

Adoption Of Québec Bill 102: Modernizing The Environment Quality Act

March 29, 2017

On March 23, 2017, the Québec National Assembly passed Bill No. 102, 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 ("Law 102")*¹. The adoption of Law 102 follows on from the publication of the Green Paper in June 2015² and the introduction of Bill 102 in June 2016³.

Law 102 makes a number of amendments to the *Environment Quality Act* (the "**EQA**")⁴. Its adoption will, in particular, have the effect of amending substantially the EQA's environmental authorization scheme. Certain provisions of Law 102 took effect on March 23, 2017, while other amendments are scheduled to come into force over the next 24 months.

At the time of writing, the final version of Law 102 was not yet available, although the Ministry of Sustainable Development, Environment and the Fight against Climate Change (the "**MSDEFCC**") has posted various details about Law 102 on its website.⁵ This newsletter therefore is designed to provide an outline of the main amendments resulting from the adoption of Law 102.

Environmental Authorizations

One of the key features of Law 102 is the reform of the authorization scheme, establishing a simplified and modulated authorization process based on environmental risks. Henceforth, projects, and the authorizations they require, will be classified in four (4) categories, according to the degree of risk they entail:

- **High-Risk Activities:** These are complex or large-scale activities that entail major environmental impacts. Generally speaking, they are projects designated by regulation, although the Québec Government may, in exceptional cases, subject to regulation an undesignated project where: (i) it is of the opinion that the environmental issues which the project raises are major ones and that public concern warrants such subjection, or (ii) if the project involves a new technology or a new type of activity in Québec the apprehended environmental impact of which is believed by the Government to be significant, or (iii) if the Government

believes that the project will involve major issues pertaining to climate change.

Such projects will be subjected to the environmental impact assessment and review procedure before any authorization is granted by the Government of Québec. In this respect, Law 102 makes a number of amendments to the impact assessment and review procedure and to the process governing the appointment of members of the *Bureau d'audiences publiques sur l'environnement*, while also providing for the greater public accessibility of documents submitted in the course of the environmental impact assessment and review procedure.

- **Moderate-Risk Activities:** These are activities designated by the EQA and the applicable regulations, as well as those which, although not specifically so designated, are not considered to be of a low or negligible risk nature. They will be subject to prior ministerial authorization.

The different forms of ministerial authorization that were historically provided for by the EQA (hazardous materials permits, authorizations under section 32, authorizations under section 48, etc.) are now grouped together in a single form of ministerial authorization⁶. The EQA provides for a general regime for this type of ministerial authorization, which is completed by a number of specific rules depending on the type of emissions, activity or materials involved. With few exceptions, municipal certificates of compliance that were required in the past to support authorization applications under the EQA are no longer required. Copies of authorization applications submitted to the Minister of Sustainable Development, the Environment and the Fight against Climate Change (the "**Minister**") must, however, be submitted to the municipality concerned.

- **Low-Risk Activities:** These are activities, designated by regulation, that entail only minor potential environmental impacts. They do not necessitate any prior ministerial authorization, but they must be disclosed in a declaration of compliance, at least 30 days before the activities commence.

Among such activities are some extensions to waterworks or sewer systems and certain rehabilitation works on contaminated lands.

- **Negligible-Risk Activities:** These are activities the environmental impacts of which are insignificant and which are designated by regulation. Such activities necessitate no prior ministerial authorization or prior declaration of compliance.

In reviewing an authorization application, the MSDEFCC may take into consideration various factors, including (notably in cases governed by regulation) the greenhouse gas effects associated with any project, as well as GHG abatement measures that such a project may necessitate. The MSDEFCC may also consider the anticipated risks and impacts that climate change may have on any project or on the community in which it is to be carried out and the adaptation measures that such a project may call for, as well as Québec's commitments to reduce greenhouse gas emissions.

