



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 88

**An Act to amend the Environment Quality
Act as regards residual materials management
and to amend the Regulation respecting
compensation for municipal services provided
to recover and reclaim residual materials**

Introduction

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

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EXPLANATORY NOTES

This bill makes various amendments to the Environment Quality Act as regards residual materials management. It better defines the concept of reclamation and enables the Government to determine what residual material treatment operations constitute reclamation. An order of precedence is established in the treatment of residual materials and reduction at source is given priority. The Minister of Sustainable Development, Environment and Parks is given the power to delegate various responsibilities to Recyc-Québec as regards the reclamation of residual materials.

The current compensation regime is modified as regards the recovery and reclamation services provided by the municipalities. More particularly, the bill amends the Environment Quality Act and the Regulation respecting compensation for municipal services provided to recover and reclaim residual materials, in order to define the calculation method and the performance and efficiency criteria used to determine the annual compensation owed to municipalities by the persons who produce, market or otherwise distribute materials subject to compensation. The amount of the compensation is to be divided among the materials or classes of materials, according to the share allotted to each by the Government. Recyc-Québec is to have the responsibility of determining the annual amount of the compensation on the basis of the information the municipalities will be required to send to that organization.

The bill provides for an annual increase of the percentage of the compensation owed to municipalities until full compensation of the admissible cost has been reached in 2015.

Furthermore, the bill determines how the annual compensation is to be paid and distributed to municipalities, including interest and penalties in the case of non-payment, and sets out the conditions under which payment of the compensation for a given material or class of materials may be made in whole or in part through a contribution in goods or services. The bill also provides for the determination of the indemnity payable to Recyc-Québec for its management costs and other expenses incidental to the compensation regime.

Lastly, the bill includes transitional measures applicable to the determination, payment and distribution of the compensation owed to municipalities for the year 2010.

LEGISLATION AMENDED BY THIS BILL:

- Environment Quality Act (R.S.Q., chapter Q-2).

REGULATION AMENDED BY THIS BILL:

- Regulation respecting compensation for municipal services provided to recover and reclaim residual materials (Order in Council 1049-2004 (2004, G.O. 2, 3153)).

Bill 88

AN ACT TO AMEND THE ENVIRONMENT QUALITY ACT AS REGARDS RESIDUAL MATERIALS MANAGEMENT AND TO AMEND THE REGULATION RESPECTING COMPENSATION FOR MUNICIPAL SERVICES PROVIDED TO RECOVER AND RECLAIM RESIDUAL MATERIALS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ENVIRONMENT QUALITY ACT

1. Section 53.1 of the Environment Quality Act (R.S.Q., chapter Q-2) is amended by replacing “composting” in the definition of “reclamation” by “biological treatment, including composting and biomethanation, land farming”.

2. Section 53.2 of the Act is amended by inserting “except those contained in another residual material or produced by the treatment of such a material,” after “gaseous substances,”.

3. The Act is amended by inserting the following section after section 53.4:

“53.4.1. The policy described in section 53.4 and any plan or program prepared by the Minister in the area of residual materials management must give priority to reduction at source and respect the following order of precedence in the treatment of the materials:

- (1) re-use;
- (2) recycling, including through biological treatment or land farming;
- (3) any other reclamation operation through which residual materials are processed for use as raw material substitutes;
- (4) energy conversion; and
- (5) elimination.”

4. Section 53.30 of the Act is amended

(1) by inserting the following subparagraph after subparagraph 1 of the first paragraph:

“(1.1) determine the operations involved in the processing of residual materials that constitute reclamation within the meaning of this division, and particularly under which conditions thermal destruction of residual materials constitutes energy conversion;”;

(2) by replacing “composting” in subparagraph 4 of the first paragraph by “biological treatment”;

(3) by inserting the following subparagraph after subparagraph *b* of subparagraph 6 of the first paragraph:

“(b.1) to obtain from the Minister, on the conditions fixed, a certificate attesting to the conformity of every program or measure described in subparagraph *b* with the applicable regulatory prescriptions;”;

(4) by inserting the following paragraph after the first paragraph:

“The Minister may delegate to the Société québécoise de récupération et de recyclage various responsibilities relating to the administration of any regulatory provision made under subparagraph 6 of the first paragraph. If the delegation concerns the issuing of a certificate described in subparagraph *b.1* of that subparagraph, the fees fixed under section 31.0.1 for obtaining such certificates are payable to the Société.”

