

BLG BULLETIN

BILL 102: A MAJOR REFORM
FOR QUÉBEC'S *ENVIRONMENT*
QUALITY ACT



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On June 7, 2016, the Minister of Sustainable Development, Environment and Fight against Climate Change (the “**Minister**”) tabled Bill no 102 in the National Assembly of Québec entitled: *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* (the “**Bill 102**”). Announced several months ago with the publication of the *Green Paper*¹, this major reform comes more than 40 years after the adoption of the *Environment Quality Act*² (“**EQA**”). In this detailed bulletin, we will review the principal amendments proposed by Bill 102.

The amendments proposed by Bill 102 relate to various important provisions of the EQA. The Ministry of Sustainable Development, Environment and Fight against Climate Change (the “**MSDEFCC**”) summarizes the general orientations set forth in Bill 102 with respect to the EQA as follows:

- integrate the 16 principles of the *Sustainable Development Act*;
- include the fight against climate changes in the authorization processes;
- accentuate modulation of the environmental authorization regime in relation to the environmental risk involved, without reducing environmental requirements;
- simplify environmental authorizations and increase the foreseeability of the analytical processes;
- increase both the information available about environmental authorizations and the opportunities for the public to become involved;
- review the responsibilities of both the MSDEFCC and project proponents;
- internalize the costs of environmental authorizations and resulting activities.³

Bill 102 also proposes to amend other statutes and regulations, including the *Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs*⁴ in order, in particular, to establish a new method of managing the Green Fund and to establish a Fund for the Protection of the Environment and Waters in the Domain of the State, as well as the *Watercourses Act*⁵, notably to eliminate certain duplications of the obligations prescribed by the *Dam Safety Act*⁶.

¹ Gouvernement du Québec, Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques, *Livre vert - Moderniser le régime d'autorisation environnementale de la Loi sur la qualité de l'environnement*, 2015, online: <www.mddelcc.gouv.qc.ca/autorisations/modernisation/livreVert.pdf> (web page visited, October 24, 2016 – in French only). See also Marie-Claude Bellemare, *Green light given for the modernization of Québec's Environmental authorizations regime*, BLG Bulletin, July 7, 2015, online: <http://www.blg.com/en/newsandpublications/publication_4169> (web page visited, October 24, 2016).

² *Environment Quality Act*, CQLR, c. Q-2, online: <<http://legisquebec.gouv.qc.ca/fr/ShowDoc/cs/Q-2/>> (web page visited October 24, 2016).

³ Gouvernement du Québec, Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques, *Feuille d'information - Résumé des mesures proposées dans le projet de loi présenté à l'Assemblée nationale*, online: <<http://www.mddelcc.gouv.qc.ca/lqe/autorisations/feuille-info.pdf>> (web page visited, October 24, 2016 – in French only).

⁴ *Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs*, CQLR, c. M-30.001, online: <<http://legisquebec.gouv.qc.ca/en/showDoc/cs/M-30.001?&digest=>>> (web page visited, June 20, 2016).

⁵ *Watercourses Act*, CQLR, c. R-13 online: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/R-13/>> (web page visited, October 24, 2016).

⁶ *Dam Safety Act*, CQLR, c. S-3.1.01, online: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/S-3.1.01>> (web page visited, October 24, 2016).

1. Amendments to the EQA's Authorization Processes: Modulating Requirements in Relation to Activity Risks

One major aspect introduced by Bill 102 is the modulation of authorizations in relation to the risks associated with activities subject to the EQA. If adopted, Bill 102 would establish four different types of regulatory framework for authorizations, according to the following classification:

- **High-risk Activities:** These are complex or large-scale activities that entail major environmental impacts. As is the case currently, such activities would require that an order in council/certificate of authorization first be obtained from the Government of Québec (the "Government"), and would be subject to the environmental impact assessment and review procedure, by being on a list of projects enumerated by regulation.
- **Moderate-risk Activities:** Moderate-risk activities would require that a ministerial authorization (as hereinafter defined) be obtained first, as is presently the case for activities requiring that a certificate of authorization be obtained first from the Minister. This category would not be associated with any list prescribed by regulation. Targeted activities would therefore be activities that would not be found in the regulatory lists for the three other risk levels⁷.
- **Low-risk Activities:** These are activities, determined by regulation, that entail minor potential impacts although they may necessitate, where applicable, certain recognized mitigation measures. These activities would not necessitate any prior ministerial authorization, but would be subject to a declaration of compliance at least thirty days before the activities begin.
- **Negligible-risk Activities:** These activities, whose environmental impact would be insignificant, would be determined by regulation and would require no ministerial authorization nor any prior declaration of compliance. Such activities could, however, be subjected to a declaration of activity, in accordance with terms and conditions to be prescribed by regulation.

These risk concepts are not to be found explicitly in Bill 102. Nevertheless, Bill 102 does set forth certain amendments to the authorization regime which correspond to these risk levels.

a) High-Risk Activities: Amendments to the Environmental Impact Assessment and Review Procedure

High-risk activities would be determined by regulation, as is presently the case for projects subject to the environmental impact assessment and review procedure provided for by sections 31.1 et seq. of the EQA⁸. Bill 102 nevertheless proposes a number of amendments to that procedure.

i. A List Revised Periodically and the Possibility of Discretionary or Voluntary Submission

The list of projects subject to the environmental impact assessment and review procedure would have to be revised every 5 years⁹.

It would henceforth be possible for the Government to subject a project not covered by the *Regulation respecting environmental impact assessment and review* to the environmental impact assessment and review procedure¹⁰.

⁷ It would, however, be possible for the Government to require that a certificate of authorization be obtained from the Minister, Bill 102, section 16, amending section 22, first para., subsection 10 EQA.

⁸ See also: *Regulation respecting environmental impact assessment and review*, CQLR, c Q-2, r 23, online: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/Q-2,%20r.%2023/>> (web page visited, October 24, 2016).

⁹ Bill 102, section 24, amending section 31.9, fifth para. EQA.

¹⁰ *Regulation respecting environmental impact assessment and review*, CQLR, c Q-2, r 23, online: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/Q-2,%20r.%2023/>> (web page visited, October 24, 2016).

The exercise of that power would, however, be limited to exceptional cases, where, within three months after an authorization application is filed under section 22 EQA, the Government, on the recommendation of the Minister¹¹, deems that :

- the project may raise major environmental issues and public concern warrants it;
- the project involves a new technology or new type of activity in Québec whose apprehended impacts on the environment are, in its opinion, major; or
- the project involves major climate change issues¹².

Furthermore, it would be possible for an applicant to voluntarily subject its project to the environmental impact assessment and review procedure, by filing a written notice with the Minister to that effect¹³.

ii. Increased Public Consultation and Intervention of the BAPE Clarified

Bill 102 also proposes to establish a public consultation stage prior to the conduct of the environmental impact assessment statement. Any person, group or municipality would be invited to submit observations to the Minister, in writing and within the time prescribed by regulation, on the issues that the environmental impact assessment statement should address¹⁴. Such observations would have, in accordance with MSDEFCC's requirements, to be taken into account by the project proponent in preparing its environmental impact assessment statement¹⁵.

The different types of interventions by the Bureau d'audiences publiques sur l'environnement ("BAPE") would also be regulated. In the environmental impact assessment and review procedure, the Minister would have the power to mandate the BAPE to conduct a public hearing, a targeted consultation, or a mediation¹⁶. The Minister would also be empowered to mandate the BAPE to hold a public hearing, without the project proponent having to proceed with the public information period (i.e., canceling the first part of the public participation process)¹⁷.

The concept of a *frivolous application*, a ground for which the Minister may refuse to hold a public meeting on a project, would be specified and defined as being, in particular, an application for which the reasons given in support of it are not serious or where a public consultation or a mediation session on the concerns raised would not be useful for analyzing the project¹⁸.

