

Regulation Respecting a Cap-and-Trade System for Greenhouse Gas Emission Allowances

- Overview -

Introduction

In April 2008, the province of Québec joined the Western Climate Initiative (WCI)¹. It has been an active partner in the preparation of the design and operating rules of the greenhouse gas cap and emission trading system (C&T) and the drafting of other documents published by the WCI², including: *Design Recommendations for the WCI Regional Cap-and-Trade Program (2008)*, *Design for the WCI Regional Program (2010)*, *Guidance for Developing WCI Partner Allowance Budget (2010)*, *Offset System Essential Elements Final Recommendations (2010)*, *Harmonization of Essential Requirements for Mandatory Reporting in U.S. Jurisdictions with EPA Mandatory Reporting Rule (2010)*, *Final Harmonization of Essential Reporting Requirements in Canadian Jurisdictions (2010)* and *Final Essential Requirements of Mandatory Reporting (Second Update)(2012)*.

In June 2009, the province of Québec unanimously adopted the Act to amend the Environment Quality Act and other legislative provisions in relation to climate change³. This Act grants the Government the enabling powers to implement, by regulation, a greenhouse gas C&T system.

In November 2009, after a parliamentary committee hearing, the Government of Québec adopted its greenhouse gas (GHG) emission reduction target for 2020, a reduction to 20% below 1990 levels, essential for the establishment of the annual GHG emission caps of the C&T system. This target, adopted by Order in Council 1187-2009⁴, has force of law.

In December 2011, following a public consultation of 60 days, the Government of Québec adopted the Regulation respecting a cap-and-trade system for greenhouse gas emission allowances⁵. This Regulation describes the operating rules of Québec's C&T system.

In December 2012, following a public consultation period of 60 days, the Government of Québec adopted the Regulation to amend the Regulation respecting a cap-and-trade system for greenhouse gas emission allowances⁶. This amendment aims to harmonize the C&T system with the one established by California and allows the linking of the Québec C&T system to the California C&T system. It also introduces the operating rules of Québec's offset system.

¹ The accession of Québec to the Western Climate Initiative was approved by Decree No. 378-2008 published in the Québec Official Gazette, Part 2, No. 19 on 7 May 2008, page 2050. The Québec Official Gazette is available on the following website: <http://www3.publicationsduQuébec.gouv.qc.ca/gazetteofficielle.fr.html>

² All these documents are available on the website of the Western Climate Initiative: www.westernclimateinitiative.org

³ Act 42 of 2009, an *Act to amend the Environment Quality Act and other legislative provisions in relation to climate change* was published in the Official Gazette of Québec, Part 2, number 34 on August 26th 2009, page 4387 (page 3069 of the English version).

⁴ Decree 1187-2009 on the adoption of Québec's GHG target of by 2020 was published in the Official Gazette of Québec, Part 2, number 49 on December 9th 2009, page 5871 (French version only).

⁵ The *Regulation pertaining to the Cap-and-trade system for greenhouse gas emission allowances* was enacted by Decree No. 1297-2011 and published in the Québec Official Gazette, Part 2, No. 50B on December 16th, 2011, page 5519B (page 3655B of the English version).

⁶ The Regulation amending the *Regulation pertaining to the Cap-and-trade system for greenhouse gas emission allowances* was enacted by Decree No. 1184-2012 and published in the Québec Official Gazette, Part 2, number 51 on December 19th 2012, page 5480 (page 3485 of the English version).

Also in December 2012, the Government of Québec adopted after a public consultation period of 60 days, the Order in Council 1185-2012⁷ regarding determination of annual cap on greenhouse gas emissions allowances for the C&T system for the 2013-2020 period. The caps have been established with the most recent emissions data in order to help achieve a reduction of 20% below the 1990 level of Québec's GHG emissions by 2020.

