

# ONTARIO'S ENVIRONMENTAL BILL OF RIGHTS AND YOU

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A guide to exercising your right to participate in environmental decision making in Ontario



Environmental  
Commissioner  
of Ontario

**Important Note:**

The information contained in this guide is provided as a public service by the Environmental Commissioner of Ontario, and should not be considered legal advice. This document is not a substitute for the *Environmental Bill of Rights, 1993 (EBR)* or any of its regulations. In the event of any inconsistency between this content and the *EBR* or its regulations, the *EBR* or its regulations (as the case may be) would prevail. You can access the full text of the *EBR* and its regulations on the Government of Ontario's "e-Laws" website at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca).

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# CONTENTS

**3 Welcome**

**4 Part 1—The *Environmental Bill of Rights, 1993*—an Overview**

4 What is the *EBR*?

5 The Environmental Commissioner of Ontario

**8 Part 2—How the *EBR* Works**

8 Who can participate under the *EBR*?

8 What does the *EBR* apply to?

10 Statements of Environmental Values

11 The Environmental Registry

**12 Part 3—Exercising Your *EBR* Rights**

12 How to Comment on a Proposal Posted on the Environmental Registry

16 How to Appeal Ministry Decisions on Instruments

20 How to Prepare and Submit an Application for Review

22 How to Prepare and Submit an Application for Investigation

25 How to Sue to Protect a Public Resource

27 How to Sue over a Public Nuisance

27 Whistleblower Protection: How to Get Protection from Employer Reprisals

29 Where to Get More Information

**Appendices**

30 Appendix A—Sample Environmental Registry Proposal Notice

32 Appendix B—Sample Environmental Registry Decision Notice

35 Appendix C—Application for Review Form

43 Appendix D—Application for Investigation Form



# Welcome

The *Environmental Bill of Rights, 1993 (EBR)*, which came into force in February 1994, is one of the most significant environmental laws of our time. The *EBR* recognizes that while the provincial government has the primary responsibility for protecting, conserving and restoring the natural environment, the people of Ontario have the right to participate in government decisions about the environment and the right to hold the government accountable for those decisions.

The *EBR* gives all Ontarians certain environmental rights. That means that all of us—ordinary citizens, students, politicians, policy-makers, business people and activists—have legal rights and formal procedures for participating in environmental matters.

Exercising your rights under the *EBR* can be an empowering and rewarding way to play a role in government decisions that affect the environment. Whether you are commenting on an environmentally significant proposal, submitting an application for review or investigation, or seeking to appeal an environmental approval, you are helping to achieve our common goal as Ontarians: the protection, conservation and restoration of Ontario's natural environment for present and future generations.

This is your guide to the *EBR*. It is not intended to answer all of your questions or act as legal advice, but it will get you started on the right track. If you are using this guide online ([www.eco.on.ca](http://www.eco.on.ca)), you can access the *EBR* and its regulations, as well as the ECO's website and the Environmental Registry by clicking on the links found throughout the guide.

If you need more information about the *EBR* or the ECO, see "Where to Get More Information," on page 29, contact the Environmental Commissioner of Ontario or check out our website at [www.eco.on.ca](http://www.eco.on.ca). Our staff is always happy to help you understand your *EBR* rights, and to provide you with the information you need to go forward.

# PART 1

## The *Environmental Bill of Rights*, 1993—an Overview

### ► What is the *EBR*?

The fundamental goals of the *EBR* are to protect, conserve and restore the integrity of the environment, to provide sustainability of the environment, and to protect the right of Ontario residents to a healthful environment. These goals include preventing, reducing and eliminating the use, generation and release of pollutants that unreasonably threaten the integrity of the environment. They also include protecting and conserving biological, ecological and genetic diversity, and protecting and conserving Ontario’s natural resources, including plant and animal life and ecological systems. The *EBR* encourages the wise management of our natural resources and the identification and protection of ecologically sensitive areas or processes.

In order to achieve these goals, the *EBR* provides the tools necessary for residents of Ontario to participate in environmentally significant government decisions and to hold the government accountable for its decisions. The *EBR* also increases Ontarians’ access to the courts to protect the environment, and provides enhanced protection for employees who blow the whistle on their employers for causing environmental harm.

Some of the key elements of the *EBR* include:

#### Statements of Environmental Values

The *EBR* requires that government ministries develop Statements of Environmental Values (SEVs) to guide ministry staff when they make decisions that might significantly affect the environment. These SEVs describe how ministries will integrate environmental values with social, economic and scientific considerations when they make environmentally significant decisions. *See page 10.*

#### The Environmental Registry

Because you can’t participate in environmental decision making if you don’t know what decisions are being made, the *EBR* requires that certain government ministries let you know about the environmentally significant policies, acts, regulations and “instruments” (e.g., approvals, permits, licences) they’re considering. The [Environmental Registry](http://www.ebr.gov.on.ca) ([www.ebr.gov.on.ca](http://www.ebr.gov.on.ca)) gives you that information. It keeps you up to date on environmentally significant proposals, decisions, appeals and other related information. *See page 11.*

### **The Right to Participate in Environmentally Significant Government Decisions**

You have the right to submit comments on proposed policies, acts, regulations and instruments that are posted on the Environmental Registry. Ministries are obligated to consider your comments before they make their decisions. *See page 12.*

### **Third Party Appeal Rights**

The *EBR* gives you, as an Ontario resident, the right to appeal (i.e., challenge) ministry decisions regarding certain licences, permits and other instruments that may affect the environment. You must first satisfy the appellate body—usually the Environmental Review Tribunal (ERT) or the Ontario Municipal Board (OMB)—that you meet the *EBR* test for being granted “leave” (i.e., permission) to appeal. *See page 16.*

### **Applications for Review**

The *EBR* gives you a formal process for asking a ministry to review an existing environmentally significant policy, act, regulation or instrument; for example you could ask that a policy, act, regulation or instrument be changed or revoked. You can also ask the government to consider establishing a new policy, act or regulation. *See page 20.*

### **Applications for Investigation**

If you think that an environmental act, regulation or instrument is being contravened, you can ask the government to investigate the alleged violation. In some cases, you can go to court if you’re not satisfied with a ministry’s response to your request. *See page 22.*

### **The Right to Sue for Harm to a Public Resource or for a Public Nuisance**

The *EBR* gives you the right to sue someone who has contravened an environmentally significant act, regulation or instrument, causing harm to a public resource. In addition, if you experience economic loss or personal injury because of a public nuisance that caused harm to the environment, you can sue for damages. *See page 25.*

### **Whistleblower Protection**

The *EBR* gives you added protection if your employer has taken reprisals against you (i.e., dismissed, disciplined, penalized, coerced, intimidated or harassed, or attempted to coerce, intimidate or harass you) because you exercised your rights under the *EBR*. For example, you have legal protection from reprisal if you report spills, unlawful emissions or other hazardous activities at your workplace. *See page 27.*

## **► The Environmental Commissioner of Ontario**

The *EBR* states that there shall be an Environmental Commissioner of Ontario (ECO or “Commissioner”), an independent officer of the Legislative Assembly who is responsible for reviewing and reporting on the government’s compliance with the *EBR*. All of the ECO’s powers and responsibilities are established by the *EBR*. The ECO, often referred to as Ontario’s

“environmental watchdog,” reports to the Legislative Assembly—not to a political party or to a ministry. The ECO is appointed for a five-year term and may be reappointed for additional terms.

### Review and Report on Government Compliance with the *EBR*

In the ECO’s annual report to the Legislature, the Commissioner reviews and reports on the government’s compliance with the *EBR*. The ECO carefully reviews how ministers exercised their discretion and carried out their responsibilities in relation to the *EBR*. To make sure the *EBR* is upheld, the Commissioner and ECO staff review how ministries use public input when making decisions about environmentally significant policies, acts, regulations and instruments, and how ministries handle Applications for Review and Investigation. In particular, the ECO considers whether ministries have complied with the procedural and technical requirements of the law, and whether the actions and decisions of ministers were consistent with the ministry’s SEV and with the purposes of the *EBR*. Each year the ECO also reviews the use of the Environmental Registry, monitors appeals of *EBR*-prescribed instruments, and monitors any court actions and/or whistleblower claims under the *EBR* that are brought to the ECO’s attention.

#### The ECO’s Expanded Mandate: Greenhouse Gas Emissions and Energy Conservation

In 2009, the *EBR* was amended to create two significant new reporting obligations for the ECO. The first requires the ECO to report annually on the progress of activities in Ontario to reduce emissions of greenhouse gases. The second requires the ECO to report annually on the progress of activities in Ontario to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels.

You can find information about the ECO’s work regarding greenhouse gas reductions and energy conservation, including copies of our greenhouse gas reports and energy conservation reports, on the ECO’s website at [www.eco.on.ca](http://www.eco.on.ca).

### Clearinghouse

The office of the ECO serves as a clearinghouse for Applications for Review and Applications for Investigation made under the *EBR*. When you submit an Application to the ECO, the ECO reviews the Application to ensure it is complete and includes all of the required information, and then forwards the Application to the appropriate ministry or ministries. ECO staff can also assist you with any questions you may have while filling out an Application form.

### Public Education and Assistance

In order to use your environmental rights, it’s important that you understand the *EBR*. ECO staff are here to answer questions and to provide public education programs about the *EBR*. Educational groups interested in learning about the *EBR* can call the ECO to arrange for a presentation by our Public Information and Outreach Officer, who can provide publications and informative workshops on the *EBR*.



## Resource Centre

The ECO is home to a Resource Centre with an extensive collection of environmental resource documents. The Resource Centre is open to the public Monday to Friday, from 9:30 a.m. to 5:00 p.m. However, we recommend that you call ahead to ensure that our librarian will be available to help you. The Resource Centre can be contacted at (416) 325-0363. You can also search the [ECO Resource Centre Catalogue](#) on the ECO's website at [www.eco.on.ca](http://www.eco.on.ca).

## ECO Website

Many of the ECO's educational publications and forms, including copies of our annual reports, are available on the ECO's website at [www.eco.on.ca](http://www.eco.on.ca). You can also link to the ECO's blog, Twitter feed, and other information about the *EBR* and the ECO on the ECO's website.

# PART 2

## How the *EBR* Works

The *EBR* creates a number of different ways for Ontario residents to exercise their right to formally participate in environmentally significant government decisions (see Part 1). The *EBR* lays out the process that residents, government ministries and the ECO must follow when *EBR* rights are exercised.

### ► Who can participate under the *EBR*?

Any person resident in Ontario (including a corporation) can participate under the *EBR*. For example, you may be:

- A cottager concerned that a new marina might harm local wetland areas, fish habitat or water quality
- An employee working in a municipal sewage treatment plant with concerns about spills
- A community group worried about emissions from a nearby industrial facility
- A naturalist who wishes to comment on a proposed new law or policy for protecting wildlife
- A company that believes new manufacturing or production processes make certain environmental laws and regulations out-of-date
- A witness to illicit dumping of hazardous waste in a rural or urban area
- A resident of a northern community who believes logging roads are threatening sensitive fish spawning areas.

