



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 72

**An Act to amend the Environment
Quality Act and other legislative
provisions with regard to land
protection and rehabilitation**

Introduction

**Introduced by
Mr André Boisclair
Minister of the Environment**

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EXPLANATORY NOTES

This bill replaces Division IV.2.1 of Chapter I of the Environment Quality Act. The purpose of the bill is to establish new rules to promote the protection of lands and their rehabilitation in the event of contamination.

The bill clarifies the conditions on which a person or municipality may be required to rehabilitate contaminated land and confers on the Minister of the Environment various powers to make orders including an order to require that a land characterization study be performed or that land be rehabilitated.

The bill recognizes that leaving contaminants in the land is a possible method of rehabilitation provided that certain environmental protection measures are taken. Publicity measures are prescribed to inform third persons of restrictions that apply to future use of the land.

The bill imposes certain obligations on enterprises in industrial or commercial sectors designated by regulation that apply when the enterprises permanently cease activities, for the purpose of identifying and remedying any contamination that may exist on the land on which the enterprises are established.

The bill subjects any change in the use of land that is contaminated as a result of certain industrial or commercial activities to the implementation of rehabilitation and publicity measures, including a public information meeting. Municipalities must draw up a list of contaminated lands situated in their territory and may not issue a building or subdivision permit unless a certificate of an expert states that the project is consistent with the provisions of the land rehabilitation plan.

The bill authorizes the Government to determine by regulation the cases where, the conditions on which and the time limits within which persons engaging in certain designated activities will be required to monitor groundwater quality at the hydraulic downstream of the land.

Lastly, the bill introduces new regulatory powers as regards the treatment, recovery, reclamation and elimination of contaminated soils.

LEGISLATION AMENDED BY THIS BILL :

- Act respecting land use planning and development (R.S.Q., chapter A-19.1);
- Environment Quality Act (R.S.Q., chapter Q-2).

Bill 72

AN ACT TO AMEND THE ENVIRONMENT QUALITY ACT AND OTHER LEGISLATIVE PROVISIONS WITH REGARD TO LAND PROTECTION AND REHABILITATION

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

- 1.** Section 19.7 of the Environment Quality Act (R.S.Q., chapter Q-2) is amended by inserting “, land rehabilitation plan” after “project” in the second line and by inserting “, a rehabilitation plan” after “authorization” in the fourth line.
- 2.** Division IV.2.1 of Chapter I of the said Act is replaced by the following division :

“DIVISION IV.2.1

“LAND PROTECTION AND REHABILITATION

“**31.42.** For the purposes of this division, “land” includes the groundwater and surface water present.

“§1. — *General powers of the Minister relating to land characterization and rehabilitation*

“**31.43.** Where it appears to the Minister that contaminants are present in the land in a concentration exceeding the limit values prescribed by a regulation made under section 31.69, or that the contaminants, even though they are not determined in the regulation, are likely to adversely affect the life, health, safety, welfare or comfort of human beings, other living species or the environment in general, or to be detrimental to property, the Minister may order any person or municipality that, even before the coming into force of this section,

— emitted, deposited, released or discharged all or part of the contaminants or allowed the contaminants to be emitted, deposited, released or discharged ; or

— has or has had custody of the land as owner or lessee or in any other capacity,

to submit for the Minister’s approval within the time specified a rehabilitation plan setting out the measures that will be implemented to protect human

beings, the other living species and the environment in general, including property, together with an implementation schedule.

Such an order may not be made against a person or municipality that has or has had custody of the land as owner or lessee or in any other capacity, where

(1) it is established that the person or municipality was unaware of and had no reason to suspect the presence of contaminants in the land, having regard to the circumstances, practices and duty of care;

(2) it is established that, once becoming aware of the presence of contaminants in the land, the person or municipality acted in conformity with the law, as to the custody of the land, in particular as regards the duty of care and diligence; or

(3) it is established that the presence of contaminants in the land results from outside migration from a source attributable to a third person.

“31.44. An order under section 31.43 must require a notice of contamination containing the information set out in section 31.58, with the necessary modifications, to be registered without delay in the land register.