Finally, it must be stated that Québec is a founding jurisdiction of the non-profit organization Western Climate Initiative, Inc. (WCI, Inc.) established in October 2011 and has undertaken to participate in its financing⁸. The main purpose of this organization is to provide administrative and technical services to States of the United States and provinces and territories of Canada in the collaborative development and implementation of their respective GHG C&T programs. In December 2012, the Government of Québec adopted the Regulation respecting the delegation of the management of certain parts of a cap and trade system for greenhouse gas emission allowances⁹. This regulation delegates to WCI, Inc. the development, hosting, management and maintenance of the electronic registry of GHG emission allowances, the monitoring of the transaction of emission allowances to the registry and the administration of the auctions.

Overview of Québec's Cap and Trade System (C&T)

Québec's Cap and Trade system is based on recommendations published by the WCI partners, including those found in the *Design Recommendations for the WCI Regional Cap-and-Trade Program (2008)* and the *Design for the WCI Regional Program (2010)*. In addition, the Ministère du Développement durable, de l'Environnement, de la Faune et des Parcs and the California Air Resources Board have worked together over the past several years to ensure that the California and Québec C&T systems were consistent and harmonized in those areas necessary to enable the two systems to be linked.

In Québec, the ministre du Développement durable, de l'Environnement, de la Faune et des Parcs (the Minister) is responsible for the implementation and the well functioning of the C&T system. The Minister notably approves the registration requests in the system, the creation and the distribution of emission allowances, the transactions, the auction results and the reserve sales results.

⁷ The Decree No. 1185-2012 on the *Determination of annual caps on greenhouse gas emission units relating to the cap-and-trade system for greenhouse gas emission allowances for the 2013-2020 period* was published in the Official Gazette of Québec, Part 2, No. 51, December 19th 2012, page 5613 (page 3612 of the English version).

⁸ The financial contribution of Québec to the organization WCI inc. for fiscal years 2012 and 2013 was determined to be US\$ 1,648,749. A first payment of US\$ 100,000 was made in December 2011. Payment of the residual contribution of US\$ 1,548,749 was authorized by Decree number 606-2012 and published in the Official Gazette of Québec, Part 2, No. 27 on July 4th 2012, page 3581 (French version only). A financial assistance agreement was submitted to the WCI Inc. and approved by its Board of Directors in December 2012.

⁹ The *Regulation concerning Delegation of management of certain parts of a cap-and-trade system for greenhouse gas emission allowances* was enacted by Decree No. 1187-2012 and published in the Official Gazette of Québec, part 2, No. 51 on 19th December 2012, page 5613 (page 3613 of the English version).

The Regulation respecting a cap-and-trade system for greenhouse gas emission allowances came into force on January 1st 2012. The first year of operation of the C&T system was a transition year during which the entities that will be regulated in 2013 were required to register to the Compliance Instrument Tracking System Service (CITSS), a common registry developed and shared by Québec and California. The persons wishing to participate voluntarily in the C&T system in order to buy and sell compliance instruments could also register to the CITSS during the year.

The Québec C&T system has three initial compliance periods. The first compliance period, of two years, will start on January 1st, 2013. The second, of three years, will start on January 1st, 2015. Finally, the third compliance period, also for three years, will start on January 1st, 2018 and will end in December 31st, 2020. A compliance period is a period at the end of which a regulated entity must submit to the Government a number of compliance instruments equal to the total GHG emissions reported (and verified) for the period.

For the purpose of regulatory compliance, a regulated entity may submit as compliance instruments: allowances, early action credits or offsets credits issued by the Government of Québec or by another government with which a linking agreement has been entered into. The use of offsets credits is limited to 8% of the number of compliance instruments that the regulated entities must submit. Submission of compliance instruments in the CITSS must occur by November 1st following the end of each compliance period¹⁰.

In the event that on November 1st following the end of a compliance period a regulated entity does not possess in its CITSS compliance account a number of compliance instruments sufficient to cover its emissions during the period, an administrative sanction of three emission allowances to one is imposed, in addition to the requirement to provide the original number of missing compliance instruments. The Minister may also limit the type of transactions that the entity may make in its general account until the compliance obligation is met. A financial penalty could also be applied.

