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# NATIONAL ASSEMBLY

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FIRST SESSION

THIRTY-SIXTH LEGISLATURE

Bill 156

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

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**Introduction**

**Introduced by  
Mr Paul Bégin  
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 specifies who may be required to rehabilitate contaminated land. It confers on the Minister of the Environment the power to make various orders, in particular to require a land characterization study be performed or land rehabilitation plan be implemented.*

*The bill recognizes that land rehabilitation is possible when contaminants are to remain in the land if certain remedial measures conducive to protecting the environment are taken. Registration requirements are prescribed to inform third persons of restrictions that apply to future land use.*

*The bill imposes certain obligations on enterprises beginning or ceasing to carry on industrial or commercial activities designated by regulation for the purpose of identifying and remedying possible contamination of the land on which the enterprises are established.*

*The bill subjects any change in the use of contaminated land to the implementation of rehabilitation measures and to certain publicity requirements, including the holding of a public consultation. Municipalities must draw up a list of contaminated lands situated in their territory, and no building or subdivision permit may be issued unless an attestation is obtained stating the project is compatible with the state of the land.*

*Lastly, the bill reinforces the regulatory powers of the Government to ensure better control of the 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)

## Bill 156

### 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. The Environment Quality Act (R.S.Q., chapter Q-2), amended by chapters 36, 40, 43, 75 and 76 of the statutes of 1999 and by chapter 34 of the statutes of 2000, is again amended by replacing Division IV.2.1 of Chapter I by the following :

#### “DIVISION IV.2.1

#### “LAND PROTECTION AND REHABILITATION

“31.42. For the purposes of this division,

“**characterization study**” must include an assessment of the risk and impacts for the environment and for human beings in particular ;

“**land**” means the soil of which the land is made up and includes the ground water and surface water present.

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

“31.43. A person or municipality is an interested party within the meaning of this subdivision if the person or municipality at any time, even before the coming into force of this subdivision,

(1) emitted, deposited, released or discharged contaminants referred to in section 31.44, or allowed such contaminants to be emitted, deposited, released or discharged ; or

(2) has or has had ownership, custody or control of such contaminants.

“31.44. Where it appears to the Minister that contaminants are present in the land and that the contaminants exceed the concentration values prescribed by a regulation made under section 31.67, or that the contaminants, even if they do not exceed those values or 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 interested party to transmit to the Minister for approval, within the time specified, a rehabilitation plan for the land setting out the measures the interested party intends to take to remedy the situation, along with an implementation schedule. All documents or information taken into consideration by the Minister must accompany the Minister's order.

In addition, in the case of contaminants that exceed the concentration values, the order must require that a notice of contamination containing the information listed in section 31.56 be registered in the land register without delay.

An order made pursuant to this section and the accompanying information must be notified to the owner of the land.

“31.45. If the rehabilitation plan submitted pursuant to section 31.44 provides that contaminants referred to in that section are to remain in the land, the plan must contain a statement of the land use restrictions that apply.

“31.46. The approval of the rehabilitation plan may include 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 new schedule be submitted within the time specified.

The Minister shall notify to the owner of the land all documents submitted for the Minister's approval, 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 the rehabilitation plan unless the owner of the land has given consent in writing to the plan and the consent document has been transmitted for approval with the rehabilitation plan. Furthermore, any amendment the Minister makes to a rehabilitation plan shall take effect only if the owner consents in writing to the amendment.

“31.47. If the rehabilitation plan approved by the Minister provides for land use restrictions, the interested party who submitted the plan must, 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 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 ;

(3) a summary of the characterization study, attested to by a professional certified pursuant to section 31.63, stating among other things the nature of the contaminants present in the land ;

(4) a statement of the land use restrictions and, in particular, the charges and obligations resulting from the restrictions ; and

(5) an indication of the place where the rehabilitation plan may be examined.

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.

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

“31.48. Where the Minister has reason to suspect the presence in land of contaminants referred to in section 31.44, the Minister may order any interested party to perform a land characterization study under the conditions and within the time specified.

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

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

“31.49. Any application made pursuant to this Act for authorization to establish an enterprise that is to carry on any industrial or commercial activity in a category designated by regulation of the Government must be submitted with the documents or information required under other provisions of this Act or the regulations, and with

(1) a characterization study for the purpose of determining the initial state of the land to be used for the project;

(2) a description of the measures to be taken to monitor and control the quality of ground water and surface water;

(3) a decontamination plan providing for the elimination, after the enterprise permanently ceases its activities, of contaminants that may be present in the land as a result of the operation of the enterprise, and for a characterization study in respect of the decontaminated land to be carried out to ascertain its final state; and

(4) financial guarantees that satisfy the requirements prescribed by regulation of the Government and intended to ensure implementation of the decontamination plan.

