

THIRD SESSION

THIRTY-SECOND LEGISLATURE

NATIONAL ASSEMBLY OF QUÉBEC

Bill 55

**An Act to amend the Environment Quality Act
and other legislation**

First reading
Second reading
Third reading

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EXPLANATORY NOTES

The main object of this bill is to amend the Environment quality Act and the Watercourses Act to institute a procedure of environmental conformity attestation designed to gradually replace the existing required administrative pre-authorization for the carrying out of certain projects.

The bill, moreover, transfers the powers of control and supervision over underground water presently under the Mining Act to the authority of the Environment Quality Act and enables the Minister to put an end by order to beyond-frontier atmospheric pollution on a basis of reciprocity with other countries or provinces.

Under the bill, the powers to cancel authorizations granted under the Environment Quality Act are increased in cases of substantiated irregularities, the regulatory powers to require security in respect of new projects are extended, fees are to be required for the issue of the authorizations provided for under the Act and the administration of the regulations concerning toxic and harmful waste is simplified.

Furthermore, the bill enables the Government to authorize minor works to be erected on certain watercourses and to identify the floodplains where municipalities will be required to establish special building by-laws.

Under the bill, the Minister is provided with new means to ensure the inspection, supervision and surveillance of ecological reserves and facilitate the updating of the norms and methods of surveys published by third parties.

Finally, the bill provides certain amendments designed to facilitate the application of the Environment Quality Act.

ACTS AMENDED BY THE BILL

- (1) the Environment Quality Act (R.S.Q., chapter Q-2);
- (2) the Watercourses Act (R.S.Q., chapter R-13);
- (3) the Act respecting ecological reserves (R.S.Q., chapter R-26);
- (4) the Act respecting the Ministère de l'environnement (R.S.Q., chapter M-15.2);
- (5) the Mining Act (R.S.Q., chapter M-13).

Bill 55

An Act to amend the Environment Quality Act and other legislation

HER MAJESTY, with the advice and consent of the National Assembly of Québec, enacts as follows:

1. Section 1 of the Environment Quality Act (R.S.Q., chapter Q-2) is amended by replacing paragraph 6 by the following paragraph:

“(6) “pollutant”: a contaminant or a mixture of several contaminants present in the environment in a concentration or quantity greater than the permissible level determined by regulation of the Government, or whose presence in the environment is prohibited by regulation of the Government;”.

2. Section 2 of the said Act, amended by section 25 of chapter 49 of the statutes of 1979, is again amended by replacing subparagraph *h* of the third paragraph by the following subparagraph:

“(*h*) make, with the authorization of the Government, any agreement with any government or governmental agency, in conformity with the interests and rights of Québec, to facilitate the carrying out of this Act.”

3. Section 31 of the said Act is amended

(1) by replacing paragraph *g* by the following paragraph:

“(*g*) determine the form and tenor of any authorization certificate, certificate, authorization, permit, permission or approval granted under this Act or a regulation thereunder, and fix the fees exigible for its issue;”;

(2) by adding, at the end, the following paragraph:

“(*n*) compel the proponent of certain categories of projects to deposit security with the deputy minister.”

4. The said Act is amended by inserting, after section 45.3, the following sections:

“45.4 No person may, except with a permit from the deputy minister, make borings or drillings for the purpose of locating and tapping deep underground water sources.

This section does not apply to a property owner who sinks a well or causes a well to be sunk on his own land for the purpose of obtaining water for domestic use.

“45.5 The permit contemplated in section 45.4 is an annual permit that expires on 1 April each year.”

5. Section 46 of the said Act is amended by adding, at the end, the following paragraphs:

“(q) prescribe norms respecting the renewal of permits contemplated in section 45.4 and respecting the duties of holders of such permits;

“(r) establish norms respecting the sinking and sealing off of wells;

“(s) regulate the tapping of underground water, in particular by requiring the authorization of the deputy minister to undertake or continue the tapping of underground water in any region where the deputy minister considers that the water is threatened with contamination.

“Every government order made under paragraph s comes into force from its adoption and is published in the *Gazette officielle du Québec*.”

