

# MATTERS TO FOLLOW IN ENVIRONMENTAL LAW IN QUÉBEC (2024)

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Environmental law continues to make rapid progress. This bulletin discusses a few of the key developments to watch for in Quebec in 2024.

## **Continued implementation of environmental authorization scheme**

Following the implementation in late 2021 of the requirement to use certain forms for applications for ministerial authorizations issued under the *Environment Quality Act*, the past two years have allowed for more practical testing of the new requirements resulting from the implementation of the environmental authorization scheme reform, which was undertaken in 2017.

While some irritants remain, at various phases of the process, including at the admissibility stage, the Ministère de l'Environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs (MELCCFP) has made significant efforts to respond to some of the comments submitted by proponents. However, these proponents should stay tuned, as the MELCCFP regularly updates mandatory forms.

## **Water extraction: an increase in royalty rates and greater transparency**

In Quebec, companies in certain industries that draw volumes of water above a regulated threshold are required to pay a royalty. Significant changes took effect on January 1, 2024. Among these, royalty rates payable were increased. For example, the royalty rate has gone from \$70 to \$150 per million litres for certain companies that incorporate water into their products, and from \$2.50 to \$35 for other activities subject to regulation. In 2026, the royalty rate threshold will be lowered from 75,000 to 50,000 litres per day. However, the sectors concerned remain unchanged.

In addition, data on water extractions covered by the mandatory reporting scheme are now available on the MELCCFP website. In addition to the withdrawer's name, the monthly and annual volumes of water withdrawn are indicated, as well as the name of the bodies of water concerned.

## **Excavated contaminated soils: a royalty comes into effect and the traceability system's implementation continues**

Since November 2021, the movement of contaminated soils resulting from certain excavation works and reach volumes thresholds are subject to the Traces Québec traceability system and a fee of \$2 per metric tonne of contaminated soil. As of January 1, 2023, any movement of soil resulting from such excavations is subject to these requirements although some of those do not apply if the volume of soil is equal to or lower than 200 metric tonnes for the same project. The implementation of this system, whose main objective was to put an end to the illegal disposal of contaminated soil, has an impact on stakeholders and industries involved in the management of contaminated soil in Quebec.

Beginning January 1, 2024, a base royalty rate of \$10.67 is applicable to certain contaminated soils excavated. As the purpose of the scheme is to encourage the treatment and reclamation of contaminated soils rather than their disposal, soils that are the subject of certain processing activities receive a lower rate (\$5) and soils reclaimed in the manner prescribed in the applicable regulations are exempt from royalties.

### **Changes to the expanded deposit-refund system**

Since November 1, 2023, new containers have been subject to the deposit in Quebec. These include aluminum containers of juice, sparkling water and cider, which many businesses must now accept when returned by a consumer. A second phase of expansion, which has been delayed until March 1, 2025, will subject a wider range of containers and require additional return locations, with a minimum target of 1,500 locations.

### **Transitional regime for activities in bodies of water**

As of March 1, 2022, a transitional regime applies to activities in bodies of water, including shorelines, littoral zones and flood-prone areas. This transitional regime, (mainly found in the *Regulation respecting the temporary implementation of the amendments made by chapter 7 of the Statutes of 2021 in connection with the management of flood risks*), is a government response to the 2017 and 2019 floods. This regime replaces the *Protection Policy for Lakeshores, Riverbanks, Littoral Zones and Floodplains*, in which shortcomings had been identified, by introducing a more uniform municipal authorization scheme for activities in such areas. It also sets out standards to be met when such activities are conducted.

The timing of the “permanent” regime remains unknown, but the MELCCFP indicated in the fall of 2023 that the new rules would be phased in and that it would not wait until the mapping of the flood-prone areas, which is still underway, to be completed.

### **GHG cap-and-trade system**

Significant changes to Quebec's GHG cap-and-trade system (SPEDE) have been in effect since January 1, 2024. In particular, the emission allowances of some companies (mainly in the industrial sector) are being gradually scaled back. However, a portion of this reduction will be banked and may be used by emitters to fund

emissions reduction projects.

