



---

---

# NATIONAL ASSEMBLY

---

---

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 89

**An Act to amend the Environment  
Quality Act in order to reinforce  
compliance**

---

---

**Introduction**

**Introduced by  
Madam Line Beauchamp  
Minister of Sustainable Development, Environment  
and Parks**

---

**Québec Official Publisher  
2010**

## **EXPLANATORY NOTES**

*The purpose of this bill is to reinforce compliance with the Environment Quality Act, in particular by introducing administrative sanctions and by increasing penal sanctions.*

*More specifically, the bill provides for administrative penalties to be imposed on persons and municipalities that contravene the Act or the regulations, subject to the right of those parties to contest before the Administrative Tribunal of Québec.*

*The penalties that may be imposed by the court on persons and municipalities convicted of an offence have been increased, and certain aggravating factors have been defined which the judge must take into account in imposing such penalties. The judge may also issue various types of orders to be carried out by the offender.*

*Certain other penal provisions are reinforced, in particular by making the directors and officers of legal persons, partnerships and associations more accountable, and by increasing prescription periods.*

*The Minister of Sustainable Development, Environment and Parks is given the power to order work or activities to be stopped if they cause serious harm or damage, or create a risk of serious harm or damage, to human health or the environment. In addition, the Government or the Minister is given the power, under certain conditions, to deny, suspend or revoke any authorization, certificate or permit they issue.*

*The bill provides that public registers must be kept to record information on administrative penalties imposed and on offences committed. It also specifies the powers of inspection and investigation provided for in the Act.*

## **LEGISLATION AMENDED BY THIS BILL:**

- Act respecting administrative justice (R.S.Q., chapter J-3);
- Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs (R.S.Q., chapter M-30.001);

- Water Resources Preservation Act (R.S.Q., chapter P-18.1);
- Environment Quality Act (R.S.Q., chapter Q-2);
- Act to affirm the collective nature of water resources and provide for increased water resource protection (2009, chapter 21).

**REGULATION AMENDED BY THIS BILL:**

- Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere (Order of the Minister of Sustainable Development, Environment and Parks, 2007, G.O. 2, 2833).



## **Bill 89**

### **AN ACT TO AMEND THE ENVIRONMENT QUALITY ACT IN ORDER TO REINFORCE COMPLIANCE**

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

**1.** Section 27.1 of the Environment Quality Act (R.S.Q., chapter Q-2) is amended by striking out “already in operation,” in the first paragraph.

**2.** Section 31 of the Act is amended by replacing “or 115.1” in subparagraph *n* of the first paragraph by “, 115.0.1 or 115.1”.

**3.** Section 31.62 of the Act is amended

(1) by striking out “, in the same manner as for any debt due to the State,” in the third paragraph;

(2) by striking out the last paragraph.

**4.** Section 44 of the Act is repealed.

**5.** Section 70.3 of the Act is amended by inserting “a notice of” after “publish” in the second paragraph.

**6.** Section 70.12 of the Act is amended by inserting “or renewal” after “issue”.

**7.** Section 70.15 of the Act is amended

(1) by replacing “or revoke” in the portion before subparagraph 1 of the first paragraph by “, revoke or refuse to renew”;

(2) by replacing “or revoke” in the second paragraph by “, revoke or refuse to renew”.

**8.** Section 96 of the Act is amended

(1) by striking out “, 114, 114.1” after “61” in the first paragraph;

(2) by inserting “, suspends” after “to grant” in the second paragraph;

(3) by inserting “, an attestation” after “permission” in the second paragraph;

(4) by adding the following paragraph after the third paragraph:

“Despite the second paragraph, a decision rendered by the Minister under paragraph 1 of section 115.6 may not be contested before the Administrative Tribunal of Québec.”

**9.** The Act is amended by inserting the following section after section 96:

**“96.1.** A review decision rendered by a person designated by the Minister which confirms the imposition of an administrative penalty under this Act or the regulations may be contested by the person or municipality concerned before the Administrative Tribunal of Québec. However, sections 98.1 and 98.2 do not apply to such recourse.”

**10.** Section 97 of the Act is replaced by the following section:

**“97.** The Minister and the person designated by the Minister shall, on making a decision under section 96 or 96.1, notify the decision to the person or municipality concerned and inform them of their right to contest the decision before the Administrative Tribunal of Québec.”

**11.** Section 99 of the Act is amended by adding the following paragraph:

“Despite the first paragraph, a proceeding instituted under section 96.1 suspends execution of the decision, subject to interest accruing.”

**12.** The Act is amended by replacing the heading between sections 105 and 106 of the Act by the following:

**“DIVISION XIII**

**“ADMINISTRATIVE MEASURES**

**“§1. — *Miscellaneous measures*”.**

**13.** Sections 106 to 112.0.1 of the Act are repealed.

**14.** Section 113 of the Act is replaced by the following section:

**“113.** When someone refuses or neglects to do something ordered under this Act, the Minister may cause the thing to be done at the expense of the offender and may recover the costs from the offender, including interest and other charges.”

