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Environmental Commissioner of Ontario

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Important Note:

The information contained in this guide is provided as a public service by the Environmental Commissioner of Ontario. This document should not be considered legal advice.

We recommend that you verify the information before acting on it. For comments or questions about the guide, please send an E-mail message to inquiry@eco.on.ca, or write or phone us at:

Environmental Commissioner of Ontario

1075 Bay Street
Suite 605
Toronto, Ontario
M5S 2B1

Telephone:

(416) 325-3377

Toll Free:

1-800-701-6454

Fax:

(416) 325-3370

Web site:

www.eco.on.ca

E-mail:

inquiry@eco.on.ca

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Part 1

The Environmental Bill of Rights

The *Environmental Bill of Rights (EBR)*, one of the most significant environmental laws in the last 25 years, was enacted in February 1994. The *EBR* recognizes that the provincial government has the primary responsibility for protecting, conserving and restoring the natural environment. It also recognizes that 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.

Your Rights under the *EBR*

The *EBR* gives everyone certain environmental rights and responsibilities. That means that all of us — citizens, politicians, policy-makers, lawyers, business people and activists — have legal rights and formal procedures for participating in environmental matters. Here's what the *EBR* does:

- Because you can't participate in environmental decision-making if you don't know what decisions are being proposed, the *EBR* requires that certain government ministries let you know about the environmental Acts, regulations and policies they're drafting. The Environmental Registry gives you that information. It's an easy-to-use Internet database — one of the first of its kind in Canada. It keeps you up to date on environmental proposals, decisions, court cases and other related information. See pages 8-9.
- You have the right to review and comment on proposed laws and standards, and ministries are obligated to consider your comments — before decisions are finalized. See pages 10-12.
- The *EBR* requires that government ministries develop Statements of Environmental Values (SEVs) to guide ministry staff when they make environmentally significant decisions. The SEVs, which are posted on the Environmental Registry, describe how ministries will integrate environmental values with social, economic and scientific considerations when they make environmentally significant decisions. See page 5.

- The *EBR* gives people the right to apply for leave to appeal certain ministry decisions, such as the licences, permits and other instruments issued to industrial facilities. See pages 13-17.
- The *EBR* gives you a formal process for proposing that existing environmental Acts, regulations, instruments or policies be reviewed, changed or improved. You can also ask the government to consider establishing new ones. See pages 18-21.
- If you think that environmental Acts or regulations are being broken, you can ask the government to investigate the alleged violation. In some cases, you can go to court if you're still not satisfied with a ministry's response to your request. See pages 22-24.
- The *EBR* gives you the right to sue someone (for example, a polluter) for causing environmental harm to a public resource. In addition, if you experience economic or personal loss because of a public nuisance that's causing environmental harm, you can now sue for personal damages. See pages 26-29.
- The *EBR* gives you added protection if you "blow the whistle" on the unsafe environmental practices of your employer. You now have legal protection from harassment if you report spills, unlawful emissions or other hazardous activities at your workplace. See pages 29-31.

What's My Next Step?

This is your guide to the *Environmental Bill of Rights*. It's not meant to answer all of your questions or as legal advice, but it will get you started on the right track. If you need more information, please contact the Environmental Commissioner of Ontario.

Part 2

What do I Need to Know

about the *EBR*?

The Goals of the *EBR*

The fundamental goals of the *Environmental Bill of Rights* are to protect, conserve and restore the integrity of the environment, to provide sustainability, and to protect the right of Ontario residents to a healthful environment.

These goals include preventing, reducing and eliminating the 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.

Ministries Prescribed under the *EBR*

The ministries to which the *EBR* applies may change from time to time (see following chart), so please contact the ECO for the most up-to-date list of ministries subject to the *EBR*. Or check the ECO Web site at < www.eco.on.ca >.

MINISTRIES SUBJECT TO THE <i>EBR</i> (OCTOBER 2003)	
Agriculture and Food	Labour
Consumer and Business Services	Management Board Secretariat
Culture	Municipal Affairs and Housing
Enterprise, Opportunity and Innovation	Natural Resources
Energy	Northern Development and Mines
Environment	Tourism and Recreation
Health and Long-Term Care	Transportation

Who can Participate in the *EBR*?

Any resident of Ontario can participate in 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 refinery.
- A business person who believes that new manufacturing or production processes make certain environmental laws and regulations out-of-date.
- A witness to nighttime 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.

Statements of Environmental Values

Each of the ministries subject to the *EBR* has a Statement of Environmental Values (SEV). The SEV guides the minister and ministry staff when they make decisions that might affect the environment. Visit MOE's Web site, www.ene.gov.on.ca, to view the ministries' SEVs online.

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.
- 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.

What is the Role of the Environmental Commissioner?

The Environmental Commissioner of Ontario (ECO) is an independent officer of the Legislative Assembly and is appointed for a five-year term. The Commissioner reports annually to the Legislative Assembly — not to a political party or to a ministry.

In the ECO annual report to the Legislature, the Environmental Commissioner reviews and reports on the government's compliance with the *EBR*. The ECO carefully reviews how ministers exercised discretion and carried out their responsibilities in relation to the *EBR*. How did the minister respond to applications from the public requesting ministry action on environmental matters? Did ministry staff comply with the procedural and technical requirements of the law? And were the actions and decisions of the minister consistent with the ministry Statement of Environmental Values and with the purposes of the *EBR*?

To make sure the *EBR* is upheld, the Environmental Commissioner and ECO staff review how ministries use public input to draft environmental Acts, regulations and policies, and how ministries investigate reported violations of Ontario's environmental laws. Let the ECO know if your comments weren't considered. Each year the ECO also reviews the use of the Environmental Registry, monitors appeals and court actions under the *EBR*, and reviews the use of *EBR* procedures to protect employees who experience reprisals for "whistle-blowing."

Clearinghouse

The office of the ECO serves as a clearinghouse for Applications for Review and Investigation. For example, if you want a ministry to review an existing environmental Act, regulation or policy, you may obtain an Application for Review from the ECO. Staff will assist you with any questions you may have in filling out your application. Send your completed Application for Review to the ECO, and it will then be forwarded to the appropriate ministry.

Public Education and Assistance

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

ECO Web Site

Many of the ECO's educational publications and forms, as well as copies of the annual reports, are available online at the ECO's Web site at www.eco.on.ca.

Resource Centre

The ECO is home to a Resource Centre with a strong and growing collection of environmental resource documents. The Centre is open to the public, who are welcome to use the facility to find out more about the *EBR* and related issues and legislation. You can also access the Environmental Registry at the Resource Centre. Call us for Resource Centre hours at (416) 325-0363, (416) 325-3377 or 1-800-701-6454.