6. The said Act is amended by inserting, after section 49, the following sections:

“49.1 In cases where the Minister if of opinion, on the basis of a study or of a recommendation of an international or governmental agency, that a source of contamination of the atmosphere situated in Québec is likely to adversely affect the health or welfare of the citizens of a foreign country or of another province, he may order the persons who are responsible for the source of contamination to cease, permanently or temporarily, or limit, on such conditions as he may impose, the emission of a contaminant into the atmosphere.

The order must be preceded by the prior notice and other formalities provided for in section 25.

Notice of the intended order shall also be transmitted to the government of the foreign country or of the province concerned,

which may intervene at any public hearing ordered in respect of the order.

“49.2 Section 49.1 applies only to those countries or provinces which give to Québec favourable treatment similar to that accorded to them under the said section.”

7. Section 70 of the said Act is amended by adding, at the end, the following:

“(n) prescribe that no payment for the transport of toxic or harmful waste is to be effected unless the carrier proves to the expeditor that the waste was effectively delivered to a place that conforms to regulation;

“(o) authorize the minister to prescribe by order classes of waste to which a regulation made under this section applies.

“The ministerial order referred to in subparagraph o of the first paragraph comes into force on the date of its publication in the *Gazette officielle du Québec*.”

8. The said Act is amended by inserting, after section 95, the following division and sections:

“DIVISION X.1

“ATTESTATION OF ENVIRONMENTAL CONFORMITY

“95.1 No person may undertake to carry out a project contemplated by regulation of the Government without first filing with the deputy minister the plans and specifications for the execution of the project and a declaration attesting to their conformity with the norms provided by regulation of the Government.

The attestation must also be signed by any professional or consultant who participated in the preparation of the project in the case where his participation deals with a matter contemplated in the regulatory norms applicable to the project.

“95.2 In the cases contemplated by regulation of the Government, the attestation must be accompanied with the security prescribed by regulation of the Government and a certificate issued by the municipality indicating that the project conforms to the municipal by-laws.

“95.3 In the case where the deputy minister is of opinion that a project does not conform to the norms provided by regulation of the Government, he may, at all times, serve a denial of conformity on the proponent of the project.

“95.4 Every denial of conformity cancels every attestation filed under section 95.1 and obliges the proponent of the project to postpone its carrying out immediately.

“95.5 In the cases contemplated in sections 95.2 and 95.3, the deputy minister may confiscate the security given by the proponent of the project and use it to repair the environmental damage incurred.

“95.6 Sections 22, 32, 33, 48 and 54 do not apply to a project that is subject to the attestation of environmental conformity under this division.

“95.7 The Government may make regulations to determine the classes of projects for which an attestation of environmental conformity and a certificate of municipal conformity must be filed with the deputy minister under this division.”

9. Section 96 of the said Act, amended by section 28 of chapter 49 of the statutes of 1979 and by section 72 of chapter 11 of the statutes of 1980, is again amended by replacing the second paragraph by the following paragraph:

“The same applies in all cases where the deputy minister refuses to grant or cancels an authorization certificate, a certificate, an authorization, an approval, a permission or a permit, requires a change in an application made to him, refuses to renew or suspends a permit, or fixes or apportions costs and expenses and determines compensation under section 61 or serves a denial of conformity to the proponent of a project.”

10. Section 98.2 of the said Act is amended by adding, at the end, the following paragraph:

“In the case where more than one municipality or more than 25 persons have transmitted written representations to him, the deputy minister, instead of transmitting copy of the petition for appeal to them, may cause a notice respecting the petition for appeal to be published in a daily newspaper circulated in the territory of the region concerned by the decision appealed from.”

11. Section 106 of the said Act, amended by section 308 of chapter 63 of the statutes of 1979 and by section 73 of chapter 11 of the statutes of 1980, is again amended

(1) by replacing the introductory lines of the first paragraph by the following:

“106. A natural person who contravenes one or other of sections 20, 21, 22, 31.1, 68, 91, 95.1, 95.4, 121, 123.1, 154 and 189 or an

order made under section 25, 26, 27, 28, 29, 49, 49.1 or 114.1, is guilty of an offence and is liable, on summary proceedings, to a fine.”;

(2) by replacing the second paragraph by the following paragraph:

“The same penalties apply to every person who does not comply with a depollution program approved by the deputy minister under section 116.2 or with the conditions imposed under section 31.5, 31.6, 164, 167, 201 or 203.”

