

A New Oil and Gas Legal and Regulatory Framework for Québec

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On September 5, 2018, the Government of Québec confirmed the coming into force of the Petroleum Resources Act and published the final version of the related regulation¹. The PRA and related regulations will govern the development of the oil and gas resources in Québec as of September 20, 2018.

While the PRA provides significant opportunities to balance environmental protection, human safety, and the aim of unlocking its oil and gas potential for the economic benefit of the province, the PRA regulations contain a complex and restrictive framework for oil and gas development and related activities in Québec. It is likely that the framework will have a negative impact on a number of oil and gas development projects in the province. A majority of the most restrictive provisions were introduced in amended draft regulations published in June 2018. These include:

1. a complete prohibition of fracking in shale (a type of geological formation present in the Utica Shale);
2. a complete prohibition of fracking within the first 1,000 meters from the surface;
3. a complete prohibition of exploration and production of hydrocarbons in and within 1,000 meters from urbanized areas, as well as within same distance from a body of water²; and
4. extended buffer zones for certain activities.

Several other aspects of the PRA framework, some of which are discussed below, may pose significant challenges for the development of oil and gas resources in the province. Only time will tell whether the new framework will hinder or spur the development of the province's resources in a meaningful way.

A. Background

The coming into force of the PRA is made possible with the adoption of three regulations which, together with the PRA, will set the conditions and requirements for oil and gas operations in Québec: *Regulation respecting petroleum exploration, production and storage in a body of water* (the "Water Reg")³; *the Draft regulation respecting petroleum exploration, production and storage on land* (the "Land Reg")⁴; and *the Draft regulation respecting petroleum exploration, production and storage licenses, and*

pipeline construction or use authorization (the “Licenses and Pipeline Reg”).⁵ These regulations are collectively referred to as the “PRA Regulations”.

The PRA was passed into law in December 2016, as part of Bill 106 An Act to Implement the 2030 Energy Policy and to Amend Various Legislative Provisions, after extended consultations and environmental assessment initiatives that took place for several years⁶ Prior to the PRA, a de facto moratorium on oil and gas development in Québec was in force since approximately 2011. The cited objective of PRA is to provide Québec with a modern and efficient framework for oil and gas development. However, the PRA did not come into force due to a lack of implementing regulations.

The Regulation respecting petroleum, natural gas and underground reservoirs,⁷ governing oil and gas development operations in Québec, will be repealed when the PRA Regulations and the PRA come into force, on September 20, 2018. A first draft of the PRA Regulations was published in September 2017. Following numerous comments, a modified version of the draft PRA Regulations was published in June 2018. The modified draft added significant restrictions to oil and gas development operations within Québec. The final version of the PRA Regulations was published on September 5, 2018. The PRA Regulations and PRA will come into force on September 20, 2018.

B. Overview of the New Framework for Oil and Gas Development in Québec

A first draft of the PRA Regulations was published in September 2017. Following numerous comments, a modified version of the draft PRA Regulations was published in June 2018. The modified draft added significant restrictions to oil and gas development operations within Québec. The final version of the PRA Regulations was published on September 5, 2018. The PRA Regulations and PRA will come into force on September 20, 2018.

However, the PRA and PRA Regulations propose a complex and restrictive framework for oil and gas development and related activities in Québec. Some of the key provisions are discussed below.

i. Restrictions on Oil and Gas Activities

The PRA Regulations include significant restrictions, which are likely to have a negative impact on a number of oil and gas development projects in Québec. A majority of these restrictions were added in the modified version of the draft Regulations, published in June 2018. Such restrictions include:

- Complete prohibition of fracking in shale (defined as a non-metamorphic geological unit consisting of sedimentary rocks with a grain size less than 0.0625 mm and consisting of at least 20% of clay minerals and less than 65 per cent of carbonates, such as the Utica Shale);
- Complete prohibition of fracking within the first 1,000 meters from the surface, regardless of the rock varieties in place;
- Complete prohibition of exploration and production of hydrocarbons within a perimeter of urbanization as well as within a 1,000 meters protection zone around this same perimeter;
- Complete prohibition of exploration and production of hydrocarbons within 1,000 meters from a body of water⁸; and

- Extension of buffer zones for some activities.

ii. Licenses, Authorizations and Reporting

A license, issued under the PRA would be required to explore or produce oil and gas. In addition, specific operations, like geophysical and geochemical surveying, stratigraphic surveying, drilling, completion, fracturing would each require separate authorizations under the PRA Regulations.