The maximum time for the Minister to make public a report from the BAPE would be reduced from 60 to 15 days¹⁹.

Certain amendments are also set forth with respect to the structure and operations of the BAPE, particularly in introducing the possibility for the Government to establish a procedure for selecting its members²⁰.

iii. One Authorization for the Whole Project

A project which has been authorized by an order in council/Government authorization at the conclusion of the environmental impact assessment and review procedure could be exempted by the Government, in whole or

¹¹ Bill 102, section 19, adding section 31.1.1, second para. EQA.

¹² Bill 102, section 19, adding section 31.1.1, first para. EQA.

¹³ Bill 102, section 19, adding section 31.1.1, third para. EQA.

¹⁴ Bill 102, section 20, adding section 31.3.1, first para. EQA.

¹⁵ Bill 102, section 20, adding section 31.3.1, second para. EQA.

¹⁶ Bill 102, section 20, adding 31.3.5, third para. EQA. See also Bill 102, section 9, amending section 6.3 EQA.

¹⁷ Bill 102, section 20, adding section 31.3.5, fourth para. EQA.

¹⁸ Bill 102, section 20, adding section 31.3.5, third para. EQA.

¹⁹ Bill 102, section 12, amending section 6.7 EQA.

²⁰ Bill 102, section 8, establishing section 6.2.2 EQA.

in part, from the requirement of obtaining one or more subsequent ministerial authorizations under section 22 EQA²¹, or be subjected to the declaration of compliance process²².

iv. A New Register of Environmental Assessments

Bill 102 would establish a new register of environmental assessments. The register would group together all the information concerning projects that are subject to the environmental impact assessment and review procedure, including, in particular:

- project notices;
- the Minister's directives for preparing an environmental impact assessment statement;
- observations and issues raised in prior consultations;
- impact assessment statements received by the Minister;
- the Minister's findings and questions;
- any information supplementing an impact assessment statement;
- the authorizations issued or amended in application of this process;
- monitoring reports which may be required under Government authorizations²³.

v. Exemptions in Case of Disasters Clarified

Bill 102 proposes to clarify the procedure for exempting a project from the environmental impact assessment and review procedure, by replacing the concept of "actual or apprehended disaster" by the concept of "disaster" within the meaning of the *Civil Protection Act*²⁴.

The Government or a committee of ministers could exempt all or part of a project from the application of the environmental impact assessment and review procedure, where carrying out the project is necessary to repair damage caused by a disaster or to prevent damage that could be caused by an apprehended disaster²⁵. Once such an exemption would be granted, the power to authorize the work could be delegated to the Minister²⁶.

vi. Agreements with Other Jurisdictions

Section 31.8.1 of the EQA, empowering the Minister to conclude an agreement with another jurisdiction in order to coordinate environmental assessment procedures, would be amended in order to provide that any such agreement could also be concluded for projects carried out in Québec, and not only for projects which are to be carried out in part outside Québec²⁷.

b) Moderate-Risk Activities: A New Section 22 of the EQA Combining Various Types of Authorization

Bill 102 proposes an overall restructuring of various authorization procedures, in order to combine them in the class of moderate-risk activities. If adopted, Bill 102 would group together, in particular, the authorizations presently issued under following regimes:

²¹ Bill 102, section 21, amending section 31.6, first para. EQA. See also section 1b) below.

²² Bill 102, section 21, adding section 31.6, second para. EQA. See also section 1c) below.

²³ Bill 102, section 177, adding section 118.5.0.1 and section 178, amending section 118.5.3 EQA.

²⁴ *Civil Protection Act*, CQLR, c S-2.3, online: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/S-2.3>> (web page visited, October 24, 2016).

²⁵ Bill 102, section 21, adding section 31.7.1, first para. EQA.

²⁶ Bill 102, section 21, adding section 31.7.1, second para. and section 31.7.3 EQA.

²⁷ Bill 102, section 23, amending section 31.8.1 EQA.

- Certificates of Authorization (section 22 EQA);
- Depollution Attestations – industrial establishments (sections 31.10 *et seq.*, EQA);
- Water Withdrawal Authorizations (sections 31.75 *et seq.*, EQA);
- Waterworks, Sewers and Water Treatment Authorizations (section 32 EQA);
- Hazardous Materials Management Permits (sections 70.9 and 70.11 EQA);
- Authorizations to install apparatus or equipment to prevent, reduce or cause the cessation of an issuance of contaminants into the atmosphere (section 48 EQA);
- Permits to operate a waterworks or sewer system (section 32.1 EQA);
- Permissions for construction on a former residual materials elimination site (section 65 EQA).

These authorizations, approvals, permits or permissions would henceforth be combined under a single authorization (the “**Ministerial Authorization**”), evolving throughout the performance of the activity concerned. Nevertheless, this new regime would not include depollution attestations applicable to municipal wastewater treatment works or water management works (sections 31.32 *et seq.*), or the approval of rehabilitation plans under the regime of land protection and rehabilitation (sections 31.43 *et seq.*). Bill 102 sets forth various general rules applicable to Ministerial Authorizations, which, in certain cases, are completed by specific rules applicable to certain activities, particularly in following fields:

- operation of certain industrial establishments;
- water management or treatment facilities;
- residual materials;
- hazardous materials.

This section summarizes the general rules and provides a brief overview of some of the specific rules.

i. A New Section 22 EQA

Section 22 of the EQA would be entirely revised. The first paragraph of the new section 22 would enumerate a list of activities subject to Ministerial Authorization, while the second paragraph proposes, in more general and non-exhaustive terms, a list of other activities subject to that regime.

The new formulation of this section would be as follows²⁸ :

“22. Subject to subdivisions 2 and 3, no one may, without first obtaining an authorization from the Minister, carry out a project involving one or more of the following activities:

²⁸ By way of comparison, the first and second paragraphs of section 22 of the present EQA are worded in the following terms and provide that:

“No one may erect or alter a structure, undertake to operate an industry, carry on an activity or use an industrial process or increase the production of any goods or services if it seems likely that this will result in an emission, deposit, issuance or discharge of contaminants into the environment or a change in the quality of the environment, unless he first obtains from the Minister a certificate of authorization.”

“However, no one may erect or alter any structure, carry out any works or projects, undertake to operate any industry, carry on any activity or use any industrial process or increase the production of any goods or services in a constant or intermittent watercourse, a lake, pond, marsh, swamp or bog, unless he first obtains a certificate of authorization from the Minister. [...]”

- (1°) the operation of an industrial establishment referred to in Division III, to the extent provided for in that division;
- (2°) any withdrawal of water, including relating work and works, to the extent provided for in Division V;
- (3°) the establishment, alteration or extension of any water management or water treatment facility, to the extent provided for in Division V;
- (4°) any work, structures or other intervention carried out in a constant or intermittent watercourse, or a lake, pond, marsh, swamp or bog;
- (5°) the management of hazardous materials, to the extent provided for in subdivision 4 of Division VII.1;
- (6°) the installation or operation of an apparatus or equipment designed to prevent, abate or stop the release of contaminants into the atmosphere;
- (7°) the establishment and operation of a residual materials elimination facility;
- (8°) the establishment and operation of a residual materials reclamation facility, including any storage or treatment of such materials for the purpose of reclaiming them;
- (9°) any construction on land formerly used as a residual materials elimination site and any work to change the use of such land;
- (10°) any other activity determined by government regulation.

The Minister's prior authorization must also be obtained for any other activity likely to result in the release of contaminants into the environment or affect the quality of the environment, including the following activities:

- (1°) the construction of an industrial establishment;
- (2°) the operation of an industrial establishment other than one referred to in subparagraph 1 of the first paragraph;
- (3°) the use of an industrial process;
- (4°) an increase in the production of property or services."

