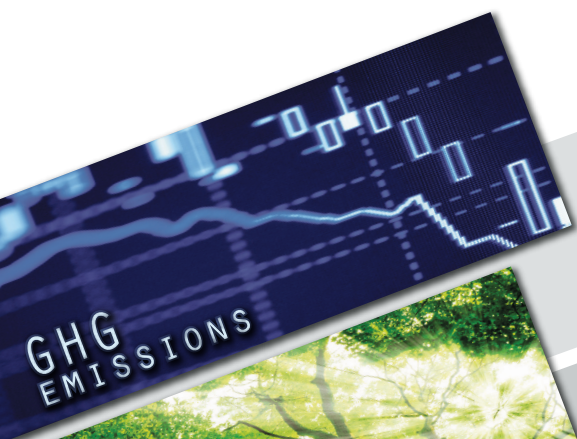




Québec's Cap-and-Trade System for Greenhouse Gas Emission Allowances

Technical Overview

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1. Introduction

In April 2008, the province of Québec joined the Western Climate Initiative (WCI)¹. It has been an active partner in designing the operating rules of the WCI cap-and-trade (C&T) system for greenhouse gas (GHG) emission allowances and drafting various WCI² documents, including the following:

- *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)*;
- *Final Essential Requirements of Mandatory Reporting (Second Update) (2012)*.

In June 2009, the Québec National Assembly unanimously adopted the *Act to amend the Environment Quality Act and other legislative provisions in relation to climate change*³, which grant the Government the enabling powers to implement, by regulation, a C&T system for greenhouse gas emission allowances.

In November 2009, after a parliamentary committee hearing, the Government of Québec adopted a new greenhouse gas (GHG) emission reduction target of 20%

below 1990 levels by 2020, which was essential for the establishment of annual GHG emission caps under the C&T system. This target, adopted by Order in Council⁴, has force of law. In December 2011, following a 60-day public consultation, 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 60-day public consultation process, the Government of Québec adopted the Regulation to amend the Regulation respecting a cap-and-trade system for greenhouse gas emission allowances⁶. This new regulation aimed at harmonizing Québec and California's C&T systems and enabling them to be linked. It also introduced the operating rules of Québec's offset credit system.

Moreover, in December 2012, after a 60-day public consultation process, the Government of Québec adopted Order in Council 1185-2012⁷ regarding the determination of the annual cap on greenhouse gas emissions allowances under the C&T system for 2013-2020. The caps were set based on the most recent known GHG emission data in order to enable Québec's GHG emissions to be reduced to 20% below 1990 levels by 2020.

It is also important to mention that Québec is a founding member of the non-profit Western Climate Initiative (WCI, Inc.), which was established in October 2011, and

1 Order in Council N° 378-2008 published in the *Québec Official Gazette*, Part 2, N° 19 on May 7, 2008, page 2050, authorized Québec to join the Western Climate Initiative. The *Québec Official Gazette* is available on the Publications Québec website: <http://www3.publicationsduquebec.gouv.qc.ca/gazetteofficielle.fr.html>.

2 All publications mentioned are available on the Western Climate Initiative Web site: www.westernclimateinitiative.org

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

4 Order in Council 1187-2009 on the adoption of Québec's GHG reduction target of 2020 was published in the *Québec Official Gazette*, Part 2, N° 49 on December 9, 2009, page 5871 (French version only).

5 *The Regulation respecting a cap-and-trade system of greenhouse gas emission allowances* was enacted by Order in Council N° 1297-2011 and published in the *Québec Official Gazette*, Part 2, N° 50B on December 16, 2011, page 5519B (page 3655B of the English version). The current version of the regulation can be found at: http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/Q_2/Q2R46_1_A.HTM.

6 *The Regulation amending the Regulation respecting a cap-and-trade system of greenhouse gas emission allowances* was enacted by Order in Council No 1184-2012 and published in the *Québec Official Gazette*, Part 2, No 51 on December 19, 2012, page 5480 (page 3485 of the English version).