**15.** Section 114 of the Act is replaced by the following section:

“**114.** If work is done or constructions or works are erected in contravention of this Act or the regulations or of an order, approval, authorization, permission, attestation, certificate or permit, the Minister may order

(1) the demolition of the work, constructions or works;

(2) the restoration of the site to the state it was in before the work began or the constructions or works were erected or to a state approaching its original state;

(3) the implementation of compensatory measures.”

**16.** Section 114.2 of the Act is repealed.

**17.** Section 114.3 of the Act is amended by striking out “, in the same manner as any debt owing to the Government may be claimed,” in the first paragraph.

**18.** Section 115 of the Act is amended

(1) by inserting “ or the regulations” after “this Act”;

(2) by replacing “put the things in the condition they were in before the cause of the offence occurred” by “restore things to the state they were in prior to the offending act, restore things to a state approaching their original state or implement compensatory measures” at the end.

**19.** Section 115.0.1 of the Act is amended by striking out “, in the same manner as any debt owing to the Government may be claimed,” in the fourth paragraph.

**20.** Section 115.1 of the Act is amended

(1) by striking out “, in the same manner as any debt owing to the Government,” in the third paragraph;

(2) by replacing “joint and several” in the third paragraph by “solidary”.

**21.** The Act is amended by inserting the following after section 115.1:

“**115.2.** If a person or municipality is doing work, erecting constructions or works or carrying on activities in contravention of this Act or the regulations or an order, approval, authorization, permission, attestation, certificate or permit, the Minister may order that such operations cease or be limited to the extent determined by the Minister for a maximum period of 30 days, if the Minister believes that they cause serious harm or damage, or

create a risk of serious harm or damage, to human health or the environment, including vegetation and wildlife.

The Minister may also, on that occasion, order the person or municipality concerned to take, within the time period determined by the Minister, the measures required to prevent or reduce the harm or damage or risk of harm or damage.

The Minister may delegate the power to order given the Minister under this section. An order made by the delegatee is deemed to be an order of the Minister for the purposes of this Act or the regulations.

**“115.3.** The Minister may extend for a maximum period of 60 days an order made under section 115.2 if the Minister believes that the reasons that gave rise to the order remain valid.

**“115.4.** An order made under section 115.2 or 115.3 must include reasons. It takes effect on the date of notification to the offender or on any later date specified in the order. A copy of the order is sent to the clerk of the municipality on whose territory the work, constructions, works or activities concerned are located.

**“115.5.** The Government or the Minister may amend, suspend or revoke an authorization certificate issued by them or in their name if

(1) the certificate was issued on the basis of erroneous or fraudulent information;

(2) the holder of the certificate does not comply with its provisions or uses it for purposes other than those provided for under this Act or the regulations;

(3) the holder of the certificate does not comply with this Act or the regulations;

(4) the holder of the certificate fails to pay the fees prescribed by an order made under section 31.0.1; or

(5) the holder of the certificate does not make use of it within one year from the date it was issued.

Subparagraph 5 of the first paragraph does not apply to the holder of an authorization certificate for a project of a class that is subject to a regulation made under subparagraph *k* of the first paragraph of section 31.

**“115.6.** The Government or the Minister may refuse to issue an authorization certificate, or may suspend or revoke an authorization certificate issued by them or in their name, if the applicant or holder or, in the case of a legal person, one of its directors or officers

(1) was convicted of an offence under this Act or the regulations within the previous two years or, in the case of an offence under section 115.31, within the previous five years;

(2) has failed to comply with an order made under this Act;

(3) has defaulted on payment of a fine or administrative penalty imposed under this Act or the regulations;

(4) has failed to reimburse the Minister for direct and indirect costs, including interest, incurred by the latter in exercising powers under this Act or the regulations;

(5) is not dealing at arm's length, within the meaning of the Taxation Act (chapter I-3), with a person who carries on a similar activity but whose authorization certificate has been suspended, revoked or denied or is the subject of an injunction or order to that effect, unless it is proven that the activity of the holder or applicant does not constitute a continuation of the activity of that person.

**“115.7.** In accordance with section 4 of the Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs (chapter M-30.001), the Deputy Minister of that department may exercise the power given the Minister under section 115.6 with respect to an authorization certificate issued by the latter or in the latter's name. The resulting decisions are deemed to have been made by the Minister for the purposes of this Act or the regulations.

**“115.8.** Sections 115.5 to 115.7 apply, with the necessary modifications, to all authorizations, approvals, permissions, attestations, certificates and permits granted under this Act or the regulations. They also apply in the cases provided for in section 32.8, without, however, restricting the application of that section.

**“115.9.** Before making a decision under section 115.5 or 115.6, the Government shall allow the applicant or holder at least 10 days to submit observations in writing.

