

The Quebec Carbon Market is in Effect!

BY OUR ENVIRONMENTAL LAW PRACTICE GROUP

Following a period of uncertainty concerning the implementation of its carbon market, Quebec passed the necessary regulatory measures at the end of 2012 to ensure the operation of its carbon market as of January 1, 2013. Quebec and California are thus the only two members of the Western Climate Initiative to have implemented a carbon market, even though certain adjustments are to be made over the next few months.

Regulatory measures passed in December 2012 resulted in amendments to the *Regulation Respecting Mandatory Reporting of Certain Emissions of Contaminants Into the Atmosphere* (the "**Regulation Respecting Mandatory Reporting**") and regulation applicable to the cap and trade system for greenhouse gas ("GHG") emission allowances in order to ensure harmonization with the Californian carbon market. The following is a description of the main amendments.

MANDATORY REPORTING

It should be noted that any person operating an establishment that, during a calendar year, emits GHGs into the atmosphere in a quantity equal to or greater than 10,000 metric tons CO₂ equivalent must report those emissions to the Ministry of Sustainable Development, Environment, Wildlife and Parks (the "**MSDEWP**"), no later than June 1 of each year, until such time as its GHG emissions have been below the reporting threshold for four consecutive years. The information must be submitted electronically using the form provided by the MSDEWP. Moreover, any emitter reporting annual GHG emissions equal to or greater than 25,000 metric tons CO₂ equivalent (except for certain emissions referred to in the *Regulation Respecting Mandatory Reporting*, for example CO₂ emissions attributable to the combustion or use of biomass and biomass fuels, or certain CO₂, CH₄ and N₂O emissions attributable to mobile equipment on the site of an establishment, etc.) must send a verification report on its emissions report, carried out by an accredited organization, to the MSDEWP, no later than June 1. For 2012 GHG emissions, the deadline has exceptionally been set to September 1, 2013.

The December 2012 amendments are aimed primarily at reinforcing requirements in connection with (i) emissions reporting; and (ii) verification, as set out below:

1. **Additional information:** A collection of additional information is required to be submitted by operators to the MSDEWP along with the mandatory report. For instance, the MSDEWP now requires precise information on biomass used, total GHG emissions attributable to combustion, CO₂ emissions attributable to fixed processes, and GHG emissions attributable to the production of electricity where the electricity is produced outside Quebec for consumption by the operator or for sale in Quebec, as the case may be.
2. **Restrictions applicable to the verification of emissions reports:** Both the verification organization and the verifier designated by such organization must meet the requirements set out in the *Regulation Respecting Mandatory Reporting*. The verification report must include, among other information, a declaration on conflicts of interest, including, *inter alia*, a certification signed by the representative of the verification organization to the effect that the requirements pertaining to conflicts of interest have been met and that the risk of conflicts of interest is acceptable. In this regard, the *Regulation Respecting Mandatory Reporting* now provides for a presumption of conflicts of interest invalidating a verification report under certain circumstances. A certain degree of flexibility will be allowed for emissions reports in respect of 2012.

3. **New protocols:** Amendments have been made to the current protocols establishing calculation methods (including to Protocol QC.1 Stationary Combustion and Protocol QC.7 Iron and Steel Production). New protocols have also been added for the following activities: (i) titanium dioxide production; (ii) titanium dioxide slag from ilmenite reduction and molten cast iron treatment; (iii) oil and natural gas exploration and production, as well as natural gas processing; and (iv) iron and steel powder production.
4. **New sanctions:** Sanctions applicable to a breach of the requirements set out in the *Regulation Respecting Mandatory Reporting* are now more strict. For legal persons, the maximum amount of penal sanctions has increased from \$25,000 to \$3,000,000, depending on the nature of the breach. In addition to these penal sanctions, monetary administrative sanctions in a minimum amount of \$1,000 and a maximum amount of \$3,500, depending on the nature of the failure and as applicable to legal persons, have been introduced.

The *Regulation Respecting Mandatory Reporting* can be accessed by clicking [here](#).

THE CAP-AND-TRADE SYSTEM

The Regulation Respecting a Cap-and-Trade System for Greenhouse Gas Emission Allowances (the "**Regulation Respecting a Cap-and-Trade System**") was also amended significantly so as to (i) ensure harmonization of the Quebec System with California regulations; and (ii) enact regulations applicable to offset projects. The following describes the main amendments to this regulation.