“31.50. Every person who permanently ceases to carry on an industrial or commercial activity in a category designated by regulation of the Government is required to perform, within six months of ceasing the activity, a characterization study in respect of the land where the activity was carried on. Upon completion, the study must be transmitted to the Minister and to the owner of the land.

If the characterization study reveals the presence in the land of contaminants referred to in section 31.44, the person who carried on the activity involved is required, upon being informed of the presence of the contaminants, to transmit to the Minister for approval a rehabilitation plan for the land setting out the measures the person intends to take to remedy the situation, along with an implementation schedule and a plan for the dismantling of the installations on the land.

The provisions of sections 31.45, 31.46 and 31.47 apply, with the necessary modifications, to the rehabilitation plan.

“§3. — *Change in land use*

“31.51. Every person intending to change the use of land where an industrial or commercial activity in a category designated by regulation of the Government has been carried on is required to first perform a land characterization study in which the projected land use is to be taken into account in assessing risk and impacts.

Upon completion, the characterization study must be transmitted to the Minister and to the owner of the land.

“31.52. Any change in the use of land where contaminants referred to in section 31.44 are present is subject to the Minister’s approval of a rehabilitation plan for the land.

The rehabilitation plan along with an implementation schedule must be transmitted to the Minister. The plan must set out the measures to be taken to remedy the situation and render the projected land use compatible with the state of the land. A land characterization study in which the projected land use is to be taken into account in assessing risk and impacts must also be transmitted with the rehabilitation plan.

“31.53. Where the rehabilitation plan provides that contaminants referred to in section 31.44 are to remain in the land, the owner of the land shall submit the land use change proposal to public consultation. For that purpose, the owner of the land shall publish a notice in a newspaper circulated in the municipality in which the land is situated containing

(1) the description of the land, the name and address of the owner and the current use of the land ;

(2) a summary of the land use change proposal, the characterization study and the rehabilitation plan ;

(3) the date, time and place of the public information and consultation meeting ; and

(4) a statement that the proposal may be examined at the office of the municipality.

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

“31.54. The provisions of sections 31.45, 31.46 and 31.47 apply, with the necessary modifications, to the rehabilitation plan mentioned in section 31.52.

“§4. — *Voluntary land rehabilitation*

“31.55. Every person intending to rehabilitate contaminated land without being required to do so under a provision of this division shall, before any work is performed and if contaminants referred to in section 31.44 are to remain in the land, submit to the Minister for approval a rehabilitation plan for the land setting out the measures the person intends to take to remedy the situation, along with an implementation schedule. A characterization study must be submitted with the rehabilitation plan.

The provisions of sections 31.45, 31.46 and 31.47 apply, with the necessary modifications, to the rehabilitation plan.

“§5. — *Contamination and decontamination notices*

“31.56. Where a characterization study performed pursuant to this Act reveals the presence in land of contaminants in excess of the concentration values prescribed by regulation of the Government made under section 31.67, the person or municipality who had the study performed shall, upon being informed of the presence of the contaminants, apply for registration in the land register of a notice of contamination.

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

(1) the name and address of the applicant for registration 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, attested to by a professional certified pursuant to section 31.63, 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, either a duplicate of the application bearing a registration certificate, or a copy of the notice certified by the land registrar. The Minister shall transmit a copy of the document, upon receiving it, to the municipality in which the land is situated.

“31.57. Any person or municipality having registered a notice of contamination under section 31.56 or the owner of the land 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 lower than or equal to the concentration values prescribed by regulation, and the contaminants are not 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 provisions of the second and third paragraphs of section 31.56 apply, with the necessary modifications, to the notice of decontamination.

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

Following registration in the land register of a notice of decontamination in proper form, the land registrar shall cancel any notice of land use restrictions registered against the land pursuant to the provisions of this division.

“§6. — *General provisions*

“31.58. The Minister may, on application by the beneficiary, amend any rehabilitation plan approved pursuant to the provisions of this division.

An application for amendment must be notified to the owner of the land 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 application for amendment.

In addition, if an amendment to a rehabilitation plan is such that it changes the land use restrictions, the beneficiary must immediately apply for registration in the land register of a notice setting out the amendments. As of the date of 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 31.56 apply, with the necessary modifications, to the notice.

“31.59. The Minister may require any person or municipality required to transmit a characterization study or a land rehabilitation plan to the Minister, or any person or municipality applying to have an approved rehabilitation plan amended, 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 and the effectiveness of the rehabilitation or protection measures.

“31.60. 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 or authorized 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 or municipality in default.

