Implementing the *Environmental Bill of Rights, 1993*

Guidance for Ministry Staff

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EBR Guidance for Ministry Staff
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Ministry Responsibilities under the *EBR*

The *Environmental Bill of Rights, 1993* (*EBR*) helps to ensure that government decisions are made in accordance with the values and goals that the people of Ontario hold in common, namely: “the protection, conservation and restoration of the natural environment for the benefit of present and future generations.” To help achieve this goal, the *EBR* provides several tools to increase government accountability, transparency and public participation in environmental decision making.

The provincial ministries have the primary responsibility for implementing the *EBR*. Specifically, prescribed ministries are required to:

- Consider their ministry’s *Statement of Environmental Values* (SEV) whenever making decisions “that might significantly affect the environment.”
- Post notice of environmentally significant acts, regulations, policies or instruments that are prescribed under the *EBR* (see *Posting Notice of Proposals on the Environmental Registry*).
- Provide an opportunity for public consultation for prescribed environmentally significant proposals (see *Public Consultation and Comment Periods*).
- Consider public input when making a decision on a proposal, and notify the public of the ministry’s decision, including a description of how the public’s input was considered (see *Decision Notices*).
- Respond to *Applications for Review and Investigation* submitted by members of the public under the *EBR*.

Additionally, the ECO must report annually on whether prescribed ministries have co-operated with the ECO’s requests for information. The ECO also reports on the work of prescribed ministries to keep the *EBR* “in sync” with new laws, instruments under newly prescribed laws, new ministries, and changes to government portfolios.

**ECO Review of Ministry Compliance**

The Environmental Commissioner of Ontario (ECO) is required under section 57 of the *EBR* to review the implementation of the *EBR* and ministry compliance with the requirements of this Act, including the ministries’ use of the Environmental Registry, compliance with their Statements of Environmental Value, and co-operation with information requests by the ECO. The ECO presents the findings of this review each fall in an annual report (the ECO’s Environmental Protection Report) that is presented to the Legislative Assembly.

In 2015/2016, the ECO began to issue annual “*EBR Report Cards*” for each prescribed ministry; these report cards evaluate prescribed ministries’ performance of their *EBR* responsibilities during the ECO’s reporting year. In 2015/2016 the report cards were published in a special report tabled before the
Legislative Assembly. In 2016/2017 and in future reporting years, the report cards will be published with the ECO’s Environmental Protection Report each fall.

**Prescribed Ministries**

Seventeen ministries in the Ontario government are prescribed under the *EBR*:

1. Ministry of Agriculture, Food and Rural Affairs (OMAFRA)
2. Ministry of Economic Development and Growth (MEDG)
3. Ministry of Education (EDU)
4. Ministry of Energy (ENG)
5. Ministry of the Environment and Climate Change (MOECC)
6. Ministry of Government and Consumer Services (MGCS)
7. Ministry of Health and Long-Term Care (MOHLTC)
8. Ministry of Housing (MHO)
9. Ministry of Indigenous Relations and Reconciliation (MIRR)
10. Ministry of Infrastructure (MOI)
11. Ministry of Labour (MOL)
12. Ministry of Municipal Affairs (MMA)
13. Ministry of Natural Resources and Forestry (MNRF)
14. Ministry of Northern Development and Mines (MNDM)
15. Ministry of Tourism, Culture and Sport (MTCS)
16. Ministry of Transportation (MTO)
17. Treasury Board Secretariat (TBS)

Each prescribed ministry is required to develop a *Statement of Environmental Values* and post notices for all environmentally significant acts, regulations and policies (see *Posting Notice of Proposals on the Environmental Registry*). Nine of the prescribed ministries are subject to the application for review process under the *EBR*, and six of those ministries are also subject to the application for investigation process (see *Ministries/Acts Prescribed for Applications for Review and Investigation*).

For the most up-to-date list of prescribed ministries, refer to *O. Reg. 73/94* under the *EBR*. 
Statement of Environmental Values
The *EBR* requires each of the prescribed ministries to develop and publish a Statement of Environmental Values (SEV). Each ministry has its own SEV that reflects the environmental issues and factors specific to its mandate. The SEV explains how that particular ministry will consider environmental values, and how it will integrate those values with other social, economic and scientific considerations when it makes an environmentally significant decision. The SEV for each prescribed ministry can be found on the [Environmental Registry](#).

The purpose of the SEV is to guide ministry staff when making decisions that might affect the environment and to ensure that the purposes of the *EBR* are being carried out. The SEV also serves as a benchmark against which the public and the ECO may evaluate ministry decisions.

Considering your Ministry’s SEV
Section 11 of the *EBR* requires prescribed ministries to “take every reasonable step to ensure that the ministry statement of environmental values is considered whenever decisions that might significantly affect the environment are made.” (To help determine if a decision might significantly affect the environment, see [How to determine if the proposal is environmentally significant?](#)) This requirement to consider the ministry’s SEV applies to all environmentally significant decisions, including decisions to: make, amend or repeal an act; make, amend or revoke a regulation; make, revise or withdraw a policy; or issue, amend or revoke a classified instrument. To be most effective, ministry staff should begin considering their SEV as early in the process of developing a proposal as possible.

