

RAPPORT DU MINISTÈRE DES AFFAIRES
MUNICIPALES ET DE L'HABITATION
PRÉSENTÉ À LA COMMISSION D'ENQUÊTE
SUR L'ÉTAT DES LIEUX ET LA GESTION
DES RÉSIDUS ULTIMES

REPORT OF THE MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING TO THE COMMISSION OF INQUIRY ON SITE INVENTORY AND FINAL WASTE MANAGEMENT

This document was prepared by the Ministry of Municipal Affairs and Housing (MAMH).

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Overview

This report presents key elements of the legal framework for the municipal sector that can support the responsible management of final waste in Québec. This legal framework includes, in particular, the part for which the Minister of Municipal Affairs and Housing is responsible. More specifically, the current legal framework provides for enabling powers and responsibilities, including land use planning, nuisance management and public participation. The report describes the potential framework for the management of final waste and the issues related to the exercise of the powers and jurisdiction of the various municipal authorities.

The Ministère places considerable importance on compliance with the planning levels and on consistency between the actions of the levels of governance. For this reason, particular attention is paid to issues of territorial planning, cohabitation of uses and social acceptability.

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Setting the Context

The Ministère's mission is to support, in the interest of citizens, municipal administration, housing and sustainable land planning, development and occupation.

The role of the Ministère is to advise the government and ensure interdepartmental coordination on issues relating to municipal organization, the development of the metropolis and the regions, the occupation and vitality of the territories, and housing.

As such, it works in cooperation with its partners in the municipal sphere as well as with government departments and agencies that deal with municipalities.

This report addresses key elements of the legal framework, governance, and scope of municipal involvement in the management of final waste. At the request of the commission of inquiry on the site inventory and final waste management, the report also addresses the following issues:

- Guidance on elimination sites
- Issues related to the establishment, presence and expansion of residual material elimination or treatment sites
- The rehabilitation of end-of-life elimination sites
- Support to municipalities in terms of cohabitation and social acceptability.

Several passages in the report are taken from the guide *La prise de décision en urbanisme*, published on the Ministère's website.¹

In this report, the term “municipality” refers to any local municipality governed by the Cities and Towns Act or the Municipal Code of Québec.

Legal Framework

Act Respecting Land Use Planning and Development (Chapter A-19.1)

The Act respecting land use planning and development establishes the framework for land use planning and the responsibilities of the decision-making bodies involved, namely the Gouvernement du Québec, the metropolitan communities (CMs), the regional county municipalities (RCMs) and the local municipalities.

Territorial Planning

With respect to territorial planning, the LAU provides for the content elements that RCMs must (s. 5), or may (s. 6), include in their land use and development plans.

¹ <https://www.mamh.gouv.qc.ca/amenagement-du-territoire/guide-la-prise-de-decision-en-urbanisme/avant-propos/>

The RCMs must determine the major uses of the territory as well as indicate the nature of the infrastructures and equipment of importance, existing and planned. They may also identify the buildings and activities whose presence or operation in a place means that the occupation of the land near that place is subject to major constraints for reasons of public safety, public health, or general well-being.

The content of the plans must ultimately be reflected in the Master Plan and planning by-laws of the local municipalities (Sec. 58).

The plans are subject to a conformity analysis in accordance with Government land-use planning guidelines (GLPG). GLPGs indicate the government's directions and expectations with respect to regional and metropolitan land use planning. They address issues such as urban management and infrastructure planning.

The LAU also establishes that CMs must maintain a metropolitan land use and development plan (PMAD) in force (sec. 2.23). The PMAD may identify any facility of metropolitan interest and determine, for any new facility, its location, purpose, and capacity (sec. 2.24).

Urban Planning By-law

The LAU confers various regulatory powers to local municipalities in matters of urban planning. These tools help establish rules, standards and evaluation criteria governing construction and the use of buildings and land on the territory. The following powers may apply, in particular, to the management of residual material elimination or treatment sites on the territory.