Accordingly, as is presently the case, the new section 22 EQA would not be associated with a regulated list of subject activities. It would, however, be possible for the Government to subject, by regulation, certain activities to the obligation to obtain a Ministerial Authorization²⁹.

ii. Specific Rules for Analysis and Issuance of Ministerial Authorization

The elements which the Minister must consider in studying any application for Ministerial Authorization would be clarified. The Minister would have to consider:

- the nature of the project and how it is to be carried out;
- the characteristics of the milieu affected;
- the nature, quantity, concentration and location of any and all contaminants that will be released into the environment; and

²⁹ Bill 102, section 16, amending section 22 first para. subsection 10 EQA.

- the findings of any strategic environmental assessment, as the case may be³⁰.

In cases provided for by regulation, the Minister may also take into account the greenhouse gas emissions attributable to the project and assess any climate change impact mitigation and adaptation measures a project may entail³¹.

Any application not including the information and documents determined by regulation would not be admissible for consideration³².

It would no longer be necessary to obtain a certificate of conformity to municipal by-laws from the municipality in which the project is located, except in the case of an application for authorization with regard to a water management or treatment facility not operated by a municipality or operated by a municipality outside its territorial limits. In such cases, the applicant for authorization would be required to submit a certificate from the clerk or secretary-treasurer of the municipality in whose territories the facility is located, attesting that the municipality does not object to the authorization being issued for the sector served by the facility³⁴.

Specific grounds for refusal of an application for Ministerial Authorization (in addition to the grounds of refusal provided for elsewhere in the Act³⁵) would be introduced into the EQA, namely

- the applicant has not demonstrated that the proposed activities comply with the EQA and its regulations;
- the applicant has not provided, within the time determined by the Minister, all the information, documents or studies required for the application to be analyzed;
- the Minister is of the opinion that the measures to be implemented in connection with the project or its modification are insufficient to ensure adequate protection of the environment, human health or other living species³⁶.

Bill 102 provides periods of validity for certain types of Ministerial Authorization. For example, a Ministerial Authorization relating to residual materials management³⁷, and a Ministerial Authorization issued for certain industrial establishments, would be limited to a period of 5 years³⁸. Moreover, the Government could, by regulation, provide for a period of validity of a Ministerial Authorization for certain activities or classes of activities, as well as the terms and conditions of renewal, where applicable. The Minister could also prescribe the term of validity of the Ministerial Authorization, on its issuance, for any activity not covered by such regulation³⁹.

iii. The Content of a Ministerial Authorization

A Ministerial Authorization could contain any condition, restriction or prohibition the Minister deems advisable for protecting the quality of the environment, human health or other living species⁴⁰.

³⁰ Bill 102, section 16, amending section 24 first para. EQA.

³¹ Bill 102, section 16, amending section 24 second para. EQA.

³² Bill 102, section 16, amending section 23 second para. EQA.

³³ Bill 102, section 244, repealing section 8 of the *Regulation respecting the application of the Environment Quality Act*, section 245 repealing section 3, paragraph 1 of the *Regulation respecting pits and quarries*, and section 252 repealing section 5 of the *Regulation respecting hot mix asphalt plants*.

³⁴ Bill 102, section 54, amending section 32.3 EQA.

³⁵ Particularly in sections 115.5 et seq. EQA.

³⁶ Bill 102, section 16, adding section 31.0.3 EQA.

³⁷ Bill 102, section 111, amending section 70.14 EQA..

³⁸ Bill 102, section 25, amending section 31.18 EQA.

³⁹ Bill 102, section 16, amending section 28, first para. EQA.

⁴⁰ Bill 102, section 16, amending section 25 EQA.

The Minister would also be empowered to prescribe any standard, restriction or prohibition different from those prescribed by Government regulation, if the Minister is of the opinion that those that apply are insufficient to ensure that the support capacity of the receiving environment, is respected or are insufficient to protect human health or other living species⁴¹.

Any Ministerial Authorization would contain the following information, which would be of public nature⁴²:

- a description of the activity and its location;
- a description of the contaminants, their sources and the points of release into the environment;
- the specific conditions, restrictions, prohibitions and standards applicable to the activity;
- the applicable monitoring, supervision and control measures, such as the methods for collecting, analyzing and calculating any release of contaminants or for collecting, preserving and analyzing samples⁴³.

iv. Amending a Ministerial Authorization

The amendment of a Ministerial Authorization would be necessary in the following cases:

- the change is likely to result in a release of contaminants into the environment, an increase in previously authorized releases or an alteration in the quality of the environment;
- the change is intended to increase the production of property or services beyond the authorized quantity;
- the change is incompatible with the authorization issued, in particular with one of its conditions, restrictions or prohibitions;
- the change concerns the alteration of a residual materials elimination facility or a hazardous materials management activity; or
- any other case prescribed by Government regulation⁴⁴.

In the case of an application to amend a Ministerial Authorization, the Minister could modify any condition, restriction or prohibition prescribed for an activity previously authorized in the context of the project, or impose further conditions, restrictions or prohibitions if this is necessary to take into account the impact of the change being sought and to protect the environment⁴⁵.

The provisions applying to an application for Ministerial Authorization would apply to any application for its amendment⁴⁶.

v. The Transfer of a Ministerial Authorization Facilitated

The transfer of any Ministerial Authorization would be simplified. Instead of requiring the Minister's authorization for a Ministerial Authorization to be transferred from one operator to another, as is the case at present, only

⁴¹ Bill 102, section 16, amending section 26 EQA.

⁴² On the rules of access to information enacted by Bill 102, see also 1b)vii.

⁴³ Bill 102, section 16, amending section 27 EQA.

⁴⁴ Bill 102, section 16, amending section 30, first para. EQA.

⁴⁵ Bill 102, section 16, amending section 30, second para. EQA.

⁴⁶ Sections 23 to 26 EQA apply to any application to amend the Ministerial Authorization and section 29, third para. EQA applies to an application to amend an authorization for research and experimental purposes. Bill 102, section 16, amending section 31 EQA.

⁴⁷ Bill 102, section 16, adding section 31.0.2, first para. EQA.

a notice of transfer to the Minister would be necessary henceforth⁴⁷. Such notice would have to contain the information prescribed by Government regulation, the declaration required under section 115.8 EQA and, if applicable, any required security or liability insurance⁴⁸.

The Minister would then have 30 days to oppose the transfer for any of the reasons enumerated in sections 115.5 to 115.7 EQA⁴⁹, by sending the transferor and the transferee a notice of the Minister's intention to oppose the transfer, failing which the transfer would be deemed to have been completed⁵⁰. Once the transfer has been completed, the new holder would have the same rights and obligations as the transferor, and any security or liability insurance provided would be an integral part of the Authorization⁵¹.

vi. New Requirements in Case of Cessation of Activities

In the case of activities or classes of activities determined by Government regulation, and within the time prescribed by that regulation, the holder would be required to inform the Minister of the total cessation of authorized activities⁵². The Minister could then require measures to be taken to prevent the release of contaminants into the environment and to ensure, among other things, site cleaning and decontamination, residual materials management, equipment and facility dismantling and environmental monitoring⁵³. The total cessation of any activity would entail cancellation of the Ministerial Authorization, except as otherwise provided⁵⁴.

Bill 102 also provides for other measures connected with the cessation of activities, in particular with respect to Ministerial Authorizations to operate industrial establishments⁵⁵ and authorizing certain water withdrawals⁵⁶ and hazardous materials⁵⁷ activities; those measures would apply alongside those already enacted under section 31.51 EQA, which impose obligations of characterization and rehabilitation in the case of cessation of certain industrial and commercial activities⁵⁸.

vii. Extended and Simplified Access to Information

If adopted, Bill 102 would significantly increase the information contained in the registers accessible on the MSDEFCC's web site. Subject to sections 28, 28.1 and 29 of the *Act respecting Access to documents held by public bodies and the Protection of personal information*⁵⁹ and information concerning the location of threatened or vulnerable species, all information, documents, studies and analyses forming part of the Ministerial Authorization would henceforth be accessible without it being necessary to file any application for access to information for that purpose⁶⁰.