Documenting your Ministry’s SEV Consideration
Ministry staff are expected to document their SEV consideration of each environmentally significant decision, including decisions relating to instruments. The ECO is required to report on ministry compliance with the requirement to consider their SEVs. In order to fulfil this responsibility, the ECO regularly asks ministry staff to provide proof of their SEV consideration, in the form of an SEV consideration document, to the ECO for select decisions. For purposes of evaluating a ministry’s compliance with the requirement to consider its SEV, the ECO requests that SEV consideration documents be provided to the ECO within **four weeks** of a request for such documentation.
Use of the Environmental Registry

Posting Notice of Proposals on the Environmental Registry

Public participation in environmental decision making is at the heart of the EBR, and providing notice to the public of a proposal to make an environmentally significant decision is the first step in the public participation process. Under sections 15, 16 and 22 of the EBR, staff at prescribed ministries are required to post notice to the public of certain environmentally significant proposals for policies, acts, regulations and instruments on the Environmental Registry.

When is a Proposal Notice Required?

Prescribed ministries must notify the public, through the Environmental Registry, whenever the ministry is proposing to:

- Make, amend, or repeal any act that could have a “significant effect on the environment”;
- Make, amend or revoke a regulation that could have a “significant effect on the environment” if the regulation is made under a prescribed act (see O. Reg. 73/94 for the list of prescribed acts);
- Make, amend, or revoke any policy that could have a “significant effect on the environment” (see What is a Policy?); or
- Issue, amend or revoke a classified instrument unless the potential effect of the amendment or revocation on the environment is insignificant (see What is a Classified Instrument?)

In determining whether the act, regulation, policy or instrument could have a “significant effect on the environment,” see How to determine if the proposal is environmentally significant?

What is a Policy?

The EBR defines a “policy” as “a program, plan or objective and includes guidelines or criteria to be used in making decisions about the issuance, amendment or revocation of instruments....” This broad definition of “policy” includes, among other things, policy statements, plans, frameworks, guidance documents, best practices, protocols, standards, procedures and directives. It also includes policies that are defined as “interim” or “draft” policies if these policies are being applied.

If you are a prescribed ministry, you are required to post a proposal notice for every environmentally significant policy that your ministry proposes to make, amend or revoke.

What is a Classified Instrument?

The EBR defines an “instrument” as “any document of legal effect issued under an Act and includes a permit, licence, approval, authorization, direction or order issued under an Act.”

The EBR requirements relating to instruments only apply to those instruments that are “classified” under O. Reg. 681/94 as a Class I, II or III instrument. Refer to O. Reg. 681/94 for the full list of classified instruments.
How to Determine if the Proposal is Environmentally Significant?

Ministry staff are only required to post a proposal notice for an act, regulation, policy or instrument if implementing the proposed decision could have a “significant effect on the environment.” Section 14 of the EBR states that the ministry must consider the following factors in determining whether a proposal for a policy, act or regulation could have a significant effect on the environment:

- the potential measures that may be required to mitigate or prevent environmental harm that may result from the proposed decision;
- the geographic extent – whether local, regional or provincial – of any potential environmental harm resulting from the proposed decision;
- the private and public interests (including municipal interests) involved in the proposal; and
- any other relevant matters.

The ECO reminds ministries that even proposals that are expected to have positive environmental effects may be environmentally significant, and thus subject to the EBR’s public notice and comment requirements.

What to include in the Proposal Notice?

In many cases, the proposal notice will provide the first point of contact for Ontario residents who want to participate in the proposed decision. Therefore, it is very important that the notice is clear and accessible, and that it contains enough information to enable members of the public to assess whether they may have an interest in the proposal.

Section 27 of the EBR sets out the basic information requirements that ministries must include in their proposal notices posted on the Environmental Registry. Generally, a proposal notice includes the following:

- **Title**: A short statement of what the proposal is about (avoid using the word “proposed” in the title, as the title will remain the same for future iterations of the notice, including the decision notice).

- **Description**: The notice should include a brief, plain language description of what is being proposed.
  - For a policy, act or regulation, this typically includes: the basic context for the proposal (e.g., why the proposal is needed); an executive summary of the proposed initiative or amendment; a summary of the potential environmental impacts of the proposal; the proposed implementation timeline; and any other key related information.
  - For an instrument proposal, the description should include: the key proposed provisions and conditions of the instrument; the geographic location; the scale of the proposal; the proposed duration; potential environmental impacts; and any other relevant information (e.g., previous related notices).
  - It is not possible to provide all of the detailed information about the proposal in the notice itself. Instead, the ECO strongly encourages staff to include additional
information through supporting documents and links.

- **Purpose of the Proposal**: The notice should include a brief statement of the purpose, objective or goal(s) of the specific proposal. This may include information about how the proposal will benefit the environment, or how it will help to meet the ministry or government’s overall environmental agenda, plan, or program needs.

