



Chapter 2

Getting Approvals Right: the MOECC's Risk-Based Approach

Contents

2.0	INTRODUCTION	72
2.1	SHIFTING TO A RISK-BASED FRAMEWORK: AN OVERVIEW	73
2.1.1	HOW ACTIVITIES ARE SELECTED FOR THE EASR	75
2.1.2	ONCE AN EASR ACTIVITY IS SELECTED...	77
2.1.3	AN EVOLVING FRAMEWORK: THE EASR REGULATION FOR ACTIVITIES WITH AIR EMISSIONS	79
2.2	COMPLIANCE AND ENFORCEMENT	80
2.2.1	THE MOECC'S COMPLIANCE AND ENFORCEMENT STRATEGY FOR THE EASR	80
2.2.2	COMPLIANCE MONITORING AND ENFORCEMENT ACTION FOR EASR-REGULATED FACILITIES TO DATE	81
2.2.3	COMPLIANCE AND ENFORCEMENT OF ENVIRONMENTAL COMPLIANCE APPROVALS	84
2.3	THE RESULTS OF THE SHIFT TO A RISK-BASED APPROACH	84
2.3.1	EFFICIENCIES FOR BUSINESS AND GOVERNMENT	84
2.3.2	FOCUS ON PROTECTING THE ENVIRONMENT	86
2.3.3	SOME LOSSES, SOME GAINS FOR <i>EBR</i> RIGHTS, TRANSPARENCY AND ACCESS TO INFORMATION	89
2.4	CONCLUSION: THE MOECC'S RISK-BASED APPROACH DELIVERS PROMISED RESULTS	93

The MOECC's approvals program is a good risk-based approach.

Abstract

The Ministry of the Environment and Climate Change's (MOECC) 2011 launch of an online permit-by-rule system (the "EASR") to regulate low-risk environmental activities has, so far, proven to be a good move. The number of applications for individual approvals is going down, reducing the ministry's approval workload and saving time and money for businesses – a key driver of approvals modernization. More significantly, the shift to the EASR has brought many facilities that were previously operating outside environmental laws under regulatory oversight, and made EASR registrants subject to up-to-date environmental standards. It has also levelled the playing field for competitors, making all EASR registrants in a sector subject to the same rules.

Further, the MOECC has developed a sound compliance and enforcement strategy for EASRs that, if maintained, should motivate registrants to follow the rules. Some

opportunities for public participation have been lost such as the right to comment on individual approvals for EASR-regulated facilities. However, the public has gained the right to help shape operating requirements for each EASR-regulated sector, potentially raising the bar for all facilities. Transparency around environmental approvals has also improved overall.

A key benefit of introducing the EASR was to enable the MOECC to focus more of its resources on higher risk activities; now it needs to do just that.

To further strengthen its environmental approvals framework, the ministry must: update older environmental compliance approvals for the higher-risk activities that will not transition to the EASR framework; account for the cumulative effects of all regulated facilities; and improve the Access Environment website upon which all EASR registrations and other environmental approvals are posted.

2.0 Introduction

Ontario has recently transformed the way that it regulates many activities that may be harmful to the environment.

In the past, each person or organization engaging in a regulated activity – emitting contaminants to air, handling and storing waste, operating a sewage works, taking water – had to first obtain an individual approval from the Ministry of the Environment and Climate Change (MOECC). The application and approval process was time-consuming for both businesses and ministry staff, costly for businesses, and led to a significant backlog of approval applications. The rules were often uneven, hard to understand and enforce, and became outdated. In short, the old environmental approvals process was not working well.

In 2010, the MOECC started to develop a framework for “modernizing” its environmental approvals. One part of that modernized framework was to transition activities that the ministry deemed to be “low-risk, less-complex or that have standard requirements,” to a new permit-by-rule system. Under the new system, instead of applying for an individual approval, a party wishing to undertake an eligible activity must follow a standard set of operating requirements for that activity by registering the activity in an online database known as the Environmental Activity and Sector Registry (EASR).

The MOECC claims that shifting low-risk activities to the EASR framework reduces cost and delays for organizations wishing to legally engage in regulated activities, and allows the ministry to focus on activities that are unique, complex or pose a greater risk to the environment. The MOECC also says that the EASR levels the playing field for EASR-regulated entities by making everyone subject to the same up-to-date rules. Most importantly, the government maintains that the EASR approach to environmental approvals can be used without reducing environmental protections, and that it provides increased transparency by publishing

THE OLD ENVIRONMENTAL APPROVALS PROCESS WAS NOT WORKING WELL.

information about registered operations on a publicly accessible and searchable website.

But is this true?

When the MOECC first introduced its risk-based approvals framework, the ECO was cautiously optimistic that it had – conceptually, at least – developed a reasonable modernized framework for environmental approvals. However, we had concerns about how the shift would affect the environment; at the time, the scope of activities that the MOECC would choose to regulate using the EASR was unknown, as were the ministry’s plans for enforcing the rules underlying EASR registrations. We also had concerns about the effects on public participation, since an individual registration for an EASR activity would not be subject to public comments and third-party appeal rights the way many individual approvals are under the *Environmental Bill of Rights, 1993*.

With the EASR now fully established, we can evaluate how it has been working in practice. In this report, the ECO provides an update on the risk-based approvals framework and the MOECC’s strategy for enforcing it, and explores three key questions:

1. Has the shift to the EASR yielded the intended efficiencies to business and government?
2. Has the shift come without costs to the environment?
3. How has the shift affected transparency and accountability in environmental decision-making?

In short, was the shift to a more risk-based approach a good move?

2.1 Shifting to a Risk-Based Framework: An Overview

One of the MOECC's core functions is to regulate activities with the potential to harm the environment – in effect, ensuring that their impact on the air, land and water is kept within limits deemed reasonable by the ministry.

Until recently, the MOECC regulated most activities with environmental impacts using the same approach, regardless of the nature of the activity. People or businesses (referred to as “proponents”) had to submit a detailed, individual application package, often including technical studies and reports, to seek approval from the MOECC to engage in a regulated activity. Ministry staff would then undertake a technical review of the application and, if deemed satisfactory, prepare an individualized approval document that, in many cases, included conditions specific to the applicant's business to minimize environmental impacts.

Today, the way an activity is regulated depends on its complexity and level of environmental risk (see *Ontario's Risk-Based Approach to Environmental Approvals* and Figure 1, below). Under this new risk-based approach, the MOECC continues to regulate activities deemed high risk using the more intensive approval process that requires an individual approval – usually an environmental compliance approval (ECA).

Conversely, many low-risk activities are now regulated using a permit-by-rule framework: self-registration on the Environmental Activity and Sector Registry (EASR), subject to standard operating requirements in a regulation. Other low-risk activities are exempt altogether from requiring an approval or registration.

The MOECC also recently created a new category of EASR registration for activities with air emissions.

UNTIL RECENTLY, THE MOECC REGULATED MOST ACTIVITIES WITH ENVIRONMENTAL IMPACTS USING THE SAME APPROACH.

Before registering, proponents of eligible activities must assess their air, noise and odour emissions to verify that their facilities meet specified emissions standards – with sign-off from a licenced engineering practitioner – and then they must file the emissions summaries with their EASR registration. The emissions summaries will be posted online with the EASR confirmation document on Access Environment, accessible to the public.

Despite a long list of ineligible activities,¹ the MOECC anticipates that 50 – 70% of air emitters will be captured. Over 9,000 facilities are believed to be eligible to register. For a more detailed discussion of the EASR regulation for activities with air emissions, see *An Evolving Framework: The EASR Regulation for Activities With Air Emissions*, below.

TODAY, THE WAY AN ACTIVITY IS REGULATED DEPENDS ON ITS COMPLEXITY AND LEVEL OF ENVIRONMENTAL RISK.

Ontario's Risk-Based Approach to Environmental Approvals

Regulating activities that may harm the environment is one of the MOECC's core responsibilities. Based on the ministry's analysis of the risk associated with an activity, an activity may now be regulated in one of four ways:

1. Exempt from Approval (lowest risk activities)

- Activities in this category do not require registration or approval, provided proponents comply with specified eligibility criteria
- The MOECC says that it will audit facilities that haven't registered or applied for an ECA to ensure that they are complying with the exemption rules
- Examples include: comfort heating (HVAC) systems; standby power systems²

2. EASR Registration with Rules Only

Proponents of activities in this category must register and follow operating conditions set out in a regulation

- Examples include: automotive refinishing; commercial printing

3. EASR Registration with Assessment

Before registering, proponents of activities in this category must complete modelling of air emissions, and evaluate potential odour and/or noise impacts

- Proponents must submit summaries of their air assessments, and, if applicable, noise assessments, with their EASR registration, and must operate within the parameters set out in those summaries
- Examples include: general manufacturing activities such as food processing and cabinet making

4. Full Environmental Compliance Approval (highest risk activities)

Activities/sectors in this category are not eligible for EASR registration

- Proponents must apply for an individual ECA and associated assessments
- Examples include: chemical manufacturing; petroleum refineries; waste disposal

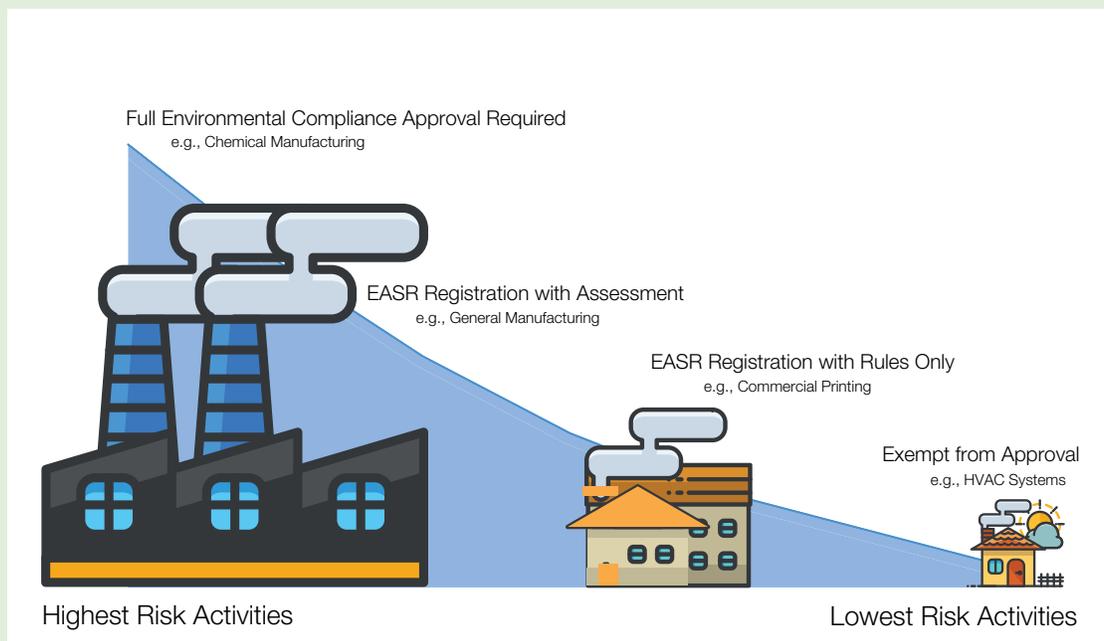


Figure 1. Ontario's risk-based approach to environmental approvals.

