



## Draft regulation respecting compensation for adverse effects on wetlands and bodies of water

### Background

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 pending the enactment of a specific draft regulation for this purpose.

A regional tour was conducted in the spring of 2018 to sound out economic, municipal and environmental stakeholders throughout Québec. The meetings pinpointed several issues, which led to the elaboration of a draft regulation that ensures broader predictability while streamlining several administrative measures for applicants for authorizations.

The government is proposing a draft regulation respecting compensation for adverse effects on wetlands and bodies of water that specifies certain facets of the implementation of the new authorization scheme in the new *Environment Quality Act* (EQA), which came into force on March 23, 2018. The draft regulation, which hinges on the environmental risk management approach in the Act, concerns activities that require an environmental authorization, namely, those that represent a moderate level of environmental risk. Accordingly, the draft regulation identifies the measures related to compensation for the loss of WBW in order to ensure the conservation and sustainable use thereof while facilitating environmentally sound economic development.

It is worth noting that, as the draft regulation respecting ministerial authorization and the statement of environmental compliance pertaining to the new *Environment Quality Act* proposes, all activity planned in a WBW that presents a negligible or low risk might be exempt from an authorization or be subject to a statement of compliance. This is true, in particular, of certain farming activities or activities in private forests.

### A simplified authorization process

The draft 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 on the sites in question;
- 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 the predictability for the clientele regarding 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 removal of sediments from a marina;
- the maintenance of a municipal water inlet;
- any construction in a 20-100 year floodplain, except in wetlands;
- farming and forestry activities without embankments or excavated earth in the 0-20 year floodplain that do not result in a decrease of the flood routing capacity.



Examples of work that can be replaced by restoration work or the creation of WBW:<sup>1</sup>

- construction of a bicycle path on the bank of a watercourse;
- horticultural peat harvesting;<sup>1</sup>
- losses of WBW related to mineral exploration and mining operations with a restoration plan or the creation of WBW.

**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 wetlands and bodies of water, 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 in order 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 draft 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 initial and final state of the environment affected;
- achieves greater flexibility and predictability when the EQA is administered, especially through its modulation according to the initial state of the environment targeted by a project, the scope of the impacts caused to ecological functions, and the regional context.

**Calculation of the financial contribution**

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

where

**AC** = amount of the financial contribution payable as compensation for adverse effects on a wetland or body of water

**cw** = cost per square metre for the creation or restoration of a wetland or body of water, calculated using the following formula:

- basic cost of \$20 per m<sup>2</sup>
- **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 using the average value of vacant land in the territory of the regional county municipality concerned, or the entity in lieu thereof, as determined in Schedule IV, or, in the case of lands in the domain of the State, calculated using the substitution price per square metre prescribed by section 5 of Schedule I to the *Regulation respecting the sale, lease and granting of immovable rights on lands in the domain of the State* (chapter T-8.1, r. 7)

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

The schedules in the draft 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 or riverbank-floodplain)  
*Division II:* Impact of the activity on the body of water (littoral zone- lakeshore or riverbank-floodplain)

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