



MOECC's Policy Review on Air Pollution, Fracking, Spills and Waste Diversion

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The Ministry of the Environment and Climate Change (MOECC) has released a status report on a series of policy reviews it is conducting in response to Applications for Review filed by the public under the *Environmental Bill of Rights, 1993 (EBR)*.¹ The Ministry is attempting to resolve a number of difficult and long-standing issues, ranging from the cumulative impacts of air pollution, to the “fracking” of oil and gas reserves in Ontario, to increasing the diversion of commercial waste from landfills. Some of these reviews have been underway for years. For example, MOECC agreed to undertake the air pollution review back in May 2009,² and the final report is not expected until early 2017.

Past *EBR*-mandated reviews have resulted in significant changes in the way MOECC administers key environmental statutes and regulations. The Ministry’s draft framework for managing excess soils, released earlier this year, was the product of a similar policy review requested under the *EBR*.³

The updates are contained in an Information Notice posted to the Environmental Registry (EBR# 012-7383) on June 17, 2016.⁴ The Ministry is currently undertaking reviews of the following issues:

- ◆ the ways that the cumulative effects of air pollution are considered in Environmental Compliance Approval (ECA) applications, particularly in highly industrialized “hot spots,” such as Sarnia and Hamilton;
- ◆ the use of high-volume hydraulic fracturing (fracking) to extract oil and gas;
- ◆ ways to increase waste diversion through industrial, commercial and institutional (IC&I) source separation programs;
- ◆ methods for digital public consultation and engagement under the *Environment Bill of Rights*, as well as several additional *EBR*-related issues;
- ◆ further prohibitions on the siting of landfill operations on hydrogeologically unsuitable sites;

¹ Information Notice, June 17, 2016. *The Ministry of the Environment and Climate Change has published a status update of reviews undertaken as a result of Applications for Review received under the Environmental Bill of Rights (012-7383)*, Government of Ontario, online: <http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTI4Mzc3&statusId=MTk0MDYx&language=en> [Information Notice 012-7383]

² Environmental Commissioner of Ontario, 2016. *Environmental Bill of Rights (EBR Requirements)*, online: <http://eco.on.ca/government-performance/moecc/>

³ Policy Proposal Notice, January 26, 2016. *Excess Soil Management Policy Framework (012-6065)*, Government of Ontario, online: <https://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTI2OTM0&statusId=MTkxNjU3>

⁴ Information Posting 012-7383

- ◆ certain technical issues related to the Wells Regulation (Regulation 903) and the wells section of the *Ontario Water Resources Act*;
- ◆ the environmental penalties associated with spills from provincially-regulated hydrocarbon pipelines; and
- ◆ the current ECA issued to Ingram Asphalt in Toronto.

Part IV of the *EBR* provides the formal process for members of the public to request that a ministry prescribed under the *Act* review existing or the need for new policies, acts, regulations or instruments to ensure the protection of the environment.⁵ The list of prescribed ministries is set out in section 5 of O. Reg. 73/94, the general regulation under the *Act*.⁶ Details of the on-going reviews, including the current status of each, are set out in the attached table.⁷

Status Report on Reviews undertaken by the MOECC as a result of Applications for Review under the <i>EBR</i>, June 17, 2016		
Title of the Review (EBR# and ECO#)	Summary of the Review	Current Status of the Review
<p>Cumulative Air Pollution – “Hot Spots”</p> <p>09EBR001.R – R2008014</p>	<p>MOECC is reviewing the need for a new and/or amended regulatory framework to enhance Ontario’s air pollution laws to more effectively manage cumulative impacts of air pollution, particularly with respect to air pollution “hot spots” (areas of concentrated industrialization, such as Hamilton and Sarnia). The application focuses on the Aamjiwnaang First Nation near Sarnia.</p>	<p>Work is ongoing to develop a policy to support decision-making with respect to ECA applications, while taking into consideration cumulative effects where feasible. MOECC has convened a dedicated working group under the O. Reg. 419/05 External Working Group, consisting of First Nations, industries, and health and environmental advocacy groups, to make policy recommendations on cumulative effects, expected later this year. MOECC is also working on a number of related initiatives expected to have a positive impact on local air quality and/or cumulative effects concerns in the Sarnia area.</p> <p>MOECC provided an update on the review to the applicants on May 27, 2016. It is anticipated that the review will be completed in early 2017.</p>

⁵ *Environmental Bill of Rights*, 1993, SO 1993, c 28, Part IV

⁶ O. Reg. 73/94, s 5

⁷ Compiled from: MOECC, June 17, 2016. *Status Report on Reviews Undertaken by the Ministry of the Environment and Climate Change (MOECC) as the Result of Applications for Review under the Environmental Bill of Rights*, online:

http://www.downloads.ene.gov.on.ca/envision/env_reg/er/documents/2016/012-7383.pdf

