



Québec cap-and-trade system
for greenhouse gas emission
allowances (C&T)

Technical Overview





Legal deposit

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1. Introduction

In April 2008, Québec joined the Western Climate Initiative (WCI)¹. It immediately became 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 grants the Government the powers to implement a C&T system for greenhouse gas emission allowances by regulation.

In November 2009, after a parliamentary committee hearing, the Government of Québec adopted a new GHG⁴ 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 Council⁵, 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 allowances*⁶.

¹ Order in Council No 378-2008 published in the *Québec Official Gazette*, Part 2, No19 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.en.html>.


² All publications mentioned are available on the Western Climate Initiative website: 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, No 34 on August 26, 2009, page 4387 (page 3069 of the English version).

⁴ The gases covered by the C&T system are listed in the second paragraph of section 46.1 of the *Environment Quality Act*. They are: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆), as well as nitrogen trifluoride (NF₃).

⁵ Order in Council 1187-2009 on the adoption of Québec's 2020 GHG reduction target was published in the *Québec Official Gazette*, Part 2, No 49 on December 9, 2009, page 5871 (French version only).

⁶ December 9, 2009, page 5871 (French version only). The *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances* was enacted by Order in Council No 1297-2011 and published in the *Québec Official Gazette*,



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 allowances*⁷. This new regulation was aimed at harmonizing Québec's 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 1185-2012⁸ regarding the determination of the annual cap on GHG emissions allowances under the C&T system for 2013-2020. The caps were set based on the latest GHG emission data available in order to reduce Québec's GHG emissions 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 participates in its funding. The main purpose of the WCI is to provide technical and scientific expertise to WCI partner jurisdictions 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 1, 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 of different countries. Since the agreement fell under the jurisdiction of the *Act respecting the Ministère des Relations internationales*, it was submitted to a vote in the Québec National Assembly and adopted unanimously.

Part 2, No 50B on December 16, 2011, page 5519B (page 3655B of the English version). The current version of the regulation can be found at: <http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/Q-2.%20r.%2046.1>.

⁷ The *Regulation amending the Regulation respecting a cap-and-trade system for 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).

⁸ Order in Council 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 Québec Official Gazette, Part 2, No 51 on December 19, 2012, page 5613 (page 3612 of the English version).



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

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 de l'Environnement et de la Lutte contre les changements climatiques* (MELCC) and CARB have worked together closely over the past several years to ensure the compatibility of California's and Québec's C&T systems, in order to enable the two to be linked.


In Québec, the MELCC is responsible for the implementation and functionality of the C&T system. In particular, the Minister approves applications for registration in the system, the creation and distribution of GHG emission allowances, as well as auction results and ministerial direct sales by mutual agreement. The *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances* came into force on January 1, 2012. The C&T system's first year of operation was transitional: emitters subject to regulation in 2013 were required to register with the CITSS, which was developed and is now 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 has had three compliance periods up to this point. The first period lasted two years, from January 2013 to December 2014. The second period lasted three years, from January 2015 to December 2017. The current (third) compliance period will also extend over three years (ending in December 2020) as will all subsequent periods. A compliance period is a duration at the end of which a regulated emitter is required to surrender to the Government the number of GHG emission allowances (compliance instruments) equal to its total reported and verified emissions for the period concerned⁹.

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 allowances the emitter is required to surrender. Emission allowances must be surrendered in the CITSS no later than November 1 following the end of each compliance period.

If, on November 1 following the end of a compliance period, emitters have insufficient allowance quantities in their CITSS compliance accounts to cover their GHG emissions for that period, they are subject to an administrative sanction of three emission allowances for each missing allowance, in addition to being required to surrender the original number

⁹ One allowance equals one ton of GHGs. *Regulation respecting a cap-and trade system for greenhouse gas emission allowances*, Sections 19 to 23.



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.

2.1 Scope of the C&T system

Since the start of the first compliance period on January 1, 2013, persons and/or municipalities that operate any facility whose annual GHG emissions, excluding CO₂ emissions related to the combustion of biomass, are equal to or greater than 25 kt of CO₂ equivalent (kt CO₂ eq.) are subject to the C&T system. Any person or municipality that distributes electricity in Québec that is produced outside Québec and whose associated GHG emissions equal or exceed the annual threshold of 25 kt CO₂ eq., is also subject to the system. The first compliance period covered approximately 80 facilities in the industrial and power generation sectors,¹⁰ which are globally referred to as emitters.

