instrument could result in significant harm to the environment.

In response to the applicants' request for new guidance about the use of exceptions under the EBR Act, the Ministry again concluded that there would be no harm to the environment if new guidance were not developed and that it would not be in the public interest to redeploy Ministry resources to undertake the work. The Ministry also noted that the Environment Ministry's Environmental Bill of Rights Office "provides support and guidance to all prescribed decision makers in respect of how to apply the exceptions in the [EBR Act]."

Under Part IV of the EBR Act, a ministry is required to determine whether the public interest warrants a requested review and then to provide a statement of reasons to the applicants to explain its decision. When a ministry does not clearly explain the basis of its decision to deny a requested review, it undermines the transparency of its decision and provides applicants little confidence that their request was fully considered. In this case, the applicants raised

reasonable arguments for the Ministry to conduct the review, and raised a reasonable argument as to why the five-year rule in section 68 of the EBR Act did not apply. However, the Ministry did not provide the applicants sufficient information or a convincing rationale to support its conclusions and its decision to deny the request.

As we noted in our 2020 report, the Ministry could have taken steps to minimize the impacts of the exemption regulation, including re-posting any instrument proposals that were still under consideration in order to restore leave-to-appeal rights for decisions on those proposals. This would not have required retroactive changes to decisions already made. Recognizing that the Ministry would have to temporarily redeploy some staff to respond to the COVID-19 pandemic, the Ministry should still have determined what steps were feasible to minimize the impacts of the exemption regulation on both the environment and Ontarians' rights under the EBR Act.

Further, the Ministry's reliance on section 68 of the EBR Act to deny the review was not reasonable. In this case, the Ministry provided no opportunity for public participation before making the exemption regulation, on the basis that it was not in the Minister's power to do so given the urgent need to respond to the COVID-19 emergency. However, to then state that the decision to make the exemption regulation was made in a manner "consistent with Part II" in order to avoid undertaking a review of that decision on which Ontarians were not consulted is inconsistent with the purposes of the EBR Act.

RECOMMENDATION 24

To adhere to the requirements of the *Environmental Bill of Rights, 1993*, and to provide greater transparency and accountability to applicants who have requested reviews of environmental matters, we recommend that the Ministry of the Environment, Conservation and Parks provide a clear and detailed explanation when it makes a decision that the public interest does not warrant a requested review.

MINISTRY RESPONSE

The Ministry will continue to provide clear and detailed explanations when it makes a decision that the public interest does not warrant a requested review, in full compliance with its legal obligations under the EBR Act.

6.15.1 Transparency and Accountability for Some Environmentally Significant Decisions Decreased Because of the Exemption Regulation

As noted in **Section 6.15**, while the public consultation requirements of Part II of the EBR Act were suspended because of O. Reg. 115/20, Temporary Exemptions Relating to Declared Emergency (the "exemption regulation"), the Environment Ministry nevertheless directed prescribed ministries to continue to:

- post non-COVID-19-related proposals for public consultation for at least 30 days on the Environmental Registry;
- consider comments received during public consultation;
- give notice of decisions made about proposals (although ministries were directed to use bulletins instead of regulation decision notices for this purpose); and
- consider their Statements of Environmental Values when making decisions, "where feasible."

The Environment Ministry gave this direction "in order to maintain transparency of government decision-making throughout this state of emergency."

While the exemption regulation was in effect from April 1, 2020 until the regulation revoking it came into force on June 15, 2020, prescribed ministries did continue to post proposal notices for public consultation on the Environmental Registry: two proposals for policies, two proposals for regulations and 262 proposals for instruments. Since then, the ministries have posted bulletins on the Environmental Registry to give notice whenever they make decisions about proposals that were posted during the exemption period.

Our Office reviewed a sample of those proposal notices and corresponding bulletins to determine whether the purposes of the EBR Act were met in relation to those proposals, even though the public's rights under the EBR Act were suspended.

Generally, we found that prescribed ministries followed the Environment Ministry's directive, and that the posting of notices on the Environmental Registry, and ministries' consideration of their Statements of Environmental Values, continued as usual. During the exemption period, Ontarians were given notice of and the opportunity to comment on 266 proposals that they may not have even known about if the ministries had ceased to post notices altogether while the public's consultation rights were suspended.

However, we also found that many of the notices related to proposals made during the exemption period did not fully meet the Environment Ministry's directive. The use of bulletins instead of regular decision notices—to avoid including the usual information about leave-to-appeal rights, which did not apply to instrument proposals posted during the exemption period—contributed to this problem.

First, we found that proposal notices we reviewed were inconsistent and, in some cases, unhelpful in how they informed Ontarians when a decision was made. For example:

- Most proposal notices were updated to provide the Environmental Registry numbers for corresponding bulletin decisions, but many did not link directly to those decisions, requiring members of the public to search for the bulletin number in order to view the decision, even though the Environment Ministry instructed ministries to include links between proposals and bulletin decisions.
- Two of the nine Energy and Mines Ministry's proposals were not updated to indicate that a decision had been made, and did not provide a bulletin decision number, so that a user may not know that the proposal had been decided.

- One Technical Standards and Safety Authority policy proposal notice included a link to the corresponding bulletin decision, but did not indicate that a decision was made.

Second, we found that bulletins giving notice of decisions were inconsistent in their content, sometimes leaving out key information. For example:

- Of the sample of 24 bulletin decisions posted by the Environment Ministry that we reviewed, one did not attach copies of the 75 comments submitted on a regulation decision, although the notice did provide a summary of the comments and the Ministry's response to those comments. The Ministry also did not provide copies of the issued approvals for three decisions (13%) on approval types for which the Ministry usually does provide copies of the approvals.
- In two of eight bulletin decisions posted by the Municipal Affairs Ministry that we reviewed, the Ministry did not report how many comments were received or the effects of public participation. One of the eight bulletins did not include a copy of the one comment submitted. Although seven of the eight bulletins were for decisions that would ordinarily be subject to leave to appeal under the EBR Act, those seven bulletins did not explain that the usual EBR Act leave-to-appeal rights did not apply.
- The then Energy and Mines Ministry did not describe the effects of public participation (other than, in some cases, stating that comments were considered) in five of the nine (56%) decision notices that we reviewed. In three of those cases, copies of the comments were also not provided.
- Eleven of the 15 decision bulletins posted by the Technical Standards and Safety Authority did not report how many comments were submitted on the proposal or the effect of public participation, and did not explain that the usual EBR Act leave-to-appeal rights did not apply to those decisions.

Although it was the Environment Ministry that issued the directive and provided guidance to other ministries (through its Inter-ministerial Committee) about posting proposals and decision notices to the Registry during the exemption period, we identified some additional issues that were unique to that Ministry. In particular:

- While the other ministries provided evidence that they considered their Statements of Environmental Values in the sample of decisions that we reviewed, the Ministry could only provide evidence that it considered its Statement of Environmental Values for four of the five decisions for which we requested proof. Further, two of the consideration documents that the Ministry did provide were not dated, and the Ministry could not provide documentation to confirm that the Statement was considered before the decisions were made.
- While other ministries generally gave prompt notice of decisions, the Environment Ministry posted 15 of the 24 (63%) bulletins for instrument decisions that we reviewed more than two weeks after the decision was made (compared with 16% of a sample of regular instrument decision notices in 2020/21). Eleven (46%) of these were posted more than two months after the decisions were made, including a notice of a Certificate of Property Use that was posted over 10 months after it was issued, and notices about a permit to take water and an environmental compliance approval for air emissions that were both posted over eight months after the approvals were issued.

In short, we concluded that, overall, while ministries continued to consult the public on proposals made during the exemption period, there was less transparency and accountability for decision-making on proposals posted during that time than would normally have been the case.

6.16 Environment Ministry Did Not Meet Timelines in Five of the Eight Applications for Review Concluded in 2020/21

When a prescribed ministry receives an application for review under the EBR Act, the ministry must follow certain legislated timelines in handling the application, including:

- acknowledging receipt of the application within 20 days of receiving the application;
- determining whether the public interest warrants the requested review and giving notice of its decision whether to conduct a review within 60 days of receiving the application (known as the “preliminary decision”);
- if the ministry decides to conduct the requested review, completing the review “within a reasonable time”; and
- if the ministry decides to conduct the requested review, giving notice of the outcome of the review within 30 days of completing the review.

In 2020/21, the Environment Ministry concluded eight applications for review initiated under the EBR Act (that is, it completed and gave notice to the applicants of the final outcome). Five were reviews that the Environment Ministry had agreed to conduct in past reporting years, while three were for new applications for review submitted in 2020/21 that the Ministry denied.

Of the five reviews that it concluded in 2020/21, the Environment Ministry did not meet the legislated timeline to provide a preliminary decision within 60 days for two of the reviews, when the Ministry initially considered whether to conduct the reviews. In the first case, the Ministry was two weeks late giving notice to the applicants that it would undertake a review of the Ministry’s guidance on landfill siting in hydrogeologically unsuitable areas. The Ministry had notified the applicants that it required more time to deliver its preliminary decision, but the EBR Act does not provide discretion for the Ministry to extend

the 60-day timeline. In the second case, the Ministry was over a month late providing its preliminary decision to the applicants of one of the requests for review of the then 19-year-old environmental compliance approval for a never-constructed landfill in the United Counties of Leeds and Grenville in eastern Ontario, known as the ED-19 landfill.

The Environment Ministry also missed the deadline for providing a notice of outcome to the applicants of three completed reviews. For both applications regarding the approval for the ED-19 landfill, the Ministry did not deliver its notice of outcome until over two months after the environmental compliance approval for the landfill was revoked—the latest date on which the Ministry could be considered to have completed its review of the approval. Similarly, the Environment Ministry did not provide a notice of outcome to the applicants in its review of the reporting deadline for pesticide use on golf courses until six months after the regulatory amendments under the *Pesticides Act* that related to the applicants' request were made.

In addition to not meeting the legislated timelines for these applications, we concluded that three of the five reviews conducted were not completed within a reasonable time, as required by the EBR Act: the review of guidance on landfill siting, which was requested in 2013, and two reviews related to pesticide use on golf courses, which were both submitted in 2017. The EBR Act does not specify what a reasonable length of time to complete a review might be, as it varies from case to case, based on the review's complexity and other factors, such as a need to gather scientific or technical evidence before completing the review. In each of these three cases, the Ministry had not met its own deadlines for completing the reviews, promising and then missing revised deadlines.

When ministries do not adhere to the specific timelines for handling applications for review under the EBR Act, or complete undertaken reviews within a reasonable time, the Ministry's accountability may be diminished, implementation of reforms may be delayed, and Ontarians' confidence in the EBR Act and its tools as an effective means of influencing

environmental decision-making may be undermined. In our 2019 and 2020 reports on the operation of the EBR Act, we recommended that the Ministry provide reasonable completion dates to applicants and complete the reviews by that time.

In the past, the Environment Ministry had a practice of periodically posting a notice on the Environmental Registry that provided a status update on applications for review submitted to the Ministry. Resuming that practice could allow for greater transparency for applicants and the public, and greater accountability for the Ministry's handling of applications for review.

For details about the eight applications that the Environment Ministry concluded in 2020/21, see **Appendix 7**.

RECOMMENDATION 25

To adhere to the requirements of the *Environmental Bill of Rights, 1993* and to provide accountability to Ontarians who submit applications for review, we recommend that the Ministry of the Environment, Conservation and Parks meet all legislated timelines for all applications for review submitted, and complete all undertaken reviews within a reasonable time.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and makes every attempt to complete reviews in a timely manner. The Ministry made significant progress by completing five reviews in 2020/21, as well as considering whether to undertake three new applications for review, and will continue to work to conclude all outstanding reviews within a reasonable time.

RECOMMENDATION 26

To adhere to the requirements of the *Environmental Bill of Rights, 1993* to complete reviews within a reasonable time, and to provide greater

transparency and accountability, we recommend that the Ministry of the Environment, Conservation and Parks post periodic updates on the Environmental Registry about the status of all applications for review submitted to the Ministry.

MINISTRY RESPONSE

The Ministry thanks the Auditor General for this recommendation. The Ministry makes every attempt to complete reviews in a timely manner, as well as to provide updates to the applicants periodically, as required by the EBR Act.

6.17 Environment Ministry Did Not Provide Educational Programs to Ontarians About Environmental Rights in the EBR Act

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. The remaining 1% preferred not to answer. Similarly, 84% of those surveyed said they did not know anything about the Environmental Registry. Only 6% of those surveyed identified the Environment Ministry as the appropriate entity to contact for information about their EBR Act rights.

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. As reported in our 2020 report, the Ministry had not started providing educational programs to Ontarians about their rights in the EBR Act. In response, the Ministry indicated that it was committed to enhancing its education to Ontarians about the EBR and how to exercise their rights.

While the Ministry provides information and links about the EBR Act and the public's rights under it on a webpage (www.ontario.ca/page/environmental-bill-rights) and on the Environmental Registry, we found that the Ministry did little in 2020/21 to actively reach out and educate the public, and did not have any specific funds budgeted for educational programs.

The Ministry has drafted a communications plan to educate the public on the EBR Act. This draft plan proposes a “digital-first approach” that uses the Ministry's existing social media channels (for example, Facebook, Twitter, LinkedIn, Instagram) and partner channels (for example, ministries, partner organizations) to help raise public awareness of the EBR Act and educate Ontarians on their rights and how they can participate in government decision-making. The draft plan also proposes incorporating general information about the EBR Act into news releases, and conducting research (through polls or surveys) to gauge public awareness and understanding of the EBR Act.

To be effective, educational programs should be accessible and reach a broad range of Ontarians, and enable members of the public to access the information they need to meaningfully exercise their rights under the EBR Act. Not all Ontarians actively engage in social media, and so a variety of approaches may be needed to educate them about the EBR Act. These could include in-person and online presentations to communities and organizations, and the dissemination of printed materials.

By comparison, even though it has no statutory requirement to do so, the Ministry of Labour, Training and Skills Development provides public education programs about the legislation it administers, including the *Employment Standards Act, 2000* and the *Occupational Health and Safety Act*. For example, the Labour Ministry provides a comprehensive online guide to inform the public of rules that employers must follow, and to help the public understand their rights under the *Employment Standards Act, 2000*. This guide is accompanied by a number of educational resources, including educational videos, in-person and virtual information sessions, downloadable

posters, and guidance in 20 languages. In another example, the Ontario Human Rights Commission, which is required to develop and conduct public information and education programs on the Ontario Human Rights Code, holds training events, provides an eLearning program, posts recorded webinars, and has developed a publicly available curriculum for educators to teach students about human rights and the Ontario Human Rights Code in schools.

RECOMMENDATION 27

As we recommended in 2020, so that Ontarians are aware of their environmental rights and how to exercise them, and to meet the Ministry's educational responsibility under of the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that the Ministry of the Environment, Conservation and Parks develop and implement a comprehensive plan for providing educational programs about the EBR Act to a broad range of Ontarians.

MINISTRY RESPONSE

The Ministry is committed to educating Ontarians about the EBR Act and is continuing to develop and implement plans to improve the Ministry's educational programs to inform Ontarians about how to exercise their rights under the EBR Act.

6.18 Environment Ministry's EBR Act Website Needed Updates, and Ministry Did Not Have Processes for Ensuring General Information About the EBR Act is Provided When Ontarians Call for Information

Under the EBR Act, the Environment Ministry must provide general information about the Act to members of the public who wish to participate in decision-making about a proposal. To fulfill this requirement, information that the Ministry provides to the public should be accurate, helpful and

timely, and provided in accordance with Ontario government standards.

To satisfy this requirement, the Environment Ministry does two things:

- it maintains a webpage on its website that provides an overview of the EBR Act and the public's rights under the EBR Act, and how to exercise those rights; and
- it responds to email and telephone inquiries from the public about the EBR Act. The Ministry's EBR Act website provides a link to Ministry contact information, including telephone numbers and an option to send an email to the Ministry. The Environmental Registry also includes a "contact us" feature that allows members of the public to provide feedback to the Ministry about the Registry, or to send an email directly to the Ministry's Environmental Bill of Rights Office.

The Ministry also routinely takes steps to ensure relevant stakeholder groups, members of the public and Indigenous communities are made aware of various proposal, information and decision notices posted on the Environmental Registry through direct outreach (for example, letters to stakeholders or communities). Some notices are also promoted through news releases and social media posts.

We reviewed the Environment Ministry's EBR Act website, and found that it did provide general information about the EBR Act and how Ontarians can exercise their rights under the Act. However, the list of prescribed ministries on the website mirrored O. Reg 73/94 (the General Regulation under the EBR Act), which had not been updated to reflect the separation of the Ministry of Health and the Ministry of Long-Term Care, which occurred on June 20, 2019, or the revised names of the Ministry of Tourism, Culture and Sport and the Ministry of Labour. As of September 2021, the website also did not reflect the new Northern Development and Natural Resources Ministry or the new Energy Ministry created in June 2021.

Referring to the list of prescribed ministries in O. Reg. 73/94 when several of those ministries no longer exist under those names may be confusing to the public and hinder their ability to exercise their

rights. For example, members of the public who wish to submit an application for review under the EBR Act could have difficulty determining to which ministry or ministries they should submit their application. Explanatory text on the Ministry's EBR Act website to clearly inform Ontarians about which current ministries are subject to the EBR Act's requirements would help avoid confusion and better assist them in exercising their rights under the Act.

We also reviewed the Ministry's handling of email inquiries, and found that the Ministry generally responded to those inquiries helpfully, accurately and in a timely manner. However, the Environment Ministry was unable to provide details from any telephone calls that it received about the EBR Act in 2020/21, as it did not keep any records of calls received. While the Ministry maintains a database to record and track email inquiries about the EBR Act, it does not have a database or management system to track and allow the analysis of the number, subject, status or outcome of telephone inquiries. Without records of such calls, the Ministry cannot determine if it is effectively complying with its EBR Act obligation to provide general information to members of the public who wish to participate in environmental decision-making.

Further, the Ministry does not have processes in place to ensure that any calls about the EBR Act received by the Ministry's or government's general inquiry telephone lines would either be directed to the appropriate office in the Ministry, or that the staff answering those telephone lines would be equipped to provide helpful and accurate information about the EBR Act.

The Ministry also told us that it does not have any documented staff guidance on handling emails and calls from the public about the EBR Act. The Ministry told us that its process is for general inquiries about the EBR Act to be directed to the Ministry's Environmental Bill of Rights Office, where staff have expertise about the EBR Act and how it works.

However, we tested how calls to the Ministry's and government's general inquiry lines about EBR Act matters are handled, and found that staff responding to these calls did not reliably or consistently refer us to

knowledgeable staff or provide information regarding the EBR Act.

Our Office called Service Ontario and the Environment Ministry's general inquiry lines as "secret shoppers" with questions about Ontarians' environmental rights. When we called Service Ontario at various times of the day, 10 (91%) of 11 times we got a busy recording and the call was disconnected. When our Office connected with a Service Ontario agent on the eleventh call, we were directed to the general inquiry number for the Air Quality Health Index (a specialized program, unrelated to the EBR Act, that provides Ontarians with real-time air pollution data), and to the Environment Ministry's general inquiry line.

We called the Environment Ministry's general inquiry line six times, asking either a general question about Ontarians' "environmental rights," about the EBR Act itself, or about specific processes in the EBR Act. In all cases we were directed to the Ministry's environmental permissions branch, which handles permits and approvals under general environmental legislation. In some cases, that branch further directed us to the EBR Act on the government's e-laws website and to the Ministry's EBR website. In one of those calls, we were also given a general explanation of the EBR Act's right to comment on proposal notices posted on the Environmental Registry. While the information provided in these cases was more helpful than in our other calls, only once were we referred to the Environmental Bill of Rights Office—and in that case, we were told to call a staff member who was on leave at the time.

Based on the process described by the Ministry, it was reasonable to expect that in each of our calls we would be directed to staff in the Ministry's Environmental Bill of Rights Office. This was not consistently the case. From our testing, we find little assurance that Ontarians seeking information about their environmental rights – or matters that may be subject to the EBR Act – will receive helpful and informative assistance from the Ministry.

Having documented procedures and guidance for its staff and for other government staff that operate

general inquiry telephone lines would help the Ministry ensure that Ontarians who wish to be informed about the EBR Act, or to exercise their environmental rights, are consistently provided with the information they need to do so.

RECOMMENDATION 28

So that Ontarians can reliably access accurate and timely general information about the *Environmental Bill of Rights, 1993* (EBR Act), and so that the Ministry of the Environment, Conservation and Parks can monitor its compliance with the EBR Act in handling inquiries from the public, we recommend that the Ministry:

- regularly update the EBR Act website to clearly inform Ontarians about the existing ministries that are subject to the EBR Act's requirements;
- maintain records of telephone calls received from members of the public with inquiries about the EBR Act;
- develop written guidance for Ministry staff on responding to public inquiries about the EBR Act; and
- establish processes and procedures for ensuring that public inquiries about the EBR Act received by the Ministry's and the government's general inquiry telephone lines and email accounts are directed to Ministry staff who are knowledgeable about the EBR Act, and for keeping records of such inquiries and the Ministry's handling of them.

MINISTRY RESPONSE

The Ministry agrees with the recommendation and will consider ways to improve processes, procedures, guidance, and record keeping related to responding to public inquiries and keeping the public informed about the EBR Act.

7.0 Ministry of Natural Resources and Forestry (Natural Resources Ministry) and Ministry of Energy, Northern Development and Mines (Energy and Mines Ministry)

7.1 Changes to Natural Resources and Energy and Mines Ministries in June 2021

The Ministry of Natural Resources and Forestry and the Ministry of Energy, Northern Development and Mines were both prescribed ministries under the EBR Act during our assessment of EBR Act implementation and compliance for the period of April 1, 2020, to March 31, 2021.

However, on June 18, 2021, those ministries changed. Northern Development and Mines merged with Natural Resources and Forestry to form the Ministry of Northern Development, Mines, Natural Resources and Forestry (the Northern Development and Natural Resources Ministry), and a separate Ministry of Energy (Energy Ministry) was formed.

The results of our audit for 2020/21 are presented below for the work of the former Ministry of Natural Resources and Forestry and the former Ministry of Energy, Northern Development and Mines, as they were at the time of our audit. However, our recommendations are directed to the ministries as they exist now: as the new Northern Development and Natural Resources Ministry and the new Energy Ministry.

In 2022, we will audit and issue individual report cards for the Northern Development and Natural Resources Ministry's and the Energy Ministry's compliance with and implementation of the EBR Act.

7.2 Overview of the Former Ministry of Natural Resources and Forestry (Natural Resources Ministry)

The former Natural Resources Ministry had primary responsibility for natural resources management in Ontario, including developing and implementing policy regarding:

- forest management, support for and oversight of the forest industry;
- aggregate, oil, gas and salt resources;
- species conservation and biodiversity;
- Ontario's Crown lands and waters, fish and wildlife;
- natural resources monitoring, mapping and research;
- community-based land use planning in the Far North;
- Niagara Escarpment planning; and
- public safety, flood control and natural hazard emergency response.

The Natural Resources Ministry was also responsible for promoting economic growth and job creation in the forestry, aggregates and fishery sectors, and providing science support for species at risk and parks to the Environment Ministry.

The Natural Resources Ministry was responsible for nine laws that are prescribed under the EBR Act, including the *Fish and Wildlife Conservation Act, 1997*, the *Crown Forest Sustainability Act, 1994*, and the *Invasive Species Act, 2015*. The Ministry also shares responsibility with the Environment Ministry for the *Conservation Authorities Act*. The Ministry was required to consult the public about instruments (permits, licences, approvals and other authorizations and orders) issued under nine prescribed acts, such as licences issued under the *Aggregate Resources Act*. The Natural Resources Ministry was also subject to receiving applications for review and applications for investigation from the public.

In 2020/21, the Natural Resources Ministry used the Environmental Registry to post 133 notices about environmentally significant policies, acts, regulations and instruments, and other matters.

See **Section 7.3 (Figure 6)** for the former Natural Resources Ministry's report card on compliance with and implementation of the EBR Act in 2020/21, and **Sections 7.4 – 7.9** for our detailed findings and recommendations.

7.3 Report Card on the Former Natural Resource Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 6: Ministry of Natural Resources and Forestry

Prepared by the Office of the Auditor General of Ontario

Legend: Met criteria Partially met criteria Did not meet criteria The ministry did not execute any responsibilities under this category in this reporting year n/a The ministry is not prescribed for this category Not assessed New criterion in 2020/21				
Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date		In October 2020, the Ministry finalized a new Statement that reflected the Ministry's responsibilities and government priorities, such as addressing climate change.		

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
b. Statement is considered when making decisions		The Ministry provided documentation to show it considered its Statement for all 18 decisions that it made on policies, acts and regulations, and for a sample of 25 instrument decisions. Six of the consideration documents were not dated, but the Ministry was able to provide documentation to confirm that consideration occurred at the time of decision-making.		
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act		Section 7.4 – The Ministry did not notify or consult the public about a regulation, O. Reg. 159/21 made under the <i>Conservation Authorities Act</i> , that enabled development in a provincially significant wetland. It also came to our attention that the Ministry had not notified or consulted the public about the decision to no longer give effect to an environmentally significant policy, <i>A Wetland Conservation Strategy for Ontario: 2017-2030</i> , which occurred after the change in government in 2018.		
b. Time to comment is extended based on the factors in the EBR Act		The Ministry met this criterion.		
c. Proposal notices for policies, acts and regulations are informative		Section 7.5 – The Ministry posted nine proposal notices this year. One of the proposal notices (11%), regarding proposed changes to the <i>Far North Act, 2010</i> , did not provide information a reader would need to fully understand the environmental implications of the proposed changes.		
d. Proposal notices for instruments are informative		The Ministry posted 50 proposal notices for permits and approvals on the Registry. We reviewed a sample of 25 proposal notices, and the Ministry met this criterion.		
e. Received comments are reviewed and considered		We reviewed documentation related to the Ministry's consideration of comments submitted about three proposals for policies and regulations, and two proposals for instruments. The Ministry's consideration met this criterion.	Not assessed	Not assessed
f. Prompt notice of decisions is given		Section 7.6 – The Ministry posted 18 decision notices for policies, acts and regulations, and 38 decision notices for permits and approvals on the Registry. The Ministry posted four (22%) of the 18 decision notices for policies, acts and regulations more than two weeks after the decisions were made, and posted six (24%) of the 25 decision notices for permits and approvals that we reviewed more than two weeks after the decisions were made. In total, 10 (23%) of the 43 notices we reviewed were posted more than two weeks after the decisions were made.		
g. Decision notices for policies, acts and regulations are informative		Section 7.7 – The Ministry posted 18 decision notices on the Registry for policies, acts and regulations. One decision notice, for amendments to the <i>Crown Forest Sustainability Act, 1994</i> , did not adequately describe the decision that was made or describe the effects of public participation on the decision.		
h. Decision notices for instruments are informative		Section 7.8 – The Ministry posted 38 decision notices for permits and approvals on the Registry. We reviewed a sample of 25 notices, and none of those notices provided a link and/or attachment to the final approval issued. Further, nine decision notices for Class A Aggregate Licences we reviewed included incorrect information about the time within which a leave to appeal application must be made.		
i. Proposal notices are up-to-date		Section 7.9 – As of March 31, 2021, the Ministry had 23 proposal notices that had been on the Environmental Registry for over two years without a decision or update, representing 12% of the Ministry's open proposals on the Registry. Further, we found that the Ministry updated two other proposal notices with inaccurate information about the proposals' status, and we did not find evidence that two other updated proposals were, in fact, still being considered.		

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

7.4 Natural Resources Ministry Did Not Notify or Consult Ontarians about Two Decisions Related to Wetlands, as Required Under the EBR Act

In 2020, we found that the Natural Resources Ministry had not consulted the public about two environmentally significant policy decisions (one for changes to Ontario’s approach to cage aquaculture, and one for Ontario’s Flooding Strategy). The Ministry posted bulletins about the decisions instead. We recommended that the Ministry consistently consult the public about its environmentally significant proposals in accordance with the EBR Act, and the Ministry agreed, stating “[t]he Ministry will ensure that required public consultation is undertaken for all proposals that are environmentally significant.”

However, this year we again found that the Ministry did not consult the public on an environmentally significant proposal. In October 2020, the Municipal Affairs Minister issued a Zoning Order authorizing the development of a warehouse on lands that are designated as a Provincially Significant Wetland and Significant Wildlife Habitat, part of the Lower Duffins Creek wetland complex in Pickering. (There was no opportunity for public comment through the Environmental Registry on that Order because, as discussed in **Section 4.5.2** of this report, Minister’s Zoning Orders are exempted from public consultation under the EBR Act.) In December 2020, Bill 229 (the budget measures bill discussed in **Section 6.5**) made changes to the *Conservation Authorities Act* that prevent conservation authorities from refusing to grant development permission for any project authorized under a Minister’s Zoning Order, regardless of the environmental impacts.

Under the new provisions, conservation authorities can impose conditions on projects (such as flood control, erosion control, or the conservation of land) to help minimize adverse impacts on the environment, public health or safety, or property. Before development can commence, conservation authorities

are also required to enter into agreements with developers to compensate (financially or through on-the-ground actions) for ecological and other impacts resulting from the project. Changes to the Act also authorized the Natural Resources Minister to make regulations “requiring that the permission be granted within a specified time after the application is submitted.” (There was no public consultation on those changes.)

The developer applied to the Toronto and Region Conservation Authority for development permission on February 16, 2021. As part of its review of the proponent’s application, the conservation authority identified potential conditions that could mitigate the anticipated adverse environmental impacts and compensate for the ecological impacts of removing the wetland. The developer disputed those conditions and requested a hearing before the authority’s Board of Directors. Before the hearing could be held, on March 4, 2021, the Natural Resources Minister filed a regulation (O. Reg. 159/21), without first consulting the public on the Environmental Registry, requiring the Toronto and Region Conservation Authority to grant, within a week, the permission to allow development to start on the site by March 12, 2021.

The conservation authority held a hearing on March 12, 2021, and issued the permission on the same day, meeting the provincially mandated deadline, even though the authority stated publicly that it would not otherwise have done so. The conservation authority noted that issuing such permission “conflicts with [its] mandate to further the conservation, development, and management of natural resources in watersheds within our jurisdiction.”

Even though the *Conservation Authorities Act* is prescribed under the EBR Act’s General Regulation for the purposes of consulting the public on environmentally significant proposals about regulations, and the regulation appeared to have potential for a significant effect on the environment, the Ministry did not give notice of the proposed regulation and did not consult Ontarians about the proposal.

We asked the Ministry why it did not do so, and the Ministry told us that “setting a timeline to

issue a permit was not considered environmentally significant.”

In some circumstances, merely setting a deadline to issue a permit might not be environmentally significant. However, in circumstances where a short deadline is imposed and a conservation authority is left without sufficient time to exercise its professional judgment in reviewing an application, designing adequate conditions, negotiating with a developer, and issuing a permit with written reasons, while meeting its obligation to afford a fair hearing to the developer, there could very well be a significant effect on the environment. Here, the environmental impacts of the development were significant locally and regionally. The conservation authority’s staff report prepared for the hearing makes clear that staff did not agree that the developer’s initial proposal for ecological compensation would adequately compensate for the habitat being lost and noted that the developer’s submitted plans were insufficient to adequately address stormwater, erosion and sediment control. At the time of the hearing, conservation authority staff indicated that further investigation and analysis was required to ensure adequate compensation for the lost wetland. Imposing a short deadline on the issuance of a permit in these circumstances was environmentally significant.

Following issuance of the permit and media reports regarding public concerns with the potential environmental implications of the proposed development, the prospective warehouse tenant abandoned the site as a possible location and Pickering City Council voted to ask the Municipal Affairs Minister to amend the zoning order. On July 2, 2021, the Municipal Affairs Minister removed the Provincially Significant Wetland portion of the site from the zoning order.

Also, during the course of another audit carried out by our Office in 2020/21, the Natural Resources Ministry informed us that the direction and targets found in *A Wetland Conservation Strategy for Ontario: 2017-2030*—an environmentally significant policy—have not been in effect since the change in government in 2018. The Ministry did not notify

or consult the public through the Environmental Registry on its decision to archive the strategy and no longer give effect to the direction and targets in it. As a result, wetland researchers, stakeholders and the public were unaware that the strategy had been archived and its targets were no longer in effect.

RECOMMENDATION 29

As we recommended in 2020, to ensure that Ontarians can take part, and the government has the benefit of Ontarians’ insights and opinions about the government’s environmentally significant decision-making, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry consistently consult with the public according to the requirements under Part II of the *Environmental Bill of Rights, 1993*.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to meeting its obligations under Part II of the EBR Act. The Ministry will ensure that required public consultation is undertaken for all proposals that are environmentally significant.

7.5 Natural Resources Ministry Did Not Fully Inform Ontarians of the Environmental Implications of Proposed Changes to the *Far North Act, 2010*

In 2019, the Natural Resources Ministry had consulted through the Environmental Registry on a proposal to repeal the *Far North Act, 2010* in order to “reduce red tape and restrictions on economic development projects,” including in the Ring of Fire, a region in Northern Ontario with significant chromate and other metal deposits where the government is encouraging economic development. (The *Far North Act, 2010* outlines the framework for land use planning in Ontario’s Far North, which is done jointly

between Indigenous communities and the province.) In addition to the Registry notice, the Ministry had consulted directly with Indigenous communities and organizations and other stakeholders. Based on the feedback it received, the Ministry decided to withdraw its proposal to repeal the *Far North Act, 2010*.

On November 30, 2020, the Ministry posted a new proposal notice on the Environmental Registry for amendments to the *Far North Act, 2010*. The new proposal would change the *Far North Act, 2010* 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 Ministry did not explain the potentially significant environmental impacts of these changes. One specific change would remove a commitment to protect 225,000 square kilometres as a planning objective and replace it with an objective to protect areas of cultural value as well as ecological systems, which is “intended to promote economic growth in the Far North by creating a balance between designated protected areas and areas for development.” The notice is silent on the possible impacts of such a significant change to the province’s conservation goals in the Far North, leaving Ontarians without necessary facts to make meaningful comments.

RECOMMENDATION 30

As we recommended in 2019 and 2020, so that Ontarians can understand and provide more informed feedback to the Ministry of Northern Development, Mines, Natural Resources and Forestry on environmentally significant proposals, we recommend that the Ministry clearly and fully describe the environmental implications of each proposal posted on the Environmental Registry.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to full compliance with its legal

obligations under the EBR Act. The Ministry’s internal guidance and training provide direction to staff on the appropriate content expected in Registry notices. This includes the best practice of describing the environmental effects in each notice where possible.

7.6 Natural Resources Ministry Took Over Two Weeks to Post 23% of the Decision Notices We Reviewed, Including Six Weeks to Post Decision to Update Ontario’s Tree Seed Transfer Policy

In 2019, we found that the Natural Resources Ministry took more than two weeks to give notice of 60% of the decisions we reviewed, and in 2020, 52%. We recommended that the Ministry follow its internal service standard of giving notice of all decisions within two weeks of the decision being made.

In 2020/21, we saw some improvement on timelines. The Natural Resources Ministry posted 56 decision notices on the Registry: 18 decision notices for policies, acts and regulations; and 38 decision notices for instruments. We reviewed all decision notices for policies, acts and regulations, and a sample of 25 of the 38 decision notices for instruments.

Of the 43 decision notices we reviewed, 10 (or 23%) were posted more than two weeks after the decision was made. Of the 18 decision notices for policies, acts and regulations, four (22%) of the notices were posted more than two weeks after the decision was made. For example, the Ministry took 42 days (six weeks) to notify the public about a decision to update Ontario’s Tree Seed Transfer Policy, which provides guidance on selecting tree seeds that will be well adapted to their environment in order to maintain healthy and diverse forests.

Of the 25 decision notices for *Aggregate Resources Act* instruments we reviewed, six (24%) were posted more than two weeks after the decision was made.

RECOMMENDATION 31

As we recommended in 2019 and 2020, to give Ontarians prompt notice of its environmentally significant decisions, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry post all decision notices on the Environmental Registry as soon as possible after making a decision, which should be no more than two weeks after making the decision, as stated in its own service standard.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to posting decision notices as soon as reasonably possible. The Ministry's internal guidance (e.g., templates and best practices bulletin) and training provides direction to staff on the appropriate timing for Registry decision notices. This includes the best practice of posting within two weeks of the decision being made.

7.7 Natural Resources Ministry Did Not Clearly Describe Decision to Exempt Forest Operations on Crown Land from the *Endangered Species Act, 2007*, or the Effects of Public Participation

The Natural Resources Ministry included amendments to the *Crown Forest Sustainability Act, 1994* in the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* (Bill 229)—discussed in **Section 6.5** above—which came into effect December 8, 2020. The Ministry had posted a policy proposal notice for changes to the *Crown Forest Sustainability Act, 1994* in December 2019, and posted a decision notice on the Environmental Registry for that proposal on December 21, 2020, stating that the amendments made by Bill 229 implemented that policy proposal.

In our 2020 Report on the Operation of the EBR Act, we found that the proposal notice did not clearly tell the public what the Ministry intended to do, what the impacts on species at risk might be, or how the Ministry intended to protect species at risk in the future if forest operations were to be permanently exempted from the *Endangered Species Act, 2007*. We recommended that the Ministry repost the proposal, with revised wording to address the identified deficiencies, including more accurate and complete information on species at risk, and consult the public on the specific legislative changes being proposed. We stated that reposting “could enable better public understanding of the proposal and provide the Ministry with the benefit of more informed public comment, demonstrating the Ministry’s commitment to meaningful public participation and the purposes of the EBR Act.” (See our 2020 Report on the Operation of the EBR Act, **Chapter 1, Section 8.0.**)

The changes to the *Crown Forest Sustainability Act, 1994* made by Bill 229 added a new section providing that the prohibitions in the *Endangered Species Act, 2007* on killing or harming a species at risk or damaging or destroying its habitat do not apply to a person who does those acts while conducting forest operations in a Crown forest in accordance with an approved forest management plan. Another new provision removed the authority of the Environment Minister to make a species protection order or habitat protection order to stop an activity that will have a significant adverse effect on a protected species or its habitat when such forest operations are the cause. Finally, the amendments gave the Lieutenant Governor in Council the power to make regulations “respecting forest operations that may impact species at risk” including requiring actions to avoid or minimize impacts to a species at risk or assist with its recovery.

Neither the proposal notice nor the decision notice outlined these details for the public. In the decision notice, the Ministry provided a high-level description of the decision, stating only that changes were made to the *Crown Forest Sustainability Act, 1994* “so that duplicative authorizations or a regulatory exemption

under the *Endangered Species Act, 2007* (ESA) would no longer be needed for forest operations conducted in Crown forests in accordance with an approved forest management plan” and the act was amended “to implement the proposal as described.” Neither of the notices described any of the actual changes made.

In the “effects of consultation” section of the decision notice, the Ministry referred to comments made on the proposal notice and stated that the presentations made to the Standing Committee on Finance and Economic Affairs during its consideration of Bill 229 were also considered. The Ministry noted that comments included both support for the proposal as well as concerns. The notice states: “we will continue to incorporate species at risk direction into existing forest management guides, as appropriate, based on science and other information.” However, the Ministry did not describe what effect the public’s comments had, if any, on the final decision.

Because the decision notice did not include complete or detailed information about the amendments, this description was not transparent and did not give Ontarians the information they needed to fully understand the decision, the impacts on species at risk or how public consultation influenced the decision.

RECOMMENDATION 32

To help Ontarians understand the Ministry of Northern Development, Mines, Natural Resources and Forestry’s environmentally significant decisions and the effect of public comments on those decisions, we recommend that the Ministry clearly describe the decisions and the effect, if any, of public participation on the Ministry’s decision-making in future decision notices as required under the *Environmental Bill of Rights, 1993*.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and will continue to commit to full compliance with its legal obligations under the EBR Act. The Ministry’s internal guidance (e.g., templates and best practices bulletin) and training provides

direction to staff on the appropriate information for Registry notices.

7.8 None of the Natural Resources Ministry’s Decision Notices for Instruments that We Reviewed Provided Links to Final Documents, and Decision Notices for Aggregate Licences Included Incorrect Information about Appeal Rights

The Natural Resources Ministry posted 38 decision notices for instruments on the Registry. We reviewed a sample of 25 decision notices (all for approvals under the *Aggregate Resources Act*), and found that none provided a link to, or attachment of, the final issued approvals.

Members of the public have the right under the EBR Act to challenge decisions about some instrument types issued under the *Aggregate Resources Act* if they are concerned about operations harming the environment. As a result, it is important that decision notices on the Environmental Registry include links to or attachments with the final issued licences so that Ontarians can understand and exercise their right to challenge these activities in their communities.

The 25 decision notices we reviewed invited viewers to contact the Ministry office to obtain copies of licences or to view copies of approved site plans. However, the need to make such an arrangement could present a barrier to some individuals, particularly if there is a delay in obtaining or viewing the document and a member of the public wishes to seek leave to appeal a decision.

We identified the same issue in 2019 and 2020, and recommended that the Ministry provide links to the final issued approval for all decision notices. In both 2019 and 2020, the Ministry told us that it is working to develop an information portal that would “enable the public to view approvals on a variety of Ministry instruments.” In 2020, the Ministry stated:

“through 2021/22 the Ministry will continue its efforts to enable public access to aggregate licence and permit approvals as well. In the interim, Ministry decision notices will continue to identify a district contact person that can provide copies of the licence upon request by the public.” As of September 2021, aggregate licence and permit approvals were still not available on the information portal.

Further, of the 25 instrument decision notices we reviewed, 11 were for decisions to issue Class A Aggregate Licences, that is, licences to extract more than 20,000 tonnes of aggregate from a pit or quarry every year. In nine of those notices, the Ministry identified the opportunity for the public to seek leave to appeal the decisions, stating that Ontarians had 20 days to begin the appeal process. (In the other two notices we reviewed, the Ministry indicated that the licences had been appealed under the *Aggregate Resources Act*, so no further appeal mechanism was available.) However, under the EBR Act, a leave to appeal application must be made no later than 15 days after a decision notice is posted, not 20.

When we asked about this discrepancy, the Ministry acknowledged that the information in the notices was incorrect. We learned that this error, which was incorporated in the Registry system’s template for such decision notices, was included in decision notices for all types of appealable instrument decisions under the *Aggregate Resources Act* dating back to 2019. The Ministry told us that it identified the problem in November 2019 and asked the Environment Ministry, as operator of the Environmental Registry, to correct it. However, the Environment Ministry did not resolve the issue, and the Natural Resources Ministry continued posting decision notices containing the misinformation in 2020 and 2021, without alerting readers to the error or providing the correct deadline for submitting a leave to appeal application.

Although in practice most licence appeals follow the *Aggregate Resources Act* process, the EBR Act leave to appeal process is independent of this. Providing incorrect information about the timeframe in which a

leave application must be made creates the risk that a person relying on that information will lose their right to seek leave to appeal.

RECOMMENDATION 33

To give Ontarians easy access to and accurate and sufficient information about decisions on instruments and the right to seek leave to appeal certain decisions, we recommend that:

- until the Ministry of Northern Development, Mines, Natural Resources and Forestry’s Natural Resources Information Portal provides public access to approvals issued under the *Aggregate Resources Act*, the Ministry include copies of issued approvals as attachments to decision notices posted on the Environmental Registry about those approvals; and
- the Ministry clearly and correctly explain the EBR Act leave-to-appeal right, and how to exercise that right, in applicable instrument decision notices.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to support efforts to improve the Natural Resources Information Portal (NRIP) to modernize service delivery, help reduce burden on industry, create internal efficiencies and enable the public to view approvals on a variety of Ministry instruments.

In the interim, while the Ministry will not include copies of issued approvals as attachments to decision notices posted on the Environmental Registry, the decision notices will continue to identify a Ministry contact person that can provide copies of the licence upon request by the public.

The Ministry will continue to improve the Environmental Registry system programming to have the leave-to-appeal clearly and correctly display the 15-day timeframe.

7.9 Natural Resources Ministry Did Not Post Decisions or Updates for 23 Proposal Notices on the Environmental Registry for Over Two Years

For the Environmental Registry to be an accurate and reliable source of information for Ontarians, ministries must keep all proposal notices up to date by either posting decision notices promptly after decisions are made, or updating ongoing proposals to inform Ontarians about the proposals' status. As a best practice, ministries should update proposal notices that have been posted on the Environmental Registry for more than two years without a corresponding decision notice. When a proposal notice has been on the Registry for more than two years without a decision or update, we consider those proposal notices to be outdated.

In 2019 and 2020, the Natural Resources Ministry had 92 and 52 outdated notices, respectively. Since then, the Natural Resource Ministry and other ministries have posted updates or decision notices for many older notices, reducing the total number of outdated notices by 76% since 2020 (see **Figure 3**).

However, as of March 31, 2021, the Natural Resources Ministry still had 23 proposal notices on the Environmental Registry that had been posted more than two years earlier, and had not been either closed with a decision notice or updated in the last two years. This represents 12% of the Ministry's total proposal notices that were open on the Environmental Registry at the end of the reporting year.

Three of the proposals were for instruments, including a proposal for a licence for a forest resource processing facility posted in 2004, a proposal for the designation of a zone under the *Public Lands Act* posted in 2007, and a proposal for a licence under the *Aggregate Resources Act* that was posted in 2018. One proposal was for a regulation under the *Far North Act, 2010* that was posted in 2013, and the remaining proposals were for policies dating as far back as 2004.

Further, we learned that the Ministry updated some proposal notices with inaccurate information about the proposals' status. We asked the Ministry to confirm the status of a sample of five updated proposal notices that the Ministry had stated were "still being considered." The Ministry provided documentation to show that two of the proposals were still being considered, but we did not find evidence that two other proposals were, in fact, still being considered. In the fifth case, we learned that the update did not accurately reflect the proposal's status. In that case, the Natural Resources Ministry posted an update in June 2019 to a proposal for a Niagara Escarpment Plan amendment that was originally posted in November 2012, to state that "there has been no change to the status of the proposal and it is still being considered." In fact, the amendment file had been closed as of May 27, 2019, but the public was not told about this outcome and the inaccurate update remained on the Registry as of September 2021, undermining the purpose of updating notices to maintain the reliability of the Registry as an information source.

It also came to our attention that the Ministry had updated another proposal notice in 2020/21 with inaccurate information. The Ministry posted an update to a proposal for a licence under the *Aggregate Resources Act* in January 2021, stating that the proposal was still being considered; however, the proponent (that is, the person applying for the licence) had actually withdrawn the application in May 2020.

RECOMMENDATION 34

As we recommended in 2019 and 2020, so that the Environmental Registry is up to date and a reliable source of information about the Ministry of Northern Development, Mines, Natural Resources and Forestry's decisions about the environment, we recommend that the Ministry bring and keep all its proposal notices up to date, including posting decision notices for proposals that have been decided or that are no longer under consideration by the Ministry.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review all outdated Registry proposal notices and bring them up to date. The Ministry will continue its process of remediating proposals that were outdated as of March 31, 2021. The Ministry will continue to monitor proposal notices on the Environmental Registry and address outdated notices by posting decision notices or status updates.

RECOMMENDATION 35

So that the Environmental Registry is up-to-date and a reliable source of information about the Ministry of Northern Development, Mines, Natural Resources and Forestry's decisions about the environment, we recommend that the Ministry:

- review all existing proposal notices on the Environmental Registry that it has updated to confirm the accuracy of the updates, and immediately correct any updates that are not accurate or up-to-date; and
- going forward, when it is necessary to update a proposal notice because it has been on the Environmental Registry for more than two years but has not yet been decided, post an accurate and informative update about the current status of the proposal, including specific details about any ongoing work on that proposal, and the Ministry's anticipated timing for making a decision.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review the Environmental Registry for up-to-date and correct information. The Ministry will continue to monitor proposal notices on the Environmental Registry and address outdated notices by posting decision notices or accurate status updates.

7.10 Overview of the Former Ministry of Energy, Northern Development and Mines (Energy and Mines Ministry)

The Energy and Mines Ministry was responsible for developing policies and programs about energy supply and electricity pricing, transmission and distribution systems, climate change adaptation, long-term energy planning, energy conservation, and energy performance standards for equipment and products. The Ministry oversaw the Ontario Energy Board (OEB) and the Independent Electricity System Operator (IESO); it also represented the provincial government in dealings with Hydro One and Ontario Power Generation (OPG). The Energy and Mines Ministry administered the *Mining Act*, regulating mineral exploration and development in the province, and was responsible for the Ontario Geological Survey, which collects and disseminates geoscience information for all parts of Ontario. The Energy and Mines Ministry also led and co-ordinated programs for northern and Indigenous economic development, including the Growth Plan for Northern Ontario and the Ring of Fire.

The Energy and Mines Ministry was responsible for two laws that are prescribed under the EBR Act: the *Mining Act* and the *Ontario Energy Board Act, 1998*. The Ministry was required to consult the public about instruments (that is, permits, licences, approvals and other authorizations and orders) issued under the *Mining Act*, such as exploration permits and approvals to rehabilitate mine hazards. The Energy and Mines Ministry was also subject to receiving applications for review and applications for investigation from the public.

In 2020/21, the Energy and Mines Ministry used the Environmental Registry to post 701 notices about environmentally significant policies, acts, regulations and instruments.

See **Section 7.11 (Figure 7)** for the former Energy and Mines Ministry's report card on compliance with and implementation of the EBR Act in 2020/21, and **Sections 7.12 – 7.17** for our detailed findings and recommendations.

7.11 Report Card on the Former Energy and Mines Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 7: Ministry of Energy, Northern Development and Mines

Prepared by the Office of the Auditor General of Ontario

Legend: ○ Met criteria — The ministry did not execute any responsibilities under this category in this reporting year
 ● Partially met criteria n/a The ministry is not prescribed for this category
 ● Did not meet criteria Not assessed New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date	○	In 2019, the Ministry finalized a new Statement that reflected the Ministry's responsibilities and government priorities, such as addressing climate change.	○	○
b. Statement is considered when making decisions	●	Section 7.12 – The Ministry provided documentation of its consideration of its Statement for all nine decisions that it posted for policies, acts and regulations, and for all 25 of the instrument decisions that we reviewed. However, five of those nine (56%) documents provided for policies, acts and regulations were not dated, and four (44%) were dated after the decisions were made. One consideration document provided for an instrument was dated almost four years after the decision was made.	○	○
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act	○	No issues came to our attention about environmentally significant proposals that were not posted on the Registry.	○	○
b. Time to comment is extended based on the factors in the EBR Act	○	The Ministry met this criterion.	○	●
c. Proposal notices for policies, acts and regulations are informative	○	The Ministry posted 13 proposal notices for policies, acts and regulations on the Registry, which met this criterion.	○	●
d. Proposal notices for instruments are informative	○	The Ministry posted 336 proposal notices for permits and approvals on the Registry, and we reviewed a sample of 25 notices, which met this criterion.	○	○
e. Received comments are reviewed and considered	●	Section 7.13 – We reviewed documentation, where provided, related to the Ministry's consideration of comments submitted about four proposals for policies and acts, and two proposals about instruments. The Ministry's consideration of comments in reaching its final decisions for the policies and acts met this criterion, but the Ministry could not provide any documentation to show how it considered the public's comments for either of the instrument decision notices.	Not assessed	Not assessed
f. Prompt notice of decisions is given	●	Section 7.14 – The Ministry posted nine decision notices for policies, acts and regulations and 268 decision notices for permits and approvals on the Registry. The Ministry posted seven (78%) of the nine decision notices for policies, acts and regulations more than two weeks after the decision was made, and posted two (8%) of the 25 decision notices for permits and approvals that we reviewed more than two weeks after the decision was made. In total, nine (26%) of 34 notices we reviewed were posted more than two weeks after the decisions were made.	●	●

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
g. Decision notices for policies, acts and regulations are informative	●	Section 7.15 – One of the Ministry's nine decision notices, for a guidance document related to site boundary and land tenure in mine closure plans, did not explain what the Ministry decided to do.	●	○
h. Decision notices for instruments are informative	●	Section 7.16 – We reviewed a sample of 25 instrument decision notices. The Ministry did not explain what the Ministry decided to do in one decision notice, and the Ministry did not attach copies of the issued permits to two of the instrument decision notices that we reviewed.	●	●
i. Proposal notices are up-to-date	●	Section 7.17 – As of March 31, 2021, the Ministry did not have any proposal notices that had been on the Registry for over two years without a decision notice or an update; a reduction of 13 from the same time a year earlier. However, we found that the Ministry posted an update to a proposal in 2020 that had, in fact, been decided over a year earlier.	●	●

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

7.12 Energy and Mines Ministry Considered its Statement of Environmental Values After the Fact for A Decision Regarding Net Metering, and Could Not Confirm That It Considered Its Statement at the Time That It Made Two Other Decisions

The Energy and Mines Ministry provided documentation to show that it considered its Statement regarding nine decisions about policies, acts and regulations and a sample of 25 instruments. Of the nine consideration documents for policies, acts and regulations, five were not dated, and four were dated after the decision was already made. One consideration document for an instrument decision was also dated after the decision was made.

We followed up with the Ministry about eight of these documents. While the Ministry confirmed that it considered its Statement for five decisions throughout the decision-making process, it could not provide documentation confirming that was the case for three others, including the instrument decision.

For two of those decisions, the consideration documents provided were dated several years after the

decisions were made, corresponding more closely to the dates that late decision notices were posted on the Environmental Registry for those decisions. In the first case, the Ministry made a decision regarding a proposal related to net metering in October 2005, but did not post a decision notice on the Registry until March 2021 (more than 15 years later); the documentation of the Ministry's consideration of its Statement for that decision was also dated March 2021, and the Ministry confirmed to our Office that its consideration occurred on that date. In the second case, the Ministry made a decision regarding the repeal of the *Green Energy Act, 2009* in December 2018, but did not post a decision notice on the Registry until March 2021; again, the Ministry's consideration document was dated March 2021. The Ministry provided documents to show that it considered environmental factors when making the decision, but the documentation did not show deliberate consideration of the Ministry's Statement principles.

To be an effective part of environmental decision-making, consideration of a ministry's Statement must occur during the decision-making process; considering how a decision conforms to a ministry's Statement after the decision is already made does not comply with the requirements or intent of the EBR Act.

RECOMMENDATION 36

To be transparent and accountable to Ontarians about their environmental decision-making, and to adhere to the *Environmental Bill of Rights*, 1993 requirements to consider their Statements of Environmental Values whenever making a decision that might significantly affect the environment, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry and the Ministry of Energy:

- consider their Statements during the decision-making process; and
- clearly document the timing of their consideration of their Statements.

NORTHERN DEVELOPMENT, MINES, NATURAL RESOURCES AND FORESTRY MINISTRY'S RESPONSE

The Ministry agrees with this recommendation and will review its internal guidance and training materials to improve documentation on when and how its Statement of Environmental Values is considered.

ENERGY MINISTRY'S RESPONSE

The Ministry takes its responsibilities under the EBR Act seriously and uses the Statement of Environmental Values (Statement) as a guiding document when developing policy. Consideration of the Statement is integral to the policy development process, and is typically part of the process from the initial inception of the policy until the final decision is made. In the future the Ministry will ensure that the date the summary document, which sets out how the Statement was considered, is approved aligns with the date of the decision. The Ministry agrees to clearly document the timing of our considerations of our Statement in the future.

7.13 Energy and Mines Ministry Could Not Show How It Considered the Public's Comments When It Made Two Instrument Decisions

When a ministry is required under the EBR Act to consult the public about an environmentally significant proposal, the ministry is also required to “take every reasonable step to ensure that all comments relevant to the proposal that are received as part of the public participation process... are considered when decisions about the proposal are made in the ministry.” The purpose of the EBR Act is to protect the environment by enabling public participation in environmental decision-making, on the basis that the public's feedback about environmentally significant proposals has the potential to inform—and, ultimately, improve—the ministry's decision-making.

For a sample of six decisions that it posted on the Environmental Registry in 2020/21, we asked the Ministry for any documentation that it had to show that it had considered the public's comments when it made the decisions.

For two policy decisions and two act decisions, the Ministry provided documentation, such as comment summaries and analyses, that showed how the Ministry had reviewed and deliberated about the public's comments in making its decisions.

However, for two decisions about *Mining Act* instruments, the Ministry could not provide any documentation to demonstrate that the Ministry considered the public's comments in making the decisions. For one decision to issue a mineral exploration permit, the Ministry directed our Office to the information provided under “Effects of Consultation” in the decision notice posted on the Environmental Registry, which included only a brief and vague statement about the primary concerns of commenters, and some general information about how early exploration activities are completed to minimize effects on the natural environment and public safety. The Ministry did not provide a comments summary or any documentation to demonstrate that the Ministry read,

analyzed or reflected on the 504 comments submitted about that proposal before making its decision.

For a second decision, about an amendment to a mine closure plan, the Ministry again could not provide any documentation to show that the 11 comments submitted about the proposal were reviewed and considered by the Ministry.

RECOMMENDATION 37

To adhere to the requirements of the *Environmental Bill of Rights, 1993*, and to meet its purposes, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry consider all comments submitted about its proposals posted on the Environmental Registry in a manner that contributes to informed and improved environmental decision-making.

MINISTRY RESPONSE

The Ministry is committed to meeting its obligations under the EBR Act and considers all comments submitted. The Ministry will review its internal guidance, training and procedural materials to determine if updates are required to improve the documentation of how comments have been considered.

7.14 Energy and Mines Ministry Took Over Two Weeks to Post 26% of Decisions We Reviewed; Some Were Over a Year Late

In our 2020 report, we found that the Ministry took over two weeks to give notice of 27% of the decisions that we reviewed.

In 2020/21, the Energy and Mines Ministry posted nine decision notices for policies, acts and regulations and 268 decision notices for instruments on the Environmental Registry. Of the nine decision notices for policies, acts and regulations, seven (78%) were posted more than two weeks after the decision was

made, including four notices (44%) for decisions that the Ministry had made more than a year earlier. For example, the Ministry took 838 days (over two years) to post a decision notice on the Environmental Registry to notify the public about its decision to repeal the *Green Energy Act, 2009*, which was enacted with the intent of fostering the growth of renewable energy projects, energy conservation and energy efficiency.

Of the 25 decision notices for instruments we reviewed, the Ministry posted two (8%) more than two weeks after the decisions were made. In total, nine (26%) of the 34 notices we reviewed were posted more than two weeks after the decisions were made.

RECOMMENDATION 38

As recommended in 2019 and 2020, to give Ontarians prompt notice of their environmentally significant decisions, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry and the Ministry of Energy post all decision notices on the Environmental Registry as soon as possible after making a decision, which should be no more than two weeks after making the decision, as stated in the former Ministry of Energy, Northern Development and Mines' service standard.

NORTHERN DEVELOPMENT, MINES, NATURAL RESOURCES AND FORESTRY MINISTRY'S RESPONSE

The Ministry agrees with this recommendation and will continue to improve upon its procedures to ensure decisions are posted to the Registry in a timely manner. The Ministry has progressively improved its decision posting practices, reducing the number of late notices.

The Ministry's internal guidance and training provides direction to staff on the appropriate timing for Registry decision notices. This includes the Auditor General's best practice service standard of posting within two weeks of the decision being made.

ENERGY MINISTRY'S RESPONSE

The Ministry agrees with this recommendation and will continue to improve upon its procedures to ensure decisions are posted to the Registry in a timely manner. The Ministry has progressively improved its decision posting practices, reducing the number of late notices.

The Ministry's internal guidance and training provides direction to staff on the appropriate timing for Registry decision notices. This includes the Auditor General's best practice service standard of posting within two weeks of the decision being made.

7.15 Energy and Mines Ministry Did Not Explain What It Decided About Proposed Guidance to Support Development of Mine Closure Plans

The former Energy and Mines Ministry posted nine decision notices for policies, acts and regulations on the Environmental Registry in 2020/21. While most of the notices met our criteria, one of the decision notices, for a proposed guidance document to prepare mine closure plans, the *Closure Plan Boundary & Land Tenure Guideline*, did not explain at all what decision was made. The decision summary referred only to the fact that one comment was submitted about the proposal, and the decision details section described what was proposed in the September 2016 proposal notice, restating the purpose and intent of the proposal, but not confirming what the Ministry decided to do. While a copy of the *Closure Plan Boundary & Land Tenure Guideline* was attached in the "supporting materials" section of the notice, so that a reader might conclude that the Ministry decided to finalize the proposed guidance, the notice did not include the information required for Ontarians to readily understand what decision was made.

RECOMMENDATION 39

So that Ontarians can understand environmentally significant decisions made by the Ministry of Northern Development, Mines, Natural Resources and Forestry, we recommend that the Ministry clearly describe the details of each decision posted on the Environmental Registry.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to improve upon its procedures to ensure the details of each decision are clearly described.

7.16 Energy and Mines Ministry's Decision Notice About a Mineral Exploration Permit Did Not Explain What the Decision Was, and Two Notices Did Not Include Links to the Final Issued Permits

The former Energy and Mines Ministry posted 268 decision notices for instruments on the Environmental Registry in 2020/21, and we reviewed a sample of 25. While most of the notices that we reviewed met our criteria, one of the decision notices, regarding a mineral exploration permit under the *Mining Act*, did not include the information required for Ontarians to readily understand what decision was made.

Both the decision summary and the decision details section of the decision notice restated what was proposed in the January 2021 proposal notice, but did not explain what the Ministry decided to do. In the section of the decision notice describing the effects of consultation, the Ministry stated, "No comments were received to impact the decision to issue," so that a reader could ultimately ascertain that the final decision was to issue the permit if they read that

section of the notice. Nevertheless, the content of the decision notice would not enable Ontarians to readily understand the Ministry's decision.

Further, this decision notice and one other instrument decision notice that we reviewed did not contain a copy of, or link to, the final issued approval, which would have helped Ontarians better understand the decision.

We identified this issue in 2019 and 2020, and recommended that the Ministry provide links to the final issued approval for all decision notices. In 2020, the Ministry told us that it developed and implemented a new template for decision notices for permits and approvals, and that it provided training to staff on the use of this new process document, which instructs staff to attach a copy of the final approval document in the decision notices. In 2020, the Ministry stated it has “started to attach copies of issued permits to decision notices, and will continue to ensure the implementation of [this] template into processes to ensure adoption of this recommendation.”

RECOMMENDATION 40

To give members of the public easy access to and enough information about decisions on instruments, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry:

- clearly describe the details of each decision posted on the Environmental Registry; and
- as recommended in 2019 and 2020, include copies of, or links to, issued approvals in decision notices posted on the Environmental Registry about those approvals, consistent with the former Ministry of Energy, Northern Development and Mines' own service standard.

MINISTRY RESPONSE

The Ministry agrees with the recommendation. As noted in the 2020 report, the Ministry developed and implemented a new template for decision notices for permits and approvals in 2020 and

training was provided on the use of this new process document. This template requires a copy of the final approval document in the decision notices and to clearly note the details of the final decision in the posting. The Ministry continues to attach copies of issued permits to decision notices and will continue to ensure the implementation of our template into our processes to ensure our adoption of this recommendation.

7.17 Energy and Mines Ministry Kept Its Proposal Notices Up to Date, But Posted an Update to a Proposal That Had Been Decided Over a Year Earlier

For the Environmental Registry to be an accurate and reliable source of information for Ontarians, ministries must either post decision notices promptly after decisions are made, or update ongoing proposals to inform Ontarians about the proposals' status.

In 2020, we found that the Energy and Mines Ministry was responsible for 13 proposal notices that had been on the Registry for more than two years without a decision or an update. The Ministry improved in 2020/21; as of March 31, 2021, the Ministry had posted either decision notices or updates for all of those proposals, and had kept its other proposals up-to-date.

However, we reviewed a sample of the Energy and Mines Ministry's updated proposal notices, and found that in September 2020, the Ministry posted an update to a proposal notice for a mineral exploration permit under the *Mining Act* that, in fact, had been withdrawn in August 2019, over a year earlier. The update stated, in part, “terminated per email from GSRC, unpublished,” but did not clearly explain the status of the proposal. The Ministry should have posted a decision notice (not an update) promptly after the proposed permit was withdrawn in August 2019. We brought this notice to the Ministry's attention in June 2021, and the Ministry posted a decision notice 13 days later.

Since 2018, the Ministry has directed staff to review instrument notices on a quarterly basis and produce a report identifying proposals that require a decision notice or an update; however, the Ministry could not provide copies of any such reports.

RECOMMENDATION 41

So that the Environmental Registry is up-to-date and a reliable source of information about the Ministry of Northern Development, Mines, Natural Resources and Forestry's decisions about the environment, we recommend that the Ministry:

- review all existing proposal notices on the Environmental Registry that it has updated to confirm the accuracy of the updates, and immediately correct any updates that are not accurate or up-to-date; and
- going forward, when it is necessary to update a proposal notice because it has been on the Environmental Registry for more than two years but has not yet been decided, post an accurate and informative update about the current status of the proposal, including specific details about any ongoing work on that proposal, and the Ministry's anticipated timing for making a decision.

MINISTRY RESPONSE

The Ministry agrees with the recommendation. The Ministry will ensure information on the Registry is up to date and accurate.

8.0 Ministry of Municipal Affairs and Housing (Municipal Affairs Ministry or Ministry)

8.1 Overview

The Municipal Affairs Ministry frequently makes decisions that affect the environment, as it develops policies and laws concerning municipal finance and governance, and land use planning and growth management. It also makes decisions that determine the balance between socio-economic interests (such as new residential or commercial developments and infrastructure projects) and the preservation of agricultural land and management and conservation of natural resources and cultural heritage.

Through its work administering and updating the Ontario Building Code and making green investments into social housing retrofits, the Municipal Affairs Ministry also plays a role in energy conservation and reduction of greenhouse gas emissions.

The Municipal Affairs Ministry is responsible for five laws that are prescribed under the EBR Act, including the *Planning Act*, the *Building Code Act, 1992* and the *Places to Grow Act, 2005*. The Ministry must consult the public about instruments (that is, permits, licences, approvals and other authorizations and orders) issued under three prescribed acts, such as *Planning Act* approvals by the Minister of Official Plans and plans of subdivision and consents where there is no Official Plan in place. The Municipal Affairs Ministry may also receive applications for review and applications for investigation from the public.

In 2020/21, the Municipal Affairs Ministry used the Environmental Registry to post 144 notices about environmentally significant policies, acts, regulations and instruments.

See **Section 8.2 (Figure 8)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21, and **Sections 8.3 to 8.10** for our detailed findings and recommendations.

8.2 Report Card on the Municipal Affairs Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 8: Ministry of Municipal Affairs and Housing

Prepared by the Office of the Auditor General of Ontario

Legend: ○ Met criteria — The ministry did not execute any responsibilities under this category in this reporting year
 ● Partially met criteria n/a The ministry is not prescribed for this category
 ● Did not meet criteria Not assessed New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date	○	The Ministry updated its Statement in February 2020, and it reflects the Ministry's current responsibilities and government priorities, such as addressing climate change.	○	●
b. Statement is considered when making decisions	●	Section 8.3 – The Ministry did not provide proof that it considered its Statement for seven of the 40 decisions for which we requested proof. Further, of the consideration documents provided, 28 were dated after the decisions were made, while one was not dated. We learned that in at least one case, the Ministry considered its Statement after it had already made the decision, and the Ministry could not provide documentation to confirm when it considered its Statement for some other decisions. Further, of a sample of 10 consideration documents that we reviewed in detail, three were not sufficiently detailed and did not reflect analysis and judgment.	●	○
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act	●	Section 8.4 – The Ministry did not consult the public about amendments to the <i>Planning Act</i> made by Bill 197 (see Chapter 1, Section 7 of our 2020 Report on the Operation of the EBR Act). The Ministry also did not consult the public about amendments to five <i>Planning Act</i> approvals for provisional consent to sever land.	○	○
b. Time to comment is extended based on the factors in the EBR Act	○	The Ministry met this criterion.	○	○
c. Proposal notices for policies, acts and regulations are informative	●	Section 8.5 – Four out of six (67%) proposal notices for policies, acts and regulations posted by the Ministry did not provide information a reader would need to fully understand the environmental implications of the proposal. One of these notices also did not describe the proposal in sufficient detail, and three did not provide links or attachments to key supporting documentation related to the proposal.	●	●
d. Proposal notices for instruments are informative	○	The Ministry posted 46 proposal notices for permits and approvals on the Registry. We reviewed a sample of 27 proposal notices, and the Ministry met this criterion.	○	●
e. Received comments are reviewed and considered	○	We reviewed documentation related to the Ministry's consideration of comments that it received about three proposals for policies, acts and regulations and one proposal for an instrument. The Ministry's consideration met this criterion.	Not assessed	Not assessed
f. Prompt notice of decisions is given	●	Section 8.6 – The Ministry posted 15 decision notices for policies, acts and regulations, and 35 decision notices for permits and approvals on the Registry. The Ministry posted seven of the 15 (47%) decision notices for policies, acts and regulations more than two weeks after the decisions were made, and posted five of the 25 (20%) decision notices for permits and approvals that we reviewed more than two weeks after the decisions were made. In total, 12 of the 40 (30%) notices we reviewed were posted more than two weeks after the decisions were made.	●	●

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
g. Decision notices for policies, acts and regulations are informative	●	Sections 8.7 – 8.8 – The Ministry posted 15 decision notices on the Registry for policies, acts and regulations. In a decision notice regarding consultation on the enhanced powers for Minister's Zoning Orders (MZOs) under the <i>Planning Act</i> enacted by Bill 197, the Ministry was not transparent about its plans to make additional legislative changes to the act's MZO provisions. Further, seven (47%) of the 15 notices did not adequately describe the effects of public participation on the final decision.	●	○
h. Decision notices for instruments are informative	●	Sections 8.9 – 8.10 – The Ministry posted 35 decision notices for permits and approvals on the Registry, and we reviewed a sample of 25 notices. Thirteen of 25 (52%) did not provide links to the final approvals issued under the <i>Planning Act</i> . Further, we found that the Ministry did not inform the public about the EBR Act right to seek leave to appeal decisions about seven <i>Planning Act</i> approvals.	●	●
i. Proposal notices are up-to-date	○	The Ministry met this criterion. The Ministry had 30 open proposal notices as of March 31, 2021, all of which were either posted or updated within the last two years.	●	○

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

8.3 Municipal Affairs Ministry Could Not Show That It Considered Its Statement of Environmental Values at All for Seven Environmentally Significant Decisions, or That Consideration Always Occurred Before – Not After – It Made Decisions

In 2019/2020, we found that the Ministry did not provide our Office with any documentation to demonstrate that it considered its Statement of Environmental Values when making environmentally significant decisions posted that year. The Ministry told us that it did not document Statement consideration because it had not yet finalized its new Statement (the new Statement was finalized in February 2020). We recommended that the Ministry consider its updated Statement at the time it makes an environmentally significant decision, and document that consideration concurrently with the decision-making, and the Ministry agreed.

However, this year, we identified several issues with the Municipal Affairs Ministry's compliance with the requirement to consider its Statement.

First, the Municipal Affairs Ministry could not provide documentation to demonstrate that it considered its Statement of Environmental Values in five of its decisions about policies and regulations that it posted in 2020/21. The Ministry also did not provide

documentation for two decisions about *Planning Act* approvals. Without documentation, it is unclear and unconfirmed if or how the Ministry considered the purposes of the EBR Act when it made these environmentally significant decisions, or how it prioritized conflicting values, including environmental values, during the decision-making process.

Second, the documentation that the Ministry did provide to confirm that it considered its Statement for five decisions about policies, acts and regulations and for 22 decisions about instruments was dated after the decisions were made—in many cases months later—while one document was undated. We followed up with the Ministry about a sample of five of those documents, and while the Ministry was able to provide additional documentation showing that the Ministry did consider its Statement before four of the decisions were made, the Ministry could not provide such documentation for one policy decision.

In fact, ministry correspondence that we reviewed about that policy decision, for Proposed Modifications to the Innisfil Heights Strategic Settlement Employment Area, confirmed that the Ministry created the documentation to show it considered its Statement almost seven months after the Ministry made the decision and posted a decision notice on the Registry, for the purposes of showing our Office “how the decision relates to the [Municipal Affairs Ministry's Statement].” The EBR Act requires prescribed ministries to consider their Statements when they are

making decisions, not after; the purpose of considering the Statement is to ensure that ministries take environmental values into account when making decisions, so that better outcomes are achieved for the environment. Explaining how the Statement relates to a decision after the decision was already made does not comply with the EBR Act and is not consistent with the Act's purposes.

A Ministry staff presentation document dated May 2020 states that consideration forms will be completed for all notices for policies, acts, regulations and instruments. It states that "the form [for policies, acts and regulations] should be started **before** the posting of the proposal notice on the [Registry] and finalized once the decision notice is posted." The Ministry did not always follow this direction. The document also states that "this form [for instrument decisions] should be completed **after** the [Environmental Registry] decision notice has been posted." This guidance is problematic; under the EBR Act, consideration of a ministry's Statement is tied to decision-making, not to posting a decision notice on the Registry. To ensure that its Statement is considered during the decision-making process (and not after), the Ministry should require staff to document the consideration at that time.

Finally, we reviewed a sample of 10 of the consideration documents provided by the Ministry and concluded that the Ministry's consideration for three decisions was not sufficiently detailed and did not reflect analysis and judgment in explaining the overall balancing of principles in the Statement. For example, the Ministry adopted a new market-demand-driven "land needs assessment methodology" that municipalities within the Greater Golden Horseshoe area must follow to identify the amount of land required to accommodate forecasted growth in housing and employment to the year 2051. This area must then be incorporated into municipal planning documents and will influence the expansion of settlement boundaries into agricultural and natural heritage areas. The consideration document emphasized that the methodology will give municipalities tools to ensure

adequate housing, meeting the principle of increasing the supply of housing. With respect to the principle of ensuring "well planned and healthy communities while protecting greenspace," the consideration document stated only that the proposal aligns with policies in the Growth Plan. It did not address how the new methodology, which many of the public comments received by the Ministry argued will accelerate sprawl, supports the protection of agricultural land, greenspace and natural heritage resources. How the Ministry balanced these principles in reaching its decision is not evident from the consideration document.

The EBR Act requirement for prescribed ministries to consider their Statements when they make decisions that might significantly affect the environment is intended to ensure that environmental principles are weighed and considered during the decision-making process, to contribute to informed and improved decision-making. Without documentation of a thoughtful analysis of the Statement's principles in the context of the decision in question, it is not clear whether the Ministry has considered its Statement in a manner that meets the EBR Act's purposes.

RECOMMENDATION 42

To be transparent and accountable to Ontarians about its environmental decision-making, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider its Statement of Environmental Values (Statement) whenever making a decision that might significantly affect the environment, we recommend that the Ministry of Municipal Affairs and Housing update and implement processes and procedures for staff to:

- consider its Statement every time that it makes a decision that might significantly affect the environment, in a manner that is deliberate and contributes to improved environmental decision-making;
- consider its Statement, and document that consideration, concurrently with the decision-making; and

- clearly document the timing of its consideration.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures and consider additional guidance/supports to assist staff in considering its Statement of Environmental Values as part of the decision-making process.

8.4 Municipal Affairs Ministry Did Not Consult Ontarians About Changes to the *Planning Act* and *Planning Act* Approvals

In 2020/21, the Municipal Affairs Ministry made changes to the *Planning Act* and to environmentally significant approvals issued under the *Planning Act* without first undertaking public consultation under the EBR Act.

Amendments to the *Planning Act* made by Bill 197

In July 2020, the Municipal Affairs Ministry proposed amendments to the *Planning Act* as part of the *COVID-19 Economic Recovery Act, 2020* (Bill 197). The Municipal Affairs Ministry did not consult the public about these amendments.

The amendments expanded the Minister's powers with respect to Minister's Zoning Orders. Minister's Zoning Orders bypass local planning authorities and requirements for public consultation and appeal rights.

Our Office wrote to the Municipal Affairs Ministry prior to third reading of Bill 197 stating that the proposed changes were environmentally significant and that, as a prescribed ministry under the EBR Act, it was required to post a notice of the proposed changes and consult the public through the Environmental Registry (see **Appendix 9**). The Ministry did not do so.

We reported on Bill 197 and the changes that it made to the *Planning Act* in **Chapter 1, Section 7.0** of our 2020 Report on the Operation of the EBR Act.

As noted in **Section 6.5**, two separate applications for judicial review were filed against the Ontario government for failing to consult the public about Bill 197 in accordance with the EBR Act, including arguments that the Municipal Affairs Minister failed or refused to comply with the EBR Act in adopting changes to the *Planning Act*. On September 3, 2021, the Divisional Court released its decision on these applications. The Court concluded that the Municipal Affairs Minister had acted unreasonably and unlawfully in failing to post the amendments to the *Planning Act* affecting Minister's Zoning Order powers in accordance with the EBR Act. The Court noted that the Minister had failed to follow the EBR Act despite a recommendation from the Auditor General to do so. The Court also held that the Municipal Affairs Ministry's "after-the-fact" consultation on the Environmental Registry (see **Section 8.5**) did not satisfy the requirements of the EBR Act. Even though the Minister argued that a court order stating that the Minister's actions were unlawful would have no practical effect, the Court accepted the applicants' argument that such an order serves the purpose of holding the Minister accountable and emphasizing the importance of respecting the public consultation provisions of the EBR Act.

Amendments to *Planning Act* Approvals for Consent to Sever Land

Under the EBR Act, the Municipal Affairs Ministry is required to give notice of and consult the public about proposals for certain types of approvals under the *Planning Act*, including consent to "sever" land (that is, divide into separate lots) where there is no municipal official plan in place.

Under the *Planning Act*, the Minister may amend the conditions of a provisional consent to sever land at any time before final consent is given. Notice must be given of amendments, other than minor ones, but only after the amendment has been made. This notice triggers a right to appeal the amended conditions

to the Ontario Land Tribunal. However, the EBR Act requires ministries to consult the public about proposals for amendments to prescribed approvals unless the Minister considers that the potential environmental effect of the amendments is insignificant.

In 2020/21, we identified five cases in which the Ministry did not consult the public about proposals for environmentally significant amendments to provisional consents before making the amendments. In these cases, the Ministry consulted the public before giving provisional consent and posted decision notices, but then later updated the decision notices with information about environmentally significant amendments that had already been made without further consultation.

For example, in January 2020 the Ministry posted decision notices on the Environmental Registry for two related provisional consents to create easements for access to cottage lots. In April 2021, the Ministry updated the decision notices to state that the consents had been amended to add new conditions—a requirement to develop and comply with an effectiveness monitoring and contingency plan about rare aquatic plants and to monitor and document erosion of a sand spit for several years following construction.

We asked the Ministry why it did not post proposal notices to consult the public about these new conditions, and the Ministry told us that it did not do so because the changes to the conditions of approval were not major, and “a change in conditions is not a change in the decision to grant conditional approval in the first place, but a change in how the decision is implemented.” However, the Ministry could not provide us with any documentation about its determination that it was not required to post proposals for amendments to provisional consents under the EBR Act. Even if the amendments are changes in conditions that are not considered “major” under the *Planning Act*, the EBR Act has a different standard. It requires the Ministry to consult the public about proposed amendments to prescribed instruments, including approvals under the *Planning Act*, if the amendments could have anything beyond an insignificant effect on the environment. Prescribed ministries

routinely consult the public in accordance with the EBR Act about proposals for changes to the conditions of existing approvals under other legislation. Amendments that, if implemented, would protect rare aquatic plants and prevent erosion are environmentally significant amendments.

In another case, a provisional consent was amended to delete a condition requiring a noise, dust and odour study, and to add a condition requiring a restrictive covenant affecting the use of the retained land. The Ministry posted a proposal notice for public consultation on the amended conditions in May 2019. However, the subsequent decision notice, posted in July 2020, indicated that the amendments had already been made in April 2019, before the proposal notice was even posted for public consultation. The *Planning Act* deadline to appeal the amended conditions was May 8, 2019, over three weeks before the end of the consultation period for the amendments.

We asked the Ministry why it posted this notice to consult the public about proposed amendments after the amendments had already been made, but the Ministry did not provide an explanation for that timing. Instead, the Ministry explained that posting the proposal for consultation was not “strictly necessary” and that “an updated decision notice would have been sufficient.” For the EBR Act’s purposes to be met, public consultation must occur while a proposal is still under consideration by the Ministry, so that the Ministry can take any feedback from the public into account when making the decision.

RECOMMENDATION 43

To engage the public in the government’s environmentally significant decision-making, we recommend that the Ministry of Municipal Affairs and Housing consistently consult with the public according to the requirements of Part II of the *Environmental Bill of Rights, 1993*.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training

and procedures for complying with Part II of the EBR Act.

8.5 Municipal Affairs Ministry Did Not Clearly Describe the Environmental Implications of 67% of Proposals for Acts and Policies

We reviewed the six proposal notices for policies and acts that the Municipal Affairs Ministry posted on the Environmental Registry in 2020/21, and found that four (67%) did not provide sufficient information about the environmental implications of the proposals to enable meaningful public participation. One of the notices also did not describe the proposal in sufficient detail, and three did not provide links or attachments to key supporting documentation related to the proposal.

In particular, two of the proposal notices (described below) lacked essential details about the environmental implications of the proposals; without these details, Ontarians did not have all of the facts needed to be fully informed, making it more difficult to provide constructive input for the Ministry to consider in reaching a decision about the proposal.

We also identified this issue with the Municipal Affairs Ministry's proposals in our 2019 and 2020 reports on the operation of the EBR Act, and recommended that the Ministry describe the environmental implications of every proposal posted on the Environmental Registry. However, the Ministry has not taken steps to address this recommendation.

Proposed Amendments to the Growth Plan for the Greater Golden Horseshoe

The Ministry proposed amendments to *A Place to Grow: Growth Plan for the Greater Golden Horseshoe* (Growth Plan), consulting Ontarians on the amendments at the same time it consulted on a new land needs assessment methodology for the Growth Plan. The Growth Plan applies to municipalities in the Greater Golden Horseshoe; those municipalities

must amend their official plans to conform with its provisions.

The proposal notice provided details about parts of the proposed amendments, including extending growth forecasts that municipalities are required to use in growth planning to the year 2051, enabling municipalities to convert employment lands to non-employment uses within major transit station areas, and changes in transition rules. The notice did not describe the potential environmental implications of any of the changes, which could include the promotion of sprawl or the loss of agricultural lands and natural heritage features.

Under the heading “Mineral Aggregate Operations,” the notice did not describe the change being proposed, and instead stated: “Mineral aggregate resources play a crucial role in the development of housing and municipal infrastructure. Ensuring adequate aggregate resources are available is critical to achieving the success of [the Growth Plan]. The proposed changes would make it easier to establish new mineral aggregate operations closer to market throughout the [Greater Golden Horseshoe] outside of the Greenbelt.” The proposal did not explain that the proposed amendments would permit the establishment of aggregate operations in the habitat of endangered and threatened species within the Natural Heritage System of the plan area.

The notice provided a link to a summary that stated only that “the proposed change to the [Growth] Plan’s aggregates policies would be more permissive of new aggregate operations, wayside pits, and quarries within the Natural Heritage System for the Growth Plan. This change will not impact the Greenbelt.” This summary also did not explain what was meant by “more permissive,” or the impact of more permissive policies on species at risk.

The Ministry was not transparent about the impacts of the proposed changes regarding mineral aggregate operations in either the notice or the summary.

This failure to provide essential information about the change being proposed made it more difficult for Ontarians to understand the implications of the

proposal and provide informed comments. Environmental organizations identified and publicized the issue and, as a result of the negative feedback received, the Ministry did not go forward with that part of the proposal.

Proposed Implementation of Provisions in the *Planning Act* that Provide the Minister Enhanced Authority to Address Certain Matters as Part of a Zoning Order

In December 2020, five months after enacting changes to the *Planning Act* to add “enhanced authority” for Minister’s Zoning Orders (MZOs)—without public consultation, as discussed in **Section 8.4** above—the Municipal Affairs Ministry posted a proposal notice and consulted the public after the fact about the enhanced authority. The ministry did not propose a new policy, but asked for feedback on whether changes should be made to expand, repeal or adjust the new provisions, and for feedback on how to implement the enhanced authority.

The notice for this after-the-fact consultation claimed that the enhanced authority could “help to overcome potential barriers and development delays” for priority developments such as long-term care homes and affordable housing. However, beyond stating that the enhanced authority would not apply to lands within the Greenbelt, the notice did not identify any potential environmental impacts of the use of this new authority or outline any Ministry policy for avoiding or mitigating adverse environmental impacts from the use of this authority.

The enhanced authority specifically permits the minister to override municipalities and direct site plans. Site plans are used to determine certain development matters (such as drainage, site access and layout, landscaping and sustainable design) that affect the surrounding community, municipal infrastructure, transportation design and environmental protection, and are supported by detailed technical studies. Identifying potential environmental effects of the Minister taking over this role would have provided essential contextual information for those commenting on the proposal.

RECOMMENDATION 44

As we recommended in 2019 and 2020, so that Ontarians can better understand and provide informed comments on environmentally significant proposals, we recommend that the Ministry of Municipal Affairs and Housing describe the environmental implications of each proposal posted on the Environmental Registry.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures for setting out the environmental implications of each proposal posted on the Environmental Registry.

8.6 Municipal Affairs Ministry Took Over Two Weeks to Post Almost One-Third of Decisions We Reviewed; Some Were Posted More than a Year Later

In 2019, the Ministry told us that, to ensure decisions are posted as soon as reasonably possible, staff are advised that decision notices should be posted within two weeks of decisions being made; this direction is reflected in the Ministry’s internal guidance documents. However, in our 2019 and 2020 reports, we identified this same issue with decision notices being posted more than two weeks after decisions were made. In response to our recommendation in 2020 that the Ministry follow its service standard of posting decision notices within two weeks, the Ministry told us that it would continue to improve its timeliness in posting all decision notices.

In 2020/21, the Municipal Affairs Ministry posted 15 decision notices for policies, acts and regulations, and 35 decision notices for instruments on the Environmental Registry. The Ministry posted 12 (30%) of the 40 notices that we reviewed more than two weeks after the decisions were made.

Of the 15 decision notices for policies, acts and regulations, seven (47%) of the notices were posted more than two weeks after the decision was made, including four that were posted more than a year after the decision was made. For example, the Ministry notified Ontarians about its decision to implement Ontario's Housing Supply Action Plan 566 days (approximately a year and a half) after making the decision.

For amendments to the *Development Charges Act, 1997*, and related amendments to the General Regulation under that act, the Ministry told us that the decision notices were posted after all of the amendments had come into effect. However, under the EBR Act, notice must be given as soon as reasonably possible after a proposal is "implemented." For acts, implementation is defined in the EBR Act as when a bill receives third reading; for regulations, implementation is when regulations are filed. Posting decision notices in a timely way is important to help the public stay informed about the progress of a ministry's decision-making.

We reviewed a sample of 25 instrument decision notices posted by the Ministry, and found that five (20%) of those decision notices, all for *Planning Act* approvals, were posted more than two weeks after the Ministry had made a decision. For example, the Ministry took 523 days to notify the public about the approval for an official plan for the City of Elliot Lake.

RECOMMENDATION 45

To give Ontarians prompt notice of its environmentally significant decisions, we recommend that the Ministry of Municipal Affairs and Housing post all decision notices on the Environmental Registry as soon as possible after making a decision, which should be no more than two weeks after making the decision, as stated in its own service standard.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures for posting all decision notices.

8.7 Municipal Affairs Ministry Was Not Transparent About Its Decision Regarding Enhanced Powers for Municipal Zoning Orders

In December 2020, the Municipal Affairs Ministry posted a proposal notice to consult the public about the enhanced authority for Minister's Zoning Orders (MZOs) that had already been added through amendments to the *Planning Act* in July 2020. The Ministry asked Ontarians for feedback on whether changes should be made to expand, repeal or adjust the new provisions, and for feedback on how to implement the enhanced authority (for more details of this after-the-fact consultation, see **Section 8.5**).

The Ministry received 507 comments on the proposal. The decision notice stated that a substantial number of comments were unrelated to the enhanced authority and thus not within the scope of the consultation. Many commenters raised concerns with the dramatic increase in the use of MZOs for developments, several of which have the potential for significant adverse environmental impacts. Many of the commenters did address the enhanced authority, including some that raised questions about the Ministry's capacity to take on this responsibility, and that recommended that the provisions be repealed or adjusted.

The Ministry was aware that the most common suggestions were to increase transparency and public consultation in the MZO process, to ensure MZOs conform to local official plans and provincial plans and policies, including the Provincial Policy Statement, and to establish criteria for when MZO use is appropriate.

In the decision notice, posted in March 2021, the Ministry stated that "no legislative changes to the enhanced authority are being proposed." The Ministry did not tell the public that, on the same day the decision notice was posted, the Ministry introduced other legislative changes to the power to make MZOs under the *Planning Act* in Schedule 3 of Bill 257, the *Supporting Broadband and Infrastructure Expansion Act, 2021*. As discussed in **Section 4.5.2**, those

amendments specified that the Provincial Policy Statement does not apply—and has never applied—to an MZO, except an MZO affecting lands in the Greenbelt.

Even though the Ministry was aware that most commenters on the enhanced authority proposal were concerned about the Minister’s use of enhanced authority in the use of MZOs generally, the Ministry did not refer to Bill 257 or include a link to the bill or the proposal notice for the proposed amendments to the *Planning Act* in this decision notice. The Ministry told us it did not consider the two proposals to be directly related.

Yet, the Ministry co-ordinated the timing of the enhanced authority decision with the preparation and introduction of Bill 257. The Ministry was not transparent about this to the public.

RECOMMENDATION 46

To be transparent and accountable in its decision-making, and so that Ontarians can meaningfully participate in decisions that affect the environment, we recommend that the Ministry of Municipal Affairs and Housing provide all relevant information in its notices, including information about and links to related proposals.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures for information in its notices, including information about and links to related proposals.

8.8 Ministry Did Not Sufficiently Explain the Effect of Public Participation in Seven Decision Notices for Policies, Acts and Regulations

In our 2020 Report on the Operation of the EBR Act, we found that the Municipal Affairs Ministry did not describe the effects of public participation on its final decisions adequately or at all in four decision notices we assessed. At a minimum, a decision notice posted on the Environmental Registry should enable the public to understand the effect of any comments on the final decision, including any changes to the proposal that were made as a result of the public’s comments, or whether the proposal remained unchanged. Simply stating that the public’s comments were considered, or that changes were made to the proposal as a result of public feedback (without describing the changes) does not meet the requirements of the EBR Act to explain the effect of public participation on the Ministry’s decision-making.

This year, we reviewed 15 decision notices posted by the Municipal Affairs Ministry, and found that, again, seven (47%) did not adequately describe the effects of public participation on the final decision.

In some notices, the Ministry summarized the comments received, and in some cases it specifically stated that the comments were considered, but then did not describe the effect of the comments, if any, on the final outcome. In other cases, the Ministry stated that it made changes as a result of public participation, but did not explain what those changes were.

For example, the Ministry did not explain how public consultation affected the outcome of two important decisions made in 2020/21, as described below.

Increasing Housing Supply in Ontario

In 2018, the Municipal Affairs Ministry consulted through the Environmental Registry, and more broadly through other measures, on a policy proposal

called “Increasing Housing Supply in Ontario,” which led to the adoption of the Housing Supply Action Plan in May 2019. The decision notice for the policy, which was not posted until November 2020, stated that the Action Plan is “complemented by” the *More Homes, More Choice Act, 2019*, which “addresses affordability in the housing market by unlocking the development of different kinds of housing through changes to a number of pieces of legislation.”

In describing how public consultation affected the outcome, the Ministry stated in the decision notice that the Ministry received more than 2,000 submissions, that “feedback emphasized the importance of protecting environmentally sensitive areas, including the Greenbelt, cultural heritage assets, and key employment and agricultural lands,” and that comments also emphasized that government should focus development in areas with existing services. The notice stated: “these priorities have been reflected in the Housing Supply Action Plan and the *More Homes, More Choice Act, 2019*,” yet the decision notice did not describe how those priorities were, in fact, reflected in the plan and legislation.

Modifications to Innisfil Heights Strategic Settlement Employment Area

In late 2019, the Ministry consulted on a proposed expansion of the boundary of the Innisfil Heights Strategic Settlement Employment Area, identified under *A Place to Grow: Growth Plan for the Greater Golden Horseshoe* to add approximately 243 hectares to the area. On May 7, 2020, the Ministry posted a decision notice, advising that the Minister had issued a revised boundary. Regarding the effect of public participation on the outcome, the notice reported that three comments were received. One comment raised concerns about the adequacy of sewage and water servicing and potential impacts on Lake Simcoe. The notice only stated that the received feedback “elicited mixed results. All feedback was taken into consideration by the Minister in making this decision.” The Ministry did not provide an explanation regarding what concerns were raised, or how the comments affected the Ministry’s final decision.

RECOMMENDATION 47

As we recommended in 2020, to help Ontarians understand the Ministry of Municipal Affairs and Housing’s environmentally significant decisions and the effect of public comments on those decisions, we recommend that the Ministry clearly describe the effect, if any, of public participation on the Ministry’s decision-making on every proposal, including whether participation led to any changes to the proposal.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures for addressing public comments in decisions.

8.9 Municipal Affairs Ministry Did Not Provide Copies of Issued Approvals to the Public in Over Half of Decision Notices Reviewed

In 2020/21, the Municipal Affairs Ministry posted 35 decision notices for *Planning Act* approvals on the Environmental Registry. Of the 25 decision notices we reviewed, 13 (or 52%) of the notices did not provide copies of, or links to, the final approvals issued under the *Planning Act*. Not providing the final approvals makes it more difficult for members of the public to understand the decisions that were made.

For example, for eight of the decision notices for approvals of new or amended official plans, we found that the Ministry did not include copies of the official plans or other supporting documents in the decision notices.

So that Ontarians can understand ministry decisions and, where applicable, exercise their right to challenge the activities that affect the environment in their communities, it is important that decision notices include adequate details about a decision. This may be easily achieved by including

an attachment or a link to the final issued permit or approval.

In our 2020 Report on the Operation of the EBR Act, we found that the Municipal Affairs Ministry had not provided links to final approvals in 88% of the decision notices that we reviewed. We recommended that the Ministry provide links to final issued approvals.

RECOMMENDATION 48

So that Ontarians can better understand environmentally significant ministry decisions for approvals posted on the Environmental Registry, and, when applicable, exercise their appeal rights, we recommend that the Ministry of Municipal Affairs and Housing provide links to final issued approvals.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures for providing links to final decisions for approvals posted on the Environmental Registry.

8.10 Municipal Affairs Ministry Posted Seven Decision Notices Late, then Misinformed Ontarians About Their Appeal Rights

In the course of our audit, we identified seven decision notices that the Municipal Affairs Ministry posted for approvals issued under the *Planning Act* that did not inform the public of their right to seek leave to appeal those decisions.

Under the EBR Act, third parties—including any member of the public—have a right to seek leave to appeal (that is, ask permission to challenge) ministry decisions about certain instruments (such as permits, licences, approvals and other authorizations and orders). Leave-to-appeal applications are made to an independent administrative tribunal (the Ontario Land Tribunal), which decides whether or not to

grant permission for the applicants to proceed with an appeal. When ministries post decision notices on the Environmental Registry for instrument decisions to which the leave-to-appeal right applies, the decision notice usually informs the public of that right. Anyone who wishes to seek leave to appeal must do so within 15 days of the day the Ministry posts the decision notice (for more details about the EBR Act leave-to-appeal rights, see **Appendix 8**).

Approvals under the *Planning Act* for official plans, subdivisions and consents by the Minister to “sever” land (that is, divide into separate lots) in an area where there is no municipal official plan in place are subject to public consultation under the EBR Act. The *Planning Act* has its own appeal process that allows third parties (such as interested members of the public) to directly appeal these approvals, without first seeking leave; therefore, anyone who wishes to challenge such a decision would typically follow that route since the EBR Act requires third parties to first seek leave to appeal.

However, in July 2020 the Municipal Affairs Ministry posted seven decision notices on the Environmental Registry for consents that had been issued much earlier, in 2018 and 2019. Many of the approvals permitted new lots for cottages, camps or lodges in remote areas, allowing road access and servicing, which could affect natural heritage and water resources, as well as create conflicts with other uses of the area. In the “Appeal” section of those decision notices, the Ministry stated “appeals are not allowed” and, variably, “the appeal period has lapsed,” “the appeal period has passed” and “this decision has passed the appeal date.” These statements appear to refer to the *Planning Act* right of appeal.

However, as noted above, the EBR Act leave-to-appeal right is distinct and only arises when notice of a decision is posted on the Environmental Registry. Therefore, although the decisions on the consents were made in 2018 and 2019, Ontarians were still entitled to seek leave to appeal those decisions within 15 days after the notices of the decisions were posted on the Environmental Registry in 2020. Usually, when the Municipal Affairs Ministry posts a decision notice

for an appealable instrument, it explains the *Planning Act* appeal right and states: “there is an additional ‘leave to appeal’ right under the *Environmental Bill of Rights*.” In these seven cases, however, the Ministry did not inform Ontarians of the EBR Act leave to appeal right, and specifically stated that appeals were not allowed.

When we asked the Ministry why none of these decision notices identified the right to seek leave to appeal under the EBR Act, the Ministry told us that it did not do so “since the decisions were posted after the last day of appeal under the *Planning Act* had passed.” The Ministry referred to the EBR Act provision that states that a person may only seek leave to appeal a decision if “another person has a right under another Act to appeal.” The Ministry also stated that “no comments were received. Therefore, it would appear that no person had the right to seek leave to appeal the decision,” referring to the section of the EBR Act that states that a person must have an interest in the decision to seek leave to appeal. However, the Ministry could not provide any documentation to support its determination that leave to appeal rights did not apply.

The Ministry’s surprising interpretation of this provision would mean that prescribed ministries could defeat Ontarians’ EBR Act leave-to-appeal rights by simply delaying the posting of decision notices about instruments until after the time to initiate a direct appeal had passed. Further, while the EBR Act states that submitting a comment is evidence that a person has an interest in the decision, the right to seek leave to appeal is not dependent on comments having been submitted. The Ministry’s interpretation, which is inconsistent with practice in the over 25 years since the EBR Act came into force, undermines the purposes of the EBR Act of providing Ontarians with rights to participate in environmental decision-making, and to challenge decisions they believe could cause harm to the environment. In fact, in 2020/21, Ontarians applied for leave to appeal an Environment Ministry decision to issue an approval for a hauled sewage site that was issued in March 2020, but for which the Ministry did not post a decision notice until

November 2020. The approval holder’s right to appeal the decision had long passed, but Ontarians’ right to seek leave to appeal the decision arose when the decision notice was posted on the Environmental Registry (for more details about that leave to appeal application, see **Appendix 8**).

The third-party right under the EBR Act to seek leave to appeal is a powerful and important tool that Ontarians can use to protect the environment by raising concerns about ministry decisions. Giving timely notice to the public of environmentally significant decisions supports the objectives of transparency and ministry accountability, and ensures that leave-to-appeal rights may be exercised within a reasonable time frame after instruments are issued. In the cases that we identified this year, the Municipal Affairs Ministry did not give timely notice of its decisions, nor did it inform Ontarians of their right—which they did have—to seek leave to appeal those decisions once notice was given.

RECOMMENDATION 49

So that Ontarians are informed of, and have the opportunity to exercise, their right to seek leave to appeal certain decisions about *Planning Act* approvals that are subject to the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that the Ministry of Municipal Affairs and Housing:

- provide training and guidance materials about the EBR Act’s leave-to-appeal rights to Ministry staff responsible for drafting and posting instrument notices on the Environmental Registry; and
- clearly explain in applicable instrument decision notices that the EBR Act leave-to-appeal right applies, and how to exercise that right.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures materials about the EBR Act’s leave-to-appeal rights to Ministry staff responsible

for drafting and posting instrument notices on the Environmental Registry.

9.0 Ministry of Government and Consumer Services (Government Services Ministry or Ministry) – Technical Standards and Safety Authority (TSSA)

9.1 Overview

Environmental aspects of the Government Services Ministry's work include its oversight of liquid fuels handling, programs related to procurement, surplus assets and electrical and electronic equipment management, digital services, management of Ontario's public real estate portfolio, and administration of the Public Work Class Environmental Assessment.

The Ontario government has delegated responsibility for enforcing provincial safety regulations and enhancing public safety in several sectors to the Technical Standards and Safety Authority (TSSA). These sectors include the transportation, storage, handling and use of fuels (such as gasoline, diesel,

propane, natural gas, digester and landfill gas and hydrogen). The TSSA, a not-for-profit administrative authority that administers regulations under the *Technical Standards and Safety Act, 2000*, reports to and is overseen by the Government Services Ministry.

The *Technical Standards and Safety Act, 2000* and its Liquid Fuels regulation are subject to EBR Act requirements to the extent that they relate to fuel handling. Under the EBR Act, the Government Services Ministry and the TSSA must consult the public about proposals to issue variances from the prescribed requirements of the Liquid Fuels Handling Code and the Liquid Fuels regulation under the *Technical Standards and Safety Act, 2000*. The Government Services Ministry may also receive applications for review and applications for investigation from the public.

In 2020/21, the Government Services Ministry and the TSSA collectively used the Environmental Registry to post 95 notices about environmentally significant policies, regulations and instruments, including a proposal by the Government Services Ministry for an updated Statement of Environmental Values.

See **Section 9.2 (Figure 9)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21, and **Sections 9.3 to 9.5** for our detailed findings and recommendations.

9.2 Report Card on the Government Services Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 9: Ministry of Government and Consumer Services – Technical Standards and Safety Authority (TSSA)

Prepared by the Office of the Auditor General of Ontario

Legend: Met criteria Partially met criteria Did not meet criteria The ministry did not execute any responsibilities under this category in this reporting year n/a The ministry is not prescribed for this category Not assessed New criterion in 2020/21				
Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date		The Ministry posted a proposal for a new Statement in February 2021 that reflects the Ministry's current responsibilities and new Ministry and government priorities, such as addressing climate change. In July 2021, the Ministry finalized its new Statement.		

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
b. Statement is considered when making decisions		Section 9.3 – The Ministry did not provide proof that it considered its Statement for either of the decisions that it posted in 2020/21. The TSSA provided consideration documents for all 25 decisions that we requested regarding approvals for liquid fuel variances under the <i>Technical Standards and Safety Act, 2000</i> , but the consideration documents were not detailed and did not reflect analysis and judgment in considering the Statement's principles.		
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act		No issues came to our attention about environmentally significant proposals that were not posted on the Registry.		
b. Time to comment is extended based on the factors in the EBR Act		The Ministry met this criterion.		
c. Proposal notices for policies, acts and regulations are informative		The Ministry and the TSSA each posted one proposal notice on the Registry, both of which met this criterion.	—	
d. Proposal notices for instruments are informative		Section 9.4 – The TSSA posted 40 proposal notices for permits and approvals on the Registry, and we reviewed a sample of 25 notices, which generally met this criterion. However, none of the proposal notices that we reviewed included contact information so that members of the public could get in touch with the TSSA with any questions about the proposals.		
e. Received comments are reviewed and considered		We reviewed documentation related to the Ministry's consideration of comments submitted about one proposal for a regulation. The Ministry's consideration met this criterion.	Not assessed	Not assessed
f. Prompt notice of decisions is given		Section 9.5 – The Ministry and the TSSA posted three decision notices for policies, acts and regulations and the TSSA posted 32 notices for permits and approvals on the Registry. The Ministry posted two (66%) of the three decision notices for policies, acts and regulations long after the decisions were made. One decision notice was posted over 10 months after the decision was made, and the other more than four years after the decision was made.		
g. Decision notices for policies, acts and regulations are informative		The Ministry posted two decision notices for regulations and the TSSA posted one policy decision notice. The TSSA's decision notice regarding the <i>Fuel Oil Code Adoption Document, 2020</i> was posted prematurely, as a final decision was not yet made. The TSSA told our Office that it would update the decision notice once the Fuel Oil Code Adoption document was finalized, including an explanation of the effects of public participation on the decision.	—	
h. Decision notices for instruments are informative		The TSSA posted 32 decision notices for permits and approvals on the Registry, and we reviewed a sample of 25 notices, which met this criterion. However, as noted above regarding instrument proposals and in Section 9.4 , the decision notices did not provide contact information so that members of the public could get in touch with the TSSA with any questions about the decisions.		
i. Proposal notices are up-to-date		The Ministry met this criterion. The Ministry and the TSSA had a total of 19 open proposal notices as of March 31, 2021, all of which were posted within the last two years.		

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

9.3 Government Services Ministry Could Not Show That It Considered Its Statement of Environmental Values for Either of the Two Decisions Posted, and TSSA Consideration Documents Were Not Sufficiently Detailed

The Government Services Ministry could not provide documentation to demonstrate that it considered its Statement of Environmental Values for either of the two regulation decisions that it posted in 2020/21. Both decisions were to amend Regulation 334 under the *Environmental Assessment Act*, to support the efficient disposal of government property, and to reflect the updated responsibility for government realty.

Without this documentation, it is unclear to the public if or how the Ministry considered the purposes of the EBR Act when making those decisions, or how the Ministry prioritized conflicting values, including environmental values, during its decision-making process.

The Ministry told us that it did not have a process for formally documenting its consideration of its Statement, and that each decision “is reviewed and analyzed on a case-by-case basis.” The Ministry stated that it was working on finalizing a checklist and a new process for the Ministry to guide consideration of its Statement.

The TSSA provided consideration documents for all of the sample of 25 decisions that we requested regarding approved liquid fuel variances under the *Technical Standards and Safety Act, 2000* (that is, permission to not comply with specific requirements of the Liquid Fuels Handling Code). While many of the documents included some consideration, some lacked detail and were often identical to the proposal information. All 25 documents we reviewed indicated that some principles did not apply, but did not explain why, even though the consideration form itself directs the person completing the form to describe “why consideration of the purpose is not

relevant to this decision.” The EBR Act requirement for prescribed ministries to consider their Statements when they make decisions that might significantly affect the environment is intended to ensure that environmental principles are weighed and considered during the decision-making process, and to contribute to informed and improved decision-making. Without documenting a thoughtful analysis of the Statement’s principles in the context of the decision in question, it was not clear whether the TSSA has considered its Statement in a manner that meets the EBR Act’s purposes.

The TSSA told us that it indicated in its consideration documents that Statement principles did not apply where it “determined that site-specific, technical safety variances may have little or only indirect environmental significance, or there was no clear connection between technical code variances for devices and components and the five main purposes of the EBR Act.” The TSSA confirmed that, going forward, when it determines that a Statement principle is not relevant to a particular variance decision or that a decision likely has no environmental impact, it will provide an explanation of that determination.

RECOMMENDATION 50

To be transparent and accountable to Ontarians about its environmental decision-making, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider its Statement of Environmental Values whenever making a decision that might significantly affect the environment, we recommend that the Ministry of Government and Consumer Services consider its Statement every time that it makes a decision that might significantly affect the environment, and document that consideration concurrently with the decision-making.

MINISTRY RESPONSE

The Ministry acknowledges this recommendation and agrees with the importance of considering the Statement of Environmental Values while

making decisions that might significantly affect the environment.

RECOMMENDATION 51

To be transparent and accountable to Ontarians about its environmental decision-making, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider its Statement of Environmental Values whenever making a decision that might significantly affect the environment, we recommend that the Technical Standards and Safety Authority consider the Ministry of Government and Consumer Services' Statement every time it makes a decision that might significantly affect the environment in a manner that is deliberate and contributes to improved environmental decision-making, and document that consideration.

TECHNICAL STANDARDS AND SAFETY AUTHORITY'S RESPONSE

TSSA will consider the Ministry of Government and Consumer Services' Statement every time it makes a decision that might significantly affect the environment. When TSSA believes there is no likely environmental impact, we will indicate as much and/or signal that the variance in question meets an equivalent level of safety as the code. TSSA welcomes the Auditor General's guidance on how to best provide explanations where the environmental link is not always immediately clear.

9.4 Technical Standards and Safety Authority Did Not Provide Contact Information in Notices About Liquid Fuels Approvals

All proposal and decision notices posted on the Environmental Registry include a section titled "Connect with us." In that section, ministries typically provide the phone number and email address of the individual staff member responsible for the proposal notice (a best practice) or, at a minimum, contact information for the ministry branch responsible for the proposal. Providing this information ensures that members of the public have someone that they can contact with any questions about the information in notices, or requests for additional information or supporting materials.

Of the 50 instrument proposal and decision notices the TSSA posted in 2020/21 that we reviewed, we found that the TSSA left the contact section blank in all of them, providing no means for anyone reading the notices to contact an informed TSSA staff member with any questions about the proposals or decisions. Further hindering public participation, in the "supporting materials" section, the notices stated that, due to the COVID-19 pandemic, it was not possible to view supporting materials in person, directing the public to instead "reach out to the Contact listed in this notice to see if alternate arrangements can be made"—despite the fact that there was no contact person listed.

It is particularly important that the TSSA provide contact information in its Registry notices because, unlike ministries, TSSA staff telephone numbers are not included in the publicly available online Ontario employee and organization directory.

RECOMMENDATION 52

To enable Ontarians to contact the Technical Standards and Safety Authority (TSSA) with any questions or requests for information about notices that the TSSA posts on the Environmental Registry, we recommend that the TSSA include,

in every notice that it posts, the names, telephone numbers and email addresses of the TSSA personnel responsible for the notices.

TECHNICAL STANDARDS AND SAFETY AUTHORITY'S RESPONSE

TSSA agrees with this recommendation. TSSA will include the contact information of the TSSA staff responsible for the notices that TSSA posts on the Environmental Registry.

9.5 Government Services Ministry Gave Significantly Late Notice of Two Decisions

In 2020/21, the Government Services Ministry posted two decision notices for regulations; both were for amendments to Regulation 334 under the *Environmental Assessment Act*, and both were posted long after the decisions were made.

The Ministry posted a decision notice informing the public about amendments to support the efficient disposal of government property more than 10 months after the amending regulation was filed. The Ministry also posted a decision notice about amendments to reflect the updated responsibility for government realty more than four years after the amending regulation was filed; our Office had identified that proposal as outdated (i.e., originally posted more than two years earlier without a decision or update) in our 2019 and 2020 reports. It was appropriate for the Ministry to bring the Environmental Registry up to date by posting this decision notice; however, Ontarians were not given prompt notice of this decision.

Members of the public submitted comments on the first proposal. Ontarians were entitled under the EBR Act to receive prompt notice of these decisions, and of the effect that public participation had on the decisions.

Unlike some other prescribed ministries, the Government Services Ministry does not have an internal

service standard for posting decision notices on the Environmental Registry as soon as reasonably possible after making a decision.

RECOMMENDATION 53

To give Ontarians prompt notice of its environmentally significant decisions, we recommend that the Ministry of Government and Consumer Services establish and consistently follow a service standard to post decision notices no more than two weeks after making a decision.

MINISTRY'S RESPONSE

The Ministry acknowledges this recommendation and agrees that decisions should be posted on the Environmental Registry in a timely manner. The Ministry will consider service standards when reviewing its policies and practices.

10.0 Ministry of Transportation (Transportation Ministry or Ministry)

10.1 Overview

The Transportation Ministry is responsible for long-range transportation planning, transit policy, the planning, design, construction and maintenance of provincial highways, road user safety, vehicle standards and heavy diesel vehicle emissions. These activities have environmental impacts including greenhouse gas emissions, air pollutants, wildlife mortality and ecological effects. However, major transportation projects may be subject to the *Environmental Assessment Act*, which has its own consultation processes, making these projects exempt from the consultation requirements of the EBR Act.

None of the laws that the Transportation Ministry administers are prescribed under the EBR Act. However, the Transportation Ministry must consult the public on proposals for environmentally

significant laws and policies. The Transportation Ministry may also receive applications for review from the public.

In 2020/21, the Transportation Ministry used the Environmental Registry to post eight notices about environmentally significant policies, acts and

regulations, including a proposal for an updated Statement of Environmental Values.

See **Section 10.2 (Figure 10)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21, and see **Sections 10.3 to 10.6** for our detailed findings and recommendations.

10.2 Report Card on the Transportation Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 10: Ministry of Transportation

Prepared by the Office of the Auditor General of Ontario

Legend: ○ Met criteria — The ministry did not execute any responsibilities under this category in this reporting year
 ● Partially met criteria n/a The ministry is not prescribed for this category
 ● Did not meet criteria Not assessed New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date	○	The Ministry posted a proposal for an updated Statement in March 2021 that reflects the Ministry's current responsibilities and new Ministry and government priorities, such as addressing climate change. The Ministry finalized its updated Statement and posted a decision notice on the Environmental Registry in October 2021.	●	●
b. Statement is considered when making decisions	●	Section 10.3 – The Ministry provided documentation of its consideration of its Statement for all four decisions that it posted in 2020/21. None of the documents were dated, but the Ministry was able to provide documentation to confirm that consideration occurred at the time of decision-making. However, one of the documents was not sufficiently detailed and did not reflect analysis and judgment in considering the Statement's principles.	○	○
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act	●	Section 10.4 – The Ministry did not consult the public about a new act, the <i>Transit-Oriented Communities Act, 2020</i> , which authorizes the Lieutenant Governor in Council to designate any land as "transit-oriented community land," facilitating high-density development on the designated lands.	○	—
b. Time to comment is extended based on the factors in the EBR Act	○	The Ministry met this criterion.	○	—
c. Proposal notices for policies, acts and regulations are informative	○	The Ministry posted four proposal notices on the Registry, all of which met this criterion.	○	—
e. Received comments are reviewed and considered	○	We reviewed documentation related to the Ministry's consideration of comments submitted about two proposal notices for policies. The Ministry's consideration met this criterion.	Not assessed	Not assessed

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
f. Prompt notice of decisions is given		Section 10.5 – The Ministry posted four decision notices. One (25%), for Bill 222 – <i>Ontario Rebuilding and Recovery Act, 2020</i> , was posted eight weeks after the decision was made.		
g. Decision notices for policies, acts and regulations are informative		Section 10.6 – The Ministry posted four decision notices, of which two (50%), including notices for the Third Party Advertising Along Provincial Highways and the Greater Golden Horseshoe Transportation Plan, did not describe the effects of public participation on the final decision.		
i. Proposal notices are up-to-date		The Ministry met this criterion. The Ministry had four open proposal notices as of March 31, 2021, all of which were posted within the last two years.		

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

10.3 Transportation Ministry Considered Its Statement of Environmental Values in Four Decisions, But Did Not Document the Timing of Its Consideration, and Did Not Thoroughly Document Its Consideration for One Decision

The Ministry provided documents to show how it considered its Statement of Environmental Values for all four decisions that it posted in 2020/21. However, none of the documents were dated, making it difficult to determine if the Ministry considered its Statement when making the decisions (and not after), as required by the EBR Act. When we asked about the timing of its consideration, the Ministry was able to provide us with additional documents to confirm that it had considered the Statement at the time of decision-making.

Three of the consideration documents were sufficiently detailed and reflected judgment and analysis in considering the Statement's principles in the context of the decisions. However, the fourth consideration document, for amendments to the Ministry's Corridor Signing Policy related to third-party advertising along provincial highways, was not sufficiently detailed. The consideration document did not demonstrate a thoughtful analysis of the relevant principles in the context of the decision in question.

The EBR Act requirement for prescribed ministries to consider their Statements when they make decisions that might significantly affect the environment

is intended to ensure that environmental principles are weighed and considered during the decision-making process, and to contribute to informed and improved decision-making. Without documenting a thoughtful analysis of the Statement's principles in the context of its decisions, it is not clear whether the Ministry has considered its Statement in a manner that meets the EBR Act's purposes.

RECOMMENDATION 54

To be transparent and accountable to Ontarians about its environmental decision-making, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider its Statement of Environmental Values whenever making a decision that might significantly affect the environment, we recommend that the Ministry of Transportation:

- consider its Statement every time that it makes a decision that might significantly affect the environment, in a manner that is deliberate and contributes to improved environmental decision-making;
- document that consideration concurrently with the decision-making; and
- clearly document the timing of its consideration.

MINISTRY'S RESPONSE

The Ministry considers its Statement of Environmental Values (Statement) for all proposal notices when a decision is made that might significantly affect the environment.

Internal ministry processes require early consideration and documentation and the State-ment consideration template has been updated to include a date for greater transparency and accountability.

10.4 Transportation Ministry Did Not Consult Ontarians About the *Transit-Oriented Communities Act, 2020*

In 2020/21, the Transportation Ministry proposed a new act, the *Transit-Oriented Communities Act, 2020*, included in Bill 197, the *COVID-19 Economic Recovery Act, 2020*, which was tabled on July 8, 2020 and which received royal assent on July 21, 2020. As part of the Ontario government's program to expand transit in Toronto and the Greater Toronto Area, this act, along with the *Building Transit Faster Act, 2020*, provided the Ontario government with the tools to expedite the planning, design and construction process for priority transit projects and communities connected to them.

As a prescribed ministry under the EBR Act, the Transportation Ministry is required to consult the public on proposed acts that could have a significant effect on the environment. The Ministry did not consult the public on the *Transit-Oriented Communities Act, 2020*, informing our Office that it did not consider the EBR Act to be applicable to this proposal. However, the Ministry could not provide us with any documentation demonstrating the basis for that conclusion, or even demonstrating that it had considered the potential environmental implications of the act prior to including it in Bill 197.

Following the adoption of Bill 197, a judicial review application was filed arguing that the Transportation Minister violated her obligation under the EBR Act to consult the public on the *Transit-Oriented Communities Act, 2020*, as well as Bill 197's amendments to the *Public Transportation Act* and *Highway Improvement Act*, both of which removed the requirement for a hearing of necessity for expropriations under those acts. On September 3, 2021, the

Divisional Court found that the legislative provisions eliminating hearings of necessity for transit projects and public highways could not have a significant impact on the environment because the primary purpose of those hearings was to assess the necessity of an expropriation from a technical perspective, not to determine environmental impacts more broadly. As a result, the proposals to eliminate those hearings did not require posting in accordance with the EBR Act.

The Ministry states that the Divisional Court's decision reinforces the Ministry's position that the proposal for the *Transit-Oriented Communities Act, 2020* as a whole was not environmentally significant and did not need to be posted for public consultation under the EBR Act. However, the court referred only to the environmental significance of hearings of necessity, and not to the significance of the broader authority in the Act. Specifically, the *Transit-Oriented Communities Act, 2020* also authorizes the Lieutenant Governor in Council to designate any land as "transit-oriented community land" if it is of the opinion that the land may be required to support a transit-oriented community project. This is a development project "of any nature or kind and for any usage" that is connected with a station or on a designated corridor as part of the development of one of four "priority transit projects" in the Greater Toronto Area. The legislation does not provide for how the usual municipal planning process will be modified to accommodate this accelerated development. This is the subject of negotiations between Ontario and affected municipalities.

The overall intention of facilitating high-density, mixed-used private development close to transit stations is to support investment in transit and increase ridership, which could have positive environmental impacts. Adding increased density or new permitted land uses to a community, particularly where this has not otherwise been planned for by a municipality, and without adequate protection of environmental, heritage and other values could also have significant negative environmental impacts.

Following enactment on July 21, 2020, the *Transit-Oriented Communities Act, 2020* was amended by the *Ontario Rebuilding and Recovery Act, 2020*

to allow the Lieutenant Governor in Council to prescribe any other provincial transit project as a “priority transit project” for the purpose of designating transit-oriented community lands. For those amendments, the Transportation Ministry appropriately posted a proposal notice on the Environmental Registry on October 23, 2020, consulted the public, considered the comments and considered its Statement of Environmental Values. The Transportation Ministry told our Office that it expects responsibility for administering some or all of the *Transit-Oriented Communities Act, 2020* will be transferred from the Transportation Ministry to the Infrastructure Ministry in late 2021 or early 2022.

The EBR Act requires prescribed ministries to consult the public when they make proposals for policies and acts that could, if implemented, have a significant effect on the environment. The government’s plan to expand transit, including the facilitation of transit-oriented communities, has the potential for significant environmental impacts, both positive and negative. Ontarians have the right to be given notice of and consulted on the environmentally significant elements of transportation planning. In this case, given the environmentally significant implications of designating transit-oriented communities, our Office believes that the Ministry should have notified and consulted the public on the proposed original *Transit-Oriented Communities Act, 2020* in accordance with the purposes of the EBR Act.

RECOMMENDATION 55

To ensure that Ontarians can take part in environmentally significant decision-making, and the government has the benefit of Ontarians’ insights and opinions, we recommend that the Ministry of Transportation consistently consult with the public according to the requirements under Part II of the *Environmental Bill of Rights, 1993*.

MINISTRY RESPONSE

The Ministry will consult with the public according to the requirements under Part II of the

EBR Act. The Ministry will assess consultation requirements for potentially environmentally significant proposals.

The Ministry is committed to work to ensure requirements under Part II of the EBR Act are met.

10.5 Transportation Ministry Took Eight Weeks to Inform Ontarians About Amendments Made by the *Ontario Rebuilding and Recovery Act, 2020*

In 2020/21, the Transportation Ministry posted four decision notices on the Environmental Registry. The Ministry posted one of the notices eight weeks after the decision was made.

The decision was about the enactment of Bill 222, the *Ontario Rebuilding and Recovery Act, 2020*, which amended the *Building Transit Faster Act, 2020* and the *Transit-Oriented Communities Act, 2020* in order to accelerate the delivery of provincial priority transit projects and transit-oriented communities. Under the EBR Act, the decision was made when Bill 222 received third reading in the Legislature on December 3, 2020; however, the Ministry did not post a decision notice on the Environmental Registry to inform the public about the decision and explain the effects of public consultation on the decision until January 28, 2021.

The Transportation Ministry’s internal guidance instructs staff to post decision notices on the Environmental Registry within two weeks of the decision date, but that direction was not followed in this case.

RECOMMENDATION 56

To give Ontarians prompt notice of its environmentally significant decisions, we recommend that the Ministry of Transportation post all decision notices on the Environmental Registry as soon as possible after making a decision, which should be no more than two weeks after making the decision, as stated in its own service standard.

MINISTRY RESPONSE

The Ministry welcomes this recommendation and will post notices of its environmentally significant decisions as soon as reasonably possible as required under the EBR Act.

The Ministry has established an internal two-week best practice and will make every effort to meet this best practice.

10.6 Transportation Ministry Did Not Describe Effects of Public Participation in Two of Its Four Decision Notices

One of the core components of public consultation under the EBR Act is the public's right to be informed about the effect of public participation on a ministry's final decision about an environmentally significant proposal. At a minimum, a decision notice posted on the Environmental Registry should enable the public to understand the effect of any comments on the final decision, including any changes to the proposal that were made as a result of the public's comments, or whether the proposal remained unchanged. Simply stating that the public's comments were considered, or that changes were made to the proposal as a result of public feedback (without describing the changes) does not meet the requirements of the EBR Act to explain the effect of public participation on the Ministry's decision-making.

Of the four decision notices for policies, acts and regulations posted by the Transportation Ministry in 2020/21, two (50%) did not describe the effects of public participation on the Ministry's decisions. Both

decisions were environmentally significant and garnered significant public interest, with 1,663 survey results for the *Greater Golden Horseshoe Transportation Plan* and 216 comments for a proposal about third-party advertising along provincial highways.

The decision notice for the *Greater Golden Horseshoe Transportation Plan* stated that "results from previous surveys and comments along with extensive stakeholder input received to date has informed the development of a comprehensive range of transportation planning goals and objectives to provide guiding direction for the plan," and the decision notice for third-party advertising along provincial highways reported that some commenters opposed the proposal while others supported it. However, the Ministry did not explain what effect, if any, public participation had on the outcome of either of those decisions, as required by the EBR Act.

RECOMMENDATION 57

To adhere to the requirements of the *Environmental Bill of Rights, 1993* and to help people understand the Ministry of Transportation's environmentally significant decisions and the effect of public comments on those decisions, we recommend that the Ministry clearly describe the effect, if any, of public participation on the Ministry's decision-making for every proposal, including whether participation led to any changes to the proposal.

MINISTRY RESPONSE

The Ministry welcomes this recommendation. The Ministry will ensure relevant comments on the posted proposal notices are considered and will include a description as to how they were considered.

11.0 Ministry of Agriculture, Food and Rural Affairs (Agriculture Ministry or Ministry)

11.1 Overview

The Agriculture Ministry is responsible for a range of environmentally significant policies affecting nutrient management, drainage, pesticide use, water quality and quantity, climate change mitigation and adaptation, renewable energy, organic waste, soil health and pollinator health.

The Agriculture Ministry is responsible for two acts that are prescribed under the EBR Act: The *Nutrient Management Act, 2002* and the *Food Safety and Quality Act, 2001* (in a limited capacity related to the disposal of deadstock). The Agriculture Ministry may also receive applications for review from the public.

In 2020/21, the Agriculture Ministry used the Environmental Registry to post five notices about environmentally significant policies, acts, and regulations.

In 2020/21, an application for judicial review argued that the government, represented by the Agriculture Ministry, failed or refused to comply with the EBR Act in adopting changes to the *Drainage Act* that were made by Bill 197, the *COVID-19 Economic Recovery Act, 2020*. The Divisional Court held that the Agriculture Ministry had complied with the EBR Act by consulting the public on the amendments through a discussion paper posted on the Environmental Registry in early 2020, and that the Ministry considered its Statement of Environmental Values when making the decision.

See **Section 11.2 (Figure 11)** for the Ministry's report card on compliance with and implementation of the EBR Act, and see **Sections 11.3 to 11.5** for our detailed findings and recommendations.

11.2 Report Card on the Agriculture Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 11: Ministry of Agriculture, Food and Rural Affairs

Prepared by the Office of the Auditor General of Ontario

Legend: ○ Met criteria — The ministry did not execute any responsibilities under this category in this reporting year
 ● Partially met criteria n/a The ministry is not prescribed for this category
 ● Did not meet criteria Not assessed New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date	○	In 2019, the Ministry updated its Statement, and it reflects the Ministry's current responsibilities and new Ministry and government priorities, such as addressing climate change.	○	○
b. Statement is considered when making decisions	●	Section 11.3 – The Ministry provided documentation of its consideration of its Statement for both of the decisions that it posted in 2020/21. However, neither of the documents were dated, and the Ministry was unable to provide documentation to confirm that consideration occurred when one of the decisions was made.	○	○

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act	☐	No issues came to our attention about environmentally significant proposals that were not posted on the Registry.	☐	☐
b. Time to comment is extended based on the factors in the EBR Act	☐	The Ministry met this criterion.	☐	☐
c. Proposal notices for policies, acts and regulations are informative	☐	The Ministry posted two proposal notices for a policy and regulation on the Registry, both of which met this criterion.	☒	☐
e. Received comments are reviewed and considered	☐	We reviewed documentation related to the Ministry's consideration of comments submitted about one proposal notice for an act. The Ministry's consideration met this criterion.	Not assessed	Not assessed
f. Prompt notice of decisions is given	☒	Section 11.4 – The Ministry posted two decision notices in 2020/21, both of which were posted more than two weeks after the decisions were made. Specifically, the Agrifood Renewable Natural Gas for Transportation Demonstration Program decision notice was posted 916 days after the decision was made, and the <i>Drainage Act</i> decision notice was posted 37 days after the decision was made.	☐	☐
g. Decision notices for policies, acts and regulations are informative	☒	Section 11.5 – The Ministry posted two decision notices. A decision notice about amendments to the <i>Drainage Act</i> did not clearly describe the decision, or include links to relevant documents that would help a reader fully understand the decision.	☐	☐
i. Proposal notices are up-to-date	☐	The Ministry met this criterion. The Ministry had four open proposal notices as of March 31, 2021, all of which were either posted or updated within the last two years.	☐	☐

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

11.3 Agriculture Ministry Did Not Document When It Considered its Statement of Environmental Values in Its Decision About an Agrifood Renewable Natural Gas for Transportation Pilot Project

The Agriculture Ministry provided documentation of its consideration of its Statement for both decisions that it posted on the Environmental Registry in 2020/21. However, neither of the consideration documents were dated, making it difficult to determine if the Ministry considered its Statement when making the decisions (and not after), as required by the EBR Act. The Ministry was able to provide additional documentation for a decision regarding the *Drainage Act* that confirmed that consideration had occurred before the final decision was made, but

could not provide additional documentation to confirm the timing of its consideration regarding a decision about the Agrifood Renewable Natural Gas for Transportation Demonstration Program.

The EBR Act requirement for prescribed ministries to consider their Statements when they make decisions that might significantly affect the environment is intended to ensure that environmental principles are weighed and considered during the decision-making process, to contribute to informed and improved decision-making.

The Agriculture Ministry told us: “OMAFRA has improved its Environmental Registry processes such that [it is] now able to provide documentation of consideration of the [Statement] at the ERO proposal notice stage rather than at the decision notice stage.” This change in process should provide greater transparency about the Ministry's consideration of its Statement.

RECOMMENDATION 58

To be transparent and accountable to Ontarians about its environmental decision-making, and to adhere to the *Environmental Bill of Rights, 1993* requirements to consider its Statement of Environmental Values whenever making a decision that might significantly affect the environment, we recommend that the Ministry of Agriculture, Food and Rural Affairs clearly document the timing of its consideration of its Statement.

MINISTRY RESPONSE

As part of the Ministry's efforts to improve compliance with the EBR Act, the Ministry is currently in the process of amending its Statement of Environmental Values (Statement) Consideration Documentation. This will include amending the Statement Consideration Documentation to clearly document the timing of consideration of the Statement.

11.4 Agriculture Ministry Was Late Informing Ontarians About the Two Environmentally Significant Decisions It Made

Both of the decision notices that the Agriculture Ministry posted on the Environmental Registry in 2020/21 were posted more than two weeks after the decisions were made.

The Ministry posted its decision on the implementation of the Agrifood Renewable Natural Gas for Transportation Demonstration Program, two-and-a-half years after the decision was made. This pilot program, developed under the previous government's Climate Change Action Plan, was intended to test the agri-food sector's interest in the production and use of renewable natural gas as transportation fuel instead of diesel fuel, to help the sector transition to

a lower-carbon economy. The proposal notice for the program was posted in May 2017, and the program was established in September 2017. By the time a decision notice was posted on April 1, 2020, the program had already been terminated.

The Ministry posted a decision notice about amendments to the *Drainage Act* 37 days after the amendments were made when Bill 197, the *COVID-19 Economic Recovery Act, 2020*, received third reading.

The Agriculture Ministry's internal guidance on compliance with the EBR Act directs staff to post decision notices within two weeks of the decision date, if possible, but this guidance was not followed in 2020/21.

RECOMMENDATION 59

To give Ontarians prompt notice of its environmentally significant decisions, we recommend that the Ministry of Agriculture, Food and Rural Affairs post all decision notices on the Environmental Registry as soon as possible after making a decision, which should be no more than two weeks after making the decision, as stated in its guidance to staff.