Scope of the C&T System

From 2013 on (the first compliance period), persons or municipalities operating a facility whose annual GHG emissions, excluding CO₂ emissions related to the combustion of biomass, are greater than or equal to 25 kt CO₂ equivalent (CO₂ eq.) will be subject to the system. Any person or municipality whose GHG emissions associated with the production of electricity imported and consumed in Québec, equal or exceed the annual threshold of 25 kt CO₂ eq., will also be subject to the system. The first compliance period will cover about 80 facilities from the industrial and power generation sectors¹¹.

Starting in 2015 (the second compliance period), any person or municipality which distributes in Québec fossil fuels whose annual GHG emissions due to the combustion of those fuels meet or

¹⁰ The requirements relating to the coverage of GHG emissions are described in Chapter III of Title II (Sections 19 to 23) of the *Regulation pertaining to the Cap-and-trade system for greenhouse gas emission allowances*.

¹¹ Entities which are subject to the system are defined in Section 2 of the *Regulation pertaining to the Cap-and-trade system for greenhouse gas emission allowances*.

exceed the annual threshold of 25 kt CO₂ eq. will also be subject to the system. In 2015, the system will then cover about 85% of GHG emissions in Québec.

When a covered entity is subject to the system, it is required to cover its GHG emissions up until at least 2020 or until December 31st following its third verified consecutive GHG emission reporting statement that is below the 25 kt CO₂ eq. threshold. Similarly, an unregulated entity becomes subject to the system on January 1st following its first statement for which its annual emissions are equal to or above the 25 kt CO₂ eq. threshold¹².

Compliance Instrument Tracking System

Any covered entity subject to the system as well as any participant (unregulated person or entity wishing to acquire compliance instruments), must register to the C&T system by submitting an application to the CITSS¹³.

Applications are subject to a rigorous Know-Your-Customer check. The identity of any person registering is checked by a third party (a lawyer or a notary) who must ensure to the Ministry that documents establishing identity provided with the application are valid and that the person involved in the application form is employed by the entity and has been duly designated to act on its behalf pertaining to the regulation.

The registration process also includes, in addition to basic information on entities and on its directors, disclosure of business relationships which is based on the requirements of the Security Act¹⁴ and the Business Corporation Act¹⁵.

If the application meets all the requirements of identity verification, it is accepted by the Minister and the proper accounts will be opened for the emitter or the participant in the CITSS.

Allowance distribution

Some businesses are subject to international competition and have little influence on the selling price of their products. For them, any increase in production costs would reduce their profit margins and could have an impact on their profitability.

In order to mitigate the impacts on the competitiveness of Québec's industrial sector, the emitters that

¹² See Section 19 of the *Regulation pertaining to the Cap-and-trade system for greenhouse gas emission allowances*.

¹³ The requirements for registering in the CITSS are defined in Sections 7 to 18 (Chapter 2, Title 3) of the *Regulation pertaining to the Cap-and-trade system for greenhouse gas emission allowances*.

¹⁴ Securities Act:

http://www2.publicationsduQuebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/V_1_1/V1_1_A.html

¹⁵ Business Corporations Act:

http://www2.publicationsduQuebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/S_31_1/S31_1_A.html

are part of the following sectors will receive assistance in the form of emission allowances distributed free of charge¹⁶ :

- Aluminium;
- Lime;
- Cement;
- Chemical and petrochemical industry;
- Metallurgy;
- Mining and pelletizing;
- Pulp and paper;
- Petroleum Refining;
- Others: manufacturers of glass containers, electrodes, gypsum products and some agri-food establishments.

Thermal power producers that have signed before January 1st 2008 long-term supply contracts, for which the price is predetermined and no provision is provided with respect to the distribution of costs arising from a GHG emissions regulation, could also receive free GHG emissions units.

The total number of allowances, which will be distributed for free during one year may not exceed the annual caps established by decree. A notice from the Minister stating the number of allowances distributed and the names of the entities that have received them will be published in the *Gazette officielle du Québec*.

Finally, distributors of fuels covered by the C&T system from January 1st 2015 are not eligible to receive free allowances. They will have to buy at auctions or on the market all the compliance instruments needed to cover emissions from combustion of fuels distributed for consumption in Québec.

