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Environmental Legislative and Regulatory Developments: Québec Keeps Up the Pace

Authors: [Marie-Claude Bellemare](#) and Martin Thiboutot

Québec's legislative activity in environmental law continues to be prolific. This bulletin sets out some of the major recent developments in this area, including the designation of protected areas on private lands, the rules governing the flood zones of lakes and watercourses and activities therein, and extended producer responsibility for the deposit and selective collection systems in Québec.

Bill 46: Act to amend the Natural Heritage Conservation Act and other provisions

Bill 46 came into force on March 19, 2021. It introduces new protected area statuses (Aboriginal-led protected area, protected area with sustainable use and marine reserve) and amends the designation procedure and rules for certain protected areas on land in the domain of the State's by eliminating the mandatory step of temporary protection of the proposed area. As a result, the government may now grant permanent status to a designation after the Minister of the Environment and the Fight against Climate Change (Minister) has held a public information period. During this period, which lasts a minimum of 30 days, any person may request a public consultation, which may take the form of either a public hearing or a targeted consultation and may be referred by the Minister to the Bureau d'audiences publiques sur l'environnement.

The government may set aside any land in the domain of the State with the view to establish a protected area, although this is not a prerequisite to that designation. Such setting aside will have the effect of prohibiting, on the land set aside, the granting or issuance of any right, lease, permit, licence or authorization to carry on a wide range of activities, including the development of natural resources.

Bill 46 also broadens the criteria for the selection of natural settings that can be designated on a plan by the Minister to ensure the maintenance of their biodiversity and ecological functions. The criteria of rarity and exceptional interest are thus eliminated for this designation, and the objective of maintaining the biodiversity and ecological functions of the setting applies to all settings, not only to wetlands and bodies of water. A designation may cover private lands and, once the natural setting has been designated, carrying on an activity in such a setting is subject to the authorization of the Minister, who may include various conditions, including the obligation to provide a financial guarantee. The Minister must now keep a register of such natural settings designated on a plan.

Thus, the scope of diligence recommended in the context of a real estate transaction or the development of a project has been broadened to include the use that can be made of the land in question.

Bill 67: Act to establish a new development regime for the flood zones of lakes and watercourses, to temporarily grant municipalities powers enabling them to respond to certain needs and to amend various provisions

The main objective of Bill 67, most of which came into force on March 25, 2021, is to provide municipalities and regional county municipalities with more support for economic recovery and better equip them to deal with emergencies, such as floods and pandemics.

One of the key environmental components of Bill 67 concerns the implementation of a new framework for flood zone management and flood protection works in order to follow up on the government's plan to protect against floods (*Plan de protection du territoire face aux inondations: des solutions durables pour mieux protéger nos milieux de vie*, in French only), presented in the spring of 2020 following the major floods that occurred in 2017 and 2019. To this end, Bill 67 amends and repeals several provisions of the *Environment Quality Act* (EQA) and the *Act respecting land use planning and development*.¹

With respect to the EQA, Bill 67 affords the government new regulatory powers to develop a regulatory framework for shores, banks, littoral zones, flood zones and mobility zones of watercourses. Pursuant to this authority, it is expected that a new regulation will eventually replace the existing *Protection Policy for Lakeshores, Riverbanks, Littoral Zones and Floodplains*.

Bill 67 also entrusts the Minister with new powers, such as the power to establish, update and make public the boundaries of the flood zones of lakes and watercourses as well as mobility zones of watercourses. The Minister may delegate to a municipality the establishment of such boundaries within its territory, but the municipality must comply with the rules prescribed by the Minister for this purpose. The boundaries established by the Minister or municipality will be re-evaluated at least every 10 years in light of the evolution of the knowledge, methods and tools available as well as natural and human-caused changes and climate change issues.

To reduce the risks associated with the failure of flood protection works and to limit the probability of flooding, Bill 67 also provides for a governance framework for these works. Under this framework, the Minister may, among other things, prescribe standards for their design, maintenance and monitoring and make any order the Minister considers necessary to ensure the safety of persons and property.

Finally, Bill 67 makes various changes to the authorization scheme enacted under the EQA, such as taking into account, when the Minister is analyzing an application to authorize a project in a flood zone or in a mobility zone of a watercourse, the consequences of the activity in question for the persons and property located in such zones and imposing conditions concerning flood-proofing measures when issuing an authorization.

Real estate developers and project proponents should be watchful for the various regulatory developments that are on the horizon regarding Bill 67 since these developments are likely to affect the use that can be made of land in flood zones or near watercourses.

Bill 65: Act to amend mainly the Environment Quality Act with respect to deposits and selective collection

Bill 65 is the legislative centrepiece in a comprehensive reform of the deposit and selective collection system in Québec announced for 2020. Bill 65 amends the EQA to enable the government to implement this reform, including by regulation. In particular, the government is considering giving a non-profit body the responsibility to develop, implement and finance the actions necessary to ensure the operation of the selective collection and deposit systems.

Deposits will be extended to new products, and the roles and responsibilities of those involved will be thoroughly reviewed.

With respect to selective collection, the obligations of businesses that market certain products, including non-returnable containers and packaging, will go beyond financing the collection of these products, as is currently the case. In accordance with the principle of extended producer responsibility, these businesses will now be responsible for the operational aspect of the collection system and for achieving results.

Most of the provisions of Bill 65 came into force on March 17, 2021, including key provisions granting the government new regulatory powers. According to information released, the government plans to enact regulations under Bill 65 by the end of 2021. Full implementation of the reform is expected in 2025.

Companies that market products in containers and packaging would be well advised to follow the developments related to this significant reform.

Other Legislative and Regulatory Changes

In addition to the legislative developments discussed above, several other legislative and regulatory changes have been made recently.

- **Legislation.** The following Acts came into force in the fall of 2020: *An Act mainly to ensure effective governance of the fight against climate change and to promote electrification* (Bill 44), which introduces various amendments related to climate change; *An Act respecting the acceleration of certain infrastructure projects* (Bill 66), under which certain infrastructure projects are subject to an accelerated environmental approval process (see our [October 1, 2020 bulletin](#) on Bill 66).

- **Regulations.** *Regulation respecting the regulatory scheme applying to activities on the basis of their environmental impact* was implemented and most of its provisions came into force on December 31, 2020, and are part of the implementation of the new environmental authorization scheme (see our [September 3, 2020 bulletin](#) on this topic).

Finally, note that legislative and regulatory measures are still being developed – for example, Bill 88: *An Act to amend the Act respecting the conservation and development of wildlife and other legislative provisions*, which aims to amend the rules applicable to wildlife habitats, including payment of financial compensation in certain cases.

Companies should keep abreast of the rapidly evolving environmental legislative and regulatory framework in Québec.

¹Note that concordance amendments are also being made to the *Act to affirm the collective nature of water resources and to promote better governance of water and associated environments* and to the *Dam Safety Act*.

Key Contacts: [Marie-Claude Bellemare](#), [Sarah V. Powell](#) and [Alexandria J. Pike](#)