### ► What does the *EBR* apply to?

The *EBR* only applies to ministries that are “prescribed” (i.e., listed) in [O. Reg. 73/94](#), the General regulation made under the *EBR* (see “Ministries prescribed under the *EBR*,” below). Some ministries are only prescribed for certain parts of the *EBR*; for example, the Ministry of Labour is subject to the *EBR* public notice and consultation requirements but is not prescribed for purposes of the Application for Review or Investigation processes.

If a ministry is prescribed under the *EBR*, the ministry is required to consult the public on any new environmentally significant acts or policies that it proposes. In addition, any environmentally significant policies of that ministry are subject to Applications for Review under the *EBR*. See “What Does ‘Environmentally Significant’ Mean?,” on page 10.

## Ministries Prescribed under the *EBR*

Currently, the ministries subject to the *EBR* are:

- Ministry of Agriculture, Food and Rural Affairs (OMAFRA)\*
- Ministry of Health and Long-Term Care (MOHLTC)
- Ministry of Consumer Services (MCS)
- Ministry of Labour (MoL)
- Ministry of Economic Development and Innovation (MEDI)\*\*
- Ministry of Municipal Affairs and Housing (MMAH)
- Ministry of Education (EDU)
- Ministry of Ministry of Natural Resources (MNR)
- Ministry of Energy (ENG)
- Ministry of Northern Development and Mines (MNDM)
- Ministry of Environment (MOE)
- Ministry of Tourism, Culture and Sport (MTCS)
- Ministry of Government Services (MGS)
- Ministry of Transportation (MTO)

\*In February 2013, OMAFRA was divided into two ministries: the Ministry of Agriculture and Food and the Ministry of Rural Affairs.

\*\* In February 2013, MEDI was divided into two ministries: the Ministry of Economic Development, Trade and Employment and the Ministry of Research and Innovation.

The ministries to which the *EBR* applies may change from time to time, so please check the [ECO's website](#) or [O. Reg. 73/94](#) for the most up-to-date information.

### Policies:

If a ministry is prescribed under the *EBR*, any environmentally significant policy of that ministry is automatically subject to the *EBR*. See "What Does 'Environmentally Significant' Mean?," on page 10.

### Acts and Regulations:

An existing law (also referred to as a "statute" or "act") is only subject to the *EBR* if it is listed in [O. Reg. 73/94](#). If an act is prescribed, environmentally significant regulations made under the act are usually also subject to the *EBR*. Like a ministry, an act may be prescribed only for certain aspects of the *EBR*; for example, the *Nutrient Management Act, 2002* is subject to the *EBR* public notice and consultation requirements, as well as the Application for Review process, but is not prescribed for purposes of the Application for Investigation process.

### Instruments:

Instruments (e.g., approvals, licences and permits) are only subject to the *EBR* if they are listed in [O. Reg. 681/94](#), the Classification of Proposals for Instruments regulation made under the *EBR*.

If you are planning to submit an Application for Review or Investigation under the *EBR*, you should first confirm that the Application for Review or Application for Investigation provisions of the *EBR* apply to the ministry, policy, act, regulation or instrument in question. You can do this by checking the ECO's website for a [list of ministries prescribed under the \*EBR\*](#) and a [list of acts subject to the \*EBR\*](#), or by referring to [O. Reg. 73/94](#) (for ministries, acts, and regulations) and [O. Reg. 681/94](#) (for instruments).

## What Does “Environmentally Significant” Mean?

The *EBR* only applies to “environmentally significant” proposals by prescribed ministries. But what does “environmentally significant” mean? It is up to each prescribed ministry to determine, on a case by case basis, whether a proposal for a policy, act or regulation might significantly affect the environment. An effect can be either a negative or positive outcome. The *EBR* provides some guidance to assist ministries in making this determination by enumerating the following factors to be considered:

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

Instruments that are determined by the responsible prescribed ministry to have the potential to have a significant effect on the environment must be prescribed (listed) in a regulation, [O. Reg. 681/94](#). Proposals for prescribed instruments are considered to be environmentally significant. Currently, only five ministries (Ministry of Consumer Services; Ministry of the Environment; Ministry of Municipal Affairs and Housing; Ministry of Natural Resources; and Ministry of Northern Development and Mines) are prescribed for purposes of classifying and giving notice of proposals for instruments.

When the ECO believes that a ministry has failed to give notice and/or consult the public regarding an environmentally significant proposal, the ECO takes action by communicating with the ministry to resolve the matter, and by reporting ministry non-compliance in our Annual Report.

## ► Statements of Environmental Values

Each of the ministries subject to the *EBR* is required to develop a Statement of Environmental Values (SEV). A ministry’s SEV guides the minister and ministry staff when they make decisions about policies, acts, regulations or instruments that might affect the environment. Each SEV should explain:

- how the ministry will consider the environment when it makes environmentally significant decisions;
- how the ministry will apply the purposes of the *EBR* when it makes environmentally significant decisions; and
- how the ministry will integrate its environmental values with social, economic and scientific considerations when it makes environmentally significant decisions.

Each minister also makes commitments in his or her ministry's SEV that are specific to the work of that particular ministry.

The ECO monitors and reports on ministry compliance with the obligation to consider their SEVs when making decisions that may have a significant effect on the environment.

[Visit the Environmental Registry to view the ministries' SEVs online.](#)

## ► The Environmental Registry

The *EBR* establishes the Environmental Registry, a searchable Internet database that provides public access to timely information about environmentally significant proposals and decisions made by the Ontario government.

Prescribed ministries must give notice on the Environmental Registry when they propose to create new or amend existing environmentally significant: policies; acts; regulations under prescribed acts; or prescribed instruments. Ministries must also provide an opportunity for the public to submit comments on such proposals. When a prescribed ministry makes a decision about a proposal, it must post a notice on the Environmental Registry explaining the decision and describing how the ministry considered any public comments in making the decision. It should be noted, however, that a ministry is only required to show that it *considered* the public's comments; a ministry is not required to change its proposal to satisfy or conform to the public's concerns.



The Environmental Registry includes information to help you participate in environmental decision making, including:

- Background information about the *EBR*
- Links to the full text of the *EBR* and its regulations
- Ministries' Statements of Environmental Values
- Summaries of proposed policies, acts, regulations and instruments, as well as links to the full text and/or supporting documents, in some cases
- Summaries of ministry decisions on proposed policies, acts, regulations and instruments, and explanations of how public comments influenced the decisions
- Notices of appeals of instruments and the outcomes of those appeals.

The Environmental Registry not only provides access to information; it also serves as a venue for public comment. If you wish to comment on a proposal posted on the Environmental Registry, you can submit your comment directly online via the Environmental Registry itself (you also have the option of submitting your comment by mail or fax to the contact person identified in the proposal notice). Once a decision is posted, you can view comments submitted online by others as well. For more information about submitting comments on proposals on the Environmental Registry, see "How to Comment on a Proposal Posted on the Environmental Registry" in Part 3, on the following page.

# PART 3

## Exercising Your *EBR* Rights

The *EBR* provides members of the public with the right to participate in environmental decision making in a number of different ways. In this part of the guide, we explain how you can exercise each of your *EBR* rights.

### ► How to Comment on a Proposal Posted on the Environmental Registry

The *EBR* gives you a way to help shape environmentally significant policies, acts, regulations and instruments to protect the environment. You have the right to receive notice of and comment on the Ontario government’s environmentally significant proposals—right from the start.

#### Public Comment Process

##### 1. A proposal is posted by a ministry on the Environmental Registry

The ministry posts a proposal for a new or updated environmentally significant policy, act, regulation or instrument on the Environmental Registry. This “proposal notice” must provide a minimum of 30 days for the public to submit comments. The proposal notice summarizes the proposal and tells you how you can participate, the deadline by which you must submit your comments, where to send them, and where you can get additional information. Many proposal notices also include links to relevant information such as copies of draft policies, legislation, regulations or instruments, or ministry web pages or documents that contain additional information on the subject matter in question.

*STRAIGHT TO THE SOURCE*  
Right to notice and comment:  
[EBR sections 15, 16, 22 and 27](#)

To see a real example of a proposal notice, see Appendix A, “Sample Environmental Registry Proposal Notice.”

##### 2. Prepare your comments

If you decide to comment on a proposal on the Environmental Registry, put your comments in writing. Before submitting your comments, ask yourself these questions:

- Do I have all the information I need? Written material on the proposal can be reviewed at a ministry office. In some cases, the ministry contact person identified in the proposal notice may be able to provide more information.
- Is my submission clear and thorough?

## How Do You Find Out About a Proposal in the First Place?

There are various ways for you to find out if there are any proposals on the Environmental Registry that interest you. For example, you may choose to:

- Monitor the Environmental Registry regularly to see if any new notices that are posted interest you.
- Conduct regular searches using the Environmental Registry's search template; you can narrow your search by using keywords or phrases, date restrictions, ministry, act or regulation names, instrument type, notice type or status, etc.
- Keep your ear to the ground; provincial or local environmental organizations and other public interest groups may alert you to certain government proposals. You may also read or hear about a proposal through the media.

You can also use the "My *EBR*" function on the Environmental Registry to more easily keep track of existing proposals that interest you and to save your searches for future use.

### 3. Send your comments to the ministry

Submit your comments to the ministry within the time frame in the notice (usually at least 30 days). There are two ways to submit your comments:

- *Online*: All regular proposal notices on the Environmental Registry include a function for submitting your comments online. When you click on the "Submit Comment" button, you will be taken to a comments page where you can paste or type your comments and submit them directly to the ministry.
- *Mail or fax*: You can mail or fax a paper copy of your comments to the ministry contact person identified in the proposal notice.

Regardless of the method that you use to submit your comments, your submission (not including any personal information) will become part of the public record. Comments that are submitted online are usually publicly accessible online once a decision notice is posted. If you submit your comments online, you should not include any personal information in the comment box.

Under the *EBR*, the ministry must consider all public comments in the course of making its decision on the proposal.

### 4. A decision is posted by a ministry on the Environmental Registry

Once the ministry has made a decision on the proposal, the ministry must post a "decision notice" on the Environmental Registry that describes the ministry's decision. The decision notice will indicate the number of comments received on the proposal, and provide access to comments that were submitted online. The decision notice should also include a brief explanation of the effect that the public's participation had, if any, on the ministry's decision.

Since the minister does not have to make a decision on a particular proposal within a set time frame, you may have to monitor the Environmental Registry for several months before a decision notice is posted.

To see a real example of a decision notice, see Appendix B, “Sample Environmental Registry Decision Notice.”

## 5. Find out how your comments were considered

You will not receive a formal response to your comments from the ministry. However, you can review the decision notice to see if your comments were considered. The ECO reviews ministry decisions to evaluate how the ministry took the public’s comments into account, and reports annually on whether ministries have complied with the requirements of the *EBR*.

### Commenting on the Environmental Registry: Not a Vote

Making a comment on the Environmental Registry should not be misunderstood as a way of casting a “vote”; the number of comments received in support or opposition of a proposal is not determinative. Under the *EBR*, ministries must consider the content of each individual comment—not the number of comments for or against a proposal—when making its decision.

Form letters and postcards may be a useful way of communicating to a ministry both a collective view of and a heightened public interest in a particular proposal, and the fact that a substantial number of comments are submitted expressing the same concerns may be given weight in a ministry’s decision-making process. However, one carefully crafted comment providing original insight, observations and recommendations could ultimately exert more influence on a ministry’s decision than a thousand form letters.

