



The Nuts, the Bolts and the Rest of the Machinery:
A Guide to Ontario's *Environmental Bill of Rights*

**A Background Paper for
Public Participation and the Environment
Five Years of the *Environmental Bill of Rights* in Ontario
February 15, 1999**

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Introduction

In February 1994, the Ontario government proclaimed into law the *Environmental Bill of Rights, 1993 (EBR)*. The proclamation ushered a new era in environmental decision-making — one of better public participation and greater accountability of government decision-makers. The purpose of the *EBR* is to make the process of developing laws, instruments and policies by government more transparent and accessible for all members of the public. It does this through a number of means, including:

1. Establishing an Environmental Registry, and allowing members of the public to comment on environmentally significant new laws, regulations, instruments and policies.
2. Allowing third-party appeals of decisions about prescribed instruments (such as permits, approvals, licences, authorizations, directions or orders that are prescribed by regulations made under the *EBR*).
3. Allowing the public to make Applications for Review of environmentally significant laws, policies and instruments.
4. Allowing the public to make Applications for Investigation of contraventions of prescribed Acts, regulations and instruments.
5. Establishing a new right to sue if someone is breaking a prescribed law, or is not following the terms of a prescribed instrument and is thus causing significant harm to a public resource.
6. Creating whistle-blowing protection for employees who use the processes of the *EBR*.

Each of these new rights and obligations is explained in more detail below. The *EBR* also created the role of the Environmental Commissioner of Ontario (ECO), which is discussed in a separate background paper.

History of the *EBR*

Ontario's *EBR* was a long time in the making.

The first environmental bill of rights in the world was the Michigan legislation enacted in 1970 — the *Michigan Environmental Protection Act*.² At least nine different private members' bills for an Environmental Bill of Rights based on the Michigan model were introduced in the Ontario Legislature between 1979 and 1991.

The prospects of seeing an Ontario *EBR* passed into law increased when Ruth Grier was appointed Environment Minister after the election of the New Democratic Party in 1990. Rather than proceed with the Michigan model for environmental rights, in late November 1990, Minister Grier announced the establishment of an Advisory Committee on an *EBR*.³

When the Advisory Committee was unable to achieve agreement on proceeding with a bill, Minister Grier appointed a Task Force to develop an innovative statute on a consensus basis.

The Task Force included representatives from the Ontario Chamber of Commerce, the Business Council on National Issues, the Canadian Manufacturers Association, environmental groups and the Ontario government. The Task Force worked for more than one year and, in July 1992, produced a report and a draft *EBR*.⁴

After public consultation on the Task Force Report and draft bill, the *EBR* was introduced for first reading on May 31, 1993. Legislative committee hearings were held between October and December of 1993, and the *EBR* was proclaimed as law on February 15, 1994.

The main difference between the Ontario law and environmental rights laws in U.S. jurisdictions is that it is more difficult to go to court in Ontario. However, the Ontario law has stronger rights — and more rights — for public participation in government decisions.

Under the *EBR*, Ontario's environmental regulatory system now has some features characteristic of U.S. federal laws and participation processes that allow for public notice and comment and increased access to courts and tribunals.⁵

The Nuts and Bolts of the *EBR*

***EBR* Goals and Purposes**

One of the first things that the Task Force did was to determine the purposes of the Act. They include:

1. to protect, conserve and, where reasonable, restore the integrity of the environment⁶
2. to provide sustainability of the environment
3. to protect the right to a healthful environment
4. pollution prevention and waste reduction

5. the protection of biodiversity
6. the protection of ecological systems
7. resource management
8. the protection of sensitive areas.

Achieving the goals of the EBR

A key idea reflected in the *EBR* is that Ontario residents can promote government accountability by participating in decision-making and by monitoring how the prescribed ministries apply their environmental values in decision-making.

Any resident of Ontario can use the processes in the *EBR*. This includes corporations that have their head offices in Ontario. To date, several corporations and individuals representing corporate interests have made applications under the *EBR* for reviews of particular laws and regulations they believe are outdated or inappropriate.

As a general rule, the *EBR* does not apply to the indoor environment and thus does not overlap with federal and provincial laws on occupational health and safety.⁷ The *EBR* also does not apply to decision-making by the federal government or municipal governments. However, municipalities may be affected if they seek an approval from a prescribed ministry.