Auctions

Auctioning of GHG allowances will be done jointly by all the participating governments with which the Québec C&T system has linked, including California when the systems become linked. Québec's C&T system may hold up to four auctions per year, held quarterly, which will be open to all registrants in the CITSS. The auctions will be announced by the Minister at least 60 days before they will be held.

The auctioning process in Québec is fully harmonized with the California process so as to allow joint auctions when the systems will be linked. For this purpose, Québec's regulation contains provisions based on the recommendations of the WCI partners and also proposed by California¹⁷ relating to currency conversion so as to allow bids in jointly held auctiond in both Canadian dollars and in U.S.

¹⁶ The allowance distribution process is described in Sections 39 to 44 of the *Regulation pertaining to the Cap-and-trade system for greenhouse gas emission allowances*.

¹⁷ California Air Resources Board's proposed regulation order for linking (Appendix A-2) is available at: <http://www.arb.ca.gov/regact/2012/capandtrade12.htm>.

dollars.

The auction process includes the registration of participants at least 30 days prior to the auction, the deposit of a financial guarantee, the respect of a bidding limit based on this financial guarantee, the respect of the holding limit for allowances and the respect of the purchase limit at the auction. A minimum auction price is set annually, starting at CAD\$10 per allowance for 2012 and increasing annually by 5% plus inflation until 2020.

The administration of the auction has been delegated to the WCI, Inc. who will receive and process the applications for auction registration as well as the financial guarantees. WCI, Inc. will manage the auction process and analysis of the bids received according to the requirements of Québec C&T system regulation. The results of the auction must be approved by the Minister before the auction results are announced. WCI, Inc. will also manage the auction settlement process, including arranging for the payments due to the Minister to be transfer to the Green Fund of the Government of Québec, as prescribed in section 46.16 of the Environment Quality Act¹⁸.

Reserve Sales

The Québec C&T system Regulation includes an allowance Price containment Reserve (Reserve). Sales from the Reserve¹⁹ may be held up to four times a year. Only covered entities established in Québec are eligible to purchase allowances from the Reserve. This restriction is the same as adopted by California²⁰, so that the respective allowance reserves created in each C&T systems would only be available for their respective entities.

The rules of the Reserve sales are very similar to California's process. The prices set for each tier of the reserve are the same as those set in California, that is CAD\$40-\$45-\$50 in 2013 for each of the reserve categories and these prices will increase annually by 5% plus inflation until 2020. By providing additional allowances at these defined prices, both the California and Québec C&T systems contain allowance prices in the same manner.

Under Québec's rules, in order to purchase allowances from the Reserve, a covered entity must not have valid compliance instruments for the current compliance period in its general account in the CITSS. In addition, the allowances purchased must be used for the entity's regulatory compliance as they will be directly transferred in the covered entity's compliance account; it will therefore not be possible to resell those allowances on the market. By so doing, we ensure that the Reserve

¹⁸ See Section 1 of Act 42 in 2009 (footnote page number 3). The amounts paid to the Green Fund from auctions are solely to be used « *to finance greenhouse gas reduction, limitation or avoidance measures, the mitigation of the economic and social impact of emission reduction efforts, public awareness campaigns and adaptation to global warming and climate change, or to finance the development of and Québec's participation in related regional and international partnerships* », including the financing of Québec's 2013-2020 Climate Change Action Plan and the implementation of C&T system.

¹⁹ The Reserve sale requirements can be found in Sections 56 to 64 of the *Regulation pertaining to the Cap-and-trade system for greenhouse gas emission allowances*.

²⁰ California Air Resources Board's final regulation order for the California tap-and-trade program is available at: <http://www.arb.ca.gov/regact/2012/capandtrade12.htm>

allowances will be used only by entities who may have difficulty finding compliance instruments on the market.

