

Intellectual Property Weekly Abstracts Bulletin — Week of May 1, 2017

April 27, 2017

On April 9, 2017, the *Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques* ("MDDELCC") [the Ministry of Sustainable Development, Environment and Fight against Climate Change] unveiled a new Soil Protection and Contaminated Sites Rehabilitation Policy (the "New Policy").¹ The New Policy sets forth the MDDELCC's priorities for the next few years with respect to contaminated sites and lands and includes an Action Plan for 2017-2021.

The New Policy is part of a series of measures recently taken by the MDDELCC and the Québec Government to update Québec's environmental laws, regulations and documentation. Those measures included updating the *Environment Quality Act* based on Bill 102 adopted in March 2017,² introducing Bill 132: *An Act respecting the conservation of wetlands and bodies of water*,³ as well as publishing, in August 2016, the *Guide d'intervention sur Protection des sols et réhabilitation des terrains contaminés* (the "Guide d'intervention"),⁴ including a series of additional technical reports published in the autumn of 2016.⁵

Objectives and Actions Proposed by the New Policy

The following table, taken from the New Policy, summarizes the issues, strategies and actions being proposed by such New Policy:⁶

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The New Policy proposes 21 actions, including regulatory measures, investments and the development of strategies.⁷ Those actions are described below, together with our comments, based on the information now available.

Issue 1: Environmental Protection

Strategy 1: Preventing New Site Contamination

1. *Update the grid of soil background levels*

The soil background levels, commonly called "Criterion A", correspond to the soil's natural condition. The background levels for different metals and metalloids differ, depending on the geological region in which a land is located. New background levels for metals and metalloids are included in the *Guide d'intervention*, published in August 2016. On this subject, see also: *Fiche technique sur le Cadre de gestion des teneurs naturelles en manganèse*, [unofficial translation: "Technical Description re Management of Natural Background Levels – Manganese"] published in the autumn of 2016.

2. Ascertain the initial (baseline) condition of the environment for new businesses deemed to be at risk

The MDDELCC wants to oversee and standardize the requirement to ascertain the initial (baseline) condition of soil and groundwater when new businesses deemed to be at risk are being established. In this regard, the MDDELCC, published a *Guide de caractérisation physicochimique de l'état initial des sols avant l'implantation d'un projet industriel*.⁸ [Unofficial translation: "Guide to the Physico-Chemical Characterization of Baseline Soil Conditions before Implementation of Industrial Projects"] in August 2016. Publication of a similar guide for aquatic areas is planned in 2020.

3. Reduce risks of fuel oil spills and leaks in residential areas

The MDDELCC is proposing collaborating with the stakeholders to implement an action-based strategy to reduce risks of spills or leaks occurring in the delivery or storage of fuel oil in residential areas. That strategy is scheduled for publication in 2018.

Strategy 2: Counteract the Spread of Soil and Groundwater Contamination

4. Ascertain environmental conditions for industrial sites involved in the Programme de réduction des rejets industriels (PRRI) (Unofficial translation: "Industrial Waste Reduction Program")

The MDDELCC desires to make continuous improvements to this Program, in order to better plan its actions.

5. Document the dry cleaning problem

The MDDELCC is proposing, for 2018, developing strategic action plan to be taken in this matter.

6. Set up post-closure management funds for landfill sites

It is proposed that regulatory amendments be made to establish post-closure management funds for contaminated landfill sites. This measure will entail amendments to the *Land Protection and Rehabilitation Regulation*⁹ ("LPRR"), the *Regulation respecting contaminated soil storage and contaminated soil transfer stations*¹⁰ ("RCSTCS") and the *Regulation respecting the burial of contaminated soils*¹¹ ("RBCS").

Note that, under the New Policy, the amendments to be made to those three Regulations, in order to implement several of the 21 actions proposed, are scheduled to be published by 2018, with a view to their adoption in 2018.

7. Regulate anticipated land-related interventions when high-risk petroleum equipment is abandoned, dismantled or replaced

It is proposed that the MDDELCC adopts measures to further regulate the environmental impacts of high-risk petroleum equipment, particularly in order to make site characterization and rehabilitation compulsory when any tank containing petroleum products is replaced, removed or abandoned. Such measures will involve amendments to the LPRR, the RCSCS and the RBCS.