## Enhanced Public Participation

Under the *EBR*, ministries are required to provide for a minimum level of public participation in environmentally significant proposals (i.e., posting a proposal notice on the Environmental Registry and providing a 30-day comment period). But for some of the permits and licences that ministries grant (i.e., Class II instruments, which have a higher level of risk and potential threat to the environment), the *EBR* requires that ministries provide additional notice at the time the instrument is posted on the Environmental Registry. Additional notice may include any one or more of: news releases; ads in local newspapers; door-to-door flyers; signs; or other methods. Moreover, for Class II proposals, ministers are required by the *EBR* to consider providing more than 30 days for the public to comment, as well as enhanced public participation opportunities. Enhanced public participation opportunities could include: the chance to speak directly to ministry decision-makers; public meetings; mediation; or any other process that would facilitate more informed public participation.

Keep in mind that ministries can always choose to provide for additional notice, longer comment periods and enhanced public participation on any proposal posted on the Environmental Registry. Whether a ministry decides to do so is always at the discretion of the ministry decision makers.



If you wish to request enhanced public participation measures on a proposal, write to the ministry contact person outlining the types of enhanced public participation measures you are seeking. If possible, send a copy of your request to the ECO. The ministry will probably respond to your request with a letter, and in some cases, may repost the proposal and describe any enhanced public participation measures that have been agreed to by the minister. The ECO reviews how these requests are handled by ministries.

## THE *EBR* IN ACTION

### Public Comments on Ministry of the Environment Proposals Yield Improvements to Final Decisions

In general, commenting on an environmentally significant proposal posted on the Environmental Registry is unlikely to persuade the government to abandon altogether or even make a fundamental shift in its original proposal. But the right to comment is still a very valuable tool; public comments regularly prompt ministries to make smaller—yet important—adjustments to their proposed acts, policies, regulations or instruments. Such changes can result in clearer legislative direction, more stringent protections, more appropriate technical requirements and greater transparency and accountability to the public, among other things.

For example, in April 2009, the Ministry of the Environment (MOE) posted a proposal notice on the Environmental Registry for Bill 167, the *Toxics Reduction Act, 2009*. The proposed legislation was intended to “prevent pollution and protect human health and the environment by reducing the use and creation of toxic substances, and to inform Ontarians about toxic substances.” The ministry received 113 comments on the proposal.

After Bill 167 passed in June 2009, MOE posted a decision notice on the Environmental Registry, explaining that it had made changes to the final Bill as a result of comments submitted by the public, including: requiring the summary of a toxic substance reduction plan and certain information in the report to be made available to the public on the internet; and requiring the Ministry to report annually to the public, via the internet, on its progress in implementing the Act.

Similarly, in early 2010 when MOE consulted the public on proposed regulatory requirements for preparing source protection plans under the *Clean Water Act, 2006*, 86 members of the public—including municipalities, conservation authorities, First Nations, environmental non-governmental organizations, industry, private individuals and others—submitted comments. The ministry made numerous changes to the draft regulation as a result of the public’s input, including: clarifying the text of certain provisions; broadening the scope of policies that source protection committees may include in source protection plans; and enhancing provisions for consultation with First Nations communities. The final regulation was filed in June 2010.

In both cases, the public’s participation helped the ministry to arrive at a better final decision: in the former case, the creation of a more transparent and accountable process for toxics reduction planning and progress evaluation, and in the latter the development of a more certain and comprehensive process for source protection planning.

## ► How to Appeal Ministry Decisions on Instruments

Under the *EBR*, five ministries must classify instruments—the permits, licences or environmental compliance approvals they issue to proponents such as industrial facilities—according to their environmental significance. This classification determines which instrument proposals are posted on the Environmental Registry, the level of public participation that may be required when making decisions about instruments, and whether they are subject to *EBR* processes such as review, investigation and appeal.

*STRAIGHT TO THE SOURCE*  
Right to seek leave to appeal:  
[EBR section 38](#)

Currently, the following five ministries administer instruments prescribed (classified) under the *EBR*:

- The Ministry of Consumer Services (MCS);
- The Ministry of the Environment (MOE);
- The Ministry of Municipal Affairs and Housing (MMAH);
- The Ministry of Natural Resources (MNR); and
- The Ministry of Northern Development and Mines (MNDM).

The *EBR* gives you, as a member of the public, the right to appeal (challenge) ministry decisions on Class I and II instruments. This is called the “third-party” appeal process. You are the “third party”; the proponent (instrument holder) and the ministry are considered the “first” and “second” parties, respectively.

Appealing a ministry decision on an instrument can take time, money and expertise, and you may wish to hire a lawyer (see Law Society Referral Service, below).

### Law Society Referral Service

The Law Society of Upper Canada’s “Law Society Referral Service” can provide you with the names of Ontario lawyers who practise environmental law. You can learn more about the Law Society Referral Service at [www.lsuc.on.ca](http://www.lsuc.on.ca), or by calling 1-416-947-3330 or 1-800-268-8326.

### Exercising your Third Party Appeal Rights

In most cases, you must first ask for “leave” (i.e., permission) to appeal a ministry decision from the proper appellate body—usually the Environmental Review Tribunal (ERT) or, for *Planning Act* and *Aggregate Resources Act* matters, the Ontario Municipal Board (OMB). There is one exception: leave is not required for third parties to appeal decisions about Renewable Energy Approvals issued under the *Environmental Protection Act* (for more information, see “Third Party Appeals of Renewable Energy Approvals,” on page 19).

To apply for leave to appeal a ministry decision on an instrument under the *EBR*, you have to be able to show:

- a. that you have an “interest” in the decision (for example, you may live near the facility to which the instrument was issued, or you may have commented on the original proposal to issue the instrument). This is generally a low threshold to meet.

AND

- b. that this kind of decision can be appealed under another act (for example, you may seek leave to appeal a decision to issue an environmental compliance approval for a waste disposal site because the waste management company to whom the approval was issued has a right under the *Environmental Protection Act* to appeal the decision). The instrument decision notice on the Environmental Registry will always tell you whether or not a third party may seek leave to appeal the decision.

Because each appellate body is different, you should contact the applicable appellate body for information about its procedures before you begin; the appellate body will be listed on the decision notice posted on the Environmental Registry.

### The Leave to Appeal Process

1. You must seek leave to appeal a decision within **15 days** after the ministry places the decision on the Environmental Registry (e.g., if a decision notice is posted on the Environmental Registry on April 1, your application for leave to appeal must be received by the ERT by April 16). If the 15th day falls on a weekend or a holiday, it must be received by the first business day that follows.

If your appeal is to the Environmental Review Tribunal and you are unable to submit all of the required information within the 15-day deadline, submit your application within the 15 days explaining this and state that you require additional time to file the additional information, and then follow the Tribunal's directions.

2. In your application, make sure you include:
  - a. A copy of the instrument you are appealing (a link to the instrument may be provided in the decision notice on the Environmental Registry; if not, a copy can be obtained from the ministry that issued the instrument);
  - b. A statement explaining your interest in the decision;
  - c. A statement of all facts (grounds) that you are relying on for the appeal;
  - d. A statement explaining why you think your appeal passes both parts of the basic test for leave to appeal:
    - i. that there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision; and
    - ii. that the decision could result in significant harm to the environment;
  - e. Copies of any supporting documents that you are relying on for your appeal;
  - f. A statement describing the portions of the instrument that you wish to challenge in the appeal hearing;
  - g. A statement describing the relief (e.g., outcome of the appeal) that you are seeking; and
  - h. Your contact information where you can be reached during business hours.
3. You must send your application for leave to appeal to:
  - the appellate body; and
  - the company or proponent to whom the instrument was issued (the "instrument holder"); and
  - the ministry official who issued the instrument; and
  - the ECO.

## THE *EBR* IN ACTION

### Appeal of Permit to Take Water Prompts Agreement on Permit Conditions

In May 2009, the Ministry of the Environment (MOE) posted a decision notice on the Environmental Registry to inform the public that it had decided to issue a Permit to Take Water (PTTW) under the *Ontario Water Resources Act* to Findlay Creek Properties Ltd. (the “instrument holder”). The permit authorized water taking for the purpose of construction dewatering for the Findlay Creek Village Subdivision in the Township of Gloucester, City of Ottawa.

The Greenspace Alliance of Canada’s Capital and Sierra Club Canada (collectively, the “applicants”) sought leave to appeal MOE’s decision. The Environmental Review Tribunal reviewed the grounds pleaded by the applicants and concluded that the applicants had satisfied the *EBR* test for leave to appeal. The ERT therefore granted leave to appeal, but limited the scope of the appeal to a subset of the issues pleaded.

The applicants proceeded to file their appeal, but then entered into settlement discussions with the instrument holder and MOE. In March 2010, the parties informed the Tribunal that they had reached a settlement in the matter, which addressed the grounds upon which the applicants’ leave to appeal was granted as well as a number of other terms of the permit. In April 2010, the Tribunal confirmed the terms of settlement and dismissed the appeal.

The Environmental Commissioner will then place a notice of your leave to appeal application on the Environmental Registry.

If your application is incomplete, the appellate body will send a letter explaining the deficiencies. The appellate body may dismiss the leave application unless the deficiencies are corrected within the time frame provided.

4. The appellate body will consider the following two questions in deciding whether to grant leave to appeal:
  - Is there good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision?; and
  - Could the decision being appealed result in significant harm to the environment?
5. Lawyers for the ministry and the proponent will be invited to respond to your application and asked to put forward arguments as to why you should not be granted leave to appeal. If these responses raise new issues and involve new evidence, you may be permitted to reply.
6. Generally, the appellate body will decide on your application within 45-60 days, unless there are unusual circumstances.

7. If the appellate body finds that you have not met the *EBR* test for leave to appeal, it will dismiss your application. This is a final decision (i.e., there is no right to appeal a leave decision).
8. If the appellate body finds that you have met the *EBR* test for leave to appeal, it will allow you to proceed with a regular appeal hearing. In that case, the ministry's decision will be "stayed" (put on hold) until the appeal is decided, unless the appellate body orders otherwise.
9. If you obtain leave to appeal, you will then need to file your appeal by the deadline specified by the appellate body.
10. After hearing the appeal, the appellate body may:
  - agree with the ministry's decision;
  - overturn the ministry's decision; or
  - decide if new conditions should be added to the ministry's original decision.

Please note that each appellate body has different decision-making powers.

If you are seeking leave to appeal a decision to the Environmental Review Tribunal, you may wish to consult the ERT's guidance document, "[A Guide to Applications for Leave to Appeal under the Environmental Bill of Rights, 1993](#)," which can be accessed on the ERT's website at [www.ert.gov.on.ca](http://www.ert.gov.on.ca).

### Third Party Appeals of Renewable Energy Approvals

As with many other instruments issued under the [Environmental Protection Act \(EPA\)](#), the Ministry of the Environment is required under the *EBR* to give notice of proposals and decisions about Renewable Energy Approvals (REAs)—e.g., approvals of certain wind, solar and bioenergy projects—on the Environmental Registry.

However, there is a separate set of rules for third party appeals of REAs: under the *EPA*, any resident of Ontario has a right to appeal a ministry decision about a REA *without first seeking leave from the appellate body*. Unlike instrument appeals under the *EBR*, though, a REA appeal is only permitted on the following limited grounds:

That engaging in the renewable energy project in accordance with the REA will either:

- cause serious harm to human health; or
- cause serious and irreversible harm to plant life, animal life or the natural environment.

