



Regulation respecting compensation for adverse effects on wetlands and bodies of water

Context

Wetlands and bodies of water (WBW) perform essential ecological functions and are a decisive link in Québec's biodiversity. Accordingly, on June 16, 2017, the National Assembly unanimously adopted the *Act respecting the conservation of wetlands and bodies of water* (ACWBW).

When the Act was adopted, transitional provisions respecting compensation for adverse effects on WBW were introduced until such time as a specific draft regulation for this purpose could be enacted.

A regional tour including meetings and public consultations was conducted in the spring of 2018 to learn the views of stakeholders throughout Québec. A public consultation was held from May 23 to July 6, 2018. Analysis of received comments led to the development of a regulation that ensures broader predictability while streamlining authorization applicant administrative measures.

On August 17, 2018, the government enacted the *Regulation respecting compensation for adverse effects on wetlands and bodies of water*, which specifies certain facets of the implementation of the new authorization scheme in the new *Environment Quality Act* (EQA) that came into force on March 23, 2018. The Regulation, published in the *Gazette officielle du Québec* on September 5, 2018, focuses on activities that require an environmental authorization, that is, activities that pose a moderate environmental hazard.

During the process of analyzing projects that can affect wetlands and bodies of water, the MDDELCC focuses on the "avoid-minimize-compensate" sequence that is the foundation for section V.1. of the new EQA and is intended to incentivize project proponents to avoid losses. When no other course of action is feasible, proponents are required to offer design and construction proposals that reduce impacts on the receiving medium. Once these two initial steps are completed, the proponent is required to compensate for residual losses to wetlands and bodies of water to meet the "no net loss objective."

Accordingly, the Regulation specifies the measures used to compensate for any adverse effects on WBW while facilitating environmentally sound economic development.

A simplified authorization process

The Regulation:

- ◆ clarifies the criteria respecting the obligation to compensate for adverse effects on WBW and offers the possibility, in the case of certain work, to replace the financial contribution by restoration work or the creation of WBW
- ◆ takes into account specific situations, for example, cases where environmental impacts are minimal, related to emergency measures or correspond to long-term resource-related operations whose impacts will be offset by the implementation of WBW restoration plans
- ◆ proposes a clear financial contribution calculation formula that project proponents can apply directly
- ◆ determines the situations in which the repayment in whole or in part of the financial contribution is possible, especially in cases of losses of WBW that are less extensive than stipulated in the authorization
- ◆ enhances flexibility and predictability for the clientele for the realization of certain necessary stages in the analysis of applications for authorizations
- ◆ specifies the territory of application in Québec

Examples of work excluded from the obligation to compensate:

- ◆ emergency work such as the stabilization of a road affected by a landslide
- ◆ restoration work in WBW
- ◆ the establishment and exploitation of cranberry plantations or blueberry fields
- ◆ forest development activities on private lands
- ◆ the removal of sediments from a marina
- ◆ the maintenance of a municipal water inlet
- ◆ any construction on flood plains except in wetlands or nearshore environments

Examples of projects in respect of which the financial contribution can be replaced by restoration work or the creation of WBW:¹

- ♦ work relating to road infrastructure, bicycle paths, hiking trails, wastewater treatment management facilities, or electricity transmission networks when it is carried out by a government department, a public body or an entity that exercises authority over the territories covered by Schedule IV of the Regulation
- ♦ work carried out in an industrial park within the meaning of section 32 of the Act respecting the exercise of certain municipal powers in certain urban agglomerations (chapter E-20.001)
- ♦ horticultural peat harvesting and market crops production²
- ♦ losses of WBW related to mineral exploration and mining operations²

A new, equitable financial contribution calculation formula

The proposed new calculation formula:

- ♦ considers the local context in determining a regional variation factor by municipality that reflects the level of influence of the potential impacts of human activities on WBW, according to the type of such activities found in the territory of the municipality
- ♦ takes into account the initial state of the WBW and the loss of ecological functions that a project engenders, to determine the financial contribution to be paid
- ♦ makes provision for reducing the financial contribution in cases where compensation for the loss of wildlife habitat is required pursuant to the administration of another statute
- ♦ ensures that the areas of activity subject to the environmental authorization that adversely affect the WBW in the territory covered by the Regulation contribute fairly to the Fonds de protection de l'environnement et du domaine hydrique de l'État, in a manner commensurate with the impacts caused and the distinctive characteristics of their regional context
- ♦ ensures recognition of the project proponents efforts to minimize the impacts in the context of projects in WBW by taking into account the scope of such impacts caused on the ecological functions of the environment affected
- ♦ make provision for the restoration of cranberry plantations and blueberry fields at the conclusion of their exploitation
- ♦ calls for the evaluation of provisions in the Regulation two years after it comes into force and every five years thereafter
- ♦ defers the application of certain sections that will come into force on the date on which paragraph 1 of section 5 of the *Regulation respecting certain transitional measures to carry out the Act to amend the Environment Quality Act to modernize the environmental authorization scheme and to amend other legislative provisions, in particular to reform the governance of the Green Fund* is abrogated

1. At the request of the project proponent.

2. Upon the acceptance of a restoration plan or the creation of WBW



Calculation of the financial contribution

New calculation formula: $AC = (cw + vl) \times SA$

where

AC = amount of the financial contribution payable as compensation for adverse effects on the WBW

cw = cost per square metre for the creation or restoration of a WBW, calculated using the following formula:

- ♦ basic cost of \$20 per m²
- ♦ **multiplied** by a factor that takes into account the adverse impacts on the WBW according to its initial state and the impact of the activity
- ♦ **multiplied** by a regional variation factor

vl = value of the land per square metre calculated according to the average value of vacant lots in the territory of the RCM concerned, or in the case of lands in the domain of the State, calculated according to a value of \$0.8307/m²

SA = surface area, in square metres, of the portion of the WBW in which the activity is carried out, excluding the surface area occupied by existing works or structures

The schedules in the Regulation present tables that determine the values related to the factors in the calculation formula:

Schedule I: Territory in which the regulation applies north of the 49th parallel and north of the St. Lawrence Estuary and the Gulf of St. Lawrence

Schedule II: Adverse effects on wetlands
Division I: Initial state of the wetland
Division II: Impact of the activity on the wetland

Schedule III: Adverse effects on bodies of water
Division I: Initial state of the body of water (littoral zone- lakeshore-floodplain)
Division II: Impact of the activity on the body of water (littoral zone- lakeshore-floodplain)

Schedule IV: Determination of the value of factors "R" and "vl" by RCM and municipality