Before making a decision under section 115.5 or 115.6, the Minister shall notify the applicant or holder in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the applicant or holder at least 10 days to submit observations.

Despite this section, the Government or the Minister may, where urgent action is required or there is a danger of irreparable harm or damage being caused, make a decision without being bound by such prior obligations. In such cases, the applicant or holder may, within the time specified, submit observations for the decision to be reviewed.

“§2. — *Administrative penalties*

“**115.10.** A person designated by the Minister for that purpose may impose an administrative penalty if the person ascertains that a person or municipality has failed to comply with the provisions or obligations referred to in sections 115.28 to 115.31 of this Act. The amount of the administrative penalty

(1) for failing to comply with a provision or obligation referred to in section 115.28 is \$250 for a natural person and \$1,000 for a legal person;

(2) for failing to comply with a provision or obligation referred to in section 115.29 is \$500 for a natural person and \$2,500 for a legal person;

(3) for failing to comply with a provision or obligation referred to in section 115.30 is \$1,000 for a natural person and \$5,000 for a legal person;

(4) for failing to comply with a provision or obligation referred to in section 115.31 is \$2,000 for a natural person and \$10,000 for a legal person.

“**115.11.** The Government and the Minister may provide that a failure to comply with a provision of a regulation made for the purposes of this Act may result in an administrative penalty being imposed by the person designated by the Minister. Such a regulation may also give the calculation methods to be used to determine the amount of the administrative penalty, which may vary according to the degree to which standards have been infringed.

The amount of such an administrative penalty may not exceed the maximum amounts set out in paragraph 4 of section 115.10, subject to the monetary penalties determined under paragraph 2 of section 46.15.

“**115.12.** If a failure to comply for which an administrative penalty is imposed continues for more than one day, it constitutes a failure for each day it continues.

“**115.13.** The administrative penalty imposed on a person or municipality may be in addition to any penal proceedings instituted against the person or municipality because of a contravention of the same provision and on the basis of the same facts, unless the person or municipality was convicted of the offence before notification of the administrative penalty.

“**115.14.** The imposition of an administrative penalty is prescribed by two years as of the date of the failure to comply.

However, if false representations have been made to the Minister, or to a functionary, employee or other person referred to in section 119, 120 or 120.1, or if a failure to comply relates to hazardous materials or to section 20, the administrative penalty may be imposed within two years after the date on which the inspection or investigation that led to the discovery of the failure

to comply was begun. In the absence of evidence to the contrary, the certificate of the Minister, inspector or investigator constitutes conclusive proof of the date on which the inspection or investigation was begun.

**“115.15.** The person designated by the Minister imposes an administrative penalty on a person or municipality by notification of a notice stating the amount of the administrative penalty, the reasons it was imposed, and the right of the party concerned to have the matter reviewed by the Minister and, subsequently, to contest the matter before the Administrative Tribunal of Québec. The notice must also include information on the procedure for recovery of the amount owing, in particular with regard to the issue of a recovery certificate under section 115.22 and its effects. The person or municipality concerned must also be informed that the facts which gave rise to the administrative penalty may also result in penal proceedings.

The amount owing bears interest at the rate determined by government regulation, from the 30th day after notification of the notice.

Prescription is interrupted as of the date of notification of the notice.

**“115.16.** The person or municipality concerned may apply for a review of the decision, in writing, within 30 days after notification of the notice.

**“115.17.** The Minister designates the persons responsible for reviewing decisions with regard to administrative penalties.

**“115.18.** A person or municipality that has applied for a review must have an opportunity to submit observations and any documents to complete the file.

**“115.19.** The application for review must be dealt with promptly.

**“115.20.** The review decision must be written in clear and concise terms, with reasons given, must be notified to the applicant and must state that the applicant may contest the decision before the Administrative Tribunal of Québec.

**“115.21.** The Minister may enter into an agreement with the person or municipality for payment of the amount owing as an administrative penalty. Such an agreement, or the payment of an amount owing, does not constitute, for the purpose of penal proceedings, a recognition of the facts giving rise to it.

**“115.22.** If the administrative penalty is not paid or the agreement entered into for payment of the administrative penalty is not adhered to, the Minister may issue a recovery certificate at the expiry of the time for applying for a review of the decision, at the expiry of the time for contesting the review decision before the Administrative Tribunal of Québec or at the expiry of 30 days after the decision of the Tribunal confirming all or part of the Minister’s decision, as applicable.

However, a recovery certificate may be issued before the expiry of a period referred to in the first paragraph if the Minister believes that the debtor is attempting to evade payment.

The certificate states the debtor's name and address and the amount of the debt.

**“115.23.** Once a recovery certificate had been issued, any refund owed to a debtor by the Minister of Revenue may, in accordance with section 31 of the Act respecting the Ministère du Revenu (chapter M-31), be withheld for payment of the amount due shown on the certificate.

The withholding of a refund under the first paragraph interrupts prescription.