7 Order in Council N° 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 *Québec Official Gazette*, Part 2, N° 51 on December 19, 2012, page 5613 (page 3612 of the English version).



participates in its funding. The main purpose of the WCI is to provide technical and scientific expertise to U.S. states and Canadian provinces and territories for the collaborative development and implementation of their respective GHG C&T programs. To that end, the WCI provides development, hosting, and management and maintenance facilities for the Compliance Instrument Tracking System Service (CITSS) and for auctions.

In September 2013, the Government of Québec signed an agreement with the California Air Resources Board (CARB) that anticipated the harmonization of mandatory reporting programs and the integration of the California and Québec cap-and-trade systems aimed at linking their respective carbon markets. This linkage came into effect on January 1st, 2014, creating the WCI regional carbon market, which is the largest in North America and the only cap-and-trade system in the world to be designed and operated by sub-national governments in different countries. Inasmuch as this was an international agreement falling under the jurisdiction of the *Act Respecting the Ministère des Relations Internationales*, it was tabled in the National Assembly of Québec and adopted unanimously.

2. 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 et de la Lutte contre les changements climatiques* and CARB have worked together diligently over the past several years to ensure that California and Québec's C&T systems were compatible, enabling the two to be linked.

In Québec, the Minister of Sustainable Development, the Environment and the Fight Against Climate Change (the Minister) is responsible for the implementation and functionality of the C&T system. In particular, the Minister approves the applications for registration in the system, the creation and the distribution of emission allowances, as well as the results of auctions. 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 transitional: emitters subject to regulation in 2013 were required to register with the CITSS, which was developed and is shared by Québec and California. Persons wishing to participate voluntarily in the C&T system carbon market in order to buy and sell GHG emission allowances were also permitted to register with the CITSS during that year.

The Québec C&T system includes three initial compliance periods spanning the calendar years 2013 to 2014, 2015 to 2017, and 2018 to 2020. A compliance period is defined as a period of time at the end of which a regulated emitter is required to submit to the Government a number of GHG emission allowances (compliance instruments) that equal its total reported and verified emissions for the period⁸.

In order to meet regulatory compliance, an emitter may submit the following types of GHG compliance instruments: emission allowance units, credits for early reduction and/or offset credits issued by the Government of Québec or by another government with which Québec has signed a market linking agreement. The use of offset credits is, however, limited to 8% of the emitter's total submitted compliance instruments. Compliance instruments must be filed in the CITSS no later than November 1st, following the end of each compliance period.

Emitters whose CITSS compliance account balances on November 1st following the end of a compliance period do not show sufficient quantities of allowances to cover their emissions during that period are subject to an administrative sanction at the rate of three emission allowances to one, in addition to being required to submit the original number of missing compliance instruments. The Minister may also place restrictions on the type of transactions that the emitter may make in its general account until the compliance obligation is met. Financial penalties may also be imposed.

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



2.1 Scope of the C&T system

Since the start of the first compliance period on January 1st, 2013, persons and/or municipalities that operate any facility whose annual GHG emissions (excluding CO₂ emissions related to the combustion of biomass) are greater than or equal to 25 kt of equivalent CO₂ (kt CO₂eq.) have been regulated by the C&T system. Any person or municipality that distributes in Québec electricity produced outside Québec, whose associated GHG emissions equal or exceed the annual threshold of 25 kt CO₂eq., is also subject to the system. The first compliance period covers approximately 80 facilities from the industrial and power generation sectors⁹.

As of January 1, 2015 (beginning of the second compliance period), any person or municipality that distributes in Québec fossil fuels whose combustion meets or exceeds the annual GHG emission threshold of 25 kt CO₂eq. is also covered by the C&T system, thereby encompassing almost 85 % of Québec's GHG emissions. Emitters regulated by the C&T system are required to cover their GHG emissions until at least 2020 or until December 31 following their third consecutive GHG emission report that falls below the threshold of 25 kt CO₂eq. Similarly, an unregulated emitter becomes subject to the system on January 1 following its first annual report showing GHG emissions that are equal to or exceed the threshold of 25 kt CO₂eq¹⁰.