MINISTRY RESPONSE

The Ministry agrees that Ontarians should have prompt notice of the government's environmentally significant decisions.

As part of the commitment to develop a process to train and update all relevant staff on the ministry's responsibilities under the EBR Act, the Ministry will continue to support staff on the requirement to post a decision notice as soon as possible, noting the expectation that the decision notice be posted within two weeks.

In addition, the Ministry will continuously review and update internal processes to support posting a decision notice within two weeks of a decision being made.

11.5 Agriculture Ministry Did Not Clearly Describe Decision About Amendments to the *Drainage Act*, or Provide Links to Key Supporting Documents

The Agriculture Ministry posted two decision notices on the Environmental Registry in 2020/21: one for the implementation of the Agrifood Renewable Natural Gas for Transportation Demonstration Program and one for changes to the *Drainage Act*.

While the Agrifood Renewable Natural Gas for Transportation Demonstration Program decision notice met our criteria, the *Drainage Act* amendment decision notice posted in August 2020 did not clearly describe the decision that was made in the appropriate section. The decision summary indicated that the Ministry was “implementing changes to the *Drainage Act*”; however, in the decision details section, the Ministry described what was proposed in the January 2020 proposal notice without indicating that the Ministry had decided to proceed with those amendments.

The decision notice also did not explain that the amendments were made through Bill 197, the *COVID-19 Economic Recovery Act, 2020*, or when the amendments were made. Only in the description of the effect of public participation, later in the notice, did the Ministry state that “a decision was made to proceed with the proposed legislative amendments as they were posted.” This was not made clear in the decision summary or decision details.

Further, in our 2020 Report on the Operation of the EBR Act, we found that the amended *Drainage Act* proposal notice did not include a link to the *Drainage Act*, which would have helped members of the public to better access and understand information about the proposal. We recommended that the Ministry provide links in Environmental Registry notices to all key supporting information, including all relevant acts. The decision notice for the *Drainage Act* amendments, posted in August 2020, also did

not include any supporting links. There was public interest in this decision, evidenced by the 76 comments submitted on the proposal. Providing links to the *COVID-19 Economic Recovery Act, 2020*, which made the amendments, and to the *Drainage Act* itself, could have helped members of the public interested in the decision better understand what changes were made to the legislation. Following our Office’s recommendation in our 2020 report, the Ministry included supporting links in a related *Drainage Act* regulatory proposal posted in December 2020.

RECOMMENDATION 60

So that Ontarians can better understand environmentally significant decisions made by the Ministry of Agriculture, Food and Rural Affairs (Ministry), we recommend that the Ministry:

- clearly describe the details of each decision posted on the Environmental Registry, including the decision date; and
- provide links to all key supporting information, including links to all relevant acts, in each decision notice.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to ensuring the public has appropriate information about government proposals that might be environmentally significant so that they may participate in the government decision-making process.

The Ministry has revised internal processes following the release of the Auditor General’s 2020 report on the operation of the EBR Act to ensure all key supporting information, including links to all relevant acts, are included in proposal notices.

The Ministry will update training materials and templates to ensure decision notices clearly describe the details of each decision and the date the decision was made.

12.0 Ministry of Heritage, Sport, Tourism and Culture Industries (Tourism Ministry or Ministry)

12.1 Overview

The Tourism Ministry's environmentally significant responsibilities include oversight of and support for the Ontario Trails Strategy and the Ontario Heritage Trust, which acquires land to protect and conserve properties of historical, architectural, aesthetic or scenic interest. The Tourism Ministry is responsible

for the *Ontario Heritage Act*, which is prescribed under the EBR Act.

In 2020/21, the Tourism Ministry used the Environmental Registry to post notices about one environmentally significant regulation, and one environmentally significant policy: an update to the Ministry's Statement of Environmental Values. The Ministry posted a decision notice with its final, updated Statement in May 2021, after the end of our reporting period.

See **Section 12.2 (Figure 12)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21.

12.2 Report Card on the Tourism Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 12: Ministry of Heritage, Sport, Tourism and Culture Industries

Prepared by the Office of the Auditor General of Ontario

Legend:	○ Met criteria	— The ministry did not execute any responsibilities under this category in this reporting year
	● Partially met criteria	n/a The ministry is not prescribed for this category
	● Did not meet criteria	

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date	○	In May 2021, the Ministry finalized an updated Statement, and it reflects the Ministry's current responsibilities and new Ministry and government priorities, such as addressing climate change.	○	●
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act	○	No issues came to our attention about environmentally significant proposals that were not posted on the Registry.	○	—
b. Time to comment is extended based on the factors in the EBR Act	○	The Ministry met this criterion.	○	—
c. Proposal notices for policies, acts and regulations are informative	○	The Ministry posted two proposal notices for a policy and regulation on the Registry, both of which met this criterion.	○	—
i. Proposal notices are up-to-date	○	The Ministry met this criterion. The Ministry had two open proposal notices as of March 31, 2021, both of which were posted within the last two years.	—	○

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

13.0 Ministry of Health (Health Ministry or Ministry)

13.1 Overview

In 2019/20, the former Ministry of Health and Long-Term Care split into two ministries: the Ministry of Health and the Ministry of Long-Term Care. In 2020/21 our Office reviewed the Health Ministry and the Long-Term Care Ministry as separate prescribed ministries.

Health and the environment are strongly linked, and the Health Ministry has the potential to positively affect the environment through its role promoting and protecting public health. The Health Ministry

is responsible for the *Health Protection and Promotion Act*, which is prescribed under the EBR Act in a limited capacity related to small drinking water systems. The Health Ministry may also receive applications for review from the public.

In 2020/21, the Health Ministry used the Environmental Registry to post one notice about an environmentally significant policy: a proposal for a new Statement of Environmental Values for the Ministry. In August 2021, the Ministry posted a decision notice on the Registry with its finalized updated Statement.

See **Section 13.2 (Figure 13)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21.

13.2 Report Card on the Health Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 13: Ministry of Health

Prepared by the Office of the Auditor General of Ontario

Legend: ○ Met criteria — The ministry did not execute any responsibilities under this category in this reporting year
 ● Partially met criteria n/a The ministry is not prescribed for this category
 ● Did not meet criteria

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date	○	The Ministry finalized a new Statement in August 2021, and it reflects the Ministry's current responsibilities and new Ministry and government priorities, such as addressing climate change.	○	●
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act	○	No issues came to our attention about environmentally significant proposals that were not posted on the Registry.	○	—
b. Time to comment is extended based on the factors in the EBR Act	○	The Ministry met this criterion.	—	—
c. Proposal notices for policies, acts and regulations are informative	○	The Ministry posted one proposal notice for a policy on the Registry, which met this criterion.	—	—
i. Proposal notices are up-to-date	○	The Ministry met this criterion. The Ministry had one open proposal notice as of March 31, 2021, which was posted within the last two years.	—	—

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

14.0 Ministry of Long-Term Care (Long-Term Ministry or Ministry)

14.1 Overview

In 2019/20, the former Ministry of Health and Long-Term Care split into two ministries: the Ministry of Health and the Ministry of Long-Term Care. In 2020/21 our Office reviewed the Health Ministry and the Long-Term Care Ministry as separate prescribed ministries. The Long-Term Care Ministry develops policy and provides planning and funding for the establishment, upgrading and operation of

long-term care facilities. The Ministry sets standards for long-term care homes, issues and renews licences, and inspects homes to ensure compliance with provincial policy, legislation and regulations.

In 2020/21, the Long-Term Care Ministry used the Environmental Registry to post one notice about an environmentally significant policy: a proposal for a new Statement of Environmental Values for the Ministry. In August 2021, the Ministry posted a decision notice on the Registry with its finalized updated Statement.

See **Section 14.2 (Figure 14)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21.

14.2 Report Card on the Long-Term Care Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 14: Ministry of Long-Term Care

Prepared by the Office of the Auditor General of Ontario

Legend: ○ Met criteria — The ministry did not execute any responsibilities under this category in this reporting year
 ● Partially met criteria n/a The ministry is not prescribed for this category
 ● Did not meet criteria

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date	○	The Ministry finalized a new Statement in August 2021, and it reflects the Ministry's current responsibilities and new Ministry and government priorities, such as addressing climate change.	○	●
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act	○	No issues came to our attention about environmentally significant proposals that were not posted on the Registry.	○	—
b. Time to comment is extended based on the factors in the EBR Act	○	The Ministry met this criterion.	—	—
c. Proposal notices for policies, acts and regulations are informative	○	The Ministry posted one proposal notice for a policy on the Registry, which met this criterion.	—	—
i. Proposal notices are up-to-date	○	The Ministry met this criterion. The Ministry had one open proposal notice as of March 31, 2021, which was posted within the last two years.	—	—

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

15.0 Ministry of Infrastructure (Infrastructure Ministry or Ministry)

15.1 Overview

The Infrastructure Ministry's work—including infrastructure planning and delivery, managing the implementation of the *Infrastructure for Jobs and Prosperity Act, 2015*, and provincial asset management planning—can have a significant bearing on environmental issues ranging from land use planning to climate change.

The Infrastructure Ministry oversees two agencies, Waterfront Toronto and Infrastructure Ontario. The Ministry works with the federal government to deliver funding for investments in public transit, green infrastructure, and community infrastructure, including wastewater. The Ministry also invests in expansion of broadband and cellular infrastructure and provides funding to stakeholders who directly manage infrastructure projects.

Some of the Infrastructure Ministry's projects are carried out by Infrastructure Ontario, which is

not subject to the EBR Act. Further, some Ministry projects are subject to a Class Environmental Assessment, while transportation, transit and municipal infrastructure projects funded by the Ministry are carried out by other public entities that must meet the requirements of the *Environmental Assessment Act*. Projects under the *Environmental Assessment Act* are not subject to the EBR Act, and related approvals are exempt from the consultation requirements of the EBR Act.

The Infrastructure Ministry is not responsible for any laws that are prescribed under the EBR Act.

In 2020/21, the Infrastructure Ministry used the Environmental Registry to post one notice about an environmentally significant policy: a decision notice for an updated Statement of Environmental Values for the Ministry. This policy was in response to our 2019 and 2020 reports on the operation of the EBR Act, in which we recommended that the Ministry update its Statement to reflect its current environmental values and responsibilities.

See **Section 15.2 (Figure 15)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21.

15.2 Report Card on the Infrastructure Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 15: Ministry of Infrastructure

Prepared by the Office of the Auditor General of Ontario

Legend:	 Met criteria	— The ministry did not execute any responsibilities under this category in this reporting year
	 Partially met criteria	n/a The ministry is not prescribed for this category
	 Did not meet criteria	Not assessed New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date		In March 2021, the Ministry finalized a new Statement, and it reflects the Ministry's current responsibilities and new Ministry and government priorities, such as addressing climate change.		

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act		No issues came to our attention about environmentally significant proposals that were not posted on the Registry.		
e. Received comments are reviewed and considered		We reviewed documentation related to the Ministry's consideration of comments submitted about one proposal notice for a policy. The Ministry's consideration met this criterion.	Not assessed	Not assessed
f. Prompt notice of decisions is given		The Ministry met this criterion.		—
g. Decision notices for policies, acts and regulations are informative		The Ministry posted one decision notice for a policy on the Registry, which met this criterion.		—
i. Proposal notices are up-to-date		The Ministry met this criterion. However, due to the migration of proposal notices from the former Environmental Registry to the new Environmental Registry of Ontario, a historical proposal notice posted and left open by the former Ministry of Public Infrastructure and Renewal in 2008 was newly assigned to the Infrastructure Ministry in 2020/21. The Ministry is now responsible for closing the notice so that the Environmental Registry is a reliable source of up-to-date information for the public.		

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

16.0 Ministry of Economic Development, Job Creation and Trade (Economic Development Ministry or Ministry)

16.1 Overview

The Economic Development Ministry includes divisions that work with stakeholders to modernize and streamline regulations (including environmental regulations), reduce regulatory burdens on businesses, manage government approvals for omnibus red tape reduction bills, and oversee the development of regulatory compliance modernization initiatives.

The Economic Development Ministry is not responsible for any laws that are prescribed under the EBR Act.

In 2020/21, the Economic Development Ministry used the Environmental Registry to post two bulletins

(notices that are posted for information purposes only) to give the public notice of omnibus bills introduced by the Associate Minister of Small Business and Red Tape Reduction. Those omnibus bills proposed environmentally significant amendments to acts administered by other prescribed ministries, and for which the responsible ministries posted individual proposal notices on the Registry for public consultation. These bulletins included links to the relevant individual proposal notices. This approach was reasonable, as it ensured that the public received notice of the bill, but that comments would be directed to the ministries responsible for the environmentally significant proposals contained in the bill.

See **Section 16.2 (Figure 16)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21.

16.2 Report Card on the Economic Development Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 16: Ministry of Economic Development, Job Creation and Trade

Prepared by the Office of the Auditor General of Ontario

Legend:	☐ Met criteria	— The ministry did not execute any responsibilities under this category in this reporting year
	☐ Partially met criteria	n/a The ministry is not prescribed for this category
	☐ Did not meet criteria	

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date	☐	The Ministry's Statement, which was last updated in 2017 (when the Ministry was the Ministry of Economic Development and Growth) reflects the Ministry's current responsibilities and new government priorities. The Statement does not reflect the Ministry's current name.	☐	☐
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act	☐	No issues came to our attention about environmentally significant proposals that were not posted on the Registry. The Ministry posted bulletins instead of proposal notices to notify the public of two omnibus red-tape reduction bills that the Ministry introduced and that included environmentally significant changes to acts administered by other prescribed ministries, which was reasonable in the circumstances (for more details, see Section 16.1).	☐	☐

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

17.0 Ministry of Indigenous Affairs (Indigenous Affairs Ministry or Ministry)

17.1 Overview

The Indigenous Affairs Ministry works with other ministries, such as the Energy Ministry and the Northern Development and Natural Resources Ministry, to identify opportunities to improve social and economic conditions for Indigenous people and to develop Indigenous economic development

policy initiatives, which could have an effect on the environment.

The Ministry is not responsible for any laws that are prescribed under the EBR Act.

In 2020/21, the Indigenous Affairs Ministry did not post any notices on the Environmental Registry.

See [Section 17.2 \(Figure 17\)](#) for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21.

17.2 Report Card on the Indigenous Affairs Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 17: Ministry of Indigenous Affairs

Prepared by the Office of the Auditor General of Ontario

Legend: ○ Met criteria — The ministry did not execute any responsibilities under this category in this reporting year
 ● Partially met criteria n/a The ministry is not prescribed for this category
 ● Did not meet criteria

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date	○	The Ministry's Statement, which was last updated in 2018 (when the Ministry was the Ministry of Indigenous Relations and Reconciliation) reflects the Ministry's current responsibilities and new government priorities, such as addressing climate change. However, the Statement does not reflect the Ministry's current name.	○	○
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act	○	No issues came to our attention about environmentally significant proposals that were not posted on the Registry.	○	○

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

18.0 Ministry of Education (Education Ministry or Ministry)

18.1 Overview

The Education Ministry provides tools and resources to school boards to assist them in making decisions on energy consumption and management, including tracking energy performance, assisting in applying for incentives to implement energy-efficient equipment, and providing information on best practices, products and services. These initiatives support the province's Made-in-Ontario Environment Plan.

The Education Ministry also plays a role in educating youth on the importance of the environment and in preparing them to be environmentally responsible citizens. The Ministry's 2009 policy framework, *Acting Today, Shaping Tomorrow*, commits the Ministry to helping realize the vision that "Ontario's

education system will prepare students with the knowledge, skills, perspectives, and practices they need to be environmentally responsible citizens."

The Ministry is not responsible for any laws that are prescribed under the EBR Act. However, the Ministry may receive applications for review from the public.

In 2020/21, the Education Ministry posted a proposal notice and a decision notice on the Environmental Registry for revisions to the Ministry's Statement of Environmental Values. These notices were in response to our Office's 2019 and 2020 reports on the operation of the EBR Act, in which we recommended that the Ministry update its Statement to reflect its current environmental values and responsibilities.

See **Section 18.2 (Figure 17)** for the Ministry's report card on compliance with and implementation of the EBR Act.

18.2 Report Card on the Education Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 18: Ministry of Education

Prepared by the Office of the Auditor General of Ontario

Legend: ○ Met criteria — The ministry did not execute any responsibilities under this category in this reporting year
 ● Partially met criteria n/a The ministry is not prescribed for this category
 ● Did not meet criteria Not assessed New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date	○	The Ministry finalized a new Statement in March 2021, and it reflects the Ministry's current responsibilities and new Ministry and government priorities, such as addressing climate change.	●	●
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act	○	No issues came to our attention about environmentally significant proposals that were not posted on the Registry.	○	○
b. Time to comment is extended based on the factors in the EBR Act	○	The Ministry met this criterion.	—	—
c. Proposal notices for policies, acts and regulations are informative	○	The Ministry posted one proposal notice for a policy on the Registry, which met this criterion.	—	—
e. Received comments are reviewed and considered	○	We reviewed documentation related to the Ministry's consideration of comments submitted about one proposal notice for a policy. The Ministry's consideration met this criterion.	Not assessed	Not assessed
f. Prompt notice of decisions is given	○	The Ministry met this criterion.	—	—
g. Decision notices for policies, acts and regulations are informative	○	The Ministry posted one decision notice for a policy on the Registry, which met this criterion.	—	—

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

19.0 Ministry of Labour, Training and Skills Development (Labour Ministry or Ministry)

19.1 Overview

The Ministry of Labour, Training and Skills Development delivers public services in four primary areas of responsibility: employment and workforce development, occupational health and safety, employment standards, and labour relations.

The Labour Ministry is not responsible for any laws that are prescribed under the EBR Act, and does not receive applications for review or investigation from the public.

In 2020/21, the Ministry did not post any notices on the Environmental Registry.

See **Section 19.2 (Figure 17)** for the Ministry's report card on compliance with and implementation of the EBR Act in 2020/21, and **Section 19.3** for our detailed finding and recommendation.

19.2 Report Card on the Labour Ministry's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 19: Ministry of Labour, Training and Skills Development

Prepared by the Office of the Auditor General of Ontario

Legend: ○ Met criteria — The ministry did not execute any responsibilities under this category in this reporting year
 ● Partially met criteria n/a The ministry is not prescribed for this category
 ● Did not meet criteria

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date	●	Section 19.3 – The Ministry has not updated its Statement since 2008, and its current statement does not reflect its current mandate or new government priorities, such as addressing climate change. The Ministry has been working on updating its Statement but as of September 2021 the Ministry had not posted the draft Statement on the Environmental Registry for public consultation.	●	●
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act	○	No issues came to our attention about environmentally significant proposals that were not posted on the Environmental Registry.	○	—

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

19.3 Labour Ministry's Statement of Environmental Values Needs Updating

The Labour Ministry's Statement was last updated in 2008. Since then, the Ministry's mandate has changed, including assuming responsibilities from the former Ministry of Training, Colleges and Universities in 2019. Further, the government's Made-in-Ontario Environment Plan (2018) directed all ministries to update their Statements to reflect Ontario's environmental plan, to improve government's ability to consider climate change when making decisions and "make climate change a cross-government priority."

In 2019 and 2020, we reported that the Ministry did not have an up-to-date Statement, and recommended that it review and update its Statement. In early 2020, the Ministry confirmed that it was working on a draft updated Statement to be finalized in October 2020, but it did not meet this internal deadline. In early 2021, the Ministry confirmed that it was still working on updating its Statement. However, as of September 2021 it had not posted a proposal to update its Statement on the Environmental Registry.

RECOMMENDATION 61

As we recommended in 2019 and 2020, so that the Ministry of Labour, Training and Skills Development's Statement of Environmental Values (Statement) reflects its current environmental values and responsibilities, we recommend that the Ministry complete its review of its Statement with public consultation through the Environmental Registry and update it to reflect its new priorities.

MINISTRY RESPONSE

The Ministry of Labour, Training and Skills Development will continue its work on updating its Statement. A draft updated Statement was prepared March 2020 but work on it was put on hold because of COVID-19.

20.0 Treasury Board Secretariat

20.1 Overview

The Treasury Board Secretariat's role is primarily financial, administrative and operational across the Ontario government. The Treasury Board Secretariat is responsible for the corporate rules for procurement across the Ontario Public Service and broader public sector.

The Treasury Board Secretariat is not responsible for any prescribed acts under the EBR Act, and does not receive applications for review or investigation.

In 2020/21, the Treasury Board Secretariat did not post any notices on the Environmental Registry.

See **Section 20.2 (Figure 20)** for the Treasury Board Secretariat's report card on compliance with and implementation of the EBR Act.

20.2 Report Card on the Treasury Board Secretariat's Compliance with the EBR Act, 2020/21

This report card summarizes our findings with respect to the Ministry's compliance with and implementation of the *Environmental Bill of Rights, 1993* (EBR Act) in the 2020/21 reporting year.

Figure 20: Treasury Board Secretariat

Prepared by the Office of the Auditor General of Ontario

Legend: ○ Met criteria — The ministry did not execute any responsibilities under this category in this reporting year
 ● Partially met criteria n/a The ministry is not prescribed for this category
 ● Did not meet criteria Not assessed New criterion in 2020/21

Criterion	2021 Results	OAGO Comments	2020 Results	2019 Results
1. Statement of Environmental Values (Statement)				
a. Statement is up-to-date	○	The Treasury Board Secretariat last updated its Statement in 2017, and its Statement reflects the Treasury Board Secretariat's responsibilities and new government priorities, such as addressing climate change.	○	○
2. Use of the Environmental Registry (Registry)				
a. Notice of proposals is given as required by the EBR Act	○	No issues came to our attention about environmentally significant proposals that were not posted on the Registry.	○	—

Note: Whether a ministry partially met or did not meet a criterion depends on the volume of non-compliance issues and/or the significance of the non-compliance issue(s) we found.

Part III: Follow-up

Ministry of the Environment, Conservation and Parks
Ministry of Municipal Affairs and Housing

Operation of the *Environmental Bill of Rights, 1993*

Follow-Up on Chapter 2, Volume 2, *2019 Annual Report*

RECOMMENDATION STATUS OVERVIEW

	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Ministry of the Environment, Conservation and Parks						
Recommendation 7	4		2	2		
Ministry of Municipal Affairs and Housing						
Recommendation 19	2			2		
Recommendation 20	1			1		
Total	7		2	5	0	0
%	100	0	29	71	0	0

Background

For many years, our Office has issued follow-up reports two years after publication of the original report to assess the progress made in implementing the actions we recommended.

As our Office reports annually on the operation of the *Environmental Bill of Rights, 1993* (EBR Act), our findings in our annual reports 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 Act. We also assess and report on relevant information about ministries'

actions to implement those recommendations, such as the development of new policies or guidance intended to achieve compliance with the EBR Act.

For specific recommendations that are not directly related to compliance with and implementation of the requirements of the EBR Act, we will follow our Office's practice of following up on the status of actions taken by ministries to implement those recommendations two years after the recommendations were published.

Many of the recommendations in our 2019 report, *Operation of the Environmental Bill of Rights, 1993*, relate to compliance with and implementation of the requirements of the EBR Act that are already covered by our continuous, annual audit of the operation of

the EBR Act. However, three recommendations in our 2019 report are not directly related to compliance with or implementation of the EBR Act, but arise from issues raised in applications for review submitted under the EBR Act. We report on the status of actions taken on those three recommendations here.

Status of Actions Taken on Recommendations

We conducted assurance work between April 2021 and August 2021. We obtained written representation from the Environment Ministry and the Municipal Affairs Ministry that effective November 5, 2021, they had provided us with a complete update of the status of the recommendations we made in the original review two years ago.

Denial of Request to Review Two Air Standards Did Not Provide Evidence that Current Standards Are Adequate to Protect the Environment and Human Health

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:

- *review its standard for nitrogen dioxide (NO₂);*
- *based on the results of its review, update its standard for NO₂;*

Status: Little or no progress.

Details

In our 2019 review, we found that the Environment Ministry provided insufficient information to support its decision denying an application for review related to standards for two air contaminants. Raising concerns about inadequate protection of the environment and human health, the applicants requested a review

of the Ministry's air standard limit for industrial emissions of nitrogen dioxide (NO₂) and of the need for an air standard to regulate industrial emissions of fine particulate matter (PM_{2.5}). The Ministry responded that its air standards are periodically reviewed and updated as new scientific information becomes available, and the NO₂ standard had been prioritized for review.

In our follow-up, we found that, while the Ministry had conducted some work in 2015 to help support future decision-making and standard-setting related to NO₂, the Ministry still had not set any time frame for undertaking its prioritized review of NO₂, nor developed a new standards-setting strategy. By December 2021, the Ministry expects to conduct a preliminary review of Canadian Ambient Air Quality Standards attainment in Ontario to inform any update of key NO₂ benchmarks. The Ministry then expects to determine the benchmarks needed to manage NO₂ sources by December 2022. This may include updates to the NO₂ standard.

- *assess the need for a standard for industrial emissions of fine particulate matter (PM_{2.5});*
- *if the assessment shows a need, establish a standard for industrial emissions of PM_{2.5}.*

Status: In the process of being implemented by 2023.

Details

As discussed above, in our 2019 review, we found that the Environment Ministry provided insufficient information to support its decision denying an application for review requesting a review of the need for an air standard to regulate industrial emissions of PM_{2.5}.

In our follow-up, the Ministry indicated to us that, in May 2020, it had updated its Ambient Air Quality Criteria list, incorporating the Canadian Ambient Air Quality Standards for PM_{2.5}. The Ministry's Ambient Air Quality Criteria are not standards that are required to be met by regulation, but rather levels that are used to assess general air quality. The Ministry indicated that it is participating in a federal-provincial-territorial initiative launching in 2021 to update the current Canadian Ambient Air Quality Standards for PM_{2.5}, and will consider the science

review undertaken as part of this initiative to inform the potential adoption or development of provincial benchmarks for this standard. However, the Ministry does not expect to establish a provincial standard for industrial emissions of PM_{2.5}, because it considers it more feasible to focus on regulatory air standards for the precursor contaminants that react to form PM_{2.5} in the atmosphere, such as sulphur dioxide, ammonia, and nitrogen oxides. Given that PM_{2.5} is not only directly emitted but also forms in the atmosphere from emitted precursors, and given the challenges in estimating PM_{2.5} emissions from industrial sources, this is a sensible approach. The Ministry's updated air standards for sulphur dioxide, a major precursor of PM_{2.5}, take effect in 2023.

Denial of Request to Review the Regulation of Septic Systems Did Not Provide Sufficient Evidence that Current Requirements Are Adequate to Protect the Environment

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: Little or no progress.

Details

In our 2019 review, we found that the Municipal Affairs Ministry provided insufficient information to support its decision denying a request to review the regulation of septic systems (that is, small, on-site systems that collect and partially treat sewage from a home or business). Specifically, the applicants were concerned that Ontario Building Code (Building Code) requirements for the operation and

maintenance of septic systems are insufficient to protect the environment from potential harm, such as from malfunctioning systems contaminating water sources with untreated human sewage. In denying the application, the Ministry did not provide the applicants any information: to explain why it had decided not to proceed with previously proposed new requirements for septic systems; or to support the sufficiency of existing requirements under the Building Code to protect the environment from malfunctioning septic systems. In response to our recommendation, the Ministry indicated that it would work with municipal stakeholders, conservation authorities and health units to assess the scope of the issue and identify potential next steps, and then take appropriate steps identified through this process.

In our follow-up, we found that the Ministry had not taken any steps to review the effectiveness of the Building Code requirements governing the operation and maintenance of septic systems. We learned that updates to Ontario's septic system requirements, if any, would occur during the harmonization of the Building Code with the National Construction Codes. In August 2020, the Minister of Municipal Affairs and Housing signed a binding agreement with the federal and other provincial and territorial governments to further harmonize the Building Code with the National Construction Codes, in line with commitments made under the Canadian Free Trade Agreement. Although the small, on-site septic systems that the Building Code regulates are not included in the National Construction Codes, the Ministry indicated that updates to Building Code requirements for small septic systems, in consultation with the Environment Ministry, may occur when amendments to the Building Code are made as part of the harmonization exercise. As part of the harmonization exercise, the Ministry will conduct a review of the Building Code. On October 20, 2021, the Ministry posted a notice on Ontario's Regulatory Registry for a first round of consultation on its review of the Building Code, including some Ontario-only updates. The Ministry told us that it plans two more rounds of consultations. One is planned for winter of 2022, which would

include the new 2020 National Construction Codes alignment proposals. The last round of consultations, on additional Ontario-only proposals, including septic systems, is scheduled for fall of 2022 or early winter 2023. The Ministry anticipates that Ontario's next Building Code will be in place by the end of 2023.

It is sensible to consider and include any updates to Ontario's septic system requirements when the Ministry amends the Building Code as part of the broader harmonization exercise. To maximize the benefits of that exercise, we believe that the Ministry should also review the effectiveness of Ontario's septic system requirements to inform its review of the Building Code and to identify any necessary updates to these requirements.

Denial of Request to Review the Rules Governing Habitat Offsets Did Not Provide Evidence that Current Requirements Are Adequate to Protect Species at Risk

Recommendation 20

To address the risks of loss of wildlife habitat and biodiversity, we recommend that the Ministry of Municipal Affairs and Housing review the effectiveness of protecting habitat for species at risk that was created as an offset, as part of its current review of the Provincial Policy Statement.

Status: Little or no progress.

Details

In our 2019 review, we found that the Municipal Affairs Ministry provided insufficient information to support its decision to deny a request to review the rules governing habitat offsets for species at risk (that is, the practice of developers obtaining approval for projects that destroy significant wildlife habitat by creating new habitat as a substitute, or an offset). The applicants were concerned that provisions in the Provincial Policy Statement under the *Planning Act*, which prohibit development in significant wildlife habitat unless the developer demonstrates that “that there will be no negative impacts,” do not in fact adequately

protect habitat when attempted through the creation of a habitat offset. Under the Provincial Policy Statement, development and site alteration is not permitted in the habitat of endangered and threatened species (the most at-risk species), except in accordance with provincial and federal requirements.

The Ministry denied the request based on the fact that it had completed a review of the Provincial Policy Statement in 2014. However, the Ministry did not provide the applicants any evidence that the 2014 review had examined habitat offsets. Further, the Ministry did not provide any evidence that the existing regulatory framework is sufficient to protect habitat for species at risk that was created as an offset.

In our follow-up, we found that the Ministry did not review the effectiveness of protecting habitat for species at risk that was created as an offset, as part of its 2019 review of the Provincial Policy Statement. The Ministry told us that responsibility for such a review belongs with the Environment Ministry, which did not recommend any changes related to endangered species policy in the Provincial Policy Statement.

The Municipal Affairs Ministry consulted the public on proposed changes to the Provincial Policy Statement, 2014 between July and October 2019 as part of a review of the Provincial Policy Statement. The Ministry informed us that, during this review, the Environment Ministry—which is responsible for the province's policies related to species at risk—did not bring forward any changes to the Provincial Policy Statement related to wildlife habitat and biodiversity. Moreover, the Municipal Affairs Ministry received limited stakeholder feedback on the issue of habitat offsets. Based on this feedback, the Ministry made minor housekeeping changes to definitions relating to the habitat of endangered species and threatened species, but neither the Municipal Affairs Ministry nor the Environment Ministry assessed the effectiveness of habitat offsets in protecting species at risk habitat.

The new Provincial Policy Statement, 2020 was released on February 28, 2020, with an effective date of May 1, 2020.

Appendix 1: Audit Criteria for Assessing Prescribed Ministries' Compliance with and Implementation of the *Environmental Bill of Rights, 1993*

Prepared by the Office of the Auditor General of Ontario

The *Environmental Bill of Rights, 1993* (EBR Act) requires our Office to report annually on the operation of the Act. The operation of the EBR Act includes both the exercising of its rights by Ontarians (for example, the use of the Environmental Registry, and the submission of applications for review and investigation) and its implementation by prescribed ministries.

For the EBR Act to operate effectively, it must be implemented in a manner that is consistent with the purposes of the Act. Our audit included an assessment of not only whether prescribed ministries complied with the minimum legal requirements of the EBR Act, but also whether the ministries implemented the Act, including exercising their discretion under the Act, in a manner that was consistent with the Act's purposes, contributing to the effective operation of the Act. The audit criteria that we used to address our audit objective are as follows.

Audit Criteria

- Processes are in place to effectively and periodically review the lists of ministries, acts and instruments¹ prescribed under the *Environmental Bill of Rights, 1993* (EBR Act), and, where needed, update the general and classification regulations so that they include all ministries whose activities are environmentally significant, and all acts and instruments¹ that could have a significant effect on the environment.
- Processes are in place for prescribed ministries to ensure that significant environmental decisions made by the ministries accord with the requirements and purposes of the EBR Act, its regulations and other relevant legislation.
- Prescribed ministries have complied with the requirements of the EBR Act and its regulations, and have implemented the EBR Act in a manner consistent with the purposes of the EBR Act, in accordance with the table below. Prescribed ministries have processes in place to achieve compliance and effective implementation.

Sub-Criteria for Assessing Prescribed Ministries' Compliance with and Effective Implementation of the EBR Act

Sub-criterion	Relevant Provision(s) in the <i>Environmental Bill of Rights, 1993</i>
1. Statement of Environmental Values (Statement)	
a. Statement is up-to-date	The Minister ² shall prepare a Statement that explains how the ministry will apply the purposes of the EBR Act when making decisions that might significantly affect the environment, and how it will integrate consideration of the purposes of the EBR Act with other considerations, including social, economic and scientific considerations. The Minister may amend the ministry's Statement from time to time. (Sections 7-10)
b. Statement is considered when making decisions	The Minister shall take every reasonable step to consider the ministry's Statement whenever it makes a decision that might significantly affect the environment. (Section 11)
2. Use of the Environmental Registry (Registry)	
a. Notice of proposals is given as required by the EBR Act	The Minister shall give notice on the Environmental Registry, for at least 30 days, of each proposed: - act or policy if the Minister considers that the proposal could have a significant effect on the environment and the Minister considers that the public should have an opportunity to comment on the proposal before implementation (Sections 15 and 27(1)); - regulation under a prescribed act if the Minister considers that the proposal could have a significant effect on the environment (Sections 16 and 27(1)); and - classified instrument¹ (Sections 22 and 27(1)), unless: - an exception applies to the proposal under Sections 29 or 30, and the Minister decides not to give notice of the proposal; or - an exception applies to the proposal under Sections 15(2), 16(2), 22(3), 32 or 33. (Sections 15(2), 16(2), 22(3), 29, 30, 32 and 33). If the Minister decides not to post a proposal on the Environmental Registry for public consultation because an exception under Section 29 (emergencies) or Section 30 (other processes) applies to the proposal, the Minister shall give notice of the decision to the public and to the Auditor General as soon as reasonably possible after the decision is made. The notice shall include a brief statement of the Minister's reasons for the decision and any other information about the decision that the Minister considers appropriate. (Sections 29, 30 and 31).

Criterion	Relevant Provision(s) in the <i>Environmental Bill of Rights, 1993</i>
b. Time to comment is extended based on the factors in the EBR Act	The Minister shall consider allowing more time to permit more informed public comment. In determining the length of time, the Minister shall consider the following factors: the proposal's complexity, the level of public interest, the period of time the public may require to comment, any private or public interest, and any other factor the Minister considers relevant. (Sections 17, 23 and 8(6))
c. Proposal notices for policies, acts, and regulations are informative	Each notice shall include a brief description of the proposal. (Section 27(2))
d. Proposal notices for instruments ¹ are informative	Each notice shall include a brief description of the proposal. (Section 27(2))
e. Received comments are reviewed and considered	A Minister that gives notice of a proposal under section 15, 16 or 22 shall take every reasonable step to ensure that all comments relevant to the proposal that are received as part of the public participation process described in the notice of the proposal are considered when decisions about the proposal are made in the ministry. (Section 35(1))
f. Prompt notice of decisions is given	The Minister shall give notice on the Environmental Registry of a decision on each proposed policy, act or regulation as soon as reasonably possible after it is implemented (Sections 36(1) and 1(6)). The Minister shall give notice on the Environmental Registry of a decision whether or not to implement a proposal for an instrument¹ as soon as reasonably possible after a decision is made. (Sections 36(1) and 1(7)) If in the Minister's opinion, a decision not to post a proposal on the Environmental Registry for public consultation because an exception under Section 29 (emergencies) or Section 30 (other processes) applies to the proposal, the Minister shall give notice of the decision to the public and to the Auditor General as soon as reasonably possible after the decision is made. (Sections 29 and 30)
g. Decision notices for policies, acts and regulations are informative	Each decision notice shall explain what decision was made, and include a brief description of the effect, if any, of public participation on the ministry's decision-making on the proposal, and any other information that the Minister considers appropriate. (Section 36)
h. Decision notices for instruments ¹ are informative	Each decision notice shall explain what decision was made, and include a brief explanation of the effect, if any, of public participation on the ministry's decision-making on the proposal, and any other information that the Minister considers appropriate. (Section 36)
i. Proposal notices are up-to-date	The Environmental Registry is to provide a means of giving information about the environment to the public, which includes information about decisions that could affect the environment. (Section 6)
j. Prompt notice of appeals and leave to appeal applications is given	The Environment Minister shall promptly place on the Environmental Registry notices of appeals and applications for leave to appeal that it receives from an appellant or applicant related to certain decisions to issue, amend or revoke instruments ¹ classified under O. Reg. 681/94. (Section 47(3))
k. The Environmental Registry platform is maintained effectively	The Environment Minister shall operate the Environmental Registry, the purpose of which is to provide a means of giving information about the environment to the public, including, but not limited to, information about: - proposals, decisions and events that could affect the environment; - actions brought under Part VI; and - things done under the EBR Act. (Sections 5 and 6, and O. Reg. 73/94, Section 13)
3. Applications for Review and Applications for Investigation	
a. Ministry reviews all matters to the extent necessary	The Minister shall consider each application for review in a preliminary way to determine whether the public interest warrants the review. The Minister may consider: - the ministry's statement of environmental values; - the potential for environmental harm if the review is not done; - whether the matter is already subject to periodic review; - any social, economic, scientific or other evidence the Minister considers relevant; - submissions from other persons the Minister considers might have a direct interest in the matters raised in the application; - the resources required to conduct the review; and - any other matter the Minister considers relevant. (Section 67(2)) In addition, when determining whether the public interest warrants a review of an existing policy, act, regulation or instrument that is the subject of an application for review, the Minister may consider: - the extent to which members of the public had an opportunity to participate in the development of the policy, act, regulation or instrument, and - how recently the act, regulation or instrument was made, passed or issued. (Section 67(3))

Criterion	Relevant Provision(s) in the <i>Environmental Bill of Rights, 1993</i>
b. Ministry investigates all matters to the extent necessary	The Minister shall not determine that the public interest warrants a review of a decision that was made during the five years preceding the date of the application for review if the decision was made in a manner that the Minister considers consistent with the intent and purpose of public participation under the EBR Act. This prohibition does not apply where it appears to the Minister that there is social, economic, scientific or other evidence that failure to review the decision could result in significant environmental harm and if that evidence was not taken into account when the decision was made. (Section 68)
	The ministry shall provide a brief statement of reasons for its decision to accept or deny the review. (Section 70)
	For undertaken reviews, the ministry shall give notice of the outcome that states what action, if any, the ministry has or will take as a result of the review. (Section 71)
	The Minister shall investigate all alleged contravention(s) set out in the application to the extent that the Minister considers necessary. The Minister may deny a request for investigation if: - the Minister considers that the application is frivolous or vexatious; - the Minister considers that the alleged contravention is not serious enough to warrant an investigation; - the Minister considers that the alleged contravention is not likely to cause harm to the environment; or - the requested investigation would duplicate an ongoing or completed investigation. (Section 77)
	If the Minister decides that an investigation is not warranted, the Minister shall provide a brief statement of the reasons for the decision not to investigate unless there is an ongoing investigation in relation to the alleged contravention. (Section 78(1) and (2))
c. Ministry meets all timelines	For completed investigations, the Minister shall give notice of the outcome that states what action, if any, the Minister has or will take as a result of the investigation. (Section 80)
	A Minister who receives an application for review or an application for investigation shall acknowledge receipt of the application to the applicants within 20 days of receipt. (Section 65 for reviews and Section 74(5) for investigations)
	The Minister shall notify the applicants and the Auditor General of a decision to undertake or deny the requested review within 60 days of receipt. (Section 70)
	A Minister that determines that the public interest warrants a review must conduct the review within a reasonable time. (Section 69(1))
	The Minister shall give notice of the outcome of the review to the applicants and the Auditor General within 30 days of completing the review. (Section 71(1))
	If the Minister decides not to investigate, the Minister shall notify the applicants, the alleged contraveners and the Auditor General of this decision within 60 days of receiving the application. (Section 78(3))
	If the Minister undertakes an investigation, the Minister must, within 120 days of receiving the application, either: - complete the investigation; or - give a written estimate of the time required to complete it, and then complete the investigation within the estimated time frame or provide a new estimated timeline. (Section 79)
	The Minister shall give notice to the applicants, the alleged contraveners and the Auditor General of the outcome of the investigation within 30 days of completing the investigation. (Section 80(1))

Criterion	Relevant Provision(s) in the <i>Environmental Bill of Rights, 1993</i>
4. Providing Educational Programs and Information about the EBR Act (Environment Ministry only)	
a. When requested, Environment Ministry helps other ministries provide educational programs	At the request of a Minister, the Environment Minister shall assist the other ministry in providing educational programs about the EBR Act. (Section 2.1 (a))
b. Environment Ministry provides educational programs about the EBR Act to the public	The Environment Minister shall provide educational programs about the EBR Act to the public. (Section 2.1 (b))
c. Environment Ministry provides general information about the EBR Act to those who wish to participate in a proposal	The Environment Minister shall provide general information about the EBR Act to members of the public who wish to participate in decision-making about a proposal as provided in the EBR Act. (Section 2.1 (c))

1. The term “instrument” in this document has the same meaning as “instrument” in the EBR Act and includes any document of legal effect issued under an act and includes a permit, licence, approval, authorization, direction or order issued under an act.
2. Note that references to a Minister in this document mean any Minister of a ministry prescribed under the EBR Act. The document refers to the Environment Minister (see **section 4** of this table) for specific responsibilities that only apply to that Minister. Note also that a Minister may delegate his or her powers or duties under the EBR Act.

Appendix 2: Responsibilities of Each Prescribed Ministry under the *Environmental Bill of Rights, 1993, 2020/21*

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

Ministry	Prepare and Consider Statement of Environmental Values	Consult on Policies and Acts*	Consult on Regulations under Prescribed Acts*	Consult on Prescribed Instruments (Permits and Approvals)	Respond to Applications for Review	Respond to Applications for Investigation
Environment	✓	✓	✓	✓	✓	✓
Natural Resources ¹	✓	✓	✓	✓	✓	✓
Municipal Affairs	✓	✓	✓	✓	✓	✓
Energy and Mines ²	✓	✓	✓	✓	✓	✓
Government Services ³	✓	✓	✓	✓	✓	✓
Agriculture	✓	✓	✓		✓	
Transportation	✓	✓			✓	
Tourism	✓	✓	✓			
Health ⁴	✓	✓	✓		✓	
Long-Term Care ⁴	✓	✓	✓		✓	
Infrastructure	✓	✓				
Economic Development	✓	✓				
Indigenous Affairs	✓	✓				
Education	✓	✓			✓	
Labour	✓	✓				
Treasury Board	✓	✓				

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

1. On June 18, 2021, the Ministry of Natural Resources and Forestry merged with part of the then Ministry of Energy, Northern Development and Mines to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry. As of September 2021, O. Reg. 73/94 has not been amended to reflect this change; here we list the responsibilities of the former Ministry of Natural Resources and Forestry.
2. On June 18, 2021, the Ministry of Energy, Northern Development and Mines split: Northern Development and Mines merged with the then Ministry of Natural Resources and Forestry to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry, and a new Ministry of Energy was formed. As of September 2021, O. Reg. 73/94 has not been amended to reflect this change; here we list the responsibilities of the former Ministry of Energy, Northern Development and Mines.
3. The Technical Standards and Safety Authority posts notices related to the *Technical Standards and Safety Act, 2000* on behalf of the Ministry of Government and Consumer Services.
4. On June 20, 2019, the Ministry of Health and Long-Term Care was split into the Ministry of Health and the Ministry of Long-Term Care. As of September 2021, O. Reg. 73/94 has not been amended to reflect this change; here we list the responsibilities of the former Ministry of Health and Long-Term Care.

Appendix 3: Prescribed Acts under the *Environmental Bill of Rights, 1993, 2021*

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

Act	Ministry to Post Notices for Regulations under the Act	Subject to Applications for Review	Subject to Applications for Investigation
Ministry of Agriculture, Food and Rural Affairs			
<i>Food Safety and Quality Act, 2001</i>	Y ¹	N	N
<i>Nutrient Management Act, 2002</i>	Y	Y	N
Ministry of the Environment, Conservation and Parks			
<i>Clean Water Act, 2006</i>	Y	Y	N
<i>Conservation Authorities Act</i>	Y	Y	Y
<i>Endangered Species Act, 2007</i>	Y ²	Y ²	Y
<i>Environmental Assessment Act</i>	Y	Y	Y
<i>Environmental Bill of Rights, 1993</i>	Y	Y	N
<i>Environmental Protection Act</i>	Y	Y	Y
<i>Great Lakes Protection Act, 2015</i>	Y	Y	N
<i>Kawartha Highlands Signature Site Park Act, 2003</i>	N	Y	Y
<i>Lake Simcoe Protection Act, 2008</i>	Y	Y	N
<i>Ontario Water Resources Act</i>	Y	Y	Y
<i>Pesticides Act</i>	Y	Y	Y
<i>Provincial Parks and Conservation Reserves Act, 2006</i>	Y	Y	Y
<i>Resource Recovery and Circular Economy Act, 2016</i>	Y	Y	N
<i>Safe Drinking Water Act, 2002</i>	Y	Y	Y ⁷
<i>Toxics Reduction Act, 2009</i>	Y	Y	Y
<i>Waste Diversion Transition Act, 2016</i>	Y	Y	N
<i>Water Opportunities Act, 2010</i>	Y ³	Y ³	N
Ministry of Energy, Northern Development and Mines*			
<i>Mining Act</i>	Y	Y	Y
<i>Ontario Energy Board Act, 1998</i>	Y ³	Y ³	N
Ministry of Government and Consumer Services			
<i>Technical Standards and Safety Act, 2000</i>	Y ⁴	Y ⁴	Y ⁴
Ministry of Health			
<i>Health Protection and Promotion Act</i>	Y ⁵	Y ⁵	N
Ministry of Municipal Affairs and Housing			
<i>Building Code Act, 1992</i>	Y ⁶	Y ⁶	N
<i>Greenbelt Act, 2005</i>	Y ²	Y	N
<i>Oak Ridges Moraine Conservation Act, 2001</i>	Y ²	Y	Y ⁷
<i>Places to Grow Act, 2005</i>	Y	Y	N

Act	Ministry to Post Notices for Regulations under the Act	Subject to Applications for Review	Subject to Applications for Investigation
<i>Planning Act</i>	Y	Y	Y ⁷
Ministry of Natural Resources and Forestry**			
<i>Aggregate Resources Act</i>	Y	Y	Y
<i>Conservation Authorities Act</i> ⁶	Y	Y	Y
<i>Crown Forest Sustainability Act, 1994</i>	Y	Y	Y
<i>Far North Act, 2010</i>	Y	Y	Y
<i>Fish and Wildlife Conservation Act, 1997</i>	Y	Y	Y
<i>Invasive Species Act, 2015</i>	Y	Y	Y
<i>Lakes and Rivers Improvement Act</i>	Y	Y	Y
<i>Niagara Escarpment Planning and Development Act</i>	Y	Y	Y ⁷
<i>Oil, Gas and Salt Resources Act</i>	Y	Y	Y
<i>Public Lands Act</i>	Y	Y	Y
Ministry of Heritage, Sport, Tourism and Culture Industries			
<i>Ontario Heritage Act</i>	Y	N	N

* On June 18, 2021, the Ministry of Energy, Northern Development and Mines split: Northern Development and Mines merged with the then Ministry of Natural Resources and Forestry to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry, and a new Ministry of Energy was formed. However, as of September 2021, O. Reg. 73/94 had not been amended to reflect this change; here we list the prescribed acts for which the former Ministry of Energy, Northern Development and Mines was responsible during our assessment of implementation and compliance with the *Environmental Bill of Rights, 1993* from April 1, 2020, to March 31, 2021.

** On June 18, 2021, the Ministry of Natural Resources and Forestry merged with part of the then Ministry of Energy, Northern Development and Mines to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry. However, as of September 2021, O. Reg. 73/94 had not been amended to reflect this change; here we list the prescribed acts for which the former Ministry of Natural Resources and Forestry was responsible during our assessment of implementation and compliance with the *Environmental Bill of Rights, 1993* from April 1, 2020, to March 31, 2021.

1. Limited to disposal of deadstock.
2. With some exceptions.
3. For parts of the Act.
4. Limited to fuel handling.
5. Limited to small drinking-water systems.
6. Limited to septic systems.
7. Limited to certain instruments under the Act.
8. Shared responsibility with the Ministry of the Environment, Conservation and Parks.

Appendix 4: Instruments (Permits and Other Approvals) Subject to the *Environmental Bill of Rights, 1993, 2020/21*

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

This is an overview summary for information purposes. Some licences, approvals, authorizations, directions or orders (collectively referred to as “instruments”) are prescribed in only limited circumstances. For the full list of instruments subject to the *Environmental Bill of Rights, 1993*, see O. Reg. 681/94 (Classification of Proposals for Instruments).

Ministry of the Environment, Conservation and Parks

Conservation Authorities Act

Approval for the sale, lease or other disposition of land by a conservation authority

Endangered Species Act, 2007

Stewardship agreement

Amendment to a stewardship agreement

Permit for activities necessary for the protection of human health or safety

Permit for species protection or recovery

Permit for activities with conditions that should achieve overall benefit or that will result in a significant social or economic benefit to Ontario

Amendment of a permit

Revocation of a permit

Environmental Protection Act

Director's order to suspend or remove a registration from the Environmental Activity and Sector Registry

Approval to use a former waste disposal site for a different use

Director's control order

Director's stop order

Director's approval of a control/preventative program

Director's order for remedial work

Director's order for preventative measures

Environmental Compliance Approval (waste management system/waste disposal site)

Environmental Compliance Order (air)

Environmental Compliance Order (sewage works)

Order for removal of waste

Order for conformity with the Act for waste disposal site

Renewable Energy Approval

Minister's directions in respect of a spill

Minister's order to take actions in respect of a spill

Director's order for performance of environmental measures

Director's order to comply—Schedule 3 standards

Approval of a site-specific standard

Director's order to take steps related to a site-specific standard

Approval of a registration for a technical standard for air pollution (industry standard)

Approval of a registration in respect of an equipment standard

Minister's orders regarding curtailment based on the Air Pollution Index

Declaration of or termination of a sulfur dioxide alert

Certificate of Property Use

Ontario Water Resources Act

Permits to take water

Permit authorizing a new transfer or an increased transfer

Director's order prohibiting or regulating sewage discharges

Director's order for measures to alleviate effects of impairment of quality of water

Director's order for unapproved sewage works

Director's order to stop or regulate discharge of sewage into sewer works

Direction to maintain or repair sewage or water works

Director's report to a municipality respecting sewage works or water works

Direction for sewage disposal

Directions for measures to be taken if a well produces water that is not potable

Director's order designating an area as an "area of public water service" or an "area of public sewage service"

Pesticides Act

Add or remove an active ingredient from a prescribed list

Agreement with a body responsible for managing a natural resources management project that would allow an unlisted pesticide to be used

Emergency notice

Stop order

Control order

Order to repair or prevent damage

Safe Drinking Water Act, 2002

Approval of a municipal drinking water system

Drinking water works permit

Municipal drinking water licence

Order or notice with respect to a drinking water system (drinking water health hazard)

Ministry of Natural Resources and Forestry¹

Aggregate Resources Act

Approval of a licensee's amendment to a site plan

Revocation of an aggregate licence

Aggregate permit

Written notice of relief to a licensee/permittee from compliance with any part of the regulations under the Act

A Minister's determination of the natural edge of the Niagara Escarpment

Class A or B aggregate licences

Amendment to an aggregate licence to add, rescind or vary a condition of the licence

Amendment to an aggregate licence to vary or eliminate a condition to the licence if the effect will be to authorize an increase in the number of tonnes of aggregate to be removed

Requirement that a licensee amend its site plan

Conservation Authorities Act

Minister's requirement that a conservation authority carry out flood control operations

Minister's requirement that a conservation authority follow the Minister's instructions for the operation of a water control structure

Minister takes over the operation of a water control structure and requires conservation authority to reimburse costs

Minister's requirement for the council of a municipality to carry out flood control operations

Minister's requirement for the council of a municipality to follow the Minister's instructions for the operation of a water control structure

Minister takes over the operation of a water control structure and requires council of a municipality to reimburse costs

Crown Forest Sustainability Act, 1994

Forest resource processing facility licence

Far North Act, 2010

Minister's order approving a land use plan

Order to amend the boundaries of a planning area after a community based land use plan is approved

Exempting order

Exception order

Fish and Wildlife Conservation Act, 1997

Authorization to release wildlife or an invertebrate

Aquaculture licence

Lakes and Rivers Improvement Act

Order to repair or remove dam

Order to rectify a problem

Order to do what Minister considers necessary to further purposes of the Act

Order to provide a fishway

Order to regulate the use of a lake or river or the use and operation of a dam

Order to take steps to maintain, raise or lower the water level on a lake or river

Order to take steps to remove any substance or matter

Niagara Escarpment Planning and Development Act

Declaration that a by-law, improvement or other development or undertaking of a municipality is deemed not to conflict with the Niagara Escarpment Plan

Order amending a local plan to make it conform to the Niagara Escarpment Plan

Approval of an amendment to the Niagara Escarpment Plan

Oil, Gas and Salt Resources Act

Permit to inject a substance other than oil, gas or water into a geological formation in connection with a project for enhancing oil or gas recovery

Amendment, suspension, revocation or addition of a term, condition, duty or liability imposed on a permit

Suspension or cancellation of a permit

Public Lands Act

Designation of an area as a planning unit

Permit to erect a building or structure or make an improvement on private land if the building, structure or improvement will be located within 20 metres of the edge of a body of water

Ministry of Municipal Affairs and Housing

Building Code Act, 1992

A ruling that relates to the construction, demolition, maintenance or operation of a sewage system

Oak Ridges Moraine Conservation Act, 2001

Minister's order to amend a municipality's Official Plan

Minister's order to amend a municipality's zoning bylaw

Approval by the Minister of an Official Plan amendment

Approval by the Minister of a zoning bylaw amendment

Planning Act

Approval by the Minister of an Official Plan

Approval by the Minister of an Official Plan amendment

Approval by the Minister for a consent in an area where there is no Official Plan in place

Approval by the Minister of a plan of subdivision in an area where there is no Official Plan in place

Ministry of Energy, Northern Development and Mines²**Mining Act**

Consent to undertake surface mining within 45 metres of a highway or road limit

Sale or award by the Minister of surface rights

Reinstatement of a licence of occupation that was previously terminated

Permission to test mineral content

Disposition Order directing that buildings, structures, machinery, chattels, personal property, ore, mineral slimes or tailings do not belong to the Crown

Issuance of an exploration permit

Lease of surface rights

Minister's direction to include reservations or provisions

Permission to cut and use trees on mining lands

Approval to rehabilitate a mine hazard

Confirmation of filing by Director of closure plan for advanced exploration or commencing mine production

Director's order requiring a proponent to file amendments to a closure plan

Director's order requiring changes to a filed closure plan or to amendments to a closure plan

Director's order requiring the performance of a rehabilitation measure

Director's order requiring a proponent to file a closure plan to rehabilitate a mine hazard

Proposal for the Crown to enter lands to rehabilitate a mine hazard site

Minister's order directing a proponent to rehabilitate a hazard that may cause immediate and dangerous adverse effect

Minister's direction to employees and agents to do work to prevent, eliminate and ameliorate adverse effect

Minister's decision to alter or revoke a decision of the Mining and Lands Tribunal³

Director's order requiring a proponent to comply with the requirements of a closure plan or to rehabilitate a mine hazard in accordance with the prescribed standards

Director's decision to have the Crown rehabilitate after proponent non-compliance with order

Issuance or validation by the Minister of an unpatented mining claim, licence of occupation, lease or patent

Minister's acceptance of a surrender of mining lands

Ministry of Government and Consumer Services**Technical Standards and Safety Act, 2000**

Director's variance from section 9 of O. Reg. 217/01 (Liquid Fuels) (permission to use equipment that is not approved)

Director's variance from any of the prescribed clauses of the Liquid Fuels Handling Code

1. On June 18, 2021, the Ministry of Natural Resources and Forestry merged with part of the then Ministry of Energy, Northern Development and Mines to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry. However, as of September 2021, O. Reg. 681/94 had not been amended to reflect this change; here we list the classified instruments for which the former Ministry of Natural Resources and Forestry was responsible during our assessment of implementation and compliance with the *Environmental Bill of Rights, 1993* from April 1, 2020, to March 31, 2021.

2. On June 18, 2021, the Ministry of Energy, Northern Development and Mines split: Northern Development and Mines merged with the then Ministry of Natural Resources and Forestry to form the new Ministry of Northern Development, Mines, Natural Resources and Forestry, and a new Ministry of Energy was formed. However, as of September 2021, O. Reg. 681/94 had not been amended to reflect this change; here we list the classified instruments for which the former Ministry of Energy, Northern Development and Mines was responsible during our assessment of implementation and compliance with the *Environmental Bill of Rights, 1993* from April 1, 2020, to March 31, 2021.

3. This provision of the *Mining Act* was repealed effective June 1, 2021. As of September, 2021, O. Reg. 681/94 had not been updated to reflect this change.

Appendix 5: Glossary

Prepared by the Office of the Auditor General of Ontario

Term	Definition
Act	Also known as a law, legislation or statute, an act is made by the provincial (or federal) government to delineate rules about specific situations.
Application for Investigation	A right under the <i>Environmental Bill of Rights, 1993</i> (under Part V), allowing two members of the public 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 the <i>Environmental Bill of Rights, 1993</i> (under Part IV), allowing two members of the public 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.
Bulletin	Bulletins (called Information Notices on the old Environmental Registry) are used by prescribed ministries to share information about any activity or other matter that they are not required to post under the <i>Environmental Bill of Rights, 1993</i> . In some cases, Bulletins are also used when legislation other than the <i>Environmental Bill of Rights, 1993</i> requires a prescribed ministry to give notice of something using the Environmental Registry (for example, the <i>Clean Water Act, 2006</i> requires the Environment Ministry to give notice of approved source protection plans using the Environmental Registry).
Environmental compliance approval	A type of approval under the <i>Environmental Protection Act</i> and the <i>Ontario Water Resources Act</i> issued by the Environment Ministry and obtained by proponents that seek to undertake certain activities related to air, noise, waste and sewage.
Environmental Registry	A website maintained by the Environment Ministry, and used by all 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 <i>Environmental Bill of Rights, 1993</i> . The Environmental Registry of Ontario (ero.ontario.ca) became the official Environmental Registry in April 2019. Notices from the previous registry (ebr.gov.on.ca) have been transferred to the Environmental Registry and archived. On March 31, 2021, the previous site was decommissioned.
Exception notice	A notice posted on the Environmental Registry to inform the public about an environmentally significant decision that was made without public consultation, for one of two reasons: 1) there was an emergency, and the delay required to consult the public would result in danger to public health or safety, harm or serious risk to the environment or injury or damage to property; or 2) the environmentally significant aspects of the proposal had already been considered in a process of public participation substantially equivalent to the process required under the <i>Environmental Bill of Rights, 1993</i> .
Instrument	A permit, licence, approval, authorization, direction or order issued under the authority of an act or regulation.
Leave to appeal	Permission to challenge. Under the <i>Environmental Bill of Rights, 1993</i> , members of the public may seek leave to appeal the decisions of prescribed ministries to issue certain types of instruments. The decision whether to grant or deny leave to appeal is made by the adjudicative body that would hear the appeal, such as the Ontario Land Tribunal.
Notice (general)	A posting on the Environmental Registry to inform the public of environmentally significant activities that prescribed ministries are considering or carrying out.
Notice—Proposal	A notice posted on the Environmental 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.

Term	Definition
Notice—Decision	A notice posted on the Environmental Registry by a prescribed ministry to notify the public that it has made a decision whether or not 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.
Permit to take water	An approval under the <i>Ontario Water Resources Act</i> that allows a person or organization to take water from groundwater or surface water sources.
Policy	A written set of rules or direction by a ministry.
Prescribed ministry	A government ministry that is required under O. Reg. 73/94 to carry out responsibilities under the <i>Environmental Bill of Rights, 1993</i> .
Public interest	The welfare or well-being of the general public and society.

Appendix 6: The Environmental Registry, 2020/21

Prepared by the Office of the Auditor General of Ontario

The Environmental Registry (ero.ontario.ca) is a website established under the *Environmental Bill of Rights, 1993* (EBR Act), that provides the public with access to information about environmentally significant proposals and decisions made by government ministries, as well as other environmental matters. It also enables public engagement in the government's environmental decision-making.

Through the Registry:

- Prescribed ministries under the EBR Act post notices about environmentally significant policies, acts, regulations and instruments (permits, licences, approvals, and other authorizations and orders) they are proposing to put into effect, issue, amend or revoke. This requirement does not apply to proposals that are mostly financial or administrative. There are also some exceptions to the posting requirement; for example, ministries are not required to post notices for proposals for permits and approvals that represent a step to implement a project approved under or exempted from the *Environmental Assessment Act*, or for environmentally significant measures that form part of or give effect to a provincial budget.
- Prescribed ministries provide the public a minimum of 30 days to comment on proposals, or longer in cases where the matter is complex, the level of public interest is high or other factors warrant more time for informed public input.

Notices for policies, acts and regulations are often of broad interest to all Ontarians, while notices for site-specific permits to authorize activities or orders to require actions are typically of greatest interest to nearby residents who may be directly impacted by the activities.

- The public can submit comments, and the ministries must consider these comments when making a decision on a proposal.
- Prescribed ministries must post notices of their decisions on whether or not to proceed with their proposals as soon as reasonably possible after making a decision. These notices must include an explanation of how the public comments affected the final decision. In 2020/21, ministries posted decision notices on the Registry for proposals about which members of the public had submitted a total of 114,209 comments (106,428 related to proposals for policies, acts and regulations, and 7,781 related to proposals for site-specific permits, licences and approvals).

In 2020/21, the Environmental Registry received 409,439 visits.

The following table describes the types of notices that are posted on the Environmental Registry, and the numbers of notices posted in 2020/21.

Types and Numbers of Notices Posted on the Environmental Registry, 2020/21

Source of data: *Environmental Bill of Rights, 1993*, Ministry of the Environment, Conservation and Parks, and Environmental Registry

Type of Notice	Requirements for Posting on the Environmental Registry under the <i>Environmental Bill of Rights, 1993</i> (EBR Act) ¹	# of Notices Posted on the Environmental Registry in 2020/21
Policy, act or regulation notice	Ministries are required to give notice of and consult on: • environmentally significant proposals for policies (s. 15); • environmentally significant proposals for acts (s. 15); and • environmentally significant proposals for regulations made under a prescribed act (s. 16).	81 proposal notices ²
	Ministries must post notice of their decisions on these proposals, including an explanation of the effect of public comments (s. 36)	114 decision notices

Type of Notice	Requirements for Posting on the Environmental Registry under the <i>Environmental Bill of Rights, 1993</i> (EBR Act) ¹	# of Notices Posted on the Environmental Registry in 2020/21
Instrument notice	Five ministries must give notice of and consult on all proposals to issue, amend or revoke an instrument (e.g., permit, approval, licence, order) that is classified under Ontario Regulation 681/94 (s. 22).	1,365 proposal notices ³
	Ministries must post a notice of their decisions on all instrument proposals, including an explanation of the effect of public comments (s. 36).	1,313 decision notices
Exception notice	In four circumstances, a ministry can forgo consulting the public on a proposal in the usual way. For two of these four situations it must instead post an “exception notice” to inform the public of the decisions and explain why it did not post a proposal notice and consult the public. The two circumstances are: • where the delay in waiting for public comment would result in danger to public health or safety, harm or serious risk to the environment, or injury or damage to property (s. 29); and • where the proposal will be, or has already been, considered in another public participation process that is substantially equivalent to the public participation process required under the EBR Act (s. 30).	6
Appeal notice	The Environment Ministry ⁴ must post notices to inform the public of any appeal of an instrument, including both direct appeals (where such right is given by a law other than the EBR Act) and applications to seek leave to appeal by third parties under the EBR Act (s. 47).	8 notices for direct appeals and 7 notices for applications for leave to appeal
Bulletins (formerly referred to as Information Notices)	This is a notice type that is not required under the EBR Act (these notices were formerly called “Information Notices”). Ministries can choose to post bulletins on the Environmental Registry to share information that does not fall into any of the above notice categories—for example, a ministry’s annual report. Ministries also use bulletins to fulfill requirements of other laws to provide notice or information to the public. Bulletins are not used for public consultation (s. 6).	297 ⁵
Voluntary consultation notices	This is another notice type that is not required under the EBR Act. Ministries can choose to use the Environmental Registry to consult with the public on any proposal that is not subject to the public consultation requirements of the EBR Act. These voluntary consultations are posted using regular proposal notices and decision notices, but include a banner explaining that the consultation is not subject to the requirements of the EBR Act.	9 proposal notices and 6 decision notices for policies, acts and regulations 9 proposal notices and 18 decision notices for instruments

1. The section of the EBR Act is indicated in parentheses at the end of each stated requirement.

2. Four of the 81 proposal notices were posted between April 1, 2020, and June 14, 2021, when O. Reg. 115/20, Temporary Exemptions Relating to Declared Emergency was in effect. During that time, the EBR Act’s Part II requirements for public consultation about environmentally significant proposals were suspended, and therefore the EBR Act did not require that proposal notices be posted during that time. Despite the regulation, prescribed ministries were directed to continue to post proposal notices for non-COVID-19 related proposals.

3. Of the 1,365 proposal notices, 262 were posted between April 1, 2020, and June 14, 2021, when O. Reg. 115/20, Temporary Exemptions Relating to Declared Emergency, was in effect. During that time, the EBR Act’s Part II requirements for public consultation about environmentally significant proposals were suspended, and therefore the EBR Act did not require that proposal notices be posted during that time. Despite the regulation, prescribed ministries were directed to continue to post proposal notices for non-COVID-19 related proposals.

4. The responsibility to post appeal notices was transferred to the Environment Ministry as of April 1, 2019; these notices were previously posted by the Environmental Commissioner of Ontario.

5. Nine of the 297 bulletins were posted to give notice of urgent, COVID-19-related decisions that were made without public consultation in accordance with O. Reg. 115/20, Temporary Exemptions Relating to Declared Emergency, and 184 were posted to give notice of decisions for proposals that were posted for public consultation while O. Reg. 115/20 was in effect.

Under the EBR Act, the Environment Ministry is responsible for operating and maintaining the Environmental Registry. In 2016, the Ministry began modernizing the Environmental Registry to make it easier for the public to understand and navigate, and on April 24, 2019, the new Environmental Registry (ero.ontario.ca) officially replaced the old (legacy) Registry.

In 2020/21, the Environment Ministry undertook a project to transfer all remaining notices from the legacy Registry to the new Environmental Registry system, so that the new Environmental Registry would serve as the single source for Ontarians to search for and access Environmental Registry notices. Older, historical notices (including most policy, act and regulation decisions posted before 2016, and most instrument decisions posted before 2019, as well as older exception, appeal and information notices) were transferred to a beta (testing) version of a searchable archive site on the new Environmental Registry. The legacy Registry was decommissioned on March 31, 2021.

Appendix 7: Applications for Review and Applications for Investigation, 2020/21

Prepared by the Office of the Auditor General of Ontario

Background

The *Environmental Bill of Rights, 1993* (EBR Act) gives Ontarians the right to submit an application to a prescribed ministry asking it to:

- review an existing law, policy, regulation or instrument (such as a permit or approval) or review the need to create a new law, policy or regulation in order to protect the environment (“application for review”); or
- investigate an alleged contravention of an environmental law, regulation or instrument (“application for investigation”).

There must be at least two persons resident in Ontario making an application. Applicants can act on their own behalf as individuals or as representatives of organizations or corporations.

Applicants can range from community residents to students to environmental activists to not-for-profit organizations to corporations or industry groups. A ministry that receives an application must consider the request according to the requirements of the EBR Act, determine whether to undertake or deny the requested review or investigation, and provide a notice of its decision with the reasons to the applicants and our Office. When a ministry agrees to undertake a review or investigation, it must also provide a notice of the outcome of that review or investigation to the applicants and our Office.

Applications for Review

Ten ministries are required to accept applications for review under the EBR Act (see **Appendix 2**). Specific acts must be prescribed under Ontario Regulation 73/94 under the EBR Act in order for them and their regulations to be subject to applications for review (see **Appendix 3**). Similarly, permits and other approvals must be prescribed under Ontario Regulation 681/94 under the EBR Act to be subject to applications for review (see **Appendix 4**).

The EBR Act directs ministries to consider the following factors to determine if a requested review is warranted:

- the potential for environmental harm if the ministry does not undertake the review;
- whether the government already periodically reviews the matter;
- any relevant social, economic, scientific or other evidence;
- the staffing and time needed to do the review; and
- how recently the ministry made or reviewed the relevant law, policy, regulation or instrument, and whether the ministry consulted the public when it did so.

The number of applications for review submitted varies from year to year. In the five years prior to this reporting year, the average number of applications for review submitted per year was 10, and ministries agreed to undertake 33% of the requested reviews (as shown in the bar graph on the next page).

The Environment Ministry received three new applications for review in 2020/21. Two applications related to the same decision, to approve a sewage works, and the third related to the adoption of the exemption regulation (O. Reg. 115/20) under the EBR Act in April 2020. All three applications were denied.

In 2020/21, the Environment Ministry also concluded five applications for review that were submitted in a previous year and that the ministry had agreed to undertake (as shown in Applications for Review Concluded in 2020/21, on the next page). Two of these related to the use of pesticides on golf courses, one regarding the timing of annual reports and the other regarding the monitoring of surface waters near golf courses. Two reviews, submitted to the Ministry in 2017, related to the 1998 pre-construction approval for a landfill that was ultimately never built. The fifth, submitted to the Ministry in 2013, addressed the rules for the siting of landfills in hydro-geologically complex settings.

No other ministries received or concluded any applications in 2020/21. At the end of 2020/21, the Environment Ministry had three reviews that it had agreed to undertake but that it had not concluded, and the Natural Resources Ministry had one review underway that it had not concluded (see Applications for Review That Were Ongoing as of March 31, 2021, on the next page).

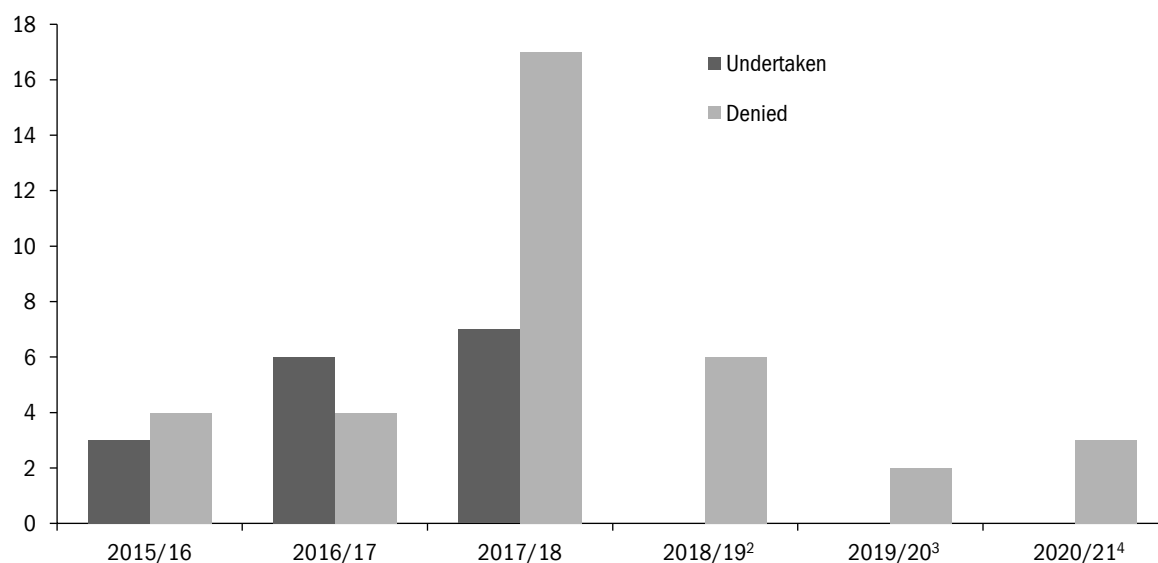
Our Office reviewed the Environment Ministry's handling of the eight applications for review that it concluded in 2020/21 and determined that the Ministry handled seven of those applications reasonably, but did not provide a reasonable rationale for

its decision not to undertake a requested review of the Ministry's exemption regulation made under the EBR Act, O. Reg. 115/20, which suspended some of the public's EBR Act rights for ten weeks in 2020/21. For the details of our review of the Environment Ministry's handling of these applications, see the Ministry's report card in **Section 6.2** of this Report.

For a summary of the applications for review that were concluded in 2020/21, see the section in this Appendix titled Concluded Applications for Review in 2020/21.

Applications for Review by Reporting Year Received and Ministries' Decisions to Undertake or Deny,¹ 2015/16–2020/21

Prepared by the Office of the Auditor General of Ontario



1. Some applications for review were sent to multiple ministries. An application sent to multiple ministries is recorded here as one application. An application is recorded here as "undertaken" if any of the ministries to which an application was sent undertook the review.
2. Three of the six applications for review submitted in 2018/19 were unreasonably denied according to the requirements of the EBR Act.
3. Both applications for review submitted in 2019/20 were reasonably denied according to the requirements of the EBR Act.
4. Two applications for review submitted in 2020/21 were reasonably denied according to the requirements of the EBR Act; one was not.

Applications for Review Concluded¹ in 2020/21

Prepared by the Office of the Auditor General of Ontario

	Applications Submitted in 2020/21		Applications Submitted in Previous Years		Total Applications Concluded in 2020/21
	Denied	Undertaken	Denied	Undertaken	
Environment Ministry	3 ²	0	0	5	8

1. An application has been "concluded" when the ministry has either (a) decided not to undertake the requested review (denied the application), or (b) decided to undertake the requested review, completed its review and given notice of the outcome of its review to the applicants.
2. Two applications were reasonably denied according to the requirements of the EBR Act; one was not.

Applications for Review That Were Ongoing as of March 31, 2021

Prepared by the Office of the Auditor General of Ontario

Ministry	Topic of the Application for Review	Date Received by the Ministry	Status
Environment	Review of the <i>Environmental Bill of Rights, 1993</i>	Jan 18, 2010	Ongoing
Environment	Review of the Lake Simcoe Protection Plan	Jul 15, 2016	Ongoing
Environment	Review of Water Management to Improve Climate Resiliency	Sep 8, 2016	Notice of completion sent April 30, 2021
Natural Resources	Review of an Aggregate Licence and Site Plan	Nov 22, 2017	Notice of completion sent June 4, 2021

Applications for Investigation

Applications for investigation are a way for members of the public to help ensure that the government upholds its environmental laws. Ontarians can formally request an investigation if they believe that someone has broken an environmental law.

Generally, members of the public make this request when they believe that the government is not doing enough—or anything—about a problem.

Ontarians can request an investigation of an alleged contravention of any of 19 different prescribed laws, or of a regulation or prescribed instrument (e.g., permit or other type of approval) under those laws.

A minister has a duty to investigate all matters raised in an application for investigation to the extent the minister considers necessary. A minister is not required to investigate where an 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 minister is also not required to duplicate an ongoing or completed investigation.

Similar to applications for review, the number of applications for investigation submitted varies from year to year. In the five years prior to this reporting year, the average number of applications for investigation submitted per year has been seven, and ministries have agreed to undertake 66% of the requested investigations (as shown in the following bar graph).

In 2020/21, Ontarians did not submit any applications for investigation. Two applications for

investigation that were submitted to the Environment Ministry in 2019/20 were ongoing at the end of the 2020/21 reporting year. No other ministries had any ongoing applications for investigation in 2020/21.

Concluded Applications for Review in 2020/21

The following is a summary of each of the applications for review that was concluded (that is, the review was either denied or, if undertaken, was completed) between April 1, 2020, and March 31, 2021.

For the details of our review of these applications, see **Sections 6.15 and 6.16** (Environment Ministry).

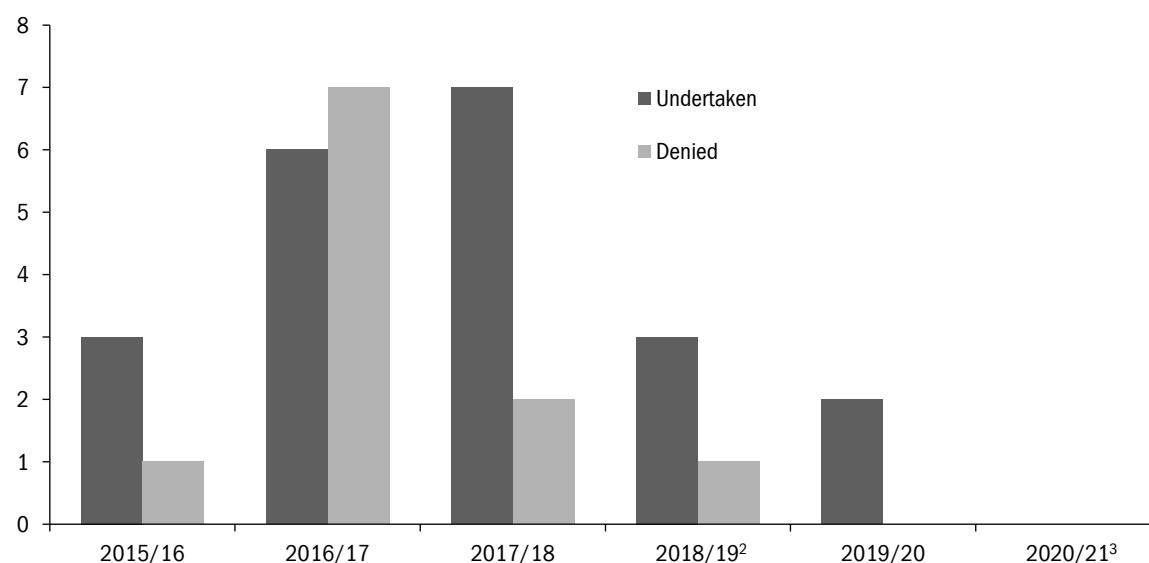
1. Request for a Review of the EBR Act Temporary Exemption Regulation

What the Applicants Asked For

On April 1, 2020, the Environment Ministry filed a regulation, Temporary Exemptions Relating to Declared Emergency, O. Reg. 115/20, made under the EBR Act (the “exemption regulation”). The exemption regulation exempted all proposals for acts, regulations, policies and instruments from Part II of the EBR Act during the period from the filing of the regulation until 30 days following the termination of the COVID-19 emergency that was declared on March 17, 2020, under the *Emergency Management and Civil Protection Act*, and subsequently extended. The exemption regulation also

Applications for Investigation by Reporting Year Received and Ministries' Decisions to Undertake or Deny,¹ 2015/16–2020/21

Prepared by the Office of the Auditor General of Ontario



1. Some applications for investigation were sent to multiple ministries. An application is recorded here as “undertaken” if any of the ministries to which an application was sent undertook the investigation.

2. In 2018/19, one application for investigation was appropriately denied according to the requirements of the EBR Act.

3. In 2020/21, no applications for investigation were submitted to any prescribed ministry.

provided that **section 11** of the EBR Act (requiring consideration of a ministry’s Statement of Environmental Values when making decisions) did not apply to ministries prescribed under O. Reg. 73/94 of the EBR Act during the same period. (We reported on the suspension of EBR Act rights through the exemption regulation in our Office’s 2020 Report on the Operation of the EBR Act. See **Chapter 1, Section 6.0** of that report for our findings and recommendations.)

In May 2020, an individual and an association submitted an application to the Environment Ministry asking it to review the exemption regulation. The applicants submitted that the exemption regulation was overly broad because it exempted all proposals, even those unrelated to the COVID-19 emergency. The effect of this broad exemption was, according to the applicants, that: residents of Ontario would not be legally entitled to have notice of, nor have means to participate in, government decisions that could have a significant impact on the environment; prescribed ministries would not be required to consider their

Statements of Environmental Values when making decisions that could significantly affect the environment; and the public would have no right to seek leave to appeal decisions about instruments that were proposed during the exemption period.

The applicants sought to have the Minister:

- revoke the exemption regulation;
- deal with new proposals related to the COVID-19 emergency under section 29 of the EBR Act (which applies to emergency exceptions to the requirements of Part II) and develop a new policy on the use of section 29;
- defer proposals for acts or regulations until 30 days after the repeal of the exemption regulation;
- extend or suspend public comment periods for the duration of the exemption period and restart following revocation;
- require prescribed ministries to defer making decisions on any proposals that were posted on the Environmental Registry before or during the exemption period (or that would have been posted

before the exemption regulation applied) until 30 days following revocation; and

- require prescribed ministries to continue to apply their Statements of Environmental Values to all decisions made before revocation of the exemption regulation.

The applicants further argued that, because the exemption regulation was adopted without any public notice or consultation, section 68 of the EBR Act could not apply. Section 68 states that a minister shall not determine that the public interest warrants a review of a decision made within the last five years, if the decision was made in a manner that the minister considers consistent with the intent and purpose of Part II of the EBR Act.

Review Denied by the Environment Ministry

On July 13, 2020, the Environment Ministry denied the application, concluding that **section 68** of the EBR Act applied. That is, because the decision to make the exemption regulation was made within the five years before the applicants submitted their application for review and because, in the opinion of the Ministry, the decision was made in a manner that is consistent with Part II of the EBR Act, the Ministry was prohibited from reviewing the decision. Even so, the Ministry did consider the merits of the application in accordance with the factors set out in **section 67** of the EBR Act to determine whether the public interest warranted a review of the matters raised by the applicants, and concluded that it was not in the public interest to conduct a review.

The Ministry noted that, because the exemption regulation was revoked on June 15, 2020, part of the applicants' request had already been implemented. With respect to the request for the need for a new policy on the use of emergency exceptions, the Ministry concluded that there would be no harm to the environment if the review was not conducted. The Ministry stated that its Environmental Bill of Rights Office already provides support and guidance to prescribed ministries in how to apply the EBR Act exceptions. In addition, the Ministry concluded that it would not be in the public interest to redeploy

Ministry resources to this review, at a time when its limited resources have been prioritized to respond to matters relating to the COVID-19 emergency.

With respect to the other requests (to defer decisions and extend consultation periods, require consideration of Statements of Environmental Values and restore leave to appeal rights), the Ministry concluded that the public interest did not warrant the review. It stated that all rights and obligations under Part II of the EBR Act were restored upon revocation of the exemption regulation, and that during the exemption period ministries were directed to post all non-urgent and non-COVID-related proposals for a minimum 30-day public comment period and to consider their Statements of Environmental Values when making decisions, while, for COVID-related decisions, ministries were directed to inform the public and consider their Statements of Environmental Values where feasible. The Ministry concluded that the actions sought by the applicants could create significant "regulatory uncertainty" in the context of an ongoing emergency, and that there would be no harm to the environment if these steps were not taken.

We concluded that the Environment Ministry did not provide a clear and convincing rationale for denying this request for a review, and that the Ministry should have determined what steps were feasible to minimize the impacts of the exemption regulation on both the environment and Ontarians' rights under the EBR Act.

We also concluded that the Ministry's reliance on the five-year rule to deny the review was not reasonable in the circumstances, and was not consistent with the purposes of the EBR Act (see **Section 6.15** of this report).

2. Requests for a Review of an Environmental Compliance Approval for Sewage Works (Two Applications)

What the Applicants Asked For

On December 19, 2018, the Environment Ministry issued an environmental compliance approval for

sewage works (“sewage works approval”) to Macey Bay Developments Corp. to service a trailer park development in the Township of Georgian Bay. The development had been the subject of a hearing before the Ontario Municipal Board in 2017. The Ontario Municipal Board’s decision approved the planning and zoning for the site, conditional on site plan approval by the local township, and conditional on other approvals, including those for water and sewage works by the Environment Ministry. The Environment Ministry’s 2018 decision to issue the sewage works approval was made without first posting a proposal notice for public consultation on the Environmental Registry.

Two sets of applicants submitted applications to the Environment Ministry requesting a review of this sewage works approval. One application was submitted by a municipality and an individual in October 2020; the other was submitted by two individuals in November 2020. The first application focused on the lack of opportunity for public input on the sewage works approval. The second application repeated that concern, but also argued that the approved sewage works would be inadequate to service the development, that there was no appropriate phosphorus management, and that the system was located without a sufficient setback from the adjacent Provincially Significant Wetland. These applicants argued that the approved sewage works would result in serious harm to species at risk and waters in the wetland and Severn Sound. The applicants alleged that relevant technical information had not been considered by the Environment Ministry in evaluating the design of the sewage works.

In 2019, an environmental organization that had participated in the Ontario Municipal Board hearing brought a judicial review application seeking to quash the sewage works approval on the grounds that the Environment Ministry failed to comply with the EBR Act prior to issuing it. The second application for review asked the Ministry to defer its consideration of the application for review until the court had reached its decision on the judicial review.

Reviews Denied by the Environment Ministry

The Environment Ministry denied both applications. In denying the first application, the Ministry relied on **section 68** of the EBR Act. As noted earlier, **section 68** provides that a minister shall not determine that the public interest warrants a review of a decision made within the last five years, if the decision was made in a manner that the minister considers consistent with the intent and purpose of Part II of the EBR Act. The Environment Ministry concluded that the decision to issue the sewage works approval was made during the five years preceding the application and, in the Ministry’s opinion, the decision was made in a manner that was consistent with the intent and purpose of Part II of the EBR Act. The Ministry stated that the Director who approved the sewage works approval did not post a proposal notice on the Environmental Registry because it was his opinion that issuance of the approval was a step towards implementing a project—the trailer park—that had been approved by a tribunal—the Ontario Municipal Board—after affording an opportunity for public participation. Under **section 32(1)(a)** of the EBR Act, a ministry is not required to post a proposal for an approval on the Environmental Registry for public consultation in those circumstances. For this project, while the Ministry did not consult the public on the sewage works application, it did consult the public on the project’s permit to take water and on an overall benefit permit issued under the *Endangered Species Act, 2007*.

In responding to the second application, the Environment Ministry refused to defer its decision on whether to undertake the review until the court had resolved the judicial review application, relying on the EBR Act requirement that the Ministry determine whether to undertake a requested review within 60 days of receiving the application. The Environment Ministry again relied, in part, on section 68 of the EBR Act to deny the second application.

In June 2021, the Ontario Divisional Court released its decision on the judicial review. The court found that the Environment Ministry’s decision to rely on section 32(1)(a) of the EBR Act when it did not

post a proposal notice for the sewage works approval was reasonable in the particular circumstances of the case. The court interpreted the EBR Act to say that, for the Ministry to be able to rely on this section, the opportunity for public participation at a tribunal has to be “relevant” to the later decision the Ministry makes. The court said there has to be a “nexus” between what was considered at the tribunal hearing and the application filed with the Environment Ministry. Further, the Minister (or a delegate) must review the record of the tribunal proceeding to assess the scope and content of the opportunity for public participation before he or she can determine whether the prior process involved an appropriate opportunity for public participation.

The court found that, because the Ontario Municipal Board had heard substantial expert evidence regarding the sewage works and because there was no significant change in the works when the final design was later submitted to the Environment Ministry, it was reasonable for the Environment Ministry to rely on section 32(1)(a) and not consult through the Environmental Registry on the sewage works approval.

For the second application, the Ministry also considered the submissions and supporting documents provided by the applicants in a preliminary way, in accordance with section 67 of the EBR Act. One of the Ministry’s technical staff was asked to review the documents and determine whether all the material was considered when the approval was issued, whether the material would have changed the outcome of the decision and whether anything in the material warranted a review of the approval. He responded to all of the 29 points raised by the applicants and concluded that the documents disclosed no reason to revisit the approval. Based on this review, the Ministry concluded that the documents did not contain evidence demonstrating that failure to review the sewage works approval could result in significant harm to the environment.

We concluded that it was reasonable for the Environment Ministry to reach its determination that the public interest did not warrant a review.

3. Review of the Deadline for Golf Courses Reporting Annual Pesticide Use

What the Applicants Asked For

In May 2017, a watershed foundation and an individual submitted four applications for review to the Environment Ministry related to the use of pesticides on golf courses. The Ministry denied two of the applications and agreed to undertake two reviews.

The first application asked the Ministry to review the General Regulation under the *Pesticides Act* (O. Reg. 63/09) regarding the timing of annual reports on golf course pesticide use. These reports identify the active ingredients applied, as well as the purposes, the total quantities and the locations of pesticide use. The regulation required that these reports be prepared by June 30 each year and be made available for public inspection by December 1 of the year following the year of use. The applicants asked that the regulation be changed to require “more timely” reporting.

The applicants argued that the timing of the annual report meant that public reporting could be as much as 20 months after a pesticide was applied, which, they submitted, was “far too late for any meaningful corrective action.” They proposed that golf courses be required to report pesticide use no later than five days after each application.

Review Undertaken by the Environment Ministry

In June 2017, the Environment Ministry determined that a review of the timing of the annual reports was warranted. Initially, the Ministry estimated that the review would be completed within a year. This was extended several times and in October 2020, the Ministry notified the applicants of the completion of the review.

In carrying out the review, the Ministry consulted with golf course operators and with the Integrated Pest Management Council of Canada, which accredits golf courses. (Golf courses must maintain this accreditation annually to be able to use particular pesticides.) The Ministry proposed to change the General Regulation to require annual reports to be

prepared by January 31 in the year following use and to be made available, including posting on the golf course's website, once prepared. The Environment Ministry included this change in a proposal for a suite of amendments to the *Pesticides Act* and the General Regulation, which the Ministry posted for comment on the Environmental Registry from October 28 to December 12, 2019. The regulatory amendments were made in April 2020, and came into force on May 1, 2020.

Although the Ministry adopted the change regarding annual reports sought by the applicants, it did not impose an obligation on golf courses to report each application of pesticide within five days. The Ministry noted that reporting on use to the public was adopted as part of the cosmetic pesticide ban for the purpose of transparency, and not for the purpose of compliance. The Ministry stated that reporting on each use would not assist its inspection and compliance activities.

We concluded that the Environment Ministry reviewed this matter to the extent necessary; however, the Ministry did not complete the review within a reasonable time, and did not give the applicants notice of the outcome of the review within the legislated timeline (see **Section 6.16** of this report).

4. Review of Pesticides Monitoring in Surface Waters Near Golf Courses

What the Applicants Asked For

This is the second review regarding golf course pesticide use the Environment Ministry agreed to undertake in 2017. This application requested a review of the need for routine monitoring of surface waters for the pesticides that are commonly used at golf courses. In previous years, the applicant watershed foundation had monitored local streams near some golf courses and detected pesticides that could have toxic effects on aquatic life.

Review Undertaken by the Environment Ministry

In June 2017, the Environment Ministry determined that a review of the need for routine monitoring of pesticides in watercourses flowing from golf courses was warranted. The applicants were advised of the completion of the review on March 18, 2021. The Ministry advised the applicants that “a comprehensive, provincial monitoring requirement for surface waters around golf courses (by the Ministry or by Golf Course Operators) is not supported by the science at this time.”

In carrying out the review, the Ministry undertook an assessment of pesticides used in Ontario and Quebec, a literature review of pesticide monitoring in surface waters near golf courses, and a jurisdictional scan of ecological standards, and compiled the findings into a technical report that was provided to the applicants. The report found that routine monitoring for all golf courses is not required by law in other jurisdictions, but limited monitoring is required to attain certain golf course certification and is carried out in some watersheds in Ontario. The Environment Ministry routinely monitors surface waters for a limited number of pesticides in partnership with the Agriculture Ministry and conservation authorities.

The Ministry surveyed scientific studies that had monitored the occurrence and impact of golf course pesticides in watercourses, including the applicant's monitoring reports. It noted that the most comprehensive studies had been done in Quebec. These studies found that some pesticides, primarily fungicides (which are 90% of the pesticides used by golf courses in Canada), were regularly detected in nearby watercourses but that there was a low frequency of exceedances of ecological criteria, in the range of 0 to 1%. The Ministry reviewed pesticide use at golf courses over a five-year period and found that only two of the 39 pesticides used in Ontario might be of potential concern because of their occurrence, persistence or toxicity, and these were investigated further. The report concluded that the exceedances identified represented a worst case, from single events, and did not represent long-term ambient conditions. The report concluded: “Overall, the Ministry's review does

not support a conclusion that golf course pesticide use under Ontario regulatory conditions ... is causing significant risk to aquatic health.”

The Ministry admitted that there are knowledge gaps. The Ministry noted that relatively few comprehensive studies of the downstream ecological impacts due to golf course pesticides have been carried out, and that there are limitations to its understanding of impacts due to lack of analytical methods or water quality standards for some pesticides. However, the Ministry concluded that there was not enough evidence of concern to justify undertaking a special survey now. Rather, the Ministry stated that it will share its findings with its partners and track scientific research and monitoring results to “help address gaps in our knowledge and inform our research and monitoring programs.”

We concluded that the Environment Ministry reviewed this matter to the extent necessary; however, the Ministry did not complete the review within a reasonable time (see **Section 6.16** of this report).

5. Review of the Environmental Compliance Approval issued to the United Counties of Leeds and Grenville (ED-19 Landfill) (Two Applications)

What the Applicants Asked For

In 1998, the Environment Ministry issued both an approval under the *Environmental Assessment Act* and an environmental compliance approval under the *Environmental Protection Act*, permitting the United Counties of Leeds and Grenville to establish and operate a landfill in the Township of Edwardsburgh/Cardinal to meet the waste management needs of area municipalities. Known as the “ED-19 Landfill,” the planned facility was never built. However, because there were no expiry dates on the approvals, they remained valid. In recent years, the United Counties began publicly discussing contracting with a private firm to establish the landfill and transferring the approvals to that firm.

In September and December 2017, two applications were submitted to the Environment Ministry asking it to review the environmental compliance approval for the ED-19 Landfill. Two local residents submitted one application; the other was submitted by a local resident and a local group. The second application included detailed expert reports to support the applicants’ submissions.

The local group, among others, also submitted a request to the Environment Minister to exercise his discretion under the *Environmental Assessment Act* to reconsider and revoke the approval issued under that act.

The two applications for review raised similar concerns. They argued that there had been significant changes to conditions on the site over the almost 20 years since the approvals were issued. In addition, they noted, the environmental compliance approval did not comply with current landfilling standards and that the landfill design and environmental compliance approval conditions were incomplete, deficient and ineffective and would not prevent adverse environmental impacts. The applicants also requested that all future environmental assessment approvals have expiry dates.

Review Undertaken by the Environment Ministry

In November 2017 (for the first application) and March 2018 (for the second), the Environment Ministry determined that the public interest warranted a review of the environmental compliance approval. Also in November 2017, the Ministry suspended conditions in the environmental compliance approval that would allow the landfill to be established, pending the United Counties carrying out studies of current environmental conditions at the site to confirm that the conditions, assumptions and circumstances made in the environmental assessment were still applicable and that the proposed landfill design was still appropriate. The United Counties appealed this suspension order to the Environmental Review Tribunal, and the Ministry told the applicants it would not be able to complete the reviews until after the Tribunal proceedings were

resolved. The Tribunal's final decision was issued in January 2019 but the local group appealed the Tribunal's decision to the Minister; as a result, the Ministry extended the timeline for completion of the reviews to May 31, 2020.

In December 2019, the Environment Minister advised the United Counties, the local group and others that he had decided to revoke the *Environmental Assessment Act* approval for the ED-19 Landfill. The Minister based his decision on a review of the environmental assessment studies, changes in regulations and guidance, and the parties' submissions, and on the Ministry's technical evaluation of current environmental information, including information gathered on a site visit by Ministry staff. On March 16, 2020, the Director revoked the environmental compliance approval. The Ministry advised the applicants of the outcome of the reviews on June 3, 2020.

Subsequently, the *Environmental Assessment Act* was amended to provide that, if an approval does not include an expiry date, approval under the act will expire after 10 years if the undertaking has not been substantially commenced by that time. (As of September 2021, this provision had not yet been proclaimed in force.)

We concluded that the Environment Ministry reviewed this matter to the extent necessary; however, the Ministry did not meet the legislated timeline for providing a preliminary decision to one set of applicants, and did not give the applicants notice of the outcome of the review within the legislated timeline (see **Section 6.16** of this report).

6. Review of Hydrogeologically Unsuitable Sites for Landfilling

What the Applicants Asked For

In 2013, two organizations and an Indigenous community submitted an application to the Environment Ministry asking the Ministry to review and amend the *Environmental Protection Act* to add provisions to prohibit landfills on sites that are "hydrogeologically

unsuitable." The application also asked the Ministry to amend the act to prohibit landfill proponents whose applications have been refused approval because of a site's hydrogeological unsuitability (under the *Environmental Protection Act* or the *Environmental Assessment Act*) from re-applying for approval of a new or expanded landfill at the same or a nearby location.

The applicants argued that, by not prohibiting landfills on all such sites in the province, the existing regulatory regime "has allowed (if not emboldened) proponents to continue proposing new or expanded landfills at fractured bedrock locations or other hydrogeologically questionable sites."

The applicants' concerns related to groundwater impacts from contaminants leaching from landfills in such locations. To illustrate the environmental problems that can arise, the applicants pointed to their long history with the Richmond Landfill in Greater Napanee, which had been established on a site underlain by fractured bedrock. The applicants had opposed the proposed expansion of the Richmond Landfill, which was ultimately turned down by the Environment Ministry.

Review Undertaken by the Environment Ministry

In 2013, the Environment Ministry refused to undertake a review of the *Environmental Protection Act*, concluding that its "site-specific assessment process" allows it to have "sufficient understanding of the risks and suitability of the associated mitigation measures, to determine whether a particular site is suitable for the landfill proposed." The Ministry concluded that a "prohibition on landfill siting in statute is not required." Nevertheless, the Ministry undertook "to conduct a review of guidance materials related to the ministry's landfill approvals processes, to determine if changes could be made to further enhance the level of protection to human health and the environment."

To carry out the review, the Ministry formed a cross-divisional Technical Working Group, which compiled a jurisdictional review, comparing Ontario's processes, guidance and standards to

other jurisdictions in Canada, the United States and internationally. The Ministry also hired a consultant to undertake a review of the state of the science. These reports were provided to the applicants in March 2017. Based on these studies, the Technical Working Group recommended the development of supplemental technical guidance. There were internal Ministry delays in moving this work forward, but in December 2020, the Ministry advised the applicants that the review was completed, and provided them with a copy of the draft guidance document. The Ministry stated that it intends to post the draft guide on the Environmental Registry for public consultation. As of August 2021, the draft guide was undergoing further internal review and approval, and had not yet been posted.

In concluding the review, the Ministry found that:

- Ontario's geology is extremely variable and province-wide requirements are not supportable. Instead, the Ministry addresses groundwater protection and other environmental concerns on a site-specific basis through the environmental assessment and environmental compliance approval processes.
- "Ontario's approvals process, including site assessment, engineering design, monitoring and contingency plan requirements, is comparable to other leading jurisdictions ... with a robust scientific approach to landfill design and approval with an emphasis on environmental protection."
- The Reasonable Use Guideline protects groundwater in all hydrogeological settings; it indicates that disposal sites should be located where their impact can be limited and recognizes that there are hydrogeological environments less suitable for landfilling that would require extensive engineering mitigation controls to protect groundwater and surface water.

The draft guide does not contain new policies or requirements, but combines and summarizes information from a range of existing documents. The Ministry stated that the draft guide is intended to assist proponents in identifying hydrogeologically vulnerable environments and to "stress that

significant justification would be required to support development of a landfill in bedrock areas rather than opting for alternatives that would not require landfill development" in those areas. According to the Ministry, it will also promote early identification of hydrogeologically vulnerable environments during the environmental assessment process, which occurs before the environmental compliance approval process.

We concluded that the Environment Ministry reviewed this matter to the extent necessary; however, the Ministry did not meet the legislated timelines for providing a preliminary decision to the applicants, and did not complete the review within a reasonable time (see **Section 6.16** of this report).

Appendix 8: Appeals, Court Actions and Whistleblowers, 2020/21

Prepared by the Office of the Auditor General of Ontario

Appeals

Many laws provide individuals and companies with a right to appeal government decisions directly affecting them, such as denial of a permit they applied for or amendment of a permit or other approval that they had previously obtained. A few laws also give other people (“third parties”) the right to appeal decisions about instruments (permits, licences, approvals and other authorizations and orders) that are applied for by, or issued to, others (for example, under the *Planning Act*, to appeal a site-specific official plan amendment or zoning by-law amendment). The *Environmental Bill of Rights, 1993* (EBR Act) expands on these rights.

The EBR Act allows any resident of Ontario to seek “leave to appeal” (that is, permission to challenge) decisions on many types of instruments from an administrative tribunal. For example, a member of the public could use this right to challenge a decision by the Environment Ministry to allow an industrial facility to discharge contaminants into the air.

Ontario residents who wish to appeal a decision must first submit an application for leave to appeal to an independent appellate body, the Ontario Land Tribunal, within 15 days of the decision’s posting on the Environmental Registry. The tribunal will determine whether leave should be granted by applying the criteria in the EBR Act. To be granted leave to appeal, the applicant must show they have an interest in the matter and must also demonstrate that it appears “there is good reason to believe” that the decision was not reasonable and could result in significant harm to the environment. If an applicant is granted leave to appeal by the tribunal, the decision is “stayed” (that is, put on hold), and the matter can proceed to a hearing, after which the tribunal will make a decision.

The number of applications for leave to appeal filed under the EBR Act varies from year to year. In the five years prior to this reporting year, Ontarians submitted an average of about four per year. Of those,

one was withdrawn. Of the 21 decisions made during that period, leave was granted in two cases (10%).

Leave to Appeal Applications in 2020/21

In 2020/21, members of the public submitted three applications for leave to appeal, related to two Environment Ministry decisions, to the Environmental Review Tribunal, now the Ontario Land Tribunal (as seen in the table below).

In the first case, in December 2020, nearly 20 individuals, businesses and a residents’ association applied for leave to appeal the Ministry’s decision to issue an environmental compliance approval (“approval”) for a hauled sewage disposal facility in Emsdale, Township of Perry. The applicants argued that the Environment Ministry had made procedural errors when it posted the proposal notice for the approval on the Environmental Registry with the wrong location information and had also made substantive errors in approving the facility. The Environment Ministry noted that, during its review of the leave to appeal application, new information about a water supply well close to the site was brought to its attention, requiring further information and assessment. As a result, the ministry revoked the approval. This led the Environmental Review Tribunal to dismiss the application for leave to appeal.

In the second case, in January 2021, Tiny Township and the Federation of Tiny Township Shoreline Associations each applied for leave to appeal the Environment Ministry’s decision to renew a water taking permit issued to CRH Canada Group Inc. for its aggregate operation in the township. The Environmental Review Tribunal considered the two applications together and, in April 2021, granted both applicants leave to appeal the permit in its entirety. The Tribunal found that there was good reason to believe that no reasonable person, having regard to several principles in the Environment Ministry’s Statement of Environmental Values, could have made the

renewal decision and that there was good reason to believe that the decision could result in significant harm to local water resources. The appeal has been commenced by the applicants and was ongoing as of September 2021.

Direct Appeals in 2020/21

In 2020/21, six direct appeals related to four decisions that were subject to the EBR Act came to our Office's attention (as seen in the table below). These included:

- In June 2020, the Environment Ministry issued an environmental compliance approval for a hauled sewage disposal site in the village of Moose Creek. The instrument holder appealed a condition in the approval that limited the maximum rate of sewage spreading on land at the site. The status of this appeal is now listed as "closed."
- The Environment Ministry amended the environmental compliance approval of a company operating an animal by-product processing facility in Moorefield, in the Township of Mapleton, in October 2020. The approval holder appealed a number of conditions in the amended approval relating to odour management. Prior to the Environmental Review Tribunal's pre-hearing conference in February 2021, the parties agreed to settle some of the issues in dispute. At the pre-hearing conference, a municipality and two associations were granted presenter status. As of September 2021, this appeal was ongoing.
- A Director's Order issued under the *Environmental Protection Act* required five companies to plan and carry out work delineating the extent of ground-water impacts and assessing the potential risks of certain fuel-related contaminants to receptors in a residential neighbourhood in Oakville. Two of the companies appealed the Director's Order in October 2020. The Environmental Review Tribunal dismissed the appeal of one company on jurisdictional grounds. As of September 2021, the second appeal was ongoing; in April 2021, the tribunal issued an order staying some of the

requirements of the Director's Order pending the outcome of the appeal. The appellant was required to retain a consultant to design and submit a work plan to delineate the contamination, but was not required to carry out the delineation work until final resolution of the appeal.

- In June 2020, two companies appealed to the Local Planning Appeal Tribunal, now the Ontario Land Tribunal, under the *Planning Act* the Municipal Affairs Minister's approval with a modification of the Municipality of Greenstone's Official Plan Amendment No. 8. The Official Plan Amendment, together with a zoning bylaw amendment, would permit the development of lands for a gold mine. At the tribunal's first case management conference, held in February 2021, it granted party status to the municipality and to an Indigenous community. In May 2021, one of the appellants withdrew. The remaining parties reached a settlement and the appeal was dismissed by the Ontario Land Tribunal.

Appeal Notices on the Environmental Registry

The Environment Ministry is responsible for posting notices on the Environmental Registry about leave to appeal applications made by third parties. The Environment Ministry is also responsible for posting notices of any direct appeals (usually instrument-holder appeals) of decisions related to instruments that are subject to the EBR Act. For the details of our review of the Environment Ministry's compliance with this requirement, see **Section 6.13** of this report.

Lawsuits and Whistleblower Protection

The EBR Act provides rights for Ontarians to: take court action against anyone who contravenes an act, regulation or approval and thereby causes significant harm to a public resource; or to seek damages for environmental harm caused by a public nuisance. To bring an action for harm to a public resource, an Ontario resident must first apply to

Leave to Appeal Applications Filed Under the *Environmental Bill of Rights, 1993*, and Appeals of Instrument Decisions Subject to the *Environmental Bill of Rights, 1993* in 2020/21

Source of data: Environmental Registry and Ontario Land Tribunal

Subject	Appeal Type	Environmental Registry Number	Status/Outcome
Issuance of an environmental compliance approval for a hauled sewage (septage) disposal site in Emsdale, Township of Perry	Leave to Appeal	019-0808	Application dismissed by the Environmental Review Tribunal after the Environment Ministry revoked the environmental compliance approval
Ten-year renewal of a permit to take water for purposes of aggregate washing at an aggregate pit in the Township of Tiny (Two applications submitted)	Leave to Appeal	013-2282	Leave to appeal granted to both applicants by the Environmental Review Tribunal; appeal commenced; as of September 2021, this appeal was ongoing before the Ontario Land Tribunal
Issuance of an environmental compliance approval for a hauled sewage disposal site in Moose Creek	Appeal	019-1219	Tribunal case status listed as “closed”
Amendment to an environmental compliance approval for an animal by-product processing facility in Moorefield, Township of Mapleton	Appeal	019-1537	As of September 2021, this appeal was ongoing before the Ontario Land Tribunal
Director's Order requiring delineation of groundwater impacts and the potential risks of fuel-related contaminants	Appeal	019-1070	As of September 2021, this appeal was ongoing before the Ontario Land Tribunal
Minister's approval of Municipality of Greenstone Official Plan Amendment No. 8 to permit development of a gold mine	Appeal	019-1010	Settlement reached; zoning by-law amended; official plan amendment appeal dismissed by the Ontario Land Tribunal

a ministry to conduct an investigation under the EBR Act and either: not receive a response within a reasonable time; or receive a response that is not reasonable. The person bringing such an action must give public notice; this is done by delivering notice to the Environment Ministry, which is then required to post the notice on the Environmental Registry. The Environment Ministry advised our Office that it did not receive notice of any actions for harm to a public resource in 2020/21.

The EBR Act also provides protection for employees (“whistleblowers”) who suffer reprisals from their employers for exercising their environmental rights or for complying with, or seeking the enforcement of, environmental rules. The Ontario Labour Relations Board did not receive any cases related to the EBR Act in 2020/21.

Appendix 9: Letters from the Auditor General to Ministries Regarding *Environmental Bill of Rights, 1993 Matters*

Prepared by the Office of the Auditor General of Ontario

Letter to Deputy Minister of Municipal Affairs and Housing from Auditor General of Ontario, regarding Bill 197, the *COVID-19 Economic Recovery Act, 2020* (page 1 of 1)



Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

July 17, 2020

Ms. Kate Manson-Smith
Deputy Minister
Ministry of Municipal Affairs & Housing
College Park, 17th Flr, 777 Bay St.
Toronto, ON M7A 2J3

Dear Ms. Manson-Smith:

I am writing to you regarding Bill 197, the *COVID-19 Economic Recovery Act, 2020* (Bill 197).

Bill 197 is an environmentally significant proposal within the meaning of the *Environmental Bill of Rights, 1993* (EBR Act). It includes at least two schedules that propose to make environmentally significant changes to acts, including Schedule 17, which proposes to amend the *Planning Act* and the *More Homes, More Choice Act, 2019*, for which your Ministry is responsible.

Under section 15 and 1(6) (b) of the EBR Act, the Ministry of Municipal Affairs and Housing is required to post proposal notices on the Environmental Registry for a minimum of 30 days to allow the public to comment on environmentally significant proposals for acts being considered by the Ministry. The EBR Act requires a minimum of 30 days of public consultation before third reading. The EBR Act is not just about process but is intended to lead to better outcomes for the environment and Ontarians.

Under the *Auditor General Act* and the EBR Act, we are required to comment on acts of non-compliance with the EBR Act. The Ministry should post a proposal notice for Schedule 17 of Bill 197 on the Environmental Registry prior to third reading to provide for full public notice and comment on the environmentally significant aspects of the proposal.

I have also written to the Ministry of the Environment, Conservation and Parks, to indicate that under the EBR Act they are required to post a proposal notice on the Environmental Registry for the proposed amendments to the *Environmental Assessment Act* contained in Schedule 6 of Bill 197.

If you would like to discuss this further, please call me at [REDACTED].

Sincerely,

Bonnie Lysyk
Auditor General of Ontario

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- c. The Honourable Steve Clark, Minister, Ministry of Municipal Affairs and Housing
Alex Beduz, Chief of Staff, Ministry of Municipal Affairs and Housing
Serge Imbrogno, Deputy Minister, Ministry of Environment, Conservation & Parks
The Honourable Jeff Yurek, Minister, Ministry of the Environment, Conservation and Parks
Liam O'Brien, Chief of Staff, Ministry of the Environment, Conservation and Parks

Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 197, the COVID-19 Economic Recovery Act, 2020 (page 1 of 4)



Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

July 17, 2020

Mr. Serge Imbrogno
Deputy Minister
Ministry of the Environment, Conservation and Parks
College Park, 5th Floor, 777 Bay St.
Toronto, ON M7A 2J3

Dear Mr. Imbrogno:

I am writing to you regarding Bill 197, the *COVID-19 Economic Recovery Act, 2020* (Bill 197).

Schedule 6 of Bill 197 would make amendments to the *Environmental Assessment Act* that would significantly affect not only the environment and public participation rights, but also government transparency and accountability in environmental decision-making.

We note that the passing of Bill 197 would retroactively override the *Environmental Bill of Rights* process. Under the *Auditor General Act* and the *Environmental Bill of Rights, 1993* (EBR Act), we are required to comment on acts of non-compliance with the EBR Act. The override of the EBR Act using retroactive legislation is precedent setting and can undermine public confidence in government transparency and decision-making.

Based on the content of Bill 197, it is unclear whether the regulations when written will align with the recommendations made by our Office in our 2016 report on environmental assessment. These recommendations were intended to help achieve the objectives of the *Environmental Assessment Act*, which remain to provide for the protection, conservation, and wise management of Ontario's environment.

Purposes of the *Environmental Bill of Rights* and the *Environmental Assessment Act*

The purpose of the EBR Act is to better protect the environment by enabling Ontarians to participate in the government's decisions that affect the environment, and to ensure government transparency and accountability for its environmental decision-making. Likewise, the *Environmental Assessment Act* was designed to ensure the protection, conservation and wise use of the environment prior to proceeding with activities that could harm the environment. Public consultation provides government with more information to make better decisions, and supports government transparency and accountability.

These Acts are not just about process but are intended to lead to better outcomes for the environment and Ontarians.

No public consultation on Bill 197 under the EBR Act

Schedule 6 of Bill 197 makes significant changes to the province's approach to environmental assessments. This is an environmentally significant proposal that is subject to the EBR Act. The EBR Act requires the Ministry of the Environment, Conservation and Parks to consult the public for a minimum of 30 days before third reading on the Schedule 6 amendments.

As such, in order to comply with the EBR Act, the Environment Ministry should post Schedule 6 on the Environmental Registry prior to receiving third reading.

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Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 197, the COVID-19 Economic Recovery Act, 2020 (page 2 of 4)

Mr. Serge Imbrogno
Page 2
July 17, 2020

The practical effect of Schedule 6 on environmental assessments is unclear and dependent on the development and implementation of regulations. Removing Schedule 6 from Bill 197 and complying with the EBR Act—by tabling a separate bill and posting proposed accompanying regulations on the Environmental Registry—would not unreasonably delay the ultimate implementation of a new environmental assessment regime. Doing so would convey the government’s support for the EBR Act and meaningful public consultation on important environmental issues.

Public participation implications of proposed amendments to the environmental assessment process

- If the Bill 197 amendments are enacted, public participation requirements may be prescribed by regulation, but the bill provides no assurance that opportunities for public participation will be included in the new streamlined process, and no minimum requirements for public participation.
- Section 32 of the EBR Act is intended to avoid duplication in public participation by exempting projects that undergo public consultation through the existing *Environmental Assessment Act*. Bill 197 proposes to expand exempted projects to include those that follow a new streamlined process. However, without the regulations that would accompany Schedule 6 being available, it is unclear whether projects that follow the newly proposed streamlined process will be subject to any type of public participation.
- Under the existing *Environmental Assessment Act*, any person with environmental concerns about a specific project may request that a project that would normally go through a streamlined process be “bumped-up” to go through a more rigorous, comprehensive environmental assessment process. Bill 197 proposes to limit bump-up requests to those with potential impacts on Indigenous rights. However, there may be other reasons why a more rigorous, comprehensive environmental assessment process is warranted.

Implementation of recommendations in 2016 Environmental Assessment report

In our 2016 Environmental Assessment report, we made several relevant recommendations (see Attachment A). Based on our review of Bill 197, and because the accompanying regulations are not yet available, we are unable to confirm whether our recommendations will be implemented.

If you would like to discuss this further, please call me at [REDACTED].

Sincerely,



Bonnie Lysyk
Auditor General of Ontario

- c. The Honourable Jeff Yurek, Minister of the Environment, Conservation and Parks
Liam O’Brien, Chief of Staff, Ministry of the Environment, Conservation and Parks
Kate Manson-Smith, Deputy Minister, Ministry of Municipal Affairs & Housing
The Honourable Steve Clark, Minister, Ministry of Municipal Affairs and Housing
Alex Beduz, Chief of Staff, Ministry of Municipal Affairs and Housing

Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 197, the *COVID-19 Economic Recovery Act, 2020* (page 3 of 4)

Attachment A – Bill 197, Schedule 6 Proposed Amendments in Relation to the Most Relevant Recommendations from 2016 Environmental Assessment Report

Recommendations from 2016 Environmental Assessment Report	Bill 197, Schedule 6 Proposed Amendments	OAGO Comment
Recommendation 1: Review and update the <i>Environmental Assessment Act</i> to ensure that projects with the potential for significant negative impact are assessed, regardless of whether the project is initiated by the public or private sector. Recommendation 2: Review and clarify the intent of the <i>Environmental Assessment Act</i> regarding the types of plans and programs that must undergo an environmental assessment.	“Project” is redefined as an “enterprise or activity, or a proposal, plan or program in respect of an enterprise or activity.” A regulation—to be developed at a later date—will designate the types of projects that will be required to undergo an environmental assessment.	Bill 197 does not include information on the criteria that the Ministry will use to determine which projects will be designated, and whether private projects will be considered for designation.
Recommendation 3: Review and revise the criteria for determining whether a comprehensive or streamlined process is required to ensure that the thoroughness of the assessment is commensurate with the project’s risk and potential impact.	A regulation—to be developed at a later date—will prescribe which process must be followed for certain types of projects for which an environmental assessment is required.	Bill 197 does not include information on the criteria that the Ministry will use to determine whether projects must follow a comprehensive or streamlined environmental assessment process.
Recommendation 4: Clearly communicate the requirement to notify the Ministry of the start and completion of environmental assessments; and assess the appropriateness of penalties for project owners that do not adequately inform the Ministry at all required stages of an environmental assessment. Recommendation 5: Develop risk-based criteria to be used to determine which streamlined environmental	A regulation—to be developed at a later date—will establish a standard streamlined environmental assessment process.	Bill 197 does not include information on the nature and extent of the Ministry’s oversight role in streamlined environmental assessments.

Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 197, the *COVID-19 Economic Recovery Act, 2020* (page 4 of 4)

Recommendations from 2016 Environmental Assessment Report	Bill 197, Schedule 6 Proposed Amendments	OAGO Comment
assessments should be reviewed [by the Ministry].		
Recommendation 7: Improve the timeliness of its process for reviewing bump-up requests to ensure that its review does not cause unnecessary delays to projects. Recommendation 9: Clarify the criteria for ministerial decision-making regarding public requests for a comprehensive assessment or a public hearing; and assess whether to appoint an independent body to provide objective advice on project-specific and systemic issues as needed, especially for projects considered to significantly impact the environment.	The Minister will have the authority to require that a project undergo a comprehensive environmental assessment. Members of the public may request that a project that would normally require a streamlined assessment to undergo a comprehensive assessment only if the project may impact Indigenous rights.	It is unclear whether the proposed amendments in Bill 197 will address the issue regarding the timeliness of the Ministry's review of bump-up requests. The proposed amendments significantly narrows the criteria for making bump-up requests. However, there may be other reasons, beyond potential impacts on Indigenous rights, why a more rigorous, comprehensive environmental assessment process is warranted.

Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 229, the *Protect, Support and Recover from COVID-19 Act, 2020* (page 1 of 3)



Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

November 20, 2020

Mr. Serge Imbrogno
Deputy Minister
Ministry of the Environment, Conservation and Parks
College Park, 5th Floor, 777 Bay St.
Toronto, ON M7A 2J3

Dear Mr. Imbrogno:

I am writing to you regarding Bill 229, the *Protect, Support and Recover from COVID-19 Act, 2020* (Bill 229) that contains important environmentally significant amendments. It is in the public interest that these proposals be posted on the Environment Registry in accordance with the *Environmental Bill of Rights, 1993* (EBR Act). The relevant issues noted in our 2018 audit of the Niagara Peninsula Conservation Authority (NPCA) are also included in this letter for your consideration.

It is our Office's view that Schedule 6 of Bill 229 proposes significant amendments to the *Conservation Authorities Act* (CA Act) that would significantly affect the oversight and operations of conservation authorities.

Based on the content of Bill 229, we are concerned that many of the proposed amendments do not align with the objectives of the CA Act—for conservation authorities to further the conservation, restoration, development and management of natural resources in watersheds in Ontario. Some of the amendments also go against recommendations made by my Office in our 2018 special audit of the NPCA related to governance, controlling development in flood-and erosion-prone areas, and enforcement. These recommendations were accepted by the NPCA and your Ministry and were intended to help conservation authorities achieve the objectives of the CA Act. In fact, the NPCA has indicated to us, that in particular, they have seen positive changes resulting from their governance changes.

Governance of Conservation Authorities

Bill 229 amendments, if enacted, would require that conservation authority board members be municipal councillors. The amendments would also replace an unproclaimed section of the Act, which requires Board members to “act honestly and in good faith *with a view to furthering the objects of the authority*” with a requirement for Board members to “act honestly and in good faith and ... shall generally *act on behalf of their respective municipalities*.” This amendment essentially redirects Board members’ fiduciary duty from the conservation authority to the municipality they represent.

Many of the operational issues we identified in our 2018 special audit stemmed from the

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Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 229, the *Protect, Support and Recover from COVID-19 Act, 2020* (page 2 of 3)

/ 2

broader governance issue of Board members having the authority to generally act on behalf of their respective municipalities. We raised concerns that NPCA Board members who were elected officials (mayors and councillors), and whose municipal priorities include facilitating economic development in their municipalities, could be in actual or perceived conflict-of-interest situations because those priorities may not be consistent with those of the conservation authority. We highlighted instances where NPCA Board members had difficulties balancing their competing municipal and NPCA interests, compromising their ability to make objective decisions in the NPCA's best interest.

Controlling development in natural hazard areas

Bill 229 amendments would give the Minister of the Environment, Conservation and Parks the power to issue permits allowing development in or near watercourses, wetlands, erosion- and flood-prone areas, and along the Great Lakes shorelines. In our 2018 audit, we highlighted the importance of restricting development in these hazardous areas to protect people and prevent costly property and infrastructure damage.

Bill 229 amendments state that the Minister's decision shall be based on the same criteria that conservation authorities must use in deciding whether to issue a permit. These criteria include whether the activity is not likely to: affect the control of flooding, erosion, pollution, or the conservation of land; and create conditions that, in the event of a natural hazard, might jeopardize public safety or result in property damage. However, it is unclear how these criteria will be applied in the Minister's review without local watershed knowledge and expertise. This knowledge and expertise has been delegated to conservation authorities.

Enforcement

Amendments to the Act in 2017 included a provision that would have allowed conservation authority enforcement officers to issue stop work orders to individuals engaging in activities that may be or are in contravention of the CA Act. Eliminating this provision would limit the conservation authorities' ability to take progressive enforcement action to enforce the CA Act. In our 2018 audit, we highlighted the importance of taking timely and progressive action after conservation authorities receive reports of potential or actual violations of the Act.

No public consultation on Bill 229 under the *Environmental Bill of Rights, 1993*

The proposed amendments to the CA Act are environmentally significant. The *Environmental Bill of Rights, 1993* (EBR Act) requires that the Ministry consult the public about proposals for environmentally significant acts for a minimum of 30 days, and consider the comments received when making a final decision.

Your Ministry's Bulletin posted on the Environmental Registry (#019-2646) cited the exception in section 33 of the EBR Act to justify the lack of public consultation. The exception in section 33 is restricted to proposals that "form part of or give effect to a

Letter to Deputy Minister of the Environment, Conservation and Parks from Auditor General of Ontario, regarding Bill 229, the *Protect, Support and Recover from COVID-19 Act, 2020* (page 3 of 3)

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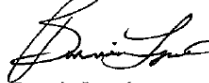
budget.” We note that Bill 229 is entitled: “An Act to implement Budget measures and to enact, amend and repeal various statutes,” which discloses that some parts of the bill are about implementing budget measures while other parts are not. It is my Office’s view that Schedule 6 is entirely independent of and does not form part of or give effect to the 2020 Budget. Two sections of the budget relate to conservation authorities. The first relates to continued participation in the National Disaster Mitigation Program, which appears to require no legislative amendments to carry out. The second is simply the annex, which describes, among other things, what is in the budget bill.

In any event, section 33 does not prevent your Ministry from electing to post the proposal for public consultation. In this regard, I wish to reemphasize the point I made earlier this week in the context of my latest report on the Operation of the *Environmental Bill of Rights*—that your ministry can do more in leading by example in furthering public participation and the purposes of the EBR Act.

For these reasons, I want to reemphasize that if the Ministry supports the intent of the EBR Act and intends to comply with it, we believe that the proposed amendments to the CA Act should be posted on the Environmental Registry for public consultation. Equally important, any such input should be objectively assessed prior to finalizing the amendments.

If you would like to discuss this further, please call me at [REDACTED]

Sincerely,



Bonnie Lysyk
Auditor General of Ontario

- c. The Honourable Jeff Yurek, Minister of the Environment, Conservation and Parks
- Liam O’Brien, Chief of Staff, Ministry of the Environment, Conservation and Parks
- The Honourable Rod Phillips, Minister of Finance
- Andrew Sidnell, Chief of Staff, Ministry of Finance
- Greg Orencsak, Deputy Minister, Ministry of Finance

Letter to Deputy Attorney General from Auditor General of Ontario, regarding Bill 245, the *Accelerating Access to Justice Act*, 2021 (page 1 of 2)



Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

March 9, 2021

Mr. David Corbett
Deputy Attorney General
Ministry of the Attorney General
McMurtry-Scott Building
11th Floor, 720 Bay Street
Toronto, ON M7A 2S9

Dear Mr. Corbett:

I am writing to you regarding Bill 245, the *Accelerating Access to Justice Act*, 2021 (Bill 245), which contains potentially environmentally significant amendments. It is our Office's view that Schedules 6 and 10 of Bill 245 propose amendments to tribunal practices and procedures that have the potential to affect environmental hearing and appeal rights. As such, it is in the public interest that these proposed amendments be posted for public consultation on the Environment Registry.

For example, it is our understanding that the proposed changes would affect the nature of public participation in Environmental Review Tribunal hearings (e.g., by limiting submissions from persons who are not a "party" to a proceeding to in writing only). Historically, unrepresented environmental groups and community members have participated in environmental hearings as "participants" or "presenters," having the opportunity to give oral evidence, submit documents and be questioned by the parties and by the Environmental Review Tribunal. This evidence can be useful to the tribunal when making decisions in the public interest. As the outcomes of tribunal decisions under EBR-prescribed acts can affect the environment, sometimes significantly, limiting the evidence heard by the amalgamated Ontario Land Tribunal could have significant environmental implications.

Furthermore, proposed changes to several EBR-prescribed acts would remove an opportunity for members of the public to appeal tribunal decisions to a Minister. Affected acts would include the *Environmental Protection Act*, *Mining Act*, *Nutrient Management Act*, 2002, *Ontario Water Resources Act*, *Pesticides Act*, *Resource Recovery and Circular Economy Act*, 2016, *Safe Drinking Water Act*, 2002, and *Toxics Reduction Act*, 2009. The elimination of such appeals could affect the public's ability to raise legitimate environmental and public policy concerns about a tribunal decision, thereby indirectly contributing to potential environmental impacts.

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Letter to Deputy Attorney General from Auditor General of Ontario, regarding Bill 245, the *Accelerating Access to Justice Act*, 2021 (page 2 of 2)

Mr. David Corbett
Page 2
March 9, 2021

We understand that Bill 245 was proposed by the Ministry of the Attorney General, which is not a prescribed ministry under the EBR. Nevertheless, if the government supports the intent of the EBR, we believe that the proposed amendments in Bill 245 that affect environmental hearing and appeal rights under EBR-prescribed acts should be posted on the Environmental Registry for public consultation. Equally important, any such input should be objectively assessed, and every reasonable step taken to ensure all comments are considered prior to finalizing the amendments.

If you would like to discuss this further, please call me at [REDACTED]

Sincerely,



Bonnie Lysyk
Auditor General of Ontario

c: Serge Imbrogno, Deputy Minister, Ministry of the Environment, Conservation and Parks
John Kelly, Deputy Minister, Ministry of Agriculture, Food and Rural Affairs
Stephen Rhodes, Deputy Minister, Ministry of Energy, Northern Development and Mines

Letter to Deputy Ministers of the Environment, Conservation and Parks; Agriculture, Food and Rural Affairs; and Energy, Northern Development and Mines from Auditor General of Ontario, regarding Bill 245, the *Accelerating Access to Justice Act*, 2021 (page 1 of 1)



Office of the Auditor General of Ontario
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March 10, 2021

Mr. Serge Imbrogno, Deputy Minister
Ministry of the Environment, Conservation
and Parks
College Park
5th Floor, 777 Bay Street
Toronto, ON M7A 2J3

Mr. Stephen Rhodes, Deputy Minister
Ministry of Energy, Northern Development
and Mines,
10th Floor, 77 Grenville Street
Toronto, ON M7A 2C1

Mr. John Kelly, Deputy Minister
Ministry of Agriculture, Food & Rural Affairs
11th Floor, 77 Grenville Street
Toronto, ON M7A 1B3

Dear Mr. Imbrogno, Mr. Rhodes and Mr. Kelly:

I am writing to you regarding Bill 245, the *Accelerating Access to Justice Act*, 2021 (Bill 245), which contains potentially environmentally significant amendments. It is our Office's view that Bill 245 proposes amendments to tribunal practices and procedures and appeal rights that have the potential to affect the environment. As such, it is in the public interest that these proposed amendments be posted for public consultation on the Environment Registry.

For example, proposed changes to several environmentally significant acts would remove the opportunity for parties (who may be members of the public) to appeal tribunal decisions to a Minister. Affected acts would include the *Environmental Protection Act*, *Mining Act*, *Nutrient Management Act, 2002*, *Ontario Water Resources Act*, *Pesticides Act*, *Resource Recovery and Circular Economy Act, 2016*, *Safe Drinking Water Act, 2002*, and *Toxics Reduction Act, 2009*. The elimination of such appeals could affect the public's ability to raise legitimate environmental and public policy concerns about a tribunal decision, thereby indirectly contributing to potential environmental impacts.

Although it is the Ministry of the Attorney General (a non-prescribed ministry) that introduced Bill 245, your ministries administer the affected acts. In keeping with the purposes of the EBR, we believe that the proposed amendments in Bill 245 that affect environmental appeal rights under these environmentally significant acts should be posted on the Environment Registry for public consultation. I encourage you to work with the Ministry of the Attorney General in this regard. Equally important, any such input should be objectively assessed, and every reasonable step taken to ensure all comments are considered prior to finalizing the amendments.

If you would like to discuss this further, please call me at [REDACTED].

Sincerely,

Bonnie Lysyk
Auditor General of Ontario

c.: Mr. David Corbett, Deputy Attorney General, Ministry of the Attorney General

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Letter to Deputy Attorney General from Auditor General of Ontario, regarding Bill 245, the *Accelerating Access to Justice Act*, 2021 (page 1 of 1)



Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

March 23, 2021

Mr. David Corbett
Deputy Attorney General
Ministry of the Attorney General
McMurtry-Scott Building
11th Floor, 720 Bay Street
Toronto, ON M7A 2S9

Dear Mr. Corbett:

Thank you for your response to my March 9th letter regarding Bill 245, the *Accelerating Access to Justice Act*, 2021 (Bill 245).