**“115.24.** Upon the filing of the recovery certificate at the office of the competent court, together with a copy of the final decision stating the amount of the debt, the decision becomes enforceable as if it were a final judgment of that court not subject to appeal, and has all the effects of such a judgment.

**“115.25.** The debtor is required to pay a recovery charge in the cases, under the conditions and in the amount determined by government regulation.

**“115.26.** The Minister may, by agreement, delegate to another department or body all or some of the powers relating to the recovery of administrative penalties owing to the Minister under this Act or the regulations.

**“115.27.** The Minister keeps a register of information concerning the administrative penalties imposed on persons or municipalities under this Act or the regulations.

The register must contain the following information:

- (1) the date the administrative penalty was imposed;
- (2) the nature of the failure for which the administrative penalty was imposed, and the date and place it occurred;
- (3) if the offender is a legal person or a municipality, its name and the address of its principal establishment;
- (4) if the offender is a natural person, the person's name, the name of the municipality in which the person resides and, if the failure to comply occurred in the course of business activities, the name of the business and the address of its principal establishment;
- (5) if the offender is a director or officer of a legal person, a partnership or an association without legal personality, the director's or officer's name, the name of the organization and the address of its principal establishment;

(6) the amount of the administrative penalty;

(7) any information concerning a proceeding before the Administrative Tribunal of Québec or an application for judicial review, and the status of the proceeding or application;

(8) any other information the Minister considers to be of public interest.

The information contained in the register is public information. However, it may not be made public until the expiry of the time for applying for a review, the expiry of the time for contesting the review decision before the Administrative Tribunal of Québec, or the expiry of 30 days after the decision of the Tribunal confirming all or part of the review decision, as applicable.

## “DIVISION XIII.1

### “PENAL PROVISIONS

#### “115.28. Whoever

(1) contravenes subparagraph 4, 5 or 6 of the first paragraph of section 31.23, the second paragraph of section 31.24 or 31.55, section 31.84, 50, 51, 52, 53.31, 64.3, 64.11, 64.13, 68.1, 70.5, 70.6, 70.7, 95.3 or 116.3,

(2) removes, defaces or allows to be defaced a notice posted by order of a functionary, employee or other person referred to in section 119, 120 or 120.1,

(3) refuses or neglects to give a notice or furnish information, studies, research findings, expert evaluations, reports, plans or any other documents required under this Act or the regulations, in cases where no other penalties are provided for by this Act or the regulations,

commits an offence and is liable to a fine of \$1,000 to \$100,000 in the case of a natural person and \$3,000 to \$600,000 in the case of a legal person.

#### “115.29. Whoever

(1) contravenes section 23, subparagraph 1, 1.1, 2 or 8 of the first paragraph of section 31.23, the first paragraph of section 31.31, paragraph 1 of section 31.38, section 31.47, 31.48 or 31.58, the third paragraph of section 31.60, section 31.63 or 31.68, the first paragraph of section 31.83, section 32.9 or 39, subparagraph 1 or 2 of the first paragraph of section 46.2, section 46.10, 53.29, 53.31.1, 53.31.12, 56, 57 or 64.10, the first or third paragraph of section 70.18, or section 95.2,

(2) fails to comply with a condition imposed under section 31.5 or 31.6, the third paragraph of section 31.15.1 or section 31.15.2, section 31.15.3 or 31.79, subparagraph 1 of the first paragraph of section 31.86, the second paragraph of section 65, the first paragraph of section 70.8, the second paragraph of section 164, section 167, the first paragraph of section 201, or section 203,

(3) fails to comply with a rehabilitation plan approved by the Minister under Division IV.2.1,

(4) fails to comply with a condition, restriction or prohibition imposed by the Minister under section 70.12,

(5) fails to comply with a depollution program approved by the Minister under section 116.2,

(6) hinders a functionary, employee or other person referred to in section 119, 120 or 120.1 in the performance of the duties of office, or misleads such a person by concealment or false declarations, or fails to obey an order such a person is authorized to give under this Act or the regulations,

(7) fails to supply financial assurance or to apply for registration in the land register as required under this Act or the regulations,

(8) fails to comply with any other condition, restriction or prohibition relating to an approval, authorization, permission, certificate, attestation or permit granted under this Act or the regulations, in particular when carrying out a project or during the construction, use or operation of works,

commits an offence and is liable to a fine of \$2,500 to \$250,000 in the case of a natural person and \$7,500 to \$1,500,000 in the case of a legal person.