Part 3

How Do I Participate?

The Environmental Registry

The Environmental Registry is an Internet database of all the important proposals related to environmental decision-making by most Ontario government ministries. Ministries must post this information on the Registry so that the public is able to provide input on decisions before they are made.

The Registry gives you the information you need to participate in environmental decision-making, including:

- The text of the *Environmental Bill of Rights (EBR)* and its regulations.
- General *EBR* information.
- Ministries' Statements of Environmental Values.
- Summaries of proposed Acts, regulations, policies and instruments.
- Ministry decisions on proposed Acts, regulations, policies and instruments, and explanations of how public comments influenced the decisions.
- Notices of appeals of instruments and appeal decisions.
- Notices of court actions and final results.
- Links to the full text for many proposals for Acts, regulations and policies.

How Do I Get on the Environmental Registry?

You don't have to be a computer whiz to use the Environmental Registry. You can get online:

- through the Internet.
- at the ECO's Resource Centre.
- at your nearest public library.

Getting Online through the Internet

Log on to the Internet as usual. The Web site address for the Environmental Registry is **www.ene.gov.on.ca/envision/env_reg/ebr/english**

Getting Online at a Library

Public libraries allow the public to use the Internet. Library staff are available to assist you in using the Registry.

Getting Online at the ECO

You can access the Environmental Registry at the ECO's Resource Centre, where staff can assist you. Call the ECO for Resource Centre hours.

How to Comment

The *EBR* gives you a way to help shape proposed environmental Acts, regulations, instruments and policies to protect the environment. You have the right to comment on environmental decisions proposed by the Ontario government — right from the start.

Public Comment Process

1. PROPOSAL POSTED ON ENVIRONMENTAL REGISTRY

The ministry posts an environmentally significant proposal on the Environmental Registry. The notice is posted for a minimum of 30 days. It summarizes the proposal, tells you how you can participate, the deadline by which you must get your comments in, where to send them, and where you can get additional information. (A sample notice is provided in Appendix B.)

If you think you need additional time to comment on a proposal, you can request an extension of the comment period. Make sure you send your request to the ministry before the comment period on the proposal ends, and if possible, send a copy of your request to the ECO.

2. PREPARE YOUR COMMENTS

If you decide to participate, put your comments in writing. Remember to 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 may be able to provide more information.)
- Do I need expert advice?
- Is my submission clear and thorough?
- Did I include all relevant supporting material?
- Have I contacted others who may also be interested in the proposal?

3. SEND YOUR COMMENTS TO THE MINISTRY

Send your written comments to the ministry contact person listed at the end of the proposal within the time frame in the notice. If possible, send a copy of your comments to the ECO at the same time. The proposal notice will specify the information you must include with your comments (for example, the Ministry of the Environment requires that the Registry proposal number be included with your comments).

4. DECISIONS ARE POSTED BY THE MINISTRY ON THE ENVIRONMENTAL REGISTRY

After the ministry reviews all written comments and considers all those relevant to the decision, the final decision is posted on the Environmental Registry, including an indication of the number of comments received and how the ministry considered the comments. Since the minister does not have to decide whether to approve a particular proposal within a set time frame, you may have to monitor the Registry for several months.

5. SEE HOW YOUR COMMENTS WERE CONSIDERED

Review the decision to see if your comments were considered. The ECO reviews ministry decisions to see how comments were taken into account and reports annually on whether ministries complied with the requirements of the *EBR*.

Enhanced Public Participation

For most proposals posted on the Registry, ministries are required to provide only a minimum level of public participation. But for some of the permits and licences that ministries grant (for example, Class II instruments, which have a higher level of risk and potential threat to the environment), the *EBR* requires that ministries provide additional notice, such as ads in local newspapers, at the time the instrument is posted on the Environmental Registry. Moreover, ministers are required by the *EBR* to provide for enhanced public participation (EPP). This can include the chance to speak directly to ministry decision-makers, public meetings, informal discussions or more formalized mediation. Enhanced public participation opportunities are at the discretion of ministry decision-makers, but if you wish to request EPP measures on an instrument proposal, you should consider the following options:

1. Before the comment period on the proposal ends, write a letter to the ministry contact person outlining the types of EPP measures you are seeking. If possible, send a copy of your letter to the ECO.
2. You can ask the minister to extend the comment period on the proposal, hold a public meeting, or allow you to make a presentation to the minister or ministry staff. You can also request that the minister initiate mediation on the proposal. The ministry will probably respond to your request with a letter, and in some cases, may repost the proposal and describe the EPP measures that have been agreed to by the minister.

The ECO reviews how these requests are handled by ministries.

Example**Public Comments on a Ministry Proposal**

The public can have an effect on the decisions that ministries make about the environment. The following example shows how public comments influenced a final ministry decision.

Bronte Creek Provincial Park Management Plan Review

Registry # PB7E3002

description Bronte Creek is a small provincial park located in the City of Oakville. The area south of the creek, which bisects the park, already contained picnic areas, parking lots, sports facilities, a working farm and a museum. Proposed changes by the Ministry of Natural Resources (MNR) to the existing Bronte Creek park plan included still more development — an amphitheatre, education centre, natural history museum, Ontario Parks store, roofed accommodations, 500-site campground and a welcome centre, possibly housing a conference centre, restaurant, and an IMAX theatre with virtual reality rooms. Part of the new development, including the campground, was being proposed for the undeveloped lands north of the creek.

public comments Many commenters were opposed to the proposed scale of development, to the number of campsites, to plans to build a bridge over Bronte Creek and to put cabins and permanent tents in an undisturbed woodlot. Several people were concerned about MNR's plans to reduce the nature reserve zoning that protected the creek valley and the adjacent lands. Other commenters wanted the northern part of the park to remain undeveloped.

decision In response to public comments, MNR reduced the park's proposed development zone from 60 per cent of the parklands to 50 per cent, and increased the nature reserve zone from 18 per cent to 25 per cent. The area set aside for natural restoration in the northern part of the park was more than doubled in size, and the proposed campground was reduced from 500 sites to 400.

How to Appeal Ministry Decisions on Instruments

Under the *EBR*, ministries must classify instruments — the permits, licences or certificates of approval 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 and whether they are subject to *EBR* processes such as review, investigation and appeal.

Lawyer Referral Service

The Lawyer Referral Service of the Law Society of Upper Canada can provide you with the names of Ontario lawyers who practise environmental law. You can call them at 1-416-947-3330 or 1-800-268-8326.

