



Comments submitted by:

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Regarding ERO Proposals:

019-6928, 019-6853, 019-6963, 019-6951 – “Environmental Permissions Modernization”

October 30, 2023

Delivered via email: minister.mecp@ontario.ca, permissions.modernization@ontario.ca

October 30, 2023

Re: Transition To Less Waste's Comments on ERO Postings 019-6928, 019-6853, 019-6963, 019-6951

Dear Hon. Andrea Khanjin, Minister of the Environment, Conservation and Parks,

Transition to Less Waste (TTLW) is an Ontario based non-profit that seeks to protect and improve the environment within the province. Our organization promotes the principles of a conserver society, and key concepts from the international Transition Movement including the reduction of waste-to-disposal, prudent use of finite resources, and protection and improvement of land, air and water resources. We believe that it is in the public interest to safeguard and enhance Ontario's environment.

Transition to Less Waste's Request

Transition to Less Waste, first and foremost, is requesting that the Minister and Ministry of the Environment, Conservation and Parks, withdraw the package of proposals the Ministry has posted on the Environmental Registry of Ontario numbered 019-6928, 019-6853, 019-6963 and 019-6951. These proposals, if implemented, have the potential to cause serious adverse effects and negative impacts in communities around Ontario. They would lead to further concealment of permissions related information from the public, and would curtail the rights of Ontarians to participate in public consultation – rights that are enshrined within Ontario's Environmental Bill of Rights.

Public Unease

The MECP's proposals were posted to the Environmental Registry of Ontario website on August 31, 2023. Transition to Less Waste and other stakeholder organizations, municipalities, Indigenous communities, and additional interested persons across Ontario had just read a troubling Auditor General's report¹ on the province's plans to remove protections for Greenbelt Plan and Area lands² in order to allow development. Ontario's Auditor General, Bonnie Lysyk, found the Ministry of Housing's selection of sites to be removed from the Greenbelt was "biased and lacked transparency". Another faultfinding report from Ontario's independent

¹ Lysyk, Bonnie. Office of the Auditor General of Ontario. "Special Report on Changes to the Greenbelt". August 2023. www.auditor.on.ca.

² McIntosh, Emma; Javed, Noor; Kennedy, Brendan. The Narwhal. *Six developers bought Greenbelt land after Ford came to power. Now, they stand to profit.* <https://thenarwhal.ca/ford-ontario-greenbelt-cuts-developers/>, Accessed November, 2022.

Integrity Commissioner followed³ on August 30, 2023, calling the process “flawed” and “unfair” and noted [then-Minister Clark’s] “lack of oversight led to the unfortunate results I set out in this report”. Less than two weeks later, it was announced that the Ontario Provincial Police had referred investigation of the matter to the RCMP’s Sensitive and International Investigations (SSI) unit⁴. On September 21, the premier stated that the land swap plan was a “mistake”⁵, and announced a reversal⁶.

The day after the people of Ontario read the results of the Integrity Commissioner’s report on the Greenbelt, the MECP posted the grouping of four “Environmental Permissions Modernization” proposals to the ERO.

We now have four proposals before us, with a mere 60-day comment period, that would force the public to assume potential risks to local economies, the environment, and public health and safety.

In many ways our concerns with sweeping Greenbelt lands changes and the new MECP proposals, overlap. Concerns with the removal of processes Ontarians have relied on to prevent urban sprawl, the building over of wetlands, and the spoilage of community drinking water resources. We’re feeling collective apprehension over proposals that would allow the removal of significant drinking water threat management information from our local source-water protection plans. We are concerned about the growth of MECP reliance on computer-driven approvals processes, where there is a lack of built-in human scientific and technical review from the MECP; and where public consultation opportunities under the Environmental Bill of Rights would be withdrawn from the Public of Ontario.

Tens of thousands of Ontarians pushed back against the Greenbelt land swap and have made their opinions regarding land use and protection of our environment abundantly clear. They have called for protection of wetlands, lakes, rivers, sources of drinking water, woodlands, fertile farm soil and the beautiful natural systems and places that make up our province.

Our organization is concerned that chronic underfunding of the MECP by the Government of Ontario, and subsequent staffing reductions, may have contributed to what we perceive as a drop in ministerial service levels; leading to the perpetuation of systems that require less

³ Wake, J. David; K.C. Office of the Integrity Commissioner. “Report of J. David Wake, K.C., Integrity Commissioner, Re: The Honourable Steve Clark, Minister of Municipal Affairs and Housing and Member of Provincial Parliament for Leeds—Grenville—Thousand Islands and Rideau Lakes”. August 30, 2023. www.oico.on.ca.

⁴ Sarfraz, A.B. The National Observer. *RCMP sensitive crimes unit investigating Greenbelt land swap scandal*. <https://www.nationalobserver.com/2023/10/10/news/rcmp-sensitive-crimes-unit-investigating-ford-greenbelt-land-swap-scandal>. Accessed 23 October 2023.

⁵ Rocca, Ryan. Global News. *‘It was a mistake’: Doug Ford says government will reverse Greenbelt land swap decision*. <https://globalnews.ca/news/9977003/doug-ford-reverses-greenbelt-land-swap/>. Accessed September 2023.

⁶ Cecco, Leyland. The Guardian. *Ontario premier reverses plans to build on green belt after ministers quit*. <https://www.theguardian.com/world/2023/sep/21/ontario-premier-toronto-greenbelt-development-reverse>. Accessed September 2023.

human input.

The proposals would remove many permissions processes from hands-on review and management. There is also the appearance of hurriedness expressed, to make activity permissions easier and faster to acquire, for the MECP “clients”. During the webinars held by the MECP regarding the proposals, the MECP referenced confusion among “the regulated community” about permit and permissions obligations. We posit that the solution to this confusion is to provide more education on ECA and permit requirements for the businesses and industries involved – instead of moving additional sectors and activities to the more hands-off approach permit-by-rule and EASR registrations these proposals suggest to employ.