⁴⁸ Bill 102, section 16, adding section 31.0.2, second para. EQA.

⁴⁹ In particular, if the person has been convicted of an offense against the EQA, or a taxation statute, or a criminal offense.

⁵⁰ Bill 102, section 16, adding section 31.0.2, third para. EQA.

⁵¹ Bill 102, section 16, adding section 31.0.2, sixth para. EQA.

⁵² Bill 102, section 16, adding section 31.0.5, first para. EQA.

⁵³ Bill 102, section 16, adding section 31.0.5, first para. EQA. See also Bill 102, section 16, amending section 25, first para. subsection 6 EQA.

⁵⁴ Bill 102, section 16, adding section 31.0.5, second para. EQA.

⁵⁵ Bill 102, section 25, amending section 31.24 EQA.

⁵⁶ Bill 102, section 47, amending section 31.83, EQA.

⁵⁷ Bill 102, section 113, amending section 70.18 and adding section 70.18.1.

⁵⁸ EQA, section 31.51 and the *Land Protection and Rehabilitation Regulation*, CQLR, c Q-2, r. 37, Schedule III, online: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/Q-2,%20r.%20r.%2037>> (web page visited, October 24, 2016). See also 2d).

⁵⁹ These restrictions concern information having an impact on the administration of justice and public safety. *Act respecting Access to documents held by public bodies and the Protection of personal information*, CQLR, c A-2.1, online: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/A-2.1>> (web page visited, October 24, 2016).

⁶⁰ Bill 102, section 16, amending section 27, second para. EQA and section 177 amending section 118.5 EQA and section 178 amending section 118.5.3 EQA.

viii. A Ministerial Authorization for a Pilot Project

Bill 102 would introduce the possibility of obtaining an authorization for a pilot project for a project which would otherwise be subject to the Ministerial Authorization regime provided in section 22 EQA. An “authorization for research and experimental purposes” would permit its holder to assess the environmental performance of a new technology or practice⁶¹. An application to obtain such an authorization would have to be accompanied by an experimental protocol⁶². The term of such an authorization would be set by the Minister⁶³, and this authorization would not be transferable⁶⁴.

ix. Exemption in Case of Disaster Clarified

In case of a disaster within the meaning of the *Civil Protection Act*⁶⁵, the Minister could exempt all or part of a project from the application of the Ministerial Authorization process where the activity is urgently required to repair any damage caused by a disaster or to prevent any damage that could be caused by an apprehended disaster⁶⁶.

x. Specific Rules for Project Involving Contaminated Land

If the Minister has reason to believe that contaminants in concentrations exceeding the limit values prescribed by the *Land Protection and Rehabilitation Regulation*⁶⁷ may be present in land contemplated by a Ministerial Authorization, and for which the provisions of sections 31.51 or 31.53 of the EQA concerning the protection and rehabilitation of lands are not applicable, the Minister could require, for the purposes of analyzing the application, that a characterization study be submitted⁶⁸.

If the study reveals the presence of contaminants likely to adversely affect human health, other living species, the environment in general or property, the Minister could require the applicant to submit the measures that will be taken to protect them, such as the removal of all or part of the contaminants or their containment⁶⁹. The Minister could also prescribe, in the authorization for the project, any condition, restriction or prohibition with regard to those measures⁷⁰.

Finally, if any project entails a change in the use of land under the provisions of the contaminated land management regime, the applicant will have to attach to his application for Ministerial Authorization the characterization study required under section 31.53 EQA⁷¹. If the study reveals the presence in the land of contaminants exceeding the limit values provided for in the *Land Protection and Rehabilitation Regulation*, authorization for the project would be subject to the Minister’s approval of the rehabilitation plan required under section 31.54 of the EQA, which plan would then form an integral part of the Ministerial Authorization⁷².

xi. Specific Rules for Industrial Establishments and Other Activities

Bill 102 sets forth particular rules for the operation of certain industrial establishments required to obtain a Ministerial Authorization. Those rules are reminiscent of the present depollution attestation scheme, with certain

⁶¹ Bill 102, section 16, amending section 29 EQA.

⁶² Bill 102, section 16, amending section 29, second para. EQA.

⁶³ Bill 102, section 16, amending section 29, fourth para. EQA.

⁶⁴ Bill 102, section 16, amending section 31.0.2, seventh para. EQA.

⁶⁵ *Civil Protection Act*, CQLR, c S-2.3, online: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/S-2.3>> (web page visited, October 24, 2016).

⁶⁶ Bill 102, section 16, adding section 31.0.14, first para. EQA.

⁶⁷ CQLR, c Q-2, r 37, online: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/Q-2,%20r.%2037>> (web page visited, October 24, 2016).

⁶⁸ Bill 102, section 31, adding section 31.50.1, first para. EQA.

⁶⁹ Bill 102, section 31, adding section 31.50.1, second para. EQA.

⁷⁰ Bill 102, section 31, adding section 31.50.1, third para. EQA.

⁷¹ Bill 102, section 35, adding section 31.54.1, first para. EQA.

⁷² Bill 102, section 35, adding section 31.54.1, second para. EQA.

amendments, particularly standardizing the period of the authorization's validity, which would be 5 years for all establishments. Also, in the case of any cessation of activities, even if partial, the Minister would be empowered to order measures to prevent the release of contaminants into the environment and to ensure, among other things, site cleaning and decontamination, equipment and facility dismantling and environmental monitoring⁷⁵.

Ministerial Authorizations issued under section 22 of the EQA for industrial establishments would remain valid until the Minister made a decision with regard to applications for their renewal⁷⁶. Upon the first renewal⁷⁷ of a Ministerial Authorization with respect to the operation of an industrial establishment, a notice announcing the availability of the application record for a period of 30 days and the holding of a public consultation on the renewal application inviting any group, person or municipality to submit comments to the Minister would have to be published⁷⁸.

It is provided that industrial establishments that are operating on the date into coming to force of a Government regulation subjecting them to the new authorization regime and which were not already subject to the depollution attestation regime⁷⁹ would be required to comply with the new authorization regime applicable to industrial establishments, by applying for the issuance of a Ministerial Authorization⁸⁰. The application would have to be submitted within the time and in the manner and form prescribed by Government regulation, failing which the Minister could order the cessation of any release into the environment⁸¹. If the establishment did not comply with a standard respecting the release of contaminants into the environment, the Minister could require that a corrective program be submitted in connection with that application, in order to bring the applicant into compliance with that standard within a maximum period of 2 years⁸².

⁷³ Establishments which are now subject to the depollution attestation regime of the EQA are prescribed by section 0.1 of the *Regulation respecting industrial depollution attestations*, CQLR, c Q-2, r 5, online: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/Q-2,%20r.%205/>> (web page visited, October 24, 2016). These establishments are the following (the numbers in parentheses refer to their primary activity under the North American Industry Classification System (NAICS 1998)):

- 1° an industrial establishment manufacturing pulp intended for sale or a paper product within the meaning of section 1 of the Regulation respecting pulp and paper mills (chapter Q-2, r. 27);
- 2° an industrial establishment engaged in metal or mining (2122) and non-metallic mineral mining and quarrying (2123) if the establishment has an ore mining capacity greater than 2 000 000 metric tonnes per year or an ore or mine tailing processing capacity greater than 50 000 metric tonnes per year;
- 3° an industrial establishment engaged in clay building material and refractory manufacturing (32712) if the establishment has a refractory brick production capacity greater than 20 000 metric tonnes per year;
- 4° an establishment engaged in glass manufacturing (327214) if its primary activity is to manufacture flat glass;
- 5° an establishment engaged in cement manufacturing (32731) if its primary activity is to manufacture Portland cement;
- 6° an establishment engaged in lime manufacturing (32741) if its primary activity is to manufacture quicklime;
- 7° an establishment engaged in other non-metallic mineral products manufacturing (3279) if its primary activity is to manufacture silicon carbide;
- 8° an establishment engaged in iron and steel mills and ferroalloy manufacturing (33111) if its primary activity is:
 - a) the production of pig iron;
 - b) the production of steel;
 - c) the production of stainless steel;
 - d) the production of ferroalloys;
- 9° an establishment engaged in the primary production of alumina and aluminum (331313);
- 10° an establishment engaged in non-ferrous metal smelting and refining (33141).

