

# Blakes Bulletin

## Infrastructure

### New Quebec Municipal Duty for Repair and Maintenance of Quebec Municipal Public Roads

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Effective January 1, 2009, the Quebec *Municipal Powers Act* (MPA) will be amended to compel Quebec municipalities (Municipality) or Quebec regional county municipalities (RCM) whose territory includes the site of a quarry or sand pit to establish a fund for the repair and maintenance of Quebec municipal public roads (a Fund). A Municipality or an RCM will need to adopt a by-law in accordance with the MPA to this effect by January 1, 2009 to establish a Fund. The MPA, which came into force on January 1, 2006, applies to all Municipalities and RCMs located in the province of Quebec except Northern, Cree or Naskapi villages. At the time of writing, not all Municipalities or RCMs have created a Fund, but the authors believe that it is highly likely that all Municipalities and RCMs will have created a Fund by January 1, 2009.

A Fund will be financed by duties to be paid by a quarry or sand pit operator located on the territory of a Municipality or an RCM (Duties). The Fund is being created to alleviate Quebec taxpayers from the burden of assuming all of the costs related to the repair and maintenance of Quebec municipal public roads that continue to be damaged, at least in part, as a result of the transportation of certain substances by the quarry and sand pit operators from their sites on Quebec municipal public roads.

#### QUARRY OR SAND PIT OPERATORS SUBJECT TO NEW QUEBEC MUNICIPAL DUTY

A quarry or sand pit operator whose site is located in the province of Quebec will be subject to paying Duties as of January 1, 2009 on certain substances that are transported outbound from its site if all of the following conditions are satisfied.

1. The substances transported outbound from the operator's site must be subject to the MPA. The following substances, whether or not they have been processed, are subject to the MPA (Substances):

- Surface mineral substances, as defined under section 1 of the Quebec *Mining Act* which include, amongst others, peat, sand including silica sand, gravel, limestone, calcite, dolomite, common clay, and argillaceous rocks;
  - Ready mixed concrete and bituminous concrete; and
  - Substances from the recycling of debris created by the demolition of buildings, bridges, highways or other structures.
2. The operations of the quarry or sand pit operator are likely to entail the transportation of Substances on Quebec municipal public roads.
3. The site in question will need to consist of a "quarry" or "sand pit" as such terms may be defined in the particular enabling by-law of the Municipality or the RCM.

#### QUANTUM OF DUTIES

The Duties payable by a quarry or sandpit operator will be calculated for a particular fiscal period in a municipal fiscal year on the basis of the quantity of Substances, expressed in metric ton or cubic metres, that are transported outbound from the operator's site. For the municipal fiscal year 2009, the Duties payable are:

- C\$0.50 per metric ton for every Substance concerned; or
- C\$0.95 per cubic metre for every Substance concerned, except dimension stone, in which case the amount is C\$1.35 per cubic metre.

Pursuant to the MPA, interest on unpaid Duties will accrue from the deadline payment date at the rate then in force for interest on arrears of Quebec municipal taxes.

Pursuant to the MPA, Duties payable constitute a prior claim on the movable property of the debtor, of the same nature and with the same rank as the claims described in article 2651(5) of the *Civil Code of Québec*, and are secured by a legal hypothec on the movable property.

#### DECLARATION BY A SITE OPERATOR

A quarry or sand pit operator, or its authorized representative, will have to declare in writing to the Municipality or the RCM, as the case may be, at the

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latest on June 15, October 15 and January 15 of every municipal fiscal year (Declaration):

- whether Substances are likely to be transported outbound from the operator's site on Quebec municipal public roads during the particular period covered by the Declaration; and
- the quantity of any such Substances, expressed in metric tons or cubic metres, transported outbound from the operator's site during the period covered by the Declaration.

Municipalities and RCMs will require that supporting documentation be filed with the Declaration and will have broad powers to verify the veracity and exactitude of a Declaration and supporting documents, including visiting a site. Penalties may also be applicable for failure to timely file a Declaration and the filing of a false Declaration.

### EXEMPTIONS TO PAYING DUTIES

There exists limited exceptions pursuant to which a quarry or sand pit operator may be exempt from paying Duties in respect of a particular period in a municipal fiscal year.

The most notable, referred to as the "Manufacturing Exception" may be available if: (i) peat or Substances are processed in an immovable; (ii) the said immovable must be part of either (a) a unit of assessment that includes the site or (b) a unit of assessment that is adjacent to the unit of assessment that includes the site; and (iii) the unit of assessment that includes the immovable must be listed under heading "2-3 INDUSTRIES MANUFACTURIÈRES" of the *Manuel d'évaluation foncière du Québec* except headings 3650 (i.e., ready mixed concrete industry) and 3791 (i.e., bituminous concrete fabrication industry).

A quarry or sand pit operator may also be exempt from paying Duties for a particular period on the Substances that are transported outbound from its site by filing a Declaration which provides that the Substances transported outbound from its site are not likely to be transported, at any given moment in the journey, on any Quebec municipal public roads during the given period covered by the Declaration. Such Declaration must include reasons.

A transitional exception also exists if a quarry or sand pit operator entered into a contract with a Municipality or an RCM before June 12, 2008 following a call for tenders for the supply of Substances. The Municipality or the RCM may reach an agreement with the operator to amend the contract in order to raise, from the year 2009, the price established in the contract by an amount equal to the Duties payable on those Substances. For the municipal fiscal year 2009, an operator who is required to pay Duties on Substances may be exempted from the portion of the Duties payable on the Substances that are transported to carry out a contract with a Municipality or an RCM (as described above) and of which the price has not been raised, provided the operator sends the Municipality or the RCM that must collect the Duties a copy of each of the contracts and a Declaration of total quantity of Substances covered by the exemption.

### GENERAL OBSERVATIONS

The determination of whether a quarry or sand pit operator whose site is located in the province of Quebec will be subject to paying Duties as of January 1, 2009 on Substances that are transported outbound from its site could be challenging – it requires, among others, the interpretation of industry specific terms and expressions that may not be clearly or comprehensively defined, or defined at all in the particular enabling by-law of the Municipality or the RCM. Each Municipality or RCM will need to adopt a by-law enabling the creation of the Fund for its particular territory. Consequently, there may be variances in the actual wording of the respective by-laws of the different Municipalities and RCMs. Moreover, site operators who operate a quarry or sand pit in more than one Municipality or RCM and transport Substances from one of such sites to the other may be subject to Duties imposed by both Municipalities or RCMs on effectively the same Substances.

Quarry or sand pit operators or other like operators in Quebec should consider whether they will be subject to paying Duties as of January 1, 2009.

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