The order must be notified to the owner of the land and to every hypothecary creditor whose right in the land is registered in the land register.

“31.45. The rehabilitation plan submitted under section 31.43 may provide that contaminants in a concentration exceeding the regulatory limit values are to be left in the land, on the condition, however, that a toxicological and ecotoxicological risk assessment and groundwater impact assessment be submitted with the plan.

In such case, the plan must contain a statement of the land use restrictions that will apply, in particular the resulting charges and obligations.

“31.46. Approval of the rehabilitation plan may be subject to conditions. Subject to the provisions of the second paragraph, the Minister may amend the rehabilitation plan or implementation schedule submitted, or order that a new plan or schedule be submitted within the time specified.

The Minister shall notify all documents submitted for the Minister’s approval to any land owner not subject to the order, with a notice indicating the time within which the owner may present observations. If the rehabilitation plan provides for land use restrictions, the Minister shall not approve it unless the owner has given consent in writing to the plan and the consent document accompanies the plan submitted for approval. Furthermore, an amendment made by the Minister to a rehabilitation plan may take effect only if the owner has consented in writing to the amendment.

“31.47. If the rehabilitation plan approved by the Minister provides for land use restrictions, the person or municipality having submitted the plan shall, as soon as possible following the approval, apply for registration in the land register of a notice containing, in addition to the description of the land,

(1) the name and address of the applicant for registration ;

(2) a description of the work or works required under the rehabilitation plan and a statement of the land use restrictions including the resulting charges and obligations ; and

(3) an indication of the place where the rehabilitation plan may be consulted.

In addition, the applicant must immediately transmit to the Minister and to the owner of the land a duplicate of the notice bearing a registration certificate or a copy of the notice certified by the land registrar. On receipt of the document, the Minister shall transmit a copy to the municipality in which the land is situated.

Registration of the notice renders the rehabilitation plan effective against third persons and any subsequent acquirer of the land is bound by the charges and obligations provided for in the rehabilitation plan as regards land use restrictions.

“31.48. As soon as the work or works made necessary by the implementation of a rehabilitation plan approved by the Minister have been completed, the person or municipality required to carry out the work or works shall transmit to the Minister a certificate of an expert referred to in section 31.65 stating that they were carried out in accordance with the plan.

“31.49. Where the Minister has reason to believe that contaminants referred to in section 31.43 may be present in land, the Minister may order any person or municipality that, in the Minister’s opinion, could be subject to an order under that section, to perform a characterization study on the conditions and within the time specified.

The Minister’s order must be notified to the owner of the land.

“31.50. An order under section 31.43 or 31.49 is without prejudice to civil remedies available to the person or municipality subject to the order for the total or partial recovery of the costs incurred to comply with the order or of any increase in the value of the land as a result of the rehabilitation.

“§2. — Special provisions relating to certain industrial or commercial activities

“31.51. A person who permanently ceases an industrial or commercial activity of a category designated by regulation of the Government is required to perform a characterization study of the land on which the activity was

carried on within six months of the cessation or within such additional time as the Minister may grant, subject to the conditions fixed by the Minister, with a view to the resumption of activity. Upon completion, the study must be transmitted to the Minister and to the owner of the land.

If the characterization study reveals the presence of contaminants in a concentration exceeding the regulatory limit values, the person who carried on the activity concerned is required to transmit for the Minister's approval, as soon as possible after being informed of the presence of the contaminants, a rehabilitation plan setting out the measures that will be implemented to protect human beings, the other living species and the environment in general, including property, together with an implementation schedule and, where applicable, a plan for the dismantling of the installations on the land.

The provisions of sections 31.45 to 31.48 apply in such a case, with the necessary modifications.

“31.52. A person who, as owner or lessee or in any other capacity, has the custody of land in which contaminants resulting from an industrial or commercial activity of a category designated by regulation of the Government are found in a concentration exceeding the regulatory limit values is required, on being informed of the presence of the contaminants at the limits of the land or of a serious risk of off-site contamination, to give immediate notice thereof in writing to the owner of the neighbouring land concerned. A copy of the notice must also be transmitted to the Minister.