⁷⁴ Bill 102, section 25, amending section 31.18, first para. EQA. At present, for establishments having begun operations after the date of coming into force of the order determining the class of industrial establishments to which they belong, the first depollution attestation is issued for a period of 10 years (section 31.27, second para. EQA).

⁷⁵ Bill 102, section 25, amending section 31.24, first para. EQA.

⁷⁶ Bill 102, section 25, amending section 31.18, third para. EQA.

⁷⁷ In cases which would be prescribed by regulation, certain provisions concerning a first renewal (sections 31.20 and 31.21 EQA) could also be applicable to an application to amend a Ministerial Authorization issued to an industrial establishment, as well as any subsequent renewal application. See Bill 102, section 25, amending section 31.22 EQA.

⁷⁸ Bill 102, section 25, amending section 31.20, first and second paras. EQA.

⁷⁹ Bill 102, section 25, amending section 31.25, second para. EQA.

⁸⁰ Bill 102, section 25, amending section 31.26, first para. EQA.

⁸¹ Bill 102, section 257.

⁸² Bill 102, section 77, repealing section 48 EQA.

As regards industrial establishments which already hold a depollution attestation under the current authorization regime, depollution attestations issued under section 31.10 of the EQA at the time of the coming into force of the new regime would be deemed to be authorizations issued under section 22 of the EQA as amended by Bill 102⁸³.

In addition, Bill 102 enacts certain amendments to provisions relating to authorizations, attestations and approvals with regard to air purification⁸⁴, water withdrawal⁸⁵, municipal wastewater treatment works and water management works⁸⁶, residual materials⁸⁷, hazardous materials and hazardous residual materials⁸⁸, water management or treatment facilities⁸⁹ and the management of contaminated lands⁹⁰.

c) Low-Risk Activities: A Prior Declaration of Compliance

The Minister would be empowered to designate by regulation activities that would ordinarily be subject to section 22 EQA, but the environmental risks of which are deemed to be “low”⁹¹. There is no requirement that this list be updated periodically, contrary to the list of high-risk activities. Activities designated in the list of low-risk activities would then only necessitate the prior filing of a declaration of compliance, at least 30 days before the beginning of the activity, attesting that the activity will comply with the conditions, restrictions and prohibitions prescribed by regulation⁹². Such declaration would have to be signed by a professional or any other person qualified in the field concerned⁹³ and contain the information to be determined by regulation⁹⁴. The Minister could also designate certain activities requiring the prior deposit of a financial guarantee⁹⁵.

Furthermore, the Minister could require, for activities designated by regulation, and in the manner and form specified in such regulation, the filing of a certificate of compliance with the applicable conditions, restrictions and prohibitions, signed by a professional or any other person qualified in the field concerned, which would have to be filed after the carrying out of those activities⁹⁶.

The transfer of a declaration of compliance would be possible by the transmission to the Minister by any person continuing the activities of a declarant, of a certificate that such person will continue the activities in accordance with the conditions, restrictions and prohibitions prescribed by regulation and if applicable, will provide the required financial guarantee⁹⁷.

A person or municipality carrying on an activity in contravention of its declaration of compliance would be deemed to be carrying on its activity without Ministerial Authorization and would be liable to the penalties, remedies, fines and other measures applicable in such a case⁹⁸, and the Minister could exercise any power provided for in the EQA in connection with any such contravention⁹⁹.

⁸³ Bill 102, section 257.

⁸⁴ Bill 102, section 77, repealing section 48 EQA.

⁸⁵ Bill 102, sections 40 to 49

⁸⁶ Bill 102, sections 26 to 29, amending sections 31.32 *et seq.* EQA.

⁸⁷ Bill 102, section 100, amending section 65 and adding sections 65.1 to 65.4, EQA.

⁸⁸ Bill 102, sections 97 to 100 and 109 to 113.

⁸⁹ Bill 102, sections 51 to 61.

⁹⁰ Bill 102, sections 30, 31, 32, 34, 35, 36, 37 and 38.

⁹¹ Bill 102, section 16, adding section 31.0.6, first para. EQA.

⁹² Bill 102, section 16, adding section 31.0.6, second para. EQA.

⁹³ Bill 102, section 16, adding section 31.0.7, second para. EQA.

⁹⁴ Bill 102, section 16, adding section 31.0.7, first para. EQA.

⁹⁵ Bill 102, section 16, adding section 31.0.7, second para. EQA.

⁹⁶ Bill 102, section 16, adding section 31.0.8, EQA.

⁹⁷ Bill 102, section 16, adding section 31.0.9, EQA.

⁹⁸ Bill 102, section 16, adding section 31.0.10, second para. EQA.

⁹⁹ Bill 102, section 16, adding section 31.0.10, first para. EQA.

d) Negligible-Risk Activities: No Authorization or Declaration of Compliance Required

Bill 102 provides that the Minister may establish by regulation a list of activities that would be exempted from the obligation to obtain a Ministerial Authorization. Bill 102 also provides that certain exempted activities could, however, be subject to a “declaration of activities”¹⁰⁰.

The “negligible” nature of the environmental impacts of an activity could be assessed using a methodology predetermined by regulation¹⁰¹.

2. Other EQA Amendments

In addition to the changes proposed to the EQA’s authorization regimes, Bill 102 provides for amendments to several other provisions of the EQA.

a) EQA’s Preliminary Provision

A preliminary provision would be added to the EQA. This preliminary provision would establish the EQA’s guiding principles, namely protection of the environment, safeguarding living species inhabiting it, consistency with sustainable development principles and reduction of greenhouse gases, taking into account the evolution of knowledge and technologies, climate change issues and the realities of the territories and communities living there¹⁰².

b) Section 20 of the EQA (the General Prohibition to Pollute)

Bill 102 proposes to revise section 20 of the EQA, which enacts the general prohibition on environmental pollution. The most notable amendment would be the introduction of the obligation for the Minister to notify the Minister of Health and Social Services of the presence of any contaminant in the environment that is likely to adversely affect the life, health, safety, welfare or comfort of human beings¹⁰³. It is also provided that the Minister, if he deems it advisable, could notify the Minister of Public Security and the Minister of Agriculture, Fisheries and Food¹⁰⁴.

c) Access to Information

The scope of section 118.4 of the EQA would be widened. That section currently provides that it is possible to obtain from the MSDEFCC any information concerning the quantity, quality or concentration of contaminants emitted by a source of contamination or concerning the presence of a contaminant in the environment.

Subject to sections 28, 28.1 and 29 of the *Act respecting Access to documents held by public bodies and the Protection of personal information*¹⁰⁵ and to information on the location of threatened or vulnerable species, the following information would be available under this provision:

- any information on the quantity, quality or concentration of contaminants released by a source of contamination or on the presence of a contaminant in the environment;

¹⁰⁰ Bill 102, section 16, adding section 31.0.12, fourth para. EQA.

¹⁰¹ Bill 102, section 16, adding section 31.0.12, third para. EQA.

¹⁰² Bill 102, section 1.