The proposed removal of layers of oversight and public consultation opportunities demonstrate a lack of understanding of the MECP’s role in protecting the environment, and public well-being, and the importance of democratic decision making. TTLW is requesting that the Government of Ontario fully fund the MECP and restore the independent office of the Environmental Commissioner of Ontario as a non-partisan resource for Ontario’s Legislature, public, and provincial ministries.

Made in Ontario Environment Plan

TTLW reviewed the Government of Ontario’s Made in Ontario Environment Plan and found it troublingly deficient in tangible plans to protect crucial elements of Ontario’s environment and eco-systems for long-term and Traditional use and enjoyment by residents. Ontario is Canada’s most populous province by far, with approximately 13.5 million of Canada’s 35 million residents⁷ according to Statistics Canada.

Ontario’s water resources continue to be diminished through pollution and a usage rate that causes rivers to run dry, drains wetlands, destroys and fragments habits, impacts species at risk, and far outpaces aquifer replenishment⁸. We are already witness to impacts of a lack of provincial protection for our water and air. From the Walkerton “Tainted Drinking Water” tragedy⁹, to impacts on First Nations¹⁰ and other community water supplies, to the cases of illness and deaths each year caused by contaminated water¹¹ and air pollution¹². Ontario has a problem with unchecked industrial pollution, including that caused by landfills and incineration, transportation, manufacturing, aggregate extraction and mining, and the fossil fuels sector.

⁷ Statistics Canada. “Census Profile”. 2016 Census. 2016.

⁸ Gleeson, Tom; Befus, Kevin; Jasechko, Scott; Luijendijk, Elco; Cardenas, M. “The global volume and distribution of modern groundwater.” *Nature Geoscience*. www.nature.com. 16 November, 2015.

⁹ O’Connor, Dennis. “The Walkerton Inquiry Report Parts 1 and 2.” Ministry of the Attorney General. www.attorneygeneral.jus.gov.on.ca. May, 2002.

¹⁰ Levasseur, Joanne; Marcoux, Jacques. *Bad water: ‘Third World’ conditions on First Nations in Canada*. CBC News. www.cbc.com. 15 October, 2015.

¹¹ Edge, Tom; Byrne, James; Johnson, Roger; Robertson, Will; Stevenson, Roselynn. Environment Canada. “Threats to Sources of Drinking Water and Aquatic Ecosystem Health in Canada”. www.ec.gc.ca.

¹² Ontario Medical Association. “The Illness Costs of Air Pollution: 2005-2026 Health & Economic Damage Estimates”. www.oma.org. June 2005.

The regulatory atmosphere would ideally encourage development of more environmentally sustainable ways of doing business. Carrying out complex activities with higher risk to the environment or public health should involve more layers of MECP control, direction and supervision. Absolute limits for contaminants should be established and enforced.

Transition to Less Waste believes that true modernization of policies and regulations that may impact the environment or public wellness in Ontario should put public health and the protection of ecosystems ahead of private corporate profits. The Future Oxford Sustainability Plan¹³, created in Oxford County with the input of many stakeholders, offers an example of a process system where a Multi-Criteria Assessment Tool places a lens of environmental sustainability over all decision making. The plan includes 70 actions for achieving community goals and targets, and can be accessed online through the Future Oxford website. This type of process system is scalable and prioritizes the consideration of long-term environmental sustainability and protection of public health.

TTLW advocates for a move away from waste-to-disposal, and opposes incineration of waste and the use of cement and manufacturing kilns as makeshift industrial and hazardous waste disposal units. We are concerned that a move towards EASR registration for the transportation of riskier waste types does not incentivize an overall reduction in the production of waste, and instead makes it faster and easier for proponents to sign up on the EASR to transport hazardous waste types for disposal to land and air.

Protection of Ontario's air, land and water is greatly hampered by a lack of compliance enforcement by the Ministry of the Environment, Conservation and Parks. We are requesting that Ontario plan for an increase in the budget for the MECP, with a greater portion of that budget earmarked for the hiring and training of provincial officers and investigative staff that will carry out monitoring, audits and public engagement activities, and whom have the power to carry out compliance enforcement.

Statement of Environmental Values

The MECP has a Statement of Environmental Values¹⁴ that notes the intentions of the Environmental Bill of Rights, and includes the following:

Ministry vision, mandate and business

¹³ Future Oxford. "Future Oxford Community Sustainability Plan". www.futureoxford.ca/General/SustainabilityPlan/index.htm. 2015.

¹⁴ MECP, former Ministry of Environment and Climate Change. "Statement of Environmental Values". <https://ero.ontario.ca/page/sevs/statement-environmental-values-ministry-environment-and-climate-change>

The Ministry of the Environment and Climate Change's vision is an Ontario with clean and safe air, land and water that contributes to healthy communities, ecological protection, and environmentally sustainable development for present and future generations.

Throughout the proposal documents, the purposes of the policy and regulatory changes are framed as ways to:

- reduce burden
- reduce unnecessary burden
- reduce regulatory burden for businesses
- allowing more projects to start without the need for ministry review
- advancing provincial priorities
- reduce delays
- start work immediately

During an MECP webinar regarding the proposals, participants were told *“we are happy to move forward and happy to find an improved way of delivering on our mandate that we have here at the Ministry”*. – MECP Webinar, October 12, 2023.

TTLW requests that a copy of the Province of Ontario's mandate letter to the Ministry of the Environment, Conservation and Parks be made available to our organization and other interested parties.