There are presently 13 Ontario ministries prescribed for the purposes of the *EBR* (see the list on this page).

Thirteen Ministries Prescribed for the Purposes of the *EBR*

Agriculture, Food and Rural Affairs
Citizenship, Culture and Recreation
Consumer and Commercial Relations
Economic Development, Trade and Tourism
Energy, Science and Technology
Environment
Health
Labour
Management Board Secretariat
Municipal Affairs and Housing
Natural Resources
Northern Development and Mines
Transportation

The *EBR* is being implemented at a particularly challenging time for a number of the ministries. For example, the Ministry of the Environment (MOE) and the Ministry of Natural Resources (MNR) have sustained budget cuts in the range of 35 per cent to 50 per cent in the past three fiscal years and are experiencing dramatic changes in structure and function.⁸ The situation is further complicated by the fact that the Ontario government is dramatically altering the legal and regulatory regime related to the environment. For example, almost half of the prescribed statutes and regulations under the *EBR* will have been amended to some degree by the end of 1998.

EBR Implementation Schedule

The *EBR* is being phased in over several years. All the prescribed ministries have had to apply their Statements of Environmental Values (see the discussion below) since Nov. 15, 1994, and all of the ministries have had to post environmentally significant proposals for new policies and Acts

on the Registry since April 1, 1995. Since February 1, 1995 only one ministry — MOE— has been subject to the full provisions of the *EBR*. Three other ministries — MNR, the Ministry of Northern Development and Mines (MNDM), and the Ministry of Consumer and Commercial Relations (MCCR) — became subject to Applications for Investigation and Applications for Review on April 1, 1996. Since April 1, 1998, the *EBR* has covered one other ministry for Review Applications — the Ministry of Municipal Affairs and Housing (MMAH).

The Statements of Environmental Values

To encourage political accountability, the *EBR* requires each ministry to develop a Statement of Environmental Values (SEV),⁹ which must be considered whenever an environmentally significant decision is made in the ministry or by delegated officials at prescribed agencies.¹⁰

What is the ministry required to explain in its SEV?

According to the *EBR*, each SEV must explain the following:

- (A) how the environment will be considered in decision-making and planning by the ministry;
- (B) how the purposes of the *EBR* will be applied when environmental decisions are made; and
- (C) how the purposes of the *EBR* will be integrated with other considerations, including social, economic and scientific considerations.

The supplement to the first annual report of the Environmental Commissioner of Ontario, released in June 1996, contains detailed assessments of all the SEVs.¹¹

The Environmental Registry

One of the main features of the *EBR* is the Environmental Registry. The Registry is accessible through the Internet.

In 1997 and early 1998, the Ministry of the Environment converted the Registry to an interactive Internet site from a traditional bulletin board service. The main advantage of the new system is that the full text of many of the proposals for new regulations and policies and related background documents are now accessible by personal computer. The Internet address for the Registry is:

<<http://www.ene.gov.on.ca/envision/ebr>>

The Registry has three main purposes: opening up the decision-making process; offering information to various sectors, including business; and making government more accountable.

The *EBR* requires the prescribed ministries to place environmentally significant proposals on the Registry for a minimum of 30 days. These proposals could be for new Acts, regulations, policies or instruments. The Registry also provides an address and a ministry contact person to whom the public can send their comments.

More than 95 per cent of the Registry proposal postings are for instruments such as licences and approvals. Not all instruments have to be placed on the Registry. They must be classified and prescribed under instrument classification regulations. Up until April 1998, the only ministry that had developed a classification regulation and was prescribed for instruments was the Ministry of the Environment.

Since April 30, 1998, two new ministries — MNDM and MCCR — have been prescribed for instrument postings and for Investigations and Reviews related to instruments.¹²

Before the *EBR*, many MOE decisions on instruments were made without any public notice or formal opportunity for public input. The *EBR* changes this for most important instrument decisions by making information available to anyone who is interested, for instance, in permits for additions to local factories that are environmentally significant.