**“115.30.** Whoever

(1) contravenes section 22, 31.1 or 31.2, the first paragraph of section 31.16, section 31.25, the first paragraph of section 31.28, section 31.40, 31.51 or 31.51.1, the first paragraph of section 31.53, 31.54 or 31.57, the second paragraph of section 31.83, section 32, 32.1, 32.2, 32.7, 33, 41 or 43, the first paragraph of section 46.6, section 48 or 55, the first paragraph of section 65, section 66, the first paragraph of section 70.8, section 70.9, the second paragraph of section 70.18, section 95.1, 154 or 189,

(2) files or signs a false declaration of environmental conformity,

(3) does something without first obtaining any other approval, authorization, permission, attestation, certificate or permit required under this Act or the regulations,

(4) knowingly makes a false or misleading declaration in order to obtain an approval, authorization, permission, attestation, certificate or permit required under this Act or the regulations,

(5) makes water withdrawals without the authorization of the Government or the Minister, as applicable, in contravention of Division IV.1 or section 31.75,

commits an offence and is liable, in the case of a natural person, to a fine of \$5,000 to \$500,000 or, despite article 231 of the Code of Penal Procedure (chapter C-25.1), to a maximum term of imprisonment of 18 months, or to both the fine and imprisonment, and, in the case of a legal person, to a fine of \$15,000 to \$3,000,000.

**“115.31.** Whoever

(1) contravenes section 20, 21 or 31.11, subparagraph 3 of the first paragraph of section 31.23, section 31.30, 31.52, 45, 45.1, 83 or 91,

(2) makes a withdrawal of water in contravention of a decision under subparagraph 2 of the first paragraph of section 31.86,

(3) contravenes the prohibition against transferring water prescribed by section 31.90 or 31.105,

(4) continues a project for which a denial of conformity was notified under section 95.4,

(5) refuses or neglects to comply with an order imposed under this Act, or in any manner hinders or prevents the enforcement of such an order,

(6) pursues an activity or operation when the approval, authorization, permission, attestation, certificate or permit required under this Act or the regulations has been denied, suspended or revoked,

commits an offence and is liable, in the case of a natural person, to a fine of \$7,000 to \$1,000,000 or, despite article 231 of the Code of Penal Procedure, to a maximum term of imprisonment of three years, or to both the fine and imprisonment, and, in the case of a legal person, to a fine of \$21,000 to \$6,000,000.

**“115.32.** The maximum penalties prescribed in section 115.31 apply to an offence described in sections 115.28 to 115.30 if the harm or damage caused by the offence to human health or the environment, including vegetation and wildlife, is sufficiently serious to justify heavier penalties.

**“115.33.** Despite sections 115.28 to 115.31, the Government or, as applicable, the Minister, may determine the regulatory provisions made under this Act whose contravention constitutes an offence and renders the offender liable to a fine the minimum and maximum amounts of which are set by the Government or the Minister. The Government may provide that, despite article 231 of the Code of Penal Procedure, a contravention renders the offender liable to the fine, a term of imprisonment, or both the fine and imprisonment.

The maximum penalties under the first paragraph may not exceed those prescribed in section 115.31. Those penalties may vary to the degree to which standards have been infringed.

**“115.34.** The fines prescribed in sections 115.28 to 115.31 or the regulations are doubled for a second offence and tripled for a subsequent offence. The maximum term of imprisonment is five years less a day for a second or subsequent offence.

If an offender commits an offence under this Act or the regulations after having been previously convicted of any such offence and if, without regard to the amounts prescribed for a second or subsequent offence, the minimum fine to which the offender was liable for the first offence was equal to or greater than the minimum fine prescribed for the second offence, the minimum and maximum fines and, if applicable, the minimum and maximum terms of imprisonment prescribed for the second offence become, if the prosecutor so requests, those prescribed for in the case of a second or subsequent offence.

This section applies to persons whose prior conviction was pronounced in the two-year period preceding the second offence or, if the minimum fine to which the offender was liable for the first offence is that prescribed in section 115.31, in the five-year period preceding the second offence.

**“115.35.** If an offence under this Act or the regulations is committed by a director or an officer of a legal person, partnership or association without legal personality, the minimum and maximum fines that would apply in the case of a natural person are doubled.

**“115.36.** If an offence under this Act or the regulations continues for more than one day, it constitutes a separate offence for each day it continues.

A person who continues, day after day, to use a structure or industrial process, to operate an industry, to carry on an activity or to produce goods or services without holding the authorization certificate required under section 22, 31.1, 32 or 48 is also guilty of a separate offence for each day.

**“115.37.** Whoever does or omits to do something in order to assist a person or municipality to commit an offence under this Act or the regulations, or advises or encourages or incites a person or municipality to commit such an offence, is considered to have committed the same offence.

**“115.38.** In any penal proceedings relating to an offence under this Act or the regulations, proof that the offence was committed by an agent, mandatary or employee of any party is sufficient to establish that it was committed by that party, unless the party establishes that the offence was committed without its knowledge or consent and despite the measures taken to prevent it.

**“115.39.** If a legal person or an agent, mandatary or employee of a legal person, partnership or association without legal personality commits an offence under this Act or the regulations, its director or officer is presumed to have committed the offence unless it is established that the offence was committed without the director’s or officer’s knowledge or consent and despite the measures taken to prevent it.