- Zoning by-law (sec. 113):
 - › Provides details on the constructions or uses that are authorized and prohibited in a zone.
 - › Allows to regulate or prohibit all or some land uses, constructions or works, taking into account the proximity of a place where the presence or exercise, actual or projected, of a building or activity makes the land use subject to major constraints for reasons of public safety, public health, or general well-being.
- Subdivision By-law (sec. 115):
 - › Allows for the regulation or prohibition of all or certain cadastral operations, taking into account the proximity of a place where the presence or exercise, actual or projected, of an immovable or activity results in the occupation of the land being subject to major constraints for reasons of public security, public health, or general well-being.
- Permits and Certificates By-law (Sec. 119, 120 and 121):
 - › Allows for the prohibition, without obtaining a certificate of authorization, of any proposed change of use or destination of a building as well as any operation covered by the power to regulate or prohibit, by zoning by-law (presented above), all land uses, constructions or works.
 - › Allows for the prohibition of occupancy of a newly erected or altered building or a building whose destination or use has been changed without obtaining a certificate of occupancy.

- › Stipulates that, if the land in question is on the list of contaminated land established by the municipality and is the subject of a rehabilitation plan approved by the Minister of the Environment and the Fight against Climate Change (MELCC), an application for a permit must be accompanied by an attestation from an expert referred to in the *Environment Quality Act* (EQA) establishing that the project is compatible with the provisions of the rehabilitation plan.

Public Participation

The LAU establishes the basis for information, consultation, and public participation to involve citizens in the management of land use and urban planning. It stipulates, among other things, the public consultation requirements to which municipal authorities are subject, as well as the by-laws that are subject to referendum approval.

Furthermore, any local municipality may adopt a public participation policy that contains measures that are complementary to those provided for in the LAU and that aims to promote the dissemination of information, consultation, and active participation of citizens in the decision-making process in matters of planning and urban development (s. 80.1).

Municipal Powers Act (chapter C-47.1)

Under the *Municipal Powers Act* (LCM), municipalities have jurisdiction over, among other things, the environment, health, nuisance, and transportation. They benefit from regulatory power associated with these areas as well as with the general well-being of their population.

In addition, the LCM stipulates that municipalities may adopt any non-regulatory measure associated with the exercise of their jurisdiction. They may establish and operate an elimination or reclamation site for residual materials.

More specifically, the LCM also determines that:

- any local municipality may entrust a person with the sale of energy from the operation of a residual materials elimination facility (sec. 15)
- a local municipality may entrust a person with the operation of its waste elimination or reclamation system (sec. 34)
- where the municipality finds a cause of insalubrity or nuisance relating to a building, it may send a formal notice to the owner or occupant of the building, requiring them to remove it or to do the work necessary to prevent its recurrence within a period determined by the municipality (sections 57 and 61)
- the local municipality has jurisdiction over roads on public highways whose management does not come under the jurisdiction of the Gouvernement du Québec or the Government of Canada or one of their departments or agencies (sec. 66).

By virtue of their constitutive laws², CMs have jurisdiction in residual materials management planning. It should also be noted that the Montreal Metropolitan Community (MMC) has jurisdiction in clean air.

Environment Quality Act (chapter Q-2)

The EQA and its regulations provide an environmental permitting framework for certain activities that impact the municipal environment, including the establishment and operation of waste disposal, incineration, and reclamation sites. These include the *Regulation respecting the landfilling and incineration of residual materials* (Chapter Q-2, r.19), which provides for operating and development standards applicable to the above-mentioned sites. These standards may promote better cohabitation between these activities and other existing or proposed uses.

The EQA also provides a framework for waste management planning by municipal stakeholders, including the obligation for CMs and RCMs to develop and maintain a residual materials management policy (PGMR). A PGMR must include, among other things, an inventory of the recovery, reclamation or elimination facilities present on the territory and, where applicable, a mention of the new facilities required to achieve its objectives. It also binds the local municipalities whose territory is included in its area of application.

Furthermore, under certain conditions and as of the coming into force of its PGMR, the RCM may adopt a by-law whose purpose is to limit or prohibit, to the extent provided for in the plan, the landfilling or incineration on its territory of residual materials coming from outside its territory.

Section 118.3.3 of the EQA determines that by-laws adopted under this Act prevail over any municipal by-law dealing with the same subject matter unless the by-law is approved by the MELCC.

Guidance on Disposal Sites

Within the scope of action of municipal authorities, the supervision of disposal sites is exercised by:

- territorial planning of regional bodies
- urban planning regulations of local municipalities
- environmental, nuisance and transportation regulations.