1. **Procedure for registering in the Cap-and-Trade System:** The procedure for registration of emitters and participants is now more demanding. For instance, an emitter must at all times designate at least two (and at most, five) account representatives, who must obtain an identifier by providing the MSDEWP with prescribed information. The emitter may also have up to five account viewing agents who have previously obtained an identifier from the MSDEWP. Hence, an emitter must adequately choose the account representatives in order to ensure that access to its account is not blocked in the event of the absence, resignation or dismissal of the representatives. Any change to the information provided at the time of registration in the System must be communicated to the MSDEWP within 10 business days of such change.

Furthermore, any transaction with an emitter will require that the information provided to the MSDEWP relative to account representatives and viewing agents be updated.

2. **Business relationship:** The emitter must identify and disclose to the MSDEWP any business relationship, as henceforth defined by the *Regulation Respecting a Cap-and-Trade System*, with an emitter or a participant registered in the System. An analysis of what constitutes a business relationship will therefore be required in order to avoid sanctions, as the concept of related entity is now defined in the *Regulation Respecting a Cap-and-Trade System*.
3. **Free allocation:** The distribution of emissions units without charge will be made twice a year: on January 14 of each year, 75% of the free units will be allocated to the general account of the emitter and the remaining units will be allocated on September 14 of each year. For the year 2013, the first issuance will be made on May 1, 2014.
4. **Coverage of emissions:** Every emitter will be required to cover each metric ton CO₂ equivalent of the verified emissions from an establishment or enterprise, as the case may be. For this purpose, every emitter will be required to have, in its compliance account, emission allowances in an amount at least equal to the verified emissions pursuant to the *Regulation Respecting Mandatory Reporting* for every covered establishment during a compliance period, as at November 1 following the end of the compliance period. Hence, the first coverage of the emissions required of the emitters will be on November 1, 2015, the second on November 1, 2018, and the third on November 1, 2021.
5. **Offset credits:** The *Regulation Respecting a Cap-and-Trade System* now establishes requirements applicable to eligible offset projects in the Quebec carbon market. Eligible projects are those pertaining to methane reduction in landfill sites and covered manure storage facilities, as well as those in connection with the destruction of ozone depleting substances contained in insulating foam removed from refrigeration and freezer appliances. Such projects may be conducted during a continuous period of not more than 10 years. Only emitters or participants having their domicile in Quebec may act as promoters for offset credit projects. A register of offset credits will be maintained by the MSDEWP.

6. **Early reduction credits:** The deadline for filing an application for early reduction credits has been pushed back to May 31, 2013. In order to be eligible for the issuance of early reduction credits, the reductions must meet 12 main criteria set out by the *Regulation Respecting a Cap-and-Trade System*. Reductions in GHG emissions resulting from on site transportation activities and the sequestration of GHG emissions are not eligible for early reduction credits. Early reduction credits will be attributed no later than January 14, 2014 by the MSDEWP to the general account of the emitter.
7. **Sales by mutual agreement and auctions by the MSDEWP:** Sales by mutual agreement and auctions by the MSDEWP are contemplated four times per year. Specific conditions apply for each of these kinds of sales. In the case of a sale by mutual agreement by the MSDEWP, only emitters registered in the System having a covered establishment in Quebec and not holding emission units in their general account that can be used to cover GHG emissions for the current compliance period are eligible for a sale of emission units by mutual agreement. In the case of an auction by the MSDEWP, only emitters or participants registered in the System having registered as bidders, at least 30 days prior to the date of the auction, by providing the MSDEWP with prescribed information, may participate in an auction. Various information and warranties are also to be provided in advance to the MSDEWP in order to participate in such sales. Verifications will therefore be required in connection with transactions with an emitter for the purposes of participating in such sales by mutual agreement and auctions.
8. **Environmental integrity account:** An MSDEWP environmental integrity account will be created in order to contain offset credits that may be extinguished to replace the illegitimate offset credits not surrendered by a promoter. Among other sources, this account will be fed by 3% of eligible GHG emission reductions resulting from offset projects.

The *Regulation Respecting a Cap-and-Trade System* can be accessed by clicking [here](#).

The legal framework of the Quebec carbon market is now in force. It is intended to be both flexible, by offering emitters several compliance mechanisms, and strict insofar as applicable criteria are concerned, including with respect to

verification rules applicable to mandatory reporting, conflicts of interest, eligibility of offset projects or eligibility for early reduction credits. The management of conflicts of interest will represent a cornerstone of this carbon market.

Please do not hesitate to contact any member of our team for more information or for assistance regarding your business relationships with an emitter, registration in the System, a transaction relating to emission allowances, an offset project or your application for early reduction credits.

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