2.1.1 How Activities are Selected for the EASR

There are no statutory criteria regarding what types of activities can or should be regulated using the EASR. However, the MOECC has developed a detailed multi-step process for identifying and vetting potential EASR candidate activities and sectors:

1. **Internal screening by ministry staff** to determine whether a candidate activity is appropriate for transitioning to the EASR; for an activity to be brought forward, the ministry must conclude three things:
 - a. The potential emissions to the environment can be categorized and have minimal impacts;
 - b. Businesses engaged in the activity all use routine or standard processes; and
 - c. There is a “sufficient number” of businesses engaging in the activity that would be captured by an EASR regulation;³
2. **Preparing a technical discussion paper** that summarizes the environmental impacts of the activity and proposes draft eligibility criteria and operating requirements to lessen those impacts;
3. **Consulting the public** on the MOECC's proposal to add the activity to the EASR (with the technical discussion paper posted on the Environmental Registry);⁴ and
4. If, based on the public's comments and the ministry's technical analysis, the ministry chooses to proceed with adding the activity to the EASR framework, **consulting the public** on a draft regulation that sets out both eligibility requirements and operating requirements for EASR registrants for that activity.⁵

If, after considering the public's comments on the draft regulation, the ministry decides to go ahead with its proposal, the regulation is finalized and filed, and the activity is officially subject to EASR registration.

TO DATE, THE MOECC HAS FOLLOWED ITS MULTI-STEP PROCESS FOR EACH SECTOR OR ACTIVITY PROPOSED FOR TRANSITION TO THE EASR.

Proponents that already have an ECA for an activity that subsequently became regulated through the EASR have a prescribed amount of time (in many cases, 10 years) to switch over to EASR registration before their ECA ceases to apply.

To date, the MOECC has followed its multi-step process for each sector or activity proposed for transition to the EASR. When the EASR was introduced in 2011, the ministry initially proposed four activities to be regulated under the EASR system (automotive refinishing; comfort heating in buildings; commercial printing; and stand-by power generation), but ultimately decided to proceed with just three of those activities (commercial printing was not prescribed at that time). Since then, the ministry has periodically added additional activities or groups of activities to the EASR framework.

Activities have also been removed from the EASR; two of the three activities that were originally prescribed for EASR registration – stand-by power systems and comfort heating in buildings – have since been exempt from the requirement to obtain approval altogether. Neither an ECA nor EASR registration is now required for those activities, provided proponents comply with the conditions of the exemption.

For a list of the activities currently prescribed under the EASR framework, see Table 1.

Table 1. Activities Subject to EASR Registration as of June 2017.

Activity	Date Added to the EASR	Details
Automotive refinishing	June 2011	Applies to auto body shop paint spray booths. ECAs cease to apply on October 31, 2021.
Waste management systems	November 2012	Applies to non-hazardous waste transportation systems. ECAs cease to apply on November 18, 2022.
Commercial printing	November 2012	Includes lithographic, screen and digital printing. ECAs cease to apply on November 18, 2022.
Small ground-mounted solar facilities	November 2012	Only applies to solar facilities between 10 and 500 kilowatts that were not already approved under an ECA or REA when O. Reg. 350/12 came into effect.
End-of-life vehicle processing	March 2016	This is a sector that was not explicitly regulated previously. Operating requirements apply as of September 30, 2017. Any applicable ECAs cease to apply on March 30, 2018.
Construction-related water taking	March 2016	Applies to water taking for road construction purposes and for construction site de-watering. Permits to take water issued before March 29, 2016 continue until they expire. ⁶
Air emissions	January 2017	This is the only “EASR with assessment.” ECAs cease to apply on January 31, 2027.

When an Activity is Not a Good Fit

The fact that the MOECC has identified an activity as an EASR candidate does not mean that a transition to the EASR system is a *fait accompli*. The ministry has opted to withdraw several proposed EASR candidates, following public consultation on the Environmental Registry. For example, concrete product manufacturing, landfill gas power generation facilities, on-farm anaerobic digestion and hazardous waste transportation systems have all been proposed as EASR candidates and then withdrawn, for various reasons. Those activities continue to require an individual ECA.

Similarly, even after an activity has been selected for EASR registration, the MOECC has made changes to proposed eligibility and operating requirements in response to stakeholder concerns. For example, the ministry removed cadmium and chrome stripping from eligibility for air emissions EASR registration after commenters indicated that those activities present too high a risk to the environment. Likewise, the MOECC made amendments to the operating requirements for the controversial EASR for construction-related water taking in response to public concerns about discharging water to land in wellhead protection areas.

2.1.2 Once an EASR Activity is Selected...

If an activity is selected to be regulated by EASR registration, proponents that meet the eligibility requirements must register their activity through the EASR website (which can be completed through the ServiceOntario webpage) by the prescribed deadline,⁷ and pay a one-time fee to the MOECC.⁸

Once the MOECC provides electronic confirmation of an EASR registration, the proponent may commence operations, provided they comply with all requirements

set out in the relevant regulation.⁹ The regulatory requirements, which are customized to the activity or sector in question and include such things as design requirements, pollution control measures and best management practices, are intended to protect the environment and human health from the effects of the registered activity. The MOECC says that EASR operating requirements are generally equivalent to the environmental standards implemented in current ECAs. For an example of EASR operating requirements, see Figure 2.

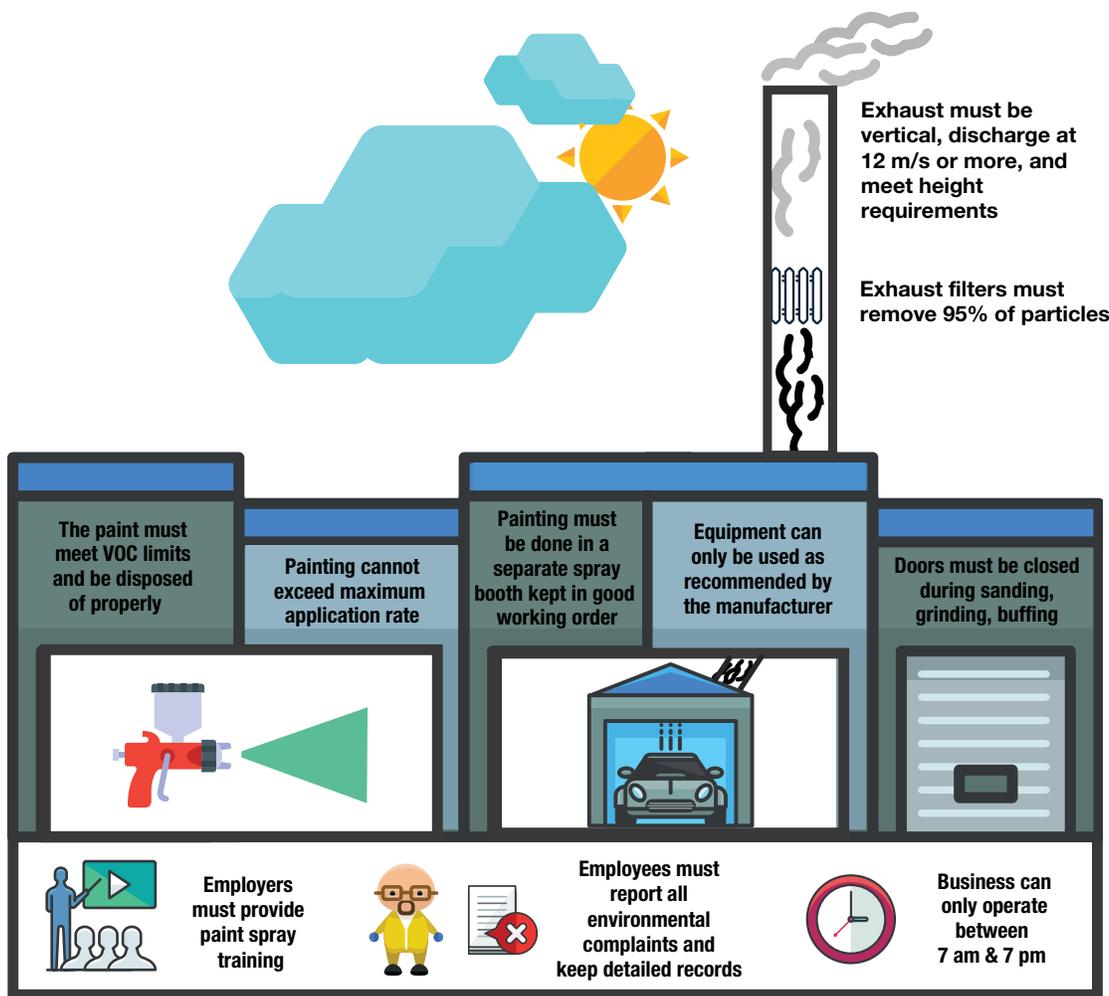


Figure 2. EASR Operating Requirements for Auto-Body Shop Paint Spray Booths.