If you can not persuade the Environmental Review Tribunal (ERT) that one of these grounds has been met, the ERT will dismiss your appeal and confirm the ministry's decision to issue the REA.

If you are considering appealing a REA, you may wish to consult the ERT's guidance document, "[A Guide to Appeals regarding Renewable Energy Approvals under section 142.1 of the Environmental Protection Act](#)," which can be accessed on the ERT's website at [www.ert.gov.on.ca](http://www.ert.gov.on.ca).

Notices of REA appeals are posted on the Environmental Registry.

## ► How to Prepare and Submit an Application for Review

Under the *EBR*, any two Ontario residents can submit an application to the ECO requesting a review of a policy, act, regulation or instrument by the appropriate minister.

STRAIGHT TO THE SOURCE  
Applications for Review:  
[EBR Part IV](#)

There are two kinds of reviews that you can request: you can ask a minister to review *existing* policies, acts, regulations or instruments (for example, you may want the government to review its drinking water quality standards to ensure they are strong enough); or you can ask a minister to review the need for *new* policies, acts, or regulations.

You may only ask for a review to be undertaken by a ministry that is prescribed under the *EBR* for purposes of applications for review.

Ministries  
Prescribed for  
Applications  
for Review

### The ministries that are currently prescribed are:

- Ministry of Agriculture, Food and Rural Affairs (OMAFRA)\*
- Ministry of Consumer Services (MCS)
- Ministry of Energy (ENG)
- Ministry of the Environment (MOE)
- Ministry of Health and Long-Term Care (MOHLTC)
- Ministry of Municipal Affairs and Housing (MMAH)
- Ministry of Natural Resources (MNR)
- Ministry of Northern Development and Mines (MNDM)
- Ministry of Transportation (MTO)

\*In February 2013, OMAFRA was divided into two ministries: the Ministry of Agriculture and Food and the Ministry of Rural Affairs.

When preparing and submitting an Application for Review, you must follow the process set out in the *EBR*:

### The Application for Review Process

1. Call, e-mail or write the ECO to request an Application for Review form (see Appendix C to this guide for a copy of an Application for Review form). You can also download an application form from the ECO's website at [www.eco.on.ca](http://www.eco.on.ca).
2. Complete all sections of the application form. Make sure you include:
  - a. Your names, addresses and declarations that both applicants are Ontario residents.
  - b. The name of the policy, act, or regulation that you want reviewed, or the ministry reference number of the instrument you want reviewed.
  - c. The reason you are requesting a review.
  - d. A summary of evidence supporting your request.

If you need assistance filling out your application form, contact the ECO. All personal information is kept confidential. However, an applicant's personal information may be disclosed if the review results in further government action outside of the *EBR*, such as a prosecution or other administrative action.

3. Make sure both you and your co-applicant sign and date the application.

4. Send your completed application, including all attachments, to the ECO. Remember to keep copies for yourselves.
5. Within 10 days of receiving your completed application form, the ECO will forward it to the appropriate ministry, or will contact you if there are any problems with your application that need to be addressed before it can be forwarded to the ministry.
6. Within 20 days of receiving your application from the ECO, the ministry will let you know it has received it. If your application relates to an instrument, the ministry will also notify anyone who may have a direct interest in the issues you raise in your application, particularly if you have asked for a review of a licence or approval issued to a company. However, the ministry will not disclose your names, addresses or any other personal information about you.
7. Within 60 days of receiving your application, the ministry will let you and the ECO know whether or not it will undertake the review that you requested. To decide whether a review will be undertaken (i.e., whether the public interest warrants a review), the ministry may consider the following:
  - a. The ministry's Statement of Environmental Values;
  - b. The potential for harm to the environment if the review is not undertaken;
  - c. Whether the matter is already subject to periodic review;
  - d. Relevant social, economic, scientific or other evidence;
  - e. Submissions from anyone else with a direct interest in your application;
  - f. Resources needed to conduct the review;
  - g. How recently the act, regulation, instrument or policy was proposed or approved;
  - h. The extent to which the public had an opportunity to participate in the development of the policy, act, regulation or instrument; and/or
  - i. Any other matter that the minister considers relevant.

If the policy, act, regulation or instrument you want reviewed was approved in the past five years—and underwent public participation consistent with the *EBR*—a ministry must deny a review on the basis that it is not in the public interest. However, the minister could decide to undertake a review if you can show that there is new evidence that failing to undertake the review could significantly harm the environment, and that this evidence was not taken into account when the decision was made.

8. If the ministry denies your application (i.e., decides that it will not undertake the requested review), the application for review process comes to an end at this point.
9. If the ministry agrees to undertake the review that you requested, there is no time limit on how long the ministry can take to complete the review, provided the review is carried out within a reasonable time. The ministry must notify you and the ECO of the outcome of its review within 30 days of completing the review. The ministry will also let you know what action (if any) will be taken as a result of the review. The Application for Review process then comes to an end.
10. Once the Application for Review process has come to an end (either because the ministry denied the application, or completed the review) the Environmental Commissioner will review and report on how the ministry handled the application in the ECO's annual report to the Legislature.

## THE *EBR* IN ACTION

### Applications for Review Fuel Creation of New and Improved Protected Areas Legislation

In 2001, three environmental organizations submitted two separate applications for review to the ECO, both requesting a review of the *Provincial Parks Act*. The applicants contended that the Act, which had not been significantly changed since it was enacted in 1954, was out of date and that a review was necessary because the Act:

- placed no onus on maintaining and restoring the ecological integrity of parks;
- failed to require adequate public consultation or park management planning; and
- failed to prohibit incompatible activities such as logging, mining, sport hunting and hydroelectric development.

The Ministry of Natural Resources (MNR) denied the applications, but agreed in principle that a review of the *Provincial Parks Act* should be undertaken. The ministry deferred the review until at least 2003/2004 because ministry staff and funding were, at the time, dedicated to implementing Ontario's Living Legacy Land Use Strategy. In our 2001/2002 Annual Report, the ECO agreed with the applicants that a review was needed, and encouraged MNR to make a stronger commitment to undertake the review and commence planning as soon as possible.

In September 2004, MNR posted a proposal notice on the Environmental Registry to solicit public input on legislative proposals for protected areas in Ontario. In June 2006, the *Provincial Parks and Conservation Reserves Act, 2006* became law, replacing the *Provincial Parks Act* and dramatically improving the legislative framework governing Ontario's protected areas.

## ► How to Prepare and Submit an Application for Investigation

Any two Ontario residents can join together to ask a ministry to investigate if they think someone has contravened or violated an environmentally significant act, regulation, or instrument. For example, you may believe that the owner of a junkyard is illegally disposing of tires at night, or that a construction company is filling in protected wetlands, or that your company is releasing toxic air emissions at a rate higher than permitted in its environmental compliance approval.

*STRAIGHT TO THE SOURCE*  
Applications for Investigation:  
[EBR Part V](#)

Before you complete your application, gather as much evidence as you can about the alleged violation. Note the location, time of day, people involved, any physical evidence (such as dead fish, empty chemical barrels, etc.), and any other evidence (for example, licence plate numbers, company names, videos or photographs of the activity). If you witnessed the incident, write down what you saw.

You may only ask for an investigation to be undertaken in relation to acts, regulations or instruments that are prescribed under the *EBR* for purposes of applications for investigation.



## Ministries Prescribed for Applications for Investigation

**Currently, specific acts, regulations and instruments administered by the following 6 ministries are prescribed:**

- The Ministry of Consumer Services (MCS)
- The Ministry of Energy (ENG)
- The Ministry of the Environment (MOE)
- The Ministry of Municipal Affairs and Housing (MMAH)
- The Ministry of Natural Resources (MNR)
- The Ministry of Northern Development and Mines (MNDM)

## In case of emergency...

If you think a situation is an emergency, call your nearest ministry office (see the Blue Pages in your telephone book or search the [Ontario Government's online telephone directory](#)). If it is a spill onto land or into water, call the Ministry of the Environment's Spills Action Centre using its province-wide toll-free number: 1-800-268-6060. The [Spills Action Centre](#) operates 24 hours a day, 7 days a week.

If the situation is not an emergency, begin the application for investigation process under the *EBR*.

## The Application for Investigation Process

1. Call, e-mail or write to the ECO to request an Application for Investigation form (see Appendix D to this guide for a copy of an Application for Investigation form). You can also download the form from the [ECO's website](#).
2. Complete all sections of the application form. Make sure you include:
  - a. Your names, addresses and declarations that you are both Ontario residents.
  - b. A description of the alleged violation. Make sure you identify the act, regulation or instrument that you think has been contravened. If you need help doing this, please contact the ECO.
  - c. The names and addresses of the alleged contravenors, if available.
  - d. A summary of the evidence supporting your request.
  - e. A list of witnesses, if possible.
  - f. Details about any previous contact you've had with the ministry or the ECO about the alleged contravention.

All personal information provided in your application is kept confidential. However, an applicant's personal information may be disclosed if the investigation results in further government action outside of the *EBR*, such as a prosecution or other administrative action.

If you need assistance filling out your application, contact the ECO.

3. Provide a sworn statement of belief (statutory declaration) to confirm that you believe the facts alleged in your application are true. Two blank statutory declarations are attached to the Application for Investigation form, for your convenience. Take your completed application to a lawyer, notary public or Commissioner of Oaths. They'll help you and your co-applicant complete the statutory declaration. Both you and your co-applicant must provide sworn statements of belief.
4. Send your application—along with your statutory declarations—to the ECO. You should keep copies for yourselves.
5. Within 10 days of receiving your completed application form, the ECO will forward it to the appropriate ministry, or will contact you if there are any problems with the application that need to be addressed before it can be forwarded to the ministry.
6. Within 20 days of receiving it from the ECO, the ministry must let you know it has received your application.
7. If the ministry decides not to investigate, it must let you and the ECO know within 60 days of receiving your application. The ministry's response should indicate why it decided not to investigate. The ministry does not have to investigate if:
  - a. Your application is considered frivolous or vexatious;
  - b. The alleged contravention isn't serious enough to warrant an investigation;
  - c. The alleged contravention isn't likely to harm the environment; or
  - d. An investigation is already under way or has already been completed.

If you receive a notice within 60 days denying your application (i.e., advising that the ministry will not undertake an investigation), then the Application for Investigation process comes to an end at this point.

If you do not receive notice of a ministry decision not to investigate within 60 days, this usually means the ministry has decided to undertake the investigation.

8. If the ministry decides to investigate, and the investigation is not completed within 120 days of receiving your application, the ministry will give you a written estimate of how long the investigation will take.
9. After the investigation is completed, the ministry has 30 days to let you and the ECO know the outcome of its investigation and any actions the ministry has taken or proposes to take as a result.
10. Once the Application for Investigation process has come to an end (either because the ministry denied the application, or completed an investigation) the Environmental Commissioner will review and report on how the ministry handled the application in the ECO's annual report to the Legislature.