“§3. — *Change in land use*

“31.53. Any person intending to change the use of land on the site of an industrial or commercial activity of a category designated by regulation of the Government is required to first perform a site characterization study unless such a study is already available and a certificate of an expert referred to in section 31.65 states that the study meets the requirements of the guide prepared by the Minister under section 31.66 and is still current.

The characterization study, once completed, and the certificate, if any, must be transmitted to the Minister and to the owner of the land unless the documents have previously been so transmitted.

The carrying on of an activity different from the activity previously carried on, whether it is a new industrial or commercial activity of a category designated by regulation of the Government or any other activity, in particular an industrial, commercial, institutional, agricultural or residential activity, constitutes a change in the use of the land within the meaning of this section.

“31.54. Any change in the use of land referred to in section 31.53 is subject to the Minister's approval of a rehabilitation plan if contaminants are present in the land in a concentration exceeding the regulatory limit values.

The rehabilitation plan must be transmitted to the Minister, together with an implementation schedule, and set out the measures that will be implemented to protect human beings, the other living species and the environment in general, including property. The plan must also indicate any measures intended to render the projected land use consistent with the condition of the land.

“31.55. The rehabilitation plan referred to in section 31.54 may provide that contaminants in a concentration exceeding the regulatory limit values are to be left in the land, on the condition, however, that a toxicological and ecotoxicological risk assessment and groundwater impact assessment be submitted with the plan.

In such a case, the person submitting the plan must inform the public by means of a notice published in a newspaper circulated in the municipality in which the land is situated and containing

- (1) a description of the land and the name and address of the owner ;
- (2) a summary of the land use change proposal, the characterization study, the toxicological and ecotoxicological risk assessment and groundwater impact assessment and the proposed rehabilitation plan ;
- (3) the date, time and place in the municipality where a public information meeting is to be held, which may not take place until five days have elapsed after publication of the notice ; and
- (4) a statement that the full text of each document referred to in subparagraph 2 may be examined at the office of the municipality.

A report of the observations made at the public meeting and a copy of the public notice published in the newspaper must accompany the rehabilitation plan submitted for approval.

“31.56. The provisions of sections 31.45 to 31.48 apply, with the necessary modifications, to the rehabilitation plan.

“§4. — Voluntary land rehabilitation

“31.57. Any person intending to rehabilitate all or any part of contaminated land on a voluntary basis without being required to do so under a provision of this division and to leave contaminants in the land in a concentration exceeding the regulatory limit values shall, before any work is undertaken, submit for the Minister’s approval a rehabilitation plan setting out the measures that will be implemented to protect human beings, the other living species and the environment in general, including property, together with an implementation schedule and a toxicological and ecotoxicological risk assessment and groundwater impact assessment. A characterization study must also be submitted with the rehabilitation plan.

The provisions of sections 31.45 to 31.48 apply in such a case, with the necessary modifications.

“§5. — *Contamination and decontamination notices*

“**31.58.** Where a characterization study performed pursuant to this Act reveals the presence in land of contaminants in a concentration exceeding the regulatory limit values, the person or municipality who had the study performed shall apply for registration in the land register of a notice of contamination on being informed of the presence of such contaminants.

The notice of contamination must contain, in addition to a description of the land,

(1) the name and address of the applicant for registration of the notice and of the owner of the land ;

(2) the name of the municipality in which the land is situated and the land use authorized by the zoning by-laws ; and

(3) a summary of the characterization study, certified by an expert referred to in section 31.65, stating among other things the nature of the contaminants present in the land.

In addition, the person or municipality must transmit to the Minister and to the owner of the land a duplicate of the notice bearing a registration certificate or a copy of the notice certified by the land registrar. On receipt of the document, the Minister shall transmit a copy to the municipality in which the land is situated.

“**31.59.** A person or municipality having registered a notice of contamination under section 31.58 or the owner of the land concerned may apply for registration in the land register of a notice of decontamination if decontamination work has been carried out and a subsequent characterization study has shown that no contaminants are present, or that contaminants are present in a concentration not exceeding the regulatory limit values.