There are two ways you can become involved in appealing ministry decisions on instruments. You can start an appeal process yourself by seeking leave (or permission) to appeal a decision.

Or you can participate in an existing appeal process already initiated by a proponent. Appealing a ministry decision on an instrument takes time, money and expertise, and you may wish to hire a lawyer. (See Lawyer Referral Service, this page.)

A) Initiating an appeal process yourself by seeking leave to appeal a ministry decision

This is called the “third-party” appeal process. You are the “third party” because the proponent and the ministry are considered the “first” and “second” parties.

You must ask for permission to appeal a ministry decision from the proper appeal body — the Environmental Review Tribunal, for instance. Because each appeal tribunal is different, you should contact the tribunal for information about its procedures before you begin. (The appeal tribunal is listed on the decision notice posted on the Environmental Registry.)

Here's the process:

1. To apply for leave to appeal a ministry decision, you have to show:

- a. that you have an "interest" in the decision.

(For example, you may live near the facility granted the instrument, or you may have commented on the original proposal to issue the instrument.)

- b. that this kind of decision can be appealed under another Act.
(For example, the owners of a waste management company may have a right under the *Environmental Protection Act* to appeal some terms and conditions of the certificate of approval to operate their facility. The Registry posting will tell you whether or not the decision can be appealed.)
2. You must seek leave to appeal a decision within 15 days after the ministry places the decision on the Environmental Registry.
3. Send your application for leave to appeal to the ECO, to the appeal tribunal, to the company or proponent holding the instrument, and to the ministry official who issued the instrument. The Environmental Commissioner then places notice of your leave to appeal application on the Environmental Registry.
4. The tribunal considers the following two questions in deciding whether to hear your appeal:

Is there good reason to believe that no “reasonable” person, having regard to the law and any relevant government policies, could have made the decision?

Could the decision being appealed result in significant harm to the environment?
5. In your application, make sure you include:
 - a. Proof that you have an interest in the decision and that you meet the other conditions required to appeal. (For example, certain tribunals allow only Ontario residents to appeal decisions.)
 - b. A statement of all facts you are relying on for the appeal.
 - c. A statement explaining why you think your appeal passes the basic tests described in step 4 above.
 - d. Copies of all supporting documents relied on for the appeal.
 - e. A copy of the instrument you are appealing (this can be obtained from the ministry issuing the instrument).
 - f. A statement describing the portions of the instrument you wish to challenge in the appeal hearing.
 - g. Your telephone number and fax number where you can be reached during the tribunal’s business hours (usually 9 a.m. to 5 p.m. most weekdays).

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

6. 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.
7. Generally, the appeal tribunal will decide on your application within 45-60 days, unless there are unusual circumstances.
8. If the tribunal finds you have not met the requirements for leave to appeal and that your grounds for appeal do not have merit, it will dismiss your application.
9. If the tribunal finds that you have met the requirements for leave to appeal and your grounds for appeal do have merit, it will allow you to proceed with a regular appeal hearing. In that case, the tribunal will usually put the ministry's decision on hold until the appeal is decided.
10. After hearing the appeal, the tribunal may:
 - agree with the ministry's decision, or
 - overturn the decision, or
 - decide if new conditions should be added to the ministry's original decision.

Please note that each tribunal has different decision-making powers.

B) Participating in an existing appeal process

Here's how it works:

1. A proponent named in an instrument (such as a company seeking approval to discharge chemicals into the environment) appeals the ministry's decision because they may not like certain conditions in the approval.
2. A notice of the appeal is placed on the Environmental Registry.

The tribunal or the proponent may also give you notice of the appeal, sending you a letter, for example, if you live in the vicinity of the facility.

3. The tribunal may let you participate.

The relevant tribunal (for example, the Environmental Review Tribunal) may allow any person with an interest in the appeal to participate fully in the hearing, or to take part in pre-hearing meetings or settlement negotiations. For more information about this kind of appeal process, contact the relevant tribunal.

Which Ministries Post Instrument Proposals?

1. Ministry of Consumer and Business Services
— Technical Standards and Safety Authority (TSSA)*
2. Ministry of the Environment
3. Ministry of Municipal Affairs and Housing
4. Ministry of Natural Resources
5. Ministry of Northern Development and Mines

* The TSSA has been delegated this responsibility by the Minister of Consumer and Business Services.

Example**Seeking Leave to Appeal a Ministry Decision**

In February 1999, the Soyers Lake Ratepayers Association (SLRA) applied to the Environmental Appeal Board for leave to appeal a decision by the Ministry of the Environment (MOE) to permit a local golf course in Haliburton to take water for irrigation from Little Soyers Lake, which is the principal source of water for Soyers Lake. The ministry's decision would have allowed the golf course to take up to 4,450 litres of water from the lake per minute during the summer months — 2,724,000 litres per day — for 25 years.

In their application seeking leave to appeal MOE's decision, the SLRA pointed out that its members lived on Soyers Lake and thus had an "interest" in the decision. The SLRA listed a number of reasons why no "reasonable" person would have made the decision to allow the golf course to take up so much water from Little Soyers Lake:

- Since there had been almost no rainfall in summer 1998, the permit would lower the level of Little Soyers Lake by more than 50 cm, eliminating the outflow from Little Soyers Lake and thus virtually extinguishing the flow of water into Soyers Lake.
- Because of the run off from the golf course, the reduced water levels would increase the concentration of fertilizers, herbicides and pesticides in the lakes and related wetlands.

SLRA recommended that the rate of water taking be reduced under dry conditions, that the amounts withdrawn be validated by an independent third party, and that annual reports be submitted to nearby municipalities and to the SLRA. They also recommended that the permit to take water be issued for five years only.

In its own submission to the Board, MOE decided to support some of the SLRA's suggestions, and in March 1999, the Environmental Appeal Board granted the ratepayers association leave to appeal. After negotiations, the SLRA withdrew its appeal, since most of its concerns had been addressed by the golf course and by MOE, and new conditions were included in the permit to take water.

How to Apply for a Review

There are two kinds of reviews in the review process established under the *EBR*. You can ask a minister to review **existing** policies and prescribed Acts, regulations, and instruments. (For example, you may have evidence that shows drinking water guidelines are too weak.) Or you can ask a minister to review the need for **new** Acts, regulations and policies. (See Appendix E: Acts Subject to the *EBR*, page 49.) Two Ontario residents must co-apply for a review.