THE MOECC SAYS THAT EASR OPERATING REQUIREMENTS ARE GENERALLY EQUIVALENT TO THE ENVIRONMENTAL STANDARDS IMPLEMENTED IN CURRENT ENVIRONMENTAL COMPLIANCE APPROVALS.

If the EASR regulation is amended to change operating requirements, proponents must comply with the updated regulation. This ensures that all EASR registrants are subject to the most up-to-date requirements regardless of when they registered. As of the end of June 2017, there were over 2,400 registrations for the seven current EASR-regulated activities (see Figure 3). Over 3,300 additional registrations for standby power systems and comfort heating systems no longer have legal effect, as those activities have now been exempt from requiring approval. Based on numbers supplied by the MOECC, the ECO estimates that EASR registrations (including those for the now-exempt activities) have replaced approximately 2,800 ECAs previously held by those registrants.

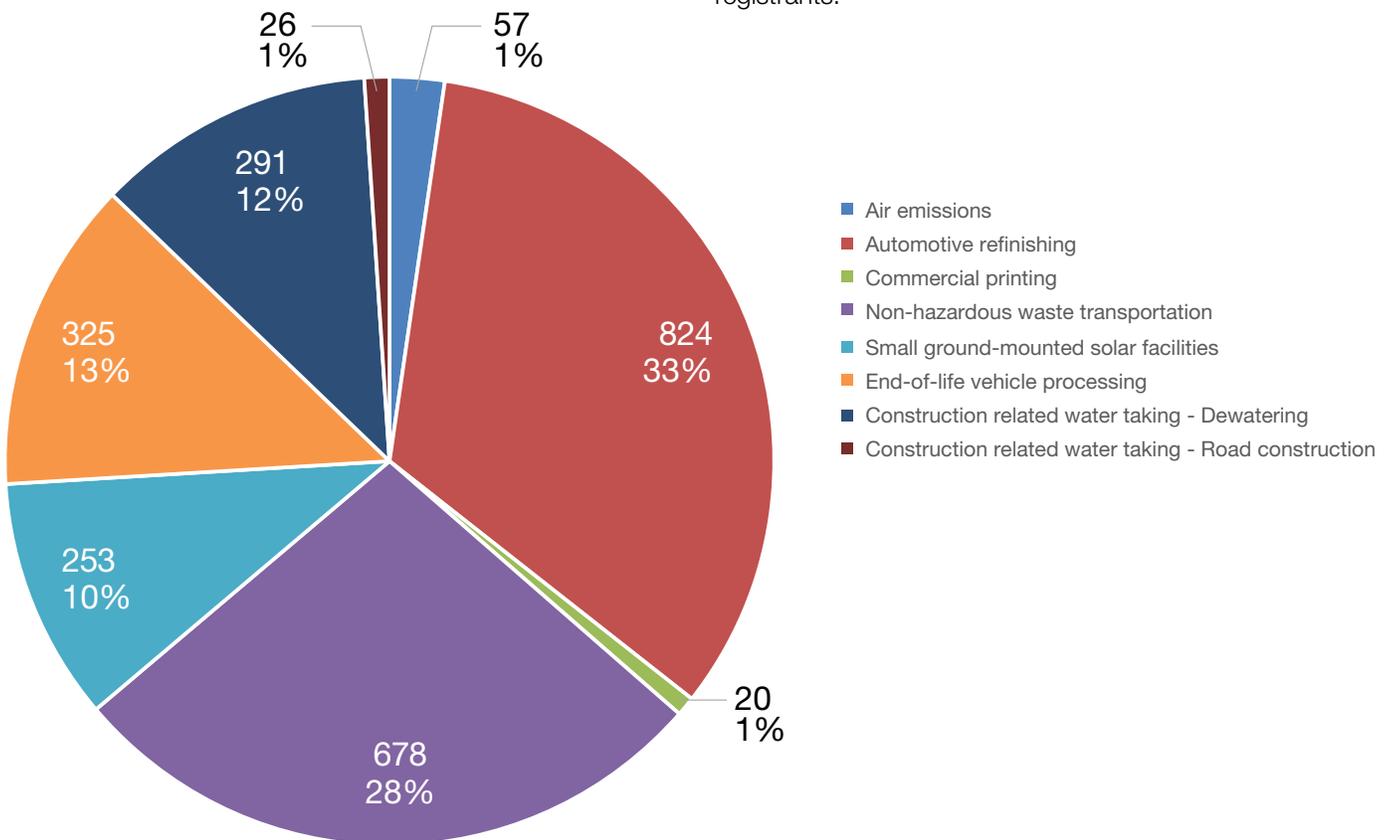


Figure 3. Numbers and percentages of registrations for current EASR-regulated activities as of the end of June 2017.

The public can search for and view details of all EASR registrations on the MOECC's Access Environment website (accessenvironment.ene.gov.on.ca/AEWeb/ae/GoSearch.action).

2.1.3 An Evolving Framework: The EASR Regulation for Activities With Air Emissions

The MOECC's proposal to regulate many activities with air emissions using the EASR – introducing an emissions assessment component as a condition of registration – was a game-changer. It represented a significant departure from the MOECC's original characterization of the EASR framework as a way to regulate activities that have predictable impacts and that can be regulated with standard requirements. Not all stakeholders were happy with the evolution of the EASR from a strict permit-by-rule framework to an “EASR with assessment” approach.

Some Argue it is Too Onerous

Some proponents of eligible activities have complained that, contrary to the intent of permit-by-rule, the requirements for registering are *more* onerous and costly than operating under an ECA. This is because it requires up-front assessment of air, noise and odour emissions, including Emission Summary and Dispersion Modelling (ESDM) reports and supplements,¹⁰ noise reports, and odour screening reports, which must also be updated every 10 years.¹¹ These stakeholders anticipate that the requirement to retain a licenced engineering practitioner to sign off on the required assessments will add significant costs to the approvals process. Some challenged the need for a licenced engineer to do this work, asserting that other types of environmental professionals are equally qualified.

Others Worry It Is Not Protective Enough

Conversely, some environmental non-governmental organizations opposed it altogether, arguing that the EASR was intended to apply to low-risk activities with predictable impacts that could be regulated by pre-set rules. They argued that the need to evaluate

**THE “EASR WITH ASSESSMENT”
APPROACH TO AIR EMISSIONS IS
A REASONABLE WAY TO REGULATE
LOW-RISK FACILITIES WITH AIR
EMISSIONS.**

an individual facility's emissions to determine whether they would cause an adverse effect should disqualify that activity from the EASR process. Commenters also maintained that the determination about whether the discharge of contaminants has the potential to cause adverse effects should be made by the MOECC, and not outsourced to an engineering practitioner.

A Reasonable Approach... Provided There's Good Enforcement

The “EASR with assessment” approach to air emissions is a reasonable way to regulate low-risk facilities with air emissions; the requirement to assess air, noise and odour emissions prior to registering provides additional safeguards to ensure that facilities will be able to meet the applicable standards once they have registered in the EASR. Registrants will then be obligated to operate within the parameters set out in the required assessments.

The requirement for a qualified professional to sign off on the reports provides an additional safeguard. Since ministry engineers will no longer undertake a detailed technical review to ensure EASR registrants' operations meet ministry requirements and protect the environment, it is appropriate to require qualified professionals to provide this oversight – and take on the liability for it – instead. To ensure the integrity of this process, the MOECC is working with Professional Engineers Ontario to develop practice standards

for completing air and noise assessments for the EASR. The MOECC also acknowledged the need to make the public aware of complaint and disciplinary processes for professional engineers, to address any poor quality registrations. However, not all engineers may have the necessary training to conduct air emissions monitoring. To protect the public, the MOECC should also require qualified professionals to have appropriate training, competence assurance and sufficient liability insurance.

Finally, while developing the operating requirements for the air emissions EASR registrants, the MOECC created its first-ever standardized odour policy framework to clarify how registrants must address and minimize potential odour emissions. The creation of this policy framework is a welcome benefit. The MOECC told the ECO that it intends to adapt this approach to regulating odour emissions from facilities that require an ECA.

Provided the MOECC applies strong compliance and enforcement measures to this sector, it should ensure that the environment is as protected from these low-risk facilities (representing a significant proportion of the sector) as it would be under an ECA regime. It should also enable the ministry to focus more resources on the smaller pool of heavy emitters and more complex operations that present a greater risk to the environment and human health.

The ECO is disappointed that the ministry provided 10 years for existing approval holders to transition from an ECA to EASR registration – double the time it initially proposed. Five years was an achievable – and not overly burdensome – timeframe within which to bring proponents of many already long-outdated approvals under current standards; a timeframe that would have yielded real environmental benefits that much sooner.

APPROXIMATELY 50% OF ALL EASR REGISTRATIONS ARE FOR FACILITIES THAT WERE PREVIOUSLY OPERATING WITHOUT ANY APPROVALS.

2.2 Compliance and Enforcement

A permit-by-rule system only works if the participants actually follow the rules. When the MOECC first introduced the EASR in 2011, the ECO noted that a strong, visible inspection program is needed for a self-regulation system such as the EASR. The MOECC's inspection rate at the time – just 5% of regulated facilities per year – as well as the ministry's apparent lack of plans or procedures for inspecting EASR registrations, did not inspire confidence.

In 2014, the ECO raised concerns about the effectiveness of the MOECC's approach for compliance and enforcement of Ontario's environmental laws and regulations. In particular, we concluded that the ministry's "soft" enforcement approach was too often failing to bring violators into compliance within a reasonable timeframe, and that a credible threat of stronger and more punitive enforcement measures was needed to motivate compliance. The province's Auditor General voiced similar concerns in her 2016 Annual Report.