Regional Planning

The GLPGs are a major component of the framework established by the LAU for land-use planning in Québec. They identify the issues facing local municipalities, RCMs and CMs; in this sense, they are the vehicle for the government's concerns and a tool for exchange between the government, RCMs and CMs on land-use planning issues.

² *Act respecting the Communauté métropolitaine de Montréal* (chapter C-37.01), s. 119 and *Act respecting the Communauté métropolitaine de Québec* (chapter C-37.02), s. 112.

Several GLPGs are in force in the various fields of government intervention. The GLPG document *Pour un aménagement concerté du territoire* addresses the consideration of natural and human-made risks and nuisances. The government therefore requests that:

- planning documents at the local and regional levels contribute to public health, safety, and well-being, as well as to environmental protection through better harmonization of uses.
- land use planning and environmental protection objectives be linked to the planning of public infrastructure and facilities and their sustainability be ensured.

As previously outlined, RCMs are empowered under the LAU to conduct planning for certain uses whose integration into the environment may be sensitive, based on the risks they present and the degree of compatibility with the sensitive uses surrounding them.

Under the GLPGs, RCMs must identify and locate all facilities for the recovery, reclamation, or disposal of residual materials in the plan. They are also invited to include provisions to limit the risks and nuisances posed by existing or planned facilities. Furthermore, to extend the life of facilities and protect the quality of life of citizens, the RCMs may determine the allocations compatible with these residual materials management activities and establish provisions on the compatibility of uses, rules relating to visual appearance and other provisions of a non-environmental nature. Finally, residual materials management facilities must be planned based on a regional consensus.

The MMC must, in accordance with the specific GLPGs applicable to its territory, consider ecological constraints to reduce environmental and social impacts when preparing the PGMR. It must also ensure the compatibility of land uses with the recovery, reclamation, or disposal sites for residual materials. The MMC therefore needs to conduct an inventory of these facilities. The Communauté métropolitaine de Québec (CMQ) must, for its part, adopt, in its PMAD, measures to facilitate the implementation, by the RCMs on its territory, of the measures mentioned in the PGMRs covering the territory of the CMQ.

Hence, with a view to contributing to public health, safety, and well-being as well as to environmental protection through better harmonization of uses and to align the planning of public infrastructures and equipment with land use planning and environmental protection objectives and ensure their viability, the RCMs are empowered to organize the sectors where facilities for the recovery, reclamation or disposal of residual materials are located or are likely to be located. This is done through the plan, in accordance with the GLPGs and in keeping with the PGMR.

Urban Planning By-Law

Thereafter, the urban planning by-laws of local municipalities must be consistent with regional planning. A zoning by-law may, for instance, permit industrial uses such as a landfill site and prohibit sensitive uses (hospitals, schools, etc.) in surrounding areas.

Other By-Laws

Furthermore, a municipality may, while respecting the jurisdiction of the various levels of government in this area, govern certain areas related to residual materials disposal sites. The purpose of these rules is generally to prevent certain practices or facilities from causing harm to the community. It can thus promote harmonious cohabitation on the territory as well as prevent environmental degradation. Note, however, that because of section 3 of the LCM, any provision of a by-law of a municipality adopted under this Act is ineffective if it is inconsistent with an Act, a regulation of the government or a regulation of one of its ministers.

Moreover, with respect to the environment, a municipality may establish rules for the management of residual materials, such as determining which materials are eligible for collection and disposal in landfills. It may also, among other things, stipulate that certain sites must be vegetated and regulate certain objects related to water management.

A municipality can also determine what constitutes a nuisance. The first characteristic of a nuisance is to cause serious inconvenience or harm either to public health or to the general welfare of part or all the community. The term “nuisance” can cover a wide range of situations: odours, noise, dust, fumes, etc.

Finally, by virtue of its jurisdiction in matters of transportation, the municipality may regulate the circulation of heavy vehicles on public roads for which it is responsible for maintenance. As such, this regulation could apply to heavy vehicles serving a disposal site. Provisions of the Highway Safety Code may apply in the exercise of this power, which requires the approval of the Minister of Transport.

It is important to note that the Ministry does not survey the by-laws adopted by municipalities.

Issues Related to the Establishment, Presence and Expansion of Residual Material Elimination or Treatment Sites on the Territory.