Most proposals do not get public comment. However, certain notices for instruments have drawn large numbers of comments. For example, more than 1,000 public comments were received in relation to the May 1995 proposals by Petro-Canada Limited to expand its operations at its Mississauga plant, which required two new certificates of approval.¹³

Registry Statistics

The Registry has been well used and is viewed as a success by the ECO, most stakeholders and the Ontario government.¹⁴ MOE figures show that more than 13,500 people opened user accounts and more than 43,000 people logged onto the Registry between June 1994 and February 1998, when the Registry was a BBS system. Now that the Registry is available on the Internet and the search engine has been improved, the Registry site averages over 6,000 hits per month.

Between November 1994 and the end of December 1997, MOE posted more than 6,100 instruments. More than 4,000 of these instruments were air approvals under the *EPA*. In addition, there were 772 approvals for enlargements or alterations to landfill sites and 953 applications for permits to take water posted on the Registry during this 37-month period. This works out to roughly five instrument postings a day.¹⁵

The Notice and Comment Process

There are three classes of instruments under the *EBR*. Class I instruments¹⁶ require a minimum of 30 days notice and comment. Class II instruments¹⁷ require additional notice and can involve additional comment opportunities, and Class III instruments¹⁸ require a full public hearing before a decision can be made. A typical example of a Class I instrument would be an MOE air approval, and a typical example of a Class II instrument would be a landfill extension. Enhanced public participation is required for Class II and Class III instruments under the *EBR*. In addition, Class I instruments can be bumped up to Class II instruments if they are considered controversial by the ministry.

Enhanced public participation is often appropriate for the development of new policies, Acts and regulations. The Commissioner has encouraged the ministries to provide longer notice and comment periods of up to 90 days for complex proposals.¹⁹ The Commissioner also encourages the ministries to hold public meetings and mediate some disputes that arise about approvals.

Before a final decision is made, the ministry must consider the public comments that were sent to them on the proposal. The decision notice posted on the Registry must indicate how many comments were made and how they were taken into account. In her annual reports, the Commissioner reviews whether the ministry has adequately taken public comments into account.

Exceptions

A minister can decide to exempt a particular proposal for an Act, policy, regulation or instrument from the public notice and comment provisions of the *EBR* if an equivalent public participation process had been conducted. As well, ministers may exempt proposals from posting requirements when the delay of giving notice on the Registry would result in danger to people, the environment or property, or when there is an emergency. In both circumstances, an exception notice must be posted on the Registry and notice given to the ECO. As of December 1998, fewer than 80 exceptions had been posted.

The Right to Appeal

The *EBR* allows third parties, who have traditionally not had appeal rights, to appeal instrument decisions. To launch a leave to appeal application, third parties must apply to the appeal body within 15 days of notice of the decision being posted on the Environmental Registry. The appeal body is the one that would have traditionally heard an appeal of that instrument.²⁰ Because ministries are required to hold public hearings on Class III instruments before they are approved, leave to appeal applications can be brought only in relation to Class I and Class II instruments under the *EBR*.

Leave to appeal will not be granted to a third party applicant by an appeal board unless the person applying has a direct interest and can meet the following two-pronged test set out in section 41 of the *EBR*:

1. No reasonable person (i.e., ministry decision-maker), having regard to the law and the relevant government policies, could have made that decision; and
2. the decision being appealed could result in significant harm to the environment.

The test is hard to meet. When the *EBR* was first proclaimed the Ministry of the Environment predicted that dozens of appeal applications would be filed each year. Some observers, however, felt that it was unlikely that many third parties would be granted leave to appeal.

As of November 1998, the Environmental Appeal Board had reviewed 19 applications for leave to appeal.²¹ Three have been granted, eleven have been rejected, four were withdrawn and one is pending decision as of December 1998.

It is useful to bear in mind that more than 8,000 decisions made since November 1994 by the Ministry of the Environment have been subject to the appeal provisions of the *EBR*. This means that the appeal rate is 0.24%, or 2.4 decisions out of every thousand issued by the Ministry of the Environment. This is a lower rate of appeal applications than many people had expected.

The Right to Apply for a Review

The *EBR* has other tools as well. It allows any two residents of Ontario to request that a minister review a current policy or a prescribed Act, regulation or instrument, or review the need for a new Act, policy or regulation. If any two Ontario residents don't like certain conditions in a certificate of approval, for example, they can ask for a review and update of those conditions.

