



NATIONAL ROUND TABLE ON THE ENVIRONMENT AND THE ECONOMY
TABLE RONDE NATIONALE SUR L'ENVIRONNEMENT ET L'ÉCONOMIE

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ECT 1

Agreeing to Improve the Environment

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BY Associates
Bunli Yang
Miscellaneous

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prepared by
Bunli Yang
BY Associates

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Agreeing to Improve the Environment

The purpose of this Issues Paper is to highlight for the National Round Table on the Environment and the Economy a set of non-regulatory approaches to pollution prevention--cooperative agreements, negotiated agreements, and eco-covenants--and to identify related issues. These approaches are supplements to regulation, not replacements. This Issues Paper concludes with next steps for the National Round Table in dealing with issues of community involvement, fairness, and cost-effectiveness.

Figure 1 illustrates the spectrum of "agreements" involving governments, from voluntary actions to increasing levels of involvement of government officials. This is not an evolutionary scale; there are compelling reasons for initiatives in each category, depending on the issue.

Figure 1

Spectrum of Agreements			
Voluntary Initiatives	Cooperative Agreements	Negotiated Agreements	Imposed Requirements (= Regulations)

A formal, signed agreement implies contractual obligations of the signatories; and penalties or loss of benefits and privileges in the event of non-compliance. Describing any agreements as "voluntary" may be misleading; all agreements are voluntarily entered. Or not entered, if a firm chooses to close down its business.

I. Why Consider Supplements to Regulation?

Through the 1980s, regulatory approaches in Canada requiring pollution clean-up and control, or "end-of-pipe" solutions, led to quick, impressive results and received wide public acceptance. Environmental regulations, federal and provincial, have led to major improvements from whatever perspective adopted--business, private citizen, environmental interest groups (ENGOs), and a myriad of other stakeholder interests.

Much more, of course, needs to be done, and there may be little consensus on future priorities and directions. In a context of governments' downsizing, global competitive pressures, and revised regulatory frameworks, alternatives to regulatory approaches are being pursued to improve the environment.

Some alternatives being explored across the country would streamline or dismantle significant parts of the existing regulatory framework. An example was the recent proposal of Bill C62, the Regulatory Efficiency Act, since withdrawn, which would have permitted the federal government to substitute for some regulatory requirements. Some provincial alternatives would leave the current framework intact but replace future regulatory additions. This Issues Paper treats an entirely different category of tools--a range of agreements that would supplement rather than replace existing regulatory approaches.

Developing a range of tools in addition to regulation is a key part of the federal government's proposal for a renewed Canadian Environmental Protection Act (CEPA), CEPA Review: The Government Response (December 1995):

By further building on partnerships with all sectors of society and through the creative use of economic instruments and voluntary initiatives supported by clear policies and good regulations, CEPA can be refashioned into a first-class statute that will be good for all Canadians (p 6)....

Non-regulatory initiatives currently in place will help government assess which sectors respond to this approach and which substances can be managed in this way. More importantly, the results of these initiatives can help to focus the government's regulatory regime. Used effectively, non-regulatory action can be used to determine if, when and to what degree regulations are required. An alternative to current non-binding voluntary agreements is binding environmental performance contracts with accountability built in.... Such agreements should allow for other orders of government and interested stakeholders to help define environmental objectives, establish accountability, elaborate consequences for abrogation and track progress (p21).

Regulations generally prescribe a performance standard or technology and operating practices. They empower governments to require reporting and to issue licenses and permits. They could go as far as outright bans and phaseouts. Regulations also provide for enforcement and penalties for non-compliance. But once in place, regulated standards or targets with penalties for non-compliance provide no incentives for further innovation and the drive to excel. Businesses often regard existing regulations as inflexible, but they provide some comfort that domestic competitors are treated equally, a "level playing field".

Developing regulations is complex and expensive for governments and businesses. The potential effects and levels of risk of new substances to be regulated are often controversial and not clear-cut. A scientific base and ongoing data collection need to be established. Setting ceiling levels or targets for a substance requires data to prove potential effects, data and models to identify the risks of exposure, and economic assessments of the benefits of reduction.

