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Enlarged Carbon Market and New Oil & Gas Statutory Framework in Québec...Predictability or Uncertainty Ahead?

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Ontario, Québec and California signed an agreement on September 22, 2017, to integrate and harmonize greenhouse gas emissions cap programs. As a result, Ontario will join the Western Climate Initiative carbon market, with California and Québec, on January 1, 2018.¹

In Québec, this announcement was preceded by the publication, on September 20, 2017, of draft regulations under the *Petroleum Resources Act*,² which were finally issued almost a year after the legislation was enacted. The Act (which is not yet in force) and the draft regulations³ are intended to do the following:

- replace the current oil and gas statutory framework set by the Québec *Mining Act*⁴ and establish a statutory framework that is specific to oil and gas activities; and
- ensure safety and environmental protection while optimizing recovery of the resources.

The draft *Regulation respecting Petroleum Exploration, Production and Storage on Land* proposes to govern oil and gas activities on land and, more specifically, to do the following:

- set conditions for the granting and exercise of authorizations for petroleum exploration, production and storage on land as well as for the production of brine, including the implementation of safety and community involvement programs;
- set the fees payable;
- determine protective and safety measures, including rigorous incident reporting requirements; and
- establish the required content of the permanent well or reservoir closure and site restoration plan, and the terms of the related guarantee.

The draft *Regulation respecting Petroleum, Production and Storage in a Body of Water* proposes to impose similar requirements in relation to oil and gas activities in a body of water (excluding marine environments), while taking into consideration the specificities of water environments.⁵

The draft *Regulation respecting Petroleum Production Exploration, Production and Storage Licences, and the Pipeline Construction or Use Authorization* proposes to do the following:

- set the terms and conditions for auctioning and awarding exploration, production and storage licences as well as the conditions of exercise, including rules requiring a monitoring committee (intended to “foster social acceptability”);
- set out the conditions for the granting and exercise of a pipeline construction or use authorization;
- determine the documents and information to be sent to the Régie de l’énergie in order to obtain the approval required under the *Petroleum Resources Act* for petroleum production or storage project and for pipeline construction or use project;
- set reparation amounts for any injury arising from the holder’s activities, irrespective of fault;

- set the annual fees; and
- incorporate the terms and conditions of the royalties currently set by the *Mining Act* and the existing *Regulation respecting Petroleum, Natural Gas and Underground Reservoirs* until the adoption of a new petroleum taxation regime. The Québec government indicated that it intends to introduce a new royalty system for oil and gas based on the principles of the new mining tax regime. The new oil and gas tax regime is expected to be presented by the Québec Ministry of Finance before the end of 2017.

In addition, these draft regulations propose to set transitional provisions, as well as fees for notices of non-compliance, monetary administrative penalties and offences.

The *Petroleum Resources Act* and the draft regulations are intended to simultaneously come into force before the end of 2017.⁶

Although these regulations impose significant oversight and obligations, they will finally provide some clarity and predictability to oil and gas activities in Québec. However, it remains uncertain how the Québec government will coordinate and manage this new statutory framework allowing for oil and gas activities in light of its target to reduce the volume of petroleum products consumed by 40% (as stated in its 2030 Energy Policy published in 2016).⁷ It is also unclear how this new statutory framework will affect Québec's target for the reduction of greenhouse gas emissions.

Persons wishing to comment on the draft regulations must submit their written comments to the Québec Ministry of Energy and Natural Resources (MENR) within 45 days and at the latest on November 4, 2017.

*Davies is pleased to welcome our new partner and author of this article, **Marie-Claude Bellemare**, to our industry-leading environmental and indigenous team. One of the top environmental lawyers in Quebec, Marie-Claude has broad experience in all aspects of environmental law, with particular expertise in civil law. Before joining our team, she practiced law at national firms in Montréal and was the in-house counsel – for both litigation and compliance – for a leading Canadian forestry corporation.*

¹ Ontario Government, News Release: Québec, Ontario and California Join Forces to Fight Climate Change (September 22, 2017).

² S.Q. 2016, c. 35.

³ See *Gazette Officielle du Québec*, September 20, 2017, vol. 149, No. 38.

⁴ CQLR c. M-13.1.

⁵ The *Petroleum Resources Act* defines the term "body of water" as a lake, a constant or intermittent watercourse, including a bed created or altered by human intervention, except a ditch as defined in subparagraph 4 of the first paragraph of section 103 of the *Municipal Powers Act* (CQLR c. C-47.1), or a marine environment.

⁶ Québec Ministry of Energy and Natural Resources, Press Release: *Hydrocarbures – Prépublication d'un cadre strict sur les hydrocarbures*.

⁷ Québec Government, *The 2030 Energy Policy. Energy in Québec: A Source of Growth*.

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