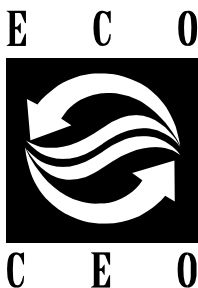


***Broken Promises: MNR's Failure to Safeguard
Environmental Rights***

Special Report to the Legislative Assembly of Ontario

**Submitted by Gord Miller, Environmental Commissioner of Ontario
June 21, 2001**



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Environmental
Commissioner
of Ontario



Commissaire à
l'environnement
de l'Ontario

Gord Miller, B.Sc., M.Sc.
Commissioner

Gord Miller, B.Sc., M.Sc.
Commissaire

June 21, 2001

The Honourable Gary Carr
Speaker of the Legislative Assembly
Room 180, Legislative Building
Legislative Assembly
Province of Ontario
Queen's Park

Dear Mr. Speaker:

In accordance with section 58(4) of the *Environmental Bill of Rights, 1993*, I present the attached Special Report of the Environmental Commissioner of Ontario for your submission to the Legislative Assembly of Ontario.

I am reporting that the Ministry of Natural Resources (MNR) is thwarting public participation and public scrutiny of environmental decision-making by effectively blocking the final steps in a legal process set out in the *EBR*. I see the need to issue this special report to respond publicly to the long string of broken promises that MNR has made to my office since 1995.

Sincerely,

A handwritten signature in black ink that reads "Gord Miller".

Gord Miller
Environmental Commissioner of Ontario

Broken Promises: MNR's Failure to Safeguard Environmental Rights

A Special Report to the Legislative Assembly of Ontario

Introduction

Ontario's *Environmental Bill of Rights (EBR)* was established to protect the right of Ontarians to a healthful environment and to promote public participation in environmental decision-making. The *EBR* explicitly states that the Ontario government has the primary responsibility for achieving these goals.

My mandate as Environmental Commissioner of Ontario is to review how provincial ministries carry out the requirements of the *EBR* and to report to the Legislative Assembly annually. The *EBR* also enables me to issue a special report at any time on matters that, in my view, should not wait until the release of my annual report.

This is my second special report since I assumed my duties as Environmental Commissioner on February 1, 2000. I am reporting that the Ministry of Natural Resources (MNR) is thwarting public participation and public scrutiny of environmental decision-making by effectively blocking the final steps in a legal process set out in the *EBR*. I see the need to issue this special report to respond publicly to the long string of broken promises that MNR has made to my office since 1995, each time asserting that the ministry would very shortly be complying with the *EBR* by "classifying its instruments" – in other words, opening its instruments to public comment and review. Other Ontario ministries classified their instruments years ago. The Ministry of the Environment (MOE) completed this process as early as 1994. MNR's persistent failure to do the same is not only a breach of the letter and spirit of the *EBR*, it also frustrates the rights of the public.

The practical effect of MNR's failure to classify its instruments is that the public cannot use the *EBR* as it was intended. Over the past five years, our office has been contacted by many Ontario residents with concerns about instruments administered by MNR. Many express shock and disappointment when they learn that MNR's instruments are still not subject to the public comment, review and appeal rights of the *EBR*.

What are instruments?

Instruments are legal documents issued to companies and individuals granting them permission to undertake certain activities. For example, MNR issues over a hundred different types of instruments, variously permitting the operation of sand or gravel pits, dredging or other construction work around lakes or rivers, or trapping wildlife. Most of these activities have environmental impacts, both positive and negative. Instruments include licences, orders, permits and certificates of approval.

Classifying Instruments

When the *EBR* came into effect, certain ministries were required to evaluate all the types of instruments that they issued, to identify those which had environmental effects, and to divide them into three classes according to their level of environmental significance. The *EBR* also established deadlines for each ministry to complete this “instrument classification” process. MNR was to complete this process “within a reasonable time” after April 1 1996.

The classification process is important for Ontario residents wishing to exercise their rights under the *EBR*. The public has no rights under the *EBR* to comment on any environmentally significant instruments until the ministry has formally classified them and finalized the decision as a regulation. How an instrument is classified (Class I, II or III) is also important, since it determines what level of public participation will be allowed, whether through making comments or applying for appeals, reviews or investigations under the *EBR*.

