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Draft Regulations

Draft Regulation

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

Declaration of water withdrawals
— Amendment

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1) and section 124 of the Environment Quality Act, that the Regulation to amend the Regulation respecting the declaration of water withdrawals, appearing below, may be made by the Government on the expiry of 60 days following this publication.

The draft Regulation prescribes the regulatory provisions required to complete the legislative provisions introduced by chapter 21 of the Statutes of 2009 and whose purpose is to implement in Québec the Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement entered into on 13 December 2005 between Québec and Ontario and the American States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin.

For that purpose, the draft Regulation determines the standards of declaration of water withdrawals which will be used to establish the reference volumes of water necessary to implement the Agreement.

The draft Regulation also sets the standards of the annual declaration of water withdrawals to which withdrawers that withdraw water in the territory of the St. Lawrence River Basin will be subject and whose withdrawal capacity reaches or exceeds a volume of 379,000 litres per day, or that transfer water out of the Basin.

The adoption of new regulatory standards governing the declaration will entail costs for those that will be required to have the quantities of water consumed estimated by a professional. The estimate, however, is required only once to establish the reference volumes of water. Costs also are expected for the estimate of the volumes of water discharged for withdrawers having the capacity to withdraw 379,000 litres or more per day, as well as for withdrawers that transfer water and that do not already have measuring equipment in place.

Further information on the draft Regulation may be obtained by contacting Yvon Maranda, Direction des politiques de l'eau, Ministère du Développement durable, de l'Environnement et des Parcs, édifice Marie-Guyart, 675, boulevard René-Lévesque Est, 8e étage, boîte 42, Québec (Québec) G1R 5V7; telephone: 418 521-3885, extension 4117; fax: 418 644-2003, or e-mail: yvon.maranda@mddep.gouv.qc.ca

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 60-day period to the Minister of Sustainable Development, Environment and Parks, édifice Marie-Guyart, 675, boulevard René-Lévesque Est, 30e étage, Québec (Québec) G1R 5V7.

PIERRE ARCAND,
Minister of Sustainable Development, Environment and Parks

Regulation to amend the Regulation respecting the declaration of water withdrawals*

Environment Quality Act
(R.S.Q., c. Q-2, s. 31.104, s. 46, par. *s*, subpars. 2.5 and 4, and s. 109.1)

1. The Regulation respecting the declaration of water withdrawals is amended by inserting the following after the title of the Regulation:

"**TITLE I**
GENERAL".

2. Section 1 is amended by inserting the following after the first paragraph:

"In addition, this Regulation, with a view to ensuring a better protection of the St. Lawrence River Basin water resources, provides for the implementation in Québec of the Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement, referred to in section 31.88 of the Environment Quality Act (R.S.Q., c. Q-2).".

* The Regulation respecting the declaration of water withdrawals, made by Order in Council 875-2009 dated 12 August 2009 (2009, *G.O.* 2, 3147), has not been amended since it was made.

3. Section 2 is replaced by the following:

"**2.** Unless indicated otherwise in the provisions of Title II of this Regulation, the following definitions apply to all the provisions of this Regulation:

"existing withdrawal" means a withdrawal that was authorized on or before (*insert the date of coming into force of section 31.90 of the Environment Quality Act*) or, if not authorized, was lawfully commenced on or before that date; (*prélèvement existant*)

"measuring equipment" means a water meter or other device designed to continuously measure and record a volume of water; (*équipement de mesure*)

"new withdrawal" means a withdrawal that was authorized after (*insert the date of coming into force of section 31.90 of the Environment Quality Act*); (*nouveau prélèvement*)

"professional" means a professional within the meaning of section 1 of the Professional Code (R.S.Q., c. C-26) whose professional order governs the exercise of a professional activity referred to in this Regulation. This definition also includes any person legally authorized to practise that activity in Québec; (*professionnel*)

"St. Lawrence River Basin" means the drainage basin whose territory is described in section 31.89 of the Environment Quality Act; (*Bassin du fleuve Saint-Laurent*)

"transfer" means the transporting of bulk water from the St. Lawrence River Basin to another basin by any means, including a waterworks system, a pipeline, a conduit or any other main, and any type of tank truck. Diverting the direction of a watercourse flow is deemed to be a transfer. Packaging water for commercial purposes in containers having a capacity exceeding 20 litres is also deemed to be a transfer; (*transfert*)

"water withdrawal" or "withdrawal" means the taking or diverting of surface water or groundwater by any means, to the exclusion of water withdrawals by means of works referred to in any of paragraphs 1 to 3 of section 31.74 of the Environment Quality Act, regardless of whether the water is returned or not to the environment where it was withdrawn; (*prélèvement d'eau*) (*prélèvement*)

"waterworks system" or "distribution system" means mains, a system of mains or a facility or equipment used to collect, store or supply water intended for human consumption; (*système d'aqueduc*)

"withdrawal site" means a location where water enters into man-made works designed to withdraw water; (*site de prélèvement*)

"withdrawer" means a person or municipality, within the meaning of section 1 of the Environment Quality Act, that operates a withdrawal site. (*préleveur*)

2.1. Where a provision of this Regulation requires that the volumes of water to be recorded or declared be expressed in litres, they may also be expressed in cubic metres.".