- **Public Consultation and Comment Periods**: Proposal notices must be posted for public review and comment for a minimum of 30 days before a decision may be made. The notice must clearly state the length and date range within which the public may submit comments on the proposal. The notice should also include details of any other public consultation opportunities that may be available.

- **Ministry Contact**: The proposal notice must include contact information (name, address, phone number and email) for a ministry staff person who will receive the public comments and who is able to address inquiries from the public.

- **Additional Information**: While the content of the proposal notice itself is limited, the ECO strongly encourages ministries to provide additional information through the use of supporting documents that are hyperlinked to the notice. For example, the ministry could include links to: the actual draft text of the proposed regulation, policy or bill; related webpages; background documents; discussion papers, etc.

As a general rule, the more information provided to the public about the proposal, the better the quality of the public input received. Without sufficient information, the public may find it difficult to make substantive comments. Furthermore, providing increased and improved information about the proposal – such as detailed information about the anticipated environmental impacts of the proposal – may actually help to allay some public concerns and decrease potential conflict about the proposal.

Note: The *EBR* requires the ministry to include an address in the notice where members of the public may review additional supporting information about the proposal. However, this requirement is increasingly being addressed through the use of attachments and hyperlinks within the notice itself.

The ECO recommends that ministries try to use plain language and make their notices on the Environmental Registry as user-friendly as possible. Click here for General Tips for Writing Notices.

**Evaluating the Quality of Proposal Notices on the Environmental Registry**

When evaluating proposal notices, the ECO will consider whether a notice:

- Is well written (i.e., no spelling or grammatical errors; proper sentence structure), using plain language;
• Describes the proposal and its purpose;
• Describes the anticipated environmental impacts of the proposal;
• Describes the geographic area that will be affected (instrument notices only);
• Includes links to the proposed policy, act, regulation or instrument and, if applicable, other key supporting information; and
• Provides sufficient time for comment, given the complexity of and public interest in the proposal and any other factors.

Exceptions to Posting Requirements
In certain situations, the EBR exempts ministries from their obligation to post notice of an environmentally significant proposal on the Environmental Registry for public comment. For some of these exemptions, ministries are required to post an Exception Notice on the Environmental Registry instead; in other cases, the EBR relieves the ministry of the obligation to post altogether (see Exceptions that Do Not Require Notice).

Note: the exception provisions only exempt ministries from the EBR’s posting requirements; they do not exempt prescribed ministries from the requirement to consider their Statement of Environmental Values when making environmentally significant decisions.

Exception Notice
An “exception notice” is a notice posted on the Environmental Registry that informs the public that the ministry has made an environmentally significant decision, but does not provide an opportunity for comment before the decision is made. Ministries can post an exception notice on the Environmental Registry instead of a regular proposal notice if the proposal falls within one of the following two categories:

• **Emergency Exception** – Section 29 of the EBR allows ministries to post an exception notice when the delay in waiting for public comment would result in: danger to public health or safety; harm or serious risk to the environment; and/or injury or damage to property.

• **Equivalent Public Participation Exception** – Section 30 of the EBR allows ministries to post an exception notice when the proposal will be, or has already been, considered in another public participation process that is substantially equivalent to the requirements of the EBR. For the public participation process to be considered “substantially equivalent,” the ECO suggests that, at a minimum, the ministry should have: provided province-wide public notice of the proposal; provided at least 30 days to comment; considered the relevant comments; and held the consultation within the last two years.

The exception notice must include an explanation of why the decision was not posted as a regular proposal notice on the Environmental Registry. Specifically, in the case of the emergency exception, the notice must explain the nature of the emergency that prevented an opportunity for notice and comment; in the case of the equivalent public participation exception, the notice must describe the
alternate public participation process that made the Environmental Registry notice and comment process unnecessary.

**Exceptions that do not Require Notice**
The *EBR* also provides several types of exceptions that do not require an exception notice. Ministries are not required to post any notice on the Environmental Registry in the following circumstances:

- **Fiscal/Administrative Exception** – Sections 15(2) and 16(2) of the *EBR* state that notice is not required for a proposal for a policy, act or regulation if it is predominantly fiscal or administrative in nature.

- **Budget Exception** – Parliamentary convention dictates that details of a budget must not be released before the budget is tabled in the Legislature. Therefore, section 33 of the *EBR* states that environmentally significant proposals that form part of, or give effect to, a budget or economic statement presented to the Legislative Assembly are exempt from the *EBR* posting requirements.

- **Environmental Assessment Act Exception** – This exemption only applies to instruments. Section 32 of the *EBR* creates an exemption from the *EBR* posting requirements for proposals to issue, amend or revoke instruments that would be a step towards implementing a project that has already been approved under the *Environmental Assessment Act*.

- **Tribunal Exception** – This exemption only applies to instruments. Section 32 of the *EBR* creates an exemption from the *EBR* posting requirements for proposals for instruments that relate to a project that was approved by a tribunal (such as the Environmental Review Tribunal or Ontario Municipal Board), if the tribunal afforded the public an opportunity to participate.