In your letter, you indicated that the legislative process provides members of the public with significant opportunity to comment on Bill 245. While the legislative process does provide opportunity for public consultation, it does not replace or reproduce the same opportunities provided for public consultation as those provided in the *Environmental Bill of Rights* (EBR Act).

The EBR Act requires prescribed ministries to provide a minimum of 30 days for the public to comment on environmentally significant proposals, but also requires ministries to consider providing more time "to permit more informed public consultation" on proposals based on how complex they are, the level of public interest, or other factors warrant more time for informed public input.

It is our understanding that Bill 245 was referred to the Standing Committee on the Legislative Assembly on March 2, 2021, with public hearings held nine and 10 days later (March 11 and March 12, 2021), and written submissions accepted until March 12, 2021.

Further, under the EBR, the responsible ministry must then consider the public's comments when making its final decision, and post a decision notice explaining the effect of any public comments on the decision.

In keeping with the purposes of the EBR, it would be reasonable that proposed amendments in schedule 6 and 10 of Bill 245 be posted on the Environmental Registry for public consultation. Equally important, is that any input could be assessed, and every reasonable step taken to ensure all comments are considered prior to finalizing the amendments.

If you would like to discuss this further, please call me at [REDACTED].

Sincerely,

Bonnie Lysyk
Auditor General of Ontario

c: Serge Imbrogno, Deputy Minister, Ministry of the Environment, Conservation and Parks
John Kelly, Deputy Minister, Ministry of Agriculture, Food and Rural Affairs
Stephen Rhodes, Deputy Minister, Ministry of Energy, Northern Development and Mines

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Appendix 10: Ministry Responses to Recommendation 8

Prepared by the Office of the Auditor General of Ontario

Below are the responses provided by the prescribed ministries to Recommendation 8, found in section 5.2 of this report.

Recommendation 8

To identify and correct non-compliance with, and ineffective implementation of, the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that every ministry that is prescribed under the EBR Act review its existing processes and procedures, if any, for complying with the EBR Act and, to the extent that it has not already done so:

- develop and implement processes and procedures to train and update all relevant staff on the ministry's responsibilities under the EBR Act and when the EBR Act applies;
- establish, implement, and periodically review and update documented processes and procedures for complying with and implementing the EBR Act; and
- implement processes for monitoring the ministry's compliance with the EBR Act, and take corrective measures to address and prevent any non-compliance with the EBR Act.

Ministry	Response
Ministry of the Environment, Conservation and Parks	The Ministry agrees that compliance with the EBR Act is important. The Ministry works annually with the Auditor General to review compliance with the EBR Act and identify areas where processes, procedures, training, monitoring, and compliance could be improved, and will continue to do so.
Ministry of Northern Development, Mines, Natural Resources and Forestry (Natural Resources and Forestry)	The Ministry agrees with this recommendation and is committed to full compliance with its legal obligations under the EBR Act. The Ministry's internal guidance and training provide direction to staff on the processes and procedures to comply with the EBR Act. This includes the best practice of describing the environmental effects in each notice where possible. The Ministry will review its internal guidance and training materials to assess the need for any updates, including compliance measures.
Ministry of Northern Development, Mines, Natural Resources and Forestry (Northern Development and Mines)	The Ministry agrees with this recommendation and is actively committed to full compliance with its legal obligations under the EBR Act. The Ministry's internal guidance and training provide direction to staff on the processes and procedures to comply with the EBR Act. This includes the best practice of describing the environmental effects in each notice where possible. The Ministry will review its internal guidance and training materials to assess the need for any updates, including compliance measures.
Ministry of Energy	The Ministry agrees with this recommendation and is actively committed to full compliance with its legal obligations under the EBR Act. The Ministry's internal guidance and training provide direction to staff on the processes and procedures to comply with the EBR Act. This includes the best practice of describing the environmental effects in each notice where possible. The Ministry will review its internal guidance and training materials to assess the need for any updates, including compliance measures.

Term	Description
Ministry of Municipal Affairs and Housing	The Ministry agrees with this recommendation. The Ministry will continue to review its training and procedures to: • train and update all relevant staff on the Ministry's responsibilities under the EBR Act and when the EBR Act applies; • establish, implement, periodically review and update documented processes and procedures for complying with and implementing the EBR Act; and • implement process for monitoring the Ministry's compliance with the EBR Act and take corrective measures to address and prevent any non-compliance with the EBR Act.
Ministry of Transportation	The Ministry welcomes this recommendation and acknowledges the importance of this recommendation to ensure effective implementation of the EBR Act. The Ministry has standards, processes and awareness training in place and periodically conducts reviews and updates as required.
Ministry of Government and Consumer Services	The Ministry acknowledges the importance of the EBR Act and agrees with the Auditor General's recommendation. The Ministry has undertaken a review of its current processes and practices.
Technical Standards and Safety Authority	TSSA will undertake a review of its existing processes and procedures for complying with the EBR Act, including instituting a periodic review of those processes and procedures and implementing processes for monitoring compliance with the EBR Act. The timeframe for implementation is two years.
Ministry of Agriculture, Food and Rural Affairs	The Ministry agrees that compliance with and effective implementation of the EBR Act is important to give the public the opportunity to participate in government decision-making. In support of the Ministry's commitment to its requirements under the EBR Act, the Ministry will: • develop a process to train and update all relevant staff on the Ministry's responsibilities under the EBR Act and when the EBR Act applies; • establish, implement, review and update processes and materials for complying with the EBR Act; and • implement processes for monitoring compliance and take corrective measures to address non-compliance with the EBR Act.
Ministry of Heritage, Sport, Tourism and Culture Industries	The Ministry appreciates this recommendation and recognizes that Ontario's EBR Act has an important role in provincial environmental protection and conservation. The Ministry will ensure its processes and procedures continue to comply with the EBR Act. The Ministry is working towards developing, implementing, and reviewing additional processes and procedures to ensure its ongoing compliance with the EBR Act, including training and updating all relevant staff on the Ministry's responsibilities under the EBR Act and when the EBR Act applies.
Ministry of Health	The Ministry accepts this recommendation. Ministry staff will work with the Ministry of the Environment, Conservation and Parks to ensure a consistent approach, where appropriate, for low-volume EBR ministries like the Ministry of Health.
Ministry of Long-Term Care	The Ministry accepts this recommendation. Ministry staff will work with the Ministry of the Environment, Conservation and Parks to ensure a consistent approach, where appropriate, for low-volume EBR ministries like the Ministry of Long-Term Care.

Term	Description
Ministry of Infrastructure	The Ministry agrees with this recommendation. The Ministry has established processes and procedures for compliance with and implementation of the EBR Act and will periodically review them. The Ministry will look to develop processes for monitoring the Ministry's compliance with the EBR Act and take measures to address non-compliance.
Ministry of Economic Development, Job Creation and Trade	The Ministry agrees with the Auditor General's recommendation, and is committing to complying with the recommendation within one year. In October 2021, the Ministry made our internal guidance document about the EBR Act available to all Ministry staff through a dedicated policy toolkit intranet page. Staff from the Corporate Policy and Coordination Unit will regularly work with divisions to ensure compliance with the EBR (e.g., by providing advice, guidance and learning resources on the EBR Act requirements). The Ministry will periodically review and update documented processes and procedures to ensure compliance with the EBR Act, as well as continue to monitor the Ministry's compliance with the Act and ensure that non-compliance is prevented.
Ministry of Indigenous Affairs	The Ministry is presently working with the Ministry of the Environment, Conservation and Parks to execute new training sessions for Ministry staff on their responsibilities under the EBR Act and how the EBR Act applies to their work. The Ministry also plans to seek the Ministry of the Environment, Conservation and Parks' support in updating existing training materials. The Ministry is beginning the process of updating its Statement of Environmental Values (Statement) and will include the revised Ministry name at that time. The Ministry will also continue reviewing and revising the Internal Staff Guide. This Guide helps staff determine when their work may be subject to the EBR Act and require Statement consideration and posting on the Environmental Registry. This Guide is to be included as part of new staff orientation packages and is shared periodically when it is revised. The Ministry is continuing the process of revising its Statement of Environmental Values Consideration Form (the Form) to be used during proposal development. The Form requires staff to consider certain principles of environmental protection as outlined in the Ministry's Statement in the context of the proposal/decision. Staff must provide a rationale describing how each principle was considered. If a principle is not applicable, staff must outline why it is not applicable to the proposal/decision or why it is not possible to take it into account at this time.
Ministry of Education	The Ministry supports the recommendation: • The Ministry will review and update the existing staff-training processes and procedures on the Ministry's responsibilities under the EBR Act and monitor its implementation; • The Ministry will review the already established and implemented EBR Act compliance processes and procedures and continue to monitor; • The Ministry will review and update the existing compliance-monitoring processes to prevent any non-compliance with the EBR Act.
Ministry of Labour, Training and Skills Development	The Ministry will develop processes and procedures for complying with this recommendation and will complete this work within a two-year timeline.
Treasury Board Secretariat	The Ministry will ensure that relevant ministry staff are aware of the Ministry's EBR responsibilities. The Treasury Board Secretariat has prepared a draft, documented, internal process and is seeking review and guidance from the Ministry of the Environment, Conservation and Parks before finalizing and implementing this guidance.



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Office of the Auditor General of Ontario

Value-for-Money Audit: Hazardous Spills



November 2021

Hazardous Spills

1.0 Summary

In November 1985, divers discovered a dark, tarry mass of hazardous chemicals the size of a basketball court at the bottom of the St. Clair River, which forms part of the international border between Ontario and Michigan, and is a drinking water source for about 160,000 people. The toxic cocktail, eventually known internationally as “The Blob,” was created by a series of chemical spills from companies along the river’s shoreline. This included the 1985 Dow Chemical spill in Sarnia of 11,000 litres of a hazardous dry-cleaning solvent with the potential to cause cancer. Removing the contaminants from the river bed took millions of dollars and years of remediation work. Since the spill, the Ministry of the Environment, Conservation and Parks (Environment Ministry) amended the *Environmental Protection Act* to require spillers to prevent, report and clean up spills to protect Ontario from the environmental and human health impacts of hazardous spills. More than 35 years later, Ontario experiences about 8,000 spills per year, some of which injure workers, kill wildlife and pollute the air, land and water. Added to the short-term effects of these spills are unknown long-term and cumulative effects.

A hazardous spill is a discharge of a substance to air, land or water that can pose a threat to human health and/or 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. Spills can occur due to malfunctioning equipment, human error and/or external factors, such as poor weather, that contribute to vehicle accidents and damage to buildings and infrastructure. 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 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/or 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/or the environment, and 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 them of the impacts on their local community and across Ontario. Information is not disclosed on the specific locations where spills occur, who caused the spills, or the specific impacts the spills have had or may have on human health and/or the environment. Further, the information that is disclosed is not reported in a timely manner. Despite timely public reporting requirements under the *Management Board of Cabinet Act*, the Environment Ministry waited until May 31, 2021, while we were conducting our audit, before publicly reporting information on spills that occurred after 2013 and up to 2020.

The Environment Ministry is also not recovering its costs from responding to spills, resulting in taxpayers and not the spillers 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. In these three instances, the Environment Ministry did not attempt to recover at least 47% of the total \$1.3 million it incurred. When looking at just 30 of these 73,000 spills (0.04%) where the Environment Ministry did not attempt to recover any costs from the spiller, we estimated that the spills had cost Ontarians \$4.5 million in staff time, laboratory tests and other expenses during spills response. The total amount of unrecovered costs incurred by the Environment Ministry responding to spills is potentially tens of millions of dollars more. However, this unrecovered amount cannot be estimated because the Environment Ministry does not track all costs.

With respect to the prevention of spills, we found 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. Without the most frequent causes of spills requiring this form of planning, the Environment Ministry cannot effectively protect the environment from spills.
- **The Environment Ministry does not verify that entities with requirements for spill prevention and contingency planning have effective plans in place.** The Environment Ministry does not ensure planning to prevent and respond to spills has occurred and is documented. Where this planning is documented, the Environment Ministry does not review or approve plans to ensure that they comply with best practices in preventing and responding to spills.

With respect to responding to spills when they happen, we found the following:

- **The Environment Ministry is not informed of spills in a timely manner.** 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 spills 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. We also reviewed a sample of 110 spills between 2010 and 2020, and

found that 45 (or 41%) were never reported to the Spills Action Centre directly by the spiller, as required by the Act. The Environment Ministry learned of these 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.**

The Environment Ministry relies on the spiller to perform its own analysis of soil and water samples, and submit proof to the Environment Ministry that the natural environment has been sufficiently restored. This means that spillers are left to police themselves and ensure effective environmental remediation, with little risk of Environment Ministry enforcement action. In 2017, the Environmental Review Tribunal identified that it is completely appropriate for the Environment Ministry to conduct independent sampling to verify the accuracy of spillers' sampling results and to reach its own conclusions on what was needed for cleanup.

- **The Environment Ministry is not fully using its powers to ensure that spills are promptly remediated.** Under the Act, the Environment Ministry has the power to clean up spills and then recover the remediation costs from the spiller. In a sample of 110 out of 40,349 spills between 2016 and 2020 that the Environment Ministry assessed as having medium to high risks to the environment and human health, most were remediated promptly by the spiller and/or a contractor. However, we identified five where the spiller initially refused, could not be found, or was unprepared to remediate the spill, delaying timely cleanup. In all these spills, the Environment Ministry did not step in to ensure timely remediation, resulting in further risks to the environment and to human health.

Environment Ministry oversight and regulation of activities that may cause environmentally harmful spills requires a strong enforcement regime. However, we found that the Environment

Ministry's approach to enforcement was lenient and relied mostly on asking violators of environmental laws and regulations to comply, instead of using its powers to confirm full compliance by a required date. Other specific concerns with the Environment Ministry's enforcement included:

- **The Environment Ministry does not properly record or analyze data to identify the highest-risk sources and causes of spills that can have negative impacts to human health and/or the environment.** This means that it cannot target its limited inspection resources on the areas that are likely to provide the most benefit or adjust its regulations and policies to more effectively reduce the impacts from spills.
- **The Environment Ministry is decreasing its proactive inspection and enforcement of environmental requirements, such as for spill prevention, because of staffing reductions.** This is despite the fact that 42% of the Environment Ministry's proactive inspections identify non-compliance with these requirements. Although the Environment Ministry said it is focusing on higher-risk inspections and investigations that can be more time consuming, inspections are identifying fewer total instances of non-compliance and investigations are resulting in fewer total convictions. This reduction in inspection and enforcement work will further limit the Environment Ministry's ability to identify weaknesses in spill prevention plans and correct non-compliance with other environmental requirements to prevent spills before harm can come to human health and/or the environment.
- **Environmental penalties cannot be used to hold polluters accountable for the most common causes of spills.** Environmental penalties are a financial penalty used to protect air, water and land, and hold polluters accountable for environmental harm. They are intended to encourage quick and effective compliance, and can be applied for not reporting spills. However, between 2016 and 2020, those responsible for over 94% (38,124 of 40,349) of reported spills could not be

penalized. This is because penalties apply only to certain facilities in nine industrial sectors (for example, petroleum, iron and steel, and metal mining). The only penalties that apply to spills to air are for specific petroleum facilities in Sarnia that discharge sulphur dioxide. However, these penalties are much lower than similar penalties in California. The 21 sulphur dioxide-related penalties that the Environment Ministry issued in 2019 and 2020 amounted to \$1.6 million, far less than the nearly \$14.7 million that would have been applied in southern California based on the same quantity of sulphur dioxide.

- **The Environment Ministry allows repeat offenders to continue operating because of an ineffective compliance strategy.** Despite the Environment Ministry's policy that allows it to revoke the environmental approvals of entities that repeatedly violate environmental laws and regulations, the Environment Ministry has only ever revoked two companies' environmental approvals. The Environment Ministry identified to our Office 54 companies as repeat offenders, with 41 of the 54 continuing to operate without being brought into compliance as of October 2021. For example, GFL Environmental (GFL), a waste management company, had 78 reported spills between 2016 and 2020. Although Environment Ministry staff noted that the company "regularly contravenes the acts, regulations and legal documents overseen by the ministry," the Environment Ministry continues to grant GFL new environmental approvals allowing it to expand its operations. For example, the Environment Ministry found that GFL was contaminating surface water in the township of North Stormont by repeatedly spilling leachate (liquid passed through a landfill) at concentrations resulting in 10% fish mortality, violating its environmental approval. The Environment Ministry also found that GFL was falsely reporting test results showing 0% fish mortality. Despite this, the Environment Ministry

approved the expansion of the landfill where this was occurring. The Environment Ministry relies on staff judgment and does not yet have a policy to ensure a consistent consideration of non-compliance prior to issuing environmental approvals.

This report contains 13 recommendations, with 29 action items, to address our findings.

Overall Conclusion

The Ministry of the Environment, Conservation and Parks (Environment Ministry) does not have effective systems and processes in place to prevent or reduce the risks and negative impacts of hazardous spills to the environment and human health. Specifically, it does not require prevention and response planning for the most common causes of hazardous spills, such as pipelines, nor does it ensure this type of planning is being effectively performed by the companies required to do so.

The Environment Ministry is also not ensuring that sufficient action is taken to prevent, eliminate or reduce adverse effects resulting from hazardous spills by spillers. It is not informed in a timely manner of all such spills and it is not independently confirming that spillers have properly remediated the spills they caused. Further, the Environment Ministry does not report to the public on hazardous spill events in a timely manner nor recover all reasonable costs it incurs from responding to these spill events, which not only burdens taxpayers but reduces the motivation for spillers to prevent spills.

When the laws and regulations the Environment Ministry does have in place are violated, the Environment Ministry's enforcement regime is not strong enough to bring entities into compliance in a timely manner or deter repeat violations. The Environment Ministry requires stronger spill prevention, response, cost-recovery and enforcement systems to protect the health of Ontarians, as well as Ontario's wildlife, air, land and water from hazardous spills.

MINISTRY OVERALL RESPONSE

Protecting the health of Ontarians and the environment is our top priority and we take spills very seriously. In the event of a spill or related emergency, the Ministry of the Environment, Conservation and Parks quickly assesses any environmental impacts and ensures the responsible parties clean up the spill and restore the environment.

We agree with the Auditor General that public transparency and timely information about spills in Ontario is important. That is why we recently (in May 2021) introduced a user-friendly online reporting tool that allows the public to report potential pollution incidents quickly and receive real-time status updates on the incident after it has been reported.

The Ministry appreciates the areas that the Auditor General has highlighted, and we are committed to continuous improvement to ensure that we address spills in a timely, effective, and transparent way. We are exploring ways to improve the environmental monetary penalties program to include more environmental contraventions and cover more members of the regulated community. We are committed to reviewing and developing new guidance documents, developing performance metrics, and improving data integrity and transparency, as appropriate.

structure, vehicle or other container that is abnormal in quality or quantity in light of all the circumstances of the discharge. “Abnormal in quality or quantity” acknowledges that substances may be released as part of normal operations for a variety of activities, and these may be permitted through regulations or environmental approvals. Therefore, approved discharges that occur as part of normal operations are not considered spills. Further, some industrial activities’ spills are a normal part of operating, and mechanisms are in place to control the substances spilled, preventing them from entering and impacting the natural environment. The Ministry of the Environment, Conservation and Parks (Environment Ministry) does not require industry to report many of these types of contained spills and are thus not the subject of this report.

Environmental approvals from the Environment Ministry are required for businesses that release contaminants into air, land or water. The Act prohibits persons from discharging a contaminant into the natural environment if the discharge causes or may cause an adverse effect. Spills and other sources of pollution contribute to adverse effects in Ontario, including:

- 800 annual worker injuries with lost work time due to exposure to chemicals and chemical products, and reported to the Workplace Safety and Insurance Board;
- 600 annual cancer cases per year from local sources of air pollution estimated by Public Health Ontario;
- 6,600 annual premature deaths from local sources of air pollution estimated by Health Canada; and
- \$5 billion annual economic costs from local sources of air pollution, including health care and lost productivity estimated by Health Canada.

In 1985, Ontario implemented amendments to the *Environmental Protection Act* to establish spill remediation requirements and a spill reporting call centre (Spills Action Centre) following the Dow Chemical pipeline spill in 1985 in Sarnia of 11,000 litres of perchloroethylene (a dry-cleaning chemical with the potential to cause cancer) into the St. Clair River. The

2.0 Background

2.1 Overview

A hazardous spill is a discharge of a substance to air, land or water that, when present in high enough quantities and concentrations, poses a threat to human health or the environment.

The *Environmental Protection Act* (Act) defines a “spill” as a discharge or release of a pollutant into the natural environment from or out of a

St. Clair River is a drinking water source that supplied water to about 160,000 people in Ontario and Michigan at the time of the spill. Perchloroethylene is hazardous in concentrations of two parts per million and was found to be in concentrations of over 100,000 parts per million in the river. The company removed approximately 80% of the contaminant immediately after the spill in August, while the rest settled at the bottom of the river and absorbed other toxic materials, before cleanup resumed in November.

In response to subsequent numerous spills in the St. Clair River in 2003 and 2004, Ontario amended the *Environmental Protection Act* in 2005 and introduced accompanying regulations in 2007 to establish environmental penalties and requirements for spill

prevention and contingency plans. These spills included a 2004 Imperial Oil heat exchanger leak of 160,000 litres of toxic methyl ethyl ketone and methyl isobutyl ketone into the St. Clair River, which are chemicals that can cause severe eye and skin irritation and were found to be in concentrations harmful to local fish. The Environment Ministry found companies had not taken steps to prevent spills despite threat of prosecution, and intended that the new penalties and requirements would encourage “companies to do more to prevent spills and to ensure fast, effective cleanup when mishaps do occur.”

See **Figure 1** for a partial account of spills in the Sarnia and St. Clair River area, and their cumulative impacts on the local First Nations community. Other

Figure 1: Examples of Cumulative Impacts from Spills on a Local Community

Prepared by the Office of the Auditor General of Ontario

Health and Environmental Impacts in Chemical Valley

With over 60 industrial plants, “Chemical Valley” in Sarnia, Ontario, accounts for approximately 40% of Canada’s chemical industry. Between 2010 and 2020, there have been 796 spills reported in Sarnia. According to a 2011 report by the World Health Organization, the people of Sarnia breathe some of the most polluted air in all of Canada.

In 2014, Plains Midstream Canada reported a spill of crude oil condensate, as local air monitoring in Sarnia measured one sample in a downwind location of 50 parts per billion of benzene in the air—22 times higher than the provincial standard that was subsequently set in 2016. The sample was a 10-minute air sample and the standard is based on an annual average. Benzene exposure has harmful effects on bone marrow and red blood cell production and has been linked to higher incidence of leukemia and other cancers in people. Ministry of the Environment, Conservation and Parks (Environment Ministry) staff did not inspect the site at the time of the spill.

That same year, Imperial Oil spilled 151 kilograms of hydrocarbon oil to the ground and 470 kilograms of hydrocarbon gas (a fuel source—examples are natural gas or propane) into the air in Sarnia, leading nearby residents to report burning eyes, dizziness and nausea. The spill was reported to the Environment Ministry’s Spills Action Centre, and within five hours of the spill, an all-clear order was issued as no unsafe levels were detected by local air monitoring systems. The Environment Ministry fined Imperial Oil \$812,000. According to media reports, only four spills reported in the Sarnia region between 2013 and 2017 have resulted in charges laid by the Environment Ministry, despite hundreds of spills reported.

The Aamjiwnaang First Nation, located near Sarnia and adjacent to Chemical Valley, has reportedly been impacted by the cumulative pollution and emissions in this area. Members of this community report health impacts including asthma, reproductive effects, learning disabilities and cancer. People also report significant impacts on their mental health, including fearing the outdoors and anxiety regarding unreported environmental incidents and a lack of transparency from industry and government.

A 2006 survey of 411 Aamjiwnaang band members identified releases of chemicals and spill incidents as their primary concern. The most common health issue experienced among the Aamjiwnaang was respiratory problems, which reportedly affected about 40% of those surveyed. Other reported issues included asthma (17% of adults, 22% of children under 16), severe chronic headaches (26% of adults, 9% of children), learning and behavioural problems (23% of children), attention deficit hyperactivity disorder (13% of children), persistent skin rashes (16% of adults, 27% of children), miscarriages or stillbirths (experienced by 39% of women), kidney problems (11%) and thyroid problems (5%).

Since the Aamjiwnaang First Nation air quality monitoring station was established in 2008, the annual average levels of sulphur dioxide have been reduced by 55%, total sulphur by 65%, nitrogen dioxide by 57% and fine particulate matter (less than 2.5 micrometres in diameter) by 32%. Benzene levels have remained stable.

Following media coverage of spills, including those described in this figure, the Environment Ministry began planning the Sarnia Area Environmental Health Project in 2017. This includes three components: Air Exposure Review, Plants Study, and Environmental Stressors Review. The project is currently under way with expected completion in 2022. The Ministry’s Environment Plan states that the goal of the project is “to help address concerns about air pollution and other environmental stressors from local industries in the Sarnia area.” Both spills and approved discharges of pollutants come under the project’s purview.

Indigenous communities can also be affected by spills. See **Appendix 1** for a list of First Nations reserves that have recently experienced the most nearby spills.

Figure 2 shows key steps in the spill prevention, response and remediation used to reduce the impacts from spills on human health and/or the environment.

2.2 Reported Spills in Ontario

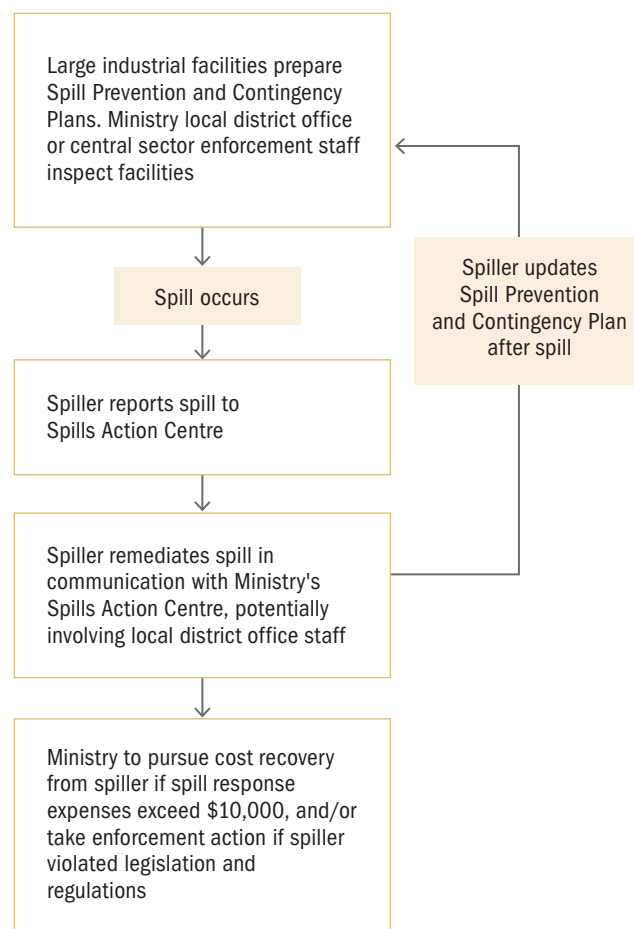
More than approximately 8,000 spills occur in Ontario each year – not including those that may go unreported and therefore unaddressed by the Environment Ministry.

Hazardous spills are discharges of substances to air, land or water that pose a threat to human health or the environment when present in high enough quantities and concentrations. The Environment Ministry assessed that 37,573 of 40,349 spills reported between 2016 and 2020 potentially had negative impacts on human health and/or the environment, based on initially reported information (see **Appendix 2**). **Appendix 3** lists the 14 spills in 2020 the Environment Ministry assessed as having an impact on human health. Based on available data, between 2016 and 2020, 36% of spills in Ontario occurred due to human error, and 21% were due to equipment failure. Other spills can be caused by external factors, such as poor weather, that contribute to vehicle accidents and damage to buildings and infrastructure (**Figure 3**).

In some industrial operations, spills are a normal part of operating, and mechanisms are in place to control the substances spilled and prevent them from entering and impacting the environment. For example, electrical utilities that distribute electricity to cities and towns use transformers to reduce the voltage of the electricity to a safe level for home and office use. These transformers use oil for insulation and cooling, and they occasionally spill this oil. However, these spills can be less than 100 litres, contained onsite and cleaned up immediately without impacting human health or

Figure 2: Key Steps and Environment Ministry Responsibilities with Hazardous Spills

Prepared by the Office of the Auditor General of Ontario



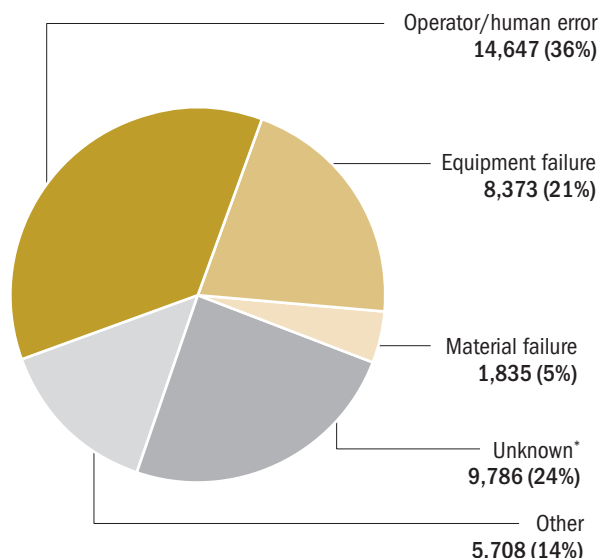
the environment. As these spills are a normal part of the utilities' operations, mechanisms and plans are in place to contain and clean up the spill immediately. These spills do not have to be reported to the Environment Ministry and are not classified as hazardous spills as discussed in this report. However, if these spills are not contained, surpass 100 litres, or affect human health or the environment, they would have to be reported and therefore would be considered hazardous spills for the purposes of this report.

2.2.1 Spills to Air

Hazardous spills include the release into the air of substances that can have negative impacts on human health and/or the environment (**Figure 4**). The most

Figure 3: Causes of Spills, 2016–2020

Source of data: Ministry of the Environment, Conservation and Parks



Note: The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

* Unknown consists of spills with incident report form field "unknown," "not applicable" or blank, due to data management issues noted in [Section 4.1](#).

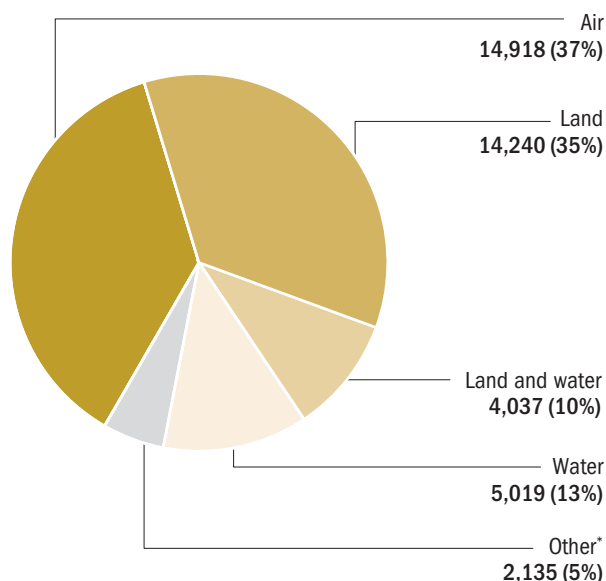
common of these is natural gas, which accounted for 12,294 or 30% of reported spills between 2016 and 2020 (**Figure 5**). Natural gas is transported to homes and businesses by pipelines, and was the source of 9,616 or 24% of reported spills (**Figure 6**). Natural gas is composed primarily of methane, which is a highly potent greenhouse gas. Natural gas exposure can cause symptoms of hypoxia (headache, decreased vision, fatigue, shortness of breath and loss of consciousness) and even asphyxiation in humans; it is also flammable and highly explosive. A 2003 explosion in Etobicoke, caused when an Enbridge natural gas pipeline was damaged by construction equipment, killed seven people and injured four others.

Propane, which accounted for approximately 109 reported spills between 2016 and 2020, is another flammable and explosive gas. A 2008 explosion following an illegal fuel transfer forced the evacuation of 12,000 people, and killed an employee and a first responder at the Sunrise Propane plant in North York.

Another frequently spilled contaminant is refrigerant gas, with 1,048 reported spills between 2016 and 2020. This highly potent greenhouse gas can deplete

Figure 4: Environment Receiving the Spill, 2016–2020

Source of data: Ministry of the Environment, Conservation and Parks



Note: The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

* Other includes spills that went to (a) air and land, (b) air and water, and (c) air, land and water, and those with unknown impacts, which are spills with incident report form field "unknown," "not applicable" or blank, due to data management issues noted in [Section 4.1](#).

the ozone layer, creating damaging cumulative effects even without dramatic direct impacts. See **Appendix 4** for a listing of the substances spilled into the air, their quantities, and the associated health and environmental impacts. See **Appendix 5** for maps of 15,373 reported spills into the air in Ontario over the period 2016 to 2020. These spills accounted for 38% of all reported spills in Ontario over that period.

2.2.2 Spills to Land and Water

Hazardous spills to land and water include approximately 12,500 reported spills of oil products or 31% of all reported spills between 2016 and 2020. Oil products are flammable and include cancer-causing substances. Examples of the many types of spilled oil products include:

- diesel fuel (3,670 reported spills), which both powers and is carried in bulk by trucks and trains;
- hydraulic oil (2,740 reported spills), which is used in braking systems for trucks, trains and other motor vehicles;

- motor oil (559 reported spills) used in vehicle engines; and,
- crude oil (55 reported spills), which is transported before being turned into final products.

In the 2015 CN Rail train derailment in Jack Township near Gogama, which was caused by a broken track, 2.6 million litres of crude oil and oil products were spilled, resulting in a fire that burned for three days and contaminated over 77,851 tonnes of soil, which had to be sent to landfill to mitigate further impacts.

Transformers use mineral oil (619 reported spills) or other transformer oils (1,635 reported spills). A 2015 spill involving a flipped truck carrying transformers resulted in 6,000 litres of spilled mineral oil flowing from the highway and through the sewer system into Mimico Creek. This event killed 37 birds despite the rescue efforts of Toronto Wildlife Centre. Transformer oil can also contain cancer-causing PCBs (polychlorinated biphenyls). PCBs do not readily break down and so accumulate in the environment and in the living tissue of humans and animals.

See **Appendix 5** for maps of 18,677 reported spills to land (46% of all reported spills) and

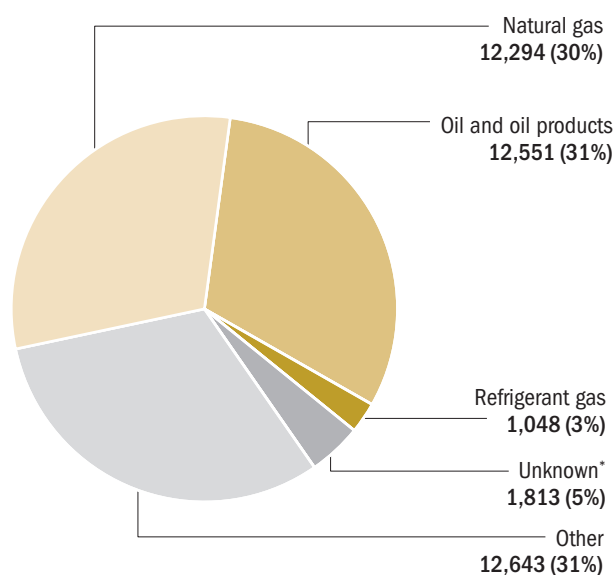
9,208 reported spills to water (23% of all reported spills) in Ontario between 2016 and 2020. Some of these spills occurred in or near wellhead protection areas (areas around municipal wells that contribute source water to a drinking water system). See **Appendix 6** for a list of the municipalities that have experienced the most spills in or near wellhead protection areas in the past five years.

2.3 Spill Prevention and Contingency Plans

Following the February 2004 Imperial Oil spill, the Environment Ministry appointed a group of experts in April 2004 to “examine the causes of industrial spills and dangerous air emissions and recommend to the government prevention measures for industry and others.” This Environment Ministry-appointed group concluded that a long-term solution to spills needed regulatory requirements to plan how to prevent spills and respond to them when they occur. Specifically, the group said “pollution prevention is an essential component of any modern environmental management framework,” but found “Ontario’s

Figure 5: Contaminants Spilled, 2016–2020

Source of data: Ministry of the Environment, Conservation and Parks

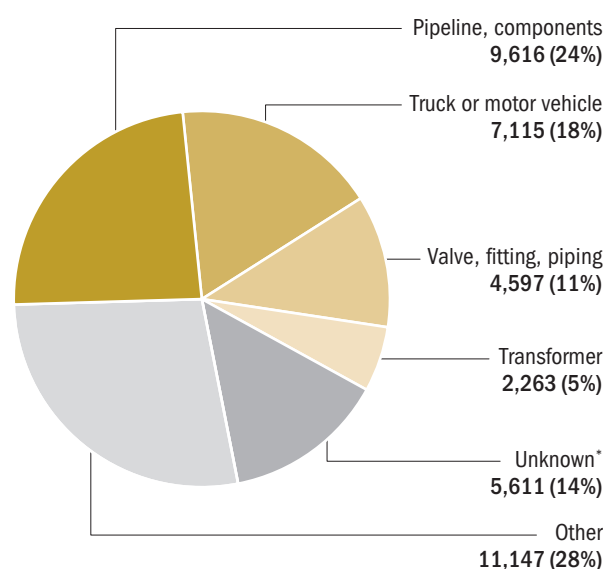


Note: The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

* Unknown consists of spills with incident report form field “unknown,” “not applicable” or blank, due to data management issues noted in **Section 4.1**.

Figure 6: Sources of Spills, 2016–2020

Source of data: Ministry of the Environment, Conservation and Parks



Note: The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

* Unknown consists of spills with incident report form field “unknown,” “not applicable” or blank, due to data management issues noted in **Section 4.1**.

environmental management framework [was] largely reactive, not preventative.” Following this review, Ontario amended the *Environmental Protection Act* (Act) in 2005 and introduced accompanying regulations in 2007 to establish environmental penalties and requirements for spill prevention and contingency plans.

Under the Act, the Environment Ministry is responsible for ensuring that regulated parties have spill prevention and contingency plans (spill plans). Ontario Regulation 224/07 directs that spill plans are required to be developed by the owners/operators of 106 facilities (as of August 2021) in the following nine industrial sectors: electrical power generation (eight), industrial minerals (15), inorganic chemical products (five), iron and steel (seven), metal casting (one), mining (44), organic chemical products (12), petroleum refining (six), and pulp and paper (eight). These requirements cover the types of high-profile spills that occurred in 2003 and 2004 in the St. Clair River. For example, the 2004 Imperial Oil spill was from a petroleum refinery. Eight of these sectors were defined in the Environment Ministry’s 1986 strategy to reduce surface water pollution from industrial wastewater facilities, while the ninth was included in 1994 regulations. No additional industries have been required to develop spill plans under O. Reg. 224/07.

Some other facilities also have spill plans. For example, the Environment Ministry also has some less stringent spill planning requirements specifically for vehicle disposal sites. The Environment Ministry also encourages the development of voluntary spill plans by allowing plans that meet O. Reg. 224/07 requirements (described below) to define “non-reportable” spills, which are exempt from having to be reported to the Environment Ministry. These plans can identify spills as non-reportable if they are contained in a manner ensuring they do not occur in water, are easily cleaned up and have no adverse effects. The Environment Ministry requires a spill plan as a condition of some individual

environmental approvals, though these plans are not centrally tracked and may not have the same requirements.

Ontario Regulation 224/07 requirements for spill plans include:

- identifying the potential spills that may occur and have potential impacts;
- outlining ways to prevent or reduce the risk of spills of pollutants, such as containment and preventative maintenance;
- outlining ways to eliminate or reduce the negative effects if a spill occurs, such as spill response training and equipment;
- annual reviews, including tests for effectiveness such as live drills;
- reviews and updates after spills; and
- a statement of accuracy and effectiveness signed by an officer or director of the corporation.

2.4 Spill Response

When a spill occurs in Ontario, the party responsible for the substance spilled, or the “spiller,” is required under both the federal *Canadian Environment Protection Act, 1999* and the provincial *Environmental Protection Act* to report the spill, contain and clean up the spill, and remediate the environment. Under the provincial *Environmental Protection Act*, the spiller is defined as the “owner.” The owner of a substance is the party who had ownership of the substance immediately before it was spilled. This may or may not be the person who was in control of the substance at the time of the spill. For example, the owner may have hired a third party to transport the substance, which spilled in transit to another location.

At the federal level, Environment and Climate Change Canada leads the spills response for any spills impacting federal land, the Great Lakes and where the impacts cross provincial boundaries. The Environment Ministry also has an information-sharing relationship with neighbouring provinces and states.

2.4.1 Spill Reporting and Initial Response

When a spill occurs, the spiller is required to notify the Province by contacting the Environment Ministry's Spills Action Centre (see **Section 2.7.1**). When a report is received by the Spills Action Centre, an Environmental Officer working at the call centre gathers information to assess the impacts of the spill on human health and/or the environment. The Environmental Officer gathers and uses information, such as the type and volume of spilled material and the potential impact to human health and environment, to help determine the risk and prioritization of the spill's response. The Environment Ministry's initial response includes:

- notifying the spiller, local municipality, and emergency services, such as the local or provincial police and/or local fire departments (if they are not the party reporting the spill);
- ensuring the spiller begins remediating and otherwise responding to the spill as required; and
- notifying other authorities as necessary, such as drinking water treatment facility operators, the Technical Standards and Safety Authority (a regulatory authority that administers and enforces technical standards in Ontario), and the federal government if the spill occurs on federal land and water (such as the Great Lakes) or crosses provincial/national boundaries.

2.4.2 Oversight of Spillers' Remediation

After the initial spill response, district office Environmental Officers review the incident and determine appropriate follow-up actions. Some of the steps undertaken by Environmental Officers in overseeing the remediation of a spill can include:

- attending the scene of a spill to confirm details and oversee its cleanup;
- having discussions with the spiller to assess the current state of the spill and ensuring all necessary remediation actions have been implemented to contain/stop the spill;

- requesting documents to confirm the details of the spill, confirmation that it has stopped, and all remediation steps;
- requiring that the spiller use all available resources to monitor downwind/downstream air and water quality to specify areas of concern and estimate potential impacts;
- collecting necessary samples from the source, from upstream and downstream water and soil sources, and from nearby sewer locations;
- requesting documents such as receipts from a contractor or a confirmation from a licensed waste disposal site that shows that the spiller (or its contractor) properly disposed of the collected spill waste and contaminated cleanup equipment.

For large and more serious incidents, specialists may be brought in from other Environment Ministry divisions to provide technical support in assessing the remediation.

2.4.3 Environment Ministry Spill Remediation

When a spiller does not remediate a spill in a timely and effective manner and where the spill may have adverse effects, the Minister may give direction to the Environment Ministry to step in to remediate the spill. This may occur under the following circumstances:

- the spiller cannot be readily identified;
- the spiller will not carry out the remediation in a timely manner; or
- the spiller requests remediation assistance from the Environment Ministry.

Since 2010, the Environment Ministry has remediated only three spills. One occurred on a contaminated site that the Province was responsible for, and, in the other two, the Ministry believed that the property owners did not have the financial means to clean up the spill. See **Figure 7** for a list of these spills and the remediation actions taken by the Environment Ministry.

Figure 7: Spills Remediated by the Environment Ministry, 2010–2020

Prepared by the Office of the Auditor General of Ontario

Date of Spill	Location	Details of Spill and Actions Taken by Environment Ministry	Receiving Environment
Sep 6, 2011	Roblin Gas Station	Spill of gasoline occurred when an underground storage tank ruptured, impacting the groundwater at surrounding properties. The gas station owner and its insurance paid for initial cleanup and providing water to affected residents. When the insurance coverage ran out, and the Ministry believed the spiller's financial resources had been exhausted, the Ministry took responsibility for cleanup, testing and monitoring, and providing water to residents.	Water
Apr 29, 2015	Deloro Mine Site	Surface water and rain spilled from behind a temporary inflatable dam within the Young's Creek area. As this was at a contaminated site already taken over by the province, the Ministry was responsible for cleanup. In this case, the onsite contractor performed water monitoring and made repairs.	Water
Apr 6, 2017	Tyendinaga Township	Spill of furnace oil from a homeowner's fuel tank into the home's sump pit discharged to a municipal ditch and into the Salmon River. Since it was the Ministry's understanding that the spiller did not have the financial resources to clean up the spill, the Ministry paid \$15,200 to monitor groundwater and sample soil to assess the impact of the spill.	Water and land

2.4.4 Municipal Spills Response

Large and medium-sized municipalities in the province often have their own spills response teams that may be involved in responding to and remediating spills that happen within their boundaries. Unlike the Environment Ministry's Environmental Officers, the municipalities' spills response teams carry equipment, such as shovels and booms, to reduce the spread of spills in the short term. For large spills, municipalities may also have their own specialized equipment, such as vacuum trucks that can suck up liquids and sludges to clean up a spill. Similar to the Environment Ministry, municipalities also have the authority under the *Environmental Protection Act* to recover spill response costs from the spiller. Municipalities may also conduct their own sampling of soil and water if needed to verify that remediation has been effective.

2.4.5 Other Ministries' Spills Response

Other provincial ministries are involved in responding to spills and remediation activities. For example, as the ministry responsible for maintaining provincial

highways, the Ministry of Transportation leads spills response on these roads, deploying equipment that can handle fuel/oil spills on highways. The Ministry of Northern Development, Mines, Natural Resources and Forestry is to be notified of, and investigate, spills that have the potential to kill fish, and any spills of petroleum, such as gas or oil wells. The Ministry of the Solicitor General is involved in providing advice and assistance related to emergency management in response to a spill. See **Appendix 7** for a listing of other ministries' involvement in spills response and the costs they incur to respond.

2.5 Polluter Pays

Ensuring polluters are held accountable for the costs of responding to and remediating spills both encourages potential spillers to modify their operations to prevent and minimize spills, and protects the public from bearing the costs associated with remediating the environment from the impacts of spills. The Environment Ministry has adopted the "polluter pays" principle, which is a commonly accepted practice that those who produce pollution should bear the costs of

managing it to prevent damage to human health and/or the environment.

In some cases, the Province may incur significant costs preventing or minimizing adverse effects on human health and/or the environment; overseeing or performing the spill cleanup and restoring the natural environment; and preventing or reducing the risk of future spills. The Environment Ministry can attempt to recover from a spiller all reasonable expenses that the Province incurred in responding to a spill.

It is the Environment Ministry's policy to attempt to recover the Province's costs related to its spill response if the responding Environmental Officer anticipates that total costs will exceed \$10,000. When assessing whether the Province's spill response costs will exceed this threshold, Environmental Officers consider factors including:

- significant environmental and health impacts;
- scientific and technical expertise required, including testing of samples;
- use of specialized provincial equipment, such as helicopters;
- extensive response by the Environment Ministry and staff at other ministries; and
- hiring private contractors for technical support or spill cleanup.

The Environment Ministry calculates the final costs to be recovered and provides this information to the relevant regional offices. The calculation of recoverable costs may include:

- staff salaries and expenses (for example, an allocation for lease costs);
- travel, food and accommodation;
- sampling, monitoring and laboratory analysis;
- costs of remediation services purchased from external providers; and
- other administrative costs.

Further costs include those incurred by other ministries as a result of the spill. See **Appendix 7** for a listing of the other ministries that may incur costs associated with spills.

The Environment Ministry initiates the cost recovery process by a direct request (via a demand payment letter) to the spiller.

Other ways the polluter pays for spills result from the Environment Ministry's enforcement activities; see **Section 2.6**.

2.6 Enforcement Tools

Enforcement of environmental laws and regulations is intended to hold polluters accountable and to protect Ontario's air, water and land. The prevention of spills and timely remediation by the spiller rely on a strong enforcement regime. The Environment Ministry has the following enforcement tools in order of escalating severity:

- **notices of violations**, which are written or verbal warnings from Environmental Officers (provincial officers with the legal authority to ensure compliance with Ontario's environmental laws);
- **voluntary abatement plans**, which are documents that Environmental Officers request from violators to correct violations or implement preventive measures;
- **orders**, which are documents with legally binding obligations that Environmental Officers or Directors issue to violators;
- **tickets**, which come with fines of less than \$500 that can be appealed in court;
- **environmental penalties**, which are up to \$100,000 per day, can be used in specified circumstances and can be appealed to the Ontario Land Tribunal;
- **prosecution**, which can follow investigation and lead to larger fines upon successful conviction in court; and
- **suspension/revocation/refusal of environmental approvals** that are required for businesses that release contaminants into air, land or water to operate.

These enforcement tools are broadly available to respond to environmental violations, with the exception of environmental penalties, which were specifically designed to address spills as discussed in **Section 2.1**. The purpose of environmental penalties is to protect the environment by encouraging companies to prevent spills and take swift remedial action in

the event of a spill. The Environment Ministry can impose penalties for allowing a spill, not monitoring for and reporting a spill, or not having a spill plan. As with the Spill Prevention and Contingency Plan regulation under the *Environmental Protection Act* (O. Reg. 224/07), the Environmental Penalties regulation (O. Reg. 222/07) applies only to the facilities in the nine industrial sectors identified in **Section 2.3**. Environmental penalties are costlier to violators than tickets, and more efficient and reliable for the Environment Ministry to use than prosecution and conviction in court.

2.7 Ministry of the Environment, Conservation and Parks

The Environment Ministry is mandated with protecting Ontario's air, land, and water to lead to healthier communities and economic prosperity.

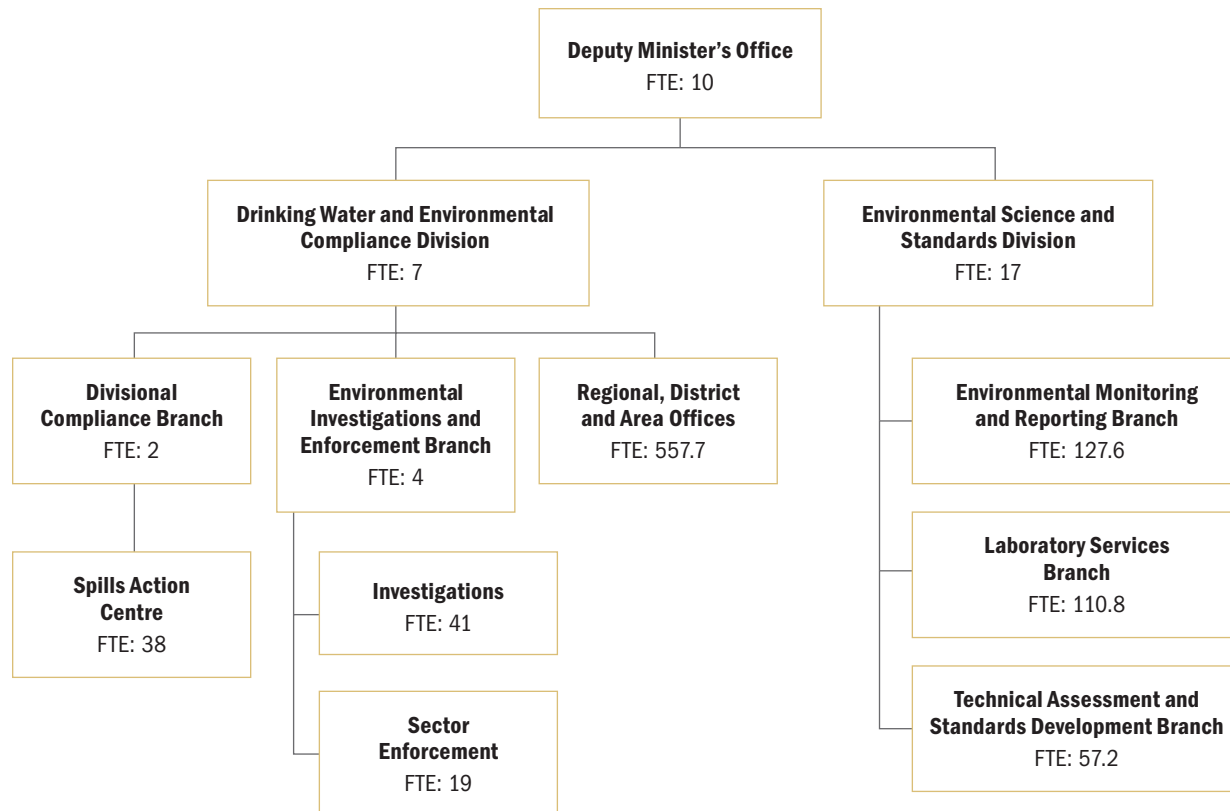
Its Drinking Water and Environmental Compliance Division has the primary role in ensuring and enforcing compliance with legislative environmental requirements. **Figure 8** presents the organizational structure of the Environment Ministry's divisions and branches primarily involved in spills prevention and response. Primary groups within the division involved in spill prevention and response are the Spills Action Centre (**Section 2.7.1**), which receives reports of spills, and the district offices (**Section 2.7.2**), which respond to spills and conduct proactive inspections to prevent spills.

Other Environment Ministry branches that provide support to spills prevention and response include:

- Sector Enforcement, which conducts proactive inspections on a sector-by-sector basis to ensure compliance with environmental policies, including the development of spill plans;

Figure 8: Environment Ministry Organizational Chart and Staff Involved in Spill Prevention and Response

Source of data: Ministry of the Environment, Conservation and Parks



FTE – full-time-equivalent employees

Note: The FTE number represents the active number of staff employed and not headcount. For example, a part-time employee working three days a week represents 0.6 FTE.

- Investigations, the group that investigates significant cases of non-compliance for prosecution, including causing a spill or failing to report a spill; and
- Technical staff from the Environmental Sciences and Standards Division, who may be called upon to perform emergency air and water modeling, analyze spill samples, maintain data on toxicological, environmental, chemical and physical properties of spilled substances, provide advice on standards associated with spills, and monitor spills using real-time data to assist first responders (fire/police/health officials).

2.7.1 Spills Action Centre

The Spills Action Centre has approximately 30 Environmental Officers who provide 24/7 spills response coverage. The Spills Action Centre receives calls, emails and e-faxes that report spills, pollution, adverse drinking water quality, and other environmental occurrences, and co-ordinates the emergency response for the Environment Ministry.

Under regulation, anyone who had control of pollutants that were spilled, or who allowed a spill to occur, must contact the Spills Action Centre without delay. Police officers, municipal employees and other public authorities are required to report spills when they believe the Environment Ministry has not been informed of the spill. The public can also contact the Spills Action Centre if they witness:

- pollution spilled on land, in water or to air;
- industrial or commercial noise pollution;
- waste being dumped into the natural environment; or
- improper disposal of commercial waste.

The Spills Action Centre is responsible for the initial spill response described in **Section 2.4.1**.

2.7.2 District Offices

After a spill is reported, the Spills Action Centre provides information on the spill to the Environment Ministry's local district office. Environmental

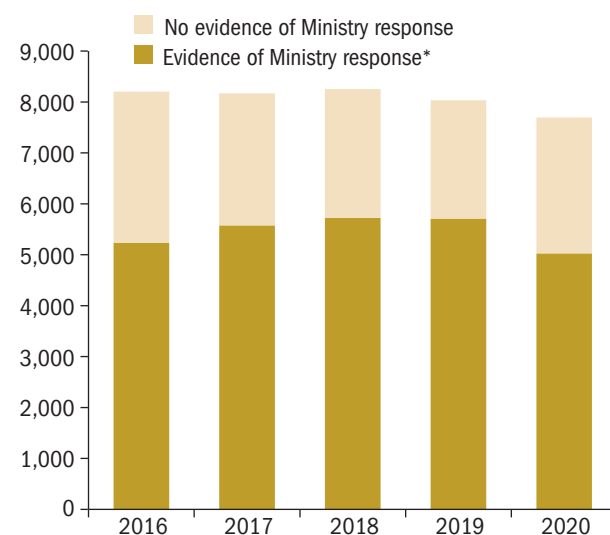
Officers at 16 local district offices are responsible for reviewing spills and following up as they deem appropriate. This includes overseeing the cleanup and taking enforcement and compliance actions as necessary. The Environment Ministry has Environmental Officers at 16 local district offices.

The district Environmental Officers are responsible for the oversight of spillers' remediation described in **Section 2.4.2**. Depending on the level of actual or potential risk assessed by the Environment Ministry, the district offices can make three types of responses:

- *Desktop Response*: District Environmental Officers gather information about the spill from the district office by communicating with the spiller or with response personnel, and use the information to assess ongoing remediation efforts and the need for possible compliance;
- *Planned Field Response*: District Environmental Officers follow up with a planned site visit to assess compliance at a later date, based on the level of a risk; and

Figure 9: Number of Spills Involving a Documented Environment Ministry Response, 2016–2020

Source of data: Ministry of the Environment, Conservation and Parks



Note: The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

* The Environment Ministry's data does not clearly specify the kind of response that was provided to each spill by the district offices. The Environment Ministry's response may include a desktop response.

- *Priority Field Response*: District office deploys Environmental Officers on a priority basis to minimize the spill's environmental impact, ensure compliance and support other agencies as needed.

Figure 9 shows the number of spills that involved a Spills Action Centre documented response by Environmental Officers between 2016 and 2020.

Environmental Officers from district offices also conduct proactive inspections to confirm compliance with environmental legislation. This includes ensuring spill plans are developed. Inspections are intended to be done on a risk basis informed by local knowledge in each district office and technical knowledge from across the Environment Ministry.

3.0 Audit Objective and Scope

The objective of our audit was to assess whether the Ministry of the Environment, Conservation and Parks (Environment Ministry) has effective systems and processes in place to:

- prevent or reduce the risks and negative impacts of hazardous spills to the environment and human health;
- ensure the Environment Ministry is aware of all spills that pose a risk to the environment and/or human health;
- investigate all reported potentially hazardous spills in a timely and effective manner, and ensure that action is taken to prevent, eliminate or reduce any adverse effects that may result from the hazardous spills, including restoring the natural environment;
- ensure that the entity responsible for the substance spilled covers all reasonable costs incurred by the Province to respond to and remediate hazardous spills; and
- monitor and report, on a timely basis, to the public on hazardous spill incidents.

In planning our work, we identified the audit criteria (see **Appendix 8**) we would use to address our audit objective. We established these criteria based on a review of applicable legislation, policies and

procedures, internal and external studies, and best practices. The Environment Ministry's senior management reviewed and agreed with the suitability of our objective and associated criteria.

Our audit focused on the Environment Ministry's prevention, oversight, remediation, cost recovery and public reporting of hazardous spills within the province.

Due to the impacts of COVID-19, we conducted our audit work largely remotely between January 2021 and June 2021. However, we continued to engage the Environment Ministry and other stakeholders through video-conferencing and other forms of electronic communication. We also attended two spill sites, one in York Region and another in Toronto during the spring with Environment Ministry staff to observe its spills response inspections.

In order to review spills and the associated Environment Ministry response, we met with and interviewed staff at regional and district offices throughout the province.

We also met with external stakeholders, including those representing:

- other provincial government entities (for example, the Ministry of Northern Development, Mines, Natural Resources and Forestry, the Ministry of Transportation, Ontario Power Generation, Metrolinx and the Ontario Clean Water Agency);
- provincial governments for British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Prince Edward Island;
- Aamjiwnaang First Nation, Toronto Water, City of Sarnia, City of Guelph and Environment and Climate Change Canada;
- Public Health Ontario and public health units such as Sarnia-Lambton Public Health, Hamilton Public Health and Greater Sudbury Public Health;
- industry representatives, such as Enbridge, Ontario Automotive Recyclers Association, Toronto Hydro, and Alectra Utilities;
- environmental organizations such as Ecojustice, Canadian Environmental Law Association, Citizens Environment Alliance, Ontario Rivers Alliance and Environment Hamilton; and

- technical experts at Ryerson University and the United States Environmental Protection Agency.

In addition, we reviewed relevant research and best practices in spills prevention and remediation in Canada, other provinces and the United States.

We received written representation from Environment Ministry management that, effective October 18, 2021, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusions of this report.

We conducted our work and reported on the results of our examination in accordance with the applicable Canadian Standards on Assurance Engagements—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 the Canadian Standard on Quality Control and, as a result, maintains a comprehensive quality-control system 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.

4.0 Detailed Audit Observations — Public Reporting

4.1 Public Unaware of Hazardous Spills Impacting Their Local Area

Despite requirements in Ontario's Digital and Data Directive, the Ministry of the Environment, Conservation and Parks (Environment Ministry) has not published information on reported spills in a timely and accessible manner. This limits the public's ability to know about

the quantity and potential impact of reported spills in Ontario, including those that might affect them directly.

The *Environmental Protection Act* requires regulated entities to have plans in place to notify any member of the public who may be affected by a spill. However, there is no centralized place the public can go to find out about hazardous spills that have affected their community, and spillers have not always informed the public of spills. For example, when the Environment Ministry first identified concerns about pollution from a spill in Hamilton's Chedoke Creek in July 2018, neither the Environment Ministry nor the City of Hamilton informed the public about its magnitude (24 billion litres of sewage spilled over four years). Sixteen months later, the media discovered that the City had not been reporting the size and duration of the spill to the public. During this time, the Environment Ministry, as well, did not alert the public about the accumulative magnitude of the spill, despite having received an ecological and remediation report from the City.

There is public demand for information about spills and other forms of land contamination. The Environment Ministry said that 95% of the Freedom of Information requests it received between 2016 and 2020 relate to historical environmental issues. These historical environmental issues may include spills, though the Environment Ministry could not readily determine what portion. It confirmed that these requests for information are typically made to ensure that specific properties have no environmental issues, or that land has been properly remediated. Between 2016 and 2020 the Environment Ministry received 42,000 of these Freedom of Information requests.

In 2015, the Province introduced Ontario's Open Data Directive (Digital and Data Directive as of February 2021), requiring all government data to be made public unless it is exempt for legal, privacy, security or confidentiality reasons, or is commercially sensitive. In 2017, the Environment Ministry published information in the Ontario

Data Catalogue on the type, source and impact of reported spills that occurred between 2003 and 2013. This publicly available data consists of spill date, reference number, municipality, receiving media (air, water, and land), material group (for example, oil or waste), environmental impact (confirmed, possible, not anticipated) and source/sector (for example, pipeline or truck). However, publication of this data was delayed for several years, and the Environment Ministry has not promptly updated the data to include spills that have occurred since 2013. The Environment Ministry was unable to provide a reason for the delay. During our audit, on May 31, 2021, the Environment Ministry published updated information on reported spills that occurred in the province between 2014 and 2020. However, the public information released in both 2017 and 2021 does not contain key data collected by the Environment Ministry, such as the location of the spill (the data only identifies the municipality) or name of the company or individual that spilled.

In contrast, British Columbia provides information on significant spills of oil and hazardous materials through its government website. This includes spiller name and summaries of the location, cause, response and environmental impacts. This information is kept up to date, summarizes the most recent spill response activities, and provides a map with the approximate location of each spill.

A key weakness with the Environment Ministry's reporting to the public on spills is the completeness and lack of discipline in its collection, tracking and verification of certain spills data. We found that the Environment Ministry does not consistently record and verify the accuracy of some significant information to inform the public of spills. For example, although the Ministry assesses the potential environmental and health impacts when it is informed of a spill, it does not update its assessment once more information is known. Therefore, the public cannot be made aware of the actual resulting impacts caused to human health and/or the environment from reported spills. Further, useful information for the public that the Environment Ministry does track is not recorded

consistently. For spills between 2016 and 2020, the Ministry did not completely record the identity of the spiller in 11,512 spills (29%). The Environment Ministry also does not regularly collect useful information such as the root causes of spills, which the Environment Ministry identified as a weakness in its processes after analyzing spills data in 2018/19.

RECOMMENDATION 1

To improve public transparency about the quantity, location and impact of spills, we recommend that the Ministry of the Environment, Conservation and Parks improve its recording and timeliness over its publicly reporting of key information on spills while providing data and information in an accessible format that allows the public to easily identify the cause, location, impact, responsible party and status of the spills.

MINISTRY RESPONSE

The Ministry agrees with the recommendation to improve public reporting on spills. The Ministry intends to post spills data to the public Ontario Data Catalogue in an accessible format on an annual basis. In addition, members of the public may review the status of their pollution reports to the Ministry via the public portal at <https://report-pollution.ene.gov.on.ca/>. Additional data identified by the Auditor General will be considered for posting on the Ontario Data Catalogue.

4.2 Environment Ministry Lacks Performance Measurement for Spills Program

We found that the Environment Ministry has not developed a performance measurement framework for its spills program. As a result, decision-makers and the public do not know the effectiveness of efforts to reduce the frequency and negative impacts of hazardous spills.

The Treasury Board Secretariat (Secretariat) establishes policies and standards for organizational practices across the provincial government. The Secretariat has provided guidance to ministries emphasizing the importance of developing key performance indicators and targets to track performance, report on progress and drive continuous improvement. For over a decade, the Secretariat has encouraged ministries to develop performance measurement frameworks—consistent processes to collect, analyze and report information on how programs are performing and whether they are achieving their intended outcomes.

It is a best practice to establish and collect information on performance measures that show whether current actions are working. For Ontario's spills management program, such measures would help inform what corrective actions need to be taken to protect Ontario from hazardous spills. However, our audit found that the Environment Ministry has not established a performance measurement framework or any performance measures with respect to its spills program.

RECOMMENDATION 2

To assess the effectiveness of its spills management program at achieving intended objectives, improve public transparency about the quantity and impact of spills, and drive continuous improvement, we recommend that the Ministry of the Environment, Conservation and Parks establish and publicly report performance measures and targets to reduce spills and any short-term and long-term impacts on human health and the environment.

MINISTRY RESPONSE

The Ministry agrees with the recommendation and will develop spills performance measures and targets, and determine how to publicly report on them.

5.0 Detailed Audit Observations—Cost Recovery

5.1 Polluters Have Not Paid for at Least \$5.6 Million in Spills Response Between 2016 and 2020

Ensuring polluters are held accountable for the full costs of responding to spills encourages potential spillers to modify their operations to reduce the risk of spills. The Environment Ministry has adopted the “polluter pays” principle, where the spiller is responsible for the full cost of promptly cleaning up the spill and remediating the environment.

However, our Office's sampling of 30 spills between 2011 and 2020 (0.04% of the 73,000 spills that occurred over this period) and the three spills where the Ministry pursued cost recovery shows that the Environment Ministry's method of tracking, calculating, and recovering costs from spillers has resulted in at least \$5.6 million in unrecovered response and remediation costs being covered by taxpayers rather than the individuals or companies responsible for the spills.

In 2005, Ontario amended the *Environmental Protection Act* to provide the Environment Ministry with a mechanism to recover the reasonable costs or expenses that the Province incurs when responding to and dealing with spills. The Environment Ministry drafted its first cost recovery framework in its 2012 Spills Costs and Expenses Recovery Policy. At that time, the Environment Ministry estimated its spills response would cost \$425,000 annually.

In September 2014 the Premier mandated that the Minister of the Environment and Climate Change review Ontario's legislative framework to ensure a comprehensive approach to holding polluters responsible for their environmental impacts, including putting greater emphasis on the polluter pays principle. No formal review has occurred and the Environment Ministry has told us that this is an ongoing effort. In 2015 the Environment Ministry made its first attempt to recover costs related to its

Figure 10: Environment Ministry's Spills Response Costs Incurred and Recovered

Prepared by the Office of the Auditor General of Ontario

Spill	Description	Spill Response Costs Recovered		Spill Response Costs Not Recovered		Total Spill Response Costs Incurred	
		\$	%	\$	%	\$	%
Regan CN Train Derailment, Feb 2015	29 train cars carrying crude oil derailed, contaminating a wetlands area and stream, and eventually migrating into a nearby lake	618,765	60	419,967	40	1,038,732	100
Gogama CN Train Derailment, Mar 2015	37 train cars containing about 4 million litres of oil spilled from the track and burned, and two cars landed in the Makami River						
401 Jet Fuel Spill, Jan 2019	A tanker truck crashed into a vehicle on Highway 401 in Puslinch Township, spilling 35,000 litres of jet fuel onto roadside soil and into two streams flowing into the Grand River watershed	61,745	25	186,033	75	247,778	100
Total		680,510	53	606,000	47	1,286,510	100

spill response. This was related to two CN rail spills that occurred near Gogama.

Between 2016 and 2020, over 40,000 spills were reported in the province. Of these, the Environment Ministry documented responding to at least 27,000 spills, but recovered costs related to its spill response in just one additional instance (**Figure 10**).

In the initial days following a spill response, the Environment Ministry decides whether it believes its response will cost more than \$10,000; if the response cost is not expected to meet this threshold, the Environment Ministry will not pursue cost recovery. Further, if no spiller can be identified and the Environment Ministry is unaware of whom to recover costs from, the Environment Ministry cannot pursue cost recovery. If the Environment Ministry decides not to recover costs, it does not consistently track the costs associated with its spill response.

In October 2015 the Environment Ministry requested Ontario Internal Audit Division to review the reasonableness of the methodology it used to calculate and track spill costs and expenses. The review recommended that the Environment Ministry should develop a procedure to require documentation

of the rationale supporting the decision whether to pursue or to forgo cost recovery. The Environment Ministry stated that this recommendation would be addressed by March 31, 2016. However, at the time of our audit, the Environment Ministry had not yet begun documenting its rationale when forgoing cost recovery.

Because the Environment Ministry rarely tracks the costs of responding to spills, we used the best available information to estimate its unrecovered response costs. We selected a sample of 30 spills where the Environment Ministry, along with other ministries, was involved in the spill response and ongoing monitoring. We interviewed Environment Ministry staff to determine the number of hours spent responding to each spill and calculated the average cost of Environment Ministry time spent on spill response. We also calculated the Environment Ministry's costs of performing laboratory services (see **Section 5.1.5**), and used the Ministry's methodology to estimate other costs. **Figure 11** shows our calculations of the costs the Environment Ministry incurred for the sample of 30 spills between 2015 and April 2021.

Figure 11: Spill Response Costs Incurred by the Environment Ministry for a Sample of 30 Spills, 2015–2021 (\$)

Prepared by the Office of the Auditor General of Ontario based on information provided by the Ministry of the Environment, Conservation and Parks

Spill Description	Staff Cost	Lab Cost	Other Costs*	Total Cost
Rideau Valley Marketplace Fire Spill	223,241	3,133,658	225,248	3,582,147
Fort Erie Chemical Spill	61,770	147,641	24,027	233,439
Bartek Ingredients Acid Spill	32,303	52,594	10,120	95,017
Brock Liftlock Fuels Spill	65,566	12,836	5,405	83,807
Pioneer Flower Farms Fire Spill	11,947	51,251	11,900	75,098
Picton Bay Barge Fuel Spill	19,939	19,990	2,711	42,641
GFL Recycling Facility Fire Spill	14,206	7,738	10,063	32,006
Aerospace Metal Finishing Fire Spill	3,721	18,617	8,766	31,104
Catfish Creek Manure Spill	4,923	23,769	2,265	30,957
Saugeen River Manure Spill	524	24,364	1,925	26,813
Fletcher's Creek Spill	6,982	17,964	1,770	26,715
Kawartha Lakes Herbicide Spill	3,192	20,174	1,616	24,982
Mink Creek Spill	660	20,863	1,444	22,966
Marnan Fuel Spill	10,105	11,144	1,678	22,927
Oxford Cattle Company Spill	5,414	13,664	1,560	20,638
Grand River Oil Spill	10,622	7,175	1,370	19,167
Niagara Fish Kill Spill	12,743	4,253	1,172	18,168
Manure Storage Pit Spill	1,438	15,087	1,284	17,809
Oak Lake Manure Spill	6,341	10,068	1,259	17,668
Caledon Fuel Spill	15,659	0	1,227	16,886
Northland Derailment Spill	8,089	5,769	946	14,804
Cambridge Fire Spill	12,343	0	956	13,300
Emo Derailment Spill	7,843	4,075	1,243	13,161
North West Rubber Fire Spill	4,289	0	7,381	11,670
Maxxit Systems Fire Spill	3,938	0	7,254	11,191
Eagle Tech Recycling Fire Spill	2,910	0	7,276	10,186
Kingston Acid Spill	8,345	0	560	8,905
Newmarket Soap Spill	1,307	5,950	557	7,814
Hwy 401 Truck Fire and Paint Spill	5,082	2,014	492	7,588
FS Partners Spill	3,096	0	286	3,382
Total	568,536	3,630,659	343,759	4,542,954

* Equipment, administration, meals.

As per **Figure 11**, we found that for our sample of spills, the Environment Ministry had incurred about \$568,000 for staff time (**Section 5.1.4**), about \$3.6 million for laboratory samples (**Section 5.1.5**), and about \$343,000 related to other costs (for example, administration and spill response equipment). In total, we calculated that

the Environment Ministry incurred costs of just over \$4.5 million related to these 30 spills, none of which it attempted to recover from the spillers, even though costs exceeded the \$10,000 threshold in 87% of the spills we tested. Further, the Environment Ministry is not the only ministry that incurs costs to respond to spills (see **Appendix 7** for a listing of the others). In

the three instances where the Environment Ministry attempted to recover the costs of its spills response, \$606,000 was not recovered (**Section 5.1.6**). Our audit identified that the Ministry of Transportation had incurred costs of over \$495,000 related to the same three spill responses between fiscal years 2016/17 and 2020/21 that has not been recovered from polluters. In total, this is \$5.6 million of costs to respond to spills that have not been recovered by the Environment Ministry.

Due to an absence of information tracked by the Environment Ministry, we were unable to obtain adequate information to calculate costs in addition to our estimates associated with the Environment Ministry's response, and therefore even our estimate is understated. Additional costs would relate to:

- staff costs of staff who played a key role in the spill response who have left the Environment Ministry and thus their hours were not included in our estimates;
- laboratory samples that are not categorized as "spills" by the Environment Ministry but may relate to the spills in our sample; and
- administration costs, which the Environment Ministry calculates is around 7% of the cost of responding to a spill – significantly lower than the 12.5% used by the Ministry of Transportation, and the 25% used in British Columbia's spill cost recovery regime.

5.1.1 No Basis for Environment Ministry's Cost Recovery Threshold

In 2016, the Environment Ministry made the internal policy decision not to attempt to recover costs for its spill response if it is estimated to cost the Province less than \$10,000. This was based on input from Directors within the Environment Ministry at that time. The Environment Ministry staff said the administrative effort associated with tracking and recovering response costs would outweigh the benefits of pursuing costs below this amount. Yet the Environment Ministry has made no attempt to estimate the labour and costs associated with recovering spill response costs

and has no documented rationale for its \$10,000 threshold.

The Environment Ministry's \$10,000 cost recovery threshold is significantly higher than that used by other provinces and Ontario municipalities. For example, British Columbia has a \$175 minimum for spills cost recovery. Municipalities also perform work to respond to and can remediate spills. They can recover the costs of these activities from the polluter. For example, the City of Guelph issues invoices to recover costs related to cleanup for any spill that requires more than two hours of its Environmental Protection Officers' time (approximately \$112 in staff time) or when the City needs to bring in an external contractor to help with the cleanup.

The Environment Ministry's current threshold is also much higher than its pre-2016 threshold of pursuing cost recovery in cases where an Environmental Officer is expected to spend more than four hours responding to a spill (approximately \$240 in staff time).

5.1.2 Environment Ministry Staff Are Not Able to Assess When \$10,000 Cost Recovery Threshold Is Met

Environmental Officers, who are responsible for making the initial assessment of whether a spill should be considered for cost recovery, are not provided with adequate information to determine whether the Environment Ministry's cost recovery threshold has been met. The Environment Ministry has tasked Environmental Officers, who may consult other Ministry staff, with initiating the process to determine whether spills are expected to surpass its \$10,000 cost recovery threshold. However, spill response activities that incur significant costs, such as the use of laboratory services and spill response equipment, have not been calculated and disclosed to Environmental Officers.

The Environment Ministry has identified laboratory sampling as a factor that may increase the cost of its spill response. In our testing of the costs of 30 spills in **Section 5.1.4**, we found that sampling

was performed in 23 (or 77%) of the spills that exceeded the cost recovery threshold. Environment Ministry staff informed us that they do not know the Environment Ministry's sampling costs and therefore are unable to estimate whether the cost recovery threshold has been exceeded. We found that the Environment Ministry does not disclose these costs to staff involved in the spill response as it considers these to be confidential.

Another factor that Environmental Officers need to consider when assessing whether the cost recovery threshold is met is the use of specialized equipment in spills response, such as mobile air monitoring vehicles to monitor air contaminants during fires. The Environment Ministry's cost recovery policy specifies the methodology to use when determining the cost of using this equipment for spill response. However, our audit found that the Environment Ministry had never calculated the cost of using any of its emergency response equipment, including the mobile air monitoring vehicles. When we asked the Environment Ministry to calculate this cost, we found that the estimated daily cost of dispatching the mobile air monitoring vehicles for spill response including staff time costs, exceeds the Environment Ministry's cost recovery threshold.

Our audit also identified a general lack of understanding among Environment Ministry staff of the Spill Cost Recovery regime. For example, staff informed us that costs are recovered from the spiller only in situations where Environment Ministry time spent on spill response goes beyond its normal requirements. In addition, senior staff at the Environment Ministry informed our Office that, aside from the three spills where the Environment Ministry recovered some of its costs, there have not been any other spills where the response costs exceeded the threshold. However, when we did our testing we found that this was not the case. We note that the Environment Ministry has not prepared the information it needs in order to assess whether costs surpassed its threshold, given that it has not calculated its spill response costs for nearly all individual spills.

5.1.3 Environment Ministry Does Not Always Pursue Cost Recovery Even When Threshold Met

Even when the Environment Ministry is aware that its \$10,000 cost recovery threshold has been surpassed, the Environment Ministry does not consistently pursue cost recovery.

In our sample of 30 spills, we identified two instances where costs surpassed the threshold based on the hours tracked by staff responding to the spill and related laboratory costs. However, the Environment Ministry did not pursue cost recovery and did not formally document its rationale.

- In 2017, the Environment Ministry tracked both its staff time spent and laboratory samples taken to respond to a diesel fuel spill into Picton Bay. The Environment Ministry calculated that the staff time spent on spills response and laboratory costs together exceeded \$18,000. The Environment Ministry told us it chose not to attempt to recover these costs from the spiller because it believed its cost recovery process was not well established at the time.
- In 2016, the Environment Ministry initially tracked 167.5 hours of staff time for staff responding to a motor oil spill into the Grand River, which our Office estimated would cost over \$10,000. However, the Environment Ministry made no attempt to recover any costs.

5.1.4 Environment Ministry Has Not Pursued and Recovered More Than \$568,000 in Staff Time Associated with Its Spills Response

Although staff's recording of their time and activities associated with responding to spills is identified as a best practice in Environment Ministry policy, this is not performed consistently nor tracked centrally. This limits the ability of the Environment Ministry to understand its costs associated with spill response and recover these costs from the spiller. As previously mentioned, we asked the Environment Ministry staff involved in spills response to quantify their time spent on our sample of 30 spills (see **Figure 11**), based

on available documentation and best estimates. We calculated that their time spent on spills response for these 30 spills cost the Environment Ministry about \$569,000.

For example, in one of the spills we tested, which involved a release in November 2018 of over 20,000 litres of gasoline into a roadside ditch in Chamberlain Township, the spill report contained information only about Environment Ministry spill response activities in the first week after the spill, even though the spill response and follow-up continued to mid-2020. In another example, a 2016 spill of water used to douse fires contaminated a community's drinking water, resulting in a spill response and long-term monitoring that was still ongoing at the time of our audit. We noted that the spill report detailed staff's spill response activities only in the first week of the spill. Therefore, the Environment Ministry is unaware of its costs associated with responding to spills when it decides not to pursue cost recovery, for reasons including those described in **Section 5.1.3**.

5.1.5 Environment Ministry Has Not Pursued and Recovered \$3.6 Million in Sampling Costs

Even when the Environment Ministry conducts its own sampling to independently assess spill remediation requirements and verify the accuracy of spillers' samples, it does not track, calculate or recover its sampling costs. Under the polluter pays principle, these costs to respond to a spill should be paid by the polluter. However, in our sample of 30 spills, we found that the Environment Ministry incurred \$3.6 million in sampling costs that it did not attempt to recover from the spiller.

The Environment Ministry does not track or calculate its costs of collecting and testing water and soil samples. However, documentation provided by the Environment Ministry in its assessment of the cost of three types of laboratory samples indicated that, on average, it costs the Ministry more than twice the private sector to analyze samples. For example, to analyze whether petroleum hydrocarbons are present

in a sample of water, it cost the Environment Ministry \$622 per sample analysis when it factored in its direct labour and material costs, whereas a private laboratory would charge about \$179 to complete the same test. This is the only attempt the Ministry has made to calculate its costs of performing laboratory samples compared to those of a private sector laboratory. We note that the Environment Ministry did not include any overhead or indirect costs in its cost calculation, which would increase its costs even higher.

We estimated unrecovered sampling costs by: requesting an Environment Ministry listing of all samples related to spills between 2015 and 2020, applying the private sector charge rate, and then increasing these costs by the Environment Ministry's estimate of the average amount that it exceeds private sector costs. See **Figure 12** for our calculations of the Environment Ministry's sampling costs incurred between 2015 and 2020.

We estimated that total sampling costs of about \$143 million were incurred between 2015 and 2020. Of this amount, we estimated that the Environment Ministry did not recover at least \$4.1 million in sampling costs categorized as relating to spills between 2015 and 2020. The unrecovered sampling costs are likely even higher because the Environment Ministry does not always attribute the cost of a sample to a spill. Our audit specifically identified over \$45,000 of unrecovered sampling costs that were collected when the Environment Ministry was pursuing cost recovery for its response to the 2015 Regan and Gogama train derailment spills. The Environment Ministry accidentally did not include these costs in the cost recovery order to the spiller because it categorized the samples as "surface water" instead of "spills." We also came across the following additional examples of samples related to spills but were not documented as attributable to spills:

- In 2017, the Environment Ministry collected samples relating to a diesel fuel spill into Picton Bay that contaminated the community's drinking water. The Environment Ministry categorized over \$23,000 of laboratory samples as "water" and "contaminated sites" samples.

Figure 12: Total Sampling Costs Incurred by the Environment Ministry, 2015–2020 (\$ million)

Prepared by the Office of the Auditor General of Ontario

2015	2016	2017	2018	2019	2020	Total
26.148	26.028	29.694	30.623	23.595	7.228	143.316

Note: The Environment Ministry could not determine what portion of these lab costs pertain specifically to spills.

- In 2017 the Environment Ministry collected samples of a black substance that had spilled into Fletcher's Creek near Brampton. The Environment Ministry categorized \$18,000 of laboratory samples as "legal."

5.1.6 Even When Environment Ministry Pursues Cost Recovery for Spills, Not All Costs Can Be Requested as Reasonable to be Recovered

In the only three occasions since 2005 when the Environment Ministry has pursued cost recovery, we found the Environment Ministry did not recover all costs from the spillers. We estimated that the Environment Ministry did not attempt to recover at least \$606,000 (or 47%) of the \$1.3 million in response costs from these spillers because its costs were unreasonable or were not documented.

Environment Ministry Has Incurred Unreasonable Remediation Costs that Cannot Be Requested for Recovery from Spillers

The *Environmental Protection Act* states that, in order to recover costs from the spiller, costs must be reasonable. The Environment Ministry performs sampling to assess the adverse effects of spills, monitor the impacts from spills, and ensure land is properly remediated by the spiller. However, the Environment Ministry cannot recover the full costs of its sampling because these sampling costs are not reasonable.

Following the 2015 Canadian National Railway (CN) crude oil spills caused by its two train derailments in Regan and Gogama, the Environment Ministry issued an order to CN to pay about \$620,000 of the Province's costs and expenses incurred in the spill response. Of this amount, CN appealed about \$530,000 to the Environmental

Review Tribunal (Tribunal) in 2017, arguing that the Environment Ministry's laboratory costs were not necessary to remediate the spills. The Tribunal disagreed, concluding that it was appropriate for the Environment Ministry to recover sampling costs from a spiller to independently reach its own conclusions on what was needed to clean up and verify the accuracy of the spiller's samples.

However, in its cost-recovery calculation for this spill, the Environment Ministry intentionally underestimated its sampling costs by using private laboratory rates instead of its actual costs. The Environment Ministry supported this underestimation by comparing its costs to perform three different types of sampling to the cost of having a private-sector company perform this work. It found that, on average, the Environment Ministry's costs were 150% higher than the private-sector costs, and ranged from 52% to 330% higher than private-sector costs.

In order to estimate what it actually cost the Environment Ministry to perform laboratory services for the three spills where it pursued cost recovery, we applied the Environment Ministry's estimated 150% premium to the sampling costs charged by private laboratories.

We found that, out of about \$696,000 that the Environment Ministry incurred for sample analysis in the three spills where it pursued cost recovery, about \$501,000 (72%) was not recovered from the spillers. Since the Environment Ministry's laboratory costs significantly surpass the cost of having the sample assessed by a private laboratory—and the Environment Ministry has shown in its cost recovery actions that it does not consider its own costs reasonable—it has demonstrated that the full costs of assessing the samples cannot be recovered from the spiller.

Even When Environment Ministry Has Pursued Cost Recovery, Significant Costs Not Included

In addition to not recovering all laboratory costs incurred in the three instances where it pursued cost recovery from the spillers, the Environment Ministry also did not include all its staff time costs and other ministries' staff time costs.

We interviewed staff who were involved in the three spills where cost recovery was pursued, and found that the Environment Ministry did not include all costs incurred by the Province, such as costs incurred by the Ministry of Transportation during the 401 jet fuel spill in Cambridge. We also found that, in all three instances, the Environment Ministry stopped tracking staff time and recovering costs once it issued its spill cost recovery order to the spillers. See **Figure 10** for the total response costs incurred and unrecovered in these three spills.

We found that, out of about \$1,287,000 incurred by the Province in responding to these three spills, about \$606,000 or 47% of the total cost, was not recovered from the spiller. In the specific case of the 401 jet fuel spill, about \$186,000 or 75% of the total cost was not recovered from the spiller. Contrary to the polluter pays principle, these unrecovered costs were borne by the taxpayers rather than the companies responsible for the spills.

RECOMMENDATION 3

To hold polluters accountable for the Province's costs of responding to spills, and reduce the costs that must be borne by taxpayers, we recommend that the Ministry of the Environment, Conservation and Parks (Ministry):

- reassess its threshold for recovering spill response costs, so that all reasonable costs are covered by the spiller;
- formally document the Ministry's rationale when cost recovery is not pursued;
- track all relevant costs associated with its spill response;
- fully and accurately calculate the costs of its spill response;

- include all costs incurred in responding to spills when recovering the costs from the spiller;
- ensure its costs to respond to spills are reasonable and recoverable; and
- recover costs that meet its threshold from the spiller.

MINISTRY RESPONSE

The Ministry agrees with this recommendation to hold polluters accountable for the Province's cost of responding to spills, and will review our cost recovery procedures to address this recommendation.

6.0 Detailed Audit Observations—Spill Response

6.1 Environment Ministry Rarely Confirms Independently That Spillers Have Sufficiently Remediated the Environment

For the majority of spills, the Environment Ministry relies on the spiller to perform its own analysis of soil and water samples, and submit proof to the Environment Ministry that the natural environment has been sufficiently restored after the spill. This means that spillers are left to police themselves and ensure effective environmental remediation, with little risk of Environment Ministry enforcement action (**Section 8.0**).

In 2017, the Environmental Review Tribunal (now the Ontario Land Tribunal) identified that it is appropriate for the Environment Ministry to conduct sampling to independently reach its own conclusions on what was needed to clean up spills and verify the accuracy of spillers' samples. We reviewed a sample of soil and water samples from 110 spills that occurred between 2010 and 2020 that the Environment Ministry assessed as potentially having a moderate to

major environmental and/or health impact. In this sample, the Environment Ministry completed its own sampling and laboratory testing to confirm adequate remediation in only one instance: the 2015 CN train derailment in Northern Ontario near Gogama that spilled 2.6 million litres of oil into the local environment.

The Environment Ministry said that it does not conduct its own sampling or laboratory testing to ensure proper remediation if it receives information from the spiller to indicate the spill has been properly remediated, or if it determines that the spill was low risk to the environment or to human health. Specific reasons it gave us for not performing its own independent assessment in individual instances included:

- The Environment Ministry received an email from the spiller that the cleanup had been completed.
- The Environment Ministry directed the spiller to conduct sampling post-remediation.
- The Environment Ministry's observations indicated that post-remediation sampling was not required.
- The spill did not migrate off-site and was cleaned up by the spiller in a timely manner.
- The spiller had its own spill prevention and contingency plan that came into action, and it cleaned up the spill.

Our audit found instances where the Environment Ministry did not conduct its own testing and subsequently the spill was discovered to have not been remediated properly, and to have had a negative impact on the environment. For example:

- On January 13, 2019, a tanker truck accident on Highway 401 in Puslinch Township resulted in a spill of over 35,000 litres of jet fuel, which affected roadside soil and water streams. In the summer of 2019, the cleanup contractor hired by the spiller informed the Environment Ministry that the spill had been cleaned up and the environment restored. In contrast with the Environment Ministry's oversight of spills, the Ministry of Transportation hired its own contractor to take laboratory samples of the affected

site to independently confirm whether it had been adequately remediated, as the spill site (a provincial highway) was under its jurisdiction. The results of the independent verification indicated that the spill had not been adequately remediated. The Environment Ministry directed the spiller to hire another cleanup contractor to properly remediate the spill.

- On July 29, 2014, the Environment Ministry was informed of a tractor trailer accident that had caused a spill of diesel and hydraulic fluid on Highway 401 near Belleville in a construction zone. The spill occurred on July 26 but was not reported until the tractor trailer was removed and the spill was noticed by the construction company that was working in the area. Since the construction zone was under the Ministry of Transportation, that Ministry brought in a cleanup contractor that was co-ordinating cleanup with the spiller's insurance company. At that time, the Environment Ministry did not request a report supporting the sufficiency of the remediation either from the spiller's cleanup contractor or the Ministry of Transportation. The Environment Ministry also did not complete its own sampling and the incident was closed in September 2014. On December 12, 2014, the Environment Ministry received a call from a different environmental contractor hired by the spiller and who advised the Environment Ministry that the spill had not been cleaned up, groundwater had been affected, and the company was now remediating the spill. Around 11,000 litres of diesel fuel and water mixture was then cleaned out of the spill site. The Environment Ministry did not require a final report to confirm that the spill had been sufficiently cleaned and did not perform any of its own sampling. On August 31, 2015, the Environment Ministry received a cleanup report from the contractor, more than a year after the spill took place.

In contrast to the Environment Ministry's approach to relying on spillers to inform or provide their own documentation confirming that effective remediation has been completed, we found municipalities, other

ministries and other Canadian provinces independently verify effective remediation. For example, the Ministry of Transportation will take its own samples and send them to private labs for analysis. The City of Guelph also sends its Environmental Protection Officers to observe the site and collect samples to independently confirm effective remediation. We also found that Saskatchewan's Ministry of Environment hires a third-party environmental consultant to review some spills on a risk-basis. This involves an in-depth assessment with sampling and monitoring of soil and/or water to verify the state of a site, identify any remaining contaminants, and assess the long-term impact on the environment.

RECOMMENDATION 4

To confirm that spill sites have been effectively restored, we recommend that the Ministry of the Environment, Conservation and Parks develop and implement a risk-based process for independently verifying the sufficient remediation of significant spill sites.

MINISTRY RESPONSE

The Ministry agrees that spills causing an adverse effect should be remediated. The Ministry's priority in a spill event is to assess environmental impacts and ensure the responsible parties promptly clean up the spill and restore the natural environment. The Ministry is committed to reviewing its guidance documentation for a consistent approach to independently verifying sufficient spill remediation for significant spill sites.

6.2 Environment Ministry Is Not Using Its Powers to Enforce Prompt Spills Remediation

Despite instances of spillers refusing, or being unprepared, to remediate spills in a timely manner, the Environment Ministry has not used its powers to step in and remediate to prevent further damage to the environment and/or human health.

Under the *Environmental Protection Act*, the Environment Ministry has the power to clean up spills and then recover the remediation costs from the spiller. However, when reviewing the Environment Ministry's response to a sample of 110 spills that the Ministry had assessed as having medium to high risks to the environment and/or to human health, we found five where the spiller initially refused, could not be found, or was unprepared to remediate the spill, delaying timely cleanup, and the Environment Ministry did not step in to ensure timely remediation, resulting in further impacts on human health and/or the environment. For example:

- On September 11, 2016, Haldimand Fire Department reported a fire at a former airplane hangar in Hagersville that was being used as a storage space for rubber materials. Environment Ministry staff were unable to oversee immediate cleanup for several hours due to safety hazards from the fire. By the following day, no cleanup arrangements had been made. Since there had not been timely remediation, the nearby Sandusk Creek was affected by that spill. The responding Environmental Officer noted that the creek was red, there were hundreds of dead fish, there was a strong odour, and his eyes and nose were irritated. After initially refusing to remediate the spill, the hangar's owner agreed to begin remediation later that day, and work began close to midnight, more than 24 hours after the spill. Heavy rainfall over the following days breached the dam containing the water used on the fire and debris, which all flowed into Sandusk Creek. Due to the volume of water, the breach could not be cleaned up. Further environmental impacts could have been avoided if the cleanup work had begun immediately, instead of 24 hours later.
- On July 6, 2018, the Environment Ministry received a public complaint concerning sewage flowing into the Chedoke Creek in Hamilton. The Environment Ministry notified the City of Hamilton to assess the water quality and find the source of the sewage. On July 18, the City found that a pipe in the main overflow was discharging

contaminated water and that the water quality in Chedoke Creek was now a confirmed health hazard. On July 27, the City submitted a report that confirmed that an error in the station's process control documentation had meant that an overflow gate had been left 5% open since January 2014, and discharged approximately 24 billion litres of sewage into the creek. Though an alarm had sounded in January 2014 in one of the City's wastewater monitoring stations, the City did not inspect as required. Further, another station gate that would have allowed the sewage to flow into the Woodward Avenue Wastewater Treatment Plant failed, sending all the sewage to the creek. Though the City cleaned up 242,000 litres of waste from the water's surface, it did not take further measures to restore the environment. In August 2018, the Environment Ministry issued its first provincial order to the City of Hamilton to evaluate the impact of the spill and to assess remediation efforts. The report from the City was deemed insufficient, and another provincial order was issued in November 2019 to revise its assessment. The Environment Ministry disagreed with the City's revised recommendations to take no remedial action to restore the creek. In late 2020, Director's Orders were issued for the City to develop a workplan to dredge parts of Chedoke Creek and provide further remediation options for the area, which the City submitted on February 19, 2021. In December 2020, the Environment Ministry laid charges for violations under the *Environmental Protection Act* and the *Ontario Water Resources Act* against the City of Hamilton for the spill and the impact it had on the environment and water quality. The charges are currently before the courts. As of August 2021, the City was waiting for the necessary permits to begin cleanup.

Between 2010 and 2020, the Environment Ministry remediated only two spills that the spiller could not or would not remediate—a spill from a fuel tank in Tyendinaga Township and a spill from an underground gasoline storage tank in Roblin Hamlet.

For both of these, the Environment Ministry believed the spillers did not have the financial means to remediate the spill.

RECOMMENDATION 5

To better protect human health and the environment from the impacts of delayed remediation, we recommend that the Ministry of the Environment, Conservation, and Parks remediate spills and recover the costs from spillers in situations where the Ministry knows that a spiller is not remediating the area immediately and that additional harm to the environment or human health will result from this delay.

MINISTRY RESPONSE

The Ministry agrees with the Auditor General on the importance of spill remediation and avoiding additional harm to the environment or human health. The Ministry will develop guidance to identify the circumstances where it may remediate spills as a result of a delayed response from the spiller.

6.3 Environment Ministry Not Informed of Spills in a Timely Manner

The Environment Ministry is not always made aware of all spills when they occur. This is because the Environment Ministry needs to rely on spillers to report spills to the Environment Ministry's Spills Action Centre, and they are not doing so immediately—despite Section 92 of the *Environmental Protection Act* (Act) requiring every person having control of a pollutant that spills to notify the Environment Ministry.

Between 2016 and 2020, 16% of spills were not reported until at least the following day, and about 1% took more than 10 days to report. See **Figure 13** for the timeliness of spills reporting.

We reviewed a sample of 110 spills from the Environment Ministry's spills records between 2010 and 2020 that were assessed by the Environment

Ministry to have medium to major impacts on the environment and/or human health. Our review of these 110 spills found that, despite regulatory requirements, 45 (or 41%) were never reported to the Spills Action Centre by the spiller, as required by the Act. The Environment Ministry only learned of these spills from first responders, such as fire and police, the municipality or members of the public. Further, we found that the Environment Ministry does not ensure that spillers meet their legal obligation to report spills promptly by penalizing or prosecuting all violators. Of the 6,270 spills between 2016 and 2020 that were not reported the same day, the Environment Ministry referred only 50 spills to be investigated for failing to report immediately and eventually convicted eight spillers (or 0.14%). **Section 8.0** contains our findings on weaknesses in the Environment Ministry's enforcement. The Environment Ministry said that it does not always penalize spillers for failing to report if the spills were small, contained and remediated. However, we found that the Environment Ministry's assessment of those 6,270 spills that were not reported on the same day included 117 spills (1.9%) as having medium to major impacts on human health and/or the environment.

We identified the following example where the spiller's failure to report the incident in a timely manner led to the spill becoming larger and having a greater impact on the environment. On April 29, 2016, a member of the public informed the Spills Action Centre that there was oil draining into the Grand River in Kitchener. When Region of Waterloo staff arrived, they found further evidence of oil in several catch basins and noted that the spill had likely begun days earlier. On May 3, a towing company informed the Environment Ministry that on the night of April 29 when the business was closed, approximately 800 litres of oil spilled into its facility's floor drains, which connect to storm sewers that empty into the Grand River. When the owner discovered the spill, he attempted to clean up the spill himself and did not report it immediately to the Environment Ministry. As a result of the delay in reporting, close to 500,000 litres of liquid waste had

Figure 13: Timeliness of Spills Reporting, 2016–2020

Source of data: Ministry of the Environment, Conservation and Parks

Timeliness of Spills Reporting	# of Reported Spills	% of Reported Spills
Same day	34,057	84.4
1–2 days	4,397	10.9
3–5 days	852	2.1
6–10 days	516	1.3
>10 days	505	1.3

Note: Data excludes 22 spills that were inaccurately documented as being reported before the spills occurred. The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

to be removed from the Grand River and surrounding areas to clean up the spill. The Environment Ministry subsequently fined the company and its director \$70,000 for the spill. However, as part of a plea bargain, the spiller did not get charged for failing to report the spill. The City of Kitchener also accrued a cost of \$1.3 million for cleaning up the spill, of which \$122,000 (9%) was recovered from the spiller and the rest is still outstanding.

7.0 Detailed Audit Observations—Spill Prevention

7.1 Thousands of Spills Are Caused by Entities Not Subject to Spill Prevention Planning Requirements

The majority of spills are from entities that are not required to have spill prevention and contingency plans. These plans are documented procedures and actions an entity intends to implement to reduce the frequency of spills (prevention) and respond to spills (contingency) and reduce their impact on human health and/or the environment. The outdated requirements for spill prevention and contingency plans in regulation apply only to a group of industrial facilities identified in 1986 for being major contributors to water pollution. However, between 2016 and 2020, these facilities were responsible for a small portion (2,842, or 7%) of the 40,349 reported spills.

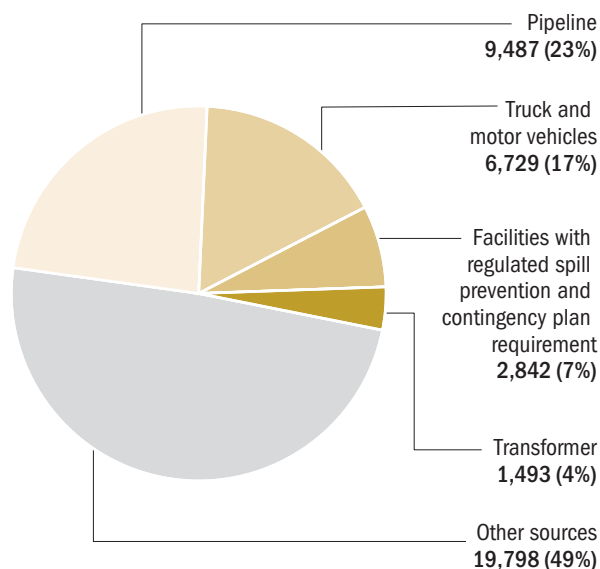
The Environment Ministry does not require spill prevention and contingency plans for many high-risk sources that require such plans in other jurisdictions. The scope of the Environment Ministry's spill planning requirements does not include oil and natural gas pipelines (the latter of which are included in California requirements), or fuel delivery trucks, electricity transmission and distribution substations, bulk fuel storage facilities and commercial fuel tanks (which are included in US requirements). These are among the sources of the most frequently reported spills in Ontario (Figure 14). Without the most frequent causes of spills requiring this form of planning, the Environment Ministry cannot effectively protect the environment from spills. For example, California has identified best practices to prevent natural gas leaks, including replacing pipeline valves that have designs that are known to leak, and having utility staff monitor construction near pipelines to avoid ruptures. More broadly, preventative maintenance and staff training can help prevent spills from many sources.

While the Environment Ministry also requires spill prevention and/or contingency planning as a condition of some environmental approvals, the Environment Ministry does not know how many approvals have these conditions because they are typically assessed on an individual permit basis.

In 2017, the Environment Ministry held a spill prevention workshop "to gain a better understanding of legislative framework related to spill prevention ... given the potential significant risks that spills of toxic substances pose to the environment and human health." The workshop led to the Environment Ministry initiating a study in 2018 of the root causes of spills, though the project ended due to staffing changes and restructuring before the production of a previously planned final report. Environment Ministry staff at the workshop identified the limited scope of spill prevention plan requirements for pipelines as a top risk and suggested that requirements should apply to pipelines. The Technical Standards and Safety Authority regulates intra-provincial fuel

Figure 14: Spills from Facilities with Regulated Spill Prevention and Contingency Plan Requirement and from Other Sources, 2016–2020

Source of data: Ministry of the Environment, Conservation and Parks



Note: The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

pipelines, but its staff at the workshop noted it does not have spill prevention requirements. The Ontario Energy Board, which approves pipelines, requires spill contingency, but not spill prevention plans. In contrast, California requires pipelines to have spill prevention plans.

The Environment Ministry argues it is not the primary regulator of most materials in transit (with the exception of waste). For example, the federal government has authority over inter-provincial and international transportation, and the Technical Standards and Safety Authority regulates intra-provincial pipelines.

In 2017, in response to a 35,000-litre diesel pipeline spill in the St. Clair River in 2013, the Environment Ministry examined expanding the scope of the Spill Prevention and Contingency Plan regulations to oil pipelines. The Environment Ministry ultimately decided not to expand the prevention planning requirements to include oil pipelines because there were no other spills from a provincially regulated oil pipeline between 2010-2017. Most pipeline spills in Ontario are of natural gas.

The Environment Ministry's spill prevention and contingency plan requirement is an example of management-based regulation, which has been found to be successful in other jurisdictions. An academic study found that manufacturing plants in US states with toxic reduction planning requirements were more engaged with pollution prevention activities, and reduced the weight of their toxic releases by 30% more than comparable plants in states without the same requirements. Environment and Climate Change Canada found federally required pollution prevention plans reduced toxic substances by four million kilograms. The federal policy applies to Ontario but differs from spill prevention and contingency plans by targeting overall pollution (including landfill waste) as opposed to targeting spills, and by targeting particular toxic substances (such as mercury) instead of facilities. The federally regulated toxic substances that require pollution prevention plans are determined individually by the federal Minister of Environment and Climate Change and do not include the most commonly spilled contaminants in Ontario, which are natural gas and oil products.

This regulatory gap can have significant consequences. The Environment Ministry received approximately 8,800 reports of spills from natural gas pipelines between 2016 and 2020. These spills result in natural gas being released directly into the air and cannot be cleaned up. Natural gas contains mostly methane, which is a damaging greenhouse gas that contributes to climate change. Methane traps up to 87 times more heat than the same amount of carbon dioxide, and approximately 8% of Ontario's methane emissions are from natural gas leaks. Because natural gas is flammable and explosive, natural gas leaks can also have direct human health impacts. For example, a 2003 natural gas pipeline explosion killed seven people and injured four others in Etobicoke. Ontario is currently subsidizing the expansion of the natural gas pipeline system, and expansion increases the risk of natural gas leaks.

RECOMMENDATION 6

To reduce the risk of hazardous spills occurrences and of hazardous spills from all sources not being properly cleaned up or remediated, we recommend that the Ministry of the Environment, Conservation and Parks review and expand its spill prevention and contingency plan requirements to include additional sources of the most frequent and environmentally harmful spills.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will review its approach to spill prevention and contingency planning at high-risk facilities, including expanding spill prevention planning requirements.

7.2 Environment Ministry Does Not Verify That Required Spill Plans Are Developed and Effective in Preventing Spills

Where entities are required to have plans in place to prevent and respond to spills, the Environment Ministry does not confirm that sufficient and effective plans are developed. When the Environment Ministry has inspected facilities or reviewed spill plans for completeness, it has found that some facilities do not have the required plans. However, the Environment Ministry does not approve spill plans or assess the effectiveness of spill prevention planning for even the highest risk facilities.

For example, the Environment Ministry has required vehicle waste facilities to have spill prevention and management plans since 2017. These plans have weaker requirements than spill prevention and contingency plans for large industrial facilities. Following the implementation of this regulation, the Environment Ministry conducted a one-time inspection blitz of the industry. The Environment Ministry inspected 529 registered vehicle disposal sites in 2017/18 and found 210 that did not

comply with spill prevention and management plan requirements. Through following up on the non-compliance, the Ministry identified that 34 facilities had still not complied as of February 2021.

Between 2016 and 2020, approximately 2,800 spills occurred at 193 industrial facilities with requirements to have spill prevention and contingency plans. The Environment Ministry did not review the quality of these entities' plans before any of these spills, and even after the spills the Environment Ministry did not review the plans to ensure they had been amended to effectively prevent and respond to similar uncontained spills.

In response to public concern regarding environmental degradation in Sarnia's Chemical Valley area, the Environment Ministry reviewed spill prevention and contingency plans of industrial facilities in Sarnia in December 2013 and January 2014. This review strictly checked whether plans existed, contained the required sections (for example, company name and a drawing of the facility), and were being updated as required. It did not assess whether plans were effective at preventing and responding to spills. Eleven of the 14 inspected facilities were found to be non-compliant with some spill prevention and contingency plan requirements and were brought into compliance. However, we found no evidence that this one-time inspection blitz (nor subsequent individual inspections of these facilities) of compliance with administrative requirements were effective in reducing spills; the average annual number of spills from six of these inspected facilities increased in the years since the inspections, and remained the same in four facilities.

The Environment Ministry solely relies on spillers to ensure the effectiveness of spill plans. This includes a requirement to review and revise plans annually, as well as following spills, to ensure their effectiveness. Unlike the US Environmental Protection Agency, the Environment Ministry does not require the spiller to have the plan certified by a professional engineer. Analyses of the root causes of spills, which inform updates to spill plans, are also conducted

solely by the spiller. The Environment Ministry does not train its Environmental Officers, who are responsible for reviewing spill plans during inspections, in spill prevention, root cause analysis of spills, nor (with few exceptions) in the particular industries they inspect. In contrast, the California Department of Fish and Wildlife's Office of Spill Prevention and Response employs Oil Spill Prevention Specialists as part of its spill response teams. These specialists investigate spills, participate in testing spill plans, review spill plans and submit recommendations. They also analyze and consider the feasibility of requiring new spill prevention technologies.

RECOMMENDATION 7

To confirm entities' compliance with the provincial requirement for them to develop effective plans to prevent and respond to spills, we recommend the Ministry of the Environment, Conservation and Parks:

- request and receive all spill prevention plans and review them for completeness;
- require professional engineers to approve plans for high-risk facilities; and
- train Environmental Officers to critically review these plans on a risk basis, including after spills.

MINISTRY RESPONSE

The Ministry agrees there are opportunities related to spill prevention planning. The Ministry will review spill prevention plans from high-risk facilities, including consideration of the Auditor General's recommended actions. The findings from the review will inform recommendations to government for proposed changes to spill prevention and planning requirements, as well as Ministry procedures.

8.0 Detailed Audit Observations—Enforcement

Spill prevention (**Section 7**) and remediation (**Section 6**) rely on a strong environmental enforcement regime. However, our audit found that the Environment Ministry's enforcement regime was inadequate to confirm spillers' compliance with environmental legislation and regulations to prevent spills and reduce their harm to human health and/or the environment. This is because the Environment Ministry:

- lacks reliable data to inform policy and risk-based inspections (**Section 8.1**);
- is reducing its proactive inspection and enforcement activities (**Section 8.2**);
- has limited ability to penalize spillers (**Section 8.3**), and is reducing the amount it can penalize spillers (**Section 8.4**);
- rarely investigates, prosecutes, convicts and fines spillers who are not subject to penalties and who harm the environment (**Section 8.5**); and
- allows spillers who repeatedly violate environmental laws and regulations to continue operating and avoid fines from prosecution (**Section 8.6**).

Overall, we found the Environment Ministry's approach to enforcement was lenient and relied mostly on only asking violators of environmental laws and regulations to comply, instead of using its powers to verify and require compliance. Between 2016 and 2020, the Environment Ministry relied on voluntary plans of action, violation notices and warnings for 22,556 (90%) of the incidents of non-compliance it identified, compared to 2,622 (10%) legally binding orders. Further, the Environment Ministry only occasionally uses financial tools to enforce compliance.

8.1 Environment Ministry Lacks Complete Data to Perform Risk-Based Enforcement of High-Risk Entities

The Environment Ministry has not ensured that spills data is recorded accurately and that all key risk

information on entities is completely input into its information system. The resulting lack of complete and accurate data limits the Environment Ministry's ability to identify and inspect high-risk entities and confirm that they are complying with spill prevention requirements. Further, this lack of reliable data limits the Ministry's ability to inform and adapt spills policy to address evolving risks. The Environment Ministry's data limitations to effectively conduct inspections on a risk basis and adjust policy undermines the effectiveness of its laws and regulations to address spills.

Historical information on environmental non-compliance, including with respect to spills, can be used to develop risk profiles and understand which activities, industries and entities are at highest risk for hazardous spills. The Environment Ministry said it does not have adequate spills data to effectively analyze and target risk-based inspections to reduce the risks from spills on human health and/or the environment. Further, such information could be used to not only inform risk-based inspections but to inform policy development. For example, had the Environment Ministry effectively recorded and analyzed data identifying the highest risk areas for spills, it should have led it to propose legislation enabling it to apply environmental penalties to deter the most common hazardous chemical spills to air (see **Section 2.2.1**).

In our 2016 Environmental Approvals audit, we noted that the Environment Ministry does not compile historical emitter-specific information to form risk profiles for individual emitters. In response, the Environment Ministry indicated it would develop a new information system that would "allow it to strengthen its risk-based process for inspections." However, despite this commitment, the Environment Ministry has not begun preparing historical data in a manner that would enable its migration to this new system.

In March 2019, the Environment Ministry proposed a new information system, noting in its business case for the new system that its environmental program, compliance and enforcement activities have not historically been outcome-focused. Instead, the

Ministry has assessed the success of many of its compliance programs by how many activities are undertaken/completed, and not necessarily prioritized by areas of highest environmental risk. Through the use of this new information system, the Environment Ministry intends to focus its compliance and enforcement processes on high-risk polluters.

The Environment Ministry recognizes that ongoing compliance efforts require access to historical information. However, when proposing the new IT system, it decided that data migration for the project would be minimal and limited only to basic information (for example, company and owner name, location). Despite investing \$19 million to develop the new system, and \$9 million to maintain it over the next 10 years, the Environment Ministry will not be migrating and using any historical data for its risk-based inspections. Without the transfer of historical spills data, the Environment Ministry will have to wait for adequate data to accumulate in the new system to make use of its primary function—assessing risk for inspection purposes.

The Environment Ministry did not formally assess the cost, timelines and benefits of transferring the historical data to the new system. The Environment Ministry informed us that it believed it would take a significant effort to migrate data to the new system, because it believes the data is significantly incomplete and inaccurate. Concerns with the data included:

- information not structured nor consistently entered;
- no spelling/grammar check feature, limiting the use of keyword searches;
- location information inconsistently entered, resulting in limited geographic understanding of spills information; and
- many key fields not being mandatory (for example, company name, location of spill, substance spilled, and cause of spill), resulting in thousands of incomplete records.

The lag in acquiring data in the system will hinder the Environment Ministry's ability to effectively assess and respond to risk, delaying the Environment

Ministry from realizing the full capacity and primary purpose of its new information system.

RECOMMENDATION 8

So that the Ministry of the Environment, Conservation and Parks (Ministry) has accurate, reliable and historical data to inform policy and enforcement to protect human health and the environment, we recommend that the Ministry:

- consistently review and ensure the accuracy of its data; and
- migrate validated data into its new information system.

MINISTRY RESPONSE

The Ministry agrees with the recommendation to review and ensure the accuracy of data. The Ministry has created a team to consistently review and help ensure the quality and accuracy of data in the new Environmental Compliance Hub of Ontario (ECHO) system. Migration of validated data into the new information system is ongoing.

8.2 Environment Ministry Decreasing Proactive Inspection and Enforcement of Environmental Requirements Despite High Rates of Non-compliance

Despite 42% of proactive inspections from 2016 to 2020 identifying non-compliance with environmental requirements, the Environment Ministry continues to reduce the number of inspections it performs. When non-compliance with environmental requirements, such as spill prevention requirements, is identified, the Environment Ministry relies on the offender voluntarily coming into compliance, although the Environment Ministry's 2019/20 compliance data indicates that this approach has been shown to be ineffective 30% of the times it was used in that period. The Environment Ministry rarely uses the stronger enforcement tools that are available to it.

The Environment Ministry attempts to target its proactive inspections on higher risk areas using the judgment of Environmental Officers and other staff. There is no centralized quantitative analysis of risk. There is also no policy guiding inspection frequency of spill prevention requirements. Not all spill plans are inspected, nor are all facilities with these plans inspected.

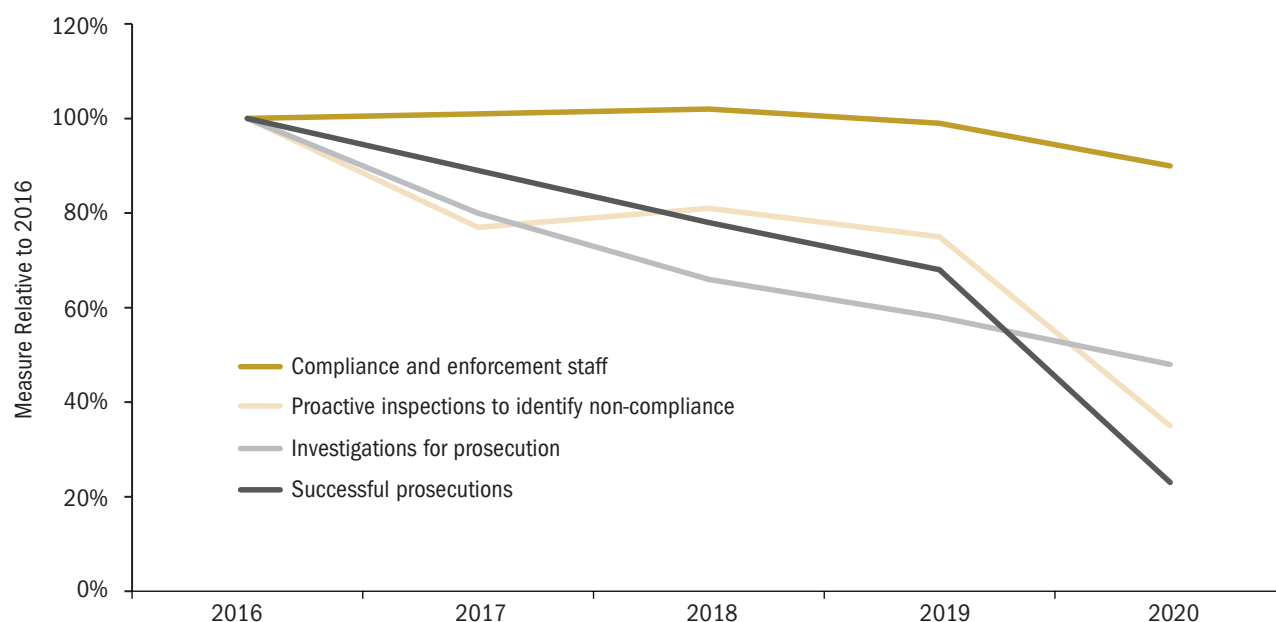
In addition to the spill plan requirements, the Environment Ministry has other requirements that are meant to help prevent spills as part of regulatory or environmental approval conditions. For example, large industrial facilities with wastewater systems must also monitor their discharges for potential spills. Additionally, the Environment Ministry requires vehicle disposal sites to have a containment system to catch spills of vehicle fluid such as fuel, oil and antifreeze. Non-compliance can range from not having a spill prevention plan (see **Section 7.2**), to providing false information (see **Section 8.6**), to not reporting spills (see **Section 8.5**) to causing a spill with an adverse effect.

It should be noted, proactive compliance activities in 2020 were significantly reduced due to the pandemic and related public health measures. However, even before the pandemic started, the Environment Ministry began reducing enforcement activity. From 2016 to 2019, the Environment Ministry reduced annual proactive inspections to ensure compliance with environmental laws and regulation by 25%, investigations of non-compliance for prosecution by 42%, and successful prosecutions of non-compliance fell by 32% (**Figure 15**). In addition to fewer inspections, there has been a 60% reduction in issuing environmental penalties and fines, from \$9.6 million in 2016 to \$3.8 million in 2019 (**Figure 16**). In 2020, in response to its budget being reduced, the Environment Ministry reduced compliance and enforcement staff by 9% from 2019, and enforcement activity dropped.

High rates of identified non-compliance (ranging from a low of 41% to a high of 45% between 2016 and 2020) indicate that reducing proactive inspection activity will further reduce the Environment Ministry's

Figure 15: Environment Ministry Proactive Inspections and Compliance, 2016–2020

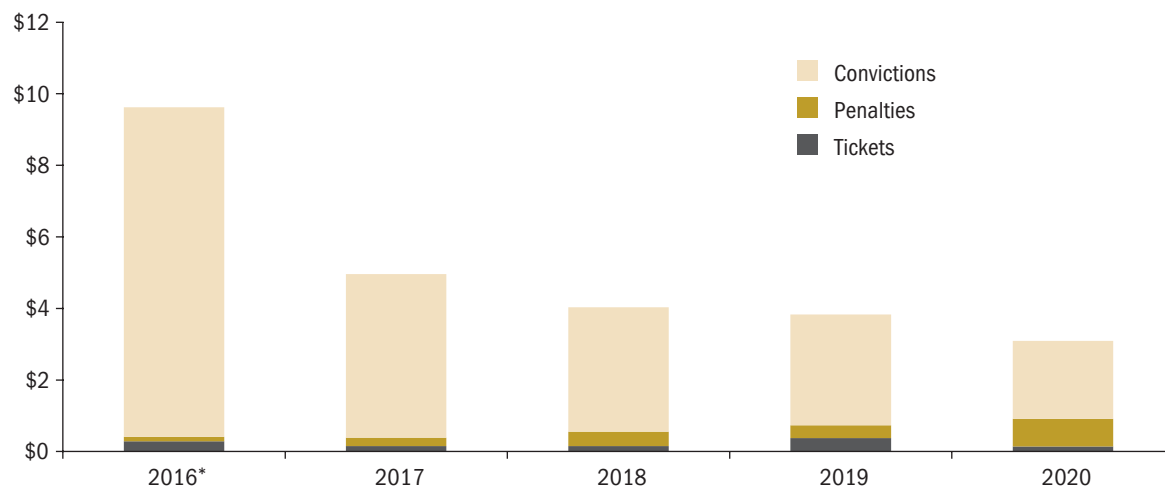
Source of data: Ministry of the Environment, Conservation and Parks



Note: Emergency measures to ensure public safety during COVID-19 affected the number of inspections in 2020.

Figure 16: Environment Ministry Use of Financial Enforcement Tools, 2016–2020 (\$ million)

Source of data: Ministry of the Environment, Conservation and Parks



* Includes conviction for the 2008 Sunrise Propane explosion with fines totaling \$5 million.

ability to detect non-compliance and prevent negative impacts on human health and/or the environment. Due to reduced inspections, instances of identified non-compliance from Environment Ministry proactive inspections have consequently declined from 3,980 in 2016 to 3,264 in 2019.

RECOMMENDATION 9

To optimize inspection resources used to identify instances of non-compliance with environmental regulations (that are intended to deter and reduce the frequency and environmental impact of spills), we recommend that the Ministry of the Environment, Conservation and Parks:

- regularly analyze collected data on key risks and sources of spills to determine the inspection frequency and approach needed to effectively address non-compliance;
- reassess assigned inspection resources to ensure that the intent of the *Environmental Protection Act* is being met; and
- undertake inspections with the frequency, resources and approach needed to identify and effectively address non-compliance.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry will review our assessment and use of spills data in our planning and inspection processes, and take corrective action as needed.

8.3 Environmental Penalties Cannot Be Issued to All Spillers

Because O. Reg. 222/07 applies to only approximately 106 industrial facilities, environmental penalties cannot be used to hold other spillers accountable or to deter spills. Between 2016 and 2020, spillers responsible for 94% (38,124 of 40,349) of reported spills could not be penalized. Although all spillers could be fined following successful investigation, prosecution and conviction in court, a study of international best practices by the Organisation for Economic Co-operation and Development has found that enforcement tools need to be easy enough to be used when needed, while strong enough to outweigh potential profits from non-compliance.

The Environment Ministry's environmental penalties are a financial enforcement tool used to protect the air, water and land and hold polluters accountable for environmental harm. Environmental penalties

are intended to encourage quick and effective compliance. This is in contrast to the other enforcement measures such as orders, which do not have a monetary component, and prosecutions, which can take a significant amount of time to pursue.

While revenues from paid tickets and fines go to the municipalities where the offence occurred, revenues from environmental penalties go toward the Province's Ontario Community Environment Fund, which funds environmental improvement projects in communities where violations occurred. A potential benefit of environmental penalties is that they can be issued once a spill is reported; this contrasts with prosecutions, where investigators are required to collect detailed evidence to prove the violation. This means investigators need to spend, on average, 16 months gathering evidence before they can begin legal proceedings.

Under the *Environmental Protection Act*, penalties apply only to certain facilities in nine industrial sectors (for example, petroleum, iron and steel, and metal mining) that may pollute land and surface waters. Penalties cannot be applied to other entities or activities, including the transportation of substances such as hazardous waste. **Figure 17** lists the types of recent spills not directly associated with a facility and therefore excluded from the application of environmental penalties. As noted, between 2016 and 2020, these amounted to 38,124 reported spills. Extrapolating from the \$1.9 million in penalties issued for 2,225 reported spills between 2016 and 2020 from the nine industrial sectors, an estimated \$32.4 million could have been charged for the remaining 38,124 that environmental penalties currently do not apply to.

The Environment Ministry is also unable to issue penalties to most spills to air from these nine industrial sectors. The only penalties that exist for spills to air is for petroleum facilities that discharge sulphur dioxide to the air. In July 2019, the Environment Ministry began issuing penalties for discharges of sulphur dioxide that exceed the Environment Ministry-approved maximum allowable amount. Between 2019 and March 2021, 21 penalties related to sulphur

**Figure 17: Sources of Spills in Ontario
Where Environmental Penalties Could Not Be Applied,
2016–2020**

Source of data: Ministry of the Environment, Conservation and Parks

Source of Spill	# of Spills
Pipeline/components	9,619
Motor vehicle	3,379
Truck – transport/hauling	1,865
Sewer (private or municipal)	1,460
Truck – only saddle tanks	1,401
Sewage treatment	1,376
Container/drum/tote	1,084
Tank – above ground	899
Structure	458
Truck – tanker	357
Other*	16,226
Total	38,124

Note: The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

* Other includes transformers, watercraft, waste disposal sites, underground tanks, trains and other spill sources.

dioxide were issued, amounting to \$1.6 million in total penalties.

These penalties are significantly weaker than those applied in some other jurisdictions. For example, the South Coast Air Quality Management District in California administers penalties for spills of sulphur dioxide emissions. **Figure 18** details the \$14.7 million in penalties that would have been applied through the South Coast Air Quality Management District approach compared with the \$1.6 million penalties actually applied in Ontario. This air quality management district has recorded decreasing annual peak sulphur dioxide concentrations since it implemented its refinery emissions policy in 1998.

Although Sarnia has seen air quality improvements over time, its petroleum refineries remain outliers with uniquely high emissions. Data compiled by Environment and Climate Change Canada shows Canada's 15 refineries emit more sulphur dioxide than 127 US refineries combined. Among Canadian facilities, Sarnia's Imperial Oil refinery is the worst

Figure 18: Comparison of Ontario and California Flaring Penalties, July 2019–March 2021

Prepared by the Office of the Auditor General of Ontario

Facility	# Flaring Events	Total Duration of Events (Hours)	Total Sulphur Dioxide Emitted (kg)	Penalties Applied by Environment Ministry (\$ million Cdn)	Equivalent Penalties in California* (\$ million US)
Imperial Oil – Nanticoke	2	61	12,291	0.1	1.3
Imperial Oil – Sarnia	9	76	92,243	0.8	9.7
Shell – Corunna Refinery	9	56	32,514	0.6	3.4
Suncor – Sarnia	1	26	3,140	0.1	0.3
Total	21	219	140,187	1.6	14.7

* Our Office's calculations based on the actual Ontario flaring events and the hypothetical results of applying California's South Coast Air Quality Management District approach to these events.

performing in terms of sulphur dioxide, relative to annual production from US plants with similar technology. The same Sarnia facility was also the worst performer in terms of fine particulate matter and nitrogen oxide, while Sarnia's Suncor refinery was worst in terms of carbon monoxide emissions. The Environment Ministry has issued 17 special air quality statements for Sarnia between 2016 and 2020. Although these are a result of many sources of air pollution, the Ministry explicitly recommends avoiding exposure to industrial emissions when these statements are issued.

In the 2018 *Made-in-Ontario Environment Plan (Preserving and Protecting our Environment for Future Generations)*, the Province committed to holding polluters accountable by strengthening enforcement measures. The Environment Ministry told us that recent changes resulting from the *Better for People, Smarter for Business Act, 2019* will enable the Environment Ministry to apply environmental penalties to all sectors. This will require the creation of a regulation that specifically enables further penalties.

RECOMMENDATION 10

To hold polluters accountable and encourage preventing spills that have potential impacts on human health and the environment, we recommend that the Ministry of the

Environment, Conservation and Parks expand the application of its environmental penalties to enable it to penalize all spills.

MINISTRY RESPONSE

The Ministry agrees with the Auditor General's recommendation and has begun the process of expanding the administrative monetary penalties regime. The Ministry has begun the process of expanding the administrative monetary penalties regime as part of Bill 132, the *Better for People, Smarter for Business Act, 2019*. The Ministry engaged with stakeholders in spring 2021 to discuss the proposed path forward for administrative monetary penalties.

The Ministry will consider spills when determining potential contraventions that may be subject to an administrative monetary penalty.

8.4 New Penalty Limits May Reduce the Incentive to Prevent and Promptly Remediate Spills

Upcoming changes to Ontario's penalty regime may further weaken Ontario's environmental enforcement regime, reducing the incentive for spillers to prevent and remediate the impacts from spills in a timely manner. The upcoming changes will put a cap on the maximum penalties per spill, limiting

the Environment Ministry's ability to compel timely remediation through cumulative daily penalties.

The purpose of environmental penalties is to protect the environment by encouraging companies to comply with environmental legislation and take swift remedial action in the event of a spill, discharge or other environmental violation. The Environment Ministry can impose penalties for causing a spill or not reporting a spill.

Currently, Ontario has the highest stipulated maximum penalty per day in Canada, at \$100,000. Despite this, Ontario routinely issues the lowest total amount of monetary penalties. This is because Ontario issues cumulative penalties to violators less than \$100,000 per day and less frequently than other provinces. This means that there is a lower cost to spillers for negatively impacting human health and/or the environment in Ontario than in some other provinces. See **Figure 19** for the number of penalties issued in the last five years by Ontario and three other provinces, and their total dollar amount.

The *Better for People, Smarter for Business Act, 2019*, which has not yet been proclaimed, makes changes to the Environment Ministry's authority to issue penalties. Amongst other things, these changes will result in penalty limits being calculated per spill rather than per day the spill has not been remediated. This will make Ontario the only province in Canada that does not set a penalty for each day a spill continues. The changes will also limit the total penalties to \$200,000 per spill and further restrict the Environment Ministry's ability to issue cumulative penalties. The Ministry noted that it can also increase

the total penalty issued by the amount the spiller economically benefitted from delaying its response to the spill. However, the Ministry has never attempted to quantify an economic benefit. The new penalty regime will come into force at a future date upon proclamation by the Lieutenant Governor.

The Environment Ministry is in the process of updating the amount and application of its environmental penalties. Environmental organizations, including Ecojustice, have raised concerns that these changes would undermine the penalties' effectiveness. An objection to the changes supported by Environmental Defence and 39 other environmental and community groups stated that "the proposed changes to introduce a maximum per contravention ... represents a weakening of the framework." The Environment Ministry has completed its stakeholder engagement and is currently reviewing the feedback received to develop the new regulations and guidance documents, with the intention of a fall 2021 release. Some of the feedback received by the Environment Ministry was that environmental penalties should be high enough for companies to have an incentive to improve their operations, and that the current framework of penalizing per day helps to ensure that the cleanup is prompt. The new environmental penalty framework is expected to be in effect at the beginning of 2022.

RECOMMENDATION 11

To compel spill prevention and timely spill remediation, we recommend that the Ministry of the

Figure 19: Provincial Comparison of Environmental Penalties Issued, 2016–2020

Prepared by the Office of the Auditor General of Ontario

	2016		2017		2018		2019		2020		Total	
	(#)	(\$ 000)	(#)	(\$ 000)	(#)	(\$ 000)	(#)	(\$ 000)	(#)	(\$ 000)	(#)	(\$ 000)
ON	11	123	12	255	19	398	19	363	18	771	79	1,910
BC	8	126	16	284	21	316	31	545	23	339	99	1,610
AB	30	2,308	26	2,516	21	1,591	28	1,771	25	8467	130	16,653
QC	456	1,865	432	1,728	433	1,750	520	2,264	223	1,105	2,064	8,712

Note: This table includes all penalties and not just those directly relating to spills.