The administration of the Reserve sales has been delegated to the WCI, Inc. who will receive and process the applications for Reserve sale registration as well as the financial guarantees. WCI, Inc. will manage the Reserve sale process according to the requirements of the Québec C&T system regulation. The results of the Reserve sale must be approved by the Minister before the Reserve sale results are announced. WCI, Inc. will also manage the Reserve sale settlement process, including arranging for the payments due to the Minister to be transferred to the Green Fund of the Government of Québec, as prescribed by section 46.16 of the Environment Quality Act.

Transfer of compliance instruments

The rules surrounding the transfer²¹ of compliance instruments are fully harmonized between California and Québec. Since the allowances are only created in electronic form in the CITSS, all transfers of compliance instruments will therefore take place within the CITSS and, since it is a common registry, the rules of transfer must be the same.

According to the process established to undertake a transfer, two account representatives of the entity that initiates the transfer, must approve the request for transfer in order for it to be effective. Once this double confirmation is completed, an account representative of the entity which will receive the allowances must accept the transfer for it to be completed. By this procedure, California and Québec have shown their desire to protect market participants against theft of compliance instruments and market manipulation.

In addition, to make a transfer, account representatives will enter and validate information relative to the transfer. The information requested includes among others the price, the quantity, type and vintage of compliance instruments involved in the transfer. Those informations will allow California and Québec to supervise the transactions undertaken in the system CITSS and as needed, to monitor anomalies with the parties involved. This way, California and Québec will ensure the integrity of market for compliance instruments.

California and Québec have adopted common holding limits to restrict the number of compliance instruments that an entity or a participant may hold. Implementing limits will minimize the risk of market manipulation through the exercise of market power.

Credits for early actions

This element of the C&T system recommended by WCI partner jurisdictions aims to recognize real, verifiable, and additional GHG emission reductions made between January 1st, 2008 and January 1st, 2012.

²¹ The process for transferring GHG allowances is described in Sections 24 to 35 of the *Regulation pertaining to the Cap-and-trade system for greenhouse gas emission allowances*.

Only covered entities regulated under the first compliance period are eligible to receive credits for early actions (CEA)²². To receive CEA, the covered entity has to meet strict criteria, including demonstrating that it has reduced both its average annual emissions and its emissions intensity under the level of the reference period which covers 2005 to 2007, that the reductions come from a specific action and that they are not caused by a decrease in production.

CEA will only be issued once. The request must be received by the Minister before May 31st, 2013 and must meet all the criteria. If approved by the Minister, they will be issued no later than January 14th, 2014.

Offset Credits

The rules governing the offset system²³ are rigorous and provides for the delivery of high-quality offsets to be used for compliance by emitters in the system. The requirements are consistent with recommendations developed by WCI, notably the documents *Offset System Essential Elements Final Recommendations* and *Final Recommendations Offset System Process*. The offset credits issued by Québec are based on real, verifiable, additional, permanent, and enforceable emission reductions. Also, to receive offset certificates, the projects will have to be validated and verified by properly accredited third party verifiers following the requirements of the regulation. Québec has adopted, on December 12, 2012, three offset protocols in his regulation. These protocols have been available for public review and comment during the consultation period, and also reflect review and comment from California Air Resources Board (CARB) staff to ensure program harmonization:

- Manure storage facilities protocol covers projects designed to reduce GHG emissions by destroying the CH₄ captured from the manure storage facility of an agricultural operation in Québec raising one of the species of livestock specified in Regulation. The protocol is similar to the CARB Livestock protocol.
- Landfill sites protocol covers projects designed to reduce GHG emissions by destroying the CH₄ captured in some landfill sites in Québec involving the use of an eligible device to destroy CH₄. The protocol is based on Climate Action Reserve Landfill protocol, with adaptations to WCI criteria, notably the performance standard only credits emission reductions that are additional to both the Québec landfill regulations and the California landfill regulations.
- Destruction of ozone depleting substance protocol covers projects designed to destroy these substances contained in insulating foam removed from freezing storage and refrigeration appliances recovered in Canada. Again, this protocol is based on the CARB's protocol.

²² The process for requesting credits for early actions is described in Sections 65 to 70 of the *Regulation pertaining to the Cap-and-trade system for greenhouse gas emission allowances*.