**Environmental Assessment Act Exception**
Generally, ministries are required to post notice of a proposal to issue, amend or revoke an instrument that is classified under O. Reg. 681/94. However, section 32 of the *EBR* creates an exemption from the *EBR* posting requirements for proposals to issue, amend or revoke instruments that would be a step towards implementing a project that has been approved under the *Environmental Assessment Act*.

This exemption explicitly applies to instruments that relate to projects that were: approved through an individual environmental assessment (EA); planned using an approved Class EA (an EA for a group of activities); or exempted from the EA process by a regulation under the *Environmental Assessment Act*.

The effect of this exemption is that, in practice, many instruments may be issued without any formal public consultation or due consideration of the environmental impacts of the instrument. For example, if a project is exempted from the EA process, section 32 of the *EBR* may then be applied to exempt any instrument issued in relation to that project from the *EBR* consultation requirements. This leads to the unfortunate situation where the environmentally significant impacts of the instrument may not be
appropriately consulted on and considered. Even when a full EA is undertaken, the EA process may not address the specific environmental controls that may be included in the instruments.

For these reasons, the ECO strongly encourages ministries to consider, where appropriate, posting an Information Notice for these instruments on the Environmental Registry. Such a notice can promote transparency and accountability, lead to better community support for projects, and improve the quality of the environmental decision making.

**Information Notice**

When ministries are not required by the EBR to post a proposal notice on the Environmental Registry, the ministry may still provide a public service by voluntarily posting an “information notice” on the Environmental Registry. For example, an information notice could be used to provide notice of a study or report, or to provide notice of a proposed regulation that falls under an act that is not yet prescribed. Information notices can help keep Ontarians informed of important environmental developments.

Ministries should only use information notices when they are not required to post a regular proposal notice for public comment (refer to [When is a Proposal Notice Required?](#)). Significant differences exist between a regular proposal notice and an information notice. With regular proposal notices, a ministry is required to consider public comments and post a Decision Notice explaining the effect of the comments on the ministry’s decision. The ministry is also obligated to consider its Statement of Environmental Values in the decision-making process. Moreover, third-party appeal rights are only available for instruments if they are posted as regular proposal notices.

In some cases, a ministry may wish to use the information notice to solicit comments on a proposed initiative that is clearly exempt from the EBR posting requirements. For example, an information notice could be used to seek comments on an instrument that falls under the Environmental Assessment Act Exception. Where ministries use information notices for proposals, the ECO encourages ministries to post a follow-up notice informing the public about the ministry’s final decision and how the public’s comments were considered.

**General Tips for Writing Notices**

As a general rule, all notices should be written using plain language. The notices should be drafted as simply and clearly as possible, with the expectation that the message can reach a broad audience.

The ECO recommends that notices:

- Avoid “bureaucratic” writing
- Use short sentences
- Use short paragraphs, subheadings and bulleted lists (where appropriate)
- Avoid highly technical or scientific terminology as much as possible
- Use simpler words where possible
- Do not use acronyms
Translation of Notices
All proposal, decision and information notices for policies, acts and regulations must be translated into French. Instrument notices do not need to be translated unless: (a) they are contentious, or (b) translation has been requested.

The French version of the notice must be posted on the Environmental Registry at the same time as the English Version. Translation of the notice generally requires 3-5 business days. Please be sure to allot sufficient time for translation.

Public Consultation and Comment Periods
Public participation in environmental decision making is at the heart of the EBR. The EBR establishes some mandatory minimum levels of public participation that must be met by prescribed ministries before making decisions on environmentally significant policies, acts, regulations and instruments. The ECO encourages ministries to go beyond these minimum requirements in most circumstances. Good public consultation provides many benefits – it can help identify and resolve issues, increase community support for programs and projects, and improve the overall quality of the decision making.

When to Consult?
Public participation is most meaningful when it occurs early in the environmental decision making process. The ECO recommends that ministry staff post a notice for a new proposal on the Environmental Registry for comment as soon as an initial draft of the proposed policy, bill or regulation has been completed (and authorized by any necessary internal approvals). Involving the public early in the process helps to ensure that there is a reasonable opportunity for the public’s comments to influence the decision. Conversely, if a proposal is posted for comment too late in the process – after key decisions have already been made – public consultation becomes meaningless, or at least appears to be so. Early consultation also helps to identify and resolve issues earlier in the process.

The EBR consultation process does not need to extend the ministry’s existing consultation timelines. Ministries are encouraged to post the proposal notice on the Environmental Registry and begin the EBR comment period at the same time as any other ministry public consultation process.

How Long Should the Comment Period Be?
The EBR requires ministries to provide the public with at least 30 days to submit comments on environmentally significant proposals. However, this is strictly a minimum. Ministries are encouraged to provide longer comment periods, with the length of the period depending on the complexity and level of public interest in the proposal. In recent years, the vast majority of proposal notices for policies, acts and regulations have been posted on the Environmental Registry for public comment for at least 45 days, and often longer.