The Review Process

1. Call or write the ECO for an Application for Review. You can also download an application from the ECO Web site.

2. Complete the application.

Make sure you include:

- a. Your names, addresses and proof that you are Ontario residents. (The application form has an easy-to-complete space for proof of residency.)
- b. The name of the Act, regulation or policy you want reviewed, or the ministry reference number of the instrument you want reviewed. (Contact the ECO if you need help obtaining the reference number for an instrument.)
- c. The reason you want a review.
- d. A summary of evidence supporting your request.

If you need assistance filling out your application, contact the ECO. Don't be afraid to include details — all personal information is kept confidential. (A sample Application for Review is provided in Appendix C to assist you in the process.)

3. Make sure both you and your co-applicant sign and date the application.
4. Send your completed application 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 ministry responsible, or will contact you if there are any problems with the application that need to be addressed before it can be forwarded.

6. The ministry will acknowledge receipt.

Within 20 days of receiving your application from the ECO, the ministry lets you know it has received it. The ministry will also notify anyone else 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 the names of the applicants and is permitted to provide only a general description of the request.

7. The ministry decides whether or not to review.

Within 60 days of receiving your application, the ministry lets you know whether or not there will be a review. To decide whether a review is necessary, the ministry may consider the following:

- a. The ministry's Statement of Environmental Values.
- b. The potential for harm to the environment.
- 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. How much public participation there was when the ministry proposed the decision.

8. The ministry will determine that a review is not in the public interest if:

- a. the ministry approved the Act, regulation, instrument or policy within the past five years.
- b. there was public participation consistent with *EBR* requirements.

However, the minister could decide to undertake a review if you can show new evidence that failure to review could significantly harm the environment, and that this evidence was not taken into account when the decision was made.

9. There is no time limit on how long the ministry has to carry out the review. But if your Application for Review is approved, you'll be notified of the outcome within 30 days of completion of the review. The ministry also lets you know what action will be taken as a result of the review.
10. Once a ministry has decided whether or not to conduct a review, the Environmental Commissioner and ECO staff review and report on how the ministry handled the application in the ECO's annual report to the Legislature, usually released in the fall of each year.

MINISTRIES SUBJECT TO APPLICATIONS FOR REVIEW

The following ministries and organizations are required to assess Applications for Review and consider whether or not to conduct a requested review:

1. Ministry of Agriculture and Food
2. Ministry of Consumer and Business Services
— Technical Standards and Safety Authority (TSSA)*
3. Ministry of the Environment
4. Ministry of Energy
5. Ministry of Municipal Affairs and Housing
6. Ministry of Natural Resources
7. Ministry of Northern Development and Mines

* The TSSA has been delegated this responsibility by the Minister of Consumer and Business Services.

Example**Application for Review****(Hazardous Waste)**

In February 1998, two applicants applied to the Ministry of the Environment for a review of Ontario's regulations for hazardous wastes. The application raised many concerns about whether information-gathering and public reporting of hazardous wastes by the ministry were adequate. The applicants also stated there was not enough emphasis on pollution prevention, and they called for more stringent controls in areas such as emissions standards for incinerators, for bans on certain kinds of waste disposals, and for stronger recycling rules for hazardous materials such as batteries and waste oil.

MOE denied the review in April 1998, noting that it was already conducting a review through the ongoing regulation reform process taking place in several of the areas raised in the application. However, in its 1998 annual report, the ECO pointed out that the ministry had failed to address evidence or concerns raised by the applicants in many other areas, including gaps in databases and poor information-gathering.

How to Apply for an 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. (See Appendix E: Acts Subject to *EBR*, page 49.) For example, you may believe that the owner of a junkyard is illegally disposing of tires at night, or a construction company is filling in protected wetlands, or your company is illegally releasing toxic air emissions at a rate higher than allowed in its certificate of approval.

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.

If you think the situation is an emergency, call or visit your nearest ministry office responsible (see the Blue Pages in your telephone book). Or if it is a spill onto land or into water, call the Ministry of the Environment's Spills Hotline at 1-800-268-6060 or 416-325-3000.

If the situation is not an emergency, begin the investigation process under the *EBR*:

1. Call or write the ECO for an Application for Investigation. You can also download one from the ECO Web site.
2. Complete the application. Make sure you include:
 - a. Your names, addresses and proof that you are Ontario residents. (The application form has an easy-to-complete space for proof of residency.)
 - b. A description of the alleged violation. Make sure you identify the law, regulation or instrument you think has been contravened. If you need help doing this, please contact the ECO. You can view Ontario's laws online at www.e-laws.gov.on.ca
 - c. The names and addresses of the alleged violators, if available.
 - d. A summary of evidence supporting your request.
 - e. A list of witnesses, if possible.
 - f. Details about previous contact you've had with the ministry or the ECO about the alleged contravention.

Don't be afraid to include details — all personal information is kept confidential. However, if the ministry decides to prosecute or use your information to impose an administrative monetary penalty, you may have to testify in court or provide additional information to ministry officials.

If you need assistance filling out your application, contact the ECO. (A sample application is provided in Appendix D to assist you in the process.)

3. Swear affidavits. Take your completed application to a lawyer, notary public or Commissioner of Oaths. They'll help you complete an affidavit swearing your allegations are true. Make sure both you and your co-applicant have sworn an affidavit.
4. Send your application — along with your affidavits — 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 ministry responsible, or will contact you if there are any problems with the application that need to be addressed before it can be forwarded.
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 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.
 - d. An investigation is already under way or has already been done.

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 let you know how long the investigation will take.

9. After the investigation is completed, the ministry has 30 days to let you know the outcome and any actions taken or to be taken.
10. Once a ministry has decided whether or not to conduct an investigation, the Environmental Commissioner and ECO staff review and report on how the ministry handled the application.

MINISTRIES SUBJECT TO APPLICATIONS FOR INVESTIGATION

The following ministries and organizations administer Acts, regulations and instruments that are subject to Applications for Investigation:

1. Ministry of Consumer and Business Services
— Technical Standards and Safety Authority*
2. Ministry of the Environment
3. Ministry of Energy
4. Ministry of Natural Resources
5. Ministry of Northern Development and Mines

* The TSSA has been delegated this responsibility by the Minister of Consumer and Business Services.

Example**Application for an Investigation**

In 1996, two Ontario residents filed an Application for Investigation with the Ministry of the Environment, alleging that a large manufacturing company in Oshawa was not complying with *Environmental Protection Act (EPA)* regulations that require companies to perform waste audits, carry out waste reduction workplans, and put in place a consistent plan for source-separating waste. The applicants also provided evidence that the company had been made aware of the regulatory requirements, but had still not taken any action.