¹⁰³ Bill 102, section 16, amending section 20, third para. EQA.

¹⁰⁴ Bill 102, section 16, amending section 20, third para. EQA.

¹⁰⁵ *Act respecting Access to documents held by public bodies and the Protection of personal information*, CQLR, c A-2.1, online: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/A-2.1>> (web page visited, October 24, 2016). These restrictions concern information having an impact on the administration of justice and public safety.

- the soil characterization studies and toxicological and ecotoxicological risk assessment and groundwater impact assessments required under Division IV of Chapter IV of the EQA;
- the required studies, expert evaluations and reports for the purpose of determining the impact of a water withdrawal on the environment, other users or public health;
- any statements of control and monitoring results with regard to contaminant releases and any reports and information provided to the Minister under Division III of Chapter IV and the regulations under the EQA;
- any annual management reports or hazardous materials management plans sent to the Minister under sections 70.7 and 70.8 EQA¹⁰⁶.

Some of the public registers provided for in the EQA would be improved and would henceforth include documents forming an integral part of authorizations¹⁰⁷. A new register of projects that are subject to the environmental impact assessment and review procedure would also be created¹⁰⁸. The documents and information contained in these registers would be of a public nature, subject to sections 28, 28.1 and 29 of the Act respecting Access to documents held by public bodies and the Protection of personal information¹⁰⁹ and to information concerning the location of threatened or vulnerable species¹¹⁰.

d) Amendment of the Contaminated Land Management Regime

Bill 102 also proposes to make certain amendments to the contaminated lands management regime.

In the first place, the non-permanent cessation of an activity contemplated by section 31.51 EQA would henceforth be subject to the obligations provided for in that section¹¹¹. That section provides for characterization obligations and, in certain cases, for rehabilitation, when an industrial or commercial activity belonging to one of the classes prescribed by regulation ceases.

Also, where a person or a municipality would intend to change the use of land that has undergone a characterization study in accordance with first paragraph of section 31.51 of the EQA, and the study reveals the presence of contaminants in concentrations exceeding the regulatory limit values, such person or municipality could, in the stead and place of whomever ceased activities on that land, submit, for the Minister's approval, a rehabilitation plan required under that section¹¹². In such a case, Bill 102 introduces the obligation to deposit, together with the rehabilitation plan, an insurance or a financial guarantee that meets the requirements prescribed by Government regulation¹¹³. The person who ceased the activity would, however, remain responsible in case of default by the person intending to change the use of land¹¹⁴.

Furthermore, upon the adoption of Bill 102, it would be possible for the person intending to rehabilitate land under section 31.51 or 31.54 EQA to submit to the Minister a declaration of compliance, signed by a qualified expert, at least 30 days before the rehabilitation work begins¹¹⁵, rather than to have a rehabilitation plan approved, as is

¹⁰⁶ See also our comments on access to information in a Ministerial Authorization regime, and on the new registers under the Government authorization regime. See section 1b)vii.

¹⁰⁷ Bill 102, section 177, amending sections 118.5 and 118.5.3 EQA and adding section 118.5.0.1.

¹⁰⁸ Bill 102, section 177, adding section 118.5.0.1 EQA.

¹⁰⁹ *Act respecting Access to documents held by public bodies and the Protection of personal information*, CQLR, c A-2.1, online: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/A-2.1>> (web page visited, October 24, 2016).

¹¹⁰ Bill 102, section 177, amending section 118.5.3 EQA.

¹¹¹ Bill 102, section 32, amending section 31.51 EQA.

¹¹² Bill 102, section 33, adding section 31.51.0.1, first para. EQA.

¹¹³ Bill 102, section 33, adding section 31.51.0.2, EQA.

¹¹⁴ Bill 102, section 33, adding section 31.51.0.1, second para. EQA.

¹¹⁵ Bill 102, section 253, third para. and section 37, adding section 31.68.1, second para. EQA.

the case at present. Once the work is completed, a certificate signed by an expert to the effect that the work has been carried out in accordance with the applicable conditions, would have to be sent to the Minister¹¹⁶.

In order that this regime may apply, however, the following conditions must be fulfilled:

- (1°) the land rehabilitation is done solely by excavating soils whose concentration of contaminants exceeds the regulatory limit values, and all the soils are taken to an authorized site mentioned in the second paragraph of section 6 of the *Regulation respecting contaminated soils storage and contaminated soil transfer stations* (chapter Q-2, r. 46), to the extent that those sites can receive them;
- (2°) the quantity of contaminated soils to be excavated does not exceed 10,000 m³;
- (3°) the characterization study shows:
 - a) an absence of measurable quantities of hazardous residual materials, volatile organic chlorinated compounds and immiscible liquids in the land;
 - b) that the only water management required is to recover the water that accumulates in the excavation site during the rehabilitation work;
 - c) that the underground water recovered may be discharged toward a municipal water purification works or may be transported to a site authorized by the Minister; and
 - d) that the quality of underground water need not be monitored after the work has been carried out; and
- (4°) the work must be completed not later than one year after the declaration of compliance is sent to the Minister¹¹⁷.

This transitional regime permitting the filing of a declaration of compliance would eventually give way to a new declaration of compliance regime under new sections 31.68.1 to 31.68.3 of the EQA, when a regulation for that purpose is adopted¹¹⁸.

Bill 102 also grants the Minister expanded powers to require a characterization study¹¹⁹ and introduces the possibility of removing an expert from the list of experts maintained by the Minister¹²⁰.

e) Framework for Strategic Environmental Assessments

Bill 102 proposes to entrench in the EQA certain principles to govern the strategic environmental assessment ("SEA") procedure. The SEA would aim to promote a fuller consideration of environmental issues and of the principles of sustainable development in the development of the Administration's programs¹²¹, including the strategies, plans and other forms of guidelines it develops if they are likely to have environmental effects¹²². A Strategic Environmental Assessment Advisory Committee would be established and mandated to advise and support the Administration with respect to SEAs¹²³. The main conditions governing SEAs are set forth in Bill 102, and they could be developed further by regulation.

¹¹⁶ Bill 102, section 253, third para. and section 37, adding section 31.68.1, fourth para. EQA.

¹¹⁷ Bill 102, section 253, first para.

¹¹⁸ Bill 102, section 253, fourth para.

¹¹⁹ Bill 102, section 31, adding section 31.50.1 EQA.

¹²⁰ Bill 102, section 36, amending section 31.65, second para. EQA.

¹²¹ The term "*Administration*" means the Government, the *Conseil exécutif*, the Conseil du trésor, a government department, or a government agency within the meaning of the *Auditor General Act*, CQLR, c V-5.01. A person appointed or designated by the Government or a Minister, as well as the personnel the person directs within the scope of the functions of office attributed to him by an Act, the Government or the Minister is considered to be an agency: Bill 102, section 116, amending section 95.5, third and fourth paras. EQA.

¹²² Bill 102, section 116, amending sections 95.5 to 95.9 EQA and adding sections 95.10 to 95.14 EQA.

¹²³ Bill 102, section 116, amending section 95.6 EQA.

It is further provided in Bill 102 that the Minister would be required to take into account the findings of an SEA in preparing the directives specifying the nature, scope and extent of the environmental impact assessment statement which the project initiator must prepare under the environmental impact assessment and review procedure¹²⁴, and that the Minister must take into account the findings of an SEA in analyzing the Ministerial Authorization application¹²⁵, where the project to be authorized results from a strategy, plan or program that has undergone an SEA.

f) Residual Materials Management

The authorization currently provided for by section 65 EQA for any construction project on a former residual materials elimination site would become a Ministerial Authorization issued under section 22 EQA¹²⁶. A Ministerial Authorization application should be accompanied by a study carried out by a qualified person for the purpose of (i) assessing whether residual materials are present in the land, (ii) determining the nature of such residual materials and the sites where they have been deposited or buried, and (iii) determining whether gas is present in the soil and, if applicable, assessing the risk of it migrating outside the land¹²⁷.