Companies subject to the SPEDE should familiarize themselves with these changes, which may have significant financial, technical and regulatory impacts on such companies.

Potentially significant changes are being studied by the Government of Quebec for subsequent years, in particular in order to promote the achievement of Quebec's greenhouse gas emission reduction targets for 2030 and 2050.

It is also envisaged that carbon sequestration activities will be subject to the SPEDE regime.

As the SPEDE has been recognized by the federal government as equivalent to the federal carbon pricing system, the federal system does not apply to Quebec facilities.

### **Municipalities increasingly active**

Municipalities have recently been taking greater actions to protect the environment. This is particularly true of the Communauté métropolitaine de Montréal (CMM), which comprises 82 municipalities making up about half the population of Quebec. In spring 2022, it adopted an interim control by-law prohibiting any construction, structure, work or activity in terrestrial and wetland areas “of metropolitan interest”, including the habitat of the chorus frog, with certain exceptions. The effect of this by-law has been to freeze project development on a large number of properties that previously had significant development potential, resulting in a considerable loss of value for some of the owners, without any compensation. The CMM in 2022 also adopted an interim control by-law specifically to prohibit the subdivision of golf courses that have the potential to be rewilded or reconverted into green spaces. Both of these by-laws, which are expected to remain in force until the next *Plan métropolitain d'aménagement et de développement* comes into effect, are being challenged before the courts with regard to projects located in several CMM municipalities. We will follow the progress of these proceedings in 2024.

In addition, significant changes regarding expropriation were adopted in the fall of 2023 and have been in effect since January 1, 2024. In environmental matters, an infringement of with the right of ownership resulting from an act of a municipal authority lawfully made under the *Act respecting land use planning and development* and intended for the protection of wetlands, bodies of water or certain other environments can no longer be compensated. These changes greatly restrict the scope of the case law that had developed in matters of disguised expropriation in the context of conservation measures taken by a municipal authority.

Some municipalities also intend to take climate action by adopting specific standards for the design, construction and operation of buildings<sup>[1]</sup>. Other municipalities are now regulating water use more closely<sup>[2]</sup>.

## Constitutional challenges

In October 2023, the Supreme Court of Canada ruled that several provisions of the federal [Impact Assessment Act](#) were unconstitutional. The federal government is now examining amendments to this legislation in order to respond to the court's findings and thus narrow the scope of this legislation. These amendments will have an impact on certain natural resources and energy projects.

In Quebec, some projects are subject to both the federal impact assessment regime and the *Environment Quality Act*.

In 2023, the courts also examined the legality of certain federal plastics initiatives. In November, the Federal Court invalidated the Government of Canada's order in council under which plastic manufactured items had been added to the Schedule 1 list of the *Canadian Environmental Protection Act* because of their toxicity. The Court concluded that the federal government had not demonstrated that the category of articles as a whole met the toxicity criteria under this law. The federal government has appealed the decision and the Federal Court of Appeal agreed to stay the decision until it issues its own judgement on the appeal. Consequently,, plastic manufactured items are still listed in Schedule 1 and the Single-use Plastics Prohibition Regulations remains in effect.

## Mining and energy

Significant changes to the regime applicable to the production and distribution of energy in Quebec would be considered by the Government of Quebec, in the context of the lack of capacity expected in the coming years. In addition, following a consultation in 2023 and in the context of continued pressure from some local communities, the government could propose amendments to the mining regime. We will follow these developments.

[1] See in particular the Sud-Ouest borough of Montreal, which makes the issuance of building permits for certain projects conditional subject to a climate resilience factor *Urban planning by-law for Sud-Ouest borough (01-280)* and the *Règlement sur le respect, le civisme et la propreté (RCA11 22005) pour une transition écologique - phase 3 et autres correctifs (1-280-65)*. To find out more, read our [bulletin](#) on this topic. [Montréal's Sud-Ouest borough will start imposing a climate resilience factor for certain construction projects - McMillan LLP](#).

[2] See, in particular, the City of Sorel-Tracy's *By-law No. 255 "Concerning the Use of Water"* adopted on November 6, 2023.

by [Martin Thiboutot](#)

## A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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