12. Section 109 of the said Act is replaced by the following section:

“**109.** Whoever contravenes this Act or a regulation made under it commits an offence and is liable, in all cases where no other penalty is imposed, to a fine not exceeding five hundred dollars.”

13. Section 110.1 of the said Act is replaced by the following section:

“**110.1** In the case where false representations have been made to the Minister, the deputy minister or a functionary contemplated in section 119 or 120, and in the case of an offence concerning the management of waste classified as toxic or harmful under section 70, the prescription contemplated in section 14 of the Summary Convictions Act (R.S.Q., chapter P-15) runs from the time the facts relating to the offence are brought to the attention of one of these persons.”

14. Section 115.1 of the said Act is amended by replacing the second paragraph by the following paragraph:

“The Minister may claim the direct and indirect costs related to such measures, in the same manner as any debt owing to the Government, from any person or municipality who had custody of or control over the contaminants or from any person or municipality responsible for the emission, deposit, discharge or issuance of the contaminants, as the case may be, whether or not the latter has been prosecuted for infringement of this Act. Liability is joint and several where several persons are responsible.”

15. Section 116.2 of the said Act is replaced by the following section:

“**116.2** No proceedings may be instituted for an offence against section 20 in connection with the emission, deposit, discharge or issuance of any contaminant likely to adversely affect the

life, health, safety, welfare or comfort of human beings, to inflict damage or otherwise prejudice the quality of the soil, the vegetation, animal life or property, against the person responsible for the source of contamination, if such person has submitted a depollution program which has been approved by the deputy minister and if he faithfully complies with its requirements and schedule of implementation.”

16. The said Act is amended by inserting, after section 122, the following sections:

“122.1 The Government, the Minister or the deputy minister may amend or cancel any authorization certificate issued by it or him or issued in its or his name in the cases where

(a) the authorization certificate has been issued on the basis of erroneous or fraudulent information;

(b) the holder of the authorization certificate does not comply with the provisions contained in it or uses it for purposes other than those provided for under this Act;

(c) the holder of the authorization certificate does not comply with this Act or a regulation thereunder; or

(d) the holder of the authorization certificate does not avail himself of it within a period of one year from its issue.

Subparagraph *d* of the first paragraph does not apply in the case where the Government makes a regulation under paragraph *k* of section 31.

“122.2 Section 122.1 does not have the effect of preventing the amendment or cancellation of an authorization certificate where its holder applies for it.

“122.3 Sections 122.1 and 122.2 apply, *mutatis mutandis*, to all certificates, authorizations, approvals, permissions or permits issued under this Act or a regulation thereunder. They also apply in the cases provided for in sections 32.8 and 59, without, however, restricting the application of these sections.

“122.4 Before rendering any decision under section 122.1, the Government, the Minister or the deputy minister must give to holders of authorization certificates, certificates, authorizations, approvals, permissions or permits the opportunity to make representations.

In cases where the decision relates to an authorization certificate issued by the Government or in its name, representations must be in writing.”

17. Section 123.1 of the said Act is amended by replacing the second and third paragraphs by the following paragraph:

“This section applies to all the authorizations issued under this Act since 21 December 1972. It also applies, *mutatis mutandis*, to the works commenced, used or operated under an attestation of environmental conformity.”

18. Section 123.2 of the said Act is amended by replacing the first paragraph by the following paragraph:

“**123.2** Every decision of the deputy minister or of the Commission municipale du Québec in respect of water tax or water rates rendered on or after 21 December 1972 and every denial of conformity made under section 95.3 are executory notwithstanding any appeal brought under Division XI of this chapter or other contestation before any court of justice until adjudication by the Commission municipale or final decision by the court, as the case may be.”

19. Section 124 of the said Act is amended

(1) by replacing the third paragraph by the following paragraphs:

“The Government may, however, without publishing the draft regulation, make a regulation if its sole purpose is to update the norms or methods of analysis published by third parties and incorporated by reference into a regulation already in force.