All new proposals for Class I, Class II or Class III instruments must receive at least a 30 day comment period on the Environmental Registry. The Registry is the key public consultation tool for the *EBR*. Above and beyond this minimum public comment opportunity, the ministry must provide additional notice, such as a newspaper ad for Class II instruments, and Class III instruments usually require a hearing.

The Registry is one of the major success stories of the *EBR*. Between 1994 and early 2001, Ontarians made good use of the Registry, and Registry use continues to rise steadily. Registry users can customize their searches and have access to an extensive database of Registry instrument postings. Registry instrument notices increasingly include links to the full text of approvals and permits, providing a cost-effective means by which ministries can solicit public input into environmental decision-making.

What kinds of instruments does MNR administer?

MNR administers and oversees a number of environmentally significant laws, and issues thousands of instruments each year. In late 1997, MNR predicted it would post approximately 2,500 instrument proposal notices on the Registry each year, under 10 different Acts. The MNR Acts that are prescribed under the *EBR* and that contain instrument granting powers include: the *Aggregate Resources Act*; the *Conservation Authorities Act*; the *Crown Forest Sustainability Act*;

the *Fish and Wildlife Conservation Act*; the *Lakes and Rivers Improvement Act*; the *Mining Act*; the *Niagara Escarpment Planning and Development Act*; the *Oil, Gas, and Salt Resources Act*; the *Provincial Parks Act*; and the *Public Lands Act*. (See table) MNR also shares administration of the *Fisheries Act* (federal) for the purposes of applications for investigation under the *EBR*.

MNR does, of course, already use the Environmental Registry to post proposals for changes to these laws, as well as changes or additions to the ministry's policies and regulations. But consultation on province-wide policies does not replace the need for transparency and public review of the ministry's many site-specific instruments. Ontarians often have a strong interest and personal stake when changes are proposed that affect a specific piece of land. For example, they may live near a proposed quarry expansion, or they may be accustomed to fishing or hiking near a proposed waterway project, or their business may be affected by proposed forestry operations. When the *EBR* was enacted, it was intended that all Ontarians would have rights to comment on such proposals, but, unfortunately, the public is still waiting for these rights.

Promises made by MNR

In May 9, 1995, the ECO wrote to the Deputy Minister of MNR requesting an update on the ministry's progress on instrument classification (IC), and urging that the ministry start work on its IC regulation as soon as possible. Between May 1995 and May 2001, senior management and staff at MNR have made numerous commitments to the ECO on this issue. A detailed chronology of the interactions between the ECO and MNR staff is attached to this Special Report as Appendix 1. The following excerpts illustrate the nature of promises made to the ECO by MNR over the years.

May 29, 1996	MNR's Deputy Minister informs the ECO that a draft regulation to classify MNR's instruments is expected by the autumn of 1996, and a regulation is to be in place by the end of 1996.
March 11, 1997	MNR posts its first proposal for a regulation to classify its instruments, and invites public comment
Nov. 10, 1997	MNR posts its second proposal for a regulation to classify its instruments, and invites public comment
January 25, 1999	The Minister of Natural Resources informs the ECO that "While the Ministry had hoped that issues could be resolved and that the [instrument classification] regulation could be moved along for the government's consideration in the fall of 1998, this has not come to be."
Sept. 1999	MNR's Deputy Minister informs the ECO that a new instrument classification regulation will be ready in early 2000.
Jan. 26, 2000	MNR staff tell the ECO that they hope the regulation will be forwarded to

MOE by the end of February.

Feb. 2000	MNR staff tell the ECO that the regulation will be ready by the end of 2000.
Dec. 21, 2000	MNR's Deputy Minister tells the ECO that the instrument classification regulation will be ready in early 2001.
March, 2001	MNR informed the ECO that the regulation had received approval from MNR management and had been forwarded to the Red Tape Committee and the Statutory Business Committee of Cabinet.
June 2001	MNR has still not posted its instrument classification regulation on the Environmental Registry.