Environment, Conservation, and Parks reassess its pending environmental enforcement regime to be consistent with the approach used throughout Canada to impose daily financial penalties at amounts significant enough to encourage spill prevention and deter delayed remediation.

MINISTRY RESPONSE

The Ministry agrees with the recommendation to assess its environmental enforcement regime. The Ministry is currently assessing and consulting on administrative monetary penalties and will propose to government financial penalty amounts significant enough to encourage spill prevention and deter delayed remediation.

8.5 Environment Ministry Rarely Investigates and Fines Spillers for Failing to Report a Spill

The Environment Ministry rarely investigates spillers who harm the environment. Out of the over 40,000 spills known to have occurred between 2016 and 2020, the Environment Ministry has referred only 153 spills to the Investigations and Enforcement Branch (Enforcement Branch) to be investigated; and only eight of these led to convictions against the spiller for failing to report a spill.

As shown in **Figure 17**, the Environment Ministry does not issue penalties for the majority of reported spills. When we inquired how the Environment Ministry holds spillers accountable to protect the environment, Environment Ministry staff advised us that, in cases where it cannot issue penalties, Environmental Officers can recommend that the Enforcement Branch investigate the spiller. The Enforcement Branch can then decide whether it should lay charges under the *Environmental Protection Act*. However, we found that Environmental Officers rarely refer spills to the Enforcement Branch. Between 2016 and 2020, we found that Environmental Officers have referred only 153 spills

to be investigated, equivalent to less than 1% of the over 40,000 spills that occurred during this period.

Further analysis of the 153 spills that were referred to the Environment Ministry's Enforcement Branch to be investigated shows that 54 were investigated to be prosecuted for failing to report a spill, but of these only eight were prosecuted for failing to report a spill. Cases for 12 spills are currently pending a decision whether to prosecute and nine cases are before the courts. Cases for 25 spills were either declined after being referred (eight) or closed following investigation (17). According to the Ministry, some of the reasons why the 25 cases were either closed or declined include the following:

- the spill was small and contained;
- the Environmental Officer did not gather the necessary samples on time;
- the samples gathered by the Environment Ministry, other agencies, such as Environment and Climate Change Canada, or the municipality were not sufficient or conclusive;
- the Environment Ministry did not make a timely response to the spill;
- the Environmental Officer did not take the necessary photographs that could be used as evidence;
- the Environment Ministry withdrew the charges because the spiller did not have the financial means to pay the fine and the spill had a low impact on the environment;
- there was no evidence of adverse impact on the environment and/or human health;
- the Environmental Officer delayed referring the spill to the Enforcement Branch;
- charges would not be in the public interest. This includes the Environment Ministry not pursuing charges against a provincial agency under the Ministry of Heritage, Sport, Tourism and Culture Industries;
- the spiller failed to report the spill in a timely manner, but there was no indication that this failure was intentional; and
- the conviction would have no additional benefit as the spiller had already cleaned up the environment.

RECOMMENDATION 12

To protect the environment through an effective enforcement regime, we recommend that the Ministry of the Environment, Conservation and Parks senior management verify that spill incidents are investigated, appropriately prosecuted and fines are sought for spillers who fail to report in a timely manner and in doing so:

- provide clear direction to Environmental Officers on all significant steps to be taken and documented;
- review the documented spills response actions on a risk basis to ensure all steps are completed; and
- use the reviews to identify prevalent issues that limit the Ministry's ability to effectively penalize and prosecute spillers, and take corrective action as needed.

MINISTRY RESPONSE

The Ministry agrees that continuous improvement of program delivery is critical and is working to improve procedures that provide clear direction for compliance and enforcement activities and documentation of actions through the implementation of our new Information Technology System Environmental Compliance Hub of Ontario (ECHO). The Ministry agrees to undertake a review of spills response actions and take corrective actions needed to address issues that are barriers to prosecution.

8.6 Environment Ministry Does Not Stop Repeat Offenders

The Environment Ministry allows companies that repeatedly spill and violate environmental laws and regulations to continue operating, despite Ministry policy that allows it to revoke environmental approvals.

In response to our Office's 2016 audit of Environmental Approvals, the Environment Ministry

developed a strategy to focus compliance and enforcement efforts on repeat violators. The strategy, put in place in 2018, includes a process to revoke environmental approvals for offenders who have not been brought into compliance. The process is initiated by Environmental Officers, but requires involvement by several individuals and branches: their manager/supervisor, regional/branch director, district manager, district supervisor, the Environmental Investigations and Enforcement Branch, the Environmental Permissions Branch, the Client Services and Permissions Branch, and Legal Services.

The Environment Ministry consulted with staff and identified this bureaucratic process as "very onerous and time consuming." Despite the Environment Ministry identifying that 41 of 54 repeat violators remained non-compliant as of October 2021, the Environment Ministry's implementation of the 2018 strategy has led to only two companies losing their environmental approvals. One is 1076330 Ontario Inc. operating a waste transfer/processing site that mismanaged hazardous waste, and did not comply with orders nor pay fines. The other is O@B Waste Management System, which was non-compliant with nearly all terms and conditions of the environmental approval and was illegally dumping. Additionally, the Environment Ministry has found that small companies that have had their environmental approvals revoked can simply operate as a new company.

The Ministry identified to our Office 41 repeat non-compliant violators, including one of the 30 most frequent spillers in Ontario—GFL Environmental Inc. (See **Appendix 9** for a list of the most frequent spillers.) Other repeat non-compliant violators identified by the Ministry included Rain Carbon Inc. (formerly Ruetgers Canada Inc.), Parmalat Canada Inc. (now Lactalis Canada), and Ontario Graphite Ltd.

The Ministry's list of repeat non-compliant violators may not include all repeat offenders. For example, Domtar Inc., a paper mill company that is one of Ontario's 30 most frequent spillers, has received 10 penalty orders for 54 different violations, as well as two convictions. During the 2021 review of its repeat non-compliant violator

strategy, the Ministry identified that the existing procedure could be burdensome, which may have discouraged staff from identifying repeat violators. The strategy required developing a compliance plan that staff described as redundant extra work. Staff indicated there was little value added because steps to bring violators into compliance would already be documented and the process of investigating companies for potential conviction does not change.

GFL Environmental Inc. is a waste management company that was identified as a repeat offender in 2018/19 and has had 78 reported spills between 2016 and 2020. This includes a spill that contributed to a fire that resulted in at least \$32,000 in Environment Ministry response costs (**Figure 11**). In its repeat offender documentation, the Environment Ministry staff noted that GFL “regularly contravenes the acts, regulations and legal documents overseen by the ministry.” Despite this continued non-compliance, the Environment Ministry continues to grant environmental approvals to GFL Environmental to expand its operations throughout the province. For example, the Environment Ministry found that GFL was contaminating surface water in the township of North Stormont by repeatedly discharging treated leachate (liquid passed through landfill) at concentrations lethal to fish, in violation of its environmental approval. It also found that GFL was falsely reporting to the Environment Ministry that test results showed no fish mortality. Despite this, the Environment Ministry issued GFL new environmental approvals, including for the expansion of the landfill where this non-compliance was occurring. This is in part because the Environment Ministry’s Environmental Permissions Branch relies on staff judgment and does not yet have a policy to ensure consistency when considering non-compliance prior to issuing environmental approvals. The Environment Ministry’s 2021 review of its repeat violator strategy also found a lack of a process to co-ordinate among district offices to address repeat violators with sites in multiple districts.

The Environment Ministry’s financial enforcement tools have not been strong enough to deter repeat offenders. As discussed in **Section 8.3**, Ontario penalties are much lower than those in the South Coast Air Quality Management District of California. In 2017, the Technical Standards and Safety Authority (TSSA) also advised that the Environment Ministry’s penalties were too low to impact multi-million-dollar companies. Although fines from convictions may be higher, there are also over \$25 million in unpaid fines as of April 2021 for violations of the Environment Ministry’s environmental policies since 1988. The Environment Ministry is not responsible for collecting these fines. Instead, this is the responsibility of the local municipality that oversees the court that issued the fine. Although the *Environmental Protection Act* allows the Environment Ministry to suspend permissions due to unpaid fines, it has not done this since at least 2016, and cannot confirm that it has ever done so.

The TSSA advised the Environment Ministry in 2017 that large companies can be motivated to protect their reputation. In response to our 2016 audit report, the Environment Ministry stated internally it would publish convictions as part of a repeat violator strategy. However, publishing convictions is not part of the Environment Ministry’s current strategy. While there were 378 Environment Ministry convictions from 2016-2020, there are only 288 Environment Ministry court bulletins published online. The Environment Ministry also does not publish repeat violators or even inform all repeat violators themselves that they have been identified as such.

RECOMMENDATION 13

To reduce repeated violations of environmental laws and regulations by the same offenders, we recommend that the Ministry of the Environment, Conservation and Parks (Ministry) revise its repeat offender strategy to ensure chronic repeat violators are:

- penalized or prosecuted considering violations on all company operations within Ontario;
- publicly identified with consolidated information published on the Ministry's website on prosecutions, penalties, tickets, orders and details of violations;
- provided with written communication of the risk of the cancellation of their environmental approvals with repeat offences; and
- denied additional environmental approvals regardless of site location or company name.

MINISTRY RESPONSE

The Ministry agrees to review its Repeat Non-Compliant Violator Strategy, considering recommendations made by the Auditor General, and propose corrective revisions as needed.

Appendix 1: Indigenous Reserves with Most Spills within 1 Kilometre, 2016–2020

Prepared by the Office of the Auditor General of Ontario

Indigenous Reserve	Reported Spills
Fort William Indian Reserve No. 52	162
Sarnia Indian Reserve No. 45	69
Six Nations Indian Reserve No. 40	41
Akwesasne Reserve No. 59	38
Glebe Farm Indian Reserve No. 40b	29
Whitefish Island Indian Reserve	21
Tyendinaga Mohawk Territory	20
Rankin Location Indian Reserve No. 15d	18
Saugeen Indian Reserve No. 29	11
Whitefish Lake Indian Reserve No. 6	11
Henvey Inlet Indian Reserve No. 2	11
Indian River Reserve	11
Kitchenuhmaykoosib Aaki No. 84	11
Chippewas of Rama First Nation	10
Gull River Indian Reserve No. 55	9
Islands in the Trent Waters Indian Reserve No. 36a	8
New Credit Indian Reserve No. 40a	8
Nipissing Indian Reserve No. 10	7
Hiawatha First Nation	7
Fort Albany Indian Reserve No. 67	7
Serpent River Indian Reserve No. 7	6
Agency Indian Reserve No. 1	6
Shawanaga Indian Reserve No. 17	6
Mississagi River Indian Reserve No. 8	6
Chapleau Indian Reserve No. 74	5
Lac Seul Indian Reserve No. 28	5
Chapleau Indian Reserve No. 74a	5
Ginoogaming First Nation	5
Chapleau Indian Reserve No. 61a	5
Kettle Point Indian Reserve No. 44	5
Other	134
Total	697

Note: The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

Appendix 2: Environment Ministry's Assessment of Impact of Spills Prior to Remediation, 2016–2020

Source of data: Ministry of the Environment, Conservation and Parks

Category	Description	Reported Spills
No impact	No actual or potential impacts on human health and/or the environment	2,348
Administrative	No actual or potential impacts on human health and/or the environment; however, there was administrative non-compliance (e.g., failure to report information to the Ministry)	334
Minor environmental	Non-lethal impacts on animal life and the natural environment; impacts are short-term or localized, and require little or no action to restore the environment	36,546
Minor health	No hospitalization or emergency treatment required	85
Medium environmental	Non-lethal widespread impact on animal and plant life; action required to restore the environment	921
Major environmental	Lethal impacts on animal life and the natural environment	13
Medium/ Major health	Impacts resulting in hospitalization or emergency treatment	8
Unknown	No assessment	94

Note: The Environment Ministry's assessment of spills is based on initially reported information. The Environment Ministry does not update the assessment if additional information is reported, such as after remediation, so rankings may not reflect real-world impact. The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

Appendix 3: Spills Assessed as Having a Negative Impact on Human Health, 2020

Source of data: Ministry of the Environment, Conservation and Parks

Date	Description	Degree of Impact on Human Health	Receiving Environment
Jan 13	Spill of oily water to parking lot and stormceptor	Minor	Land
Jan 15	Spill of hydrogen sulfide to the air	Minor	Air
Mar 2	Spill of natural gas from a damaged pipeline in a residence	Minor	Air
Mar 13	Spill of cooking grease to pavement	Minor	Land
Mar 26	Plume resulting from a generating station's cooling tower	Minor	Air
Apr 3	Spill of hydraulic oil to asphalt	Minor	Land
Apr 10	Spill of diesel oil alongside Highway 11	Minor	Land
Apr 15	Plume resulting from a fire at a facility	Minor	Air
May 19	Spill resulting of water main break, impacting nine homes	Medium/Major	Water
Jul 16	Spill from an oxygen tanker facility	Medium/Major	Air
Aug 26	Spill of hydraulic oil to gravel	Minor	Land
Oct 19	Plume resulting from generating facility's cooling tower	Medium/Major	Air
Nov 12	Spill of natural gas after contractor hit plastic service line	Minor	Unassessed
Dec 4	Spill of douse water and plume resulting from a fire at a Toledo beach	Minor	Air, water

Appendix 4: Substances Spilled to Air and Associated Impacts, 2016–2020

Prepared by the Office of the Auditor General of Ontario

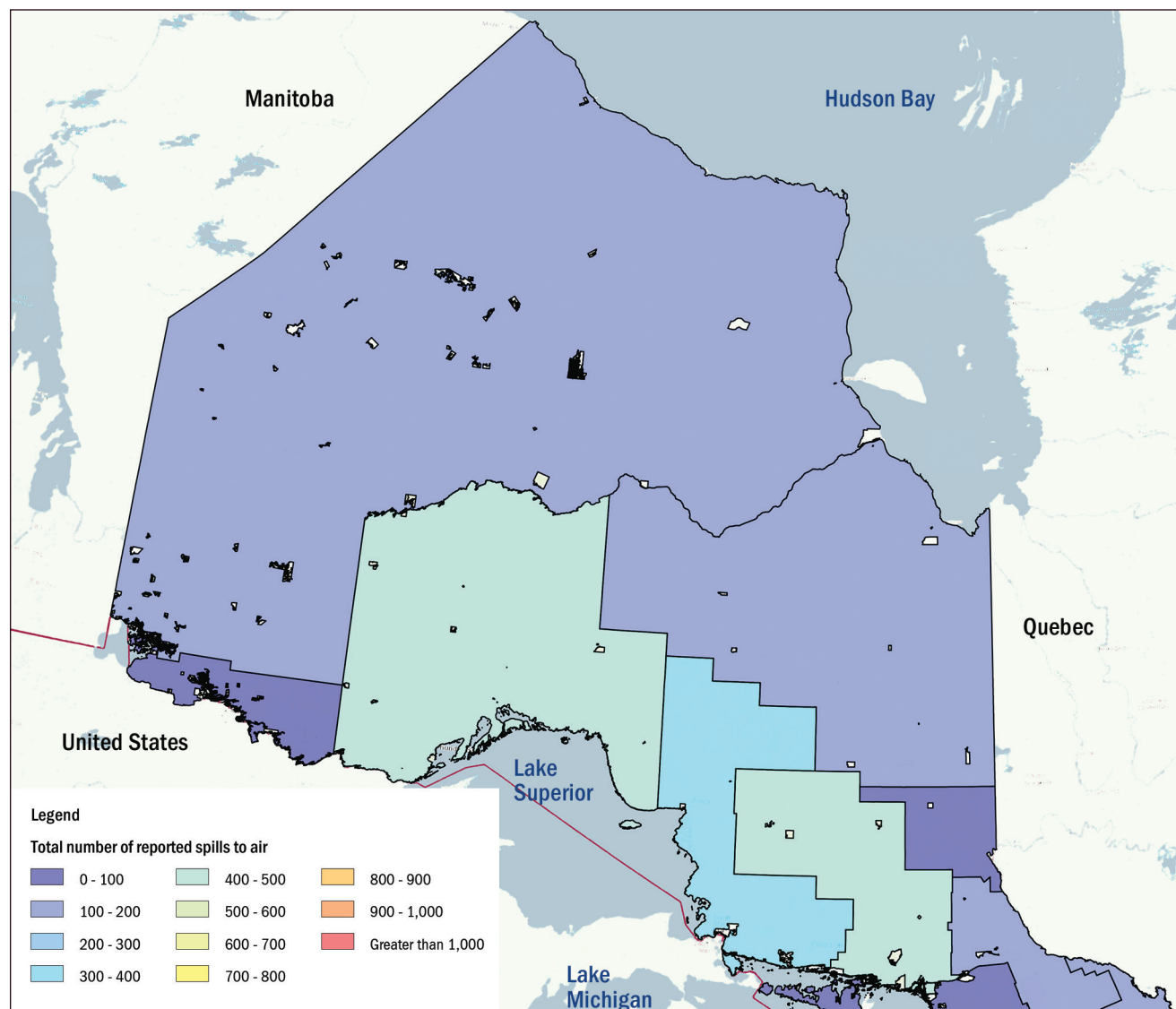
Substance	Potential Health and Environmental Impacts	Reported Spills
Natural gas	Natural gas is flammable and explosive; can cause asphyxiation by displacing oxygen in the air and symptoms of hypoxia (e.g., headache, decreased vision, fatigue, shortness of breath and loss of consciousness); and it is composed primarily of methane, which is a highly potent greenhouse gas.	12,294
Refrigerant gas	Refrigerants can deplete the ozone layer and be a highly potent greenhouse gas contributing to climate change.	1,048
Smoke	In the environment, smoke obscures visibility and decreases air quality. In humans, fine particles from smoke can penetrate the lungs and cause aggravated chronic heart and lung disease, which is linked to death.	321
Methane gas	An extremely flammable greenhouse gas, methane traps heat in the atmosphere, contributing to increasing global warming. It decreases air quality. In humans, fine particles from smoke can penetrate the lungs and cause aggravated chronic heart and lung disease, which is linked to death.	176
Propane	Propane is an asphyxiant. In humans, exposure to high concentrations can harm the nervous system and lead to unconsciousness.	109
Ammonia gas	In humans, ammonia causes immediate burning of the eyes, nose, throat and respiratory tract and can result in blindness, lung damage or death. Inhalation of lower concentrations can cause coughing, and nose and throat irritation.	65
Other	Other substances spilled to air include sulphur dioxide (31 spills), sulphur hexafluoride (26 spills), hydrogen sulfide (24 spills), carbon monoxide (12 spills), among others, all of which have negative impacts to both human health and the environment.	1,360
Total		15,373

Note: The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

Appendix 5: Maps of Reported Spills in Ontario, 2016–2020

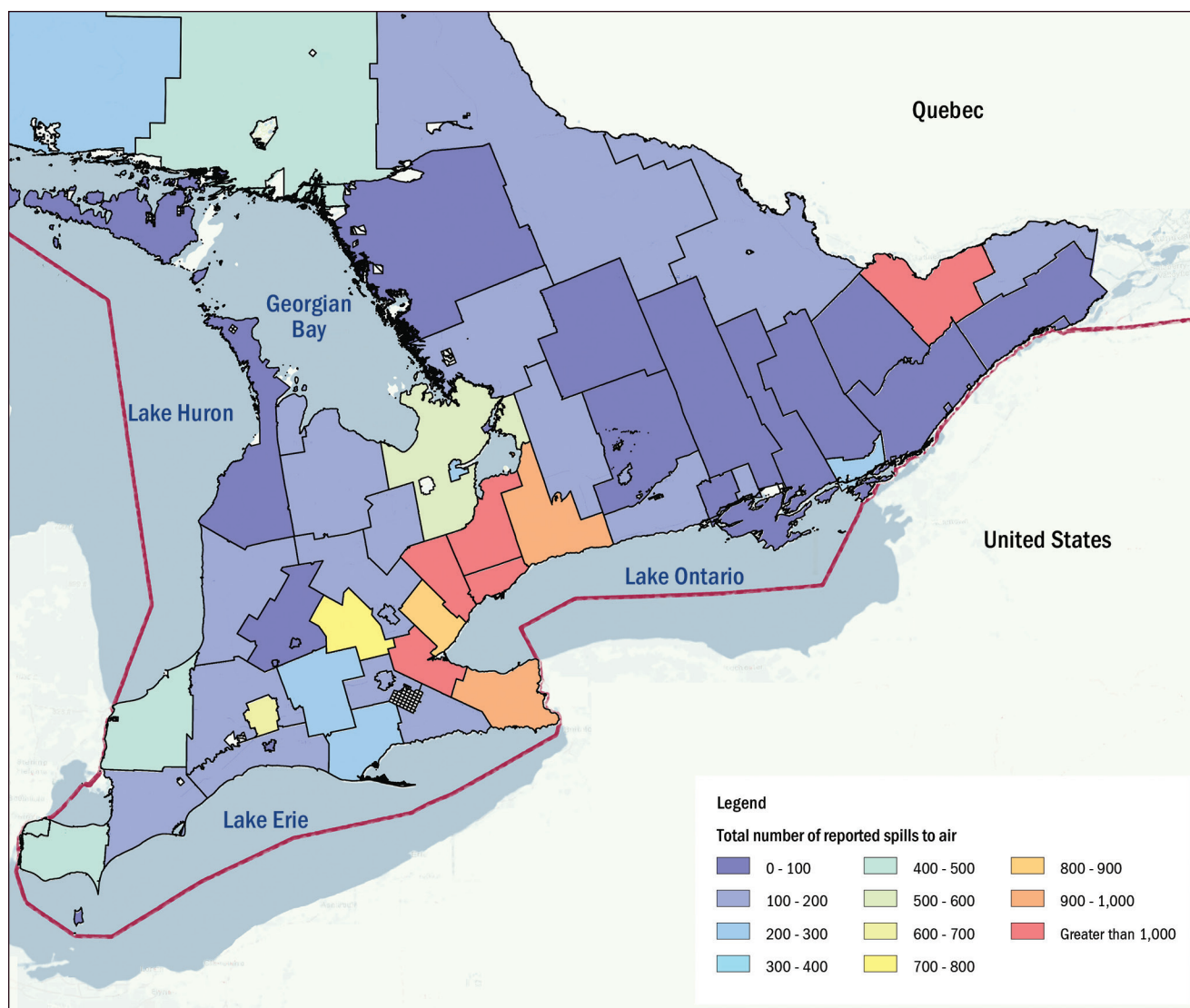
Prepared by the Office of the Auditor General of Ontario

Reported Spills to Air, Northern Ontario, 2016–2020



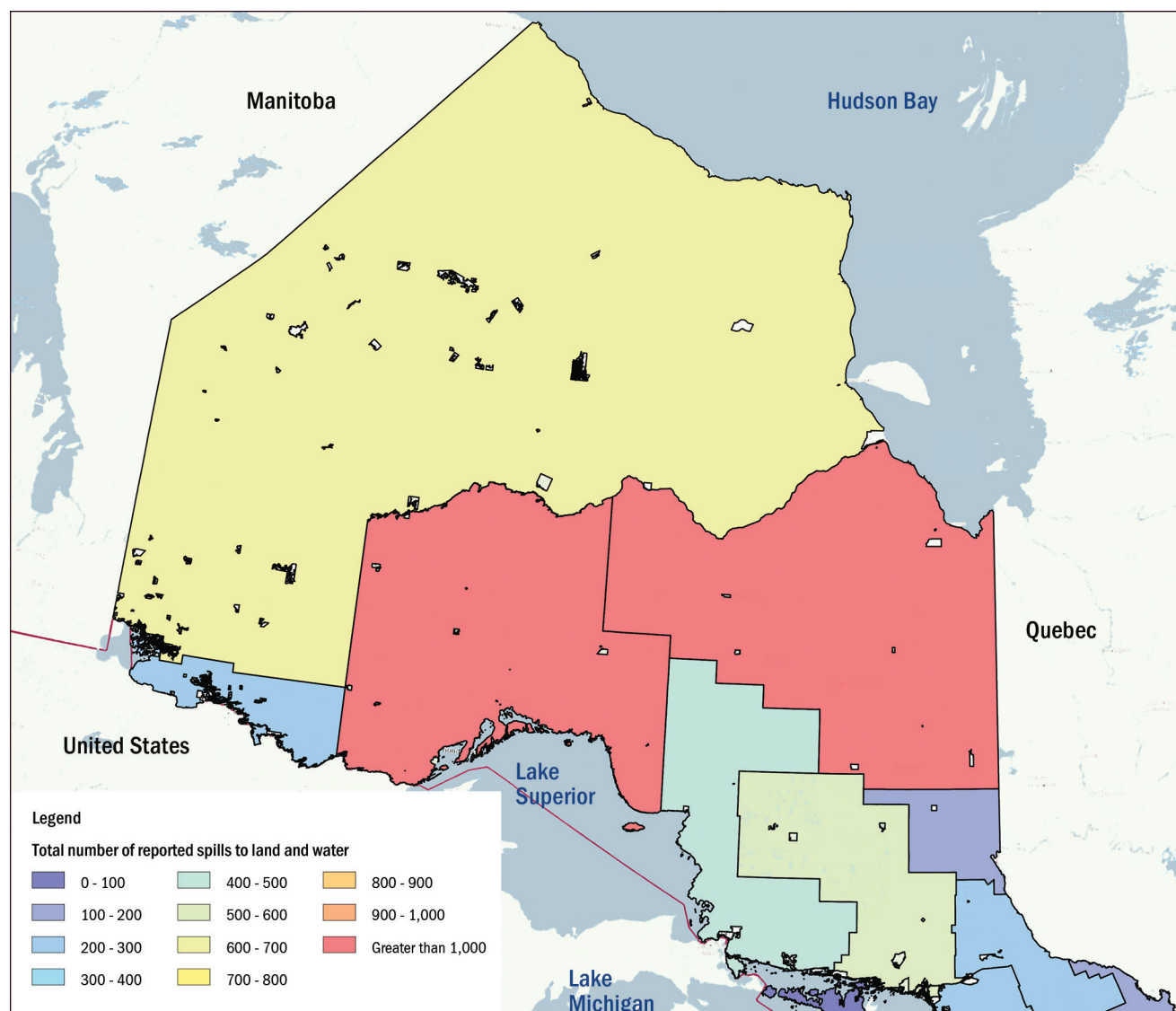
Note: These maps are based on data provided by the Ministry of the Environment, Conservation and Parks. The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

Reported Spills to Air, Southern Ontario, 2016-2020



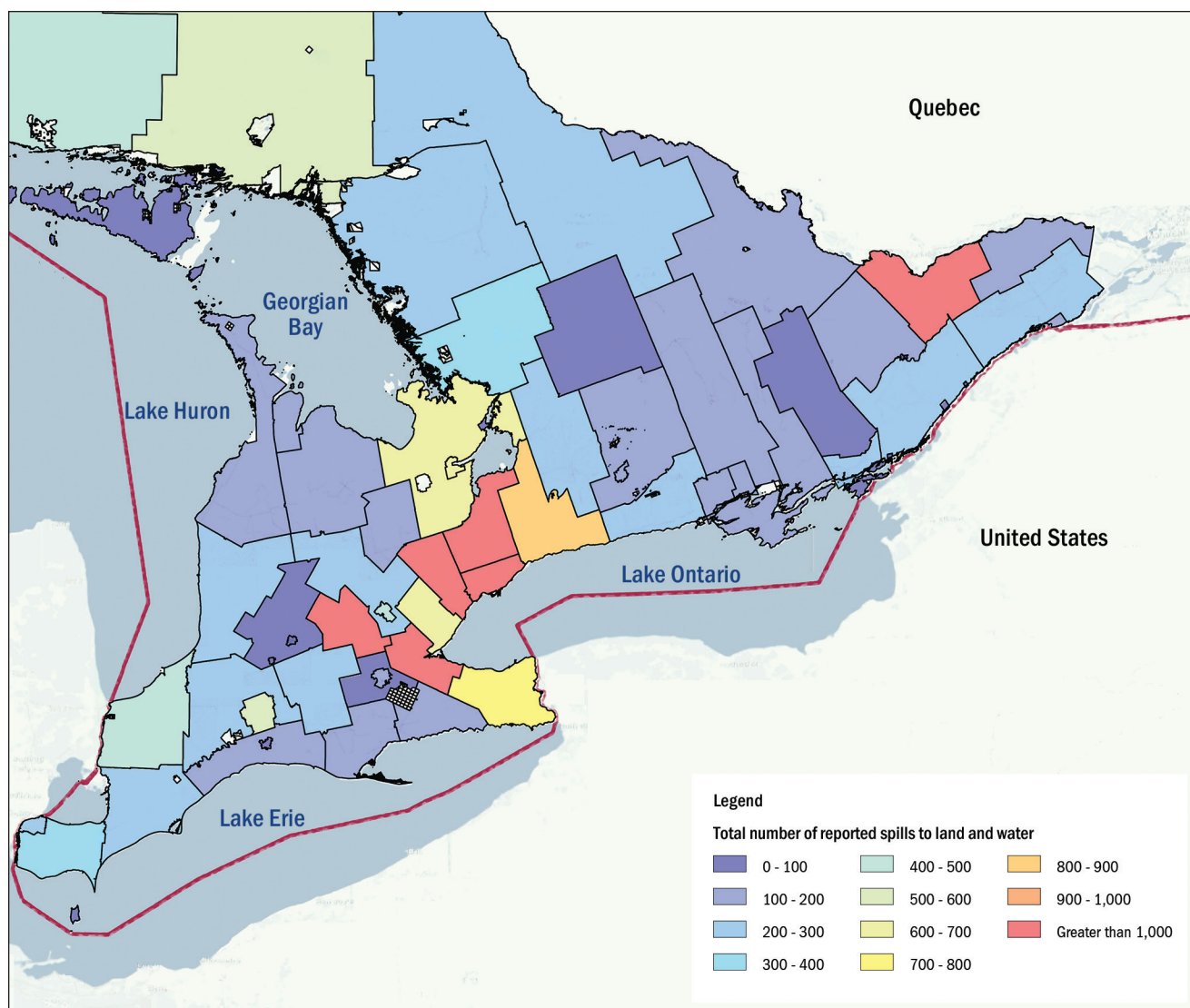
Note: These maps are based on data provided by the Ministry of the Environment, Conservation and Parks. The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

Reported Spills to Land and Water, Northern Ontario, 2016-2020



Note: These maps are based on data provided by the Ministry of the Environment, Conservation and Parks. The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

Reported Spills to Land and Water, Southern Ontario, 2016–2020



Note: These maps are based on data provided by the Ministry of the Environment, Conservation and Parks. The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

Appendix 6: Municipalities with Most Spills within Wellhead Protection Areas, 2016–2020

Prepared by the Office of the Auditor General of Ontario

Municipality	Reported Spills
Guelph	473
Cambridge	374
Kitchener	322
Barrie	219
Waterloo	128
Aurora	95
Newmarket	64
Centre Wellington	55
King	34
New Tecumseth	32
Woolwich	30
Woodstock	25
Halton Hills	22
Wellington North	21
St. Marys	20
Guelph/Eramosa	19
Midland	19
Minto	18
Ingersoll	18
Wilmot	17
Sault Ste. Marie	15
East Gwillimbury	15
Ottawa	14
Greater Sudbury	13
Puslinch	13
East Zorra-Tavistock	13
Vaughan	11
Central Huron	11
Whitchurch-Stouffville	10
Blandford-Blenheim	10
Other	215
Total	2,345

Note: The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.

Appendix 7: Other Ministries' Spill Response Costs

Prepared by the Office of the Auditor General of Ontario

Ministry	Response Actions	Type of Costs Incurred
Ministry of Northern Development, Mines, Natural Resources and Forestry	• Site visitation by helicopter and on-the-ground monitoring • Use of drones and staff to survey the site and create visual images • Reviewing restoration plans and providing comments and recommendations to spillers	• Staff salary costs and travel expenses • Transportation expenses • Helicopter costs
Ministry of the Solicitor General – Office of the Fire Marshal and Emergency Management	• Co-ordinating and deploying field staff to the affected municipality • Providing advice and co-ordination between municipalities, ministries, federal departments and First Nations • Providing advice and assistance to local emergency management co-ordinators • Providing situation awareness through reports to all ministry, federal, municipal, and First Nations stakeholders	• Staff salary costs and travel expenses
Ministry of Transportation	• Co-ordinating with different regions responsible for area maintenance, communications and issue management • Liaising with Transport Canada and Provincial Emergency Operations Centre • Deploying traffic control mechanisms and road repair • Responding to highway spills to contain and clean up the contaminant if Ontario Provincial Police requests assistance at spill site and when spiller cannot be identified • Contracting environmental consultants to perform laboratory analysis services to confirm spill remediation on highways	• Staff salary costs • Transportation costs • Lab sample analysis costs • Direct materials costs for spill response (such as booms and pads)
Ministry of Health	• Assessing the incident and impacts on human health • Notifying local health system partners to ensure local awareness of incident and assessing whether additional provincial support is required • Liaising with local health units to assess health risks and impacts and support local decision-making regarding emergency response activities	• Staff salary costs

Appendix 8: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1. High-risk activities are regulated in a manner that reduces the risk and impact on human health and the environment from hazardous spills.
2. When spills occur, they are identified and responded to in a timely and effective manner.
3. Spills are remediated in a timely and effective manner.
4. Reasonable costs associated with responding to and remediating hazardous spills are fully covered by the responsible parties.
5. Information on spills and their impacts are readily available to the public in a timely and accessible manner.
6. Meaningful performance measures and targets are established, monitored and compared against actual results and publicly reported on, and corrective actions are taken on a timely basis when issues are identified, to ensure that intended outcomes are achieved.

Appendix 9: Most Frequently Reported Spillers, 2016–2020

Source of data: Ministry of the Environment, Conservation and Parks

Company Name	# of Spills
Enbridge	7,327
Union Gas Limited	2,698
Hydro One	684
Toronto Hydro	592
The Regional Municipality of Peel	571
City of Toronto	482
Resolute Forest Products	478
ArcelorMittal	329
Alectra Utilities Corporation	294
City of Ottawa	235
Loblaws	209
Detour Gold Corporation	207
Toronto Transit Commission	170
CRH Canada Group Inc.	158
Canada Cartage Limited	131
Domtar Inc.	128
407 General Partnership	127
Canadian National Railway	126
AV Terrace Bay Inc.	119
City of Hamilton	116
Algoma Steel Inc	112
Metrolinx	105
Neelands Refrigeration Limited	103
Kiewit Eurovia	90
Imperial Oil	84
Ontario Clean Water Agency	81
GFL Environmental Inc.	78
Highstone Logging	71
Shell Canada	71
London Hydro	64

Note: The Environment Ministry has advised us that, due to a lack of overall data stewardship, data related to spills has poor to fair reliability.



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Office of the Auditor General of Ontario

Value-for-Money Audit:
Non-Hazardous
Waste Reduction
and Diversion in the
Industrial, Commercial
and Institutional
(IC&I) Sector



November 2021

Ministry of the Environment, Conservation and Parks

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

1.0 Summary

Ontarians who recycle their packaging and compost their food waste at home can know they are helping reduce the amount of waste going to landfill. It is a different story, however, for waste thrown out outside the home. The paper, bottles and food containers we place in the recycling bin at work, school or the mall are likely to end up as garbage in landfill.

More than 98% of industrial, commercial and institutional (IC&I) establishments are not required to recycle. (See **Appendix 1** for a glossary of terms.) Recyclables thrown out at most small businesses, movie theatres and warehouses, among other places, are disposed of as garbage. Poor signage, too few recycling bins and waste collected in shared spaces also means that items end up in the wrong bin, which contaminates and lowers the quality of otherwise recyclable materials. Businesses may also generate a lot of material that is expensive or technologically hard to recycle—such as coffee cups, plastic food containers, clothing and other textiles—meaning that this waste can end up going to landfill instead.

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. The amount of waste generated in Ontario, and Canada as a whole, is among the highest levels of waste generated per person in the world.

If Ontario continues on its current trajectory of waste generation and disposal, existing landfill capacity in the province will be filled within the next 11 to 14 years. Generating and disposing all of this waste has other negative impacts too. Disposing items squanders the resources—such as metals, minerals and nutrients—contained in them, as well as the energy, water, pollution and other environmental and financial costs associated with manufacturing those items in the first place. Disposing organic waste, such as food and yard waste, in landfill also causes greenhouse gas emissions that contribute to climate change.

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. 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.

IC&I establishments are responsible for managing their own waste, at their own cost, through contracts with private waste management businesses. Multi-residential buildings (apartments and condominiums) straddle the IC&I and residential sectors. They are responsible for managing their own waste privately and are regulated along with IC&I establishments. However, almost 80% of multi-residential households receive municipal garbage and recycling collection, which is counted as residential waste for data purposes.

In addition to generating more waste than the residential sector, the IC&I sector also diverts—that is, reuses, recycles or composts—much less of its

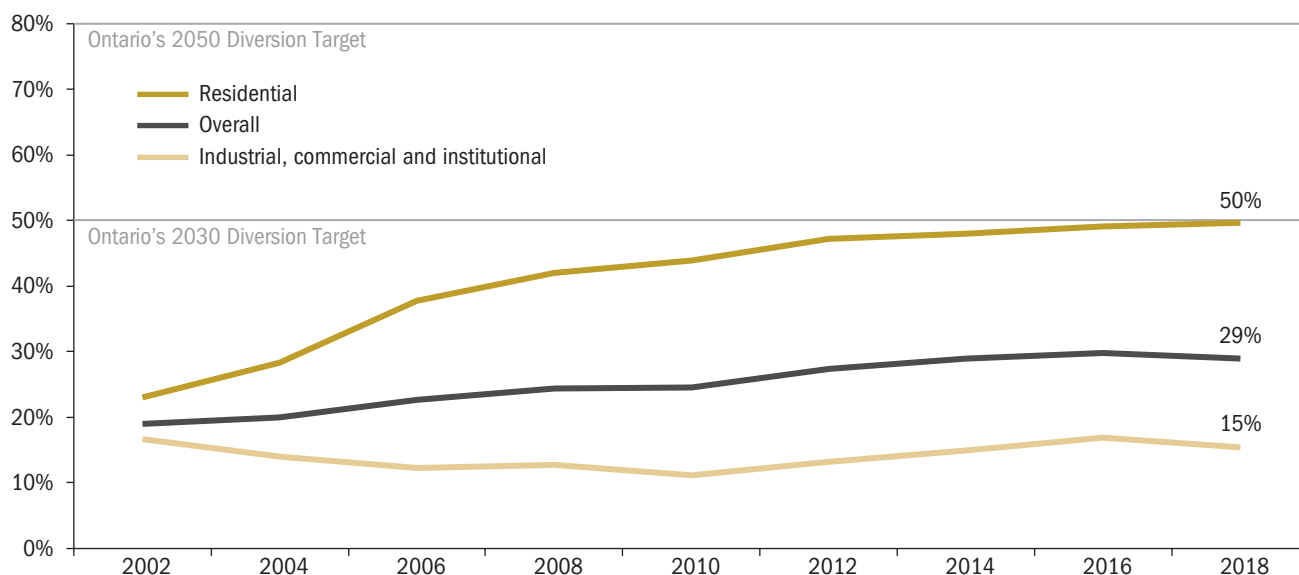
waste (see **Figure 1**). According to Statistics Canada data for 2018 (the most recent available), Ontario's IC&I sector diverted an estimated 15% of its waste, which is lower than its diversion rate of 17% in 2002, when Statistics Canada began its waste reporting. By comparison, the Ministry estimates that the residential sector diverted 50% of its waste in 2018, which has driven an increase in Ontario's overall diversion rate from 19% in 2002 to 29% in 2018.

Despite this improvement in Ontario's diversion rate, persistently high levels of waste generation have resulted in continuing high amounts of waste disposed. According to the Ministry, the amount of waste disposed annually decreased by 12% between 2002 and 2018, but data from Statistics Canada indicates that annual waste disposed actually increased by 4% over this period.

The Ministry set a goal in 2017 to reduce total waste disposed per person each year (including both IC&I and residential waste), as well as set targets to divert 50% of the total waste generated (both IC&I and residential) by 2030 and 80% by 2050. To help meet these targets, the Ministry has taken recent steps to amend the residential Blue Box recycling

Figure 1: Ontario's Waste Diversion Rates, 2002–2018 (%)

Sources of data: Statistics Canada and Ontario's Datacall



Note: Figure uses Statistics Canada data, produced biennially from 2002 to 2018, with Ontario's Datacall data, produced annually since 2006, for residential waste only. This follows the Ministry of the Environment, Conservation and Parks' methodology for estimating total waste, allowing for consistent trend analysis over time.

program to improve waste diversion in the residential sector. The Ministry has also taken recent steps to improve diversion of a few specific waste products from both residential and IC&I sectors, including used tires, electronics, batteries, paints and solvents. Improving diversion of these waste products will provide important environmental benefits, but will not significantly affect Ontario's overall diversion rate, as they collectively make up less than 5% of the province's total waste stream.

Our audit found that improving waste management in the IC&I sector—which generates and disposes of the majority of Ontario's waste—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 of to put Ontario on track to meet its targets. We also found that the Ministry does not have the data it needs to reliably track the IC&I sector's progress toward Ontario's waste goals.

The Ministry has two regulations introduced in 1994 under the *Environmental Protection Act* that require IC&I establishments that meet type and size thresholds to take steps to reduce and divert waste:

- the Waste Audits and Waste Reduction Work Plans Regulation (Waste Audit Regulation) requires the IC&I establishments to take inventory of their waste and to develop and implement a plan to reduce waste; and
- the Source Separation Programs Regulation (Source Separation Regulation) requires the IC&I establishments, as well as multi-residential buildings, to separately collect specified materials to be recycled or reused.

We found that less than 2% of all IC&I establishments in Ontario are subject to these regulations. The Ministry does not have sufficient data to determine what portion of IC&I waste is generated by the regulated 2% of establishments. However, estimates suggest they may be responsible for anywhere between one-third to two-thirds of total IC&I waste.

Further, we found that the requirements that apply to those establishments that are regulated—to operate

a recycling program and make “reasonable efforts” to collect and divert recyclable waste—have not been effective at driving widespread improvement in waste reduction and diversion. In the absence of requirements to achieve a specific outcome, we found that diversion rates varied widely (6% to 90%) among regulated establishments, with many operating poorly performing recycling programs with high contamination levels.

In 2018, the Ministry also introduced the *Food and Organic Waste Policy Statement* (Organic Waste Policy), which requires certain IC&I establishments and multi-residential buildings to meet targets to reduce their organic waste by 2025. However, at the time of our audit, the Ministry had not done outreach to promote compliance with these targets.

In addition, waste management service providers, such as waste collectors, transfer stations and sorting facilities, are not required to divert the IC&I waste they handle. We found that waste management service providers frequently send collected IC&I source-separated recyclables and organic wastes, intended for diversion, to landfill instead. We found three key interrelated reasons why this occurs:

- collected IC&I source-separated materials are too heavily contaminated to be feasibly diverted;
- the cost of diverting collected IC&I materials is significantly higher—up to six times higher—than the cost of landfilling them; and
- a lack of end markets, such as processors or manufacturers interested in buying the materials, prevents waste management companies from diverting IC&I waste.

Significantly, we found that the Ministry has not implemented key measures to help address these underlying barriers, such as landfill bans or landfill levies, which have been implemented in other jurisdictions with higher diversion and lower waste disposal rates than Ontario, including Nova Scotia, Prince Edward Island and Quebec (see **Appendix 2**).

Finally, we found that it is difficult to obtain information about waste management operations, including where waste is taken or how much

and which types of materials waste management facilities divert. As a result, IC&I establishments cannot access reliable information to determine whether their materials are, in fact, being diverted.

The following are some of our significant detailed findings:

Waste Management Industry

- 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 or energy-from-waste facilities. We also found that waste collectors take about one-fifth of collected IC&I organic waste directly to landfill. This means that many materials that are collected separately by IC&I establishments, such as retail stores, restaurants, offices and hotels, with the intent of being diverted, never reach a processing facility to be recycled or composted.
- 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. We found that it was difficult to obtain reliable information about waste facilities' operations. For example, our review of a sample of 20 waste company websites found that the information about how the facility manages the IC&I materials that it accepts was unclear in 19 cases, and misleading in four of those cases. For example, some facilities advertised recycling services when in practice they send almost all of the materials they receive to landfill as garbage.
- Contracts between regulated establishments and waste management companies rarely require the waste collectors to divert the IC&I materials.** Our review of 40 agreements between regulated establishments with source-separation programs and their waste collectors found that only three required the collectors to divert the customers' waste. Most of the agreements gave collectors—either explicitly or through the absence of terms about how materials were to be managed—discretion to make operating decisions that balance costs against waste diversion goals, such as taking materials that cannot be recycled economically to landfill.

Underlying Barriers to Waste Reduction and Diversion

- 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 of them in landfill. As private businesses driven by profit, higher costs to recycle or compost compared to landfill deter waste management companies from diverting materials. Some IC&I waste loads are too contaminated to divert. Some loads contain materials, such as plastic film and polystyrene, that lack viable end markets or buyers for the materials. We found that other leading jurisdictions with higher diversion, in Canada and abroad, have implemented measures to overcome the barriers to diversion. For example, we found that landfill bans in many jurisdictions, including Nova Scotia, Germany and Scotland, have been effective in increasing diversion of recyclable and organic waste. To offset lower disposal costs, Quebec charges a landfill levy, and Prince Edward Island has surcharges for mixed recycling and waste. Japan's green procurement law, which

requires government entities to purchase products with high levels of reclaimed or recycled content, helped create a market for these materials. To encourage waste reduction, Nova Scotia has developed a program that rewards municipalities for achieving low overall—residential and IC&I—disposal rates, by providing funding to them for their waste diversion initiatives.

Regulated Businesses and Institutions and Multi-residential Buildings

- **More than 98% of the almost 1.6 million IC&I establishments in Ontario are not regulated, limiting the potential of existing regulations to drive better overall IC&I waste practices.** The Ministry's IC&I waste regulations—the Source Separation Regulation and Waste Audit Regulation—apply to less than 2% of Ontario's total number of businesses and institutions. The remaining 98% of IC&I establishments have no obligations under the regulations to reduce or divert any of their waste. The 2% of establishments that are regulated are the largest ones in each subsector and therefore are assumed to generate more waste than the smaller ones. However, the Ministry does not have sufficient data to determine what portion of IC&I waste is generated by regulated establishments. Applying data from a 2015 California waste study, the Ministry roughly estimates that between half to two-thirds of IC&I waste is generated by regulated establishments. However, data from a 2008 Ontario waste study suggests that this amount is likely closer to one-third.
- **The Source Separation Regulation has driven regulated businesses, institutions and multi-residential buildings to operate recycling programs, but has not led to widespread improvement in diversion rates.** Our review of waste data from a sample of regulated IC&I establishments from 2014 to 2019 found that diversion rates ranged from 6% to 90%. Diversion rates for multi-residential buildings in a sample of municipalities ranged from 17% to 28%. Regulated establishments are required to operate a recycling program and to make “reasonable efforts” to collect and divert recyclable waste. We found that 88% of all establishments inspected by the Ministry between 2014/15 and 2018/19 (the most recent year with complete inspection data) had implemented a recycling program as required by the regulation. However, with no requirement to achieve a specific outcome, such as a diversion target, nor other government measures to support and encourage diversion, their diversion rates varied widely.
- **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.** The list of materials that regulated establishments must separately collect for diversion was made in 1994 and focused on common packaging wastes at that time, including glass containers, metal cans, cardboard and paper. This list, set out in the Source Separation Regulation, has not been amended since it was enacted. As a result, several materials commonly found in today's waste stream, such as plastic waste from most subsectors, including retail, offices, schools and hospitals, are excluded from the list. Plastics make up an increasingly large share of IC&I waste: an estimated 10% by weight, and much more by volume.
- **Establishments deemed by the Ministry to be fully complying with the Source Separation Regulation may still be operating poorly performing recycling programs.** We found that Ministry inspectors do not assess the effectiveness of an establishment's recycling program, such as the amount of contamination (garbage or food waste) in the collected recycling, when determining compliance with the Source Separation Regulation. The Ministry told us that the language in the regulation—such as the requirement to make “reasonable efforts”—limits the scope of how strictly inspectors can enforce it. As a

result, establishments can be deemed compliant by the Ministry even if they have poorly performing recycling programs, such as heavy contamination. Further, our review of a sample of Ministry inspection files found that, in 40% of cases, the documents that establishments provided to the Ministry about their waste collection did not demonstrate that their recyclables were being taken to an appropriate final destination to be recycled. In all but one of these cases, the inspectors concluded that the establishments had made “reasonable efforts” to ensure their materials were recycled. We found that, in half of the cases we examined, the inspected establishments’ collected recyclables were being taken by waste collectors to facilities that disposed the recyclables as garbage.

- **The Ministry has stopped enforcing the Waste Audit Regulation in regular inspections, but has not assessed the effect of the regulation on establishments’ waste practices.** We found that 63% of all regulated IC&I establishments inspected by the Ministry for compliance with the Waste Audit Regulation between 2014/15 and 2018/19 had not complied with this regulation. As of April 2019, the Ministry stopped enforcing the regulation in all regular inspections to focus inspection efforts on the Source Separation Regulation, on the basis that that regulation provides more verifiable outcomes (the operation of a recycling program) than the Waste Audit Regulation. However, at the time of our audit, the Ministry had not reviewed the effect of the Waste Audit Regulation, such as whether completing waste audits and waste reduction work plans helps IC&I establishments reduce waste, improve the quality of their recycling programs or track waste performance.
- **Large IC&I establishments and condo and apartment buildings may not know that they must meet organic waste targets by 2025 because the Ministry has not taken steps to promote the Organic Waste Policy.** 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 implement this policy. For example, the policy requires multi-residential buildings and large establishments to reduce and divert organic waste by either 50% or 70%, depending on their size and subsector, by 2025. This could result in added costs for the affected multi-residential buildings and establishments that require budgeting, but the Ministry has not yet provided essential guidance on how to calculate the baseline for the target, nor undertaken outreach activities to promote compliance with the policy.

Data Gaps in IC&I Waste

- **The Ministry has major data gaps with respect to IC&I waste, which hinder the province’s ability to develop effective waste policies and to reliably track progress toward Ontario’s waste goals.** Statistics Canada publishes high-level data every two years, based on data submitted by the waste management industry, on total residential and IC&I waste diverted and disposed in each province. This data is intended to provide a national overview of waste activities across Canada, not to provide comprehensive data to meet the specific needs of each province. The province collects its own detailed data for residential waste but it does not collect data for IC&I waste. Without IC&I data of its own, we found that the Ministry has major gaps in its understanding of the state of IC&I waste in Ontario, including which types of establishments generate and dispose the most IC&I waste. We also found that the Ministry is likely underestimating total waste disposed by up to 3.1 million tonnes per year.

This report contains 17 recommendations, with 38 action items, to address our audit findings.

Overall Conclusion

We found that the Ministry does not have effective systems and processes in place to improve IC&I waste reduction and diversion rates to enable Ontario to meet its provincial waste goals. These goals are to reduce total waste per person disposed and divert 50% of total waste generated (by both IC&I and residential sectors) by 2030, and 80% of waste by 2050. We also found that the Ministry does not have policies or programs in place, nor has it taken concrete actions at the time of our audit to implement new policies and programs, to reduce the amount of IC&I waste generated and disposed of to ensure that Ontario does not run out of landfill space within the next 11 to 14 years.

Specifically, we found that the province's regulations for IC&I waste—the Source Separation Regulation and Waste Audit Regulation—apply to less than 2% of all IC&I establishments. While the regulated establishments are larger and generate more waste than the smaller unregulated ones (potentially one- to two-thirds of IC&I waste), the limited application of the regulations significantly reduces the impact that they may have on improving the IC&I sector's overall waste disposal and diversion rates. Further, the regulations, which have been in place for over 25 years, have not been effective in improving waste performance across the regulated IC&I sector. Although the Ministry has committed since at least 2004 to review the IC&I waste regulations and develop a more effective approach, it had not begun to do so at the time of our audit.

We also found that, for most materials, the current economics of diversion favour disposal in landfill over recycling or composting. As a result, we found that waste management companies, which are not required to divert the collected IC&I waste, often send IC&I source-separated materials intended for diversion to landfill instead. The Ministry has not developed programs and policies needed to address

the economic barriers or otherwise support and encourage IC&I establishments and waste management companies to divert more IC&I waste.

We further found that, despite a long-term inspection program for the IC&I waste regulations, some subsectors continue to have low compliance rates yet receive few inspections from the Ministry.

Finally, we found that the Ministry does not have the data needed to inform the design of policies and programs to address IC&I waste, or to reliably measure and report on progress toward achieving the province's waste reduction and diversion goals.

OVERALL MINISTRY RESPONSE

The province continues to take action to reduce waste sent to landfill and is committed to creating more opportunities to reduce and recycle all waste.

Over the last year, we have finalized three new producer responsibility regulations for electronics, batteries, hazardous and special products (e.g., paints and solvents), finalized changes to enhance the Blue Box program, and established Ontario's Provincial Day of Action on Litter, while working with other jurisdictions on a Canada-wide plastics strategy.

We recognize the need to expand the amount of waste diverted by our businesses and institutions and appreciate the Auditor's suggestions on how we can do so.

We want to engage with businesses, stakeholders and First Nations to determine how we can build on our efforts in the most cost-effective ways.

Our goals are to improve waste reduction and diversion, minimize costs to our businesses and institutions, improve data collection, and improve compliance.

We will consider the Auditor's comments carefully as we continually work to divert more waste and protect and improve our environment for future generations.

2.0 Background

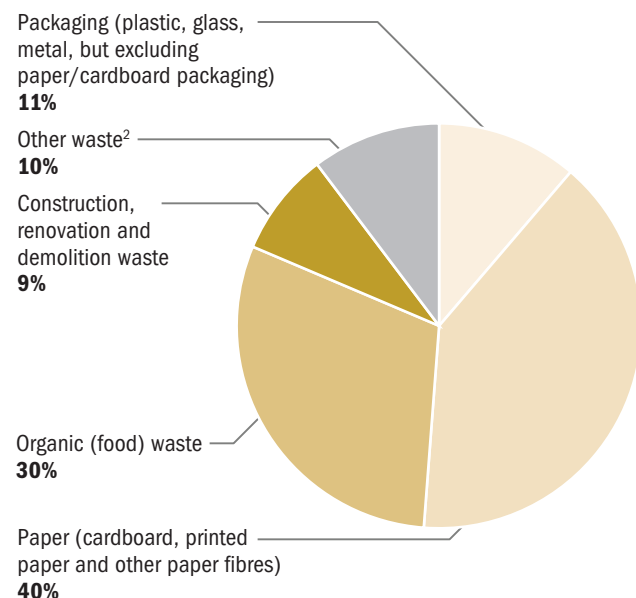
2.1 Overview of Waste in Ontario

According to the Ministry of the Environment, Conservation and Parks (Ministry), Ontario generates approximately 12 million tonnes of non-hazardous waste each year, although other data sources indicate it may be closer to 15 million (see **Section 4.1.1** for discussion of data issues). As shown in **Figure 2**, the majority of this waste is made up of cardboard, paper, food waste and plastic packaging.

Most of Ontario's waste is discarded in landfills. In 2018 (the most recent year with full data), municipalities (who handle residential waste) and IC&I establishments collectively sent at least 8.5 million tonnes of non-hazardous waste

Figure 2: Estimated Composition of Non-hazardous Waste Generated in Ontario¹

Sources of data: Statistics Canada, Ontario's Datacall, and Ministry of the Environment, Conservation and Parks



1. Figure is based on data compiled from various sources, providing only an approximation of waste composition (see **Section 4.1.2** for discussion of data issues).
2. "Other waste" includes items such as used tires, electronics, beer and alcohol containers, furniture, textiles, wood, scrap metals and manufacturing non-hazardous wastes.

to disposal, although some estimates put it as high as 11.6 million tonnes (see **Section 4.1.1**). Of that total, IC&I establishments sent about 3.2 million tonnes to the United States, mostly to landfills in Michigan. A small amount (less than 300,000 tonnes) was disposed in energy-from-waste facilities (see Glossary in **Appendix 1**), and the remainder (ranging from five to eight million tonnes depending on the data source) was disposed in Ontario landfills.

Ontario's overall diversion rate—the portion of generated waste that is reused, recycled or composted, and therefore diverted from landfills—has increased gradually over the past two decades. Based on combined data from Statistics Canada and the province, overall diversion increased from 19% in 2002 to 29% in 2018.

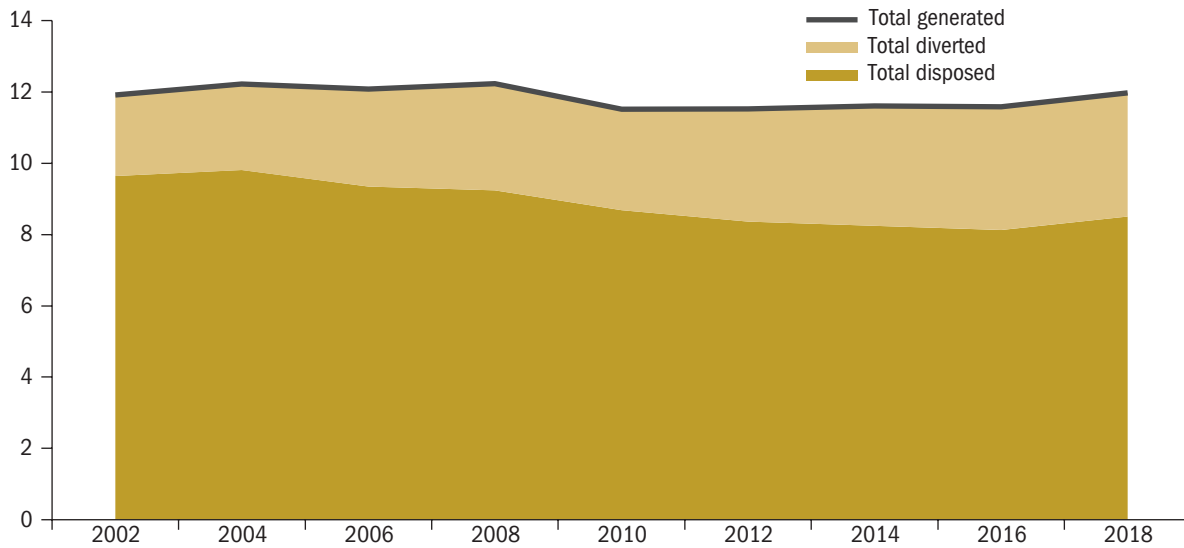
Despite this improvement in the diversion rate, persistently high levels of waste generation have resulted in continuing high amounts of waste disposed (see **Figure 3**). According to the Ministry, annual waste disposed decreased by 12% from 2002 to 2018, but data from Statistics Canada indicates that annual waste disposed has increased by 4% over the same period.

2.1.1 Waste from the Industrial, Commercial and Institutional Sector

The IC&I sector generates 60% of Ontario's total waste and the residential sector generates the other 40%. In addition to generating more waste, the IC&I sector also diverts much less waste than the residential sector. As shown in **Figure 1**, the IC&I sector diverted only 15% of its waste in 2018—which is lower than its diversion rate of 17% in 2002. By comparison, the residential sector has steadily improved its diversion rate, with households diverting 50% of their waste in 2018, up from 23% in 2002. Residential diversion has been achieved primarily through municipal Blue Box (paper and packaging) recycling and Green Bin (organics) programs.

Figure 3: Ontario Non-hazardous Waste Generated, Diverted and Disposed, 2002–2018 (million tonnes)

Sources of data: Statistics Canada and Ontario's Datacall*



* Figure uses Statistics Canada data, produced biennially from 2002 to 2018, with Ontario's Datacall data, produced annually since 2006, for residential waste only. This follows the Ministry of the Environment, Conservation and Parks' methodology for estimating total waste, allowing for consistent trend analysis over time.

2.1.2 Waste from Multi-residential Buildings

Multi-residential buildings (apartments and condominiums with six or more units) are a hybrid that straddle the residential and IC&I sectors. Owners of multi-residential buildings are, like IC&I establishments, responsible for their building's waste services. This includes responsibility for both the management and separation of wastes within the building and the removal of waste from the building.

In practice, however, the majority of Ontario municipalities have chosen to collect waste from multi-residential buildings in their municipality, alongside single-family residential waste. Under the *Environmental Protection Act*, municipalities are required to provide Blue Box recycling services for any residents for whom they provide garbage collection services. Collectively, almost 80% of multi-residential households receive municipal collection for waste and recycling (and in a few large cities, also organic waste), with the remaining 20% of multi-residential buildings retaining responsibility for private waste collection.

Regardless, all multi-residential building owners, even those that receive municipal collection, retain responsibility for source separation of materials within the building.

2.2 Impacts of Waste

Disposing waste in a landfill has a number of negative impacts. Foremost, any valuable resources contained in the discarded waste, such as metals, minerals and nutrients, are permanently lost. Disposal loses not just the tangible materials, but also the labour, energy and water that went into mining, refining, growing, harvesting and manufacturing all of the discarded items.

Further, when wastes are disposed in a landfill, rain or snowmelt that enters the landfill can absorb contaminants from the waste as it breaks down. This contaminated liquid is called leachate. Many everyday items, from textiles to toys to cosmetics, contain substances, such as metals, flame retardants and phthalates (chemicals used to make plastics flexible), that can potentially make leachate toxic. All new

landfills in Ontario approved after 1998 must include a leachate collection system in their design, but these systems do not eliminate all risk of toxic substances seeping out and contaminating nearby soil or water.

Landfills are also contributors to global climate change. When food and other organic wastes are disposed in landfill, they decompose without oxygen, releasing methane, a potent greenhouse gas. Most large landfills in Ontario are required to have a landfill gas collection system that collects and manages the gases generated. However, emissions from landfills without these capture systems remain a major source of greenhouse gases in Ontario. Landfills emit almost 90% of the waste sector's emissions, which make up 4% of Ontario's total greenhouse gas emissions.

Perhaps the most pressing concern related to waste disposal in the province is a diminishing landfill capacity. Despite their negative impacts, landfills continue to be the primary form of waste management in Ontario. However, if Ontario continues on its current trajectory of waste generation and disposal, all existing landfill capacity in Ontario will be filled within 11 to 14 years (by 2032 to 2035).

The IC&I sector is particularly vulnerable to landfill shortages: the Ontario Waste Management Association estimates that municipalities own 47% of Ontario's remaining landfill capacity, which they mostly reserve for their own residential waste. Private sector landfills hold the remaining 53% of landfill capacity, which mostly accept both residential and IC&I waste. With fewer landfills accessible to the IC&I sector, Ontario businesses rely heavily on cheap disposal in Michigan. If the United States were to halt waste imports, Ontario businesses would be forced to find alternative domestic waste management options at much higher cost. Further, if the United States were to close its borders to Ontario's waste, landfill space within the province would be exhausted even earlier, potentially by 2029.

Only two new landfills, located in the Niagara and Ottawa regions, have been approved in Ontario since 1999, with most additional landfill capacity over the past 20 years coming from the expansion of existing

sites. In July 2020, in recognition of the strong opposition by many communities to new local landfills, the province required that the proponent of any new landfill obtain support from the host municipality and specified adjacent municipalities.

2.3 Ontario's Waste Reduction and Diversion Goals

For over three decades, the province has expressed an aspirational goal to reduce waste in Ontario. Over this time, the province has proposed various specific targets, as well as numerous policy and regulatory initiatives to help achieve the goal to reduce waste (see **Appendix 3** for a list of key initiatives and targets).

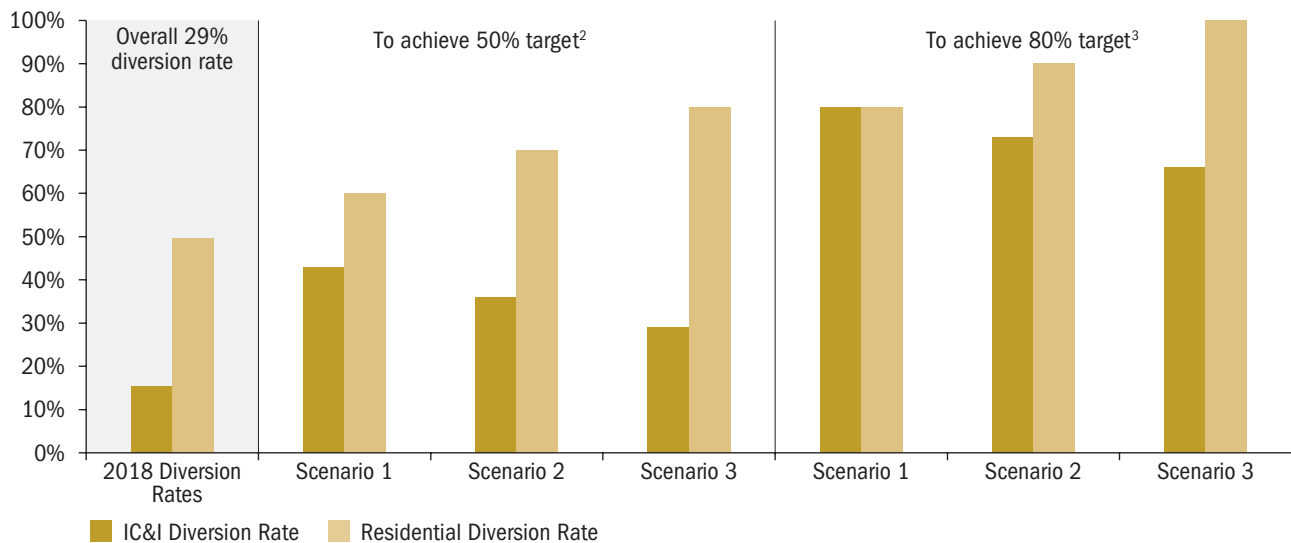
Despite its ambitions, Ontario has made little progress toward its waste goals. For example, in 1989, the former Ministry of the Environment announced a goal to divert 25% of the province's waste by 1992 and 50% by 2000. However, by 2000, Ontario's actual diversion rate was only 21%. In 2004, the Ministry proposed a new goal to divert 60% of provincial waste by 2008. But in 2008, the diversion rate was only 24% (see **Figure 1**).

In 2017, the government released a *Strategy for a Waste-Free Ontario: Building the Circular Economy*, which set a new goal to move toward a circular economy—a system in which products are never discarded, but reused and recycled into new products—and to ultimately achieve zero waste. To work toward this goal, the Ministry established an internal key performance indicator to reduce the amount of waste disposed per person each year (including both IC&I and residential waste). The Strategy also set interim targets to divert 30% of total waste generated by 2020, 50% by 2030, and 80% by 2050. As of 2018 (the most recent data available), Ontario diverted 29% of its waste, up from 24% in 2008.

Though Ontario does not have distinct targets for either IC&I or residential waste, the IC&I sector is key to meeting the province's overall 2030 and 2050 diversion targets. To date, diversion by the residential sector has been sufficient to pull up Ontario's overall diversion rate to almost 30% to meet

Figure 4: Examples of Waste Diversion Scenarios to Meet Ontario's Targets¹

Prepared by the Office of the Auditor General of Ontario



1. Based on assumption that industrial, commercial and institutional (IC&I) and residential sectors generate 60% and 40%, respectively, of total waste.

2. Hypothetical mixes of IC&I and residential diversion rates that would achieve an overall 50% diversion rate.

3. Hypothetical mixes of IC&I and residential diversion rates that would achieve an overall 80% diversion rate.

the 2020 target. However, to achieve the overall diversion targets of 50% by 2030 and 80% by 2050, the IC&I sector will need to significantly increase its diversion rate. For example, as shown through various hypothetical future waste diversion scenarios in **Figure 4**, if the proportion of IC&I and residential waste were to remain constant and the residential sector were to increase its diversion rate as high as 80%, the IC&I sector would still need to increase its diversion rate from 15% to at least 30% by 2030, and 80% by 2050, for Ontario to meet its targets.

2.3.1 Strategies to Reduce, Reuse, Recycle and Recover

Waste management strategies can be used to reduce and divert waste from disposal. All of these strategies decrease pressure on landfill capacity, but some provide greater benefits than others. The “waste hierarchy” is a tool used by jurisdictions around the world to set out waste management strategies in order of most to least favoured based on their environmental

benefits, starting with reduce and reuse, followed by recycle (including “recycling” organic waste through composting or anaerobic digestion), energy recovery, and lastly, disposal (see **Figure 5**). The waste hierarchy is also used as a tool to work toward a circular economy.

Recovering Energy

Recovering energy from waste provides benefits over traditional disposal in landfills or incinerators. Energy-from-waste facilities recover energy from the process of incinerating waste and use that energy to heat buildings or generate electricity, replacing other energy sources. These facilities can relieve pressure on landfill capacity, as well as emitting fewer greenhouse gases than landfills. Despite these benefits, the energy-from-waste process is typically more expensive than landfill, it releases some harmful air pollutants and, like landfill, it similarly loses all valuable materials contained in waste. For these reasons, the waste hierarchy recommends energy-from-waste as a waste management option strictly for materials that cannot feasibly be recycled, composted or reused.

Figure 5: Hierarchy of Waste Management Approaches, from Most to Least Favoured, Used by Jurisdictions Around the World

Prepared by the Office of the Auditor General of Ontario

Reduce

Preventing waste from being created in the first place, such as eliminating unnecessary packaging, replacing single-use disposable items with reusable items, or improving food purchasing and preparation to avoid food waste.

Reuse

Giving products a longer or second life before they become waste, such as donating items for second-hand use, repairing items, or repurposing materials for a new use.

Recycle

Processing waste materials into new products, such as green bin organic waste into compost, used metal cans into new cans, or electronic waste into its multiple component materials.

Recover Energy

Recovering some of the energy that is produced when waste is incinerated (burned) or landfilled and using such energy to heat buildings or generate electricity.

Dispose

Discarding waste in a landfill or burning waste in an incinerator without energy recovery.

Recycling

Recycling is next in the hierarchy, because it recovers the resources contained in waste, creating new products that replace the need for virgin materials. For many materials, such as paper, cardboard, metal, glass and plastic bottles, recycling uses less energy, emits less greenhouse gases and produces fewer environmental impacts (such as air and water pollution and land contamination) than extracting and manufacturing virgin materials. Further, composting and anaerobic digestion produce less greenhouse gas than landfilled organic waste. Plus, the resulting compost can be put back in the soil, which increases nutrients and carbon stored in the soil, as well as reducing the need for chemical fertilizer.

In addition to the environmental benefits, a 2014 Conference Board of Canada study showed that the recycling industry also provides greater economic benefits for the province, creating more jobs and economic growth than disposal. However, for most materials, recycling is currently a more expensive waste management option than landfill.

Reduce and Reuse

Reduce and reuse are prioritized at the top of the waste hierarchy because they avoid the need for new materials and all the impacts associated with manufacturing, transporting, and disposing or recycling a product. Reduction is especially important for materials that are not commonly recycled. For example, only 9% of plastic waste was recycled in Canada in 2016—90% was disposed and 1% (29,000 tonnes) entered the environment as litter. In addition, measures to reduce and reuse, such as eliminating unnecessary packaging or replacing single-use items with reusable items, can cut business purchasing and waste collection costs, sometimes resulting in substantial savings, which can be passed on to consumers.

2.4 Regulation and Oversight of IC&I Waste Management

The Ministry regulates waste management in Ontario under the *Environmental Protection Act* and the *Resource Recovery and Circular Economy Act, 2016*. For IC&I waste, this includes regulating both:

- **IC&I establishments:** the businesses and institutions that generate waste; and
- **the waste management industry:** the service providers that collect, transfer, sort, recycle, compost, incinerate or landfill waste.

Multi-residential buildings with six or more units are also partially regulated along with IC&I establishments (see **Section 2.4.1**).

The Ministry also regulates the producers—brand holders, importers or retailers—of certain products, including used tires, electronics and

batteries, under the *Resource Recovery and Circular Economy Act, 2016*, by requiring the producers to operate programs to collect and divert the waste that results from their products (see **Section 4.9** for details). However, the requirements under this regulatory framework that apply to IC&I waste cover less than 5% of Ontario's total waste stream and are not included in the scope of this audit.

See **Appendix 4** for a chart of the entities involved in the oversight of IC&I waste.

2.4.1 IC&I Establishments and Multi-residential Buildings

Businesses, institutions and multi-residential buildings are responsible for managing the waste they generate onsite and, except for multi-residential buildings that receive municipal collection services, for arranging the collection and subsequent management of their waste through contracts with private waste companies.

IC&I Waste Regulations

The Ministry has two regulations under the *Environmental Protection Act*, introduced in 1994, that require certain establishments to take some steps to reduce and divert their waste (referred to collectively in this report as the IC&I waste regulations).

The first regulation, the Waste Audits and Waste Reduction Work Plans Regulation (Waste Audit Regulation), requires large businesses and institutions that meet the thresholds set out in the regulation (see

Appendix 5) to:

- conduct a waste audit (that is, an inventory of their waste);
- develop and implement a work plan to reduce, reuse and recycle waste; and
- update both the audit and work plan annually, and implement any updates.

The second regulation, the IC&I Source Separation Programs Regulation (Source Separation Regulation), requires the same list of regulated establishments, plus all multi-residential buildings with six

or more units, to implement a recycling program with specific obligations to:

- collect the recyclable materials specified in the regulation (see **Appendix 5**) separately from other waste;
- provide facilities (bins) to collect and store the recycling, which are adequate for the anticipated quantity of the recyclable materials;
- provide information to inform and encourage proper use of the recycling program;
- ensure that the source-separated recyclables are removed from their site; and
- make “reasonable efforts to ensure that full use is made of the program and that the separated waste is reused or recycled.”

Inspection and Enforcement of IC&I Waste Regulations

Since 2007, the Ministry's Sector Enforcement Section has been responsible for inspecting and enforcing the IC&I waste regulations. This section inspects and enforces compliance in two ways—through regular inspections and its “corporate initiative” program. The corporate initiative is an approach used by inspectors to maximize inspection resources, in which a company, such as a retail or fast food chain, commits to the Ministry to achieve compliance at all of its locations within an agreed-upon time frame. Once the company confirms that it is compliant, the Ministry inspects a sample of the company's locations and, if they pass inspection, the Ministry deems all locations compliant.

Since 2017/18, the Ministry has redirected some of the Sector Enforcement Section's inspection focus to compliance of other programs, including greenhouse gas reporting and end-of-life vehicle management. The Ministry informed us that this shift in inspection focus is based on the Ministry's risk evaluation and priority setting.

See **Section 4.7** for a discussion of our findings related to the Ministry's IC&I waste inspection program.

Organic Waste Policy

The Ministry introduced the *Food and Organic Waste Policy Statement* (Organic Waste Policy) in 2018, under the *Resource Recovery and Circular Economy Act, 2016*. The Organic Waste Policy requires municipalities, multi-residential buildings and IC&I establishments that meet the thresholds in the Policy to:

- reduce and divert food and organic waste by either 50% or 70%, depending on their size and sub-sector, by 2023 or 2025; and
- implement separate collection for food and organic waste in time to meet the 2025 target.

2.4.2 Waste Management Industry

The waste management industry includes the following service providers:

- **Waste collectors** – collect waste from establishments and take it to a transfer station, or sorting, processing, disposal or energy recovery facility, depending on the type of waste and their contract with the establishment.
- **Waste haulers** – transport (rather than collect) waste over longer distances, such as from transfer stations to landfills in Michigan.
- **Transfer stations** – function as an interim destination where waste is consolidated into larger loads before being transported to the next destination. Most transfer stations consolidate garbage for transfer to landfills, and occasionally remove select valuable recyclables if feasible, while some consolidate loads of source-separated recyclables and organics for transfer to sorting or processing facilities.
- **Material recovery (sorting) facilities** – sort and bale mixed recyclables into their individual commodities (such as plastics, paper, metals and glass), to be sold to processing facilities or directly to end-users, such as manufacturers.
- **Processing (recycling or organic processing) facilities** – process materials such as paper, plastics or electronics into usable products that can be sold to manufactures or end-users;

composting and anaerobic digestion facilities process organics to produce compost or digestate and biogas, respectively.

- **Disposal and energy recovery facilities** – dispose the waste in a landfill or energy-from-waste facility.

Figure 6 shows how waste moves through these waste services.

Ontario's waste management industry comprises approximately 470 businesses, but the majority of IC&I waste is managed by just 25 to 30 of these businesses, with the five largest businesses collecting, sorting and processing over half of all IC&I waste in Ontario. Hundreds more businesses provide other waste services, such as operating transfer stations, processing organic wastes or leasing waste equipment (see **Appendix 6** for a summary of Ontario's IC&I waste management service providers). According to the Conference Board of Canada, Ontario's waste management sector employed over 17,000 employees and contributed \$2.8 billion to Ontario's gross domestic product in 2018.

Approval and Oversight of Waste Management Industry

The Ministry's Environmental Assessment and Permissions Division regulates the waste management industry under the *Environmental Assessment Act* and the *Environmental Protection Act*.

All waste management facilities (transfer stations, sorting, processing and disposal facilities) are required to operate in accordance with an environmental compliance approval issued by the Ministry. These approvals typically include conditions, such as limits on the types and quantities of waste the facility can receive, operating hours and approved equipment. The purpose of such conditions is to provide for environmental protection and public health and safety, such as reducing the risk of fires, leaks and spills from waste management operations. These approvals are not intended to regulate IC&I waste diversion, such as requiring transfer stations to divert the recyclables they receive.

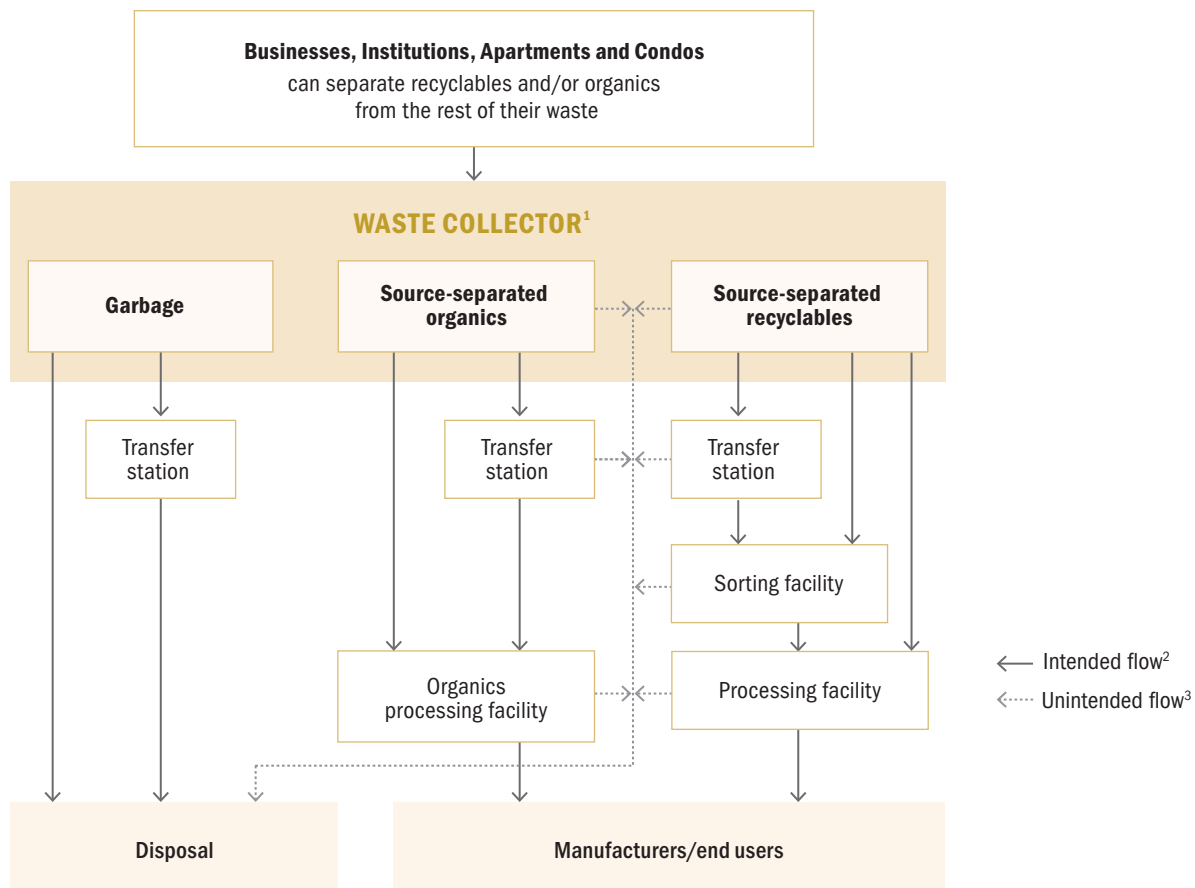
All waste transportation vehicles are required to obtain an environmental compliance approval or register under the Ministry's Environmental Activity and Sector Registry. The vehicles must operate in accordance with the requirements set out in the approval or regulation, such as types of waste they are approved to transport, service area, driver training and insurance. These requirements are similarly intended to provide for safe transport, not to regulate diversion, such as requiring waste collectors to

take recyclable materials to a facility that diverts such materials.

Environmental Officers from the Ministry's 16 District Offices located across Ontario, as well as the Environmental Investigations and Enforcement Branch's on-road enforcement team, are responsible for inspecting waste management vehicles and facilities across the province and enforcing compliance with these requirements. The Ministry's Central Region Office provides additional support and advice.

Figure 6: Movement of Industrial, Commercial & Institutional (IC&I) Waste

Prepared by the Office of the Auditor General of Ontario



1. Waste collectors manage the majority of IC&I waste; however, establishments may take certain materials that have specialized producer-run recycling programs, including beer and alcohol containers, used tires, electronics and batteries, directly to the collection site (see [Section 4.9](#)).
2. As indicated by the solid arrows, waste collectors may first take source-separated materials to a transfer station for consolidation, or they may take materials directly to a facility for sorting or processing. Recyclables can be taken to a sorting facility, where they are sorted and baled into individual material types before they are sent for processing at a specialized facility. Materials that have already been separated out (such as bundled cardboard or shredded office paper) may bypass this sorting stage and go directly to a processing facility.
3. As indicated by the broken arrows, some materials that IC&I establishments place in the recyclable or organic stream with the intention of diversion end up in landfill, either because the materials were placed in the incorrect stream or the waste management company otherwise deemed the materials impractical to recycle or compost due to contamination, degradation or economic factors (see [Section 4.3](#)). In addition, sorting and processing facilities may dispose of unrecyclable by-products from their operations.

3.0 Audit Objective and Scope

The objective of our audit was to assess whether the Ministry of the Environment, Conservation and Parks has effective systems and processes to:

- achieve a reduction in the amount of Industrial, Commercial & Institutional (IC&I) non-hazardous waste that is generated and disposed, to enable Ontario to meet its waste reduction and waste diversion goals;
- promote and enforce compliance with relevant legislation, regulations and policy requirements to reduce and divert IC&I waste; and
- reliably measure and publicly report on its effectiveness in achieving the province's waste reduction and waste diversion goals.

In planning for our work, we identified the audit criteria that we would use to address our audit objective. We established these criteria based on a review of applicable legislation, policies and procedures, internal and external studies and best practices. Senior management at the Ministry reviewed and agreed with the suitability of our objectives and associated criteria as listed in **Appendix 7**.

Our audit scope focused on IC&I waste reduction and diversion. The scope of this audit does not cover diversion programs under the *Resource Recovery and Circular Economy Act, 2016*, because the requirements under this regulatory framework that apply to IC&I waste cover less than 5% of Ontario's waste stream.

We conducted our audit between January 2020 and April 2021. We obtained written representation from the Ministry that effective October 16, 2021 it had provided us with all the information that it was aware of that could significantly affect the findings or the conclusion of this report.

Our audit work was conducted initially at the Ministry's Drinking Water and Environmental Compliance Division and Policy Division offices in Toronto from January to mid-March 2020. Due to the COVID-19 pandemic, we were unable to complete our audit work onsite at the Ministry offices, but we continued to hold discussions with Ministry

representatives by telephone and video conference, and Ministry staff electronically provided us with all documents and data we required.

As part of our audit work relating to IC&I establishments:

- We interviewed Ministry inspection staff to understand their practices to promote, inspect and enforce compliance with the IC&I waste regulations. We reviewed inspection data from 2014/15 to 2018/19 (the last year for which complete inspection data was available) to analyze inspection frequency, compliance rates and enforcement actions. Due to the COVID pandemic, as of March 2020, the Ministry adapted its inspection program to conduct desktop audits (by telephone) to gather information about establishments' compliance, which inspectors plan to use to prioritize future in-person inspections as well as reduce the time required for the inspections. We also reviewed a sample of 30 inspection files from 2018/19 and 2019/20 to examine the Ministry's IC&I inspection practices.
- We visited 30 establishments, including stores, malls, restaurants, hotels, office and multi-residential buildings, to observe the quality of recycling programs that the Ministry had deemed compliant with the IC&I waste regulations.

As part of our audit work relating to the waste management industry:

- We spoke with various stakeholders from the waste industry to better understand the waste management industry. This included interviews with dozens of waste collectors, transfer stations, sorting facilities and organics processing facilities, as well as expert consultants and the Ontario Waste Management Association (OWMA), which represents over 250 companies and organization in the public and private sector that collectively manage over 85% of Ontario's waste.
- We conducted a survey, in May 2020, of the OWMA's members that collect, transfer, sort or process IC&I recycling and organic waste to obtain information about waste operations

and the challenges the industry faces in diverting IC&I wastes. We received 20 responses, an 80% response rate of the targeted 25 members that provide the relevant services.

- To verify what happens to IC&I waste after it is collected from establishments:
 - We contacted all 20 transfer stations listed in our sample of inspection files as a destination for establishments' source-separated recycling as a "secret shopper" seeking waste management services. We asked each facility whether it would accept our commercial mixed recycling or construction and demolition waste, as applicable, and how it would manage it.
 - We reviewed annual reports from a sample of 46 waste facilities across Ontario that handle IC&I waste, including 20 transfer stations, 20 sorting facilities and six compost facilities, to analyze facilities' diversion rates. These facilities collectively receive almost three million tonnes of waste per year, over 20% of all waste generated in Ontario.

As part of our audit work relating to IC&I waste data:

- We reviewed all available data relating to IC&I waste generation, disposal and diversion in Ontario, including from Statistics Canada, the Resource Productivity and Recovery Authority, industry associations, and various consultants.
- We held discussions with staff in the Ministry's Resource Recovery Policy Branch and from Statistics Canada about the waste data collection methodology.

See **Appendix 8** for details on additional work done to perform the audit.

We conducted our work and reported on the results of our examination in accordance with the applicable Canadian Standards on Assurance Engagements—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 the Canadian Standard on Quality Control and, as a result, maintains a comprehensive quality-control system 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.

3.1 Subsequent Events

Subsequent to our audit, in June 2021, the Ministry passed a new regulation to update the province's residential Blue Box program. The Blue Box Regulation makes producers (brand holders, importers or retailers) of paper and packaging responsible for delivering Blue Box services starting in 2023, with full responsibility by 2026. It also expands the list of materials collected in the Blue Box, including more types of plastic packaging, packaging-like products such as boxes and trays, and single-use items, such as cutlery and straws. The regulation also sets out diversion targets for each material category.

Several of these changes are relevant to this report. The Blue Box Regulation expands collection to include materials from various IC&I sources, including multi-residential buildings, elementary and secondary schools, and municipal and non-profit long-term-care and retirement homes. The regulation also expands collection to public spaces, such as parks, playgrounds and transit stations. In addition, the producers of ready-to-drink beverage containers will be responsible for meeting diversion targets for all such containers sold in Ontario, including those supplied to the IC&I sector.

These changes will shift some amount of IC&I waste that was previously privately managed into

the more successful Blue Box program, which has a current diversion rate of 60%. The Ministry has estimated that, once fully implemented, the Blue Box Regulation would result in over 200,000 additional tonnes of diversion each year (from both IC&I and residential sectors). However, our analysis suggests that the increased amount of diverted IC&I waste will be relatively small, as some of the added sources were already being voluntarily collected by municipalities for inclusion in the Blue Box.

4.0 Detailed Audit Observations

4.1 Data Gaps in Industrial, Commercial and Institutional Waste

Ontario collects its own data on residential waste but it relies entirely on Statistics Canada for data about IC&I waste generated, disposed and diverted. Statistics Canada publishes high-level data every two years, based on information collected from waste management service providers, on total residential and IC&I waste diverted and disposed. Statistics Canada does not provide data on waste generated, but for the purposes of this report, we estimate it as the sum of waste diverted and disposed.

The Ministry has noted, including in its 2017 *Strategy for a Waste-Free Ontario* and its 2019 *Reducing Litter and Waste in Our Communities: Discussion Paper*, that the province has significant gaps in its understanding of IC&I waste. The Ministry informed us during the audit that these information gaps present a barrier to developing new waste policies and programs. Nonetheless, the Ministry has not taken steps to obtain additional data or better utilize existing data sources regarding IC&I waste in Ontario.

4.1.1 Data Gaps for IC&I Waste Mean Ministry Unable to Reliably Track Progress toward Province's Waste Reduction and Diversion Goals

Statistics Canada IC&I and residential waste data is a valuable source of information. However, its purpose is to provide a national, province-by-province, overview of waste activities in Canada, not to provide comprehensive data to meet the specific needs of each province. Without supplemental IC&I data of its own, we found that the province has major gaps in its understanding of the state of IC&I waste in Ontario. These gaps present a barrier to the Ministry's development of new waste policies and its ability to reliably track progress toward Ontario's waste goals. We also found, based on data from the Ontario Waste Management Association (OWMA), that the province is likely grossly underestimating total waste disposed.

Statistics Canada publishes its waste report every two years, based on data from one to two years prior to the report release. Therefore, at any given time, the Ministry is relying on data that is between two to four years old for its understanding of the "current" status of IC&I waste generated, disposed of and diverted in Ontario.

Furthermore, Statistics Canada only captures data reported by the waste management industry. This excludes all waste that is diverted by IC&I establishments without the use of a waste management service provider, including:

- waste, such as manufacturing off-cuts, that is reused or recycled within a facility; or
- waste, such as scrap metal, textiles or excess food, that is taken, sold or donated directly to others for reuse or recycling.

These excluded forms of diversion are poorly tracked, leading to an unknown underestimation of the total amount of IC&I waste that is generated and diverted.

Figure 7: Estimates of Ontario Non-hazardous Waste Diverted, Disposed and Generated in 2018, by Various Data Sources

Sources of data: Statistics Canada, Ontario's Datacall and Ontario Waste Management Association

	Generated (million tonnes)	Disposed (million tonnes)	Diverted (million tonnes)	Diversion Rate (%)
Statistics Canada¹				
Residential	6.0	4.0	2.0	33
Industrial, Commercial and Institutional (IC&I)	7.2	6.1	1.1	15
Total	13.2	10.1	3.1	23
Ministry of the Environment, Conservation and Parks²				
Residential	4.8	2.4	2.4	50
Total²	12.0	8.5	3.5	29
Ontario Waste Management Association (OWMA)³				
Total	No data	11.6	No data	No data

1. Statistics Canada publishes data of waste disposed and diverted biennially, with the most recent data for 2018. Waste generated was calculated as the sum of waste diverted and disposed. Statistics Canada's data excludes materials diverted through producer-run programs: tires, electronics and alcohol/beer containers.
2. Ontario's Datacall provides annual data for residential waste generated and diverted. Data is available up to 2019, but we used 2018 data for comparison across sources. Waste disposed was calculated as the difference between waste generated and waste diverted. The Ministry of the Environment, Conservation and Parks calculates total waste using the Datacall data for residential waste and Statistics Canada's data for IC&I waste.
3. The OWMA publishes a landfill report biennially, in alternate years to Statistics Canada. To compare with 2018 data across sources, we used an average of its 2017 and 2019 disposal data, which were 11.4 million and 11.8 million tonnes of non-hazardous waste, respectively.

Statistics Canada data also excludes waste that is exported to landfills in the United States by long-haul transporters, which are not waste companies. The OWMA conducts its own biennial survey of Ontario's waste disposal. The OWMA's estimate of Ontario's total waste disposed (11.6 million tonnes) is 1.5 million tonnes higher than Statistics Canada's estimate (10.1 million tonnes) (see **Figure 7**). The OWMA informed us that its higher total for waste disposed includes some waste—such as asphalt, concrete and bricks—that is not fully accounted for in Statistics Canada's disposal totals, but also that its data more accurately captures the total amount of IC&I waste exported for disposal in the United States.

The disparity between the province's and Statistics Canada's residential waste data highlights a further data issue. The province collects its own data for residential waste directly from Ontario municipalities, through the Resource Productivity and Recovery

Authority's annual "Datacall" (see **Section 4.9** for details on the Resource Authority). The Datacall data, which the Ministry considers more reliable than Statistics Canada data, consistently estimates residential waste generated much lower than Statistics Canada: about 1.2 million tonnes lower in 2018 (see **Figure 7**). The Datacall data also estimates more diverted and less disposed residential waste, resulting in a much higher residential diversion rate: 50% in 2018, compared with 33% based on Statistics Canada 2018 data.

Neither Statistics Canada nor the Ministry is able to fully account for the disparity, but both noted to us differences in their data collection methodologies and, in particular, both noted that they treat multi-residential waste differently. Ontario's Datacall captures only multi-residential waste that is municipally collected, whereas Statistics Canada residential data includes both municipally and privately collected

multi-residential waste. The Ministry's practice of estimating Ontario's total waste as the sum of Data-call residential data plus Statistics Canada IC&I data therefore omits all privately collected multi-residential waste.

Collectively, these data issues suggest that the province is likely underestimating both IC&I and total provincial waste. For example, the OWMA's estimate of total disposed waste was 3.1 million tonnes higher than the Ministry's estimate for 2018 (see **Figure 7**).

4.1.2 Ministry Cannot Identify Which Establishments Generate and Dispose of the Most Waste Due to Lack of Data

Our Office's 2010 audit of Non-hazardous Waste Disposal and Diversion found that the Ministry lacked information on the specific sources and types of Ontario's IC&I waste and recommended that the Ministry obtain such information. Our review of the Ministry's current data found that, over 10 years later, the Ministry still does not have this information.

In particular, the Ministry does not have data about:

- how much of Ontario's total IC&I waste is generated by each IC&I subsector (such as retailers, restaurants, manufacturers, hospitals and construction);
- the breakdown of how waste is generated within each subsector, such as between large and small establishments; or
- the diversion and disposal rates of each subsector.

Without this data, the Ministry cannot determine what portion of the IC&I waste stream is generated by establishments that are subject to the IC&I waste regulations. Nor can the Ministry identify what other types of establishments are significant generators of IC&I waste, and should potentially be included in future regulations or programs.

The Ministry also does not have reliable data on the composition of the IC&I waste stream by type of material. Statistics Canada provides only partial data on the breakdown of waste by material type:

- Statistics Canada can break out disposed IC&I waste into "construction, renovation and demolition" waste and all other IC&I waste, but it does not provide data on other types of disposed materials (such as plastics, textiles or organic waste) beyond these two broad categories.
- Statistics Canada publishes a breakdown of diverted waste in Ontario by material type. However, without any data about waste disposed by material type, it is not possible to determine which materials have high or low diversion rates.

The Ministry commissioned three studies between 2016 and 2018 to improve its understanding of the most common materials in the IC&I waste stream. These studies broadly estimate the amounts of IC&I paper and packaging, organic waste, and construction, renovation and demolition waste generated and diverted in Ontario. However, the Ministry advised us that there are limitations to relying on these studies for precise information, as they were based on modelling rather than reported data.

4.1.3 Existing Sources of Waste Data Are Not Being Utilized

During our audit, the Ministry informed us that it is considering options to obtain IC&I waste data to supplement the Statistics Canada data. Among possible options for data collection, we found that there are several opportunities to better utilize existing data sources. For example, we found that the following sources of data are underutilized:

- **Waste Management Facility Reports:**

All waste management facilities, including transfer, sorting, processing and disposal facilities, are required by their environmental compliance approvals (see **Section 2.4.2**) to maintain waste data records—including the quantities, types, sources and outbound destinations of the waste they handle—and to prepare annual reports. Our review of a sample of annual reports found that these reports contain valuable data on

IC&I waste, but several limitations prevent them from being better utilized:

- there are no standard data requirements or direction for reporting on waste “type,” so the contents of the reports vary widely, with some facilities reporting on only some recyclable materials or, in some cases, only garbage;
 - some facilities are required to maintain their annual reports onsite, while others are required to submit the reports to the Ministry. Ministry inspectors may review the annual report, such as to inspect compliance with a facility’s approved tonnage limits, but the Ministry does not compile or analyze the information to assess diversion and disposal trends; and
 - the few reports that must be submitted are held, often in hard copy, in district offices across the province (rather than in a central database).
- **Waste Audits by Regulated Establishments:** Regulated IC&I establishments are required to take an inventory of their waste and produce a waste audit report every year. Our review of a sample of waste audits found that they include useful data about IC&I waste composition from regulated establishments, but several limitations prevent them from being better utilized:
 - the Ministry does not require waste audits to be submitted. Ministry inspectors reviewed the waste audits during inspections to determine compliance with the Waste Audit Regulation until 2019 (see **Section 4.6**), but the Ministry has not analyzed or used the data for policy development;
 - the Ministry’s audit report template does not provide detailed direction on content, which results in inconsistent reporting between companies, such as different categorization of materials, and gaps in key information, such as overall diversion rate; and
 - the Ministry’s template is not an electronically editable form, which means data cannot

be easily entered or extracted and calculations must be done manually.

- **3Rcertified data:** The Recycling Council of Ontario, a non-profit, received funding from the Ministry in 2010 to develop 3Rcertified, a voluntary certification program that helps IC&I establishments monitor their waste stream and review their waste reduction policies and procedures. IC&I establishments can achieve various certification levels by completing standardized waste audits. The lowest certification level is based on requirements in the Waste Audit Regulation. We found that the program provides streamlined reporting for IC&I establishments, and an opportunity for the Ministry to collect standardized IC&I waste data.
- **Ontario Waste Management Association (OWMA) data:** The OWMA offers another potential source of data. The OWMA collects data, which is not collected by the Ministry, from its members on the annual quantity, source and category of waste received at landfills and organic processing facilities. The OWMA has used this information, collected through waste data management software (Re-TRAC), to create its own private database of information about waste disposal and organic processing facilities in Ontario. The OWMA analyzes and presents high-level findings from this database in its annual reports.

Many governments in other jurisdictions have more effective waste data collection and reporting than Ontario. For example, the state of Vermont uses Re-TRAC to streamline data collection from all waste facilities. South Carolina offers generators free access to the Re-TRAC software to encourage businesses to voluntarily report on annual recycling activities. Scotland not only tracks waste management data from all sources to obtain generation, diversion and recovery tonnages by waste category and material type, but also makes the facility-specific waste information publicly available in an interactive database.

RECOMMENDATION 1

To inform the province's review of its current waste regulations and the development of effective policies and programs to address industrial, commercial and institutional (IC&I) waste, and to reliably track progress toward the province's waste reduction and diversion goals, we recommend that the Ministry of the Environment, Conservation and Parks:

- utilize existing data from IC&I establishments and waste management facilities, including waste audits, waste facility reports and data collected by other organizations, to help fill gaps in baseline data about total IC&I waste generated, diverted and disposed, as well as gaps in data about the types of IC&I waste materials and the sources of waste by sub-sectors and size of establishments;
- implement measures to streamline and simplify existing data reporting requirements and provide for electronic reporting of the standardized data from IC&I establishments and waste management facilities about the types, quantities and destinations of IC&I waste they generate or manage; and
- publicly report summarized IC&I waste data based on the collected information, and to the extent that any published data does not align with Statistics Canada data, include a clear explanation of the factors that contributed to the different results.

MINISTRY RESPONSE

The Ministry agrees with the Auditor General that data is a valuable resource that can be used to inform the development of effective policies and programs. We will use reliable sources of available data to improve Ontario's baseline data on IC&I

waste generation, diversion and waste composition, which we will use when considering how to improve our current framework.

The Ministry will also consider approaches to streamline how we collect, report and receive data and publicly share information.

4.2 Waste Management Industry

The Ministry does not require waste management service providers—the companies that collect, transfer, sort and process waste—to divert the IC&I recyclables or organic waste they handle (see **Section 2.4.2**), nor to report on their waste diversion activities.

Our audit of waste industry practices found that many materials that are source-separated by establishments such as stores and office buildings, with the intent of being diverted, never reach a processing facility. We found that waste collectors take roughly half of the IC&I source-separated recyclables and organics that they collect to transfer stations. Yet, only 34% of the transfer stations we examined transfer loads of IC&I recycling to sorting or processing facilities to be diverted. The other 66% of the transfer stations we examined accept the IC&I recyclables as garbage, which they send to landfill or energy-from-waste facilities. We also found that waste collectors take about one-fifth of collected IC&I organic waste directly to landfill. (For a discussion of why waste companies send the materials to landfill, see **Section 4.3**.)

We also found that it was difficult to obtain information about waste industry operations. Without access to such information, establishments cannot easily verify whether their recyclables are being sent to a facility that actually diverts them and, therefore, cannot make informed decisions when contracting waste services.

4.2.1 Waste Collectors Not Required by Ministry to Report Where Source-Separated Recycling and Organic Waste Is Taken

The Ministry does not require waste collectors to divert the IC&I recyclable or organic waste that they collect, or to report where they take waste or how much they divert.

We obtained information through several means to determine where waste collectors take collected IC&I mixed recyclables (see **Section 4.2.2** for details on what happens to materials taken to transfer stations):

- In a 2016/17 information gathering project by the Ministry, Ministry inspectors found that 65% of the waste collection vehicles that they observed took the source-separated recyclables from IC&I establishments to a transfer station, while 35% of the vehicles took the recyclables to a sorting facility. In 24% of the cases, the inspectors observed the collectors load and compact the recycling and garbage together in the vehicle before taking the materials to a transfer station. One vehicle operator, when asked, confirmed to the inspector that this was normal practice. Another vehicle operator told the inspector that all collected recyclables on that route, except cardboard, are regularly taken to the transfer station as garbage.
- In our review of information provided by regulated establishments to the Ministry during inspections conducted in 2018/19 and 2019/20, 66% of the establishments indicated that their waste collector took their recyclables to a transfer station and 34% indicated that they were taken to a sorting facility.
- In response to our May 2020 survey to members of the waste management industry, on average, waste collectors reported taking 43% of collected IC&I source-separated recyclables to transfer stations, 53% to sorting or processing facilities, and 4% directly to landfill.

For organic waste, in response to our survey, on average, waste collectors reported taking 54% of source-separated IC&I organic waste to an organic

processing (composting or anaerobic digestion) facility, 23% to a transfer station, and 22% directly to landfill. However, the amounts sent to landfill varied considerably among respondents. For example, two reported taking 50% to 60% of the collected organics to landfill, one reported taking as much as 90% and the remaining six collectors reported taking no source-separated organics to landfill.

Some other jurisdictions require waste collectors to report where they take collected waste, and in some cases, hold both IC&I establishments and waste collectors responsible for ensuring collected waste is brought to appropriate final destinations. For example, Scotland requires that IC&I source-separated waste be accompanied by a waste transfer note (chain of custody) to verify that materials are diverted.

RECOMMENDATION 2

To increase the accountability of waste collectors taking source-separated materials from industrial, commercial and institutional (IC&I) establishments to appropriate waste management facilities for diversion rather than disposal, we recommend that the Ministry of the Environment, Conservation and Parks:

- require waste collectors to maintain documentation, to be provided to IC&I establishments upon request, to verify how collected source-separated materials are being managed;
- require waste collectors to report information to the Ministry (or a delegate) to track the quantities, types and destinations of IC&I materials diverted and disposed; and
- develop and implement a framework to inspect and enforce these requirements.

MINISTRY RESPONSE

The Ministry agrees with the Auditor General that waste collectors play an important service in the waste chain-of-custody. As such, the Ministry is currently looking at the role of waste collectors

under the IC&I regulatory framework. The Ministry will look at potential roles and responsibilities for waste collectors that will support improved diversion outcomes in the most efficient and least burdensome way.

4.2.2 Ministry Does Not Require Transfer Stations to Divert; IC&I Recyclables Often Sent to Landfill

Transfer stations operate as an interim destination, where the priority is rapid and efficient consolidation of large volumes of waste. Transfer stations that handle IC&I waste often lack the space or equipment to sort incoming materials to divert them from landfill. The Ministry does not require transfer stations to divert the IC&I recyclable or organic waste they handle, nor to report on their diversion rates or which specific materials they divert.

We examined the handling of IC&I waste at 50 transfer stations located across the province by reviewing transfer stations' annual reports submitted to the Ministry and information from the Ministry's 2016 and 2018 project on how transfer stations manage commercial mixed recycling and construction and demolition waste. We also independently contacted transfer stations as a "secret shopper" seeking waste management services to verify operations.

Our examination of the 50 transfer stations found the following:

- 35 transfer stations accept IC&I garbage and mixed (Blue Box-type) recyclables. However, only nine (26%) of these 35 transfer stations consolidate and transfer loads of mixed IC&I recyclables to sorting or processing facilities, of which six are operated by the same company. The other 26 (74%) of the 35 transfer stations accept loads of mixed recycling as garbage, which they send to landfill, with the exception of a few materials (such as wood, metal and clean cardboard) that some transfer stations pull out and divert if feasible.
- Five transfer stations are co-located with sorting facilities. All of these transfer stations told us that

the transfer station would accept only garbage, but would redirect the mixed recyclables to the adjacent sorting facility for diversion.

- 10 transfer stations receive primarily mixed construction and demolition waste. We found that only three (30%) of the 10 facilities consistently sort and divert these materials. The other seven send the materials to landfill, with the exception of a few valuable materials, which are diverted if feasible.

We also reviewed the incoming and outgoing waste data reported in annual reports from 20 transfer stations that had "process" and/or "transfer" in their facility description to determine average diversion rates. These transfer stations receive a combined total of 1.7 million tonnes of waste annually, or about 14% of all waste generated in Ontario. The average diversion rate at the 20 transfer stations was 7%. The majority of diverted waste was made up of cardboard, leaf and yard waste and wood. Diverted mixed recyclables cumulatively accounted for 18,000 tonnes annually, or just 1% of the materials managed by the transfer stations. Annual reports from two transfer stations that receive construction and demolition materials reported that they divert less than 5% these materials.

4.2.3 Sorting Facilities Divert Most Waste They Accept, but Some Do Not Accept IC&I Mixed Recyclables

Sorting facilities clean, sort and bale mixed recyclables into their individual commodities (such as plastics, paper, metals and glass) to be sold to processing facilities or directly to end-users, such as manufacturers. The Ministry does not require sorting facilities to divert any specific amount of the IC&I recyclable waste they handle, nor to report on their diversion rates. We found that sorting facilities in Ontario divert, on average, about 86% of the mixed recyclables that they accept. However, we also found that some sorting facilities will only handle residential waste and refuse to accept loads of IC&I mixed recyclables.

We reviewed annual reports from 20 sorting facilities that receive both IC&I and residential materials to determine average diversion rates. Collectively, these facilities receive over one million tonnes of source-separated mixed recyclables or construction and demolition waste annually. We found:

- The 18 sorting facilities that receive mixed recyclables reported diverting an average of 86% of materials they accept, with diversion rates at the two largest sorting facilities that receive IC&I waste ranging from 54% to 94%. The facility that achieved 94% diversion had invested in enhanced equipment and facilities, based on a business model focused on recovering materials rather than diverting waste.
- The two facilities that exclusively receive construction and demolition recyclables reported diverting 31% and 86% of materials.

In response to our waste management industry survey, the responding sorting facilities reported, on average, diverting 87% of recyclables. However, the two facilities that exclusively handle IC&I waste reported diverting 70%, much less than the three facilities that handle mostly residential waste.

Further, we found that some facilities with higher diversion rates will rarely accept IC&I mixed recyclables. For example, two of the five largest waste management companies told us that their sorting facilities will not accept mixed recyclables from IC&I establishments because contamination and lack of end markets make diversion of IC&I mixed recyclables too costly, or in some cases unfeasible (see **Section 4.3**). As a result, the waste collectors and transfer stations send these materials to landfill as garbage instead.

4.2.4 Ministry Does Not Compile Information about Waste Companies' Operations, Leaving Establishments in the Dark When Contracting Waste Management 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. We found that it is difficult to obtain reliable information about waste facilities' operations. Without access to such information, establishments cannot easily verify whether recyclables are being sent to facilities that divert their materials, nor make informed decisions when contracting waste services.

The Ministry has a database of waste management facilities. At our request, the Ministry compiled a list from this database of facilities that are approved to manage IC&I waste in Ontario, based on approvals that include the terms industrial, commercial and institutional. We found, however, the list is not up-to-date and does not provide complete information about facility operations. For example:

- The list classifies waste management facilities based on the approved activities in their environmental compliance approval, such as "transfer," "process" or "compost;" however, these terms indicate any possible activity for which a facility has been approved, but are not necessarily helpful for either Ministry staff or the public to determine a facility's current or principal operations in practice. For example, facilities may be approved to "process and transfer," but, in practice, may exclusively transfer materials without diverting any recyclables.
- In addition, 24 facilities that we examined that manage IC&I waste were not included in the Ministry's list. The Ministry acknowledged that its list included facilities that were no longer approved, had never been approved, or their operational status was unknown.

Other jurisdictions, such as California, Vermont and Scotland, require waste management facilities to report on their annual recycling activities, such as the amount and kinds of materials they handle each year. In California, waste facilities that do not comply with the reporting requirements have their names posted publicly online. Scotland publishes the facility-specific waste information, including waste diversion tonnages by material type, in a publicly available interactive database.

4.2.5 Waste Companies' Information Unclear or Misleading to Public, Transfer Stations Treating Recyclables as Garbage

Our review of a sample of 20 waste companies' websites found that it is difficult for the public to find information online about how transfer stations are managing the waste they receive. We cross-checked transfer stations' website information against their annual reports and through secret shopper phone calls asking the facilities about their services. We found that the information on 19 of the 20 websites was unclear about how the facility manages the IC&I materials it accepts, and in four cases, was also misleading. For example:

- One transfer station's website lists a variety of common materials that it accepts as recyclables, noting that the materials can be reused instead of landfilled. When we inquired by phone, facility staff informed us that all materials received would be sent to landfill.
- The website of another transfer station, with "recycling" in its name, indicates that it accepts and manages both waste and recycling. When we contacted the facility, staff initially informed us that it would accept our mixed recyclables and quoted the fee. After further questioning, staff eventually explained that these materials would not be sorted, but rather would "just be tossed into the [garbage] pile."

Moreover, when we contacted transfer stations as a secret shopper, seven (44%) of the 16 transfer stations that do not divert IC&I mixed recyclables provided misleading information to us. In each case, the employee we spoke with failed to explain that, although loads of mixed recyclables would technically be accepted, the materials would be treated as garbage.

RECOMMENDATION 3

To increase transparency about the waste management industry and help industrial, commercial and

institutional establishments make more informed business decisions about the management of their waste, we recommend that the Ministry of the Environment, Conservation and Parks (Ministry):

- require waste management facilities to report their annual diversion rate, as well as the specific materials they regularly divert, to the Ministry (or a delegate); and
- provide publicly accessible information, such as an online central database, of waste management facilities' past reported diversion rates and materials diverted.

MINISTRY RESPONSE

The Ministry recognizes the importance of increasing transparency about the waste management industry to enable businesses and institutions to make more informed waste management decisions. The Ministry will consider options for increasing transparency about the waste management industry, including looking at appropriate reporting requirements and making information publicly accessible.

4.2.6 Establishments' Contracts with Waste Management Companies Rarely Require IC&I Materials to Be Diverted

For establishments that have invested in source-separation programs and want to ensure their source-separated materials are diverted, it is important that their contracts with their waste service providers expressly require that materials are diverted, as well as requiring collectors to report back about where materials are taken. There is, however, minimal public information to guide establishments about waste service agreements. Our review of 40 service agreements between regulated establishments that have source-separation programs and their service providers found that only three of the agreements required the collectors to divert the customers' waste. As noted

in **Sections 4.2.1** and **4.2.2**, without contractual terms that require diversion, waste companies often send these source-separated materials to landfill.

IC&I establishments (and multi-residential buildings that receive private collection) enter into agreements with waste companies to remove and manage their waste. Because these are private contracts between private parties, businesses typically maintain their confidentiality and do not share contract terms. We were able to obtain copies of 40 waste service agreements from establishments, covering the five largest waste companies operating across Ontario. The agreements varied widely, ranging from short, basic contracts to very sophisticated, detailed contracts. Our review found the following:

- Only three of the 40 agreements expressly required the waste collector to take all collected recyclables to a recycling facility. The other 37 agreements allowed the waste collectors flexibility to manage collected materials based on market conditions. Each of these agreements gave collectors—either explicitly or through the absence of terms about how materials were to be managed—discretion to make operating decisions that balance costs against waste diversion goals, such as taking materials that cannot be recycled economically to landfill.
- Only six of the 40 agreements included requirements for the collector to report back to the establishment on the final disposition of the collected materials, which enables the establishment to confirm to what extent diversion occurred.

Our review of the agreements, as well as discussions with several of the largest waste management companies in Ontario, found that, despite the higher cost to process mixed recyclables (see **Section 4.3.1**), waste collectors typically charge establishments the same or less to collect recycling than garbage, for one of two reasons:

Several waste management companies informed us that they often dispose collected IC&I mixed recyclables as garbage due to high contamination

(see **Section 4.3.3**) and challenges securing suitable end markets (see **Section 4.3.2**). By treating mixed recyclables as garbage, waste management companies are not incurring the higher costs of sorting and processing, and so the costs remain the same as garbage. Further, mixed recyclables tend to include lighter-weight materials, often weighing half as much as a typical load of garbage. Therefore, collection and transport fees, for which weight is a major factor, are lower than the transport costs for garbage.

- Where loads of recycling are properly separated with minimal contamination and contain more profitable recyclables with reliable markets, such as metals, clean cardboard and high-value plastics, the cost to collect and process these materials can be lower than landfill disposal.

RECOMMENDATION 4

To support efforts by industrial, commercial and institutional (IC&I) establishments to have their source-separated waste diverted by their waste management service providers, we recommend that the Ministry of the Environment, Conservation and Parks develop and distribute resources for IC&I establishments, such as guidance and template terms, that promote waste service agreements that require diversion of materials and reporting back on final disposition.

MINISTRY RESPONSE

The Ministry is committed to improving the management of source-separated waste from the IC&I sector to ensure it does not end up in landfill. The Ministry will work with Ontario businesses and institutions to better understand what kind of information and resources are necessary to achieve this outcome, and will provide appropriate information and resources as identified.

4.3 Underlying Barriers to Waste Reduction and Diversion

Our audit found that several major, interrelated barriers—namely, high diversion costs, high contamination rates and weak end markets—prevent or hinder waste management companies, and in turn IC&I establishments, from diverting more IC&I waste.

Other governments, in Canada and around the world, have increased waste diversion, as well as reduced the amount of waste disposed, by implementing measures that address these barriers and improve the economic conditions for waste diversion. These overarching measures, such as landfill bans, landfill levies and programs to develop end markets, can be used in conjunction with, or even as an alternative to, the direct regulation of businesses (IC&I establishments, producers and/or waste management companies). We found, however, that the Ministry has not implemented any such key measures needed to drive waste reduction and diversion in Ontario.

4.3.1 Diverting IC&I Waste Can Cost Up to Six Times More than Disposal

Several factors affect the economics of diverting a particular load of waste, including the market value of the specific materials, the mix of materials in the load, and the contamination levels (see **Appendix 9** for more details on the economic factors). We found that although some IC&I materials—such as aluminum, steel, clean cardboard and certain high-value plastics—can be recycled economically, most loads of IC&I waste are cheaper to dispose in landfill than to divert. Unlike the municipal sector, higher diversion costs deter waste management companies—as private, profit-driven businesses—from voluntarily diverting much of the IC&I waste that they collect or receive.

When waste collectors take the collected IC&I materials to a waste management facility—such as a transfer station, sorting facility, organic processor or landfill—they are charged a “tipping fee” to deposit the waste. This tipping fee is set at a rate to cover the facility’s operating costs and is usually negotiated

Figure 8: Average Tipping Fees Charged by Different Types of Waste Management Facilities to Receive Industrial, Commercial and Institutional (IC&I) Waste

Prepared by the Office of the Auditor General of Ontario, based on information from a sample of waste management service providers that handle IC&I waste

Facility Type	Service	Average Range of Tipping Fees (\$/tonne)
Landfills in Michigan	Dispose IC&I waste	10–20
Private landfills in Ontario	Dispose IC&I waste	40–70
Compost/anaerobic digestion ¹ facilities	Process IC&I organic waste	80–120
Sorting facilities ²	Sort and bulk mixed construction, renovation and demolition waste	70–80
	Sort and bulk mixed IC&I recyclables	100–250
Transfer stations ³	Transfer IC&I waste to landfill	80–120
	Transfer IC&I mixed recyclables to sorting facility	100–250
	Transfer IC&I organic waste to processing facility	110–130

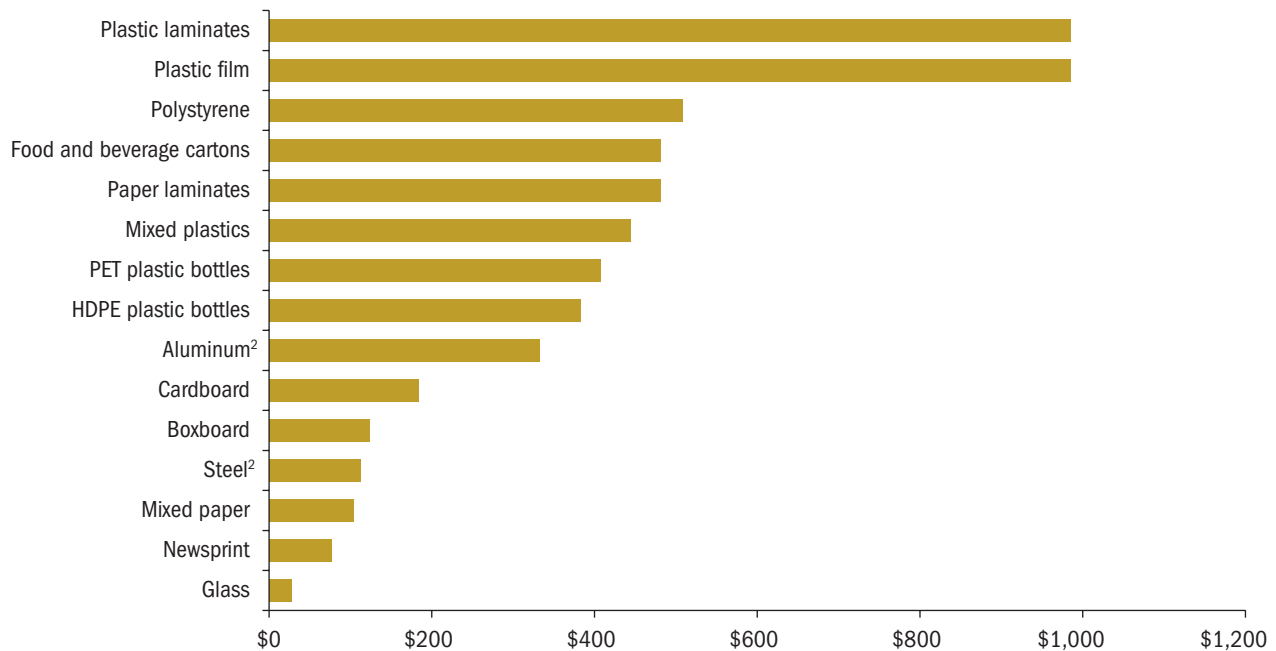
1. Anaerobic digestion is the processing of organic waste without oxygen to generate biogas, which can be used to produce electricity.

2. The tipping fees charged by sorting facilities are highly variable, depending on the mix of materials, as well as the contamination levels. Sorting facilities may receive loads of mixed recyclables containing over 20 different types of materials.

3. Transfer stations typically charge fees that cover the tipping fee of the final destination where the materials will be sent (such as landfill fee for garbage or sorting fee for recyclables), plus a charge for their services. For some materials that the transfer station can sell to processors, such as clean cardboard and scrap metal, the transfer station may charge low fees or even pay for the materials.

Figure 9: Municipal Processing Costs for Residential Mixed Recyclables in 2020¹ (\$/tonne)

Source of data: Stewardship Ontario



1. Processing costs are approximately 35% of the participating municipalities' total gross costs for the residential Blue Box program. The costs set out assume that processing costs are 35% of the municipalities' cost for each material (other costs include collection, transfer, education and administration). However, some materials, such as plastics, have a higher proportion of the total processing costs, while others, such as paper and cardboard, have a lower proportion of the total processing costs.
2. Aluminum and steel are the only materials where revenue exceeds processing costs, at \$1,311/tonne and \$215/tonne, respectively, in 2020.

privately between the waste companies. We obtained information from dozens of waste industry sources to determine an average range of fees charged by different types of facilities (see **Figure 8**). We found that, while tipping fees vary, the cost to divert IC&I waste can be up to six times the cost to landfill it.

For example, a collector may pay \$120/tonne to deposit organic waste at a composting facility, or \$250/tonne to deposit IC&I mixed recyclables at a sorting facility, compared with \$40/tonne to dispose of these wastes in landfill. We found that it can cost much more to divert IC&I mixed recyclables, in particular, for several reasons:

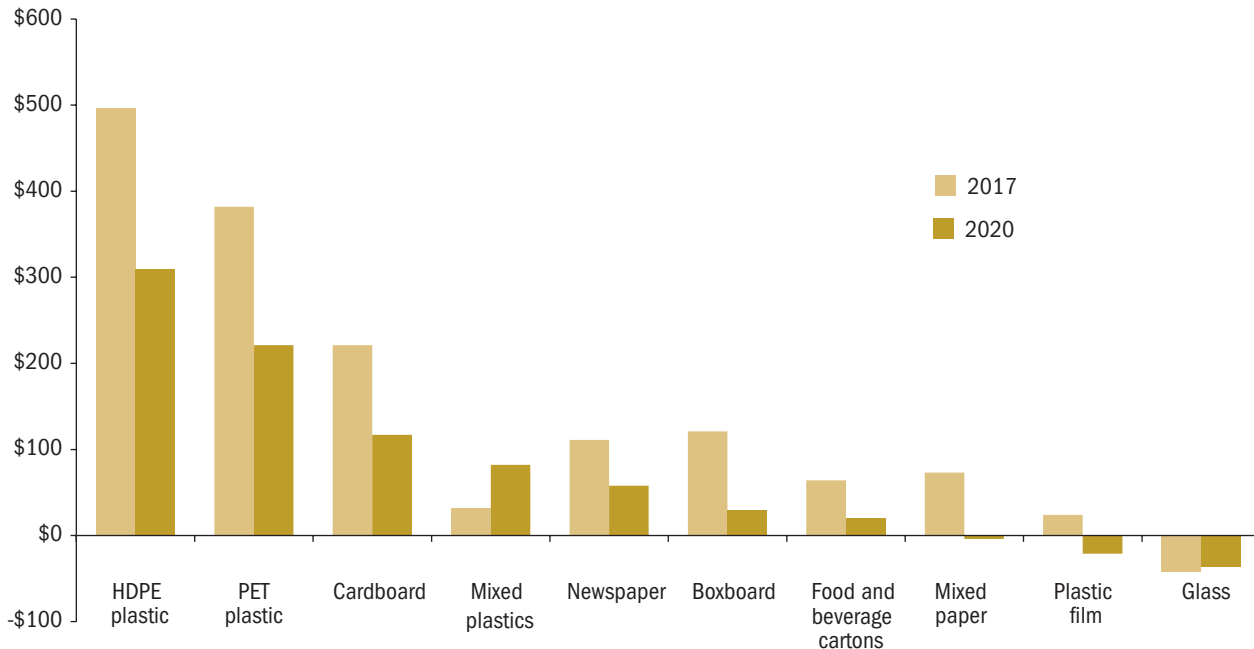
- Loads of mixed recyclables can contain over 20 different types of materials, many of which are expensive to process (see **Figure 9**). Further, Ontario's waste stream is increasingly comprised of more lightweight materials, such as plastic and multi-layer packaging, while heavier materials, like glass and printed paper, have

decreased. These changes in composition have increased costs, as the cost to process a typical tonne of plastic packaging is over five times higher than printed paper. The result is that facilities now have to sort and process a greater volume of materials to achieve the same tonnage.

- IC&I mixed recyclables tend to have high contamination levels, particularly when collected from establishments with publicly accessible bins, which dramatically increases processing costs, as well as decreasing revenue (see **Section 4.3.3**).
- In January 2018, China and other countries in Southeast Asia began banning most imports of paper and plastic waste due, in large part, to excessive contamination and poor quality of the imported recyclable materials. These bans and contamination restrictions disrupted global recycling markets, reduced commodity revenue (see **Figure 10**) and increased operational costs. Data from the residential sector, for example, shows

Figure 10: Market Value* for Ontario Recyclables in 2017 and 2020 (\$/tonne)

Source of data: Continuous Improvement Fund Price Sheet



Note: On January 1, 2018, China implemented its National Sword Policy, which banned many mixed recyclable materials by reducing the allowable contamination rate to 0.5%. The policy disrupted global recycling markets, and has resulted in lower revenue for most recycled commodities produced in Ontario. The policy mainly impacted various fibre and plastic materials, but steel cans declined by 17% (\$215/tonne in 2020) and aluminum cans declined 26% (\$1,311/tonne in 2020).

* Values are based on municipal market prices for recyclable commodities. Industrial, commercial and institutional recyclables are typically sorted and processed in similar, or sometimes the same, facilities, and are often sold to the same end markets.

that residential Blue Box net recycling costs went up 35% from 2017 to 2019, largely because revenue for collected recyclables decreased by 51% after the bans were implemented.

As noted in **Section 4.2.6**, despite these higher processing costs, waste companies typically charge establishments lower collection fees for mixed recyclables because they are generally lighter-weight and cheaper to transport. For heavier materials, like organics and construction and demolition waste, collectors charge IC&I establishments collection fees based largely on the transport distance. Where processing facilities are closer than landfills, the lower cost to transport the heavy materials shorter distances can offset the higher processing costs to divert the materials.

In contrast to the IC&I sector, we found that municipalities divert more recyclable materials despite the higher costs, on account of several factors, including:

- Municipalities with a population above 5,000 are required by law to operate residential Blue Box

recycling programs. The residential Blue Box program has a target to divert 60% of generated Blue Box materials, which helps to drive diversion of materials that would not otherwise be diverted economically.

- Municipalities are reimbursed for up to 50% of the net costs of running Blue Box programs by the producers (brand holders, importers or retailers) of the packaging materials. The Blue Box Regulation, finalized in June 2021, will make producers responsible for delivering Blue Box services starting in 2023, with producers 100% responsible upon full implementation in 2026.
- Municipalities can also pass on the higher costs of other diversion programs, such as organic diversion, to municipal residents.
- Municipalities invest in educational materials to promote awareness of what goes in the Blue Box and Green Bin to achieve less contamination of residential waste.

4.3.2 Many Materials, like Coffee Cups and Plastic Film, Sent to Landfill Due to Lack of Buyers or Low Market Prices

Lack of stable end markets—processing facilities or manufacturers that buy clean, sorted materials from sorting facilities—is the other side of the economic barrier. We found that there are currently no accessible or viable end markets in Ontario to support diversion of a large number of IC&I materials, such as textiles, coffee cups, plastic film, glass and drywall. Sorting facilities will either refuse IC&I materials for which they cannot secure stable and profitable end markets, in which case the materials are landfilled, or charge higher fees to cover their costs.

The Ministry conducted a survey in 2016 of 17 facilities that transfer and sort mixed recyclables. Of the 17, 11 (or 65%) identified the lack of stable and accessible end markets as a challenge that regularly impacts their operations.

In our waste industry survey, facilities similarly listed lack of stable markets as a barrier to diverting materials. We found that waste management facilities face several challenges related to end markets, including:

- For a few materials, like textiles and coffee cups, the technological capacity does not yet exist to viably recycle the materials.
- Compostable packaging and products, such as fibre takeout containers, can technically be diverted in laboratory conditions. However, many organic processing facilities in Ontario have reported that in practice, facilities cannot feasibly recycle compostable products because they require a significantly longer time to compost compared with organic material. The facilities therefore must pay to send these materials to landfill.
- For other materials, the technology to process the materials exists, but the cost is currently too high to sustain the end markets. For example, a waste management company built a processing facility in Ontario in 2013 to recover wood, concrete, drywall and metal from construction and demolition waste for reuse. However, the facility shut down after just nine months because it was not economically sustainable to continue operations.
- For many other materials, end markets exist, but the commodity price for the material is low or negative, and often volatile. The IC&I waste stream includes many materials that have low or even negative market value, such as multi-layer packaging, polystyrene, drywall, glass and plastic film. In addition, a waste management company told us that the time that it takes for staff to find the end markets also increases diversion costs. Because receiving lower value IC&I recyclables without a secure end market is risky, transfer stations and sorting facilities often will not accept them without having a secure contract with processors or manufacturers to buy all of the materials. For example, one sorting facility reported that, in 2016, it baled several hundred tonnes of plastic bags as part of a grocery bag recovery program, but had to pay to landfill the materials instead when the prospective buyer was no longer interested. Several waste management companies noted that since several countries banned or restricted imports of mixed paper fibres and mixed plastics in 2018 (see **Section 4.3.1**), end markets for these materials have declined. One company told us that since the bans lowered the contamination thresholds for plastics, it now primarily manages all mixed containers as garbage.
- Lack of nearby end markets is another challenge, especially in Northern Ontario and rural areas. Sorting and transfer facilities informed us that the added cost of hauling recyclables long distances to processing facilities limits what they can accept for recycling. For example, we found that a municipal waste facility in Northern Ontario, which received mixed recyclables from local IC&I establishments, diverted less than 1% of IC&I waste received.

4.3.3 Contamination Is a Major Barrier to Diverting IC&I Waste

Contamination of recyclable or organic materials with other waste can dramatically increase the cost to process those materials. This is due to both higher labour and equipment costs to remove the contaminants, as well as lower quality and value end materials, such as when food waste degrades paper products (see **Appendix 9**). At a certain level of contamination, recycling or composting become unfeasible. Our audit found that high contamination levels are a major barrier to diverting IC&I waste.