In considering how long the public comment period should be, subsection 8(6) of the EBR states that ministry staff should consider the following factors:
the complexity of the matter;
the level of public interest in the matter;
the amount of time needed for the public to be able to make informed comment;
any private or public interest, including municipal interest, in resolving the matters; and
any other relevant factors.

Multiple Notice and Comment Periods
The ECO encourages ministries to make use of the Environmental Registry at multiple stages in the development of environmentally significant policies, acts and regulations. For example, as new legislation is being developed, ministries may choose to post an initial policy proposal notice seeking comments on the proposed framework for the legislation, followed by a second act proposal notice and comment period on the bill itself. This multi-staged approach allows the public to comment on both the broader concepts as well as the fine details of the legislation.

Enhanced Public Participation
In addition to providing notice and seeking public comment through the Environmental Registry, ministry staff are encouraged to consider using additional methods of public notice and consultation, as appropriate. For example, in some cases, it may be appropriate for the ministry to provide additional notice of a proposal through ads in the local newspapers. Another common approach is for the ministry to hold open houses and public meetings to better explain the proposal to the public and to receive input directly.

For instruments that are classified as a Class II instrument under O. Reg. 681/94, section 24 of the EBR requires the ministry to consider providing enhanced public participation for these proposals based on the extent of the potential environmental effects of the proposal, the geographic scope, and the level of public interest.

Considering the Public Comments
Ministries are not required to individually acknowledge each comment that is received or to respond to the individual commenters. However, ministries are required to consider each comment that is submitted. Section 35 of the EBR requires the ministry to “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.” A summary of how these comments affected the ministry’s decision must be included in your Decision Notice.
Decision Notice

Once the ministry has made a decision on a proposal, the ministry must post a decision notice on the Environmental Registry.

When to Post the Decision Notice?

Section 36 of the EBR requires ministry staff to post the decision notice “as soon as reasonably possible” after the decision is made. Failure to post a decision notice promptly frustrates the role of the Environmental Registry as a reliable and accurate source of information for the public. Furthermore, failure to post a decision notice for an instrument promptly can hinder the appeals process. (The EBR gives Ontarians 15 days to apply for leave to appeal certain instruments after the decision has been posted on the Environmental Registry – therefore, a delay in posting the decision notice also delays the appeal timeframe.)

For purposes of evaluating ministry compliance with the requirement to post decision notices “as soon as reasonably possible,” the ECO takes the position that it is reasonable to expect a ministry to post a decision notice within two weeks after the date a decision was made.

The date that a decision was made is determined as follows:

- **Policies:** The date that a policy was finalized (usually the date of the policy document itself)
- **Acts:** The date the bill that would implement a proposed act received third reading
- **Regulations:** The date that a regulation was filed with the Registrar of Regulations
- **Instrument:** The date that an instrument was issued.

What to Include in the Decision Notice?

The decision notice includes the following features:

- **Summary of Decision** – The decision notice should include a brief summary of the final decision, including details of any changes between the proposal and the final decision. The decision notice should also clearly indicate the date that the decision was made.
- **Comments Received** – The notice must state the number of individual comments received on the proposal. In addition, the notice should provide a general description of the key comments.
- **Effect of Consultation on the Decision** – Subsection 36(4) of the EBR requires the ministry to provide “a brief explanation of the effect, if any, of public participation on decision making of the proposal.” A best practice used by some ministries is to set out the comments by topic, and then follow each comment topic with a brief description of the ministry’s response to that issue or concern.
- **Appeal Rights** – For instruments only, the decision notice should also set out the details of any opportunity for the public to seek leave to appeal the decision.

Evaluating the Quality of Decision Notices on the Environmental Registry

When evaluating decision notices, the ECO will consider whether a notice:
Outdated Notices on the Environmental Registry

When a proposal remains on the Environmental Registry for more than two years without a corresponding decision notice and without being updated, the ECO considers that notice to be “outdated.” Outdated notices are a problem because they undermine the public’s confidence in the Environmental Registry as a reliable and useful source of information.

In many cases, a proposal notice is outdated because:

- A decision on the proposals was made but the responsible ministry neglected to post a corresponding decision notice;
- The proposal was abandoned by the ministry or transitioned into in a newer proposal, but notice of this abandonment or transition was not provided; or
- The proposal was put on hold by the ministry or referred to an external adjudicative body, such as the Ontario Municipal Board, to make a decision.

Even if a proposal is ongoing (i.e., the proposal remains under consideration), the ECO considers the proposal to be “outdated” if the proposal remains on the Environmental Registry after two years.

For the most part, ministries can avoid having outdated notices on the Environmental Registry by making it a practice to post decision notices promptly after decisions on proposals are made, in accordance with the EBR requirement to post decision notices “as soon as reasonably possible.”

If your ministry has outdated proposals, it should post decision notices for those proposals as soon as possible.

If your ministry has outdated proposals that are ongoing (i.e., remain under consideration by the ministry), it should post updates to those proposal notices so that the public is informed of their status. When updating a notice:

- Indicate the date that the notice was updated, so that members of the public can determine how current the information in the notice is; and
- Do not re-start the “publish” date of the notice.