What other ministries have done

Three ministries and one agency — the Ministry of the Environment, the Ministry of Northern Development and Mines, the Ministry of Municipal Affairs and Housing and the Technical Safety and Standards Authority — have posted proposals for instruments on the Registry for public comment for years. Indeed, MOE has posted more than 10,000 instrument proposal notices for public comment since November 1994. Appendix 2 provides more detail on how these other ministries successfully classified their instruments under the *EBR*.

Which other *EBR* rights have been curtailed?

MNR's delay in finalizing its instrument classification regulation has also prevented Ontarians from using other *EBR* rights in the way that the drafters of the law had intended. For example, the public has not been able to ask for reviews of older MNR permits for aggregate operations, or apply for investigations of contraventions related to conditions of these permits. In addition, the public has been denied the right to request appeals of certain MNR instruments before review tribunals.

Moreover, until MNR's instrument classification regulation is finalized, MNR staff are not required to consider the ministry's Statement of Environmental Values (SEV) in making decisions to issue new instruments under MNR's prescribed Acts. The SEV spells out core values that are to guide the ministry in making decisions that might affect the environment. It is also a tool that Ontarians can use to see how each ministry complies with the *EBR*. For example, MNR's SEV requires that ministry staff consider ecosystems values, but until the ministry's instruments are classified, this requirement does not extend to decisions on instruments.

How has MNR done on its instrument classification regulation so far?

Since the autumn of 1992, MNR management has known that the instrument classification

requirements would soon apply to the ministry. The *EBR* was introduced for first reading in the Ontario Legislature in May 1993. The legislation was proclaimed in force in February 1994. Under O. Reg. 73/94, the General Regulation under the *EBR* that was filed when the *EBR* was proclaimed in 1994, MNR was required to complete work on its instrument classification regulation within a reasonable time after April 1, 1996.

In December 1996, the Canadian Environmental Law Association launched a judicial review of the failure of MNR to file its IC regulation proposal. MNR advised the ECO in early 1997 that the ministry would quickly proceed with development on an IC regulation proposal rather than attempt to deal with the judicial review in the courts.

MNR posted a preliminary proposal for a regulation in March 1997, which received extensive public comment, including criticism on a number of issues. MNR staff undertook significant changes to both the regulation and the text of the posted proposal, and its proposal was re-posted in November 1997.

In the fall of 2000 MNR staff advised the ECO that they had completed planning work for implementation of MNR's instrument classification regulation. MNR also has undertaken a considerable amount of mandatory training for field staff, planners and managers in the ministry to ensure that staff are aware of overall *EBR* requirements and specific procedures relating to the posting of instrument proposal and decision notices.

Nevertheless, the core fact remains that MNR has still not classified its instruments, and I no longer have confidence that the ministry will carry out its legal obligation of its own accord.

Conclusion

Despite working on its instrument classification process for more than five years, MNR has not yet fulfilled its *EBR* obligation to finalize a regulation classifying environmentally significant instruments under the various Acts it administers. O. Reg. 73/94 under the *EBR* requires the ministry to develop an instrument proposal within a reasonable time after April 1, 1996. The ministry has circulated two proposals for an instrument classification regulation, the first issued in March 1997, and the second issued in November, 1997, with a comment period ending in January 1998. For the last three and a half years, MNR has not communicated with the public about its intentions on this matter.

MNR's delay in completing its instrument classification regulation is unreasonable and unacceptable. The ministry should finalize and publish its classification regulation in the *Ontario Gazette* before September 1, 2001.

