

SEPTEMBER 3, 2020

Important Modifications to Québec's Environmental Permitting Regime

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Several regulations governing the implementation of the environmental authorization scheme have been enacted and were published on September 2, 2020, in the *Gazette officielle du Québec, Part 2*, including the *Regulation respecting the regulatory scheme applying to activities on the basis of their environmental impact* (Regulation).

Context

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)¹ was passed on March 23, 2017, and the majority of its provisions came into force in March 2018.

The main purpose of Bill 102 was to amend the authorization scheme under the *Environment Quality Act* (EQA) by implementing a simplified version tailored to the environmental risk so that, depending on the risk level (i.e., high, moderate, low, negligible), a project (or components of it) could be subject to a government authorization, a ministerial authorization and/or a declaration of compliance or be otherwise exempted from the obligation to hold an authorization.

Various draft regulations were published in February 2018 for public consultation. An overview of initial proposals was provided in our [February 20, 2018 bulletin](#). Since then, the Québec government has revisited the proposals, conducted various consultations and published several draft regulations in the *Gazette officielle du Québec* of February 19, 2020 and has now enacted the regulatory scheme.

Regulatory Changes

The regulatory scheme is based on the type of impact the activity has on the environment and on the type of environment in which the activity is carried out. The Regulation identifies the activities that are subject to ministerial authorization (moderate risk) and those that are eligible for a declaration of compliance (low risk) or an exemption (negligible risk); high-risk activities are subject to government authorization and are already mainly governed by the *Regulation respecting the environmental impact assessment and review of certain projects*, although the Regulation does provide clarification on the interaction, for such type of project, between the governmental authorizations, the ministerial authorizations, the declaration of compliance and the exemptions. The Regulation further sets rules with respect to matters such as the following:

- the information and documents to be provided in support of an application for a ministerial authorization;
- the terms and conditions governing an application for the issue, amendment, renewal, suspension or revocation of a ministerial authorization, including, the taking into account, for some types of project, of the greenhouse gas emissions;
- the terms and conditions applicable to the assignment of a ministerial authorization or the cessation of an activity authorized under the EQA;
- the conditions, restrictions and prohibitions applicable to a declaration of compliance, the information and documents to be provided in support of a declaration of compliance and, where applicable, the declaration from a professional that must accompany the declaration of compliance or the attestation that must be provided once the activity has been completed;

- the conditions, restrictions and prohibitions applicable to exempted activities and, where applicable, the attestation from a professional that must be provided once the activity has been completed.

The Regulation will come into force on December 31, 2020, but provides for some transitional provisions and some delays in the application of other provisions such as those requiring that the information and documents in support of an application for authorization submitted via the applicable electronic forms, which are delayed until December 31, 2021. In parallel, the Minister announced on the same day that it is continuing its efforts to improve processes and develop online services, always with the aim of optimizing the new environmental authorization regime (see the [Minister's press release](#), available in French only). In addition to the Regulation, about 30 other regulations have been enacted, mainly to modify existing sectorial regulations to harmonize with the Regulation; although we note that some changes are nonetheless of a substantive nature, notably with respect to the *Regulation respecting the landfilling and incineration of residual materials*.

Among these regulations, we note the adoption of two new regulations – namely the *Design code of a storm water management system eligible for a declaration of compliance* and the *Regulation respecting the reclamation of residual materials*, which set additional conditions under which some activities might be exempted from a ministerial authorization or be subject to a declaration of compliance.

In addition, the *Regulation respecting activities in wetlands, bodies of water and sensitive areas* replaces the *Regulation respecting motor vehicle traffic in certain fragile environments* and sets out additional requirements that will mainly govern, with some exceptions, activities in wetlands and water environments that are exempt from a ministerial authorization or eligible for a declaration of compliance. Similarly, the *Snow, Road Salt and Abrasives Management Regulation* replaces the *Regulation respecting snow elimination sites* and sets a regulatory framework for snow management as well as for the storage and handling centres for road salt and abrasives in order to allow such activities to be carried out, with some exceptions, without a ministerial authorization or under a declaration of compliance.

Furthermore, the Regulation revokes the *Regulation respecting the application of section 32 of the Environment Quality Act*, the *Regulation respecting the application of the Environment Quality Act*, the *Regulation respecting certain measures to facilitate the carrying out of the Environment Quality Act and its regulations*, and the *Regulation respecting the filing of information on certain drilling and fracturing work on gas or petroleum wells*.

The coming into force of the regulatory scheme gives rise to significant amendments to the environmental permitting regime that applies to the carrying on of commercial and industrial activities in Québec. Current operators as well as proponents of new projects should therefore familiarize themselves with these amendments, which are likely to have an impact on both current activities and new projects.

¹ Bill 102 was subsequently modified in June 2017 by Bill 132, *An Act respecting the conservation of wetlands and bodies of water*, S.Q. c. 14

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