

Regulation to amend the Regulation respecting hazardous materials

Environment Quality Act

(chapter Q-2, ss. 31.0.6, 31.0.7, 46, 70.5.1, 70.5.2, 70.5.4, 70.5.5, 70.6, 70.7, 70.8, 70.9, 70.14, 70.18, 70.19, 95.1, 115.27, 115.34 and 124.1; 2017, chapter 4)

1. The Regulation respecting hazardous materials (chapter Q-2, r. 32) is amended in section 1 by replacing “paragraph 21” by “the first paragraph”.

2. Section 2 is amended by adding the following paragraphs:

“(22) emery, graphite, kaolin, talc, montmorillonite, carbon black, non-corrosive sodium silicate within the meaning of section 3, silicon dioxide and titanium dioxide, unless those materials contain a hazardous material in such a concentration that the material acquires a property of hazardous materials referred to in section 3 or by a material considered to be a hazardous material under section 4;

(23) ceramic fibres, slag wool, rock wool, glass wool and mineral wool, unless those materials contain a hazardous material in such a concentration that the material acquires a property of hazardous materials referred to in section 3 or by a material considered to be a hazardous material under section 4;

(24) alcoholic beverages.”.

3. Section 5 is amended

(1) by striking out the definition of “residual hazardous materials”;

(2) by replacing the definition of “hazardous materials disposal site” by the following:

“hazardous materials disposal site” means any site for the final disposal of hazardous materials as well as any site for incineration, gasification, pyrolysis or plasma treatment and any other thermal treatment site the main result of which is to transform residual hazardous materials into gas, ash or coal or pyrolytic oil; (*lieu d'élimination de matières dangereuses*)

4. Section 6 is amended by replacing the part preceding subparagraph 1 of the first paragraph by the following:

“6. The list of the following materials is established for the purposes of subparagraph 4 of the first paragraph of section 70.6 of the Environment Quality Act (chapter Q-2), to the extent that the materials are hazardous within the meaning of section 1 of the Act:”.

5. Section 8 is replaced by the following:

“8. No one may release a hazardous material into the environment or into a sewage system, or allow such release, unless the operation is made in accordance with the Environment Quality Act (chapter Q-2).”

6. Section 9 is replaced by the following:

“9. Subject to section 9.1, where the person responsible for an accidental release of hazardous materials has, in accordance with section 70.5.1 of the Environment Quality Act (chapter Q-2), taken all the appropriate measures to recover those materials and remove or clean the contaminated materials, the person shall, if unable to recover, remove or clean all the materials, conduct without delay a characterization study of the site where the materials were released, which must include, in particular, the volume of hazardous materials or materials contaminated by such material that are present in the land.

The characterization study required under this section shall be carried out according to the guide referred to in section 31.66 of the Environment Quality Act and be certified by an expert in accordance with section 31.67 of the Act. The study shall also be provided to the Minister and owner of the land as soon as it is completed, in accordance with the second paragraph of section 70.5.2 of the Environment Quality Act, but not later than 90 days after the release.

This section does not apply to the release of gaseous halocarbons.

9.1. Where the treatment of all or part of the hazardous materials or materials contaminated by such material that are present in the land is possible, the person responsible shall, not later than 90 days after the release, apply for an authorization to the Minister under section 22 of the Environment Quality Act (chapter Q-2) with a view to treating the materials on site, in particular soils.

That application for an authorization to treat contaminated materials shall be accompanied by the site characterization study referred to in the first paragraph of section 9, as well as by the other information and documents required under the Regulation respecting ministerial authorizations and declarations of compliance in environmental matters (*insert the reference to the CQLR*).

Within 30 days of the completion of the treatment work, the person responsible for the release shall send to the Minister a characterization study intended to determine whether the hazardous materials in the release or the materials contaminated by such material are still present in the land, as well as a notice from a qualified and independent professional in the field of soil or groundwater treatment confirming that the treatment process has been applied in optimum conditions to its technological limit.

The second paragraph of section 9 also applies to the characterization study referred to in the third paragraph.

9.2. Where the treatment of all or part of the hazardous materials or materials contaminated by such material present in the land proves impossible, the person responsible for the release shall, to maintain the materials in the land, provide to the Minister, not later than 90 days after the release,

(1) a technical opinion from an engineer member of the Ordre des ingénieurs du Québec showing that removing all or part of the hazardous material or material contaminated by the release cannot be carried out by reason of structural constraints, the layout of the site or the risks that the excavation walls collapse. That opinion shall also indicate at what time and on what conditions the recovery or treatment of the materials may be carried out or completed;

(2) a technical opinion from a qualified and independent professional in the field of soil or groundwater treatment stating the reasons for which the treatment on site that would be appropriate according to the situation prevailing in the land affected by the release and according to the hazardous materials released is impracticable on all or part of the land affected;

(3) on the basis of the characterization study referred to in the first paragraph of section 9 and, if applicable, the application for an authorization to treat the hazardous materials or materials contaminated by such material on site, the volume of materials that cannot be treated and that will be left in the land.