Environmental Bill of Rights

Through Ontario's Environmental Bill of Rights (EBR), Ontarians have been provided with the ability to receive notice of activities that may affect the environment, and to participate in the decision-making processes the province undertakes. The purposes of the EBR, the rights given to Ontarians, and the reasons why this public participation is significant, are included within the Act:

¹⁵Environmental Bill of Rights, 2003

2 (1) The purposes of this Act are,

- (a) to protect, conserve and, where reasonable, restore the integrity of the environment by the means provided in this Act;*
- (b) to provide sustainability of the environment by the means provided in this Act; and*
- (c) to protect the right to a healthful environment by the means provided in this Act. 1993, c. 28, s. 2 (1).*

¹⁵ “Environmental Bill of Rights, 1003, S.O. 1993, c.28”. www.ontario.ca/laws/statute/93e28

Same

(2) The purposes set out in subsection (1) include the following:

- 1. The prevention, reduction and elimination of the use, generation and release of pollutants that are an unreasonable threat to the integrity of the environment.*
- 2. The protection and conservation of biological, ecological and genetic diversity.*
- 3. The protection and conservation of natural resources, including plant life, animal life and ecological systems.*
- 4. The encouragement of the wise management of our natural resources, including plant life, animal life and ecological systems.*
- 5. The identification, protection and conservation of ecologically sensitive areas or processes. 1993, c. 28, s. 2 (2).*

Same

(3) In order to fulfil the purposes set out in subsections (1) and (2), this Act provides,

- (a) means by which residents of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario;*
- (b) increased accountability of the Government of Ontario for its environmental decision-making;*
- (c) increased access to the courts by residents of Ontario for the protection of the environment; and*
- (d) enhanced protection for employees who take action in respect of environmental harm. 1993, c. 28, s. 2 (3).*

The EBR system is designed to give the public information on proposals which may affect the environment, with the understanding that as a whole, the residents of Ontario require a healthy environment, and that our ecologically diverse ecosystems should be protected, conserved and restored. The Act allows the residents of Ontario to oversee environmental decision making, and reminds the Government of Ontario that they are accountable not to corporate “clients”, or “the regulated community”, but to every person who relies on safe and abundant community water resources, healthy soils, vibrant ecosystems, and clean air, in order to live and thrive.

Intention and Limitations of the EASR

Ontario’s Ministry of the Environment, Conservation and Parks uses a discretion-based risk assessment method in order to allow certain categories of environmental permissions to be given via the online registration and permitting system called the Environmental Activity and

Sector Registry (EASR).

The MECP describes the EASR¹⁶ as:

[I]ntended for activities or sectors that:

- pose minimal risk to the environment and human health when regulated and required to follow specific rules*
- use equipment and processes that are standard to the industry or sector with known environmental impacts*

When developing EASR regulations, the MECP “*must build a strong case, supported by science, that the activity or sector meets the EASR criteria*”.

Descriptions within the MECP’s Environmental Registry info pages describe further screening that is supposed to be undertaken while considering EASR suitability for sectors or activities:

- the size, location and prevalence of the activity or sector*
- the media (e.g., air, land, or water) impacted by the activity or sector and the risks to the environment if emissions from the activity or sector are not promptly controlled*
- the complexity of the activity or sector (i.e., does this sector use highly complex and site specific processes and/or pollution control measures or are the processes simple and commonly used?)*
- the compliance performance of the activity or sector regarding current environmental standards*

During the webinars held by the MECP in support of these proposals, attendees’ queries to the Ministry reps were met with responses that appeared to confirm that the Ministry had not completed desktop or on-the-ground auditing of activities and sectors already added to the EASR.

While the Ministry’s own documents describe the EASR as being a vehicle for permitting the execution of low-risk activities, webinars carried out by the MECP in support of the concurrent proposals countered this narrative.

When asked during the October 12, 2023 MECP webinar on the Waste Management Systems EASR Expansion Proposal, about the EASR being developed for lower risk activities, the MECP responded with: *“It’s true in the early days, which was over a decade ago, we began with some of the lower risk activities. It is evolving, and, as you’ve seen through the eight EASRs that you heard about today, it’s evolved, and it continues to evolve. And so EASR is no longer limited to just low risk activities. We are looking at leveraging the system and the methodology to allow more activities to go through. And that’s actually part of the fourth permission modernization*

¹⁶ “Environmental registration”. www.ontario.ca

proposal that's out there, where we're looking at expanding and improving the EASR system. So, happy to hear input on that... Just a reminder for those of you who might not be familiar with all four proposals that are out there, there's this waste management expansion proposal, there's one out there for stormwater management, there is one regarding expanding the water taking EASR, which currently exists and has been in place for five years, and we are proposing this expansion of the permit-by-rule concept. So, happy to hear any input that you have, as you can see here today, I'm not sure if it was clear, this waste management proposal is one of those rules-based type, so it's very explicit requirements that they would have to adhere to and those would all be included in the regulation, and be required as part of the registration activities. But moving forward, there's lots of opportunities to find different ways to manage those things in continuing to ensure that we're protecting the environment and human health. So again, happy to hear and happy to discuss more... but [unintelligible] I just want to reinforce that they are no longer limited to low risk activities."

The Question-and-Answer period following the MECP's webinar, held on September 19, 2023 included the question: *"With no posting on the Environmental Registry, would that limit public consultation for new items on EASR?"* The following response was given by the MECP: *"The question was referring to the individual EASR registrations I believe. That is true that they, the individual registrations are not consulted on individually. However, the proposed EASR eligibility and operating requirements are consulted on broadly through the Environmental Registry of Ontario and the regulatory registry as well, which is a part of the efforts that we're going through in the coming weeks. So, as I said, again, any potential candidates for an EASR are consulted on and the requirements they would need to follow to ensure that the impacts are managed, appropriately, are consulted on through those mechanisms. And once an EASR registration is completed, you can actually access information related to that EASR through Access Environment, which will have all of the particulars associated with that registration and is in some cases some additional information depending on the particular activity that's being registered. So, I hope that helps to clarify".*

This response confirmed that once additional sectors and activities are allowed to register via the EASR, the public will no longer be able to comment on proposals for those activities through the ERO website, under the Environment Bill of Rights.

A webinar held October 19, 2023 for the slide deck entitled Waste Management Systems EASR Expansion Proposal, ERO POSTING #019-6963, a response to a question appeared to confirm that the MECP's next action on the topics would be the posting of a Decision on the ERO website. A question on whether there would be any further consultation after review and consideration of comments was met with the response: *"After the ministry reviews the comments, we will definitely be doing a Decision posting".*

TTLW does not believe the Ministry of Environment, Conservation and Parks has met their own "strong case" threshold, nor have they provided scientific rationale for moving riskier activities from the Environmental Compliance Approval and Permit realm to the EASR regulation system.