**“115.40.** In determining the penalty, the judge may take into account aggravating factors such as

(1) the seriousness of the harm or damage, or of the risk of harm or damage, to human health or the environment, including vegetation and wildlife;

(2) the particular nature of the environment affected as, for example, whether the aspect affected is unique, rare, significant or vulnerable;

(3) the intentional, negligent or reckless nature of the offence;

(4) the foreseeable character of the offence or the failure to follow recommendations or warnings to prevent it;

(5) the cost to society of repairing the harm or damage;

(6) the toxic or dangerous nature of the substances resulting in the offence;

(7) the behaviour of the offender after committing the offence, as, for example, whether the offender attempted to cover up the offence or omitted to take rapid measures to prevent or limit the damage or remedy the situation;

(8) the increase in revenues or decrease in expenses that the offender obtained, or intended to obtain, by committing the offence or by omitting to take measures to prevent it;

(9) the failure to take reasonable measures to prevent the commission of the offence or limit its effects despite the offender’s financial ability to do so, given such considerations as the size of the offender’s undertaking and the offender’s assets, turnover and revenues.

A judge who, despite the presence of an aggravating factor, decides to impose the minimum fine must give reasons for the decision.

**“115.41.** On an application made by the prosecutor and submitted with the statement of offence, the judge may impose on the offender, in addition to any other penalty, a further fine equal to the financial gain realized by the offender as a result of the offence, even if the maximum fine has also been imposed.

**“115.42.** In the judgment, the judge may order an offender convicted under this Act or the regulations

(1) to refrain from any action or activity that may lead to the continuation or repetition of the offence;

(2) to carry out any action or activity to prevent the offence from being continued or repeated;

(3) to establish a pollution prevention plan or an environmental emergency plan, submit the plan to the Minister for approval within the time period the Minister determines, and abide by the approved plan;

(4) to carry out follow-up studies on the environmental impact of the activities carried on by the offender or to pay a sum of money to a person or body designated by the judge to carry out such studies;

(5) to take one or more of the following measures, set out in order of priority, within the time period set by the judge:

(a) to restore things to the state they were in prior to the offending act;

(b) to restore things to a state approaching their original state;

(c) to implement compensatory measures;

(d) to pay compensation, in a lump sum or otherwise, for repair of the damage resulting from the commission of the offence;

(e) to pay, as compensation for the damage resulting from the commission of the offence, a sum of money to the Green Fund established under section 15.1 of the Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs (chapter M-30.001);

(6) to provide security or consign a sum of money to guarantee performance of those obligations.

Moreover, if the Minister, in carrying out this Act or the regulations, has taken restoration or compensatory measures in the place and stead of the offender, the judge may order the offender to reimburse the Minister for the direct and indirect costs of such measures, including interest.

**“115.43.** The prosecutor must give the offender prior notice of an application for restoration or for compensatory measures, or of any request for an indemnity, a sum of money to be paid to the Green Fund or a reimbursement of costs to the Minister, unless the parties are in the presence of a judge.

**“115.44.** When determining a fine higher than the minimum fine prescribed in this Act or the regulations, or when determining the time within which an amount must be paid, the judge may take into account the offender's ability to pay, provided the offender furnishes proof of assets and liabilities.

**“115.45.** Penal proceedings for offences under this Act or the regulations are prescribed by the longer of

- (1) five years from the date the offence was committed;
- (2) two years from the date on which the inspection or investigation that led to the discovery of the offence was begun if
  - (a) false representations were made to the Minister, or to a functionary, employee or other person referred to in section 119, 120 or 120.1;
  - (b) the offence relates to hazardous materials;
  - (c) the case involves an offence under section 20.

In the cases referred to in subparagraph 2 of the first paragraph, the certificate of the Minister, inspector or investigator constitutes, in the absence of evidence to the contrary, conclusive proof of the date on which the inspection or investigation was begun.

**“115.46.** A municipality may institute penal proceedings with regard to offences committed on its territory in contravention of a regulatory provision that was made under this Act and that the municipality is in charge of carrying out. If applicable, such proceedings may be instituted before the competent municipal court.

The fines collected as a result of such proceedings belong to the municipality.

The costs relating to proceedings instituted before a municipal court belong to the municipality under the jurisdiction of that court, except the part of the costs remitted to another prosecuting party by the collector under article 345.2 of the Code of Penal Procedure (chapter C-25.1), and the costs remitted to the defendant or imposed on the municipality under article 223 of that Code.

**“115.47.** The Minister or, as applicable, the municipality, keeps a register of information on convictions for offences under this Act or the regulations. This register must contain, for each conviction,

- (1) the date of conviction;
- (2) the nature of the offence, and the date and place it was committed;
- (3) if the offender is a legal person, its name and the address of its principal establishment;

(4) if the offender is a natural person, the person's name, the name of the municipality in which the person resides and, if the offence was committed in the course of business activities, the name of the business and the address of its principal establishment;

(5) if the offender is a director or officer of a legal person, partnership or association without a legal personality, the director's or officer's name, the name of the organization and the address of its principal establishment;

(6) the penalty and any other measure imposed by the judge;

(7) any information with regard to an appeal of the conviction and the status of such an appeal;

(8) any other information the Minister considers to be of public interest.