The provisions of the second and third paragraphs of section 31.58 apply, with the necessary modifications, to the notice of decontamination. The notice must also mention any land use restrictions registered in the land register that have been rendered unnecessary as a result of the decontamination.

The characterization study mentioned in the first paragraph shall be made available to the Minister.

“§6. — *General provisions*

“**31.60.** The Minister may amend any rehabilitation plan approved pursuant to the provisions of this division on the request of the person or municipality required to implement the plan.

The request to amend the plan must be notified to any land owner not required to implement the plan, with a notice indicating the time within which the owner may present observations to the Minister. If the rehabilitation plan to be amended provides for land use restrictions, it may not be amended unless the owner has given consent in writing to the amendments and the consent document has been transmitted to the Minister with the request for amendment.

In addition, if an amendment to a rehabilitation plan is such that it modifies land use restrictions, the person or municipality requesting the amendment must immediately apply for registration of the amendment in the land register by means of a notice setting out the modifications. As of the registration of the notice, the amended rehabilitation plan is effective against third persons and any subsequent acquirer of the land is bound by the charges and obligations provided for in the rehabilitation plan as regards land use restrictions.

The provisions of the last paragraph of section 31.58 apply, with the necessary modifications, to the notice.

“31.61. The Minister may require any person or municipality required to transmit a characterization study, a toxicological and ecotoxicological risk assessment and groundwater impact assessment or a land rehabilitation plan to the Minister, or any person or municipality requesting an amendment to an approved rehabilitation plan, to furnish any additional information, document, study or expert evaluation the Minister considers necessary to determine the nature and extent of the contamination involved, the risk and impacts for the environment or for human beings, and the effectiveness of the rehabilitation or protection measures.

“31.62. If a person or municipality fails to perform a characterization study or furnish any additional information, document, study or expert evaluation required under this division, or fails to apply for registration in the land register, the Minister may take any measure necessary to remedy the default.

The same applies if a person or municipality fails to transmit or amend a land rehabilitation plan required under this division, or fails to carry out a land rehabilitation or decontamination plan as approved and according to the implementation schedule. In such a case, the Minister may take any measure the Minister considers appropriate to decontaminate the land or to ensure the plan is implemented.

The Minister may, in the same manner as for any debt due to the State, recover from the person or municipality in default the direct and indirect costs incurred by reason of measures taken pursuant to this section.

Every amount due to the State under this section is secured by a legal hypothec on the movable and immovable property of the person in default.

“31.63. The person who, as owner or lessee or in any other capacity, has the custody of the land shall give free access to the land at any reasonable time to any person required under this division to perform a characterization study or a toxicological and ecotoxicological risk assessment and groundwater impact assessment or to implement a rehabilitation plan, subject, however, to that person restoring the premises to their former state and compensating the owner or custodian of the land, as the case may be, for any damage.

“31.64. Work or works that are necessary to implement a land rehabilitation plan approved by the Minister under this division are exempt from the application of section 22.

“31.65. The Minister shall draw up and maintain a list of experts authorized to furnish the certificates required under this division and sections 120 and 121 of the Act respecting land use planning and development (chapter A-19.1). The list shall be made available to the public in the manner determined by the Minister.

The conditions to be met for entry on the list, including the fees payable, shall be determined by the Minister after consultation with groups or organizations which in the Minister’s opinion are comprised of persons having qualifications susceptible of satisfying those conditions. Once determined, the conditions must be published in the *Gazette officielle du Québec*.

“31.66. The Minister shall prepare a guide setting out the objectives and elements to consider in performing a site characterization study, in particular as regards the assessment of soil quality and the impacts that contaminants present in the land may have on the groundwater and surface water.

For that purpose, the Minister may consult any government department, group, body or person interested in the matter.

The guide shall be made available to the public in the manner determined by the Minister.

“31.67. Every site characterization study performed under this division must be certified by an expert referred to in section 31.65.

In certifying a study, the expert shall attest that the study was performed in accordance with the guide prepared by the Minister and the requirements, if any, fixed by the Minister pursuant to section 31.49.