8. Hold liable those responsible for any off-site migration of contaminants

This action is designed to better regulate cases of potential or actual off-site migration of contaminants. The New Policy contemplates the possibility of widening the obligation to notify a neighbouring landowner in this situation and proposes to facilitate, for the party responsible for the contamination, the possibility of going onto the neighbour's lands, with the latter's permission, to assess the extent and scope of the contamination. Such measures will necessitate further specific amendments to the LPRR, the RCSCS and the RBCS.

Issue 2: Sustainable Land Revitalization

Strategy 3: Ensure Site Rehabilitation

9. Review the list of high-risk industrial and commercial activities at least every 10 years

The MDDELCC is proposing to update periodically the categories of activities appearing in Schedule III of the LPRR, to which certain regulatory obligations apply when such activities terminate or when a change of land use occurs.

10. Ensure that businesses provide guarantees to repair environmental damage

The MDDELCC proposes to oblige certain business organizations that are more prone to contaminate soils and watercourses to provide financial guarantees similar to those required for quarries and sandpits, certain landfill sites, as well as in the mining sector. That measure will imply making amendments to the LPRR, the RCSCS and the RBCS.

11. Update technical impracticability procedures

The MDDELCC wishes to add social and economic dimensions to the factors assessed in studying this type of request. Under the New Policy, a new technical impracticability procedure will be published for that purpose in 2018.

12. Implement the Program ClimatSol-Plus for municipalities

This Program, which follows the lead of the Revi-Sols Program (1998-2005) and the ClimatSol Program (2005-2015), will aim to accelerate the revitalization of contaminated sites, particularly by providing financial support to municipalities. The ClimatSol-Plus Program will have two major components and will be funded out of a budget allocation of \$55 million from the Green Fund, through the Climate Change Action Plan 2013-

2020, as well as from additional moneys granted to the MDDELCC. The Program will be launched in 2017.¹²

13. Develop a financial assistance program for rehabilitating service stations

The New Policy calls for a two-phased financing program to be launched in 2018, the funds to come from a new charge on contaminated soils deposited in landfills (see Action 21). The first phase of the Program will focus on characterizing and rehabilitating service stations belonging to small owners. The New Policy does not specify what amount will be earmarked for this program, but does state the objective of rehabilitating 100 service stations.

14. Develop a financial assistance program for residential properties contaminated by fuel oil

The second phase of the financing program mentioned in Action 13 above will fund the characterization and rehabilitation of residential properties contaminated by fuel oil. That second initiative should be launched in 2018. The New Policy does not specify how much money will be provided under the program, but does state its objective: decontaminating 200 residential sites.

Furthermore, Québec intends to do its share to ensure site rehabilitation, since it was announced, in listing the objectives of the New Policy, that the MDDELCC will invest some \$120M in decontaminating the province's Crown lands.

Strategy 4: Promote the reclamation of excavated lands and the development of green technologies

15. Provide more opportunities for land reclamation

Amendments to the LPRR, the RCSCS and the RBCS and other measures will focus primarily on removing certain obstacles that now limit options for the reclamation of contaminated excavation sites.

16. Draft a guide on contaminated land reclamation

This guide, due to be published in 2018, will set forth permitted options for the reclamation of contaminated lands, as well as the MDDELCC's governance methods that will apply to such reclamation options. The New Policy mentions that this guide will widen the reclamation options, while also providing follow-up and control measures for some of them.

17. Develop a financial assistance program for green technologies

This is phase 3 of the program mentioned in Actions 13 and 14 above. This aspect will be financed first by a budgetary allocation of \$2.1M, and then by a new charge on landfilling of contaminated soil. The program will aim to promote the implementation and development of green technologies, particularly *in situ* technologies and site-specific technologies. The New Policy calls for this program to be launched in 2019.

18. *Standardize administrative requirements to facilitate implementation of new soil treatment technologies*

This measure will be put into effect by the publication of technical documents. Three such documents were published in 2016,¹³ and others could be published if necessary.

19. *Regulate treatment centres*

The MDDELCC proposes to review the governance of contaminated soil treatment centres, by way of amendments to the LPRR, the RCSCTS and the RBCS.

20. *Review landfill prohibition thresholds*

The MDDELCC wishes to review the contamination thresholds provided for in the RBCS, on the basis of which certain soils must be treated before they are deposited in landfills. The objective is to promote treatment and reclamation of a greater volume of soils.