Appendix 1

Chronology of ECO-MNR Discussions and Correspondence re: Classification of Instruments and Related Policy Issues, 1995 -2001

- May 9, 1995: The ECO writes to MNR's Deputy Minister requesting an update on ministry's progress with respect to instrument classification (IC), and urging an early start.
- May 20, 1995: The ECO hosts a meeting with MNR staff to discuss various MNR programs. Overview meetings of this type continue for the next two years and cover a range of topics including instrument classification, challenges with EBR implementation, MNR monitoring of natural resources, forest management and other topics.
- June 23, 1995: MNR's Deputy Minister replies to ECO's May 1995 letter, agreeing that an early start is important, and inviting an ECO staff person to be part of drafting team in a liaison capacity.
- September 6, 1995: An MNR staff person working on *EBR* implementation phones to invite an ECO staff person to the first meeting of working group on classifying instruments.
- September 7, 1995: ECO declines the offer to participate to avoid conflict of interest in evaluating the final decision on the IC.
- December 1, 1995: ECO writes to MNR's Deputy Minister, requesting an update on classification of instruments, especially a list of all instruments which will be subject to section 20(2) of the *EBR*.
- December 13, 1995: ECO staff meet with MNR staff. MNR staff make it clear that due to Bill 26, they can not meet their schedule.
- January 3, 1996: MNR's Deputy Minister replies to ECO letter with an update on the status of a development of a regulation to classify instruments.
- February 1, 1996: ECO decides to postpone further work on draft ECOnotes on MNR issues, pending completion of the MNR IC regulation.

- February 2, 1996: ECO replies to Jan. 3, 1996 letter from MNR's Deputy Minister, saying : "I urge you to put in place a regulation prescribing instruments as soon as possible after April 1st, 1996."
- April 6, 1996: MNR staff tell ECO staff that the MNR intends to put forward a draft classification regulation as soon as MNR staff have a precise list of instruments. This means that the MNR has to wait until the new regulations are developed under the amended *Lakes and Rivers Improvement Act* and the *Public Lands Act*. (Both were amended by Bill 26.) MNR staff also say that the MNR expects the whole matter will be completed before the end of the calendar year (ie. a new regulation in place by Jan. 1, 1997). ECO staff suggests that MNR should follow the approach outlined in the ECO's first guidance document on Public Consultation and the Registry, which suggests that complex postings should be posted twice.
- April 9, 1996: ECO writes to MNR's Deputy Minister, asking for an update on how ministry is progressing in classifying its instruments, and what the MNR schedule is.
- May 29, 1996: MNR's Deputy Minister replies that the completion of a draft regulation has been deferred due to Bill 26, and the OPS strike, and losing 1,820 staff. He expects that a draft regulation will be completed by the Fall of 1996, and a regulation will be in place before the end of the year.
- September, 1996: The ECO receives an application for review related to a proposed aggregate project. The licence for the project was issued in the 1970s and was grandparented under the *Aggregate Resource Act (ARA)*. The applicants seek a review of the license. The ECO returns the application to the applicants because the MNR IC regulation is not in place. Similar inquiries are received by phone, in letters, etc. each month (at the rate of 5-10 per year) for the next three years.
- December, 1996: CELA launches a judicial review requiring the MNR to post a proposal for an instrument classification regulation. [CELA withdrew the case in the spring of 1997 when the MNR posted its draft regulation.]
- January 10, 1997: In response to the CELA judicial review application, MNR's Deputy Minister directs the MNR manager responsible for the *EBR*, to establish a special team of staff (including policy analysts and lawyers) to prepare a draft IC regulation. MNR staff inform ECO staff that they expect to deliver on a draft regulation in the early spring of 1997.