“31.68. Every municipality shall, on the basis of the notices registered in the land register pursuant to sections 31.44, 31.47, 31.58 and 31.59, prepare and maintain a list of contaminated lands situated in its territory. The information contained in the list is public information.

The issue of building and subdivision permits by the municipality that concern land entered on the list is subject to the conditions set out in sections 120 and 121 of the Act respecting land use planning and development.

“§7. — *Regulatory powers*

“**31.69.** The Government may make regulations to

(1) prescribe the concentration limit values for the contaminants it determines, in excess of which those contaminants, when present in land, may give rise to implementation of the characterization, rehabilitation or publicity measures provided for in this division. The limit values may vary in particular on the basis of land use ;

(2) determine the categories of the industrial or commercial activities referred to in sections 31.51, 31.52 and 31.53 ;

(3) prescribe the cases where, the conditions on which and the time limits within which a person carrying on an industrial or commercial activity in a specified category will be required to monitor groundwater quality at the hydraulic downstream of the land and to transmit the results of the monitoring to the Minister ;

(4) fix the fees payable for the processing of the file of an applicant for an approval under this division or for an amendment to a rehabilitation plan, and the terms and conditions of payment ; and

(5) regulate, in all or part of the territory of Québec, the treatment, recovery, reclamation and elimination of contaminated soils not subject to the provisions of Division VII of this chapter and of any materials containing such soils. The regulations may, in particular,

(a) classify contaminated soils and materials containing contaminated soils into categories, in particular according to the origin, nature and concentration of the contaminants, and the facilities that treat, recover, reclaim or eliminate such soils and materials ;

(b) prescribe or prohibit, in respect of one or more categories of contaminated soils or materials containing contaminated soils, any mode of treatment, recovery, reclamation or elimination ;

(c) determine the conditions or prohibitions applicable to the establishment, operation and closure of any facility that treats, recovers, reclaims or eliminates contaminated soils or materials containing contaminated soils ;

(d) authorize the Minister to determine, for the classes of elimination facilities specified in the regulation, the parameters to be measured and the substances to be analysed according to the composition of the contaminated soils or materials containing contaminated soils received for elimination, and

prescribe the limit values to be respected for such parameters or substances. The values may be in addition to the values prescribed by regulation;

(e) prescribe the conditions or prohibitions applicable to facilities that eliminate contaminated soils or materials containing contaminated soils after they are closed, including the conditions or prohibitions relating to maintenance and supervision, prescribe the period of time during which the conditions or prohibitions are to apply, and determine who will be required to ensure that they are complied with; and

(f) require, as a condition for the operation of any facility that eliminates contaminated soils or materials containing contaminated soils, determined by the regulation, that financial guarantees be set up as provided in section 56 for residual materials elimination facilities, and that section shall then apply with the necessary modifications.”

3. Section 53.2 of the said Act is amended by replacing “paragraph *a* of section 31.52” by “paragraph 1 of section 31.69”.

4. Section 96 of the said Act is amended by striking out “other than the approval referred to in the third paragraph of section 31.44” and “notifies a notice under section 31.46,” in the second paragraph and by inserting “approves, with amendments, a rehabilitation plan submitted to the Minister under Division IV.2.1, refuses an amendment requested under section 31.60,” after “refuses to renew a permit,” in that paragraph.

5. Section 106.1 of the said Act is amended

(1) by striking out “, the fifth paragraph of section 31.42, the third paragraph of section 31.49 or the third paragraph of section 31.51” in the first paragraph;

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

“Every person commits an offence and is liable to the same penalties who

(a) fails to transmit to the Minister a rehabilitation plan required under section 31.51, 31.54 or 31.57 or an attestation required under section 31.48;

(b) fails to comply with a rehabilitation plan approved by the Minister under the provisions of Division IV.2.1;

(c) fails to perform a characterization study required under section 31.51 or 31.53;

(d) fails to apply for registration in the land register as required under the provisions of Division IV.2.1; or

(e) contravenes any provision of section 31.52 or 31.63.”

6. Section 107 of the said Act is amended

(1) by inserting “, expert evaluations” after “research findings” in the first paragraph and by striking out “furnish a document referred to in the first paragraph of section 31.49 or the first paragraph of section 31.51,” in that paragraph;

(2) by striking out the second paragraph.