**Your ministry must notify the ECO if it updates any notices** in order for those notices to be excluded from the ECO’s tally of your ministry’s outdated notices at the conclusion of our reporting year. It is impossible for the ECO to identify updated notices through a search of the Environmental Registry.
Applications for Review and Investigation
Under the *EBR*, Ontario residents can file an “application for review” asking certain prescribed ministries (see Ministries/Acts Prescribed for Applications for Review) to review an existing policy, law, regulation or instrument, or to review the need for a new law, regulation or policy, if they feel the environment is not being protected. Members of the public can also file an “application for investigation” asking certain prescribed ministries (see Ministries/Acts that are subject to the Application for Investigation Process) to investigate an alleged contravention of an environmental law, regulation or instrument.

Ministries/Acts Prescribed for Applications for Review and Investigation
Not all prescribed ministries are subject to the *EBR* application process.

Ministries/Acts Prescribed for Applications for Review
The following 11 ministries are prescribed under the *EBR* to respond to applications for review:

1. Ministry of Agriculture, Food and Rural Affairs
2. Ministry of Education
3. Ministry of Energy
4. Ministry of the Environment and Climate Change
5. Ministry of Government and Consumer Services
6. Ministry of Health and Long-Term Care
7. Ministry of Housing
8. Ministry of Municipal Affairs
9. Ministry of Natural Resources and Forestry
10. Ministry of Northern Development and Mines
11. Ministry of Transportation

In addition, for a review of an *existing* act or regulation, the relevant act must also be prescribed. The following 29 acts (and the regulations under these acts) are subject to applications for review:

1. Aggregate Resources Act
2. Clean Water Act, 2006
3. Conservation Authorities Act
5. Environmental Assessment Act
6. Environmental Bill of Rights, 1993
7. Environmental Protection Act
8. Far North Act, 2010
11. Greenbelt Act, 2005
12. Invasive Species Act, 2015
13. Kawartha Highlands Signature Site Park Act, 2003
14. Lakes and Rivers Improvement Act
15. Lake Simcoe Protection Act, 2008
16. Mining Act
17. Niagara Escarpment Planning and Development Act
18. Nutrient Management Act, 2002
20. Oil, Gas and Salt Resources Act
21. Ontario Heritage Act
22. Ontario Water Resources Act
23. Pesticides Act
24. Places to Grow Act, 2005
25. Planning Act
27. Public Lands Act
28. Safe Drinking Water Act, 2002
29. Toxics Reduction Act, 2009

The following six acts and their regulations are also prescribed for applications for review, but in a more limited capacity:

1. Building Code Act, 1992 – only to the extent that the act or regulation under it relates to the construction, demolition, maintenance or operation of sewage systems.
3. Health Protection and Promotion Act – only sections 96(1), 96(2), 96(3)(m)-(t), and 96(3.1) of the Act, and regulations made under those sections that relate to small drinking water systems.
4. Ontario Energy Board Act, 1998 – only sections 88(1)(a.1) to (g) of the Act and regulations made under these sections.
5. Technical Standards and Safety Act, 2000 – only with respect to matters referred to in section 42 of the Act, and with respect to any proposed amendment to or replacement of O. Reg. 217/01 (Liquid Fuels) made under the Act.

For a review of an existing instrument, the category of instrument must be classified.

For the full, up-to-date list of prescribed acts and regulations that are subject to applications for review, refer to O. Reg. 73/94. For the full list of classified instruments, refer to O. Reg. 681/94.

Ministries/Acts that are Subject to the Application for Investigation Process

For an application for investigation, the relevant act or instrument that is allegedly contravened must be prescribed. Only the following six ministries administer acts and/or instruments that are subject to the application for investigation process:

1. Ministry of Energy
2. Ministry of the Environment and Climate Change
3. Ministry of Government and Consumer Services
The following 20 acts (and the regulations under those acts) are prescribed for the purpose of applications for investigation:

1. Aggregate Resources Act
2. Conservation Authorities Act
3. Crown Forest Sustainability Act, 1994
5. Environmental Assessment Act
6. Environmental Protection Act
7. Far North Act, 2010
10. Invasive Species Act, 2015
11. Kawartha Highlands Signature Site Park Act, 2003
12. Lakes and Rivers Improvement Act
13. Mining Act
14. Oil, Gas and Salt Resources Act
15. Ontario Water Resources Act
16. Pesticides Act
17. Provincial Parks and Conservation Reserves Act, 2006
18. Public Lands Act
19. Toxics Reduction Act, 2009
20. Technical Standards and Safety Act, 2000, but only with respect to matters to which the predecessor Gasoline Handling Act applied.

For the full, up-to-date list of prescribed acts and regulations that are subject to applications for investigation, refer to O. Reg. 73/94. For classified instruments, refer to O. Reg. 681/94.