5. Sections 53.31.3 to 53.31.6 of the Act are replaced by the following sections:

“53.31.3. The annual compensation owed to the municipalities is based on the cost of the services they provide during a year to deal with the materials or classes of materials subject to compensation, that is the collection, transportation, sorting and conditioning costs, including an indemnity for the management of those services.

The Société québécoise de récupération et de recyclage shall determine annually the amount of the compensation, by calculating for each municipality, in accordance with the calculation method and the performance and effectiveness criteria determined by regulation of the Government, the costs of the services provided that are eligible for compensation and the management indemnity to which the municipality is entitled, and by aggregating all the costs and fees calculated for the municipalities.

“53.31.4. For the purposes of section 53.31.3, the Government shall prescribe by regulation the information and documents the municipalities are required to send to the Société québécoise de récupération et de recyclage not later than 30 April each year, and the manner in which they must be sent.

The regulation must also specify the data the Société may use to calculate the amount mentioned in the second paragraph of that section should a municipality fail to send information or a document under the conditions and within the time prescribed, and the penalties applicable in such a case.

“53.31.5. The amount of the annual compensation owed to the municipalities under section 53.31.3 is divided among the materials or classes of materials subject to compensation, according to the share allotted to each by order of the Government.

However, the Government may, by regulation and for every material or class of materials it specifies,

- (1) set the maximum amount of the annual compensation payable; and
- (2) limit the amount of the annual compensation payable to a percentage it sets.

“53.31.6. After obtaining the opinion of the Société québécoise de récupération et de recyclage, the Government may review the share of the annual compensation owed to the municipalities that is attributed to one or more materials or classes of materials.

The opinion of the Société must take into account the data the Société collects on the nature, quantity and destination of the residual materials produced in Québec, and on the costs related to their recovery and reclamation. The Société must also consult the certified bodies established under sections 53.31.9 to 53.31.11 and the Union des municipalités du Québec, the Fédération québécoise des municipalités locales et régionales (FQM) or any other body it considers appropriate.”

6. Sections 53.31.7 and 53.31.8 of the Act are repealed.

7. Section 53.31.12 of the Act is amended

- (1) by inserting the following paragraph after the first paragraph:

“It shall also remit to the Société, in addition to the compensation owed to the municipalities, the amount payable to the Société under section 53.31.18.”;

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

“The Government may, by regulation, determine how the amounts identified in the first and second paragraphs are to be paid, including any interest or penalties due in case of non-payment. The Société and the certified body may make arrangements regarding payment, subject to the applicable regulatory prescriptions.”;

- (3) by replacing “provide that” in the third paragraph by “determine the conditions on which”;

- (4) by inserting “Québec-wide, regional and local” after “must enable the” in the fourth paragraph;

- (5) by striking out the last paragraph.

8. Section 53.31.13 of the Act is replaced by the following section:

“53.31.13. A certified body may collect from its members and from persons who, without being members, carry on activities similar to those carried on by the members where the designated materials or classes of materials are concerned, the contributions necessary to remit the full amount of compensation, including any interest or other applicable penalties, and to indemnify the body for its management costs and other expenses incidental to the compensation regime.

The certified body may similarly collect the amount payable to the Société québécoise de récupération et de recyclage under section 53.31.18.”