²³ See Sections 70.1 to 70.22 (Chapter IV) of the *Regulation pertaining to the Cap-and-trade system for greenhouse gas emission allowances*.

Finally, to ensure the environmental integrity of offsets credits, in the event that offset credits are subsequently found to have been issued for reductions that did not occur, the Minister will require the replacement of those credits from the offset project proponent responsible for that fault. However, in the instance where the Minister could not recover the credits, an equivalent number of credits will be retired from the Minister's environmental integrity account. This environmental integrity account has been created in the regulation and is managed by the province. It is constituted from the conservation and the deposit of 3% of offset credits issued for each approved projects. This mechanism constitutes an insurance to maintain at any time the environmental integrity of the offset system, no matters the events.

The Québec regulation also respects the method adopted by California regarding offset credits issued by the CARB. In the event that CARB voids an offset credit that is held in an account of a Québec C&T system participant, upon receipt of documentation from CARB, the Minister has the authority to prevent the transaction or the use for compliance purposes of those credits.

GHG Emissions Mandatory Reporting

The C&T system is primarily based on a rigorous reporting of GHG emissions. Since its entry into force in November 2007, the Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere (RRMRCECA)²⁴ requires Québec entities to report their emissions of contaminants from their activities, including GHG emissions.

In joining in 2008 the WCI, Québec committed itself to adopt common rules regarding the reporting of GHG emissions. To this end, the RRMRCCECA was amended in 2010, 2011 and recently in 2012.

The first amendment came into force on December 30, 2010. Its main objective was to lower the reporting threshold to 10,000 tonnes CO₂ equivalent (t CO₂ eq.), to require third party verification for entities reporting 25 000 t CO₂ eq. or more from the year 2012 and to standardize the methodology to calculate GHG emissions by imposing the use of quantification protocols.

To furthermore harmonize with the requirements of the WCI and those of the US-EPA contained in the WCI document called *Final Essential Requirements of Mandatory Reporting* issued December 17th, 2010, a second amendment was made to the RRMRCCECA. This amendment came into force on December 31st, 2011 and added to the regulation new protocols to cover a wider range of activities undertaken by the C&T system covered entities.

Between December 2011 and April 2012, Québec and California compared their respective regulations to ensure that they are harmonized so as to enable the linking of California and Québec C&T systems. Thus, minor changes were made to RRMRCCECA and came into force on September

²⁴ The Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere can be found on the following website:

http://www2.publicationsduQuébec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/Q_2/Q2R15_A.HTM

20th, 2012. This change also included a new protocol for reporting GHG emissions for fuel distributors which will be covered by the C&T system beginning January 1st, 2015.

Finally, to ensure the regulation incorporates the latest recommendations from WCI in the document entitled *Final Essential Requirement of Mandatory Reporting Second Update* and issued on December 21st, 2011, the RRMCECA was again amended in December 2012.

Enforcement

The ministère du Développement durable, de l'Environnement, de la Faune et des Parcs has a long history of enforcing environmental regulations. In order to enforce Québec's Regulation respecting a cap-and-trade system for greenhouse gas emission allowances (cap-and-trade regulation) (R.L.R.Q., chapter Q-2, r. 46.1), its full set of authorities are available.

First, in all cases, when a violation of a regulation is noticed, either following an inspection or by the administrative authority (for example when required acts are not done in the time allotted or when required information are missing, erroneous or misleading), a notice of non compliance is sent to the offender urging that the necessary measures be taken immediately to remedy the failure. Such a notice must mention that the failure may give rise to a monetary administrative penalty and penal proceedings²⁵.

For the enforcement of the regulation, the following measures can be taken:

1. Monetary Administrative Sanctions

Those sanctions are found in Sections 71 to 73 of the cap-and-trade regulation and in Sections 115.13 to 115.28 of the EQA.