Status Report on Reviews undertaken by the MOECC as a result of Applications for Review under the <i>EBR</i>, June 17, 2016		
<p>Review of the <i>Environmental Bill of Rights (EBR)</i></p> <p>10EBR008.R – R2010009 10EBR002.R – R2009016 12EBR006.R – R2009016</p>	<p>MOECC is undertaking a review of the <i>Environmental Bill of Rights, 1993</i> and its regulations. MOECC subsequently granted two other review applications and has included them as part of this review. Those include reviewing whether new regulations for stays of Permits to Take Water pending the outcome of an appeal application are required, and whether copies of Statements of Environmental Values should be mandated to be posted for policies, acts, regulations and instruments.</p>	<p>MOECC is proceeding, in consultation with all prescribed Ontario ministries, to undertake a scoped review of the <i>EBR</i> and its regulations. MOECC scheduled a session with key stakeholders in June 2016 to obtain insights on creative and innovative methods for digital public consultation and engagement. MOECC will also be seeking public feedback through a posting on the Environmental Registry commencing in summer 2016 for 120 days. A work plan and timelines to support a scoped review are currently being developed.</p> <p>MOECC provided an update on the review to the applicants on May 30, 2016. It is anticipated that the review will be completed by Spring 2017.</p>
<p>High-Volume Hydraulic Fracturing</p> <p>12EBR008.R – R2009016</p>	<p>MOECC and the Ministry of Natural Resources and Forestry (MNRF) are jointly reviewing definitions and sections of the <i>Oil, Gas and Salt Resources Act</i> and the <i>Environmental Protection Act</i> that relate to high-volume hydraulic fracturing.</p>	<p>High-volume hydraulic fracturing is not being used to extract oil or gas in Ontario today. MNRF and MOECC are finalizing their review and continuing to monitor activities in other jurisdictions. MNRF has issued a statement that the ministry would not consider applications for the use of high-volume hydraulic fracturing before proper consultations with stakeholders, Aboriginal communities and the public are conducted.</p> <p>MOECC provided an update on the review to the applicants on December 9, 2013. It is anticipated that the review will be completed by summer 2016.</p>

Status Report on Reviews undertaken by the MOECC as a result of Applications for Review under the EBR, June 17, 2016		
<p>Industrial, Commercial and Institutional (IC&I) Source Separation Programs</p> <p>12EBR011.R – R2012013</p>	<p>MOECC is undertaking a review of the Industrial, Commercial and Institutional (IC&I) Source Separation Programs, under the <i>Environmental Protection Act</i> to consider the applicants’ claim that the regulation is too lenient on small businesses. The review has been expanded to encompass a broader review of all 3R regulations.</p>	<p>This review, part of an initiative to increase diversion in the IC&I sector, will identify the best tools to ensure all businesses take steps to divert their waste while carefully considering the implications to small businesses in particular. The <i>Waste-Free Ontario Act</i> is intended to increase resource recovery and waste reduction in Ontario and increase recycling in the IC&I sector. A final Strategy will be finalized within 90 days of proclamation of the Act and will commit the government to undertake a review of all three IC&I regulations. The review and development of any proposed changes to the IC&I regulations will include extensive stakeholder engagement, including creating a stakeholder working group.</p> <p>MOECC provided an update on the review to the applicants on May 26, 2016. It is anticipated that the review will be completed by summer 2016.</p>
<p>Section 27 of the EPA – hydrogeologically unsuitable sites</p> <p>13EBR004.R – R2015005</p>	<p>MOECC is undertaking a review of section 27 of the <i>Environmental Protection Act</i> in order to impose further and more stringent prohibitions on the establishment, use, operation, alteration or expansion of waste disposal sites at locations that are hydrogeologically unsuitable (i.e., fractured bedrock).</p>	<p>MOECC continues to conduct a review of the guidance materials related to MOECC’s landfill approval processes in order to determine if changes could be made to enhance the level of protection to human health and the environment. There are two parts to the review: a scan looking at best practices in leading jurisdictions (anticipated to be completed June 2016); and a review of the state of the science regarding site conditions and performance of selected existing Ontario landfills (anticipated to be completed in September 2016). This work will assist in identifying opportunities to supplement Ontario’s current practices and guidance related to groundwater protection and hydrogeological suitability.</p> <p>MOECC will be providing an update on the review to the applicants in July 2016. It is anticipated that the review will be completed by October 2017.</p>

Status Report on Reviews undertaken by the MOECC as a result of Applications for Review under the EBR, June 17, 2016		
<p>Wells Regulation and wells section of the Ontario Water Resources Act</p> <p>14EBR001.R – R2013002</p>	<p>MOECC is undertaking a focused review to assess the selected issues raised by the applicants in Ontario’s existing legislative and regulatory framework for wells and to identify preliminary options to address key gaps, if required.</p>	<p>MOECC has completed initial technical assessments of the issues under review, including assessments of comments received by key stakeholders and a scientific/jurisdictional scan. MOECC is consulting with other ministries and will be receiving and considering input before finalizing the review in the next few months.</p> <p>MOECC provided an update on the review to the applicants on May 31, 2016. It is anticipated that the review will be completed by fall 2016.</p>
<p>Spills from provincially regulated pipelines</p> <p>15EBR003.R – R2015004</p>	<p>MOECC is undertaking a review of the environmental penalties and spills regulations under the <i>Environmental Protection Act, Ontario Water Resources Act</i> and spills prevention regulation in order to broaden the application of these regulations to provincially-regulated hydrocarbon pipelines.</p>	<p>MOECC agreed to undertake the review of Environmental Penalties when conducting its next review of the program. Review of the Environmental Penalties program is required every five years under legislation. Pipeline proposals in Ontario must meet strict environmental and safety standards, and have contingency planning and emergency response programs.</p> <p>MOECC provided an update on the review to the applicants on June 2, 2016. It is anticipated that the review will be completed by December 2017.</p>
<p>ECA No. 8-3330-99-006 – Ingram Asphalt</p> <p>15EBR005.R – R2015006</p>	<p>MOECC is undertaking a review of an ECA issued to Ingram Asphalt for the operation of an asphalt plant at 103 Ingram Drive, Toronto. The applicants allege that noise and dust emitted from the facility are causing health effects and property damage.</p>	<p>Work is underway on this review and it is being conducted in conjunction with the MOECC’s review of Ingram’s application for amendment of their ECA for air and noise.</p> <p>MOECC provided an update on the review to the applicants on June 2, 2016. It is anticipated that the review will be completed by August 2016.</p>

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