9. Section 53.31.14 of the Act is amended

(1) by adding the following sentence at the end of the first paragraph: “The schedule may cover a maximum of three years.”;

(2) by striking out “, which must take into account payments through a contribution in goods or services made in accordance with section 53.31.12” in the third paragraph;

(3) by inserting the following paragraph after the third paragraph:

“Subject to the applicable regulatory prescriptions and following consultations with the Union des municipalités du Québec, the Fédération québécoise des municipalités locales et régionales (FQM) or any other body the Société québécoise de récupération et de recyclage considers appropriate, the schedule of contributions must also state how payment may be made through contributions in goods or services.”;

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

“The schedule of contributions must be submitted to the Government, which may approve it with or without modification.”

10. Section 53.31.15 of the Act is replaced by the following section:

“53.31.15. A certified body must send to the Société québécoise de récupération et de recyclage its proposal for a schedule of contributions, together with a report on the consultations prescribed under section 53.31.14

(1) within the time set by the Government in the regulation designating the material or class of materials subject to compensation, if it is the first time a schedule is proposed; or

(2) not later than 31 December of the year in which the schedule in force expires, in all other cases.

The Société must give the Government an opinion on the proposed schedule.

If a certified body fails to send its proposed schedule and the consultation report within the time prescribed, the Société must submit to the Government, within 45 days after the deadline, a proposed schedule for the contributions payable for the current year. The proposed schedule is approved by the Government, with or without modification.

The approved schedule of contributions must be published in the *Gazette officielle du Québec*.”

11. Section 53.31.16 of the Act is amended by replacing “as a compensatory contribution to the municipalities bears interest at the rate fixed under” in the first paragraph by “as a contribution toward the compensation payable to municipalities and the indemnity payable to the Société québécoise de récupération et de recyclage under section 53.31.18 bears interest at the rate fixed under the first paragraph of”.

12. Sections 53.31.17 and 53.31.18 of the Act are replaced by the following sections:

“53.31.17. The Société québécoise de récupération et de recyclage shall distribute to the municipalities the amount of the compensation paid by a certified body, in accordance with the distribution and payment rules determined by regulation of the Government.

“53.31.18. The Government shall determine by regulation the amount payable to the Société québécoise de récupération et de recyclage to indemnify the Société for its management costs and other expenses related to the current compensation regime, including expenses for information, awareness and educational activities and for development activities related to the reclamation of the designated materials or classes of materials.

That amount may not exceed 5% of the annual compensation owed to the municipalities.”

REGULATION RESPECTING COMPENSATION FOR MUNICIPAL SERVICES PROVIDED TO RECOVER AND RECLAIM RESIDUAL MATERIALS

13. Section 1 of the Regulation respecting compensation for municipal services provided to recover and reclaim residual materials, enacted by Order in Council 1049-2004 (2004, G.O. 2, 3153), is amended

(1) by adding “and determines the calculation method and the performance and efficiency criteria used to determine the annual compensation” after “compensation regime applies” at the end of the second paragraph;

(2) by replacing “the maximum compensatory contribution limits” in the last paragraph by “the indemnity payable to the Société québécoise de récupération et de recyclage by the persons to whom the compensation regime applies,”.

14. Section 2 of the Regulation is amended

(1) by striking out the second paragraph of paragraph 1;

(2) by replacing “are also” in the third paragraph of paragraph 1 by “, however, are”;

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

“(2) newspapers: this class includes paper and other cellulosic fibres used as a medium for written current affairs periodicals published on newsprint, including daily newspapers and weekly publications.

This class also includes containers and packaging used to deliver newspapers directly to the ultimate consumer or recipient;”;

(4) by replacing “written media” in the first paragraph of paragraph 3 by “newspapers”.

15. The heading of subdivision 2 of Division III of the Regulation is amended by replacing “Written media” by “Newspapers”.

16. Section 6 of the Regulation is amended

(1) by replacing “written media” in the first paragraph by “newspapers”;

(2) by replacing “written media” in the second paragraph by “newspaper”.