**Ministry Requirements for Applications for Review**

Any two residents of Ontario can submit an application to the ECO asking a prescribed ministry to review an existing policy, act, regulation or instrument, or to review the need for a new one. Once the application has been received, the ECO will review the application for completeness and forward it to the appropriate ministry within 10 days. Your ministry must then send a letter to the applicants acknowledging receipt of the application within 20 days of receiving the application. If the application for review relates to an instrument, the ministry must also give notice of the application to any persons directly interested in the application (i.e., the instrument holder).
Preliminary Consideration
Upon receiving the application, your ministry must determine whether “the public interest warrants a review.... [of the] matters raised in the application.” Section 67 of the EBR states that, in determining whether the public interest warrants a review of the matters raised in the application, the ministry should consider the following factors:

- the ministry’s Statement of Environmental Values
- the potential for harm to the environment if the review is not undertaken
- whether that matter raised is already subject to periodic review
- any relevant social, economic, scientific or other evidence
- the resources required to conduct the review
- the extent to which the public had an opportunity to participate in the development of the policy, act, regulation or instrument in question
- how recently the policy, act, regulation or instrument in question was developed
- any other matter that the ministry considers relevant

However, section 68 of the EBR states that a ministry shall not determine that the public interest warrants a review of a decision that was made during the five (5) years preceding the date of the application for review, if that decision was made in a manner that the minister considers consistent with the intent and purpose of Part II of the EBR. This provision applies unless “there is social, economic, scientific or other evidence that failure to review the decision could result in significant harm to the environment,” and that evidence was not taken into account when the decision was made.

Notice of Decision Whether to Undertake the Review
Based on the ministry’s preliminary consideration of the application, the ministry must notify the applicants and the ECO within 60 days of receiving the application of the ministry’s decision whether or not to undertake the review. The notice must provide a brief statement of the reasons for the decision. If your ministry has agreed to undertake the review, the notice of decision should include your projected completion date of the review.

After Undertaking the Requested Review
If your ministry has undertaken the requested review, you must conduct the review “within a reasonable time.” You must notify the applicants and the ECO of the outcome of the review within 30 days of completing the review. This notice must state what action, if any, the ministry has taken, or proposes to take, as a result of the review.

Avoiding “Overdue” Applications for Review
When a ministry fails to conduct an undertaken review “within a reasonable time,” the ECO considers the application for review to be “overdue.” Whether a review is considered overdue depends on the circumstances of the specific review, and is a judgment call by the ECO.
Ministries should strive to complete reviews within a reasonable time, and to avoid having overdue reviews. However, when a ministry does take longer to complete a review than originally projected, the ministry can mitigate the delay to some extent by providing updates on the status of the review to the applicants and the ECO at least every six (6) months.

**Evaluating the Handling of an Application for Review**

The ECO reviews a ministry’s handling of an application for review only after the ministry has made a final decision on the application (i.e., the ministry either denied the application, or the ministry undertook and completed the requested review, and delivered a notice of decision to the applicants and the ECO).

When evaluating a ministry’s handling of an application for review that the ministry has decided *not to undertake* (i.e., denied), the ECO considers whether:

- all statutory timelines were met;
- the denial was valid based on *EBR* requirements;
- the ministry’s explanation for its decision was thorough enough for the applicants and the ECO to fully understand the ministry’s rationale for denying the application;
- the ministry responded to/acknowledged the key concerns raised in the application;
- the ministry’s decision was well written, using plain language; and
- despite denying the application, the ministry committed to or undertook any follow-up action, suggested reasonable alternative mechanisms for the applicants to resolve the issue, and/or provided useful information to the applicants.

When evaluating a ministry’s handling of an application for review that the ministry has *undertaken*, the ECO considers whether:

- all statutory timelines were met;
- the ministry responded to/acknowledged the key concerns raised in the application;
- the ministry explained its decision in sufficient detail for the applicants and the ECO to fully understand the ministry’s review process, the outcome of the ministry’s review, and the rationales for the ministry’s conclusions;
- the ministry’s decision was well written, using plain language; and
- if the application was overdue, the ministry kept the applicants and the ECO informed about the status of the review or investigation.

**Ministry Requirements for Applications for Investigation**

Any two residents of Ontario can submit an application to the ECO asking a prescribed ministry to investigate an alleged contravention of a prescribed act, regulation or instrument. Once the application has been received, the ECO will review the application for completeness and forward it to the appropriate ministry within 10 days. Your ministry must then send a letter to the applicants
acknowledging receipt of the application within 20 days of receiving the application.

**Determining Whether the Requested Investigation is Necessary**
The ministry is required to investigate all alleged contraventions raised in an application “to the extent that the minister considers necessary.” In deciding whether the investigation is necessary, section 77 of the *EBR* states that the ministry does not need to conduct an investigation if the minister considers that:

- the application is frivolous or vexatious;
- the alleged contravention is not serious enough to warrant an investigation;
- the alleged contravention is not likely to cause harm to the environment; or
- there is already an ongoing or completed investigation.

**Notice of Decision Not to Investigate**
If the ministry decides that an investigation is not required, the ministry must notify the applicants, the ECO, and the alleged contravenor of the decision within 60 days of receiving the application. The notice of decision must provide a brief statement of the reasons for the decision. If no notice is received within 60 days, the ECO presumes that the investigation is being undertaken.

