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The Québec *Environment Quality Act*: major changes coming in 2018

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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) was passed on March 23, 2017. Although some portions of Bill 102 came into force on that date, many of them will come into force on March 23, 2018.

The main purpose (available in French only) of Bill 102 is to amend the authorization scheme under the *Environment Quality Act* (EQA) by implementing a simplified authorization scheme tailored to the environmental risk so that, depending on the risk level (i.e., high, moderate, low, negligible), a project could require a government authorization, a ministerial authorization and/or a declaration of compliance or be exempt from the obligation for an authorization. Bill 102 further specifies, and in certain cases increases, the obligations that normally apply in case of the cessation of activities as well as to contaminated land, residual materials and hazardous materials.

Various regulations need to be amended and passed under the EQA in order for Bill 102 to have full effect. Various draft regulations have therefore been published recently for public consultation. These draft regulations target only a portion of the regulations currently enacted under the EQA, so there is a number of regulations that will not be affected by the passage and coming into force in 2018 of these draft regulations.

The following is a brief overview of the draft regulations:

1) *Government authorization: new regulations and amendments to the various regulations respecting the environmental impact assessment and review procedure*

On December 13, 2017, the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques (MDDELCC) published the draft *Regulation respecting the environmental impact assessment and review of certain projects*. This draft regulation replaces the current *Regulation respecting environmental impact assessment and review* and amends the *Regulation respecting the environmental impact assessment and review applicable to a part of the northeastern Québec region* mainly to ensure consistency with the amendments to the EQA enacted by Bill 102, while updating the list of projects subject to the environmental impact assessment and review procedure (EIARP) for southern Québec based on the environmental risk and revising how the procedure should be applied (i.e., project notices, impact assessment statements, public consultation, access to information, public register, duration and time limits, etc.). The public consultation period for this regulation has ended and we are waiting for the final version of this draft regulation (which should come into force on March 23, 2018) to be published.

In parallel, the MDDELCC recently published a new project notice form for project proponents subject to the EIARP and, on February 14, 2018, a draft order to amend the *Ministerial Order concerning the fees payable under the Environment Quality Act*, which makes amendments, on the basis of the revised list of projects, to the rate classes applicable to applications for authorization relating to projects subject to the EIARP. This draft order has been submitted to public consultation for a period of 15 days after its publication so as to bring it into force on March 23, 2018.

Moreover, on January 31, 2018, the Bureau d'audiences publiques sur l'environnement (BAPE) published a draft regulation that replaces the *Rules of procedure relating to the conduct of public hearings* currently in force. The purpose of this draft regulation, entitled *Rules of procedure of the Bureau d'audiences publiques sur l'environnement*, is to set rules of procedure for the conduct of consultations, mediation sessions and public hearings within the framework of the EIARP set out in the EQA (as modified by Bill 102), and those provided

for in the draft *Regulation respecting the environmental impact assessment and review of certain projects*. This draft regulation is subject to public consultation for a period of 45 days after its publication so as to bring it into force on March 23, 2018.

2) Ministerial authorization, declaration of compliance and exemptions: new regulations and amendments to certain existing regulations

On February 14, 2018, the MDDELCC published twenty or so draft regulations relating to the implementation of the EQA (as modified by Bill 102), some of which are new regulations, while others amend existing regulations. The following is an overview of the draft regulations by focus area:

a) Authorization scheme

- *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters*
 - The draft regulation proposes the enactment of the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters*.
 - This regulation determines the activities requiring a ministerial authorization (in addition to those that already require such an authorization pursuant to the EQA, as amended by Bill 102) as well as the activities eligible for a declaration of compliance and those that are exempt from the requirement to obtain a ministerial authorization.
 - This draft regulation further proposes rules relating to (i) the content and admissibility of applications for a ministerial authorization (including the terms relating to climate tests) and declarations of compliance, as well as the content of applications for the amendment, renewal, suspension or revocation of ministerial authorizations, (ii) the terms and conditions governing the transfer of a government or ministerial authorization, (iii) the terms and conditions governing certain activities requiring a ministerial authorization or a declaration of compliance, (iv) the terms and conditions governing certain activities that are exempt from the requirement to obtain a ministerial authorization, (v) the terms and conditions governing the cessation of certain activities, and (vi) the conditions for the implementation of certain activities to prevent, abate or stop the release of contaminants into the environment.

b) Industrial activities

- *Regulation respecting sand pits and quarries*
 - This draft regulation proposes to replace the current *Regulation respecting sand pits and quarries* in order to modernize the regulatory framework of the industry of sand pits and quarries, while ensuring that it is consistent with the EQA (as amended by Bill 102).
 - The proposed amendments review (i) location standards (including the protection of wetlands), (ii) operating conditions (for example, noise, blasting, dust, registers, etc.), and (iii) the requirements related to site restoration (for example, financial guarantees, use of slightly contaminated soils for backfilling, etc.).
 - However, ministerial authorizations, declarations of compliance and exemptions will be governed by the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters*. It should be noted that the MDDELCC has stated that the legal framework applicable to the operation of sand pits and quarries will have to be amended again in the future in order to specify the activities that will be eligible for a declaration of compliance, which will allow the operators concerned to be exempt from the requirement to file an application for a ministerial authorization.
- *Regulation to amend the Regulation respecting industrial depollution attestations*
 - This draft regulation proposes to amend the *Regulation respecting industrial depollution attestations* mainly to (i) ensure that it is consistent with the EQA (as amended by Bill 102), (ii) amend the existing coverage rules, and (iii) require new industrial sectors to

obtain a ministerial authorization for the operation of an industrial establishment (formerly referred to as a depollution attestation), in particular the expanded sectors of organic and inorganic chemistry.