Every regulation made by the Government under this Act comes into force upon its publication in the *Gazette officielle du Québec* or on a later date indicated in the regulation, or by proclamation of the Government.”;

(2) by adding, at the end, the following paragraph:

“The Minister may amend or cancel any approval granted under the fifth paragraph in the case where the Government makes a new regulation relating to a matter contemplated by a municipal by-law already approved. Notice of the decision of the Minister shall be published without delay in the *Gazette officielle du Québec*.”

20. The Watercourses Act (R.S.Q., chapter R-13) is amended by inserting, after section 2, the following sections:

“**2.1** The Government may, by regulation, generally authorize, according to the conditions it determines, the occupation of property contemplated in the third paragraph of section 2, by every category of minor works it indicates.

“2.2 A regulation made under the fourth and fifth paragraphs of section 2 or under section 2.1 comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date provided for in the regulation.”

21. The said Act is amended by replacing the heading of Division III by the following heading:

“USE OF WATERCOURSES AND PREVENTION OF FLOODING”.

22. Sections 6 to 8 of the said Act are replaced by the following sections:

“6. A court may order, upon an ordinary action instituted by the Attorney General, the demolition of any work and the restoration of the premises to their original condition or to a condition approaching as nearly as possible thereto, where a person constructs or maintains any work on the banks and beds of rivers and lakes forming part of the public domain, as well as on the bed and foreshore of the sea, without obtaining beforehand the sale or lease of or an occupation licence for the immoveable concerned.

“7. The Government may authorize the Minister of the Environment to open or close the dams, sluiceways or other apparatus to empty the water from any work constructed in a private or public watercourse, and to take the necessary measures to keep the apparatus open or closed, as the case may be, during the time the Minister prescribes, where the Government considers that the measures are required in order to put an end to the flooding of private or public lands.

“8. In no case may a municipality issue a permit to build in a floodplain recognized by government regulation published in the *Gazette officielle du Québec* until the municipality has passed a by-law prohibiting or governing construction in that floodplain under paragraph 16 of the second paragraph of section 113 of the Act respecting land use planning and development (R.S.Q., chapter A-19.1).

The municipal by-law passed under this section comes into force if it complies with the development plan of the regional county municipality of which the municipality forms part or, if no development plan is in force, on the approval of the Minister of the Environment. Conformity of the municipal by-law to the development plan is determined according to sections 36 to 45 of the Act respecting land use planning and development.”

23. Sections 9 to 12 of the said Act are repealed.

24. Subsection 1 of section 13 of the said Act is replaced by the following section:

“13. (1) The owner or operator of any work constructed in a watercourse, or of a plant, a mill, a manufactory, works or machinery of any kind contemplated in section 5, is liable for all damages resulting therefrom to any person, whether by excessive elevation of the flood-gates or otherwise.”

25. Sections 57 and 58 of the said Act are replaced by the following sections:

“57. (1) No work mentioned in section 56 of which the construction or maintenance necessitates the taking possession or occupation of any public or private property, or prejudicially affects either of such properties, or any rights, public or private, either by the backflow of the water or otherwise, may be constructed or maintained unless the owner or the operator of the work has transmitted beforehand to the Minister of the Environment the plans and specifications of the work as prepared by an engineer, as well as an attestation of the conformity of the work to the norms prescribed by government regulation. The attestation must also be signed by every professional or consultant who has participated in the preparation of the project in the cases where his participation deals with a matter contemplated by the regulatory norms applicable to the project.

The owner or operator of any work contemplated in the first paragraph and erected without obtaining the required government approval before the coming into force of this section may, instead of submitting to the formalities indicated in the first paragraph, elect to solicit the Minister’s approval for the work. No such work may be maintained without obtaining the approval.

(2) If such a work is constructed or maintained without complying with subsection 1 or if, after its construction, it is not kept up in accordance with the plan and specifications transmitted to the Minister of the Environment, the norms prescribed by government regulation or the Minister’s approval, the demolition of the work and the restoration of the lands, either public or private, to their original condition or to a condition approaching as nearly as possible thereto may be ordered by any court of competent jurisdiction, upon an ordinary action instituted by the Crown or by any interested party, according as the land taken, occupied or affected is public or private property, without prejudice to any other recourse at law.

(3) This section does not apply to the construction or maintenance of a dam less than three metres high by-passing the bed of a watercourse.