- February 1, 1997: MNR begins to voluntarily post forest management plans as information items on the Registry, which let people know how timber operations will comply with laws and other requirements for sustainable forestry practices and summarizing public comments on the proposed plans.
- March 11, 1997: MNR posts its first proposal for an IC regulation.
- April 25, 1997: At the request of MNR, who indicate they are actively seeking our input to improve its proposal, the ECO submits detailed comments on the MNR's first proposal for an IC regulation. The ECO states that we are troubled by some features of the proposed IC regulation and indicate that some significant changes are required to comply with basic elements of s. 20 of the *EBR*.
- Early May 1997: A coalition of environmental groups including CELA submits lengthy, critical comments on the MNR's proposed IC regulation. Industry officials also are critical of the proposal. MNR staff begin to develop major revisions to the first IC regulation proposal.
- September 17, 1997: ECO staff meet with staff from the MNR and the Niagara Escarpment Commission (NEC) to discuss how the *EBR* applies to administration of the legislation creating the NEC (ie. *NEPDA*). ECO staff are advised that MNR staff have recommended to MNR management that MNR accept the ECO's interpretation of the *EBR* related to *NEPDA* and NEC and accept that *NEPDA* instruments should be prescribed for posting and applications.
- October, 1997 MNR estimates that implementation of the IC regulation will result in nearly 2,200 instruments postings on the Registry each year. Most of the proposed instrument postings are related to activities of Conservation Authorities (~1400/year) because the vast majority of environmentally significant instruments issued by the MNR will be excepted from Registry notice and comment requirements because they fall under an approval or an exemption order under the EAA. The Conservation Authorities express shock and disagreement with the consequences of the work done by the MNR staff and convey this to the ECO and MNR management.
- October 10, 1997: ECO meets with MNR staff for a day-long session to discuss the IC regulation. There is significant disagreement on a number of aspects of the proposed approach. In addition, there is confusion about whether certain Cabinet decisions to be made under the *NEPDA* are reviewable decisions under the *EBR* and whether they need to be posted.

October 20, 1997: MNR staff contacts ECO staff and explains that the aggregate industry led by the Aggregate Producers Association of Ontario (APAO), and supporting government officials intend to oppose further implementation of the MNR IC regulation. A major concern is that the aggregate companies do not wish to be subject to applications for review and applications for investigation related to specific pits and quarries.

November 10, 1997: MNR posts its second proposal for an instrument classification regulation. In the ECO's opinion, the proposal is significantly improved.

April 22, 1998: 1997 ECO Annual Report is released. ECO says that:

In 1997, MNR fulfilled its *EBR* requirement to develop a draft instrument classification regulation. The ministry's second version of the proposed regulation reflects a determined effort to address some of the concerns raised by members of the public during the first comment period. MNR worked hard on the instrument classification process, and ministry staff are to be commended for undertaking two notice and comment periods on this regulation. However, the delay in the finalization of the regulation delayed as well the ability of Ontarians to use the *EBR* fully with respect to the permits and approvals the ministry issues. For example, Ontario residents have not been able to ask for reviews of existing permits for aggregate operations, or to apply for investigations of contraventions of the conditions of these permits.

MNR's instrument classification proposal does not comply with the intent of the *EBR*. Some environmentally significant instruments are still left out of the proposal. Because of this, for example, members of the public will not be able to comment on MNR proposals to grant a sustainable forest licence to harvest forest resources, or on proposals to supply forest resources to an individual or company. (To its credit, however, it should be noted that MNR is voluntarily posting forest management plans, which let people know how timber operations will comply with laws and other requirements for sustainable forestry practices.)

There are also gaps in public participation created by the interaction of MNR's activities and the *Environmental Assessment Act (EAA)*, due to exceptions created by the *EBR*. Although the ministry's second version of its classification regulation contains more instruments than its first, many instruments will not be posted on the Environmental Registry for notice and comment, since they are exempted from or covered by the *EAA* and thus also from the public participation requirements of the *EBR*, under *EBR* s.32. MNR is using the s. 32 *EBR* exception in a legally correct

manner, but the result, unfortunately, will still remove many of the permits, licences and approvals granted by the ministry from public scrutiny. The ministry is also proposing a regulation that would define certain classified instruments as “field orders,” removing them from all of the public participation processes of Part II of the *EBR*.