17. Division IV of the Regulation is replaced by the following divisions:

“DIVISION IV

**“CALCULATION METHOD, PAYMENT AND DISTRIBUTION OF
COMPENSATION**

“§1. — Calculation of costs eligible for compensation and of management indemnity

“7. The calculation of the cost of the services provided by a municipality that is eligible for compensation must be based on the net cost of the services provided during the year preceding the year for which the compensation is owed. That cost corresponds to the expenses incurred by the municipality during that year to collect, transport, sort and condition the materials or classes of materials subject to compensation, after deducting any income, rebate or other gain related to the materials and received by the municipality.

“8. For the purpose of calculating the cost of the services they provide that is eligible for compensation, the municipalities are divided into six groups:

(1) municipalities of fewer than 3,000 inhabitants, situated less than 100 km from the cities of Montréal or Québec;

(2) municipalities of 3,000 to 25,000 inhabitants, situated less than 100 km from the cities of Montréal or Québec;

(3) municipalities of more than 25,000 inhabitants, situated less than 100 km from the cities of Montréal or Québec, including those two cities;

(4) municipalities of fewer than 3,000 inhabitants, situated 100 km or more from the cities of Montréal or Québec;

(5) municipalities of 3,000 to 25,000 inhabitants, situated 100 km or more from the cities of Montréal or Québec; and

(6) municipalities of more than 25,000 inhabitants, situated 100 km or more from the cities of Montréal or Québec.

“8.1. The Société québécoise de récupération et de recyclage determines, for each municipality, the cost of the services that is eligible for compensation by comparing the performance and efficiency of a municipality with the performance and efficiency of the other municipalities of the same group, using the factors established under sections 8.2 and 8.3.

“8.2. The performance and efficiency factor for each municipality is determined by applying the following formula:

$$PE = \frac{(\text{cost/tonnes})}{(\text{kg/inhab.})}$$

“PE” is the performance and efficiency factor of the municipality for the year concerned;

“cost” is the net cost declared by the municipality for the services it provided during the year;

“tonnes” is the quantity, in metric tonnes, of materials subject to compensation that was recovered or reclaimed during the year, as declared by the municipality;

“kg” is the quantity, in kilograms, of materials subject to compensation that was recovered or reclaimed during the year, as declared by the municipality; and

“inhab.” is the number of inhabitants in the municipality, as determined in the Order in Council made under section 29 of the Act respecting municipal territorial organization (R.S.Q., c. O-9).

“8.3. The performance and efficiency factor for each group of municipalities constituted under section 8 is determined by carrying out the following operations in the following order:

(1) once the performance and efficiency factor for each municipality in a group has been determined under section 8.2, the two subsets formed by the factors situated, respectively, in the lowest 12.5% and the highest 12.5% are excluded, and the arithmetic mean of the factors remaining between those two subsets is then calculated;

(2) the standard deviation is calculated, that is, the mean difference between the remaining factors mentioned in paragraph 1 and the arithmetic mean established under that paragraph; and

(3) the results obtained in paragraphs 1 and 2 are added together.

“8.4. If the performance and efficiency factor determined for a municipality is equal to or lower than that established for the group of municipalities to which it belongs, the cost of the services provided by the municipality that is eligible for compensation corresponds to the net cost declared by the municipality under section 8.6.

If the performance and efficiency factor determined for a municipality is higher than that of the group of municipalities to which it belongs, the cost of the services provided by the municipality that is eligible for compensation corresponds to the amount obtained by applying the following formula:

$$EC = [PE_G \times (kg/inhab.)] \times tonnes$$

“EC” is the cost of the services provided by the municipality that is eligible for compensation;

“PE_G” is the performance and efficiency factor determined for the group of municipalities to which the municipality belongs;

“kg” is the quantity, in kilograms, of materials subject to compensation that was recovered or reclaimed during the year, as declared by the municipality;

“inhab.” is the number of inhabitants in the municipality, as determined in the Order in Council made under section 29 of the Act respecting municipal territorial organization; and

“tonnes” is the quantity, in metric tonnes, of materials subject to compensation that was recovered or reclaimed during the year, as declared by the municipality.