2.2.1 The MOECC's Compliance and Enforcement Strategy for the EASR

Since the ECO voiced our concerns, the MOECC has developed a compliance and enforcement strategy that is tailored to address the unique characteristics of each EASR-regulated activity or sector.

The MOECC's new compliance and enforcement strategy for the EASR takes a sector-based approach, rather than focusing just on entities that have already registered. This approach enables the ministry to identify facilities that are eligible for EASR registration but have not yet registered. It also identifies facilities operating without any approvals that are ineligible for EASR registration but should have an ECA. The MOECC reports that this approach has resulted in

many existing facilities being brought under ministry oversight for the first time; in fact, approximately 50% of all EASR registrations are for facilities that were previously operating without any approvals.

The ministry's strategy includes both proactive and responsive approaches to compliance and enforcement. Proactive approaches include:

- **Education and outreach/communicate for compliance:** As a first step, the MOECC may send letters to all known facilities in a newly regulated sector, to help facilities determine what compliance actions are required of them. For example, the MOECC sent outreach letters to over 1,000 known end-of-life vehicle waste disposal sites, with a link to an online survey for self-assessment, before the deadline for EASR registration for that sector. The ministry followed up with a second outreach letter to over 500 facilities that had neither registered for the EASR nor completed the survey.
- **Desktop audits:** Desktop audits are compliance reviews that MOECC staff conduct without a site visit or inspection. Desktop audits evaluate compliance with some (but not all) EASR requirements. The MOECC has told the ECO that it prioritizes review of facilities that are closer to sensitive receptors.¹²
- **Inspections:** Depending on the results of an audit, a facility may be referred for an inspection.¹³ The ministry may also conduct planned proactive inspections that are not the result of an audit. An inspection involves a visit to the facility by MOECC staff to determine whether the facility is complying with *all* eligibility and operating requirements of the EASR (i.e., not just those reviewed during the audit).

The MOECC's responsive approach focuses on responding to reported incidents, concerns or complaints from the public, whether received through the MOECC's Spills Action Centre, local district offices or reported by registered businesses themselves. EASR-regulated facilities must report any environmentally related public complaints to the MOECC, in most cases within two

business days. All regulated facilities also have a separate, pre-existing legislative duty to immediately report to the MOECC any spills of pollutants, and any discharges of contaminants that exceed permitted levels or that cause or may cause an adverse effect.

The MOECC has developed guidance materials for ministry staff that set out distinct steps for various compliance activities specific to EASR-regulated sectors. The ministry may address non-compliance a number of different ways:

- Voluntary abatement;
- Provincial officer's orders;
- Director's orders;
- Referral for investigation (which could lead to a prosecution and conviction); or
- Removal or suspension of EASR registration (requiring a Director's order¹⁴).

Environmental Officers must follow the MOECC's general compliance policy¹⁵ when determining how to address non-compliance issues.

2.2.2 Compliance Monitoring and Enforcement Action for EASR-Regulated Facilities to Date

As of April 2017, the MOECC had conducted over 2,900 audits and/or inspections of facilities in EASR sectors (registered and non-registered).¹⁶ Total audit/inspection rates of EASR-registered facilities by sector range from 13% (for end-of-life vehicle processing) to 37% (for automotive refinishing), with an average audit/inspection rate of almost 25% of registered facilities (see Figure 4).

THE MOECC HAS CONDUCTED OVER 2,900 AUDITS AND/OR INSPECTIONS OF FACILITIES IN EASR SECTORS.

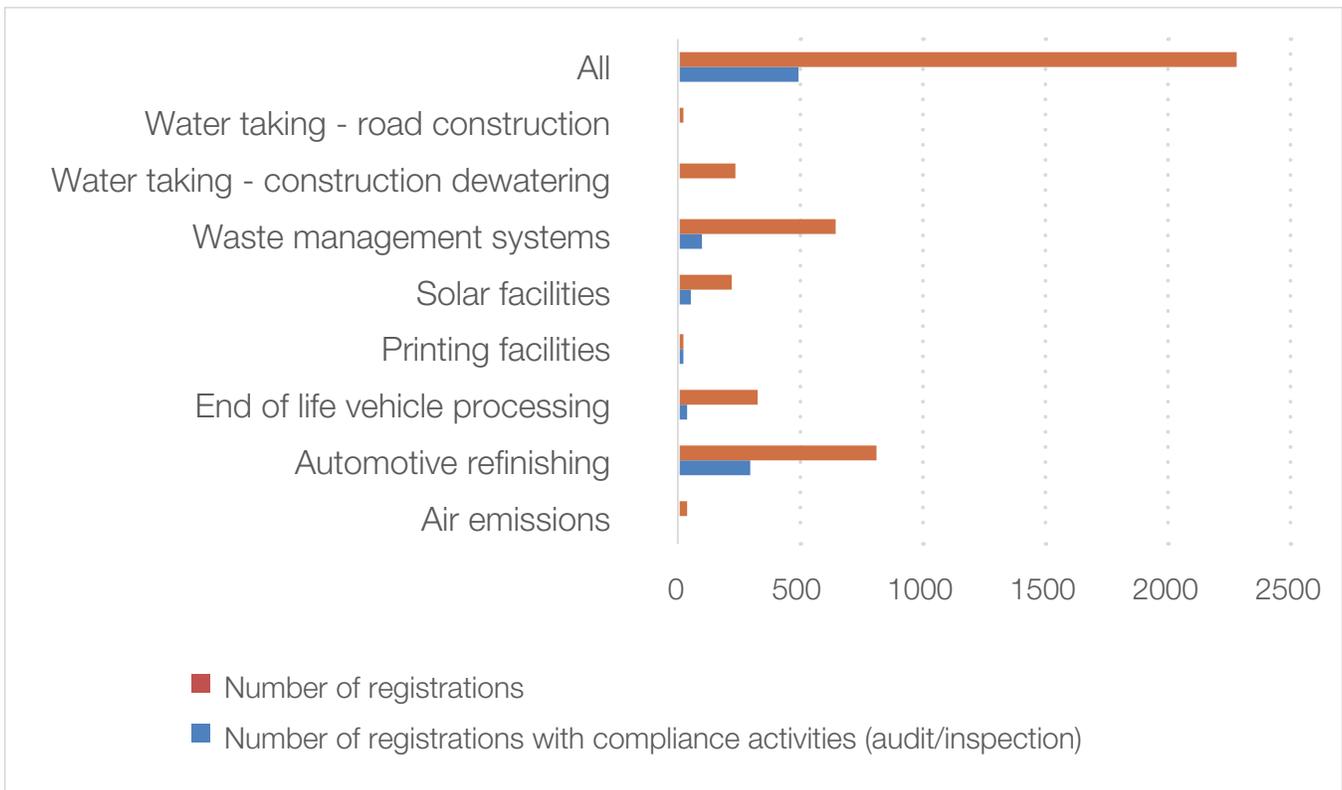


Figure 4. Number of registrations by EASR sector, and number of registrations by sector that have been subject to compliance activities (i.e., desktop audit and/or site inspection) as of May 2017 (if a facility was subject to an audit and an inspection, this was counted as a single compliance activity). Note that numbers for standby power systems and comfort heating systems are not included as they are no longer eligible for EASR registration. No data is available yet on compliance activities for air emissions or water taking.

Source: Data provided to the ECO by the Ministry of the Environment and Climate Change on May 3, 2017.

THE MINISTRY REPORTS THAT IT HAS ISSUED OVER 1,500 COMPLIANCE INSTRUMENTS.

As a result of the MOECC's audits and inspections of both EASR-registered facilities and non-registered facilities in EASR sectors (i.e., facilities that likely should be registered in the EASR), as of May 2017 the ministry reports that it had issued over 1,500 compliance instruments.¹⁷ These include: 696 warnings; 475 letters/notices of violation; 199 provincial officer orders; a Director's order; 6 referrals to the ministry's Investigations and Enforcement Branch (which has the

power to lay charges); and 316 tickets. About 65% of the instruments to date have been warnings or letters/notices of violations, and almost 90% of all instruments related to non-hazardous waste vehicle inspections (a subset of the waste management EASR) (see Figure 5).

As of May 2017 there have been six EASR-related convictions. The MOECC has also issued 10 orders removing registrations from the EASR (i.e., requiring the proponent to stop operating or obtain an ECA).

THERE HAVE BEEN SIX EASR-RELATED CONVICTIONS.