In response to the application, MOE's investigation revealed that indeed the company was not complying with requirements for waste audits and waste reduction workplans. Moreover, the ministry also discovered that the company did not have a certificate of approval for air emissions and had also failed to register as a generator of liquid industrial waste. MOE and the company agreed to a deadline for submitting applications for these permits. In addition, the ministry issued violation notices to the company for failing to meet the *EPA* requirements related to waste audits and other recycling regulations.

How to Sue to Protect a Public Resource

The *EBR* gives you the right to sue someone who is violating or is about to violate an environmental Act or regulation, 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.

What Do I Need to Know Before I Sue?

You should carefully consider the pros and cons of going to trial. 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 apply for an investigation before you can bring a lawsuit through the *EBR* (unless there's a serious risk of harm to a public resource). If you've asked 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.
- 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.

The Court Process

1. If you decide to sue, contact a lawyer and start your lawsuit. (See the Lawyer Referral Service, p. 13.)
2. Have your lawyer serve a statement of claim on the defendant (the person or company you're suing). Within the next 10 days, the Attorney General of Ontario must also be formally notified. Please notify the ECO at this time as well.

3. Within 30 days of receiving the statement of defence from the defendant and serving all official papers to the court, 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. Forward the proposed notice to the defendant and ask the court if additional notice of your action should appear in local newspapers or elsewhere. Once the notice has been approved by the court, forward a copy to the ECO and we will post it on the Registry.
4. Now you're ready to go to trial. 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 judgement. This way, you save the expense and stress of a full trial.
5. If you go to a full trial, here's what could happen:
 - a. If the court finds that the defendant complied with the law, and didn't break any Acts or regulations, 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 the defendant broke an environmental law, it may grant an order to stop the polluting practice, 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. The ECO posts the court's ruling on the Environmental Registry.

Example**Lawsuit for Harm to a Public Resource**

In 1998, Karl and Vicki Braeker, owners of a farm in Grey County, began legal proceedings against Max Karge, the owner of a property adjacent to their own farm, and against the Ministry of the Environment, alleging that more than 33,000 scrap tires had been illegally dumped and then buried on Karge's property. The tires had contaminated the subsoil, groundwater, and surface water in the surrounding vicinity, including their well water, the Braekers said. MOE bore some responsibility for the situation, alleged the claimants, by acting negligently in monitoring and inspecting the property, failing to enforce pollution laws, and authorizing the burial of the tires.

The Braekers said that in the seven years since the tires had been buried, under the supervision of MOE staff, they had been deteriorating and leaching contaminants into the local groundwater. Their statement of claim further stated that testing in 1994 by MOE revealed that the contaminants from the tires were toxic to fish and other aquatic life and that a ministry groundwater specialist recommended the tires be removed. Yet, three years later, MOE was still unwilling to act on the problem. Further testing done in 1997 found water at the site was contaminated with chemicals in concentrations that greatly exceed levels permitted under the Provincial Water Quality Objectives.

MOE began work in the summer of 1998 to remove the tires so they could be recycled for use in an asphalt mix to be applied on Grey County roads. When the ministry refused to clean up the groundwater as well, the Braekers began their legal proceedings.

Although the Braekers had not submitted an Application for Investigation before beginning their legal proceedings, they relied upon ss. 84 (6) of the *EBR*, which states that this requirement does not apply where delay would result in harm or serious risk of harm to a public resource. The claimants are seeking a declaration from the court that the defendants unlawfully caused, permitted, or failed to stop the actual or imminent contamination of the plaintiffs' properties by contaminants emanating from the illegal waste dump; an interim and permanent injunction preventing the use of the property for any use other than rural uses; a declaration or injunction requiring an environmental plan to restore the site to its prior condition; and damages in excess of \$1 million.

A statement of defence was filed in 1999 by MOE and the numbered company that acquired title to the land previously owned by Mr. Karge. As of January 31, 2000, the lawsuit had not proceeded to trial or been settled by the parties.

How to Sue over a Public Nuisance

Individuals in most other parts of Canada have limited access to the courts when they want to sue for public nuisances because of the requirement that they first obtain the consent of the provincial Attorney General. But under s.103 of 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.

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 p. 13 for the Lawyer Referral Service.)

How to Get Protection from Employer Reprisals

Many employers in Ontario both use and create toxic or hazardous materials and wastes. If you know about or have 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:

- A truck driver who is told to fill out false reports and dump some 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 certificate of 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 materials 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, shop steward or a lawyer first unless the situation is an emergency.

If you do participate in the *EBR* and you believe your employer has taken reprisals against you, here's what to do:

The Employer Reprisal Protection Process

1. Contact the Ontario Labour Relations Board (OLRB) for an Unlawful Reprisal Application form (OLRB Form A-59). You can obtain background information and copies of the OLRB application forms at www.gov.on.ca/lab/olrb/eng/forms/formsnot.htm

Complete the application form and file it with the OLRB.

2. A Labour Relations Officer will investigate.

If there are grounds to support your complaint, a Labour Relations Officer will look into the situation and try to settle the matter with you and your employer.

3. If there is no settlement, the OLRB may review the complaint directly. Your employer must prove to the Board that no reprisals were taken against you.

4. Settlement

If the Board finds that you did experience reprisals, it may order your employer to:

- a. stop or fix the action you've complained about.
- b. reinstate you.
- c. compensate you for lost earnings.

5. Enforcement

If your employer does not follow the Board's order or the settlement agreement, you must let the Board know and its decision will be filed with the Ontario Superior Court of Justice. The decision can then be enforced as if it were a court order.

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
Phone: (416) 326-7500
Fax: (416) 326-7531

How to Get More Information

If you need more information about the *Environmental Bill of Rights* or want an Application for Review or Investigation, contact the Environmental Commissioner of Ontario.

Address:

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

Web site:

www.eco.on.ca

E-mail:

inquiry@eco.on.ca

Appendix A

Definitions

The following definitions apply under the *EBR*.

Air

Open air not enclosed in a building, structure, machine, chimney, stack or flue.

Environment

The air, land, water, plant life, animal life and ecological systems of Ontario.

Harm

Any contamination or degradation, including harm caused by the release of any solid, liquid, gas, odour, heat, sound, vibration or radiation.

Instrument

Any document of legal effect issued under an Act, including a permit, licence, approval, authorization, direction or order. Instruments do not include regulations.

Land

Surface land not enclosed in a building, land covered by water (including wetland) and all subsoil.