The information contained in the register is public information.

#### **“DIVISION XIV**

#### **“GENERAL PROVISIONS**

**“115.48.** If a legal person has defaulted on payment of an amount owed to the Minister as an administrative penalty or as a reimbursement of direct or indirect costs, including interest, incurred by the Minister in exercising powers under this Act or the regulations, the Minister may claim the amount from the legal person's directors or officers.

The directors and officers are solidarily liable if

(1) they authorized or encouraged the legal person to refuse or neglect to comply with this Act, the regulations, an injunction, an order or the conditions of an approval, authorization, permission, attestation, certificate or permit, or ordered or advised the legal person's refusing or neglecting such compliance;

(2) they tolerated the legal person's refusing or neglecting such compliance.

**“115.49.** The reimbursement of an amount owed to the Minister as an administrative penalty or for direct or indirect costs, including interest, incurred by the Minister in exercising powers under this Act or the regulations is secured by a legal hypothec on the debtor's movable and immovable property.

That debt also constitutes a prior claim on the debtor's movable and immovable property, of the same nature and with the same rank as the claims referred to in paragraph 4 of article 2651 of the Civil Code.

The Minister may also claim the security or the sum consigned by the offender to guarantee performance of an obligation, as ordered by the court.”

**22.** Section 116.1.1 of the Act is amended

(1) by replacing “this section” in the second paragraph by “the first paragraph”;

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

“Expenses incurred by the Minister to determine the nature of the work required to restore things to their original state or to a state approaching their original state, or to implement compensatory measures shall also be included in the cost of proceedings.”

**23.** The heading between sections 116.4 and 117 of the Act is repealed.

**24.** Section 118.1 of the Act is amended by replacing “or 97” by “, 97 or 115.15”.

**25.** Section 118.5 of the Act is amended by replacing “The Minister” in the portion before subparagraph 1 of the first paragraph by “In addition to the registers prescribed under sections 115.27 and 115.47, the Minister”.

**26.** Section 119 of the Act is amended

(1) by replacing everything after “a boat” in the first paragraph by “to consult books, registers and records or examine premises for the purposes of carrying out this Act or the regulations.”;

(2) by inserting the following paragraphs after the first paragraph:

“A person who has the care, possession or control of such books, registers or records must make them available to the functionary and facilitate their examination.

The functionary may also, on that occasion,

(1) collect samples;

(2) evacuate any premises or cause any premises to be evacuated;

(3) install measuring apparatus;

(4) conduct tests and take measurements;

(5) make analyses;

(6) record the state of a place or natural environment by means of photographs, videos or other sound or visual recording methods;

(7) examine, record or copy a document or data, on any medium whatsoever; or

(8) require that something be set in action, used or started, under the conditions specified by the functionary.”;

(3) by replacing “the first paragraph” in the last paragraph by “this section”.

**27.** Section 119.1 of the Act is amended

(1) by replacing the portion of the first paragraph after “any place” by “to perform an act described in section 119.”;

(2) by replacing subparagraph 2 of the third paragraph by the following subparagraph:

“(2) the reasons why performance of the act that is the subject of the application will provide evidence of the commission of the offence;”;

(3) by replacing subparagraph 4 of the third paragraph by the following subparagraph:

“(4) the time needed to perform the act that is the subject of the application;”;

(4) by replacing subparagraph 5 of the third paragraph by the following subparagraph:

“(5) the period when the act that is the subject of the application is to be performed.”;

(5) by replacing the fourth paragraph by the following paragraph:

“The judge may grant the authorization on the terms and conditions the judge determines if satisfied, on the strength of the declaration, that performance of the act that is the subject of the application will provide evidence of the commission of the offence. The judge who grants the authorization may order any person to lend assistance if it may reasonably be necessary for performance of the authorized act.”;

(6) by replacing “exercise the powers conferred under the first two paragraphs if the time involved in obtaining a warrant, taking into account the exigent circumstances” in the portion of the fifth paragraph before subparagraph 1 by “, without authorization, perform an act referred to in the first paragraph if, given the urgency of the situation, the conditions to be met and the time needed to obtain authorization”.

**28.** Section 120.6.1 of the Act is amended by replacing “a charge has been laid under this Act” by “penal proceedings have been instituted under this Act or the regulations”.

**29.** The Act is amended by inserting the following section after section 121:

“**121.1.** A functionary, employee or other person who exercises the duties described in section 119, 120 or 120.1 may not be prosecuted for acts performed in good faith in the performance of those duties.”