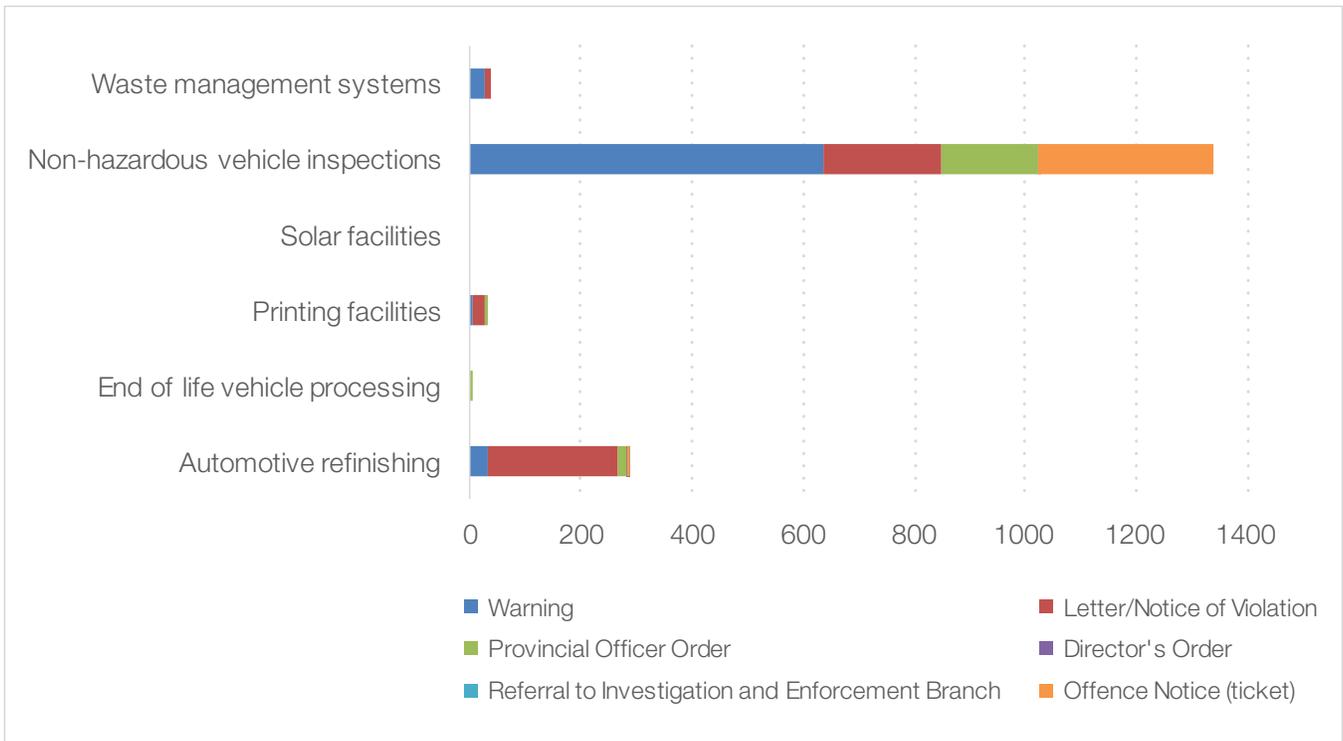


Figure 5. Compliance instruments issued as of May 2017 to proponents of facilities in EASR sectors (registered and non-registered), by compliance instrument type and sector (not including water taking or air emissions, for which there is no data available yet).

Source: Data provided to the ECO by the Ministry of the Environment and Climate Change on May 3, 2017.

The MOECC has noted that compliance issues are more frequent with “new captures”(i.e., facilities that did not have an ECA and were not under government oversight before registering in the EASR). Some compliance issues are administrative, such as record keeping requirements, and may not present a direct risk to the environment. Because approximately half of all EASR registrants are new captures who may not be familiar with regulatory requirements, the ministry acknowledges the need for strong education and outreach initiatives even after facilities have completed EASR registration.

The MOECC has stated that, going forward, it will evaluate options for improving the transparency of the compliance process, such as making its sector-

THE MINISTRY ACKNOWLEDGES THE NEED FOR STRONG EDUCATION AND OUTREACH INITIATIVES.

specific compliance strategies and audit/investigation findings available to the public. It will also ensure public availability of information about how to make a complaint about an EASR-registered facility, and the ministry’s procedures for responding to such complaints.

A Case Study: EASR Compliance and the Automotive Refinishing Sector

In 2015/2016, the MOECC assessed EASR compliance of 106 facilities in the automotive refinishing sector within a selected region.

Of the 106 facilities assessed, 83 were identified as potentially non-compliant. After follow-up by the MOECC, including inspections of 68 of those 83 facilities:

- 2 were found to be in compliance at the time of inspection;
- 72 had complied as of October 2016;
- 8 were working towards compliance as of October 2016; and
- 1 facility was no longer in operation.

The high rate of non-compliance initially identified by the MOECC – and the encouraging results of the MOECC’s compliance actions – reinforce the importance of maintaining a strong compliance and enforcement strategy to ensure that EASR-sector facilities follow the rules, and, consequently, that the environment is being protected.

2.2.3 Compliance and Enforcement of Environmental Compliance Approvals

As additional government resources become available through the transition of low-risk activities to the EASR, the theory behind a risk-based approach is that the resulting freed-up resources should be redirected towards the higher-risk activities. These additional resources should be focused not only on reviewing ECA applications, but also on ensuring and enforcing compliance of the high-risk activities with their ECAs.

The MOECC informed the ECO that the frequency of inspections and level of enforcement of existing ECAs has not changed since the introduction of the EASR.

THE FREQUENCY OF INSPECTIONS AND LEVEL OF ENFORCEMENT OF EXISTING ENVIRONMENTAL COMPLIANCE APPROVALS HAS NOT CHANGED.

However, the ministry reported that it is enhancing its compliance and enforcement approach to ECA facilities by integrating risk assessment into its decision-making/planning regimen. The ministry stated that it has undertaken a comprehensive compliance risk assessment exercise that has been integrated into its decision-making/planning regimen, which includes identifying and assessing risks related to emitters operating with and without appropriate environmental approvals.

2.3 The Results of the Shift to a Risk-Based Approach

In this section, the ECO tests the MOECC’s assertions about the benefits of the EASR. Is it achieving efficiencies for government and business without sacrificing environmental protection? Has it really increased transparency and access to information?

2.3.1 Efficiencies for Business and Government

The ECO has found that, as intended, the EASR approach is creating efficiencies for both business and government, by:

- playing a role in reducing wait times to obtain environmental approvals, and allowing the MOECC to focus on the most complex and high-risk activities;
- reducing approval costs associated with EASR activities; and
- levelling the playing field and creating certainty by requiring all proponents of an EASR activity to follow the same up-to-date rules.

Reducing Approval Wait Times

In its 2015 Fall Economic Statement, the Ontario government committed to: reduce, by the fall of 2017, the amount of time taken to review air and noise ECAs by at least 50%; and implement a one-year service standard for reaching a decision on higher-risk ECA applications received after 2017. The MOECC's multi-pronged approach to fulfilling these commitments includes:

- creating the system for air emissions EASR registrants, which will shift more than 50% of proponents with air and noise emissions from the ECA process to the EASR, allowing the ministry to “more quickly assess activities with a more complex, higher risk profile”;
- engaging nine additional engineers to help review the existing backlog of approval applications; and
- developing a more efficient process for screening approval applications before forwarding them for technical review (i.e., ensuring applications are complete).

The MOECC reports that wait times for air and noise ECAs have already decreased from an average of 720 days in fall 2015 to an average of 400 days as of May

THE NUMBER OF APPLICATIONS – AS WELL AS WAIT TIMES FOR APPROVAL – WILL DECREASE FURTHER AS MORE PROPONENTS REGISTER FOR AIR EMISSIONS.

2017; and 76% of applications for air and noise ECAs received in December 2015 were completed in fewer than 360 days (i.e., before December 31, 2016). While it is encouraging to at last see some improvement, these wait times are still much too long. Figure 6, below, shows that the number of air and noise approval applications more than one year old, as well as the overall number of air and noise applications under ministry review at one time, declined between April 2016 and April 2017.

The average wait time for all types of ECAs combined actually went up for the first few years after the EASR was introduced, climbing from 200 days in 2011 to 350 days in 2015 and 2016 – perhaps due to the initial ministry resources required to get the EASR program

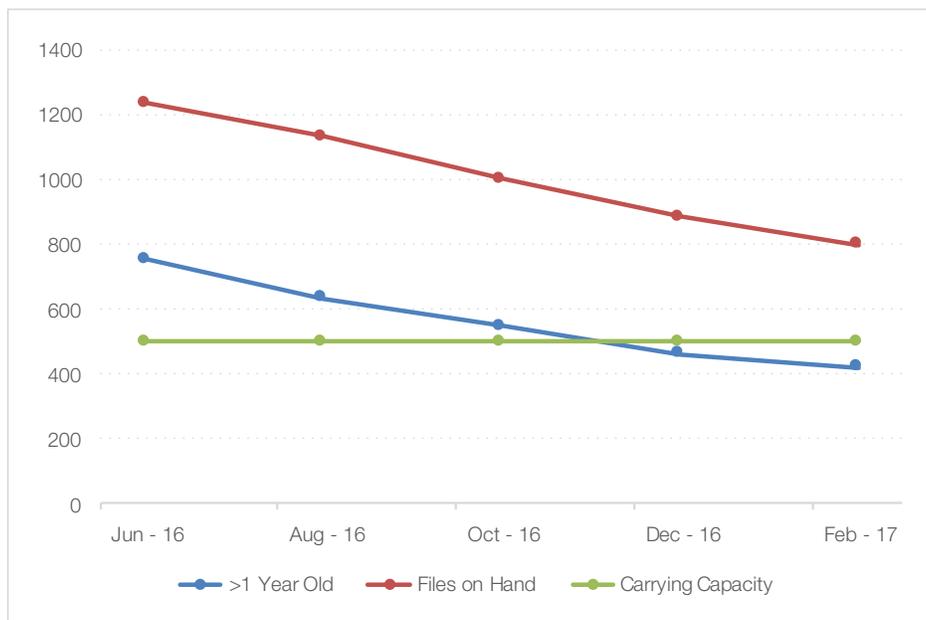


Figure 6. Numbers of applications for air and noise approvals under review by the MOECC, April 2016 – April 2017. “Carrying capacity” refers to the number of applications that the ministry is equipped to review at any given time.

Source: Ministry of the Environment and Climate Change.

established and running. However, this number has started to decline in 2017, down to 275 days at the end of March. The average number of applications for ECAs of all types received by the MOECC per month is also on the decline, down to 275 at the end of March 2017 from 383 in 2011.

The ministry anticipates that the number of applications – as well as wait times for approval – will decrease further as more proponents register for air emissions. With fewer applications to review, the MOECC should be able to spend more time and resources on the most complex and high-risk activities that still require ECAs.

NEWLY-CAPTURED FACILITIES ARE NOW MORE LIKELY TO OPERATE WITHIN THE ENVIRONMENTAL STANDARDS SET BY THE MINISTRY, POTENTIALLY DIMINISHING THEIR IMPACT ON THE ENVIRONMENT.

Reducing Costs

From businesses' perspective, the time and cost savings of registering in the EASR instead of applying for an ECA have been described as "very significant."