2.2 The CITSS

All emitters subject to the cap-and-trade system and unregulated participants wishing to acquire GHG emission allowances on the market must register in the C&T system by submitting a CITSS application¹¹. All applications are vetted by a rigorous Know-Your-Customer process. This means that registrant identities are checked by a third party (a lawyer or notary) who warrants to the Ministry that the identification documents submitted with the application are valid. The third party is also required to confirm that the individuals who submitted the application form are in fact employed by the enterprise and are empowered to act on its behalf for the purposes of the Regulation respecting a cap-and-trade system of greenhouse gas emission allowances.

In addition to basic information on companies and their directors, the registration process also includes the disclosure of business relationships as mandated by the *Securities Act*¹² and the *Business Corporations Act*¹³. Applications that meet all criteria are approved by the Minister, and the appropriate CITSS accounts are then opened for the emitter or unregulated participant.

9 Persons that are subject to the system are defined in Section 2 of the Regulation respecting a cap-and-trade system of greenhouse gas emission allowances.

10 See Section 19 of the Regulation respecting a cap-and-trade system of greenhouse gas emission allowances.

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

12 Securities Act: <https://www.canlii.org/en/qc/laws/stat/cqlr-c-v-1.1/latest/cqlr-c-v-1.1.html>

13 Business Corporations Act: <https://www.canlii.org/en/qc/laws/stat/cqlr-c-s-31.1/latest/cqlr-c-s-31.1.html?searchUrlHash=AAAAQAiTG9plHN1ciBsZXMgc29jacOpdMQpcyBwYXlgYWNOaW9ucwAAAAAB>

2.3 Distribution, purchase and sale of GHG emission allowances

Some businesses that face international competition have little or no influence on the selling price of their products. For them, any increase in production costs could reduce their profit margins and compromise their profitability.

In order to mitigate the repercussions of the C&T system on the competitiveness of Québec's industrial sector and avoid carbon leakage, emitters that are part of the following sectors receive assistance in the form of free GHG emission allowances¹⁴:

- Aluminium;
- Lime;
- Cement;
- Chemical and petrochemical industry;
- Metallurgy;
- Mining and pelletizing;
- Pulp and paper;
- Petroleum refining;
- Glass containers, electrodes, gypsum products;
- Some agri-food establishments.

Thermal power producers that signed long-term supply contracts before January 1st, 2008, under which pricing is predetermined and which have no cost-sharing clauses pertaining to GHG emission regulation are also eligible for free emissions units.

The total number of free GHG emission units distributed in any given year may not exceed the annual caps set by Order in Council. A notice from the Minister stating the number of allowances distributed and the names of the recipients is published in the *Québec Official Gazette*.

Finally, distributors of fuels and combustibles covered by the C&T system as of January 1st, 2015 do not receive free GHG emission units. Rather, they are required to purchase all emission allowances needed to cover emissions attributable to the combustion of the fossil fuels they sell for consumption in Québec at government auctions or on the WCI carbon market.

2.4 Auctions

The Government of Québec may hold GHG emission unit auctions separately or jointly with governments with which it has carbon market linkage agreements in place, as is currently the case with California. Québec regulations allow for up to four auctions per year, or one per quarter, which are open to participation by all persons that are registered in the CITSS. All auctions are announced by the Minister at least 60 days before they are held.

The auction process requires participant registration at least 30 days prior to the sale, the deposit of a financial guarantee, as well as compliance with this guarantee and with the authorized allowance holding and auction purchase limits. The auctioning process in Québec is harmonized with the California process to allow for joint auctions. Both Québec and California regulations contain provisions based on the recommendations of the WCI partners in regard to currency conversion¹⁵. These provisions enable joint auction financial guarantees, bids, and payment to be made in either Canadian or U.S. dollars¹⁶.