If that study reveals the presence of residual materials in the land, the person or municipality making the application for authorization would have to apply for registration of a notice in the Land Register containing the information provided for in the EQA¹²⁸. A residual materials removal notice could, however, be registered following the rehabilitation work¹²⁹. The owner of any neighbouring land should also be notified if the presence of residual materials is noticed at the property line of the land, or if there is migration of gas outside the land or a serious risk of such migration¹³⁰.

Bill 102 also provides certain amendments relating to residual materials management plans¹³¹ and to the system of compensation for municipal services¹³².

g) Hazardous Materials Management

The authorization currently provided for by section 70.9 EQA would become a Ministerial Authorization issued under section 22 EQA. This Ministerial Authorization, would have a maximum validity period of five (5) years, renewable under conditions to be prescribed by regulation¹³³.

In the case of any total or partial cessation of activities, the Minister would have to be informed within the time prescribed by Government regulation¹³⁴. The Minister could then require any measures to prevent the release of contaminants into the environment and ensure, among other things, site cleaning and decontamination, hazardous materials management, equipment and facility dismantling and environmental monitoring¹³⁵. A total cessation of activities would entail the cancellation, by operation of law, of a hazardous materials management authorization¹³⁶.

¹²⁴ Bill 102, section 20, amending section 31.3, third para. EQA.

¹²⁵ Bill 102, section 16, amending section 24, first para. subsection 4 EQA.

¹²⁶ Bill 102, section 16, amending section 22 EQA and section 100, amending section 65 EQA. Section 100 of Bill 102, adding sections 65.1 and 65.2 EQA, enacts various rules on the analysis and issuance of Ministerial Authorizations.

¹²⁷ Bill 102, section 100, amending section 65 EQA.

¹²⁸ Bill 102, section 100, amending section 65 EQA.

¹²⁹ Bill 102, section 100, amending section 65.4 EQA.

¹³⁰ Bill 102, section 100, adding section 65.3 EQA.

¹³¹ Bill 102, section 79 *et seq.*

¹³² Bill 102, section 96, amending section 53.31.1 EQA.

¹³³ Bill 102, section 111, amending section 70.14 EQA.

¹³⁴ Bill 102, section 113, amending section 70.18, first para. EQA.

¹³⁵ Bill 102, section 113, amending section 70.18, first para. EQA.

¹³⁶ Bill 102, section 113, amending section 70.18, second para. EQA. See also Bill 102, section 113 adding section 78.18.1 EQA.

Moreover, Bill 102 would extend from 12 to 24 months the maximum time permitted for storing any hazardous residual materials without authorization¹³⁷. A Ministerial Authorization would be necessary for the possession of any residual hazardous materials for more than 24 months¹³⁸.

Bill 102 would also revise the rules applicable to accidental releases of hazardous materials. The person responsible for an accidental release of hazardous materials into the environment would be required to recover such materials as quickly as possible and to remove any contaminated matter that is not cleaned or treated in situ¹³⁹. A Government regulation could, however, determine certain cases and the conditions on which the hazardous materials could remain in the land concerned, in particular because of technical or operational constraints¹⁴⁰.

In addition, in certain cases of accidental releases of hazardous materials to be determined by Government regulation, there would henceforth be an obligation on the person responsible for the release to conduct a characterization study of the land concerned¹⁴¹, to apply for a contamination notice to be registered in the Land Register¹⁴² and to notify the owner of the neighbouring land, particularly in cases where hazardous materials are present at the property line of the land concerned or if there is a serious risk of migration of those materials outside that land¹⁴³. A decontamination notice could nevertheless be registered following rehabilitation work¹⁴⁴.

Finally, Bill 102 also provides for certain amendments with respect to the registers and reports applicable to hazardous residual materials¹⁴⁵.

h) Accidental Releases into the Environment

Section 21 of the EQA would be amended to specify that the person responsible for an accidental release into the environment must not only notify the Minister, but must also put a stop to the release without delay. Special rules on releases of hazardous materials are also introduced by Bill 102¹⁴⁶.

i) Report of Greenhouse Gas Emissions and the Carbon Market

Different amendments would be made to the scheme for reporting greenhouse gas emissions and to the Quebec cap-and-trade system for greenhouse gas emission allowances, in particular:

- The Minister would henceforth be empowered to suspend without any prior notice any emission allowance, if the Minister had reasonable grounds to believe that the integrity of the cap-and-trade system was threatened, in particular by irregular transactions (or if the Minister is notified of such a case by a partner agency), or if the emitter does not meet its obligations as to the coverage of greenhouse gas emissions for a period to be prescribed by regulation of the Minister¹⁴⁷;
- The Minister would henceforth post in its web site, and not in the *Gazette officielle du Québec*, the list of emitters who had benefited from an allocation of emission units without charges¹⁴⁸.

¹³⁷ Bill 102, section 109, amending section 70.8, first para. EQA.

¹³⁸ Bill 102, section 109, amending section 70.8, second para. EQA.

¹³⁹ Bill 102, section 105, adding section 70.5.1 EQA.

¹⁴⁰ Bill 102, section 105, adding section 70.5.1 EQA.

¹⁴¹ Bill 102, section 105, adding section 70.5.2 EQA.

¹⁴² Bill 102, section 105, adding section 70.5.4 EQA.

¹⁴³ Bill 102, section 105, adding section 70.5.3 EQA.

¹⁴⁴ Bill 102, section 105, adding section 70.5.5 first and second paras. EQA.

¹⁴⁵ Bill 102, sections 106 and 107, amending sections 70.6 and 70.7 EQA.

¹⁴⁶ See section 2g).

¹⁴⁷ Bill 102, section 73, amending section 46.12, second para. EQA.

¹⁴⁸ Bill 102, section 71, amending section 46.8, third para. EQA.

In addition, the Minister's regulatory powers would be clarified with respect to:

- determining the default greenhouse gas emissions of emitters who have not reported them or whose emissions report cannot be satisfactory verified¹⁴⁹ ;
- establishing protocols to determine the eligibility of projects for offset credits and define the methods to be used by those projects to achieve and quantify reductions of greenhouse gas emissions¹⁵⁰.

j) Amendments to the Powers of the Minister and the Government

Bill 102 also provides for several amendments concerning the powers of the Minister and of the Government, including:

- Certain powers to make orders would be grouped together in a single division of the EQA¹⁵¹;
- Various existing powers to make orders and some applicable rules of procedures would be amended¹⁵²;
- The period of validity of certain orders would be extended from 30 to 90 days¹⁵³;
- The claims of the MSDEFCC for the carrying out of measures that were not carried out by a person pursuant to an order, would become prior claims of the same nature and with the same rank as the claims of municipalities and school boards for property taxes on taxable immovables¹⁵⁴. These rules on prior claims would also be applicable to amounts due to the Minister under sections 115.0.1¹⁵⁵ and 115.1 EQA¹⁵⁶;
- Revisions of the powers of refusal, modifications, suspension and revocation of authorizations provided for by sections 115.5 *et seq.* EQA.

Bill 102 furthermore provides that a functionary or employee of a municipality shall be invested with the same powers of an MSDEFCC inspector, where that municipality is required to apply a regulation made under the EQA¹⁵⁷.

Furthermore, Bill 102 proposes to revise the regulatory powers of the Government¹⁵⁸, including new regulatory powers concerning hazardous residual materials management and the growing, sale and transportation of invasive plant species¹⁵⁹. Bill 102 also proposes to revise the regulatory powers of the Minister, in particular to increase their scope¹⁶⁰.

¹⁴⁹ Bill 102, section 70, amending section 46.2, second para. EQA.

¹⁵⁰ Bill 102, section 71, amending section 46.8, second para. EQA.