The MOECC reports that the cost savings to proponents of EASR-registered activities range from an estimated \$1,000 for waste management systems to an estimated \$100,000 for solar facilities. In total, the MOECC estimates that, as of April 2017, total cost savings to business attributable to using EASR registrations instead of ECAs amounted to almost \$45 million.¹⁸

Meanwhile, as of April 2017, revenue from EASR registration fees collected by the government totalled over \$4 million, helping the ministry recover its costs for running the program.¹⁹

Levelling the Playing Field

The MOECC takes the position that shifting to a risk-based framework, including the EASR, is not only about reducing costs and delays for businesses; it is also a way to increase predictability in environmental approvals and create a more level playing field, which in some cases also increases environmental protections. The ECO agrees.

Under the ECA process, proponents within the same sector may be required to adhere to terms and conditions that are customized to their facilities' particular operations. While this approach can be more protective of the environment, that is not necessarily always the case. Differences between ECAs within a sector may also depend on where, when and by whom the approval is issued, contributing to an uneven playing field.

The EASR framework eliminates opportunities to customize approvals with facility-specific conditions designed to protect the environment. However, by limiting EASR eligibility to activities and sectors that are already known to be routine, low risk, or generally subject to standard conditions, the ministry has levelled the playing field for those sectors, creating certainty for proponents and the public, while retaining the authority to impose facility-specific – and environmentally protective – conditions on more complex or high-risk activities and sectors through the ECA process.

2.3.2 Focus on Protecting the Environment

The MOECC is adamant that shifting an activity to EASR registration can be done without decreasing environmental protections.

The ECO believes that, as intended, environmental protections are being maintained or enhanced under the risk-based approach to environmental approvals in several ways:

- the MOECC is now overseeing more facilities overall;
- all EASR registrants are subject to up-to-date environmental standards;

- faster (but still not fast enough) approval times for ECA amendments that benefit the environment; and
- increased data collection can inform better policy-making.

Oversight of More Facilities

The ECO found that one of the most conclusive results of introducing the EASR is that many new proponents have been brought under ministry oversight for the first time. As noted above, the MOECC reports that approximately 50% of EASR registrations are for “new capture” facilities that previously operated without the required approvals, and which may or may not have been operating within acceptable standards prior to registration. Because of the EASR – and the ministry’s associated compliance and enforcement strategy for the EASR – those newly-captured facilities are now more likely to operate within the environmental standards set by the ministry, potentially diminishing their impact on the environment.

Not only is the EASR bringing new proponents under the MOECC’s oversight, but it has brought in a whole new sector that was previously unregulated: end-of-life vehicle processing. End-of-life vehicle processing includes dismantling and depolluting retired vehicles before crushing and shredding them, and can involve the removal of a number of contaminants such as fuels, lubricating oils, coolant fluids, refrigerants, batteries and mercury-containing parts.

Before the end-of-life vehicle sector was prescribed for EASR registration in 2016, there were no explicit regulatory requirements for the safe removal and management of contaminants from end-of-life vehicles, even though the MOECC had concerns about improper waste management associated with end-of-life vehicle processing. Now that proponents must register end-of-life vehicle waste disposal sites in the EASR, the MOECC can require that these previously unregulated actors operate within standards that minimize environmental impacts.

The implications of the MOECC’s new oversight of this sector are not insignificant; according to the MOECC, approximately 600,000 vehicles are retired each year in Ontario, creating over 150,000 tonnes of waste that can and should be safely diverted from landfill.

FACILITIES WITH OLDER ECAS TRANSITIONING TO EASR REGISTRATION WILL LIKELY RESULT IN SOME FACILITIES OPERATING UNDER STRICTER CONDITIONS.

All EASR Registrants are Subject to Current Environmental Standards

One problem with individual ECAs is that the terms and conditions of approval – which can vary from one ECA to another – can become outdated. Because ECAs do not have to include expiry dates or review requirements, facilities with older ECAs can legally operate indefinitely under conditions that may not meet today’s environmental standards. In 2016, the Auditor General of Ontario reported that there were over 200,000 environmental compliance approvals issued more than 15 years ago that have not been updated to meet current standards or reflect current operations.

Under the EASR, all registered facilities are subject to the same operating conditions, set out in a regulation. The MOECC has the power to amend the regulations to update operating conditions to ensure that EASR-registered facilities are required to operate under the most current standards for environmental protection.

As noted above, the MOECC says that EASR requirements are generally equivalent to the environmental standards implemented in current ECAs. Facilities with older ECAs transitioning to EASR

THE SHIFT FROM AN ECA TO AN EASR REGISTRATION RESULTS IN THE LOSS OF *EBR* RIGHTS WITH RESPECT TO AN INDIVIDUAL PROPONENT'S ACTIVITY.

registration will likely result in some facilities operating under stricter conditions. However, because of the long deadlines for proponents to transition existing ECAs to EASR registration (in most cases, 10 years from the date the activity is first prescribed for EASR registration), it could take a long time before the full benefits to the environment of shifting to the EASR are felt.

Faster Approval Times Create Opportunities for Improvements

As noted above, the MOECC is reporting shorter turn-around times for issuing ECAs to higher-risk activities, due in part to the staff time that was freed up by the transition of low-risk activities to the EASR framework.

Often, proponents apply for proposed amendments to existing ECAs to enable them to install new technology or update their processes in ways that will benefit the environment – for example, by improving spill containment infrastructure, or by improving the energy efficiency of equipment. By freeing up ministry time to undertake the necessary technical review of applications faster, proponents should be able to make improvements to their facilities faster as well.

The MOECC has also noted that “a faster review process allows more certainty for businesses, for example, as they plan for investments to upgrade their facilities to reduce greenhouse gas emissions under the cap and trade program.”

Increased Data Collection Can Inform Future Policy-Making

According to the MOECC, the data that it collects from air emissions EASR registrants (i.e., emissions summary tables) can be used across the ministry in developing or refining program initiatives that could improve protections for the environment. In particular, the ministry has noted that the increased data could help it address cumulative effects, air standard setting and contaminants without specified limits (see *Cumulative Effects Not Reflected in Approvals or EASR Regulations*, below).

The MOECC told the ECO that this year it intends to develop a road map for how it will use the data collected from air emissions EASR registrants.

THE POOLED COMMENTS FROM THE PUBLIC, INCLUDING INFORMED EXPERTS, ON THE EASR REGULATION CAN HELP RAISE THE BAR FOR EVERY SINGLE FACILITY.

Cumulative Effects Not Reflected in Approvals or EASR Regulations

The MOECC continues to disregard the potential cumulative effects of regulated activities, whether approved under the individual approval process or permitted by EASR registration. This is a significant gap that, although not specific to the EASR framework, must be noted as an ongoing failure of environmental regulation in Ontario more generally.

THE MOECC CONTINUES TO DISREGARD THE POTENTIAL CUMULATIVE EFFECTS OF REGULATED ACTIVITIES.

The operating conditions for an approved individual facility are intended to prevent that facility's emissions from presenting an unreasonable risk to the environment or human health. But groups of facilities in close proximity to one another may each be permitted to operate without considering the collective effects of their emissions, resulting in heavy emissions – and negative environmental impacts – in that geographic area. Chapter 3 of this report describes the dire case of Aamjiwnaang First Nation's residential community, which is known as an air pollution "hot spot" due to the cumulative effects of air emissions from multiple heavy emitters operating in close proximity to the community.

For years, the ECO has called on the MOECC to account for potential cumulative effects of air emissions (and other environmental impacts) from regulated activities to avoid creating pollution hot spots. Although the ministry reports that they are working on a cumulative effects policy, to date the ministry has set no timeline for finalizing or implementing the policy and continues to regulate facilities in a vacuum – ignoring the presence of any other emitters in the same area.

The ECO is encouraged that the MOECC intends to use the data collected through EASR registrations for development of initiatives to address cumulative effects. The MOECC must prioritize the development of a process for identifying potential cumulative effects of multiple regulated entities on the local environment, and take those effects into account when issuing approvals or enabling EASR registration.

2.3.3 Some Losses, Some Gains for EBR Rights, Transparency and Access to Information.

When the MOECC first created the EASR, environmental non-governmental organizations were strongly opposed to the exclusion of the individual registrations of EASR activities from the public participation and leave to appeal provisions of the *Environmental Bill of Rights, 1993 (EBR)*. They argued that it would undermine the purposes of the act and significantly erode the public's ability to participate in environmental decision making in Ontario.

The ECO shared these concerns, and does not take the loss of any *EBR* rights lightly. However, as discussed above, the MOECC has thus far taken a reasonable approach to selecting activities that can be appropriately regulated using standard eligibility and operating rules instead of individual approvals. Facilities undertaking activities that are high risk or complex – which often garner heightened public concern – remain in the individual approvals stream and continue to be subject to the public's *EBR* rights.

In the context of this risk-based approach to approvals, the ECO believes that the loss of the right to comment on or appeal approvals for individual EASR-regulated facilities is mitigated by:

- the public's new *EBR* right to participate in the development of the underlying policy and sector-wide rules for EASR-regulated facilities; and
- safeguards in the EASR framework that should ensure facility-specific concerns by the public are heard and empower the MOECC to take action.

The EASR process has also improved overall transparency and access to information about environmental approvals.

Public Input Shapes the Rules for Entire Sector Rather than a Site-Specific Approval

The shift from an ECA to an EASR registration results in the loss of *EBR* rights with respect to an individual proponent's activity. Once an activity is transitioned to the EASR, a registered facility undertaking the activity is no longer subject to *EBR* rights.²⁰ This means that the MOECC does not have to give notice on the Environmental Registry or consult the public about a specific EASR registration, as it would have had to about an ECA. Further, there is no right for members of the public to seek leave (i.e., permission) from the Environmental Review Tribunal to appeal a specific EASR registration, the way they would be able to seek leave to appeal a ministry decision about an ECA (for example, of a neighbouring industrial facility's air emissions) posted on the Environmental Registry.