A minimum bid price is set each year for Québec. It was CAD \$10 when the C&T system came in to effect in 2012 (pricing was identical in California). The C&T regulation allows for annual price increases of 5% plus inflation until 2020. Minimum prices may differ among partner jurisdictions due to differing annual rates of inflation. For joint Québec-California auctions, the minimum bid price will be the higher of Québec and California minimum prices on auction day, based on the latest exchange

14 The allowance allocation process is described in Sections 39 to 44 of the Regulation respecting a cap-and-trade system of greenhouse gas emission allowances.

15 The California Air Resources Board's Final Regulation Order for the California Cap-and-Trade Program is available at www.arb.ca.gov/regact/2012/capandtrade12.htm.

16 All operations must, however, take place in the same currency.



rate published by the Bank of Canada. GHG emission allowance lots put up for sale at auctions are comprised of 1,000 mixed units from the markets involved in the sale and cannot be identified by origin.

Auction administration is handled by WCI, Inc., which receives and processes applications for auction registration and financial guarantees. WCI, Inc. manages the auction process and analyses bids received in accordance with regulations. Applications for auction registration are subject to ministerial approval. In addition, auction results must be approved by the Minister before they are made public. WCI, Inc. also collects funds due to the Minister, which are paid to the Government of Québec Green Fund per Section 46.16 of the *Environment Quality Act*¹⁷.

2.5 Ministerial direct sales by mutual agreement

The Québec C&T system Regulation includes an Allowance Price Containment Reserve (Reserve). Sales from the Reserve¹⁸ 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 the one adopted by California¹⁹, so that the respective allowance reserves created in each C&T system would only be available for their respective entities.

The rules of the Ministerial direct sales by mutual agreement (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 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 requests for registration must be approved by the Minister. Similarly, the results of the Reserve sale must be approved by the Minister before they are made public. 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*.

2.6 CITSS transactions

The rules surrounding the transfer²⁰ of GHG emission allowances are fully harmonized. Since the allowances are only created in electronic form in the CITSS and originate in either Québec or California, they are fully fungible. All transfers occur within the CITSS and the same transfer rules apply to all participants, whatever their jurisdiction.

Under the process established to conduct transfers, approval from two account representatives of the entity

17 All sums paid into the Green Fund from auction sales are strictly reserved 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" and in particular, to fund the 2013-2020 Climate Change Action Plan and implementation of a cap-and-trade system.

18 The Ministerial direct sales by mutual agreement requirements can be found in Sections 56 to 64 of the *Regulation pertaining to the Cap-and-trade system for greenhouse gas emission allowances*.

19 California Air Resources Board's final regulation order for the California cap-and-trade program is available at: <http://www.arb.ca.gov/cc/capandtrade/capandtrade.htm>.

20 The process for transferring GHG allowances is described in Chapter IV, Title II, Sections 24 to 35 of the *Regulation respecting a cap-and-trade system of greenhouse gas emission allowances*.

that initiates the transfer is required for it to be effective. Once this double confirmation takes place, an account representative of the entity that will receive the allowances must in turn accept the transfer in order for it to be completed. By adopting this procedure, California and Québec have demonstrated their desire to protect market participants against theft of emission allowances and market manipulation.

In addition, the account representatives are required to enter and confirm information about the transfer before it can occur. The required information includes the price, quantity and type of GHG emission allowances that are involved. This information allows both California and Québec to supervise CITSS transactions and, as needed, check any anomalies with the parties involved. This oversight enables California and Québec to ensure the integrity of the GHG emission allowances market.

California and Québec have agreed to apply common holding limits in order to restrict the number of GHG emission units that can be held by any given emitter or non-regulated other participant. Implementing limits is a way of minimizing the risk of market manipulation.