Insurance and Risks

Ontario's insurance industry is already being stressed by ballooning climate related costs, leading to increased costs for individual Ontario policy holders¹⁷. Given that fact, the MECP should be doing everything in their power to address costly risks to our environment.

The insurance industry and public infrastructure costs of global warming are already at catastrophic levels, and will become worse if we do not act on climate change urgently. *"Canadian insurers are now facing claims on natural catastrophes – floods, forest fires and other extreme weather events – of approximately \$1-billion annually, according to the Insurance Bureau of Canada. This amount has grown from \$400-million annually in previous decades. Claims are expected to continue to increase, as is damage to personal property and public assets. This aggregate number does not include smaller events that are not considered catastrophic (an event with total claims less than \$25-million), so the full impact of climate change on Canadian insurers and clients is likely understated.*

Similarly, there has been a related dramatic rise in government funding and liabilities owing to flood damage and other catastrophic events. In Canada, annual liabilities of the Disaster Financial Assistance Arrangements (DFAA) – managed by the federal and provincial governments – have risen steadily. These costs increased from around \$100-million annually two decades ago to \$500-million in 2009-10; they reached a current high of \$2-billion in 2013-14. The Parliamentary Budget Office projected that annual DFAA liabilities would average \$902-million over five years, of which \$673-million would be for floods. Based on recent and repeated flooding, those estimates may prove to be conservative.¹⁸" – Glen Hodgson

Ontario's successive Environmental Commissioners were at the forefront of warning the Ontario Legislative Assembly and Ontario's citizens that urgent action on climate change is needed to avoid the further financial burden and loss of life that will come with inaction. The MECP's "Environmental Permissions Modernization" proposals ask the public to assume additional environmental and financial risks by seeking to remove the requirements for carriers of PCB and Biomedical wastes to provide financial assurances to the province. With Ontario also seeking to privatize many sectors of healthcare in the province, the choice and oversight of carriers would further slip from the realm of public accountability.

Existing sectors and activities that require financial assurance, require the regulated party to provide it to the director before they begin their activity, in case there is a spill or incident. This requires coordination between the MECP's approvals branch and legal, financial, environmental, and economic assessment branches, before an ECA regulated activity can begin.

¹⁷ Rosanes, Mark. Insurance Business. *How climate change is impacting home insurance rates in Canada.* <https://www.insurancebusinessmag.com/ca/news/property-insurance/how-climate-change-is-impacting-home-insurance-rates-in-canada-320723.aspx>. 28 December 2021.

¹⁸ Hodgson, Glen. Globe and Mail. *The costs of climate change are rising.* <https://www.theglobeandmail.com/business/commentary/article-the-costs-of-climate-change-are-%20rising/>

The ministry requires an Irrevocable Letter of Credit or similar for waste management system carriers.

“The ministry is considering the removal of existing financial assurance requirements that currently apply to PCB and Biomedical waste haulers. We want to explore whether or not we can instead rely on coverage provided by insurance policy [sic] that has an amount set aside for liability resulting from spills.” – October 19, 2021 Waste Systems EASR webinar statement.

In the absence of financial assurances, an increased cost burden would be shifted to municipalities to cover contaminant clean up and mitigation costs, and personal insurance policy holders around the province would have to compensate for potential payouts to cover corporate pollution and contaminant accident and incident costs. A true polluter pays based system would ensure that proponents of higher risk activities provide financial assurance, so that Ontario municipalities, ratepayers, and personal policy holders do not have to shoulder the burden of costs when incidents occur.

Instead of moving away from being able to use financial assurances as a compliance tool, the MECP should be seeking to add the requirement for financial assurance to additional waste types being trucked across our province on an increasingly frequent basis.

A 2000 article on insurance issues with regard to Walkerton referred to the tragedy’s financial costs as “a risk management nightmare¹⁹”. In 2001, CBC News reported on the judicial inquiry findings that the Walkerton tainted drinking water tragedy “had an economic impact of at least \$155 million²⁰”. In 2011, CityNews reported²¹ that “The Ontario government has paid out more than \$72 million in compensation to victims of Walkerton’s tainted water tragedy and their families. [...] A total of 10,189 claims were made, with 9,275 qualifying for compensation.”

The Office of the Auditor General of Ontario released a Hazardous Spills 2020/21 Audit²², noting in the summary of their report:

- *The responsibility for protecting Ontario’s air, land and water falls to the Environment Ministry.*
- *Under the Environmental Protection Act and related regulations, the Environment Ministry is responsible for ensuring that companies have plans in place to prevent and respond to hazardous spills, reduce their risk of spilling and comply with related legislation and rules.*

¹⁹ Blakeney, William. Canadian Underwriter. *Walkerton: a risk management nightmare*. <https://www.canadianunderwriter.ca/features/walkerton-a-risk-management-nightmare/>. September 2000.

²⁰ CBC. *Economic toll high in Walkerton water disaster*. <https://www.cbc.ca/news/canada/economic-toll-high-in-walkerton-water-disaster-1.289892>. 26 November 2001.

²¹ CityNews. *Ontario pays \$72 million to victims of Walkerton tainted water tragedy in 2000*. May 2011.

²² Office of the Auditor General of Ontario. “Hazardous Spills 2020/21 Audit”. https://www.auditor.on.ca/en/content/news/21_summaries/2021_summary_ENV_HazardousSpills.pdf. 2021.