IC&I establishments can take steps to reduce contamination and achieve higher diversion, but such actions often require an investment of human and/or financial resources. Further, there are no requirements for establishments, even those that are regulated, to reduce contamination levels (see **Section 4.5.3**).

We conducted a survey of members of Ontario's waste management industry that handle (collect, transfer, sort, recycle or compost) IC&I recycling and organic waste, to understand their practices and challenges diverting IC&I waste. The survey responses indicated that contamination is one of the main reasons IC&I recyclable and organic materials are disposed rather than diverted. Specifically:

- Of the respondents that collect primarily IC&I waste, 80% indicated that the recyclable or organic materials they collect are “too heavily contaminated to be diverted” and are taken to disposal more than 30% of the time, while the other 20% of respondents indicated that this occurred 5% to 15% of the time. One of these respondents noted that recyclables from IC&I establishments and multi-residential building are “generally over 50% contaminated and rarely can be recovered.” By contrast, all respondents who collect primarily single-family residential waste indicated that they encounter loads that are too contaminated less than 15% of the time.
- One operator of a sorting facility that handles exclusively IC&I waste stated that it rejects

inbound loads of recycling over 30% of the time because of contamination. By contrast, three sorting facilities that primarily handle residential waste stated that they reject inbound loads of recycling less than 5% of the time.

- The operators of organic waste processing facilities indicated that they send, on average, 24% of the materials they receive to disposal, most of which are contaminants. Organic processing facility operators told us that contamination is increasing and includes more compostable packaging (see **Section 4.3.2**).

IC&I establishments can take steps to reduce contamination, such as improve signage or hire and train employees to source separate materials better. Most notably, establishments can reduce contamination by collecting different types of materials separately (multi-stream) rather than multiple materials mixed together (single-stream). Data from the municipal sector indicates that residential Blue Box materials collected single-stream have over twice the contamination as materials collected multi-stream.

However, IC&I establishments are not required to reduce contamination to achieve any specific diversion rate. Further, meeting acceptable contamination thresholds is particularly challenging for some types of IC&I establishments, where bins are shared by more than one business, accessible to the public, or used by multiple residents.

Waste management companies advised us that they implement various policies and procedures to address contamination, such as setting maximum contamination thresholds, installing cameras on collection trucks to monitor the sources of contamination, setting requirements for multi-stream collection, and charging higher collection and tipping fees for contaminated materials. One waste facility operator advised us that it charges almost double the regular fee to accept contaminated recycling. Another company told us that, to address high contamination rates, it requires its client establishments to use three separate bins: for mixed paper, mixed cardboard and loose containers. Other waste management companies told us that they have addressed contamination

by working with their customers through enhanced education and by investing in better facilities and equipment. However, several other waste management companies told us that, in cases of highly contaminated recyclables, they treat the collected materials as garbage.

4.3.4 Ministry Lacks Key Measures, Such as Landfill Bans or Levies, Used in Other Jurisdictions to Encourage IC&I Waste Reduction and Diversion

Many jurisdictions, in Canada and around the world, have increased diversion and reduced the amount of landfilled IC&I waste by implementing measures, such as landfill bans or levies, to help overcome the underlying barriers to waste diversion (see **Appendix 2** for waste policies and performance by province and territory). These measures are used either in conjunction with, or as an alternative to, the direct regulation of IC&I establishments, producers and the waste management industry, to support waste reduction and diversion activities. We found that the Ministry has not implemented key measures needed to address the barriers to diverting IC&I waste and to encourage waste reduction in Ontario.

Landfill Bans

Landfill bans, which prohibit the disposal of specific recyclable or organic materials, have been used effectively by many jurisdictions to reduce the amount of waste disposed. For example, we found that landfill bans in many jurisdictions, including Nova Scotia, Massachusetts, Austria, Germany, the Netherlands and Scotland, have been effective in both increasing their diversion and reducing their disposal rates. The disposal rate in Nova Scotia, which implemented its disposal ban in 1997, decreased 46% from 1990 to 2018. We also found that the regulatory certainty provided by landfill bans drives development of end markets for the banned materials. For example, after Nova Scotia banned organic waste from landfill, several new organic processing facilities opened in that province.

Landfill bans also enable governments to enforce waste management activities more efficiently by focusing enforcement at the final landfill stage, which tends to be concentrated in fewer sites, rather than at the waste generation stage, which can encompass thousands of establishments. For example, in Ontario, enforcement of a landfill ban could target the 15 landfills that hold 85% of the province's remaining landfill capacity, as well as the transfer stations that export waste to the United States for disposal, rather than targeting enforcement of the source-separation requirements at the almost 1.6 million IC&I establishments.

The Ministry has committed, most recently in the 2020 progress update on the *Made-in-Ontario Environment Plan* (2018), to consult on a plan to ban, or phase-out, organic waste from landfill by 2030. However, at the time of our audit, the Ministry had not taken steps toward developing the proposed landfill phase-out.

Landfill Levies

Landfill levies (or surcharges) are another measure used by many jurisdictions to help offset the economic bias toward landfill. In Canada, the provinces of Quebec and Manitoba charge a landfill levy, and Prince Edward Island has relatively high tipping fees as well as surcharges for mixed waste. We found that higher landfill costs can help drive development of processing capacity and end markets. For example, when landfill tipping fees in some parts of Ontario increased to \$150/tonne in the early 1990s, private recycling businesses started up and expanded because they were able to provide a cheaper waste management option. However, it soon became cheaper to export IC&I waste to the United States, and many of the new or expanded recycling companies went out of business or shifted their services from recycling to transfer stations.

In British Columbia, regional districts are responsible for solid waste management planning and have the authority to create bylaws related to collection and disposal of waste generated in their area. Metro Vancouver, which has the highest overall diversion

rate (64%) of major Canadian municipalities, has both landfill bans on recyclables and organics and imposes a levy (\$42/tonne) for garbage.

Measures to Improve End Markets

We also found a number of jurisdictions have implemented measures directed at improving end markets for recycled materials. For example, to help make recycled materials competitive with virgin materials, some European countries, including Belgium and the Netherlands, have added levies on virgin materials, such as virgin aggregate, as well as levies on landfilling waste. In Japan, a green procurement law requires government entities to purchase products with high reclaimed or recycled content, which helped create a market for these materials. In the 2017 *Strategy for a Waste-Free Ontario*, the Ministry committed to reviewing its government purchasing policies to buy materials with recycled content to support those markets. However, at the time of our audit, the Ministry had not implemented any changes to support end markets.

Other Jurisdictions Focus on Waste Reduction

Finally, we found that other top performing jurisdictions place a greater focus on waste reduction over diversion. Ontario's waste management programs, policies and performance metrics focus almost exclusively on improving waste diversion rates. In contrast, Nova Scotia's programs, policies and metrics focus on reducing the amount of waste generated and disposed of. Recognizing that waste reduction and reuse are preferable to diversion, in addition to its landfill ban, Nova Scotia has developed a funding program that rewards municipalities with the lowest overall disposal rates, including both residential and IC&I. The less waste sent to disposal, the more funding a municipality receives for its waste diversion initiatives.

Measures directed at reducing waste generation at its source are particularly important for materials that cannot be easily recycled or that currently lack viable end markets, such as textiles and many plastics. To this end, in October 2020, the federal government proposed to ban six single-use plastic items—plastic

checkout bags, food service ware made from hard-to-recycle plastics, stir sticks, six-pack rings, cutlery and straws—across Canada, under the federal *Canadian Environmental Protection Act*. However, at the time of our audit, the federal government had not yet introduced a regulation to enact this ban.

In Ontario, the Ministry implemented a program in 2020 to support IC&I food waste reduction: a food rescue program that helps organizations secure funding to safely donate surplus food before it becomes waste. However, aside from this program, Ontario has implemented no other measures to address the province's high levels of waste generation.

RECOMMENDATION 5

To overcome the underlying barriers to reducing and diverting waste from the industrial, commercial and institutional (IC&I) sector, including high diversion costs, contamination and lack of stable end markets, we recommend that the Ministry of the Environment, Conservation and Parks:

- look to jurisdictions that have achieved significant reductions in their waste disposal rates to assess their use of policies and programs—including landfill bans, landfill levies and measures to support end markets for IC&I materials—to encourage waste reduction and improve the viability of diversion;
- based on this review, implement measures demonstrated to be most effective at reducing and diverting IC&I waste; and
- promptly develop a concrete plan for an organic waste landfill phase-out with firm dates for implementation.

MINISTRY RESPONSE

The Ministry recognizes the importance of looking at other jurisdictions to identify effective waste reduction and diversion policies and measures, including landfill bans and levies, as a key component of policy development. The Ministry is currently undertaking this jurisdictional work

and will evaluate different measures to reduce and divert IC&I waste based on the outcome of this review.

The Ministry is also considering a proposal to phase out food and organic waste from landfill and will develop a plan informed by the outcome of the consultation and final policy approvals.

RECOMMENDATION 6

To encourage waste reduction by the industrial, commercial and institutional (IC&I) sector, we recommend that the Ministry of the Environment, Conservation and Parks:

- introduce a target for reducing total amount of IC&I waste disposed annually; and
- track and publicly report on progress toward the IC&I waste reduction target.

MINISTRY RESPONSE

The Ministry agrees that targets can be an effective approach to increasing diversion of waste from landfills. We stand by our *Reducing Litter and Waste in Our Communities: Discussion Paper* commitment to mark our overall diversion rate goals of 30% diversion by 2020, 50% diversion by 2030 and 80% diversion by 2050. We also agree with the Auditor General that reducing and diverting waste in the IC&I sector is fundamental to meeting Ontario's waste goals, and therefore, targets for the IC&I sector could be important means to meeting the province's overall waste targets.

The Ministry has also set targets and taken action through the 2018 *Food and Organic Waste Policy Statement*, which directs municipalities, businesses and institutions to reduce and divert food and organic waste and to meet individual targets by 2023–25. The Ministry commits to report on provincial progress achieved through the *Food and Organic Waste Policy Statement*. The Ministry is considering amendments to the *Food and Organic Waste Policy Statement* that would require municipalities, businesses and institutions

to publicly report on their progress towards meeting their targets.

We also agree with the Auditor on the importance of data to measure waste diversion. The Ministry is considering and will consult with stakeholders on how to best collect information that will support results-based outcomes and modernized compliance, while cutting red tape and minimizing regulatory burden.

4.4 Portion of Businesses and Institutions That Are Regulated

4.4.1 More than 98% of All IC&I Establishments Are Not Required to Recycle

The IC&I waste regulations (the Source Separation Regulation and Waste Audit Regulation described in **Section 2.4.1**) apply to only certain IC&I sub-sectors and, within those subsectors, apply to only establishments that meet the size thresholds set out in the regulations (see **Appendix 5**). Our audit found that less than 2% of all businesses and institutions in Ontario are subject to the regulations. This means that over 98% of the almost 1.6 million IC&I establishments in the province are not required to take the measures set out in the regulations to reduce and divert their waste. Some non-regulated establishments may still choose to voluntarily reduce and divert their waste, but the regulations' narrow application significantly limits their potential to drive better overall IC&I waste practices.

The regulations apply only to the listed IC&I subsectors, which include retail stores and malls, office buildings, hotels and motels, schools, hospitals, restaurants, manufacturers and construction and demolition. The list leaves out whole types of IC&I establishments, such as:

- transit stations, like TTC and GO stations;
- warehouses and wholesale establishments; and
- institutions other than schools and hospitals, including prisons, long-term-care homes and other health-care institutions.

Figure 11: Estimated Portion of Establishments Regulated under Industrial, Commercial and Institutional (IC&I) Waste Regulations in 2019¹

Prepared by the Office of the Auditor General of Ontario

Subsector	Total # of Establishments	# of Regulated Establishments	Portion of Establishments That Is Regulated (%)
Construction and demolition ²	140,500	100-600	<1
Restaurants	32,500	400-2,500	1-6
Retail (stores and malls)	80,000	1,500-4,000	2-5
Manufacturing	36,500	1,500	4
Office buildings ³	93,000	7,000	8
Hospitals	500	100	20
Hotels and motels	2,500	800	32
Educational institutions	8,000	3,000	40
IC&I establishments in designated sectors	393,500	14,500-19,500⁴	4-5
IC&I establishments (including all sectors)	1,580,000		<2

1. Most recent data available.

2. The construction and demolition subsector is regulated based on the size of the construction or demolition project; however, as there is no available data on the number of projects by size, which is always changing, estimates are based on the number of businesses engaged in the construction of buildings.

3. Estimates are for number of office buildings because the subsector is regulated at the building level. Because multiple establishments can reside in a single building, tens of thousands of smaller establishments may be included.

4. Because office buildings can include multiple establishments, the number of regulated establishments, including those captured indirectly, is higher, but would not alter the overall portion of regulated establishments.

Other venues, like movie theatres, entertainment complexes and sports stadiums and arenas, are also not listed in the regulation, but the Ministry told us that it has applied the regulation to these establishments in a few cases as part of the retail sector.

According to Statistics Canada, as of 2019, there were approximately 1.6 million businesses and institutional establishments in Ontario. Based on Statistics Canada's categorization of establishments by subsector, an estimated 400,000 (25%) of the total establishments fall within one of the regulated subsectors. The Ministry does not have the business-specific information—such as annual revenue for restaurants or square footage of stores—to determine the precise number of these establishments that meet the size thresholds and are therefore regulated.

Ministry staff have, instead, estimated the portion of IC&I establishments that are regulated using other available information, such as number of employees per establishment, as a proxy for size. Using this method, and refining the estimates with additional

information from industry associations about the number and size of establishments within their subsectors, we estimated that roughly 14,500 to 19,500 establishments are subject to the IC&I waste regulations (see **Figure 11**). By these estimates, only 4% to 5% of establishments within the regulated IC&I subsectors, and less than 2% of all businesses and institutional establishments in Ontario, are subject to the regulations.

The IC&I establishments that are regulated are the very largest businesses and institutions in each subsector and are assumed to generate more waste per establishment than smaller ones. However, as noted in **Section 4.1.2**, the Ministry does not have sufficient data to determine what portion of IC&I waste is generated by the regulated establishments versus the unregulated ones.

The best data available of IC&I waste generated and disposed of by establishment size is from a 2008 consultant's study, conducted for the Ministry, of all IC&I waste generated, diverted and disposed of in

the City of Owen Sound, Ontario. The study found that large businesses (with over 50 employees) comprised 6% of the total 615 businesses in the city (excluding 47 businesses with insufficient data), but disposed of 36% of the total IC&I waste. Because businesses were classified by number of employees rather than the regulations' size thresholds, the study could not conclude what precise portion of IC&I waste was generated by regulated establishments; however, it suggests that unregulated smaller businesses may generate up to two-thirds of the IC&I waste stream. The Ministry has separately estimated, applying data from a 2015 California waste study, that unregulated establishments generate roughly between one-third to half of the total IC&I waste stream.

4.4.2 Organic Waste Policy's Requirements Exclude Thousands of IC&I Establishments That Generate Organic Waste

Ontario's *Food and Organic Waste Policy Statement* (Organic Waste Policy) requires only the following IC&I establishments to source separate to meet the organic waste diversion targets (see **Section 2.4.1**) in the Organic Waste Policy:

- restaurants, retail stores and shopping centres, office buildings, hotels, and large manufacturers that generate over 300 kilograms of organic waste per week; and
- educational institutions and hospitals that are subject to the IC&I waste regulations and that generate over 150 kilograms of organic waste per week.

The Organic Waste Policy also formally encourages, but does not require, all other restaurants, retail stores and shopping centres, office buildings, hotels and manufacturers that generate less than 300 kilograms of organic waste per week to source separate food and organic waste.

As noted in **Section 4.1.2**, the Ministry does not have data about IC&I waste to determine what portion of organic waste is generated and disposed of by establishments subject to the Policy requirements.

In the absence of waste audits, we applied food waste calculators developed in other jurisdictions (California and Massachusetts) to estimate the amount of food waste generated by Ontario establishments. While the calculators include assumptions that may not represent the true amounts generated, we roughly estimated that, conservatively, thousands of IC&I establishments in Ontario that generate organic waste would not be required to take steps to reduce or divert their organic waste. For example:

- Based on the food waste calculators, restaurants with fewer than 20 employees would not likely meet the Policy's threshold of 300 kilograms, which requires them to meet the waste reduction targets. According to Statistics Canada data, nearly 6,000 (or 24%) of Ontario restaurants have fewer than five employees, which falls far below the threshold.
- Similarly, based on the food waste calculators, hotels with fewer than 100 rooms would not likely meet the Policy's threshold of 300 kilograms, which requires them to meet the waste reduction targets. According to the Ontario Restaurant, Hotel & Motel Association, about 1,450 (or 64%) of Ontario hotels have fewer than 75 rooms, which falls below the threshold.

In addition, the Organic Waste Policy does not apply to certain types of IC&I establishments, such as long-term-care homes, which generate considerable food waste. In our *2019 Annual Report* audit on Food and Nutrition in Long-Term-Care Homes, we recommended that the province establish a goal of diverting food waste generated in long-term-care homes. The Ministry told us that it is reviewing potential expansion of the range of establishments covered by the policy, including long-term-care homes. However, at the time of our audit, there has not yet been progress on this.

The requirements in the Organic Waste Policy to divert organic waste apply broadly to all multi-residential buildings with six or more units, which could help close the gap for buildings that do not yet have Green Bin organic collection. There is no province-wide data on organic diversion in multi-residential

buildings, but information from municipalities suggests that it is low. Several municipalities, such as Peel Region and Durham Region, collect organics from single-family residences, but not from the multi-residential buildings that they service for garbage and recycling. The City of Ottawa does collect organics from buildings, but reports that, as of 2020, only 36% of the multi-residential buildings it services are registered for the Green Bin program. The City of Toronto requires all buildings that it services to participate in the Green Bin program, but condo and apartment buildings may opt for private collection for all of their waste services rather than meet the City's requirements.

RECOMMENDATION 7

So that the scope of Ontario's regulatory framework enables meaningful improvement in overall industrial, commercial and institutional (IC&I) waste diversion and disposal rates, and to facilitate identification and inspection of regulated establishments, we recommend that the Ministry of the Environment, Conservation and Parks:

- review options for significantly expanding the application of the IC&I waste regulatory framework to additional businesses and institutions, with possible exemptions for small establishments (based on quantity of waste generated, number of employees or other metrics); and
- based on the outcome of the review, expand the application of the IC&I waste regulatory framework such that a significant majority of IC&I waste is covered.

MINISTRY RESPONSE

The Ministry agrees to examine and review frameworks currently in place in other jurisdictions, including the levels and types of thresholds (e.g., waste generation, number of employees), used to determine what establishments are subject to regulatory requirements. We will

consult with businesses and stakeholders on any options to expand the number and types of IC&I establishments regulated, while recognizing the strain that a number of businesses are under due to the global pandemic.

4.5 Mandatory Recycling Programs

The Source Separation Regulation (see **Section 2.4.1**) requires regulated IC&I establishments and multi-residential buildings to operate a source separation program to collect recyclable materials (such as cans, bottles, paper and cardboard) specified in the regulation and to make reasonable efforts to ensure that those materials are diverted.

4.5.1 Compliance with Regulation Has Not Improved Overall IC&I Diversion Rate

Our audit found that 88% of the 1,262 IC&I establishments and multi-residential buildings that were inspected by the Ministry between 2014/15 and 2018/19 had implemented a recycling program as required by the Source Separation Regulation (see **Figure 12**). Compliance was high (between 74% and 94%) across all regulated IC&I subsectors, except for the manufacturing subsector, which had a 40% compliance rate (see **Section 4.7** regarding enforcement).

We found, however, that broad compliance with the Source Separation Regulation does not necessarily result in higher waste diversion. The regulation does not require establishments to achieve a specific performance outcome, such as a diversion target, only to make "reasonable efforts" to divert collected materials. Without either targets or other government measures to support diversion (see **Section 4.3**), the waste performance of regulated establishments is wide ranging.

We reviewed the waste diversion performance of a sample of 60 regulated IC&I establishments. Based on establishments' self-reported data, the diversion rates

Figure 12: Compliance with Source Separation Regulation by Subsector, 2014/15–2018/19*

Source of data: Ministry of the Environment, Conservation and Parks

Subsector	# of Establishments Inspected	Compliance Rate (%)
Manufacturing	10	40
Hotels and motels	141	74
Restaurants	43	79
Construction	184	84
Educational institutions	37	86
Retail (stores and malls)	119	88
Hospitals	20	90
Multi-residential buildings	582	92
Office buildings	126	94
Overall	1,262	88

* Most recent year with complete inspection data.

ranged from 6% to 90% (see **Figure 13**). Restaurants had the lowest diversion rates in our sample and construction sites had the highest.

In multi-residential buildings, municipalities consistently report low diversion. Low diversion is attributed in part to lack of space in older buildings for multiple chutes on each floor and inconvenience for residents to take recycling to a centralized area. For example, waste studies undertaken by the following Ontario municipalities have shown that the estimated diversion rate for multi-residential waste is less than half the rate of single-family residences in each of their jurisdictions:

- 28% for multi-residential waste in Toronto in 2019, compared with 64% for single-family residential waste;
- 17% for multi-residential waste in Ottawa in 2018, compared with 49% for single-family residential waste; and
- 20% for multi-residential waste in London in 2017, compared with 45% for single-family residential waste.

Despite some individual establishments reporting high diversion rates, the fact that the diversion rate

Figure 13: Range of Diversion Rates from a Sample* of Regulated Establishments

Source of data: Waste audits from a sample of regulated businesses and institutions from 2014 to 2019

Subsector	Range of diversion rates (%)	
	Low	High
Restaurants	6	70
Education (universities)	11	81
Hotels	22	85
Office buildings	36	90
Hospitals	37	57
Construction	38	90
Retail (stores and malls)	50	83
Overall	6	90

Note: Insufficient data was available to estimate diversion for the following omitted subsectors: i) multi-residential buildings are not subject to the Waste Audit Regulation; ii) the Ministry of the Environment, Conservation and Parks has not conducted a demolition inspection since 2012/13; iii) the Ministry inspected only 10 manufacturers since 2014, none of which complied with the Waste Audit Regulation.

* This figure is intended to show the range of diversion rates among regulated establishments; it does not, however, provide a representative average diversion rate of regulated establishments or the entire IC&I sector. Establishments that conducted waste audits may be more likely to have dedicated efforts to diverting waste (and therefore have higher diversion rates) compared with establishments that did not conduct waste audits, for which we do not have diversion data. It should also be noted that true diversion rates (material diverted from landfill) may be lower than those self-reported in waste audits (material diverted from garbage onsite).

of the IC&I sector as a whole (15% in 2018) has not improved in the 25 years that the Source Separation Regulation has been in place suggests that the regulation has not been effective at driving regulated establishments to improve their waste diversion rates.

The Ministry has itself concluded that the Source Separation Regulation has not been effective at driving diversion. Over the past 15 years, the Ministry has stated that the IC&I waste regulations need to be reviewed, including in *Ontario's 60% Waste Diversion Goal Discussion Paper* (2004), *Strategy for a Waste-Free Ontario: Building the Circular Economy* (2017), and *Reducing Litter and Waste in Our Communities: Discussion Paper* (2019) (see **Appendix 3**). At the time of our audit, the Ministry had not begun its review.

RECOMMENDATION 8

So that the requirements imposed on industrial, commercial and institutional (IC&I) establishments and multi-residential buildings effectively drive waste reduction and diversion, we recommend that the Ministry of the Environment, Conservation and Parks revise or replace the requirements in the IC&I Source Separation Programs Regulation (Ontario Regulation 103/94) with clear and enforceable outcomes-based requirements for establishments to separately collect and divert recyclables, such as diversion targets, disposal caps or contamination thresholds.

MINISTRY RESPONSE

The Ministry agrees with the recommendation to review and update the regulatory framework for IC&I waste. Building on the success of our other diversion programs for electronics, tires, hazardous and special products, and the Blue Box program, we will consider how to improve waste reduction and diversion rates from the IC&I sector, and will seek input from stakeholders and First Nations communities.

4.5.2 List of Materials That Must Be Diverted Has Not Been Updated in Over 25 Years; Excludes Now Common Materials, Such as Most Plastics

Regulated establishments are required to separately collect for recycling the materials that are listed for their subsector in the Source Separation Regulation (see **Appendix 5**). The list of materials that must be collected was made in 1994 and focused on common packaging wastes at that time, including glass containers, metal cans, cardboard and paper. This list has not been amended since it was enacted, despite major shifts in the composition of the waste stream. As a result, common types of materials found in today's waste stream are excluded from the list of materials that must be recycled.

Most notably, there has been a major increase in the use of plastic, in Ontario and globally, with plastic use more than doubling since the 1990s. According to a 2016 study prepared for the Ministry, plastic packaging comprised roughly 10% of all IC&I waste generated in Ontario (by weight), which was more than twice as much as metal cans and glass bottles and jars combined.

However, the Source Separation Regulation only requires a few subsectors—restaurants, hotels, manufacturers and multi-residential buildings—to collect and recycle a few types of plastics (see **Appendix 5**). Most plastics, including all plastic thrown out in shopping malls, stores, offices, colleges, universities and hospitals, are excluded. According to the 2016 study, the retail sector, which is not required to recycle any plastics, generates between 70% to 87% of all IC&I plastic waste (excluding multi-residential buildings). The study estimated that only 12% of plastics generated by IC&I establishments were recycled, with the rest sent to landfill.

Given the gaps in information on the composition of IC&I waste (see **Section 4.1.2**), we reviewed data from a sample of 45 waste audits from regulated IC&I establishments to analyze the composition of their waste. Our results aligned with the Ministry's studies, finding that food waste (27%), cardboard (16%), paper fibres (19%) and plastics (9%) were the most common materials (see **Figure 14**). We found that, on average, only 41% of the IC&I establishments' generated waste (by weight) in our sample is regulated under the Source Separation Regulation and 59% are non-regulated materials, including food waste, paper towels, coffee cups, plastic packaging and compostable packaging such as fibre takeout food containers.

The Ministry has developed a separate approach, outside the Source Separation Regulation, to drive the reduction and diversion of food and organic waste; however, our audit identified issues that may limit its effectiveness (see **Section 4.8**).

Figure 14: Composition of a Typical¹ Regulated Establishment's Generated Waste by Weight (%)

Source of data: Waste audits from a sample¹ of regulated businesses and institutions from 2014 to 2019

Materials Regulated by Industrial, Commercial and Institutional (IC&I) Source Separation Programs Regulation	
Paper fibres ²	19
Corrugated cardboard	16
Metal cans and glass ³	6
Total	41
Materials Not Regulated by IC&I Source Separation Programs Regulation	
Food waste	27
Recyclable plastics (such as PET and HDPE) ⁴ and polystyrene	9
Paper towels	5
Coffee cups	4
Compostable packaging	3
Wood (including skids) ⁵	2
Other metals (excluding food and beverage cans) ⁵	2
Other (includes non-recyclable packaging, textiles, and other residual wastes)	7
Total	59

1. The list of materials regulated, and types of materials generated, vary significantly among subsectors. This figure is based on a representative sample of waste audits from the commercial subsectors (restaurants, retail, offices and hotels) and universities, but excludes the unique waste composition of manufacturers, construction sites and hospitals.
2. Includes both fine paper and newsprint, which are regulated, as well as other paper fibres (such as boxboard and magazines), which are not regulated but could not be broken out.
3. Includes glass bottles, which are regulated, as well as other non-regulated glass that could not be broken out.
4. Includes a small amount of plastics that are regulated (such as polyethylene terephthalate (PET) plastic bottles generated by restaurants and hotels) but that could not be broken out.
5. Wood and other metals (except metal cans) are regulated only for manufacturing and construction sectors.

RECOMMENDATION 9

So that Ontario's waste regulatory framework applies to a sufficient portion of the waste stream to significantly contribute to Ontario's waste diversion rates, we recommend that the Ministry of the Environment, Conservation and Parks:

- expand the list of materials, in the current or revised regulatory framework, that industrial, commercial and institutional (IC&I) establishments must separately collect and divert to include common recyclable materials in the waste stream, including plastics, to cover a larger portion of the IC&I waste stream; and
- develop and implement a process to update the list to align, as required, with shifts in the waste stream and with residential recycling programs.

MINISTRY RESPONSE

The Ministry agrees with the Auditor General about the need to divert more types of waste materials and to provide improved consistency between the IC&I and residential sectors. The Ministry will look to update the list of materials that must be diverted in the IC&I sector and will consider the Blue Box Regulation for potential material categories. This approach would seek to not only capture more types of materials, such as different plastics, but also provide improved consistency in what materials are diverted in the IC&I and residential sectors.

4.5.3 Poor Quality Recycling Programs Passed Ministry Inspections

The Ministry found that 88% of the 1,262 regulated IC&I establishments and multi-residential buildings that it inspected between 2014/15 and 2018/19 fully complied with the Source Separation Regulation. However, we found that establishments can be deemed by the Ministry to be fully complying with the regulation even if they are operating poorly performing recycling programs, such as programs that do not capture most recyclables and/or contain high contamination (such as garbage or food waste) in the recycling.

The Source Separation Regulation requires establishments to meet specific onsite requirements, including providing adequate bins to

separately collect and store recycling and information to support use of the recycling program, as well as to make “reasonable efforts to ensure that full use is made of the program.”

The Ministry developed a *Guide to Source Separation of Recyclable Materials for Industrial, Commercial and Institutional Sectors and Multi-Unit Residential Buildings* in 2016, which provides additional guidance and tips for effectively implementing all of the program requirements set out in the Source Separation Regulation.

We reviewed a sample of inspection files from 2018/19 and 2019/20 to assess in detail how Ministry inspectors determined compliance with the regulatory requirements. The Ministry had found that 80% of these establishments had met the onsite requirements for their recycling program, 10% had not implemented a recycling program, and the other 10% had flaws, such as not providing separate bins, with their recycling programs.

Our review of the inspection files found that Ministry inspectors applied differing interpretations of the requirements; but, overall, inspectors generally concluded that establishments complied with the regulation so long as the establishment had implemented each of the basic program elements, regardless of the quality or overall performance of the recycling program. For example, we found:

- When inspecting for compliance with the requirement to provide information, inspectors typically deemed an establishment compliant if it had provided any, but not necessarily all, of the applicable components of information, such as signage for customers near the bins, employee training, or information for building tenants.
- Inspectors applied differing interpretations of what constituted adequate facilities; for example, in one case, the inspector concluded that a mall that had only waste bins, but no recycling, at the mall entrances did not have adequate facilities, but at another mall with the same circumstances, another inspector concluded that the mall was compliant.

The Ministry advised us that the language in the regulation limits the scope of how strictly it can enforce the requirements. So, although it has developed guidance to encourage more consistent and effective implementation, it does not enforce those guidelines.

As such, we found that Ministry inspectors do not inspect for, or consider, indicators of program quality, such as the amount of contamination in the recycling stream, or the amount of recyclables in the garbage. Similarly, inspectors do not inspect for, or require, establishments to implement any best practices. For example, we identified a number of best practices used by some establishments to improve recycling, including:

- replacing solitary waste bins with adjacent recycling bins;
- using colour-coded or differently shaped bins or slots to help users identify the correct place for their waste or recyclable item;
- increasing the number of collection streams, such as collecting paper fibres separately from glass, metal and plastic containers, to reduce contamination;
- providing clear and informative signage, such as including images that depict the site-specific materials, to help individuals use the correct bins;
- eliminating plastic bags for collection where possible and using transparent bags so staff can visually identify contamination and remove such items (when safe to do so); and
- employing staff in high-use areas (such as food courts) to help sort materials correctly as they are placed into bins.

Similarly, several voluntary third-party certification standards, such as LEED, BOMA or 3RCertified, also include best practices for waste management, which we found resulted in higher diversion rates by establishments that held those certifications.

We visited 30 establishments that the Ministry had deemed compliant with the Source Separation Regulation since 2014, to observe the quality of recycling programs of regulated, compliant establishments. During our visits, we observed:

- waste bins, in most cases unlabelled, that were not accompanied by recycling bins in 57% of the establishments;
- recycling bins without signage to indicate which materials were accepted in 33% of the establishments that had visible recycling bins; and
- moderate to high levels of contamination, such as garbage in the recycling bin or recyclables in the garbage bin, in 92% of the establishments where the contents of the bins were visible.

RECOMMENDATION 10

To promote effective recycling programs by industrial, commercial and institutional (IC&I) establishments and multi-residential buildings, we recommend that the Ministry of the Environment, Conservation and Parks:

- develop and distribute more detailed guidelines and educational resources for effective recycling programs in IC&I establishments and multi-residential buildings, including best practices to reduce contamination and increase capture of recyclables; and
- in consultation with stakeholders, implement measures to encourage or require IC&I establishments and multi-residential buildings to collect IC&I materials, such as paper fibres and containers, in multiple streams to reduce contamination.

MINISTRY RESPONSE

The Ministry agrees with the recommendation. Ontario has already taken steps to improve diversion in multi-unit residential buildings by making all buildings eligible for producer-run Blue Box services starting in 2026. In addition, we have committed to releasing guidance to help municipalities, businesses and institutions reduce food waste and meet their obligations under the *Food and Organic Waste Policy Statement*.

The Ministry will consider the types of support tools, such as guidelines and educational resources,

that would be the most useful for IC&I stakeholders and waste service providers to reduce contamination and increase diversion of recyclables from landfills, and will provide the supports needed based on consultation.

4.5.4 Ministry Inspections Do Not Verify the Final Destination of Mixed Recyclables; Often Go to Landfill as Garbage

In addition to operating a recycling program onsite, the Source Separation Regulation requires regulated establishments, including multi-residential buildings that do not receive municipal collection, to ensure that their separately collected recyclables are removed and to make “reasonable efforts to ensure that ... the separated waste is reused or recycled.” In other words, establishments must hire a waste company to separately collect their recyclables and take steps to verify that the collector takes these materials to be recycled or reused, rather than landfilled.

We found that, despite these requirements, establishments frequently do not know where their collected source-separated materials are being taken. Further, our examination of waste management facilities’ handling of IC&I recyclables found that, in 47% of the cases we reviewed, the establishments’ mixed recyclables were being sent to landfill.

To assess whether reasonable efforts for reuse or recycling have been made, the Ministry implemented a procedure in 2014 to obtain information from all inspected establishments about the collection and destination of their recyclables, including:

- the name of the waste company that collects their recyclables;
- invoices or other documents from the waste collector that provide proof of the separate collection of the recyclables; and
- information about the final destination of the materials—the sorting or recycling facility where the collector takes the recyclables; or, if the recyclables are first taken to a transfer station (which

is an interim destination), the sorting or recycling facility where the recyclables are ultimately sent.

Our review of 30 Ministry inspection files found that inspectors consistently checked to ensure establishments had contracted a licensed waste collector to manage their waste and obtained documentation from the establishments about the collection and destination of the recyclables. However, in 12 (40%) of the 30 inspection files, the information obtained did not demonstrate that the source-separated materials were being separately collected and taken to an appropriate final destination to be recycled. Specifically:

- In three cases, the establishments provided no evidence to show that their recyclables were being separately collected or diverted. None of these three establishments provided an invoice for waste collection with a collection charge for recycling. Each establishment provided the name of a transfer station where their materials were being taken, but not a final destination to show that their materials were actually being diverted rather than sent to landfill.
- In six other cases, establishments provided proof that their recyclables were being separately collected and taken to a transfer station, but did not provide an appropriate final destination—sorting or processing facility—where materials were sent to from there. Four of these establishments did not provide any final destination and the other two provided addresses for landfills.
- In another three cases, the establishments provided the names of sorting or processing facilities where their materials were to be sent, but did not provide proof, such as an invoice or report, to show that their waste collector was in fact collecting and taking their recyclables to the listed addresses.

In all but one of these cases, the inspectors concluded that the establishment had made “reasonable efforts” to ensure its materials were recycled. The Ministry noted to us that, while they encourage businesses to discuss with their collectors that the intended final destination of their waste is a

recycler, the language in the regulation limits the scope of how strictly it can enforce the requirement.

Further, our examination of the handling of IC&I recyclables by waste management facilities (see **Section 4.2.2** for more details) found that:

- in eight (67%) of the 12 cases where establishments had not provided complete information (that is, had not provided proof of separate collection or an appropriate final destination), their recyclables were being taken to transfer stations where most materials would be sent to landfill as garbage; and
- in six (or 33%) of the 18 cases where establishments had provided documentation that materials were being separately collected and taken to an appropriate final destination, their recyclables were, in fact, also being taken to facilities where most mixed recyclable materials would be sent to landfill as garbage.

Therefore, although the Ministry had deemed all but one of the 30 inspected establishments as having made reasonable efforts to ensure their materials were recycled, 14 (47%) of the 30 were having their collected mixed recyclables sent to landfill as garbage.

RECOMMENDATION 11

To promote and more consistently enforce the recycling or reuse of source-separated materials by industrial, commercial and institutional establishments and multi-residential buildings with private collection, we recommend that the Ministry of the Environment, Conservation and Parks:

- implement processes for inspectors to consistently obtain all necessary documentation from establishments about the collection and final destination of their source-separated materials; and
- implement processes for inspectors to verify, based on the documentation, that establishments have hired a waste collector to separately collect and take their source-separated materials to an appropriate facility for reuse or recycling.

Figure 15: Compliance with Waste Audit Regulation, by Subsector, 2014/15–2018/19

Source of data: Ministry of the Environment, Conservation and Parks

Subsector	# of Establishments Inspected	Compliance Rate (%)	# of Corporate Initiative Inspections ¹	Adjusted Compliance Rate ² (%)
Manufacturing	10	0	0	0
Hotels and motels	124	14	0	14
Construction	184	17	0	17
Restaurants	37	65	21	19
Retail (stores and malls)	87	71	54	27
Educational institutions	37	59	1	58
Hospitals	5	60	0	60
Office buildings	50	80	0	80
Overall	534	37	76	27

1. These inspections (included in total inspections) were conducted as part of the corporate initiative program.

2. The adjusted compliance rate excludes corporate initiative inspections, which occur after a company has confirmed to the Ministry of the Environment, Conservation and Parks that all of its establishments are fully complying with the regulations. The adjusted compliance rate more accurately reflects the rate of compliance within a subsector before involvement of Ministry inspectors.

MINISTRY RESPONSE

The Ministry accepts the Auditor General's recommendation. The Ministry's new information technology (IT) system for tracking compliance has incorporated workflows for inspectors to consistently document required information and will improve access to data to support quality program delivery.

The Ministry will review its inspection procedures and training to determine opportunities to improve consistency in obtaining documentation from establishments about the collection and final destination of source separated materials and assessment of "reasonable efforts."

4.6 Waste Audits and Waste Reduction Work Plans

The Waste Audits and Waste Reduction Work Plans Regulation (Waste Audit Regulation) requires regulated IC&I establishments to complete and implement annual waste audits and work plans to reduce

waste. Multi-residential buildings are not subject to this regulation.

4.6.1 Only 37% of IC&I Establishments Complied with Waste Audit Regulation in Five-Year Period

The Ministry inspected 534 IC&I establishments for compliance with the Waste Audit Regulation between 2014/15 and 2018/19. Of the inspected establishments, only 199 or 37% had complied with the regulation (see **Figure 15**). If we exclude inspections done as part of the Ministry's corporate initiative program—which occur after a company has confirmed that it is fully compliant—only 27% of establishments complied. All subsectors, except for the office sector, had low compliance, with manufacturers, hotels and construction having especially low compliance (see **Section 4.7** regarding enforcement).

Of the 335 inspected establishments that did not comply with the regulation, 270 (81%) had not prepared a waste audit or work plan at all. The other

65 (19%) had a waste audit or work plan that was incomplete, flawed or not updated.

The Ministry has noted in internal briefing documents that compliance with the Waste Audit Regulation does not relate to, or affect, compliance with the Source Separation Regulation. Our review of the inspection data from 2014/15 to 2018/19 confirms the Ministry's conclusion that waste audits and work plans are not prerequisites to operating a recycling program: of the 335 establishments that failed to comply with the Waste Audit Regulation, 241 (72%) still complied with the Source Separation Regulation.

At the time of our audit, the Ministry had not, however, reviewed whether the failure to implement the requirements in the Waste Audit Regulation had other impacts on waste performance and waste tracking. As noted in **Section 4.5.3**, although most regulated establishments have recycling programs, the quality of programs can be poor. The Waste Audit Regulation is intended to guide establishments to examine their waste practices and identify measures to improve their recycling program, as well as identify new ways to reduce, reuse or divert materials.

The Ministry has not assessed the effect of compliance with each of the requirements in the Waste Audit Regulation on establishments' waste management, such as whether:

- completing an initial waste audit and work plan leads to improved waste reduction and diversion rates by establishments;
- updating the waste audit and work plan every year provides continuing value, or if resources spent on updates could be redeployed to more effective measures; and
- waste audits provide information, such as baseline data about waste generation, diversion and disposal, data about the composition of the IC&I waste stream, or data to track establishments' progress in reducing and diverting waste over time, that is not otherwise available.

4.6.2 Ministry No Longer Inspects for Waste Audit Regulation Compliance in Regular Inspections but Has Not Reviewed, Revised or Repealed the Regulation

The Ministry informed us that, as of April 2019, Ministry inspectors no longer inspect for compliance with the Waste Audit Regulation, except in corporate initiative inspections or where warranted by a risk assessment or complaint. Instead, they focus IC&I inspections predominantly on the Source Separation Regulation. The Ministry also focused some prior IC&I inspections exclusively on the Source Separation Regulation, including 146 inspections in 2015/16 and 2016/17.

The Ministry informed us that its decision to focus IC&I waste inspections on the Source Separation Regulation is based on risk, as that regulation provides more verifiable outcomes (that is, the operation of a recycling program) than the Waste Audit Regulation.

Ministry inspectors also noted to us that the Waste Audit Regulation is hard to enforce in a meaningful way. For example, inspectors can assess and enforce if a waste audit is complete, but not if it is accurate. Similarly, inspectors can assess and enforce if a waste reduction work plan is complete, but cannot enforce the extent to which establishments implement it. Further, establishments may choose to make their work plan as ambitious, or as unambitious, as they choose.

As noted in **Section 4.5.1**, the Ministry has committed to review the IC&I waste regulations, but had not begun to do so at the time of our audit. The delay in reviewing the regulations has particular consequences for the Waste Audit Regulation, given the Ministry's decision to stop enforcing it. Having a regulation remain in force, but that is not being enforced, creates regulatory confusion and undermines the concept of the rule of law.

This issue also applies to another related regulation, the Packaging Audits and Packaging Reduction

Work Plans Regulation. This regulation, which was implemented in 1994 at the same time as the Waste Audit Regulation and the Source Separation Regulation, requires large manufacturers of packaged products to develop plans to reduce their use of packaging and improve the recyclability of packaging. However, the Ministry subsequently shifted its approach to regulating producers of packaging, which are now regulated through the *Resource Recovery and Circular Economy Act, 2016* instead (see **Section 4.9** for details), and has never enforced this regulation, except for a single inspection in 2007.

RECOMMENDATION 12

So that requirements imposed on regulated industrial, commercial and institutional establishments are effective and efficient, and enforced where needed, we recommend that the Ministry of the Environment, Conservation and Parks:

- undertake its promised review, in consultation with stakeholders, to assess the efficacy of each of the requirements in the Waste Audit and Work Plans Regulation (Ontario Regulation 102/94) and the Packaging Audits and Packaging Reduction Work Plans Regulation (Ontario Regulation 104/94) at driving waste reduction and diversion or at providing useful data to measure progress by establishments;
- based on the review, revise or revoke any requirements that are found to be ineffective or inefficient, and replace them with alternative measures to drive waste reduction and diversion and track progress as appropriate; and
- continue Ministry inspections of any requirements that remain in force.

MINISTRY RESPONSE

The Ministry agrees with the recommendation to undertake a review of Ontario Regulation 102/94 – Waste Audit and Work Plans Regulation and Ontario Regulation 104/94 – Packaging Audits and Packaging Reduction Work Plans. Based

on the findings of the review, the Ministry will develop a proposed path forward to address identified inefficiencies.

The Ministry undertakes risk-based compliance for all regulated activities and will continue to assess activities related to Waste Reduction Audits and Work Plans in the context of broader Ministry responsibilities.

4.7 Ministry Inspections of Regulated Establishments

4.7.1 Some Subsectors with Low Compliance History Are Rarely Inspected

The Ministry advised us that it uses a risk-based inspection planning process that includes looking at past inspection numbers, past compliance rates, size of establishments and size of sectors. The objectives are to focus resources on the higher-risk sectors and to reach the greatest number of regulated establishments. However, our review of inspection data from 2014/15 to 2018/19 found that Ministry inspections do not consistently align with these risk-based factors, and that the Ministry has inspected only a small portion of establishments within the subsectors with the lowest compliance rates.

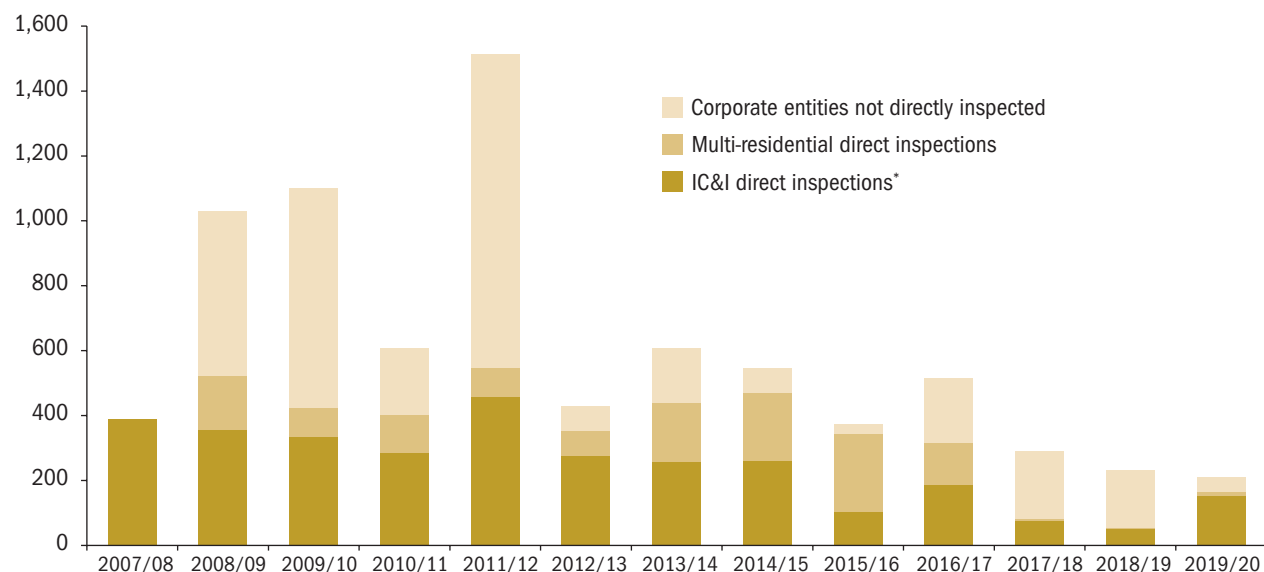
Between 2007, when the Ministry began a dedicated inspection program of the IC&I waste regulations (see **Section 2.4.1**), and the end of 2019/20, Ministry inspectors inspected or otherwise assessed the compliance of approximately 7,850 establishments. The Ministry:

- directly inspected approximately 3,200 businesses and institutions and 1,300 multi-residential buildings; and
- indirectly covered roughly an additional 1,650 business establishments and 1,700 schools through the corporate initiative program (see **Section 2.4.1**).

Overall, the Ministry has inspected, directly or indirectly, roughly only 35% to 45% of all regulated IC&I establishments since the IC&I waste inspection program began in 2007.

Figure 16: Number of Industrial, Commercial and Institutional (IC&I) Establishments Directly Inspected or Addressed Through Corporate Program, 2007/08–2019/20

Source of data: Ministry of the Environment, Conservation and Parks



* Excludes multi-residential buildings.

Figure 17: Number of Direct Inspections and Non-compliance Rates with the Industrial, Commercial and Institutional (IC&I) Waste Regulations, by Subsector, 2014/15–2018/19

Source of data: Ministry of the Environment, Conservation and Parks

Subsector	# of Establishments Inspected ²	Failure Rate (%)		Adjusted Failure Rate ¹ (%)	
		Source Separation Regulation	Waste Audit Regulation	Source Separation Regulation	Waste Audit Regulation
Manufacturing	10	60	100	60	100
Restaurants	43	21	35	32	81
Hotels and motels	141	26	86	26	86
Retail (stores and malls)	119	12	29	22	73
Construction	184	16	83	16	83
Educational institutions	37	14	41	14	42
Hospitals	20	10	40	10	40
Multi-residential buildings	582	8	n/a ²	8	n/a ²
Office buildings	126	6	20	6	20
Overall	1,262	12	63	13	73

1. The adjusted failure rate excludes corporate initiative inspections, which occur *after* a company has confirmed to the Ministry of the Environment, Conservation and Parks (Ministry) that it is fully complying with the regulations. The Ministry conducted 76 inspections as part of the corporate initiative program: 54 of retail stores, 21 of restaurants, and one educational institution. The adjusted failure rate more accurately reflects compliance within a subsector before Ministry involvement.
2. The Ministry conducted 1,262 total inspections, but inspected only 534 establishments for compliance with the Waste Audit Regulation. Multi-residential buildings are not subject to the Waste Audit Regulation, and the Ministry focused 146 IC&I inspections in 2015/16 and 2016/17 exclusively on the Source Separation Regulation.

As seen in **Figure 16**, the number of annual inspections has decreased since 2011/12. The Ministry informed us that, based on its risk evaluation and priorities, it has directed some of the inspectors' focus on other Ministry priority risk areas since 2017/18. While the Ministry is conducting fewer annual IC&I inspections, our audit found that Ministry inspections have addressed only a small portion of subsectors that have the lowest compliance rates (see **Figure 17**):

- **Manufacturing subsector:** the manufacturing subsector had the lowest compliance rate of any subsector—60% of inspected sites failed to comply with the Source Separation Regulation and 100% failed to comply with the Waste Audit Regulation. Despite the low compliance rate, the Ministry inspected only 10 manufacturers over five years—fewer than any other subsector. Further, since the inspection program began in 2007, the Ministry has inspected only 116 manufacturing sites, which is an estimated 8% of all regulated manufacturers in Ontario.
- **Restaurant subsector:** the restaurant subsector also had a high non-compliance rate, but the Ministry inspected only 43 restaurants from 2014/15 to 2018/19. Of the 22 regular inspections (excluding the corporate initiative inspections, which take place after the company has achieved full compliance), 32% of the restaurants failed to comply with the Source Separation Regulation, and 81% failed to comply with the Waste Audit Regulation. Since the inspection program began in 2007, the Ministry has inspected only 85 restaurants in Ontario. The Ministry has, however, worked with several large restaurant chains through the corporate initiative program to address compliance at an additional 253 restaurant locations. Several more restaurants may have been indirectly addressed through the inspection of malls or office buildings in which they are located. Even so, the long-term inspection rate for restaurants remains relatively low.
- **Demolition subsector:** The Ministry has not conducted a single demolition inspection since 2012/13. The Ministry has undertaken numerous

construction inspections, but staff told us that demolition projects, which are regulated alongside construction projects, are very hard to identify and plan for due to their short-term nature.

4.7.2 Size Thresholds in Regulation Create Inspection Inefficiencies

We found that the IC&I waste regulations' method for defining which establishments are regulated—by setting minimum thresholds—creates several inspection inefficiencies. For example, Ministry inspectors told us that a key reason they inspect fewer restaurants is that they have difficulty identifying which restaurants meet the threshold for minimum annual revenue, which determines whether they are regulated. Restaurant chains with franchisee-owned locations must each be evaluated on their individual revenue to determine whether they meet the threshold, adding to the challenge to identify regulated restaurants. Some other jurisdictions, such as Nova Scotia, Prince Edward Island and Scotland, require all establishments, regardless of size, to source-separate materials, which simplifies enforcement.

Ministry staff also advised us that, when planning inspections, they must research the business-specific information for each establishment to determine if it meets the threshold and is therefore regulated. This information could include a restaurant's annual revenue, number of rooms in a hotel, or an office building's square footage. Staff use various sources, such as online searches, paid directories and other resources, but the information is often difficult and time-consuming to obtain.

The regulatory thresholds also result in further inefficiencies through unsuccessful inspections, when inspectors are unable to determine in advance whether establishments are regulated and discover at the site visit that the establishment falls below the threshold. In our review of the inspection data, we found that 137 (10%) of the total 1,399 IC&I inspections attempted by the Ministry between 2014/15 and 2018/19 were unsuccessful. In some of these cases, inspectors advised us that they were still

able to gather information and provide education to the site operator.

RECOMMENDATION 13

To improve risk-based inspection planning of establishments across all industrial, commercial and institutional (IC&I) subsectors, to maximize the effectiveness of inspections, and to avoid unsuccessful inspection visits to non-regulated establishments, we recommend that the Ministry of the Environment, Conservation and Parks:

- establish processes to obtain better information to identify which establishments are regulated, such as through the use of private directories or data sharing agreements with other government agencies;
- prioritize inspections of establishments that are likely not complying with the regulations, including establishments within subsectors that have a history of lower compliance rates; and
- review, in consultation with stakeholders, options to revise the thresholds set out in the IC&I waste regulations so that they are easier to apply and enforce.

MINISTRY RESPONSE

The Ministry agrees there are continued opportunities to improve the information used to determine which sites require compliance checks.

The Ministry's new information technology (IT) system for compliance supports additional regulatory profile information and enables assessments of regulated facilities. Opportunities for obtaining information from other sources will be explored.

The Ministry will continue to utilize and refine its risk-based approach to prioritize compliance activities related to IC&I waste management.

We will examine and review frameworks currently in place in other jurisdictions, including the levels and types of thresholds (e.g., waste generation, number of employees), used to determine

what establishments are subject to regulatory requirements.

4.7.3 Minimal Risk for Establishments Found Not Complying with IC&I Waste Regulations

There is minimal risk or penalty for establishments found non-compliant with the IC&I waste regulations. As such, establishments may defer, without consequence, implementing required measures until directed to do so by a Ministry inspector.

Ministry inspectors reported to us that most establishments they inspect are aware of the requirements in the IC&I waste regulations. They observed that the reason establishments often do not comply is not due to unfamiliarity with the regulations, but rather to avoid the added costs of the required measures.

A failure to comply with the IC&I waste regulations is considered to be an "administrative failure." Per the Ministry's *Compliance Policy for Applying Abatement and Enforcement Tools*, inspectors typically address such failures through "soft" compliance approaches, working with the establishments to comply voluntarily.

Our review of inspection data from 2014/15 to 2018/19 found that inspectors addressed non-compliance with the IC&I waste regulations by issuing a warning or non-compliance letter in 50% of cases and a formal notice of violation in 45% of cases. In the other 5% of cases, the Ministry issued a Provincial Inspector's Order or referred the matter to the Ministry's Environmental Investigations and Enforcement Branch.

Our review found that, using these measures, inspectors brought violators into full compliance, on average, within three months of identifying a failure. However, we also found that many establishments do not remain fully compliant over the long term. The Ministry has completed 114 regular re-inspections since the inspection program began in 2007. During the re-inspections, 28 (25%) of 114 re-inspected establishments failed to comply with the Source Separation Regulation, and 79

(69%) failed to comply with the Waste Audit Regulation. The Ministry also completed 20 re-inspections in 2019/20 of establishments in the corporate initiative program. Of the 20 re-inspected establishments, nine (45%) failed to comply with the Source Separation Regulation and 16 (80%) failed to comply with the Waste Audit Regulation. All were subsequently brought into compliance.

The Ministry told us that, while it considers re-inspections as part of its risk-based inspection planning, its goal is to reach as many regulated establishments as possible and, therefore, inspectors primarily target previously uninspected establishments.

RECOMMENDATION 14

So that industrial, commercial and institutional waste (IC&I) establishments and multi-residential buildings proactively comply with the IC&I waste regulations, and remain in compliance with the regulations, we recommend that the Ministry of the Environment, Conservation and Parks:

- review its compliance and enforcement approach to determine whether stronger measures, such as administrative fines, are needed to address non-compliance with the IC&I waste regulations; and
- based on the outcome of the review, implement any changes to its compliance and enforcement policies.

MINISTRY RESPONSE

The Ministry appreciates the Auditor General's recommendation. Legislative amendments were made in 2019 to enable the expansion of administrative penalties. The Ministry is already engaging with industry, agricultural sectors, environmental groups, municipalities and other stakeholders on how to implement the new administrative monetary penalties and will review and implement other measures as appropriate.

4.8 Organic and Food Waste Reduction and Diversion

Although organic waste—such as food waste, soiled paper, leaf and yard waste and compostable products—makes up approximately one-quarter of the IC&I waste stream, it is not included in the Source Separation Regulation's list of materials to be diverted. To address this gap, the Ministry introduced the *Food and Organic Waste Policy Statement* (Organic Waste Policy) in 2018—a new approach that focuses on prevention, reduction and rescue of food and organic waste, above waste diversion. However, at the time of our audit, the Ministry had not taken steps needed to effectively implement this policy.

The Organic Waste Policy requires multi-residential buildings and IC&I establishments (as well as municipalities) that meet the thresholds in the policy to:

- reduce and divert food and organic waste by either 50% or 70%, depending on their size and sub-sector, by 2025; and
- implement separate collection for organic waste in time to meet the 2025 target.

4.8.1 Ministry Has Not Begun Outreach to Ensure IC&I Establishments, Condos, Apartments Know They Must Meet Organic Waste Targets by 2025

At the time of our audit, the Ministry had not engaged in education or outreach regarding the Organic Waste Policy, outside of the consultation process prior to the release of the Organic Waste Policy. The Ministry advised us that it has put outreach on hold until it completes supporting guidance, which it intends to release in late 2021, and a food waste calculator. However, without outreach from the Ministry, establishments may not be aware that they are subject to the policy and, therefore, may not yet be taking steps to put themselves on track to meet the 2025 targets. These steps could include, for example, condo buildings budgeting for the costs of

added space and equipment that may be needed for onsite collection of organic waste.

In addition, the policy requires certain establishments—restaurants, hotels, retailers that generate food and food manufacturers that meet the thresholds—to have implemented programs to educate consumers about reducing food waste by April 30, 2019. At the time of our audit, the Ministry had not conducted any inspections or enforcement of this requirement.

4.8.2 Enforcement Relies on Collaborative Approach

The Ministry's only legal tool to enforce compliance with the Organic Waste Policy is its power under the *Resource Recovery and Circular Economy Act, 2016* to require establishments to report on past and proposed steps to comply with their obligations in the Organic Waste Policy and to publicly disclose this information. The Ministry told us that this more collaborative approach could achieve compliance more effectively than traditional enforcement approaches. The Ministry stated that this method could, for example, leverage a business's interest in protecting its brand image from public disclosure of its lack of compliance with the policy, as incentive for the company to reduce organic waste. The Ministry also noted that financial penalties may not provide an incentive for waste reduction, particularly for larger businesses with high revenue.

Despite this being a novel approach to enforcement, the Ministry has not developed internal guidance for applying this approach and monitoring its effectiveness.

4.8.3 Lack of Guidance on Organic Waste Targets Weakens Policy to Reduce Food Waste at IC&I Establishments and Multi-residential Buildings

The Organic Waste Policy leaves it up to each establishment to determine the baseline for the targets (to reduce and divert food and organic waste by either

50% or 70%, depending on the establishment's size and subsector) from which to calculate the percentage of waste reduction achieved. The Ministry has not provided guidance on how these targets are to be measured. Given that the targets are the central feature of the policy, this lack of direction on calculating a baseline could undermine the effectiveness of the entire policy to reduce food waste.

The Ministry told us that it is working on both guidance and a food waste calculator to help establishments determine their baseline and progress toward the targets. The Ministry plans to give establishments flexibility to determine their own baseline, so that past measures taken by businesses to reduce food waste can be counted toward the target, and to provide flexibility in how they achieve the targets, whether through front-end reduction, food donations or composting. However, the Organic Waste Policy is three years old and the calculator and guidance were still being developed at the time of our audit. Without this information, establishments cannot properly plan ahead to ensure that they are on track to meet the 2025 organic waste reduction targets.

Furthermore, the policy recommends, but does not require, that establishments conduct food waste audits to quantify the amount and type of food waste. If establishments do not measure and record their food waste, there will be no means for either the establishments or the Ministry to monitor establishments' progress in reducing organic waste.

RECOMMENDATION 15

To promote and enforce the reduction and diversion of food and organic waste by industrial, commercial and institutional waste (IC&I) establishments and multi-residential buildings, in accordance with the *Food and Organic Waste Policy Statement*, we recommend that the Ministry of the Environment, Conservation and Parks:

- promptly provide guidance on calculating the baseline from which establishments are to measure progress toward the 2025 targets;

- require establishments to measure and track their organic waste to demonstrate progress toward the targets; and
- develop and implement a strategy for education, outreach and enforcement of the policy, and for tracking the effectiveness of enforcement measures.

MINISTRY RESPONSE

The Ministry accepts the Auditor General's recommendation and is working on guidance along with an online calculator to help municipalities, businesses and institutions meet their targets under the *Food and Organic Waste Policy Statement*. The guidance will include tools and best practices for municipalities, businesses and institutions to measure and track their progress toward their targets under the Policy Statement.

The proposed amendments to the *Food and Organic Waste Policy Statement* that were consulted on in fall 2020 also included reporting requirements for municipalities, businesses and institutions to publicly report on their progress toward their targets.

To ensure that the *Food and Organic Waste Policy Statement* is effective at reducing food and organic waste from IC&I establishments, the Ministry will conduct outreach as needed on the guidance and calculator as well as on the amendments to the Policy Statement that require public reporting on the targets.

4.9 Delegating Duties to Resource Productivity and Recovery Authority

The Resource Productivity and Recovery Authority (Resource Authority) is a non-Crown, not-for-profit corporation. The province created the Resource Authority in November 2016 to deliver services to support the province's efforts to transition to a waste-free Ontario. The Resource Authority receives its powers primarily from the *Resource Recovery and*

Circular Economy Act, 2016 (Act), which sets out its various responsibilities (see **Appendix 4**). The Ministry is responsible for overseeing the Resource Authority and has the power to delegate other duties relating to waste reduction and diversion, beyond those directly set out in the Act, to the Resource Authority.

The Resource Authority operates on a cost-recovery basis and is financed exclusively through fees charged to the producers regulated under the Act (see **Section 4.9.2**).

4.9.1 Ministry Has Not Assessed Delegating Responsibility to the Resource Authority to Collect, Analyze and Report IC&I Waste Data

As discussed in **Section 4.1**, the province has significant data gaps relating to the total amount of Ontario's IC&I waste, as well as the breakdown by source and type, hindering the Ministry's development of effective waste policies. Further, as discussed in **Section 4.2.4**, lack of data and tracking of IC&I waste also hinder IC&I businesses' ability to verify whether their recyclable waste is being diverted. Despite these long-standing issues, the Ministry has not begun to gather additional data or improve the tracking of IC&I waste, nor assessed the potential for delegating this responsibility to the Resource Authority.

Our discussions with the Resource Authority confirmed that it already has the information technology and systems in place for waste data collection and analysis, which it currently uses for other waste diversion programs and which it can efficiently expand to additional programs. The Resource Authority has also been developing in-house staff expertise related to waste data collection, verification and analysis.

Further, our review of the Resource Authority's legislation and operating documents found that a complete framework is already in place to govern waste data collection, analysis and reporting by the Resource Authority, including:

- provisions to ensure data privacy and confidentiality of reported information; and

- requirements for the Resource Authority to publish annual reports on collected data and annual business plans, providing financial transparency on program costs and fees.

As well, we found that the Resource Authority's data collection system can reduce administrative burdens and create efficiencies for businesses that are required to report waste data, such as waste management companies that provide various waste services, by enabling businesses to register and report in a single data reporting system.

In recognition of the Resource Authority's ability to provide efficient waste data collection and reporting services, the Ministry announced in 2020 that it would transition its hazardous waste reporting framework from the Ministry to the Resource Authority starting on January 1, 2023, with the stated goal of improving the quality and efficiency of data reporting and tracking of hazardous waste.

Despite the potential to further leverage the Resource Authority's assets and expertise, we found that the Ministry has not yet assessed the potential for delegating responsibility to the Resource Authority for data collection, analysis and reporting for IC&I waste. Among other priorities, the Resource Authority's current roles and responsibilities include overseeing the transition of the waste diversion programs under the Act (see **Section 4.9.2**) and implementing the new hazardous waste digital reporting program, slated to occur by January 1, 2023. As a result, the Resource Authority's operational capacity to take on new programs may be limited in the near future. However, based on the timelines directed by the Ministry, the Resource Authority's business plan indicates that the Resource Authority should have capacity to take on additional programs beginning in 2023.

RECOMMENDATION 16

To collect and analyze industrial, commercial and institutional (IC&I) waste data, we recommend that the Ministry of the Environment, Conservation and Parks:

- assess the feasibility of assigning responsibility for collecting, analyzing and reporting on IC&I waste data to the Resource Productivity and Recovery Authority (Resource Authority), including assessing the Resource Authority's operational capacity to take on additional data collection and analysis responsibilities over the next two years; and
- based on the review, develop and implement a plan for assigning responsibility to the Resource Authority, or alternatively an appropriate body within the Ministry, for collecting, analyzing and reporting on IC&I waste data.

MINISTRY RESPONSE

The Ministry recognizes the potential benefits of a centralized one-window reporting system for the collection of information from those involved in the recycling of materials in the IC&I sector. As a part of its ongoing review of the IC&I waste framework, the Ministry will consult on the most appropriate mechanism for collecting information on materials diverted from landfill, including considering an appropriate role for the Resource Productivity and Recovery Authority. Any initiative to collect information must minimize the burden on businesses.

4.9.2 Material-Specific Programs Achieve Higher Diversion than Other IC&I Wastes

The *Resource Recovery and Circular Economy Act, 2016* (Act) provides a second waste diversion framework, separate from the IC&I waste regulations, for select materials. Under the Act, producers (brand holders, importers or retailers) of designated products and packaging are required to collect and divert the waste that results from their products. There are currently five producer-responsibility waste diversion regulations under the Act that regulate:

- printed paper and packaging (Blue Box) waste from the residential sector;

- electronic waste;
- used tires;
- used batteries; and
- wastes that require special handling, including used paints, propane tanks, oil filters, solvents, pesticides and fertilizers.

Producer-run diversion programs achieve significantly higher diversion rates than other IC&I materials. We found that there is a potential opportunity to increase IC&I diversion rates by including more materials under the producer-run diversion framework.

Producer-run programs provide an exception to an IC&I establishment's general responsibility to manage its own waste. IC&I establishments may return designated items, such as used electronics, batteries or oil filters, directly to a collection depot for the producer-run diversion program, and it is the producer's responsibility to divert them from disposal.

Each of the regulations under the Act includes legally enforceable targets, as well as mandatory data reporting. In addition, the Resource Authority is responsible for overseeing and enforcing compliance with the regulatory requirements. We found that the program framework under the interim *Waste Diversion Transition Act* has resulted in all of the diversion programs achieving high collection and recycling efficiency (the portion of collected materials that is diverted) rates, generally ranging from over 70% to 100%. For example, the electronic waste program reported a recycling efficiency rate of 84% in 2019 (most recent data).

The Ministry has stated that not all forms of waste are suited to the producer-run framework; however, the Ministry has committed, including in the 2017 *Strategy for a Waste-Free Ontario: Building the Circular Economy*, to assess and identify appropriate new materials—such as textiles, mattresses and carpets—and to designate such materials under producer-run diversion regulations. At the time of our audit, the Ministry had proposed to designate beverage containers, such as water, juice and soft drink bottles, from the IC&I sector, by including them in the

producer-run diversion regulation for residential Blue Box packaging waste.

RECOMMENDATION 17

To achieve higher diversion rates for materials generated by the industrial, commercial and institutional waste (IC&I) sector, similar to the rates achieved by the producer-run diversion programs overseen by the Resource Productivity and Recovery Authority, we recommend that the Ministry of the Environment, Conservation and Parks:

- undertake an assessment of potential candidate materials, including materials from the IC&I sector, to identify materials that are suited to producer-run diversion requirements under the *Resource Recovery and Circular Economy Act, 2016*; and
- designate additional products and materials from the IC&I sector that have been identified as appropriate.

MINISTRY RESPONSE

The Ministry agrees that making producers responsible for the waste derived from their products and packaging is an important part of a comprehensive strategy to reduce waste and increase diversion. The Ministry will continue to work with partners to identify materials, including materials from the IC&I sector, that could be part of future regulations under the *Resource Recovery and Circular Economy Act, 2016*.

Appendix 1: Glossary of Terms

Prepared by the Office of the Auditor General of Ontario

Term	Definition
Anaerobic digestion	The processing of organic waste without oxygen to generate biogas, which can be used to produce electricity. The resulting solid digestate can be composted or used as fertilizer.
Construction and demolition waste	Waste generated by construction, renovation and demolition activities, from businesses or residences. Includes materials such as brick, concrete, wood, drywall, metal, cardboard, brick, doors, windows and wiring.
Contamination	Occurs when a waste stream, separated for diversion, is contaminated with non-targeted materials. For example, organic materials may be contaminated with plastic packaging, or mixed recyclables may be contaminated with garbage (such as straws or coffee cups). Contamination can increase the cost or make it unfeasible to divert the materials.
Datacall	The annual residential waste data reported to the Resource Productivity and Recovery Authority by Ontario municipalities and First Nation communities that collect Blue Box waste.
Dispose/Disposal	When waste is discarded in either landfill (which is how the majority of Ontario's IC&I waste is disposed) or in an energy-from-waste facility.
Divert/Diversion	When materials are reused, recycled, composted and are therefore diverted from landfills or energy-from-waste facilities.
Energy-from-waste or energy recovery facility	A facility that recovers energy from the waste incineration process and uses the energy to heat buildings and generate electricity. The Ministry of the Environment, Conservation and Parks considers energy-from-waste to be disposal, not diversion.
Establishment	A business or institution, corresponding to an individual site, such as store, hotel or restaurant, of a company.
Generate/Generation	The production of waste materials, which are eventually either disposed or diverted.
HDPE plastic	High-density polyethylene (HDPE) is a stiff, durable plastic that is often used for containers, such as milk jugs, shampoo bottles and laundry detergent containers. HDPE, which has the #2 resin identification code, is one of the easiest plastics to recycle.
Industrial, commercial and institutional (IC&I) waste	Waste that is generated by non-residential sources (i.e., outside of the home) by industrial facilities (e.g., manufacturers), commercial businesses (e.g., retail stores, restaurants, hotels and offices) and institutions (e.g., schools, universities and hospitals). Under Ontario's waste regulations, waste from construction and demolition projects and multi-residential buildings is also regulated along with IC&I waste. IC&I waste is generally managed by the establishment, at its own expense, through contract with private waste service providers.
IC&I Waste Regulations	The two regulations (Ontario Regulation 102/94 – Waste Audit Regulation and Ontario Regulation 103/94 – Source Separation Regulation) introduced in 1994 under the <i>Environmental Protection Act</i> that require certain establishments to take some steps to reduce and divert some of their waste.
Mixed recyclables	Blue Box-type recyclables, which may be collected in one or more streams. Mixed recyclables include recyclable containers (e.g., plastic, aluminum, steel, glass and polycoat containers) and fibre materials (e.g., mixed paper, newspaper and thin cardboard). We do not include corrugated cardboard, as it is often collected and managed separately from mixed recyclables for IC&I establishments.

Term	Definition
Multi-residential	Residential buildings with six or more units, including apartments and condominiums, high-rises and low-rises. Multi-residential buildings are regulated under the Source Separation Regulation along with IC&I establishments. However, most multi-residential waste is collected and managed by municipalities with other residential waste, and is often included in residential waste data.
Non-hazardous waste	Refers to both garbage, recyclables and organic materials generated by the residential and IC&I sectors. It does not include hazardous wastes, which due to their flammability, corrosiveness or toxicity cannot be handled by normal waste and recycling programs.
Organic waste materials/organics	Organic (green bin) material, such as food scraps, soiled paper and compostable products, and yard waste, such as leaves, grass and wood waste.
Organic processing	The breakdown of organic waste materials into useful products (compost or electricity) at either compost facilities or anaerobic digestion facilities.
PET plastic	Polyethylene terephthalate (PET) is a clear, lightweight plastic that is widely used for food and beverage packaging, especially water bottles and soft drink beverage containers. PET, which has the #1 resin identification code, is the most commonly recycled plastic globally.
Processing facility	Recycling facilities that chip, bale, grind, melt, or otherwise process recyclables or organics into materials that can be used to create new products. Processing facilities receive specific materials that were either collected separately from the garbage (e.g., organics or clean cardboard) or have been baled into individual commodities (e.g., glass or plastic) at sorting facilities.
Producer/Producer-run programs	Producers are the brand holders, importers, or retailers of products and packaging, which eventually become waste. Producer-run programs are diversion programs for specific designated materials that are operated and funded by the producers.
Residential waste	Waste generated by residents for personal, family or household purposes that is diverted or disposed in residential settings. In Ontario, multi-residential buildings (apartments, condominiums and high-rises), however, are currently regulated under the Source Separation Regulation along with the IC&I sector.
Recyclables	Materials that can be recycled, or have been designated or identified for collection, source separation or diversion, including corrugated cardboard, mixed recyclables, construction and demolition waste, and other specialized items, such as tires and electronics.
Reuse	Giving products a longer or second life, such as donating used items for second-hand use, repairing items, or repurposing materials for a new use.
Sorting facility	A waste management facility that sorts and bales or bulks one or more types of mixed recyclables, including fibres (paper products and cardboard), plastic, glass, aluminum, steel and scrap metal. Commonly referred to as a material recovery facility or a material recycling facility.
Source-separated	Waste materials that have been separated from the general garbage stream with the intent of diversion. An IC&I establishment may source-separate waste into multiple streams, such as mixed recyclables, organics, cardboard, steel or wood.
Source Separation Regulation	Ontario Regulation 103/94 – Industrial, Commercial and Institutional Source Separation Programs. The regulation requires regulated establishments, plus all multi-residential buildings with six or more units, to implement a recycling program with specific obligations.
Transfer station	A waste management facility that serves as an interim destination, where waste loads are consolidated for transport to the next destination (either a landfill, or an energy-from-waste, sorting or processing facility). Most transfer stations' main operation is the quick transfer of large quantities of garbage. Some also consolidate and transfer mixed recyclables or organics, and some will separate select materials onsite to be sent for diversion.

Term	Definition
Waste	In this report, refers to solid, non-hazardous materials for which the waste generator (residence or IC&I establishment) has no further use, including both garbage as well as recyclables and organic materials separated for diversion.
Waste Audit Regulation	Ontario Regulation 102/94 – Waste Audits and Waste Reduction Work Plans. The regulation requires large businesses and institutions that meet the thresholds set out in the regulation to conduct a waste audit (i.e., an inventory of their waste), implement a work plan to reduce, reuse and recycle waste, and update both the audit and work plan annually.
Waste collector/ collection	Waste collectors are hired by businesses, institutions or multi-residential buildings to collect waste and take it to a waste management facility, in accordance with a service agreement between the waste collector and the establishment. Waste may be collected in separate streams (e.g., garbage, mixed recyclables, organics and cardboard).
Waste facility	Refers to waste management facilities that receive waste from IC&I establishments, including transfer stations, sorting facilities and processing facilities.
Waste haulers/waste hauling	The transportation of waste from one site or geographic area to another. This excludes the collection of waste from an establishment and is limited to activities such as waste exporting or transport of waste from transfer station to disposal or processing facility.
Waste stream	A type of material that is collected separately from other waste, such as mixed recyclables or organics.
Waste management activities/service providers/businesses	Includes waste collection, waste hauling, transfer, sorting, processing (organic processing or recycling services) and waste disposal facilities and services. Collectively referred to as the waste management industry.

Appendix 2: Waste Performance and Policies in Canadian Provinces and Territories

Prepared by the Office of the Auditor General of Ontario

	Direct Regulation of Industrial, Commercial and Institutional (IC&I) Establishments	Other Key Policies and Programs to Drive IC&I Waste Reduction and Diversion ¹	IC&I Diversion Rate, 2018 ² (%)	Total Waste Disposed Per Person, 2018 ³ (kg)
PE	All businesses and institutions required to source-separate organics and certain recyclables for diversion.	Relatively high disposal fee (\$100–\$115) with surcharge for mixed waste (\$230); requires transparent bags to enable enforcement.	43	348
NS	All businesses and institutions required to source-separate organics and certain recyclables for diversion.	Disposal ban on recyclables and organics; research and development funding for waste reduction initiatives.	36	407
BC	—	Various regional policies, including landfill bans on organics and recyclables, waste levies and contamination surcharges.	35	540
NB	—	—	9	657
QC	—	Landfill levy of \$24/tonne added to cost of tipping fee; portion of revenue funds organic processing infrastructure.	40 ⁴	660
ON	Very large businesses and institutions required to source-separate certain recyclables for diversion.	—	15	701
MB	—	Landfill levy of \$10/tonne added to cost of tipping fee.	8	709
NL	—	—	7	711
YT, NW and NU	—	—	23	730
SK	—	—	6	742
AB	Local requirements (Calgary and Lethbridge) for businesses and institutions to source-separate certain materials for diversion.	—	10	954

1. Other policies not mentioned in this figure include single-use plastic bans in several regions, as well as (non-alcoholic) beverage container deposit-return systems in all jurisdictions except Manitoba (which instead has a producer recovery system that includes IC&I), Nunavut and Ontario.
2. IC&I diversion rates are based on Statistics Canada data and exclude tires and electronics. IC&I diversion rates for Nova Scotia, New Brunswick, Manitoba, Newfoundland and Labrador, and Saskatchewan may be underestimated due to exclusion of several materials in the Statistics Canada dataset.
3. Includes both residential and IC&I sources. We used data from Statistics Canada from all provinces to enable consistent comparison across jurisdictions.
4. Waste diversion data for Quebec is derived by Statistics Canada from a survey administered by RECYC-QUÉBEC. The IC&I diversion rate for Quebec may be overestimated due to its differing methodology.

Appendix 3: Key Provincial Waste Reduction and Diversion Initiatives, Commitments and Goals, 1989–2021

Prepared by the Office of the Auditor General of Ontario

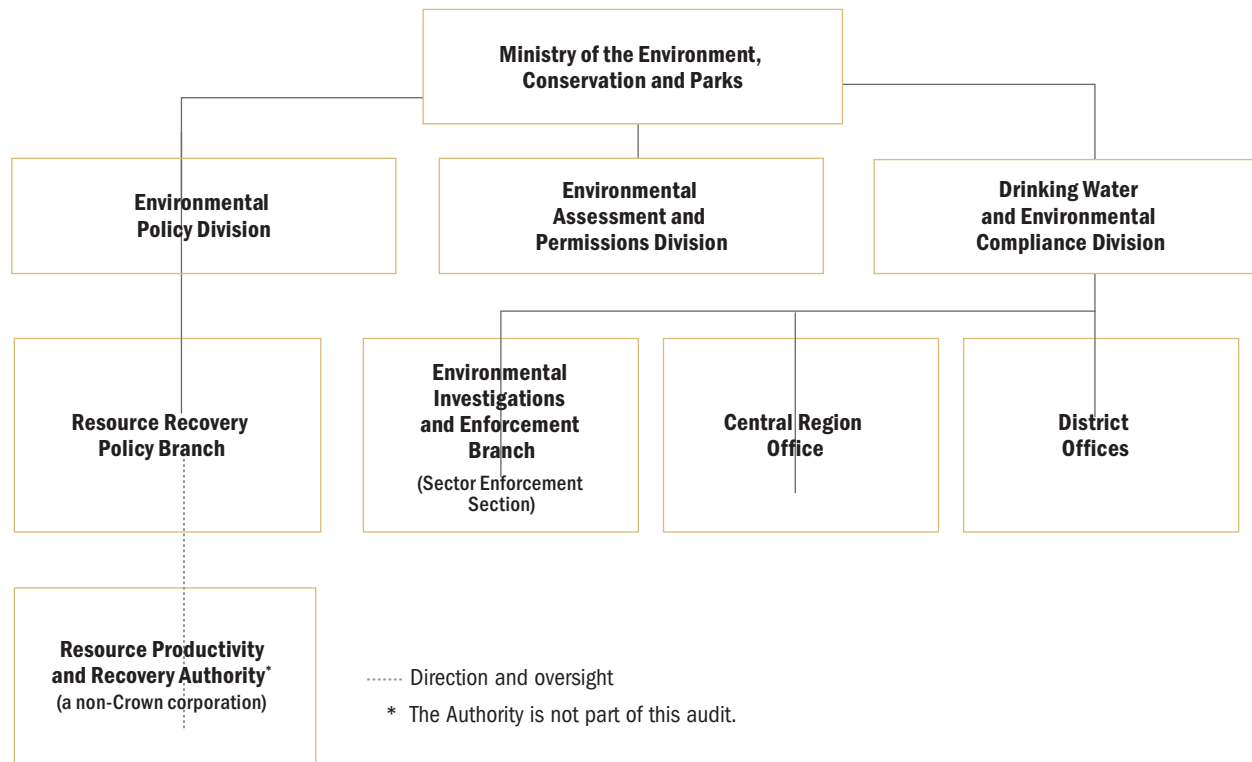
	Provincial Initiatives and Goals	Status as of June 2021
1989	Ministry of the Environment announces target to divert 25% of Ontario's waste by 1992 and 50% of waste by 2000.	Goal not met
1994	Ministry implements four regulations under the <i>Environmental Protection Act</i> , which require: • municipalities to operate residential Blue Box program; and • certain industrial, commercial and institutional (IC&I) establishments to conduct waste audits, develop waste reduction work plans, separately collect some common recyclables, and make reasonable efforts to have those materials reused or recycled.	In effect
2002	Ontario enacts <i>Waste Diversion Act, 2002</i> , which: • requires producers to fund 50% of the cost of the municipal-run residential Blue Box program; and • creates a framework to establish other producer-run diversion programs (for both residential and IC&I wastes).	Repealed in 2016 (replaced by <i>Waste-Free Ontario Act, 2016</i>)
2004	Ministry releases discussion paper, <i>Ontario's 60% Waste Diversion Goal</i> , which proposes: • goal of 60% diversion rate by 2008; • strategies to meet the goal, including enhancing enforcement of the IC&I waste regulations to increase IC&I recycling; and • to review and revise the IC&I Source Separation Programs Regulation.	Goal not met
2007	Ministry releases a proposed <i>Policy Statement on Waste Management Planning</i> , which: • identifies that the province is facing "critical waste management challenges"; and • proposes a plan for increasing waste diversion, including directing municipalities to develop waste management plans and challenging IC&I establishments to generate less waste.	Not finalized or implemented
2008	Ministry releases discussion paper, <i>A Review of the Waste Diversion Act, 2002: Toward a Zero Waste Future</i> , which: • recognizes the need to increase diversion and aim for zero waste; • proposes greater focus on producer responsibility (i.e., making producers responsible for waste generated by their products), reduction and reuse, and increasing IC&I waste diversion.	Input on discussion paper incorporated into 2009 Minister's Report
	Ministry implements diversion program for electronic waste (from residential and IC&I sources) under the <i>Waste Diversion Act, 2002</i> .	Replaced with new program in 2020
	Ministry implements diversion program for household hazardous waste under the <i>Waste Diversion Act, 2002</i> .	Being transitioned to new program to be completed Oct 2021
2009	Ministry implements diversion program for used tires (from residential and IC&I sources) under the <i>Waste Diversion Act, 2002</i> .	Replaced with new program in 2018
	Ministry releases <i>From Waste to Worth: Minister's Report on the Review of the Waste Diversion Act, 2002</i> , which: • conveys the results of the five-year review of the <i>Waste Diversion Act, 2002</i>; and • proposes changes to Ontario's waste management framework and the <i>Waste Diversion Act, 2002</i>.	Input on Minister's Report incorporated into 2013 proposed Bill 91 and Strategy (which were not implemented)

	Provincial Initiatives and Goals	Status as of June 2021
2013	Ministry introduces Bill 91, <i>Waste Reduction Act, 2013</i> , which would implement a new producer responsibility approach, and releases its Waste Reduction Strategy, which proposes several actions to address stalled waste diversion.	Bill died and strategy not implemented. Superseded by <i>Waste-Free Ontario Act, 2016</i> and <i>2017 Strategy for a Waste-Free Ontario</i>
2016	Province enacts <i>Waste-Free Ontario Act, 2016</i> , which: • repeals and replaces the <i>Waste Diversion Act, 2002</i>; • enacts the <i>Resource Recovery and Circular Economy Act, 2016</i>, which establishes a framework for full producer responsibility waste diversion programs; and • enacts the <i>Waste Diversion Transition Act, 2016</i>, which provides interim rules for waste diversion programs while they transition to the <i>Resource Recovery and Circular Economy Act</i>.	In effect
2017	Ministry releases its <i>Strategy for a Waste-Free Ontario: Building the Circular Economy</i> , which: • sets overarching goal to reduce waste and targets to divert 30% of waste by 2020, 50% by 2030, and 80% by 2050; • commits to amend the IC&I waste regulations; and • commits various measures to support waste reduction and diversion (such as regulating additional materials, landfill bans, and focusing on increasing IC&I waste diversion). Ministry sets a key performance indicator to reduce the amount of waste disposed per capita each year. Ministry releases a discussion paper, <i>Addressing Food and Organic Waste in Ontario</i> , to consult on reducing organic waste from both residential and IC&I sources.	In effect In effect Supported development of <i>2018 Policy Statement and Framework</i>
2018	Ministry releases <i>Food and Organic Waste Policy Statement</i> , which sets waste reduction and resource recovery targets for municipalities and IC&I establishments to reduce organic waste by 50% or 70%, by 2025, depending on the type of establishment. Ministry releases <i>Food and Organic Waste Framework</i> , which outlines commitments to address food and organic waste, including a proposal to ban food waste from landfill, to accompany the <i>Food and Organic Waste Policy Statement</i> . Ministry implements regulation to transition the Used Tires program into a full individual producer responsibility program under the <i>Resource Recovery and Circular Economy Act, 2016</i> . Ministry releases proposed <i>Made-in-Ontario Environment Plan</i> , which commits to several measures to increase waste diversion, including reducing and diverting food and organic waste from households and businesses; reducing plastic waste; and making producers responsible for the waste they generate.	In effect Superseded by the 2018 <i>Made-in-Ontario Environment Plan</i> and the 2019 <i>Reducing Litter and Waste in Our Communities: Discussion Paper</i> In effect Ministry describes the plan as an evolving document; update provided in 2020
2019	Ministry releases discussion paper <i>Reducing Litter and Waste in Our Communities</i> for consultation, which: • reaffirms waste diversion targets set out in the 2017 Strategy: 30% by 2020, 50% by 2030, and 80% by 2050; and • states that IC&I waste regulations are “largely ineffective” and seeks input on new approach to reduce waste and increase diversion from the IC&I sector, as well as ways to better track information about IC&I waste. David Lindsay, as a Special Advisor to the Ministry, issues his report <i>Renewing the Blue Box: Final Report on the Blue Box Mediation Process</i> , providing advice on transitioning the municipal Blue Box Program to full producer responsibility.	Consultation completed Completed

Provincial Initiatives and Goals		Status as of June 2021
2020	Ministry implements regulations to transition the Electronic Waste and Batteries programs into full individual producer responsibility programs under the <i>Resource Recovery and Circular Economy Act, 2016</i> .	In effect
	Ministry proposes new regulations to transition the residential Blue Box program and hazardous and special products into full individual producer responsibility programs under the <i>Resource Recovery and Circular Economy Act, 2016</i> .	Finalized in June 2021
	Ministry releases two-year progress update on its <i>Made-in-Ontario Environment Plan</i> , which commits to consult on: - reforming the IC&I waste framework; and - a proposal to phase out organic waste from landfill by 2030.	In effect

Appendix 4: Key Entities Involved in Oversight of Industrial, Commercial and Institutional (IC&I) Waste Management

Prepared by the Office of the Auditor General of Ontario



Environmental Policy Division

Develop policies, programs, regulations and legislation to support environmental protection.

Environmental Assessment and Permissions Division

Issue operating approvals and manage regulatory permissions for waste management industry.

Drinking Water and Environmental Compliance Division

Provide oversight of compliance and enforcement of Ontario's environmental laws and regulations.

Resource Recovery Policy Branch

Develop policies, regulations and laws related to waste management, reduction and diversion.

Environmental Investigations and Enforcement Branch

Inspect, enforce and promote compliance of IC&I establishments with the IC&I waste regulations (Ontario Regulations 102/94 and 103/94). Inspect waste vehicles through on-road enforcement team.

Central Region Office

Lead provincial compliance program for waste management industry.

District Offices

The 16 district offices located across Ontario inspect waste management facilities and vehicles for operational compliance and environmental impacts, and respond to local incidents.

Resource Productivity and Recovery Authority*

- Oversee and enforce compliance of regulated producers of products and packaging and waste service providers with the requirements under the *Recovery and Circular Economy Act, 2016*.
- Oversee the operations and wind-up of programs under the *Waste Diversion Transition Act, 2016*.
- Develop and operate an electronic registry for producers and waste service providers to register and submit waste data.
- Manage, verify and publicly report on the information provided through the registry.

Appendix 5: Establishments and Materials Subject to Industrial, Commercial and Institutional (IC&I) Waste Regulations

Source of data: Ontario Regulations 102/94 and 103/94 under the *Environmental Protection Act*

Regulated Establishments	Threshold	Materials to Be Collected
Retail shopping complexes or establishments (e.g., malls, plazas or stores)*	Occupy 10,000 m ² or more	- Aluminum and steel cans - Glass bottles and jars - Paper and newsprint - Cardboard
Office buildings	Occupy 10,000 m ² or more	
Educational institutions	With more than 350 students enrolled per year	
Public hospitals	General hospitals with 100 or more beds; teaching hospitals; or hospitals for chronic patients with 200 or more beds	
Hotels and motels	With more than 75 units	- Aluminum and steel cans - Glass bottles and jars - Paper and newsprint - Cardboard - Polyethylene terephthalate (PET) plastic bottles for food and beverages
Restaurants	Gross annual sales of \$3 million or more in at least one of the previous two years (for all locations)	
Manufacturing facilities	Employ staff that collectively work at least 16,000 hours or more for at least one month over the last two-year period	- Aluminum and steel - Glass - Paper and newsprint - Cardboard - Various plastics (HDPE plastic containers, LDPE plastic film, and polystyrene foam and trays) - Wood
Construction projects	Total floor area of at least 2,000 m ²	- Brick and cement concrete - Cardboard - Steel - Unpainted drywall and wood
Demolition projects	Total floor area of at least 2,000 m ²	- Brick and cement concrete - Steel - Unpainted wood
Multi-unit residential (apartment/condo) buildings	With six or more dwelling units	- Aluminum and steel cans - Glass bottles and jars - Newsprint - PET plastic bottles - Any other packaging materials collected in the residential Blue Box program.

* The Ministry of the Environment, Conservation and Parks told us that the requirements for retail shopping establishments or complexes may be applied to large movie theatres, event venues, and sports venues, arenas and stadiums.

Appendix 6: Waste Management Service Providers for Industrial, Commercial & Institutional (IC&I) Solid, Non-hazardous Waste in Ontario

Prepared by the Office of the Auditor General of Ontario, with data from the Ontario Waste Management Association (OWMA), Ministry of the Environment, Conservation and Parks, and waste management companies

IC&I Waste Management Service	# of Facilities	Comments
Collection of garbage, mixed recyclables and organics	n/a	15 companies provide collection services that cover the majority of IC&I non-hazardous solid waste. Of these 15 companies, nine collect all three core streams: garbage, recyclables and organics. This excludes companies that collect niche wastes, such as used oil. Additional companies may also collect small amounts of IC&I waste.
Transfer stations	~ 100–150	Approximately 150 waste management facilities in Ontario, which have “transfer” in their environmental compliance approval description, handle some IC&I waste. This excludes facilities that specialize in niche waste types, such as electronics or tires.
Sorting facilities – mixed recyclables	~25	Collectively, 12 companies operate about 25 sorting facilities (commonly called material recovery facilities) in Ontario that manage the majority of IC&I mixed recyclables. This includes facilities that sort and bale one or more types of mixed recyclables, including fibres (paper products and cardboard), plastic, glass, aluminum, steel, and other scrap metal. Most municipally owned material recovery facilities will also accept a small amount of IC&I materials.
Sorting facilities – construction and demolition	6	Collectively, five companies operate six sorting facilities in Ontario that handle construction and demolition waste.
Organics processing facilities	63	These privately owned facilities include compost, commercial anaerobic digestion, and on-farm anaerobic digestion facilities. There are an additional 49 publicly owned facilities, some of which may also accept some IC&I organic materials.
Commercial landfills	33	33 privately owned landfills in Ontario accept IC&I, construction and demolition, and residential waste. There are another 380 municipally owned landfills in Ontario, but most of these landfills accept primarily or exclusively residential waste.
Energy-to-waste facilities	2	—

Note: The OWMA estimates that about 25 to 30 companies handle the majority of all core IC&I waste services, and that the five largest waste companies in Ontario (GFL, Miller, Waste Connections, Waste Management and Wasteco) handle over half of Ontario's total generated waste. Collectively, these five companies operate about 60 transfer stations, about 10 sorting (material recovery) facilities, and two organic processing facilities that manage IC&I waste.

Appendix 7: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1. Effective systems and processes are in place to drive sufficient industrial, commercial and institutional (IC&I) waste reduction and diversion to make a substantive impact on achieving the province's overall waste reduction and diversion targets.
2. The Ministry of the Environment, Conservation and Parks (Ministry) has timely, accurate and complete information about IC&I waste to inform the design and delivery of programs. Management information systems are effective in maintaining this information for decision-making.
3. The Ministry has effective oversight processes in place to promote and enforce compliance by the regulated IC&I establishments to reduce and divert IC&I waste.
4. Recyclable and compostable IC&I waste intended for diversion is being diverted from landfill.
5. The Ministry assesses whether its IC&I waste reduction and diversion programs can be more effectively and economically delivered by the Resource Productivity and Recovery Authority.
6. Meaningful performance measures and targets are established, monitored, compared against actual results and publicly reported. Corrective actions are taken on a timely basis when issues are identified.

Appendix 8: Additional Work Done to Perform the Audit

Prepared by the Office of the Auditor General of Ontario

During our audit, in addition to activities described in **Section 3.0**, we did the following.

As part of our audit work relating to IC&I establishments:

- We had discussions with three associations that represent segments of the IC&I sector—Retail Council of Canada, Canadian Manufacturers & Exporters, and Ontario Restaurant, Hotel & Motel Association—and obtained direct input from 10 businesses (retailers and manufacturers) to understand their waste management practices and the challenges they face to increase waste diversion.
- We reviewed waste data from a sample of 60 IC&I establishments to analyze the types and amounts of waste that establishments generate, divert and dispose and the range of diversion rates across regulated IC&I subsectors.

As part of our audit work relating to the waste management industry:

- We interviewed staff in the Ministry's Environmental Permissions Branch and Central Region to understand their practices with regard to approving waste management facilities and inspecting compliance with reporting requirements as they relate to waste diversion. We did not audit the Ministry's approval and oversight of waste management facilities, which was included in our Office's 2016 audit on Environmental Approvals.
- To understand the private business arrangements between IC&I establishments and waste service providers, we obtained and reviewed 40 confidential waste service agreements, including from the five largest companies operating across Ontario. We also obtained information from dozens of waste industry sources to determine the range of fees charged by waste management facilities for various waste services.

Other work included the following:

- We interviewed staff in the Ministry's Resource Recovery Policy Branch to understand their roles in developing IC&I waste policies and programs, and the status of work on IC&I policy currently being developed, including guidance to support the *Food and Organic Waste Policy Statement* and a proposal to expand the residential Blue Box program to include multi-residential buildings.
- We reviewed the Resource Productivity and Recovery Authority's governance structure, operating documents and annual reports, as well as met with members of its executive management team, to understand their programs and processes to collect waste data and oversee waste diversion programs.
- We reviewed available reports from municipalities regarding waste diversion in multi-residential buildings.
- We reviewed all relevant policies, procedures and internal documentation and data maintained by the Ministry related to IC&I waste.
- Lastly, we reviewed and identified best practices used in other jurisdictions in Canada (including British Columbia, Nova Scotia, Quebec and Prince Edward Island) and foreign jurisdictions (the United States, Scotland, Germany, England, the Netherlands and Japan) to improve IC&I waste management, and spoke with policy staff in Nova Scotia and Prince Edward Island.

Appendix 9: Factors Affecting the Economics of Recycling and Composting

Prepared by the Office of the Auditor General of Ontario

Factors Affecting Cost/Revenue		Examples
Costs		
Transport costs (vehicles, fuel, wages)	Collection: a fee is charged for each collection trip.	- Businesses that separate waste into multiple streams may incur extra collection (pick-up) fees. - Businesses located in rural areas, further from recycling facilities, may incur higher transport costs. - Lightweight plastic packaging is cheaper to transport than heavy materials like glass and food waste.
	Distance: transport costs increase relative to distance. Weight: heavier materials increase transport (fuel) costs.	
Processing costs (labour, equipment, energy)	Sorting: multiple materials mixed together must be sorted by type, often manually, before being processed, increasing costs.	- Mixed recyclables (e.g., paper, plastic, glass and cans collected together) cost more to process than individual items that are sent directly for processing without sorting. - Sorting multiple different plastics increases costs.
	Contamination: items incorrectly placed in recyclable or organic loads can significantly increase costs (labour and equipment) to remove them.	
	Type of material: the nature of the item determines the difficulty and cost (labour, equipment, energy) to process it into raw materials.	- Mixed recyclables are often contaminated with non-target materials that must be removed to create a sellable end product. Higher contamination increases processing costs. - Food waste contaminated with plastic, paper or even “compostable” packaging increases costs to remove these items before it can be composted. - Cardboard is simple and relatively cheap to process. - Packaging that has multiple layers of different materials is more difficult and costlier to process than packaging made of a single material. - Electronic waste is labour-intensive and costly to separate into its component parts.
Revenue		
Commodity revenue	Market price: revenue for the end product is based on the material’s market price, which fluctuates with the global commodity price and with local supply and demand (domestic buyers) for the material.	- Aluminum has a consistently high market price. - Some plastics, like HDPE, have strong demand and market value; other plastics, like plastic film, have poor end markets and are often given away for free. - After China and other Southeast Asian countries banned the import of most paper and plastic waste in 2018, the resulting surplus material and few buyers caused its value to fall to zero.
	Contamination and quality of materials: revenue is related to the quality of the end-product, which is affected by the incoming materials.	
Tipping (drop-off) fees	Tipping fee: most facilities charge a fee to receive materials to cover their waste management costs (less revenue, plus some profit).	- Clean paper collected separately produces a more valuable end product than paper in mixed recyclable loads, which is often soiled. - Mixed or contaminated plastics result in a lower-quality, lower-value end commodity than pure plastic. - Sorting facilities may charge a tipping fee of \$100 to \$250/tonne for mixed recyclables to fill the gap between processing costs and commodity revenue. - Compost facilities may charge a tipping fee of \$80 to \$120/tonne for organic waste to fill the gap between processing costs and the revenue for compost.



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Office of the Auditor General of Ontario

Value-for-Money Audit:
Protecting
and Recovering
Species at Risk



November 2021

Ministry of the Environment, Conservation and Parks

Ministry of Northern Development, Mines, Natural Resources and Forestry

Protecting and Recovering Species at Risk

1.0 Summary

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 worldwide rate at which species are now going extinct and disappearing is tens to hundreds of times higher than over the past 10 million years—and the rate is accelerating. Experts and world leaders are calling for urgent action to address this global loss of nature. Species loss directly affects how the natural world works, and impacts the many ways in which humans rely on nature and the services it provides. In 2021, the World Bank estimates that without concerted conservation action, the loss of biodiversity and ecosystem services could have multi-trillion dollar impacts on the global economy. The World Economic Forum ranks biodiversity loss as one of the top five risks for the planet over the next decade.

In Canada, habitat loss and degradation—resulting from land use changes and disturbance from human activities—is the biggest threat to species at risk, like Blanding’s turtles and boreal caribou. Other threats include hunting, fishing and trapping, climate change, pollution, and invasive species. Unless these threats

are addressed, species may be eliminated from an area that they would normally be found—or worse, become extinct and lost forever.

Conserving biodiversity, including species at risk, is essential for ecosystems to stay healthy. Healthy ecosystems produce oxygen, control climate, lessen the impacts of floods and storms, and supply people with essentials like food and water. The degradation or loss of one part of an ecosystem impacts the functioning of the whole. For example, pollinators like bees support over 35% of the world’s food crop production, so if bees suffer, we suffer. Failing to protect and recover Ontario’s species and their habitats will eventually leave the province vulnerable to environmental problems such as soil erosion, air pollution, forest fires and floods, and could worsen the impacts of climate change.

Protecting species and their habitats is also increasingly important for lowering the risk from infectious diseases, such as COVID-19, which are spread from animals to humans. The risk of disease transmission is higher when species that carry infectious diseases end up in close contact with human populations, such as when housing and agricultural developments encroach on formerly wild spaces.

The successful protection and recovery of species at risk could stop or reverse significant declines. However, populations of Canadian at-risk species have declined by 59% on average from 1970 to 2016 according to the World Wildlife Fund’s

2020 Living Planet Report. In Ontario, 2,752 species are now considered vulnerable, rare or rapidly declining as of 2021.

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. Its actions have not been sufficient to improve the state of these species and their habitats. **Figure 1** shows that since 2009, the first full year the Act was in effect, compared to 2020:

- the total number of species at risk has risen by 22%;
- annual approvals to harm species at risk have increased by 6,262%;
- annual approvals for protection and recovery have increased by 59%;
- annual stewardship funding has decreased by 10%; and
- the number of charges laid under the Act was zero in 2020.

The Environment Ministry does not have a long-term plan to improve the state of species at risk and there are no performance measures to evaluate the effectiveness of the species at risk program. Additionally, some species at risk may not be protected in the future, as the Act's classification criteria for species at risk was changed in 2019 and is now inconsistent with how species are assessed in other provinces across Canada. Moreover, forestry

Figure 1: Number of Species at Risk in Ontario, Approvals, Offences and Species at Risk Stewardship Program Budget under the *Endangered Species Act, 2007*, 2008–2020

Sources of data: Ministry of the Environment, Conservation and Parks and Ministry of Northern Development, Mines, Natural Resources and Forestry

Activity ¹	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	% Difference (2009-2020)
Species at Risk in Ontario regulated under the Act ²	184	200	207	207	212	215	224	226	231	237	243	243	243	22
Approvals to Impact ³	1	13	197	29	40	38	143	380	771	803	987	972	827	6,262
Approvals for Protection and Recovery ⁴	0	68	106	139	101	100	97	117	166	106	129	101	108	59
Offences under the Act ⁵	9	8	11	15	50	12	0	28	27	36	3	2	0	(100)
Species at Risk Stewardship Program Budget (\$ million) ⁶	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	4.5	4.5	4.5	4.5	(10)

1. 2009 was the first full year that the Act was in force. The Ministry of Northern Development, Mines, Natural Resources and Forestry was responsible for enforcing the Act from 2008 to 2018. The Ministry of the Environment, Conservation and Parks has been responsible for enforcing the Act since 2019.

2. Species on the Species at Risk in Ontario List are classified as Endangered, Threatened, Special Concern or Extirpated.

3. Approvals to impact species at risk include agreements, permits and conditional exemptions.

4. Approvals for protection and recovery of species at risk include permits and conditional exemptions.

5. Offences include charges laid (including withdrawn and dismissed).

6. The budgeted amounts have not been adjusted for inflation. After inflation, the 2009 budgeted amount of \$5.0 million would be \$6.0 million if adjusted to 2020.

operations on Crown lands were exempted from the Act in 2020, resulting in some species actually losing habitat protections under the Act.

The committee that advises Ontario's Environment Minister on how to implement the Act is dominated by industry stakeholders, whose interests can be contrary to protecting species at risk and their habitats. Additionally, the Environment Ministry could not explain how six recent appointees were identified, screened and chosen for the independent science committee that classifies which species are at risk.

The Environment Ministry lacks guidance on when to say "no" to permit applications to harm species at risk and their habitats. No application to harm species or their habitats has ever been denied. In fact, most approvals are granted automatically by the Environment Ministry without review. There are also no inspections to ensure that companies and others abide by the conditions of their approvals. The cumulative effects of approvals to harm species at risk and other threats are not assessed by the Environment Ministry.

Because the province's goals are generally less ambitious than the recommendations made by independent scientists, its planned actions for the protection and recovery of species at risk are unlikely to improve their status. Few performance measures have been developed to gauge progress for any particular species, and progress is reviewed only once for each species as that is all that is required by the Act.

The following are some of our specific significant findings.

Governance and Accountability

- **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. A 2019 Ontario Public Service employee engagement survey conducted by the Environment Ministry found that 76% of the Species at Risk
- Branch staff believed that the Ministry was not on the right track in its planning for the future.
- **Forestry operations on Crown lands were exempted from the *Endangered Species Act, 2007* in the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* despite the Environment Ministry's determination that forestry rules could cause significant adverse effects to 12 endangered or threatened species such as boreal caribou.** The federal government can issue orders under the *Species at Risk Act* if the federal Minister of Environment and Climate Change is of the opinion that the laws of a province or territory do not effectively protect the critical habitat of a federally listed species at risk. In March 2021, the Environment and Natural Resources ministries each received a letter from the federal Environment Minister that warned the forestry exemption did not conform with the federal *Species at Risk Act*. Corrective action was requested by November 2021. In June 2021, the Environment Ministry received a follow-up letter. To date, no action has been taken. Additionally, Ontario made legislative changes in the *More Homes, More Choice Act, 2019* that increase its risk of not conforming with the federal *Species at Risk Act*, including changes to classification criteria for species at risk and the introduction of a new type of approval that does not require beneficial actions to be carried out for all impacted species.
- **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. In 2016/17 and 2019/20, the annual reports were prepared by Ministry staff on behalf of the Advisory Committee. None of these reports are publicly available.

Species Assessment and Classification

- **No new species at risk were regulated in 2019 and 2020 because the committee that assesses and classifies species lacked quorum to function.** The Species at Risk in Ontario List has not been updated since 2018 and some species that could have been protected sooner were not. For a species to receive protections under the Act, the Committee on the Status of Species at Risk in Ontario (Assessment Committee) assesses and classifies the species, then the Environment Ministry adds them to the Species at Risk in Ontario List. However, the Assessment Committee did not have the required members to function in the second half of 2018 and all of 2019. Once it had sufficient members again in 2020, the Assessment Committee assessed and classified 35 species from the backlog. The Environment Ministry must now update the Species at Risk in Ontario List by January 2022. Fifteen of the 35 are newly listed species at risk that will be regulated under the Act, including black ash (a tree), smooth yellow false foxglove (a plant) and hairy valerian (a plant).
- **The current process for appointments to the committee that assesses and classifies species in Ontario is not transparent.** Until 2019, vacancies on the Committee on the Status of Species at Risk in Ontario were broadly advertised. Ministry staff with species at risk expertise screened applications using standard review criteria and recommended qualified candidates to the Minister for appointment. However, in 2019 and 2020, the Minister appointed six individuals: five were not screened using these criteria or

recommended by staff with species at risk expertise, and the one candidate who was screened using these criteria was determined to be marginally qualified and was not recommended. The Environment Ministry could not explain how these six appointed members were identified, screened and chosen.

- **The *More Homes, More Choice Act, 2019* changed the classification criteria used by the independent scientific committee, which may result in some species at risk not being protected in the future.** A 2019 omnibus bill changed the Act to require the Committee on the Status of Species at Risk in Ontario to consider a species' condition outside Ontario, and if the condition of the species across this broader area is determined to be at a lower risk level than if only the population in Ontario is considered, it must classify the species at the lower risk level. Previously, species assessments were based on their biological status in Ontario only, while accounting for functional connections with populations elsewhere. This was consistent with practices across Canada and internationally. In the future, a species may be down-listed from endangered or threatened, not because that species' status is improving in Ontario, but because with the changed criteria the Assessment Committee must consider the species' status outside of the province. Therefore, some species that are currently at-risk in Ontario may not be protected under the Act in the future.

Species at Risk Recovery Planning

- **Recovery strategies are delayed for six endangered and 11 threatened species.** 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. Two recovery strategies—for mountain lion (cougar) and spoon-leaved moss, both due in 2013—have been delayed to allow the Environment Ministry to prioritize the preparation of recovery strategies for other species. The recovery strategy for Algonquin wolf, due in 2018, was delayed due to “complex issues,” despite a draft strategy that warned that a delay may jeopardize the wolf’s long-term recovery. Hunting and trapping of wolves have economic and social importance for some people, yet these activities are significant threats to the Algonquin wolf. The Algonquin wolf is protected from being killed across only some of its geographical range.

- **Response statements are generally insufficient to improve the status of species at risk.** A response statement is prepared by the Environment Ministry for an endangered or threatened species. It identifies what actions the Government of Ontario will take, or support others to take, for a species’ protection and recovery. However, we found that the province’s goals are generally less ambitious than the scientific advice in recovery strategies, and that government-led actions are often not specific to the species and include meeting existing legal obligations. Additionally, response statements do not establish performance measures or provide cost estimates to help inform decisions about which protection and recovery actions to take or prioritize. Accordingly, the Environment Ministry does not have any objective or systematic way of knowing whether any actions being taken are making a difference. As a result of these weaknesses, implementing response statement actions may not improve the status of species at risk.
- **Response statements for two endangered, one threatened and one special concern species have been delayed for seven or more years.** Response statements publicly identify the actions and priorities that Ontario intends

to take and support to protect and recover a species. Response statements have been prepared for 164 or 98% of species at risk. They have not been prepared for the American eel and three populations of lake sturgeon (a fish). Accordingly, the status of these species is unlikely to improve. Another 17 endangered or threatened species do not have response statements because the recovery strategies upon which the statements will be based have not yet been created.

- **Reviews of progress do not evaluate the effectiveness of actions taken and are done only once per species.** The Environment Minister must ensure the implementation of any actions in a species’ response statement that are feasible and within the responsibilities of the Minister. However, reviews of progress do not evaluate the effectiveness of actions taken, and cannot be used to gauge progress for the recovery of a species at risk. Once a review is completed, the Ministry is not required to report again on the actions taken for that species, even when the review identifies that no progress has been made. In contrast, the federal government, Nova Scotia, and the Northwest Territories report on progress every five years until either a species’ recovery objectives have been achieved or the species’ recovery is no longer required or feasible.

Species at Risk Approvals

- **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—are what pose a significant threat to species. For example, Blanding’s turtles have been impacted by 1,403 approvals since 2007; this species has declined by more than 60% over the last three generations because of ongoing

habitat loss in Ontario. Similarly, bobolinks (a bird) have been impacted by 2,049 approvals since 2007; this species is estimated to have declined by 77% since 1970 and by 33% since 2000. Additionally, legislative changes made in 2019 now allow for landscape agreements that approve multiple harmful activities across a broad area. In this type of approval, beneficial actions may not occur for all impacted species.

- **Permit applications to harm species at risk or their habitats are always approved.** Since the Act was passed in 2007, there have been 306 permits issued that have allowed harmful activities—74% of which have been in and around the Greater Golden Horseshoe and southwestern Ontario. The consequences are ongoing impacts to species at risk and their habitats. For example, the Environment Ministry issued a permit in 2021 to allow a corporation to construct a subdivision of cottages. The same corporation had been issued a stop work order in 2018 by the Natural Resources Ministry for building a road through Massasauga rattlesnake habitat without approval—and was subsequently charged in 2019 with damaging habitat. This prosecution was still ongoing at the time of our audit. In 2018, the Natural Resources Ministry, then responsible for the program, identified the need for internal guidance on when to say “no” to a permit application.
- **In 2020, 893 (or 96%) of approvals to harm species at risk and their habitats were conditional exemptions, which the Environment Ministry cannot choose to deny or tailor for specific circumstances.** Harmful activities by companies, organizations and people are allowed under conditional exemptions (sometimes called permit-by-rule) if a standard set of rules is followed. In 2020, conditional exemptions impacted 123 different species at risk. Often, these conditional exemptions require only that harm be minimized, which may contribute to a worsening status for the species at risk. In contrast, overall benefit permits require that species be made better off than before the activity occurred. The species

frequently negatively impacted by conditional exemptions are bobolink, eastern meadowlark (a bird), barn swallow (a bird), Blanding’s turtle and butternut (a tree) as these species have a broad geographical distribution.

- **The Environment Ministry has not assessed the effectiveness of overall benefit permits that allow harmful activities but require that species be made better off.** A total of 276 overall benefit permits was issued between 2007 and 2020—93% for locations in southern Ontario. Overall benefit permits require a company, organization, or person to make the species better off than before the activity was approved. In 2018, the Natural Resources Ministry, then responsible for the program, found that better guidance was needed on how much habitat is replaced compared to how much is destroyed, and that restoration work was sometimes done at unsuitable sites. For example, we found a case where a company was allowed by the Environment Ministry to damage and destroy 9.6 hectares of different types of Blanding’s turtle habitat, and was required to create a 0.49 hectare pond in order to achieve an overall benefit. Monitoring reports showed that the much smaller, newly created habitat was not effective as no turtles had inhabited it in two years after it had been constructed.
- **The Environment Ministry has delayed issuing some permits for conservation work, while fast-tracking some permits for development.** Instead of delegating decision-making, the Environment Minister is currently responsible for making all decisions on issuing permits under the Act, based on the advice of staff. This may be causing delays that impact species. According to Ministry staff with technical expertise, delays dating back to 2017—including obtaining the Minister’s approval—for a protection and recovery permit for conservation work on the Massasauga rattlesnake likely contributed to this species becoming locally extinct. In contrast, we found that companies or organizations who complain to

higher levels within the Ministry obtain permits for development 43% faster than had they not complained. For example, our review of permit files found that the Ministry prioritized permits for Infrastructure Ontario ahead of other applicants.

- **There is an increasing use of social or economic benefit permits to allow harmful activities; these permits do not require that species are made better off.** Social or economic benefit permits allow for activities that are expected to result in significant social or economic benefit to Ontario without requiring that any affected species at risk are made better off. There have been six of these permits for large-scale projects issued since 2007—four since 2019. Metrolinx obtained three of these permits in 2020 for transit projects in the Greater Toronto Area that collectively impact at least nine species at risk. Having a Crown agency obtain multiple permits for harmful activities, with no required overall benefit to make species better off, demonstrates to the public that the government sets a low standard for itself for species at risk conservation.
- **The Environment Ministry does not charge fees for approvals, although this would discourage activities that harm species at risk and their habitats.** The Environment Ministry charges fees for other activities that impact the environment. For example, the Ministry charges between \$1,190 and \$2,353 for different types of approvals under its Environmental Activity and Sector Registry program and charges up to \$60,000 for certain types of permits. Had the Ministry charged the lowest similar fee for the 935 approvals it issued in 2020 under the *Endangered Species Act, 2007*, it could have generated over \$1.1 million in revenue to support species at risk conservation.

Compliance and Enforcement

- **The Environment Ministry has laid only two charges for harming species at risk since 2019. An enforcement plan is not finalized and environmental officers have not been appointed to enforce the Act.** In contrast, when

it enforced the Act, the Natural Resources Ministry laid an average of 19 charges annually from 2009 (the first full year the Act was in force) to 2018. The Environment Ministry's enforcement of the Act is complaint driven, but the Ministry's enforcement website does not include information about how to file a complaint about potential harm to species at risk. At the time of our audit, the Ministry had not yet appointed environmental officers to enforce the Act due to labour relations issues such as new work with no additional resources. The Ministry has internally identified that not appointing environmental officers is a high risk to implementing its enforcement framework for the Act.

- **The Environment Ministry does not conduct inspections to ensure compliance with the requirements of agreements, permits and conditional exemptions.** There have been 6,539 approvals (agreements, permits and conditional exemptions) under the Act between 2007 and 2020 but none of the activities involved have ever been inspected for compliance with their approval conditions by the Environment Ministry or the Natural Resources Ministry (when it was responsible for the program prior to 2019). For example, conditional exemptions may require preparing mitigation plans but these are often missing or in poor quality. In 2017, 9% of approval holders did not provide plans when requested by the Natural Resources Ministry and 63% of the plans provided were poor in quality, with no clear actions to minimize adverse effects on the species. The Natural Resources Ministry did not follow up. The Environment Ministry expects to finalize a draft of its enforcement plan in 2021, but its approach will remain complaint driven. For other provincial environmental programs, inspections are routine.

Species at Risk Stewardship Program

- **Funding for the Stewardship Program has decreased despite an increased number of species at risk and the program's contributions**

to recovery efforts. The Environment Ministry relies on the Species at Risk Stewardship Program (Stewardship Program) to conduct on-the-ground conservation work because the Ministry has no dedicated staff or internal funding to conduct this work. The Stewardship Program has funded 1,170 projects and contributed to restoring 55,459 hectares of habitat for species at risk since its creation in 2007. However, we noted that the total amount budgeted for the Stewardship Program was \$5 million per year from 2008 to 2016, and has been \$4.5 million per year since 2017. In comparison, the number of regulated species at risk increased by 59 (or 32%) between 2008 and 2020.

- **Delays by the Environment Ministry in funding stewardship projects to undertake conservation work have sometimes resulted in the cancellation of projects.** We found that, in the last two funding cycles, successful Stewardship Program applicants were not officially notified that their projects were accepted until four to six months after their projects were to have started. The relatively late launch date for the call for proposals and the length of the approval process by senior management contributed to these delays. In addition, payment agreements for successful Stewardship Program applicants were not finalized until almost a year after the intended start date. The delays resulted in some applicants either walking away or having to redesign their projects. For example, activities to restore habitat damaged by phragmites (an invasive reed grass) did not proceed in 2019. This restoration work would have addressed high-priority actions in the response statement for the least bittern (a bird).

This report contains 21 recommendations, with 52 action items, to address our findings. See **Appendix 1** for a summary of the recommendations and the Environment Ministry's response to them. Our work is supported by the evidence in this audit. We believe that these recommendations are supportable and should be implemented.

Overall Conclusion

The overarching goal of the *Endangered Species Act, 2007* is to protect Ontario's species at risk and to promote their recovery for future generations. Yet, the Environment Ministry's species at risk program misses achieving its central purpose: protecting and recovering species at risk. The purpose of species at risk legislation is to serve as the last line of defence when other programs have been ineffective in conserving nature or have directly contributed to biodiversity loss. The Environment Ministry is not, however, acting in the best interests of species and their habitats.

Our audit found that the Environment Ministry's systems and processes for approvals facilitate and enable harm to species at risk and their habitats. Moreover, the government exempted forestry operations on Crown lands from the Act and its protection requirements for species and their habitats. No application for a permit to harm a species has ever been denied, resulting in ongoing impacts to species at risk and their habitats. Most other approvals, such as for gravel pit operations and some agricultural activities, are obtained automatically without the possibility of putting the needs of a species first by not allowing a particular harmful activity when warranted.

The Environment Ministry has not assessed the cumulative effects on species and their habitats of the 6,539 agreements, permits and conditional exemptions allowed between 2007 and 2020. Additionally, the Ministry has laid only two charges in the last two years and does not conduct inspections to ensure the conditions of approvals are complied with by the companies, organizations, and people who have been allowed to harm species and their habitats.

The Committee on the Status of Species at Risk in Ontario did not have sufficient members to assess and classify species at risk in 2018 and 2019. Accordingly, no new species at risk were regulated in 2019 and 2020. Further, the process for appointing members to this committee, whose work is meant to be independent and based on science, is not transparent. Recovery strategies and response

statements have been delayed for some species. The existing response statements are not likely to improve the status of species at risk.

The Environment Ministry does not have a long-term strategy or performance measures to evaluate whether successful outcomes are being achieved for species at risk. In the absence of substantive actions, the number of species at risk in Ontario will continue to grow. The condition of species and their habitats will continue to decline.

OVERALL ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks appreciates the Auditor General's comments and will use the report and the recommendations to guide our future work.

Our government is committed to conserving the province's rich biodiversity by protecting and recovering species at risk and their habitats. We continue to take action to make the *Endangered Species Act, 2007* more effective and efficient. We have made great progress over the past few years and continue to fund on-the-ground work through the Species at Risk Stewardship Program, investing more than \$16 million since 2018 to protect and recover species at risk. In 2019, we modernized and improved the effectiveness of the *Endangered Species Act, 2007* by implementing recommendations received as part of the 10-year review of the Act, including improving transparency when it comes to notifications of new species listings and enhancing government oversight and enforcement powers to ensure compliance with the Act.

We are committed to finalizing government response statements to support the protection and recovery of new species at risk and issuing permits with stringent requirements. We created a new provincial agency, the Species Conservation Action Agency, that will strategically invest funds to protect and recover species at risk on a province-wide scale, with the long-term interests of species in mind.

Species protection and recovery is a shared responsibility—that is why we will continue to work with individuals, stakeholders and Indigenous communities to achieve our goals.

OVERALL NATURAL RESOURCES MINISTRY RESPONSE

The Ministry of Northern Development, Mines, Natural Resources and Forestry (Natural Resources Ministry) acknowledges the recommendations outlined in this report and recognizes the importance of species at risk protection and recovery. The Ministry of the Environment, Conservation and Parks (Environment Ministry) is now responsible for the *Endangered Species Act, 2007* and will provide comments on behalf of the Government of Ontario.

The Natural Resources Ministry will continue to provide science support associated with species at risk and consider the requirements of the *Endangered Species Act, 2007* when implementing changes to existing programs and policies where there may be an impact to species at risk and/or their habitat and will support the Environment Ministry in addressing the recommendations in the report as appropriate.

2.0 Background

2.1 Species at Risk Conservation is a Global Issue

Species at risk are the plants, mammals, birds, fish, and other organisms that are in danger of extinction and being lost forever. See **Appendix 2** for a glossary of terms used in this report. According to the Inter-governmental Science-Policy Platform on Biodiversity and Ecosystem Services, an international body of experts, the worldwide rate at which species are now becoming extinct is tens to hundreds of times higher than the average rate over the past 10 million years, and it is accelerating.

The loss of species contributes to the larger loss of biodiversity (nature), which includes plants, animals and all other living things, as well as how they interact in the environment. Experts and world leaders have called for urgent action to address this global loss of nature. In December 2020, the Secretary-General of the United Nations warned that humanity is waging war on nature at its own peril.

The World Economic Forum in its *Global Risks Report 2021* ranked biodiversity loss, which includes species at risk, as a top-five risk—by likelihood and impact—over the next five to 10 years. The other top risks by likelihood are extreme weather, climate action failure, human environmental damage and infectious diseases. Each of these risks impact species and their habitats in different ways.

The global *Red List* of imperilled species—the most comprehensive list of species at risk—currently includes more than 37,000 species assessed to be threatened with extinction, including 41% of all amphibians, 34% of evergreen trees, 33% of reef-building corals, 26% of mammals and 14% of birds. This list is prepared by the International Union for Conservation of Nature, the global authority on the natural world comprising more than 1,400 government and non-governmental organizations.

Canada has similar rates of imperilled plants, animals and other organisms compared to other countries in the Americas. According to the World Wildlife Fund's *2020 Living Planet Report*, the populations of Canadian at-risk species have declined by 59% on average from 1970 to 2016. At the time of our audit, there were 3,594 species in Canada on the global *Red List*, including 28 that are listed as critically endangered. Examples of critically endangered species in decline in Ontario are the rusty-patched bumble bee, American chestnut (a tree), and the green ash (a tree). For example, the rusty-patched bumble bee was common in southern Ontario until the 1980s, but it has not been found since 2009 despite extensive scientific surveys—it was regulated as endangered in Ontario in 2010.

2.2 Why Species Diversity is Important

Species make many significant contributions to the quality of human life. For example, the antibiotic penicillin is derived from a fungus; a drug used to fight leukemia in children is derived from Madagascar's rosy periwinkle plant; research on venom from a South American snake led to the development of a drug to control blood pressure; and one of the tests currently used to diagnose COVID-19 comes from bacteria discovered in hot springs in Yellowstone National Park in 1966.

Preventing the loss of species and their habitats is also increasingly important for lowering the risk of transmitting infectious diseases such as COVID-19 from animals to humans. Scientists estimate that there are approximately 700,000 wildlife viruses that have the potential to affect humans and cause disease. The risk of disease transmission from wildlife to humans increases with more interaction between humans and wildlife. When wildlife habitat is converted into other land uses such as housing or agriculture, species that carry infectious diseases live closer to human populations. Losing a species from an ecosystem can also disrupt the balance in that ecosystem. For example, if a disease-carrying species loses a natural predator, its numbers will increase, which increases the risk it will transmit the disease to humans.

Further, conserving biodiversity, including species at risk, is essential to maintaining properly functioning ecosystems, which produce oxygen, regulate climate, mitigate floods and storms and provide recreational opportunities like hunting, fishing and wildlife-viewing, and supply people with food and water. For example, pollinators like bees support over 35% of the world's food crop production. In 2021, the World Bank estimated that the loss of biodiversity and ecosystem services could result in a \$2.7 trillion USD decline in global GDP by 2030 without concerted conservation actions. In Ontario, failing to protect and recover species and their habitats will also leave the province more vulnerable to environmental impacts

such as soil erosion, air pollution, forest fires and floods, and could exacerbate the impacts of climate change. The degradation or loss of one part of an ecosystem impacts the functioning of the whole.

2.3 The Biggest Threats to Species

An estimated one million of the planet's eight million species are threatened with extinction by human actions and the resulting changes in nature, according to the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. The biggest threats to biodiversity, including species at risk, are:

- land-use change (such as converting natural forest or grassland to agricultural, residential or industrial uses, resulting in the loss of natural areas and habitat for species);
- direct exploitation or harvesting (logging, hunting, trapping and fishing);
- climate change (including temperature and precipitation changes, worsening natural disasters, and rising sea levels);
- pollution (air, water, and plastic pollution); and
- invasive species (non-native species that compete with native species and alter how ecosystems function).

Habitat loss is a key predictor of species becoming endangered and causes problems for species recovery efforts. Scientists reported in 2020 in the *Earth System Science Data* journal that 178 square kilometres of natural land is lost each day around the world and the rate has increased over the last 25 years. Scientists also reported in 2021 in the *Frontiers in Forests and Global Change* journal that only 3% of the world's land (except Antarctica) remains ecologically intact with healthy populations of original wildlife and unimpacted habitat.

Similarly, in Canada, habitat loss and degradation—resulting from land-use changes and disturbance from human activity—is the predominant threat to species at risk. Creating and effectively managing protected areas is one way to conserve species and habitats from harmful impacts of human activities such as logging, mining, urban development and

agriculture. Our Office reported on protected areas in our 2020 value-for-money audit on *Conserving the Natural Environment with Protected Areas*. Canada's national target is to protect 25% of lands by 2025 to conserve biodiversity, including species at risk. Provincially, protected areas covered 10.7% of Ontario at the time of our audit. The effectiveness of laws for species at risk is especially important for the species in lands and waters outside of protected areas.

2.4 Species at Risk in Ontario

Ontario is home to more than 30,000 species. Scientists have assessed the status of more than half the species in Ontario and 2,752 are of conservation concern in 2021. Species are “of conservation concern” when they are vulnerable, rare or rapidly declining, indicating significant risk about their future survival. Additionally, Ontario has eight species that are not found anywhere else in Canada or the world (see **Appendix 3**). Other species are found only in Canada such as the Algonquin wolf that inhabits parts of Ontario and Quebec.

The Ontario Biodiversity Council—a volunteer body of conservation groups, industry associations, and Indigenous peoples—reported in 2021 that:

- the total number of species at risk in Ontario had increased by 19 species (or 8%) to 243 and only one species was delisted since its last report in 2015; and
- species at risk in Ontario that were reassessed between 1996 and 2017 worsened more often in status (20%) than improved (14%).

Species have evolved over thousands or millions of years but can now face rapid decline in decades, sometimes only years, because of different threats. For example, four of Ontario's eight bat species are at-risk due to a disease called white-nose syndrome that causes the death of 95% to 100% of hibernating bats in two to three years. Since the emergence of this disease in 2006 in eastern New York, white-nose syndrome, which has no known cure, has spread to 35 US states and seven Canadian provinces. The Natural Resources Ministry released

Ontario's White-nose Syndrome Response Plan in 2015. However, remaining populations of at-risk bats in Ontario still face other pressures from habitat loss due to infrastructure, urban development and mining-related activities.

Other species, like Ontario's population of polar bears, face slower declines. Scientists have found that polar bears are likely to become locally extinct in Ontario in 40 to 100 years due to the loss of sea ice habitat on Hudson Bay. Climate change is impacting their ability to hunt for food sources, such as seals. Climate change exacerbates the risks and threats that many other imperilled species already face, including pushing species northwards as temperatures warm.

The decline of other species is directly connected to human development. For example, Ontario's caribou—sometimes called the “grey ghosts” of the boreal forest—have retreated northwards as 40% to 50% of their habitat has been lost since the 1800s. Threats to the boreal population of caribou include habitat loss, degradation and fragmentation due to human settlement and development activities such as forestry, mining, and building hydro corridors and roads. Caribou are also at risk from an increase in predation and disease that accompanies such broad habitat changes.

American eels in Ontario were once abundant in the Great Lakes basin, providing a highly prized food source for Indigenous peoples. American eel numbers drastically declined as dams were constructed that fragmented their waterway habitat. The commercial eel fishery was closed in 2004 and American eels are now endangered. Without action, these could be the last generations of the species in Ontario.

There are at least eight species that once lived in Ontario that are now extinct (see **Appendix 4**). For example, there were as many as five billion passenger pigeons at one time across North America, but this species became extinct in 1914 due to extensive hunting. Other species that once lived in Ontario may only be found in other parts of Canada, like the eastern tiger salamander, now found only in Manitoba.

2.5 Protecting and Recovering Species at Risk

Government programs—the rules for land-use planning, development, forestry, agriculture, mineral development, hunting and fishing, and controlling pollution—are expected to conserve biodiversity and prevent species from becoming at risk. Species at risk legislation usually serves as the last line of defence when other programs have been ineffective in conserving nature or have directly contributed to biodiversity loss. The goal of a species at risk program should be to protect and recover species so that they are no longer at risk.

Species at risk are like patients in a hospital emergency room—both have imminent threats to their survival that must be assessed and treated to prevent their condition from worsening. An endangered species is like a patient having a heart attack—both require immediate intervention to prevent their extinction or death. Like preventative health care, it is more effective, efficient and economical to keep species healthy by protecting them than to undertake complex and time-consuming efforts to recover them after they have been harmed.