However, for the years 2010 and 2011, the cost of the services provided by a municipality that is eligible for compensation may in no case be lower than 70% of the net cost declared by the municipality under section 8.6.

“8.5. To indemnify the municipalities for the management costs related to the services they provide for the recovery and reclamation of materials or classes of materials subject to compensation, an amount equivalent to 6.55% of the eligible cost determined under section 8.4 must be added to that cost to determine the annual compensation owed to each municipality.

“8.6. Every municipality is required to send to the Société québécoise de récupération et de recyclage, not later than 30 April each year, a declaration stating, for the year preceding the year for which the compensation is owed, the quantity of materials subject to compensation that was recovered or reclaimed in its territory and the net cost of the services it provided for the collection, transportation, sorting and conditioning of those materials.

The declaration must be signed by the municipality’s external auditor, who must certify that the information it contains is accurate.

“8.7. If a municipality fails to send to the Société québécoise de récupération et de recyclage a document or information as and within the time prescribed in section 8.6, the cost of the services provided by the municipality that is eligible for compensation is calculated using the formula given in the second paragraph of section 8.4, and 50% of the amount obtained is deducted as a penalty.

For the purposes of the calculation mentioned in the first paragraph, the Société may estimate the quantity of materials subject to compensation that is recovered or reclaimed in the territory of the municipality in default, on the basis of the most recent data it has on other municipalities in the same group.

“§2. — Limitation on the annual compensation owed to the municipalities

“8.8. For each of the years listed below, the annual compensation payable for the services provided by the municipalities may not exceed the amount corresponding to the percentage given below of the compensation owed to them under this division:

- (1) for the year 2010: 70%;
- (2) for the years 2011 and 2012: 80%; and
- (3) for the years 2013 and 2014: 90%.

“8.9. The amount of the annual compensation owed to the municipalities that is allotted to the newspapers class may not exceed,

- (1) for the year 2010: \$2,660,000;
- (2) for the years 2011 and 2012: \$3,040,000;

(3) for the years 2013 and 2014: \$3,420,000; and

(4) for subsequent years: \$3,800,000.

“§3. — *Terms of payment and failure to pay*

“8.10. A certified body must pay to the Société québécoise de récupération et de recyclage, not later than 31 October each year, an amount equivalent to at least 80% of the annual compensation owed to the municipalities for the year concerned.

Furthermore, the balance of the compensation must be paid to the Société not later than 31 December of the same year.

“8.11. Any sum not yet paid to the Société québécoise de récupération et de recyclage by a certified body as of the expiry dates set out in section 8.10 bears interest at the rate determined under the first paragraph of section 28 of the Act respecting the Ministère du Revenu (R.S.Q., c. M-31).

“8.12. The share of the annual compensation owed to the municipalities that is allotted to the newspapers class may be paid, in whole or in part, through a contribution in goods or services, provided the certified body proposed a schedule of contributions to the Société québécoise de récupération et de recyclage, in accordance with sections 53.31.14 and 53.31.15 of the Environment Quality Act, determining the contributions payable and the manner in which payment may be made.

The schedule referred to in the first paragraph must specify how the environmental information, awareness and education messages provided for in the fifth paragraph of section 53.31.12 of that Act are to be disseminated on a Québec-wide, regional and local basis, and determine the sanctions and other penalties applicable in the event of non-compliance with that section.

The certified body must report to the Société on the implementation of the provisions of the schedule determining a contribution in goods or services within 30 days following the end of each calendar year covered by the schedule.

“§4. — *Distribution of compensation to the municipalities*

“8.13. The Société québécoise de récupération et de recyclage must distribute the compensation owed to the municipalities not later than 30 days after it receives from the certified body, for a material or class of materials subject to compensation, the last payment on the total amount owed for the year concerned.

The Société must distribute to the municipalities any interest or penalties collected.