2.7 Offset Credits

The rules governing the offset credit system²¹ are rigorous and provide for the issuance of high-quality offsets to ensure that emitters are C&T-compliant. The rules were established to be consistent with recommendations developed by the WCI, notably found in the documents *Offset System Essential Elements Final Recommendations* and *Final Recommendations Offset System Process*. The offset credits issued by Québec represent actual, verifiable, additional, permanent, and enforceable emission reductions. Moreover, in order to receive offset credits, projects must be certified and verified by third party auditors that have been accredited in compliance with the requirements of the Regulation. Of interest, on December 12, 2012, Québec adopted the following three regulatory offset credit protocols. These protocols were

subjected to a public consultation process, and were reviewed by the California Air Resources Board (CARB) to ensure program harmonization:

- The manure storage captured CH₄ destruction protocol covers projects designed to reduce GHG emissions by eliminating CH₄ captured from Québec agricultural manure storage facilities in livestock operations involving one of the species mentioned in Regulation;
- The landfill site captured CH₄ protocol covers projects designed to reduce GHG emissions by destroying CH₄ captured in landfill sites in Québec through the use of an eligible device;
- The destruction of ozone-depleting substance (ODS) protocol covers projects designed to destroy these substances, which are found in insulating foam, as well as the destruction of ODS used for refrigeration that are removed from freezing storage and refrigeration appliances recovered in Canada.

Other protocols are in development.

Finally, to guarantee the environmental integrity of the scheme in the event that offset credits are subsequently found to have been issued for reductions that did not occur, the Minister will require the at-fault offset project proponent to replace the credits. In cases where the Minister is unable to recover the credits, an equivalent number of credits will be withdrawn from the Minister's environmental integrity account. This account, managed by the Government of Québec, was set up for this very purpose by the C&T regulation. Funded by retaining 3% of the offset credits issued for each approved project, this mechanism is a form of insurance to maintain the permanent environmental integrity of the cap-and-trade system, no matter what events may occur.

Québec regulations also respect the method adopted by California regarding CARB offset credits. In the event that CARB voids an offset credit that is held in the account of a Québec C&T system participant, upon receipt of the appropriate documentation from CARB, the Minister has the authority to prevent transactions involving these credits or their use for regulatory compliance purposes.

²¹ See Chapter IV, Sections 70.1 to 70.22 of the *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*.



2.8 Early reduction credits

Early reduction credits²² under the cap-and-trade system have been recommended by the WCI partners, because they enable the recognition of actual, verifiable and additional reductions achieved between January 1st, 2008 and January 1, 2012.

Only those emitters covered in the first compliance period that met strict criteria were entitled to receive early reduction credits. In particular, applicants were required to demonstrate that they had reduced the annual average of their GHG emissions, both in terms of intensity and net volume, based on the 2005-2007 reference period, and that the reductions came as a result of a specific action and were not due to a drop in production.

Early reduction credits were only issued once. The deadline was May 31, 2013 for receipt of applications by the Minister, who issued the authorized credits by January 14, 2014.

²² The early reduction credit application procedure is described in Title II, Chapter III, Sections 65-70 of the Regulation respecting a cap-and-trade system for greenhouse gas emission allowances.

3. Mandatory GHG emission reporting

The C&T system is primarily based on rigorous reporting of GHG emissions. Since it came into effect in November 2007, the Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere²³ requires Québec businesses to report the emissions of contaminants derived from their activities, including GHG emissions.

After it joined the WCI in 2008, Québec committed itself to adopting common rules regarding the reporting of GHG emissions. To this end, the Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere was amended in 2010, 2011 and 2012.

The first amendment came into force on December 30, 2010. Its main objective was to lower the reporting threshold to 10,000 tons of equivalent CO₂ (t CO₂eq.), to require third-party verification for emitters reporting 25,000 tCO₂eq or more starting in 2012, and to standardize the methodology used to calculate GHG emissions through mandatory quantification protocols.