The protection and recovery of species at risk and their habitats is a shared responsibility across Canada between the provincial, territorial and federal governments. **Figure 2** summarizes the roles and responsibilities of various key players in Ontario. There are a number of significant agreements, summarized in **Figure 3**, intended to address species at risk.

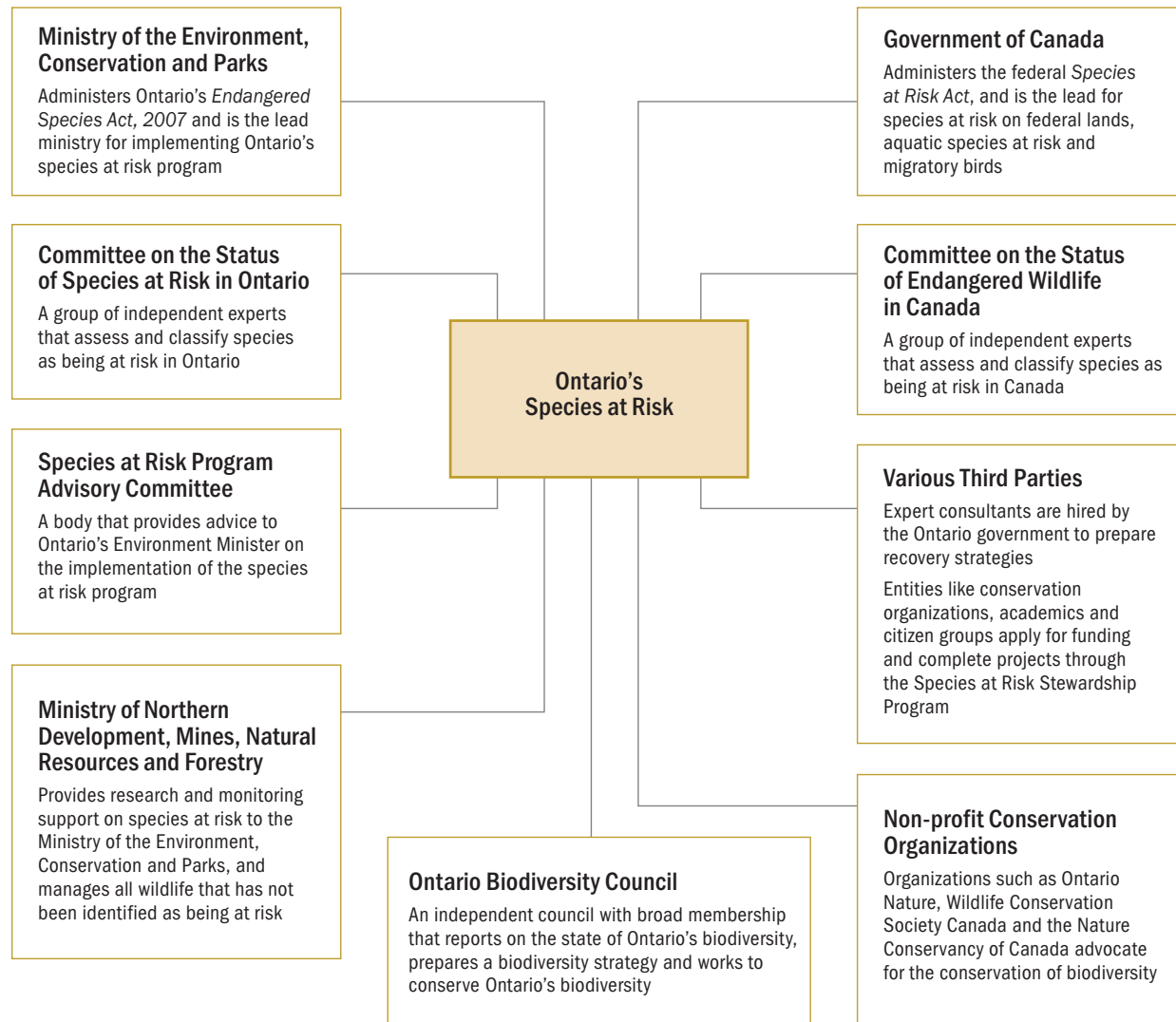
2.6 Species at Risk Law

2.6.1 Federal Law – the *Species at Risk Act*

The federal *Species at Risk Act*, passed in 2002, legally established the Committee on the Status of Endangered Wildlife in Canada, an independent body of scientists, to assess whether individual species across Canada are endangered, threatened, of special concern, extirpated or extinct. This federal law outlines measures to protect the 630 wildlife species (including aquatic

Figure 2: Roles and Responsibilities of Key Players on Species at Risk

Prepared by the Office of the Auditor General of Ontario



species and migratory birds) currently listed in Schedule 1 of this Act, 226 (or 36%) of which are found in Ontario. This law is administered by Environment and Climate Change Canada, and various responsibilities are implemented by the Canadian Wildlife Service, Parks Canada, and Fisheries and Oceans Canada.

The *Species at Risk Act* generally directly applies only to federal lands (national parks and reserves, First Nation reserves, military bases, airports), which make up about 1% of Ontario's land base. However, the federal government can issue orders under the *Species at Risk Act*, such as when the federal Minister

of the Environment and Climate Change is of the opinion that the laws of the province or territory do not effectively protect the critical habitat of a federally listed species at risk.

The federal government can also enter into a conservation agreement with a province or territory to benefit a species at risk or enhance its survival in the wild when the two parties agree that conservation measures are sufficient. For example, all jurisdictions—except Manitoba and Ontario—have negotiated an agreement (or equivalent) with the federal government for the conservation and recovery of boreal and/

Figure 3: Government Agreements on Species at Risk Conservation

Prepared by the Office of the Auditor General of Ontario

Strategy or Framework	Description
United Nations' <i>Convention on International Trade in Endangered Species of Wild Fauna and Flora</i> , 1974	The aim of this agreement is to ensure that the international trade in wild animals and plants does not threaten their survival.
<i>Recovery of Nationally Endangered Wildlife Strategy</i> , 1988	In 1988, federal, provincial and territorial governments agreed to a strategy for species at risk with the following objectives: - no endangered species in Canada will be allowed to become extirpated or extinct; - no new species will be allowed to become threatened or up-listed to endangered; - when and where possible, extirpated species will be reintroduced to Canada; - recovery plans will be prepared for all threatened and endangered species; and - recovery programs will be initiated, where feasible, to work towards removing species from threatened, endangered or extirpated status.
United Nations' <i>Convention on Biological Diversity</i> , 1992	- The Convention, ratified by Canada in 1993, is an international treaty with the goal of slowing or halting the loss of biodiversity. - In 1995, Canada developed the <i>Canadian Biodiversity Strategy</i> to implement the Convention and it was adopted by federal, provincial and territorial ministers on behalf of their respective governments. - In 2010, Canada and the other parties to the Convention—now 196 countries—met in Nagoya, Aichi Prefecture, Japan, and agreed to a new 10-year strategic plan for biodiversity that established 20 targets. - The “Aichi targets” were targets to conserve biodiversity, including to prevent the extinction of known threatened species and improve their conservation status, particularly of those most in decline, by 2020.
<i>Accord for the Protection of Species at Risk</i> , 1996	- The Accord was signed by federal, provincial and territorial ministers responsible for wildlife (except Quebec) with the goal of preventing species in Canada from becoming extinct or extirpated because of human impacts. - The Accord set out principles and commitments related to protecting species at risk, including the importance of intergovernmental co-operation, and complementary legislation and effective programs across the country.
<i>Biodiversity Goals and Targets for Canada</i> , 2015	In 2015, the federal, provincial and territorial governments released the <i>2020 Biodiversity Goals and Targets for Canada</i>. Target 2 states that, “By 2020, species that are secure remain secure, and populations of species at risk listed under federal law exhibit trends that are consistent with recovery strategies and management plans.”
<i>Pan-Canadian Approach to Transforming Species at Risk Conservation in Canada</i> , 2018	In 2018, the federal, provincial and territorial governments agreed to implement the <i>Pan-Canadian Approach to Transforming Species at Risk Conservation in Canada</i>—a new multispecies and ecosystem approach that focuses efforts on priority species, places and sectors across Canada.

or southern mountain caribou. Entering into such an agreement would require a willingness by Ontario to improve existing measures for boreal caribou and adapt rules for the forestry industry.

2.6.2 Provincial Law – the *Endangered Species Act, 2007*

The *Endangered Species Act, 2007* took effect in 2008 and its purposes are to:

- identify species at risk based on the best available scientific information, community knowledge and Indigenous traditional knowledge;
- protect species at risk and their habitats;
- promote the recovery of species at risk; and
- promote stewardship activities to assist in the protection and recovery of species at risk.

The *Endangered Species Act, 2007* replaced the *Endangered Species Act* that was passed in 1971. The old law enabled the Natural Resources Ministry to regulate species as threatened with extinction, and prohibited harming them or destroying their habitat under any circumstance. This inflexibility hindered the government's willingness to regulate additional species at risk despite many being identified by scientists as warranting protection. Only 43 species at risk were regulated under the old law when it was repealed, despite 119 others that had been identified as at risk.

Six other provinces and territories (Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, and the Northwest Territories) also have standalone laws to address species at risk (See **Appendix 5**).

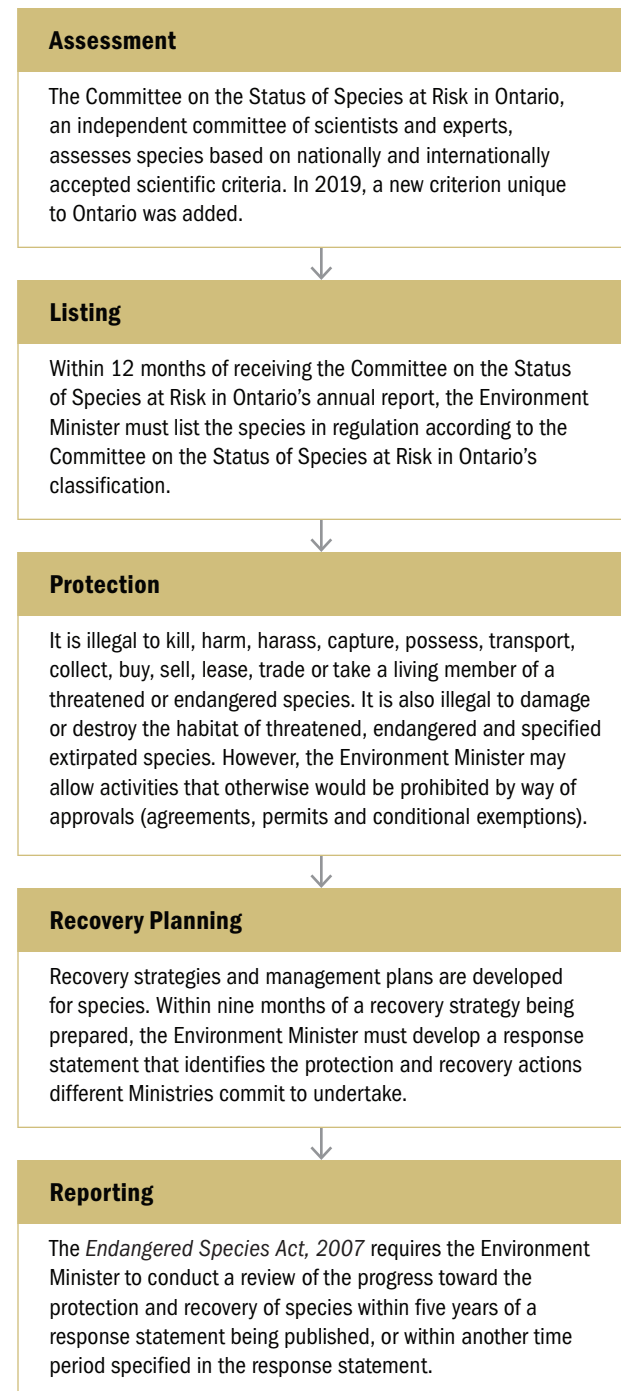
2.7 Ontario's Species at Risk Program

The *Endangered Species Act, 2007* is administered by the Environment Ministry's Species at Risk Branch. It was previously administered by the Natural Resources Ministry. The transfer of the program was announced in June 2018, formalized in an October 2018 Order-in-Council, and operationalized by the Environment Ministry in April 2019. **Figure 4** illustrates Ontario's species at risk protection and recovery process. The branch also provides advice on species at risk issues in other regulatory processes such as environmental assessment and works with other governments on shared species at risk issues.

Figure 5 shows that the Environment Ministry's Species at Risk Branch currently has 51 full-time equivalent staff (FTEs), seven seasonal and three intern positions. In addition, there are 47 staff in the Ministry's Environmental Investigations and Enforcement Branch who were appointed by the Minister to enforce

Figure 4: Ontario's Species at Risk Protection and Recovery Process

Prepared by the Office of the Auditor General of Ontario



the *Endangered Species Act, 2007*, in addition to their enforcement responsibilities for other programs. For the 2020/21 fiscal year, the Species at Risk Branch had a budget of \$10.5 million. For the 2021/22 fiscal year, the Species at Risk Branch has a budget of \$10.9 million.

Prior to 2019, responsibilities for the species at risk program were spread across a number of areas at the Natural Resources Ministry and neither the overall budget nor the FTEs were tracked.

In April 2019, the Environment and Natural Resources ministries signed a three-year Services Partnership Agreement that outlines the nature and extent of continuing and new science and research supports that the Natural Resources Ministry will provide to the Environment Ministry's Species at Risk Branch and Ontario Parks.

At the time of our audit, the Natural Resources Ministry's Science and Research Branch had 22 FTEs who spend more than a quarter of their time supporting or conducting species at risk work. Additionally, the Natural Heritage Information Centre in the Natural Resources Ministry compiles, maintains and distributes information about species, plant communities

and natural areas of conservation concern as part of its responsibilities.

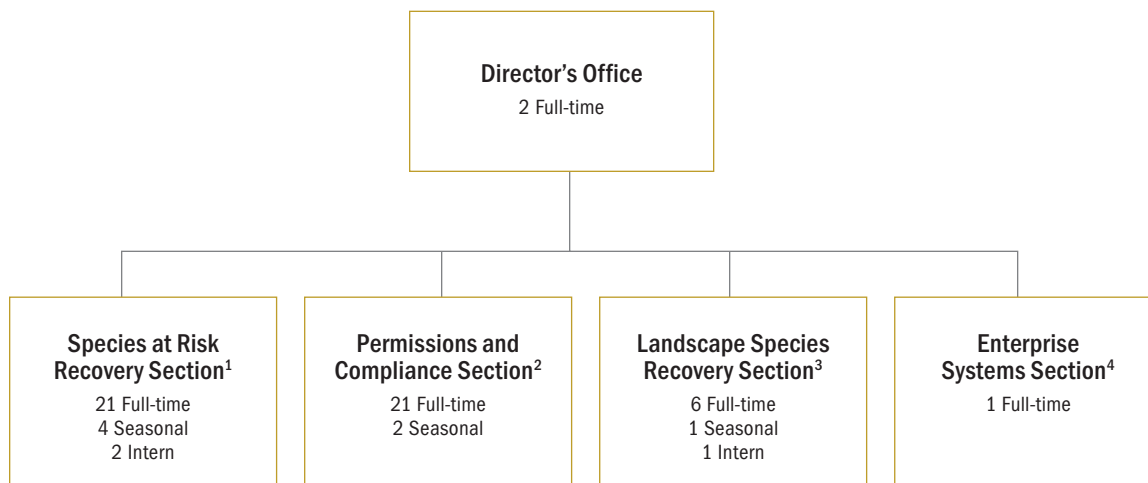
2.7.1 Species Assessment, Classification and Listing

The Act establishes the Committee on the Status of Species at Risk in Ontario (Assessment Committee). The Assessment Committee assesses and classifies species, and provides advice to the Environment Minister when requested.

The Act requires the Assessment Committee to submit a report to the Environment Minister in January of each year. The annual report is to summarize newly classified species and changes to the classification of currently listed species (see **Figure 6**). Within one year of receiving this annual report, the Environment Minister must update the

Figure 5: Ministry of the Environment, Conservation and Parks' Species at Risk Branch Organizational Chart, as of December 31, 2020

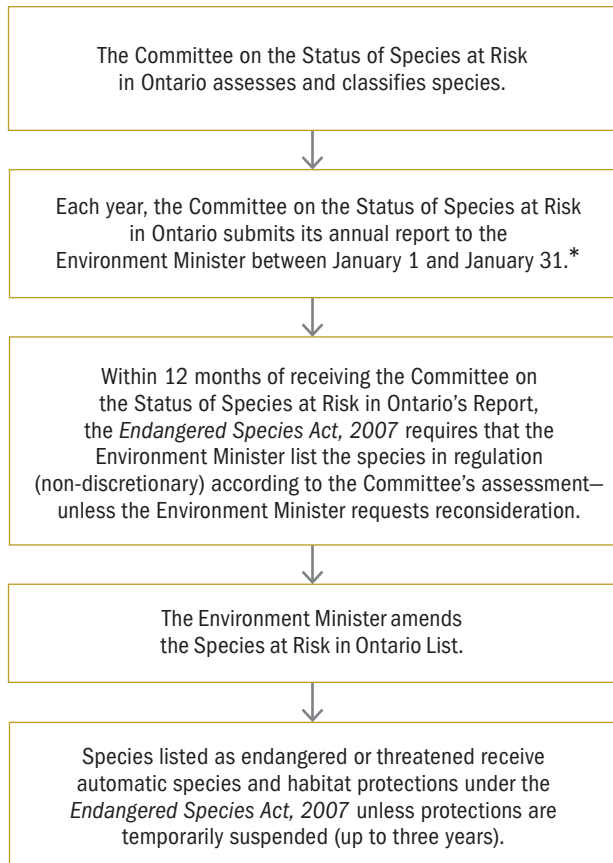
Source of data: Ministry of the Environment, Conservation and Parks



1. **Species at Risk Recovery Section:** responsibilities include leading the development of legislation, regulations and policies related to species at risk protection and recovery; providing secretarial support to the Committee on the Status of Species at Risk in Ontario (see **Section 2.7.1**); leading the development of recovery strategies, management plans and government response statements (see **Sections 2.7.2** and **2.7.3**); and administering the Species at Risk Stewardship Program (see **Section 4.6**).
2. **Permissions and Compliance Section:** responsibilities include working with proponents to navigate the approval's application process (see **Section 4.3**); providing program support for compliance activities (see **Section 4.4**); and building relationships with other ministries and municipalities.
3. **Landscape Species Recovery Section:** responsibilities include leading the implementation of the Services Partnership Agreement with the Natural Resources Ministry for co-ordination of science and data support (see **Section 2.7.4**), reporting and policy development and evaluation; and leading development of policies, approvals and projects that overlap with Crown land and the Far North.
4. **Enterprise Systems Section:** leads the establishment of an electronic permissions system as well as the development of guidance documents and tools to support proponents in the approvals process.

Figure 6: Species Assessment and Listing Process

Prepared by the Office of the Auditor General of Ontario



* The Committee on the Status of Species at Risk in Ontario may submit additional reports only when the Environment Minister requests reconsideration or where the Committee on the Status of Species at Risk in Ontario deems the species to be at imminent risk of extirpation or extinction.

Species at Risk in Ontario List (O. Reg. 230/08) to regulate the classified species. Protection and recovery activities only occur after species have been put on the list.

At the time of our audit, 243 species were listed in the Species at Risk in Ontario List regulation (O. Reg. 230/08) under the provincial *Endangered Species Act, 2007* as shown in **Figure 7**. The complete list of species at the time of our audit is found in **Appendix 6**.

2.7.2 Recovery Strategies and Management Plans

Within one year of an endangered species becoming regulated, and within two years of a threatened species becoming regulated, the Environment Ministry must ensure that a recovery strategy for the species is prepared. **Figure 8** outlines the species recovery process and timelines. Recovery strategies must identify the habitat needs of the species, describe the threats to the survival and recovery of the species, and recommend objectives on protection and recovery measures including any specific area that should be regulated as protected habitat. In order for recovery strategies to be based on independent scientific advice, the Environment Ministry contracts with persons or organizations with relevant scientific expertise to prepare recovery strategies.

A recovery strategy is not required for extirpated species but must be prepared if the Minister is of the

Figure 7: Ontario's Species at Risk under the *Endangered Species Act, 2007*, October 2021Source of data: *Endangered Species Act, 2007*; O. Reg. 230/08

Classification	Description	# of Species
Endangered	Lives in the wild in Ontario but is facing imminent extirpation or extinction	117
Threatened	Lives in the wild in Ontario, is not endangered, but is likely to become endangered if steps are not taken to address threats	54
Special Concern	Lives in the wild in Ontario, is not threatened or endangered, but may become threatened or endangered due to a combination of biological characteristics and identified threats	56
Extirpated	Lives somewhere in the world, and at one time lived in the wild in Ontario, but no longer lives in the wild in Ontario	16
Total		243

Figure 8: Species Recovery Process and Timelines

Source of data: Ministry of the Environment, Conservation and Parks



1. The Ministry may also develop customized species and/or habitat protection that limits the scope and/or timing of prohibitions.

2. Unless a notice is posted to notify the public additional time is needed.

3. Only if no federal plan is required.

4. Unless an alternate timeline is specified in a Government Response Statement.

opinion that reintroduction of the species to Ontario is biologically, socially and economically feasible.

Within five years of a species of special concern being regulated, the Environment Minister is required to ensure that a management plan is prepared for the species unless there is a federal recovery strategy or management plan. A management plan sets

out advice and recommendations to the Minister on approaches for the management of the species.

2.7.3 Government Response Statements and Reviews of Progress

The Environment Minister must generally develop a government response statement within nine months

of finalizing a species' recovery strategy or management plan. The Minister may delay preparation if additional time is required for one of three reasons specified in the Act. A response statement identifies the actions that Ontario intends to take to protect and recover the species, and identifies potential actions for third parties, such as conservation organizations. The Environment Minister must ensure the implementation of response statement actions that, in the opinion of the Minister, are feasible and within the responsibilities of the Minister.

Within five years of a response statement being published for an endangered, threatened or extirpated species (or within some other time frame specified in a response statement), the Act requires the Environment Minister to conduct a review of the progress toward the protection and recovery of the species. Reviews of progress are not required for species of special concern, even if a response statement is required for that species.

2.7.4 Scientific Research and Monitoring

Science plays a significant role in effectively protecting and recovering species at risk. Research and monitoring activities are conducted to gather scientific information to support the assessment, protection, recovery and stewardship of species at risk. The scale, scope, and necessary time, sometimes many years, for research and monitoring depend on the species, the current state of knowledge, and the threats it faces. Some work can be conducted by outside experts, but it is best suited for ministry staff and resources in many cases.

In April 2019, a three-year Services Partnership Agreement was entered into outlining the nature and extent of continuing and new science and research supports the Environment Ministry can expect from the Natural Resources Ministry. This agreement expires on March 31, 2022 and a new agreement would be necessary to continue this arrangement.

The Environment Ministry identifies its species research and monitoring priorities for consideration in future annual workplans, and the Natural

Resources Ministry assesses its capacity to either conduct the work internally or support the Environment Ministry in procuring or partnering for external expertise. In the fall of 2019, the Environment Ministry identified 12 new science projects and seven ongoing projects. These priority research projects included requests to:

- evaluate the importance of habitat features for bats;
- develop modelling for the survival of American eels during downstream movement;
- develop and implement a polar bear science program; and
- assess the effectiveness of caribou conservation and recovery efforts through monitoring.

As of March 2021, the Natural Resources Ministry has completed four (21%) of the 19 multi-year projects in progress. Twelve projects (63%) were identified as partially completed and/or research was ongoing, and three priority projects (16%) were not actioned (wolverine monitoring, caribou monitoring strategy and road reclamation). The Environment Ministry did not request any priority projects for the 2021/22 fiscal year because the Natural Resources Ministry had limited capacity to address them due to constraints related to COVID-19 on field work and travel.

2.7.5 Approvals (Agreements, Permits and Conditional Exemptions)

The Act makes it illegal to kill, harm, harass, capture, possess, transport, collect, buy, sell, lease, trade or take a living member of an endangered, threatened or extirpated species. It is also illegal to damage or destroy the habitat of endangered, threatened, or specified extirpated species. Penalties include fines and imprisonment. In addition, the Minister has the ability to customize species and habitat protections by regulation. The Act's prohibitions do not apply to species of special concern.

A broad restriction on all activities that may affect species at risk and their habitats may not be practical or possible. For example, a situation may arise that involves activities necessary to protect human health

and safety, or that will result in significant social and economic benefit to Ontario. **Figure 9** shows the different types of agreements, permits and conditional exemptions for prohibited activities that would otherwise not be allowed. Permits and agreements require approvals from the Environment Ministry before being issued whereas conditional exemptions are approved automatically. No agreements have been issued since 2013.

Only some types of agreements and permits are currently required under the *Environmental Bill of Rights, 1993* to be posted by the Environment Ministry on the Environmental Registry for public consultation before a decision is made on their issuance and conditions. The Environmental Registry is an online platform maintained by the Environment Ministry to notify and consult the public on ministries' environmentally significant decisions. However, the Natural Resources Ministry and now the Environment Ministry voluntarily post overall benefit permits for public consultation. There is typically a minimum 30-day public comment period for proposals. Consulting the public allows the Environment Ministry to inform and improve its decision-making, including considering local community knowledge.

2.7.6 Compliance and Enforcement

There are 47 investigators and other staff in the Ministry's Environmental Investigations and Enforcement Branch appointed to enforce the *Endangered Species Act, 2007* as part of their enforcement responsibilities. There are two main types of compliance and enforcement violations under the Act: contraventions of the general prohibitions on the harm to species and their habitats; and contraventions of the conditions of an approval (agreement, permit, conditional exemption). Penalties under the Act include a fine of not more than \$1,000,000 in the case of a first offence for a corporation, and a fine of not more than \$250,000 or imprisonment for a term of not more than one year for a first offence by any other person. Fines may be multiplied by the number of individual animals, plants and other organisms harmed.

2.7.7 Species at Risk Stewardship Program

The Act establishes the Species at Risk Stewardship Program to fund third parties to assist in the protection and recovery of species on the Species at Risk in Ontario List. Eligible applicants include Indigenous communities and organizations, academic institutions, businesses and conservation organizations, but provincial ministries and federal government departments and agencies are excluded. The purposes of this program are to promote:

- preserving and rehabilitating habitat, and enhancing other areas so that they can become habitat;
- implementing recovery strategies and management plans;
- public education and outreach programs relating to stewardship; and
- other activities to assist in the protection or recovery of species.

All stewardship project funding recipients must develop a targeted action plan, maintain detailed financial information and comply with regular reporting requirements that include evaluating project outcomes. Administration and other indirect costs cannot exceed 10% of the total project funding. Payments are not to be made to recipients until project milestones are completed, and interim and final reports that are satisfactory to the Ministry are submitted.

2.7.8 Species at Risk Program Advisory Committee

The Act also provides for the establishment of the Species at Risk Program Advisory Committee (Advisory Committee) to make recommendations to the Minister on implementing the species at risk program. The Advisory Committee is composed of up to 19 members (currently 15) appointed by the Lieutenant Governor in Council. The Act allows the Advisory Committee to provide advice on issues ranging from public education and outreach, to agreements and permits toward the protection and recovery of species. The Terms of Reference for the Advisory Committee requires preparing an annual report on its activities.

Figure 9: Agreements, Permits, Conditional Exemptions and Other Exemptions under the *Endangered Species Act, 2007*

Prepared by the Office of the Auditor General of Ontario

Type	Regulation or Section of the Act	Description
Stewardship Agreement	16(1)	Issued for activities to assist in the protection or recovery of a species that are not otherwise allowed under the Act. Conditions are put in place to minimize negative effects. This type of agreement has not been issued since 2013.
Landscape Agreement*	16.1(1)	Authorizes a party to carry out multiple activities throughout a geographic area that would otherwise be prohibited under the Act. The authorized party is to complete beneficial actions that will assist in the protection or recovery of one or more endangered, threatened or special concern species that exist in the geographic area. At least one of the benefitting species must also be an impacted species. This type of agreement has not been issued as of 2020.
Health or Safety Permit	17(2)(a)	- Issued to allow actions necessary for the protection of human health or safety. - Conditions or requirements for this type of permit include taking steps to minimize adverse effects on the species at risk, monitoring and reporting. Examples: - Reduce flooding near property by decreasing water levels impacting Blanding's turtle and its habitats. - Bridge replacement, where there is an impact to wood turtle and its habitats.
Protection or Recovery Permit	17(2)(b)	- Issued to permit activities that will assist in the protection or recovery of a species at risk. - Conditions or requirements for this type of permit include taking steps to minimize adverse effects on the species at risk, monitoring and reporting. Examples: - Blanding's turtle egg collection to support egg incubation and headstarting to recover their population in a park. - Mitigating threats and increasing populations of freshwater mussel species at risk in a river.
Overall Benefit Permit*	17(2)(c)	- Issued for activities that do not assist in the protection or recovery of species at risk where the Minister is of the opinion that steps have been taken to minimize adverse effects on species, alternatives have been considered and an overall benefit will be provided for the species through requirements imposed by conditions of the permit. The person carrying out the activity must improve the situation for the species compared to the previous condition before the permit. - Conditions or requirements for this type of permit include mitigating adverse effects on the species at risk impacted, and providing overall benefit (net positive effect) for species at risk impacted within a reasonable time frame, monitoring and reporting. Examples: - Subdivision development impacting Blanding's turtle, butternut trees and their habitats. - Construction of an open pit gold mine that will result in destruction of little brown myotis (bat) and northern myotis (bat) habitats.

Type	Regulation or Section of the Act	Description
Social or Economic Benefit Permit*	17(2)(d)	- Issued to allow activities that will result in a significant social or economic benefit to Ontario. - The Minister must also be of the opinion that the activity will not jeopardize the survival or recovery of the species in Ontario, there are reasonable alternatives that have been considered and there are reasonable steps to minimize adverse effects. Conditions of the permit minimize adverse effects to the species at risk impacted by the permitted activity. Examples: - Transit line expansion project known as the Scarborough Subway Extension, extending east from Scarborough Centre Station to Kennedy Station in Toronto, with adverse impacts to nine species at risk and their habitats. - Construction of an 1,800-kilometre system of new transmission lines in northwestern Ontario, impacting four species and their habitats (also covered as an Aboriginal permit).
Aboriginal Permit*	19(3)	Issued for activities undertaken by a band (as defined in the federal <i>Indian Act</i>), a tribal council, or an organization that represents a territorially based Aboriginal community. It may include conditions or requirements like monitoring and reporting.
Conditional Exemptions	O. Reg. 242/08	- Authorizes a party to carry out activities without seeking a permit or agreement. Conditions can include registering the activity with the Environment Ministry, undertaking measures to minimize the adverse effects of the activity on species at risk, creating and following a mitigation plan, monitoring and reporting on the effectiveness of mitigation measures. There are currently 17 conditional exemptions, which apply to a variety of activities and specific species; - Aquatic species (section 23.4) - Barn swallow (section 23.5) - Bobolink, eastern meadowlark (section 23.6) - Butternut (section 23.7) - Chimney swift (section 23.8) - Drainage works (section 23.9) - Early exploration mining (section 23.10) - Ecosystem protection (section 23.11) - Hydro-electric generating stations (section 23.12) - Transition - development ongoing when species first listed, etc. (section 23.13) - Pits and quarries (section 23.14) - Possession for educational purposes, etc. (section 23.15) - Safe harbour habitat (section 23.16) - Species protection, recovery activities (section 23.17) - Threats to health and safety, not imminent (section 23.18) - Trapping – incidental catch (section 23.19) - Wind facilities (section 23.20) Examples: - Operation of a wind facility impacting 18 species at risk and their habitats. - Mine rehabilitation to block access to potentially unsafe underground mine infrastructure in the case of threats to human health and safety that is not imminent. The work impacts little brown myotis (bat) and northern myotis (bat) and their habitats.

Type	Regulation or Section of the Act	Description
Other Exemptions	O. Reg. 242/08	- A variety of eligible activities and persons are exempted subject to conditions. There are currently 24 of these types of exemptions under the regulation. These types of exemptions do not require a registration through the registry; - Algonquin wolf (section 1.1) - American ginseng (section 2) - Bobolink, eastern meadowlark (section 4.1) - Eastern flowering dogwood (section 5.1) - Northern bobwhite (section 6) - Virginia mallow (section 6.1) - Caribou (boreal population) – cast antlers (section 7) - Protection of health or safety, etc. (section 8) - Protection of property (section 9) - Escape or unauthorized release from captivity (section 10) - R.H. Saunders Station – American eel (section 11.1) - Commercial cultivation of vascular plants, etc. (section 12) - Fishing – incidental catch (section 13) - Veterinarians (section 15) - Rehabilitation or care – wildlife custodians (section 16) - Rehabilitation or care – transfer to Ministry employees (section 17) - Zoos (section 18) - Falconry (section 19) - Possession prior to listing, etc. (section 20) - Tanning or taxidermy (section 21) - Forest operations in Crown forests (section 22.1) - Transition – development and infrastructure (section 23) - Development and infrastructure – reddsides dace (section 23.1) - Development – bobolink, eastern meadowlark (section 23.2) Examples: - Allowing hunting and trapping of Algonquin wolf in some locations. - Incidental fishing by-catch. - Veterinarians transporting a species at risk. - Protection of property where a species at risk is damaging the property.
Other Exemptions	<i>Crown Forest Sustainability Act, 1994</i>	Forest operations in Crown forests are exempt.

* Can be used to apply to prescribed “conservation fund species” and the proponent pays a fee to the Species at Risk Conservation Fund. The Species at Risk Conservation Trust then funds other parties to undertake conservation work (rather than the proponent) subject to various requirements. This fund had not been established at the time of our audit.

3.0 Audit Objective and Scope

Our audit objective was to assess whether the Ministry of the Environment, Conservation and Parks and the Ministry of Northern Development, Mines, Natural Resources and Forestry have a long-term strategy, and cost effective and efficient systems and processes to:

- assess and identify species at risk;
- protect species at risk and their habitats;
- promote the stewardship and recovery of species at risk and their habitats; and
- measure and publicly report on progress towards the protection and recovery of species at risk and their habitats.

In planning our work, we identified the audit criteria (**Appendix 7**) we would use to address our audit objective. We established these criteria based on a review of applicable legislation, policies and procedures, internal and external studies, and best practices. The senior management of both ministries reviewed and agreed with the suitability of our objective and associated criteria.

We conducted our audit from January 2021 to July 2021. We received written representation from management of both ministries that, effective November 4, 2021, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusions of this report.

Due to COVID-19, our work was conducted remotely. We engaged the ministries and other stakeholders through video-conferencing, phone calls and emails. We interviewed senior management and staff, and reviewed relevant data and documents from both ministries.

We asked the federal government and the six Canadian provinces and territories that have standalone species at risk legislation, about their approaches and processes for different aspects of species at risk conservation and received responses

from the Northwest Territories, Quebec, New Brunswick, and the federal government. In addition, we interviewed staff from organizations who work on species at risk protection and recovery—such as the Canadian Wildlife Service, the Nature Conservancy of Canada, the Wildlife Conservation Society Canada and Ontario Nature—to obtain their perspectives on species at risk protection and recovery in Ontario. We also interviewed current and former members of the Committee on the Status of Species at Risk in Ontario, the Species at Risk Program Advisory Committee, the Ontario Biodiversity Council, and the federal Committee on the Status of Endangered Wildlife in Canada. To identify best practices, we reviewed scientific literature and international standards about species at risk protection and recovery. We also interviewed academic experts in species at risk policy and science.

We conducted our work and reported on the results of our examination in accordance with the Canadian Standard on Assurance Engagements—Direct Engagements issued by the Auditing and Assurance Standards Board of the Chartered Professional Accountants of Canada. These standards involve conducting the tests and other procedures that we consider necessary, including obtaining advice from external experts when appropriate to obtain a reasonable level of assurance.

Our Office applies the Canadian Standard on Quality Control and, as a result, maintains a comprehensive quality control system that includes documented policies and procedures with respect to compliance with the code 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 Accountants of Ontario, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

4.0 Detailed Audit Observations

4.1 Species Assessment and Classification

4.1.1 No New Species at Risk were Protected for Two Years Because the Assessment Committee Lacked Quorum

The Committee on the Status of Species at Risk in Ontario (Assessment Committee) is responsible for the critical task of assessing and classifying Ontario species as being endangered, threatened, special concern, extirpated, extinct or not at risk. However, the Assessment Committee was unable to function and fulfill its mandate during the second half of 2018 or any of 2019. As a result, no new species at risk were regulated in order to receive protections under the Act in 2019 or 2020 (see **Figure 10**).

The Assessment Committee may consist of up to 12 members, and must have a minimum of eight members present at meetings, including the Chair or Deputy Chair, to conduct committee business. The Minister is responsible for recommending appointments and re-appointments of members to the Assessment Committee, including the Chair or Deputy Chair, to the Lieutenant Governor in Council

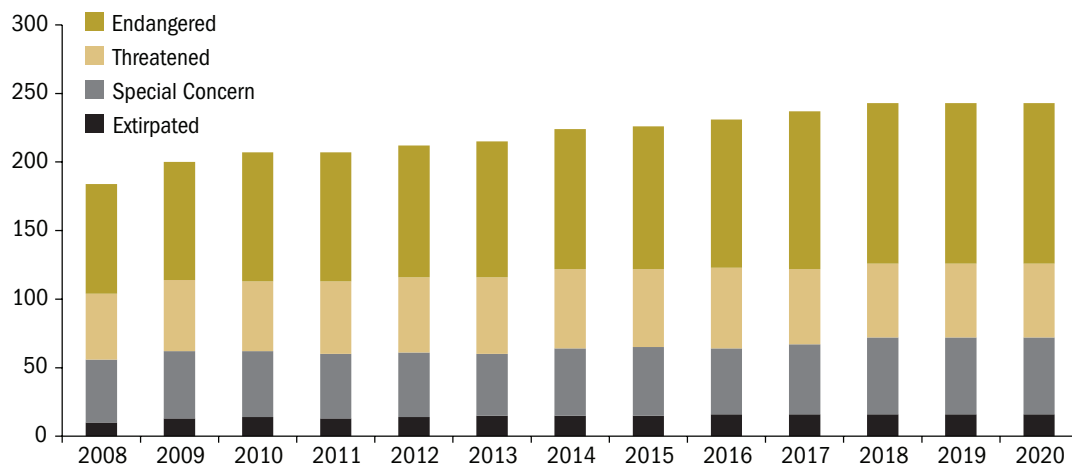
who approves the appointments. The Assessment Committee had 11 members at the time of our audit but there was an insufficient number of members in 2018 and 2019. From August 12, 2018 to December 11, 2018, the number of members dropped to eight, and there was no Chair or Deputy Chair appointed. This resulted in the committee not being able to make quorum. In 2019, there were seven or fewer members for 10 months of the year.

The Assessment Committee experienced issues meeting quorum in 2016 and postponed its spring meeting when the terms of four members expired and the Natural Resources Ministry was delayed in renewing them.

In addition to an insufficient number of members to function, there was no Deputy Chair until March 2020, though members had advised the Natural Resources Ministry in 2018 about the need for a Deputy Chair to act in the Chair's absence. The Assessment Committee attempted to have a member designated as the Deputy Chair in fall 2018. The Natural Resources Ministry had in fact approved the member who volunteered to be Deputy Chair, but the Environment Ministry decided against it. This occurred when the program was in transition from the Natural Resources Ministry to the Environment Ministry.

Figure 10: Changes to the Classifications of Species at Risk in O. Reg. 230/08, 2008–2020*

Source of data: Ministry of the Environment, Conservation and Parks



* No annual reports were submitted for 2018 and 2019 by the Committee on the Status of Species at Risk in Ontario.

The Assessment Committee must include on its priority list for assessment Ontario species that have been classified by the federal Committee on the Status of Endangered Wildlife in Canada—and have not yet been assessed by the Assessment Committee. Both the federal and Ontario committees usually meet twice a year to conduct species assessments—they meet independently of one another and meetings take place once in the spring and once in the fall. The federal committee assesses the Canada-wide status of a species, whereas Ontario’s committee assesses a species’ status specifically in Ontario. Ontario’s committee generally assesses species six months after they have been assessed by the federal committee as it uses the status reports prepared for the federal committee as the basis of the provincial assessment reports. Because of the provincial committee’s inability to make quorum in 2018 and 2019, by spring 2020, there was a backlog of 46 species requiring assessment in Ontario.

As a result of Ontario’s Assessment Committee’s inability to function, the Species at Risk in Ontario List has not been updated since 2018, and species have not been protected as soon as they could have been. For example, two populations of threatened lake whitefish, found in a deep, cold inland lake in Ontario, would have otherwise been assessed in fall 2019 and therefore protected starting in January 2021. Instead, these fish will not be protected under the Act until January 2022.

During 2020—once it had sufficient members—the Assessment Committee classified 35 species from the backlog and provided its annual report to the Environment Ministry in January 2021. The Environment Ministry shared the results of the new classifications with the public in April 2021 and must update the Species at Risk in Ontario List by January 2022. The updated list will have seven new endangered species: Gillman’s goldenrod (a plant), shagreen (a snail), toothed globe (a snail), black ash (a tree), white-rimmed shingle lichen, false-foxglove sun moth, and downy yellow false foxglove (a plant). Additionally, seven new

threatened species also will be added: lake whitefish—Opeongo Lake large-bodied populations, lake whitefish—Opeongo Lake small-bodied populations, Carolina mantleslug, Hudsonian godwit (a bird), smooth yellow false foxglove (a plant), fern-leaved yellow false foxglove (a plant), and hairy valerian (a plant). Red-tailed leafhopper (an insect) was added as a new species of special concern. No currently listed species improved to the degree that they were classified as no longer at risk.

The Assessment Committee assesses and classifies Ontario species, determining what species will be regulated under the *Endangered Species Act, 2007*. Because it is only after species have been regulated that protection and recovery requirements apply, it is critical that the Assessment Committee maintain sufficient membership to operate.

4.1.2 Current Process for Appointing and Re-appointing Members to the Assessment Committee is Not Transparent

We found that the process for appointing and re-appointing new members to the Assessment Committee was not transparent.

The *Endangered Species Act, 2007* states that members may only be appointed to the Assessment Committee if the Environment Minister considers that the person has relevant expertise in a range of scientific disciplines, or in community knowledge or Indigenous traditional knowledge.

Until fall 2019, vacancies on the Assessment Committee were broadly advertised. Applications submitted by interested individuals were screened by technical and program staff with species at risk expertise. Standardized review criteria were used to evaluate applicants based on their qualifications, experience related to conducting species assessments, and how they could fill known expertise gaps on the Assessment Committee. Staff with species at risk expertise then identified and recommended qualified candidates to the Minister for interviews.

After the Environment Ministry took responsibility for the program in 2019, branch staff reviewed applications submitted by 48 individuals to fill five positions on the committee. Branch staff recommended nine candidates for interviews. The Minister appointed two of the nine recommended candidates.

Our review of 2019 applicant evaluation files showed that the Minister's office also appointed one candidate who was not recommended after staff with species at risk expertise had determined the candidate was marginally qualified. The Minister also appointed five individuals in 2019 and 2020 who were not screened or recommended by staff with species at risk expertise. The Environment Ministry could not provide us with details about how these six recently appointed members were identified, screened and chosen.

Furthermore, we found that from 2017 to 2020, five committee members were dismissed by the Minister who were willing to continue to serve on the committee when their terms expired. They were not told the reason for their dismissal. Two members were university professors, two worked for conservation authorities, and one was a botanist with the federal government. All were considered productive and well-respected members of the Assessment Committee.

The Assessment Committee Chair expressed concern over the lack of transparency in the appointment and re-appointment process in a letter to the Deputy Minister in 2017, and by an Assessment Committee member in a letter to the Minister in 2019. The dismissal process negatively influenced committee morale and led to some members' unwillingness to continue to serve or recommend colleagues for committee membership.

Ontario's current process for filling vacancies on its Assessment Committee contrasts with the clearly defined and transparent process used to fill vacancies on the federal assessment committee. The federal assessment committee advertises vacancies on its website and via email notifications, and new members are selected by a committee comprising existing members who score applicants against established criteria.

RECOMMENDATION 1

So that independent expertise is used to promptly assess species and improve the status of species at risk in line with the purpose of the *Endangered Species Act, 2007*, we recommend that the Ministry of the Environment, Conservation and Parks:

- ensure that membership on the Committee on the Status of Species at Risk in Ontario is sufficient for quorum to be able to carry out its mandate to assess and classify species for subsequent recovery and protection efforts; and
- develop, publish, and follow transparent and accountable procedures so that technical and program staff with species-at-risk expertise screen and recommend to the Minister candidates for appointment and re-appointment to the Committee on the Status of Species at Risk in Ontario.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks agrees with the recommendation to ensure membership on the Committee on the Status of Species at Risk in Ontario is sufficient so that quorum is achieved to carry out its mandate.

The *Endangered Species Act, 2007*, sets out the role and member qualifications of the Committee on the Status of Species at Risk in Ontario. The Environment Ministry will continue to ensure that the processes outlined by the Public Appointments Secretariat and the Agencies and Appointments Directive are adhered to in appointments and reappointments to the Committee on the Status of Species at Risk in Ontario. The Environment Ministry does not intend to develop procedures that are unique to the Committee on the Status of Species at Risk in Ontario.

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not agree to develop, publish, and follow transparent and

accountable procedures so that technical and program staff with species-at-risk expertise screen and recommend to the Minister candidates for appointment and re-appointment to the Committee on the Status of Species at Risk in Ontario.

4.1.3 Assessment Committee Requires Additional Resources to Fulfill its Mandate

The Assessment Committee requires additional technical resources to fulfill its mandate. In order to conduct species assessments, the committee must assemble and analyze data correctly as they are used to determine whether a species meets a threshold for a given classification status. In May 2017, the Assessment Committee requested that the Natural Resources Ministry provide it with technical support for this, and subsequently referenced this need in meeting minutes. We found that the need for support with these analyses remains an issue for the current committee. In comparison, the secretariat for the federal assessment committee—funded and staffed by the Canadian Wildlife Service—provides technical support as required to committee members.

The Assessment Committee has also identified that the Environment Ministry should acquire assessment software for rapid screening to prioritize species in need of assessment. This software uses the international criteria on which Ontario's assessment criteria are based (see **Section 4.1.4**) and is used by the federal assessment committee to prioritize the species it assesses. This software can help the Assessment Committee decide how to most efficiently spend its time, which is increasingly important as species that will not be assessed by the federal assessment committee can then be considered for assessment in Ontario—for example, American white pelican, bald eagle, moose and wild rice. The federal assessment committee has not prioritized these species because it is required by the federal *Species at Risk Act* to give priority to species that are “more likely to become extinct.”

Finally, the Assessment Committee has identified that funds may be needed to contract external consultants to prepare comprehensive status reports for species that have not been assessed by the federal assessment committee. The federal assessment committee contracts external consultants to prepare status reports in advance of its species assessments. These status reports form the basis of the federal committee's status assessments and subsequent assessments by Ontario's committee. Preparing status reports falls outside the scope of Assessment Committee member responsibilities, but is recognized by the committee's Terms of Reference.

RECOMMENDATION 2

So that the Committee on the Status of Species at Risk in Ontario (Assessment Committee) has the resources needed to effectively fulfill its mandate as required by the *Endangered Species Act, 2007*, we recommend that the Ministry of the Environment, Conservation and Parks ensure that the Assessment Committee be provided access to the technical support it needs, and be supplied with the necessary tools and the funds to procure needed status reports to promptly and effectively assess species.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks acknowledges and agrees with the recommendation to provide the Committee on the Status of Species at Risk in Ontario with technical support and tools to do its work.

That is why the Environment Ministry is acquiring specific software for rapid screening to prioritize species in need of assessment, as requested by the Committee on the Status of Species at Risk in Ontario. The Environment Ministry will also continue to support the Committee on the Status of Species at Risk in Ontario in obtaining required information, as it identifies specific needs.

4.1.4 Legislative Changes to Species Assessment and Classification Criteria Are Inconsistent with Species Assessment and Classification Criteria across Canada and May Result in Unprotected Species at Risk in Ontario

Legislative changes to the *Endangered Species Act, 2007* in 2019 to the species at risk classification criteria now require the Assessment Committee to consider a species' condition outside, as well as inside, Ontario. This change may result in some currently listed species at risk losing protection if reassessed at a future date or some newly assessed species not being protected in the future.

As required under the Act, the Assessment Committee maintains the list of criteria used to assess and classify species in Ontario. These criteria include consideration of population size, trends and distribution. For example, a species may be considered threatened if the number of mature individuals in Ontario has declined by more than 50% in the last 10 years or three generations, or may be considered endangered if the decline has been more than 70%. These criteria are based on the scientific quantitative criteria used to assess species globally by the international scientific community, and across Canada by the federal Committee on the Status of Endangered Wildlife in Canada.

However, the *More Homes, More Choices Act, 2019* amended the Act's criteria. The Assessment Committee is now required to consider not only the condition of species in Ontario but also the "condition of the species across the broader biologically relevant geographic range in which it exists both inside and outside of Ontario." The previous criteria considered the condition of species only in Ontario when assessing species. Furthermore, the Act now requires that if the condition of the species across this range is at a lower level of risk than if only the population in Ontario is considered, the Assessment Committee must classify the species at the lower level of risk. At the time of our audit, no other province or territory in Canada uses this classification criterion.

Previously, species assessments were based on their biological status in Ontario only, while accounting for whether populations were functionally connected—able to move back and forth—with areas outside Ontario. This 2019 change may result in "edge of range species" not being protected under the Act. For example, the gray fox is classified as threatened—isolated in a single population on Pelee Island on Lake Erie—but is relatively common in the United States. However, populations of species like these that live at the edge of their geographical range, can have unique genetic traits, be especially well adapted to northward range shifts because of climate change, not be functionally connected to other populations, and also face different threats than elsewhere.

The Assessment Committee was required to classify two species at lower risk levels in 2020 after the legislative change because populations other than those in Ontario were considered. The chimney swift (a bird) met the criteria for assessment as endangered in Ontario based on the declining number of mature individual birds, declining food sources and loss of roosting habitat, but its classification was reduced to threatened based on its condition outside of Ontario. Hairy valerian (a plant) also met the criteria for endangered in Ontario based on the small area in which it is found, but its classification was reduced to threatened based on its lower risk status in Wisconsin, Illinois, Michigan and Minnesota. In both cases, the classification of threatened instead of endangered results in a one-year delay in the deadline for preparing a recovery strategy.

This 2019 amendment does not define "condition" or what is considered a species' "broader biologically relevant geographic range," leaving this language open to interpretation. In 2020, the Assessment Committee asked the Environment Ministry for guidance on how to interpret these terms, and was provided with clarification on the legal requirements and policy intent. The committee drafted its own interpretation and is still working to implement this new concept in a consistent manner.

As well, information on species in areas outside of Ontario may be of varying reliability or may not exist—they may be out of date or inaccurate, and information on population trends, threats and efforts to protect and recover species may be unavailable or unknown.

Due to this legislative change, some species that are currently at risk in Ontario may lose protections, and some newly assessed species may never receive protections. Our Office compared the status of Ontario's endangered and threatened species—those that currently receive protections based on their status under the Act—with adjacent jurisdictions. We found that 78 (or 67%) of 117 endangered species and 34 (or 63%) of 54 threatened species in Ontario are classified at a lower risk level in one or more adjacent jurisdictions (Manitoba, Quebec, Michigan, Minnesota, New York, Ohio and Pennsylvania).

Moreover, since the criteria for species classifications have changed, going forward it will be difficult to assess or track progress in recovering species at risk simply by looking at changes to their classification on the Species at Risk in Ontario List. For example, in the future, a species may be down-listed from endangered or threatened to special concern not because the species' status has actually improved in Ontario, but because the Assessment Committee is now considering the species' status in areas outside of Ontario. As well, in some cases, individual species classifications may more accurately be described as the status of the species in "Ontario and Manitoba" for example, rather than their status in Ontario only.

RECOMMENDATION 3

So that species at risk receive protections under the *Endangered Species Act, 2007* when appropriate, we recommend that the Ministry of the Environment, Conservation and Parks align the assessment and classification criteria used by the Committee on the Status of Species at Risk in Ontario with that used by the federal and other provincial or territorial assessment committees.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks acknowledges and agrees with the recommendation to align the assessment and classification criteria used by the Committee on the Status of Species at Risk in Ontario, when appropriate.

The Environment Ministry is supportive of the Committee on the Status of Species at Risk in Ontario continuing to utilize the existing International Union for Conservation of Nature and the Committee on the Status of Endangered Wildlife in Canada criteria with appropriate modifications taking into consideration the 2019 amendments to the *Endangered Species Act, 2007*.

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not agree to align the assessment and classification criteria used by the Committee on the Status of Species at Risk in Ontario with that used by the federal and other provincial and territorial assessment committees for all species.

4.2 Recovery Planning

4.2.1 Recovery Strategies Delayed for 17 Endangered and Threatened Species

There were 117 endangered and 54 threatened species on the Species at Risk in Ontario List at the time of our audit (see **Appendix 6**). As of June 2021, recovery strategies had been completed for 154 (or 90%) of these species but were delayed for six endangered and 11 threatened species (see **Figure 11**). Eight (or 47%) of these 17 species have had the preparation of their recovery strategies delayed for eight or more years.

Recovery strategies identify habitat needs and threats to species. They also recommend goals and objectives for the protection and recovery of species, and identify approaches that can be used to achieve

the recommended objectives. Recovery strategies are important because they form the basis of the Environment Ministry's response statements—policies that describe what actions the province will take or support to recover species at risk.

The Act requires that a recovery strategy must be prepared within one year for endangered species and two years for threatened species from the date that the species is placed on the Species at Risk in Ontario List. However, the Ministry may take additional time to ensure the completion of recovery strategies if they involve complex issues, are prepared in co-operation with other jurisdictions like the federal government, or the government wants to prioritize the preparation

of recovery strategies for other species. To do so, the Minister must post a notice on a Government of Ontario website to provide the reason for the delay and an estimate of when the recovery strategy will be completed—and must do this before the one- or two-year statutory deadlines for endangered or threatened species recovery strategies expires. The Environment Ministry posts these notices on the Environmental Registry of Ontario.

For all 17 species with delayed recovery strategies, the government posted public notices about the delays. Recovery strategies have been delayed for 14 species to allow for co-operation with the federal government—the Environment Ministry

Figure 11: Outstanding Recovery Strategies for Endangered and Threatened Species, as of June 2021

Prepared by the Office of the Auditor General of Ontario

Species	Species at Risk in Ontario List Status	Date Regulated	Ministry's Rationale for Delay	Included in Animal Justice's 2017 Lawsuit
Algonquin wolf	Threatened	Jun 15, 2016	Complex issues	No
Black redhorse	Threatened	Jun 30, 2008	Co-operation with federal government	Yes
Broad-banded forestsnail	Endangered	Jun 15, 2016	Co-operation with federal government	No
Cerulean warbler	Threatened	Jun 8, 2011	Co-operation with federal government	Yes
Chimney swift	Threatened	Sep 10, 2009	Co-operation with federal government	Yes
Fawnsfoot	Endangered	Sep 10, 2009	Co-operation with federal government	Yes
Hickorynut	Endangered	Jan 13, 2012	Co-operation with federal government	Yes
Lilliput	Threatened	Jun 27, 2014	Co-operation with federal government	Yes
Louisiana waterthrush	Threatened	Jun 2, 2017	Co-operation with federal government	No
Mountain lion (cougar)	Endangered	Jun 30, 2008	Priority given to other species	Yes
Pugnose minnow	Threatened	Jan 24, 2013	Co-operation with federal government	Yes
Shortjaw cisco	Threatened	Jun 30, 2008	Co-operation with federal government	Yes
Silver chub	Threatened	Jan 24, 2013	Co-operation with federal government	Yes
Silver shiner	Threatened	Jan 13, 2012	Co-operation with federal government	Yes
Spoon-leaved moss	Endangered	Jun 30, 2008	Priority given to other species	Yes
Threehorn wartyback	Threatened	Jun 27, 2014	Co-operation with federal government	Yes
Warmouth	Endangered	Jun 15, 2016	Co-operation with federal government	No

plans to adopt the federal recovery strategies developed for these species rather than prepare its own, but the timelines do not align with the *Endangered Species Act, 2007*. Recovery strategies for three other species have been delayed to give priority to other species, or due to complex issues:

- The Algonquin wolf has been regulated as a threatened species since 2016 when it was up-listed from special concern. Its population has been estimated at between 250 and 1,000 animals. Despite the Act's general prohibitions, the Algonquin wolf may be hunted and trapped across parts of its range due to a regulatory exemption under the Act. The hunting and trapping of wolves have economic and social importance for some people, yet it is a significant threat to the survival of Algonquin wolves. Given the best available scientific evidence, public opposition to allowing the hunting and trapping of this threatened species, and the negligible financial benefit of these activities, the former Environmental Commissioner of Ontario recommended in 2017 that the Algonquin wolf be fully protected under the Act across its range. A recovery strategy was required by June 2018, but it was delayed due to "complex issues" and was anticipated to be finalized by September 2019. A draft recovery strategy, released in January 2018, concludes that delays in implementing recovery actions may jeopardize the long-term recovery of the species. In April 2019, the Environment Ministry presented options internally that included: 1) further extending the timelines on the recovery strategy and subsequent response statement; 2) the Minister requiring the Assessment Committee to reassess the Algonquin wolf, which may result in its down-listing and removal of existing prohibitions; and 3) revoking the current limited restrictions on hunting and trapping to address "sector concerns." The delay for this recovery strategy is unreasonable.
- The mountain lion (cougar) has been regulated as an endangered species since 2008 when the Act came into effect. Cougars are Canada's largest wild cat and were once found across much of

North America. The main threat to the species is human disturbance and forest clearing that destroys their habitat. A 2011 study by Natural Resources Ministry staff in the *Canadian Field-Naturalist* confirmed the presence of free-ranging cougars in Ontario, but the current population size is unknown. A recovery strategy was required by June 2013, but it has not been prepared, as other species were prioritized. The deadline for preparation was initially delayed to May 2016, but in June 2016 the deadline was again extended. The Ministry did not provide an estimate for when it would be finalized. The delay for this recovery strategy is unreasonable.

- Spoon-leaved moss has been regulated as an endangered species since 2008 when the Act came into effect. It is found at only a few sites in southern Ontario, and is threatened by development and invasive species. A recovery strategy was required by June 2013. It has not been prepared, as other species were prioritized, but was estimated to be finalized by May 2016. The Environment Ministry has now forecast that the recovery strategy for the spoon-leaved moss will be completed by December 2022. The delay for this recovery strategy is unreasonable.

Until these recovery strategies are complete, the Ministry is not required to develop response statements (see **Section 4.2.2**) that identify the actions it intends to take or support to help recover these species. This delays provincial efforts to improve the status of these species.

These current delays are not new. In September 2017, Animal Justice (a non-profit charity) commenced an application for judicial review alleging that the Natural Resources Minister had failed to ensure that 37 recovery strategies for species at risk were prepared within the time specified by the Act, or fulfill the notice requirements in the Act that would allow additional time to prepare recovery strategies. The parties reached a settlement in May 2018. The government agreed that it would publicly provide quarterly updates on the progress made on the 37 outstanding recovery strategies for three years, including a

timetable for their development. At the time of our audit, 13 of the 37 (or 35%) recovery strategies were still outstanding (see **Figure 11**).

The timely preparation of recovery strategies is critical because delays in their preparation can result in delays in the province's efforts to protect and recover species at risk.

RECOMMENDATION 4

To identify goals, objectives and approaches to improve the status of all species at risk, and to be transparent and accountable to the public and timely in meeting its legislative responsibilities under the *Endangered Species Act, 2007*, we recommend that the Ministry of the Environment, Conservation and Parks:

- ensure the preparation and public release of recovery strategies for Algonquin wolf, mountain lion (cougar), and spoon-leaved moss by December 2022; and
- post the list of outstanding recovery strategies and management plans, and a timetable for their development on the Environmental Registry on a quarterly basis.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks agrees about the importance of transparency and accountability to the public and timeliness in meeting legislative responsibilities under the *Endangered Species Act, 2007*.

As recommended, the Environment Ministry is committed to ensuring the preparation and public release of a recovery strategy for spoon-leaved moss by December 2022.

The Environment Ministry will finalize the recovery strategy, as appropriate, for Algonquin wolf pending the outcome of the reassessment by the Committee on the Status of Species at Risk in Ontario which is occurring in November 2021. A draft recovery strategy for Algonquin wolf was posted on the Environmental Registry for public

comment in January 2018. However, since the species was assessed and listed as threatened in 2016, questions have been raised about the abundance and distribution of this species and the history of breeding among canids (members of the dog family) in Ontario.

The Environment Ministry will finalize the development of the recovery strategy for mountain lion (cougar), as appropriate pending the outcome of the upcoming reassessment by the Committee on the Status of Species at Risk in Ontario. The January 2020 Committee on the Status of Species at Risk in Ontario report identified mountain lion on the list of species being considered for assessment or reassessment in 2021.

The Environment Ministry agrees with the Auditor General's recommendation to share information publicly about the status and timelines for recovery strategies and management plans and will undertake an analysis to determine how best to achieve that objective.

4.2.2 Response Statements for Four Species Have Been Delayed for Seven or More Years

The Act requires that the Ministry prepare a response statement for each recovery strategy or management plan prepared under the Act. Response statements identify what actions Ontario intends to take or support to help recover species.

The response statement must generally be completed within nine months of the recovery strategy or management plan being finalized and shared with the public. The timely preparation of response statements is critical because delays in their preparation may result in further delays to recover affected species.

At the time of our audit, response statements had been prepared for 164 (or 98%) of the 168 species currently requiring a response statement. However, response statements for four species have been delayed.

The Ministry may take additional time to complete the response statement if the Minister publishes a notice on a Government of Ontario website that states

that additional time is required, provides the reasons for why the time is required and provides an estimate of when the government response statement will be completed before the nine-month statutory deadline expires. The Environment Ministry posts these notices on the Environmental Registry.

At the time of our audit, required response statements for four of the 168 species had been delayed because they involve complex issues. The Natural Resources Ministry posted notices of delay for:

- lake sturgeon (Great Lakes—Upper St. Lawrence populations) (endangered) due in 2012;
- lake sturgeon (Saskatchewan—Nelson River populations) (threatened) due in 2012;
- lake sturgeon (Southern Hudson Bay—James Bay populations) (special concern) due in 2012; and
- American eel (endangered) due in 2014.

In September 2012, the Natural Resources Ministry posted a notice on the Environmental Registry that the response statement for the three populations of lake sturgeon was forecast to be complete by June 2013. In December 2014, the Natural Resources Ministry posted a notice that additional time would be required for the American eel's response statement, but did not forecast a timeline for completion.

For these species, the Ministry stated that it required additional time to engage with key interested parties—in particular, hydroelectric dam operators. Lake sturgeon and American eel are affected by hydroelectric dams that block their movements along waterways. Additionally, hydroelectric dams can kill American eels, which require structural modifications like fish ladders (structures that allow migrating fish passage over or around an obstacle) in order to lessen their impacts.

While the issues involved are complex, the prolonged delays in preparing response statements are unreasonable. The province has an obligation to set out the actions it intends to take, even if the identified actions do not immediately solve the problem at hand. Preparation of robust response statements maintains government accountability for species at risk, even in the absence of a perfect solution. Response statements should be

“robust, effective, and defensible” as recommended by the former Environmental Commissioner of Ontario in 2009.

Additionally, the recovery strategies for 17 threatened and endangered species have been delayed (see **Section 4.2.1**). This means there is no requirement yet to prepare response statements describing what actions will be taken to protect and recover them.

4.2.3 Response Statements are Generally Insufficient to Improve the Status of Species at Risk

Our review of a sample of 30 response statements from 2010 to 2020 found that the province's goals are generally less ambitious than the scientific advice in the recovery strategies, and government-led actions are often not specific to the species and include meeting existing legal obligations. We also found that response statements do not establish performance measures and do not provide cost estimates to help inform decisions about which protection and recovery actions to take or prioritize. As a result of these weaknesses, implementing response statement actions, in general, is unlikely to improve the status of species at risk.

Response statements are the provincial government's species-specific policy that identifies the goal and what actions the province intends to take to protect and help recover species. Response statements include two types of actions: “government-led” actions are those that a provincial ministry or agency will undertake, while “government-supported” actions are those that the government endorses as necessary for the protection and recovery of species and looks to external third parties to undertake. One of the ways the government supports undertaking these actions is through the Species at Risk Stewardship Program (see **Section 4.6**).

The Act requires that the Environment Minister implement any actions in a response statement that, in the opinion of the Minister, are feasible and within the responsibilities of the Minister. Response

statements are prepared by Ministry staff based on advice provided in the recovery strategy or management plan, social and economic considerations, and input from stakeholders, Indigenous communities, other jurisdictions and the public.

Of the sample of 30 response statements we reviewed, we found that their goals are generally less ambitious than the corresponding recovery strategy goals. We found that 24 (or 80%) of 30 recovery strategies recommended goals that involve increasing the populations of the species at risk, and that six (or 25%) of these increases are qualified. In contrast, we found that 23 (or 77%) of 30 response statements contained goals that involve increasing the population, but 18 (or 78%) of these increases are qualified—six specify these will be achieved through natural processes and increases, and 12 are qualified by reference to “feasibility.” Examples of less ambitious response statement goals include:

- eastern meadowlark (a bird)—the recovery strategy’s recommended long-term goal is to achieve population stability at approximately 90% of the current population size, yet the response statement goal is to retain 72% of its current population size by 2036;
- northern madtom (a fish)—the recovery strategy’s recommended goal is to “sustain and enhance the viability of existing populations,” yet the response statement goal is to “maintain existing populations;”
- American chestnut (a tree)—the recovery strategy’s recommended goal is to restore populations to a self-sustaining state, yet the response statement goal is to “retain the current population level and distribution” and explore the feasibility of restoring the species to a self-sustaining state; and
- kidneyshell (a freshwater mussel)—the recovery strategy’s recommended goal is to prevent the extirpation of the species, maintain healthy self-sustaining populations in specific locations, and re-establish historic populations, yet the response statement goal is to protect populations of species, improve their habitat, and “investigate the feasibility of augmenting existing populations.”

In contrast, the United States Fish and Wildlife Service uses quantitative population targets for some species to guide recovery efforts and ultimately remove them from its list of regulated species under the US *Endangered Species Act*. For example, its recovery goal for the piping plover (a bird) is to increase and maintain for five years a total of 2,000 breeding pairs, including region-specific minimum sub-populations such as a minimum of 625 breeding pairs in New England. Likewise, Environment and Climate Change Canada’s proposed population goal for piping plover is to achieve and maintain a minimum of 250 breeding pairs in the short term, and 310 breeding pairs in the long term. In comparison, Ontario’s response statement goal for the piping plover is qualitative, such that progress achieving it will be open to interpretation: “ensure its persistence along the coasts of the Great Lakes and Lake of the Woods, encourage increases in the number of breeding pairs, and support the expansion of the species to additional suitable breeding habitat in Ontario, where feasible.”

In general, we found that Ministry staff have been directed to not include government-led actions that require additional financial resources. As a result, required actions to substantially improve the state of a species—such as reintroduction into a particular area, which would likely involve new costs and other needed resources—would have to be led by external parties rather than the government.

Our review showed that there is a standard list of government-led actions included in most response statements. Government-led actions focus on areas of provincial responsibility such as regulations, policy, enforcement, and establishing funding priorities that cannot be led by other jurisdictions or partners. These types of action are positive and should be undertaken by the Ministry, regardless of whether they are specified in a response statement. For example, a standard government-led action is to “educate other agencies and authorities involved in planning and environmental assessment processes on the protection requirements under the Act.” While such government-led actions are reasonable, they

are not an effective substitute for specific actions to improve the status of a particular species.

We sampled 30 response statements for endangered and threatened species covering all groups of species. We found that they contained an average of eight government-led actions yet an average of seven (or 88%) were standard and not specific to the species of interest. All response statements in our sample contained standard actions, including some that the Ministry is required to do by law (see **Figure 12**). For example, four response statements prepared in 2020—Blanding’s turtle, purple twayblade orchid (a plant), transverse lady beetle, yellow-breasted chat (a bird)—included the government-led action to conduct a review of progress within a specified number of years.

The former Environmental Commissioner of Ontario (Commissioner) reported in 2015 that the conditions that initially contributed to species being listed as at risk were unlikely to improve as a result of the actions set out in 13 sampled government

response statements. The Commissioner found that response statements generally reiterated approaches that existed before the response statements were prepared, had little Ministry involvement in monitoring, relied on third parties for conservation actions, and did not contain any population recovery targets or timelines against which to measure success. The Commissioner previously reported in 2011 that another 13 sampled response statements made overly broad commitments, restated already existing legal obligations, and relied on third parties to undertake conservation work (see **Section 4.6.1**). These findings are consistent with the observations of our current audit.

We also found that while each of our sampled recovery strategies recommended up to 17 performance measures to gauge the success of protecting and recovering particular species, none of the corresponding response statements included any explicit performance measures. Including performance measures in response statements improves

Figure 12: Standard Government-led Actions in a Sample of 30 Response Statements from 2010–2021

Prepared by the Office of the Auditor General of Ontario

Government-led Action	Required by the <i>Endangered Species Act, 2007</i>	% of Response Statements with Action
Educate other agencies and authorities involved in planning and environmental assessment processes on the protection requirements under the Act	No	100
Encourage the submission of data to Ontario’s central repository at the Natural Heritage Information Centre	No	100
Protect the species and its habitat through the Act and implement and enforce habitat protection provisions	Yes	100
Undertake communications and outreach to increase public awareness of species at risk in Ontario	No	97
Support conservation, agency, municipal, industry partners and Indigenous communities to undertake activities to protect and recover the species by providing support through funding, agreements, permits and advisory services	No	97
Establish and communicate annual priority actions for government support in order to encourage collaboration and reduce duplication of efforts	No	90
Continue to implement the Ontario Invasive Species Strategic Plan to address the invasive species that threaten the species	No	77
Conduct a review of progress toward the protection and recovery within five years of the publication of the response statement	Yes	13

accountability. Knowing what steps have been taken to implement protection and recovery actions, and what are the outcomes, creates a meaningful framework for reviewing progress for each species (see **Section 4.2.4**).

For example, independent experts who prepared the recovery strategy for the endangered barn owl recommended 17 specific performance measures to improve knowledge about the Ontario population, increase the availability of nesting sites, identify and improve habitat, and increase public awareness. There were only two confirmed breeding locations of barn owls in the province according to the 2007 *Atlas of the Breeding Birds of Ontario*. While the response statement included actions related to 11 of the 17 recommended performance measures, it did not include any explicit performance measures to gauge improvements in the status of the species. Therefore, the Environment Ministry currently has no objective or systematic way of knowing whether actions being taken are making a difference.

Response statements also generally do not have estimated timelines and never forecast costs for actions to achieve recovery goals. Including the costs of intended actions would allow decision-makers to make informed choices about actions to protect and recover species at risk. Cost estimates could inform the Minister's decision about whether actions in response statements are feasible. For example, the US *Endangered Species Act* requires estimates of the time and costs to carry out recovery actions in order to achieve the goals for each species. The US Government Accountability Office reported in 2006 that costs to recover different species at risk range from an estimated \$58,000 USD to recover the decurrent false aster (a plant in Illinois and Missouri) to \$125 million USD to recover the whooping crane (a bird found across the Midwest). Similarly, scientists in 2020 assessed New Brunswick's Saint John River Watershed and concluded that 40 species at risk could be recovered by undertaking 15 actions at a cost of \$25.8 million annually for 25 years.

Cost estimates also are beneficial to illustrate the financial burden and required effort to recover species

at risk, compared to safeguarding wildlife before they become at risk. No overall cost estimates for Ontario or Canada exist but in the United States, the estimated annual national cost to recover species at risk in 2019 was \$1.5 billion USD.

RECOMMENDATION 5

To increase transparency and improve clarity about the government's actions to improve the status of all species at risk, and to increase accountability and progress in implementing identified protection and recovery actions, we recommend that the Ministry of the Environment, Conservation and Parks:

- develop guidance for the preparation of response statements that will result in the achievement of meaningful outcomes for species at risk;
- complete the development of response statements for American eel and lake sturgeon by December 2022 so that actions to protect and recover species can be implemented;
- post the list of outstanding response statements, and a timetable for their development on the Environmental Registry on a quarterly basis;
- include performance measures in response statements based on recovery strategies so that success can be assessed and accountability established for undertaking required actions; and
- include cost and time estimates in response statements so that the needed allocation of resources for actions is clear to decision-makers and the public.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks is committed to having a clear and comprehensive consultation process for preparing response statements. Each response statement shall identify a provincial recovery goal for the species as well as key objectives and prioritized

actions necessary to support the recovery of (and meaningful outcomes for) the species. This is the Environment Ministry's current focus and new guidance for the preparation of response statements is not being developed at this time.

The Environment Ministry is finalizing the response statement for American eel and developing the response statement for lake sturgeon. These will be completed by December 2023.

The Environment Ministry agrees with the Auditor General's recommendation to share information publicly about the status and timelines for response statements and will undertake an analysis to determine how best to achieve that objective.

The Environment Ministry will ensure each response statement includes a provincial recovery goal for each species as well as detailed objectives, performance measures and prioritized actions necessary to support the species' recovery. These will be used to assess and report on progress toward the protection and recovery of each species.

The Environment Ministry is committed to incorporating considerations of time into response statements through prioritization of the actions identified as necessary to support the protection and recovery of each species, as well as for some species by identifying short- and long-term goals or timelines for achieving the goals or particular actions.

Cost estimates are not included in response statements, as statements identify actions necessary to support recovery, but remain flexible for stewards and stakeholders to identify the best approaches for implementing or achieving the actions.

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not agree to develop guidance for the preparation of response statements that will result in the achievement of meaningful outcomes for species at risk. The

Environment Ministry also did not agree to include cost estimates in response statements so that the needed allocation of resources for actions is clear to decision-makers and the public.

4.2.4 Reviews of Progress Are Done Only Once, Provide Few Details on Outcomes for Species, and Do Not Evaluate the Effectiveness of Actions Taken

The Act requires that reviews of progress for species be done only once. Reviews of progress provide few details on outcomes, and do not evaluate the effectiveness of actions in response statements taken to protect and recover species. The Environment Ministry is therefore unable to gauge progress or effectively adapt work toward the recovery of species at risk in a manner that ensures that continuous improvements are made for the betterment of species.

According to the Act, the Ministry must prepare a review of progress for all threatened, endangered and extirpated species for which a response statement has been published. Reviews of progress are prepared by Environment Ministry staff who compile information from a wide variety of sources, including the Natural Resources and other ministries, and summarize the progress toward meeting all actions in the response statements.

At the time of our audit, all 85 reviews of progress have been completed as required (100%) and 18 additional reviews of progress are due to be completed later in 2021. As noted in **Section 4.2.3**, response statements do not contain performance measures and, accordingly, reviews of progress cannot assess the success of actions. Our analysis of a sample of 30 reviews of progress from 2015 to 2020 showed that the reviews included information that was generally focused on outputs rather than outcomes for species. For example, the review of progress for the bobolink and eastern meadowlark, completed in 2020, reported:

- 13 dedicated stewardship projects received a total of \$537,847;

- 35 stewardship projects for other species, which likely also benefit these two species, received a total of \$1,639,211;
- stewardship projects received a total of \$10,008,080 of in-kind resources;
- stewardship projects involved 54,675 volunteer hours;
- stewardship projects reached 1,783,242 individuals through outreach; and
- 50 permits and 2,946 conditional exemptions were allowed for these two species.

Information in reviews of progress related to outcomes for species comprises a summary of species observations submitted to the provincial data repository, as well as updated information on numbers of species and the area(s) in which they are found. For example, the review of progress for the bobolink and eastern meadowlark reported that these species have been found in additional locations and that their known distribution is greater than what was previously reported.

The review of progress for these two species also briefly describes the progress made toward achieving the actions in the response statement and identified actions without progress. The review concluded that “substantial” progress had been made toward achieving the recovery goal of slowing population decline by maintaining and enhancing grassland habitat in the short term and maintaining a stable population throughout its current range in the long term. However, without any performance measures against which to compare progress on maintaining and enhancing grassland habitat, this conclusion is subjective.

We sampled 30 reviews of progress completed from 2015 to 2020, covering endangered and threatened species of all species groups, and found that the implementation of only one government-led action had been described. In the 30 reviews, containing between six and 13 government-led actions, the implementation of the majority of these actions was described as “direct action” undertaken by Ontario. Only the implementation of the government-led action to “encourage other agencies to ensure

that wastewater treatment plants and stormwater management facilities are functioning effectively so as to maintain or improve water quality in the habitat,” found in three reviews of progress for freshwater mussels, was described.

In addition, we found that no progress was reported by the Ministry for 37 (or 15%) of the 249 government-supported actions identified in response statements in our sample. For example, no progress was reported on any of the six government-supported actions for Hungerford’s crawling water beetle and no progress was reported on seven of the eight government-supported actions for wild hyacinth (a plant). The Environment Ministry does not have a database to track the assignment, implementation and progress of government-supported actions outlined in response statements. Our 2020 value-for-money audit on *Setting Indicators and Targets, and Monitoring Ontario’s Environment* recommended that the Environment Ministry:

- establish a database of actions contained in government response statements;
- execute on high-priority actions to be taken, including monitoring;
- solicit interest from and assign responsibility for certain actions to conservation partners (e.g., organizations, agencies, universities and other stakeholders); and
- use the database to annually track and follow up on progress on actions.

In addition, reviews of progress were previously required to be conducted within five years of the publication of the response statement for a species. The *More Homes, More Choices Act, 2019* amended the Act to now allow a different reporting date based on what may be specified in the response statement. Four response statements—for American ginseng (a plant), Blanding’s turtle, spiny softshell (a turtle), and spotted turtle—released in 2020 specify a 10-year reporting period. This change is viewed by many as positive; a five-year reporting period may be too short to complete recovery actions in response statements, assess progress toward goals with the data available, and see changes in outcomes for

species. However, a longer reporting period could result in a reduction in transparency, and may reduce opportunities to adapt protection and recovery actions in a timely fashion as new information becomes available. It would therefore be reasonable to report every five years until a species is no longer on the Species at Risk in Ontario List.

Once a review of progress is completed, there is no further requirement in the Act for the Environment Ministry to ever report again on the actions taken for that species at risk—even when little or no progress has been made to improve its status. For example, we found that no progress was reported on government-supported actions in the response statement for Hungerford’s crawling water beetle and the Environment Ministry is not required to report on this species in the future. In contrast, the federal government, Nova Scotia, and the Northwest Territories report every five years until either a species’ recovery objectives have been achieved or the species’ recovery is no longer required or feasible. Similarly, the Secretary of the Interior in the United States must report every two years to different committees of the House of Representatives on recovery efforts for all species at risk. The Secretary of the Interior also is required to continue monitoring and reporting on species for no less than five years after they have been recovered and de-listed to ensure that their status has stabilized or continues to improve.

RECOMMENDATION 6

To increase accountability on progress made to improve the status of species at risk in Ontario, we recommend that the Ministry of the Environment, Conservation and Parks:

- report on the outcomes of actions and impacts on species at risk in reviews of progress, based on the performance measures described in **Recommendation 5**;
- detail in reviews of progress how government-led actions were implemented; and
- report on progress for species every five years until the species is no longer on the Species at Risk in Ontario List.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks acknowledges this recommendation and recognizes the importance of regular reporting to provide transparency and effectively track progress on species at risk protection and recovery.

The Committee on the Status of Species at Risk in Ontario maintains the priority list of species requiring assessment or reassessment, and generally performs species reassessments on an approximate 10-year cycle, which aligns with federal species assessment processes. Through its assessment work, the Committee provides a transparent and science-based evaluation of progress made toward species recovery. The Committee’s reports are provided annually to the Minister and are made available to the public within three months of being received.

The Ministry of the Environment, Conservation and Parks is exploring the feasibility of enhanced progress tracking and follow up on actions identified in government response statements.

AUDITOR GENERAL’S RESPONSE

The Environment Ministry did not agree to report on outcomes in reviews of progress, detail how government-led actions are implemented, and report on progress until the species is no longer at risk.

We note that the Committee on the Status of Species at Risk in Ontario’s species reassessments do not evaluate the outcomes of actions nor detail how government-led actions are implemented.

4.3 Approvals (Agreements, Permits and Conditional Exemptions)

4.3.1 Permits to Harm Species at Risk Always Approved

No permits to harm species or their habitats have been denied since the Act was passed in 2007. While it is illegal to kill, harm or harass endangered and

threatened species or damage and destroy their habitats, the Minister may allow activities that would otherwise be prohibited using various types of permits (see **Figure 9**).

A permit is like a licence issued by the Minister to a person, company or organization, and includes conditions that must be met. Since the Act was passed in 2007, there have been 1,124 permits of various types issued (see **Figure 13**). Excluding permits that have the main purpose of protection and recovery, there have been 306 permits that have allowed harmful activities—74% of which have been in the areas around the Greater Golden Horseshoe and southwestern Ontario, where a significant amount of development activity occurs provincially. The species most frequently impacted by these 306 permits were butternut, redbreasted dace (a fish), bobolink, whip-poor-will (a bird), and Blanding’s turtle.

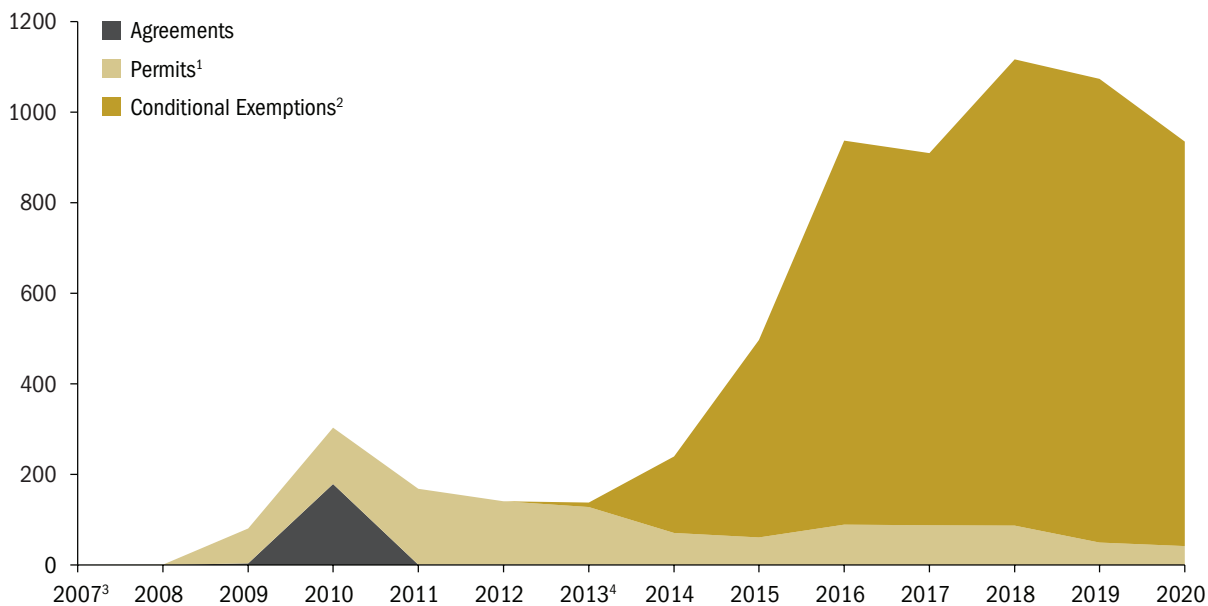
In 2018, Natural Resources Ministry staff identified the need for guidance on when to say “no” to a permit application. No guidance was developed. Consequently, we found that no permits have ever

been denied. For example, in a sample of permits we reviewed, the Environment Ministry issued a permit in 2021 to a company to divide a tract of cottage land into smaller lots, despite that the same company had been issued a stop work order in 2018 for building a road through the habitat of a species at risk (Massasauga rattlesnake) without approval, and was charged in 2019 with unlawfully damaging habitat. That prosecution was still ongoing at the time of our audit.

The Ministry’s objectives for handling permits is to use an “avoidance first” approach. In other words, the Ministry will work with a company, organization, or person to see whether measures can be taken to avoid harmful impacts to species and habitat so that a permit is not required. If negative impacts cannot be avoided, the Ministry will work with them through the permit process. Based on our analysis, the Environment Ministry handled at least 150 avoidance cases in 2020, where no permit was ultimately issued. However, in the absence of inspections, there is no way for the Ministry to know

Figure 13: Approvals under the *Endangered Species Act*, 2007, 2007–2020

Source of data: Ministry of the Environment, Conservation and Parks



1. There have been 1,124 permits since 2007; 818 of those permits were for protection and recovery purposes.

2. There have been 5,229 registered conditional exemptions since 2013; 520 of those exemptions were for protection and recovery purposes.

3. The first year of the Act was 2007, and no approvals were passed that year.

4. The Act was amended in 2013 to allow conditional exemptions.

whether the promised avoidance measures were implemented. The Ministry does not track avoidance cases.

Additionally, in our review of permits, we noted that the language was sometimes oversimplified and misleading in proposal notices on the Environmental Registry. For example, in 2021, there was a proposed permit to build a subdivision that staff determined would damage 3.1 hectares and destroy 18.8 hectares of habitat for eastern foxsnake and Butler’s gartersnake. However, the proposal notice on the Environmental Registry described that the activity “may impact” the habitat of the two species. Ministry staff removed all references relating to killing, harming, harassing, damaging, and destroying—all of which are the prohibited activities spelled out in the Act—which would have helped the public better understand the nature of the proposal, and make informed comments on whether the permit should be issued. We reviewed a sample of proposed permits posted on the Environmental Registry since 2019 and found that 52% contained similar understated language. Staff selected the understated wording of “may impact” at the preference of the Minister’s office.

RECOMMENDATION 7

To minimize the harm to species at risk allowed by permit approvals under the *Endangered Species Act, 2007*, we recommend that the Ministry of the Environment, Conservation and Parks (Environment Ministry):

- develop and implement guidance for Environment Ministry staff on when to deny approvals based on the needs of a species; and
- ensure language used in proposed permits on the Environmental Registry clearly identifies expected impacts to species and their habitats.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks agrees that guidance for Environment

Ministry staff in relation to approvals under the *Endangered Species Act, 2007* is important.

The Environment Ministry’s priority is guidance for staff on how to determine whether the Act’s requirements have been met. Permit proposals that meet the Act’s legal tests are recommended to the Environment Minister for issuance. Permit proposals that do not meet the legal tests are not recommended for approval.

As noted in the Environment Ministry’s responses to **Recommendations 10 and 11**, the Environment Ministry is committed to continuously improving and refining its guidance for Environment Ministry staff related to permit development under the *Endangered Species Act, 2007*.

The Environment Ministry agrees that communication of information through the Environmental Registry should be as clear as possible for the public.

That is why when the Environment Ministry prepares to post, each individual posting is evaluated and carefully reviewed to avoid technical and legal jargon and to ensure that it clearly identifies expected impacts to the natural environment. We will ensure that the same standard is applied for all Environmental Registry postings, including those under the *Endangered Species Act, 2007*.

AUDITOR GENERAL’S RESPONSE

The Environment Ministry did not agree to develop and implement guidance for Ministry staff on when to deny approvals based on the needs of a species.

4.3.2 96% of Approvals to Harm Species at Risk in 2020 Were Issued Automatically

In 2020, 893 (or 96%) of the 935 approvals allowed under the Act were automatic conditional exemptions. Conditional exemptions do not go through a review process by staff, unlike agreements and permits. These approvals impacted 123 different species at risk—72% of all 171 species listed as endangered

or threatened. Since 2013, 50% of conditional exemption registrations impacted bobolink, eastern meadowlark, barn swallow, Blanding's turtle, and butternut.

Regulatory changes were made in 2013 to allow companies, organizations, and people to be conditionally exempted from the prohibitions of the Act for some types of harmful activities rather than having to apply for a permit (see **Figure 14**). This change was the product of the Natural Resources Ministry's three-year Transformation Plan to modernize its business and operate more cost efficiently by streamlining some approvals. The Natural Resources Ministry stated that the use of conditional exemptions would allow for the "more efficient implementation of the [Act] while continuing to protect species at risk and their habitats." The former Environmental Commissioner of Ontario reported in 2013 that this change to approvals effectively exempted many activities that can adversely affect species at risk and their habitats, such as gravel pit operations and drainage works, and was at odds with the purposes of the Act.

There are 41 different conditional exemptions and other exemptions; 17 require activities to be

registered with the Ministry by completing an online form (see **Figure 9**). For example, conditional exemptions include activities like the operation of a wind facility, and early exploration for mining. There are 24 other exemptions that do not require registration, such as incidental fishing by-catch, when species are caught accidentally.

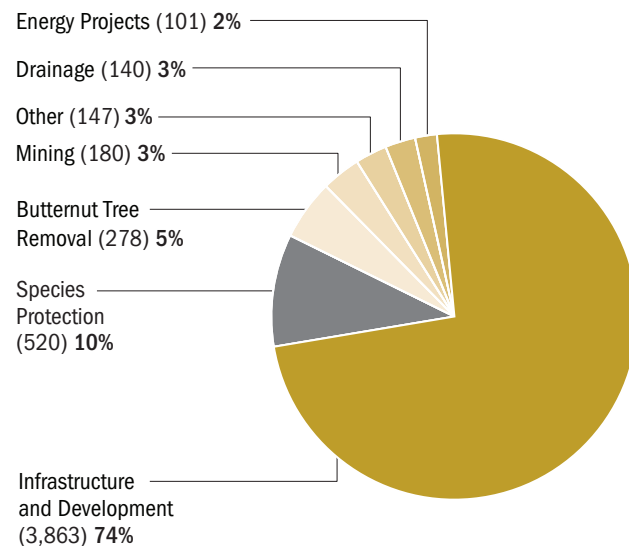
These conditional exemptions often allow harmful activities and only minimize harm, but do not eliminate or compensate for it by providing an overall benefit, which would make the species better off. Activities affecting certain species at risk (bobolink, butternut) can proceed without requiring a permit as long as the conditions in the regulation are followed. Conditions can include such things as registering with the Ministry, developing a mitigation plan, keeping activities a specified distance away from important habitat features, limiting the timing of activities, creating or enhancing habitat elsewhere, species monitoring and maintaining habitat features.

There have been 5,229 registrations for conditional exemptions as of 2020 with an annual average of 923 in the last five years. There have been 520 (or 10%) conditional exemptions for activities for the protection and recovery of species at risk compared to 4,709 (or 90%) conditional exemptions for activities with a potential negative impact on species as of 2020. There has been an average of 846 conditional exemptions annually in the last five years with the potential to negatively impact species at risk and their habitats. In 2020, the majority of conditional exemptions were located in southern Ontario.

The species most commonly identified in registrations for conditional exemptions as being likely to be affected are bobolink, eastern meadowlark, barn swallow, Blanding's turtle, and butternut. In part, these species are impacted more than others because of their widespread habitats. Their at-risk status is based on rates of decline, not total population size. For example, bobolink—which have declined considerably over the last half century—inhabit grasslands and often use farm fields across southern Ontario as habitat. Mowing of hay during

Figure 14: Conditional Exemptions under O. Reg. 242/08 by Activity Type, 2007–2020

Source of data: Ministry of the Environment, Conservation and Parks



the breeding period from May to July may inadvertently kill and disturb nesting adults and young birds, and destroy eggs and nests.

There have been 1,133 activities that have registered for conditional exemptions with potential impacts to Blanding's turtles. Seventy-eight percent of these are for non-imminent threats to human health or safety, such as road and culvert maintenance and repair. Similarly, there have been 2,010 activities that have registered for conditional exemptions for bobolink and 1,964 for eastern meadowlark, ranging from wind facility operations to drainage works construction. More than 90% of the conditional exemption registrations for both of these birds do not concern imminent threats to human health or safety.

Additionally, the online portal that companies use to obtain conditional exemptions currently uses Natural Resources Ministry forms, which may lead the public to mistakenly believe that it is still responsible for the Act. The Environment Ministry has initiated work to transition to its own online system for conditional exemptions.

RECOMMENDATION 8

To minimize the harm to species at risk allowed by conditional exemption approvals under the *Endangered Species Act, 2007*, we recommend that the Ministry of the Environment, Conservation and Parks:

- evaluate the effects of conditional exemptions on species at risk and their habitats;
- make the results of that evaluation public; and
- take corrective action as necessary on the requirements and scope of conditional exemptions.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks agrees that evaluating the effects of conditional exemptions on species at risk and their habitats is beneficial to the provincial species at risk program.

Within budgetary and staffing realities, the Environment Ministry will continue to evaluate the effectiveness of conditional exemptions.

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not commit to making an evaluation of the effects of conditional exemptions public, and taking corrective action as necessary.

4.3.3 Insufficient Information Required for Health or Safety Conditional Exemptions

There have been 2,954 conditional exemptions for infrastructure or structure maintenance, or repairs or certain replacements related to non-imminent threats to human health and safety where a mitigation plan is not required. These types of activities may include the removal of hazardous trees, bridge replacement, lowering pond levels to prevent flooding of roads, or culvert replacement. However, there is no requirement to explain how species at risk will be impacted by the activity. There is also no requirement to include how human health or safety will be impacted if the activity is not allowed to proceed. In 2020, the majority of the activities that have been registered for these conditional exemptions were located in southern Ontario.

We sampled 30 conditional exemptions and found that there are inconsistencies in information provided about how activities will help protect human health or safety. In 27% of registrations for health or safety, no information was provided by the registrant on the threat to human health and safety to justify the need for the activity. Additionally, none of the registrations we sampled contained information about how much species at risk habitat would be damaged or destroyed as it is not a requirement to provide such details. For example, Hydro One registered a conditional exemption to remove trees and shrubs that provided bobolink, loggerhead shrike (a bird) and eastern meadowlark habitat and did not include

information about how much habitat would be damaged or destroyed.

Similarly, the Natural Resources Ministry found in 2017 that some of these conditional exemptions did not include information about the threat, indicate whether the mitigation plan was prepared by an expert, describe what would happen if the work was not done, or include details about the activity. The Natural Resources Ministry did not take any corrective action based on these findings, as the transfer of the species at risk program to the Environment Ministry was announced in 2018.

RECOMMENDATION 9

To minimize the harm to species at risk allowed by conditional exemption approvals under the *Endangered Species Act, 2007*, we recommend that the Ministry of the Environment, Conservation and Parks require that health or safety conditional exemptions justify the need for the exemption and provide details of the activity, including an assessment of how species will be impacted.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks acknowledges and agrees with this recommendation in regard to structures and infrastructure.

A condition to the exemption for activities involving structures and infrastructure under the conditional exemption for non-imminent threats to health and safety is that proponents must develop a mitigation plan prior to commencing their activity. This plan must include information about the need for the exemption and an assessment of the activity's likely effects on species at risk identified in their mitigation plan. Further, it is a condition to the exemption that the activity is carried out in accordance with the mitigation plan.

Proponents must comply with the conditions of the exemption in order for the exemption to apply. Further, failure to comply with a

requirement under a regulation is an offence under the *Endangered Species Act, 2007*.

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not agree to require that all registrations for health or safety conditional exemptions justify the need for the exemption and provide details of the activity, including how species will be impacted.

4.3.4 Unknown Whether Overall Benefit Permits are Effective in Making Species and Their Habitats Better Off

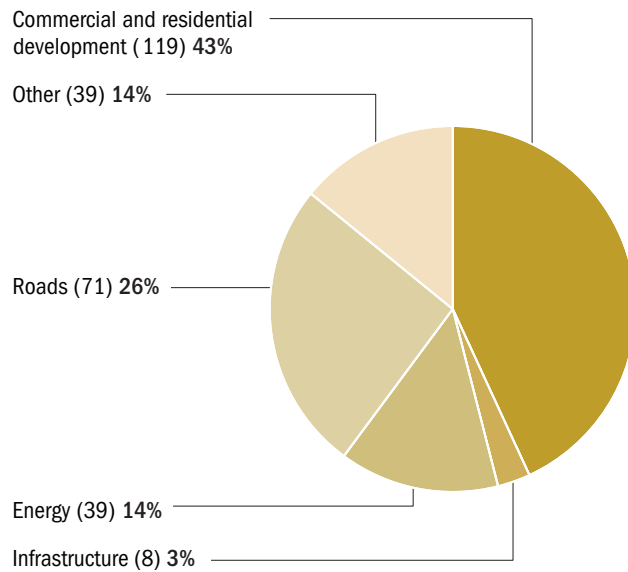
We found that the Environment Ministry has not assessed the effectiveness of overall benefit permits, which are intended to make species better off than before the activity occurred.

Overall benefit permits are issued for activities that may have an unavoidable adverse effect on species at risk or their habitat. **Figure 15** shows the types of activities that have been allowed under overall benefit permits. Conditions for this permit include the requirement to achieve an overall benefit, making the species better off than before the activity, within a reasonable time. For example, a condition of this type of permit could include creating a greater amount of habitat than what is permitted to be destroyed, or other measures to improve the conditions of the species and its habitat. A total of 276 overall benefit permits have been issued between 2007 and 2020. Forty-three percent of overall benefit permits are related to residential and commercial development, and 93% are located in southern Ontario. **Figure 16** shows that 68% of the 30 overall benefit permits that we sampled have been issued to private corporations.

The Natural Resources Ministry found in 2018 that only 42% of monitoring reports demonstrated evidence of desired outcomes of overall benefit objectives. Our review of permit files found a case where a company was allowed to damage and destroy 9.6 hectares of different types of habitat

Figure 15: Overall Benefit Permits under the *Endangered Species Act, 2007* by Activity Type, 2007–2020

Source of data: Ministry of the Environment, Conservation and Parks

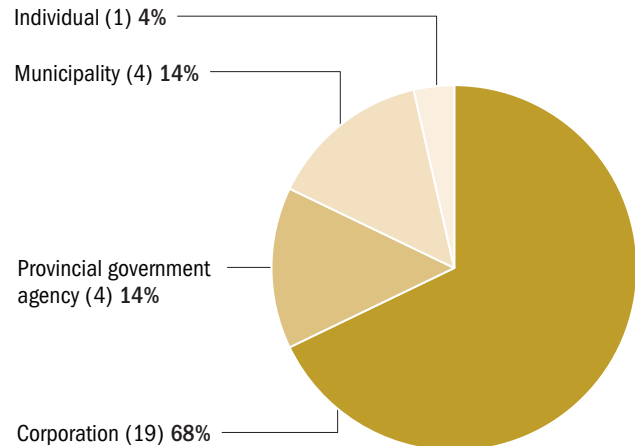


for Blanding's turtle, and was required to create a 0.49 hectare pond as an overall benefit to the turtle. However, monitoring reports showed that no turtles had inhabited the pond two years after it had been constructed.

The Natural Resources Ministry also found in 2018 that better guidance is needed for suitable habitat offsets and replacement ratios (how much is replaced compared to how much is destroyed) in some permits. Similarly, our review of approvals files found that eight overall benefit permits for reddsides (a fish) issued in the last two years always allowed for more damage or destruction of habitat than what was restored or replaced. For example, the Ministry of Transportation obtained an overall benefit permit in 2021 for a highway crossing over a creek that allowed the damage and destruction of 0.46 hectares of reddsides habitat, but only required 0.08 hectares of habitat to be created or enhanced. In Ontario, the overall population of reddsides is estimated to have declined by over 50% in the last decade based on a reduction in its

Figure 16: Sample of 30 Entities that Hold Overall Benefit Permits under the *Endangered Species Act, 2007**

Source of data: Ministry of the Environment, Conservation and Parks



* The sample includes overall benefit permits from 2015 to 2021.

geographic range and the number of sites where it has been found.

We also found overall benefit permits for Blanding's turtles in which large amounts of habitat were allowed to be damaged or destroyed compared to what was required to be replaced. For example, we found two overall benefit permits in 2021 for a subdivision development that allowed 51.6 hectares of different types of habitat for Blanding's turtle to be damaged or destroyed, but required the creation or enhancement of just 1.8 hectares (3%).

Some guidance incorporated into permits may not be effective. We found that the guidance for the construction of building kiosks and nest cups for barn swallows may not be working. Some species have more site fidelity than others, as they always return to the same site, and will not seek out new habitat. A 2019 study published in the *Canadian Field-Naturalist* found that building shed-like structures may not be effective for mitigating the loss of barn swallow nesting habitat. Additionally, the Natural Resources Ministry found in 2018 that work was being performed on unsuitable sites as replacement habitat

for bobolink and eastern meadowlark. Environment Ministry staff informed us that they often copy the conditions from previously issued permits in order to expedite approvals.

The effective implementation of the Act—protecting and recovering species at risk—requires that overall benefit permits result in verifiable outcomes that make species better off. However, the Environment Ministry is not assessing whether the required conditions in these permits work as intended.

RECOMMENDATION 10

To improve the status of species at risk affected by overall benefit permit approvals under the *Endangered Species Act, 2007*, we recommend that the Ministry of the Environment, Conservation and Parks:

- evaluate the outcomes to species at risk from issuing overall benefit permits to confirm that required conditions are making species better off;
- publicly report on that evaluation; and
- update internal guidance using the best available scientific information to ensure overall benefit permits result in successful outcomes for species at risk and their habitats.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks agrees that the evaluation of the outcomes to species at risk from issuing overall benefit permits is important and will undertake such work within budgetary and staffing realities.

The Environment Ministry is committed to using the best available scientific information to ensure overall benefit permits result in successful outcomes for species at risk and their habitats.

The Environment Ministry will continue to apply and refine its internal guidance on an ongoing basis in the development of overall benefit permits consistent with the *Endangered Species Act, 2007*.

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not agree to publicly report on the evaluation of the outcomes to species at risk from issuing overall benefit permits.

4.3.5 Some Protection and Recovery Permits that Benefit Species Are Delayed, while Some Development-Related Permits that Harm Species Get Fast Tracked by the Environment Ministry

We found delays by the Environment Ministry in issuing permits for the protection and recovery of species. On the other hand, permit applications for development activities were fast tracked when companies or organizations complained.

Protection and recovery permits are issued to allow activities to help a species at risk or its habitat; the permits are required because the activities are likely to cause some minor adverse effects during the work. There have been 818 protection and recovery permits issued between 2007 and 2020 for conservation work such as the restoration of a wetland. For protection and recovery permits, 30% of permits were for conservation work for Blanding's turtle, Jefferson salamander, redbreasted dace, and spotted turtle. The remaining 70% were for conservation work for 117 other species at risk.

In 2010, when the Natural Resources Ministry was responsible for the Act, it began delegating 22 different functions to Ministry staff, including issuing permits for protection and recovery activities to make species better off. Since the Environment Ministry became responsible for the Act in 2019, the Environment Minister has assumed responsibility for making decisions on issuing all types of permits under the Act.

Delays in issuing protection and recovery permits can impact species. For example, one conservation organization has been waiting for four years since 2017 to obtain this type of permit for conservation work for the endangered Carolinian population of Massasauga rattlesnake at Ojibway Prairie near Windsor. This work is listed as a high-priority action

in the response statement for the species because the population has declined over 50% since 2013 and is facing imminent extirpation. However, delays in issuing the permit may have contributed to the species' local demise due to the time taken by the Ministry to consider policy and other implications for the proposal.

Likewise, a conservation organization attempted to renew its permit in the beginning of March 2020 to collect and incubate Blanding's turtle eggs to help increase the local population in the Ottawa area. Egg collection was to occur from late May to early July. However, the Environment Minister did not approve the permit until the end of June 2020. As a result of this delay, the conservation organization was only able to collect 14 eggs (or 5%) of the 300 eggs it had planned to collect.

In comparison, we found that other permit applications related to development received priority treatment, and were able to jump the queue. For example, in 2020 a permit for Infrastructure Ontario to build affordable housing was prioritized over other permits and was issued in 90 days. This permit allowed for the habitat of three at-risk bats (little brown myotis, northern myotis, eastern small-footed myotis) to be destroyed through the demolition of four vacant warehouse buildings in the City of Toronto. Abandoned dark places like old warehouses are used as habitat by some species of bats. The Natural Resources Ministry's 2018 internal evaluation of permits found that staff felt pressure when assessing the impacts of a project and identifying options for achieving an overall benefit when companies or organizations appealed to higher levels within the Ministry outside of the permit process. Environment Ministry staff informed us that companies or organizations that complain to the Ministry will generally obtain their permits faster. Our review of a sample of 30 permits related to development activities found that seven (or 23%) were fast-tracked by staff, resulting in approvals issued 43% faster than those that were not. Six of the fast-tracked permits were for housing development and the other was for an electrical transmission line.

Our review of a sample of development-related permits issued between 2015 and 2021 found that it took an average of 851 days—ranging from 90 to 2,733 days—to complete the permit process. In 2020, the Environment Ministry set a target to reduce the amount of time by 10 to 16 weeks for when a company, organization or a person submits the necessary information to when a permit is issued. As of August 2020, it took 256 days on average to complete the permit process. However, Environment Ministry staff have never conducted site visits during the preparation of permits to better understand local conditions and validate information. Conducting site visits would increase the processing time for permits but could provide important information for staff to assess the application and possible conditions of a permit. Although the Environment Ministry conducts site visits for other programs, none of the 30 permits we sampled had site visits.

RECOMMENDATION 11

So that all permit approvals under the *Endangered Species Act, 2007* achieve the best possible outcomes for species at risk and their habitats, we recommend that the Ministry of the Environment, Conservation and Parks:

- develop and implement guidance for staff to process all permits in a consistent manner; and
- develop and implement guidance that delegates Ministerial authority back to Ministry staff to issue permits with the main purpose of assisting in the protection or recovery of the species.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks agrees that guidance for staff on processing permit applications in a consistent manner is important to ensure consistency and completeness in reviewing applications.

The Environment Ministry is committed to continuously improving its internal guidance

regarding permit development consistent with the *Endangered Species Act, 2007*.

The Environment Ministry acknowledges the ability to delegate statutory powers and will continue to review delegations as needed to determine if they are appropriate.

4.3.6 Increasing Use of Social or Economic Benefit Permits for Public Infrastructure with No Requirement to Provide Overall Benefit to Species

Our audit found an increase in the last several years in the number of social or economic benefit permits being used for public infrastructure projects. There have been six social or economic benefit permits issued since 2007 for large-scale projects; four have been issued by the Environment Ministry since 2019.

Companies or agencies can apply for either an overall benefit permit, or a social or economic permit. As discussed in **Section 4.3.4**, overall benefit permits are issued for activities that may have an unavoidable adverse effect on species at risk or their habitats. Social or economic benefit permits are issued to allow activities that are expected to result in a significant social or economic benefit to Ontario. The most significant difference between the two permits is that overall benefit permits require an overall benefit, making the species better off within a reasonable time, whereas social or economic permits do not have this requirement.

Ministry staff are concerned that social or economic benefit permits will become increasingly more common, reducing the benefit and protection for species at risk. We reviewed the four most recent social and economic benefit permits and noted that three of the four permits are for public transit projects. Metrolinx obtained three separate permits in 2020 for the Eglinton Crosstown West Extension, Scarborough Subway Extension, and the Ontario Line projects in the Greater Toronto Area, impacting nine species at risk: barn swallow, butternut, bank swallow, Blanding's

turtle, chimney swift, eastern small-footed myotis bat, little brown myotis bat, northern myotis bat and tri-colored bat. Metrolinx requested these permits be issued in advance of tendering the projects so that bidders can factor them into their bids. Granting a Crown agency multiple permits with no required overall benefit could create the perception that the government sets a lower standard for itself for protecting species at risk than of others. The Environment Ministry could have required that Metrolinx obtain overall benefit permits instead but it would have taken longer in order for Metrolinx to determine which species were present and for the Environment Ministry to determine what overall benefit requirements would be necessary.

Additionally, the Environment Ministry noted internally that many of the project areas have not yet been surveyed in detail for species at risk, and Metrolinx is not yet clear on the specific impacts on the species and their habitats. Furthermore, for barn swallows, the permits direct Metrolinx to follow guidance to construct nest cups, which have been proven ineffective in other cases (see **Section 4.3.4**). These permits were fast tracked by the Ministry and were issued within five months of the Ministry of Transportation proposing legislation to speed up construction of transit projects in the Greater Toronto Area.

The Environment Ministry also issued a social or economic benefit permit to Wataynikaneyap Power Ltd. in 2019 for the construction, operation, maintenance and retirement of approximately 1,800 kilometres of transmission lines located north of Red Lake and Pickle Lake to connect 17 remote First Nation communities to the provincial electricity grid. These communities have historically relied on diesel fuel to power their communities, which was financially unsustainable, environmentally risky, and unreliable to meet community needs. The company obtained a permit to impact four species at risk: boreal caribou, wolverine and two bats (northern myotis and little brown myotis). In 2018, stakeholders raised concerns about the environmental assessment for this project and the transmission lines routing through

caribou habitat rather than alternative locations with less impact.

RECOMMENDATION 12

To minimize the harm to species at risk allowed by social or economic benefit permit approvals under the *Endangered Species Act, 2007*, we recommend that the Ministry of the Environment, Conservation and Parks develop and implement guidance based on the best available science that details when it is appropriate to issue a social or economic benefit permit rather than an overall benefit permit.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks acknowledges and agrees with the Auditor General's recommendation and notes that current work is under way to update guidance to support staff in the review of applications for approvals under the *Endangered Species Act, 2007*.

4.3.7 The Environment Ministry Does Not Assess Cumulative Effects of Approvals (Agreements, Permits, Conditional Exemptions) and How They Impact Species at Risk and Their Habitats

The Environment Ministry does not assess cumulative effects—the total impact over time—of all the activities allowed by agreements, permits and conditional exemptions on species at risk, with the exception of boreal caribou. Cumulative effects also include any ongoing threats and pressures that affect species' well-being.

Certain activities otherwise prohibited under the *Endangered Species Act, 2007* require approval because they are detrimental to the well-being of Ontario's species and their habitats. However, each approval is treated in isolation without regard for the net impact that they collectively have on a particular species and its habitat. The cumulative effect of multiple stressors, particularly those involving land-use change, poses a significant threat to biodiversity and

a risk to species recovery in Ontario. Introduced in 2013, conditional exemptions often allow harmful activities that require only that harm to species and their habitats is minimized. However, they do not eliminate harm and are not required to provide an overall benefit to species. Conditional exemptions account for 80% (5,229) of the 6,539 approvals since 2007 (see **Figure 13**).

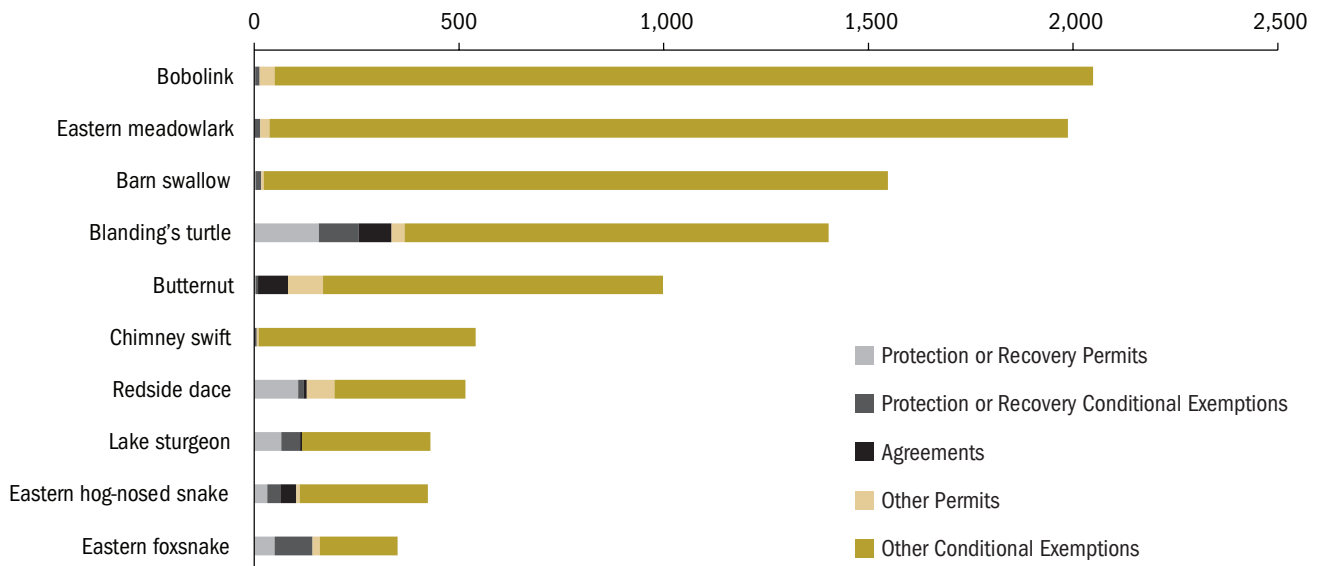
Figure 17 shows the top 10 species in Ontario with the highest numbers of approvals (agreements, permits, and conditional exemptions). These 10 species are affected by an average of 1,025 approvals each. These species were all at risk before these approvals allowed further impacts. As a result, many species are now subject to pressures from ongoing activities that the Ministry has allowed, including bobolink (39 permits, 2,010 conditional exemptions), lake sturgeon (five agreements, 66 permits, 359 conditional exemptions) and Blanding's turtle (80 agreements, 190 permits, 1,133 conditional exemptions). Scientists estimate that Blanding's turtles have declined by more than 60% over the last three generations (approximately 120 years) due to fragmentation and loss of habitat in southern Ontario. Similarly, the number of bobolinks is estimated to have declined by 77% since 1970 and by 33% since 2000.

The government has made recent changes to the approvals framework that may worsen the cumulative effect of harm to species and their habitats. The *More Homes, More Choice Act, 2019* added a new type of approval to the *Endangered Species Act, 2007* called a landscape agreement. Previously, an approval would only be issued to a single entity to engage in a harmful activity at a defined location with limitations on the project size and the number of harmful activities allowed. However, landscape agreements can approve multiple harmful activities across a broader area, and beneficial actions may not occur for all impacted species.

In contrast to Ontario's Environment Ministry, other federal and other provincial departments with responsibilities for species at risk consider the cumulative effects of approvals on species and their

Figure 17: Top 10 Species Impacted by Approvals under the *Endangered Species Act, 2007*, 2007–2020

Source of data: Ministry of the Environment, Conservation and Parks



habitats. Federally in Canada, the cumulative effects of any proposed activity are considered alongside activities affecting the same species. Likewise, Quebec considers the cumulative effects of both past approvals and other activities affecting a given species or habitat when assessing a new permit application affecting that same species or habitat. British Columbia is currently drafting its own species at risk legislation that aims to bring an integrated and consistent approach to cumulative effects assessment.

RECOMMENDATION 13

To minimize the harm to species at risk allowed by approvals under the *Endangered Species Act, 2007*, we recommend that the Ministry of the Environment, Conservation and Parks:

- evaluate the cumulative effects of approvals and other threats over time on species at risk and their habitats and factor this knowledge into the issuance or non-issuance of future approvals;
- publicly report on this information; and

- take corrective actions as necessary to ensure that approvals contribute to successful outcomes for species at risk and their habitats.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks acknowledges the Auditor General's recommendation to evaluate the cumulative effects of approvals and other threats over time on species at risk and their habitats, to factor this knowledge into the issuance or non-issuance of future approvals, to publicly report, and take corrective actions as necessary.

Overall benefit permits are unique from other types of approvals in that the intended outcome of these permits is meant to improve the relative standing of a species after taking into account the residual adverse effects to the species or its habitat that are authorized by the permit.

The Environment Ministry intends to initiate development of policy considerations to support the development of landscape agreements and to consider appropriate approaches to balancing

across species the impacts on species at risk with the benefits provided.

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not commit to evaluating the cumulative effects of approvals and other threats, publicly reporting on this evaluation, and taking any necessary corrective actions.

4.4 Compliance and Enforcement

4.4.1 Ministry Has Laid Only Two Charges for Harming Species at Risk Since 2019

The Environment Ministry has laid only two charges under the *Endangered Species Act, 2007* since assuming enforcement responsibility in April 2019. In contrast, when it enforced the Act, the Natural Resources Ministry laid an average of 19 charges annually from 2009 (the first full year the Act was in force) to 2018. This represents a 95% reduction in average annual charges under the Act when comparing between the two Ministries. **Figure 18** shows the number of charges and fines issued in the last five years.

Environment Ministry enforcement staff have the authority to issue stop orders, and the Minister has the authority to issue species protection orders and habitat protection orders. The Ministry has issued only a single stop order since 2019 for clearing a small forest that was alleged to have American chestnut, eastern flowering dogwood (a plant), eastern foxsnake, blue ash (a tree), and eastern prairie fringed-orchid (a

plant). In contrast, the Natural Resources Ministry issued an average of three stop orders annually between 2015 and 2018. These stop orders allow the Environment Ministry to halt an activity that is underway or about to begin. Species protection orders and habitat protection orders, issued by the Minister, may also require that steps be taken to either address adverse impacts or rehabilitate a damaged or destroyed area. The Environment Ministry has a compliance policy to inform decision-making on enforcement actions, but Ministry staff are still in the process of determining when it may be appropriate to issue a stop order under the Act.

There are 47 investigators and other staff in the Ministry's Environmental Investigations and Enforcement Branch appointed to enforce the Act, in addition to enforcement responsibilities for other programs. It is a new responsibility for these staff to enforce this Act and, more generally, enforce wildlife-related laws. However, at the time of our audit, the Environment Ministry had not yet appointed its environmental officers to enforce the Act due to labour relations issues, involving new work with no additional resources. The Environment Ministry internally identified not appointing environmental officers as a risk to its enforcement of the Act.

In contrast, at the time the species at risk program was transferred to the Environment Ministry, the Natural Resources Ministry had 184 conservation officers appointed to enforce the Act, in addition to their enforcement of over 25 other natural resource laws such as the *Fish and Wildlife Conservation Act*. Prior to the transition of the program, enforcement work

Figure 18: Total Fines and Offences under the *Endangered Species Act, 2007*, 2015–2020

Sources of data: Ministry of the Environment, Conservation and Parks and Ministry of Northern Development, Mines, Natural Resources and Forestry

Year	2015 ¹	2016 ¹	2017 ¹	2018 ¹	2019 ²	2020 ^{2,3}
Total Fines⁴ (\$)	46,720	75,000	118,200	2,000	0	0
Total Offences⁵ (#)	28	27	36	3	2	0

1. Under the Ministry of Northern Development, Mines, Natural Resources and Forestry.

2. Under the Ministry of the Environment, Conservation and Parks.

3. The statute of limitations for proceedings was suspended between March 16, 2020 and September 13, 2020 under O. Reg. 73/20. Due to COVID-19, provincial courts were only managing critical issues.

4. Total fines may be a result of charges laid in years prior and the charge may not be laid in the same year in which the incident occurred. Per the Act, the statutes of limitations for charges is five years.

5. Offences include charges laid (including withdrawn and dismissed).

related to the Act was undertaken by all field officers on an as-needed basis. Additionally, park wardens in the Ontario Parks branch were authorized to enforce the Act. Following an analysis, the Natural Resources Ministry transferred the budget for two vacant enforcement positions to the Environment Ministry when responsibility was transferred in 2019.

Environment Ministry staff also do not possess tools like untraceable cellphones, used to contact and investigate people illegally selling species at risk, that were available to Natural Resources Ministry staff when they enforced the Act. This may hamper the Environment Ministry's ability to work covertly on undercover operations. There is a need for training for investigations staff to enable covert operations and increase technical knowledge on particular species at risk given that the nature of investigating species at risk violations is substantially different than the other enforcement work conducted by staff.

The Environment Ministry does not have a dedicated website, whistleblower phone line or email address for the public to use to report possible contraventions of the Act. The Ministry may conduct enforcement in response to public complaints made to the Ministry's Spills Action Centre, its district offices, and from the Natural Resources Ministry's TIPS hotline. Public complaints may be escalated to the Species at Risk Branch, which may then escalate to the Environmental Investigations and Enforcement Branch. However, the Environment Ministry's Spills Action Centre's public website contains no information about the *Endangered Species Act, 2007* or its enforcement. Given its name, this could lead to confusion for members of the public interested in reporting possible violations.

The Natural Resources Ministry's TIPS hotline also receives public tips about species at risk. The majority of these tips are forwarded to the Environment Ministry and are not tracked in the Natural Resource Ministry's TIPS database. However, when it is initially unclear if the tip involves a species at risk, they may be assigned to an enforcement unit and logged in the Natural Resources Ministry's database. Referrals concerning the tip may occur once the assigned

conservation officer gathers more information about the tip. However, the Natural Resources Ministry is unable to track the total number of possible cases of harm to species at risk due to the system's limited reporting function and lack of integration with the enforcement records management system. We reviewed all 139 reports of possible violations entered in the Natural Resources Ministry's TIPS database between January 2018 and January 2021—5% were forwarded to the Environment Ministry after being assigned to an enforcement unit, 10% were forwarded to police or a municipality; and the status of 22% of complaints was unknown. The Natural Resources Ministry closed the files on the remaining 63% of reports as they did not involve species at risk or possible contraventions of the Act.

The Environment Ministry receives approximately two public complaints or referrals from the TIPS hotline each week; one-third of these are then referred to the Ministry's Environmental Investigations and Enforcement Branch for further action. The Environmental Investigations and Enforcement Branch had 23 possible contraventions of the Act in 2019/20 and 57 cases in 2020/21. It closed the files on 52 (or 65%) and 28 (or 35%) remain open or under investigation.

Our Office audited a sample of 35 of these cases and found that 74% of cases relate to habitat damage or destruction, and 26% relate to selling species at risk illegally. In cases of reported habitat destruction, we found that staff visited the site in question only 24% of the time. The remaining cases were addressed remotely. If a site visit is initiated, the enforcement officer needs to ensure appropriate authorizations are in place to legally attend the site. This could include consent from the owner, a judicial inspection warrant or if an investigation has been initiated, an investigative techniques warrant and/or a search warrant.

In addition, the Environment Ministry currently does not have an incident report specifically for species at risk that can be used by the Spills Action Centre to record incidents. The Spills Action Centre instead uses a pollution incident report. The pollution

incident report template does not include information about repeat offenders, the species impacted, or the approval holder, if applicable.

4.4.2 Environment Ministry Does Not Inspect to Ensure Compliance with Approvals (Agreements, Permits and Conditional Exemptions)

The Environment Ministry does not have an inspection program to ensure that companies, organizations, and people adhere to the conditions of their approval when species at risk and their habitats are impacted. There have been 6,539 approvals (186 agreements, 1,124 permits, and 5,229 conditional exemptions) allowed under the Act between 2007 and 2020 (see **Figure 13**). The Environment Ministry has never inspected or laid a charge against any approval holder for non-compliance under the Act. Likewise, when the Natural Resources Ministry was responsible for enforcement prior to 2019, it did not carry out any inspections for non-compliance with approvals. In contrast, both ministries conduct routine inspections for other environmental programs. For example, the Natural Resources Ministry conducts inspections of licensed operators under the *Aggregate Resources Act*.

In July 2020, the Environment Ministry began developing a risk-based compliance and enforcement plan, including operational procedures, the appointment of additional officers, training, and information management strategies. However, the draft plan is not expected to be finalized until later in 2021, and the current complaint-driven process remains.

Permits may require the preparation and submission of an annual monitoring report to the Ministry. We reviewed a sample of permits and found that only 53% of the required monitoring reports had been submitted to the Ministry. The Ministry does not have any procedures in place to track reports or request outstanding reports. Reports that are received are not reviewed, as staff prioritize addressing inquiries and issuing new permits. Similarly, the Natural Resources Ministry found in 2018 that 53% of permit

holders either did not prepare a required report or they were not saved by Ministry staff.

Conditional exemptions may require the preparation of mitigation plans and/or monitoring reports but only some are required to be submitted to the Ministry. These mitigation plans should detail how adverse effects on species are minimized. However, the Natural Resources Ministry determined in 2017 that 9% of registrants did not provide these mitigation plans when they were requested. The Natural Resources Ministry also found that 63% of provided mitigation plans were poor in quality, with no clear actions to minimize adverse effects on the species, and there was no follow-up by the Ministry.

Our Office requested copies of mitigation plans and annual monitoring reports for 30 conditional exemptions from the Environment Ministry, but we received only three mitigation plans because it had not received any other documents and had not taken any action to obtain them. Mitigation plans and annual monitoring reports are to be submitted to the Environment Ministry upon the Ministry's request. The Environment Ministry would only provide our Office with the documents that were already in its possession. Accordingly, the Ministry has no way of knowing whether the other mitigation plans and monitoring reports are sufficient or that they exist. As a result, the Environment Ministry does not know if these registrants are in compliance with their conditional exemptions. Our Office contacted these 30 registrants: 40% did not respond, 13% provided partial documentation related to their conditional exemption, and 47% provided the requested documents.

We found that one of the three mitigation plans was prepared by an expert with the aim to create an overall benefit for impacted species, with 7.6 hectares for development and 8.8 hectares set aside for habitat. However, another mitigation plan for an early mineral exploration exemption, also prepared by an expert, stated only that the company would avoid all species at risk habitat in its 427-hectare plan, and

would not perform work during timing restrictions associated with impacted species.

In our testing, we found a case of a conditional exemption for early exploration mining where the company was allowed to impact boreal caribou and was required to submit annual monitoring reports to the Environment Ministry. Our Office asked the Ministry to provide the documents that should be in their possession. The Ministry informed us that it did not have them, and would not contact the company to obtain them; the Ministry did not have updated contact information for the new mining company that had bought out the original corporation that registered the conditional exemption. Our Office asked the new mining company for the annual monitoring reports, but we were told that they are unavailable and nothing has been filed for the conditional exemption since 2018.

Similarly, the Environment Ministry does not track the cases of when companies, organizations or people have chosen to avoid impacts to species at risk rather than obtain an approval like a permit or conditional exemption. The Environment Ministry does not follow up to ensure that promised actions to avoid harm to species at risk have been taken unless a complaint is received. If avoidance actions are not taken, the result could be unauthorized impacts to species or their habitats, a contravention of the Act.

RECOMMENDATION 14

So that regulated species at risk and their habitats are protected according to prohibitions under the *Endangered Species Act, 2007* and in the conditions of approvals, we recommend that the Ministry of the Environment, Conservation and Parks:

- develop and implement a comprehensive risk-based and sector-based compliance and enforcement plan, including regular inspections of approval holders to confirm that they are operating as allowed and are fulfilling their commitments regarding species at risk;

- ensure the sufficiency of enforcement resources, including training requirements, information management strategies, and the number of appointed officers;
- provide information on its website that informs the public that it is responsible for enforcement of the *Endangered Species Act, 2007* and how to report possible violations; and
- publicly report on the Environment Ministry's enforcement actions as part of its yearly published plans and annual report.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks agrees with the Auditor General's recommendation.

The Environment Ministry is currently implementing a comprehensive risk-based compliance and enforcement framework that would include responsive and project-based proactive activities, taking into consideration the Ministry's broad compliance and enforcement mandate and available resources.

The Environment Ministry will ensure there is clear information on how to report potential violations under the Act on its website.

The Environment Ministry recognizes that more can be done to improve transparency and public communication as it relates to enforcement actions under the *Endangered Species Act, 2007*. We will consider publishing information in the future.

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not commit to ensuring sufficient enforcement resources, including training requirements, information management strategies, and the number of appointed officers.

4.5 Funding for Species at Risk Conservation

4.5.1 Ministry Does Not Charge Approval Fees (for Agreements, Permits and Conditional Exemptions) to Recover Program Costs or to Discourage Harmful Activities

The Environment Ministry recognizes the polluter pays principle in its Statement of Environmental Values under the *Environmental Bill of Rights, 1993*—those that harm the environment should bear the costs involved for the activity and any remediation. Likewise, the 2012 Commission on the Reform of Ontario's Public Services recommended full cost recovery and user-pay models for environmental programs and services. However, the Environment Ministry does not charge fees for any approvals (agreements, permits, conditional exemptions) under the *Endangered Species Act, 2007* that allow otherwise prohibited activities to harm species at risk and their habitats. In contrast, the United States Fish and Wildlife Service charges up to \$2,500 USD for permit applications under its *Endangered Species Act*.

There have been 6,539 approvals (186 agreements, 1,124 permits, 5,229 conditional exemptions) issued under the Act between 2007 and 2020 (see **Figure 13**). Infrastructure and development projects, which often negatively impact habitats of different species, account for 59% (3,863) of these approvals.

Fees can recover costs for Ministry programs. The Environment Ministry levies fees to process, review and issue approvals for other environmental programs. For example, the Ministry charges between \$1,190 and \$2,353 for different types of registrations under its Environmental Activity and Sector Registry (Sector Registry) program, and charges up to \$60,000 for other types of permits (environmental compliance approvals) based on complexity and environmental risk. Likewise, other program areas like Ontario Parks charge user fees to pay some aspects of the operational costs of conserving nature in protected areas. Had the Ministry levied the minimum Sector Registry fee for the 935 approvals (42 permits, 893 conditional exemptions) given out

in 2020 under the *Endangered Species Act, 2007*, it would have generated over \$1.1 million in revenue to support species at risk conservation.

4.5.2 Other Jurisdictions More Innovative in Generating Funds to Support Species at Risk

The Ministry does not raise funds for species at risk conservation directly from the public. In contrast, Nova Scotia (since 2008), New Brunswick (since 2009) and Prince Edward Island (since 2013) generate revenue in the sale of species conservation licence plates. Such initiatives also contribute to increasing public awareness of species at risk conservation. For example, New Brunswick's program contributed to nearly 250 recovery projects after generating \$2.1 million from the sale of specialty licence plates and other revenue sources. Although Ontario Parks solicits public donations to help support some aspects of conservation work, it estimates that a specialty licence plate program would generate at least \$1.2 million annually in additional revenue for its programs.

Further, the Ministry has not explored opportunities for corporate sponsorships, philanthropic donations and fundraising toward species at risk conservation. For example, Australia publishes an annual *Threatened Species Prospectus* to solicit funding from the private sector to help meet conservation objectives. The prospectus details practical, tested and costed recovery actions for specific listed species that have been assessed against the best available science and evaluated for success by consulting scientific experts. The government openly solicits donations to fund these proposals and encourages private entities to become involved by having their employees participate in fieldwork alongside conservation organizations.