4. Section 3 is replaced by the following:

"**3.** This Regulation applies to any water withdrawal. Unless indicated otherwise, it immediately applies to existing withdrawals and to new withdrawals.

This Regulation does not apply to

(1) withdrawals that total an average volume of less than 75,000 litres per day for all the withdrawal sites of one establishment or waterworks system. That average daily volume is calculated on the basis of the monthly quantity of water withdrawn, divided by the number of withdrawal days in the month concerned;

(2) withdrawals intended for domestic use, namely withdrawals using a personal well or a surface water intake for the use of one household only;

(3) withdrawals to supply vehicles, such as vessels and aircraft, either for the needs of the persons or animals being transported or for ballast, or to meet other needs incidental to the operation of those vehicles;

(4) withdrawals exclusively for firefighting purposes, in particular to supply an aircraft or tank vehicle;

(5) withdrawals from a waterworks system;

(6) withdrawals for the purposes of a temporary industrial camp intended to house not more than 80 persons simultaneously for a period not exceeding 6 months per year and that is located in one of the following territories:

— the territory not organized into a local municipality, including the unorganized territory amalgamated with one of the municipalities of Rouyn-Noranda, La Tuque or Senneterre, as it was delimited the day before the amalgamation;

— the James Bay territory as described in section 133 of the Environment Quality Act;

— the territory situated north of the 55th parallel;

— the territories of the municipalities of Blanc-Sablon, Bonne-Espérance, Côte-Nord-du-Golfe-du-Saint-Laurent, Gros-Mécatina and Saint-Augustin and the territory of any other municipality constituted under the Act respecting the municipal reorganization of the territory of Municipalité de Côte-Nord-du-Golfe-du-Saint-Laurent (S.Q. 1988, c. 55; S.Q. 1996, c. 2);

— the territories that are not accessible at all times by road vehicles;

(7) withdrawals for the purposes of a temporary industrial camp set up for timber salvage following a forest fire, regardless of the number of person housed in the camp;

(8) withdrawals using a drain or a drainage ditch that is not connected to an active pumping system, that are not intended to transport water to a site where the water is used or that are not used to fill a water supply reservoir for subsequent use;

(9) non-recurring groundwater withdrawals during not more than 30 days, as part of civil engineering work or to analyze the performance of the withdrawal facility or to establish the properties of a geological aquifer;

(10) temporary and non-recurring water withdrawals as part of mining exploration activities, other than those made for petroleum or gas prospection, except if the withdrawals are made for the purposes of dewatering mine shafts, access ramps to a mine or mine workings, or keeping them dry.

In addition, this Regulation does not apply to the following withdrawals insofar as they are wholly made outside the St. Lawrence River Basin:

(1) withdrawals intended for agricultural or fish-breeding purposes;

(2) withdrawals intended to produce hydroelectric power.

For the purposes of this section, "temporary industrial camp" means a group of facilities and their dependencies, that an employer temporarily sets up to house, for not more than 6 months during the 12-month period following the setting-up, the employer's employees who carry out forest management, mining exploration, mining operation, transport infrastructure and water retaining work or any other work.

3.1. To determine if a water withdrawal capacity or if a water withdrawal reaches the volume from which the withdrawer is required, under a provision of this Regulation, to declare the volumes of water it withdraws or may withdraw, all the volumes of water withdrawn from each withdrawal site must be added up each time that more than one withdrawal site is used to supply water to a single establishment or waterworks system. Establishments whose activities are related or complementary to one another and are under the responsibility of one withdrawer are considered to be part of the same establishment.".

5. Section 5 is amended

(1) by replacing "section 9" in the first paragraph by "sections 9, 18.4 and 18.7";

(2) by striking out the third paragraph.

6. The following is inserted after section 5:

"**5.1.** Despite the provisions of the second paragraph of section 5, where a new withdrawal is authorized for the purposes of a transfer out of the St. Lawrence River Basin, the withdrawer so authorized must install the appropriate measuring equipment at the points where water is withdrawn, transferred and, where applicable, returned to the Basin.".