In accordance with section 115.13 of the EQA, a general framework developed by the Minister for applying such administrative penalties in connection with penal proceedings specifies the following elements:

- (1) the purpose of the penalties, such as urging the person or municipality to take rapid measures to remedy the failure and deter its repetition;
- (2) the categories of functions held by the persons designated to impose penalties;
- (3) the criteria that must guide designated persons when a failure to comply has occurred, such as the type of failure, its repetitive nature, the seriousness of the effects or potential effects, and the measures taken by the person or municipality to remedy the failure;

²⁵ See Section 115.15 of the Environment Quality Act (R.S.Q., c. Q-2) (EQA) :
http://www2.publicationsduQuebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/Q_2/Q2_A.html

- (4) the circumstances in which a penal proceeding is deemed to have priority;
- (5) the other procedures connected with such a penalty, such as the fact that it must be preceded by notification of a notice of non-compliance.

It also gives the categories of administrative or penal sanctions as defined by the Act or the regulations.

This framework states that:

- (1) the main objectives of monetary administrative penalties are:
 - to prompt the person in charge to quickly take the measures required to comply with the law;
 - to deter repetition of such violation.
- (2) the criteria guiding the use of monetary administrative penalties are:
 - real or apprehended consequences of the violation on the environment or the human being;
 - the vulnerability of the affected or potentially affected surroundings;
 - the nature of the violation;
 - the repetitive character of the violation;
 - the measures taken by the offender to remedy to the violation or repair the damages caused;
 - the damage to the authority of the Ministry or the Government;
 - the reprehensible conduct of the offender.

If a failure to comply for which a monetary administrative penalty may be imposed continues for more than one day, it constitutes a new failure for each day it continues²⁶.

When a person designated by the Minister decides to impose a monetary administrative penalty, this person must notify the decision by a notice of claim²⁷.

The person may apply in writing for a review of the decision within 30 days after being notified of the notice of claim²⁸.

After giving the applicant an opportunity to submit observations and produce any documents to complete the record, the person of the Ministry responsible for reviewing the decision renders a decision on the basis of the record, unless the person deems it necessary to

²⁶ Environmental Quality Act, Section 115.22.

²⁷ Environmental Quality Act, Section 115.16.

²⁸ Environmental Quality Act, Section 115.17.

proceed in some other manner. That person may confirm, quash or vary the decision under review²⁹.

The offender has the right to contest the decision before the Administrative Tribunal of Québec³⁰.

2. Penal Sanctions

Those sanctions are found in Sections 74 to 75.4 of the cap-and-trade regulation, in Sections 115.29 to 115.47 of the EQA and in the Code of Penal Procedure (CPP)³¹.

Depending on the situation, an inquiry can be done to acquire more proof of the violation.

When the case is ready and well documented, it is transferred to a criminal and penal prosecuting attorney who will decide if a statement of offence will be serviced. Penal proceedings are instituted by way of a statement of offence³² and every penal proceeding shall commence with service of a statement of offence³³.

The defendant can transmit a plea of guilty or not guilty within 30 days after service of the statement³⁴.

Where the defendant has transmitted or is deemed to have transmitted a plea of guilty without indicating his intention to contest the sentence imposed on him, he is deemed to have been convicted of the offence³⁵.

When the defendant has transmitted a plea of not guilty, the proceedings are tried by a judge of the Court of Québec³⁶.

An appeal of the judgement can be brought before the Québec Superior Court³⁷.

3. Specific administrative measures in the cap-and-trade regulation and the EQA.

(1) Non compliance: 3 for 1 penalty and suspension of general account

A failure by an emitter to cover the GHG emissions of a covered establishment on the expiry of the compliance deadline leads to the suspension of its general account

²⁹ Environmental Quality Act, Section 115.19.

³⁰ Environmental Quality Act, Section 115.20.

³¹ Code of Penal Procedure (CPP) (R.S.Q., c. C-25.1) :

http://www2.publicationsduQuebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_25_1/C25_1_A.html

³² See section 144 of the CPP.

³³ See section 156 of the CPP.

³⁴ See section 160 of the CPP.

³⁵ See section 165 of the CPP.

³⁶ See sections 187 and seq. of the CPP.

³⁷ See sections 266 and seq. of the CPP.

and the application of an administrative sanction equal to 3 emission units or early reduction credits for each missing emission allowance needed to complete the coverage³⁸.