As of 2015, any person or municipality that distributes 200 liters or more of fossil fuels in Québec is also subject to the C&T system. As a result, the system covers nearly 85% of Québec's GHG emissions. The second compliance period covered almost 120 emitters, which included facilities from the industrial sector as well as fossil fuel distributors.

Emitters regulated by the C&T system are required to cover their GHG emissions until December 31 following their third consecutive report indicating that their GHG emissions falls below the threshold at which emitters are subject to that C&T system (25 kt CO₂ eq. or 200 liters). Similarly, an unregulated emitter becomes subject to the system on January 1 following its first annual report showing its GHG emissions are equal to or exceed the threshold of 25 kt CO₂ eq.¹¹.

Starting on January 1, 2019, the C&T system allows facilities to become regulated entities on a voluntary basis under certain conditions. These are called opt-in facilities. They are required to cover their emissions, but are admissible for free allocation of emission allowances, as provided for by the *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*. Moreover, fossil fuels bought by an opt-in facility are excluded from the compliance obligation of the distributors from which they were acquired. Therefore, distributors do not charge the carbon cost to opt-in facilities for those products. An entity can become regulated on a voluntary basis if its emissions are greater than 10 kt eq. CO₂¹² but below 25 kt eq. CO₂¹³, the threshold at which emitters are subject to the C&T system.

¹⁰ *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*, Section 2.

¹¹ *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*, Section 19.

¹² Within the meaning of the *Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere*.

¹³ Within the meaning of the *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*.



2.2 The CITSS

All (mandatory or voluntary) emitters subject to the cap-and-trade system as well as any legal entities or natural persons wishing to acquire GHG emission allowances on the market must register with the C&T system by submitting a CITSS application¹⁴.

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 Government 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 company in question and are empowered to act on its behalf for the purposes of the Regulation respecting a cap-and-trade system for 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 Act¹⁵ and the Business Corporations Act¹⁶.

Applications that meet all criteria are approved by the Minister, and the appropriate CITSS accounts are then opened for the emitter or the unregulated participant.

2.3 Distribution, purchase and sale of GHG emission allowances

Some businesses face international competition and 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 (the transfer of production to jurisdictions where there is no price on carbon), emitters that are part of the following sectors receive assistance in the form of free GHG emission allowances¹⁷:


- Aluminum;
- Lime;
- Cement;
- Chemical and petrochemical industry;
- Metallurgy;
- Mining and pelletizing;
- Pulp and paper;

¹⁴ *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*, Sections 7 to 18.

¹⁵ *Securities Act*: <http://legisquebec.gouv.qc.ca/en/showDoc/cs/V-1.1>.

¹⁶ *Business Corporations Act*: <http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/S-31.1>.

¹⁷ *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*, Sections 39 to 44.

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- Petroleum refining;
 - Glass containers, electrodes, gypsum products;
 - Some agri-food establishments.

Thermal power producers that signed long-term supply contracts before January 1, 2008, under which pricing was predetermined and which have no cost-sharing clauses pertaining to GHG emission regulation, are also eligible for free GHG 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, fuel distributors covered by the C&T system since January 1, 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 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, compliance with this guarantee as well as with the unit holding limit and purchase limit during the auction. 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 regarding currency conversion¹⁸.

These provisions enable joint auction financial guarantees, bids, and payment to be made in either Canadian or U.S. dollars¹⁹.

A minimum bid price is set each year for Québec. The amount was CAD \$10 when the C&T system came in to effect in 2012 (pricing was identical in California, in U.S. dollars). The C&T regulation provides 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's and California's minimum prices on auction day, based on the latest exchange rate published by the Bank of Canada. GHG emission allowance lots put up for sale at

¹⁸ The California Air Resources Board's Final Regulation Order for the California Cap-and-Trade Program is available at <https://www.arb.ca.gov/cc/capandtrade/capandtrade.htm>.

¹⁹ All operations must, however, take place in the same currency.



auctions are composed 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's Green Fund as per Section 46.16 of the *Environment Quality Act*²⁰.

2.5 Ministerial direct sales by mutual agreement

The Québec C&T system regulation provides for a Ministerial Reserve designed to prevent GHG unit sale prices from rising too high. Sales from the Reserve²¹ may be held up to four times a year. Only emitters established in Québec are eligible to purchase allowances from the Reserve. California adopted the same restriction²², so that allowance reserves created in each C&T system would only be available to its own entities.