## THE EBR IN ACTION

### Application for Investigation Prompts Better Management of Sewage Works in Provincial Parks

In February 2010, two applicants requested that the Ministry of the Environment (MOE) investigate alleged contraventions of multiple acts, regulations and Certificates of Approval related to sewage works in Ontario's provincial parks. The applicants alleged that Ontario Parks—a branch of the Ministry of Natural Resources responsible for administering and operating provincial parks—was failing to comply with requirements for basic maintenance of sewage works, discharging untreated sewage into the natural environment, and altering sewage works without appropriate approvals.

MOE agreed to undertake the requested investigation. In September 2010 it reported to the applicants on the outcome of the investigation, which comprised reviewing the application, ministry records, and operations at 12 provincial parks identified in the application, as well as conducting inspections at those parks. While MOE found that Ontario Parks has a comprehensive plan for reviewing the operations of its parks, including its sewage facilities, the ministry identified several issues of non-compliance, some of which were related to the applicants' allegations. The ministry nevertheless did not find "evidence of serious environmental impacts or immediate danger to public health and safety."

As a result of the investigation, MOE instructed park staff to undertake actions to address issues of non-compliance by specified deadlines, and advised that a Provincial Officer would follow up to ensure timely compliance. MOE also encouraged park staff to undertake additional actions to enhance their current practices. Finally, MOE committed to providing the applicants with an update by March 2011 on progress made by Ontario Parks in fulfilling the required actions and recommendations. In April 2011, MOE wrote to the applicants to report that Ontario Parks had completed all of the work required to bring each park into compliance.

## ► How to Sue to Protect a Public Resource

The *EBR* gives you the right to bring an action in the civil courts (i.e., sue) against someone who is violating or is about to violate a prescribed environmental act, regulation or instrument, and is harming, or about to harm a public resource. You are not entitled to personal awards or compensation for damages under this civil action—you can go to court only to protect a public resource.

*STRAIGHT TO THE SOURCE*  
Right to sue for harm to a public  
resource: [EBR Part VI](#)

### What Do I Need to Know Before I Sue?

You should carefully consider the pros and cons of bringing an action. Even if your case is strong, court actions can be expensive, time-consuming and stressful. Make sure you've considered all your options before you decide to sue. You must first submit an Application for Investigation before you can bring a lawsuit under the *EBR* (unless the delay would result in significant harm or serious risk of significant harm to a public resource). If you've applied for an investigation, you can sue only if:

- a. the ministry didn't give notice of a decision not to investigate within a reasonable time;
- b. the ministry didn't complete the investigation within a reasonable time;
- c. the ministry didn't give notice of the outcome of an investigation within a reasonable time;  
or
- d. the ministry's response to your Application for Investigation was unreasonable.

Please note that if you wish to sue because you think odour, noise, dust, vibration, flies, smoke or light from a farm is harming the environment, you must first apply to the Normal Farm Practices Protection Board to get approval for your lawsuit. You cannot take legal action until the Board has ruled on your application and approved the lawsuit.

For full details about how to sue for harm to a public resource under the *EBR*, including time limits for bringing an action, consult a lawyer (see the Law Society Referral Service, p. 16). A brief summary of the process is provided below.

### The Court Process

1. Have your lawyer serve a statement of claim on the defendant (the person or company you're suing). Within the next 10 days, you must also serve the statement of claim on the Attorney General of Ontario. You must also notify the ECO of your claim.
2. Within 30 days of receiving a statement of defence from the defendant and serving all official papers to the court, you must draft a notice for the Environmental Registry—a statement of the facts and claims on which your case is based—for the court to approve. You will need to make a motion to the court to ask for directions on giving notice of the action to the public, including when the notice should be given. Once the notice has been approved by the court, you must deliver a copy to the ECO so that we can post the notice on the Environmental Registry.
3. The rules of court apply to your lawsuit. You will need to follow all of the steps normally required in any civil action.
4. It's up to you to prove your case. If your case is strong, the defendant may offer you a settlement proposal to stop or change their environmentally harmful behaviour. If you agree to this, you can have the defendant's settlement proposal approved by the court and entered as a court judgment. This way, you save the expense and stress of a trial.
5. If you go to a trial, here's what could happen:
  - a. If the court finds that you have not proven your case (e.g., it is not clear that the defendant contravened an environmental law, regulation or instrument, or caused the damage alleged, or the defendant has a reasonable defence), the court may dismiss your case. If that happens, the court may order you to pay some or all of the defendant's legal costs.
  - b. If the court finds that you have proven your allegations, it may grant an order to stop the defendant's polluting actions, approve a settlement agreement between you and the defendant, order a cleanup and restoration plan, or make any other order it judges appropriate. If the court rules in your favour, it may order the defendant to pay some or all of your legal costs.
6. Once the ECO has notice of the court's decision, the ECO will post a notice summarizing the court's ruling on the Environmental Registry.

## ► How to Sue over a Public Nuisance

Because of the requirement that they first obtain the consent of the provincial Attorney General, individuals in most other parts of Canada have limited access to the courts when they want to sue for public nuisances. But under the *EBR*, any person in Ontario who experiences direct economic or personal loss because of a public nuisance causing harm to the environment, such as a widespread pollution problem, may sue for damages or other personal remedies without having to obtain the Attorney General's consent.

*STRAIGHT TO THE SOURCE*  
Right to sue for public nuisance:  
[EBR section 103](#)

There is an important exception for farming. Under the *Farming and Food Production Protection Act, 1998*, farmers may be protected against public nuisance lawsuits relating to odour, noise, dust, vibration, flies, smoke and light. If you wish to sue using these public nuisance provisions of the *EBR*, you must first apply to the Normal Farm Practices Protection Board, and you cannot take legal action until the Board has ruled on your application.

For details about how to sue a polluter using the public nuisance provisions in the *EBR*, consult a lawyer (see the Law Society Referral Service, page 16).

## ► Whistleblower Protection: How to Get Protection from Employer Reprisals

Many employers in Ontario engage in activities that could have negative impacts on the environment. If you are an employee who knows about or has been forced to participate in unsafe practices, spills, leaks, or violations of environmental laws, you can report your employer without fear of reprisal. For example, you could be:

*STRAIGHT TO THE SOURCE*  
Whistleblower protection:  
[EBR Part VII](#)

- A truck driver who is told to fill out false reports and dump hazardous chemicals in a rural area at midnight.
- A dry-cleaning store attendant who discovers your employer is using a duct system to vent dangerous fumes directly into the atmosphere in contravention of a ministry order or environmental compliance approval prohibiting the activity.
- A municipal staff planner who has a confidential report showing that a council-approved subdivision may destroy a wetland and result in discharges of contaminants into waters used by local fish species.

Today, you don't have to choose between your civic duty and your job. The *EBR* provides protection for employees who may in the past have been dismissed, penalized, disciplined, coerced, intimidated or harassed for reporting environmental contraventions. You are also protected from retaliation by your employer if you participate in any of the processes under the *EBR*.

You are also protected if you disobey your employer but comply with laws and regulations subject to the *EBR*. For example, you may turn off a valve to stop an illegal discharge of effluent directly into a river. However, don't take any of these steps lightly. Talk to your co-workers, union steward or a lawyer first unless the situation is an emergency.

If you believe your employer has taken reprisals against you for complying with or seeking enforcement of a prescribed environmental law or for participating in the *EBR*, contact the Ontario Labour Relations Board (OLRB) for an application form for unlawful reprisals under the *EBR* ([OLRB Form A-59](#)). You can obtain background information on making an unlawful reprisal application under the *EBR* and copies of the OLRB application forms at [www.olrb.gov.on.ca](http://www.olrb.gov.on.ca).

Follow the OLRB's directions for completing, serving and filing an application.

A Labour Relations Officer will be assigned to your case, and will try to help you and your employer (and any other party involved) reach a settlement. If no settlement is reached, the matter will proceed to a hearing before a Vice-Chair or panel of the OLRB. Each party is responsible for presenting their own case. The Board will issue a written decision following the conclusion of the hearing.

*For more details about protection against employer reprisals under the EBR, contact the ECO or:*

**Ontario Labour Relations Board**  
505 University Avenue, 2nd Floor  
Toronto, ON M5G 2P1  
[www.olrb.gov.on.ca](http://www.olrb.gov.on.ca)

Phone: (416) 326-7500  
Toll-free: 1-877-339-3335  
TTY: 416-212-7036  
Fax: (416) 326-7531

## Where to Get More Information

If you need more information about the *Environmental Bill of Rights, 1993*, contact the ECO:

### Address:

Environmental Commissioner of Ontario  
1075 Bay Street, Suite 605  
Toronto, ON M5S 2B1

### Phone:

**Main line:** (416) 325-3377

**Resource Centre:** (416) 325-0363

**Toll Free:** 1-800-701-6454

### Fax:

(416) 325-3370

### E-mail:

[commissioner@eco.on.ca](mailto:commissioner@eco.on.ca)

### Websites:

**Main:** [www.eco.on.ca](http://www.eco.on.ca)

**ECO Blog:** [www.eco.on.ca/blog](http://www.eco.on.ca/blog)

**ECO-issues:** [www.ecoissues.ca](http://www.ecoissues.ca)

### Media inquiries:

(416) 325-3371

### Join our newsletter list:

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[@ecocommish](https://twitter.com/ecocommish) (The ECO's personal account)

[@EBR\\_EnvRegistry](https://twitter.com/EBR_EnvRegistry) (links to new policy, act and regulation notices on the Environmental Registry)

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## APPENDIX A

# Sample Environmental Registry Proposal Notice

Here is an example of a real proposal notice that was posted on the Environmental Registry ([www.ebr.gov.on.ca](http://www.ebr.gov.on.ca)). The ECO has annotated the notice in red ink to point out some of the key features of the notice.

**Notice Type**: Act Proposal Notice

**Notice Title**: Great Lakes Protection Act

**Keywords related to the proposal**: Agriculture | Drinking Water | Fish and Wildlife | Land | Monitoring | Nutrient Management | Water | Land use planning | Conservation | Legislation | Wastewater | Sewage

**Description/Explanation of the proposal**: The proposed Act is enabling and would give the province new tools to take targeted action to improve water quality, and protect coastlines, beaches and wetlands, with the overall intent of helping to attain Great Lakes that are drinkable, swimmable, and fishable. If passed, the proposed Act would provide authority to take action in a variety of ways:

1. Establish a Great Lakes Guardians' Council to provide a forum for Great Lakes Ministers, municipal representatives, representatives of First Nations and Métis communities, and representatives from environmental organizations, the scientific community, industrial, agricultural, recreational and tourism sectors and others, to identify Great Lakes priorities for action, propose projects, potential financial measures and partnerships, and help to facilitate information sharing and discuss matters related to setting targets, development of initiatives and inter-jurisdictional agreements.
2. Require that Ontario's Great Lakes Strategy be maintained, reviewed at least every 6 years, and reported on periodically. Ontario's Great Lakes Strategy sets out environmental conditions, goals, a summary of actions taken, and priorities for future action on the Great Lakes.
3. Enable the Minister of the Environment, in consultation with other Great Lakes Ministers, to set Great Lakes targets. These targets would help achieve the purposes of the Act and would support implementation of Ontario's Great Lakes Strategy and actions under the proposed Act.
4. Following local discussion, provide authority to take targeted action on priority areas through geographically-focused initiatives. These initiatives could address priority issues such as excessive algae, protection of important Great Lakes habitat, or coordination of efforts to improve beaches. Initiatives could build on existing work, combining and aligning resources and coordinating efforts from different partners in Great Lakes protection. The proposed Act would allow flexibility regarding what priority issues are addressed; where to target action, how to address priority issues, and who should address them. These initiatives could be developed through a collaborative process by the Government of Ontario or by another public body (such as a municipality, a conservation authority, a source protection committee, or others prescribed by regulations). Consultation would be required on both a proposal for an initiative and craft initiative. Both proposals for initiatives and the initiatives themselves would be subject to the approval of Cabinet prior to implementation. Initiatives would be required to contain either a legally enforceable policy (such as one that affects government permits and approvals) or a proposal for a shoreline regulation (please see #5 below), or both. The initiatives could also include policies that would be voluntary (such as programs to coordinate efforts, promote good stewardship, pilot new programs, promote best management practices, facilitate research, and encourage education and outreach).
5. Provide authority to make a shoreline regulation, within an area covered by a geographically-focused initiative, to regulate activities that may affect the ecological health of the Great Lakes such as disposal of invasive species or damage to sensitive shoreline areas. Any shoreline regulation contemplated under the proposed Act would be consulted on and would move forward only after careful assessment and consideration of options and impacts.