To further harmonize with WCI and US-EPA requirements as described in *Final Essential Requirements of Mandatory Reporting*, which was published by the WCI on December 17, 2010, a second amendment was made to the Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere. This amendment came into force on December 31, 2011, adding new protocols to cover a wider range of activities by emitters subject to the C&T system.

Between December 2011 and April 2012, Québec and California compared their respective regulations to ensure that they were fully harmonized in order to enable the linking of the California and Québec C&T systems. Minor changes made to the Regulation respecting mandatory

reporting of certain emissions of contaminants into the atmosphere came into force on September 20, 2012. These changes also included a new GHG emission reporting protocol for fuel and combustible distributors, as they will be covered by the C&T system beginning in January, 2015.

Finally, to ensure that the Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere incorporated WCI recommendations published in *Final Essential Requirement of Mandatory Reporting Second Update* on December 21, 2011, it was again amended and enacted in December 2012.

²³ The Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere is available at <http://www.canlii.org/en/qc/#search/?id=qc&all=Regulation%20respecting%20mandatory%20reporting%20of%20certain%20emissions%20of%20contaminants%20into%20the%20atmosphere>.



4. Enforcement

The *Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques* applies and enforces environmental regulations. Various means of enforcing Québec's Regulation respecting a cap-and-trade system for greenhouse gas emission allowances are available to the Minister²⁴.

Firstly, whenever a regulatory infraction is observed, either following an inspection or by the administrative authority (for example when required action is not taken within the allotted time or when mandatory information is missing, erroneous or misleading), a notice of non-compliance is sent to the offender requiring that the necessary remedial measures be taken immediately. The notice stipulates that the infraction may lead to a monetary administrative sanction being imposed and to penal proceedings²⁵.

A number of different measures can be used to enforce the regulation.

4.1 Monetary administrative penalties

Applicable monetary administrative penalties are set out in Sections 71 to 73 of the cap-and-trade regulation and in Sections 115.13 to 115.28 of the *Environment Quality Act*.

Pursuant to Section 115.13 of the *Environment Quality Act*, a general ministerial framework for applying administrative sanctions in connection with penal proceedings specifies the following:

- (1) The purpose of the penalties, such as prompting the person or municipality to take rapid measures to remedy the infraction and refrain from future repetition;
- (2) The categories of positions held by individuals designated to impose penalties;
- (3) The criteria used to guide designated individuals when an infraction is observed; for example, the type of infraction, its repetitive nature, the seriousness of its effects or potential effects, and the remedial measures taken by the individual or municipality;
- (4) The circumstances in which penal proceedings will be given priority;
- (5) The other procedures involved in imposing the penalty, such as issuing a non-compliance notice beforehand.

The general framework also stipulates the various available categories of administrative or penal sanctions, as set out in the *Environment Quality Act* and/or its regulations.

The general framework sets out the following:

- (1) The main objectives of monetary administrative sanctions are:
 - To prompt the person in charge to quickly;

²⁴ CQLR c Q-2, r. 46.1

²⁵ See Section 115.15 of the *Environment Quality Act*, CQLR c Q-2 at <http://www.canlii.org/en/qc/laws/stat/cqlr-c-q-2/latest/cqlr-c-q-2.html>

take the measures required to comply with the law;

- To deter further infractions.

(2) The criteria guiding the use of monetary administrative penalties are:

- The real or apprehended consequences of the infraction on the environment or on human beings;
- The vulnerability of the affected or potentially affected surroundings;
- The nature of the infraction;
- The repetitive nature of the infraction;
- The measures taken by the offender to remedy the infraction or repair the damages caused;
- The impairment to the authority of the Ministry or the Government;
- The reprehensible conduct of the offender.

Any infraction for which a monetary administrative penalty may be imposed that continues for more than one day constitutes a new infraction for each day it continues²⁶.