¹⁵¹ For example: Bill 102, sections 130.

¹⁵² For example: Bill 102, section 138, amending section 115.4 EQA and adding sections 115.4.1 to 115.4.4 EQA.

¹⁵³ Bill 102, section 135, amending section 115.2, first para. EQA.

¹⁵⁴ Bill 102, section 138, adding section 115.4.4, EQA. In other words, these claims would be of the same nature and have the same ranking as claims contemplated by paragraph 5° of article 2651 of the Civil Code.

¹⁵⁵ "...intervention by the Minister to avert or diminish the risk of damage to public or private property, human beings, wild life, vegetation or the general environment".

¹⁵⁶ "... measures ... to clean, collect or contain contaminants that are or that are likely to be emitted, deposited, discharged or ejected into the environment or to prevent them being emitted, deposited, discharged or ejected into the environment, where he considers such measures necessary to avert or diminish the risk of damage to public or private property, human beings, wild life, vegetation or the general environment".

¹⁵⁷ Bill 102, section 181, adding section 119.0.2, EQA.

¹⁵⁸ Bill 102, section 115, amending sections 95.1 to 95.4, EQA.

¹⁵⁹ Bill 102, section 115, amending section 95.1, EQA.

¹⁶⁰ See in particular sections 31.0.6, 31.0.7, 31.0.12, 46.2, 95.3 and 95.4 of the EQA, as amended or added by Bill 102, if adopted.

k) Accreditation and Certification

The rules relating to accreditation and certification of persons to take samples or carry out analyses, calculations, assessments, expert evaluations or verifications would be reviewed in order to widen the scope of the present regime so as to include other types of establishments and other types of activities¹⁶¹. The rules on issuance, modification, suspension, revocation or transfer of such accreditations and certifications would also be clarified¹⁶².

l) Ministerial Immunity

Bill 102 proposes to exonerate the Minister from all liability resulting from the carrying out of an activity in accordance with the information or documents provided by the authorization holder and on which the authorization is based, for damages suffered by the authorization holder, unless the damages are due to an intentional or gross fault¹⁶³.

The Minister would also be exonerated for damages suffered by any declarant of an activity and resulting from an activity carried on in accordance with the information or documents accompanying certain declarations of compliance made under the EQA¹⁶⁴.

3. Amendments to the Green Fund and Establishment of a Fund for the Protection of the Environment and the Waters in the Domain of the State

a) Amendments to Governance of the Green Fund

Bill 102 provides for the establishment of a *Conseil de gestion du Fonds vert*, composed of nine persons, a majority of whom (five members) would come from civil society¹⁶⁵. The mission of the *Conseil du Fonds vert* would be to provide a governance framework for the Green Fund and to coordinate its management in keeping with the principles of sustainable development, effectiveness, efficiency and transparency¹⁶⁶.

The purpose of the Green Fund would be redefined. At present, the Green Fund is dedicated to “the financing of measures or programs that the Minister may carry out within the scope of ministerial functions”, and is intended, among other purposes, to “support measures promoting sustainable development, especially in its environmental aspects, and [...] grant financial assistance, within the framework of the law, in particular to municipalities and non-profit organizations working in the environmental field”¹⁶⁷.

Bill 102 would propose that the Green Fund be dedicated instead to the financing of any measure related to the fight against the climate change, residual materials management and water governance, and that it be used “to finance activities, projects and programs aimed at stimulating technological innovation, research and development, knowledge acquisition, performance improvement, and public awareness and education with regard to any [of those] matter[s]”¹⁶⁸.

¹⁶¹ Bill 102, section 179, amending section 118.6, EQA and adding sections 118.7 to 118.11, EQA.

¹⁶² Bill 102, section 179, adding sections 118.7 to 118.9, EQA.

¹⁶³ Bill 102, section 189, amending section 124, first para. EQA.

¹⁶⁴ Bill 102, section 189, amending section 124, second para. EQA. See also section 1c).

¹⁶⁵ Bill 102, section 203, adding section 15.4.9 to the *Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs*.

¹⁶⁶ Bill 102, section 203, adding section 15.4.7 to the *Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs*.

¹⁶⁷ *Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs*, CQLR, c M-30.001, section. 15.1, online: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/M-30.001>> (web page visited, October 24, 2016).

¹⁶⁸ Bill 102, section 196, amending section 15.1 of the *Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs*.

It must be remembered that the Green Fund is notably financed out of sums collected at auction sales held for the purposes of the carbon market.

b) Establishment of a New Fund for the Protection of the Environment and the Waters in the Domain of the State

Bill 102 provides for the establishment of a new Fund that would be managed by the Minister. The Fund would be dedicated to the control and management of activities under the Minister's administration, the conservation of wetlands and bodies of water, the conservation of the natural heritage, as well as the management of waters in the domain of the State and of public dams¹⁶⁹.

This Fund would be financed in particular out of certain revenues from the application of the EQA, including from monetary administrative penalties and fines¹⁷⁰.

4. Concordance, Transitional and Implementation Provisions

Bill 102 provides a number of concordance, transitional and implementation provisions¹⁷¹.

Bill 102 furthermore provides that no later than 12 months after it is assented to, the Government may enact, by regulation, any transitional measures required to carry out Bill 102, including measures to adjust the transitional provisions provided for therein¹⁷².

With respect to regulatory amendments, which are essential to the implementation of a number of the measures proposed, Bill 102 provides that certain regulations must be amended, replaced or repealed no later than 12 months following the adoption of Bill 102¹⁷³, including:

- the *Regulation respecting the application of section 32 of the Environment Quality Act*¹⁷⁴;
- the *Regulation respecting the application of the Environment Quality Act*¹⁷⁵;
- the *Regulation respecting industrial depollution attestations*¹⁷⁶;
- the *Regulation respecting waterworks and sewer services*¹⁷⁷;
- the *Regulation respecting environmental impact assessment and review*¹⁷⁸;
- the *Regulation respecting hazardous materials*¹⁷⁹;
- the *Water Withdrawal and Protection Regulation*¹⁸⁰.

¹⁶⁹ Bill 102, section 203, adding section 15.4.38 to the *Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs*.

¹⁷⁰ Bill 102, section 203, adding section 15.4.40 to the *Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs*.

¹⁷¹ Bill 102, sections 224 et seq.

¹⁷² Bill 102, section 283.

¹⁷³ Bill 102, section 284.

¹⁷⁴ CQLR, c Q-2, r 2.

¹⁷⁵ CQLR, c Q-2, r 3.

¹⁷⁶ CQLR, c Q-2, r 5.

¹⁷⁷ CQLR, c Q-2, r 21.

¹⁷⁸ CQLR, c Q-2, r 23..

¹⁷⁹ CQLR, c Q-2, r 32.

¹⁸⁰ CQLR, c Q-2, r 35.2.

The *Regulation respecting pits and quarries* would have to be amended by the Government no later than 24 months following the date of assent to Bill 102, in order to provide for activities that are eligible for a declaration of compliance¹⁸¹.

It is also provided that the Minister, no later than 12 months from the date of assent to Bill 102, shall adopt the following regulations:

- a regulation on activities eligible for a declaration of compliance;
- a regulation on activities exempted from section 22 of the EQA;
- a regulation on fees payable, in accordance with section 95.3 of the EQA¹⁸².

Conclusion

More than 40 years after its adoption, Bill 102 is a proposal to substantially update the EQA. Many details remain to be clarified, but it is already to be expected that the amendments set forth in Bill 102 will have an impact not only for the future, but also for operators, initiators and consultants working in Québec at the present time.

Particular consultations on Bill 102 may be held in the autumn, which will provide an opportunity for all interested persons to make known their comments and suggestions on Bill 102.

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¹⁸¹ Bill 102, section 285.

¹⁸² Bill 102, section 286.

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