In addition, the Minister and the Government, in granting environmental authorizations, may prescribe different standards from those prescribed by regulation, where the Minister or the Government is of the view that those regulatory norms are inadequate to respect the support capacity of the receiving environment or that the provisions of the

regulations concerned afford insufficient protection for human health or that of other living species.

Law 102 also facilitates the transfer of ministerial or government authorizations, which may now be transferred by a simple notice, subject, however, to the right of the MSDEFCC to oppose such transfer.

Information concerning authorization applications and authorizations issued will henceforth be more readily accessible, since Law 102 expands the required content of the environmental registers to be kept by the MSDEFCC and provides that certain information shall be accessible to the public, such as the authorizations and documents that are an integral part thereof, the studies and other analyses submitted by the applicant on which authorizations were based, except, however, information that constitutes industrial or trade secrets as provided for in the EQA.

Other Amendments

Law 102 clarifies, and indeed extends, the obligations prescribed by the EQA that apply in cases of cessation of activities.

Law 102 further makes various changes to the specific provisions governing, in particular, contaminated lands, residual materials and hazardous materials. The following are examples:

- *Contaminated lands:* Certain amendments are made to ensure coordination between the requirements relating to cessation of activities and those relating to changes of land use, as well as between those dealing with applications for authorization to implement a project and those relating to changes of land use.
- *Residual materials:* Law 102 further regulates projects for changes in the use of land that was formerly (but is no longer) used, in whole or in part, as a site for the elimination of residual materials, by laying down rules governing studies, notices to neighbours and publication of notices in the Land Register.
- *Hazardous materials:* Law 102 also governs more extensively the management of accidental discharges of hazardous materials into the environment, by making the carrying out of studies compulsory and also, in certain cases, the sending of notices to neighbours and the publication of notices in the Land Register.

Law 102 further groups together the Minister's powers to issue orders, which were formerly scattered in various places throughout the *Environment Quality Act*. The new statute also clarifies the powers of the Minister and the Government to revoke, modify and suspend environmental authorizations.

The provisions dealing with administrative monetary penalties, penal sanctions and recourses before the Administrative Tribunal of Québec are also amended, particularly to take account of the changes made to various sections of the EQA by Law 102.

Furthermore, Law 102 sets up a legal framework for conducting strategic environmental assessments, requiring those programs of the Administration⁷ determined by Government of Québec regulation, including the strategies, plans or other forms of guidelines it develops, to be subjected to strategic environmental assessments.

This is a brief overview of the amendments made to the *Environment Quality Act* by Law 102, which represents a significant update of the EQA. Many details of the reform remain to be determined, however, particularly because implementing Law 102 will require the revision and updating of several regulations, as well as the adoption of some new ones. One thing is certain, the coming into force of Law 102 will have an impact on industrial operators, real estate developers and environmental consultants working in Québec.

¹ See the [Bill 102 page of National Assembly's website](#), the final version of which is not available as the date of this newsletter.

² Borden Ladner Gervais, "Green light given for the modernization of Québec's Environmental authorizations regime," *BLG Bulletin*, July 7, 2015

³ Borden Ladner Gervais, "Bill 102: A Major Reform for Québec's *Environment Quality Act*", *Environmental Law Booklet*, August 2016.

⁴ CQLR, c. Q-2.

⁵ MSDEFCC, La nouvelle Loi sur la qualité de l'environnement a été adoptée: un moment marquant de l'histoire de la protection de l'environnement au Québec (available in French only).

⁶ It is important to specify that certain forms of authorization, previously provided for in the EQA, remain unchanged. This is particularly true for the land rehabilitation plans regime and the regime governing depollution attestations for municipal wastewater treatment works.

⁷ The Government of Québec, the *conseil exécutif*, the *Conseil du trésor*, a ministry, as well as any government body contemplated by the *Auditor General Act*, CQLR, c. V-5.01.

By

[Marie-Claude Bellemare](#), [Alexandre Desjardins](#)

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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