Reliable, long-term funding for species-at-risk initiatives is critical for protecting and improving the conditions of species and their habitats. Research shows that increasing expenditures on species conservation reduces the likelihood of further species decline. Experts concluded in a 2017 study in the

journal *Nature* that increased spending on biodiversity conservation since the Rio Earth Summit in 1992 has prevented species losses. Additionally, a 2007 study in the *Journal of Environmental Economics and Management* found that listing a species as at risk must be accompanied by funding for recovery actions for that species to achieve successful outcomes.

RECOMMENDATION 15

To improve the sufficiency of financial resources available for actions to protect and recover species at risk in Ontario, we recommend that the Ministry of the Environment, Conservation and Parks:

- charge fees for approvals to harm species at risk that recover program costs and help discourage harmful activities;
- actively engage the public, businesses, and the philanthropic sector in cultivating new sources of investment for species recovery actions; and
- develop a business case to implement a specialty licence plate program to raise funds for species at risk conservation.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks agrees with the Auditor General that it is important to ensure sufficient financial resources to protect and recover species and acknowledges the potential sources of revenue that the Auditor General identifies.

The Environment Ministry's current priority is to operationalize the Species Conservation Action Agency which may receive donations from members of the public and organizations.

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not commit to charging fees for approvals to harm species at risk and to develop other methods to raise funds for the conservation of all species at risk.

4.6 Species at Risk Stewardship Program

4.6.1 Species at Risk Stewardship Program Contributed to Restoring Species at Risk and Their Habitats

The Species at Risk Stewardship Program (Stewardship Program) has funded 1,170 projects and contributed to restoring 55,459 hectares of habitat for species at risk since its creation in 2007. See **Figure 19** for recipients of stewardship funding for 2015/16 to 2020/21. The Stewardship Program is an important means for making progress on government-supported actions identified in response statements (see **Section 4.2.3**).

The Environment Ministry's Species at Risk Branch does not have dedicated staff or funding to conduct on-the-ground species at risk work itself. The Stewardship Program was established by the *Endangered Species Act, 2007* to encourage people to assist in the protection and recovery of species on the Species at Risk in Ontario List. Eligible applicants include Indigenous communities and organizations, academic institutions, businesses and conservation organizations, but provincial ministries and federal government departments and agencies are excluded.

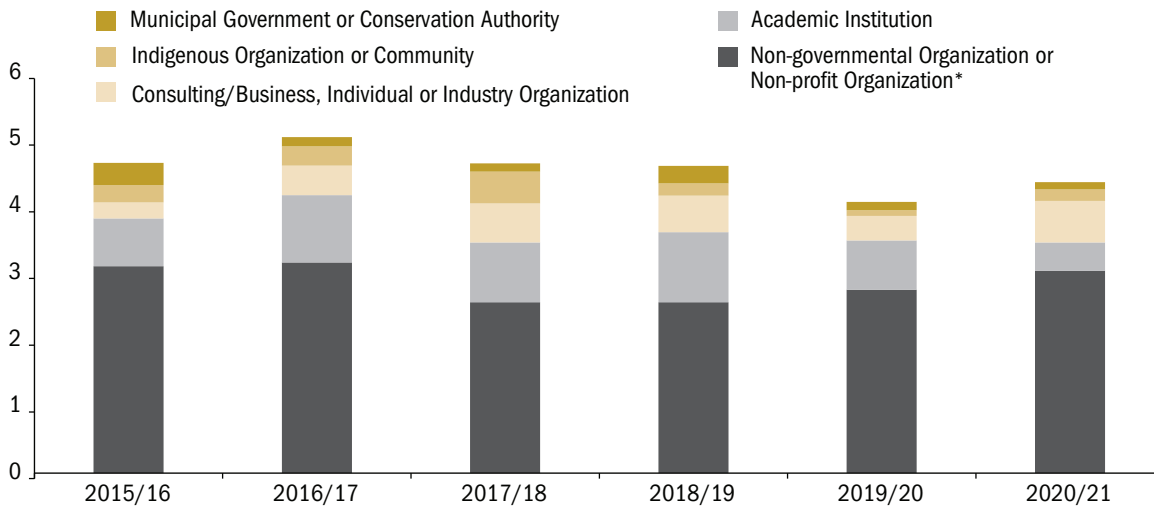
The Stewardship Program promotes activities including the preservation and rehabilitation of habitat, public education and outreach programs, and scientific research that fills knowledge gaps. For example, projects in 2019/20 included:

- the restoration of five hectares of habitat for at-risk pollinators like the rusty-patched bumble bee and the monarch butterfly;
- the delivery of workshops to the public on wetlands and at-risk bats, and classroom presentations for children on two endangered freshwater fish (spotted gar and redbreasted dace); and
- research to determine good growing conditions for sprouting the seeds of an endangered aquatic plant (scarlet ammannia).

In addition to the benefits for species at risk, the Stewardship Program generated social and economic

Figure 19: Recipients of Species at Risk Stewardship Program Funding, 2015/16–2020/21 (\$ million)

Source of data: Ministry of the Environment, Conservation and Parks



* Includes several large projects that implement programs designed to reach individual landowners and farmers.

benefits in capacity development and job creation. We analyzed final reports for 235 stewardship projects funded from 2015/16 to 2019/20, and it was reported that these projects created 502 full-time and 374 part-time positions, and engaged 410 contractors. During this time, 11,526 volunteers, including 3,021 youth, were reported to have gained skills and experience while contributing their time and efforts to these projects. The total volunteer time was valued at over \$4.5 million. In-kind donations for these projects were valued at over \$6.6 million.

Annual project funding priorities are largely driven by actions identified in government response statements—Ministry staff prioritize government-supported actions on which no or limited progress has been made, as funding is insufficient to finance all identified government-supported actions. Although applications are open for projects on all species at risk, each year, the Ministry identifies a list of high-priority species for targeted consideration.

We found that the total funding amount budgeted for the Stewardship Program was \$5 million per year from 2008 to 2016. It then decreased to \$4.5 million per year from 2017 to 2021, despite the fact that the

number of regulated species increased by 59 species (or 32%) from 2008 to 2020.

In our sample of 30 reviews of progress for species with response statements (see **Section 4.2.4**), we found that no progress had been made for 37 (or 15%) of the 249 government-supported actions identified in those response statements—including no progress made on eight (or 9%) of the 90 high-priority actions. For example, actions without progress include determining the cause of the decline of the endangered rusty-patched bumble bee, and developing a monitoring strategy and best management practices for the wild hyacinth plant.

Actions may not be taken in some cases, as the Stewardship Program relies on qualified third parties being aware, available, and interested in applying and undertaking projects that match province-supported actions in response statements. In other words, it assumes that there is an external expert on wild hyacinth plants who wishes to spend time writing a best management practice for the plant and its habitat. Actions may also not be taken because the level of funding is not adequate to cover all government-supported actions listed in response statements.

4.6.2 Funding Delayed for Successful Stewardship Program Applicants That Were Willing to Undertake Conservation Work

We found that in the last two funding cycles, successful Stewardship Program applicants were not officially notified that their projects were accepted until four to six months after their projects were to have started. Further, in some cases, payment agreements for successful Stewardship Program applicants were not finalized until almost a year after programs' start

dates. In the 2019/2020 funding cycle, delays resulted in five applicants walking away and likely contributed to the need for eight other applicants to scale back the scope of their projects.

Ministry staff follow a well-established series of steps geared toward funding stewardship projects that typically begin in May as shown in **Figure 20**. These steps include setting funding priorities, publicly announcing the call for proposals, conducting technical reviews and selecting proposals to fund, negotiating

Figure 20: Species at Risk Stewardship Program – Process and Timeline

Source of data: Ministry of the Environment, Conservation and Parks

Activity	Description	Timeline, Targeted
Priority setting	• Consultation across Species at Risk Branch and Natural Resources Science Branch • Seek alignment with recovery strategies, government response statements and reviews of progress	May
Prepare for program launch	• Prepare program guidelines and application form • Work with Business and Fiscal Planning Branch and Legal Services Branch to prepare materials required to approve launch of program • Work with Communications Branch to prepare communications strategy and website materials • Program must be approved prior to launch*	May to mid-Sep
Launch of annual program with call for proposals	• Inform the public of program's launch and deadline for submitting applications	Mid to late Sep
Application period open	• Proposals can be submitted • Application period is typically six weeks long	Late Sep to early Nov
Application review and project recommendations	• Applications are summarized, reviewed and evaluated • Review panel finalizes project recommendations	Early Nov to early Jan
Approval of recommended projects	• Recommended projects must be approved prior to notifying successful applicants*	Early Jan to Feb
Notification of approval	• Notification letters sent to successful applicants	Feb or Mar
Develop transfer payment agreements with recipients	• Draft, negotiate and finalize transfer payment agreements with recipients • Work with Business and Fiscal Planning Branch and Legal Services Branch • Complete transfer payment agreements' risk assessments	Apr to Oct
Program administration	• Administer transfer payment agreements • Process and issue payments • Track financials • Review project reports and compile information for reviews of progress	Ongoing

* Deputy Minister can approve according to the Ministry of the Environment, Conservation and Parks' Delegation of Financial Management Authority.

and finalizing payment agreements with applicants, reviewing progress and facilitating payments to applicants.

Approval is required at two primary points in this process: the launch of the call for proposals for each program year, including the annual list of funding priorities; and the list of projects recommended for funding after the technical review is complete.

As shown in **Figure 21**, for the 2019/20 and 2020/21 Stewardship Program years, the Minister gave approval to launch the call for proposals seven months later, and the Deputy Minister four months later, respectively, than when the Stewardship Program was with the Natural Resources Ministry—which from 2015 to 2018 launched in September or October of each year. For 2021/22, the Deputy Minister gave approval to launch the program on November 10, 2020, but final approval was not received until January 4, 2021 as materials associated

with this approval package—including communications strategies materials—required Minister’s Office, Cabinet Office and Premier’s Office approval following the Deputy’s approval.

With the exception of the approval to launch the program in 2020/21, final approvals have taken place at the ministerial level in the Environment Ministry or higher, despite the Deputy Minister’s delegated financial authority for Stewardship Program approvals.

Delays in notifying successful applicants and finalizing funding agreements have resulted in proposed work not being completed, or not being completed as initially proposed. For example, during the 2019/20 Stewardship Program cycle, approved projects that did not proceed as planned included the following:

- activities to restore lake habitat damaged by an invasive reed grass; this restoration effort, which did not proceed, would have addressed high

Figure 21: Species at Risk Stewardship Program – Timing of Approvals and Finalized Applicant Agreements

Source of data: Ministry of the Environment, Conservation and Parks

Activity	2019/20	2020/21	2021/22
Project activities may begin	Jun 1, 2019	Apr 1, 2020	Apr 1, 2021
Approval process to launch program initiated	Jul 2018	Dec 10, 2019	Jul 24, 2020
Approval to launch program	Apr 11, 2019 by the Environment Minister	Feb 28, 2020 by the Deputy Environment Minister	Nov 10, 2020 by Deputy Environment Minister, but final approval not given until Jan 4, 2021*
Call for proposals	Apr 18 2019	Mar 4, 2020	Jan 5, 2021
Approval process for recommended projects initiated	Jun 4, 2019	Jun 2, 2020	May 20, 2021
Recommended projects approved	Sep 11, 2019 by the Environment Minister	Aug 7, 2020 by the Environment Minister	Not complete as of Oct 1, 2021
Successful applicants notified	Dec 3, 2019	Aug 10, 2020	Not complete as of Oct 1, 2021
Transfer payment agreements finalized	Feb–Mar 2020	Jan–Mar 2021	Not complete as of Oct 1, 2021

* Materials associated with this approval package require Minister’s Office, Cabinet Office and Premier’s Office approval following the Deputy’s approval.

priority actions in the government response statement for the least bittern (a bird);

- a survey to monitor populations of white wood aster (a plant); this monitoring effort, which did not proceed, was identified as a high priority action in the government response statement;
- the development of a tool to assess the health of eastern flowering dogwood (a plant) in the wild; a tool to help assess threats to the health of eastern flowering dogwood, which was not developed, would contribute to a high-priority action in the government response statement; and
- the development of incentives for farmers to support species at risk on their farms; the applicant had to scale back this project and was not able to fund farmers to complete species at risk best practices on their farms, but conducted some outreach and other activities.

While the Environment Ministry launched the call for proposals earlier in 2021/22 (January), the consistent mismatches in timing between the program start date, when successful applicants are notified that their projects have been approved, and when their funding agreement is finalized continues to impact program delivery.

The Natural Resources Ministry streamlined aspects of administering the Stewardship Program by delegating approval authority to the Assistant Deputy Minister or Deputy Minister. For example, each year the approvals package for the recommended projects to be funded also included approval for issuing the following year's call for proposals; following that, the exact timing of the annual call for proposals was a program-level decision. The Environment Ministry has not developed its own processes required to deliver the Stewardship Program effectively and efficiently.

RECOMMENDATION 16

To increase the positive outcomes for species at risk made possible by the Species at Risk Stewardship Program, we recommend that the Ministry of

the Environment, Conservation and Parks evaluate and provide the annual funding needed for the Stewardship Program to implement government-supported actions in response statements.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks agrees with the Auditor General that the Species at Risk Stewardship Program is an important means for making progress on government-supported actions in response statements.

For the 20 species at risk featured in 2019 and 2020 Review of Progress reports, stewardship projects achieved progress on 76% of all associated response statement actions; for 15 of these species, stewardship projects achieved progress on 100% of high-priority government-supported response statement actions.

The Environment Ministry will also continue to identify response statement actions as a high priority for funding within the program's annual application guidelines, and to evaluate and provide annual summaries of the Stewardship Program in the annual, publicly posted progress reports.

Additionally, the Stewardship Program achieved value-for-money in job creation (9.5 jobs created per \$100,000 invested), volunteer involvement, public engagement through education and outreach activities, species at risk habitat creation and enhancement (90 hectares per \$100,000 invested), and significant leveraging of external funds (\$1.39 leveraged per program dollar disbursed).

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not agree to evaluate and provide the annual funding needed for the Stewardship Program to implement government-supported actions in response statements.

RECOMMENDATION 17

To increase the efficiency and effectiveness of Ontario's Species at Risk Stewardship Program, and allow successful applicants to undertake protection and recovery actions in a timely manner, we recommend that the Ministry of the Environment, Conservation and Parks:

- follow the delegation of authority already in place by having the Deputy Minister approve use of program funding to enable prompt decision-making for this low-cost program; and
- modify the funding cycle to reduce the time required for the approvals process.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks agrees with the recommendation.

The Environment Ministry will continue to apply the delegation of authority already in place by having the Deputy Minister approve use of program funding and modify the funding cycle.

AUDITOR GENERAL'S RESPONSE

We note that the Environment Minister, not the Deputy Minister, approved the list of recommended projects for funding for 2019/20 and 2020/21.

4.7 Governance and Accountability

4.7.1 No Long-term Strategic Plan to Improve the Status of Species at Risk

The Environment Ministry has not developed a long-term strategic plan to improve the status of species at risk. Strategic direction serves as a road map to guide decision making. It should describe the organizational values, identify priority program areas to leverage the best possible use of resources, show how collaboration will occur with other parties, and detail the tactics that staff will use to effectively and efficiently achieve successful outcomes.

A 2019 Ontario Public Service employee engagement survey conducted by the Environment Ministry found that 76% of the Species at Risk Branch staff believed that the Ministry was not on the right track in its planning for the future. Sixty percent of branch staff also did not clearly understand the Ministry's mandate and goals, and 52% of staff did not know how their work contributes to the achievement of Ministry goals.

According to the Ministry, species at risk priorities are informed by the 2018 Made-in-Ontario Environment Plan. This plan reaffirms the government's commitment to "protect species at risk and their habitats," and also commits to "ensuring that the legislation provides stringent protections for species at risk, while continuing to work with stakeholders to improve the effectiveness of the program." The Ministry's published plan and annual report for 2020/21 states that it will continue to implement the Species at Risk Stewardship Program; deliver on recovery products required by the law; and issue permits and authorizations to enable businesses and residents to prosper while protecting and recovering species at risk. Neither plan contains detailed actions and timelines for the conservation of species at risk.

In comparison, British Columbia publicly released a detailed five-year strategic plan in 2014 for species at risk with 39 actions and timelines to:

- improve species conservation through management at the ecosystem and landscape scale;
- provide the best available information to support identification, management and recovery of species at risk;
- encourage people to embrace stewardship of species at risk across all lands;
- apply protection for species at risk consistently across all sectors; and
- measure and report on government's investments in species at risk.

Other jurisdictions identify priority species, habitats and threats in their strategic directions as a best practice. For example, Australia and its states and territories use this approach to address the more than 1,700 species and ecological communities that are

known to be threatened and at risk of extinction. In 2015, Australia publicly identified 20 mammals, 20 birds, and 30 plants as priority species to focus conservation work in order to improve their populations by 2020.

Similarly, in 2018, the federal, provincial and territorial governments in Canada committed to “redouble their efforts” in species at risk conservation. Eleven priority places have been nationally identified, including Long Point Walsingham Forest on the north shore of Lake Erie in Ontario, and six shared priority species have been identified across Canada, including boreal caribou in Ontario.

Strategic direction with actions can also be used to address program risks. Risks can include damage to reputation and litigation if an organization is perceived not to be making meaningful progress according to its mandate and obligations. However, the Ministry does not have a description of the governance, oversight processes and risk management strategies for the species at risk program. In contrast, the Canadian Wildlife Service, Parks Canada, and Fisheries and Oceans Canada publicly identify key risks to core program responsibilities that relate to species at risk and outline annually how they will be addressed.

RECOMMENDATION 18

To guide decisions that can impact species at risk in Ontario, and to effectively, efficiently and accountably achieve successful outcomes for those species, we recommend that the Ministry of the Environment, Conservation and Parks:

- identify priority species, places, and systemic threats as well as how they are to be addressed;
- develop a long-term strategy that outlines specific protection and recovery actions, with associated timelines, that the Ministry will undertake for the program as a whole;
- implement the strategy; and
- publicly report on the progress toward achieving the strategy’s objectives as part of an annual report.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks agrees that the development of a long-term strategy focused on priority species, places and threats would be valuable in guiding decisions that can impact species at risk in Ontario and will undertake such work within budgetary and staffing realities.

At this time, the Environment Ministry is focused on fulfilling the purposes of the *Endangered Species Act, 2007*. The overarching purposes of the Act, which are articulated in section 1 of the Act, guide ministry decisions relating to species at risk in Ontario.

The Environment Ministry is also focused on preparing species-specific response statements that identify and prioritize specific protection and recovery actions that Ontario intends to take or support to help recover species.

Where possible, response statements may be developed to strategically address the recovery of multiple species at risk in a single policy, such as the:

- Blue Racer, Lake Erie Watersnake, Small-mouthed Salamander and Unisexual Ambystoma (Small-mouthed Salamander dependent population) government response statement; or the
- Pink Milkwort, Showy Goldenrod (Great Lakes Plains population), Skinner’s Agalinis and White Prairie Gentian government response statement.

In addition, as part of Species at Risk Stewardship Program delivery, the Environment Ministry conducts a rigorous annual priority-setting exercise in order to direct funding where stewardship can make a difference and where it is most urgently needed.

AUDITOR GENERAL’S RESPONSE

We note that developing a long-term strategy, with timebound and specific protection and recovery

actions that the Environment Ministry will undertake for the program as a whole, would allow for an effective, efficient and accountable method of contributing to meeting the purposes of the *Endangered Species Act, 2007*.

4.7.2 Ontario Risks Not Conforming with Federal Law Because of the Insufficiency of Provincial Habitat Protections for Some Species like Boreal Caribou

The Environment Ministry has not undertaken any risk assessment of its conformity with the federal *Species at Risk Act* and the sufficiency of habitat protections for species at risk. Ontario made legislative changes in 2019 and 2020 that impact the protection of species at risk and risk potential non-conformity with the federal law.

The federal government can issue orders under the *Species at Risk Act* when the federal Minister of the Environment and Climate Change is of the opinion that the laws of a province or territory do not effectively protect the critical habitat of a federally listed species at risk. For example, the federal government issued orders to protect the western chorus frog—classified nationally as threatened—in Quebec in 2015 because habitat protection there was insufficient. The western chorus frog is also found in Ontario but is not regulated under Ontario's *Endangered Species Act, 2007* because the Assessment Committee assessed it as not at risk in 2009. If a species is federally classified as threatened but receives no habitat protection in Ontario, the province risks non-conformity. No order has been issued by the federal government yet for this species in Ontario.

The *More Homes, More Choice Act, 2019*, passed in June 2019, made several amendments to the *Endangered Species Act, 2007*. Changes include new species assessment criteria, and the Minister's ability to temporarily suspend prohibitions for newly listed species for up to three years. The Ministry states that the authority to suspend protections will allow for "the right protection approaches that better consider

Ontarians' social and economic realities and species' needs." For example, in September 2021 after our audit was complete, the Environment Ministry proposed a temporary two-year suspension of protections for the endangered black ash tree after it becomes regulated. Additionally, a new type of approval, a landscape agreement, can also allow multiple harmful activities impacting many species across a broad area, and does not hold parties accountable for actions that impact all of the species.

Before the Legislature passed these changes, the Environment Ministry consulted the public on proposed changes to the *Endangered Species Act, 2007*. The proposal was posted on the Environmental Registry for a 30-day comment period in April 2019 and received 45,214 public comments, including both form letters and unique comments. The Environment Ministry determined that 1,115 (or 98%) of the 1,138 unique comments were either opposed or concerned about the proposal. The majority of comments from the public, conservation organizations, scientists, Indigenous communities and municipalities expressed concern about reducing protections for species at risk. In contrast, the majority of comments from business and industry associations expressed support for changes to enhance certainty, streamline processes and reduce regulatory burden.

The 2019 amendments also created the Species at Risk Conservation Fund and provided the power to establish the Species at Risk Conservation Trust to administer the fund. The Minister may designate species as a "conservation fund species" and certain approval holders could pay a conservation charge instead of undertaking on-the-ground beneficial actions themselves. The funds can be awarded to other parties to undertake conservation work, but the work need not be in the same geographic area or for the same species. In 2020, the Ministry proposed six species for conservation fund designation. The federal government expressed concern over designating Blanding's turtle in the Canadian Shield region as a conservation fund species, as an increase in the number of permitted activities could contribute to loss of critical habitat and decrease the viability of existing

local populations. At the time of our audit, the Ministry had not decided which species would be “conservation fund species,” an agency to administer the fund had not yet been established, and there was no funding to distribute. In September 2021, after our audit was complete, the Environment Ministry formally established the Species Conservation Action Agency to administer the fund.

The *Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020, passed in December 2020, included amendments to the *Crown Forest Sustainability Act*, 1994 that exempts forestry operations conducted on Crown lands in accordance with an approved forest management plan from the *Endangered Species Act*, 2007. Forestry operations in Crown-managed forests—approximately 40% of the provincial land base—had been allowed under temporary conditional exemptions. This 2020 change enables forestry operations to proceed without requiring any approvals under the *Endangered Species Act*, 2007. The Natural Resources Ministry posted the proposed amendments on the Environmental Registry for a 31-day comment period in December 2019 and 762 (or 63%) of the 1,207 public comments received expressed opposition to the proposal.

This exemption is related to the Natural Resources Ministry’s 2020 forest-sector strategy that aims to “remove unnecessary regulatory duplication” in order to remove “policy barriers” to increase industry access to supplies of wood. The Natural Resources Ministry posted a draft of the forest strategy on the Environmental Registry for a 63-day comment period in December 2019. Of the 33,136 public comments on the strategy, 32,653 (or 99%) were opposed to the proposal, including expressing concern that the strategy does not protect species at risk or biodiversity more generally.

However, in 2019, the Environment Ministry determined that the Natural Resources Ministry’s rules for forestry could potentially subject 12 of the 54 endangered or threatened species in logged Crown forests to significant adverse effects (see **Appendix 8**). The Environment Ministry determined that these species are adversely impacted because:

- there is no species at risk direction in current forest management guides; or
- the direction does not align with scientific evidence, and/or the direction does not adequately address key threats to the species and its habitat.

In March 2021, the Environment Minister and Natural Resources Minister received letters from the federal Minister of Environment and Climate Change that warned of non-conformity with the federal *Species at Risk Act* due to portions of boreal caribou critical habitat remaining unprotected in Ontario. The federal Minister requested that corrective action be taken by November 2021—preferably in the form of a conservation agreement to support boreal caribou conservation—otherwise it would begin consultations on the development of an order to protect unprotected portions of boreal caribou critical habitat in Ontario.

In June 2021, the Environment Minister received a follow-up letter from the federal Minister re-iterating that a conservation agreement is preferred and that a recommendation had been made to the Governor in Council regarding the protection of critical caribou habitat in Ontario under section 61 of the *Species at Risk Act*. The federal Minister also noted that, should a conservation agreement or equivalent measures not be concluded by November 2021, the Government of Canada intends to begin consultations on developing an order for the protection of unprotected portions of critical boreal caribou habitat in Ontario. At the time of our audit, we asked the Environment Ministry and the Natural Resources Ministry for an update and were informed that next steps are under consideration. The Natural Resources Ministry had also received a letter in 2020 from the federal government expressing concern that the proposed changes to exempt forest operations from the Act, which subsequently became law, would weaken regulatory protections for species at risk and their habitat.

In 2020, the province created the Office of the Comptroller General tasking it with identifying and mitigating potential financial and policy risks. This

would include issues such as the lack of protections for boreal caribou habitat that could create larger issues that would take more time and resources to correct. Enterprise risk management is a best practice in the private sector, including forecasting and managing operational risk. Under the *Management Board of Cabinet Act*, the Enterprise Risk Management Directive requires ministries to have risk management practices in place tailored to their mandate, objectives, activities and responsibilities. This process involves identifying and assessing risks; planning and taking action; and monitoring and reporting.

RECOMMENDATION 19

So that the Province of Ontario conforms with the federal *Species at Risk Act*, we recommend that the Ministry of the Environment, Conservation and Parks:

- assess the risks of non-conformity with the federal *Species at Risk Act*;
- provide information on the risks to the Comptroller General for inclusion in the province's Enterprise Risk Plans;
- publicly report on those risks; and
- take corrective actions to ensure sufficient habitat protections for species at risk.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks agrees that it is important to assess the risks of non-conformity of the provincial approach to protecting species at risk and their habitats with the federal *Species at Risk Act*.

The Environment Ministry regularly assesses its approach in regard to the federal approach and takes appropriate action to manage risks, as needed. Canada and Ontario have complementary approaches to protecting species at risk, which are codified under the National Accord for the Protection of Species at Risk. Ontario's approach is designed to meet provincial needs.

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not clearly commit to assessing the risks of non-conformity with the federal *Species at Risk Act*, providing information on risks to the Comptroller General, and publicly reporting on those risks.

4.7.3 No Performance Measures to Evaluate Program Effectiveness

The Environment Ministry has not developed a performance measurement framework for its species at risk program to evaluate the effectiveness of efforts to improve the status of species at risk and their habitats. In addition, the Environment Ministry has not established any performance measures for enforcement and compliance with the *Endangered Species Act, 2007*. As a result, it is difficult to know whether threats to these species are being reduced in an effective and efficient manner, and whether overall efforts result in making species better off.

The Treasury Board Secretariat (Secretariat) establishes policies and standards for organizational practices across the provincial government. The Secretariat has provided guidance to ministries emphasizing the importance of developing key performance indicators and targets to track performance, report on progress and drive continuous improvement. Meaningful performance measures are important to drive progress.

It is a best practice to have performance measures that show whether current actions are working. These measures inform what corrective actions need to be taken by ministries to improve the individual and collective status of species at risk. For example, Canada set a goal in 2015 that by 2020 "species at risk listed under the federal law exhibit trends that are consistent with recovery strategies and management plans." The federal government uses indicators to benchmark its achievement and to be accountable for its international obligations to conserve biodiversity. The federal government reported that of the 113 species at

risk for which population trends could be determined as of 2019, 55 species at risk (or 42%) show progress toward their population objectives, 61 species (or 47%) do not show progress, and 14 species (or 11%) have mixed results.

Federal departments with responsibilities for species at risk use performance measures to be accountable. For example:

- The Canadian Wildlife Service (Service) has set a deadline and measurable target for recovering species at risk to address its responsibilities under the federal *Species at Risk Act*. It seeks to achieve changes in species populations that are consistent with the corresponding recovery objectives for 60% of species at risk by May 2025. The Service reports publicly on their actual performance toward this target each year. At the time our audit, the Service reported an actual result of 42% for 2018/19.
- Fisheries and Oceans Canada set an objective that negative impacts on oceans and other aquatic ecosystems be minimized or avoided. It uses the percentage of aquatic species at risk listed under the *Species at Risk Act* for which a recovery strategy or management plan is completed as a performance measure. Its target is at least 80% by March 31, 2023 and its actual results for 2018/19 were 75%.
- Parks Canada is responsible for the conservation of species at risk on the lands and waters that it manages. It uses the percentage of national park ecosystems where ecological integrity is maintained or improved as a performance measure. Its target is at least 92% by March 2023. The most recent data available shows that 86% were maintained or improved in the 119 national park ecosystems assessed in 2019.

RECOMMENDATION 20

To measure the effectiveness of its species at risk program at improving the status of species at

risk and their habitats, we recommend that the Ministry of the Environment, Conservation and Parks, adhering to guidance from the Treasury Board Secretariat:

- develop a performance measurement framework for the species at risk program that focuses on successful outcomes;
- include the performance measurement framework within the long-term strategy described in **Recommendation 18**; and
- publicly report on actual results against these performance measures as part of an annual report.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks agrees with the Auditor General that performance measurement is important.

The Environment Ministry has a full spectrum of key performance indicators developed to measure the Environment Ministry's delivery of its mandate and commits to ensuring that they continue to be applied.

The Environment Ministry's priority in regard to performance measurement related to the species at risk programs includes fulfilling the commitment to ensure each response statement includes performance measures (see **Recommendation 5**) and exploring the feasibility of enhanced progress tracking and follow up on actions identified in government response statements (see **Recommendation 6**).

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not commit to developing performance measures for the species at risk program and publicly reporting on actual results.

4.7.4 No Transparency in Species at Risk Program Advisory Committee Appointments and Activities

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 but we found that there was a lack of transparency in appointing members and the committee's activities. The Act allows the committee to provide advice to the Minister on a wide variety of matters from developing outreach programs to delivering incentive programs.

We reviewed the appointments process for the Advisory Committee and found that there are no committee-specific screening criteria for applicants such as knowledge of species at risk conservation. Seven new members were recommended to be appointed in 2019/20 by the Environment Minister but the vacancies were not publicly advertised. These appointments were recommended to the Lieutenant Governor in Council by the Minister's office but the Ministry could not provide us with any information on how the new members were identified, screened and chosen.

At the time of our audit, members who work for industry associations or companies account for 10 of the 15 (or 67%) members. Half of these members also are registered lobbyists for the Ontario Forest Industries Association; the Ontario Home Builders' Association; the Ontario Stone, Sand & Gravel Association; the Ontario Waterpower Association; and Newmont Corporation (a mining company). Only five (or 33%) of the current Advisory Committee members are from conservation organizations. In comparison, 56% of members on the equivalent federal species at risk advisory committee are from conservation organizations and the remaining members are from industry associations.

The Advisory Committee may make recommendations to the Minister on the assembly of scientific information, community knowledge, and Indigenous traditional knowledge to assist in the classification of species. However, we noted that there was no

Indigenous representation on the Advisory Committee. In comparison, the equivalent federal species at risk advisory committee invites Indigenous participation from the National Aboriginal Council on Species at Risk, the Assembly of First Nations, the Metis National Council and Inuit Tapiriit Kanatami. Unlike the federal species at risk advisory committee, there are no experts from the academic community such as university scientists who specialize in biology or conservation. Additionally, there are no members from the 36 conservation authorities that manage 150,000 hectares of land that are home to many species at risk.

The Terms of Reference for the Advisory Committee require it to prepare and provide an annual written report on its activities to the Minister. However, no annual report was prepared for 2017/18 or 2018/19. The 2016/17 and 2019/20 annual reports were prepared by Ministry staff on behalf of the Advisory Committee. The Advisory Committee's annual reports are also not publicly available, which impairs the transparency of its work and advice.

The Advisory Committee's responsibilities include voting on recommendations and providing them in writing to the Minister. Our review found that no written recommendations were provided to the Minister in three of the last five fiscal years. In 2018/19, the Advisory Committee provided comments to the Environment Minister on the 10-year review of the Act. In 2020/21, the Advisory Committee provided written recommendations regarding the Species at Risk Conservation Fund regulatory proposal at the request of the Environment Ministry. The Advisory Committee also developed a workplan for 2021 that included reviewing permit implementation and providing input into the design of the new landscape agreements.

RECOMMENDATION 21

So that the appointments and work of the Species at Risk Program Advisory Committee (Advisory Committee) are transparent and helpful to the

Environment Minister for improving the status of species at risk, we recommend that the Ministry of the Environment, Conservation and Parks:

- assess the existing mix, composition, and competencies of the Advisory Committee, including Indigenous representation; and
- develop and implement transparent criteria and procedures for appointments and re-appointments to the Advisory Committee, including to address any identified competency and representation gaps.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks is committed to ensuring that the processes outlined by the Public Appointments Secretariat and the Agencies and Appointments Directive are adhered to in appointments and re-appointments to the Advisory Committee. The Environment Ministry does not intend to develop procedures that are unique to the Advisory Committee.

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not agree to assess the existing mix, composition, and competencies of the Advisory Committee. The Environment Ministry also did not agree to develop and implement transparent criteria and procedures for appointments and re-appointments to the Advisory Committee.

Appendix 1: Summary of Recommendations and Environment Ministry Responses

Prepared by the Office of the Auditor General of Ontario

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
1.	So that independent expertise is used to promptly assess species and improve the status of species at risk in line with the purpose of the <i>Endangered Species Act, 2007</i>, we recommend that the Ministry of the Environment, Conservation and Parks: - ensure that membership on the Committee on the Status of Species at Risk in Ontario is sufficient for quorum to be able to carry out its mandate to assess and classify species for subsequent recovery and protection efforts; and - develop, publish, and follow transparent and accountable procedures so that technical and program staff with species-at-risk expertise screen and recommend to the Minister candidates for appointment and reappointment to the Committee on the Status of Species at Risk in Ontario.	The Ministry of the Environment, Conservation and Parks agrees with the recommendation to ensure membership on the Committee on the Status of Species at Risk in Ontario is sufficient so that quorum is achieved to carry out its mandate. The <i>Endangered Species Act, 2007</i>, sets out the role and member qualifications of the Committee on the Status of Species at Risk in Ontario. The Environment Ministry will continue to ensure that the processes outlined by the Public Appointments Secretariat and the Agencies and Appointments Directive are adhered to in appointments and reappointments to the Committee on the Status of Species at Risk in Ontario. The Environment Ministry does not intend to develop procedures that are unique to the Committee on the Status of Species at Risk in Ontario.	The Environment Ministry did not agree to develop, publish, and follow transparent and accountable procedures so that technical and program staff with species-at-risk expertise screen and recommend to the Minister candidates for appointment and reappointment to the Committee on the Status of Species at Risk in Ontario.		✓

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
2.	So that the Committee on the Status of Species at Risk in Ontario (Assessment Committee) has the resources needed to effectively fulfill its mandate as required by the <i>Endangered Species Act, 2007</i> , we recommend that the Ministry of the Environment, Conservation and Parks ensure that the Assessment Committee be provided access to the technical support it needs, and be supplied with the necessary tools and the funds to procure needed status reports to promptly and effectively assess species.	The Ministry of the Environment, Conservation and Parks acknowledges and agrees with the recommendation to provide the Committee on the Status of Species at Risk in Ontario with technical support and tools to do its work. That is why the Environment Ministry is acquiring specific software for rapid screening to prioritize species in need of assessment, as requested by the Committee on the Status of Species at Risk in Ontario. The Environment Ministry will also continue to support the Committee on the Status of Species at Risk in Ontario in obtaining required information, as it identifies specific needs.		✓	
3.	So that species at risk receive protections under the <i>Endangered Species Act, 2007</i> when appropriate, we recommend that the Ministry of the Environment, Conservation and Parks align the assessment and classification criteria used by the Committee on the Status of Species at Risk in Ontario with that used by the federal and other provincial or territorial assessment committees.	The Ministry of the Environment, Conservation and Parks acknowledges and agrees with the recommendation to align the assessment and classification criteria used by the Committee on the Status of Species at Risk in Ontario, when appropriate. The Environment Ministry is supportive of the Committee on the Status of Species at Risk in Ontario continuing to utilize the existing International Union for Conservation of Nature and the Committee on the Status of Endangered Wildlife in Canada criteria with appropriate modifications taking into consideration the 2019 amendments to the <i>Endangered Species Act, 2007</i>.	The Environment Ministry did not agree to align the assessment and classification criteria used by the Committee on the Status of Species at Risk in Ontario with that used by the federal and other provincial and territorial assessment committees for all species.	✓	

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
4.	To identify goals, objectives and approaches to improve the status of all species at risk, and to be transparent and accountable to the public and timely in meeting its legislative responsibilities under the <i>Endangered Species Act, 2007</i>, we recommend that the Ministry of the Environment, Conservation and Parks: - ensure the preparation and public release of recovery strategies for Algonquin wolf, mountain lion (cougar), and spoon-leaved moss by December 2022; and - post the list of outstanding recovery strategies and management plans, and a timetable for their development on the Environmental Registry on a quarterly basis.	The Ministry of the Environment, Conservation and Parks agrees about the importance of transparency and accountability to the public and timeliness in meeting legislative responsibilities under the <i>Endangered Species Act, 2007</i>. As recommended, the Environment Ministry is committed to ensuring the preparation and public release of a recovery strategy for spoon-leaved moss by December 2022. The Environment Ministry will finalize the recovery strategy, as appropriate, for Algonquin wolf pending the outcome of the reassessment by the Committee on the Status of Species at Risk in Ontario which is occurring in November 2021. A draft recovery strategy for Algonquin wolf was posted on the Environmental Registry for public comment in January 2018. However, since the species was assessed and listed as threatened in 2016, questions have been raised about the abundance and distribution of this species and the history of breeding among canids (members of the dog family) in Ontario. The Environment Ministry will finalize the development of the recovery strategy for mountain lion (cougar), as appropriate pending the outcome of the upcoming reassessment by the Committee on the Status of Species at Risk in Ontario. The January 2020 Committee on the Status of		✓	

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
		Species at Risk in Ontario report identified mountain lion on the list of species being considered for assessment or reassessment in 2021. The Environment Ministry agrees with the Auditor General's recommendation to share information publicly about the status and timelines for recovery strategies and management plans and will undertake an analysis to determine how best to achieve that objective.			

Auditor General's Assessment of Environment Ministry's Response to Recommendation				
#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Sufficient
				Insufficient
5.	To increase transparency and improve clarity about the government's actions to improve the status of all species at risk, and to increase accountability and progress in implementing identified protection and recovery actions, we recommend that the Ministry of the Environment, Conservation and Parks: • develop guidance for the preparation of response statements that will result in the achievement of meaningful outcomes for species at risk; • complete the development of response statements for American eel and lake sturgeon by December 2022 so that actions to protect and recover species can be implemented; • post the list of outstanding response statements, and a timetable for their development on the Environmental Registry on a quarterly basis; • include performance measures in response statements based on recovery strategies so that success can be assessed and accountability established for undertaking required actions; and • include cost and time estimates in response statements so that the needed allocation of resources for actions is clear to decision-makers and the public.	The Ministry of the Environment, Conservation and Parks is committed to having a clear and comprehensive consultation process for preparing response statements. Each response statement shall identify a provincial recovery goal for the species as well as key objectives and prioritized actions necessary to support the recovery of (and meaningful outcomes for) the species. This is the Environment Ministry's current focus and new guidance for the preparation of response statements is not being developed at this time. The Environment Ministry is finalizing the response statement for American eel and developing the response statement for lake sturgeon. These will be completed by December 2023. The Environment Ministry agrees with the Auditor General's recommendation to share information publicly about the status and timelines for response statements and will undertake an analysis to determine how best to achieve that objective. The Environment Ministry will ensure each response statement includes a provincial recovery goal for each species as well as detailed objectives, performance measures and prioritized actions necessary to support the species' recovery. These will be used to assess and report on progress toward the protection and recovery of each species.	The Environment Ministry did not agree to develop guidance for the preparation of response statements that will result in the achievement of meaningful outcomes for species at risk. The Environment Ministry also did not agree to include cost estimates in response statements so that the needed allocation of resources for actions is clear to decision-makers and the public.	✓

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response		Auditor General's Assessment of Environment Ministry's Response to Recommendation	
					Sufficient	Insufficient
		The Environment Ministry is committed to incorporating considerations of time into response statements through prioritization of the actions identified as necessary to support the protection and recovery of each species, as well as for some species by identifying short- and long-term goals or timelines for achieving the goals or particular actions. Cost estimates are not included in response statements, as statements identify actions necessary to support recovery, but remain flexible for stewards and stakeholders to identify the best approaches for implementing or achieving the actions.				

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
6.	To increase accountability on progress made to improve the status of species at risk in Ontario, we recommend that the Ministry of the Environment, Conservation and Parks: - report on the outcomes of actions and impacts on species at risk in reviews of progress, based on the performance measures described in Recommendation 5; - detail in reviews of progress how government-led actions were implemented; and - report on progress for species every five years until the species is no longer on the Species at Risk in Ontario List.	The Ministry of the Environment, Conservation and Parks acknowledges this recommendation and recognizes the importance of regular reporting to provide transparency and effectively track progress on species at risk protection and recovery. The Committee on the Status of Species at Risk in Ontario maintains the priority list of species requiring assessment or reassessment, and generally performs species reassessments on an approximate 10-year cycle, which aligns with federal species assessment processes. Through its assessment work, the Committee provides a transparent and science-based evaluation of progress made toward species recovery. The Committee's reports are provided annually to the Minister and are made available to the public within three months of being received. The Ministry of the Environment, Conservation and Parks is exploring the feasibility of enhanced progress tracking and follow up on actions identified in government response statements.	The Environment Ministry did not agree to report on outcomes in reviews of progress, detail how government-led actions are implemented, and report on progress until the species is no longer at risk. We note that the Committee on the Status of Species at Risk in Ontario's species reassessments do not evaluate the outcomes of actions nor detail how government-led actions are implemented.	Sufficient	Insufficient ✓

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
7.	To minimize the harm to species at risk allowed by permit approvals under the <i>Endangered Species Act, 2007</i>, we recommend that the Ministry of the Environment, Conservation and Parks (Ministry): - develop and implement guidance for Ministry staff on when to deny approvals based on the needs of a species; and - ensure language used in proposed permits on the Environmental Registry clearly identifies expected impacts to species and their habitats.	The Ministry of the Environment, Conservation and Parks agrees that guidance for Environment Ministry staff in relation to approvals under the <i>Endangered Species Act, 2007</i> is important. The Environment Ministry's priority is guidance for staff on how to determine whether the Act's requirements have been met. Permit proposals that meet the Act's legal tests are recommended to the Environment Minister for issuance. Permit proposals that do not meet the legal tests are not recommended for approval. As noted in the Environment Ministry's responses to Recommendations 10 and 11, the Environment Ministry is committed to continuously improving and refining its guidance for Environment Ministry staff related to permit development under the <i>Endangered Species Act, 2007</i>. The Environment Ministry agrees that communication of information through the Environmental Registry should be as clear as possible for the public. That is why when the Environment Ministry prepares to post, each individual posting is evaluated and carefully reviewed to avoid technical and legal jargon and to ensure that it clearly identifies expected impacts to the natural environment. We will ensure that the same standard is applied for all Environmental Registry postings, including those under the <i>Endangered Species Act, 2007</i>.	The Environment Ministry did not agree to develop and implement guidance for Ministry staff on when to deny approvals based on the needs of a species.		✓

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
8.	To minimize the harm to species at risk allowed by conditional exemption approvals under the <i>Endangered Species Act, 2007</i>, we recommend that the Ministry of the Environment, Conservation and Parks: • evaluate the effects of conditional exemptions on species at risk and their habitats; • make the results of that evaluation public; and • take corrective action as necessary on the requirements and scope of conditional exemptions.	The Ministry of the Environment, Conservation and Parks agrees that evaluating the effects of conditional exemptions on species at risk and their habitats is beneficial to the provincial species at risk program. Within budgetary and staffing realities, the Environment Ministry will continue to evaluate the effectiveness of conditional exemptions.	The Environment Ministry did not commit to making an evaluation of the effects of conditional exemptions public, and taking corrective action as necessary.		✓
9.	To minimize the harm to species at risk allowed by conditional exemption approvals under the <i>Endangered Species Act, 2007</i>, we recommend that the Ministry of the Environment, Conservation and Parks require that health or safety conditional exemptions justify the need for the exemption and provide details of the activity, including an assessment of how species will be impacted.	The Ministry of the Environment, Conservation and Parks acknowledges and agrees with this recommendation in regard to structures and infrastructure. A condition to the exemption for activities involving structures and infrastructure under the conditional exemption for non-imminent threats to health and safety is that proponents must develop a mitigation plan prior to commencing their activity. This plan must include information about the need for the exemption and an assessment of the activity's likely effects on species at risk identified in their mitigation plan. Further, it is a condition to the exemption that the activity is carried out in accordance with the mitigation plan. Proponents must comply with the conditions of the exemption in order for the exemption to apply. Further, failure to comply with a requirement under a regulation is an offence under the <i>Endangered Species Act, 2007</i>.	The Environment Ministry did not agree to require that all registrations for health or safety conditional exemptions justify the need for the exemption and provide details of the activity, including how species will be impacted.		✓

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
10.	To improve the status of species at risk affected by overall benefit permit approvals under the <i>Endangered Species Act, 2007</i>, we recommend that the Ministry of the Environment, Conservation and Parks: • evaluate the outcomes to species at risk from issuing overall benefit permits to confirm that required conditions are making species better off; • publicly report on that evaluation; and • update internal guidance using the best available scientific information to ensure overall benefit permits result in successful outcomes for species at risk and their habitats.	The Ministry of the Environment, Conservation and Parks agrees that the evaluation of the outcomes to species at risk from issuing overall benefit permits is important and will undertake such work within budgetary and staffing realities. The Environment Ministry is committed to using the best available scientific information to ensure overall benefit permits result in successful outcomes for species at risk and their habitats. The Environment Ministry will continue to apply and refine its internal guidance on an ongoing basis in the development of overall benefit permits consistent with the <i>Endangered Species Act, 2007</i>.	The Environment Ministry did not agree to publicly report on the evaluation of the outcomes to species at risk from issuing overall benefit permits.		✓
11.	So that all permit approvals under the <i>Endangered Species Act, 2007</i> achieve the best possible outcomes for species at risk and their habitats, we recommend that the Ministry of the Environment, Conservation and Parks: • develop and implement guidance for staff to process all permits in a consistent manner; and • develop and implement guidance that delegates Ministerial authority back to Ministry staff to issue permits with the main purpose of assisting in the protection or recovery of the species.	The Ministry of the Environment, Conservation and Parks agrees that guidance for staff on processing permit applications in a consistent manner is important to ensure consistency and completeness in reviewing applications. The Environment Ministry is committed to continuously improving its internal guidance regarding permit development consistent with the <i>Endangered Species Act, 2007</i>. The Environment Ministry acknowledges the ability to delegate statutory powers and will continue to review delegations as needed to determine if they are appropriate.		✓	

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
12.	To minimize the harm to species at risk allowed by social or economic benefit permit approvals under the <i>Endangered Species Act, 2007</i> , we recommend that the Ministry of the Environment, Conservation and Parks develop and implement guidance based on the best available science that details when it is appropriate to issue a social or economic benefit permit rather than an overall benefit permit.	The Ministry of the Environment, Conservation and Parks acknowledges and agrees with the Auditor General's recommendation and notes that current work is under way to update guidance to support staff in the review of applications for approvals under the <i>Endangered Species Act, 2007</i> .		✓	
13.	To minimize the harm to species at risk allowed by approvals under the <i>Endangered Species Act, 2007</i> , we recommend that the Ministry of the Environment, Conservation and Parks: • evaluate the cumulative effects of approvals and other threats over time on species at risk and their habitats and factor this knowledge into the issuance or non-issuance of future approvals; and • publicly report on this information; and • take corrective actions as necessary to ensure that approvals contribute to successful outcomes for species at risk and their habitats.	The Ministry of the Environment, Conservation and Parks acknowledges the Auditor General's recommendation to evaluate the cumulative effects of approvals and other threats over time on species at risk and their habitats, to factor this knowledge into the issuance or non-issuance of future approvals, to publicly report, and take corrective actions as necessary. Overall benefit permits are unique from other types of approvals in that the intended outcome of these permits is meant to improve the relative standing of a species after taking into account the residual adverse effects to the species or its habitat that are authorized by the permit. The Environment Ministry intends to initiate development of policy considerations to support the development of landscape agreements and to consider appropriate approaches to balancing across species the impacts on species at risk with the benefits provided.	The Environment Ministry did not commit to evaluating the cumulative effects of approvals and other threats, publicly reporting on this evaluation, and taking any necessary corrective actions.		✓

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
14.	So that regulated species at risk and their habitats are protected according to prohibitions under the <i>Endangered Species Act, 2007</i> and in the conditions of approvals, we recommend that the Ministry of the Environment, Conservation and Parks: - develop and implement a comprehensive risk-based and sector-based compliance and enforcement plan, including regular inspections of approval holders to confirm that they are operating as allowed and are fulfilling their commitments regarding species at risk; - ensure the sufficiency of enforcement resources, including training requirements, information management strategies, and the number of appointed officers; - provide information on its website that informs the public that it is responsible for enforcement of the <i>Endangered Species Act, 2007</i> and how to report possible violations; and - publicly report on the Environment Ministry's enforcement actions as part of its yearly published plans and annual report.	The Ministry of the Environment, Conservation and Parks agrees with the Auditor General's recommendation. The Environment Ministry is currently implementing a comprehensive risk-based compliance and enforcement framework that would include responsive and project-based proactive activities, taking into consideration the Ministry's broad compliance and enforcement mandate and available resources. The Environment Ministry will ensure there is clear information on how to report potential violations under the Act on its website. The Environment Ministry recognizes that more can be done to improve transparency and public communication as it relates to enforcement actions under the <i>Endangered Species Act, 2007</i>. We will consider publishing information in the future.	The Environment Ministry did not commit to ensuring sufficient enforcement resources, including training requirements, information management strategies, and the number of appointed officers.		✓

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
15.	To improve the sufficiency of financial resources available for actions to protect and recover species at risk in Ontario, we recommend that the Ministry of the Environment, Conservation and Parks: - charge fees for approvals to harm species at risk that recover program costs and help discourage harmful activities; - actively engage the public, businesses, and the philanthropic sector in cultivating new sources of investment for species recovery actions; and - develop a business case to implement a specialty license plate program to raise funds for species at risk conservation.	The Ministry of the Environment, Conservation and Parks agrees with the Auditor General that it is important to ensure sufficient financial resources to protect and recover species and acknowledges the potential sources of revenue that the Auditor General identifies. The Environment Ministry's current priority is to operationalize the Species Conservation Action Agency which may receive donations from members of the public and organizations.	The Environment Ministry did not commit to charging fees for approvals to harm species at risk and to develop other methods to raise funds for the conservation of all species at risk.		✓
16.	To increase the positive outcomes for species at risk made possible by the Species at Risk Stewardship Program, we recommend that the Ministry of the Environment, Conservation and Parks evaluate and provide the annual funding needed for the Stewardship Program to implement government-supported actions in response statements.	The Ministry of the Environment, Conservation and Parks agrees with the Auditor General that the Species at Risk Stewardship Program is an important means for making progress on government-supported actions in response statements. For the 20 species at risk featured in 2019 and 2020 Review of Progress reports, stewardship projects achieved progress on 76% of all associated response statement actions; for 15 of these species, stewardship projects achieved progress on 100% of high-priority government-supported response statement actions.	The Environment Ministry did not agree to evaluate and provide the annual funding needed for the Stewardship Program to implement government-supported actions in response statements.		✓

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
		The Environment Ministry will also continue to identify response statement actions as a high priority for funding within the program's annual application guidelines, and to evaluate and provide annual summaries of the Stewardship Program in the annual, publicly posted progress reports. Additionally, the Stewardship Program achieved value-for-money in job creation (9.5 jobs created per \$100,000 invested), volunteer involvement, public engagement through education and outreach activities, species at risk habitat creation and enhancement (90 hectares per \$100,000 invested), and significant leveraging of external funds (\$1.39 leveraged per program dollar disbursed).			
17.	To increase the efficiency and effectiveness of Ontario's Species at Risk Stewardship Program, and allow successful applicants to undertake protection and recovery actions in a timely manner, we recommend that the Ministry of the Environment, Conservation and Parks: • follow the delegation of authority already in place by having the Deputy Minister approve use of program funding to enable prompt decision-making for this low-cost program; and • modify the funding cycle to reduce the time required for the approvals process.	The Ministry of the Environment, Conservation and Parks agrees with the recommendation. The Environment Ministry will continue to apply the delegation of authority already in place by having the Deputy Minister approve use of program funding and modify the funding cycle.	We note that the Environment Minister, not the Deputy Minister, approved the list of recommended projects for funding for 2019/20 and 2020/21.	✓	

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
18.	To guide decisions that can impact species at risk in Ontario, and to effectively, efficiently and accountably achieve successful outcomes for those species, we recommend that the Ministry of the Environment, Conservation and Parks: • identify priority species, places, and systemic threats as well as how they are to be addressed; • develop a long-term strategy that outlines specific protection and recovery actions, with associated timelines, that the Ministry will undertake for the program as a whole; • implement the strategy; and • publicly report on the progress toward achieving the strategy's objectives as part of an annual report.	The Ministry of the Environment, Conservation and Parks agrees that the development of a long-term strategy focused on priority species, places and threats would be valuable in guiding decisions that can impact species at risk in Ontario and will undertake such work within budgetary and staffing realities. At this time, the Environment Ministry is focused on fulfilling the purposes of the <i>Endangered Species Act, 2007</i>. The overarching purposes of the Act, which are articulated in section 1 of the Act, guide ministry decisions relating to species at risk in Ontario. The Environment Ministry is also focused on preparing species-specific response statements that identify and prioritize specific protection and recovery actions that Ontario intends to take or support to help recover species. Where possible, response statements may be developed to strategically address the recovery of multiple species at risk in a single policy, such as the: • Blue Racer, Lake Erie Watersnake, Small-mouthed Salamander and Unisexual Ambystoma (Small-mouthed Salamander dependent population) government response statement; or the • Pink Milkwort, Showy Goldenrod (Great Lakes Plains population), Skinner's Agalinis and White Prairie Gentian government response statement.	We note that developing a long-term strategy, with timebound and specific protection and recovery actions that the Environment Ministry will undertake for the program as a whole, would allow for an effective, efficient and accountable method of contributing to meeting the purposes of the <i>Endangered Species Act, 2007</i>.	✓	

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
		In addition, as part of Species at Risk Stewardship Program delivery, the Environment Ministry conducts a rigorous annual priority-setting exercise in order to direct funding where stewardship can make a difference and where it is most urgently needed.			
19.	So that the Province of Ontario conforms with the federal <i>Species at Risk Act</i>, we recommend that the Ministry of the Environment, Conservation and Parks: • assess the risks of non-conformity with the federal <i>Species at Risk Act</i>; • provide information on the risks to the Comptroller General for inclusion in the province's Enterprise Risk Plans; • publicly report on those risks; and • take corrective actions to ensure sufficient habitat protections for species at risk.	The Ministry of the Environment, Conservation and Parks agrees that it is important to assess the risks of non-conformity of the provincial approach to protecting species at risk and their habitats with the federal <i>Species at Risk Act</i>. The Environment Ministry regularly assesses its approach in regard to the federal approach and takes appropriate action to manage risks, as needed. Canada and Ontario have complementary approaches to protecting species at risk, which are codified under the National Accord for the Protection of Species at Risk. Ontario's approach is designed to meet provincial needs.	The Environment Ministry did not clearly commit to assessing the risks of non-conformity with the federal <i>Species at Risk Act</i>, providing information on risks to the Comptroller General, and publicly reporting on those risks.		✓

#	Auditor General's Recommendation	Environment Ministry's Response	Auditor General's Response	Auditor General's Assessment of Environment Ministry's Response to Recommendation	
				Sufficient	Insufficient
20.	To measure the effectiveness of its species at risk program at improving the status of species at risk and their habitats, we recommend that the Ministry of the Environment, Conservation and Parks, adhering to guidance from the Treasury Board Secretariat: - develop a performance measurement framework for the species at risk program that focuses on successful outcomes; - include the performance measurement framework within the long-term strategy described in Recommendation 18; and - publicly report on actual results against these performance measures as part of an annual report.	The Ministry of the Environment, Conservation and Parks agrees with the Auditor General that performance measurement is important. The Environment Ministry has a full spectrum of key performance indicators developed to measure the Environment Ministry's delivery of its mandate and commits to ensuring that they continue to be applied. The Environment Ministry's priority in regard to performance measurement related to the species at risk programs includes fulfilling the commitment to ensure each response statement includes performance measures (see Recommendation 5) and exploring the feasibility of enhanced progress tracking and follow up on actions identified in government (see Recommendation 6).	The Environment Ministry did not commit to developing performance measures for the species at risk program and publicly reporting on the results.		✓
21.	So that the appointments and work of the Species at Risk Program Advisory Committee (Advisory Committee) are transparent and helpful to the Environment Minister for improving the status of species at risk, we recommend that the Ministry of the Environment, Conservation and Parks: - assess the existing mix, composition, and competencies of the Advisory Committee, including Indigenous representation; - develop and implement transparent criteria and procedures for appointments and reappointments to the Advisory Committee, including to address any identified competency and representation gaps.	The Ministry of the Environment, Conservation and Parks is committed to ensuring that the processes outlined by the Public Appointments Secretariat and the Agencies and Appointments Directive are adhered to in appointments and re-appointments to the Advisory Committee. The Environment Ministry does not intend to develop procedures that are unique to the Advisory Committee.	The Environment Ministry did not agree to assess the existing mix, composition, and competencies of the Advisory Committee. The Environment Ministry also did not agree to develop and implement transparent criteria and procedures for appointments and reappointments to the Advisory Committee.		✓

Appendix 2: Glossary of Terms

Prepared by the Office of the Auditor General of Ontario

Term	Definition
Aichi Targets	A set of 20 targets to conserve biodiversity, including to prevent the extinction of known threatened species and improve their conservation status. The targets were agreed to in 2010 in Nagoya (Aichi Prefecture), Japan by the 196 countries that are signatories of the Convention on Biological Diversity.
Biodiversity	The variety of life on Earth—it includes plants, animals and all other living things, as well as how they interact with one another and their environment.
Conservation	The maintenance of sustainable use of the Earth's resources. Conservation may or may not involve the use of resources; that is, certain areas, species or populations may be excluded from human use as part of an overall landscape/waterscape conservation approach.
Critical habitat	Under the federal <i>Species at Risk Act</i> , critical habitat is the habitat that is necessary for the survival or recovery of listed extirpated, endangered, or threatened species, and is identified in a recovery strategy or action plan.
Ecosystem	A dynamic complex of plant, animal and micro-organism communities and their non-living, abiotic environment interacting as a functional unit.
Ecosystem services	Direct and indirect benefits derived from properly functioning ecosystems. These include food and water supply, oxygen production, climate regulation, flood and storm control and recreational opportunities.
Endangered species	Species that live in the wild in Ontario but are facing imminent extinction or extirpation.
Extirpated species	Species that live somewhere in the world, and at one time lived in the wild in Ontario, but no longer live in the wild in Ontario.
Extinct species	Species that no longer exist.
Habitat	The place or type of site where an organism or population naturally occurs and depends on to carry out its life processes such as reproduction, rearing, hibernation, migration or feeding. Species may require different habitats for different uses throughout their lifecycle.
Lichens	Two biological organisms, fungi and algae, living in close association with one another.
Molluscs	The group of soft-bodied invertebrate animals that includes snails, slugs, mussels, and octopuses.
Organism	A synonym for "life form," any individual entity that embodies the properties of life.
Polluter pays principle	A norm that recognizes those that harm the environment should bear the costs involved for the activity and any remediation.
Protected area	A clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values.
Range	An area that a species depends upon for all or parts of its life cycle.
Recovery actions	Are taken to reduce or eliminate a condition or circumstance that causes a species to be listed as threatened, endangered or extirpated.
Restoration	The return of a species, a population or an ecosystem to its state prior to a disturbance.
Species	The biological definition of species is a group of living organisms that are similar to one another and are capable of reproducing with one another to make offspring that are capable of reproducing with one another. As defined in the <i>Endangered Species Act, 2007</i> , "species" means a species, subspecies, variety or genetically or geographically distinct population of animal, plant or other organism, other than a bacterium or virus, that is native to Ontario.

Term	Description
Species at risk (or imperilled species)	The plants, animals and other organisms in danger of going extinct and being lost forever.
Species (or ecosystem) of conservation concern	A species (or ecosystem) is of conservation concern when it is in decline, rare or scarce in the wild.
Species of special concern	Species that live in the wild in Ontario, are not threatened or endangered, but may become threatened or endangered due to a combination of biological characteristics and identified threats.
Stewardship	The co-operative planning and management of environmental resources in which individuals, organizations, communities and other groups actively engage in the prevention of habitat loss and the facilitation of resource recovery and/or restoration.
Threatened species	A species that lives in the wild in Ontario, is not endangered, but is likely to become endangered if steps are not taken to address factors threatening it.
Watershed	The area of land that drains into a river, lake or other waterbody.

Appendix 3: Species Found Nowhere Else in the World Except Ontario

Sources of data: Nature Conservancy of Canada and NatureServe Canada

Name	Location in Ontario	Global rank by NatureServe*	Ontario Assessment by the Committee on the Status of Species at Risk
False northwestern moonwort (<i>Botrychium pseudopinnatum</i>)	Found in only two locations on the north shore of Lake Superior	Critically imperilled	Not assessed
Slender notchwort (<i>Crossocalyx tenuis</i>)	Found only on the Bruce Peninsula and Eugenia Falls on the Niagara Escarpment	Critically imperilled	Not assessed
A small scavenger beetle (<i>Hydnobius autumnalis</i>)	Only known from eastern Ontario	Critically imperilled	Not assessed
Guarded guest thin ant (<i>Leptothorax paraxenus</i>)	Found near Mississauga and Milton	Unranked	Not assessed
A rust fly (<i>Loxocera ojibwayensis</i>)	Found only in Ojibway Prairie Provincial Nature Reserve	Unranked	Not assessed
Macoun's shining moss (<i>Neomacounia nitida</i>)	Original site near Belleville was cleared by 1892 and not been found since	Presumed extinct	Extinct
Insignificant small minnow mayfly (<i>Proclleon insignificans</i>)	Last found near Ottawa in 1925	Unranked	Not assessed
Cain's screw moss (<i>Syntrichia cainii</i>)	Restricted to alvars (a limestone plain with thin or no soil)	Critically imperilled	Not assessed

* NatureServe Canada is a non-profit organization that collects, manages and distributes scientific data on biodiversity for decision-making purposes. The data collected by the organization are used by governments and other parties.

Appendix 4: Extinct Species Found Historically in Ontario

Source of data: Government of Canada

Name	Species Type
Atlantic salmon (Lake Ontario population)	Fish
Blue walleye	Fish
Deepwater cisco	Fish
Lake Ontario kiyi	Fish
Lake whitefish (Como Lake large-bodied population)	Fish
Lake whitefish (Como Lake small-bodied population)	Fish
Macoun's shining moss	Moss
Passenger pigeon	Bird

Appendix 5: Species at Risk Laws in Canada

Prepared by the Office of the Auditor General of Ontario

While British Columbia, Alberta, Saskatchewan, Prince Edward Island, Yukon and Nunavut do not have standalone species at risk legislation, federal and other provincial/territorial legislation and programs contribute to the protection and recovery of species at risk.

		Ontario	Canada	Manitoba	New Brunswick	Newfoundland & Labrador	Northwest Territories	Nova Scotia	Quebec
Law	Standalone species at risk legislation	<i>Endangered Species Act, 2007</i>	<i>Species at Risk Act, 2002</i>	<i>The Endangered Species and Ecosystems Act, 1990</i>	<i>Species at Risk Act, 2012</i>	<i>Endangered Species Act, 2001</i>	<i>Species at Risk Act (NWT), 2009</i>	<i>Endangered Species Act, 1998</i>	<i>Act Respecting Threatened or Vulnerable Species, 1989</i>
Species Assessment Committee	Independent advisory committee	✓	✓	✓	✓	✓	✓	✓	
	Scientific knowledge and expertise	✓	✓	✓	✓	✓	✓	✓	
	Indigenous, traditional or community knowledge	✓	✓		✓	✓	✓		
Species Assessment and Listing Process	Annual report of assessments by committee	✓	✓	✓		✓		✓	
	Real-time assessment reports by committee				✓		✓		✓
	Mandated response time for Ministry	✓	✓		✓	✓	✓	✓	✓
	Minister may request reconsideration by committee	✓		✓	✓				
	Minister has final authority on listing		✓	✓		✓	✓	✓	✓
Protections Afforded	Life and welfare protections	✓	✓	✓	✓	✓	✓	✓	✓
	Habitat and ecosystem protections	✓	✓	✓	✓	✓	✓	✓	✓
	Temporary suspension of listing protections by Ministerial order	✓							

		Ontario	Canada	Manitoba	New Brunswick	Newfoundland & Labrador	Northwest Territories	Nova Scotia	Quebec
Species Recovery Strategy and Management Plan	Recovery strategy co-ordinated by Ministry			✓	✓				✓
	Recovery strategies independently drafted	✓	✓			✓	✓	✓	
	Mandated government response timeframe	✓	✓		✓	✓	✓	✓	
	Technical feasibility considerations		✓		✓	✓	✓	✓	
	Economic feasibility considerations	✓			✓	✓		✓	
	Implementation schedule required for actions		✓		✓		✓	✓	
Review of Progress and Actions	Review at Ministry discretion				✓	✓			
	Mandated one-time review	✓							
	Periodic review required until objectives achieved		✓				✓	✓	
Permitting Mechanism	Minister may issue permits for otherwise prohibited activities	✓	✓	✓	✓	✓	✓	✓	✓
	Ministerial or conditional exemptions from Act	✓	✓	✓	✓	✓	✓		✓
	All reasonable alternatives considered	✓	✓		✓		✓		
	Public registry for all permissions or annual report		✓	✓	✓	✓	✓		
Fines and Penalties	Prescribed fines for corporations >\$500,000	✓	✓				✓	✓	
	Prescribed fines for individuals >\$100,000	✓	✓		✓	✓	✓	✓	
	Penalty of imprisonment	✓	✓	✓		✓	✓	✓	

Appendix 6: Species at Risk Regulated under the *Endangered Species Act, 2007*, October 2021

Source of data: *Endangered Species Act, 2007*; O. Reg. 230/08

Endangered Species

Amphibian

Allegheny Mountain dusky salamander
Fowler's toad
Jefferson salamander
Northern dusky salamander
Small-mouthed salamander
Unisexual ambystoma¹

Bird

Acadian flycatcher
Barn owl
Golden eagle
Henslow's sparrow
King rail
Kirtland's warbler
Loggerhead shrike
Northern bobwhite
Piping plover
Prothonotary warbler
Red knot rufa subspecies
Yellow-breasted chat

Fish

American eel
Eastern sand darter
Lake sturgeon²
Northern madtom
Redside dace
River darter²
Shortnose cisco
Spotted gar
Warmouth

Insect

Aweme borer moth
Bogbean buckmoth
Gypsy cuckoo bumble bee
Hine's emerald
Hoptree borer
Hungerford's crawling water beetle
Laura's clubtail
Mottled duskywing
Nine-spotted lady beetle

Northern barrens tiger beetle
Pygmy snaketail
Rapids clubtail
Riverine clubtail
Rusty-patched bumble bee
Transverse lady beetle

Lichen

Golden-eye lichen³
Pale-bellied frost lichen

Moss

Spoon-leaved moss

Mammal

American badger⁴
Eastern small-footed myotis (bat)
Little brown myotis (bat)
Mountain lion (cougar)
Northern myotis (bat)
Tri-colored bat

Mollusc

Broad-banded forestsnail
Eastern banded tigersnail
Fawnsfoot
Hickorynut
Kidneyshell
Northern riffleshell
Proud globelet
Rayed bean
Round hickorynut
Round pigtoe
Salamander mussel
Snuffbox

Plant

American chestnut
American columbo
American ginseng
Bent spike-rush
Bird's-foot violet
Bluehearts
Blunt-lobed woodsia
Butternut

Cherry birch
Colicroot
Cucumber tree
Drooping trillium
Eastern flowering dogwood
Eastern prairie fringed-orchid
Eastern prickly pear cactus
Engelmann's quillwort
False hop sedge
Few-flowered club-rush
Forked three-awned grass
Four-leaved milkweed
Gattinger's agalinis
Heart-leaved plantain
Hoary mountain-mint
Horsetail spike-rush
Juniper sedge
Large whorled pogonia
Lowland toothcup
Nodding pogonia
Ogden's pondweed
Pink milkwort
Red mulberry
Scarlet ammannia
Showy goldenrod⁵
Skinner's agalinis
Slender bush-clover
Small white lady's-slipper
Small whorled pogonia
Virginia goat's-rue
Virginia mallow
Western silvery aster
White prairie gentian
Wood-poppy

Reptile

Blue racer
Butler's gartersnake
Common five-lined skink⁶
Eastern foxsnake⁶
Gray ratsnake⁶
Massasauga rattlesnake⁶
Queensnake
Spiny softshell
Spotted turtle
Wood turtle

Threatened Species

Bird

American white pelican
Bank swallow
Barn swallow
Bobolink
Cerulean warbler
Chimney swift
Eastern meadowlark
Eastern whip-poor-will
Least bittern
Louisiana waterthrush

Fish

Black redhorse
Cutlip minnow
Lake chubsucker
Lake sturgeon⁷
Pugnose minnow
Pugnose shiner
Shortjaw cisco
Silver chub
Silver shiner

Insect

Lake Huron grasshopper

Mammal

Algonquin wolf
Caribou⁸
Gray fox
Polar bear
Wolverine

Mollusc

Lilliput
Threehorn wartyback
Wavy-rayed lampmussel

Plant

American water-willow
Blue ash
Branched bartonia
Common hoptree
Deerberry
Dense blazing star
Dwarf hackberry

False rue-anemone
Goldenseal
Hill's thistle
Houghton's goldenrod
Kentucky coffee-tree
Lakeside daisy
Pitcher's thistle
Purple twayblade
Round-leaved greenbrier
Showy goldenrod⁸
Small-flowered lipocarpa
Spotted wintergreen
White wood aster
Wild hyacinth
Willowleaf aster

Reptile

Blanding's turtle
Eastern foxsnake⁹
Eastern hog-nosed snake
Gray ratsnake¹⁰
Massasauga rattlesnake¹¹

Special Concern Species

Bird

Bald eagle
Black tern
Canada warbler
Common nighthawk
Eastern wood-pewee
Evening grosbeak
Golden winged warbler
Grasshopper sparrow
Horned grebe
Olive-sided flycatcher
Peregrine falcon
Red-headed woodpecker
Red-necked phalarope
Rusty blackbird
Short-eared owl
Wood thrush
Yellow rail

Fish

Blackstripe topminnow
Bridle shiner

Channel darter
Grass pickerel
Lake sturgeon¹²
Northern brook lamprey
Northern sunfish²
River redhorse
Silver lamprey¹³
Upper Great Lakes kiyi

Insect

Monarch
West Virginia white
Yellow-banded bumble bee

Mammal

Beluga
Caribou¹⁴
Eastern mole
Woodland vole

Mollusc

Eastern pondmussel
Mapleleaf
Rainbow

Plant

American hart's tongue fern
Broad beech fern
Climbing prairie rose
Crooked-stem aster
Dwarf lake iris
Green dragon
Hill's pondweed
Riddell's goldenrod
Shumard oak
Swamp rose-mallow
Tuberous Indian-plantain

Reptile

Common five-lined skink¹⁵
Eastern musk turtle
Eastern ribbonsnake
Lake Erie watersnake
Northern map turtle
Snapping turtle

Extirpated Species**Amphibian**

Blanchard's cricket frog
 Eastern tiger salamander
 Spring salamander

Bird

Eskimo curlew
 Greater prairie-chicken

Fish

Gravel chub

Paddlefish**Insect**

American burying beetle
 Eastern persius duskywing
 Frosted elfin
 Karner blue

Moss

Incurved grizzled moss

Plant

Illinois tick-trefoil

Spring blue-eyed Mary**Reptile**

Eastern box turtle
 Timber rattlesnake

1. Jefferson salamander dependent and small-mouthed salamander dependent populations.
2. Great Lakes – Upper St. Lawrence populations.
3. Great Lakes population.
4. Northwestern and Southwestern Ontario populations.
5. Great Lakes Plains population.
6. Carolinian population.
7. Saskatchewan - Nelson River populations.
8. Boreal population.
9. Georgian Bay population.
10. Frontenac Axis population.
11. Great Lakes – St. Lawrence population.
12. Southern Hudson Bay – James Bay populations.
13. Great Lakes – Upper St. Lawrence population.
14. Eastern Migratory population.
15. Southern Shield population.

Appendix 7: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

-
1. Roles, responsibilities and accountability requirements for identifying, protecting, recovering, researching, monitoring and progress reporting on species at risk and their habitats are clearly defined.
-
2. Species are effectively and promptly assessed and classified as at risk based on the best available scientific information, community and Indigenous traditional knowledge. Species at risk and their habitats are effectively and efficiently regulated.
-
3. Sufficient programs to protect and recover species at risk and their habitats exist and are based on best practices, and are developed and implemented in an effective and efficient manner.
-
4. Processes and procedures for permissions and compliance are based on best practices and are implemented in an effective and efficient manner to protect and recover species at risk and their habitats as appropriate.
-
5. Meaningful performance measures and targets are established, status and progress are regularly monitored and publicly reported on, and corrective actions are taken on a timely basis when issues are identified.
-

Appendix 8: Species at Risk Potentially Significantly Adversely Affected by Commercial Forestry Operations as Determined by the Ministry of the Environment, Conservation and Parks

Prepared by the Office of the Auditor General of Ontario

Species	Status under the <i>Endangered Species Act, 2007</i>	Status under the federal <i>Species at Risk Act</i>
American ginseng	Endangered	Endangered
Blanding's turtle	Threatened	Threatened
Boreal caribou	Threatened	Threatened
Eastern hog-nosed snake	Threatened	Threatened
Eastern small-footed myotis (bat)	Endangered	Not assessed
Little brown myotis (bat)	Endangered	Endangered
Massasauga rattlesnake (Great Lakes – St. Lawrence population)	Threatened	Threatened
Northern myotis (bat)	Endangered	Endangered
Pale-bellied frost lichen	Endangered	Endangered
Tri-coloured bat	Endangered	Endangered
Wolverine	Threatened	Special Concern
Wood turtle	Endangered	Threatened



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Office of the Auditor General of Ontario

Value-for-Money Audit:
Reporting
on Ontario's
Environment



November 2021

Ministry of the Environment, Conservation and Parks
Ministry of Northern Development, Mines, Natural Resources and Forestry
Ministry of Agriculture, Food and Rural Affairs

Reporting on Ontario's Environment

1.0 Summary

Ontarians rely on the natural environment for water, food, energy and resources. Fresh air and access to clean water, beaches, parks and other green spaces are vital for the health and well-being of Ontarians. However, our environment, natural resources and agriculture can be negatively affected by pollution, development, a changing climate and other pressures. Degradation and damage of ecosystems can in turn harm Ontario's economy and Ontarians' health and quality of life.

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 (for example, air pollution that can affect people's breathing, the spread of Lyme disease), and helps people understand whether provincial environmental goals are being met (for example, decreasing the amount of waste disposed per person per year). Further, regularly sharing information on the state of the environment allows the Legislature, scientists and the public to question the underlying reasons for changes in Ontario's environment and provide relevant information to improve understanding. Similar to provincial reporting on Ontario's finances,

reporting to the public on the state of Ontario's environment increases transparency, accountability and informed decision-making.

To report this picture, there needs to be effective monitoring of Ontario's environment, natural resources, wildlife and agriculture. Indicators can be used to assess the state of the environment and the government's progress in achieving targets, objectives and goals (see **Appendix 1** for a glossary of terms). Our Office reported on environmental indicators, targets and monitoring programs in *Setting Indicators and Targets*, and *Monitoring Ontario's Environment* in our *2020 Annual Report*.

Canadian and international jurisdictions have regularly reported to the public on the overall state of the environment for years, citing several benefits, including providing baseline information for environmental planning and assessment; integrating information to identify connections and interactions; providing an early warning of emerging trends; increasing public and industry interest; transparently tracking achievement of environmental objectives; and informing and improving environmental policy. Dozens of European countries are required to release state-of-the-environment reports at least every four years. The United States Environmental Protection Agency has publicly reported on more than 80 peer-reviewed environmental indicators since 2008. Since 1996, Australia has been commissioning comprehensive, independent reports on the state of Australia's environment for tabling every five years, a requirement contained in Australian legislation. Canada has released

three five-year state-of-the-environment reports, and now updates a suite of indicators online as new information becomes available. Saskatchewan and Yukon regularly release state-of-the-environment reports, as required by legislation.

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 province does produce regular reports summarizing information on Ontario's air quality, forests and protected areas. However, 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*, and has not fulfilled legislated requirements to release 2013, 2014 and 2018 annual reports under the *Lake Simcoe Protection Act, 2008* (but instead included the content of these annual updates in its five-year reports). Despite a commitment in *A Wetland Conservation Strategy for Ontario: 2017–2030* to initiate public reporting on progress in 2020, the Natural Resources Ministry has not developed a framework for progress reporting and no data has been collected. 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, *Water Quality in Ontario* reports, Minister's Reports on Toxics Reduction, progress reports on the 2018 *Made-in-Ontario Environment Plan*, annual reports related to the Provincial Wildlife Population Monitoring Program, and reports related to diseases and pests that affect managed honey bees.
- **The Environment Ministry has stopped regularly reporting on the overall state of Ontario's water quality.** The Ministry previously released *Water Quality in Ontario* reports between 2009 and 2016, but stopped this comprehensive reporting in 2016. Information on the state of Ontario's water quality, including inland lakes, the Great Lakes, streams and groundwater, is now published in a variety of different reports. This makes it harder for the public to access and understand the overall state of Ontario's water. The Ministry told

us it has moved to posting data onto the Ontario Data Catalogue. However, the Catalogue contains raw datasets instead of summaries, which makes the information less understandable to the general public.

- **The Natural Resources Ministry does not presently have plans to release to the public its prepared report on the state of the province's natural resources.** Instead, the Ministry informed us in June 2021 that it will use the prepared *State of Ontario's Natural Resources Report* as an internal document to inform program and policy decisions. The Ministry stated that it does not plan to share the current report with the public because it has not sought or received approval from the new Natural Resources Minister to do so. The report, which the Ministry had been planning since 2017, was designed to unify the Ministry's public reporting (including legislated reporting on forests and protected areas) into one easily navigated online report. Ministry staff had indicated that consolidated reporting would reduce duplication in separate reports, improve consistency in messaging and make it easier for Ontarians to access information on the province's natural resources.
- **Ministries do not publicly report on wild pollinators, the health of soil or pesticide use.** The Natural Resources Ministry and Agriculture Ministry have little data to report on wild pollinators, such as bees, butterflies and hummingbirds, because neither ministry monitors them provincially—despite their essential role in Ontario's crop production and sustaining the health and diversity of wild plants. We also found that neither the Agriculture Ministry nor the Environment Ministry collects and reports information on the amount, type, timing and location of the application of pesticides to agricultural lands. The Agriculture Ministry stopped conducting voluntary surveys on pesticide use in 2013 because it said it had a low response to the latest survey.
- **In 2019, the Natural Resources Ministry cut funding to the Ontario Biodiversity Council, which has reported publicly on the state**

of Ontario's biodiversity since 2008. While provincial reporting on certain aspects of the environment (such as forests, the Great Lakes, protected areas) is required in legislation, reporting on other areas is not. For example, there is no statutory requirement to report to the public on biodiversity. Rather, the Natural Resources Ministry works with volunteers on the Ontario Biodiversity Council (Council) to report every five years on the state of Ontario's biodiversity. The government established the Council, comprised of representatives of environmental, industry, Indigenous and other groups, to guide the implementation of *Ontario's Biodiversity Strategy* (2005). The Council released reports on the state of Ontario's biodiversity in 2008, 2010, and 2015, and updated indicators online in 2021. Provincial support for the Council between 2015 and 2018 amounted to only approximately \$10,000 a year. In 2019, however, the Ministry informed the Council that no funding would be provided in 2019/20, and no funding has been provided since. While the Ministry lends support for various Council activities (planning meetings and updating biodiversity indicators), without a legislated requirement or sustained funding, there is no guarantee that the Council's objective and valuable reporting on the state of Ontario's biodiversity will continue.

- **The three ministries are not explaining to the public what actions they have taken to meet their environmental goals, objectives and targets.** For example, the Environment Ministry has not reported publicly on Ontario's progress in meeting waste diversion targets, or the outcomes of actions to reduce greenhouse gas emissions, which contribute to global climate change. The Natural Resources Ministry has not released regular reports on progress in conserving wetlands, adapting to climate change, preventing the spread of invasive species, or implementing fish and wildlife management strategies. The Agriculture Ministry has not reported publicly on progress in implementing Ontario's soil health strategy or the former *Pollinator Health Action Plan* (2016).

This report contains 14 recommendations, with 20 action items, to address our audit findings.

Overall Conclusion

We found that the three ministries have not put in place effective systems and processes for regular reporting to the members of the Legislature and the public on the state of the environment and natural resources, or progress in meeting environmental goals and targets.

The province does produce regular reports summarizing information on Ontario's air quality, forests and protected areas. However, it lacks summarized reporting on other natural resources, water, soil, waste, climate change and wildlife for members of the Legislature and the general public. As such, there is no comprehensive public reporting on the state of Ontario's environment to give the public, stakeholders and decision-makers an assessment of the overall condition of Ontario's environment and whether things are getting better or worse. By contrast, regular state-of-the-environment reporting is undertaken by dozens of other jurisdictions, many of which are required by legislation to prepare these reports every few years.

Further, ministries' reporting to the public on progress in implementing some environmental strategies and plans has been absent or late despite legislated requirements to report on the Great Lakes, Lake Simcoe and toxic substances.

Finally, we found that the public is not always notified through the Environmental Registry of ministries' environmental publications.

OVERALL ENVIRONMENT MINISTRY RESPONSE

Our government is committed to protecting and conserving our environment so that Ontario's natural beauty can be enjoyed for generations to come.

We agree with the Auditor General that information on the state of the environment is important for Ontarians as we all work together to protect Ontario's natural environment. That is why the Ministry of the Environment, Conservation and Parks (Ministry) uses and generates credible science to publish a variety of public environmental reports currently available on Ontario.ca, including the Minister's Annual Reports on Drinking Water, Great Lakes Strategy Progress Reports, Lake Erie Action Plan annual update, Lake Simcoe reports, *Air Quality in Ontario* reports, annual reviews of progress toward the protection and recovery of Ontario's species at risk, and many others. In addition, the Ministry makes location- and media-specific information available on the Ontario Data Catalogue, which currently houses 58 Ministry datasets as of October 2021, including many datasets on water, air, greenhouse gas emissions, climate, fish, contaminant levels and soil.

We appreciate the Auditor General's recommendations and will consult with partner ministries to inform future work.

OVERALL NATURAL RESOURCES MINISTRY RESPONSE

The Ministry of Northern Development, Mines, Natural Resources and Forestry (Ministry) welcomes the Auditor General's recommendations and agrees that reporting on the state of the environment supports transparency, accountability and informed decision-making.

The Ministry is committed to responsible resource management, including the conservation of Ontario's biodiversity. To support achievement of its natural resource mandate, the Ministry monitors and reports on a variety of topics related to the state of natural resources including the state of Ontario's forests, and uses relevant information, data and reports when conducting policy and program evaluations. The Ministry continues to address the recommendations in the Auditor's

2020 report, *Setting Indicators and Targets, and Monitoring Ontario's Environment*. The Ministry will continue to meet its statutory requirements for public reporting and will continue to collaborate with the Ontario Biodiversity Council and partner ministries on related environmental reporting initiatives. The Ministry will also explore opportunities to enhance public reporting on progress toward achieving its environmental goals, objectives and targets.

The Ministry appreciates the Auditor's recommendations in this report and looks forward to working with partner ministries to implement our commitments in response to the recommendations.

OVERALL AGRICULTURE MINISTRY RESPONSE

The Ministry of Agriculture, Food and Rural Affairs (Ministry) thanks the Office of the Auditor General of Ontario for the observations and recommendations in this report.

The Ministry continues to address the recommendations in the Auditor General's 2020 report, *Setting Indicators and Targets, and Monitoring Ontario's Environment*. For example, the Soil Action Group, a collaboration of over 20 partners from government, academia, industry and conservation groups, has worked to develop a set of short-list priorities to support an implementation plan for the *New Horizons: Ontario's Agricultural Soil Health and Conservation Strategy*. In addition, our Ministry continues efforts to support pollinators, particularly managed honey bees, through managed honey bee inspections and administering research programs.

A healthy environment is an ongoing priority for the Ministry as part of a sustainable agriculture and food production system. We recognize the value in transparency and reporting to the public on the environmental sustainability of Ontario's agriculture, including progress toward meeting

environmental goals and targets. In addition, our collaboration with the Ministry of the Environment, Conservation and Parks will ensure that environmental reports accurately represent the information, data and science relevant to Ontario agriculture and food.

We also understand the role the Environmental Registry plays in informing the public about environmental matters in the province. The Ministry regularly uses the Environmental Registry to seek public comment on environmentally significant proposals. The Environmental Registry can also serve as a centralized source of information related to the environment for members of the public.

In collaboration with our partners, the Ministry will begin implementing our commitments to the recommendations provided in this report.

2.0 Background

2.1 A Healthy Natural Environment

Ontario's natural environment supplies Ontarians with many and varied benefits, such as water, food, energy resources and economic benefits. Nature distributes and filters water, produces oxygen, regulates climate, provides pollination of crops, controls pests, provides natural resources, such as wood, minerals, aggregates, and energy, and breaks down waste. Overall, healthy ecosystems sustain the quality of air, water and soils, and provide habitat and resources to support wildlife, humans and agriculture.

However, the state of Ontario's environment can be negatively affected by many different pressures, including pollution, invasive species, diseases, resource extraction, land development and a changing climate. Degradation and damage of functioning ecosystems can in turn impact Ontario's economic productivity and Ontarians' health and quality of life.

To help prevent and respond to these impacts, Ontario has a range of laws, regulations, policies and programs that recognize the benefits of healthy ecosystems, aim to protect against environmental degradation, and support better health and quality of life for current and future generations. Many Ontario laws have broad goals to protect, maintain and/or improve the state of the environment. These goals relate to a wide variety of environmental areas, including air quality; water quality and quantity; land and natural resources; nature and wildlife; and greenhouse gas emissions, which contribute to a changing global climate. Under these broad goals, more specific, tangible and measurable objectives and targets can detail how to achieve the overarching goals.

Stage 1 of this audit (Setting Indicators and Targets, and Monitoring Ontario's Environment in our *2020 Annual Report*) noted the following:

- targets are important for driving and tracking progress in meeting environmental goals;
- monitoring is critical for detecting threats to Ontario's environment, natural resources and agriculture, informing management decisions, and assessing the effectiveness of programs at achieving their goals and objectives; and
- indicators (variables or metrics to describe or measure a condition, phenomenon or dynamic) can be used to assess the state of the environment, and assess progress in achieving targets, objectives and goals.

In our 2020 report, we found that the three lead ministries did not have effective systems and processes for setting targets, carrying out effective monitoring practices, or ensuring data quality and data sharing for certain aspects of Ontario's environment.

These issues in turn affect the ministries' ability to effectively report to the public on the environment and progress in protecting and improving it. Ministries' implementation of the recommendations we made in Stage 1 is necessary for meaningful and effective public reporting, and for the benefits of

implementing the recommendations we make in this report to be fully realized.

2.2 Environmental Reporting

Public reporting on the state of the environment is critical for demonstrating transparency and accountability regarding the quality of Ontario's environment, whether it is getting better or worse, and whether environmental objectives and their overarching goals are being met.

Similar to provincial reporting on the state of Ontario's finances, reporting on environmental monitoring results is also important for developing, implementing, assessing and increasing public understanding, feedback and buy-in of government policies, programs and actions for improvement. Reporting on information collected through environmental monitoring can also be used by many others outside the provincial government. These include municipal engineers, Indigenous communities, health professionals, emergency responders, resource managers and users, researchers, scientists and concerned members of the public.

Without effective environmental monitoring and reporting, the Legislative Assembly and the public do not have an adequate picture of the state of the environment, knowledge of whether the environment is improving or deteriorating, or awareness of underlying environmental problems and risks.

2.2.1 Using Indicators to Report on the State of the Environment

Monitoring programs use a number of direct and indirect measures, or indicators (such as contaminant levels in air or water, wetland area, lake levels, fish populations), to track the state of the environment and potential impacts over time. Environmental indicators provide data and information to inform decision-makers and the public on the state of the environment, support program evaluation, and track progress in meeting targets.

Indicators can measure the following:

- driving forces (for example, activities that increase pressures on the environment, such as manufacturing, forestry and mineral extraction);
- the stressors or pressures that result (for example, the use of toxic substances, air and water pollution, land-use changes and waste);
- the effects these pressures have on the state or condition of the environment (for example, air, water and soil quality, and natural habitat);
- the impacts of environmental degradation, such as on wildlife populations and human health; and
- responses by governments and society to the condition of the environment, such as conservation programs and regulations.

International organizations, including the United Nations Environment Programme and the Organisation for Economic Co-operation and Development, have developed guidance and frameworks for developing indicators for environmental reporting. These organizations have recognized that effective environmental indicators are:

- generally useful and relevant to the environmental risk or area;
- understandable to the public;
- objective and unbiased;
- representative of underlying trends;
- timely;
- comparable across space and time; and
- use data that are collected in a transparent, scientifically sound, and relatively easy and inexpensive way.

2.2.2 Other Jurisdictions' State of the Environment Reporting

Several other provinces, territories and international jurisdictions use environmental indicators to publicly report on the state of the environment and progress toward meeting environmental targets and goals (see **Appendix 2**). These jurisdictions find that, among other benefits, comprehensive reporting informs and improves environmental policy, increases public and

industry interest in the environment and policies that protect it, and charts the achievement of environmental objectives.

The 1972 United Nations Conference on the Human Environment triggered the publication of the first State of the Environment report in Finland, paving the way for similar reporting in other European countries. In 2003, the European Parliament passed a directive requiring member states to produce national and, where appropriate, regional or local reports on the state of the environment at regular intervals not exceeding four years. As a result, many European countries have incorporated this reporting requirement into national law. Today, more than 25 European countries publish regular reports on the state of the environment.

Australia's *Environment Protection and Biodiversity Conservation Act 1999* requires the Minister of the Environment to table a report in Parliament every five years on the state of the environment. This independent review provides Australians with authoritative information on the state of the environment, and provides the public, government and other decision-makers with an assessment of how effectively the environment is being managed. To ensure that these reports are highly credible and robust, they are authored by a panel of independent experts, using the best available evidence, and a rigorous consultation, peer-review and fact-checking process.

In North America, the United States Environmental Protection Agency (EPA) has published its *Report on the Environment* since 2008. The report is based on more than 80 peer-reviewed indicators in five theme areas (air, water, land, ecological condition, and human exposure and health). The reporting shows how the condition of the environment and human health in the US is changing over time and helps answer 23 questions critical to the EPA's mandate of protecting the environment and human health. Since 2015, the EPA's *Report on the Environment* has been web-based, and indicators are updated as new data become available.

Canada, Other Provinces and Territories

Canada has had long-standing legislated requirements to provide Canadians with information on the state of the environment. The *Canadian Environmental Protection Act, 1999* requires the federal Minister of the Environment to publish a periodic report on the state of the Canadian environment. Between 1986 and 1996, the federal government released three five-year state-of-the-environment reports, followed by reports in Canada's National Environmental Indicator Series (2000, 2001 and 2003) and Canadian Environmental Sustainability Indicators program (2005, 2006 and 2007). The Canadian Environmental Sustainability Indicators, covering air, water, climate, wildlife and habitat, and socio-economic indicators, have been posted and updated online since 2011 as new information becomes available.

These federal indicators provide limited, snapshot data at the provincial level in some environmental areas (for example, emissions of harmful substances to air, and water quality in rivers). However, gaps in regional reporting on several federal indicators, and the benefits of integrating provincial information to identify connections and interactions, highlight the value of reporting at the provincial and territorial level.

At the provincial and territorial level, regular reporting on the state of the environment is variable, although more consistent where required by law (see **Appendix 2**). For example, under Yukon's *Environment Act*, the Minister of Environment must table a full state-of-the-environment report in the Legislature every three years and interim reports in the years in-between. Yukon's Minister of the Environment has accordingly been releasing Yukon State of the Environment reports since 1996. Likewise, Saskatchewan's *Environmental Management and Protection Act, 2010* (and *The State of the Environment Report Act* before that) has required that a State of the Environment Report be tabled every two years, and the province has released such reports since 1991.

Benefits of State of the Environment Reporting

Jurisdictions with regular, public reporting on the state of the environment cite several benefits, including its value in:

- providing baseline information for environmental planning, assessment and regulation;
- integrating information to better identify connections and interactions between environmental areas, human well-being and the economy, and to highlight the cumulative effects of pressures, such as pollution, on the environment;
- providing an early warning system of possible emerging trends and environmental impacts;
- informing, influencing and improving environmental policy;
- increasing interest from the public and industry in the environment and protective policies;
- allowing for better interaction between policy-makers and researchers;
- receiving feedback from stakeholders to improve the value and impact of monitoring and reporting;
- distributing timely, targeted and reliable environmental information to decision-makers, citizen groups, institutions and key economic sectors; and
- charting the achievement of environmental objectives.

Continuous, comparable and comprehensive reporting enables governments to understand the state of the environment, look at changes over time, project future conditions for long-term planning (for example, preparing for a changed climate), communicate the effect of current policies, and to adjust these policies and design new ones. For example, the European Union's proposed 8th Environment Action Programme (to guide European environmental policy to 2030) relies on information reported in the European Environment Agency's eighth state-of-the-environment report, *The European Environment—State and Outlook 2020*. Moreover, the European Environment Agency's annual indicator reports have supported the monitoring of progress implementing past EU Environment Action Programmes.

Citizens expect to know whether the air, water and land are clean, and wildlife and natural environments are thriving, contributing to food production, the economy, and people's health and well-being. Holistic, integrated reporting can provide a one-stop overview and lead readers to more detailed, topic-specific reports and data. Consistent, legislated timelines for tabling reports in the Legislature can ensure regular government and public attention on environmental impacts and responses. Several jurisdictions have also moved to web-based reporting, which allows information to be updated as needed, and users to download and analyze data and share interactive graphics.

2.2.3 Responsibility for Reporting on Ontario's Environment

At the provincial level, responsibility for monitoring, improving and reporting on 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).

Environment Ministry

The Environment Ministry is responsible for the following:

- protecting Ontario's air, land, water and species at risk and their habitat;
- tackling climate change;
- managing provincial parks and conservation reserves;
- administering laws, regulations and programs related to air pollution, water use and pollution, climate change, contaminated lands and spills, waste management, pesticides, toxic substances, endangered species, protected areas and conservation authorities;
- conducting environmental monitoring to provide scientific data to track the state of the environment. The data:

- informs policy and program development and assessment; and
- supports the Ministry's compliance, enforcement and emergency response programs; and
- informing Ontarians on the state of their environment.

Conservation authorities are established under legislation administered by the Environment Ministry. The authorities monitor surface and groundwater quality, groundwater levels and surface water flows, and in some cases other natural resources, in their jurisdiction in collaboration with the province.

Natural Resources Ministry

The Natural Resources Ministry is the lead provincial body responsible for the conservation of Ontario's biological diversity and for the government's Biodiversity Plan. The Natural Resources Ministry also has primary responsibility for managing Ontario's natural resources, including forests; aggregate, oil, gas and salt resources; fish and wildlife; and Crown lands. To achieve its mandate, the Ministry conducts monitoring, research, and planning for the management and use of Ontario's natural resources.

Agriculture Ministry

The Ministry of Agriculture, Food and Rural Affairs (Agriculture Ministry) is responsible for ensuring the sustainability of Ontario's agriculture, which is affected by the health of agricultural soils and pollinators. The Agriculture Ministry's Apiary Program is responsible for monitoring the health of managed honey bees, including their pests and diseases.

2.2.4 Ontario Biodiversity Council

Biodiversity conservation is a shared responsibility, and the government alone cannot safeguard Ontario's biodiversity. Recognizing this, in 2004, the Minister of Natural Resources brought together representatives of environmental, industry, Indigenous and other groups, as well as other levels of government, to participate in the development of the first biodiversity strategy for Ontario. In 2005, the then Minister released *Protecting What Sustains Us, Ontario's*

Biodiversity Strategy, outlining 37 recommended actions—including a priority action to establish a broad-based Ontario Biodiversity Council to guide implementation of the strategy.

In 2005, the government established the Ontario Biodiversity Council (Council), comprised of the then Minister, representatives of conservation organizations and industry associations, and Indigenous representatives. As of July 2021, the Council is comprised of the Minister and about 40 volunteers—scientists and stakeholders representing a broad range of organizations. Member organizations include the Chiefs of Ontario, the Federation of Ontario Cottagers' Associations; the Ontario Home Builders' Association; the Ontario Mining Association; Ontario Power Generation; the Royal Ontario Museum; the Toronto Zoo; and conservation and environmental groups.

Ontario's Biodiversity Strategy also contains a priority action to report on the "State of Ontario's Biodiversity" every five years, something the Council committed to doing in 2011 when the strategy was renewed. The Council has released multiple reports on the state of Ontario's biodiversity (in 2008, 2010, and 2015), reporting independently on the status and trends of numerous indicators that are updated online as new information becomes available. These indicators cover the state of ecosystems and species, pressures on biodiversity and conservation response. Up until 2019/20, the Council's work was funded by the Natural Resources Ministry. (See **Section 4.1.3** for more information on biodiversity reporting by the Council and the Natural Resources Ministry.)

3.0 Audit Objective and Scope

Our audit was conducted in two stages. The scope of Stage 1 of our audit, which was released in November 2020, covered the environmental indicators, targets and monitoring programs of three ministries: Ministry of the Environment, Conservation and Parks (Environment Ministry); Ministry of Northern

Development, Mines, Natural Resources and Forestry (Natural Resources Ministry); and the Ministry of Agriculture, Food and Rural Affairs (Agriculture Ministry). Stage 2, found here, assesses the three ministries' reporting to the public on the state of the environment and progress toward meeting their objectives, goals and targets.

The objective of this stage of our audit was to assess whether the Environment and Natural Resources ministries have effective systems and procedures in place to publicly report on the state of the environment and natural resources respectively, and provincial progress towards meeting set goals, objectives and targets. We also assessed whether the Agriculture Ministry has effective systems and procedures to report publicly on the environmental sustainability of Ontario's agriculture and provincial progress towards meeting set goals, objectives and targets.

In planning our work, we identified the criteria (see **Appendix 3**) we would use to compare practices against. These criteria were established based on a review of applicable legislation, policies and procedures, internal and external studies and best practices. Senior management at each of the three ministries reviewed and agreed with the suitability of our audit objectives and associated criteria.

We conducted Stage 2 of our audit between January 2020 and September 2021. We obtained written representation from management of the three ministries that, effective November 4, 2021, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusions of this report.

We interviewed senior management and staff, and examined relevant reports, data, protocols, research and other documents from the Environment Ministry, Natural Resources Ministry and Agriculture Ministry to obtain an understanding of each entity's involvement in reporting to the public. We also interviewed and reviewed information provided by other ministries and agencies, including the Ministry of Health, Ministry of Municipal Affairs and Housing, Ministry

of Transportation, and Public Health Ontario, as well as Agriculture and Agri-Food Canada, Environment and Climate Change Canada, Health Canada and Natural Resources Canada.

We also talked with scientists, subject matter experts and stakeholders from various other organizations and institutions, including the Canadian Wildlife Federation, City of Toronto, Conservation Ontario, the David Suzuki Foundation, the Ontario Biodiversity Council, the Ontario Soil and Crop Improvement Association, the Ontario Waste Management Association, Toronto Environmental Alliance, University of Guelph, University of Toronto, University of Waterloo, Wildlife Conservation Society Canada and York University. Further, we conducted research related to public reporting on the state of the environment undertaken by other provinces and states, countries and international organizations, including the European Environment Agency, the Organisation for Economic Co-operation and Development, and the United Nations.

We conducted our work and reported on the results of our examination in accordance with the applicable Canadian Standards on Assurance Engagements—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 the Canadian Standard on Quality Control and, as a result, maintains a comprehensive quality-control system 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.

4.0 Detailed Audit Observations: Reporting on the Environment

4.1 Comprehensive Reporting

4.1.1 Public Not Informed on Overall State of Ontario's Environment

The Environment Ministry does not report on the overall state of Ontario's environment. This means that the public, businesses, stakeholders and decision-makers do not have a clear, comprehensive picture of the general state of the environment at any given period of time or of changes over time, nor of the connections and interactions between the different areas of the environment, such as water, air and natural resources. Such comprehensive, overall reporting would help in identifying and communicating the impacts of complex pressures, such as climate change, and whether government policies and programs are collectively maintaining Ontario's environment, improving it or harming it.

More than 20 years ago, our Office reported on the lack of comprehensive, objective reporting on the state of Ontario's environment. In our 2000 *Special Report on Accountability and Value for Money*, we noted that the Environment Ministry periodically published reports and news releases on its activity in key environmental areas but these documents generally described recent Ministry successes or initiatives. They lacked objective appraisals of the quality of Ontario's environment.

The Environment Ministry, Natural Resources Ministry and their partners and agencies, such as conservation authorities, publish reports and information on the condition of Ontario's environment and natural resources (see **Appendix 4**). Many of these reports compile the data from monitoring programs on a specific topic into usable information to help readers understand the state of a particular environmental area. In addition, information on some environmental areas, like air quality, are publicly

reported online on an up to hourly basis. Other reports provide a summary of steps taken by the province and partners during the reporting period to address an environmental issue. Some reports include both.

However, the numerous ministries' reports and information sources on the environment do not allow for an easy and effective evaluation of the overall state of the environment. We noted this issue in our 2000 special report. To ensure that the Environment Ministry's progress in managing the environment is measured and communicated in an objective manner, we recommended in 2000 that a state of the environment report should periodically be prepared using a set of comprehensive outcome measures that assess the quality of and changes to the environment over time. Twenty years later, the problem remains.

Several of the reports released by ministries are required by law to be prepared (for example, on drinking water, forests, the Great Lakes, Lake Simcoe, protected areas, and toxic substances), often within legally mandated time frames such as annually, every two years, or every five years. However, as discussed in **Section 4.3**, not all reporting meets legislated timelines.

Where no legislated reporting requirements exist, reporting to the public has been lacking. For example, the Natural Resources Ministry has not released regular, public reports on the state of Ontario's rivers, fish populations or wildlife (such as birds, reptiles, amphibians, bears, wolves and deer), although it has published information on hunting activity, harvest levels and moose numbers, and may share information with local stakeholders. Further, the Environment Ministry does not report to the public on the amount of water withdrawn in the province, or how water takings compare to water availability.

Likewise, the Niagara Escarpment Commission, which reports into the Natural Resources Ministry, has not released regular reports on the state of the Niagara Escarpment (a UNESCO World Biosphere Reserve). In 1985, the government released the *Niagara Escarpment Plan* to preserve the escarpment and nearby land as a continuous environment, and to

ensure only development that is compatible with that natural environment occurs. A 2005 update to the *Niagara Escarpment Plan* states that the results of an environmental monitoring program will be provided through the Commission's website, regular reports, conferences, presentations and publications. The Commission identified its intention to develop State of the Escarpment reporting as early as 2012. However, there is no legislated requirement for reporting to the public on the state of the Niagara Escarpment, no regular reporting has occurred, and the two reports that the Commission prepared on the condition of the Niagara Escarpment (in 2008 and 2011) are no longer available on its website.

Regular reporting on the state of the environment could draw the attention of the public, industry and Legislative Assembly to newly emerging contaminants and risks (such as microplastics and nanomaterials), as well as improving environmental conditions. This would allow transparent evaluation of the coverage and effectiveness of the province's environmental monitoring, targets and programs.

RECOMMENDATION 1

So that decision-makers, industry, stakeholders, and the public are regularly and consistently provided with a comprehensive assessment of the state of Ontario's environment, whether it is getting better or worse, and how effectively it is being managed, we recommend that the Ministry of the Environment, Conservation and Parks work with the Ministry of Northern Development, Mines, Natural Resources and Forestry, Ministry of Agriculture, Food and Rural Affairs, and Environment and Climate Change Canada and other relevant partners to:

- prepare and publicly release state-of-the-environment reports every five years, describing the drivers of change, pressures on natural and physical resources, the state of the environment (including air, water, land, climate, biodiversity and ecosystems), how the environment has changed, the impacts

of changes, and forecasts for the state of the environment and potential impacts in the future; and

- table these reports in the Legislative Assembly.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks (Ministry) acknowledges the Auditor General's recommendation and agrees that providing the public information about Ontario's environment is important. The Ministry will continue to make environmental reports of interest available to the public, on a local, regional or province-wide scale or specific to media as most appropriate, including the Minister's annual report on drinking water, Great Lakes strategy progress report, Lake Erie Action Plan, Lake Simcoe reports, *Air Quality in Ontario* report and many others. In addition, the Ministry makes location-specific information available on the Ontario Data Catalogue, e.g., water quality data through the Lake Partner Program.

The Ministry will continue to review the existing format, frequency and distribution of its environmental reporting and consider options that would improve how the public access reporting information.

AUDITOR GENERAL'S RESPONSE

The Ministry did not agree to regularly prepare, publicly release, and table a comprehensive assessment on the state of Ontario's environment.

RECOMMENDATION 2

So that Ontario's environmental reporting is credible, informed, consistent and beneficial in improving environmental protection and management policies, programs and initiatives, we recommend that the Ministry of the Environment,

Conservation and Parks, in consultation with the Ministry of Northern Development, Mines, Natural Resources and Forestry and the Ministry of Agriculture, Food and Rural Affairs:

- establish a scientific advisory panel to provide independent, expert advice on the focus, priority issues and content of state-of-the-environment reports, as well as the research, monitoring and data needed to provide robust, comprehensive and effective reporting;
- develop and implement a transparent process for appointing qualified experts to this panel;
- define, in consultation with this panel, a set of core environmental indicators, and consistently collect the data needed to regularly report on the status of these indicators and changes over time;
- include in state-of-the-environment reports a description—in the context of the report's findings—of what policies, programs and initiatives currently exist, what new policies, programs and initiatives are proposed or planned, and what analysis will be undertaken to identify any other policies, programs and initiatives needed; and
- use published state-of-the-environment reports in internal program evaluations.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks acknowledges this recommendation. The three ministries have and can continue to collaboratively produce credible, informed, consistent and beneficial reporting without the assistance of an advisory panel.

AUDITOR GENERAL'S RESPONSE

The Ministry did not agree to establish and engage a panel of independent experts to inform its environmental monitoring and reporting;

determine a set of core environmental indicators for consistent reporting over time; and use state-of-the-environment reports in program evaluations.

RECOMMENDATION 3

To improve environmental protection and natural resource management policies, programs and initiatives, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry use published state-of-the-environment reports in internal program evaluations.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry of Northern Development, Mines, Natural Resources and Forestry (Ministry) appreciates the Auditor General's recommendation and agrees that state-of-the-environment reports provide a valuable source of information to support policy and program decisions and improvements. The Ministry will continue its practice of considering relevant information, data and reports when conducting policy and program evaluations. This will include using future published state-of-the-environment reports to inform the Ministry's internal program evaluations.

RECOMMENDATION 4

To improve the environmental sustainability of Ontario's agriculture and the effectiveness of environmental protection and management policies, programs and initiatives, we recommend that the Ministry of Agriculture, Food and Rural Affairs use published state-of-the-environment reports in internal program evaluations.

AGRICULTURE MINISTRY RESPONSE

The Ministry of Agriculture, Food and Rural Affairs (Ministry) recognizes the value in

understanding progress toward environmental outcomes and will actively collaborate with the Ministry of the Environment, Conservation and Parks as requested to support the development of environmental reports to ensure they are accurately representative of information, data and science relevant to Ontario agriculture and food.

The Ministry understands the value in using credible, informed and consistent information to continuously improve the effectiveness of environmental policies, programs and initiatives, and will explore the use of state-of-the-environment reports, as they become available, to inform program evaluations. The Ministry will continue to use existing reporting and/or credible science to inform internal program evaluations.

4.1.2 Environment Ministry Stopped Publicly Reporting on Overall State of Ontario's Water Quality in 2016

In 2016, the Environment Ministry stopped regularly reporting on the overall state of Ontario's water quality. As a result, there is no longer a consolidated publication on the state of all water resources in Ontario, including inland lakes, streams and groundwater.

Starting in 2009, the Ministry had published biennial *Water Quality in Ontario* reports, summarizing the results of multiple water monitoring programs, including key findings on the Great Lakes, inland lakes, streams and groundwater. These reports included updates on a number of issues that affect Ontario's water quality, such as climate change, nutrients and algae and contaminants. The reports also highlighted progress toward various environmental priorities. Stakeholders found these reports informative and valuable, providing Ministry analysis of the collected data besides the raw data itself.

However, the Ministry stopped issuing *Water Quality in Ontario* reports in 2016. The Ministry informed us that it ceased issuing the "ad-hoc reports" as it moved to posting data on the Ontario Data

Catalogue. The Data Catalogue contains datasets with the raw data from a number of the Ministry's water-monitoring programs, such as measurements on phosphorus, nitrogen, temperature, nutrients and metals. Although the posted data is not summarized to explain what it means (for example, the underlying reasons for observed results and the impacts on people and the environment), posted data supports various water-related reports (see below).

Currently, information on the state of Ontario's water quality is published in a variety of different places (see **Appendix 4**), including the following:

- The Minister's annual drinking water report, which provides a comprehensive overview of the actions taken to protect water sources—but not the results of those actions or the state of waterbodies.
- *Ontario's Great Lakes Strategy Progress Report*, which reports on key measures, actions and accomplishments made toward goals in Ontario's Great Lakes Strategy. At the time of our audit, it had not been released despite its 2019 legislated release deadline (see **Section 4.3**).
- The binational (Canada-US) *State of the Great Lakes Reports*, which report on the status and trends of the Great Lakes ecosystem in great detail, with technical reports in excess of 500 pages.
- Ontario's 36 conservation authorities each produce report cards on the quality of the surface water and groundwater within their watershed every five years, and Conservation Ontario provides summary reporting on the State of Ontario's Watersheds. However, the individual reports are not consolidated, some report cards are difficult to locate online, and reporting is based on only a few indicators.
- The Minister's *Reports on Lake Simcoe*, which focus on the state of the Lake Simcoe watershed.
- Peer-reviewed articles co-authored by Ministry scientists.
- Public Health Ontario's website includes a Raw Water Chemicals Map that displays data on water contaminant concentrations in surface and

groundwater, by public health unit. These data are collected by the Ministry of the Environment, Conservation and Parks.

As mentioned in **Section 4.1.1**, the Environment Ministry also does not publicly report water withdrawal and consumption quantities, and how this compares to available water resources. Although the Environment Ministry has stopped consolidated reporting on Ontario's water quality, by contrast, it continues to report on Ontario's overall air quality. Since 1971, the Environment Ministry has released an annual report on the state of Ontario's air quality. This report, called the *Air Quality in Ontario* report since 1984, summarizes for the public the annual and trend data in ambient air quality gathered at a network of sampling stations throughout the province.

RECOMMENDATION 5

To provide the public with regular and comprehensive information on the overall state of Ontario's water quality for decision-making, policy and program development, and holding the government accountable for progress, we recommend that the Ministry of the Environment, Conservation and Parks review its current water reporting and provide biennial summarized reporting to the public as well, as part of a future regular, comprehensive state-of-the-environment reporting.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks (Ministry) acknowledges the Auditor General's recommendation and agrees that the public is interested in obtaining information on the state of Ontario's water quality. The Ministry will continue to report on the state of Ontario's water while avoiding duplication by producing regular reports, for example on drinking water, Lake Simcoe, and the Great Lakes; supporting the Canadian government on compiling reports; making data publicly available on the Ontario Data Catalogue; and continually reviewing the ministry's environmental reporting.

AUDITOR GENERAL'S RESPONSE

The Ministry did not agree to provide the public with regular, comprehensive, summarized reporting on the overall state of Ontario's water.

4.1.3 Natural Resources Ministry Currently Does Not Have Plans to Publicly Release Its Prepared, Consolidated Report on State of Natural Resources

In June 2021, the Natural Resources Ministry informed us during our audit that it did not have plans to make its prepared report on the state of Ontario's natural resources public, although this was originally planned when the Ministry initiated work on the report in 2017.

Instead, the Natural Resources Ministry said the report (which covers a range of topics, including aggregates, fish, forests, invasive species, protected areas and wetlands) will be used as an internal document to inform program and policy decisions, and was used to produce the 2021 *State of Natural Resources—Forests Report*, which was publicly released in September 2021. According to the Ministry, it has not shared the *State of Ontario's Natural Resources Report* with the public because the Ministry has not sought or obtained approval from the new Minister, who was appointed in June 2021.

Between 2012 and 2015, the Natural Resources Ministry underwent a transformation to more effectively deliver on its core mandate and modernize its approaches to natural resource management. During this process, the Ministry identified the need to consolidate and streamline its legislated "state of" public reporting on forests and protected areas (required under the *Crown Forest Sustainability Act, 1994* and the *Provincial Parks and Conservation Reserves Act, 2006* respectively), as well as reporting commitments in *Ontario's Biodiversity Strategy, 2011* (described in **Appendix 4**).

With reports on each of these areas (forests, protected areas and biodiversity) previously released separately, staff noted a duplication of efforts in

reporting on similar topics, and the risk of inconsistent public communication on how resources are doing, for example, on afforestation, deforestation and protected areas. Ministry staff's proposed approach was to unify the Ministry's legally required public reporting into one easily navigated online report. Internally, Ministry staff expected that this new, modern approach would cut costs and make it easier for Ontarians to access reliable and up-to-date information on how Ontario's natural resources are doing.

Since 2017, the Natural Resources Ministry has been consulting staff on the best indicators to include, compiling and analyzing data, and developing indicator reports to consolidate its public reporting on the state of Ontario's natural resources. The Ministry's initial focus for this new state of Ontario's natural resources report was on forests, fisheries and biodiversity. This reflected reporting requirements in legislation (the *Crown Forest Sustainability Act, 1994*), and commitments in policies (*Ontario's Provincial Fish Strategy*, and *Biodiversity: It's In Our Nature*). Statutory responsibility for managing and reporting on protected areas (including provincial parks and conservation reserves) was transferred from the Natural Resources Ministry to the Environment Ministry in 2018.

In its 2012 biodiversity action plan *Biodiversity: It's In Our Nature*, the province recognized that, to track and report on progress conserving biodiversity, support decision-making, and help with communicating to the public, it is important to develop an effective set of biodiversity indicators. With this in mind, the province committed to reviewing and refining indicators for measuring and reporting on the state of biodiversity. The Natural Resources Ministry's project to consolidate its public reporting on the state of Ontario's natural resources involved such a review and refinement of biodiversity indicators.

Through an internal working group and several staff consultation workshops held in 2018, the Natural Resources Ministry reduced a preliminary list of 202 indicators down to roughly 65 key indicators, supported by multiple measures to report on. Indicators

were selected based on their policy relevance, ability to be communicated to the public, and data quality. Reports for each indicator—assessing their status, trend and geographic coverage—were drafted by Policy Division staff and reviewed by subject matter experts across the Ministry for publication on the planned new website. The Ministry's intention was to update the indicator reports and add new reporting themes and indicators as data became available.

Several of the indicators relate to the state or condition of Ontario's biodiversity, including aquatic ecosystems, fish community diversity, fish populations and wetland area. At the time of our audit, the Ministry was also working to update other biodiversity-related indicators: rare ecosystems, species of conservation concern, wildlife habitat and wildlife population. Other biodiversity-related indicators that were discussed during internal sessions, but not ultimately included in the final list of indicators, were aquatic and terrestrial species, pollinators, vegetation, Great Lakes ecosystems, and geological features that contribute to ecosystems.

Initially, the proposed publication date for a subset of 39 indicator reports was March 29, 2019. In addition to reporting on fisheries, forests, invasive species and ecosystems, indicator reports in this group include information on flows and barriers in Ontario streams; how much oil, gas and aggregate (like bedrock, sand and gravel) is produced in Ontario; and the roads, dams and waste management sites on Crown land. In January 2020, Ministry staff sought the then Minister's approval to publish the new *State of Ontario's Natural Resources Report* online (on Ontario.ca), with a revised target publication date of March 25, 2020. At the time, staff noted to the Minister's Office that this web-based public reporting on the state of natural resources would address several Ministry needs, including:

- legal requirements to report publicly on the state of Ontario's forests, and policy requirements to report on fisheries, biodiversity and the Ministry's progress under *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan* (2018) (see **Appendix 5**

for a Ministry-prepared list of indicators in the *State of Ontario's Natural Resources Report* and their potential contribution to meeting reporting requirements);

- the need to use staff time efficiently and reduce duplication in public reporting; and
- providing needed information to the natural resource business sector (for planning and management purposes), Ministry staff (for policy and program development purposes), and the public and politicians.

No decision was made by the then Minister at that time, and the Ministry could not provide our Office with an explanation why. In late 2020, in the absence of ministerial approval, senior Ministry staff decided that the *State of Ontario's Natural Resources Report* and its accompanying indicators would not be planned for public release, though approval from the new Minister may be sought in the future. Instead, the Ministry will keep the report as an internal resource.

The Ministry told us it continues to develop and update indicators for the *State of Ontario's Natural Resources Report* but has no plans to share the prepared website or indicator reports with the public without Ministerial approval to do so.

During the course of our audit, we also learned that, as part of the government's commitment to balance the budget, in 2019 the Ministry ended financial support for the Ontario Biodiversity Council (Council)—a group of volunteer stakeholders and scientists who report to the public on the state of Ontario's biodiversity in support of commitments in *Ontario's Biodiversity Strategy*. As discussed in **Section 2.2.4**, the Council was established by the Ministry in 2005, and has released reports on the state of Ontario's biodiversity in 2008, 2010, and 2015, and updated indicators online in 2021. Although the Ministry lends support to the Council (planning meetings and updating biodiversity indicators), and the Council currently operates on residual funds previously provided by the province (as well as proceeds from the 2015 Ontario Biodiversity Summit), there is no legislated requirement or sustained funding for the Council to continue its valuable reporting.

RECOMMENDATION 6

So that Ontarians are fully informed regarding the province's natural resources, and that the Ministry efficiently and effectively meets its statutory and policy requirements for public reporting, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry:

- regularly release consolidated information on the state of Ontario's natural resources (including on aggregates, fisheries, forests, oil and gas and, in co-operation with the Ontario Biodiversity Council, aspects of Ontario's biodiversity); and
- work with the Ministry of the Environment, Conservation and Parks to include relevant areas of this reporting in any future regular, comprehensive state-of-the-environment reporting.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry of Northern Development, Mines, Natural Resources and Forestry (Ministry) agrees that there are many benefits to public reporting on the state of the environment, including natural resources. The Ministry makes a wide variety of natural resource data and information available through existing channels such as the Ontario Data Catalogue and Ontario.ca. The Ministry will continue to meet its statutory requirements for public reporting on the state of forests, and will continue to collaborate with its partners, including the Ministry of the Environment, Conservation and Parks and the Ontario Biodiversity Council. The Ministry will continue to make improvements.

Going forward, the Ministry will consider releasing consolidated information on Ontario's natural resources when data has been updated and validated for public release.

4.1.4 Public Has No Source of Information on Wild Pollinators, Regional, Local Soil Health and Pesticide Use

The Agriculture Ministry and Natural Resources Ministry have little data to report on wild pollinators because neither ministry has a broadscale, long-term wild pollinator monitoring program. The Agriculture Ministry also does not report to the public on the health of soils or on the pesticides applied to agricultural lands, which can contribute to negative impacts on watersheds and pollinators. Neither the Agriculture Ministry nor the Environment Ministry collects and reports information on the amount, type, timing and location of the application of pesticides to farmland, which makes up about 5.6 million hectares (or 5.7%) of Ontario's land area.

Wild Pollinators

Wild pollinators, including species of bees, flies, wasps, butterflies, moths, beetles and hummingbirds, are essential to Ontario's agricultural production—especially fruit, vegetable and nut crops—and to sustaining the health and diversity of wild plant communities. A 2016 study commissioned by the Natural Resources Ministry estimated that the total value of pollination by wild species for agricultural purposes in Ontario ranges from \$470 million to \$1.35 billion. The study also estimated that wild pollinators provide between 50% and 56% of the value of pollination services for Ontario's agriculture. Neither the Agriculture Ministry nor the Natural Resources Ministry reports regularly to the public on the status of wild pollinators. Ontario has no comprehensive, long-term wild pollinator monitoring program to report on (see **Section 5.2.4** of our *2020 Annual Report* audit, Setting Indicators and Targets, and Monitoring Ontario's Environment).

In October 2019, the Agriculture Ministry began drafting an Agri-Food Environment Plan, with a key action to improve the Ministry's reporting on environmental outcomes. For various environmental themes (water, soils, climate change, waste, farmland and biodiversity), the draft plan describes the current regulatory framework and programs, outlines key

actions, provides specific targets where available, identifies performance metrics and the recent status of those metrics, and indicates plans to measure progress. The draft plan indicates that quantitative performance targets will be established across several metrics, including soil erosion risk, soil organic carbon, soil cover, agriculture greenhouse gas emissions and hectares of farmland. The current draft, however, does not discuss the state, targets, metrics or status of crop pollination in Ontario by wild species. The Agriculture Ministry expects to release the draft plan for public consultation, but does not yet have a date for release.

The Agriculture Ministry told us that tracking and reporting on wild pollinators is outside its mandate. This is because wildlife management is the responsibility of the Natural Resources Ministry. Still, the Agriculture Ministry also does not regularly assess the dependence of agricultural crops on wild pollinators, nor changes in the pollination services and impacts over time on Ontario's crops. Rather, the Agriculture Ministry focuses on the pollination provided by domesticated honey bees.

Though not required by legislation, the Agriculture Ministry reports annually on the health, diseases and pests of Ontario's managed honey bees through its *Provincial Apiarist Reports* and *Apiculture Winter Loss Surveys*. However, only two years of reporting are available online; the 2016 and 2017 *Provincial Apiarist Reports* are available on the Ministry's website. Reports from all other years between 2003 and 2019 are not publicly available on the Ministry's website. When asked why this is, the Ministry indicated that the pre-2016 reports were dated and considered of little value, the webpage was inundated with links to older reports, the reports are available upon request, and the 2019 report needs to be reformatted for posting on the Ministry's new website (on Ontario.ca). According to the Ministry, it is working on migrating content to the new website, with a March 2022 deadline.

In our 2020 audit, we recommended that the Natural Resources Ministry develop and implement a broad-scale, long-term monitoring program for wild

pollinators and report annually to the public on the results of this program and the status of wild pollinators. We also recommended that the Agriculture Ministry work with the Natural Resources Ministry to develop and implement a research and monitoring program on wild species that pollinate Ontario's crops. In response, the Natural Resources Ministry acknowledged the information gaps in pollinator monitoring provincially; the Ministry committed to consulting with partner ministries on how to address wild pollinators within a broader monitoring framework, and exploring how to monitor and report. As of July 2021, the Natural Resources Ministry had not yet consulted partner ministries on this.

Agricultural Soil Health

Like wild pollinator health, there is a gap in provincial reporting on the health of Ontario's agricultural soils. Because the Agriculture Ministry does not have its own soil health monitoring program, it relies on national-scale reporting by the federal government. Agri-Food and Agriculture Canada (Agriculture Canada) uses Agri-Environmental Indicators that measure the agriculture and agri-food sector's environmental performance for soil, water and air quality and farmland management at a national scale. Information is collected every five years, with the most recently published indicator reports covering results and trends from 1981 to 2011. Agriculture Canada has uploaded updated data (to 2018) online and plans to update the indicator website information by the end of March 2022.

The Ministry has noted that province-wide soil assessment tools are not well developed, and that creating Ontario-specific indicators at different scales (for example, farm, field, regional and provincial) would allow for better analysis and reporting, and would be more useful than using only the federal Agri-Environmental Indicators. In 2018, the Agriculture Ministry, as a member of the Soil Health Working Group, worked alongside various stakeholders to release *New Horizons: Ontario's Agricultural Soil Health and Conservation Strategy* (Soil Health Strategy), highlighting the need to report, where

appropriate and feasible, on province-specific indicators of Ontario's soil health. The Soil Health Strategy outlines more than 30 actions related to collecting and sharing soil health information.

However, as we reported in Stage 1 of this audit, Setting Indicators and Targets, and Monitoring Ontario's Environment in our *2020 Annual Report*, since the release of Ontario's Soil Health Strategy in 2018, little progress had been made to implement foundational actions within it. To improve the tracking, measuring, analyzing and reporting on the state of Ontario's agricultural soil health, we recommended that the Agriculture Ministry work with the Soil Action Group (a partnership between government, industry, conservation groups and academics to lead and monitor the strategy's implementation) to promptly develop and execute a collaborative implementation plan for the Soil Health Strategy and report annually to the public on progress.

After the release of our audit report, the Soil Action Group, which first met in January 2020, established a collaborative implementation approach and three task teams to support the development of a three-year plan to implement the strategy. The implementation plan is expected by December 2021, including options for how to report on progress implementing the Soil Health Strategy.

Pesticides

Between 1973 and 2013, the Agriculture Ministry collected detailed pesticide use data by means of a voluntary survey, and released public reports every five years summarizing the survey results. For over 40 years, the survey provided information on the types, amounts and use of pesticides on agricultural crops. According to the Ministry, the collected data was useful in estimating and reporting pesticide use; tracking trends in pesticide use by crop and by region; and supporting studies that evaluated the environmental risks of pesticides used in Ontario, which informed the development and sharing of best practices for integrated pest management. Early surveys were also used to gauge the local and overall effectiveness of a pest management program that was completed in 2002.

According to the Agriculture Ministry, it stopped conducting these surveys due to low response rates. The Ministry received more than 1,200 submissions for the 1998, 2003 and 2008 mail-in surveys, but received only 475 submissions for the 2013 online survey. The Ministry speculates that the lower response rate was due to growers' reluctance to share pesticide use data, similar to the general public's reluctance to share what they see as sensitive business information.

While the Agriculture Ministry does not have a mechanism to require mandatory reporting of agricultural pesticide use, it told us that it is reviewing its approach for collecting information and exploring options that may provide more robust data on pesticide use.

RECOMMENDATION 7

To understand and inform the public about the types and amounts of pesticides applied to Ontario crops, detect trends in pesticide use and environmental impact, and inform policy development, decision-making and the public, we recommend that Ministry of Agriculture, Food and Rural Affairs develop and implement an approach for collecting and publicly reporting information on agricultural pesticide use.

AGRICULTURE MINISTRY RESPONSE

The Ministry of Agriculture, Food and Rural Affairs (Ministry) acknowledges this recommendation and notes that the data challenge is not central to Ontario; the collection of pesticide use and environmental monitoring data is being investigated at the federal-provincial-territorial (FPT) level to support common interests for improved access to data for policy development and scientific review of pesticide registrations. The Ministry will be participating in these FPT discussions and will ensure that any potential solutions will consider Ontario's needs and take this recommendation into consideration. This collaborative

approach may also help to support sustainable pest management strategies with industry.

The Ministry notes that all pesticides must be authorized before they can be sold or used in Canada, and rigorous scientific review is undertaken by Health Canada's Pest Management Regulatory Agency to ensure they meet the latest health and environmental risk assessment standards. While pesticide use data can provide general information on volume applied and inform trends on product types used, pesticide use data in isolation will not provide a true assessment of environmental impact. The assessment to understand environmental performance is far more complicated and is dependent on science-informed, responsible use and application of pesticides in accordance with regulated labels, as well as adoption of best practices and integrated pest management approaches that influence their sustainable use. Environmental monitoring (e.g., stream monitoring) is a valuable approach to assess potential impacts associated with pesticide use. Data for the types and amounts of pesticides used can inform trends that may support interpretation of environmental monitoring data, such as the joint water monitoring project with the Ministry of the Environment, Conservation and Parks.

The Ministry's voluntary pesticide use survey that was completed every five years from 1973 to 2013 faced challenges with decreasing response rates, especially for horticulture crops. The data collected was not fulsome or complete and limited the ability to estimate and report on pesticide use. There is no regulated requirement for Ontario farmers to provide pesticide use information to the Ministry.

The Ministry will continue to explore options with industry that may provide more robust pesticide use data to complement environmental monitoring data. If a viable option is identified for collection of pesticide use data, the Ministry will work with industry to implement a pilot project to evaluate the effectiveness of that approach.

4.2 Ministries Not Reporting Progress Implementing Environmental Strategies, Plans and Policies, or Progress Toward Targets

The province's numerous environmental plans, strategies and policies contain objectives and key actions to achieve overarching goals. Effective progress reporting would regularly explain to the public what steps have been taken to implement each action and tactic, and the outcomes of implementing these actions in achieving stated objectives and targets. However, the three ministries we audited (Environment, Natural Resources and Agriculture) have not regularly reported publicly on progress implementing some of their strategies, plans and policies, and the resulting outcomes (see **Appendix 6**). Further, we found that none of these three ministries have overarching policies or requirements for reporting back publicly on progress.

Environment Ministry

Greenhouse Gas Emissions

The *Cap and Trade Cancellation Act, 2018* compels the Minister of the Environment, Conservation and Parks to prepare a climate change plan and regular reports on progress.

In 2018, the Environment Ministry released *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan* for public consultation, including the province's climate change plan. The plan sets a target to reduce Ontario's greenhouse gas emissions, which contribute to global climate change, by 30% below 2005 levels by 2030.

In 2019 and 2020, the Ministry released progress updates on the *Made-in-Ontario Environment Plan* and the climate change plan within it. However, these updates are brief, high-level summaries that focus on outputs and do not report the status of recent emissions relative to Ontario's 2030 target; the estimated emissions in each sector; the outcomes and expected contribution that taken actions have had on reducing emissions; nor revised emissions forecasts based on

progress implementing the plan (see Climate Change: Follow-Up on VFM Chapter 3, Volume 2 in our *2021 Annual Report*, which is a follow-up to our 2019 audit, Climate Change: Ontario's Plan to Reduce Greenhouse Gas Emissions).