7. Section 109 of the said Act is amended by striking out the second paragraph.

8. Section 118.1 of the said Act is amended by striking out “, 31.44, 31.46”.

9. Section 118.3.2 of the said Act is amended by replacing “31.42, 31.43” in paragraph 1 by “31.43, 31.49”.

10. Section 118.5 of the said Act is amended by replacing subparagraphs *m* and *n* of the first paragraph by the following subparagraphs :

“(m) all characterization studies, all toxicological and ecotoxicological risk assessments and groundwater impact assessments and all rehabilitation plans required under Division IV.2.1;

“(n) all attestations transmitted pursuant to section 31.48;”.

11. Section 126 of the said Act is amended by striking out the second paragraph.

12. Section 120 of the Act respecting land use planning and development (R.S.Q., chapter A-19.1) is amended by adding the following paragraph :

“In addition, where the land in respect of which the building permit application is made is entered on the list of contaminated lands drawn up by the municipality pursuant to section 31.68 of the Environment Quality Act (chapter Q-2) and is the subject of a rehabilitation plan approved by the Minister of the Environment under Division IV.2.1 of Chapter I of that Act, the permit shall be issued only if the application is accompanied with the attestation of an expert referred to in section 31.65 of that Act establishing that the project for which the permit application is made is consistent with the provisions of the rehabilitation plan.”

13. Section 121 of the said Act is amended by adding the following paragraph :

“In addition, where the land in respect of which the subdivision permit application is made is entered on the list of contaminated lands drawn up by the municipality pursuant to section 31.68 of the Environment Quality Act

(chapter Q-2) and is the subject of a rehabilitation plan approved by the Minister of the Environment under Division IV.2.1 of Chapter I of that Act, the permit shall be issued only if the application is accompanied with the attestation of an expert referred to in section 31.65 of that Act establishing that the proposed operation for which the permit application is made is consistent with the provisions of the rehabilitation plan.”

14. Section 227 of the said Act is amended

(1) by adding the following subparagraph at the end of the first paragraph :

“(3) a use of land or a structure inconsistent with the provisions of a land rehabilitation plan approved by the Minister of the Environment under Division IV.2.1 of Chapter I of the Environment Quality Act (chapter Q-2).”;

(2) by adding the following paragraph after the second paragraph :

“It may also order, at the expense of the owner, the carrying out of the works required to bring the use of the land or the structure into conformity with the provisions of the land rehabilitation plan referred to in subparagraph 3 of the first paragraph, or if there is no other useful remedy, the demolition of the structure or the restoration of the land.”

15. Section 227.1 of the said Act is amended by adding “, or where the use of land or a structure is inconsistent with the provisions of a land rehabilitation plan approved under Division IV.2.1 of Chapter I of the Environment Quality Act (chapter Q-2)” at the end.

16. Section 228 of the said Act is amended by replacing “or an agreement made under section 145.21” in the fourth line of the first paragraph by “, an agreement made under section 145.21 or a land rehabilitation plan approved by the Minister of the Environment under Division IV.2.1 of Chapter I of the Environment Quality Act (chapter Q-2)”.

17. An owner of contaminated land who, before the coming into force of this Act, entered into an agreement with the Minister of the Environment to provide for the rehabilitation of the land must, where the agreement provides for land use restrictions, apply as soon as possible following the coming into force of this Act for registration in the land register of the notice required under section 31.47 of the Environment Quality Act, which applies with the necessary modifications.

The agreement shall be considered, for the purposes of the new Division IV.2.1 of Chapter I of the Environment Quality Act, to be a rehabilitation plan approved by the Minister of the Environment.

18. Until the list of experts referred to in section 31.65 of the Environment Quality Act has been made public, the attestations required by the provisions of Division IV.2.1 of Chapter I of that Act and sections 120 and 121 of the Act

respecting land use planning and development shall be issued by the public servants in the Ministère de l'Environnement designated by the Minister of the Environment.

19. The provisions of this Act come into force on the date or dates to be fixed by the Government.