As of December 1998, more than 370 applications for review had been forwarded to the ministries by the ECO. The review applications have covered a range of issues, such as packaging waste, drinking water, leaky landfills, and the need for new legislation in a number of areas.²²

The Right to Apply for an Investigation

Another part of the *EBR* toolkit is the application for investigation. Under the *EBR*, any two Ontario residents can request an investigation if they think someone is contravening an environmentally significant Act, regulation or instrument that is prescribed under the *EBR*. This new right was modelled in part on provisions in the *Canadian Environmental Protection Act*, which were enacted in 1988.

Applications for Investigation can be made in relation to the *Environmental Assessment Act*, the *EPA*, and the *Ontario Water Resources Act*, but the provisions also apply to 15 other environmentally significant Acts.²³ Since it is a serious matter to allege that someone is breaking the law, applicants are required to sign an affidavit swearing they believe what they are saying is true.

As of December 1998, 77 applications for investigation had been forwarded to the Ministry of the Environment and the Ministry of Natural Resources by the ECO. The applications cover a range of issues, such as alleged contraventions of landfill approvals, the *Fisheries Act* and the *Crown Forest Sustainability Act*. The Supplement to the Commissioner's third annual report contains more information on the 1997 applications.

The Right to Go to Court

Most of the parts of the *EBR* discussed thus far are designed to promote greater political accountability on the part of decision-makers. Many stakeholders feel that, in addition, judicial scrutiny helps to ensure that better decisions are made about the environment.

The *EBR* reflects this by creating two new legal rights that increase public access to the courts. First, there is a new right to sue for harm to a public resource. Second, the *EBR* removes the court-imposed barriers to public nuisance law suits.

Suing for Harm to a Public Resource

Some general requirements must normally be met before someone can sue for harm to a public resource under the *EBR*. A person must first ask for an investigation under the *EBR* into the breaking of a law, regulation or instrument that is harming a public resource. At that point, he or she can sue only if one of the following four conditions applies: the ministry didn't give notice to investigate within a reasonable time; the ministry did not complete the investigation within a reasonable time; the ministry did not give notice of the outcome of the investigation within a reasonable time; or the ministry's response to the application for investigation was unreasonable. Only then can the court action proceed. There is an exception where the delay involved in complying with these steps would result in significant harm or serious risk of significant harm to a public resource.²⁴

If a court rules in favour of the plaintiff, the court may grant an injunction to stop the harmful actions or order the parties to negotiate a plan to restore the public resource to a state that existed before the harm was done. The court **will not** make an award of damages under this part of the *EBR*.²⁵

Public Nuisance

The *EBR* also affords greater access to the courts for public nuisance suits. Before the *EBR* was enacted, individuals had limited access to the courts when it came to public nuisance activities harming the environment.²⁶ Now any person who experiences direct economic or personal loss because of a public nuisance causing environmental harm may sue for damages or other personal remedies.

The ECO maintains files on these actions because the Commissioner has a duty to report to the Legislature each year on how this section (s.103) of the *EBR* is used by the public.

First Public Nuisance Case Filed in February 1997

In February 1997, the first public nuisance case relying in part on s. 103 of the *EBR* was filed in the Ontario Court of Justice in Whitby on behalf of 30,000 residents in Maple and Richmond Hill. These residents are suing the City of Toronto on the grounds that odours, noxious gas, debris and noise have emanated from a local landfill since it began operations in 1983 and that these emissions have caused harm to local residents.²⁷

Second Public Nuisance Action Launched in August 1997

In August 1997, Shirley Grace began a similar class action proceeding against the Town of Fort Erie, her local municipality, which operates a municipal water system, and the Regional Municipality of Niagara, which owns and operates the water treatment plant that supplies Fort Erie's water system. Ms. Grace alleges that the water supplied to residents is frequently contaminated by iron rust and by microorganisms present at levels that exceed the Ontario

Drinking Water Objectives and the Guidelines for Canadian Drinking Water Quality. She also claims that the contaminated water is a nuisance, relying on s. 103 of the *EBR* (the right to sue for a public nuisance).²⁸

The ECO is monitoring these landmark cases and will report on developments in future annual reports. In addition, the ECO, with the cooperation of MOE, posted notices about these actions on the Registry.

Whistleblower Protection

Prior to the proclamation of the *EBR*, whistleblowers who felt that they were being penalized by their employers because they had provided information to MOE officials could file complaints under section 174 of the *EPA*.