Waste Diversion

Historically, the Environment Ministry also has not regularly reported on progress meeting the province's waste diversion targets, including its most recent targets to divert 30% of Ontario's total waste generated by 2020, 50% by 2030 and 80% by 2050. The first five-year progress report on the *Strategy for a Waste-Free Ontario: Building a Circular Economy* is expected in 2022.

Species at Risk

Under the *Endangered Species Act, 2007*, the Environment Ministry must publish reports on progress made toward protecting and recovering species at risk. These reports are due no later than the time specified in a species' government response statement (species-specific plans of action) or no later than five years after the response statement is published. This year, in *Protecting and Recovering Species at Risk* of our *2021 Annual Report*, our Office found that all 85 reports on progress have been completed on time as required, with 18 additional reviews of progress due to be completed in December 2021. However, a sample of progress reports we reviewed found that they fail to clearly specify all of the work that remains outstanding. We also noted that progress reviews did not assess the effectiveness of action taken, due in part because response statements contain no performance measures against which to compare. These reports focus on the outputs and not the actual outcomes of actions identified in response statements to protect and recover species at risk.

Natural Resources Ministry

Wetland Conservation

The Natural Resources Ministry has also not released reports on progress in implementing strategies and meeting targets. For example, *A Wetland Conservation Strategy for Ontario: 2017-2030* lays out targets

and actions to conserve the area and function of Ontario's wetlands. In the strategy, the government committed to developing performance measures and reporting to the public on progress implementing the strategy's actions and achieving the targets, with progress reports to be published every five years beginning in 2020. At the time of our audit, the Ministry had given no priority to draft or release such a progress report. Moreover, no performance measurement framework was in place for reporting on progress implementing this strategy, and no data was being collected.

During the course of our audit, however, the Ministry informed us that *A Wetland Conservation Strategy for Ontario: 2017-2030* is an archived product of a previous government, and the direction and targets within it are no longer in effect. The Natural Resources Ministry did not notify or consult the public on this decision through the Environmental Registry, as required under the *Environmental Bill of Rights, 1993* (see our 2021 report on the *Environmental Bill of Rights*). As a result, wetland researchers, stakeholders and the public were unaware that the strategy and its targets had been cancelled.

Biodiversity, Resilience, Wildlife Management and Invasive Species

Similarly, the Natural Resources Ministry's 2017 climate adaptation strategy, *Naturally Resilient: MNRF's Natural Resource Climate Adaptation Strategy (2017-2021)*, states that the Ministry will assess and report on its progress meeting the goals of the strategy to build biodiversity and resilience (the capacity of a community, business or natural environment to anticipate, prevent, withstand, respond to and recover from a climate change-related disruption or impact). However, the Ministry has released no such progress reporting.

Likewise, the Ministry has not published status reports on progress in implementing actions in the 2012 *Ontario Invasive Species Strategic Plan*, Ontario's 2012 biodiversity action plan *Biodiversity: It's In Our Nature*, or various wildlife management strategies, including the Ministry's *Strategy for Wolf Conservation*

in Ontario (2005), *Moose Management Policy* (2009) and *Ontario's Provincial Fish Strategy* (2015), which states that progress toward achieving the goals, objectives and outcomes of the strategy will be measured regularly and reported on through provincial State of Resource Reporting.

Though the Ministry points to the Ontario Biodiversity Council's reporting on certain relevant indicators (for example, wetlands and invasive species) in its *State of Ontario's Biodiversity Report* (see **Section 2.2.4**) as public reporting in these areas, reporting on the state of these indicators is not a substitute for reporting on progress in implementing actions and achieving objectives of the Ministry's strategies and plans.

Niagara Escarpment Plan

The *Niagara Escarpment Plan* (first released in 1985, and updated most recently in 2017) states that the province will develop a set of performance indicators to measure the implementation of the Plan's policies, and that the Plan's implementation will be monitored and reported. (The Niagara Escarpment Commission, which is tasked with developing, interpreting and applying policies that maintain and enhance the Niagara Escarpment's unique environmental and landscape features, reports to the Natural Resources Ministry.) The *Niagara Escarpment Plan's* performance indicators are contained within the Ministry of Municipal Affairs and Housing's *Performance Indicators for the Greenbelt Plan*, and have not been publicly reported since they were first published in 2015, some with data dating back to 2002.

Agriculture Ministry

Soil Health

The Agriculture Ministry has also not reported to the general public on progress in implementing the province's strategy to sustain and enhance the health of agricultural soils, *New Horizons: Ontario's Agricultural Soil Health and Conservation Strategy* (2018). The 2018 strategy commits to establishing a schedule for reporting on progress but nothing

on that is expected until December 2021. Updates on the strategy's implementation have not been reported publicly—only within the Soil Action Group (a select group of members from government, industry, conservation groups and academia).

Pollinator Health

The former *Pollinator Health Action Plan* (2016) stated that the Agriculture Ministry would keep partners and the public informed on the progress of the plan, including reporting on targets. However, a report on progress that the Ministry prepared in 2018 was never approved for public release. Further, though certain actions to improve pollinator health continue, the Ministry cancelled the plan's overarching framework and targets sometime after July 2018 without informing or consulting the public (see **Chapter 2, Section 8.3** of our 2020 report, *Operation of the Environmental Bill of Rights*).

RECOMMENDATION 8

To promote accountability, transparency and progress on achieving published goals, objectives and targets, we recommend that the Ministry of the Environment, Conservation and Parks develop and implement policies and frameworks that require regular reporting to the public on progress in implementing all its environmental strategies, policies and plans.

ENVIRONMENT MINISTRY RESPONSE

As recognized in the Auditor General's report, the Ministry of the Environment, Conservation and Parks (Ministry) reports publicly on progress in implementing several environmental strategies, policies and plans, such as through the Minister's annual reports on drinking water, Great Lakes strategy progress report, Lake Erie Action Plan annual update, Lake Simcoe reports, *Air Quality in Ontario* reports and many others. The Ministry is also required to report on progress toward implementing the *Strategy for a Waste-Free Ontario* every five years. The Ministry reports on progress

toward implementing *Ontario's Food and Organic Waste Policy Statement*.

The Ministry will consider additional opportunities of reporting to enhance the public's understanding of the Ministry's progress in implementing its environmental strategies, policies and plans.

AUDITOR GENERAL'S RESPONSE

The Environment Ministry did not agree to develop and implement policies and frameworks requiring regular reporting to the public on progress in implementing its environmental strategies, policies and plans.

RECOMMENDATION 9

To promote accountability, transparency and progress on achieving published goals, objectives and targets, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry develop and implement policies and frameworks that require regular reporting to the public on progress in implementing all its environmental strategies, policies and plans.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry of Northern Development, Mines, Natural Resources and Forestry (Ministry) agrees public reporting on progress in implementing environmental strategies, policies and plans has many benefits. As recognized by the Auditor, the Ministry reports to the public on progress toward achieving many of its environmental goals, objectives and targets and will continue to make improvements. Given the change in Ministers, the new Minister will need to be provided with more information to formulate a decision on reporting on progress implementing the Ministry's strategies, policies and plans.

RECOMMENDATION 10

To promote accountability, transparency and progress on achieving published goals, objectives and targets, we recommend that the Ministry of Agriculture, Food and Rural Affairs develop and implement policies and frameworks that require regular reporting to the public on progress in implementing all its environmental strategies, policies and plans.

AGRICULTURE MINISTRY RESPONSE

The Ministry of Agriculture, Food and Rural Affairs (Ministry) agrees that public reporting on progress on environmental strategies, policies and plans helps promote accountability, transparency and progress on achieving published goals, objectives and targets. The Ministry commits to develop and implement a policy on regular reporting to the public on progress implementing its environmental strategies, policies and plans.

With regard to the current Soil Health Strategy, the Ministry co-ordinates the strategy's actions through its membership on the Soil Action Group, a collaboration that includes over 20 partners from government, academia, industry and conservation groups. No partner on the Soil Action Group, including the Ministry, has unilateral control over decisions impacting the Soil Health Strategy. Recognizing the value for transparency and measuring progress, the Ministry commits to leveraging its role as a member on the Soil Action Group to influence the potential development and execution of a collaborative implementation plan and annual public reporting on progress. The Ministry believes that current Soil Action Group activities are on track to meet the December 2021 timeline for the completion of the implementation plan, while recognizing that building consensus within the Soil Action Group takes time and is not under the Ministry's unilateral control.

4.3 Ministries Missing Public Reporting Deadlines in Legislation and Policies by Several Years

Ministries are not always meeting public reporting deadlines laid out in legislation and policy. We found several cases where ministries are not meeting their legal requirements and policy commitments to report (see **Appendix 4**). Further, ministries face no consequences for failing to meet these deadlines. Putting reporting requirements in law is supposed to help ensure that public reporting occurs and is timely. But public confidence in government is undermined when ministries do not meet public reporting deadlines in acts, regulations and policies, and ministries are not held accountable.

A process exists to provide assurance that provincial ministries have complied with applicable laws, regulations, directives and policies. Each year, ministries conduct a self-assessment on the achievement of organizational objectives by evaluating the effectiveness of their internal controls to provide reasonable assurance over the reliability of financial reporting; effectiveness of operations; and compliance with applicable laws, regulations, as well as directives and policies issued by the Ministry of Finance, Treasury Board Secretariat and Treasury Board/Management Board of Cabinet. Relying on the results of self-assessments carried out at branch and division levels, Deputy Ministers sign a formal attestation memo, referred to as a Certificate of Assurance, consisting of a standard set of statements formulated by the Office of the Provincial Controller Division. Ministries identify instances of non-compliance with any of these statements as exceptions. We found that the following instances of non-compliance in public reporting do not appear in ministries' Certificates of Assurance, and there is no requirement to report non-compliance with ministries' own policies.

Environment Ministry

Non-compliance with *Great Lakes Protection Act, 2015*

Under the *Great Lakes Protection Act, 2015*, the Environment Minister must prepare a progress report at least once every three years, including, among other things:

- a description of recent actions that have been taken to address the priorities identified in Ontario's Great Lakes Strategy;
- a description of any established targets and progress made in achieving those targets;
- a description of progress made in achieving the purposes of this Act; and
- a summary of the information with respect to the monitoring and reporting programs.

The Environment Ministry published one Great Lakes progress report in 2016, which indicated the Ministry's intention to report again in three years using a suite of performance measures to track progress. However, the second report, which was due in 2019, has not been drafted or released, hampering the public's understanding of the state of the lakes and provincial progress. According to the Ministry, the report was delayed so that the Ministry could prioritize revisions to the *Canada-Ontario Agreement on Great Lakes Water Quality and Ecosystem Health*. However, the *Great Lakes Protection Act, 2015* does not make accommodations for deferring the preparation of progress reports to respond to other priorities.

Non-compliance with the *Lake Simcoe Protection Act, 2008*

Despite requirements under the *Lake Simcoe Protection Act, 2008* to produce annual progress reports, the Environment Ministry did not release the Minister's annual report on Lake Simcoe in 2013, 2014 or 2018. The Ministry did report on progress made during those years in its five-year and 10-year progress reports (released in 2015 and 2020). The Ministry asserts that it therefore met the annual reporting obligations. However, the *Lake Simcoe Protection Act, 2008* has both annual and five-year reporting requirements.

Non-compliance with the *Toxics Reduction Act, 2009*

The *Toxics Reduction Act, 2009*, which is scheduled to be repealed on December 31, 2021, requires the Environment Minister to prepare annual reports describing progress relating to the implementation of this Act. However, no such reports have been prepared or published since the *2017 Minister's Report on Toxics Reduction* was released in 2018.

Natural Resources Ministry

Failure to Meet Reporting Commitments in *Provincial Wildlife Population Monitoring Program Plan (2004)* and *A Wetland Conservation Strategy for Ontario: 2017–2030*

In its *Provincial Wildlife Population Monitoring Program Plan*, the Natural Resources Ministry committed to producing an annual report on the program's accomplishments from 2015 to 2019, and a five-year report covering 2015 to 2019. In 2018, the Ministry published a 2015 annual report, as well as a 2016/2017 report. However, these reports are not easily located or accessed online, and the Ministry has not produced a 2018 annual report or the five-year report. Fieldwork was not conducted in 2019 because, according to the Natural Resources Ministry, it needed to focus on data analysis and improving the wildlife monitoring program.

Furthermore, as discussed in **Section 4.2**, despite a commitment in *A Wetland Conservation Strategy for Ontario: 2017–2030* to initiate public reporting on progress in 2020, the Natural Resources Ministry has not developed a framework for reporting on progress and no data has been collected.

RECOMMENDATION 11

So that ministries' legislated and policy requirements and deadlines for reporting to the public are met, and so that ministries are held accountable for failing to meet these responsibilities, we recommend that the Treasury Board Secretariat:

- require ministries, either as part of or separate from the Certificate of Assurance process, to itemize, attest to and report annually to

Treasury Board Secretariat on their compliance with all applicable legislation and meeting of policy commitments: and

- annually report the results of this ministry reporting to the Treasury Board.

TREASURY BOARD SECRETARIAT RESPONSE

Ministries are accountable for adherence to their legislation and policy commitments, including any deadlines for public reporting.

Treasury Board Secretariat supports the current ministry accountability mechanisms that are in place.

Risks associated with ministries' legislated requirements will be considered as part of internal audit planning processes.

4.4 Public Could Be Notified and Provided Environmental Reports through Environmental Registry

Ministries have an excellent opportunity to use the Environmental Registry—a centralized website of environmental information—to notify the public of the release of environmental reports. However, we found that the Environment, Natural Resources and Agriculture ministries are not fully utilizing this platform for this purpose.

Under Ontario's *Environmental Bill of Rights, 1993* (EBR), 16 ministries—including the Environment Ministry, Natural Resources Ministry, and Agriculture Ministry—are required to notify and consult the public through the Environmental Registry when proposing laws, regulations and policies, including strategies and action plans, that might have a significant effect on the environment.

The Environmental Registry is a website that the Environment Ministry created in 1994 and continues to maintain. The Environmental Registry has a well-established reputation as an easily accessible and centralized source of information on environmental activities. In 2020/21, the Environmental Registry

received over 400,000 visits. For more than 25 years, it has served as a central point for the public to learn about proposals and actions of the government that might affect the environment, including those that are required by law to be posted and others that are posted voluntarily by a ministry. A “one-window” approach to informing Ontarians about environmental proposals, decisions and information is convenient and transparent.

Although not required under the EBR, ministries post many bulletins (previously referred to as “information notices”) on the Environmental Registry for information purposes, including to let Ontarians know about the release of environmental reports by other organizations. For example, the Environment Ministry has used the Environmental Registry to advise the public about reports by:

- the Resource Productivity and Recovery Authority, a non-Crown, not-for-profit corporation created to deliver services to support the province’s transition to a waste-free Ontario;
- the Committee on the Status of Species at Risk in Ontario, an independent committee of experts responsible for assessing and classifying species at risk in Ontario; and
- Waste Diversion Ontario, a non-Crown corporation that previously developed, implemented and operated waste diversion programs.

The Natural Resources Ministry has used the Environmental Registry to advise the public about reports by the Nuisance Bear Review Committee (a committee established to independently review scientific information related to nuisance bears).

According to the EBR, the purpose of the Environmental Registry is “to provide a means of giving information about the environment to the public.” However, we found that legislative requirements to post prepared environmental progress reports on the Environmental Registry are found in only two acts: the *Lake Simcoe Protection Act, 2008* and the *Water Opportunities Act, 2010*. Further, the Environment Ministry, Natural Resources Ministry and Agriculture Ministry have not fully used the Environmental Registry to inform the public of the release of reports

that relate to the environment (see **Appendix 4**).

For example:

- The Environment Ministry has not posted any of its *Air Quality in Ontario* reports, *Water Quality in Ontario* reports, Minister’s Reports on Toxics Reduction, or progress reports on the 2018 *Made-in-Ontario Environment Plan*.
- The Natural Resources Ministry has posted some but not all of its forest-related reports, and has not used the Environmental Registry to inform the public of the 2010 and 2015 *State of Ontario’s Biodiversity* reports, or its annual reports related to its Provincial Wildlife Population Monitoring Program.
- The Agriculture Ministry has not posted its reports related to diseases and pests that affect managed honey bees, many of which are also not available elsewhere online.

Given the Environmental Registry’s well-established reputation and extensive use as a source of information about government environmental decisions, it would be sensible and beneficial for ministries prescribed under the EBR to use the Environmental Registry as a central site for informing the public about all important environmental activities and developments, regardless of whether more detailed information is provided elsewhere. Moreover, the newly updated (as of 2019) Environmental Registry platform allows ministries to attach reports and other documents to notices. Attached documents would remain accessible to the public even when a ministry’s website is changed and weblinks are buried or broken over time. Members of the public can also register to receive email alerts when notices with specified keywords are posted on the Environmental Registry.

RECOMMENDATION 12

So that Ontarians can readily find and access information about all environmental reports, publications, and research, we recommend that the Ministry of the Environment, Conservation and Parks post all its reports related to the environment on the Environmental Registry.

ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation and Parks (Ministry) thanks the Auditor General for this recommendation and will consider whether it would be appropriate to post additional reports, publications, and research on the Environmental Registry.

The Ministry will continue to use various methods to provide environmental-based information to the public, including the Environmental Registry as appropriate.

RECOMMENDATION 13

So that Ontarians can readily find and access information about all environmental reports, publications, and research, we recommend that the Ministry of Northern Development, Mines, Natural Resources and Forestry post all its reports related to the environment and natural resources on the Environmental Registry.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry of Northern Development, Mines, Natural Resources and Forestry (Ministry) thanks the Auditor General for this recommendation and will consider whether it would be appropriate to post additional reports, publications and research on the Environmental Registry. The Ministry will continue to use various methods to provide environmental-based information to the public, including the Environmental Registry, as appropriate.

RECOMMENDATION 14

So that Ontarians can readily find and access information about all environmental reports, publications and research, we recommend that the Ministry of Agriculture, Food and Rural Affairs post all its reports related to the environment, and the environmental sustainability of Ontario's agriculture, on the Environmental Registry.

AGRICULTURE MINISTRY RESPONSE

The Ministry of Agriculture, Food and Rural Affairs (Ministry) recognizes the important role of the Environmental Registry in informing the public on environmental matters in the province and agrees with the recommendation to post reports related to the environment and the environmental sustainability of Ontario's agriculture on the Environmental Registry, as appropriate.

The Ministry commits to develop and implement a policy on posting reports generated by the Ministry that may be of interest to the public related to the environment and the environmental sustainability of Ontario's agriculture, on the Environmental Registry.

Appendix 1: Glossary of Terms

Prepared by the Office of the Auditor General of Ontario

Term	Definition
Ambient air quality	The condition or general quality of surrounding outdoor or open air
Biodiversity	The variety of life—including plants, animals, fish and other organisms. It includes diversity of individuals, species, and ecosystems
Canada-Ontario Agreement on Great Lakes Water Quality and Ecosystem Health	An agreement between the government of Canada and Province of Ontario, signed in 1971, to restore, protect and conserve Great Lakes water quality and ecosystem health
Climate adaptation	Actions taken to reduce the potential damage caused by climate change and prepare for its impacts (e.g., higher temperatures, extreme weather, flooding). Adaptation is often viewed as one of two core strategies for addressing climate change, with the other being mitigation, or the reduction of greenhouse gases in the atmosphere
Climate change	Climate change is the long-term change in weather patterns, which is causing shifts in temperatures, precipitation, and/or the timing or length of seasons. The climate change observed since the early 20th century is a result of global warming, or the long-term heating of Earth's surface due to human activities, primarily fossil fuel burning
Ecosystem	All of the living things, such as plants and animals, and all of the non-living things in their environment, such as water, soil and sunlight, and how these living and non-living things interact with each other
Environmental Registry	A website maintained by the Environment Ministry, and used by all 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 <i>Environmental Bill of Rights, 1993</i> . The Environmental Registry of Ontario (www.ero.ontario.ca) became the official Environmental Registry in April 2019
Goal	A long-term desired outcome. Goals tend to be broad in scope, general in intention, intangible, abstract and difficult to measure. Goals are often broken into more specific objectives
Greenbelt Plan	A provincial plan introduced in 2005 intended to protect Ontario's Greenbelt, a region within the Greater Golden Horseshoe, by identifying where urbanization should not occur in order to permanently protect agricultural lands and ecological and hydrological features, areas and functions occurring within the Greenbelt
Greenhouse gas	Water vapour, carbon dioxide, methane, nitrous oxide, ozone and other gases that absorb and emit infrared radiation in Earth's atmosphere, causing the greenhouse effect (i.e., letting the sun's energy in, but blocking its heat from escaping). Increasing greenhouse gas emissions from human activities since the industrial revolution are the primary cause of climate change
Indicator	A variable or metric to describe or measure a condition, phenomenon or dynamic. A goal may have many indicators
Invasive species	Invasive species are species that are introduced outside of their normal range that establish and spread, and threaten the economy, environment, society or human health
Niagara Escarpment	A ridge of sedimentary rock that rises up to 510 metres at its highest point and runs 725 kilometres from Niagara to Tobermory. The Escarpment has been designated as a World Biosphere Reserve because it provides habitat to numerous and diverse animal and plant ecosystems
Objective	A specific, tangible and measurable outcome toward achieving an overarching goal

Term	Definition
Performance indicator	A quantitative or qualitative measure that indicates progress on desired outcomes, or the extent to which a program's objectives are achieved. It may take multiple performance indicators to capture an outcome
Pollinator	Species, including bees, flies, wasps, butterflies, moths, beetles and hummingbirds, that spread pollen from male to female plants, providing pollination services and facilitating plant reproduction
Protected areas	A clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature
Soil erosion	The natural process by which the surface of soils wears away due to natural physical forces (water or wind) or human activities, such as agricultural tillage. Soil erosion can deplete the organic matter and soil organic carbon stored, reducing soil productivity, degrading nearby waterbodies and increasing soil carbon emissions
Soil organic carbon	The solid carbon stored in soils, which is the measurable component of soil organic matter, or the total organic materials built up from decaying plants, animals and microorganisms
Species at risk	The plants, animals and other organisms in danger of going extinct and being lost forever
Sustainability	The ability of the Earth's surface, atmosphere and hydrosphere to be able to persist in a state of balance over the long term. Sustainable human development involves human use of renewable and non-renewable resources and aims to ensure that needs of present and future generations can be met
Target	A future desired value of an indicator. A target is a time-bound benchmark for driving and measuring progress toward meeting an objective
Waste diversion	When materials that would otherwise be disposed of are instead reused, recycled or composted and are therefore diverted from landfills, incinerators or facilities that recover energy from the waste incineration process
Wetlands	Lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface. In either case, the presence of abundant water has caused the formation of very wet soils and has favoured the dominance of either plants that grow partly or totally submerged in water or water-tolerant plants. The four major types of wetlands are swamps, marshes, bogs and fens
Wildlife	Living things that are neither human nor domesticated

Appendix 2: Comprehensive State of the Environment Reporting in Other Jurisdictions

Prepared by the Office of the Auditor General of Ontario

Jurisdiction	Environmental Themes	Reporting		
		History	Format	Requirement
Canadian Provinces and Territories				
AB	n/a	n/a	n/a	n/a
BC	Air, climate change, land and forests, plants and animals, sustainability, water	1993, 1998, 2000, 2002, 2006 (coastal environment), 2007, 2012–present	Report document (1993–2012) and updated, web-based reporting (2012–present)	None
MB	Air, biodiversity and habitat conservation, climate change, fish, forests, water	2005, 2009	Report document (Provincial Sustainability Report for Manitoba)	Previously required under <i>The Sustainable Development Act</i> , which was repealed in 2018
NB	Air, land, water	2003	Report document	n/a
NL	n/a	n/a	n/a	n/a
NS	Air quality, water resources, waste-resources management	1998	Report document	The <i>Environment Act</i> states that the Minister of the Environment shall report periodically on the state of Nova Scotia’s environment
NU	n/a	n/a	n/a	n/a
NW	Air, biodiversity, climate change, economy and energy, land and ocean, people, water	2009, 2010 (biodiversity), 2011, 2016	Long form report online, highlight report document	<i>Environmental Rights Act</i> (2019) now requires that a state-of-the-environment report be tabled every four years
ON	n/a	n/a	n/a	n/a
PE	Air quality, biodiversity, climate change, drinking water quality, environmental stewardship, energy use, land use, pesticides, soil quality, surface water quality	2003, 2010	Report document	None
QC	Agricultural land, air quality, biodiversity, climate, forests, surface water	2014 (reporting on 2006–2013), 2020 (reporting on 2013–2019)	Report document	<i>Sustainable Development Act</i> requires status reports, based on indicators, upon periodic review of Quebec’s sustainable development strategy
SK	Individual indicators are no longer categorized into air, habitat, land or water	1991–2021	Report document	The <i>Environmental Management and Protection Act</i> requires a State of the Environment report every two years

Jurisdiction	Environmental Themes	Reporting		
		History	Format	Requirement
YT	Air, climate change, land, fish and wildlife, water	1995–2020 (excluding 1996, 1998, 2009–2011)	Report document	The <i>Environment Act</i> requires state-of-the-environment report every three years (and annual interim reports)
Countries				
Australia	Antarctic environment, atmosphere, built environment, biodiversity, coasts, heritage, land, inland water, marine environment	1996, 2001, 2006, 2011, 2016	Report document and online	<i>Environment Protection and Biodiversity Conservation Act 1999</i> requires a report on Australian environment to be prepared and tabled every five years
Austria	Air pollution control, biodiversity, changing climate, climate protection, humans as a mirror of the environment, soil preservation, water and aquatic habitats protection	1988, 1991, 1993, 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, 2019	Report document	European Union (EU) directive on public access to environmental information
Canada	Air, climate, socio-economics, wildlife and habitat, water	1986, 1991, 1996, 2003–present	Report document, then updated web-based reporting	<i>Canadian Environmental Protection Act, 1999</i> requires federal Minister of the Environment to publish a periodic report on the state of the Canadian environment
England	Air quality, soil, water quality, water resources	2013–2021	Report document	None
European Union	Air pollution, biodiversity and nature, climate change, freshwater, land and soil, marine environment	1985, 1992, 1995, 1999, 2005, 2010, 2015, 2020	Report document	Regulation No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network
Finland	Air pollutants, biodiversity, chemicals and hazardous substances, circular economy, climate change and black carbon, communities and transport, green economy, microplastics, natural resources, urban nature and human health, waters	1972, 1982, 1992, 1996, 2000, 2008, 2013, 2017	Report document	EU directive on public access to environmental information
France	Air, biodiversity and ecosystems, sea and coastline, soil, water	1994, 1998, 2002, 2006, 2010, 2014, 2019	Report document, online	EU directive on public access to environmental information
Germany	Air, chemicals, climate change, green economy, health and the environment, nature and biodiversity, raw materials and waste, soil, water	1994, 1998, 2002, 2006, 2010, 2015, 2019	Report document, online	EU directive on public access to environmental information

Jurisdiction	Environmental Themes	Reporting		
		History	Format	Requirement
Ireland	Air quality and emissions, climate change, environment, health and well-being, inland and marine, nature, land and soil, nature, waste, waters	1985, 1996, 2000, 2004, 2008, 2012, 2016, 2020	Report document, online	EU directive on public access to environmental information
Italy	air pollution, biodiversity, chemical pollution, climate change, freshwater, land and soil, marine environment, noise, waste and resources	1986, 1989, 1996, 2001–2013, 2015–2020	Report document, online	EU directive on public access to environmental information
Japan	Air, biodiversity, climate change, waste, water	1969–2021	Report document	<i>Basic Environment Law</i> <i>Basic Act on Establishing a Sound Material-Cycle Society</i> <i>Basic Act on Biodiversity</i>
Netherlands	Circular economy, climate adaptation and mitigation, food and agriculture, healthy environment, nature, water quality	1988, 1995–2010, 2012, 2014, 2016, 2018, 2020	Report document	EU directive on public access to environmental information
New Zealand	Air, atmosphere and climate, fresh water, land, marine	2015, 2019	Report document	<i>Environmental Reporting Act 2015</i>
South Africa	Air quality, biodiversity, climate change, forests, land degradation, oceans and coasts, waste	1999, 2002, 2004, 2006, 2008, 2009, 2010, 2011, 2014, 2016, 2019	Report document and web-based reporting	<i>National Environmental Management Act, 1998</i>
Spain	Air, climate change, coasts and marine environment, energy, natural and man-made disasters natural environment, soil, waste, water	2006–2019	Report document, mobile app	EU directive on public access to environmental information
Switzerland	Air, biodiversity, climate, contaminated sites, forest, landscape, soil, waste and raw materials	1991, 1993, 1997, 2002, 2007, 2009, 2011, 2013, 2015, 2018	Report document	<i>Environmental Protection Act</i>
United Kingdom (UK)	n/a	Annual digest of environmental statistics (1979–1997), after which the four UK administrations were made responsible for all aspects of the environment, including reporting	Report document	None
USA	Air, ecological condition, human exposure and health, land, water	2008, 2015–present	Report document (2008), and updated, web-based reporting (2015–present)	None

Appendix 3: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

This audit is being conducted in two stages. Stage 1, which our Office released in November 2020, covered the environmental indicators, targets and monitoring programs of the Ministry of the Environment, Conservation and Parks, the Ministry of Northern Development, Mines, Natural Resources and Forestry, and the Ministry of Agriculture, Food and Rural Affairs.

Stage 2, found in this report, is reviewing the ministries' reporting to the public on the state of the environment and progress toward meeting their objectives, goals and targets.

Ministry of the Environment, Conservation and Parks

The Ministry regularly reports to the public on the state of Ontario's environment, and progress in meeting environmental targets, goals and objectives. This reporting is objective, timely and understandable to the general public.

Ministry of Northern Development, Mines, Natural Resources and Forestry

The Ministry regularly reports to the public on the state of Ontario's natural resources, and progress in meeting environmental targets, goals and objectives. This reporting is objective, timely and understandable to the general public.

Ministry of Agriculture, Food and Rural Affairs

The Ministry regularly reports to the public on the sustainability of Ontario's agriculture, and progress in meeting environmental targets, goals and objectives. This reporting is objective, timely and understandable to the general public.

Appendix 4: Key Public Reporting on the State of the Environment in Ontario

Prepared by the Office of the Auditor General of Ontario

..... indicates information that supports findings in the report.

Report (Lead Author)	Topic	Public Reporting Requirements	Frequency of Reporting	Posted on Environmental Registry?	Timely?	Comprehensive and Understandable? ¹
Air Pollution/Air Quality						
Air Quality in Ontario Report (Environment Ministry)	State of air quality in Ontario and long-term trends for key air pollutants Includes pollution data by area (air monitoring site) and source of emissions by sector	None	Annually. First published: 1971 Most recent release: 2021 (reporting on 2018)	No	Data delay: 1.5 years	Yes
Water Pollution/Water Quality						
Water Quality in Ontario Report (Environment Ministry)	State of water quality in Ontario, including the Great Lakes, inland lakes, streams and groundwater Summary of multiple monitoring program results and progress toward various environmental priorities	None	Years published: 2009 (reporting on 2008); 2011 (on 2010); 2013 (on 2012); and 2016 (on 2014)	No	Data delay: 1.5 years Not published since 2016	Yes
Watershed Report Cards: Surface Water and Groundwater Quality (Ontario's 36 conservation authorities)	Report cards grading the quality of the surface water and groundwater (and forest condition) within each watershed, based on each conservation authority's monitoring results of several key water-quality indicators	None	Every five years. Published in 2013 and 2018. Next due in 2023	No	All conservation authorities met timeline set by Conservation Ontario	Understandable, but individual report cards not consolidated, and some difficult to find online

Report (Lead Author)	Topic	Public Reporting Requirements	Frequency of Reporting	Posted on Environmental Registry?	Timely?	Comprehensive and Understandable?¹
Ontario's Great Lakes Strategy Progress Report (Environment Ministry)	Key measures, actions and accomplishments made by provincial government and its partners during previous three years toward meeting each of the goals in Ontario's Great Lakes Strategy Also highlights developments in Great Lakes science, with links to comprehensive resources	<i>Great Lakes Protection Act, 2015</i> requires progress report every three years	Published in 2016	No	Required 2019 progress report not yet published	Yes
State of the Great Lakes Report (Jointly by Canada and US governments, with contribution from Ontario ministries)	Status and trends of the Great Lakes ecosystem, based on assessment of nine indicators of ecosystem health, including assessments for each lake (there is also a separate annual progress report for each lake)	<i>Great Lakes Water Quality Agreement</i> requires progress report every three years	Every two years. First published: 1982 Most recent release: 2020 (of 2019 report)	No	Yes, timelines have been met	Yes
Minister's Annual Report (and Five-Year and Ten-Year Reports) on Lake Simcoe (Environment Ministry)	State of the Lake Simcoe watershed, including results of various monitoring programs in the watershed, as well as actions and progress made toward achieving the objectives set out in the Lake Simcoe Protection Plan	Annual and five-year reports required by <i>Lake Simcoe Protection Act, 2008</i>	Annual and five-year summary reports. First annual report in 2010; last release in 2019 (for 2017). Annual reports not released in 2013, 2014 or 2018 (but bundled with five-year reports). Five-year reports released in 2015 and 2020.	Yes, as is required	Inconsistent in publishing. Annual reports often 1.5 years behind.	Yes
Chief Drinking Water Inspector's Annual Report (Chief Drinking Water Inspector, Environment Ministry)	Performance of Ontario drinking water systems over the past year and the Ministry's inspection activity, including drinking water test results and adverse water quality incidents	Required under the <i>Safe Drinking Water Act, 2002</i>	Annually. First published: 2005 Most recent: December 2020 (for 2019/20)	No	Yes, on time and timely	Yes

Report (Lead Author)	Topic	Public Reporting Requirements	Frequency of Reporting	Posted on Environmental Registry?	Timely?	Comprehensive and Understandable? ¹
Minister's Annual Report on Drinking Water (Environment Ministry)	Overview of provincial government's programs, initiatives and actions taken in the past year to reduce contaminants from entering Ontario's waterways and to protect drinking water Also includes a progress report every three years on implementing the <i>Water Opportunities Act, 2010</i> , which summarizes actions taken to encourage water conservation, innovative water and wastewater technologies, and improved municipal infrastructure planning	Required annually under the <i>Safe Drinking Water Act, 2002</i> . The <i>Water Opportunities Act, 2010</i> also requires progress report every three years, though this progress report can be included in the Minister's Annual Report on Drinking Water under the <i>Safe Drinking Water Act, 2002</i> .	Annually. First published: 2007 Most recent release: 2020	No	Yes, on time and timely	Comprehensive summary of actions and some state of water quality information. Not as comprehensive as the former Water Quality in Ontario Reports. Refers readers to Source Protection Committees' annual progress reports, but does not comprehensively summarize their contents
Source Protection Plan Progress Reports (Conservation authorities)	Annual report by each lead Source Protection Authority on progress implementing their source protection plan	Required by the <i>Clean Water Act, 2006</i>	Annually	No	Yes, on time and timely	Understandable, but individual reports not consolidated, and some hard to find online
General Pollution (Toxic Substances and Waste)						
Minister's Report on Toxics Reduction (Environment Ministry)	Amounts of toxic substances used, created, contained in products, and released into the environment (air, land and water) by industrial facilities in Ontario, and trends over time of these amounts	<i>Toxics Reduction Act, 2009</i> (which is to be repealed December 31, 2021) requires annual progress reports on implementation of the Act	Annually. Published for 2012 to 2017. Not published as required for 2018, 2019 or 2020	No	Timely when published	Yes

Report (Lead Author)	Topic	Public Reporting Requirements	Frequency of Reporting	Posted on Environmental Registry?	Timely?	Comprehensive and Understandable? ¹
Resource Productivity and Recovery Authority Annual Report (Resource Productivity and Recovery Authority)	Waste diversion results and rates of the programs operating under the <i>Waste Diversion Transition Act, 2016</i> and the <i>Resource Recovery and Circular Economy Act, 2016</i> (i.e., Blue Box program, municipal hazardous or special waste, tires and waste electronics)	Annual reporting requirements in the <i>Waste Diversion Transition Act, 2016</i> and the <i>Resource Recovery and Circular Economy Act, 2016</i>	Annually. Published between 2017 and 2021 (for 2020)	Yes	Yes	Yes
Climate Change						
Progress Reports on the Made-In-Ontario Environment Plan (Environment Ministry)	Short, high-level summary of some steps taken and planned to implement the <i>Made-In-Ontario Environment Plan</i> , including its chapter on climate change	<i>Cap and Trade Cancellation Act, 2018</i> compels the Minister to, on a regular basis, prepare reports in respect to the climate change plan	Annually. Published 2019 and 2020	No	Yes	Understandable, but no information on the current status of greenhouse gas emissions, progress achieving target or contribution of actions to emissions reductions
Nature and Wildlife						
State of Ontario's Protected Areas Report (Natural Resources Ministry/Environment Ministry)	State of Ontario's protected areas, including ecological, geological and cultural heritage features within Ontario's provincial parks and conservation reserves	Required by <i>Provincial Parks and Conservation Reserves Act, 2006</i>	Every 10 years. First report published: 2011 (on the period 2001-2009) Most recent release: 2021 (on the period 2010-2019)	Yes	On time; reasonably timely (a one-year delay)	Understandable. Reports on protected areas number, size, representation targets, biodiversity, socio-economic condition and benefits, education and outreach, and policy, planning and research – but not yet ecological condition.

Report (Lead Author)	Topic	Public Reporting Requirements	Frequency of Reporting	Posted on Environmental Registry?	Timely?	Comprehensive and Understandable? ¹
State of Ontario's Biodiversity Report (Ontario Biodiversity Council)	State of Ontario's biodiversity and progress in achieving the 15 biodiversity targets in <i>Ontario's Biodiversity Strategy, 2011</i>	Not legally required, but commitment in Ontario Biodiversity Strategy to monitor and publicly report on progress every five years	Interim report published in 2008. Reports published in 2010 and 2015 and indicators updated online throughout 2021	2008 interim report but not 2010 and 2015 reports	2020 report to be released in 2021, indicators updated online throughout 2021	Yes
State of Ontario's Natural Resources – Forests (Natural Resources Ministry)	State of Ontario's forests, based on the assessment of 63 indicators, which reflect both the environmental health of the forests and state of the forest industry	Required at least once every five years under the <i>Crown Forest Sustainability Act, 1994</i> (and by requirements in declaration order ² prior to July 1, 2020)	Every five years. First published: 2001 Most recent: 2021	Yes	Yes	Understandable
Forest Resources of Ontario (Natural Resources Ministry)	Overview and statistics on Ontario's forests by area and type, including by ownership type, by forest type, and by distribution of tree species.	Required every five years under the Forest Resource Assessment Policy	Every five years. First published: 1920s Most recent: 2016 Next due: 2021	No	Yes, published every five years, on time	Yes
Forest Health Conditions Report (Natural Resources Ministry)	Description of forest health and monitoring results of disturbances to Ontario forested areas from insects, disease, and weather-related disturbances like wind or drought	None	Annual. Most recent report: 2020 (reporting on 2019)	No	Yes	Yes
Ontario Apiculture Winter Loss Survey Report (Agriculture Ministry)	Results of voluntary survey of beekeepers on estimated honey bee colony winter mortality	None	2011, 2014–2018	No	Yes	Yes
Report on Forest Management (Natural Resources Ministry)	Report on forest management activities within Crown (i.e., publicly owned) land in managed forest	Requirements in declaration order ² prior to July 1, 2020	Annually from 1994–2015, then every two years Last report published: 2020 (reporting on 2016/17 and 2017/18)	2008/09, 2012/13 and 2013/14	Reporting on 2016/17 and 2017/18 was expected in 2019 but not released until 2020	Yes

Report (Lead Author)	Topic	Public Reporting Requirements	Frequency of Reporting	Posted on Environmental Registry?	Timely?	Comprehensive and Understandable? ¹
Provincial Wildlife Population Monitoring Program Annual Report (Natural Resources Ministry)	Annual accomplishments of Provincial Wildlife Population Monitoring Program and recommendations for future work	Under the <i>Provincial Wildlife Population Monitoring Program Plan</i> (released in 2004, revised in 2010 and 2015), the Ministry committed to producing annual reports from 2015 to 2019 and a five-year summary report	Annual and five-year summary reports (2015-2019) Most recently published: 2018 (for 2015, 2016 and 2017) A five-report was not completed and an annual report from the 2018 field season was not prepared. No data was collected in 2019	No	Annual Reports for 2018 and 2019, and five-year summary report (2015-2020) not yet published	Yes
Progress Reports on the Protection and Recovery of Ontario's Species at Risk (Natural Resources Ministry/ Environment Ministry)	A separate report for each species at risk on the progress made to protect and recover that species, summarizing actions taken by the provincial government and its partners toward meeting the recovery goal for the species	Under the <i>Endangered Species Act, 2007</i> , required within five years after release of a species' government response statement (or within time specified in government response statement)	Progress reports published for 85 species between 2014 and 2020	Yes	Yes, all 85 reports on progress completed on time as required	Some progress reports fail to clearly specify outstanding work or assess the effectiveness of actions taken, focusing on outputs rather than outcomes
Provincial Apiarist Report (Agriculture Ministry)	Provides statistics and information on the beekeeping industry, diseases and pests, honey bee mortality, inspections and monitoring	None	Annually since 2003, though no report in 2009 or 2020, and only 2016 and 2017 reports available on Ministry's website	No	Yes	Yes

1. We categorized a report as "understandable" when it was clear, in plain language and had explanations for technical terms.

2. The Minister of the Environment, Conservation and Parks can exempt a project from the requirement to prepare an environmental assessment, or require compliance with only certain requirements of the *Environmental Assessment Act*. This is known as a declaration order.

Appendix 5: Draft State of Ontario's Natural Resources Report Indicators and Their Potential to Support Legal and Policy Reporting Requirements

Source: Ministry of Northern Development, Mines, Natural Resources and Forestry¹

Indicator ²	Source of Reporting Requirement				
	<i>Crown Forest Sustainability Act, 1994</i>	<i>Ontario Government Plan to Conserve Biodiversity, 2012-2020 (2012)</i>	<i>Ontario's Provincial Fish Strategy: Fish for the Future (2015)</i>	<i>Provincial Parks and Conservation Reserves Act, 2006³</i>	<i>Made-in-Ontario Environment Plan (2018)</i>
Aggregates production					
Aquaculture economics			X		
Aquatic ecosystems		X	X	X	
Aquatic invasive species		X	X	X	X
Aquatic stress		X	X	X	
Commercial fishing value			X		
Crown land infrastructure	X				
Fish community diversity		X	X	X	
Fish populations		X	X	X	
Fish stocking			X	X	
Fisheries harvest		X	X	X	
Forest certification	X	X			
Forest composition	X	X		X	
Forest growth	X	X		X	
Forest harvest	X				
Forest products	X				
Forest regeneration	X				
Forest sector exports	X				
Forest sector GDP	X				
Growing season	X	X			X
Ice cover		X	X		
Independent forest audits	X				
Indigenous involvement in management planning	X	X			
Invasive insects and diseases	X	X		X	X
Natural forest disturbance	X	X		X	
Natural resource employment	X				
Oil and gas industry					
Protected area system	X	X		X	X

Indicator ²	Source of Reporting Requirement				
	<i>Crown Forest Sustainability Act, 1994</i>	<i>Ontario Government Plan to Conserve Biodiversity, 2012-2020 (2012)</i>	<i>Ontario's Provincial Fish Strategy: Fish for the Future (2015)</i>	<i>Provincial Parks and Conservation Reserves Act, 2006³</i>	<i>Made-in-Ontario Environment Plan (2018)</i>
Public awareness of natural resource management	X	X	X		X
Public engagement in natural resource management	X	X	X		
Recreational fishing and hunting expenditures			X	X	
Recreational opportunities	X		X	X	X
Resources management and land use planning	X	X	X	X	
Stream flows and connectivity		X	X	X	
Tax incentive programs	X	X			X
Terrestrial connectivity	X	X		X	X
Terrestrial invasive plants	X	X		X	X
Water quality		X	X		
Wetland area		X	X	X	X
Total	23	24	18	19	10

1. This table was prepared by Ministry staff in 2019 for internal purposes only.

2. Since preparing this table, the Ministry identified 12 additional indicators that it is developing and updating: deforestation/afforestation; ecological footprint; forest carbon; forest compliance; forest stumpage revenue; governance in forest management; habitat for wildlife; mainstreaming biodiversity and climate change (i.e., integrating these concepts into Ministry policies); resource revenue sharing; species of conservation concern; stewardship effort; and wildlife population.

3. In 2018, responsibility for reporting on the state of Ontario's protected areas under the *Provincial Parks and Conservation Reserves Act, 2006* was transferred from the Ministry of Northern Development, Mines, Natural Resources and Forestry to the Ministry of the Environment, Conservation and Parks.

Appendix 6: Reporting on Progress Achieving Published Environmental Goals, Objectives and Targets Administered by the Three Ministries

Prepared by the Office of the Auditor General of Ontario

Highlighted text indicates information that supports findings in the report.

Legislation, Strategy or Policy	Environmental Goals or Objectives	Relevant Target(s)	Most Recent Status of Progress Toward Target(s)	Public Reporting on Progress ¹
Ministry of Agriculture, Food and Rural Affairs (Agriculture Ministry)				
<i>Bees Act</i>	Protect the health of managed honey bees, particularly from pests and diseases	No targets set (but see targets set under <i>Ontario's Pollinator Health Action Plan</i>)	n/a	Provincial Apiarist Reports Ontario Apiculture Winter Loss Survey Reports
<i>New Horizons: Ontario's Agricultural Soil Health and Conservation Strategy</i> (2018)	Sustain and enhance soil health, make reliable soil data and tools available, track the health and status of Ontario's agricultural soils over time and optimize soil knowledge and skills	No targets set	n/a	None
<i>Nutrient Management Act, 2002</i>	Provide for the management of nutrient-containing materials in ways that will enhance protection of the natural environment and provide a sustainable future for agricultural operations and rural development	No targets set	n/a	None
<i>Ontario's Pollinator Health Action Plan</i> (2016) (No longer in effect) ²	Reduce level of exposure of pollinators to pesticides	80% reduction in the number of acres planted with insecticide (neonicotinoid)-treated corn and soybean seed by 2017	n/a – no longer tracked by Agriculture Ministry and Environment Ministry	None
	Reduce impacts of diseases and pests on pollinators	Reduce overwinter mortality rates for managed honeybees to 15% by 2020	19% for commercial sector (winter 2019/2020)	Provincial Apiarist Reports Ontario Apiculture Winter Loss Survey Reports
	Improve habitats and nutrition for pollinators	Restore, enhance and protect one million acres of pollinator habitat	n/a – no longer tracked by Agriculture Ministry and Natural Resources Ministry	None

Legislation, Strategy or Policy	Environmental Goals or Objectives	Relevant Target(s)	Most Recent Status of Progress Toward Target(s)	Public Reporting on Progress ¹
Ministry of the Environment, Conservation and Parks (Environment Ministry)				
<i>Cap and Trade Cancellation Act, 2018</i> (Target set in <i>Preserving and Protecting Our Environment for Future Generations: A Made-in-Ontario Environment Plan</i>)	Establish targets to reduce greenhouse gas emissions and prepare a climate change plan	Reduce emissions 30% below 2005 levels by 2030	21% below 2005 levels (based on 2019 data released in 2021)	Under the <i>Cap and Trade Cancellation Act, 2018</i> , the Minister shall regularly report publicly in respect of a climate change plan. The Minister released progress reports on the climate change plan contained in <i>A Made-in-Ontario Environment Plan</i> in 2019 and 2020. Neither mentioned Ontario's emissions levels nor the outcomes and expected contribution of actions on reducing emissions.
<i>Clean Water Act, 2006</i>	Protect sources of drinking water	No targets set. Under this Act, the Minister may establish targets relating to the use of the Great Lakes as a source of drinking water	n/a	Minister's <i>Annual Report on Drinking Water</i> , which refers readers to Source Protection Committees' annual progress reports
<i>Endangered Species Act, 2007</i>	Protect and recover species at risk and their habitats	No high-level targets set, although some species-specific targets set through recovery goals in the development of government response statements	n/a	Reviews of Progress Towards the Protection and Recovery of Ontario's Species at Risk
<i>Environmental Protection Act</i>	Protect and conserve Ontario's natural environment	No targets set under the Act. However, Ministry has established internal target to decrease, by March 31, 2021, ambient pollutant levels to be equal to or lower (< 100%) than the Canadian Ambient Air Quality Standards for ozone, fine particulate matter, sulphur dioxide and nitrogen dioxide	100% (in 2019/2020)	<i>Air Quality in Ontario</i> Reports

Legislation, Strategy or Policy	Environmental Goals or Objectives	Relevant Target(s)	Most Recent Status of Progress Toward Target(s)	Public Reporting on Progress ¹
<i>Ontario's Food and Organic Waste Policy Statement (2018)</i>	Prevent and reduce food waste, effectively and efficiently collect and process food and organic waste, and reintegrate recovered resources back into the economy	By 2023 or 2025, prescribed municipalities, businesses and institutions must divert 50% or 70% of food waste (depending on the subsector) from landfills	n/a	Progress reporting to be included as part of five-year progress reports on the <i>Strategy for a Waste-Free Ontario: Building a Circular Economy</i> (2017)
<i>Great Lakes Protection Act, 2015</i> <i>Canada-Ontario Agreement on Great Lakes Water Quality and Ecosystem Health (2014)</i> <i>Canada–Ontario Lake Erie Action Plan: Partnering on Achieving Phosphorus Loading Reductions to Lake Erie from Canadian Sources (2018)</i>	Protect human health and well-being through protecting and restoring water quality, hydrologic functions, natural habitats, biodiversity and the ecological health of the Great Lakes–St. Lawrence River Basin	Reduce phosphorus loadings to the Ontario portion of Lake Erie western and central basins by 40% by 2025 (from 2008 levels), as well as an interim target of reducing loadings by 20% by 2020	n/a	Ontario's Great Lakes Strategy Progress Reports State of the Great Lakes Reports Reporting on Canada-Ontario Lake Erie Action Plan through the Ontario.ca website
<i>Lake Simcoe Protection Act, 2008</i> <i>Lake Simcoe Protection Plan (2009)</i>	Protect and restore the ecological health of the Lake Simcoe watershed	Minimum 7 milligrams/litre of dissolved oxygen in Lake Simcoe at end of summer in each year	5.9 mg/L (in 2020/2021)	Minister's Annual Reports (and Five-Year and Ten-Year Reports) on Lake Simcoe
		Reduce loading of pathogens (disease-causing organisms) to eliminate beach closures	As of 2017, this target had not been met. In 2017, the beaches in Lake Simcoe's three regions averaged between one to five swim advisory postings	

Legislation, Strategy or Policy	Environmental Goals or Objectives	Relevant Target(s)	Most Recent Status of Progress Toward Target(s)	Public Reporting on Progress ¹
		Reduce contaminants to levels that achieve Provincial Water Quality Objectives or better	Chloride levels have steadily increased, but are still well below (a little less than 50%) Canadian Council of Ministers of the Environment Guidelines for the Protection of Aquatic Life for chronic exposure to chloride. Spring total phosphorus concentrations have decreased, averaging 14 micrograms (µg/L) in 1980 and 7 µg/L in 2018. Both concentrations meet the province's Interim Provincial Water Quality Objective of 20 µg/L.	
<i>Ontario Water Resources Act</i>	Conserve, protect and manage Ontario's waters and their efficient and sustainable use	No targets set	n/a	Water Quality in Ontario Reports (Ministry stopped issuing this report in 2016) Minister's Annual Report on Drinking Water Conservation authorities' individual Watershed Report Cards: Surface Water and Groundwater Quality
<i>Provincial Parks and Conservation Reserves Act, 2006</i> <i>Ontario Provincial Parks: Planning and Management Policies (1992)</i>	Permanently protect a system of provincial parks and conservation reserves that includes ecosystems representative of all of Ontario's natural regions, protects provincially significant elements of Ontario's natural and cultural heritage, maintains biodiversity, and provides opportunities for compatible, ecologically sustainable recreation	Provincial park class targets—specific targets for the number, size and distribution of wilderness, natural-environment and waterway-class parks within ecoregions and ecodistricts	Targets not met. For details on the recent status of each target, see Section 4.4.1 of our <i>2020 Annual Report</i> audit on Conserving the Natural Environment with Protected Areas	State of Ontario's Protected Areas Reports
		Representation targets—targets for provincial parks, conservation reserves and areas of natural and scientific interest have been defined by frameworks for geological and biological conservation	Targets not met. For details on the recent status of each target, see Section 4.4.1 of our <i>2020 Annual Report</i> audit on Conserving the Natural Environment with Protected Areas	

Legislation, Strategy or Policy	Environmental Goals or Objectives	Relevant Target(s)	Most Recent Status of Progress Toward Target(s)	Public Reporting on Progress ¹
<i>Resource Recovery and Circular Economy Act, 2016</i>	Minimize the use of raw materials, maximize the useful life of materials and other resources through resource recovery, and minimize waste generation at the end of life of products and packaging	No provincial targets set under Act. However, regulations under the Act set out targets for each waste diversion program, and the Ministry has set internal indicators to decrease the amount of waste disposed per capita each year	585 kilograms of waste sent to disposal per person (in 2018/2019)	Expected to be included as part of five-year progress reports on the <i>Strategy for a Waste-Free Ontario: Building a Circular Economy</i> (2017) Resource Productivity and Recovery Authority publishes annual reports on progress toward program targets
<i>Safe Drinking Water Act, 2002</i>	Protect human health and prevent drinking water health hazards through the control and regulation of drinking water systems and testing	99.75% of drinking water test results from municipal residential systems meet Ontario Drinking Water Quality Standards	99.85% (in 2019/2020)	Minister's Annual Report on Drinking Water
<i>Strategy for a Waste-Free Ontario: Building the Circular Economy</i> (2017)	Achieve a zero waste (waste-free) Ontario and zero greenhouse gas emissions from the waste sector	• 30% waste diversion by 2020 • 50% waste diversion by 2030 • 80% waste diversion by 2050	31% (in 2019)	First progress report to be released in 2022
<i>Toxics Reduction Act, 2009</i> (to be repealed December 31, 2021)	Prevent pollution and protect human health and the environment by reducing the use and creation of toxic substances, and inform Ontarians about toxic substances	No targets set, although regulated facilities could have set targets for reducing the use and creation of toxic substances	n/a	Minister's Reports on Toxics Reduction (last report published was the 2017 report)
<i>Water Opportunities Act, 2010</i>	Conserve and sustain water resources for present and future generations	No targets set. Under this Act, the Minister may establish targets with respect to water conservation	n/a	Minister's Annual Report on Drinking Water

Legislation, Strategy or Policy	Environmental Goals or Objectives	Relevant Target(s)	Most Recent Status of Progress Toward Target(s)	Public Reporting on Progress ¹
Ministry of Northern Development, Mines, Natural Resources and Forestry (Natural Resources Ministry)				
<i>A Wetland Conservation Strategy for Ontario: 2017-2030</i> (No longer in effect) ³	Develop and advance public awareness of, appreciation for and connection to Ontario's wetlands Increase knowledge about Ontario's wetlands, including their status, distribution, functions and vulnerability Establish and strengthen partnerships to focus and maximize conservation efforts for Ontario's wetlands Develop conservation approaches and improve policy tools to conserve the area and function of Ontario's wetlands	Using 2010 as a baseline, by 2025, the net loss of wetland area and function is to be halted where wetland loss has been the greatest Using 2010 as a baseline, by 2030, a net gain in wetland area and function is to be achieved where wetland loss has been the greatest	n/a n/a	Progress reports are to be published every five years, beginning in 2020. However, the Ministry has no framework in place for progress reporting and no data is being collected The Ontario Biodiversity Council also reports on the extent of wetland cover and wetland loss
<i>Aggregate Resources Act, 1990</i>	Minimize adverse impacts of aggregate operations on the environment, and require the rehabilitation of land from which aggregate has been excavated	No targets set	n/a	The Ontario Aggregate Resources Corporation's Annual Reports State of the Aggregate Resource in Ontario Study (2010) Licence and permit holders' annual Compliance Assessment Reports available to the public on request
<i>Biodiversity: It's In Our Nature (Ontario Government Plan to Conserve Biodiversity, 2012-2020)</i> (2012)	Goals found in <i>Ontario's Biodiversity Strategy, 2011</i> : mainstream biodiversity, protect and restore Ontario's biodiversity, use Ontario's biological assets sustainably	15 biodiversity targets are set out in <i>Ontario's Biodiversity Strategy, 2011</i>, including: - By 2020, at least 17% of land and water systems are conserved through well-connected networks of protected areas and other effective area-based conservation measures. - By 2015, the release of pollutants harmful to biodiversity is reduced. - By 2020, the growth of Ontario's per-capita resource consumption and waste generation is halted and reversed.	Status of targets reported in the Ontario Biodiversity Council's State of Ontario's Biodiversity reporting (to be updated in 2021)	No reporting on progress implementing actions and activities in the government's plan to conserve biodiversity. Status of targets set out in <i>Ontario's Biodiversity Strategy, 2011</i> presented in Ontario Biodiversity Council's State of Ontario's Biodiversity reporting

Legislation, Strategy or Policy	Environmental Goals or Objectives	Relevant Target(s)	Most Recent Status of Progress Toward Target(s)	Public Reporting on Progress ¹
<i>Cervid Ecological Framework (2009)</i>	Ensure ecologically sustainable populations of cervids (members of the deer family) and the ecosystems on which they rely	Targets identified through species-specific policies. Cervid Ecological Framework provides framework for integrating management across Ontario's cervid species	n/a	None
<i>Crown Forest Sustainability Act, 1994</i>	Provide for the sustainability of Crown forests, and manage Crown forests to meet social, economic and environmental needs of present and future generations	Targets identified in individual forest management plans	Status of targets found in Forest Management Unit annual reports	Management Unit Annual Reports Report on Forest Management State of Ontario's Natural Resources Report – Forests
<i>Elk Management Plan (2010)</i>	Support sustainable elk populations and the ecosystems on which they rely	Population objectives for each herd directed by <i>Elk Population Objective Setting Guidelines</i> (2011)	n/a	None
<i>Far North Act, 2010</i>	Protect ecological systems and areas of cultural value in the Far North; maintain biological diversity, ecological processes and ecological functions in the Far North	Include at least 225,000 km ² of the Far North in an interconnected network of protected areas designated in community-based land-use plans	47,068 km ² in 2020, representing total area protected in the Far North, including Dedicated Protected Areas (approximately 12,260 km ²) and provincial parks and conservation reserves (approximately 34,808 km ²)	None
<i>Framework for Enhanced Black Bear Management in Ontario (2009)</i>	Ensure sustainable black bear populations across the landscape and the ecosystems on which they rely	No targets set	n/a	None
<i>Invasive Species Act, 2015</i> <i>Ontario Invasive Species Strategic Plan (2012)</i>	Prevent, detect and respond to the spread of invasive species	No targets set	n/a	None
<i>Lakes and Rivers Improvement Act</i>	Provide for the management, protection, preservation and use of Ontario's lakes and rivers, specifically in relation to the construction, operation, alteration, improvement or repair of dams	No targets set	n/a	None

Legislation, Strategy or Policy	Environmental Goals or Objectives	Relevant Target(s)	Most Recent Status of Progress Toward Target(s)	Public Reporting on Progress ¹
<i>Moose Management Policy</i> (2009) <i>Moose Population Objectives Setting Guidelines</i> (2009)	Ensure sustainable moose populations and the ecosystems on which they rely	2030 population objectives for wildlife management units	Varied	Online at Ontario.ca
<i>Naturally Resilient: MNRF's Natural Resource Climate Adaptation Strategy</i> (2017-2021) (2017)	Build resilience and biodiversity	No targets set	n/a	None
<i>Niagara Escarpment Planning and Development Act</i> <i>Niagara Escarpment Plan</i> (released in 1985, updated most recently in 2017)	Provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and ensure only such development occurs as is compatible with that natural environment	No targets set	n/a	None
<i>Ontario's Provincial Fish Strategy: Fish for the Future</i> (2015)	Healthy ecosystems that support self-sustaining native fish communities	No targets set	n/a	None
<i>Small Game and Furbearer Management Framework</i> (2017)	Ensure sustainable populations of small game and furbearers in an ecosystem context	No targets set. Framework provides overarching program direction	n/a	None
<i>Strategic Policy for Ontario's Commercial Fisheries</i> (2011)	Ensure the long-term sustainability of fish populations, safeguarding function and biodiversity	No targets set	n/a	Annual Reports of Great Lake Management Units
<i>Strategy for Wolf Conservation in Ontario</i> (2005)	Ensure ecologically sustainable wolf populations and the ecosystems on which they rely	No targets set. Strategy provides overarching program direction	n/a	State of Resources Reporting: Wolves in Ontario (2007)
<i>White-Tailed Deer Management Policy for Ontario</i> (2017)	Manage for sustainable deer populations and the ecosystems on which they rely	Local objectives set through direction provided in <i>White-tailed Deer Population Objective Setting and Harvest Management Guidelines</i> (2019)	n/a	None

Legislation, Strategy or Policy	Environmental Goals or Objectives	Relevant Target(s)	Most Recent Status of Progress Toward Target(s)	Public Reporting on Progress ¹
<i>Wild Turkey Management Plan</i> (2007)	Ensure sustainable management of turkeys as important components of the biodiversity of southern Ontario	No targets set. Plan provides overarching program direction	n/a	None

1. See **Appendix 4** for details on the public reporting identified here.

2. During the course of our audit, we found that while some actions and support work from the plan may continue, the overarching framework of *Ontario's Pollinator Health Action Plan*, and the targets within it, were cancelled sometime after July 2018.

3. During the course of our audit, the Natural Resources Ministry informed us that *A Wetland Conservation Strategy for Ontario: 2017-2030* is an archived product of a previous government, and the direction and targets within it are no longer in effect.



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Office of the Auditor General of Ontario

Follow-up on
Value-for-Money Audit:
**Climate Change:
Ontario's Plan to
Reduce Greenhouse
Gas Emissions**

Follow-Up on VFM Chapter 3,
Volume 2, *2019 Annual Report*



November 2021

Ministry of the Environment, Conservation and Parks

Climate Change: Ontario's Plan to Reduce Greenhouse Gas Emissions

Follow-Up on VFM Chapter 3, Volume 2,
2019 Annual Report

RECOMMENDATION STATUS OVERVIEW						
	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	1				1	
Recommendation 2	1			1		
Recommendation 3	2	1		1		
Recommendation 4	1	1				
Recommendation 5	1	1				
Recommendation 6	1	1				
Recommendation 7	1		1			
Recommendation 8	1			1		
Recommendation 9	1			1		
Recommendation 10	1	1				
Recommendation 11	1		1			
Recommendation 12	1		1			
Recommendation 13	1			1		
Recommendation 14	1			1		
Recommendation 15	1			1		
Recommendation 16	1			1		
Recommendation 17	1	1				
Recommendation 18	1		1			
Recommendation 19	3			3		
Total	22	6	4	11	1	0
%	100	27	18	50	5	0

Overall Conclusion

According to the information the Ministry of the Environment, Conservation and Parks (Ministry) and Secretary of the Cabinet provided to us, as of September 29, 2021, 27% of actions we recommended in our *2019 Annual Report* have been fully implemented. The Ministry has made progress in implementing an additional 18% of the recommended actions.

The Ministry has fully implemented recommended actions to update its emissions estimates to reflect new information, work with partner ministries to base emission estimates from electric vehicles on sound evidence and analyze the feasibility of increasing the supply of renewable natural gas.

In our follow-up, we found that the Ministry has initiated some work to update its climate change plan to be based on sound evidence. Progress has been made in using modelling to account for interactions between, and to better estimate the impact of, emission-reduction initiatives in an updated “Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan” (Plan). The Ministry has been meeting with other ministries to discuss and evaluate opportunities for emission-reductions initiatives. The revised Plan is anticipated to include updates to the emissions reductions expected from the four committed policies: Emissions Performance Standards, Renewable Content in Gasoline, Transit and Natural Gas Conservation. At the time of our follow-up, we found that, based on a \$50/tonne carbon price, the Ministry estimated these committed policies could reduce Ontario’s emissions in 2030 by 3.4 megatonnes (Mt). These estimated reductions are 14.2 Mt less than the 17.6 Mt of total emissions reductions presented in the Plan.

Little progress has been made on 50% of the recommended actions, such as designing an effective reverse auction, including agriculture-specific initiatives in an updated Plan, assessing and comparing all costs and net emissions reductions of considered

initiatives, developing, implementing and reporting on performance metrics for all key sectors, and explaining to the public the outcomes of all initiatives to reduce emissions in an annual report. The Ministry does not have an expected timeframe for presenting an updated climate change plan to Cabinet for approval.

The status of actions taken on each of our recommendations is described in this report.

Background

High concentrations of greenhouse gases in Earth’s atmosphere, mainly from burning fossil fuels, have contributed to an increase in the planet’s average surface temperature (global warming) and to heat waves, droughts and storms. Ontario’s 2019 greenhouse gas emissions were 163 Mt, 22.4% of the Canadian total. Ontario’s 2018 emissions were 0.3% of the global total. Ontario’s 11 tonnes of average emissions per person per year in 2018 are higher than in many developed countries, and almost twice the world average.

Ontario’s *Cap and Trade Cancellation Act, 2018* (Act) committed the province to establish greenhouse gas emission-reduction targets, and required the Ministry of the Environment, Conservation and Parks (Ministry) to prepare a new climate change plan. In November 2018, the Ministry released “Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan” (Plan) for public consultation. According to the Ministry, the Plan’s climate change chapter fulfils the commitment under the Act to prepare a climate change plan. The Ministry’s internal modeling indicates that, if no further emission-reduction actions are taken and if economic growth continues, Ontario’s greenhouse gas emissions would increase by 0.1 Mt—from an estimated 160.8 Mt in 2018 to 160.9 Mt in 2030 (the “business-as-usual forecast”). Estimating this forecast accurately is important to provide the starting point for assessing and planning emission-reduction programs.

The Plan set a target to reduce Ontario's emissions to 30% below 2005 levels by 2030, representing a reduction to 143.3 Mt, or 17.6 Mt below the business-as-usual forecast. The Plan states that this aligns Ontario with Canada's 2030 target under the 2015 United Nations Paris Agreement, and outlines eight areas where the Ministry expects emissions reductions. At the time the Plan was released, Canada's target was to reduce greenhouse gas emissions by 30% below 2005 levels by 2030. Subsequently, in April 2021, Canada announced a new target of 40-45% reductions below 2005 levels by 2030.

Our audit focused on the process the Ministry used to develop the Plan, and the evidence underlying the proposed emissions reductions identified in the Plan to achieve the 2030 target. We found that the Ministry's projected emissions forecast, and the estimated emissions reductions for all eight areas, were not yet supported by sound evidence. Specifically:

- The Plan's "business-as-usual" emissions projection for 2030 was re-estimated in August 2019 to be 163.6 Mt—2.7 Mt higher than the projection on which the Plan is based. Some of the initiatives in Ontario's 2017 Long-Term Energy Plan, including renewable energy contracts, were cancelled before the Ministry calculated its 2030 projection in November 2018.
- The Plan's estimate for emissions reductions from Low Carbon Vehicles Uptake included reductions from cancelled programs that supported electric vehicle adoption.
- The Plan estimated emissions reductions from natural gas customers switching to renewable natural gas, though evidence shows that the higher cost of renewable natural gas means that few customers would switch.
- The Plan relied on the federal government's proposed Clean Fuel Standard for emissions reductions of 1.3 Mt by 2030, although the Standard was not yet finalized.
- The Plan double counted some emissions reductions that were targeted by more than one program, resulting in an overstatement of total emissions reductions. It contained two separate

overlapping programs aimed at reducing emissions from natural gas use, and it did not account for another overlap with both Natural Gas Conservation and the federal Clean Fuel Standard.

- The Plan improperly counted emissions reductions expected from reducing exported organic waste that are required by international agreement to be counted in the United States' emissions inventory—not Ontario's inventory.
- The Plan stated that Future Innovation would reduce emissions by 2.2 Mt, but no emission-reduction programs had yet been identified.

In reviewing the process used by the Ministry to develop the Plan, our Office learned that Ministry staff internally estimated that implementing initiatives in the Plan could likely achieve only 10.9 Mt in emissions reductions, 6.7 Mt less than the 17.6 Mt presented in the Plan. We found that the Plan had the potential to achieve between 6.3 Mt and 13.0 Mt of the estimated 17.6 Mt reduction required to meet the target of 30% below 2005 levels.

Our audit also found that:

- The Ministry did not fully estimate costs for more than half of the emission-reduction areas included in the Plan.
- An expert panel had not yet been appointed to provide advice on Ontario's climate change plan.
- Other provincial ministries were making decisions that may increase Ontario's emissions. The Plan gives the Ministry the responsibility to co-ordinate Ontario's actions on climate change. However, many of the emission-reduction initiatives in the Plan are not within the Ministry's control and are the responsibility of other ministries. The government's cross-ministry Climate Change Leadership Team had no authority over whether ministries adopt its recommendations. It was unclear whether the team had the capacity and resources to deliver results.

We made 19 recommendations, consisting of 22 action items, to address our audit findings.

We received commitment from the Ministry and the Secretary of the Cabinet that they would take action to address our recommendations.

Status of Actions Taken on Recommendations

We conducted assurance work between April 2021 and October 2021. We obtained written representation from the Ministry and Secretary of the Cabinet that effective November 4, 2021, they have provided us with a complete update of the status of the recommendations we made in the original audit two years ago.

Unclear If Plan Will Be Updated Based on Comments Received Through the Environmental Registry

Recommendation 1

To help ensure that the public is aware that plans, strategies and policies, when posted for review and public comment on the Environmental Registry are draft, we recommend that, in the future, the Ministry of the Environment, Conservation and Parks label such documents as draft.

Status: Will not be implemented.

Details

In our 2019 audit, we found that, unlike other proposed policies posted on the Environmental Registry for public consultation and comment, the Plan itself was not marked as a draft. By contrast, the supporting materials for all other 10 policy proposals posted on the Environmental Registry by the Ministry between June 2018 and September 2019 were marked with a label indicating that the policies were either proposed, a draft for consultation, or a discussion paper.

In our follow-up, the Ministry indicated that notices posted for consultation on the Environmental Registry are automatically labelled as proposals so that it is clear to the public whether a document attached to a notice has been finalized. As a result, Registry users who access a document through a proposal notice are informed while viewing the notice itself that it is an unfinalized proposal. However, members of the public who access a linked document

from outside the Registry (for example, redirected from a news release, government website, external website, or email), or who are sent a draft document, would not necessarily have that same awareness, and may incorrectly interpret an unfinalized document as final – unless clearly marked as a draft or discussion paper.

The Ministry's templates for drafting proposal notices indicate that supporting materials (like files and links) can be added to provide readers more information about the notice. While these templates specify that saved files should have simple file names that describe what a document is, they do not direct that added draft documents be marked as draft.

We found that, of the 30 policy proposal notices or updates to proposal notices the Ministry posted on the Environmental Registry between December 4, 2019 (when we released our 2019 audit report) and March 31, 2021, 29 (or 97%) of them either had no supporting materials attached or had draft supporting materials that were clearly marked as draft or for discussion purposes. Only one did not – templates for environmental compliance approvals for municipal sewage collection and stormwater management systems (Environmental Registry #019-1080). While the filenames and web addresses for the draft templates indicated that they were drafts, the documents themselves were not marked as draft or proposed. In the subsequent decision notice, posted March 17, 2021, the Ministry indicated that it was in the process of finalizing the environmental compliance approval templates.

In response to our inquiries, the Ministry indicated that it had reviewed its Registry proposal notice templates and determined that further clarification in the templates to direct staff to label draft documents as draft is not necessary. Though members of the public may access linked Registry documents through other means, it is the Ministry's position that labelling draft documents as such is unnecessary as Registry notices specify whether an attached document has been finalized and the status of the notice.

The Ministry told our Office that the Made-in-Ontario Environment Plan remains a draft; the Ministry

has not yet taken the necessary steps to have the Plan approved. However, the Plan, which was attached to the 2018 proposal notice and is posted as the lead on the Ministry's main webpage, is still not marked "draft," and the Ministry has not referred to the Plan as "draft" or explained that it is unfinalized in various communications to the public.

Rather, the Ministry has publicly indicated that it has implemented aspects of the Plan. For example, the Ministry has announced that initiatives, such as reducing waste and expanding recycling services, improving public reporting of pollution, and improving water quality in Lake Erie, are a key part of, and are delivering on commitments made in, its Plan. In 2019 and 2020, the Ministry released public updates on the Plan, outlining steps that had been taken, progress on commitments, accomplishments made, and next steps.

No External Advisory Panel Yet Established to Provide Advice on Climate Change Plan

Recommendation 2

So that Ontario's climate change planning can benefit from external expert advice, we recommend that members be appointed to the Climate Change Advisory Panel to review and provide advice on climate change planning and further refine the Ministry's Plan as needed.

Status: Little or no progress.

Details

In our 2019 audit on Ontario's plan to reduce greenhouse gas emissions, we found that although the Plan contained a commitment to establish an advisory panel to provide advice to the Minister on implementation and further development of climate change actions in the Plan, no appointments had been made as of September 2019. We noted that establishing an advisory panel would help ensure that the Plan is better supported by sound evidence and includes the most effective and innovative emission-reduction

initiatives to reach the 2030 target. We also noted that other jurisdictions, including the United Kingdom and Sweden, have used independent bodies to provide non-partisan, science-based analysis and advice on reducing greenhouse gas emissions.

In November 2018, the government approved the creation of a Climate Change Advisory Panel, but no panel members were appointed at the time of our audit.

In our follow-up, we found that in November 2019 the Minister appointed a 10-member advisory panel with a two-year term. Under the Terms of Reference, the panel's mandate is to provide advice to the Minister on implementing the climate change resilience commitments of the Plan. There is no direction to the panel to provide advice on plans to reduce greenhouse gas emissions, which was the subject of our audit and intent of our recommendation.

Better Methods to Estimate Emissions Reductions Needed Going Forward

Recommendation 3

So that complex interactions between energy, economics and emissions are taken into account when selecting and designing emission-reduction initiatives, and to provide more reliable emissions estimates, we recommend that the Ministry of the Environment, Conservation and Parks:

- *use integrated modelling, where appropriate, to better estimate the impact of planned and future initiatives when updating its Plan to meet the 2030 target;*

Status: Little or no progress.

Details

In our 2019 audit, we found that the Ministry overstated potential emissions reductions from initiatives presented in the Plan, in part, by not modelling the overlap between many of the initiatives presented. Although the Ministry used an integrated energy-emissions-economy model to estimate its business-as-usual forecast and Emissions Performance

Standards (referred to in the Plan as Industry Performance Standards) policy, most of the presented policies and emissions reductions were based on ad hoc, out-of-model estimates.

In our follow-up, we found that the Ministry had incorporated some additional emission-reduction initiatives in its integrated model in response to our Office's 2019 recommendations. The additional policies added to the integrated model were:

- increased renewable content in gasoline (referred to in the Plan as ethanol in gasoline within Clean Fuels);
- improved diversion of food and organic waste from landfills (referred to in the Plan as Organic Waste within Other Policies);
- natural gas conservation (the estimated emissions reductions of which were being evaluated at the time of our audit); and
- the federal Clean Fuel Standard.

The Ministry has not used the integrated model to estimate other potential emissions reductions, including from:

- an Emission Reduction Fund (referred to in the Plan as Ontario Carbon Trust);
- implementing the GO Regional Express Rail (referred to in the Plan as Transit within Other Policies);
- phasing out industrial coal use (which was not in the Plan); and
- landfill gas collection (which was not in the Plan).

As discussed below, policies to achieve the majority of emissions reductions required to meet the 2030 target have not been identified, and thus not modelled. The Ministry notes that additional details are needed to identify whether other policies can be incorporated into the integrated model. At the time of our follow-up, Ministry staff were continuing to seek policy guidance and working to update the climate change plan, including emissions estimates. The Ministry does not have an expected timeframe for presenting an updated climate change plan to Cabinet for approval.

- *annually update its estimates to reflect new information and changes to proposed initiatives, and assess whether it is on track to achieve the targeted reductions.*

Status: Fully implemented.

Details

In our 2019 audit, we found that the Ministry did not use current information for modelling. For example, the Plan's business-as-usual forecast incorporated out-of-date electricity emission forecasts based on cancelled policies, including the cap-and-trade program, renewable energy contracts and electricity conservation programs.

In our follow-up, we found that the Ministry has revised the business-as-usual forecast in its integrated model with updated data:

- The Independent Electricity System Operator's 2020 Annual Planning Outlook was used to update electricity sector assumptions.
- The Ministry of Finance's budget 2020 Outlook was used to forecast gross domestic product.
- Environment and Climate Change Canada's 2021 National Inventory Report was used to calibrate historical emissions.

The Ministry has also updated the business-as-usual forecast in its integrated model to include federal carbon pricing on fuels, but not on industrial emissions. Although the federal carbon pricing for fuels and industrial emissions was announced in October 2016, became law in June 2018, and announced to apply in Ontario in October 2018, the November 2018 Plan did not include 2030 emissions reductions expected from carbon pricing. This is because the Plan was framed as an alternative to the federal carbon pricing system. However, in June 2019, the Ontario Court of Appeal ruled against a constitutional challenge of the federal policy, as did the Supreme Court of Canada in March 2021, so that a carbon pricing system will continue to be applied in Ontario.

Since October 2020, the Ministry has started producing internal, monthly updates on Ontario's

greenhouse gas emissions outlook based on current policy scenarios. In October 2021, the Ministry revised its internal estimate of business-as-usual forecast and estimated Ontario's 2030 emissions to be 160.9 Mt based on the federal government's \$50/tonne (t) carbon price on fuels. This estimate is coincidentally the same as the 160.9 Mt internal estimate shown in the Plan's business-as-usual scenario, despite differences in assumptions. The Ministry continues to exclude from its business-as-usual 2030 emission estimate the potential reductions from the existing federal carbon price on industrial emissions, because the Ministry plans to replace the existing system with the less stringent provincial Emissions Performance Standards.

The Ministry's October 2021 estimates of the impact of other policies suggest Ontario is not on track to achieve the 2030 target. The target is a reduction of 30% below 2005 levels, which is 144.0 Mt based on the latest data. As of October 2021, the Ministry's internal estimates indicate that "committed policies," which are discussed in our follow-up on **Recommendation 13**, could reduce emissions from the business-as-usual forecast by 3.4 Mt in 2030 based on a \$50/tonne carbon price. This results in a 13.5 Mt-gap in meeting the updated 2030 target. For committed policies, the Ministry's internal estimates for a scenario with a \$170/t carbon price, which the federal government has announced for federal policies, could reduce the gap to 6.2 Mt. The Ministry has not committed to increasing the carbon price of the provincial Emissions Performance Standards to match the federal government's.

Emissions Estimates Underlying Plan Not Supported by Sound Evidence

Recommendation 4

To better assess whether Ontario will achieve 2.6 Mt in emissions reductions from the uptake of electric vehicles, we recommend that the Ministry of the Environment, Conservation and Parks, together

with key partner ministries, base its estimates on sound evidence.

Status: Fully implemented.

Details

In our 2019 audit, we found that the Ministry overestimated the emissions reductions expected from the increased uptake of electric vehicles, which were shown in the Plan as part of Low Carbon Vehicles Uptake. The Ministry's Plan estimated emissions reductions from 1.3 million electric vehicles in 2030, despite its integrated energy-emissions-economy model estimating Ontario would have 250,000 electric vehicles. The Ministry took the higher number from a 2016 forecast based on since-cancelled programs, including provincial incentives for new electric vehicles and charging infrastructure. The Ministry was unable to provide any details of planned initiatives that would result in 1.3 million electric vehicles by 2030.

In our follow-up, we found that, in March 2020, the Ministry re-evaluated a scenario with 1.3 million electric vehicles in its integrated model by assuming a sales mandate (a requirement that a certain percentage of vehicles sales be electric vehicles). After accounting for overlap with federal vehicle emission regulations in the business-as-usual forecast, the Ministry's updated integrated modelling estimated potential emissions reductions of 0.9 Mt in 2030 – 1.7 Mt lower than the 2.6 Mt estimate in the Plan.

After receiving direction that the Ministry will not implement zero emission vehicle financial incentives or a sales mandate, Ministry staff revised the emission-reduction estimates in January 2021 to exclude any reductions from low carbon vehicles beyond the business-as-usual forecast.

Ministry staff continue to seek policy direction regarding zero emission freight and fleet vehicles. Ministry Assistant Deputy Ministers also participate in an inter-ministry low carbon vehicle steering committee to gather perspectives, discuss and evaluate opportunities and risks, and set priorities for cross-ministry work.

Recommendation 5

To help reach Ontario's emission-reduction target by 2030, we recommend that the Ministry of the Environment, Conservation and Parks analyze the feasibility and emissions impact of increasing the use of compressed natural gas, taking into consideration the life-cycle emissions associated with compressed natural gas.

Status: Fully implemented.

Details

In our 2019 audit, we found that the Ministry used an illustrative example to estimate 0.2 Mt in emissions reductions from compressed natural gas trucks, which were shown in the Plan as part of Low Carbon Vehicles Uptake. Ontario used only 0.1 petajoules of natural gas energy in freight trucks in 2016, but the Plan estimated an increase in compressed natural gas by 55 petajoules in 2030, based on a submission from the Ontario Energy Association to the Ministry to help inform the development of the Plan. The Ministry did not assess whether this level of compressed natural gas uptake was feasible or cost effective. Further, scientific studies have shown natural gas leaks during fuel production and transportation release methane into the atmosphere, which may increase overall greenhouse gas emissions.

The Ministry determined that the initiative in the Plan to reduce operator requirements for 24/7 compressed natural gas fueling stations along 400-series highways would lead to a negligible impact on uptake and therefore no incremental emissions reductions. In January 2021, the Ministry removed compressed natural gas trucks from its revised emission-reduction estimates.

Recommendation 6

To help reach Ontario's 2030 emission-reduction target, we recommend that the Ministry of the Environment, Conservation and Parks work with the Ministry of Energy, Northern Development and Mines to assess the feasibility of increasing renewable natural gas supply in Ontario.

Status: Fully implemented.

Details

In our 2019 audit, we found that the Plan estimated 2.3 Mt of emissions reductions by 2030 to come from Ontario requiring utilities to offer their customers the option of purchasing renewable natural gas. Internally, however, Environment Ministry staff estimated that “negligible” (0.0049 Mt) emissions reductions would come from this voluntary initiative – a consequence of the higher costs and therefore lower sales of this low-carbon fuel; staff estimated that renewable natural gas would cost customers \$18 per gigajoule versus \$3 per gigajoule for conventional natural gas. Instead of using this internal staff analysis, the Environment Ministry used an illustrative example from the Ontario Energy Association for the Plan's 2.3 Mt of potential emissions reductions.

In our 2020 audit on Reducing Greenhouse Gas Emissions from Energy Use in Buildings, we found that the Ontario Energy Board approved a pilot program application in September 2020 from one utility (Enbridge) to allow customers to purchase renewable natural gas, but there was no requirement for any utility to do so. We also found that the then Ministry of Energy, Northern Development and Mines asked the Environment Ministry to relieve it of any responsibilities related to renewable natural gas in the Plan. In June 2021, the Natural Resources Ministry merged with Northern Development and Mines (a portion of the Energy and Mines Ministry) to form a new Ministry of Northern Development, Mines, Natural Resources and Forestry. A new, separate Ministry of Energy was also formed.

In our follow-up, we found that the Environment Ministry met with the Ministry of Energy in December 2018 and January 2019 to assess a voluntary program. The Ministry of Energy does not plan to place any requirements on utilities to offer a voluntary renewable natural gas program and the utility-led pilot does not subsidize costly renewable natural gas. The Environment Ministry concluded that there would be no significant new incremental emissions reductions from renewable natural gas use in Ontario. Accordingly, the Environment Ministry's latest internal emission-reduction estimates from

October 2021 exclude any potential incremental reductions from renewable natural gas.

Recommendation 7

To better assess the contribution that Industry Performance Standards would make toward Ontario's 2030 emission-reduction target, we recommend that the Ministry of the Environment, Conservation and Parks use best practices, such as integrated modelling, that account for the interactions and overlap with other initiatives.

Status: In the process of being implemented by December 2023.

Details

In our 2019 audit, we found that the Plan overstated emissions reductions from Industry Performance Standards, standards that require industry to pay a carbon price for emissions that exceed pre-established levels, which are now referred to as Emissions Performance Standards. The Plan's estimate of 2.7 Mt in emissions reductions was based on modelling of assumptions that did not match the policy ultimately proposed. The weaker policy was later estimated to reduce emissions by 1.0 Mt. The Ministry's estimate also did not account for the policy's overlap with emissions reductions expected through Natural Gas Conservation and the federal Clean Fuel Standard.

In our follow-up, we found that the Ministry incorporated Natural Gas Conservation and the federal Clean Fuel Standard into the integrated energy-emissions-economy model. The Ministry's internal estimate indicates these two initiatives, in addition to Emissions Performance Standards, Renewable Content in Gasoline and Transit, could reduce emissions by 3.5 Mt in 2030. This estimate is 4.9 Mt less than the combined 8.4 Mt reduction expected in the Plan. Although the Ministry's internal estimate also indicates that a scenario with a \$170/t carbon price, which the federal government has announced for federal policies, could reduce emissions from these initiatives by 5.6 Mt, the Ministry has not committed

to increasing the carbon price of provincial Emissions Performance Standards to match the federal government's.

Because the Ministry has not yet designed Emissions Performance Standards policy details post-2022, its estimates are based on assumptions for the year 2030. At the time of our follow-up, the Ministry expects to finalize Emissions Performance Standards by the end of 2023.

Recommendation 8

To better assess the contribution that the Emission Reduction Fund would make toward Ontario's emission-reduction target, we recommend that the Ministry of the Environment, Conservation and Parks use best practices, such as integrated modelling, that account for the interactions and overlap with other initiatives.

Status: Little or no progress.

Details

In our 2019 audit, we found that the Ministry's estimate of 0.5 Mt in emissions reductions in 2030 from the Emission Reduction Fund (referred to as the Ontario Carbon Trust in the Plan) was overstated. The estimate assumes half of the emissions reductions would come from energy-efficiency loans to reduce natural gas use in buildings. However, the Plan also assumed all cost-effective ways of reducing natural gas use would be funded by natural gas conservation programs. The unaccounted overlap between the two initiatives overestimated the emissions reductions possible.

In our follow-up, we found that the Ministry has determined that its integrated energy-emissions-economy model is incapable of incorporating the Emission Reduction Fund. Still, the Ministry preliminarily revised its emission-reduction estimate to 0.3-0.5 Mt. The Ministry told us that it is continuing to improve its emissions forecasting by making use of more robust integrated modelling approaches, and continues to draft options for the development of an Emission Reduction Fund.

Recommendation 9

To help achieve a reverse auction that contributes toward reaching Ontario's 2030 emission-reduction target, we recommend that the Ministry of the Environment, Conservation and Parks design its reverse auction to achieve additional emissions reductions that would not have happened without government funding.

Status: Little or no progress.

Details

In our 2019 audit, we found that the Ministry estimated that a reverse auction as part of the Emission Reduction Fund would reduce emissions by 0.1 Mt in 2030. Reverse auctions allow bidders to compete for funding to finance projects with the lowest cost reductions. However, research based on Australia's reverse auction suggests lowest cost bids are often for projects that would have happened regardless of government funding. We noted that, unless Ontario's reverse auction is designed to prevent it, government funding could be provided to projects that would have happened anyway, overestimating the emissions reductions achieved through the auction.

In our follow-up, we found that the Ministry has not designed a reverse auction and continues to consider whether to proceed with this initiative. Accordingly, the Ministry has removed the reverse auction from its emission-reduction estimates for the time being.

Recommendation 10

To improve the reliability of estimated emissions reductions associated with organic waste diversion, we recommend that the Ministry of the Environment, Conservation and Parks follow the Inter-governmental Panel on Climate Change Guidelines for National Greenhouse Gas Inventories and transparently account for actions that occur outside Ontario's borders, consistent with international rules.

Status: Fully implemented.

Details

In our 2019 audit, we found that the Ministry overestimated potential emissions reductions in Ontario

expected from increased organic waste diversion by including emissions reductions that are counted outside the province. The Plan estimated 1.0 Mt of emissions reductions in 2030 from this initiative, but this includes waste that would be exported to the United States, which is where any potential reductions in exported waste and their associated emissions would be counted. International guidelines for emissions accounting would not credit Ontario for emissions reductions accounted for in the United States' emissions inventory.

In our follow-up, we found that the Ministry revised its emissions estimates to exclude reductions expected to occur in the United States.

Recommendation 11

So that an increase in Ontario's electricity storage capacity contributes to achieving Ontario's overall 2030 emissions reduction target, we recommend that the Ministry of the Environment, Conservation and Parks work with the Ministry of Energy, Northern Development and Mines to identify and assess the feasibility of energy storage initiatives that are supported by sound evidence.

Status: In the process of being implemented by December 2021.

Details

In our 2019 audit, we found that the Plan expected 0.3 Mt of emissions reductions in 2030 to come from increasing energy storage, but the Environment Ministry did not assess the feasibility or cost of the proposed level of energy storage (750 megawatts) to achieve these reductions. Rather, this assumed reduction was taken directly from a hypothetical example submitted by the Ontario Energy Association for illustrative purposes.

In our follow-up, we found that the Ministry of Energy had indicated that it would require funding from the Environment Ministry for any incremental energy storage. Environment Ministry staff were unable to identify dedicated sources of funding. Accordingly, the Environment Ministry excludes energy storage from its most recent

emission-reduction estimates. However, the Environment Ministry engaged with the Ministry of Energy to review input from a hydrogen discussion paper, which includes energy storage. In November 2020, the Ministry released a discussion paper on a potential hydrogen strategy, with ideas on hydrogen as an energy storage option. At the time of our follow-up audit, the Environment Ministry expects to have worked with partner ministries to develop a hydrogen strategy by December 2021.

Recommendation 12

To help achieve emissions reductions from technological improvements beyond those already accounted for in the 2030 emissions projection, we recommend that the Ministry of the Environment, Conservation and Parks work with key partner ministries to identify and assess the feasibility of initiatives to support the adoption of new and innovative emission-reduction technologies in Ontario.

Status: In the process of being implemented by December 2021.

Details

In our 2019 audit, we found that the Ministry had no evidence to support its assumed 2.2 Mt of emissions reductions in 2030 from Future Innovation within the Plan's broader Innovation category. Emissions reductions expected from technological improvements and price reductions were already included in the business-as-usual forecast. The Ministry was unable to provide any evidence of further reductions beyond that forecast.

In our follow-up, we found that the Ministry had initiated some work with partner ministries to identify and assess new emission-reduction technologies. For example, in November 2020, the Ministry released a discussion paper on a potential hydrogen strategy, with ideas on hydrogen as an energy storage option. A Hydrogen Strategy Working Group is expected to review input received through consultation and propose recommendations for Ontario's hydrogen strategy, expected to be released by December 2021. However, Ministry staff estimated that a hydrogen

strategy would have negligible emissions reductions assuming no funding or regulations. Although the Ministry is also part of on-going, cross-government meetings to support the adoption of innovative emission-reducing technologies, the Ministry has removed emissions reductions from Future Innovation from its forecasts for the time being. At the time of our follow-up, the Ministry expects to have worked with partner ministries to finalize a hydrogen strategy by December 2021.

Internal Ministry Analysis Estimates That Current Initiatives in the Plan Will Achieve Less Than 17.6 Mt of Emissions Reductions

Recommendation 13

To support Ontario in achieving the 2030 emission-reduction target, we recommend that the Ministry of the Environment, Conservation and Parks work with partner ministries to update its climate change plan to include detailed actions, with all estimated emissions reductions based on sound evidence and supported by a comprehensive and transparent feasibility and cost analysis.

Status: Little or no progress.

Details

In our 2019 audit, we found that Ministry staff estimated that the initiatives included in the Plan would not result in the emissions reductions needed to achieve Ontario's 2030 target. Ministry staff estimated the Plan's initiatives could likely reduce emissions by only 10.9 Mt as opposed to the 17.6 Mt shown in the Plan.

In our follow-up, we found that the Ministry had initiated some work to update its Plan to be based on sound evidence. However, it had not yet updated the Plan to include detailed actions with emission-reduction estimates supported by a feasibility and cost analysis.

The Ministry updated its assumptions, and as of October 2021, estimated its “committed policies” could reduce emissions by 3.4 Mt in 2030. These policies include Emissions Performance Standards, Renewable Content in Gasoline, Transit and Natural Gas Conservation. The Ministry estimated 3.4 Mt in total reductions from the first three. The Ministry estimated an additional 0.03 Mt reductions from Natural Gas Conservation (as compared to 3.2 Mt shown in the Plan) based on funding estimated by the Ministry of Energy. This partner ministry was not supportive of initiatives related to Renewable Natural Gas, or Natural Gas Conservation as described in the Plan. Although the Environment Ministry has also estimated additional emissions reductions from a scenario with a \$170/t carbon price, which the federal government has announced for federal policies, the Environment Ministry has not committed to increasing the carbon price of provincial Emissions Performance Standards to match the federal government’s.

The Environment Ministry also updated its internal list of proposed climate change plan initiatives with revised emission-reduction estimates. The Environment Ministry has identified partner ministries and costs for many “uncommitted policies” under consideration. The Environment Ministry does not have an expected timeframe for presenting an updated climate change plan to Cabinet for approval.

Ministry Did Not Request or Receive Assurance on IT Controls of Integrated Model Used to Estimate Emissions

Recommendation 14

To obtain assurance over a vendor’s information technology system used for emissions modelling, we recommend that the Ministry of the Environment, Conservation and Parks obtain and review independent assurance reports annually for information technology weaknesses.

Status: Little or no progress.

Details

In our 2019 audit, we found that the Ministry did not have assurance on the information technology (IT) controls of the integrated model used to estimate and forecast Ontario’s greenhouse gas emissions. Ministry staff use an online connection to access the integrated model’s IT system, which was hosted and stored on servers in Vancouver. Because this system was outside of the Ministry’s IT environment, the Ministry had no oversight of the system’s technology controls, such as security of the stored information, the integrity of the information and reliable access. Although the Ministry had no assurance report on the model vendor’s IT system itself, our Office requested and received from the vendor independent assurance reports (for the period of October 1, 2017, to September 30, 2018) on the system and operating effectiveness of controls related to the data centre that hosted the model.

In our follow-up, we found that the Ministry had obtained subsequent independent assurance reports on the effectiveness of controls of the same data centre’s system (October 1, 2018, to September 30, 2019), as well as the model vendor’s new service provider. While the Ministry did have a description of the security posture of the vendor’s climate modelling platform, it did not have a cybersecurity assessment, penetration testing reports, nor an assurance report on the model vendor’s own technology controls. The Ministry asked for penetration testing and vulnerability assessment reports, but the vendor declined, citing confidentiality concerns.

Plan Leaves Agricultural Emissions Largely Unaddressed

Recommendation 15

So that all major economic sectors are taken into account when designing emission-reduction initiatives, we recommend that the Ministry of the Environment, Conservation and Parks work with the Ministry of Agriculture, Food and Rural Affairs to include agriculture-specific initiatives in an updated Plan to reduce emissions to meet the 2030 target.

Status: Little or no progress.

Details

In our 2019 audit, we found that although the Plan contained eight areas to reduce greenhouse gas emissions that targeted many sectors, it did not explicitly address emissions from the agricultural sector. Agriculture is one of the major economic sectors and contributed 12.1 Mt (7.4%) of Ontario's emissions in 2019. The Environment Ministry agreed with our recommendation and indicated it would work with the Ministry of Agriculture, Food and Rural Affairs to include agricultural initiatives in a future iteration of the climate change plan.

In our follow-up, we found that the Environment Ministry made no progress on this recommendation until January 2021, and even then, progress toward including agriculture-specific initiatives in an updated Plan has been limited. In December 2020, the federal government released an updated climate plan that included funding for various initiatives, such as carbon storage in agricultural lands. In January 2021, the Environment Ministry initiated cross-ministry meetings with the Ministry of Agriculture, Food and Rural Affairs to discuss updating the climate change section of the Plan and how to access federal funding to improve carbon storage in agricultural soils.

Costs of Emission-Reduction Initiatives Were Not Fully Evaluated or Considered

Recommendation 16

To support the selection of emission-reduction initiatives, we recommend that the Ministry of the Environment, Conservation and Parks accurately assess and compare all costs and net emissions reductions associated with all initiatives under consideration for inclusion in the final Plan.

Status: Little or no progress.

Details

In our 2019 audit, we found that the Ministry did not fully evaluate the costs of proposed emission-reduction initiatives. During the development of the Plan, the Ministry's assessment awarded points

to proposals with little or no assumed provincial costs. The assessment did not consider indirect costs to the public and businesses, or to the economy as a whole.

In our follow-up, we found that the Ministry added additional policies into its integrated energy-emissions-economy model (see **Recommendation 3**). The Ministry has also been updating its list of policies under consideration. In addition to the new proposed emission-reduction initiatives described in **Recommendation 3**, Ministry staff are transparent about the potential lack of emissions reductions from other initiatives under consideration:

- Hydrogen and Clean Tech – staff estimate that this initiative (to advance hydrogen technology, production and use) will have negligible reductions without funding or regulations; and
- Government Leadership – staff note that this initiative (to prioritize low-carbon and climate resilience in government investment decisions) could have an impact depending on the scale of targets and investments.

The Ministry has excluded from its updated internal emission-reduction estimates some high-cost initiatives (Renewable Natural Gas), or not-fully-costed initiatives shown in the Plan (Low Carbon Vehicles Uptake and Innovation). The Ministry does not have an expected timeframe for presenting an updated climate change plan to Cabinet for approval.

Decisions Made Separately by Provincial Ministries and Agencies Can Undermine Efforts to Reduce Emissions

Recommendation 17

So that actions and decisions made by ministries support Ontario's ability to meet its greenhouse gas reduction target, we recommend that the Secretary of Cabinet, in conjunction with the Ontario Deputy Ministers' Council, require ministries to use the guidance tools developed by the Climate Change Leadership Team.

Status: Fully implemented.

Details

In our 2019 audit, we found that the Plan contained a commitment to develop tools to help government decision makers understand the climate impacts of government activities. In January 2019, a Climate Change Leadership Team (CCLT) was established. The CCLT is a cross-ministry group responsible for embedding climate change in government procurement, building understanding and capacity within government, and creating a process to update internal directives and guidance to help ensure climate change is considered. It has no direct authority over whether other ministries adopt its recommendations. At the time of our audit, the CCLT was working on several pilot projects to develop tools for the Ontario Public Service, but there were no plans to ensure the results of the pilots would be adopted across government.

In our follow-up, we found that the Secretary of the Cabinet had provided direction that, on a going forward basis, guidance tools developed by the CCLT and shared with the Deputy Ministers' Council will also, where appropriate, be provided to the Office of the Treasury Board in the Treasury Board Secretariat for distribution for use by ministries in the Multi-Year Planning Process.

However, while the requirement from the Secretary of the Cabinet for ministries to use the CCLT's tools has been put in place, the tools themselves have not yet been developed. The Ministry updated the Deputy Ministers' Council on the work of the CCLT in February 2021. The Ministry has advised that four working groups have been established to develop tools and guidance materials:

- **Governance Working Group** – to develop a governance framework for considering climate change in decision making;
- **Economics Working Group** – to develop standard business cases identifying economic drivers for integrating climate change considerations; undertake research on the socio-economic aspects of climate change economic impacts, potential costs and opportunities; and develop standard financial valuation methodology for assessing the costs

and benefits of incorporating climate change into decisions;

- **Research and Knowledge Management and Translation Working Group** – to develop materials that will translate climate change data and expertise into easy-to-read and use resources; and
- **Enterprise Emissions Working Group** – to identify enterprise emissions to begin the development of an emissions inventory for government buildings and assets.

These groups are to report to the CCLT on their progress, and the Secretary of the Cabinet will then invite the Ministry to provide an update to the Deputy Ministers' Council on progress made. The first report back to the CCLT was expected in summer 2021. However, in August 2021, the Ministry advised that there has been no formal report back to date and that the next meeting of the CCLT is to be in fall 2021.

Recommendation 18

So that ministries consider the impact that their decisions may have on greenhouse gas emissions, we recommend that the impact of decisions that affect emissions be evaluated and highlighted in all Treasury Board submissions.

Status: In the process of being implemented by fall 2021.

Details

In our 2019 audit, we found that the Plan included a commitment to “make climate change a cross-government priority,” by developing a Climate Change Governance Framework to establish clear responsibilities and requirements for ministries to track and report on climate change measures and consider climate change in certain government procurement decisions. Our Office acknowledged that the fulfilment of these commitments would be a step forward to support climate-change mitigation efforts government-wide, but noted that climate change must be embedded into all government decision making to ensure progress in reducing provincial emissions. A best practice used by other jurisdictions to embed climate change in government decisions and

operations includes considering climate change in all submissions to Cabinet and the Treasury Board and in regulatory impact analyses.

In our follow-up, we found that in December 2019, Cabinet Office updated the template that is used for Cabinet and Cabinet committee submissions. The template prompts ministries to describe the effect that any proposal has on people, households, communities and the environment, including considerations and impacts relating to climate change.

However, we reviewed a sample of 14 recent Cabinet submissions that could have an impact on greenhouse gas emissions and found that only four actually followed the updated template and considered emissions impacts.

By fall 2021, the Treasury Board Secretariat plans to update all business case templates that ministries use to make submissions to the Treasury Board/Management Board of Cabinet, and provide guidance to ministries to ensure environmental impacts, including greenhouse gas emissions, are identified in relevant submissions and those impacts are highlighted to decision-makers.

Public Reporting on Environment Plan Under Development

Recommendation 19

To help keep Ontarians updated on the status of efforts to reduce emissions, we recommend that the Ministry of the Environment, Conservation and Parks:

- *develop and implement a set of performance metrics that are measurable and cover all key sectors;*
- *report at least annually to the public on the government's performance metrics and overall cumulative progress toward meeting its 2030 emissions target;*
- *explain the outcomes of all initiatives to reduce emissions in the annual report.*

Status: Little or no progress.

Details

In our 2019 audit, we reported that the *Cap and Trade Cancellation Act, 2018* requires the Ministry to regularly prepare and release progress reports on the Ministry's climate change plan. Further, the Plan states that, to ensure progress toward the 2030 target, the Ministry is committed to updating and reporting on estimated greenhouse gas reductions once program details are finalized. The Plan also states that the Ministry is committed to reporting regularly on progress, developing key indicators and reviewing the Plan every four years.

At the time of our 2019 audit, we learned that Ministry staff were preparing advice to government on how to meet the Ministry's reporting obligations, including options for releasing an annual, public-facing web report on progress on Plan initiatives, statistics on outcomes achieved to date, and a focus on the social and economic benefits of initiatives; and a more detailed, web-based update with quantitative results, modelling and analysis of progress toward targets, and timing and performance metrics.

We were told that Ministry staff planned to consult with partner ministries to develop specific performance metrics and align them with best practices. Our audit found that it is a best practice in other jurisdictions to provide timely and useful information about progress in specific sectors to complement regular economy-wide reporting.

In our follow-up, we found that the Ministry had not drafted or implemented performance metrics that cover all key sectors, and had not met or consulted with partner ministries on their development. The Ministry indicated that it is yet to finalize its approach to public reporting, monitoring and evaluating progress against the commitments in the Plan. While the Ministry released public updates in 2019 and 2020 on the Plan (and its climate change plan), outlining steps taken and next steps, these updates do not report on: performance metrics; the outcomes of initiatives undertaken to reduce emissions; the status of Ontario's greenhouse gas emissions; or cumulative progress made since the release of the Plan towards meeting the 2030 target.



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Office of the Auditor General of Ontario

Follow-up on
Value-for-Money Audit:
**Climate Change:
Ontario's Plan to
Reduce Greenhouse
Gas Emissions**
Standing Committee
on Public Accounts
Follow-Up on Volume 2,
Chapter 3, *2019 Annual Report*



November 2021

Climate Change: Ontario's Plan to Reduce Greenhouse Gas Emissions

Standing Committee on Public Accounts Follow-Up on Volume 2, Chapter 3, *2019 Annual Report*

On March 11, 2020, the Standing Committee on Public Accounts (Committee) held a public hearing on our 2019 audit of Climate Change: Ontario's Plan to Reduce Greenhouse Gas Emissions. (In November 2018, the Ministry of the Environment, Conservation and Parks had released Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan (Plan), which contained a chapter with Ontario's climate change plan to reduce greenhouse gas emissions.) The Committee tabled a report on this hearing in the Legislature in December 2020. A link to the full report can be found at <http://www.auditor.on.ca/en/content/standing-committee/standingcommittee.html>.

The Committee made 20 recommendations and asked the Ministry of the Environment, Conservation and Parks (Ministry) to report back by April 2021 and asked the Treasury Board Secretariat to report back by August 31, 2021. The Ministry and the Treasury Board Secretariat responded to the Committee on April 1, 2021 and August 30, 2021, respectively. A number of the issues raised by the Committee were similar to the audit observations of our 2019 audit, which we followed up on in 2021. The status of each of the Committee's recommended actions is shown in **Figure 1**.

We conducted assurance work between April 2021 and October 2021, and obtained written representation from the Ministry and Secretary of the Cabinet that effective November 4, 2021, they had provided us with a complete update of the status of the recommendations made by the Committee.

Overall Conclusion

As of August 2021, 36% of the Committee's recommended actions had been fully implemented, and 17% of the recommended actions were in the process of being implemented. There has been little or no progress on 44% of the recommended actions and one action will not be implemented.

Detailed Status of Recommendations

Figure 2 shows the recommendations and status details that are based on responses from the Ministry and the Secretary of the Cabinet, and our review of the information provided.

Figure 1: Summary Status of Actions Recommended in December 2020 Committee Report

Prepared by the Office of the Auditor General of Ontario

RECOMMENDATION STATUS OVERVIEW						
	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	1				1	
Recommendation 2	2	1		1		
Recommendation 3	3	2		1		
Recommendation 4	1			1		
Recommendation 5	3	2	1			
Recommendation 6	3	3				
Recommendation 7	1		1			
Recommendation 8	2			2		
Recommendation 9	1	1				
Recommendation 10	2		2			
Recommendation 11	3	2	1			
Recommendation 12	2	1		1		
Recommendation 13	1			1		
Recommendation 14	1			1		
Recommendation 15	1			1		
Recommendation 16	1			1		
Recommendation 17	1	1				
Recommendation 18	1		1			
Recommendation 19	3			3		
Recommendation 20	3			3		
Total	36	13	6	16	1	0
%	100	36	17	44	3	0

Figure 2: Committee Recommendations and Detailed Status of Actions Taken

Prepared by the Office of the Auditor General of Ontario

Committee Recommendation	Status Details
Recommendation 1 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should clearly label proposed plans, strategies, and policies on the Environmental Registry as “Draft.” Status: Will not be implemented.	Of the 30 policy proposal notices or updates to proposal notices the Ministry posted on the Environmental Registry between December 4, 2019, and March 31, 2021, 29 (or 97%) of them either had no supporting materials attached or had draft supporting materials that were all clearly marked as draft or for discussion purposes. Only one did not – templates for environmental compliance approvals for municipal sewage collection and stormwater management systems (Environmental Registry #019-1080). While the filenames and web addresses for the draft templates indicated that they were drafts, the documents themselves were not marked as draft or proposed. In the subsequent decision notice, posted March 17, 2021, the Ministry indicated that it was in the process of finalizing the environmental compliance approval templates. The Ministry’s templates for drafting proposal notices indicate that supporting materials (like files and links) can be added to provide readers more information about the notice. While these templates specify that saved files should have simple file names that describe what a document is, they do not direct that added draft documents be marked as draft. In response to our inquiries, the Ministry indicated that it had reviewed its Registry proposal notice templates and determined that further clarification in the templates to direct staff to label draft documents as draft is not necessary. Though members of the public may access linked Registry documents through other means, it is the Ministry’s position that labelling draft documents as such is unnecessary as Registry notices specify whether an attached document has been finalized and the status of the notice. The Ministry told our Office that the Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan (Plan) remains a draft; the Ministry has not yet taken the necessary steps to have the Plan approved. However, the Plan, which was attached to the 2018 proposal notice and is posted as the lead on the Ministry’s main webpage, is still not marked “draft,” and the Ministry has not referred to the plan as “draft” or explained that it is unfinalized in various communications to the public. Rather, the Ministry has publicly indicated that it has implemented aspects of the Plan. For example, the Ministry has announced that initiatives, such as reducing waste and expanding recycling services, improving public reporting of pollution, and improving water quality in Lake Erie, are a key part of, and are delivering on commitments made in, its Plan. In 2019 and 2020, the Ministry released public updates on the Plan, outlining steps that had been taken, progress on commitments, accomplishments made, and next steps.

Committee Recommendation	Status Details
Recommendation 2 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should: - consider whether the Climate Change Advisory Panel needs a clearly defined mandate with corresponding objectives and targets; Status: Fully implemented. - make its advice publicly available for Ontarians. Status: Little or no progress.	The Plan contained a commitment to establish an advisory panel to provide advice to the Minister of the Environment, Conservation and Parks on implementation and further development of climate change actions. In November 2019, the then Minister appointed 10 members to the Climate Change Advisory Panel for a two-year term. Under the Terms of Reference, the panel's mandate is to provide advice to the Minister on implementing the climate change resilience commitments of the Plan. The two objectives are to provide advice to the Minister: - on the development and implementation of climate change resilience commitments as outlined in the Plan; and - on key areas related to addressing climate change resilience. The mandate of the panel does not include providing advice on plans to reduce greenhouse gas emissions, which was the subject of our audit. No targets are included in the panel's Terms of Reference. Under the Terms of Reference, formal advice from the panel is to be provided directly to the Minister verbally, by letter, and through meeting minutes. To date, the Ministry has not made any advice received from the panel publicly available. In November 2020, the panel submitted its annual progress report to the Minister. Under the panel's Terms of Reference, its annual progress report is to be for public consumption. While this report is not posted on the Ministry's website, the Ministry has advised us that the report is available to the public upon request. The progress report contains information on consultations the advisory panel has held. It does not provide advice on initiatives to address climate change impacts and indicates that the panel will provide specific recommendations to promote climate resilience of communities, infrastructure and homes by November 2021. The Ministry has advised that the Minister may choose to release the final report, or specific sections of it, after receiving the panel's report.

Committee Recommendation	Status Details
Recommendation 3 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should: • update the integrated energy-emissions-economy model with new information as available; Status: Fully implemented. • improve communication and information sharing with other ministries to improve its understanding of planned and proposed initiatives as they occur; Status: Fully implemented. • create and publish a regular report with up-to-date information and emission forecasts, in order to publicly track the Ministry's progress towards meeting the 2030 emission-reduction goals. Status: Little or no progress.	The Ministry has revised its integrated model with updated data, including: • the Independent Electricity System Operator's 2020 Annual Planning Outlook was used to update electricity sector assumptions; • the Ministry of Finance's budget 2020 Outlook was used to forecast gross domestic product; and • Environment and Climate Change Canada's 2021 National Inventory Report was used to calibrate historical emissions. The Ministry continues to exclude from its business-as-usual 2030 emissions estimate the potential reductions from the existing federal carbon price on industrial emissions. This is because the Ministry plans to replace the existing system with the less stringent provincial Emissions Performance Standards. Since October 2020, the Ministry has started producing internal, monthly updates on Ontario's greenhouse gas emissions outlook based on current policy scenarios. In October 2021, the Ministry revised its internal estimate of business-as-usual forecast and estimated Ontario's 2030 emissions to be 160.9 Mt based on the federal government's \$50/tonne carbon price on fuels. This estimate is coincidentally the same as the 160.9 Mt estimate shown in the Plan's business-as-usual scenario, despite differences in assumptions. The Ministry notes that additional details are needed to identify whether other policies can be incorporated into the integrated model. At the time of our follow-up, Ministry staff were continuing to seek policy guidance. The Ministry has established an Assistant Deputy Minister-endorsed Director's Level Climate Change Working Group that met quarterly from spring 2019 to spring 2020, and has continued to meet as required to discuss climate change across government and track the implementation of climate change initiatives. At the time of our 2019 audit, we learned that Ministry staff were preparing advice to government on how to meet the Ministry's reporting obligations, including options for releasing an annual, public-facing web report on progress on Plan initiatives, statistics on outcomes achieved to date, and a focus on their social and economic benefits; and a more detailed, web-based update with quantitative results, modelling and analysis of progress toward targets, and timing and performance metrics. In our follow-up, we found that the Ministry had not published a report with up-to-date information and emission forecasts in order to publicly track progress. The Ministry expects to finalize its approach to public reporting, monitoring and evaluating progress against the commitments in the Plan by December 2022. While the Ministry released public updates in 2019 and 2020 on the Plan (including its climate change plan), outlining steps taken and next steps, these updates do not report on: performance metrics; the outcomes of initiatives undertaken to reduce emissions; the status of Ontario's greenhouse gas emissions; or progress made since the release of the Plan towards meeting the 2030 target.

Committee Recommendation	Status Details
Recommendation 4 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should ensure the evidence and assumptions underlying the Environment Plan are based on sound evidence and current information. Status: Little or no progress.	As noted above, the Ministry has initiated some work to update the Plan to be based on sound evidence. However, it had not yet updated the Plan to include detailed actions with emission-reduction estimates supported by evidence. The Ministry updated its assumptions, and at the time of our follow-up, internal estimates indicated its “committed policies” could reduce emissions by 3.4 Mt in 2030 based on a \$50/tonne carbon price. These policies include Emissions Performance Standards, Renewable Content in Gasoline, Transit and Natural Gas Conservation. The Ministry estimated only 0.03 Mt reductions from Natural Gas Conservation (as compared to 3.2 Mt shown in the Plan) based on funding estimated by the Ministry of Energy. Although the Ministry also estimates that a scenario with a \$170/t carbon price, which the federal government has announced for federal policies, could further reduce emissions, the Ministry has not committed to increasing the carbon price of the provincial Emissions Performance Standards to match the federal government’s. The Ministry does not have an expected timeframe for presenting an updated climate change plan to Cabinet for approval.
Recommendation 5 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should: • explore opportunities for private sector investment to develop critical infrastructure for electric vehicles in Ontario; Status: In the process of being implemented by December 2021. • improve emission-reduction estimates for both hybrid and fully-electric cars; Status: Fully implemented.	In December 2019, the Ministry established an inter-ministerial steering committee on low-carbon vehicles to explore opportunities to support the uptake of electric vehicles in Ontario. The steering committee is co-chaired by assistant deputy ministers from the Environment Ministry, Ministry of Economic Development, Job Creation and Trade, and Ministry of Transportation. The steering committee is to act as a forum to gather perspectives, discuss and evaluate opportunities and risks, and set priorities for cross-ministry work. Inter-ministry staff-level working groups will be formed as needed to enable cross-ministry collaboration on policy development. The Environment Ministry, Ministry of Economic Development, Job Creation and Trade, and Ministry of Energy are supporting the Ministry of Transportation in the establishment of a Transportation Electrification Council. Members include representatives from the industry, academia, and not-for-profit organizations. The stakeholder group will provide input for the development of a provincial Transportation Electrification Policy at meetings, which are to occur between September and December 2021. In July 2019, the Ministry re-evaluated the 2018 Plan’s scenario of 1.3 million electric vehicles. After accounting for overlap with federal vehicle emission regulations in the business-as-usual forecast, the Ministry’s updated integrated modelling estimated potential emissions reductions of 0.9 Mt in 2030 – 1.7 Mt lower than the 2.6 Mt estimate in the Plan. After receiving direction that the Ministry will not implement zero emission vehicle financial incentives or a sales mandate, Ministry staff revised the emission-reduction estimates in January 2021 to exclude any reductions from low carbon vehicles beyond the business-as-usual forecast. Ministry staff continue to seek policy direction regarding zero emission freight and fleet vehicles.

Committee Recommendation	Status Details
assess the feasibility of increasing the use of compressed natural gas and calculate the corresponding impact on emissions and take into account the leakage of methane in the production and transportation of natural gas. Status: Fully implemented.	The Ministry concluded that the Plan's action to reduce operator requirements for 24/7 compressed natural gas fueling stations along 400-series highways would have a negligible impact on uptake and therefore no incremental emissions reductions. The Plan estimated 0.2 Mt in emissions reductions. In January 2021, the Ministry removed compressed natural gas trucks from its revised emission-reduction estimates.
Recommendation 6 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should: - assess the feasibility of increasing the supply and reducing the cost of renewable natural gas in Ontario; Status: Fully implemented. - consider developing and implementing a pilot program to conduct a price discovery of the renewable natural gas market in Ontario; Status: Fully implemented. - take into account renewable natural gas leakage during production and transportation. Status: Fully implemented.	The Environment Ministry met with the Ministry of Energy to discuss the Plan's commitment to require utilities to offer renewable natural gas to its customers. The Ministry of Energy, which oversees energy utilities via the Ontario Energy Board, asked the Environment Ministry to relieve it of any responsibilities related to renewable natural gas in the Plan. One utility (Enbridge) did voluntarily apply to offer a renewable natural gas pilot program, which the Ontario Energy Board approved in September 2020. However, Environment Ministry staff also concluded that there would be no incremental emissions reductions from new renewable natural gas projects in Ontario, because the Ministry of Energy does not plan to place any requirements on utilities and because the pilot does not include any subsidies for costly renewable natural gas. Accordingly, the Environment Ministry's emission-reduction estimates as of October 2021 exclude any potential incremental reductions from renewable natural gas. As noted above, the Ontario Energy Board has approved a renewable natural gas pilot program. The Ontario Energy Board stated in its decision that it supports the investigation of the costs and benefits of renewable natural gas. The Environment Ministry's integrated energy-emission-economy model accounts for gas leakage during production and transportation.
Recommendation 7 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should use best practices, such as integrated modelling, to analyze interactions between, and overlap of, various federal and provincial initiatives. Status: In the process of being implemented by 2023.	The Ministry has updated its integrated model with additional federal and provincial initiatives. These include adding the provincial Natural Gas Conservation and the federal Clean Fuel Standard into the integrated energy-emissions-economy model. The Ministry's internal estimate indicates these two initiatives, in addition to Emissions Performance Standards, Renewable Content in Gasoline and Transit, could reduce emissions by 3.5 Mt in 2030. This estimate is 4.9 Mt less than the combined 8.4 Mt reduction shown in the Plan. Although the Ministry also estimates that a scenario with a \$170/t carbon price, which the federal government has announced for federal policies, could reduce emissions from these initiatives by 5.7 Mt, the Ministry has not committed to increasing the carbon price of provincial Emissions Performance Standards to match the federal government's. Because the Ministry has not yet designed Emissions Performance Standards policy details for the year 2030, its estimates are based on approved 2022 details. At the time of our follow-up, the Ministry expects to finalize Emissions Performance Standards by the end of 2023.

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Recommendation 8 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should: • use integrated modelling to account for interactions and overlap with other emission-reduction initiatives; Status: Little or no progress. • finalize the framework for the Emission Reduction Fund. Status: Little or no progress.	As noted in Recommendation 7, the Ministry now has additional initiatives in the integrated energy-emissions-economy model. However, the Ministry has determined that its integrated model is incapable of incorporating the Emission Reduction Fund. Still, the Ministry preliminarily revised its emission-reduction estimate to a range of 0.3-0.5 Mt. The Ministry told us that it is continuing to improve its emissions forecasting by making use of more robust integrated modelling approaches, and that these estimates will depend on the design of the Emission Reduction Fund. The Ministry also has not used the integrated model to estimate other potential emissions reductions, including from: • implementing the GO Regional Express Rail (referred to in the Plan as Transit within Other Policies); • phasing out industrial coal use (which was not in the Plan); and • landfill gas collection (which was not in the Plan). The Ministry continues to look at leading jurisdictions for best practices on the funding, developing and administering of emission reduction funds. The Ministry continues to consider options for the design and development of the Emission Reduction Fund.
Recommendation 9 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should consistently follow the Intergovernmental Panel on Climate Change Guidelines and avoid counting emissions reductions associated with organic waste diversion that occur outside Ontario's borders. Status: Fully implemented.	The Ministry revised its emissions estimates to exclude emissions reductions associated with diverting organic waste that would have otherwise gone to landfills in the United States.
Recommendation 10 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should: • determine the feasibility of implementing various energy storage technologies in Ontario; Status: In the process of being implemented by December 2021.	The Ministry of Energy had indicated that it would require funding from the Environment Ministry for any incremental energy storage. Environment Ministry staff were unable to identify dedicated sources of funding. Accordingly, the Environment Ministry excludes energy storage from its most recent emission-reduction estimates. However, in November 2020, the Environment Ministry released a discussion paper on a potential hydrogen strategy, with ideas on alternative energy storage options. The Environment Ministry engaged with the Ministry of Energy to review input from the hydrogen discussion paper, which includes energy storage. The Environment Ministry expects to work with partner ministries to develop a hydrogen strategy by December 2021.

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explore emerging and new energy storage technologies in order to increase Ontario's capacity. Status: In the process of being implemented by December 2021.	As noted above, the Environment Ministry released a hydrogen discussion paper in November 2020. The discussion paper was developed with input from other ministries. The Environment Ministry is currently analyzing stakeholder input on the hydrogen discussion paper received through the Environmental Registry and has established an industry working group to develop recommendations. The Environment Ministry expects to work with partner ministries to develop a hydrogen strategy by December 2021.
Recommendation 11 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should: - update the model with more precise emission-reduction estimates from prospective technologies; Status: Fully implemented. - support the adoption of new and innovative emission-reduction technologies; Status: In the process of being implemented by December 2021. - continually monitor emerging global emission-reduction technologies that could have an impact in Ontario. Status: Fully implemented.	In November 2020, the Ministry released a discussion paper on a potential hydrogen strategy, with ideas on alternative energy storage options. However, assuming no funding or regulations, Ministry staff estimated that a hydrogen strategy would have negligible emissions reductions. The Ministry has removed emissions reductions expected from Future Innovation and prospective technologies from its forecasts. The Ministry has initiated some work with partner ministries to identify and assess new emission-reduction technologies. A Hydrogen Strategy Working Group reviewed input received through consultation and proposed recommendations for Ontario's hydrogen strategy. The Ministry expects to release its hydrogen strategy by December 2021. The Ministry is part of ongoing, cross-government meetings to support the adoption of emission-reducing technologies. The Ministry states that it will continue to monitor emerging emission-reduction technologies that could have an impact in Ontario.
Recommendation 12 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should work with the Ministry of Transportation and its partner agencies to: - determine how interacting programs and policies will lead to emissions reductions; Status: Little or no progress. - update the integrated energy-emissions-economy model with evidence-based, transit-related data and information where applicable. Status: Fully implemented.	The Ministry met with the Ministry of Transportation in January 2021 to discuss emissions reductions from transit. The Ministry states that this is an ongoing process without an implementation date. As noted in Recommendation 3, since October 2020, the Ministry has updated its emission-reduction estimates monthly. Emissions reductions from transit were estimated by Metrolinx and added to the Ministry's integrated model.

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Recommendation 13 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should work with partner ministries to update its climate change plan to include detailed actions, based on sound evidence and supported by feasibility and cost analysis. Status: Little or no progress.	The Environment Ministry has engaged other ministries but made little progress identifying committed policies and initiatives from other ministries to reduce emissions. For example, the Ministry of Energy was not supportive of initiatives related to renewable natural gas, or natural gas conservation as described in the Plan. The Environment Ministry has updated its internal list of proposed climate change plan initiatives with revised emission-reduction estimates. The Environment Ministry has identified partner ministries and costs for many “uncommitted policies” under consideration. The Environment Ministry does not have an expected timeframe for presenting an updated climate change plan to Cabinet for approval.
Recommendation 14 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should obtain and review an independent assurance report from the vendor of the integrated model for estimating emissions on an annual basis. Status: Little or no progress.	The Ministry has obtained independent assurance reports on the effectiveness of controls related to the data centre in Vancouver that previously hosted the model, as well as the model vendor’s new service provider. While the Ministry did have a description of the security posture of the vendor’s climate modelling platform, it did not have a cybersecurity assessment, penetration testing reports, nor an assurance report on the model vendor’s own technology controls. The Ministry asked for penetration testing and vulnerability assessment reports, but the vendor declined, citing confidentiality concerns.
Recommendation 15 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should work with the Ministry of Agriculture, Food and Rural Affairs to include agriculture-specific initiatives in an updated Environment Plan to reduce emissions. Status: Little or no progress.	The Ministry made no progress on this recommendation until January 2021, and even then, progress including agriculture-specific initiatives in proposed updates to the Plan have been limited. In December 2020, the federal government released an updated climate plan that included funding for various initiatives, such as carbon storage in agricultural lands. In January 2021, the Ministry initiated cross-ministry meetings with the Ministry of Agriculture, Food and Rural Affairs to discuss updating the climate change section of the Plan and how to access federal funding to improve carbon storage in agricultural soils.
Recommendation 16 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should determine and compare costs and net emissions reductions associated with all initiatives included in the Environment Plan. Status: Little or no progress.	The Ministry has not determined and compared the costs and net emissions reductions associated with all initiatives in the Plan. Further, the Ministry does not have an expected timeframe for presenting an updated climate change plan to Cabinet for approval. The Ministry has added additional policies into its integrated energy-emissions-economy model (see Recommendation 7). The Ministry has also been updating its list of policies under consideration. Ministry staff are transparent about the potential lack of emissions reductions from some initiatives under consideration: • Hydrogen and Clean Tech – staff estimate that this initiative (to advance hydrogen technology, production and use) will have negligible reductions without funding or regulations; and, • Government Leadership – staff note that this initiative (to prioritize low-carbon and climate resilience in government investment decisions) could have an impact depending on the scale of targets and investments. The Ministry has excluded from its updated internal emission-reduction estimates some high-cost initiatives (Renewable Natural Gas), or not-fully-costed initiatives shown in the Plan (Low Carbon Vehicles Uptake and Innovation).

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Recommendation 17 The Standing Committee on Public Accounts recommends that the Secretary of Cabinet and the Ontario Deputy Ministers' Council should require ministries to use the guidance developed by the Climate Change Leadership Team. Status: Fully implemented.	The Climate Change Leadership Team (CCLT) is a cross-ministry group responsible for embedding climate change in government procurement, building understanding and capacity within government, and creating a process to update internal directives and guidance to help ensure climate change is considered. The Secretary of the Cabinet has provided direction that, on a going forward basis, guidance tools developed by the CCLT and shared with the Deputy Ministers' Council will also, where appropriate, be provided to the Office of the Treasury Board in the Treasury Board Secretariat for distribution for use by ministries in the Multi-Year Planning Process. However, while the requirement from the Secretary of the Cabinet for ministries to use the CCLT's tools has been put in place, the tools themselves have not yet been developed. The Ministry updated the Deputy Ministers' Council on the work of the CCLT in February 2021. The Ministry has advised that four working groups have been established to develop tools and guidance materials: • Governance Working Group – to develop a governance framework for considering climate change in decision-making; • Economics Working Group – to develop standard business cases identifying economic drivers for integrating climate change considerations; undertake research on the socio-economic aspects of climate change economic impacts, potential costs and opportunities; and develop standard financial valuation methodology for assessing the costs and benefits of incorporating climate change into decisions; • Research and Knowledge Management and Translation Working Group – to develop materials that will translate climate change data and expertise into easy-to-read and use resources; and • Enterprise Emissions Working Group – to identify enterprise emissions to begin the development of an emissions inventory for government buildings and assets. These groups are to report to CCLT on their progress, and the Secretary of the Cabinet will then invite the Ministry to provide an update to the Deputy Ministers' Council on progress made. The first report back to CCLT was expected in summer 2021. However, in August 2021, the Ministry advised that there has been no formal report back to date and that the next meeting of the CCLT is to be in fall 2021.
Recommendation 18 The Standing Committee on Public Accounts recommends that the Treasury Board Secretariat should ensure that ministries highlight and evaluate the emissions impacts of all decisions that may affect greenhouse gas emissions in their submissions to Treasury Board/Management Board of Cabinet. Status: In the process of being implemented by fall 2021.	In December 2019, Cabinet Office updated the template that is used for Cabinet and Cabinet committee submissions. The template prompts ministries to describe the effect that any proposal has on people, households, communities and the environment, including considerations and impacts relating to climate change. Cabinet Office has advised our Office that it has provided ministries with materials that prompt them to include considerations and impacts relating to the environment and climate change (including greenhouse gas emissions) in their Cabinet and committee submissions. However, we reviewed a sample of 14 recent Cabinet submissions that could have an impact on greenhouse gas emissions and found that only four actually followed the updated template and considered emissions impacts. By fall 2021, the Treasury Board Secretariat plans to update all business case templates that ministries use to make submissions to the Treasury Board/Management Board of Cabinet, and provide guidance to ministries to ensure environmental impacts, including greenhouse gas emissions, are identified in relevant submissions and those impacts are highlighted to decision-makers.

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Recommendation 19 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should: - develop and implement measurable performance metrics; Status: Little or no progress. - publicly report, on a regular basis, on the government's performance metrics and progress towards meeting its 2030 emissions targets; Status: Little or no progress. - explain the outcomes of all initiatives aimed at reducing emissions in the annual report. Status: Little or no progress.	The Ministry has not drafted or implemented performance metrics, and has not met or consulted with partner ministries on their development. The Ministry expects to finalize its approach to public reporting, monitoring and evaluating progress against the commitments in the Plan by December 2022. While the Ministry released public updates in 2019 and 2020 on the Plan (and its climate change plan), outlining steps taken and next steps, these updates do not report on: performance metrics; the outcomes of all initiatives undertaken to reduce emissions; the status of Ontario's greenhouse gas emissions; or progress made since the release of the Plan towards meeting the 2030 target.
Recommendation 20 The Standing Committee on Public Accounts recommends that the Ministry of the Environment, Conservation and Parks should: - update the draft of the Environment Plan with recent integrated modelling and refined emission-reduction estimates; Status: Little or no progress. - provide specific timelines and expected emissions reductions for each action; Status: Little or no progress. - present the updated draft Environment Plan, which includes subsequent developments before Cabinet for approval as required. Status: Little or no progress.	The Ministry does not have a timeline for updating its draft of the Plan. The Ministry does not have a timeline for updating its Plan. The Ministry does not have an expected timeframe for presenting a draft Plan to Cabinet for approval.



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