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Bill 102: Modernization of the Environmental Authorization Scheme

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The Minister of Sustainable Development, the Environment and the Fight Against Climate Change (the "MSDEFCC") introduced *An Act to amend the Environment Quality Act to modernize the environmental authorization scheme and to amend other legislative provisions, in particular to reform the governance of the Green Fund* ("**Bill 102**") in the National Assembly, in the form of a bill, on June 7, 2016. Anticipated since the Minister's February 2015 announcement that he would undertake a modernization of the environmental authorization scheme, and the tabling of the Green Paper in June 2015, *Bill 102* proposes, *inter alia*, a new ministerial authorization scheme that will replace the current certificate of authorization and attestation schemes, as well as the permit scheme applicable to hazardous materials management.

New Ministerial Authorization Scheme

The modernization of the current certificate of authorization scheme that is being proposed pursuant to *Bill 102* focuses on the assessment of environmental impacts and procedural review. The Minister's goal is to reduce both the number of authorizations and processing deadlines. *Bill 102* brings the various types of authorizations together under a single designation: the ministerial authorization. *Bill 102* provides that, when assessing any ministerial authorization application, the Minister shall take into consideration, *inter alia*, (1) the nature of the project and how it will be implemented; (2) the characteristics of the milieu affected; (3) the nature, quantity, concentration and location of any and all contaminants that will be released into the environment; and, where applicable, (4) the results of any strategic environmental assessment analysis. While *Bill 102* does not set out the specific details regarding how a determination will be made with respect to what type of authorization will be required, the bill does reveal that certain activities may qualify for a determination of compliance (instead of a ministerial authorization) and that others may be exempted from the application of the ministerial authorization procedure altogether.

Bill 102 also describes the conditions, restrictions and prohibitions that the Minister may prescribe, on issuing a ministerial authorization, in order to protect the quality of the environment, human health and other living species. Such conditions, restrictions and prohibitions may include, *inter alia*, measures to mitigate the impacts of human activity on the environment, an environmental monitoring program, residual materials management as well as measures to reduce greenhouse gas emissions.

Bill 102 aims to simplify the transfer of ministerial authorizations. The bill provides that, prior to a transfer, a notice of transfer containing the information and documents prescribed by regulation must first be sent to the Minister. Thereafter, in the absence of a notice of opposition by the

Minister within 30 days following the notice of transfer, the transfer shall be deemed to have been approved. This represents a significant improvement with regard to situations where a business is being transferred.

Bill 102 proposes various changes to the Minister's authority relating to the issuance of orders and other interventions which reflects the new ministerial authorization scheme. Currently, the standards applicable to surface and ground waters are dictated by a ministerial policy that lies outside of any legislative or regulatory framework. *Bill 102* aims to give the Minister new authority to prescribe, by regulation, a water classification and to define, *inter alia*, physical, chemical and biological water quality standards according to different water uses.

Obligations Following the Cessation of a Regulated Activity

Further to the adoption of the amendments, *Bill 102* amends the obligations imposed following the cessation of a regulated activity by providing that such obligations will no longer apply solely in the event of a "permanent" cessation. The new provisions introduced by *Bill 102* provide for the possibility for a person who intends to change the use of the land following the cessation of a regulated activity to submit, for the Minister's approval, in the stead and place of whoever ceased its activities on that land, a rehabilitation plan. Moreover, *Bill 102* introduces a new obligation, *i.e.* an obligation to provide financial assurance or a financial guarantee to cover the costs related to carrying out a rehabilitation plan on the basis of the applicable regulatory limit values.

The new provisions also provide for the possibility of an exemption from the obligation to submit a rehabilitation plan where the land rehabilitation is to be done solely by excavating soils where all such soils are to be taken to an authorized site or where the quantity of contaminated soils to be excavated does not exceed 10,000 m³.

Access to Information

Bill 102 provides that ministerial authorizations will be made public in a registry to be found on the MSDEFCC's website. The accessible information will include most of the documents that form an integral part of an authorization application as well as the studies on which an authorization is based. Currently, in order to access this type of information, one must submit a formal access to information request, and the response times can be long. *Bill 102* does not specify whether some of the information provided to the MSDEFCC during the ministerial authorization application process may be declared confidential and therefore, remain unavailable to the public. This could be a major concern for those applicants requesting a ministerial authorization who are required to provide commercially sensitive information along with their application.

Greenhouse Gas Emissions

Bill 102 allows the Minister, in certain cases, to determine the greenhouse gas emissions of regulated emitters that are not reported or whose reporting cannot be satisfactorily verified. *Bill 102* also proposes significant amendments which provide for the establishment of the *Conseil de gestion du Fonds vert* (the Green Fund management board), and the coordination of its management, the whole in keeping with the principles of transparency, accountability, and rigour.

Please note that *Bill 102* will be the subject of a consultation process by Parliamentary Committee, scheduled to be conducted this Fall, and that the bill could undergo various amendments given the scope of the proposed reform.