“31.61. The owner of land shall give free access to the land at any reasonable time to a third person required under this division to perform a characterization study or carry out a rehabilitation plan, subject, however, to the third person restoring the premises to their former state and compensating the owner for any damage.

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

“31.63. The Minister may certify professionals, on such conditions as the Minister considers appropriate, to attest to the validity of characterization studies, the conformity of work or works carried out as part of a rehabilitation or decontamination plan with the standards applicable and the Minister’s requirements, as well as land use compatibility with the state of the land.

The certification conditions the Minister may fix shall concern, in particular, the qualifications, training and experience required of the professionals, the fees payable and the conditions governing the exercise of their functions for the purposes of this division.

The Minister shall keep a register of the names and addresses of the certified professionals. The information recorded in the register is public information.

“31.64. Every land characterization study performed under this division must be certified by a professional having received certification from the Minister.

In certifying a study, the professional shall attest to the validity of the characterization study, in particular the fact that it was performed in conformity with standard practices, standards applicable, if any, and the Minister's requirements.

“31.65. The owner of land in which contaminants referred to in section 31.44 are present is, upon being informed of a serious risk that the contaminants may migrate to neighbouring land, or of the presence of contaminants at the limits of the owner's land, required to notify the owner of the neighbouring land concerned in writing. A copy of the notice must be transmitted to the Minister.

“31.66. Every municipality shall, on the basis of documents transmitted for that purpose by the Minister pursuant to the provisions of this division, draw up 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 with regard to land entered on the list is subject to the provisions of sections 120 and 121 of the Act respecting land use planning and development (chapter A-19.1).

“§7. — *Regulatory powers*

“31.67. The Government may make regulations to

(1) prescribe, in respect of the presence in land of the contaminants it determines, concentration values in excess of which the implementation of the characterization, rehabilitation or publication measures provided for in this division will be required. The concentration values may vary in particular on the basis of land use;

(2) determine the categories of industrial or commercial activities referred to in sections 31.49, 31.50 and 31.51;

(3) determine the parameters for land characterization studies, in particular with regard to the assessment of the risk and impacts for the environment and human beings in particular. For that purpose, the regulation may by reference incorporate parameters set out in a guide, procedure, method, directive or any other document produced by a body or government department having jurisdiction in the matter, in which case the parameters are incorporated as amended from time to time;

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

(5) determine and regulate the financial guarantees that must be furnished for the establishment of enterprises in the cases mentioned in section 31.49,

and fix the extent, duration, amount and other conditions of the guarantees ;  
and

(6) regulate, in all or part of the territory of Québec, the treatment, recovery, reclamation and elimination of contaminated soils not subject to the application 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 on the basis of 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 on the basis of 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, or substituted for, 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 be applied, and determine who will be required to ensure that they are applied ; 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.”

2. Section 53.2 of the said Act is amended by replacing “paragraph *a* of section 31.52” by “paragraph 1 of section 31.67”.

3. Section 96 of the said Act is amended

(1) by inserting “, 31.44, 31.48” after “29” in the first paragraph ;

(2) 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” and by inserting “approves an amended rehabilitation plan submitted to the Minister pursuant to Division IV.2.1, refuses an amendment applied for under section 31.58” after “refuses to renew a permit,” in the second paragraph.

4. 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 sections 31.50, 31.52 and 31.55 ;

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

(c) fails to perform a characterization study required under sections 31.50 and 31.51 ;

(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 31.61 or 31.65.”

5. Section 107 of the said Act is amended

(1) by inserting “, expert evaluations” after “research findings” 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 the first paragraph ;

(2) by striking out the second paragraph.

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

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

8. Section 118.3.2 of the said Act is amended by replacing “31.42, 31.43” in paragraph 1 by “31.44, 31.48”.

9. Section 118.5 of the said Act is amended

(1) by replacing “programmes of decontamination or restoration required under section 31.42, 31.49 or 31.51” in subparagraph *m* of the first paragraph

by “rehabilitation and decontamination plans required pursuant to Division IV.2.1”;

(2) by striking out subparagraph *n* of the first paragraph.

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

11. Section 120 of the Act respecting land use planning and development (R.S.Q., chapter A-19.1) is amended by inserting 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 31.66 of the Environment Quality Act, the permit shall be issued only if the application is accompanied with the attestation of a professional certified pursuant to section 31.63 of that Act establishing that the proposal for which the permit application is made is compatible with the state of the land.”

12. 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 31.66 of the Environment Quality Act, the permit shall be issued only if the application is accompanied with the attestation of a professional certified pursuant to section 31.63 of that Act establishing that the proposed operation is compatible with the state of the land.”

13. 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 provided for in section 31.47, 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.

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