The proposed Act would clarify that nothing in the Act should be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the Aboriginal Peoples of Canada by Section 35 of the Constitution Act, 1982. It recognizes that Aboriginal communities within the Great Lakes-St. Lawrence River Basin have important connections to the Basin. First Nations maintain a spiritual and cultural relationship with water and the Basin is an historic location where Métis identity emerged in Ontario. It also recognizes that First Nations and Métis communities may contribute traditional ecological knowledge to support Great Lakes protection. The proposed Act encourages sharing information to help determine the best way to protect the ecology of the Great Lakes.

Provisions of the proposed Act would come into effect on proclamation.

**Purpose of Act:** The purposes of the proposed Great Lakes Protection Act, 2013, are to protect and restore the ecological health of the Great Lakes-St. Lawrence River Basin, and to create opportunities for individuals and

**Registry Number**: EBR Registry Number: 011-6481

**Responsible Ministry**: Ministry of the Environment

**Proposal Date**: Date Proposal loaded to the Registry: February 25, 2013

**Ministry Contact Information**: Carolyn O'Neil, Manager, Ministry of the Environment, Integrated Environmental Policy Division, Land and Water Policy Branch, Great Lakes Office, 135 St. Clair Avenue West, Floor 6, Toronto Ontario, M4V 1P5. Phone: (416) 314-7833, Fax: (416) 326-0461.

**Click here to submit a comment online**: Submit Comment

**How to find more information about the proposal**: The following government offices have additional information regarding this Proposal. To arrange a viewing of these documents please call the Ministry Contact or the Office listed below. Land and Water Policy Branch - 135 St. Clair Avenue West, Floor 6, Toronto Ontario, M4V 1P5, Phone: (416) 314-6363. The documents linked below are provided for the purposes of enhancing public consultation. All links will open in a new window.

1. [Legislative Assembly of Ontario website \(for proposed act\)](#)
2. [Healthy Great Lakes, Strong Ontario Not! \(Environmental Registry # 035-6100\)](#)
3. [Ontario's Great Lakes Strategy Policy Discussion Notice \(Environmental Registry # 011-6418\)](#)
4. [Ministry of the Environment Great Lakes website](#)
5. [Ministry of Natural Resources Great Lakes website](#)



Description/  
Explanation  
of the purpose  
of the proposal

Information  
about when and  
how to submit a  
comment on the  
proposal

Information about other  
public  
consultation  
opportunities

Links to relevant  
documents,  
websites  
and other  
information

Deadline  
to submit a  
comment

Click to link to  
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The proposed Act would clarify that nothing in the Act should be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the Aboriginal Peoples of Canada by Section 35 of the Constitution Act, 1982. It recognizes that Aboriginal communities within the Great Lakes-St. Lawrence River Basin have important connections to the Basin. First Nations maintain a spiritual and cultural relationship with water and the Basin is an historic location where Métis identity emerged in Ontario. It also recognizes that First Nations and Métis communities may contribute traditional ecological knowledge to support Great Lakes protection. The proposed Act encourages sharing information to help determine the best way to protect the ecology of the Great Lakes.

Provisions of the proposed Act would come into effect on proclamation.

**Purpose of Act:**

The purposes of the proposed Great Lakes Protection Act, 2013, are to protect and restore the ecological health of the Great Lakes-St. Lawrence River Basin; and to create opportunities for individuals and communities to become involved in the protection and restoration of the ecological health of the Great Lakes-St. Lawrence River Basin. Purposes also include:

- To protect human health and well being through the protection and restoration of the ecological health of the Great Lakes- St. Lawrence River Basin.
- To protect and restore wetlands, beaches, shorelines, and other coastal areas of the Great Lakes-St. Lawrence River Basin.
- To protect and restore the natural habitats and biodiversity of the Great Lakes-St. Lawrence River Basin.
- To advance science relating to existing and emerging stressors, such as climate change, that improves understanding and management of the Great Lakes-St. Lawrence River Basin.
- To enrich the quality of life in communities in the Great Lakes-St. Lawrence River Basin through support of environmentally sustainable economic opportunities and innovation through environmentally sustainable use of natural resources.

**Public Consultation:**

This proposal has been posted for a 60 day public review and comment period starting February 25, 2013. If you have any questions, or would like to submit your comments, please do so by **April 26, 2013** to the individual listed under "Contact". Additionally, you may submit your comments on-line.

All comments received prior to April 26, 2013 will be considered as part of the decision-making process by the Ministry of the Environment if they are submitted in writing or electronically using the form provided in this notice and reference EBR Registry number 011-6461.

Please Note: All comments and submissions received will become part of the public record. You will not receive a formal response to your comment, however, relevant comments received as part of the public participation process for this proposal will be considered by the decision maker for this proposal.

**Other Public Consultation Opportunities:**

The Minister of the Environment received input on the proposed legislation through: engagement on the proposed Great Lakes Protection Act, 2012, introduced in June 2012; a number of recent listening sessions held prior to June 2012; as well as through previous engagement on the 2009 Great Lakes discussion paper titled "Healthy Great Lakes, Strong Ontario: Talking with Ontarians About Protecting, Restoring, Using and Enjoying the Great Lakes."

The 2012 proposal notice for a Great Lakes Protection Act was posted on June 6, 2012, with a 62-day comment period. Comments continued to be received and accepted after the August 7, 2012 date of that Environmental Registry posting.

The province also met with and heard from municipalities, First Nations and Métis communities, environmental experts and stakeholders including industry, agriculture and the tourism sector, to gain the benefit of their views about the issues facing the Great Lakes-St. Lawrence River Basin and to seek their feedback on the proposed Great Lakes Protection Act.

The province also received comments on Ontario's draft Great Lakes Strategy (finalized in December 2012 - see link to Decision Posting on Great Lakes Strategy under Additional Information).


The proposed Great Lakes Protection Act, 2013, will be informed by the input received to date; by ongoing Great Lakes dialogues with First Nations and Métis communities, municipalities, industries, environmental experts and other groups; and by various opportunities for input throughout the legislative process. Please visit the Legislative Assembly of Ontario website for details (see link under Additional Information).

Comments may also help to inform other provincial Great Lakes protection actions, such as negotiation of a new Canada-Ontario Agreement and the implementation of Ontario's Great Lakes Strategy.

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## APPENDIX B

# Sample Environmental Registry Decision Notice

Here is an example of a real decision notice that was posted on the Environmental Registry ([www.ebr.gov.on.ca](http://www.ebr.gov.on.ca)). The ECO has annotated the notice in red ink to point out some of the key features of the notice.

The screenshot shows a web page for an Environmental Registry Decision Notice. The page is titled "Policy Decision Notice: Endangered Species Act (ESA) Submission Standards for Activity Review and 17 (2)(c) Overall Benefit Permits". The notice is dated February 09, 2012, and was posted on the registry on April 29, 2011. The responsible ministry is the Ministry of Natural Resources. The notice includes a description of the decision, a list of keywords (Fish and Wildlife, Land, Land use planning, Standard, Conservation, Legislation), and a list of links to relevant documents, websites, and information. The notice also includes a section for public comments received on the proposal, with a link to view all comments. The notice is annotated with red lines and text boxes pointing to various features:

- Notice Type:** Policy Decision Notice
- Notice Title:** Endangered Species Act (ESA) Submission Standards for Activity Review and 17 (2)(c) Overall Benefit Permits
- Keywords related to the proposal:** Fish and Wildlife | Land | Land use planning | Standard | Conservation | Legislation
- Description/Explanation of the Ministry's final decision on the proposal:** A decision was made on December 15, 2011 to proceed with the proposal as described, subject to changes described below as a result of public consultation and changes made by the Ministry of Natural Resources (MNR). Links to the final document and associated forms are provided: Endangered Species Act (ESA), 2007 Submission Standards for Activity Review and 17 (2)(c) Overall Benefit Permit: <http://www.mnr.gov.on.ca/en/Business/SpeciesIndex.html> Information Gathering Form: <http://www.mnr.gov.on.ca/en/Business/SpeciesIndex.html> Avoidance Alternatives Form: <http://www.mnr.gov.on.ca/en/Business/SpeciesIndex.html> Overall Benefit Permit (C-Permit) Application Form: <http://www.mnr.gov.on.ca/en/Business/SpeciesIndex.html> The document and associated forms are effective at the date of release of this notice. Proponents already proceeding through a permitting process with a local MNR office may continue with status quo processes without altering submission information. For more information on obtaining ESA permits, please contact your local MNR office and ask to speak to the species at risk representative [http://www.mnr.gov.on.ca/en/Contact/120/NameSubPage/STEL02\\_179502.html](http://www.mnr.gov.on.ca/en/Contact/120/NameSubPage/STEL02_179502.html)
- Registry Number:** EBR Registry Number: 011-2542
- Responsible Ministry:** Ministry of Natural Resources
- Date of decision notice:** Date Decision loaded to the Registry: February 09, 2012
- Date proposal was posted on the registry:** Date Proposal loaded to the Registry: April 29, 2011
- Ministry Contact Information:** Contact: Darlene Dove, Senior Policy Advisor, Ministry of Natural Resources, Policy Division, Species at Risk Branch, 300 Water Street, Floor 2, Robinson Place South Tower, Peterborough Ontario, K9J 8M5, Phone: (705) 755-5578, Fax: (705) 755-5483
- Links to relevant documents, websites and other information:** 1. Endangered Species Act (ESA), 2007 Submission Standards for Activity Review and 17 (2)(c) Overall Benefit Permit; 2. Appendix A, Information Gathering Form; 3. Appendix B, Application Form for an Overall Benefit Permit; 4. Appendix C, Guideline Principles for Overall Benefit; 5. Guidance to support the application of a subsection 19(3) (the habitat protection provisions of Ontario's Endangered Species Act, 2007 (search EBR 811-2841)); 6. MNR Species at Risk website; 7. Endangered Species Act, 2007; 8. Ontario Regulation 230/08 SARIO List
- Click to view public comments submitted online:** View All Comments
- Description/Explanation of how the ministry considered public comments in reaching the decision:** Effects of Consultation on this Decision: After careful consideration of all comments received through consultation, a number of changes to the final document and associated forms were made, including:
  - Removal of the explanation of key terms pertaining to Section 9 and 10 considerations (i.e. harm, harass, damage and destroy).
  - Incorporation of a preliminary screening stage to the permitting process.
  - Inclusion of opportunities within the permitting process where proponents can choose to adopt avoidance alternatives and proceed with proposed activities without obtaining an ESA permit.
  - Greater clarity on:
    - o avoidance and minimization of adverse effects
    - o the application of overall benefit principles (i.e. location of actions, use of supplementary actions and monitoring, use of science to fill information gaps, acknowledging situations where overall benefit may not be achievable for a species);
    - o surveys, survey protocols, mapping standards and dissemination of sensitive information;
    - o reasonable alternatives and the selection of the best alternative;
    - o requirements for Aboriginal consultation and Environmental Assessment Act (EA Act) requirements; and,
    - o roles and responsibilities of MNR and proponents within the various phases of the permitting process.
  - Streamlining of the forms to remove redundant and repetitive information and more detailed instructions within the forms to assist in their completion.Comments received indicated concerns with the proposed definitions for harm, harass, damage and destroy as listed under s.9 and s.10 of the ESA. MNR Response: MNR continues work to revise these terms under separate policy development initiatives and they have been removed from this policy document.