When an individual that has been empowered by the Minister decides to impose a monetary administrative penalty on a person or municipality, it must be preceded by a notice of claim²⁷.

The target person or municipality may apply in writing for a review of the decision within 30 days of notification²⁸.

After giving the applicant an opportunity to submit his/her response and produce documents to complete the record, the individual responsible for the review at the Ministry renders a decision on the basis of the record, unless it is deemed necessary to proceed in some other manner. The decision under review may be upheld, quashed or modified²⁹.

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

4.2 Penal provisions

Relevant penalties are described in Sections 74 to 75.4 of the cap-and-trade regulation; in Sections 115.29 to 115.47 of the *Environment Quality Act*; and in the Code of Penal Procedure (CPP)³¹.

Depending on the situation, an investigation may be ordered to acquire additional proof of the infraction. When the case is ready and well documented, it is transferred to a criminal and penal prosecuting attorney for a decision on whether or not a statement of offence will be issued. Penal proceedings proceed by way of a statement of offence³² and every penal proceeding shall commence with a statement of offence being served³³.

The defendant is required to plead guilty or not guilty within 30 days of service of the statement of offence, in writing, at the location stipulated on the statement³⁴.

In cases where a defendant has submitted or is deemed to have submitted a plea of guilty without indicating intent to contest the imposed sentence, he is deemed to have been convicted of the offence³⁵. In cases where a defendant has submitted a "not guilty" plea, the proceedings are tried by a judge of the Court of Québec³⁶.

The defendant may appeal the judgment to the Québec Superior Court³⁷.

26 *Environment Quality Act*, Section 115.22

27 *Environment Quality Act*, Section 115.16

28 *Environment Quality Act*, Section 115.17

29 *Environment Quality Act*, Section 115.19

30 *Environment Quality Act*, Section 115.20

31 Code of Penal Procedure (CPP), CQLR, c C 25.1: <http://www.canlii.org/en/qc/laws/stat/cqlr-c-c-25.1/latest/cqlr-c-c-25.1.html>

32 Idem, Section 144

33 Idem, Section 156

34 Idem, Section 160

35 Idem, Section 165

36 Idem, Sections 187 and seq.

37 Idem, Sections 266 and seq.



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

(1) Non compliance:

This infraction may lead to a 3 for 1 penalty and suspension of the 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 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 of

emission allowances 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.

4.4 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 its litigation office and the *Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques*. An application for an injunction is made to the Québec Superior Court.

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

For most entities, an authorization certificate delivered by the *Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques* 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.

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.
43 See Section 96 of the EQA.

4.5 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 reasons⁴⁴:

- where a new fact is discovered which, had it been known in time, could have warranted a different decision;
- where a party, owing to reasons considered sufficient, could not be heard;
- where a substantive or procedural defect is of a nature likely to invalidate the decision;

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) Judgment of the Québec Superior Court

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

(3) Judgment of the Québec Court of Appeal

An appeal of a judgment 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.

44 See Section 154 of the Act respecting Administrative Justice (R.S.Q., c. J-3) : http://www2.publicationsduquebec.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.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_25/C25_A.HTM

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>



5. Linking carbon markets

On January 1st, 2014, Québec linked its cap-and-trade system with California's, thereby creating the largest carbon market in North America and the first in the world to have been designed and to be operated by subnational governments of different countries. This linking was made possible because of a close collaboration between the Québec and California governments, and came to fruition as a result of a comprehensive regulatory harmonization process⁴⁷. On November 25, 2014, the two partners held their first joint auction, thereby completing the integration of their two systems.

Québec is interested in linking its cap-and-trade system with similar systems in North America. In the long run, Québec welcomes the possibility of expanding its actions on climate change by linking its cap-and-trade system with other systems worldwide in order to achieve more important reductions in GHG emissions.

⁴⁷ The document 'Québec's cap-and-trade system and the WCI carbon market: A Historical Overview' describes the process leading to the linking of Québec and California's cap-and-trade systems.

