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Québec Issues Compensation Regime for Adverse Effects on Wetlands and Bodies of Water

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The *Regulation respecting compensation for adverse effects on wetlands and bodies of water* (Regulation), enacted on August 17, 2018, was published in the *Gazette officielle du Québec* on September 5, 2018. It came into force on September 20, 2018, except for certain rules respecting work on lakeshores, riverbanks, littoral zones and floodplains, which will come into force on a date to be determined.

The Regulation clarifies certain provisions that have governed the authorization regime enacted under the *Environment Quality Act* (EQA) since March 2018 for work, constructions and other interventions in wetlands and bodies of water. It also replaces certain transitional provisions of the *Act respecting the conservation of wetlands and bodies of water* (Conservation Act), which came into force in June 2017.

Just over a year ago, the *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* and the Conservation Act introduced new provisions to the EQA applicable to wetlands and bodies of water, particularly provisions regarding the environmental authorization regime for projects affecting those areas and a transitional method of calculating the financial contribution to compensate for adverse impacts on wetlands and bodies of water.

Under the EQA, work, constructions and other interventions in wetlands and bodies of water generally require prior ministerial authorization, which is issued subject to the payment of a financial contribution for the following activities:

1. drainage and pipe work
2. clearing and filling activities
3. ground preparation work, in particular if it requires stripping, excavation, earthwork or destruction of vegetation cover
4. any other activity determined by government regulation.

That financial contribution is paid into the Fund for the Protection of the Environment and the Waters in the Domain of the State and is used to finance programs to restore and create wetlands and bodies of water.

The Regulation applies to the territory of Québec south of the 49th parallel (subject to certain exceptions) and in several regions north of it, as shown on the attached plan (in French).

The Regulation lists the work and projects that are exempt from the obligation to compensate for adverse effects on wetlands and bodies of water, including the following:

- projects that result in a loss of the surface area of a wetland or body of water equal to or less than 30 m^2;
- work to restore a wetland or body of water;
- certain work carried out in the floodplain, other than in a wetland or in the littoral zone;

- certain activities exempted from the environmental impact assessment and review procedure under the EQA, although the EQA provides that the government authorization issued under that procedure determines whether a financial contribution is payable or whether all or part of the payment may be replaced by the carrying out of work to restore or create wetlands or bodies of water; and
- the establishment and operation of a cranberry or blueberry farm, although the Regulation provides that the affected wetlands must be returned to the state they were in before the operation began when the farm ceases to operate.

The Regulation also sets out the activities for which the financial contribution may be replaced by work to restore or create wetlands or bodies of water. These activities include the following:

- certain exploration or mining work
- work carried out in certain industrial parks
- cultivation of a parcel of land for market crops production
- certain road infrastructure work.

If the work to restore or create wetlands or bodies of water is not carried out within the required time, the financial contribution must be paid.

Lastly, the Regulation sets out the formula for calculating the financial compensation payable in the case of adverse effects to a wetland or body of water – a "basic cost" of $20 per m^2 (adjusted on January 1 of each year) of affected wetlands or bodies of water:

- applying a factor representing the adverse effects on the wetland or body of water based on its initial and final state as well as a variable factor based on the region in which the wetland or body of water is located;
- adding the average value of vacant land in the territory of the regional county municipality in which the wetland or body of water is located; and
- multiplying the result by the surface area of the wetland or body of water.

The different factors and average values of vacant land are found in the schedules to the Regulation.

The portion of the wetland or body of water subject to compensation for the loss of wildlife habitat is not considered in calculating the compensation.

The Regulation also sets out the circumstances in which a contribution could be reimbursed – namely, when the work

- will result in a loss of surface area in a wetland or body of water less than the one authorized; or
- will be subject to compensation for a loss of wildlife habitat after the authorization is issued.

Depending on the case, the amount of the reimbursement will correspond to the surface area of the wetland or body of water that has not been affected by the work or the surface area subject to compensation for the loss of wildlife habitat.

The Regulation will be assessed two years after it comes into force and every five years thereafter.

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