- *A hazardous spill is a discharge of a substance to air, land or water. Spills of hazardous substances continue to occur in Ontario, risking the health and safety of Ontarians and the environment (air, water and land).*
- *Between 2016 and 2020, there were 40,349 reported spills in Ontario, over 90% of which were assessed by the Ministry of the Environment, Conservation and Parks (Environment Ministry) as having potentially negative impacts on human health and/or the environment.*
- *The Environment Ministry does not disclose sufficient information to the public about the quantity of hazardous spills and the harm they cause. Further, the information that is disclosed is not reported in a timely manner.*
- *The Environment Ministry does not have a performance measurement framework for its spills program, which means that decision makers and the public do not know the effectiveness of efforts to reduce the frequency and impact of spills.*

Environment Ministry Not Overseeing or Ensuring Adequate Spill Response

- *Rather than conduct its own testing of soil and water samples to confirm that a spill has been properly remediated, the Environment Ministry instead relies on spillers to perform these activities and provide confirmation. This means spillers are left to police themselves and ensure effective spills remediation, with little risk of enforcement.*
- *The Environment Ministry has only used its legislative powers under the Environmental Protection Act to step in and remediate spills to prevent further environmental and/or health damages three times, despite other instances we identified where the spiller did not remediate the spill in a timely manner.*
- *The Environmental Protection Act requires spillers to report spills immediately to the Environment Ministry. However, our review of spills reporting timelines showed that, between 2016 and 2020, 16% of spills were not reported until the following day, and 1% took over 10 days to report. Furthermore, our review of a sample of 110 spills that had the potential for medium to major environmental and/or health impacts showed that 41% of these spills were never reported by the spiller.*

Spill Prevention Requirements Do Not Cover More than 90% of Spills

- *Thousands of hazardous spills are caused by entities not subject to spill prevention and contingency planning requirements. Between 2016 and 2020, facilities required to have spill prevention and contingency plans were responsible for only 7% of the 40,349 reported spills. Without the most frequent sources of spills, particularly pipelines, requiring this form of planning, the Environment Ministry cannot effectively protect the environment from spills.*
- *For those entities required to have spill prevention and contingency plans, the Environment Ministry does not approve spills plans or assess the effectiveness of the plans for even the highest risk facilities. The Environment Ministry relies solely on the spiller to ensure that the plan is effective.*

Ministry's Enforcement is Lax, Legislation Covers Few Industrial Spillers

- *The Environment Ministry's approach to enforcement was lenient and relied mostly on asking violators of environmental laws and regulations to comply, instead of using its powers to ensure full compliance.*
- *The Environment Ministry decreased its proactive inspections and enforcement of environmental requirements, such as for spill prevention, by 25% from 2016-2019 because of staffing reductions.*
- *Environmental penalties can only be issued to approximately 106 industrial facilities in Ontario, meaning that the Environment Ministry was unable to penalize spillers responsible for 94% of the spills reported between 2016 and 2020.*
- *The Environment Ministry has referred less than 1% of the 40,349 reported spills that occurred between 2016 and 2020 for further investigations.*
- *Because of its ineffective compliance strategy, the Environment Ministry allows repeat offenders to continue operating and even expand their operations.*

In summary of their reported conclusions, the Auditor General noted that the MECP was demonstrating systemic and process issues that left the environment and human health at risk:

- *The Environment Ministry does not have effective systems and processes in place to prevent or reduce the risks of negative impacts from hazardous spills on the environment and human health. Specifically, it does not require prevention and response planning for the most common causes of hazardous spills, such as pipelines, nor does it ensure this type of planning is being effectively performed by the companies required to do so.*
- *The Environment Ministry does not report to the public on hazardous spill events in a timely manner nor recover all reasonable costs it incurs from responding to spill events, which not only burdens taxpayers but reduces the motivation for spillers to prevent spills.*
- *The Environment Ministry's enforcement regime is not strong enough to bring entities into compliance in a timely manner or deter repeat violations.*

The report also let Ontarians know that, alarmingly, the public was shouldering the bulk of cleanup costs associated with spills:

Spillers Not Paying for Spill Response and Related Costs

- *The Environment Ministry is not recovering its costs from responding to spills, resulting in taxpayers and not the spillers paying for Ministry costs associated with spill response.*
- *When looking at just 30 of the 73,000 spills (0.04%) that were reported in Ontario between 2011 and 2020, we estimated that polluters had cost Ontarians over \$4.5 million in Ministry spill response resources such as staff time, laboratory tests and other expenses. The total amount of unrecovered costs incurred by the Environment Ministry responding to spills is potentially tens of millions of dollars more.*

- *The Environment Ministry's current cost recovery threshold of \$10,000 does not have a documented rationale and the Ministry has not attempted to estimate the labour and costs associated with spill cost recovery. Furthermore, laboratory costs are not made available to staff because of confidentiality reasons, and the Environment Ministry has never estimated the cost of using specialized equipment that may be needed during spills response.*
- *Even when the Environment Ministry attempts to recover costs, not all costs can be requested as reasonable to be recovered because the Ministry's laboratory costs are much higher than private-sector costs.*
- *For the three spills since 2005 for which the Environment Ministry pursued recovering costs from spillers, the Ministry did not attempt to recover 47% of our estimated total incurred cost of \$1.3 million, as some costs were unreasonable or not documented.*
- Auditor General of Ontario's Hazardous Spills 2020/21 Audit, Summary

The Waste Management Systems EASR August 2023 Discussion Paper, Section 4 Financial Assurance and Insurance Policy Requirements²³ states:

The financial assurance program is a program that supports the ministry's overall objective of minimizing government liability and strengthening the polluter pay principle.

The Environmental Protection Act gives the ministry the authority to require financial assurance from waste carriers to cover potential future clean-up costs and to ensure compliance with environmental objectives.

Currently, financial assurance is only required for:

- *Biomedical Waste in the amount of \$50,000.*
- *PCB Waste in the amount of \$100,000*

During the Question-and-Answer period the MECP held on October 19, 2023 for the slide deck entitled Waste Management Systems EASR Expansion Proposal, ERO POSTING #019-6963, a ministry response to a question asking about spill cleanup costs reiterated that financial assurance (FA) was only required for the two waste types given (biomedical and PCB). Participants were also told *"it's [financial assurance] never been used for a cleanup. So, what typically happens is there is actually immediate action. And that happens, and I'm generalizing here, because, you know, there's different cases, but it generally happens with the municipality and the, hauler, who deal with that spill immediately, and then resolve it however they would normally resolve it. And what we're saying is, you know, it's not like you would go to insurance for the cleanup. The insurance would be to cover the cost, you know, to recoup the cost at a later date. And what we're finding is, there's inconsistency right now within our Environmental Compliance Approvals, compared to our non haz-waste EASR registrants, where we have one*

²³ Ontario Ministry of the Environment, Conservation and Parks. "Waste Management Systems EASR Proposal August 2023 Discussion Paper". 2023.

requirement for insurance, and they have different requirements in the ECA side of things, and none of them have clear requirements around the liability side of it all. So, we're just thinking that we want to strengthen that in case it is necessary, but it's not the source of money we're looking at, for the immediate cleanup. That happens through a different route already".