The *EBR* contains additional whistleblowing protection for workers who participate in *EBR* processes. Thus, if an employer takes reprisals against an employee participating in *EBR* processes, the employee can file a complaint with the Ontario Labour Relations Board. Reprisals could include harassment, intimidation, coercion, discipline or dismissal (or attempts at harassment, intimidation, etc.).

Participation in *EBR* processes that is protected by these "whistleblowing" provisions includes:

- < participating in decision-making about a ministry Statement of Environmental Values, a policy, an Act, a regulation or an instrument as provided in Part II of the *EBR*; and
- < applying for a review or an investigation.

To date, there have been no applications by whistleblowers under the *EBR*.

Conclusion

The *EBR* represents a new approach to promoting transparent government decision-making. The new rights and responsibilities in the legislation require politicians, policy-makers, lawyers, activists and citizens to rethink the way they look at environmental matters. The *EBR* enables Ontarians to explore new ways to resolve environmental issues and to promote positive measures like waste reduction, energy and water conservation, and green industry development. Indeed, the legislation is designed to ensure government officials, business leaders and residents are fully accountable for the decisions they make.

It is clearer than ever before that careful review and measured reform of existing environmental safeguards are required. Environmental protection and sustainability are achievable and necessary — necessary to retain what we currently enjoy and necessary for future environmental quality as

well as economic development and competitiveness.

Transparent environmental decision-making and adequate opportunities for public input into environmental decisions can help to ensure that environmental quality is safeguarded. The *EBR* provides ministries in the Ontario government with tools for achieving these goals and opportunities for demonstrating their commitment to environmental protection. Conversely, failure to provide the public with adequate information and opportunities to review and comment on changes to environmental protection will produce poorer results and will damage public confidence in the government's commitment to protecting the environment.

ENDNOTES

¹. This paper is a condensed version of David McRobert's paper, "The Nuts and Bolts and the Rest of the Machinery: A Guide to and Update on Ontario's *Environmental Bill of Rights*," a background paper for presentation to "Environmental Law, Regulation and Management: New Rules, New Strategies for Compliance," Canadian Institute Conference, King Edward Hotel, Toronto, May 1998.

². Mich. Comp. Laws Ann. 691, 1201-1207. For discussions of the *MEPA*, see: J.L. Sax and R.L. Conner, "Michigan's *Environmental Protection Act of 1970: A Progress Report*" (1972), *70 Michigan Law Review* 1003-91; J. Sax, *MEPA – Ten Years Later*" (November-December 1980), *Michigan Environs* 6; and D.K. Slone, "The Michigan Environmental Protection Act: Bringing Citizen-Initiated Environmental Suits Into the 1980s" (1984-5), vol. 12, No. 27, *Ecology Law Quarterly*, 291.

³. Paul Muldoon & Richard Lindgren, *The Environmental Bill of Rights: A Practical Guide* (Toronto: Emond Montgomery Publications Limited, 1995), pp. 9-10.

⁴. Government of Ontario, *Report of the Task Force on the Ontario Environmental Bill of Rights* (Toronto: Queen's Printer for Ontario, 1992).

⁵. W.M. Glenn, "Ontario's Environmental Registry: Plugging Into Your Rights," *Occupational Health and Safety Canada*, November/December 1995. Glenn describes the recent evolution of environmental decision-making in the following terms:

Since the early 1970s, the dawn of the modern environmental era, Ontario's bureaucrats have quietly plotted their strategies in the proverbial smoke-filled back rooms of the Ministry of Environment. Almost every regulation, approval, order and prosecution was drafted in private and then sprung fully-formed on a (largely) unsuspecting public.

On occasion, a few "concerned stakeholders" — the usual faces from the big industry associations and prominent environment groups — were invited to voice their opinions and serve as a surrogate for wider public consultation. And of course a proponent could always talk to somebody in the approvals branch, or a polluter to an enforcement officer. In recent years, the more momentous initiatives, such as the 3Rs regulations or the industrial discharge standards, have received a greater public airing.

But it wasn't until February, 1994, with the enactment of the province's *Environmental Bill of Rights*, that every member of the Ontario public was formally invited into those (now smokeless) back rooms.

Glenn may be overstating the case. However, the general point is well put.