7. Section 7 is amended by replacing "cubic metres" in the second paragraph by "litres".

8. The heading of Chapter III is amended by adding "ANNUAL" before "DECLARATION".

9. Section 9 is amended

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

"Every withdrawer whose water withdrawals total an average daily volume of 75,000 litres or more per day, calculated on the basis of the monthly quantity of water withdrawn, divided by the number of withdrawal days in the month concerned, is required to send to the Minister of Sustainable Development, Environment and Parks an annual declaration describing the withdrawal activities by specifying the monthly volumes of water withdrawn.

The declaration must be transmitted electronically, using the form available online on the Ministère du Développement durable, de l'Environnement et des Parcs website. All the sections relevant to the information that the withdrawer is required to declare must be filled out. Where at least 2 of sections 9, 18.4 and 18.7 of this

Regulation apply to the withdrawer, only one declaration containing all the information prescribed by those sections must be transmitted.";

Where a withdrawer resides or a legal person has its seat in the territory of a local municipality or in a territory not organized as a municipality where no Internet service provider offers access to the Internet, the data to be transmitted to the Minister pursuant to section 9, 18.4 or 18.7 may be transmitted, despite those provisions, using the form provided by the Minister on a medium other than a technology-based medium. In such case, the declaration must be dated and signed by the person who wrote it and must attest to the accuracy of the information contained therein.";

(2) by adding "and the addresses of the withdrawer's establishments" at the end of subparagraph 1 of the third paragraph;

(3) by striking out "and the dates" in subparagraph *b* of subparagraph 3 of the third paragraph;

(4) by replacing the words "cubic metres" wherever they appear in subparagraphs *e*, *f* and *i* of subparagraph 3 of the third paragraph by "litres".

10. Section 10 is amended by replacing "cubic metres" in subparagraph 4 of the first paragraph by "litres".

11. Section 11 is amended by striking out the following at the end of paragraph 3:

"if the location is still not readily accessible, the equipment must have a remote reader;".

12. Section 15 is replaced by the following:

"**15.** If the measuring equipment ceases to function or malfunctions, or a discrepancy in a reading is detected in comparison with an earlier reading, the withdrawer must indicate, as the volumes of water withdrawn in the period concerned, the volumes of water withdrawn during the corresponding period in the previous year as declared pursuant to section 9 or 18.7. If no water was withdrawn during the latter period, or if the volumes of water withdrawn were lower that the declaration threshold provided for in section 9, the withdrawer must have the volumes of water withdrawn in the period concerned estimated by a professional, in accordance with the provisions of Chapter V.

Where 3 months, each comprising at least one withdrawal day, have elapsed and the measuring equipment has not been restored to proper working order or replaced, the withdrawer must, for each following month comprising at least one withdrawal day, and for as long as the measuring equipment does not function or malfunctions, cause the volumes of water withdrawn to be estimated, in accordance with the provisions of Chapter V.".

13. Section 16 is amended by adding the following at the end:

"or using another generally recognized method whose accuracy percentage is at least equivalent to the accuracy percentage of the methods referred to in section 18".

14. The Regulation is amended by adding the following after section 18:

"**TITLE II**
SPECIAL PROVISIONS APPLICABLE TO WATER WITHDRAWALS FROM THE ST. LAWRENCE RIVER BASIN

CHAPTER I
INTERPRETATION AND SCOPE

18.1. For the purposes of this Title,

"level 1 drainage basin" means a territory whose waters converge towards a watercourse that flows directly into the St. Lawrence River or James Bay; (*bassin versant de niveau 1*)

"rated capacity" means the maximum effective capacity, according to the specifications of the builder or manufacturer of the withdrawal works, facility or equipment; (*capacité nominale*)

"water withdrawal" means the withdrawing of water within the meaning of section 2 of this Regulation, including by means of any of the works referred to in any of paragraphs 1 to 3 of section 31.74 of the Environment Quality Act; (*prélèvement d'eau*)

18.2. The provisions of this Title apply to any water withdrawal in the St. Lawrence River Basin, regardless of the volumes of water that are withdrawn.

The provisions of this Title do not apply to the following water withdrawals:

(1) withdrawals used for the production of hydroelectric power by means of run-of-river works or facilities;

(2) withdrawals by means of works used for the impounding of water, other than a dam, such as a pond or a basin having no hydraulic interconnection with groundwater, except if the pond or basin is supplied by means of a surface water drainage system.