The Waste Management Systems EASR Discussion Paper also states: *In addition, road authorities such as Ministry of Transportation and municipalities, have in some cases, undertaken the clean-up and remediation of a spill on behalf of the responsible party.*

An evident lack of financial assurance requirements leaves Transition to Less Waste with a number of questions: Why is the current system not taking advantage of financial assurance requirements as a prevention and cleanup cost payment tool? Why would the Ministry allow any higher risk activity to be undertaken in the province without a financial assurance in addition to insurance? How is a spills system that relies on other ministries or municipalities to pay for waste transportation system spill cleanup costs, instead of having the company pay directly or using the financial assurance tools at their disposal, truly employing the polluter pays principle? The Ministry should absolutely not be removing financial assurance requirements for biomedical and PCB waste haulers, and instead should be requiring them for more waste types, along with insurance.

Environmental Protection Act and Public Expectations

The "Environmental Permissions Modernization" proposals would not serve to carry out the purposes of the Environmental Protection Act²⁴:

3 (1) *The purpose of this Act is to provide for the protection and conservation of the natural environment. R.S.O. 1990, c. E.19, s. 3.*

Ontarians have the expectation that the Ministry will have a strong roll in safeguarding our environment and well-being by curtailing environmental pollutants and contaminants, and disallowing and prohibiting activities that are, or have the potential to degrade our environment, native species populations, habitats, ecosystems, or public health.

Our organization advocates for any activity that has the potential to cause adverse effects as defined in the EPA to be strongly regulated, monitored and controlled, in order to prevent undesirable outcomes and cumulative impacts from negatively effecting life in our biologically diverse province:

"adverse effect" means one or more of,

- (a) impairment of the quality of the natural environment for any use that can be made of it,*
- (b) injury or damage to property or to plant or animal life,*

²⁴ Ontario. "Environmental Protection Act, R.S.O. 1990, c. E.19". <https://www.ontario.ca/laws/statute/90e19>

- (c) harm or material discomfort to any person,*
 - (d) an adverse effect on the health of any person,*
 - (e) impairment of the safety of any person,*
 - (f) rendering any property or plant or animal life unfit for human use,*
 - (g) loss of enjoyment of normal use of property, and*
 - (h) interference with the normal conduct of business; (“conséquence préjudiciable”)*
- Adverse Effects, EPA

The MECP should be enforcing adherence to maximum contaminant levels, and should support Conservation Authorities, municipalities, businesses, and communities in maintaining and improving the natural environment, including ground and surface water.

Unsuitability of Posting the Proposals Concurrently

Our organization requested that the comment periods for the “Environmental Permissions Modernization” proposals be extended, from the concurrent 60-days, to 145 days, beginning from the date the Ministry had scheduled their last Webinar on, October 27, 2023. We received a letter from the MECP denying additional time for the public to review and prepare comments on this package of complex proposals.

While the MECP acknowledged during the Waste Management Systems webinars that the information was “high level”, and where the MECP’s own process involves consulting with the industry prior to divulging proposal details to the public, Ontario’s residents were still not granted a reasonable time in which to comment on these proposals. The proposals have the potential to remove our public comment opportunities granted under the Environmental Bill of Rights, for every activity added to the EASR going forward. This would include an unknown number of industrial activities, with the potential to impact the environment, our dwindling natural systems and spaces, important habitats, and public health and wellbeing.

These proposals would take away our EBR given right for a *“means by which residents of Ontario may participate in the making of environmentally significant decisions by the government of Ontario”* – in this case, Environmental Registry of Ontario postings for individual instrument proposals. These ERO postings would typically allow the public to receive notice, review, and comment on proposed activities. With no ERO comment opportunities, the public would no longer have the opportunity for our opinions to be considered meaningfully, and we would be denied “increased access to the courts”.

The “Environmental Permissions Modernization” proposals would strip the public’s ability to comment to the MECP in advance of EASR registrations regarding:

- who is taking water from our community water resources, how much, and for how long

- how it may impact the watershed or other established and community water users
- pollutants and contaminants being discharged into our environment
- impacts to Traditional use of the environment
- impacts to eco-systems and species
- the transportation of potentially dangerous waste types with no financial assurance

Lack of Audit Results and Poor Communication Between MECP Branches

During the Question-and-Answer period the MECP held on October 19, 2023 for the slide deck entitled Waste Management Systems EASR Expansion Proposal, ERO POSTING #019-6963, the MECP was asked if they had information on current compliance levels for hazardous waste transportation (records of compliance and number of non-compliant or incidents each year where industry has not complied with existing regulations). The MECP response was: *I don't think we can answer unless some on my team has done some research on this, because we aren't the compliance division, so we wouldn't have the statistics on that.*

As well as: *I think your questions are more about what is the province doing about compliance with this sector? which we can't speak to specifically.*

When asked about the MECP's lack of follow-up for carrier waste amount discrepancies, webinar participants were told: *It's not a topic that we can speak to here because our focus is on the permission, and we'll pass that message on.* – October 12, 2023 MECP Webinar

Transition to Less Waste believes it would be imprudent to add additional sectors and activities under EASR regulation registration, when on-the-ground compliance information on the current EASR registered activities and information on the current safety climate of hazardous waste haulage is not available for public review.

Missing Definition

Does the MECP have an official definition for the term “The Regulated Community” that is used throughout the document?

Lack of Accessibility

The MECP was asked to increase accessibility by making transcripts of the webinars available; they declined.

019-6963

Streamlining environmental permissions for the waste management systems under the Environmental Activity and Sector Registry

In their 2007 Annual Report, Ontario's Auditor General covered the topic of hazardous waste management, noting the MECP *had not conducted any recent work in the areas covered by our audit.* They shared that: *We identified over 26,000 shipments of hazardous waste in 2005 where*

the quantity received was less than the quantity shipped by the generator. The difference was greater than 10% in half of these shipments, with no explanation for or follow-up on the discrepancy. The lack of follow-up and other exceptions noted during our audit indicated that there is a risk that a significant amount of hazardous waste may not be disposed of properly.