- August 15, 1998: MNR staff contact ECO staff to discuss stakeholder concerns (e.g. APAO, NEC, Conservation Authorities) about the MNR’s IC regulation proposal.
- September 1998: MNR staff appear before the Red Tape Commission (RTC) to explain the implications of the MNR IC regulation. Staff are invited to appear several times.
- January 4, 1999: The ECO writes to the MNR Minister asking for an update on how ministry is progressing in classifying its instruments, and what the MNR’s schedule is for finalizing the regulation.
- January 25, 1999: Minister responds that MNR has been “working with different interests, including the aggregates industry, conservation authorities and others, to address their concerns about the implications of classifying instruments and fulfilling *EBR* obligations....While the Ministry had hoped that issues could be resolved and that the regulation could be moved along for the government’s consideration in the fall of 1998, this has not come to be.”
- April 28, 1999: 1998 ECO Annual Report is released. In the report, the ECO says that:
- Despite working on this project for at least three years, the Ministry of Natural Resources still has not fulfilled its *EBR* obligation to finalize an instrument classification regulation that would classify environmentally significant instruments under the various Acts it administers. The *EBR* requires the ministry to develop an instrument proposal within a reasonable time after April 1, 1996. The ministry has posted two proposals for an instrument classification regulation, the first issued in March 1997, and the second issued in November 1997, with the latter’s comment period ending in January 1998. The failure of the ministry to finalize this regulation in 1998 means that members of the public are unable to scrutinize the ministry’s proposals for specific instruments related to Ontario’s natural resources and may not exercise their rights under the *EBR* to comment upon these proposals or apply for a review or investigation, if required. I continue to urge the ministry to finalize and promulgate its classification regulation.
- May 1999: The ECO receives a comprehensive application for investigation alleging

that repeated violations of licences, site plans and legislation at Bowman Pit Complex near Elora have resulted in, and are continuing to cause, significant environmental damage in the area of the gravel pits. MNR conducted an investigation and determined that neither the *Aggregate Resources Act* nor the *Fisheries Act* were contravened by the aggregate extraction activity at the Bowman Pit Complex. While the MNR concluded that there is no evidence to support the alleged contraventions under the two Acts, the ministry stated that it does recognize the importance of continuing and improving upon the monitoring of the water table and the final depth of excavation elevations. The MNR had indicated that it will monitor site rehabilitation where the final excavation depth and limit have been reached and will encourage the operator to finalize the rehabilitation of these areas at the earliest opportunity. The ECO reports on MNR's handling of this application in its 1999-2000 annual report.

- September 1999: The Acting Environmental Commissioner meets with MNR's Deputy Minister on Sept. 24, 1999. The Commissioner receives a commitment that the new IC regulation will be ready in early 2000.
- January 26, 2000: MNR staff tell ECO staff that they hope that the IC regulation will go to MOE by February 29; they are doing the best that they can.
- February 2000: MNR staff promise ECO staff that the new IC regulation will be ready by the end of 2000.
- July 14, 2000: MNR comments on the ECO's Draft 1999 Annual Report indicate that the ministry "intends to bring forward a regulation in the fall of 2000"
- September 1, 2000: MNR's second round of comments on the ECO's Draft 1999 Annual Report indicates that "MNR intends to bring forward a regulation in the fall of 2000."
- September 28 2000: MNR staff tell ECO staff that they hope that the IC regulation will get approval within MNR by November. MNR staff say there are just a few issues outstanding, and that MNR staff need to develop procedures and have some training to integrate *EBR* consultation into ministry practices. They want to develop procedures to ease the burden for field staff for processing common instruments, such as *Aggregate Resources Act* amendments. MNR staff further advise that after the revised IC regulation is given MNR management approval it will go to Cabinet's Statutory Business Committee (formerly the Legislation and Regulations Committee), and hopefully will be implemented as soon as possible after

that. MNR staff don't think that the Red Tape Review Committee would want to see it again, as they have already had a chance to review it.

- December 21, 2000: Environmental Commissioner meets with MNR's Deputy Minister, and is told that the new IC regulation will be ready in early 2001. The Deputy Minister advised the Commissioner in a message sent the next day that the regulation would be sent to MOE shortly.
- March, 2001: The ECO was officially informed that the regulation had received approval from MNR management in late December 2000. MNR staff advised the ECO that a draft IC regulation had been forwarded to the Red Tape Committee and to Statory Business Committee of Cabinet.
- June 2001: No instrument classification regulation has been posted or promulgated.

Appendix 2

How Other Ministries Have Done

Four other ministries also are required to classify instruments and post notices of instrument proposals and decisions on the Registry.

Ministry of the Environment (MOE)

Under O. Reg. 73/94, MOE was required to complete work on its instrument classification regulation within a reasonable time after November 15, 1994. In October 1994, MOE completed its instrument classification process and commenced posting of proposal notices on November 15, 1994. MOE also undertook mandatory intensive training programs for hundreds of staff and managers in the ministry to ensure that staff were aware of overall *EBR* requirements and specific procedures relating to the posting of instruments proposals and decisions.