These losses are significant. Input from the local community on facility-specific proposals can alert the MOECC to issues unique to a particular facility or location. And although *EBR* leave to appeal rights are used relatively infrequently – all told, members of the public have exercised this right about 165 times since 1995 in relation to tens of thousands of approvals issued – the right to appeal the ministry's decision on a specific approval for a facility is nevertheless a powerful one.

However, the public has gained new opportunities under the *EBR* to participate on sector-wide rules. The MOECC is required to – and does – use the Environmental Registry to consult the public on both the policy underlying a decision to transition an activity or sector to the EASR, as well as the eligibility and operating requirements for a new EASR regulation. Before the EASR, public comments were confined

to a particular ECA; while this may have yielded improvements for the operating requirements for a specific proponent, it had no effect on the broader standards for every other proponent in that sector. The pooled comments from the public, including informed experts, on the EASR regulation can help shape the operating requirements for an entire sector, addressing the types of public concerns that are often raised on an individual facility basis, and potentially raising the bar for every single facility.

And the public does take these opportunities to comment; all EASR proposals have yielded input from the public, with some of the higher-interest proposals (e.g., short-term water takings; air and noise emissions) prompting dozens of public submissions. Moreover, the MOECC appears to be seriously listening to this public input and making changes as a result (see box above: *When an Activity is Not a Good Fit*).

Unfortunately, some members of the public may not take an interest in these broader proposals unless or until a problem with a facility arises in their own community, when they may not have a right to comment. However, the public may still have some options to raise their concerns, see box below: *What Can the Public Do if Concerned About an EASR-Registered Facility?*

What Can the Public Do if Concerned About an EASR-Registered Facility?

So what can members of the public do when they are concerned about an EASR-registered facility? It depends on the issue.

If the issue is non-compliance with EASR rules, the first step is to collect evidence of the non-compliance and submit it to the facility and/or the MOECC (keeping in mind that the facility is required to report public complaints related to the environment to the ministry). If the facility is persistently failing to comply with EASR requirements and the MOECC has failed or refused to enforce compliance, members of the public can submit an *EBR* application for investigation to the ECO. The application for investigation can ask the MOECC to investigate the alleged non-compliance with the *Environmental Protection Act* and the regulation applicable to that facility.

If, on the other hand, the public is concerned more generally that the requirements for the entire sector are inadequate, they can submit an *EBR* application for review to the ECO. An application for review could ask the MOECC to review the provisions of the regulation applicable to the sector to address the inadequacies that are causing the public's concerns.

In either case, the use of citizen science – the collection or analysis of data about the natural environment by members of the public, usually in collaboration with professional scientists – may help the public gather the evidence needed to persuade the MOECC that a specific facility is not complying with EASR requirements, or that the requirements for a sector are inadequate to protect the environment.

EASR Framework Affords Some Safeguards

The regulatory framework for EASR activities or sectors provides some safeguards to ensure the public's concerns about specific EASR-regulated facilities are heard, and to empower the MOECC to act when it has concerns about a specific facility.

All EASR regulations require registrants to notify the MOECC of any public complaints they receive that are related to the environment; this triggers the MOECC's responsive approach to EASR compliance and enforcement (see Part 2.2 above). For most activities, the MOECC must be notified within two business days after the complaint is made; air emissions EASR registrants must notify the MOECC immediately of any complaints related to the discharge of a contaminant to air.

Further, the MOECC Director has retained the power to require any proponent of an EASR-regulated activity

to obtain a full ECA for the facility instead of registering in the EASR (and therefore remain subject to *EBR* public participation rights).²¹ This broad power could be invoked to prevent a highly contentious facility, or a facility with a history of non-compliance, from transitioning to EASR registration in the first place, or to require an EASR registrant that has been subject to numerous complaints and/or compliance issues to return to a full ECA. However, the MOECC has not shared with the ECO how many times, if any at all, MOECC Directors have exercised this power on their own initiative.²²

Greater Transparency and Access to Information

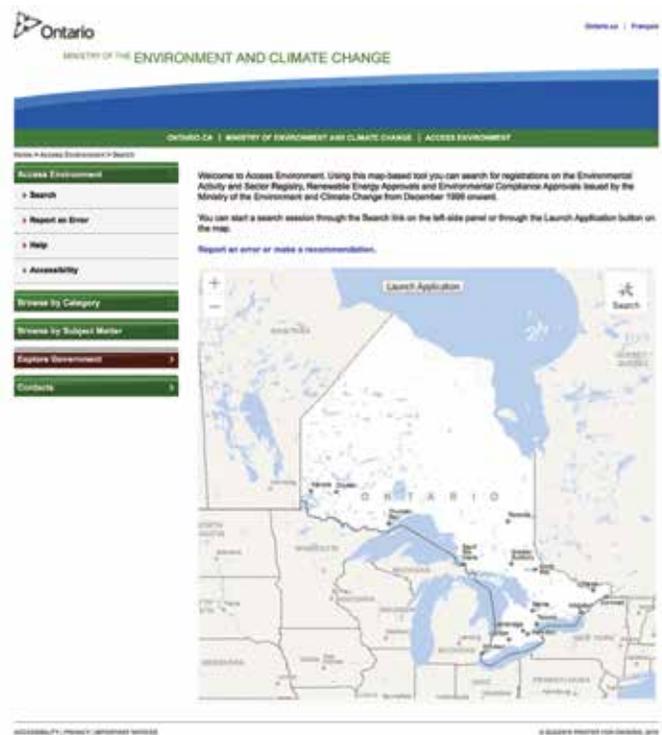
One of the MOECC's goals for approvals modernization was to "improve public transparency through improved reporting and a public information website to access approvals and registration related information."

BEFORE THE EASR WAS INTRODUCED, THERE WAS NO CENTRAL LOCATION – OR EASY WAY – FOR THE PUBLIC TO ACCESS INFORMATION ABOUT, OR COPIES OF, ENVIRONMENTAL APPROVALS.

Before the EASR was introduced, there was no central location – or easy way – for the public to access information about, or copies of, environmental approvals. Notices of many types of approvals (called “instruments”) are posted on the Environmental Registry, but they often include only minimal information, and ministries frequently do not attach copies of the approval documents themselves to the notices (for more information about quality of instrument notices posted on the Environmental Registry, see Chapter 1 of this report). In those cases, members of the public instead had to request copies of approval documents directly from the responsible ministry or, in some cases, resort to making a request under Ontario’s *Freedom of Information and Protection of Privacy Act*.

Further, there is no reliable way to search the Environmental Registry for approval notices on a geographic basis, making it difficult for a member of the public to use the Environmental Registry to find out about environmental approvals issued in a particular community or area of the province.

Today, all EASR registrations and most ECAs are recorded on the MOECC’s Access Environment website (www.accessenvironment.ene.gov.on.ca/AEWeb/ae/GoSearch.action). This map-based website enables the public to search for all EASR registrations, and all ECAs dating back to 1999 (as well as renewable energy approvals), by location. An advanced search function also



MOECC’s Access Environment website

enables searching by: approval number or approval date; business name; address, municipality, MOECC district or source protection area; and approval type or status.

Each EASR registration on Access Environment includes a link to the MOECC’s confirmation of registration document, which includes information about the activity undertaken by the registered facility. For the air emissions EASR registrants, emissions summary tables and, in some cases, acoustic assessment summary tables, are also made publicly available. This type of information may not have been accessible to the public at all under the ECA process.

The MOECC has also committed to making serious occurrences of non-compliance with the EASR public, by making convictions and revocations of EASR registrations publicly available through court bulletins and Access Environment.

Unfortunately, the Access Environment website still needs a lot of work. The ECO has experienced frequent error messages and long delays when conducting advanced searches and using the map function, as well as outages of the system altogether. The “help” function does not work.

Access Environment also lacks tools to enable the public to monitor the website for, or receive alerts about, new registrations for a specific activity or geographic location. Unlike the Environmental Registry, Access Environment is not even set up to display new registrations as they are added. Further, the assessment documents that accompany air emissions EASR registrations are unclearly and inconsistently labelled, which could make it difficult for a member of the public to find what they are looking for.

UNDER THE EASR FRAMEWORK, ALL PROPONENTS OF AN ACTIVITY OR SECTOR ARE SUBJECT TO THE SAME RULES.

Nevertheless, the public's ability to access all EASR registrations and copies of ECAs and Renewable Energy Approvals on the Access Environment website, as well as conduct geographic searches for approvals, represent a clear improvement in transparency and access to information.

Common, Publicly Available Rules Add Transparency

The EASR framework also increases transparency by establishing predictability about the rules registrants have to follow. Under the ECA process, individual proponents within a sector could be subject to differing, facility-specific terms and conditions. And

unless the MOECC posts copies of issued ECAs on the Environmental Registry (which, as noted above, does not always happen), the public may not be able to readily determine what conditions are imposed on a particular facility. Further, it can be difficult to understand the terms of approval for a specific facility if its ECA has undergone a series of amendments, due to a lack of co-ordination of historical notices posted on the Environmental Registry.

Under the EASR framework, all proponents of an activity or sector are subject to the same rules, which are set out in a publicly available regulation (all EASR regulations can be found on the Ontario government's e-Laws website at ontario.ca/laws). By applying the same rules to all proponents of an activity, the public is better informed about what rules apply to a given facility, and better able to determine whether a facility is operating in compliance with the law.

2.4 Conclusion: The MOECC's Risk-Based Approach Delivers Promised Results

With the MOECC's risk-based approval framework, the ministry has set up a system for regulating activities based on their complexity and level of risk to the environment, reserving the most resource-intensive process – the issuance of individual approvals – for activities that present the highest risk to the environment or are too complex for one-size-fits-all rules.

A risk-based framework should never be used as a justification for underfunding the ministry's approvals program. However, in a world of finite capacity and financial resources, it makes a lot of sense for the MOECC to focus the bulk of its resources on keeping the environment safe from activities that present the greatest risk of harm, while still keeping close watch over other less risky – yet still potentially harmful – activities.