Policy

A program, plan or objective, including guidelines or criteria for making decisions to issue, amend or revoke an Act, regulation or instrument.

Prescribed

Anything established by the regulations of the *EBR*.

Regulation

A form of law, rule or order of a legislative nature, specifically authorized under a provision of a statute and approved by Cabinet. Regulations have the force of law when in effect.

Water

Surface and groundwater.

Appendix B**Sample Registry Notice****EBR Registry Number:** IA9E0781**Ministry Reference Number:** 8320399**Type of Posting:** Instrument**Status of Posting:** Proposal**Ministry:** Environment**Date Proposal Loaded:** 1999/06/29**Comment Period:** 30 day(s)

Written submissions may be made between June 29, 1999 and July 29, 1999.

NOTICE OF PROPOSAL FOR AN INSTRUMENT:**Instrument Type:**

EPA s. 9 - Approval for discharge into the natural environment other than water (i.e. Air)

Proponent:

West-End Chrysler Dodge (1971) Limited, 1865 Weston Road, Toronto, Ontario, M9N 1V9

Location of Activity:

City of Toronto

County/District/Region:

Municipality of Metropolitan Toronto

Other Activity Location Identifiers:

1865 Weston Road

Description:

This application is for a certificate of approval (air) for the installation of a down-draft, filter-type, automotive paint spray booth.

Comments should be directed to the following Contact Person:

Information Officer, Industrial & Municipal

Approvals Branch

3rd Floor, 250 Davisville Ave.

Toronto, Ontario, M4S 1H2

PHONE: (416) 314-8079 FAX: (416) 314-8452

Some government offices may have copies of this proposal for viewing.

These are listed below:

Env. Assessment & Approvals Branch
250 Davisville Avenue
3rd Floor, Toronto, Ontario M4S 1H2
PHONE: (416) 314-8001 FAX: (416) 314-8452

Toronto District Office
5775 Yonge Street
8th Floor, Toronto, Ontario M2M 4J1
PHONE: (416) 326-6700 FAX: (416) 325-6346

All comments will be considered as part of the decision-making by the ministry if they:

- (a) are submitted in writing;
- (b) reference the EBR Registry number; and
- (c) are received by the Contact Person within the specified comment period.

****** No acknowledgement or individual response will be provided to those who comment. All comments & submissions received will become part of the public record. ******

Appendix C

Application For Review

Some of the information contained in the application below is taken from an example of an Application for Review contained in "The Environmental Bill of Rights, A Practical Guide" (1995), and is reprinted here with the permission of the authors, Paul Muldoon and Richard Lindgren, and the publisher, Emond Montgomery Publications Ltd.



**Environmental
Commissioner
of Ontario**

1075 Bay Street
Suite 605
Toronto, Ontario
M5S 2B1
Tel: (416) 325-3377
Fax: (416) 325-3370
1-800-701-6454



Application For Review

Section 61, *Environmental Bill of Rights*

General Information About This Application

Under section 67 of the *Environmental Bill of Rights (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 requested 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 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 Officer	Phone: (416) 325-3377
Environmental Commissioner of Ontario	Fax: (416) 325-3370
1075 Bay Street, Suite 605	Toll Free: 1-800-701-6454
Toronto, ON, M5S 2B1	

Instructions

1. Type or print clearly in ink.
2. Ensure both applicants provide proof of Ontario residency.
3. Ensure both applicants sign and date the Application.
4. Answer all the questions.
5. Keep a copy of the Application and any supporting documents for your files.
6. Submit your original Application and supporting documents to the Environmental Commissioner of Ontario.

Applicant Number One

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

Declaration of Ontario Residency:

I _____ am an Ontario resident and have been since _____

(Name) (Month) (Year)

(Date) (Signature)

Applicant Number Two

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

Declaration of Ontario Residency:

I _____ am an Ontario resident and have been since _____
 (Name) (Month) (Year)

 (Date) (Signature)

Corporate Applicant

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

Declaration Of Incorporation In Ontario

I _____ is an Ontario or Canadian federal corporation in good
 (Name of Corporation)
 standing, carrying on business with its head office in Ontario*, established by articles of
 incorporation in _____.
 (Year)

 (Date) (Name of Officer and Position)

 (Company Number) (Signature)

* If the company is a federal corporation, and its head office is not in Ontario, please contact the Environmental Commissioner.

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

Questions

1.(a) I request a Review of an **existing** policy, Act, regulation or instrument.

Policy Act Regulation Instrument

Clearly identify the name of the Policy, Act, Regulation or Instrument that you wish reviewed. Please provide as much detail as possible, including the name, section numbers and instrument numbers where applicable.

[example]

Provisional Certificate of Approval for a Waste Disposal Site No. 0000, issued by Ministry of Environment and Energy (MOE) to Blackacre Landfill Limited on July 4, 1982.

1.(b) I request a Review of the need for a **new** policy, Act or regulation.

Policy Act Regulation

Description of Policy, Act or Regulation:

Not Applicable

2. Explain why you think there is a need for a review:

The current Provisional Certificate of Approval for the Blackacre Landfill Site is inadequate to protect the environment because:

1. *The certificate does not require an impermeable liner or engineered leachate collection system at the landfill site.*

2. *The certificate does not require the landfill owner and operator to monitor or characterize the leachate generated at the site, nor does it require the landfill owner or operator to take steps to improve the quality of the leachate or reduce the quantity of leachate.*

3. *The present method of collecting and re-circulating leachate at the landfill without off-site treatment and disposal has resulted in groundwater contamination, surface water contamination and discharges of leachate to Pike Creek and the natural environment. The discharges of leachate have caused*

significant harm to Pike Creek and the life therein, and it is not in the public interest to permit these discharges and harm to continue.

4. *The certificate should be amended to expressly require the landfill owner and operator to immediately design and implement an appropriate leachate collection and management system at the landfill site.*
5. *Such further or other reasons as the applicants may provide in support of this application for review.*

3. The following is a summary of the evidence that supports my Application For Review. **(For example, scientific studies and reports. Attach copies of written materials and photographs to this Application. Reference each document and photograph against the list you have created and reference them with this number — #3.)**

The following evidence supports the need to review and revise the current Provisional Certificate of Approval for the Blackacre Landfill Site:

1. *MOE site inspection reports and laboratory analyses from 1989 to 1993 which document numerous examples of leachate-contaminated surface water runoff from the landfill site into Pike Creek. Leachate seepages draining from the eastern slope of the landfill towards and into Pike Creek have also been confirmed by MOE staff.*
2. *Memoranda from 1991 to the present time by MOE hydrogeologists who confirmed the existence of groundwater and surface water contamination originating from the landfill site. The MOE hydrogeologists also concluded that the landfill owner and operator should develop and implement an acceptable long-term plan for the collection, treatment and disposal of leachate generated at the landfill site.*

Application Checklist...