Therefore the authorization framework is activity-specific as opposed to project-focused. Piecemeal authorizations with separate applications are required for individual activities associated with a single project, including carrying out any work or activities necessary to install conductor casing..

This feature contrasts with the modern streamlined regulatory approach, used in other successful oil and gas jurisdictions, which allows the submission of one application for the construction or operation of any energy development that includes facilities, pipelines, or wells including multi-well pads.

Further, the framework involves a large number of agencies for the review and approval of projects. There are about seven regulatory bodies and government departments in addition to First Nations and the public.

The PRA Regulations also include significant reporting requirements for all activities related to oil and gas, and require notification and provision of detailed information on every aspect of work or activity, requiring significant administrative resources on the part of the province and industry. An example is the requirement to provide photographs and specifications of equipment in technical programs and requiring signs on all mobile equipment, regardless of size and quantity.

Also, in contrast to licensees, the framework does not impose any time restrictions on the regulatory authorities. There is a potential risk of administrative delays and backlogs in obtaining the required regulatory approvals.

iii. Social Acceptability

As part of the social acceptability component of the Québec framework, a licensee must establish a monitoring committee per license territory (and adjacent territories, up to a maximum of 5 licenses) to foster the local community's involvement throughout the entire life of the project. This requirement is in addition to public and stakeholder participation required at the application stage before authorizations are issued. A licensee is required to provide the committee volumes of information, some of which may be business sensitive or even confidential. A licensee is also required to provide the committee technical support including external expertise where required, and a website for the committee's activities. All expenses related to the operation of the committee are assumed by licensee including travel and accommodation expenses of the committee members. A majority of the committee members must be independent from the licensee, all must be from the region of the license territory, for a renewable term of 2 years.

iv. Financial Requirements

Licensees are required to prove their solvency up to \$1 billion pre-determined as their liability under the no-fault regime for injuries caused by oil and gas activities.

While the framework requires licensees to furnish guarantees representing the totality of the costs for well or reservoir closure and site restoration, there appears to be no closure for licensee or authorization holder upon transfer of assets under the petroleum regulatory framework. There continues to be liability under environmental legislation in respect of the same activities for which full guarantees were provided. The framework is also silent on the procedure and timeline for return of guarantees upon fulfilment of obligations by Licensees.

v. Access to information

The PRA would establish a public registry of real and property rights in relation to hydrocarbons. Licensed exploration, production and storage rights would be published. Information provided to the Ministry of Energy and Natural Resources by the holder of an exploration, production or storage license following geophysical or geochemical surveys or stratigraphic surveys would become public five years after the completion of the work, while those transmitted to the Minister by the holder of an exploration, production or storage license following the drilling of a well, subject to some exceptions, would become public two years after the final closure of that well.

Regardless of the above limited protection, the same information, when submitted to the public through submissions to monitoring committee or applications for other authorizations, may not have the same protection. These may include financial, proprietary or sensitive trade secrets and business confidential information.

C. Conclusion

A new regime that would allow an efficient, responsible and sustainable oil and gas development in Québec has been awaited for several years. The new regime has been expected to end the legal and administrative moratorium on oil and gas activities in Québec. However, given the complexity of the regulatory approach and the prohibitions on certain oil and gas activities, time will tell whether the key objectives of the PRA will be met and whether Québec's oil and gas resources can practically be developed under the new framework. Finally it is worth noting that upcoming elections in Québec, scheduled for October 1, 2018, may result in a change of government, which may have an impact on the future of this new legal and regulatory framework.

1 Online: <https://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=13&file=1836-A.PDF>

2 However, the Minister may reduce that distance if the holder demonstrates to the Minister that the activities planned do not compromise the integrity and conservation of the body of water.

3 QOG N° 36, 05-09-2018, p. 4565.

4 QOG N° 36, 05-09-2018, p. 4629.

5 QOG N° 36, 05-09-2018, p. 4696.

6 See notably : Bureau des audiences publiques sur l'environnement (BAPE), Développement durable de l'industrie des gaz de schiste au Québec, Report 273, February 2011 (Partial translation available online, Government of Québec, *Environmental Strategic Assessment on Shale Gas*, final report, January 2014 (Only available in French). Bureau des audiences publiques sur l'environnement (BAPE), *Les enjeux liés à l'exploration et l'exploitation du gaz de schiste dans le shale d'Utica des basses-terres du Saint-Laurent*, Report 307, November 2014 (Partial translation available online)

7 CQLR, c M-13.1, r 1.

8 However, the Minister may reduce that distance if the holder demonstrates to the Minister that the activities planned do not compromise the integrity and conservation of the body of water.

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