The rules of the ministerial direct sales by mutual agreement (Reserve sales) are very similar to California's. The prices set for each tier of the reserve were the same in 2013, that is CAD \$40-\$45-\$50 for each of the reserve categories, and these prices were set to increase annually by 5% plus inflation until 2020. By providing additional GHG units at these set prices, both the California and Québec C&T systems exercise control over unit prices in the same manner.


Under Québec's regulation, only emitters that do not have enough valid GHG emission units in their general CITSS account for the current compliance period can participate in a Reserve sale. In addition, since the units purchased are directly transferred into the emitter's compliance account, they must be used for the entity's regulatory compliance. It will therefore not be possible to resell these units on the market. In this way, the Minister ensures that the Reserve units will be used only by entities that may have difficulty finding compliance instruments on the market.

The administration of the Reserve sales has been delegated to WCI, Inc. which receives and processes the applications for Reserve sale registrations as well as financial guarantees. WCI, Inc. manages the Reserve sale process according to the requirements set out in the Québec C&T system regulation. Registration applications 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. also manages the Reserve sale settlement

²⁰ 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.

²¹ *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*, Sections 56 to 64.

²² See the California Air Resources Board's final regulation order for the California cap-and-trade program.



process, which includes arranging for the payments due to the Minister to be transferred to the Government of Québec's Green Fund, as prescribed by section 46.16 of the *Environment Quality Act*.

2.6 CITSS transactions

The rules surrounding the transfer²³ of GHG emission allowances are fully harmonized. Since the allowances are only created in electronic format 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, regardless of whether they are based in Québec or California.

Under the established process, to carry out a transfer, the approval of two account representatives of the entity initiating the transfer is required. Once this double confirmation takes place, an account representative of the entity that receives 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 emission allowance theft 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 involved. This information allows both California and Québec to supervise CITSS transactions and, as needed, follow up on any anomalies with the parties involved. This oversight enables California and Québec to ensure the integrity of the GHG emission allowance 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 participant. Implementing limits is a way to minimize the risk of market manipulation.

2.7 Offset Credits

The rules governing the offset credit system²⁴ are rigorous and provide for the issuance of high-quality offsets to ensure that emitters are C&T compliant. The rules were established in accordance with recommendations developed by the WCI, primarily found in the documents *Offset System Essential Elements Final Recommendations* and *Final Recommendations Offset System Process*. Therefore, the offset credits issued by Québec represent emission reductions that are real, verifiable, additional, permanent, and enforceable. 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 respecting a cap-and-trade system for greenhouse gas emission allowances*.

²³ *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*, Sections 24 to 35.

²⁴ *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*, Sections 70.1 to 70.22.



The following five regulatory offset credit protocols currently in effect were the subject of a public consultation process and were reviewed by the California Air Resources Board (CARB) to ensure program harmonization:

- The protocol pertaining to manure storage facilities of livestock operations involving one of the species mentioned in the Regulation applies to the capture of methane (CH₄);
- The landfill site protocol covers sites that use devices that are allowed under the Regulation to destroy CH₄;
- The protocol pertaining to the destruction of ozone-depleting substances (ODS) covers projects designed to destroy these substances, which are found in insulating foam as well as certain refrigerant gases extracted from air conditioning and refrigeration appliances recovered in Canada.
- Two protocols pertaining to active coal mines cover projects aimed at destroying CH₄ in drainage systems or air ventilation equipment.

Other protocols are in development.

Finally, in order to guarantee the environmental integrity of the offset credit system should it be discovered that offset credits were issued for reductions that did not occur, the Minister will require the offset project proponent deemed to be at fault 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 specific purpose by the C&T system regulation. It is funded by retaining and depositing 3% of the offset credits issued for each approved project and serves as a mechanism to ensure that the environmental integrity of the cap-and-trade system is maintained at all times, no matter what events may occur.


The Québec regulation also complies with 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, the Minister has the authority, upon receipt of the appropriate documentation from CARB, to prevent transactions involving these credits or their use for regulatory compliance purposes.

2.8 Early reduction credits

Early reduction credits,²⁵ a component of the cap-and-trade system recommended by the WCI partners, made it possible to achieve real, verifiable and additional reductions between January 1, 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 resulted from a specific action and were not due to a drop in production.