Before you send your Application to the Environmental Commissioner of Ontario, make sure you've:

- Reviewed what the minister must consider before undertaking the Review you have requested.
- Used a typewriter or pen, not pencil.
- Included someone as your co-applicant.
- Completely filled out Applicant Number One **AND** Applicant Number Two sections and signed both.
- Provided the proper legal name of the corporation **AND** completed the declaration of incorporation in Ontario, if you are a corporate applicant.
- Made it clear what existing policy, Act, regulation or instrument you want reviewed and explained in detail why.

OR

Made it clear what new policy, Act, or regulation you believe should be developed and explained in detail why.

- Provided a summary of the evidence that supports your Application For Review.
- Kept copies of your Application.
- Addressed your original Application to:

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

Disponible en français.

Appendix D**Application For Investigation**

Some of the information contained in the application below is taken from an example of an Application for Investigation provided in "The Environmental Bill of Rights, A Practical Guide" (1995), and is reprinted here with the permission of the authors, Paul Muldoon and Richard Lindgren, and the publisher, Emond Montgomery Publications Ltd.



**Environmental
Commissioner
of Ontario**

1075 Bay Street
Suite 605
Toronto, Ontario
M5S 2B1
Tel: (416) 325-3377
Fax: (416) 325-3370
1-800-701-6454

Application For Investigation**Section 74, Environmental Bill of Rights****General Information About This Application**

The personal information requested in this Application is gathered under the legislative authority of the *Environmental Bill of Rights (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 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 Officer
Environmental Commissioner
of Ontario**

1075 Bay Street, Suite 605
Toronto, ON, M5S 2B1

Phone: (416) 325-3377

Fax: (416) 325-3370

Toll Free: 1-800-701-6454



Instructions

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

1. Applicant Number One

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

Declaration of Ontario Residency:

I _____ am an Ontario resident and have been since _____
 (Name) (Month) (Year)

 (Date) (Signature)

2. Applicant Number Two

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

Declaration of Ontario Residency:

I _____ am an Ontario resident and have been since _____
 (Name) (Month) (Year)

 (Date) (Signature)

3. Corporate Applicant

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

Declaration Of Incorporation In Ontario

I _____ is an Ontario or Canadian federal corporation in good
 (Name of Corporation)
 standing, carrying on business with its head office in Ontario*, established by articles of
 incorporation in _____.
 (Year)

(Date)	(Name of Officer and Position)	
(Company Number)	(Signature)	

- * If the company is a federal corporation, and its head office is not in Ontario, please contact the Environmental Commissioner.
- ** If there are two corporate applicants, please copy this declaration form and attach the second completed declaration form to this application.

4. Alleged Contravenors

Provide the name and address of the person (s) you believe has contravened an Act, regulation or instrument prescribed under the EBR.

[example]

BLACKACRE LANDFILL LIMITED / JOSEPH HAROLD BLACKACRE		
Company/Individual Name		
123 ANYWHERE STREET	APT 300	
Address	Unit/Apartment	
KINGSTON	ONTARIO	K7L 1Z1
City	Province	Postal Code
(000) 000-0000	(000) 000-0000	
Residence Telephone	Business Telephone	

Are you an employee of the suspected contravenor. Please circle Yes or No.

Applicant Number One: Yes/No

Applicant Number Two: Yes/No

5. Alleged Contravention

(A) State the name of the prescribed Act, regulation or instrument you believe has been contravened. You must also provide the section number of the Act, regulation and/or instrument number. Please note that the Act must be prescribed under the Environmental Bill of Rights. Applications for Investigations alleging a contravention of a non-prescribed Act will not be considered.

Acts Prescribed For An Investigation

<i>Aggregate Resources Act</i>	<i>Gasoline Handling Act</i>
<i>Conservation Authorities Act</i>	<i>Lakes and Rivers Improvement Act</i>
<i>Crown Forest Sustainability Act</i>	<i>Mining Act</i>
<i>Endangered Species Act</i>	<i>Ontario Water Resources Act</i>
<i>Energy Efficiency Act</i>	<i>Pesticides Act</i>
<i>Environmental Assessment Act</i>	<i>Oil, Gas and Salt Resources Act</i>
<i>Environmental Protection Act</i>	<i>Provincial Park Act</i>
<i>Fish and Wildlife Conservation Act</i>	<i>Public Lands Act</i>
<i>Fisheries Act (Federal)</i>	<i>Waste Management Act</i>

Name of Act (s): Environmental Protection Act (EPA), and Ontario Water Resources Act (OWRA). Section Number EPA, s. 14 and s. 186; OWRA, s. 30 and s. 107
 (This item must be completed)

Regulation: Not applicable Section Number Not applicable

Instrument Number: Not applicable

(B) Provide a short description of the alleged contravention(s). For example: "An illegal discharge into the air or water", "the contravention of an existing Certificate of Approval", or "the operation of equipment without proper approvals".

The applicants believe that the suspected violators have:

1. *Failed to comply with a Director's Order issued against them on May 1, 1999;*
2. *Discharged or caused or permitted the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect; and*
3. *Discharged or caused or permitted the discharge of material into Pike Creek that may impair the quality of the water of Pike Creek.*

6. Seriousness Of The Contravention(s)

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

1. *The suspected violators are committing a continuing contravention of the Director's Order, Environmental Protection Act (EPA), and Ontario Water Resources Act (OWRA).*
2. *This continuing contravention involves the direct and deliberate discharge of leachate from the Blackacre Landfill site into Pike Creek and the natural environment. Leachate has also been permitted to drain or seep into Pike Creek.*
3. *This continuing contravention has caused, or is likely to cause, significant harm to public resources of Ontario, including Pike Creek and the fisheries, wildlife and plant life therein. It is not in the public interest to permit these discharges and harm to continue.*

The contravention has caused, and continues to cause, the following environmental harm:

1. *Degradation or contamination of the water quality of Pike Creek;*
2. *Degradation or contamination of the creek bed, aquatic organisms, fish and wildlife species within Pike Creek;*
3. *Degradation or contamination of fish habitat, including injury or damage to aquatic plant life, within Pike Creek; and*
4. *Degradation or contamination of the ecological functions of Pike Creek.*

7. Summary of Evidence

(A) List all the material evidence that supports your allegation. For example:

- “ 1. Photographs were taken of illegal discharges into the Pike Creek.
2. Samples were taken of the discharge.”