⁶. *Ibid.*

⁷. Consequently, indoor air quality is not captured under the *EBR*. Indeed, the Task Force which presented the draft *EBR* in July 1992 to the former Minister of the Environment, the Honourable Ruth Grier, decided that the primary role of the *EBR* was to protect the natural environment and that this included only open air. The Task Force could not reach a consensus on indoor air. They recommended further study to determine the best approach for dealing with indoor air and suggested that it might require further consideration by government. For the Task Force discussion, see Government of Ontario, *Report of the Task Force on the Ontario Environmental Bill of Rights: Supplementary Recommendations* (Toronto: Queen's Printer for Ontario, 1992).

⁸. For additional information, see Government of Ontario, *Doing Better for Less: Introducing Ontario's Business Plans* (Toronto: Queen's Printer for Ontario, May 1996). The business plans set out in this document illustrate some of the effects of these dramatic changes to both MNR and MOE, as well as in other ministries prescribed for

certain parts of the *EBR*, such as MCCR and MNDM. The 1997 ministry business plans are available on the Homepage for the Management Board Secretariat and have been summarized in Registry postings. For critical comments on the ministry business plans and comparisons between the Statements of Environmental Values required by the *EBR* and the business plans, see the Environmental Commissioner of Ontario's *Keep The Doors Open to Better Environmental Decision-Making* (Toronto: Environmental Commissioner of Ontario, 1996) and *Open Doors: Ontario's Environmental Bill of Rights: 1997 Annual Report of the Environmental Commissioner of Ontario* (Toronto: Environmental Commissioner of Ontario, 1997).

⁹. A package containing the SEVs is available: see Environmental Commissioner of Ontario, "Ontario's *Environmental Bill of Rights: Statements of Environmental Values for 14 Government Ministries*" (Toronto: Environmental Commissioner of Ontario, November 1994).

¹⁰. Background information on the SEVs is contained in Eva Ligeti, Environmental Commissioner of Ontario, "Overview of the *Environmental Bill of Rights*," paper presented to "New Rights and Remedies Under the *Environmental Bill of Rights*," Canadian Bar Association Continuing Legal Education Program, December 8, 1994.

¹¹. Environmental Commissioner of Ontario, *Opening the Doors to Better Environmental Decision Making: 1994/95 Annual Report of the Environmental Commissioner of Ontario* (Toronto: Environmental Commissioner of Ontario, 1996).

¹². This change was made on April 30, 1998, when the Ministry of the Environment filed a new regulation, Reg. 180/98, amending Regulation 681/94 under the *EBR*. In contrast, the Ministry of Natural Resources and Ministry of Municipal Affairs and Housing are not yet fully phased in for Investigations and Reviews and for posting instruments on the Registry because those ministries have yet to develop final instrument classification regulations under the *EBR*. The *EBR* requires that Ministry of Natural Resources develop its regulations within a reasonable time after April 1, 1996, and Ministry of Municipal Affairs and Housing must develop its regulation within a reasonable time after April 1, 1998.

¹³. For the complete text of the Petro-Canada Registry file, see Appendix 1 of David McRobert, "The Nuts and Bolts of Ontario's *Environmental Bill of Rights: An Update*," a background paper for "Environmental Law, Regulation and Management," Canadian Institute Conference, Hotel Plaza II, Toronto, October 28 & 29, 1996.

¹⁴. See, for example, Len Griffiths and John Nicholson, "Environmental Registry offers free and easy access to the information highway," *The Lawyers Weekly*, August 11, 1995, p. 11.

¹⁵. The number of postings increased this past year when the Ministry of Consumer and Commercial Relations and Ministry of Northern Development and Mines began to post instruments under the *Gasoline Handling Act* and the *Mining Act* respectively. It is conceivable that the legal and regulatory changes now under consideration at the Ministry of the Environment will reduce the number of instrument postings by the Ministry of the Environment by anywhere between 40 and 60 per cent, depending on how the Standardized Approvals Regulations (SARs) under the Bill 57 amendments to the *Environmental Protection Act (EPA)* are handled.

¹⁶. Under Reg. 681/94, the following MOE instruments are classified as Class I instruments: most air approvals under s. 9 of the *EPA*; approvals under s. 46 of the *EPA* for use of former disposal sites; and water taking permits under s. 34 of the *OWRA*.