**Completing the Investigation**
If your ministry has agreed to undertake the requested investigation, the ministry must, within 120 days of receiving the application, either complete the investigation or give the applicants a written estimate of the time required to complete it. The ministry must then either complete the investigation within the estimated time provided, or give the applicants a revised written estimate of the time required to complete it.

When the investigation is completed, the ministry must notify the applicants, the ECO, and the alleged contravenor of the outcome of the investigation within 30 days. This notice must state what action, if any, the ministry has taken, or proposes to take, as a result of the investigation.

**Evaluating the Handling of an Application for Investigation**
The ECO reviews a ministry’s handling of an application for investigation only after the ministry has made a final decision on the application (i.e., the ministry either decided not to investigate, or the ministry undertook and completed the requested investigation, and delivered a notice of decision to the applicants and the ECO).

When evaluating a ministry’s handling of an application for investigation that the ministry has decided not to undertake (i.e., denied), the ECO considers whether:

- all statutory timelines were met;
- the denial was valid based on *EBR* requirements;
• the ministry’s explanation for its decision was thorough enough for the applicants and the ECO to fully understand the ministry’s rationale for denying the application;
• the ministry responded to/acknowledged the key concerns raised in the application;
• the ministry’s decision was well written, using plain language; and
• despite denying the application, the ministry committed to or undertook any follow-up action, suggested reasonable alternative mechanisms for the applicants to resolve the issue, and/or provided useful information to the applicants.

When evaluating a ministry’s handling of an application for investigation that the ministry has undertaken, the ECO considers whether:

• all statutory timelines were met;
• the ministry responded to/acknowledged the key concerns raised in the application;
• the ministry explained its decision in sufficient detail for the applicants and the ECO to fully understand the ministry’s review process, the outcome of the ministry’s review, and the rationales for the ministry’s conclusions; and
• the ministry’s decision was well written, using plain language.

**Ministry Co-operation**

The ECO is required under section 58(2) of the *EBR* to report annually on “whether the ministries affected by this Act have co-operated with requests by the Commissioner for information.” The ECO relies heavily on information that prescribed ministries provide to help us fulfil our mandate.

To evaluate whether prescribed ministries have co-operated with ECO requests for information in a given reporting year, the ECO considers how promptly and thoroughly each prescribed ministry responded to the ECO’s varying requests for:

• data;
• internal documents;
• explanations of ministry positions;
• interpretations of government materials;
• answers to questions;
• briefings or meetings; and
• other information.

The ECO may contact a prescribed ministry’s *EBR* co-ordinator, or ministry staff responsible for program delivery, with such requests for information.
Keeping the *EBR* in Sync

The *EBR* and its regulations must be updated regularly to reflect new ministries, new environmentally significant laws and instruments, and the shuffling of government portfolios. The ECO refers to this process as “keeping the *EBR* in sync.”

Prescribing environmentally significant acts for which prescribed ministries are responsible is important because it ensures that proposals for environmentally significant regulations under those acts are posted on the Environmental Registry, and that instruments under those acts can be classified under the *EBR*. Classifying instruments under the *EBR* is important because it requires ministries to give notice on the Environmental Registry of any proposals and decisions related to those instruments, and to consider comments from the public during their decision-making processes. In some cases, classifying instruments may provide members of the public with the right to seek leave to appeal decisions on those instruments. Prescribed acts and instruments may also be subject to applications for review and investigation.

The ECO reports annually on any progress made during the reporting year to keep the *EBR* in sync, including newly prescribed ministries and newly classified instruments, and amendments to reflect ministry name changes. The ECO also identifies ministries, laws or instruments that we believe should be prescribed under the *EBR*.

If your ministry is responsible for a new act that could have a significant effect on the environment, your ministry should work with the Ministry of the Environment and Climate Change (which is responsible for the *EBR*) to ensure that the act is prescribed, and that any environmentally significant instruments issued under the act are classified under the *EBR*. 
Appendix: Flow Chart for Posting Notices on the Environmental Registry

Are you a prescribed ministry? (Consult O. Reg. 73/94)

- No: You are not subject to the EBR requirements.
- Yes: Could the proposed decision, if implemented, have a significant effect on the environment? (See section 14 of the EBR)
  - No: The proposal is not subject to the EBR.
  - Yes: You must consider the ministry’s Statement of Environmental Values in deciding on this proposal and continue to next step.

Does the EBR require the proposal to be posted on the Environmental Registry? (If it is an act or policy, it is subject to the posting requirements. If it is a regulation, consult O. Reg. 73/94 to see if the governing act is prescribed. If it is an instrument consult O. Reg. 681/94.)

- No: Proposal notice is not required. Consider whether it would be appropriate to post an information notice on the Environmental Registry.
- Yes: Do any of the exception provisions under the EBR apply to this proposal? (Refer to sections 29, 30, 32 and 33 of the EBR)
  - No: Post a proposal notice on the Environmental Registry for public comment.
  - Yes: Post an exception notice on the Environmental Registry, if required.

After the consultation period, consider all comments and post a decision notice on the Environmental Registry.