- *Regulation to amend the Regulation respecting the liquid effluents of petroleum refineries*
 - This draft regulation proposes to revoke the sections of the *Regulation respecting the liquid effluents of petroleum refineries* relating to applications for a ministerial authorization, considering that these applications will be governed by the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters* once it comes into force.
- *Regulation to amend the Regulation respecting pulp and paper mills*
 - This draft regulation proposes to revoke the sections of the *Regulation respecting pulp and paper mills* relating to applications for a ministerial authorization, considering that these applications will be governed by the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters* once it comes into force.
- *Regulation to amend the Regulation respecting hot mix asphalt plants*
 - This draft regulation proposes to revoke the sections of the *Regulation respecting hot mix asphalt plants* relating to applications for a ministerial authorization, considering that these applications will be governed by the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters* once it comes into force.

c) Farming activities

- *Regulation to amend the Agricultural Operations Regulation*
 - This draft regulation proposes to amend the *Agricultural Operations Regulation* in order to (i) specify adjustments and additions to the definitions set out in the regulation, (ii) broaden the application of this regulation and (iii) make various technical adjustments.

d) Hazardous materials

- *Regulation to amend the Regulation respecting hazardous materials*
 - This draft regulation proposes to amend the *Regulation respecting hazardous materials* in order to (i) ensure that it is consistent with the EQA (as amended by Bill 102), and the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters*, and (ii) specify the rules relating to the management of accidental release of hazardous materials into the environment, including determination of the circumstances in which a characterization study and a contamination notice will have to be filed in connection with such release.

e) Water, waterworks and sewers

- *Regulation respecting work related to a water management or treatment facility*
 - This draft regulation proposes to replace the current *Regulation respecting the application of section 32 of the Environment Quality Act* and enact a new regulation governing work related to the establishment, alteration or extension of a waterworks system, sewer system or storm water management system.
 - However, the ministerial authorizations, declarations of compliance and exemptions will be governed by the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters*.

- *Regulation respecting the extension of a storm water management system eligible for a declaration of compliance*
 - This draft regulation proposes the enactment of a new regulation establishing the standards applicable to the design of the extension of a storm water management system eligible for a declaration of compliance pursuant to the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters*.
 - According to the MDDELCC, this draft regulation essentially proposes to introduce standards inspired by the March 2017 edition of the “*Manuel de calcul et de conception des ouvrages municipaux de gestion des eaux pluviales*”, the manual to calculate and design municipal storm water management works, published on the MDDELCC’s website.
- *Regulation to amend the Water Withdrawal and Protection Regulation*
 - This draft regulation proposes to amend the *Water Withdrawal and Protection Regulation* in order to (i) specify adjustments and additions to the definitions set out in the regulation, (ii) specify adjustments to the requirements relating to the sending of information, and (iii) make various technical adjustments.
 - However, the ministerial authorizations, declarations of compliance and exemptions will be governed by the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters*.
- *Regulation to amend the Regulation respecting the framework for authorization of certain projects to transfer water out of the St. Lawrence River Basin*
 - This draft regulation proposes to revoke the sections of the *Regulation respecting the framework for authorization of certain projects to transfer water out of the St. Lawrence River Basin* relating to applications for a ministerial authorization, considering that these applications will be governed by the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters* once it comes into force.
- *Regulation to amend the Regulation respecting municipal wastewater treatment works*
 - This draft regulation proposes to amend the *Regulation respecting municipal wastewater treatment works* with respect to (i) the certification of operators and the conditions under which such operators may obtain a qualification certificate, (ii) the standards relating to overflow and diversion, and (iii) the toxicity tests that must be carried out at the effluent of the treatment plant.
- *Regulation respecting private waterworks and sewer services*
 - This draft regulation proposes to replace the current *Regulation respecting waterworks and sewer services*.
 - It also proposes to introduce, for private waterworks and sewer services, (i) new terms to regulate the quality, interruption and suspension of the service and illicit connections, and (ii) a new plan for setting rates that the person in charge of a private waterworks or sewer system may collect from persons served by the system, including various provisions to regulate the contestation of the rate by the persons served and the inquiry process leading, in certain circumstances, to the imposition of a rate by the MDDELCC.

f) Atmosphere

- *Regulation to amend the Clean Air Regulation*
 - This draft regulation proposes to amend the *Clean Air Regulation*, in connection with the amendments set out in the *Regulation respecting sand pits and quarries*, in order to specify the requirements with respect to the emission of particles relating to the crushing or sieving of surface mineral substances outside quarries or sand pits.