“DIVISION IV.1

“INDEMNITY PAYABLE TO SOCIÉTÉ QUÉBÉCOISE DE RÉCUPÉRATION ET DE RECYCLAGE

“**8.14.** The amount payable annually to the Société québécoise de récupération et de recyclage to indemnify it for its management costs and other expenses mentioned in section 53.31.18 of the Environment Quality Act is equal to the amount corresponding to the percentage given below of the annual compensation owed to the municipalities under this division:

- (1) for the year 2010: 4.29%;
- (2) for the years 2011 and 2012: 3.75%;
- (3) for the years 2013 and 2014: 3.33%; and
- (4) for subsequent years: 3%.

The indemnity provided for in the first paragraph must be paid to the Société by the certified body not later than 31 December of each year. Any sum not yet paid as of that date bears interest at the rate specified in section 8.11.”

TRANSITIONAL AND FINAL PROVISIONS

18. For the years 2008 and 2009, the determination, payment and distribution of the compensation owed to the municipalities, and the determination of the percentage to which the Société québécoise de récupération et de recyclage is entitled under section 53.31.18 of the Environment Quality Act (R.S.Q., chapter Q-2), continue to be governed by that Act and the Regulation respecting compensation for municipal services provided to recover and reclaim residual materials, enacted by Order in Council 1049-2004 (2004, G.O. 2, 3153), as they read before (*insert the date of assent to this Act*).

19. For the year 2010, this Act applies, subject to the following:

(1) for the purpose of determining the amount of compensation owed to the municipalities for that year, the declaration under the new section 8.6 of the Regulation respecting compensation for municipal services provided to recover and reclaim residual materials must be sent to the Société québécoise de récupération et de recyclage by every municipality on or before (*insert the date that occurs 90 days after the date of assent to this Act*). In the event of non-compliance, section 8.7 of that Regulation applies, with the necessary modifications;

(2) the annual compensation owed to the municipalities for the year 2010 is distributed among the materials or classes of materials subject to compensation in the following proportions:

- (a) 60% for containers and packaging;
- (b) 30% for printed matter; and
- (c) 10% for newspapers;

(3) for the purpose of determining the contributions a certified body may collect from the persons mentioned in section 53.31.13 of the Environment Quality Act for the year 2010, the certified body must send a proposed schedule and the consultation report provided for in section 53.31.15 of that Act, to the Société québécoise de récupération et de recyclage on or before (*insert the date that occurs 90 days after the date of assent to this Act*). If the certified body fails to send the documents within the time prescribed, the Société must submit to the Government, for approval, a proposed schedule covering that year within 30 days after the expiry of that time;

(4) the certified body must pay to the Société québécoise de récupération et de recyclage, within five months after the date of publication in the *Gazette officielle du Québec* of the schedule determining the contributions payable for the year 2010 and approved by the Government under section 53.31.14 or 53.31.15 of the Environment Quality Act, an amount equivalent to at least 80% of the annual compensation due to the municipalities for that year. Furthermore, the balance of the compensation and the amount payable to indemnify the Société for its management costs and other expenses mentioned in section 53.31.18 of that Act must be paid to the Société not later than the end of the seventh month after the publication of the schedule; and

(5) the certified body must send the proposed schedule under which the share of the annual compensation owed to the municipalities for the year 2010 that is allotted to the newspapers class may be paid in whole or in part through a contribution in goods or services to the Société québécoise de récupération et de recyclage, together with the consultation report provided for in section 53.31.15 of the Environment Quality Act, on or before (*insert the date that occurs 90 days after the date of assent to this Act*). The certified body is required to report to the Société on the implementation of the schedule within 12 months after its publication in the *Gazette officielle du Québec*.

20. For the purpose of determining the contributions a certified body may collect for the year 2011 from the persons mentioned in section 53.31.13 of the Environment Quality Act, the proposed schedule and consultation report provided for in section 53.31.15 of that Act must be sent by the certified body to the Société québécoise de récupération et de recyclage on or before 31 December 2010. Failing that, the third paragraph of section 53.31.15 applies.

21. This Act comes into force on (*insert the date of assent to this Act*).