“58. Notwithstanding the provisions of subsection 2 of section 57, in the case of any such work affecting public property, which has been constructed without complying with the formalities provided for in subsection 1 of section 57, or if the work has not been constructed or maintained in accordance with the plans and specifications transmitted to the Minister, the norms prescribed by government regulation, or the Minister’s approval, the Government may authorize the Minister to open or close the dams, sluiceways or other apparatus to empty the water from the work, and to take the necessary measures to keep the apparatus open or closed, as the case may be, during the time prescribed by the Minister, the whole so as to put an end to the flooding or the encroachment so caused upon the public property.”

26. Section 59 of the said Act, amended by section 17 of chapter 49 of the statutes of 1979, is again amended by replacing the introductory lines by the following:

“59. The person who solicits the approval contemplated in the second paragraph of subsection 1 of section 57 must file a petition with the Minister with a plan of the work and a memorandum showing:”.

27. Sections 60 and 61 of the said Act are replaced by the following sections:

“60. If any part of the lands or rights taken, occupied or affected belongs to an individual, it is likewise obligatory to

(1) deposit a duplicate or a copy of the plans and specifications mentioned in subsection 1 of section 57 or of the memorandum referred to in section 59, at the registry office of the registration division where it is intended to carry on the work, where the documents may be examined by any person during office hours;

(2) give a notice, in accordance with form 3, of the project and of the deposit of the documents referred to in paragraph 1, by advertisement published once in the *Gazette officielle du Québec*, and also in the locality where it is intended to carry on the work, in the manner in which municipal public notices are there published; however, when the work has to be carried on in a territory not yet organized, the notice in the *Gazette officielle du Québec* shall suffice.

“61. The Minister may approve, purely and simply, the plans submitted to him for approval under the second paragraph of subsection 1 of section 57, or may approve them subject to the modifications and conditions he may consider useful or expedient, or he may refuse to approve them.”

28. Section 63 of the said Act is replaced by the following section:

“63. If the construction or maintenance of any such work necessitates the taking possession or occupation of public lands, or if the work will have the effect of flooding or otherwise prejudicially affecting such public lands or any other right of Québec, it is necessary to obtain from the Government, in advance, in addition to every formality required in section 57, in consideration of an annual rental or other remuneration, a concession of the lands or of the public rights which will be so taken, occupied or affected.”

29. Section 66 of the said Act is replaced by the following section:

“66. The Government may, by regulation published in the *Gazette officielle du Québec*, fix such tariffs of fees as it considers fair respecting an approval solicited under the second paragraph of subsection 1 of section 57.”

30. Sections 71 to 73 of the said Act are replaced by the following sections:

“71. Notwithstanding any inconsistent provision of any general law or special Act, no person may erect or maintain a channel, dam, dike, causeway, sluiceway, embankment or other work serving to retain the waters of a lake, pond, river or stream unless the owner or operator of the work has transmitted beforehand to the Minister of the Environment the plans and specifications of the work as prepared by an engineer, as well as an attestation of the conformity of the work to the norms prescribed by government regulation. The attestation must also be signed by every professional or consultant who has participated in the preparation of the project, in the case where his contribution deals with a matter contemplated in the regulatory norms applicable to the project.

The owner or operator of any work contemplated in the first paragraph erected without obtaining the required government approval before the coming into force of this section may, instead of submitting to the formalities indicated in the first paragraph, elect to solicit the Minister’s approval for the work.

This section does not apply to any work for which plans and specifications must be submitted for government approval under other provisions of this Act, any work contemplated in Division VII, any work of a temporary nature contemplated in section 39 or any work less than three metres high by-passing the bed of a watercourse.

“72. If any work is constructed or maintained without complying with section 71 or if, after construction, it is not maintained in accordance with the plans and specifications transmitted to the Minister of the Environment, the norms prescribed by government regulation or the Minister’s approval, the demolition of the work and the restoration of the land to its original condition or to a condition approaching as nearly as possible thereto may be ordered by any competent court at the suit of the Attorney General, without prejudice to any other legal recourse.

“73. Notwithstanding the provisions of the second paragraph of section 72, in the case of any such work which has been constructed without complying with the formalities provided in section 71, or if the work has not been constructed or maintained in accordance with the plans and specifications transmitted to the Minister or with the norms prescribed by government regulation or with the Minister’s approval, the Government may authorize the Minister to open or close the dams, sluiceways or other apparatus to empty the water from the work, and to take the necessary measures to keep the apparatus open or closed, as the case may be, during the time prescribed by the Minister, so as to put an end to the flooding or the encroachment caused by such work.”