In the past seven years, MOE has posted more than 10,000 instrument proposal notices on the Registry for public comment.

Ministry of Consumer and Business Services/Technical Safety and Standards Authority

Under O. Reg. 73/94, the Ministry of Consumer and Commercial Relations (as it then was) was required to complete work on its instrument classification regulation within a reasonable time after April 1, 1996. (MCCR was renamed the Ministry of Consumer and Business Services in February 2001.)

In June 1996, MCCR drafted a proposal for its instrument classification regulation and posted it on the Registry for public comment. After reviewing public comments, MCCR decided to re-post its proposal for public comment in December 1996. In 1996, the MCCR also delegated most of its instrument administration and enforcement functions to a not-for-profit agency called the Technical Safety and Standards Authority (TSSA).

In 1997, the Technical Safety and Standards Authority and MCCR completed its work on its instrument classification regulation and forwarded its draft regulation to MOE. The TSSA and MCCR also undertook a comprehensive, intensive training for staff and managers to ensure that staff were aware of overall *EBR* requirements and specific procedures relating to the posting of proposal and decision notices for instruments issued under the *Gasoline Handling Act*.

Ministry of Northern Development and Mines

Under O. Reg. 73/94, the Ministry of Northern Development and Mines (MNDM) was required to complete work on its instrument classification regulation within a reasonable time after April 1, 1996.

In May 1997, MNDM approved a draft proposal for its instrument classification regulation and posted it on the Registry for a 90-day public comment period. In addition, MNDM undertook public consultations with the minister's Mining Act Advisory Committee in 1996.

In early 1998, MNDM completed its work on its instrument classification regulation and forwarded its draft regulation to MOE. MNDM also undertook a training program for staff and managers to ensure that they were aware of *EBR* requirements and specific procedures relating to the posting of proposal and decision notices for instruments issued under the *Mining Act*.

Ministry of Municipal Affairs and Housing

Under O. Reg. 73/94, the Ministry of Municipal Affairs and Housing (MMAH) was required to complete work on its instrument classification regulation within a reasonable time after April 1, 1998.

In the spring of 1999 MMAH completed its instrument classification process. MMAH also undertook mandatory, intensive training for planners and managers in the ministry to ensure that staff were aware of overall *EBR* requirements and specific procedures relating to the posting of *Planning Act* instruments. Since the summer of 1999, members of the public have been able to comment on MMAH instruments proposed under the *Planning Act (PA)*, including proposals for approval by the minister of an official plan under the *PA*, and proposals for approval by the minister of a plan of subdivision, where there is no official plan in place. As well, the public can now submit applications for review in regard to these instruments. In our 1999-2000 annual report, the ECO commended MMAH for completion of its instrument class.

**Instruments Proposed for Classification under the *EBR* According to MNR's October 1997 Draft
Instrument Classification Regulation****

Prescribed Act	Number of Classified Instruments (Oct 1997 Draft IC Reg.)	Number of Classified Instruments to be Posted (remaining to be subject to s. 32 exceptions)	Estimated Number of Proposal Postings of Classified Instruments per Year
<i>Aggregate Resources Act</i>	21	11 of 21	390
<i>Conservation Authorities Act</i>	12	12 of 12	1600
<i>Crown Forest Sustainability Act</i>	15	3 of 15 (Plus 3 additional information postings)	80-90 (70 would be information postings)
<i>Game and Fish Act</i>	6	2 of 6	2
<i>Lakes and Rivers Improvement Act</i>	11	10 of 11	25
<i>Mining Act</i>	2	1 of 2	0
<i>Niagara Escarpment Planning and Development Control Act</i>	13	12 of 13	300
<i>Oil, Gas and Salt Resources Act</i>	7	4 of 7	20
<i>Provincial Parks Act</i>	3	0 of 3	0
<i>Public Lands Act</i>	18	4 of 18	5
Total	108	59	Approx. 2400

**Data provided by MNR

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