The MOECC has developed a cautious approach to selecting the activities to transition to the EASR framework, with reasonable selection criteria and a public consultation process that works. Moreover, safeguards built into the EASR framework will enable the ministry to keep a specific facility out of the EASR system when a permit-by-rule approach would not be appropriate. The ECO believes that the ministry's approach is working and that, so far, the sectors and activities that have been selected for the EASR seem appropriate. In particular, the new "EASR with assessment" approach applied to the EASR regulation for activities with air emissions, with its additional safeguards to ensure eligible facilities can meet applicable standards, is a reasonable middle ground between a full ECA and a more basic EASR registration.

The ministry must remain vigilant, however, to ensure that eligibility requirements continue to bring appropriate activities into the EASR framework (and leave appropriate activities out). It should also periodically review and evaluate operating requirements to ensure that they remain up to date and protective of the environment; and any updates should be accompanied by strong outreach efforts to ensure EASR registrants are informed of changes to the rules applicable to their operations.

A strong cue that an activity is not appropriate for regulation under the EASR framework would be the presence of a high degree of public concern or ongoing public complaints about registered facilities undertaking that activity. The MOECC should collect data on public complaints about EASR-regulated activities and facilities to continually evaluate whether an activity (or a specific facility or group of facilities undertaking that activity) would be better regulated using an individual approvals approach.

So far, the MOECC's shift to a risk-based framework is delivering on its promised results:

- Numbers of applications and wait times for ECAs have begun to go back down, which should enable

the MOECC to focus more resources on activities that pose the greatest risk to the environment and save time and money for businesses;

- The environment is being protected by: bringing more entities and sectors into the regulated community, imposing consistent, up-to-date standards on all EASR registrants, and undertaking strong compliance and enforcement measures to motivate EASR registrants to follow the rules;
- The public has access to more information about environmental approvals in Ontario, including EASR registrations and ECAs, through the publicly accessible map-based Access Environment website. The EASR provides transparent, predictable rules for all registered activities.

Ontarians have lost some *EBR* rights with respect to the individual facilities that are now regulated via EASR registration, but have gained the *EBR* right to participate in the policy discussion about which activities are selected for EASR regulation, and in the development of sector-wide rules for those activities. This process should ensure the rules address the common concerns that the public would have had about individual facilities, potentially raising the bar for the entire sector and improving environmental outcomes overall. Further, safeguards in the EASR framework should ensure that facility-specific complaints by the public are heard, and empower the MOECC to take action when a specific facility is problematic.

**IT IS CRITICAL THAT THE
MINISTRY MAINTAIN A HIGH
LEVEL OF COMPLIANCE
MONITORING AND ENFORCEMENT
GOING FORWARD.**

The MOECC has developed a compliance and enforcement strategy that should motivate EASR registered facilities to follow the rules, and ineligible facilities to either obtain an ECA or comply with the requirements for exemptions. It is critical that the ministry maintain a high level of compliance monitoring and enforcement going forward, to ensure that existing and new EASR registrants are held accountable.

However, the reason the MOECC introduced the EASR in the first place was to enable the ministry to focus more resources on the higher-risk activities that pose the greatest threat to the environment; now it needs to do just that. The creation of the EASR will be in vain if the rest of the environmental approvals framework is not also strengthened. Wait times for approvals are still much too slow, and must be reduced further. The MOECC must also intensify its compliance and enforcement efforts for ECAs.

The ECO is pleased that the MOECC is strengthening its review process for new ECA applications, but thousands of older ECAs remain that contain few conditions and may be based on outdated environmental standards. Even proponents of activities that are now subject to EASR registration could continue operating under their outdated ECAs for many years before the registration deadline; ideally, those proponents would be brought under current standards of environmental performance more swiftly. The ECO urges the MOECC to consider providing shorter timeframes for ECAs to cease to apply for any future activities or sectors that are transitioned to the EASR regulatory framework.

At a minimum, **the ECO recommends that the MOECC take a risk-based approach to prioritize updating older ECAs for activities that will not be subject to EASR registration.** Proponents of higher-risk activities should certainly be expected to operate under up-to-date environmental standards and conditions.

The MOECC's ongoing failure to address the potential cumulative effects of air emissions or other

environmental impacts from multiple regulated entities is a major flaw in Ontario's environmental regulatory framework as a whole. **The ECO recommends that the MOECC ensure that all forms of environmental approvals (including ECAs and registrations) take into account the potential cumulative effects of multiple regulated entities on local air quality.**

Finally, having a comprehensive online record of all EASR registrations as well as most ECAs adds significant transparency to Ontario's environmental approvals program. However, the current functional and technical shortcomings of the Access Environment site detract significantly from its usefulness. The MOECC is currently working on updating its Environmental Registry website, and it is important that these two websites together provide a comprehensive, well-integrated portal for all environmental approval information. **The ECO recommends that the MOECC resolve ongoing technical issues with Access Environment, so that information about environmental approvals is more accessible to the public.** In addition, **the ECO recommends that the MOECC post all ECAs that are still in force on Access Environment.**

Current technological shortcomings aside, the Access Environment website could be an excellent resource to find information about all types of environmental approvals and permits. The ECO envisions a site that would not only provide information about EASR registrations, ECAs, and renewable energy approvals issued by the MOECC, but would incorporate permits to take water and environmentally significant approvals issued by other ministries, such as *Endangered Species Act, 2007* permits and *Aggregate Resources Act* licences issued by the Ministry of Natural Resources and Forestry, and *Mining Act* permits issued by the Ministry of Northern Development and Mines. The ECO encourages the MOECC to work with other ministries to make Access Environment a one-stop source for up-to-date, map-based information about all environmentally significant activities taking place in Ontario.

Endnotes

1. A large number of activities and facility types are ineligible to register due to the toxicity of the contaminants they emit, as well as other considerations such as issues with noise and odour levels, or the need for site specific requirements to reduce emissions. For example, ineligible activities for air emissions EASR registrants include: facilities identified by a specified North American Industry Classification System (NAICS) codes (e.g., metal ore mining; sewage treatment facilities; petroleum refineries); renewable energy projects; facilities that use a site-specific air standard or a technical standard; and facilities at which any of a number of other specified activities take place (e.g., land disposal of waste; closed landfill site; processing of waste via thermal treatment; use of a wood-fired combustor over 3 MW; certain plating processes; electrolytic stripping processes; the processing of metals outdoors).
2. Although many registrations for HVAC and standby power systems remain on Access Environment, those registrations no longer have any legal status. Registrants must specifically request for their registrations to be removed from the EASR.
3. Ministry staff begin by assessing a candidate activity (in consultation with in-house experts and external stakeholders) for: its environmental impacts; the complexity of the processes and equipment used; how widespread the activity is in Ontario; and the compliance history of proponents of the activity.
4. The ministry usually gives the public at least 45 days to comment, although in some cases it has given as little as 30 days or as many as 60 days.
5. Usually for 45 days.
6. A permit to take water (PTTW) is required for water taking under the *Ontario Water Resources Act*.
7. If a proponent wishes to make any modifications to their approved processes or equipment that would require an amendment to the ECA before the prescribed deadline, they must register rather than apply for an ECA amendment. If a proponent registers earlier, their ECA ceases to apply immediately.
8. Fees range from \$1,190 for short-term project-based registrations to \$2,353 for air emissions. The one-time fee for most activities is set at \$1,309.
9. Proponents must update their registrations if they become aware of any inaccurate information, or if they receive a notice from the MOECC Director requiring additional information. If a proponent stops operating, they must request that their registration be removed from the EASR.
10. An ESDM report is used by a regulated facility to document the facility's air emissions information. This information is used to assess the concentrations of contaminants that the facility is emitting to the local air, to ensure that the facility's emissions do not exceed the regulated standards at a specified location.
11. During the initial policy consultation (Environmental Registry #012-7954), the MOECC proposed a 5-year updating requirement. The ministry changed it to 10 years at the regulation development stage (Environmental Registry #012-8646) in response to public comments.
12. Facilities may be selected randomly for an audit, or, in some cases, the MOECC uses geo-spatial analysis to identify facilities that are at higher risk of non-compliance (e.g., due to setback distances).
13. For example, a facility may be referred for an inspection if the proponent fails to provide information for an audit or to address non-compliance identified through an audit, or if the audit identifies larger compliance issues.
14. *Environmental Protection Act*, section 20.23.
15. Ministry of the Environment and Climate Change, Compliance Policy – Applying Abatement and Enforcement Tools (May 2007)
16. These numbers do not include over 300 inspections and audits of standby power systems or comfort heating systems, which are now exempt from EASR requirements. These numbers also exclude the air emissions EASR registrants and the EASRs for construction-related water taking, as these sectors were only transitioned to the EASR in 2016/2017, and no data on compliance/enforcement actions were provided by the MOECC.
17. Not including 120 compliance instruments issued in relation to EASR registrations for now-exempt standby power and comfort heating systems.
18. This figure includes almost \$17 million in cost savings for registering heating and stand-by power systems before they were exempt.
19. In October 2016, the MOECC reported that the ministry is on track to achieve full cost recovery for the EASR, but that it needs to increase registration fees for most EASRs by 10% per year “to remain on track and continue the momentum towards full cost recovery.”
20. Most approvals for sectors or activities that have now been transitioned to the EASR were prescribed under the *EBR*. However, short-term water takings (under one year in duration) were not prescribed under the *EBR*; similarly, end-of-life vehicle processing was not explicitly regulated previously by the MOECC, and was therefore not subject to *EBR* requirements.
21. Under section 20.18 of the *Environmental Protection Act*.
22. Since 2011, at least 1,458 section 20.18 orders have been issued (39 of those in 2017); however, a proponent can also request that a section 20.18 order be issued to them so that they may stay in the ECA program. Many of the section 20.18 orders were at the request of proponents who wished to bundle their HVAC and standby power activities within an ECA.