31. Section 74 of the said Act, amended by section 18 of chapter 49 of the statutes of 1972, is again amended by replacing the introductory lines by the following:

“74. The person who solicits the approval contemplated in the second paragraph of section 71 must file a petition with the Minister with a plan of the work and a memorandum showing:”.

32. Section 75 of the said Act is replaced by the following section:

“75. The Minister may approve, purely and simply, the plans submitted to him for approval under the second paragraph of section 71, or may approve them subject to the modifications and conditions he may deem useful or expedient, or he may refuse to approve them.”

33. Section 77 of the said Act is replaced by the following section:

“77. The Government may, by regulation published in the *Gazette officielle du Québec*, fix such tariffs of fees as it may consider fair respecting the approval solicited under the second paragraph of section 71.”

34. Section 79 of the said Act is replaced by the following section:

“79. Any person who constructs or maintains a work contemplated in section 71 without obtaining the Minister’s approval or transmitting to him the plans and specifications of the work as well as an attestation of the conformity of the work to the norms prescribed by government regulation, or who does not maintain the work in conformity with the plans and specifications transmitted to the Minister or with the prescribed norms applicable or with the Minister’s approval, is guilty of an offence and liable, upon summary prosecution, in addition to costs, to a fine of \$100 to \$1 000. The penalty may be repeatedly imposed until the offender has complied with his obligations.”

35. The said Act is amended by replacing the heading of Division XI by the following heading:

“FINAL PROVISIONS”.

36. The said Act is amended by adding, after section 85, the following sections:

“86. The Government may make regulations to establish norms respecting the erection and maintenance of works contemplated in sections 56 and 71.

“87. A regulation made under this Act comes into force on the date of its publication in the *Gazette officielle du Québec* or on any other date provided in the regulation.”

37. Section 7 of the Act respecting ecological reserves (R.S.Q., chapter R-26) is amended by adding, at the end, the following paragraphs:

“The Minister may also authorize a person to enter or circulate in an ecological reserve for inspection, supervision or conservation purposes.

An authorization issued by the Minister under this section may be accompanied with conditions intended to ensure the protection of the ecological reserve.

The Minister may, at all times, withdraw an authorization issued under this section where he considers it necessary in order to ensure the protection of the ecological reserve.”

38. Section 13 of the said Act is amended by adding the following paragraph:

“A person authorized under the third paragraph of section 7 may, in an ecological reserve, require that every person identify himself and show any authorization or permit required under this Act. The person authorized therefor may also seize every object with which a person commits an offence against this Act.”

39. The Act respecting the Ministère de l'environnement (R.S.Q., chapter M-15.2) is amended by inserting, after section 8, the following section:

“8.1 Notwithstanding section 2 of the Photographic Proof of Documents Act (R.S.Q., chapter P-22), the documents or copies of documents forming part of the records and archives of the department may be destroyed at all times after being reproduced. In the cases where they were reproduced before the coming into force of this section, they are deemed to have been validly reproduced even if they were so reproduced in the presence of only a single officer of the department.

The officer may make the declaration contemplated in section 3 of the Photographic Proof of Documents Act within six months of the date of the coming into force of this section.”

40. Section 1 of the Mining Act (R.S.Q., chapter M-13), amended by section 20 of chapter 49 and by section 20 of chapter 81 of the statutes of 1979, is again amended by replacing paragraph 38 by the following paragraph:

“(38) “Minister”: the Minister of Energy and Resources;”.

41. This Act replaces Division XIX of the Mining Act including sections 218 to 222.1.

42. Section 296 of the said Act, amended by section 293 of chapter 63 of the statutes of 1979, is again amended by replacing paragraph *j* by the following paragraph:

“(j) prescribe the conditions on which drilling licences may be issued under sections 139, 167, 191, 195, 201, 211 and 213, and the methods of drilling to be employed;”.

43. This Act comes into force on the date of its sanction, except sections 25 to 34 and section 39, which will come into force on dates to be determined by proclamation of the Government.