**30.** Section 122.1 of the Act is repealed.

**31.** Section 122.2 of the Act is amended

(1) by inserting “, suspend” after “amend”;

(2) by adding the following paragraph:

“This section applies, with the necessary modifications, to any authorization, approval, permission, attestation, certificate or permit granted under this Act or the regulations. It also applies in the cases provided for in section 32.8, without, however, restricting the application of that section.”

**32.** Section 122.3 of the Act is repealed.

**33.** Section 122.4 of the Act is repealed.

**34.** Section 123 of the Act is renumbered “121.2”.

**35.** Section 123.1 of the Act is amended by striking out the second paragraph.

**36.** The heading between sections 126.1 and 127 of the Act is repealed.

**37.** Sections 127 to 129 of the Act are repealed.

**38.** Section 129.2 of the Act is repealed.

#### AMENDING PROVISIONS

##### ACT RESPECTING ADMINISTRATIVE JUSTICE

**39.** Schedule III to the Act respecting administrative justice (R.S.Q., chapter J-3), amended by section 31 of chapter 21 of the statutes of 2009, is again amended by replacing “and 96” by “, 96 or 96.1” in paragraph 3.

##### ACT RESPECTING THE MINISTÈRE DU DÉVELOPPEMENT DURABLE, DE L'ENVIRONNEMENT ET DES PARCS

**40.** Section 15.4 of the Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs (R.S.Q., chapter M-30.001) is amended by inserting the following paragraph after paragraph 5:

“(5.1) the administrative penalties imposed under subdivision 2 of Division XIII of Chapter I of the Environment Quality Act;”.

#### WATER RESOURCES PRESERVATION ACT

**41.** Section 4 of the Water Resources Preservation Act (R.S.Q., chapter P-18.1) is amended

(1) by replacing “106.1” in the first paragraph by “115.30”;

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

“Sections 113, 114, 114.3, 115, 115.2 to 115.4, 115.34 to 115.49 and 116.1.1 of the Act apply.”

#### ACT TO AFFIRM THE COLLECTIVE NATURE OF WATER RESOURCES AND PROVIDE FOR INCREASED WATER RESOURCE PROTECTION

**42.** Section 35 of the Act to affirm the collective nature of water resources and provide for increased water resource protection (2009, chapter 21) is amended by replacing “109.1” in the second paragraph by “115.33”.

**43.** Section 36 of the Act is amended by replacing “106.1” by “115.30”.

**44.** Section 37 of the Act is amended by replacing the portion before “of the Environment Quality Act” by “Sections 113, 114, 114.3, 115, 115.2 to 115.4, 115.34 to 115.49 and 116.1.1”.

#### REGULATION RESPECTING MANDATORY REPORTING OF CERTAIN EMISSIONS OF CONTAMINANTS INTO THE ATMOSPHERE

**45.** Division III of the Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere (Order of the Minister of Sustainable Development, Environment and Parks, 2007, G.O. 2, 2833) may not be invalidated on the ground that it was enacted by the Minister rather than the Government.

Accordingly, penal proceedings instituted after (*insert the date of coming into force of this section*) with regard to an event that occurred after that date may not be terminated or dismissed on that ground.

**46.** Section 8 of the Regulation is amended by replacing the portion before paragraph 1 by the following:

**“8.** Whoever fails to communicate to the Minister data, information, notices and documents prescribed by this Regulation, communicates false or inaccurate information, fails to use the calculation methods prescribed by this regulation or fails to retain the data, information and documents for the period prescribed is liable”.

#### TRANSITIONAL AND FINAL PROVISIONS

**47.** Section 115.45 of the Environment Quality Act (R.S.Q., chapter Q-2), enacted by section 21, applies to an offence committed before (*insert the date of coming into force of that section 115.45*), taking into account the time that has elapsed at that date.

**48.** The penalties prescribed in section 115.31 of the Environment Quality Act, enacted by section 21, apply to those who refuse or neglect to comply with an order issued under the Water Board Act (Revised Statutes, 1964, chapter 183), the Public Health Act (Revised Statutes, 1964, chapter 161) or the Water Purification Board Act (Revised Statutes, 1941, chapter 44A) concerning any matter covered by the Environment Quality Act. Such orders remain in force, even those issued by the Water Purification Board that have not been approved by the Government, unless they have since been repealed or amended by another order under the Environment Quality Act.

**49.** In any other Act, regulation or document, a reference to any of sections 106 to 112.0.1 of the Environment Quality Act is a reference to the section as it existed prior to (*insert the date of coming into force of section 13*).

**50.** The Government or the Minister, as applicable, must, no later than 30 June 2012, revise the penal provisions of the regulations adopted for the purposes of the Environment Quality Act before (*insert the date that is 30 days after the date of assent to this Act*) in order to harmonize them with those enacted by this Act.

**51.** This Act comes into force on (*insert the date that is 30 days after the date of assent to this Act*), except sections 9 and 11, sections 115.10 to 115.27, enacted by section 21, which come into force on 1 January 2011, and sections 42 to 44, which come into force on the date or dates to be set by the Government.