18.3. Where a provision of this Title prescribes that a water withdrawer is required to make a declaration on the basis of the withdrawal rated capacity of the works or facilities used for water withdrawals and it appears that the withdrawal capacity of those works or facilities exceeds the withdrawal volume that the withdrawer is authorized to withdraw, under the provisions of the Environment Quality Act or a regulation thereunder, the authorized withdrawal volume must be considered to be the threshold from which declaration is required.

CHAPTER II
INITIAL DECLARATION REQUIRED TO ESTABLISH THE REFERENCE VOLUMES OF WATER FOR THE IMPLEMENTATION OF THE GREAT LAKES–ST. LAWRENCE RIVER BASIN SUSTAINABLE WATER RESOURCES AGREEMENT

18.4. In order to enable the Minister of Sustainable Development, Environment and Parks to determine the reference volumes of water for the implementation of the Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement, a withdrawer that withdraws water from the St. Lawrence River Basin from a withdrawal site whose works or facilities have a withdrawal rated capacity equal to or greater than 379,000 litres per day must, not later than 31 March 2012, send the Minister a declaration on existing withdrawals that contains, in addition to the information referred to in subparagraphs 1, 2 and subparagraphs *a*, *c*, *d*, *h* and *i* of subparagraph 3 of the fourth paragraph of section 9, the following information:

(1) the authorized daily water withdrawal volumes, as they appear on the certificate of authorization, authorization or in the documents that are part of the certificate of authorization or authorization:

(a) where the certificate of authorization or, as the case may be, the authorization provides for specific withdrawal volumes for the various components of the same works or facility used for withdrawals, the declaration must indicate the highest withdrawal volume of the component and identify the component;

(b) where the certificate of authorization or, as the case may be, the authorization identifies the components of the works or facility used for withdrawals without specifying the authorized withdrawal volume, the declaration must indicate the highest rated capacity of the component and identify the component;

(c) where the certificate of authorization or, as the case may be, the authorization concerns both a determined withdrawal volume and the installation of an identified component, such as a pump, whose withdrawal rated capacity is different from the determined withdrawal volume, the declaration must indicate the authorized withdrawal volume only;

(2) the volumes of water corresponding to the withdrawal rated capacity of the works or facility and for which no certificate of authorization or no authorization was issued under the Environment Quality Act. Where the works or facilities have components whose rated capacities are different from one another, the declaration must indicate the lowest rated capacity and identify the component used to establish the rated capacity;

(3) the volumes of water consumed within the St. Lawrence River Basin, expressed in litres or in percentage, out of the volumes of water withdrawn from the Basin and declared pursuant to paragraphs 1 and 2;

(4) the volumes of water transferred out of the St. Lawrence River Basin out of the volumes of water withdrawn from the St. Lawrence River Basin and declared pursuant to paragraph 1 or 2:

(a) where the volume of water transferred out of the Basin represents only a part of the volume of water withdrawn from the Basin, the declaration must indicate the volume corresponding to the rated capacity of the facility used for the transfer. The declaration must identify the class of industrial or commercial activities for which the withdrawal or, as the case may be, the transfer is intended, using the codes of the North American Industry Classification System (NAICS);

(b) where the water transferred out of the Basin or a part of the water transferred is returned to the Basin, the declaration must identify, by means of georeferenced data, the locations where the water was returned for each withdrawal site and the volumes of water returned;

(c) where the water transferred out of the Basin is not returned to the Basin, the declaration must specify, in addition to the volumes discharged, the location where they were discharged, by means of georeferenced data;

(5) the volumes of water consumed out of the Basin out of the volumes of water declared pursuant to paragraph 4, expressed in litres or in percentage. The declaration must identify the class of activities in all cases where the water transferred out of the Basin is consumed in whole or in part, using the codes of the North American Industry Classification System (NAICS).

Each time that a provision of this section provides that the location of a site must be indicated, the georeferenced data of the site must be provided. If the

withdrawals are intended to supply a waterworks system serving all or part of the population of a municipality, the site must be located by referring to the level 1 drainage basins covered by the waterworks system, specifying the name of the watercourse, as officialized by the Commission de toponymie du Québec, into which the water of the territory of the basin flows.

For the purposes of this section, the volumes of water consumed must be either calculated using the direct measurement taken by measuring equipment or estimated. Where the volumes are calculated, no supply of water from outside the withdrawal site may affect or distort the calculation. Where the volumes of water are estimated, the estimate must be made by a professional in accordance with the provisions of sections 16 to 18 of this Regulation. In addition, the declaration must contain the name of the professional who evaluated the volume of water consumed, as well as his or her profession, and a description of the estimation method used. However, where the water is withdrawn to supply a waterworks system serving all or part of the population of a municipality, the person making the declaration may indicate a consumptive use equal to 15% of the person's withdrawals without justifying the percentage.