21. *Charge for landfilling contaminated soils*

The objective of this measure is to increase the cost of depositing contaminated soil in landfills, in order to make the treatment and reclamation options more competitive. The charge will be imposed under the *Regulation respecting charges payable for the elimination of residual materials and contaminated soils*.¹⁴ Under the New Policy, a draft amendment to that Regulation will be tabled in 2017, with a view to its adoption that same year. The measure is designed to promote attainment of the objective of treating 80% of contaminated soils from excavation sites, so that they may be reclaimed subsequently. In 2014, 69% of soils were reclaimed.¹⁵

Conclusion

By its New Policy, the MDDELCC is proposing an ambitious game plan for handling contaminated soils in the coming years. For business organizations involved in this sector, the measures announced represent both challenges and interesting business opportunities. For the moment however, many details about the New Policy remain to be clarified, despite the tight scheduling that is being proposed.

¹ MDDELCC, *Politique de protection des sols et de réhabilitation des terrains contaminés — Plan d'action 2017-2021*. Retrieved April 26, 2017 (In French only). Unofficial translation: "Soil Protection and Contaminated Sites Rehabilitation Policy — Action Plan 2017-2021".

² Borden Ladner Gervais, *Adoption of Québec Bill 102: Modernizing the Environment Quality Act*, March 29, 2017. Retrieved April 26, 2017. See also National Assembly, [Bill 102: Act to amend the Environment Quality Act to modernize the environmental authorisation scheme and to amend other legislative provisions, in particular to reform the governance of the Green Fund](#). Retrieved April 26, 2017.

³ National Assembly, [Bill 132: An Act respecting the conservation of wetlands and bodies of water](#). Retrieved April 26, 2017.

⁴ MDDELCC, *Guide d'intervention — Protection des sols et réhabilitation des terrains contaminés*. Retrieved April 26, 2017. (In French only) Unofficial translation: "Intervention Guide — Soil Protection and Contaminated Sites Rehabilitation".

⁵ Ibid.

⁶ MDDELCC, *Politique de protection des sols et de réhabilitation des terrains contaminés — Plan d'action 2017-2021*, p. 11. Retrieved April 26, 2017 (In French only). Unofficial translation: "Soil Protection and Contaminated Sites Rehabilitation Policy — Action Plan 2017-2021".

⁷ The New Policy contains no technical criterion or standard, as those items have been included in the above-mentioned *Guide d'intervention — Protection des sols et réhabilitation des terrains contaminés*.

⁸ MDDELCC, *Guide de caractérisation physicochimique de l'état initial des sols avant l'implantation d'un projet industriel*, 2015. Retrieved April 26, 2017 (In French only).

⁹ CQLR, c Q-2, r. 37.

¹⁰ CQLR, c Q-2, r. 46.

¹¹ CQLR, c Q-2, r. 18.

¹² Certain details concerning the *ClimatSol-Plus* Program are available on the website, retrieved April 26, 2017 (In French only).

¹³ MDDELCC, *Fiche technique 8 : Centre de traitement de sols contaminés Standardisation des demandes d'autorisation (article 22 de la LQE)* [unofficial translation: "Technical Document 8: Contaminated Soils Treatment Centre, Standardization of Applications for Authorization (section 22 of the EQA)"]; *Fiche technique 9 : Réhabilitation d'un terrain à l'aide d'un procédé de traitement in situ*, [unofficial translation: "Technical Document 9: Land Rehabilitation using an *in situ* Treatment Process"]; *Fiche technique 10 : Traitement de sols contaminés sur un terrain en réhabilitation à l'aide d'un procédé ex situ* [unofficial translation: "Technical Document 10: Treatment of Contaminated Soils on Land being Rehabilitated using an *ex situ* Process"]. Retrieved April 26, 2017 (In French only).

¹⁴ CQLR, c. Q-2, r. 43.

¹⁵ MDDELCC, *Politique de protection des sols et de réhabilitation des terrains contaminés — Plan d'action 2017-2021*, p. 11. Retrieved April 26, 2017, p. 27 (In French only). Unofficial translation: "Soil Protection and Contaminated Sites Rehabilitation Policy — Action Plan 2017-2021".

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