¹⁷. Under Regulation 681/94, the following MOE instruments issued under the *EPA* are classified as Class II instruments: control orders under s. 7; stop orders under s. 8; remedial measures under s. 17; preventive measures under s. 18; orders to remove waste under s. 43; approvals for waste sites and systems under s. 44; orders related to spills under s. 97 and orders about financial assurance under s. 136; most approvals for waste systems and sites under s. 27; approvals under s. 10 programs; emergencies under s. 31; and directions for spills and clean-ups under s. 94 of the *EPA*. The following MOE instruments issued under the *OWRA* are classified as Class II instruments:

orders related to sewage discharges under s. 31; orders related to impairment of water quality under s. 32; orders related to water works undertaken without approvals under s. 52(2); orders related to sewage works undertaken without approvals under s. 53(3); and discharge of sewage into sewage works under s. 92. In addition, directions for water works undertaken without approvals under ss. 52(3) and 52(6); directions for sewage works to be kept in proper repair under s. 61; implementation of a MOE report under s. 62(2); directions related to sewage disposal under s. 91; directions related to well leaks under s. 34(7); and most approvals setting limits for discharges of specific contaminants under s. 53(1) are all Class II *OWRA* instruments.

¹⁸. Under Reg. 681/94, the following MOE instruments are classified as Class III instruments: waste systems and site approvals under s. 27 of the *EPA* where a hearing is required by s. 30; approvals for sewage works under s. 53(1) of the *OWRA*; and approvals for public water or sewage service under s. 74(2) of the *OWRA*.

¹⁹. See Environmental Commissioner of Ontario, "Implementing the Environmental Bill of Rights: Environmental Registry Notice and Comment Procedures — A Guidance Document" (Toronto: Environmental Commissioner of Ontario, August 1996).

²⁰. For example, the appeal body for decisions on instruments under the *Environmental Protection Act* is the Environmental Appeal Board.

²¹. The ECO counts Applications for Leave to Appeal according to the number of instruments appealed rather than the number of applicants appealing. Since the Petro-Canada leave to appeal application involved appeals of two instruments, the ECO counted it as two applications, even though several individuals were requesting the appeals.

²². A complete list of all the Applications for Review (and Applications for Investigation) received by the ECO in 1997, and a short description of how they were handled by the ministries, are included in Appendix G of the Supplement of the ECO's third annual report, *Open Doors: Ontario's Environmental Bill of Rights: 1997 Annual Report of the Environmental Commissioner of Ontario* (Toronto: Environmental Commissioner of Ontario, 1997).

²³. The other 15 prescribed Acts for investigation applications are: the *Aggregate Resources Act*; the *Conservation Authorities Act*; the *Crown Forest Sustainability Act*; the *Endangered Species Act*; the *Energy Efficiency Act*; the *Fisheries Act (federal)*; the *Game and Fish Act*; the *Gasoline Handling Act*; the *Lakes and Rivers Improvement Act*; the *Mining Act*; the *Pesticides Act*; the *Oil, Gas and Resources Act*; the *Provincial Parks Act*; the *Public Lands Act*; and the *Waste Management Act*.

²⁴. In November 1998, a retired policeman living in Grey County by the name of Karl Braeker filed a statement of claim relying in part on the harm to a public resource provision of the *EBR*. His complaint is that tires buried on the site of his neighbour, Mr Karge, have contaminated his groundwater supply.

²⁵. A special exception exists for farmers who may be protected against lawsuits relating to odour, noise and dust under Bill 146, the *Farming and Food Production Protection Act*. This exception also applies in relation to public nuisance actions.

²⁶. For an excellent summary of public nuisance law in Canada, see Mario Faieta, et al., *Environmental Harm: Civil Actions and Compensation* (Toronto: Butterworths, 1996), pp. 43-64.

²⁷. The primary basis for this action is a class action suit under the *Class Proceedings Act*. In this suit, the City of Toronto faces a \$600 million claim, \$500 million in compensatory damages, and \$100 million in punitive damages. In addition, the plaintiffs are seeking an injunction preventing Toronto from continuing to pollute the local environment. In March 1998, Justice John Jenson gave the go-ahead to this lawsuit, but in November, the Divisional Court overturned this decision. The matter is under appeal.

²⁸. She is seeking \$30 million in damages on behalf of the class of residents and an injunction preventing the defendants from adding corrosion inhibitors to the water they supply.