g) Residual materials

- *Fertilizing Residuals Regulation*
 - This draft regulation proposes the enactment of the *Fertilizing Residuals Regulation* in order to (i) develop a classification of fertilizing residuals in accordance with the environmental risk associated with their use, and (ii) specify certain standards relating to the use of fertilizing residuals (storing, composting, spreading, etc.).
 - However, the ministerial authorizations, declarations of compliance and exemptions will be governed by the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters*.
- *Regulation to amend the Regulation respecting the landfilling and incineration of residual materials*
 - This draft regulation proposes to revoke the sections of the *Regulation respecting the landfilling and incineration of residual materials* relating to applications for a ministerial authorization, considering that these applications will be governed by the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters* once it comes into force.
- *Regulation to amend the Regulation respecting biomedical waste*
 - This regulation proposes amendments to the *Regulation respecting biomedical waste* with respect to (i) the application of this regulation, and (ii) biomedical waste management. It also proposes amendments to ensure the regulation is consistent with the EQA (as amended by Bill 102), and the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters*.
- *Regulation to amend the Regulation respecting snow elimination sites*
 - This draft regulation proposes to revoke the sections of the *Regulation respecting snow elimination sites* relating to applications for a ministerial authorization, considering that these applications will be governed by the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters* once it comes into force.
- *Regulation to amend the Regulation respecting used tire storage*
 - This draft regulation proposes to revoke the sections of the *Regulation respecting used tire storage* relating to applications for a ministerial authorization, considering that these applications will be governed by the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters* once it comes into force.

h) Contaminated soil and land

- *Regulation to amend the Land Protection and Rehabilitation Regulation*
 - This draft regulation proposes to revoke the sections of the *Land Protection and Rehabilitation Regulation* relating to applications for a ministerial authorization with respect to certain commercial and industrial activities, considering that these applications will be governed by the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters* once it comes into force.
 - It also proposes amendments to ensure the regulation is consistent with certain provisions of the EQA (as amended by Bill 102), relating to land use changes.
- *Regulation to amend the Regulation respecting contaminated soil storage and contaminated soil transfer stations*
 - This draft regulation proposes to revoke the sections of the *Regulation respecting contaminated soil storage and contaminated soil transfer stations* relating to applications for a ministerial authorization, considering that these applications will be governed by

the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters* once it comes into force.

- It also proposes amendments to the application of this regulation based on the amendments set out in the draft *Regulation respecting sand pits and quarries* with respect to the use of slightly contaminated soils for the reclamation and restoration of quarries.
- *Regulation to amend the Regulation respecting the burial of contaminated soils*
 - This draft regulation proposes to revoke the paragraph of the *Regulation respecting the burial of contaminated soils* relating to applications for a ministerial authorization, considering that these applications will be governed by the *Regulation respecting ministerial authorizations and declarations of compliance in environmental matters* once it comes into force.
 - It also proposes amendments to the application of this regulation based on the amendments set out in the draft *Regulation respecting sand pits and quarries* with respect to the use of slightly contaminated soils for the reclamation and restoration of quarries.

These draft regulations have been submitted to public consultation for a period of 60 days after their publication (i.e., until mid-April 2018), except for the *Regulation respecting private waterworks and sewer services*, which has been submitted for public consultation for a period of 15 days to bring it into force on March 23, 2018.

In principle, these draft regulations, as provided for in Bill 102, should be passed and come into force on March 23, 2018. Given that most of these regulations were published in draft form on February 14, 2018 with little time for public consultation, the MDDELCC published a draft regulation proposing to introduce transitional measures to ensure the application of the EQA (as amended by Bill 102), for the period from March 23, 2018, until the new regulations are passed. The draft regulation is entitled *Regulation respecting certain transitional measures to carry out 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* (Transitional Regulation). This draft regulation has been submitted to public consultation for a period of 15 days after its publication to bring it into force on March 23, 2018.

3) *Transitional Regulation*

The draft Transitional Regulation proposes to schedule the coming into force of the regulations necessary to allow for the implementation of the EQA (as amended by Bill 102), for no later than December 1, 2018. This draft regulation further proposes various rules that will apply during the transition period, including:

- certain adjustments relating to the legislative references and their interpretation
- the content of certain applications for authorization, certain applications for amendment, notices of transfer of authorizations and the declaration referred to in section 115.8 EQA
- the content of certain public registers
- maintenance, with some exceptions, of the current rules relating to the cessation of an activity
- consistency with certain provisions of the EQA (as amended by Bill 102), in particular with respect to certain sections of the Regulation respecting hazardous materials and certain sections of the Regulation respecting industrial depollution attestations.

The regulations enacted under the EQA and the transitional provisions set out in Bill 102 that currently apply will therefore continue to apply, subject, however, to the rules that will be set out in the final version of the Transitional Regulation, which is expected to come into force on March 23, 2018.

The coming into force of Bill 102 on March 23, 2018, will give rise to a large number of amendments to the environmental legal regime that currently applies to the carrying on of commercial and industrial activities in Québec. Current operators, as well as proponents of new projects, will have to become familiar with these standards, which are likely to have an impact on both current activities and new projects.

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