The person responsible for the release shall provide to the Minister, along with the opinions provided for in the first paragraph, a financial guarantee of \$150 per cubic metre of hazardous materials or materials contaminated by such material maintained on site, unless the determined amount is less than \$50,000. That guarantee shall be maintained until the recovery, removal and treatment work is carried out in accordance with section 9.3.

The provisions of Division 2 of Chapter VIII apply to the financial guarantee required under the second paragraph, with the necessary modifications.

9.3. Any hazardous material or material contaminated by such material maintained in the land in accordance with section 9.2 shall be recovered, removed or treated on site where the problems identified in the engineer's technical opinion no longer exist. The person responsible for the release or the owner of the land shall then inform the Minister not later than 30 days after the disappearance of the problems. The provisions of section 9.1 apply, with the necessary modifications, to the treatment of hazardous materials and materials contaminated by such material.

Until the hazardous materials or materials contaminated by such material maintained in the land are recovered or treated, the person responsible for the release shall take all the necessary measures to keep them confined in the same place and to avoid that they adversely affect the life, health, safety, well-being or comfort of human beings, ecosystems, live species in general and property.

9.4. The person responsible for the release must require the entry of a contamination notice in the land register in accordance with section 70.5.4 of the Environment Quality Act (chapter Q-2) in the following cases:

(1) if the concentration of contaminants identified in the characterization study referred to in the first paragraph of section 9 or the third paragraph of section 9.1 exceeds the limit values prescribed by Schedule I to the Land Protection and Rehabilitation Regulation (chapter Q-2, r. 37); or

(2) regardless of the concentration of contaminants, if the hazardous materials or materials contaminated by such material are maintained in the land in accordance with section 9.2.

9.5. The summary of the characterization study referred to in section 70.5.4 of the Environment Quality Act (chapter Q-2) shall be certified by an expert referred to in section 31.65 of the Act.”.

7. Section 11 is amended

(1) by replacing “authorized” in the first paragraph by “empowered”;

(2) by replacing “that meets the conditions mentioned in subparagraph 4 of the first paragraph of section 118 of this Regulation” in the third paragraph by “that was the subject of a declaration of compliance or exempt from an authorization under the Regulation respecting ministerial authorizations and declarations of compliance in environmental matters (*insert the reference to the CQLR*)”.

8. Section 12 is amended by replacing the first paragraph by the following:

“**12.** Every person who ships residual hazardous materials shall entrust them to a carrier empowered for that purpose under section 117.”.

9. Section 13 is amended

(1) by replacing “a permit holder” in the first paragraph by “an authorization holder”;

(2) by adding “and all the residual hazardous materials stored in the course of those activities shall be shipped to a site authorized for that purpose” at the end of the second paragraph.

- 10.** Section 23 is amended by striking out “, a permit application”.
- 11.** Section 32 is amended by striking out subparagraphs 1 and 2 of the first paragraph.
- 12.** Section 39 is amended by replacing “a permit holder carrying on one of the activities referred to in paragraphs 1, 2 and 3” in the second paragraph by “an authorization holder carrying on one of the activities referred to in subparagraphs 1, 2 and 3 of the first paragraph”.
- 13.** Section 70 is amended
- (1) by inserting “and independent” in the first paragraph after both occurrences of “qualified”;
- (2) by replacing the second paragraph by the following:
- “The owner or operator sends to the Minister of Sustainable Development, Environment and Parks, once the installation is completed, an attestation prepared and signed by the professional referred to in the first paragraph to the effect that that the installation complies with the applicable standards or indicating that those standards have not been complied with.”.
- 14.** Section 74 is replaced by the following:
- 74.** The operator shall submit to the Minister of Sustainable Development, Environment and Parks, once the layout is completed, an attestation prepared and signed by a qualified and independent professional to the effect that the installation, including the network of wells monitoring the quality of underground water, complies with the applicable standards. If the installation does not comply, the professional shall indicate the correctional measures to be taken.”.
- 15.** Section 75 is amended by replacing the third paragraph by the following:
- “As soon as the operator notices that groundwater has been contaminated, the operator shall take all the correctional measures required to stop the release of contaminants into that water and so inform the Minister of Sustainable Development, Environment and Parks.”.
- 16.** Section 81 is amended by replacing “a permit holder carrying on an activity under” in paragraph 1 by “an authorization holder carrying on an activity referred to in the first paragraph of”.
- 17.** Section 85 is amended
- (1) by replacing “permit holder carrying on an activity under” in the part preceding subparagraph 1 of the first paragraph by “authorization holder carrying on an activity referred to in the first paragraph of”;

(2) by replacing “permit” in the second paragraph by “authorization”;

18. Section 86 is amended by replacing “permit holder” by “authorization holder carrying on an activity referred to in the first paragraph of section 70.9 of the Environment Quality Act (chapter Q-2)”.