Attached copies of written materials and photographs to this Application. Reference each document and photograph against the list you have created below.

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.

1. *On-site observations and site inspection reports from MOE officers from 1989 to 1999 documenting numerous examples of leachate runoff and seepages towards and into Pike Creek (Document #1);*
2. *Memoranda from 1989 to the present time from MOE hydrogeologists confirming the existence of groundwater and surface water contamination from the originating landfill site (Document #2);*
3. *Director's Order dated May 1, 1999, and accompanying correspondence and reports, requiring the suspected contravenors to immediately take steps to properly control leachate at the site (Document #3);*
4. *Personal observations and photographs by the applicants, who have witnessed the suspected violators operating a pump to discharge leachate directly into Pike Creek on the afternoons of August 16, 17 and 23, 1999. The applicants have also observed and photographed significant harm to Pike Creek and the organisms and wildlife therein resulting from the discharge of leachate. This harm includes: shoreline erosion; sediment deposits; discoloured water; and significant amounts of dead or dying aquatic plant life (Document #4).*

(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 Environment,
Central Region (416) 555-1234**

Ms. Doe will confirm that on August 25, 1995 a pipe from the alleged contravenor’s company was discharging into Pike Creek. Ms. Doe can also confirm that the samples mentioned in Section 8 were obtained on August 25, 1995 from the same discharge.”

1. *Paul Jones — Hydrogeologist — MOE Southeastern Regional Office — has inspected the site and can confirm nature and extent of groundwater and surface water contamination originating from the landfill site.*
2. *Sarah Nova — Abatement Officer — MOE Southeastern Regional Office — has inspected the site and can confirm leachate runoff, leachate seepages, and can confirm non-compliance with Director's Order.*

(C) Describe the document(s) or other material you believe should be considered in the Investigation. Attached a copy of any document(s) referred to in this section where it is reasonable to do so.

1. *MOE reports, memoranda, laboratory analyses, correspondence and Director's Order, as described above.*

2. *Photographs by the applicants, as described above.*
All relevant documents are appended to this application.

8. Previous Contact with The Ministry or Environmental Commissioner of Ontario

If you have previously contacted any ministry or the Environmental Commissioner, 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**
- **the outcome of the contact**

On August 24, 1999, the applicants contacted Mr. George Smith, abatement officer with the MOE, by telephone (000-0000) to complain about the continuing discharge of leachate into Pike Creek.
Mr. Smith advised the applicants that he would look into the matter. Since this telephone conversation, the applicants have not received any follow-up information from Mr. Smith or the MOE as to what action, if any, the MOE would take to ensure compliance with the Director's Order, EPA or OWRA.

The *Environmental Bill of Rights* 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 the 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 to before you forward it to the Environmental Commissioner. Two affidavit forms are attached for your use.

Application Checklist...

Before you send your Application to the Environmental Commissioner of Ontario, make sure you've:

- Used a typewriter or pen, not pencil.
- Included someone as your co-applicant.
- Completely filled out Applicant Number One **AND** Applicant Number Two forms and signed both.
- Included as much support information as you can, including the names of any witnesses and copies of evidence.
- Made it clear what provisions of the Act, regulation or instrument you want investigated were contravened and explained in detail why.
- Included the section number of the Act or regulation you think has been contravened.
- Double checked that the policy, Act, regulation or instrument falls under the *Environmental Bill of Rights*.
- Filled out separate sheets of paper for **EACH** alleged contravenor.
- Provided a sworn affidavit for **BOTH** applicants.
- Kept copies of your Application.
- Addressed your original Application to:

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

Disponible en français.

Appendix E

Acts Subject to the *EBR*

The table below shows the Acts, listed by ministry, which are subject to Applications for Review and Applications for Investigation under the *EBR*. Although most Acts are subject to both application processes, some are subject to only one process, as indicated in the explanatory notes.

Ministry of the Environment

Environmental Assessment Act
*Environmental Bill of Rights**
Environmental Protection Act
Ontario Water Resources Act
Pesticides Act

Safe Drinking Water Act
*Sustainable Water and
 Sewage Systems Act*
Waste Diversion Act
Waste Management Act

Ministry of Energy

Energy Efficiency Act

Ministry of Natural Resources

Aggregate Resources Act
Conservation Authorities Act
Crown Forest Sustainability Act
Endangered Species Act
*Fisheries Act (s. 36)****
*Fish and Wildlife Conservation Act***
Lakes and Rivers Improvement Act
*Niagara Escarpment Planning and Development Act**
Oil, Gas and Salt Resources Act
Provincial Parks Act
Public Lands Act

Ministry of Northern Development and Mines

Mining Act

Ministry of Consumer and Business Services

Technical Standards and Safety Act (s.42, Liquid Fuels Handling Regulation, O.Reg. 217/01)

Ministry of Municipal Affairs and Housing

*Planning Act**

* These Acts are not subject to Applications for Investigation.

** The *Fish and Wildlife Conservation Act* is not subject to Applications for Review.

*** The *Fisheries Act (Canada)* is a federal law subject to Applications for Investigation for matters administered under the jurisdiction of the Ministry of Natural Resources. As of October 2002, MNR enforced only s.36 of the *Fisheries Act*, and only with respect to discharges of silt and sand (not chemicals).

Appendix F

ECONotes

ECONOTES – January 2000

Econote 001 The Environmental Registry

Econote 002 Statements of Environmental Values

Econote 003 How to Comment on Proposals for Acts, Regulations, Policies and Instruments

Econote 004 How the Public can Appeal Ministry Decisions on Instruments

Econote 005 How to Apply for a Review

Econote 006 How to Apply for an Investigation

Econote 008 How to Sue over a Public Nuisance

Econote 009 How to Protect Yourself from Employer Reprisals

Econote 014 Before You Send Your Application for Review...

Econote 015 Before You Send Your Application for Investigation...

Econote 016 How Instruments are Classified under the *Environmental Bill of Rights*

Econote 017 How You can Appeal Ministry Decisions – Instrument Holders and Applicants

Econote 031 Applications for Investigation under the *EBR* – Questions and Answers for Business

Econote 032 Applications for Review under the *EBR* – Questions and Answers for Business

Ontario's Environmental Bill of Rights and You

Produced by:

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: inquiry@eco.on.ca

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Environmental Commissioner of Ontario