The public is being asked to take on socialized risks, in order to enable a permissions system that allows corporations to register, pay online, and begin their undertaking with no individual opportunities for public comment, and no built-in guarantee of MECP review, monitoring, auditing, or compliance oversight and enforcement.

With the issue of discrepancies in hauler manifests for hazardous waste already being an subject of concern in Ontario, it behooves the Ministry to add additional safeguards and oversight to hazardous waste management systems, including waste generators, transportation, and disposal sites.

019-6853

Streamlining permissions for water takings for construction site dewatering activities and foundation drains

Question and Answer from MECP webinar September 19, 2023. Question: *“Can you provide some detail or rationale for removing notice to Conservation Authorities for water takings?”* To which the Ministry responded *“The Conservation Authorities Act was amended in 2022 to limit Conservation Authorities from commenting and [unintelligible] applications or other matters under prescribed Acts, which include the Environmental Protection Act as well as the Ontario Water Resources Act. Our proposal to remove the notification requirement to the local Conservation Authority for water takings that will be occurring for more than one year will align with that amendment. So, that is the approach that we are proposing to take.”*

019-6928

Streamlining environmental permissions for stormwater management under the Environmental Activity and Sector Registry (EASR)

The Ministry of the Environment, Conservation and Parks is responsible for the administration of Acts, Regulations and Policies that were developed to ensure that the waters that make up our environment and provide us with life are managed sustainably.

The MECP’s decision makers should always keep the long-term health and environmental needs of Ontarians and the other species we share this environment with, as their top priority. Water uses that are heavily or 100% consumptive reduce the quantity of water in our watersheds, and industrial uses that discharge contaminants or pollute, reduce water quality. Where multiple water users are discharging dirty water back into our local surface water, we see the cumulative impacts of degradation, including the loss of Traditional uses. Environmental Compliance Approvals and Permits to Take Water involve MECP staff review and posting on the ERO before the MECP decides whether or not to approve a permit, and what conditions will be included.

The Ministry has historically shown that there is very little regard for the cumulative impacts on communities where there are multiple or clustered pollution permission permits. The EASR registration and permit-by-rule systems, when applied to riskier undertakings and areas with multiple pollution permits, would arguably exacerbate this unacceptable situation. The MECP should absolutely be individually assessing all permit and approvals proposals on a site-specific basis. Ontarians must retain our EBR given rights to comment on individual applications, and be involved in meaningful decision-making processes.

Dealing with contaminants and pollutants does not benefit from a hands-off approach from the Ministry, in fact it requires the opposite.

The purpose of the Ontario Water Resource Act²⁵:

0.1 The purpose of this Act is to provide for the conservation, protection and management of Ontario's waters and for their efficient and sustainable use, in order to promote Ontario's long-term environmental, social and economic well-being. 2007, c. 12, s. 1 (1).

Following the Walkerton Inquiry's recommendations, the Ministry of Environment subsequently developed the Safe Drinking Water Act, and local source protection plans.

From the Safe Drinking Water Act²⁶:

1 The purposes of this Act are as follows:

- 1. To recognize that the people of Ontario are entitled to expect their drinking water to be safe.*
- 2. To provide for the protection of human health and the prevention of drinking water health hazards through the control and regulation of drinking water systems and drinking water testing. 2002, c. 32, s. 1.*

It is an invitation for disaster to consider amending Ontario Regulation 287/07 by removing the need for, limiting, or restricting the types of policies to be included in source protection plans where a significant drinking water threat is being managed through the EASR as the Ministry proposes in ERO 019-6928. Management of significant drinking water threats should never be removed from source protection plan documents, and MECP systems should include strong government and public oversight in order to permanently protect the quantity and quality of our waters in Ontario.

²⁵ "Ontario Water Resources Act, R.S.O. 1990, c. O.40". <https://www.ontario.ca/laws/statute/90o40#BK0>

²⁶ "Safe Drinking Water Act, 2002, S.O. 2002, c. 32". <https://www.ontario.ca/laws/statute/02s32#BK1>

ERO 019-6928 proposes to allow for amendments to existing source protection plans without following the usual process.

Source protection plans are created to protect the environment and public health. The “usual process” involves opportunities for the public to use the Environmental Bill of Rights. There should never be an instance when source protection plans are amended without the current processes of oversight and public involvement. It is not in the interest of Ontarians for source water protection planning to involve any cutting of corners or secrecy. Safe drinking water is required to sustain life in Ontario into perpetuity. This is not an area of safety where we can move backwards to a pre-Walkerton era.

As part of protection of source water and the environment in Ontario, municipalities must be able to raise the bar and create bylaws for stormwater runoff standards that are protective of the environment, public health, and the wellbeing of their communities.

019-6951

Exploring changes to streamline the permit-by-rule framework

We advise the MECP to consult the report Good Choices, Bad Choices²⁷, where the Environmental Commissioner of Ontario noted the following:

- *If badly designed and/or badly enforced permit-by-rule systems can eviscerate Environmental Protections.*
- *A permit-rule-approach, is only suitable for lower risk activities.*
- *[B]ecause there is reduced government oversight in a permit-by-rule approach, it is only suitable for lower risk activities*
- *Species are getting less protection under permit-by-rule*
- *The MNRF is not tracking the cumulative impact of harmful activities on species*
- *Permit-by-rule is a proponent driven approach that is largely based on self-assessment. This means that there is generally minimal, if any ministry involvement when a registration occurs*
- *[under permit-by-rule] the public loses EBR rights to receive notice and to comment*
- *[the decision in the Ostrander case] underscored the need to account for site-specific factors when determining the adverse effects of projects on the species at risk, and that the permit-by-rule system does not do that*

Transition to Less Waste opposes a move to a permit-by-rule system.