19. Section 93 is amended

(1) by replacing “the permit referred to in” in the first paragraph by “an authorization carrying on an activity referred to in the first paragraph of”;

(2) by replacing “referred to in section 144 of this Regulation” in the second paragraph by “closed before 1 December 1997”;

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

“Sections 95 and 96 do not apply to final disposal sites in operation on 1 December 1997.”.

20. Section 104 is amended

(1) by replacing the part preceding subparagraph 1 of the first paragraph by the following:

“**104.** The requirement to keep a register in respect of the residual hazardous materials referred to in the second paragraph of section 70.6 of the Environment Quality Act (chapter Q-2) applies.”;

(2) by replacing “a certificate of authorization” in subparagraph 1 of the second paragraph by “an authorization”.

21. Chapter VII is revoked.

22. Sections 115 and 116 are revoked.

23. Section 117 is replaced by the following:

“**117.** Any person who operates a transportation service for residual hazardous materials or who carries residual hazardous materials generated by the person to a site owned by a third party shall first make a declaration of compliance, in accordance with the Regulation respecting ministerial authorizations and declarations of compliance in environmental matters (*insert the reference to the CQLR*).

The carrier shall also, at all times,

(1) be entered in the register of owners and operators of heavy vehicles and maintain a satisfactory safety rating;

(2) hold security of \$1,000,000 complying with sections 120 to 123, with the necessary modifications; and

(3) hold civil liability insurance of \$1,000,000 complying with sections 124 and 125, with the necessary modifications.”.

24. Section 118 is revoked.

25. The heading of Division 2 of Chapter VIII is replaced by the following:

**“DIVISION 2
FINANCIAL GUARANTEE”.**

26. Section 119 is revoked.

27. Section 120 is replaced by the following:

“120. Any guarantee required under the Regulation respecting ministerial authorizations and declarations of compliance in environmental matters (*insert the reference to the CQLR*) or this Regulation to carry on an activity related to the management of hazardous materials is intended to ensure, while the activity is carried on and upon cessation of the activity, the performance of the obligations incumbent on the operator under the Environment Quality Act (chapter Q-2), its regulations, an order or an authorization. Should the operator fail to do so, that guarantee is to be used to pay the expenses incurred by the Ministère du Développement durable, de l'Environnement et des Parcs under sections 113, 114, 115, 115.0.1 and 115.1 of that Act.”.

28. Section 121 is amended by replacing “by the applicant or by a third party on that person’s behalf” in the part preceding paragraph 1 by “by the person or the municipality that carries on the activity or by a third party on behalf of them”.

29. Section 122 is amended by replacing “permit” by “authorization”.

30. Section 124 is amended

(1) by replacing the first paragraph by the following:

“124. The amount of any liability insurance exigible from an operator under the Regulation respecting ministerial authorizations and declarations of compliance in environmental matters (*insert the reference to the CQLR*) to carry on an activity related to the management of residual hazardous materials is determined in accordance with Schedule 11 to this Regulation.”;

(2) by replacing “The applicant of a transportation permit” in the second paragraph by “However, the carrier of residual hazardous materials referred to in section 117”;

- (3) by replacing the third paragraph by the following:

“The operator shall keep his liability insurance contract in force for as long as the activity is carried on. To that end, the operator shall send to the Minister of Sustainable Development, Environment and Parks, 15 days before the insurance contract expires, an attestation signed by the insurer, confirming that the insurance contract is renewed and that it complies with section 125.”.

- 31.** Section 125 is amended

(1) by replacing “permit holder” in subparagraph 1 of the first paragraph by “operator”;

(2) by replacing “holder” in the second paragraph by “operator”.

- 32.** Sections 127 to 129 are revoked.

- 33.** The heading of Division 3 of Chapter VIII is amended by striking out “KEPT OR DRAWN UP BY A PERMIT HOLDER”.

34. Section 130 is amended by replacing “permit holder carrying on an activity referred to in section 70.9 of the Environment Quality Act (chapter Q-2), except the transportation of hazardous materials,” by “authorization holder carrying on an activity referred to in subparagraphs 1 to 4 of the first paragraph of section 70.9 of the Environment Quality Act (chapter Q-2)”.