- incorporation of a preliminary screening stage in the permitting process.

- inclusion of opportunities within the permitting process where proponents can choose to adopt avoidance alternatives and proceed with proposed activities without obtaining an ESA permit.

- Greater clarity on:

- avoidance and minimization of adverse effects
- the application of overall benefit principles (i.e. location of actions, use of supplementary actions and monitoring, use of science to fill information gaps, acknowledging situations where overall benefit may not be achievable for a species);
- surveys, survey protocols, mapping standards and dissemination of sensitive information;
- reasonable alternatives and the selection of the best alternative;
- requirements for Aboriginal consultation and Environmental Assessment Act (EA Act) requirements; and
- roles and responsibilities of MNR and proponents within the various phases of the permitting process.

- Streamlining of the forms to remove redundant and repetitive information and more detailed instructions within the forms to assist in their completion.

Comments received indicated concerns with the proposed definitions for harm, harass, damage and destroy as listed under s.9 and s.10 of the ESA.

MNR Response: MNR continues work to revise these terms under separate policy development initiatives and they have been removed from this policy document.

Comments received requested more emphasis and clarity on avoidance alternatives and mitigation measures within the process. Related comments also suggested adding more detail on the selection of the best alternative.

MNR Response: Avoidance alternatives and mitigation measures has been defined and a separate form created to document the avoidance alternatives separately from other alternatives (mitigation measures) within an activity. More detail on the selection of the best alternative was added to the C-Permit Application Form.

Comments received emphasized that the overall benefit permitting process would be too onerous and costly to a proponent as it requires them to retain the services of consultants to complete studies to support the gathering of information as well as plan and implement mitigation measures and overall benefit actions.

MNR Response: MNR encourages early contact with local MNR offices to effectively plan for their activities and ensure avoidance alternatives and efficient mitigation measures can be built into the design of their activity. The information gathering form and other forms that accompany the process have been thoroughly reviewed and redesigned to minimize repetition in required information.

Comments received indicated some concerns regarding the commencement of the five month service guarantee for a permit decision. Requests were made to include timelines on the front end of the process.

MNR Response: The five month service guarantee has been changed to a three month service guarantee for a decision on the issuance of a permit once a submission has been deemed complete by MNR. No timelines will be applied to the front end of the process as this is predominantly a proponent driven part of the process.

Comments submitted indicated concerns with obtaining information on private land and potential indirect effects of disseminating species at risk information on property rights and values.

MNR Response: Clarity was added to the document to ensure that proponents know it is their responsibility to ensure they have all required authorizations prior to proceeding with proposed activities, including landowner permissions, where applicable. Information collected during the permitting process will be used for the purposes of administering the ESA and its regulations in accordance with the Freedom of Information and Protection of Privacy Act, 1990.

Comments received included concerns regarding the issuance of permits and the cumulative effects on species at risk of issuing too many permits. Related comments also included the need to include the concept of the precautionary approach to the issuance of permits.

MNR Response: By the very nature of the legislative requirements for the issuance of an overall benefit permit, the Minister must be of the opinion that an overall benefit will be achieved for the species at risk through the conditions on the permit, resulting in a net positive effect on the species. Recognition of decision making on the side of caution for the species in cases of greater uncertainty of proposed mitigation and overall benefit actions has been reflected in the document.

General comments received indicated the need to include more direction on surveys, survey protocols and ongoing impacts and effectiveness monitoring to the document.

MNR Response: Greater clarity on surveys, survey protocols and direction to contact local MNR office staff for more detail was added. MNR defined both impacts and effectiveness monitoring and described that these may be standard conditions within an overall benefit permit.

In addition, a number of comments received were deemed out of scope for this policy document as they did not directly relate to the proposal.

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# Application for Review Form

(also accessible online on the ECO's website)



**Environmental  
Commissioner  
of Ontario**

1075 Bay St.  
Suite 605  
Toronto, ON  
M5S 2B1

Tel: 416-325-3377  
1-800-701-6454

Fax: 416-325-3370  
[www.eco.on.ca](http://www.eco.on.ca)

[commissioner@eco.on.ca](mailto:commissioner@eco.on.ca)



**Environmental  
Commissioner  
of Ontario**

## Application for Review Part IV, *Environmental Bill of Rights*

### General Information About This Application

Under section 67 of the *Environmental Bill of Rights, 1993 (EBR)*, the minister must consider each Application for Review in a preliminary way to determine whether the public interest warrants a Review of the issues raised in your Application. Among other factors, the minister must consider:

1. The ministry Statement of Environmental Values;
2. The potential for harm to the environment if the Review applied for is not undertaken;
3. The fact that matters sought to be reviewed are otherwise subject to periodic review;
4. Any social, scientific or other evidence that the minister considers relevant;
5. Any submission from a person who may be directly interested in the Review who has been notified about the Review;
6. The resources required to conduct the Review; and
7. Any other matter the minister considers relevant.

If the decision asked to be reviewed was made within the last five years with public participation consistent with the *EBR*, the minister will not determine that the public interest warrants a Review. This provision does not apply where it appears to the minister that there is other evidence that failure to review the decision could result in significant harm to the environment and that this evidence was not considered when the decision sought to be reviewed was made.

The personal information requested in this Application is gathered under the legislative authority of the *EBR*. All the information on this form is required by the *EBR* for the minister to determine whether an existing policy, act, regulation or instrument of Ontario should be reviewed, or to decide whether there is a need for a new policy, act or regulation.

The *EBR* does not allow the Environmental Commissioner of Ontario or the ministry to disclose personal information about applicants. The *EBR* protects the personal information provided by applicants. Applicants' personal information may be disclosed if the Review results in further government action outside of the *EBR* such as:

- A prosecution, or
- Other administrative action

*For more information on the requirements of this Application and how to use the EBR please contact:*

**Public Information and Outreach Officer**  
Environmental Commissioner of Ontario  
1075 Bay Street, Suite 605  
Toronto, ON, M5S 2B1

**Phone: 416-325-3377**  
**Toll Free: 1-800-701-6454**  
**Fax: 416-325-3370**  
**e-mail: [commissioner@eco.on.ca](mailto:commissioner@eco.on.ca)**

## Instructions

1. Type or print clearly in ink.
2. Ensure both applicants sign and date the Application.
3. Complete all the sections.
4. Answer all the questions.
5. Clearly indicate the section of the Application to which any additional documentation applies.
6. Keep a copy of the Application for your files.
7. Submit your original Application and supporting documents to the Environmental Commissioner of Ontario at the address above.

## 1. APPLICANTS

Please complete 1(a) and 1(b) **OR** complete 1(a) and 1(c) if one of the applicants is a corporation. If both applicants are corporations, please copy the declaration form for 1(c) and attach the second completed declaration form to this application.

### 1. a) Applicant Number One

_____	_____	_____
Last Name	First Name	Initial
_____		_____
Address		Apartment
_____		
ONTARIO		
_____	_____	_____
City	Province	Postal Code
( )	( )	
_____	_____	
Residence Telephone	Business Telephone	

#### Declaration of Ontario Residency:

I \_\_\_\_\_ am an Ontario resident and have been since \_\_\_\_\_  
(Print Name) (Month, Year)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## 1. b) Applicant Number Two

_____	_____	_____
Last Name	First Name	Initial
_____		_____
Address		Apartment
_____	ONTARIO	_____
City	Province	Postal Code
( )	( )	_____
Residence Telephone	Business Telephone	

### Declaration of Ontario Residency:

I \_\_\_\_\_ am an Ontario resident and have been since \_\_\_\_\_  
(Print Name) (Month, Year)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## 1. c) Corporate Applicant

_____	_____	
Name of Corporation	Name of Position of Corporate Officer	
_____	_____	ONTARIO
Address	City	Province
_____	( )	_____
Postal Code	Business Telephone	

### Declaration of Incorporation in Ontario:

The \_\_\_\_\_ is an Ontario or Canadian Federal Corporation, carrying on  
(Name of Corporation)  
business with its head office in Ontario, established by articles of incorporation in \_\_\_\_\_  
(Month, Year)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Officer and Position

\_\_\_\_\_  
Company Number

\_\_\_\_\_  
Signature

## 2. REQUEST FOR APPLICATION FOR REVIEW

Please complete section 2(a) **OR** 2(b) below. Only complete both sections if you are requesting a review of an existing policy, act, regulation or instrument **AND** the need for a new policy, act or regulation.

2. a) We request a Review of **an existing** policy, act, regulation or instrument (please check at least one).

Policy       Act       Regulation       Instrument

Clearly identify the name of the policy, act, regulation and/or instrument that you wish to be reviewed. Please provide as much detail as possible, including the name, section numbers and instrument numbers where possible.

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*To confirm that the EBR's application for review provisions apply to the policy, act, regulation or instrument that you are seeking to be reviewed, check the ECO's website for a [list of ministries prescribed under the EBR](#) and a [list of acts subject to the EBR](#), as well as [O. Reg. 73/94](#) (ministries, acts, and regulations) or [O. Reg. 681/94](#) (instruments).*

2. b) We request a Review of the need for **a new** policy, act and/or regulation (please check at least one).