(2) Suspension of the allocation of emission units without charge

The Minister may suspend the allocation of emission units without charge to any emitter that fails to comply with the provisions of the Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere (c. Q-2, r. 15) or with the provisions of this Regulation³⁹.

(3) Refusal of registration for auction sale or sale by mutual agreement

The Minister may refuse to register an emitter or a participant for any auction or sale by mutual agreement if, when applying for registration for the system or for a previous auction or sale by mutual agreement, the emitter or participant provided false or misleading information, omitted to disclose information required by this Regulation, or contravened a rule of procedure for the auction or sale by mutual agreement⁴⁰.

(4) Suspension, withdrawal or cancellation emission of allowance granted by the Minister

The Minister may suspend, withdraw or cancel any emission allowance: if the emission allowance was granted, traded or used to cover emissions on the basis of false or inaccurate information; if this subdivision or a regulation of the Government under this subdivision has been contravened; or for any other reason determined by regulation of the Government⁴¹.

4. Injunctions and other measures⁴²

(1) Injunctions

In a situation where the Ministry wants to force an entity to do or stop doing something, the case is prepared by the attorneys of the Justice Ministry working for the Sustainable Development, Environment and Parks Ministry and for the litigation office. An application for an injunction is made to the Québec Superior Court.

³⁸ See Section 22 of the cap-and-trade regulation.

³⁹ See Section 43 of the cap-and-trade regulation.

⁴⁰ See Sections 47 and 60 of the cap-and-trade regulation.

⁴¹ See Section 46.12 of the Environmental Quality Act.

⁴² See Sections 751 to 761 of the CCP.

(2) Refusal, modification, suspension and revocation of authorization

For most entities, an authorization certificate delivered by the Minister of Sustainable Development, Environment and Parks is required in order to operate.

Sections 115.5 et seq. of the EQA states that the minister can refuse, modify, suspend or revoke the certificate of an applicant or holder for different reasons, one being a conviction, either of the applicant or holder or in the case of a legal person, of one of its directors, officers or shareholders, for an offence under the EQA or its regulations.

Such a decision can be contested before the Administrative Tribunal of Québec⁴³.

5. Appeal

(1) Decision of the Administrative Tribunal of Québec

By a written request a person can ask the Tribunal to review or revoke its own decision for the following reason⁴⁴:

- the person was unable to attend the hearing for a serious reason;
- after the hearing a new fact is discovered that the person could not have been aware of before;
- there has been a substantive or procedural defect serious enough to invalidate the decision of the administrative judges

In certain exceptional cases where a decision of the Tribunal would not be reasonable in the legal sense, a proceeding for "judicial review" is possible before the Québec Superior Court.

(2) Judgement of the Québec Superior Court

An appeal of a judgement of the Québec Superior Court can be brought before the Québec Court of Appeal⁴⁵.

(3) Judgement of the Québec Court of Appeal

An appeal of a judgement of the Québec Court of Appeal can be brought before the Supreme Court of Canada on a question of law alone with leave of that Court⁴⁶.

⁴³ See Section 96 of the EQA.

⁴⁴ See Section 154 of the Act respecting Administrative Justice (R.S.Q., c. J-3) :

http://www2.publicationsduQuébec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/J_3/J3_A.html

⁴⁵ See sections 291 et seq. of CPP for penal proceedings and Sections 25 et seq. of the Code of Civil Procedure (CCP) (R.S.Q., c. C-25) :

http://www2.publicationsduQuébec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_25/C25_A.html

Prospects for Linking

Québec has worked through the WCI to enable its system to be linkable with similarly rigorous and well-designed programs. Québec welcomes the opportunity to expand climate action through linking programs, enabling greater emission reductions in more provinces and states in North America. With the level of advanced harmonization that has occurred among WCI Partner jurisdictions, we do not anticipate circumstances that could create liabilities for Québec or other linking partners.

⁴⁶ See Supreme Court Act (R.S.C., 1985, c. S-26, sections 35 et seq.) : <http://lois-laws.justice.gc.ca/eng/acts/S-26/FullText.html>