

Québec introduces Bill 81 to amend various environmental laws

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On November 20, 2024, Québec's Minister of the Environment and the Fight against Climate Change tabled Bill 81, *An Act to amend various provisions relating to the environment*, which, if passed, will amend the majority of Québec's environmental legislation.

This Update summarizes the key proposals of Bill 81.

Modification of the environmental impact assessment and review procedure

Bill 81 revises the environmental impact assessment and review procedure set out in the *Environment Quality Act (c.Q-2, EQA)* to make it more efficient and encourage public participation at the outset.

1. Enhancement of the BAPE's role and information periods at the outset of the procedure

Bill 81 proposes that information periods to gather public concerns, comments and questions be held before the *Bureau d'audiences publiques sur l'environnement* (BAPE) as soon as the project initiator's notice of intent is received, and before the Minister transmits the directive that determines the scope and extent of the impact study to be carried out. The Minister's directive would then be drawn up on the basis of the initiator's proposal, adjusted or enhanced with information gathered during public information periods.

According to Bill 81, the BAPE will have to develop and make public a general framework for analyzing requests for public consultation or mediation made to the Minister, which will have to set out the criteria that must guide the BAPE in its recommendation to the Minister as to whether a mandate should be issued and, if so, the type of mandate.

2. New attestation of admissibility of the impact study

Bill 81 suggests that the environmental analysis of a project should begin as soon as the

impact study has been submitted to the Ministry, and that a certificate from the project initiator confirming compliance with the requirements of the directive and the regulations should be attached.

3. New assessment procedure: sectoral or regional environmental assessment

Bill 81 proposes a new procedure for sectoral or regional environmental assessments of any plan or program relating to the development of a sector of activity or territory and involving several projects and activities likely to present significant environmental or sustainable development risks or issues.

The purpose of this assessment would be to ensure that the plan or program is consistent with the government's environmental and social orientations and objectives, as well as to ensure the participation of the public and Indigenous communities in the planning of the development covered by the plan or program.

Bill 81 provides that, on the recommendation of the Minister, the government may adjust the environmental authorization regime for certain activities or projects that fall within the scope of the plan or program by defining the appropriate terms and conditions. This power would be provided for cases where it would not be advantageous, for the projects or activities in question, to repeat a subsequent environmental assessment, relying instead on the results obtained through the sectoral or regional environmental assessment.

4. Expanded powers of the Minister over the conduct of the procedure for certain projects

Bill 81 contains new powers to terminate the assessment procedure at any stage of the procedure or to require reversion to an earlier stage of the procedure. In cases where the Minister terminates the procedure, the project initiator who still intends to undertake the project will have to file a new notice of intent and start the procedure over again.

In addition, for certain projects that "contribute to the achievement of the government's targets regarding the fight against climate change or relating to the energy transition", Bill 81 sets out new powers to allow — on an exceptional basis and if justified by the public interest — certain preliminary work required as part of a project to be undertaken, despite the ongoing assessment procedure or without following the assessment procedure, provided that this work alone is not subject to the procedure.

Coexistence of provincial regulations and municipal bylaws relating to the environment

Bill 81 contains amendments relating to the coexistence of provincial regulations and municipal bylaws relating to the environment. The provisions suggested by Bill 81 would replace the principle whereby provincial regulations take precedence over municipal bylaws on the same subject matter.

Thus, in the absence of an express provision in a regulation adopted under the EQA to the effect that the regulation in question takes precedence over municipal bylaws, a new general principle of regulatory coexistence would apply, similar to that set out in the *Municipal Powers Act* (c C-47.1). This principle states that a municipal bylaw is compatible with a provincial

statute or regulation if it is possible to comply with both regulations simultaneously. In other words, the principle of consistency would apply *de facto*, unless the provincial regulation expressly specifies otherwise, in which case the principle of precedence would apply. As a result, municipal environmental bylaws would no longer need to be approved by the Minister.

Clarification of measures applicable to activities affecting certain environments

1. Determination and enforceability of compensation measures

Bill 81 sets out guidelines to be applied when the government must determine whether compensation measures are required, and the nature of these measures, when a project affects certain environments, including wetlands, bodies of water and wildlife habitats, or when the project is likely to affect a specimen of a threatened or vulnerable plant species, or when it alters the habitat of such a species.

The powers relating to compensation measures would also apply to a project whose preliminary works have been the subject of a decision exempting it from the environmental assessment procedure, where these works have not been the subject of another compensation measure.

2. Demonstration of avoidance of damage to wetlands and bodies of water

Bill 81 recommends that the notion of avoidance be clarified by providing for the demonstration that projects carried out in wetlands and bodies of water have been conceptualized in such a way as to avoid damaging these environments as much as possible.