Instrument proposals posted to the ERO give Ontarians the opportunity to review and comment on applications for activities that may impact the environment, and have the

²⁷ Environmental Commissioner of Ontario. “Good Choices, Bad Choices. Environmental Rights and Environmental Protections in Ontario”. <https://www.auditor.on.ca/en/content/reporttopics/envreports/env17/Good-Choices-Bad-Choices.pdf>. 2017.

potential to cause adverse effects. The MECP should conduct a technical and scientific review of every proposal on an activity and site-specific basis, along with assessing on-the-ground compliance audit information to fully inform their decision making. These assessments must include meaningful cumulative impact and human health impact assessments. Environmental degradation or exposure related impacts may reasonably be expected to occur with more frequency and severity in areas where multiple sectors or activities are clustered.

The Sierra Club has named Southwestern Ontario a “polluter haven”, as the MECP often appears to struggle at monitoring and enforcing compliance in areas where there are multiple or many pollution permissions holders operating in one area.

The MECP, ministries with overlapping responsibilities, such as the Ministry of Natural Resources and Forestry, and residents of Ontario, thankfully have reports from the offices of Ontario’s Environmental Commissioner and Auditor General to consult. These reports, such as the ECO’s Back to Basics, provide valuable insights and recommendations on ways the province could and should be doing more to protect the long-term sustainability of Ontario’s land, water, and air.

While this document is not exhaustive, and contains only a fraction of our concerns with the proposals, the following thoughts from our organization should be noted:

Transition to Less Waste;

- Opposes creation of a regulation under the EPA that would allow stormwater management works to be registered on the EASR
- Opposes amending O.Reg. 525/98 to exempt some residential stormwater management works from approval requirements
- Does not believe that environmental protections processes or systems should be characterized as unnecessary “burdens”
- Asks that O.Reg. 287/07, under the Clean Water Act, 2006 not be amended
- Believes that all significant drinking water threat information should remain in source protection plan documents, and should not be moved to an EASR system
- Opposes the amending of source protection plans without the usual processes
- Opposes amending O.Reg. 63/16 under the Environmental Protection Act
- Believes the spirit of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement should be respected
- Believes municipalities are uniquely positioned to understand the needs of their communities, and should be able to create municipal sewer use bylaw criteria that is superior to current provincial standards, and more protective of the environment
- Understands that the water communities send downstream impacts First Nations and other communities, as well as the Great Lakes water system
- Believes the province should never seek to reduce water quality protection and enhancement policies put in place by municipalities
- Opposes EASR permitting of pollution and water taking activities

- Opposes amending O.Reg. 352/12 to include waste management systems that manage asbestos, biomedical waste, hazardous waste, liquid industrial waste, and treated characteristic waste or the in-transit storage of waste
- Opposes expanded use of the MECP's permit-by-rule framework and the development of a single permit-by-rule regulation
- Questions the MECP's assertion that they have "a robust set of environmental outcomes for activities that emit contaminants to air" -ERO proposal 019-6951
- Believes it is not wise to rely on a proponent selected "qualified person" as the sole assessor of whether a proponent's project is acceptable
- Strongly opposes the addition of any activities or sectors related to aggregate operations to the EASR system
- Understands that many industry technical design standards, standard operational procedures, and currently used technologies are not protective of the environment or public health and safety
- Realizes that best practices guidelines and standards are often not scientifically up to date or adequately protective of receiving environments
- Opposes moving the rules that govern activities to "codes of practice" and out of the regulatory realm, where the public can currently comment on proposed ECA and permits activities via the ERO
- Opposes allowing a single registration for each facility and does not believe it would help proponents to comply with rules or regulatory requirements
- Opposes removing financial assurance requirements for the transportation of PCBs and biomedical waste

Summary of Recommendations

- That the Ministry not approve their "Environmental Permissions Modernization" policy and regulation proposals
- That the Government of Ontario increase funding to the MECP so that they can carry out the on-the-ground compliance assessments, independent environmental monitoring, and enforcement activities that would assist them in carrying out the purpose of the Environmental Protection Act
- That the MECP increase compliance enforcement, with penalties paid into an environmental education and restoration fund
- That the MECP require pollution prevention and control plans accompany applications for ECAs and water taking and discharge permits

Conclusion

The proposals put forth by the MECP, ostensibly to modernize their permissions processes shine a light on the many flaws and ailments of a system that is underfunded and understaffed; where the proposed stopgap solutions for systems failure are the removal of much of the oversight that would normally be carried out through technical and public reviews.

For Ontario to prosper, the health and wellbeing of Ontarians must be protected. For Ontarians to be well, our environment must be conducive to supporting optimal public health and wellness. Our environment is not for human consumption, it is a living system where we are one species among many. The intrinsic value of Ontario's natural systems, features and spaces cannot be overstated. Any moves by our governing bodies to devalue our natural life support systems would be of disservice to Ontarians. Consequently, Transition to Less Waste opposes ERO proposals 019-6928, 019-6853, 019-6963, and 019-6951 and asks that the Ministry of Environment, Conservation and Parks not seek to carry them out.

Sincerely,

Michael G. Farlow, President, Transition to Less Waste (TTLW)
and Suzanne Crellin, on behalf of Transition to Less Waste (TTLW)

Comments contained in this document are in regards to the Ministry of the Environment, Conservation and Parks (MECP) proposals posted to the Environmental Registry of Ontario website on August 31, 2023, numbered 019-6928, 019-6853, 019-6963, 019-6951 and related matters. While we strive for accuracy, no quote in this document should be considered an official transcript, as no transcript was provided for any of the MECP consultation or webinars carried out during the ERO commenting period. Quotations may have been edited for length and clarity. TTLW encourages the review of all document or article excerpts that have been referred to in our comments. The Province of Ontario's Ministry of the Environment, Conservation and Parks has solicited public comments via the Environmental Registry, and we are responding according to our rights; afforded by Ontario's Environmental Bill of Rights. The comments are being submitted by the nonprofit organization Transition to Less Waste (TTLW), and are the opinions of said organization; they are submitted in the public interest, and in good faith, as comments on proposals which Transition to Less Waste believes may impact the environment and public health and safety within the province.