35. Section 132 is amended by replacing “the permit holder” in the part preceding paragraph 1 by “the holder of an authorization referred to in the first paragraph of section 70.9 of the Environment Quality Act (chapter Q-2)”.

36. Section 133 is amended by replacing “the permit holder” by “the holder of an authorization referred to in the first paragraph of section 70.9 of the Environment Quality Act (chapter Q-2)”.

- 37.** Section 134 is amended

(1) by replacing “permit holder” by “holder of an authorization referred to in the first paragraph of section 70.9 of the Environment Quality Act (chapter Q-2)”;

(2) by adding the following paragraph:

“The operator of a transportation service for residual hazardous materials referred to in section 117 shall prepare an annual report containing the information indicated in section 137.”.

38. Section 135 is amended in paragraph 2 of the second hyphen:

(1) by replacing “Column III of List II of Schedule II to the Transportation of Dangerous Goods Regulations (SOR/85-77)” in the second hyphen by “Column 1 of Schedule 1 to the Transportation of Dangerous Goods Regulations (SOR/2017-137)”;

(2) by replacing “Column II of Parts I, II, III or IV of Schedule 3 to the Export and Import of Hazardous Waste Regulations (SOR/92-637)” in the third hyphen by “Column 1 of Schedule 3 or according to Column 1 of Parts 1 and 2 of Schedule 4 to the Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations (SOR/2005/149)”.

39. Section 137 is amended

(1) by striking out “to a disposal site” in the part preceding paragraph 1;

(2) by replacing “columns I and III of List II of Schedule II” in paragraph 1 by “Column I of Schedule I”.

40. The following is inserted after section 138:

“**138.0.1.** The provisions of this Division apply, with the necessary modifications, to any operator carrying on an activity that was the subject of a declaration of compliance, in accordance with the Regulation respecting ministerial authorizations and declarations of compliance in environmental matters (*insert the reference to the CQLR*).”.

41. Section 138.2 is amended by striking out paragraph 9.

42. Section 138.5 is amended

(1) by striking out subparagraph a of paragraph 1;

(2) by replacing paragraph 6 by the following:

“(6) transports residual hazardous materials without complying with the conditions set out in the second paragraph of section 117.”.

43. Section 138.6 is amended by replacing paragraph 2 by the following:

“(2) entrusts residual hazardous materials to a carrier who is not empowered for that purpose under section 117, in contravention of the first paragraph of section 12;”.

44. Section 138.7 is amended by replacing paragraphs 1 and 2 by the following:

“(1) releases or allows the release of a hazardous material into the environment or into a sewage system, in contravention of the requirements of section 8;

(2) in the case of accidental release of hazardous materials, fails to

(a) carry out a characterization study in accordance with section 9 or the third and fourth paragraphs of section 9.1 or to provide those studies to the Minister, in contravention of those sections;

(b) provide the Minister with the documents or information required under the first paragraph of section 9.2 to maintain materials in land;

(c) recover, remove or treat materials on site when the problems that prevented it no longer exist, in contravention of the first paragraph of section 9.3;

(d) take all the necessary measures referred to in the second paragraph of section 9.3 where materials are maintained in land;

(e) require the registration of a contamination notice, in contravention of section 9.4;

(f) to have the summary of the characterization study certified by an expert, in contravention of section 9.5;”.

45. Section 140 is amended by replacing “, section 108 or 111, the second or third paragraph of section 118, or section 130, 133, 134 or 138” by “or section 108, 111, 130, 133, 134 or 138”.

46. Section 143 is amended by replacing paragraph 1 by the following:

“(1) contravenes section 13, any of sections 24 to 27, the first paragraph of section 71, the third paragraph of section 75, the first paragraph of section 103 or the second paragraph of section 117;”.

47. Section 143.2 is amended by replacing “subparagraph 3 of the first paragraph of section 9” by “any of sections 9 to 9.5”.

48. Section 143.3 is amended by striking out “, subparagraph 1 of the first paragraph of section 9”.

49. Schedule 4 is amended by replacing “in section 70.9” in the heading of categories N and O of hazardous materials by “in the first paragraph of section 70.9”.

- 50.** Schedule 5 is amended by striking out the line “Maximum water content**” and its corresponding footnote.
- 51.** Schedule 6 is amended by striking out the line “Water***” and its corresponding footnote.
- 52.** Schedule 10 is amended
- (1) by replacing the heading by the following:
“FINANCIAL GUARANTEE”;
 - (2) by striking out “by the permit application” in the note under the table.
- 53.** Schedule 11 is amended by striking out “by the permit application” in the note under the table.
- 54.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.