More specifically, the project initiator will have to submit the following with its request for authorization:

- a demonstration that known wetlands and bodies of water of conservation importance in the regional municipality concerned have been taken into account when selecting the project site, so that they are avoided
- a document containing a description of the alternative scenarios studied, including other locations considered
- an explanation as to why the scenario chosen is the one that least affects wetlands and bodies of water, and a justification as to why the project still affects wetlands and bodies of water despite the avoidance effort, if applicable

Harmonization of environmental control measures and supervision of activities

1. Power to refuse to issue an authorization to a legal person

Bill 81 proposes to harmonize powers relating to inspections provided for in the *Act*

respecting certain measures enabling the enforcement of environmental and dam safety legislation (c M-11.6) and to add the power to refuse to issue an authorization to a legal person if one of its directors has previously been a director of another legal person convicted of an offence under any legislation administered by the Minister, including regulations made thereunder, a tax offence or a criminal offence.

2. Increased minimum fines for certain activities

To increase the deterrent effect in respect of certain activities, Bill 81 proposes to raise the minimum amount of certain criminal fines for legal persons in certain categories of industrial activity that contravene environmental legislation.

In particular, Bill 81 contains a new provision whereby the minimum fine to which a legal person is liable for certain breaches of the law is “10 times higher than what is provided for” in the penal provisions of the EQA for certain categories of the most polluting activities, to be determined by regulation.

3. Modification of certain modalities of the ministerial authorization regime

Bill 81 provides for new procedures enabling authorization holders to assign or request the revocation of part of their authorization when it covers several distinct activities. Following the transmission of a notice of partial transfer to the Minister, these procedures would make it possible to split the authorization and assign the obligations related to the transferred activity to the transferee. The transferor, for its part, would be able to keep its authorization without having to request a modification to remove the transferred activity.

In addition, Bill 81 would add the power to determine by regulation the fees associated with applications to maintain or suspend an authorization, in accordance with the user-pays principle.

4. Clarification of the contaminated soil framework

Bill 81 also introduces a new obligation to maintain a register recording the results of inspections and recurrent environmental monitoring carried out as part of land rehabilitation under a notice of restriction of use, as well as any corrective measures carried out.

Bill 81 would add a regulatory empowerment to enable the Minister to determine the situations and conditions under which contaminants in excess of regulatory limits may not be maintained in place.

In addition, Bill 81 contains amendments clarifying when the obligation to register a notice of contamination in the land register is required. To encourage voluntary remediation through *in situ* or *ex situ* treatment, Bill 81 also proposes to add regulatory authority to remove the obligation to register a notice of contamination in the land register in certain situations.

5. Eligibility of projects to remove greenhouse gases from the atmosphere for allocations under the cap-and-trade System

Bill 81 proposes to add projects for the removal of greenhouse gases (GHGs) from the atmosphere, including capture and sequestration, to the projects eligible for free allocations

by large emitters subject to the cap-and-trade System (CTS) for GHG emission reduction or innovation projects. In its current version, section 46.1.8 of the EQA does not allow projects involving the removal of GHGs from the atmosphere, including capture and sequestration, to benefit from these allowances.

New powers for residual materials management

Bill 81 proposes the addition of several regulatory powers to ensure the recovery and reclamation of residual materials in Québec. In particular, the proposed amendments concern the following topics:

- expansion of the extended producer responsibility (EPR) approach to new products or sectors of activity
- obligation on certain producers to compensate the costs of collecting, transporting, sorting and packaging certain residual materials, with a view to their recovery
- regulation of the marketing, distribution and sale of certain single-use products, including their prohibition
- control of certain unsold goods
- clarification of certain management powers relating to management organizations and managers of individual recovery and reclamation programs for certain residual materials

Introduction of a zero-emission standard for heavy motor vehicles

Bill 81 provides for the amendment of the *Act to increase the number of zero-emission motor vehicles in Québec in order to reduce greenhouse gas and other pollutant emissions (c A-33.02)*, to enable the government to adopt measures to encourage manufacturers to increase the supply of electric heavy motor vehicles in Québec.

The amendments proposed in Bill 81 include the introduction of a credit system linked to the sale and lease of zero-emission heavy motor vehicles. These changes would affect any manufacturer selling or leasing more than 50 heavy motor vehicles and would not apply to buses and minibuses. Bill 81 envisages fines of up to \$3 million for violations of the applicable legislation.

Conclusion

Bill 81 has only recently been tabled and will be studied in greater detail by the Québec National Assembly. We will be closely monitoring the progress of this omnibus bill and any amendments that may be made before it is adopted. If you believe that the proposed amendments could have an impact on your business activities in Québec, or if you have any questions about Québec's environmental laws and regulations, please do not hesitate to contact us.