²⁵ Regulation respecting a cap-and-trade system for greenhouse gas emission allowances, Sections 65-70.



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

3. Mandatory GHG emission reporting

The C&T system is first and foremost 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 atmosphere*²⁶ 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 GHG emissions reporting. To that 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 CO₂ equivalent (t CO₂ eq.), to require third-party verification for emitters reporting 25,000 t CO₂eq 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 distributors.

²⁶ The *Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere* is available at <http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/Q-2,%20r.%2015>.



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

Since then, the *Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere* has been amended annually to clarify the information to be reported, make technical changes, facilitate understanding of the regulation, and ensure harmonization with the *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*.

4. Enforcement

The *Ministère de l'Environnement et de la Lutte contre les changements climatiques* applies and enforces environmental regulations. Various means are available to the Minister²⁷ for enforcing Québec's *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*.

Whenever a regulatory infraction is detected, 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 the imposition of a monetary administrative penalty and penal proceedings²⁸.

A number of 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 *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances* and Sections 115.13 to 115.28 of the *Environment Quality Act* (EQA).

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;

²⁷ *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*, Sections 71 and seq.

²⁸ *Environment Quality Act*, Section 115.15: <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/Q-2>.

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3. The criteria used to guide designated individuals to apply sanctions when an infraction is detected; 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 provided for 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 take the measures required to comply with the law;
 - 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 human beings, or on the proper functioning of economic instruments put in place to protect the environment;
 - 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 continues²⁹.


When an individual who has been empowered by the Minister imposes a monetary administrative penalty on a person or municipality, it must be preceded by a notice of claim³⁰.

The person or municipality targeted may apply in writing for a review of the decision within 30 days of notification³¹.

²⁹ *Environment Quality Act*, Section 115.22.

³⁰ *Environment Quality Act*, Section 115.16.

³¹ *Environment Quality Act*, Section 115.17.



After giving the applicant an opportunity to respond and, if applicable, produce documents to complete the record, the individual responsible for the review 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, overturned or modified³².

The offender has the right to appeal the decision before the Administrative Tribunal of Québec³³.

4.2 Penal provisions

Relevant penalties are described in Sections 74 to 75.4 of the cap-and-trade regulation and in Sections 115.29 to 115.47 of the *Environment Quality Act*.

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 are instituted by way of a statement of offence³⁴ and every penal proceeding commences at the time the statement of offence is served³⁵.

The defendant is required to plead guilty or not guilty within 30 days after service of the statement of offence, in writing, at the location stipulated on the statement³⁶.

In cases where a defendant has submitted or is deemed to have submitted a guilty plea without indicating intent to contest the imposed sentence, he is deemed to have been convicted of the offence³⁷. In cases where a defendant has submitted a not guilty plea, the proceedings are tried by a judge of the Court of Québec³⁸.

³² *Environment Quality Act*, Section 115.19.

³³ *Environment Quality Act*, Section 118.12.

³⁴ *Code of Penal Procedure*, Section 144: <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/C-25.1>.

³⁵ *Code of Penal Procedure*, Section 156.

³⁶ *Code of Penal Procedure*, Section 160.

³⁷ *Code of Penal Procedure*, Section 165.

³⁸ *Code of Penal Procedure*, Sections 187 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 coverage³⁹.

2. Suspension of emission units allocated 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 the cap-and-trade regulation⁴⁰.

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 the cap-and-trade regulation, or contravened a rule of procedure for the auction or sale by mutual Agreement⁴¹.

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 Government⁴².

Such decisions may be appealed before the Administrative Tribunal of Québec.⁴³

³⁹ *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*, Section 22.

⁴⁰ *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*, Section 43.

⁴¹ *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*, Sections 47 and 60.

⁴² *Environmental Quality Act*, Section 46.12.

⁴³ *Environment Quality Act*, Section 118.12.



4.4 Injunctions and other measures⁴⁴

1. Injunctions:

In a situation where the Minister wants to force an entity to do or stop doing something, the case is prepared by the attorneys of the *Ministère de la Justice* working for its litigation office and the *Ministère 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 issued by the *Ministère 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 state that the Minister may refuse, modify, suspend or revoke the certificate of an applicant or holder for various reasons, including a conviction of either 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 may be contested before the Administrative Tribunal of Québec⁴⁵.

⁴⁴ *Code of Penal Procedure*, Sections 751 to 761.

⁴⁵ *Environmental Quality Act*, Section 96.



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