As industrial activities that can generate externalities, waste recovery, reclamation or disposal sites can present several challenges for municipal governments.

Given the possible duration of operation of these places, the planning and regulation of the sectors where they are authorized to settle require sensitivity to the territorial issues that concern them, including:

- the location of sites and the road network
- the cohabitation of uses and reciprocity
- nuisance management
- environmental quality.

Planning and Regulation

In addition to important facilities and infrastructures, it is also recommended that the RCMs indicate, in the plan, the sources of man-made constraints present or projected on their territory.

This exercise allows the organization of the territory in consideration of the issues inherent to the activities and sources of constraints identified. The RCMs should determine land uses and minimum urban planning rules to be adopted based on this diagnosis. Special attention should be paid to the location of more sensitive uses (e.g., drinking water intakes, hospitals, schools, residential complexes, etc.).

Moreover, to promote the cohabitation of uses and the social acceptability of regulation, the principle of reciprocity should be applied. This principle means that the rules applicable to an immovable must respect, with respect to neighbouring infrastructures and facilities, any distance standards imposed on them when they are built.

In the long run, this prevents the encroachment on and convergence of uses, constructions or works that are incompatible and that could compromise the health, security, or general well-being of persons as well as the possibilities of exploitation or expansion of activities designated as such.

Finally, when an RCM identifies sources of man-made constraints in its plan and the minimum rules that should apply in its vicinity, the municipalities that make up the RCM must ensure their application through the compliance process. Furthermore, local municipalities may also, on their own initiative and for reasons of public health and security or general welfare, regulate or prohibit land uses, constructions, works or cadastral operations in the vicinity of an immovable or activity that they recognize as being a source of major constraints.

In fact, regional reflection on residual materials management planning should lead to the identification of existing facilities, needs in terms of residual materials recovery and disposal and, subsequently, to the identification of spaces likely to accommodate these activities. Inevitably, this reflection is carried out in consideration of the location of the neighborhoods that the facilities are intended to serve as well as the nearby road network.

Site Expansion

Expanding the recovery, reclamation or disposal of residual materials can lead to certain conflicts of cohabitation of uses and social acceptability. Some citizens may feel a loss of enjoyment due to the proximity of their homes to industrial activities.

Optimally, the possibilities for expanding these sites should be analyzed as early as possible in the residual materials management planning process. Based on demographic forecasts and the potential growth of its needs, it is recommended that the RCM anticipate the expansion of certain facilities and organize the territory accordingly. Planning that integrates the precautionary principle and reciprocity is more likely to prevent conflicts that may arise from expansion projects.

Finally, municipalities may determine certain conditions that must be met when expanding a site, such as the deployment of measures to mitigate nuisances or inconveniences related to the project.

Regional Differences

Certain specific environments, such as island environments, also face challenges in relation to the management of residual materials. This applies to the Magdalen Islands, which, given its structural particularities in the context of insularity, is a fragile and cramped environment that requires the export of its residual materials from the territory. The complex cohabitation of uses in such a small area means that the heavy industrial zones that can accommodate this type of site are very limited, if not non-existent. In the case of island environments, this compels municipal authorities to export their residual materials to the mainland, forcing an external site to accept them and thus increasing treatment costs compared to an average municipality in Québec.

Northern environments also face challenges related mainly to the dispersion and isolation of communities on the territory as well as the presence of permafrost. In many communities, burial is impossible because of the rocky soil and permafrost, which encourages the open burning of domestic waste. Sorting and recovering recyclable materials is difficult to consider in this context, given the costs associated with transportation. This can lead to several challenges in implementing measures to reclaim residual materials. Finally, bulky materials, particularly used vehicles, must be stored properly because of the high potential for contamination from liquids and gases.

Nuisance and Environmental Quality Management

As mentioned, the operation of recovery, reclamation or disposal of residual materials can generate nuisance problems. These are mainly odours, noise and heavy vehicle traffic. Within this context, municipalities can use the regulatory powers conferred on them by the LCM to, namely:

- determine what constitutes a nuisance
- determine the measures to be implemented to counteract the negative effects of certain activities
- provide for a system of offences and penalties
- restrict or prohibit the circulation of heavy vehicles on certain roads to protect the infrastructure and maintain the quietness of certain sectors.