Policy       Act       Regulation

Description of policy, act or regulation:

---

---

---

---

---

*To confirm that the EBR's application for review provisions apply to the ministry that would be responsible for your proposed new policy, act or regulation, check the ECO's website for a [list of ministries prescribed under the EBR](#) or [O. Reg. 73/94](#).*









## Application for Review Checklist

Before you send your Application for Review and supporting documents to the Environmental Commissioner of Ontario, make sure you have:

- Completed the forms for Applicant Number One **AND** Applicant Number Two, including the signatures of both applicants
- If you are a corporate applicant, provided the proper legal name of the corporation **AND** completed the declaration of incorporation in Ontario
- Made it clear what *existing* policy, act, regulation or instrument you want reviewed
  - **AND/OR** -
  - Made it clear that you want the Minister to review the need for a *new* policy, act, or regulation
- If you are seeking a review of an *existing* policy, act, regulation or instrument:
  - a. included the section number(s) or parts of the policy, act, regulation or instrument that you would like to be reviewed; **AND**
  - b. double checked that the section(s) or parts of the policy, act, regulation or instrument that you seek to have reviewed is/are subject to an *EBR* Application for Review
- If you are seeking a review of the need for a *new* policy, act or regulation, double checked that the ministry that would be responsible for such a policy, act or regulation is subject to an *EBR* Application for Review
- Explained why the review that you are requesting is necessary to protect the environment
- Provided a summary of the evidence that supports your belief that the review you are requesting should be undertaken in order to protect the environment
- Addressed your original Application for Review to:
  - The Environmental Commissioner of Ontario**  
**1075 Bay Street, Suite 605**  
**Toronto, ON M5S 2B1**
- Retained a copy of your Application for Review and supporting documents for your own records

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## APPENDIX D

# Application for Investigation Form

(also accessible online on the ECO's website)



**Environmental  
Commissioner  
of Ontario**

1075 Bay St.  
Suite 605  
Toronto, ON  
M5S 2B1

Tel: 416-325-3377  
1-800-701-6454

Fax: 416-325-3370  
[www.eco.on.ca](http://www.eco.on.ca)

[commissioner@eco.on.ca](mailto:commissioner@eco.on.ca)



**Environmental  
Commissioner  
of Ontario**

## **Application for Investigation** **Part V, *Environmental Bill of Rights, 1993***

### **General Information About This Application**

The personal information requested in this Application is gathered under the legislative authority of the *Environmental Bill of Rights, 1993 (EBR)*. All the information requested on this form is required by the *EBR* for the minister to determine whether to conduct an Investigation into an alleged contravention of a prescribed act, regulation or instrument.

The *EBR* does not allow the Environmental Commissioner of Ontario or the ministry to disclose personal information about applicants. The *EBR* protects the personal information provided by applicants. Applicants' personal information may be disclosed if the Investigation results in further government action outside of the *EBR* such as:

- A prosecution, or
- Other administrative action

*For more information on the requirements of this Application and how to use the EBR please contact:*

**Public Information and Outreach Officer**  
**Environmental Commissioner of Ontario**  
1075 Bay Street, Suite 605  
Toronto, ON, M5S 2B1

**Phone: 416-325-3377**  
**Toll Free: 1-800-701-6454**  
**Fax: 416-325-3370**  
**e-mail: [commissioner@eco.on.ca](mailto:commissioner@eco.on.ca)**

## Instructions

1. Type or print clearly in ink.
2. Ensure both applicants sign and date the Application.
3. Complete all the sections.
4. Clearly indicate the section of the Application to which any additional documentation applies.
5. Ensure that your sworn statement is attached and properly affirmed before a commissioner for taking affidavits in Ontario.
6. Keep a copy of the Application for your files.
7. Submit your original Application and supporting documents to the Environmental Commissioner of Ontario at the address above.

## 1. APPLICANTS

Please complete 1(a) and 1(b) **OR** complete 1(a) and 1(c) if one of the applicants is a corporation. If both applicants are corporations, please copy the declaration form for 1(c) and attach the second completed declaration form to this application.

### 1. a) Applicant Number One

_____	_____	_____
Last Name	First Name	Initial
_____		_____
Address		Apartment
_____		
ONTARIO		
_____	_____	_____
City	Province	Postal Code
( )	( )	
_____	_____	
Residence Telephone	Business Telephone	

#### Declaration of Ontario Residency:

I \_\_\_\_\_ am an Ontario resident and have been since \_\_\_\_\_  
(Print Name) (Month, Year)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## 1. b) Applicant Number Two

_____	_____	_____
Last Name	First Name	Initial
_____		_____
Address		Apartment
_____	ONTARIO	_____
City	Province	Postal Code
( )	( )	_____
Residence Telephone	Business Telephone	

### Declaration of Ontario Residency:

I \_\_\_\_\_ am an Ontario resident and have been since \_\_\_\_\_  
(Print Name) (Month, Year)

\_\_\_\_\_  
Signature Date

## 1. c) Corporate Applicant

*If there are two corporate applicants, please copy this declaration form and attach the second completed declaration form to this application.*

_____	_____	
Name of Corporation	Name of Position of Corporate Officer	
_____	_____	ONTARIO
Address	City	Province
_____	( )	_____
Postal Code	Business Telephone	

### Declaration of Incorporation in Ontario:

The \_\_\_\_\_ is an Ontario or Canadian Federal Corporation, carrying on  
(Name of Corporation)  
business with its head office in Ontario, established by articles of incorporation in \_\_\_\_\_  
(Month, Year)

\_\_\_\_\_  
Date Name of Officer and Position

\_\_\_\_\_  
Company Number Signature

## 2. ALLEGED CONTRAVENOR(S)

Provide the name and address of the person(s) or company(ies) that you believe has/have contravened an act, regulation or instrument prescribed for investigation under the *Environmental Bill of Rights, 1993*.

\_\_\_\_\_  
Company/Individual Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Unit/Apartment

\_\_\_\_\_  
ONTARIO

\_\_\_\_\_  
City

\_\_\_\_\_  
Province

\_\_\_\_\_  
Postal Code

( )  
Residence Telephone

( )  
Business Telephone

**Are you an employee of the suspected contravenor?** Please mark Yes or No with an X.

Applicant Number One:  Yes  No

Applicant Number Two:  Yes  No

## 3. a) ALLEGED CONTRAVENTION

Act \_\_\_\_\_

Section Number \_\_\_\_\_

Regulation \_\_\_\_\_

Section Number \_\_\_\_\_

Instrument Type/Number \_\_\_\_\_

Condition Number \_\_\_\_\_

*To confirm that the EBR's application for investigation provisions apply to the act, regulation or instrument that you allege has been contravened, check the ECO's website for a [list of ministries subject to the EBR](#) and a [list of acts subject to the EBR](#), or refer to [O. Reg. 73/94](#) (ministries, acts and regulations) or [O. Reg. 681/94](#) (instruments).*



**3. b)** Provide a short description of the alleged contravention(s) (for example: “A discharge of gasoline into water that caused an adverse effect” or “The operation of a waste disposal site without the proper approval”).

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**3. c)** Provide a detailed description of the alleged contravention(s). The description must include:

- A description of the nature/circumstances of the alleged contravention(s)
- An explanation of why you believe that the company(ies) and/or individual(s) cited as the “contravenors” are responsible for the contravention
- If known, the date and time of the contravention or the approximate date and time
- The date you first became aware of the incident(s)
- How you became aware of the incident(s)
- Any other information that you believe is relevant

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### 4. Seriousness of the Contravention(s)

Provide your explanation of why the alleged contravention(s) are serious enough to warrant an Investigation. Explain the potential harm to the environment.

Lined area for writing an explanation.

*If you need more space, attach additional pages, each referenced with "Question #4".*

## 5. Summary of Evidence

5. a) List all the evidence that supports your allegation, including any written documents, photographs, samples or any other materials that you believe should be considered in the investigation.

Attach copies of written materials and photographs to this Application, or contact [commissioner@eco.on.ca](mailto:commissioner@eco.on.ca) to submit the documents and photographs electronically. Reference each document and photograph against the list you have created below and indicate that they are part of your answer to "Question #5 a)".

Please note that if this Application is forwarded to an investigator, any evidence contained in it may be released to ministry investigators. Ministry investigators may also contact you to get more evidence, if it is available.

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*If you need more space, attach additional pages, each referenced with "Question #5 a)".*

**5. b)** Provide names and addresses of anyone who might be able to give evidence about the alleged contravention, to the extent that this information is available. For example:

"Jane Doe, Abatement Officer, Ministry of the Environment  
Central Region, 416-555-1234

Ms. Doe will confirm that on August 25, 2011, a pipe from the alleged contravenor's company was discharging into ABC Creek. Ms. Doe can also confirm that the samples mentioned in Section 5. a) were obtained on August 25, 2011 from the same discharge."

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*If you need more space, attach additional pages, each referenced with "Question #5 b)".*

# 6. Previous contact with the Ministry or Environmental Commissioner of Ontario

If you have previously contacted any ministry or the Environmental Commissioner of Ontario about the alleged contravention, please provide the following information:

- Name, address and telephone number of the person or office contacted and date contacted
- Details of the reason for contact
- Outcome of the contact

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*If you need more space, attach additional pages, each referenced with "Question #6".*

## Sworn Statement

The *Environmental Bill of Rights, 1993* also requires that each applicant make a sworn statement that he or she believes that the facts alleged in the Application are true. After you have completed this Application, bring the Application before a Judge, Justice of the Peace, lawyer, MPP or anyone else who is a Commissioner for taking affidavits and have the Application sworn or affirmed before you forward it to the Environmental Commissioner of Ontario. Two statutory declaration forms are attached for your use.

*Forms are on following pages.*

**APPLICANT 1**

<p>CANADA Province of Ontario</p>	<p>IN THE MATTER OF</p>
<p>TO WIT:</p>	
<p>I, _____ of the _____ (full name) (city, town, etc.)</p> <p>in the province of Ontario SOLEMNLY DECLARE THAT the attached documentation and statements are true to the best of my knowledge.</p> <p>AND I make this solemn Declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.</p> <p>DECLARED before me at the _____ of _____ in the Province of Ontario</p> <p>this _____ day of _____, 20____</p>	
<p>_____ A Notary Public, Commissioner of Oaths, etc.</p>	



## APPLICANT 2

CANADA  
Province of Ontario

IN THE MATTER OF

TO WIT:

I, \_\_\_\_\_ of the \_\_\_\_\_  
(full name) (city, town, etc.)

in the province of Ontario SOLEMNLY DECLARE THAT the attached documentation and statements are true to the best of my knowledge.

AND I make this solemn Declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the

\_\_\_\_\_ of \_\_\_\_\_

in the Province of Ontario

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
A Notary Public, Commissioner of Oaths, etc.



## Application for Investigation Checklist

Before you send your Application for Investigation and supporting documents to the Environmental Commissioner of Ontario, make sure you have...

- Completed the forms for Applicant Number One **AND** Applicant Number Two, including the signatures of both applicants
- If you are a corporate applicant, provided the proper legal name of the corporation **AND** completed the declaration of incorporation in Ontario
- Provided a sworn statement from **EACH** applicant that the applicant believes that the facts alleged in the application are true
- Specified the section(s) of the act(s), regulation(s) or instrument(s) that you believe was/were contravened
- Double checked that the section(s) of the act(s), regulation(s) or instrument(s) that you believe was/were contravened is/are subject to an *EBR* Application for Investigation
- Provided the names and addresses (if possible) of each person alleged to have been involved in the commission of the contravention(s)
- Described the nature of the alleged contravention(s)
- Included as much information as you can to support your application, including the names and addresses of any witnesses, any documents or materials that you believe should be considered in the investigation, and copies of any documents or other evidence (if possible)
- Provided details of any previous contact that you have had with the office of the Environmental Commissioner of Ontario or any ministry regarding the alleged contravention(s)
- Addressed your original Application for Investigation to:  
**The Environmental Commissioner of Ontario**  
**1075 Bay Street, Suite 605**  
**Toronto, ON M5S 2B1**
- Retained a copy of your Application for Investigation and supporting documents for your own records

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## **Ontario's Environmental Bill of Rights and You**

**Produced by:**

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**Environmental  
Commissioner  
of Ontario**