The provisions of the second paragraph of section 9 apply to the declaration of information provided for by this section, except for the purposes of section 18.6.

18.5. Where the water is withdrawn using a pond, a basin or other retaining works and having a hydraulic interconnection with groundwater, the declaration provided for in section 18.4 must indicate as withdrawal volume the rated volume of the pond, basin or works. In such a case, the volume of water withdrawal made out of the pond, basin or works needs not be indicated.

18.6. Despite the provisions of section 18.4, a withdrawer that, for agricultural or fish-breeding purposes, withdraws water from the St. Lawrence River Basin or transfers water out of the Basin is exempted from sending to the Minister of Sustainable Development, Environment and Parks the information provided for in that section if the Minister of Agriculture, Fisheries and Food has the same information out of the information collected pursuant to the regulations under the Minister's responsibility, such as the Regulation respecting the registration of agricultural operations and the payment of property taxes and compensations, made by Order in Council 340-97 dated 19 March 1997, or out of the programs under the Minister's responsibility or to which the Minister is a party, and where the withdrawer has consented to the transmission of the information to the Minister of Sustainable Development, Environment and Parks.

CHAPTER III
ANNUAL DECLARATION OF WATER WITHDRAWAL ACTIVITIES IN THE ST. LAWRENCE RIVER BASIN AND OF TRANSFER ACTIVITIES OUT OF THE BASIN

18.7. As of 1 January 2012, a withdrawer that withdraws water from the St. Lawrence River Basin from a withdrawal site whose works or facilities have a withdrawal rated capacity equal to or greater than 379,000 litres per day is required to annually declare to the Minister of Sustainable Development, Environment and Parks, for the year preceding the withdrawer's declaration or, as the case may be, for the year in progress, in addition to the information that must be declared pursuant to section 9, the volumes of water consumed every month in the Basin by indicating, for each site of use of the water withdrawn, the georeferenced data of their location, the volume and the class of industrial or commercial activities for which the withdrawal is intended; the class is identified using the codes of the North American Industry Classification System (NAICS).

Likewise, as of the same date, a withdrawer that transfers water out of the St. Lawrence River Basin, whatever the volume, must provide, in addition to the information that the withdrawer must declare pursuant to section 9, the following additional information for the preceding year:

(1) the volumes of water transferred out of the St. Lawrence River Basin, expressed in litres, indicating for each withdrawal site concerned, the georeferenced data of the sites where the water so transferred is used. Where the water transferred out of the Basin is intended to supply a waterworks system serving all or part of the population of a municipality, the level 1 drainage basins covered by the waterworks system must be indicated, and the name of the watercourse into which the water of the territory flows must be specified, as that name was officialized by the Commission de toponymie du Québec;

(2) the volumes of water discharged or returned to the St. Lawrence River Basin, expressed in litres, specifying the georeferenced data of the sites where the water was discharged or, as the case may be, where the water was returned.

As soon as a withdrawer is subject to a provision of this section, the withdrawer becomes, despite the provisions of subparagraph 1 of the second paragraph and subparagraphs 1 and 2 of the third paragraph of section 3 of this Regulation, subject to the provisions of sections 9 and 10 of this Regulation.

The provisions of sections 5 to 8 and 18.5 of this Regulation apply to the determination of the volumes of water to which this section applies, including the determination of the volumes of water transferred out of the St. Lawrence River Basin and the volumes of water discharged or returned to the Basin. The provisions of the third paragraph of section 18.4 apply to the determination of the volumes of water consumed; the provisions of the second and third paragraphs of section 9 apply to the transmission of the declaration provided for in this section.

18.8. The provisions of section 18.6 of this Regulation apply to the annual declarations to which section 18.7 apply, with the necessary modifications.

TITLE III
PENAL AND MISCELLANEOUS".

15. The heading "CHAPTER VI" is replaced by "CHAPTER I".

16. Section 19 is amended by replacing "18" in the introductory sentence of the first paragraph by "18.8".

17. The heading "Chapter VII" is replaced by "CHAPTER II".

18. Section 22 is struck out.

19. The annual declaration required by section 18.7, introduced by section 12 of this Regulation, applies as of 1 January 2015 for water withdrawals made for agricultural or fish-breeding purposes during 2014.

20. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*, except paragraph 2 of section 5, which comes into force on 1 January 2012.

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