Municipalities should also pay particular attention to environmental quality issues such as the protection of drinking water sources, the preservation of the integrity of natural environments, particularly wetlands and water bodies, and the management of wildlife in urban areas.

Finally, for public health reasons, the planning of equipment likely to generate atmospheric emissions (e.g., an incinerator) or dust, and other nearby uses, should take into consideration certain factors specific to air quality, such as wind direction.

End-of-life Site Rehabilitation

The rehabilitation of end-of-life sites can create several challenges for municipal governments in terms of landscape aesthetics, safety and change of use.

Along with the rules set out in the EQA, municipalities have a role to play in the management of end-of-life sites on their territory. They can ensure that these sites do not present health and safety risks or landscape problems.

Municipalities can do this by, among other things:

- determine that end-of-life sites, or a portion thereof, must be vegetated and establish standards in this regard
- determine restrictions on access to the site (e.g., fencing the building)
- enact a building occupancy and maintenance by-law to promote the maintenance of buildings and to respond to building obsolescence
- provide for signage to be posted to warn the public of the hazards associated with the site.

The municipality may also regulate certain terms and conditions for changing the use of the site at the end of its life.

The by-law on permits and certificates of the municipality may prohibit any project to change the use or destination of an immovable without obtaining a certificate of authorization. It may also prohibit the occupancy of a newly erected or altered building or a change in the destination or use of a building without a certificate of occupancy. These provisions allow the municipality to monitor the evolution of uses on its territory.

Furthermore, the EQA and the LAU provide for specific provisions regarding the issuance of permits on sites with a history of contamination. The EQA requires municipalities to draw up a list of contaminated sites on their territory. This list is developed based on the notices registered in the land registry under the EQA, i.e., notices of contamination, use restriction or decontamination. The elements to be included in the list must provide useful information for the application of sections 120 and 121 of the LAU, which impose conditions on the issuance of subdivision or construction permits for the sites concerned.³

The issuance of a permit that does not comply with these provisions could lead to serious consequences because of the risks to health, the environment and well-being associated with the presence of contaminants in the soil.

Furthermore, the growth context may mean that some sites that were once located outside the urban perimeter are now in strategic areas for real estate development. In such cases, it is important to be vigilant regarding possible sources of historical contamination on the territory of the municipality, notwithstanding the aforementioned list. The presence of former landfill sites on the territory may in fact predate the coming into force of the legislation applicable to these sites and therefore constitute a risk despite everything.

³For more information, please consult the Muni-Express bulletin on the role and responsibilities of municipalities with respect to the use of contaminated land located on their territory: <https://www.mamh.gouv.qc.ca/publications/bulletin-muni-express/2020/n-11-28-septembre-2020/>

Furthermore, the RCM must determine and identify the locations of soil and industrial waste disposal sites as well as former industrial waste disposal sites as major anthropogenic stress zones in its plan. In the same vein, it may also list contaminated land that the MELCC considers problematic. Furthermore, the MMC must ensure, in its PMAD, the compatibility of land uses with contaminated land and thus proceed with the development of an inventory. The CMQ must, for its part, adopt measures in its PMAD with respect to contaminated land to guide RCMs in determining priority areas for intervention to direct their decontamination and reuse according to the intended use.

Finally, it should be noted that the local municipality may adopt, on all or part of its territory, an environmental rehabilitation program aimed at decontaminating or restoring soil.

Support for Municipalities Regarding Cohabitation and Social Acceptability

Role of the Regional Offices

The Ministère supports its municipal partners through the guidance provided by its regional branches and by developing and disseminating knowledge on best practices.

With the help of the technical sub-committee of the Regional Advisory Council (RAC) devoted to land use planning, the Ministère and the other ministries and agencies accompany the RCMs to clarify the GLPGs and the issues arising from them. Furthermore, they assist the RCMs in the search for concrete solutions to the various situations that they will have to deal with in their planning processes, particularly in terms of cohabitation and social acceptability.

Documentation

It should be noted that the Ministère produces and communicates various tools for the municipal community, including:

- the guide *La prise de décision en urbanisme*
- the guide to drafting a public participation policy
- the collection of good practice guides on territorial planning and sustainable development
- Muni-Express newsletters on topics related to public participation, residual materials management, and land use planning.