To achieve the targets by setting further, generally provincial, regulations to meet the targets and ceiling levels means a lengthy process to learn about and then to prescribe performance or technology requirements after comparing benefits and costs. The engineering and economic analysis requirements are substantial. A license or permit is the end result. Integrated, multi-media regulations are difficult to develop and for the most part do not exist in Canada.

Extensive multi-stakeholder consultations and discussions are required before empowered decision-makers, acting on behalf of the public interest, promulgate regulations. A regulatory consensus may be a long time coming and may be opposed aggressively by an array of interest groups. The result often is regulatory gridlock on issues widely regarded as important, like urban air quality, and growing discontent that governments' regulatory efforts may not be well-matched with environmental needs.

The ongoing monitoring, reporting, verification, and enforcement needs and costs are also substantial. Federal and provincial resources for research, analysis, monitoring, enforcement, and reporting face ongoing cutback pressures. Furthermore, political capital even to defend current levels of resources is necessary at a time when competitiveness is an important issue.

Lowering the future costs to business and governments is a major reason cited for exploring alternatives to supplement regulations. Cost-effectiveness in terms of pollution reduction per dollar invested is an important principle for industry. The business perspective is, "If you can address 80% of the problem by spending 20% of the resources now, do it."

Early in the federal government's internal review of CEPA, a report, "CEPA Review - Tool Box and Interventions: Issues for Consideration by the Review Team" (October 1993) listed an inventory of tools for environmental protection:

Command-and-Control

Market-Based

- trading programs
- taxes and charges
- financial incentives
- environmental liability
- deposit-refund systems

Voluntary

- guidelines and codes of practice
- multi-stakeholder protocols

Information Provision

- environmental labelling
- technology transfer

Exhortation

- environmental quality standards
- citizenship programs

This inventory of tools for environmental management covers a wide range beyond regulations, or "command-and-control". Of course, timing is problematic for some options; new incentives in the form of program subsidies or capital contributions are unlikely in a period of government spending cutbacks. Tax incentives and tax treatment of capital investments have potential. Another route is to build on voluntary business initiatives--partnerships between governments and business, perhaps with third party involvement, that lead to signed agreements.

Thus, there have been renewed efforts to promote pollution prevention through partnerships. Partnership arrangements that lead to shared understanding, mutually acceptable objectives, and commitments that involve incentives and disincentives can be faster, cheaper, and more effective even if coverage of substances or of an industrial sector is less than universal.

II. Pollution Prevention

In recent years, federal and provincial governments have encouraged and promoted pollution prevention. In Pollution Prevention: A Federal Strategy for Action (June 1995):

The federal government believes that pollution prevention is the most effective means of protecting our environment, eliminating costly waste, and promoting sustainable development (p 1).

The federal government defines pollution prevention as:

The use of processes, practices, materials, products or energy that avoid or minimize the creation of pollutants and waste, and reduce overall risk to human health or the environment (p 4).

Pollution prevention may be hard to define to everyone's satisfaction, but the concept includes greater societal awareness of the impacts of decisions that have yet to be made. In turn, this means greater emphasis on information, inventories, and public reporting. Having the information base makes possible the frequently cited hallmark of sustainable development, "anticipate and prevent".

Two distinctly different interpretations are embedded in the concept of "anticipate and prevent". One is the notion that some substances should be eliminated entirely from use and discharge because they are such a hazard or threat to the environment or human health. This is "zero discharge" or "virtual elimination". Once virtual elimination and a timeframe are specified by regulation for a substance, there is little room for voluntary actions.

A second understanding of "anticipate and prevent" is that future capital investments affecting usage and emissions are at least as important as day-to-day operations and practices. It takes capital investments, for new production processes and for add-on clean-ups, to prevent discharges. Influencing investment patterns is closely linked with competitiveness.

"Competitiveness" can mean many things to many parties. For many of Canada's resource and manufacturing industries, commodity prices must compete with sources worldwide. Any additional costs not borne by competitors in other jurisdictions increase the chances that capital will "walk" or close down. For business, competitiveness means being able to price commodities below worldwide benchmark prices. And it means having the flexibility to time investments in line with business cycles in the overall economy. For governments, competitiveness means being able to attract new capital investments to Canada.

Virtual elimination of certain substances is never possible instantly. Striving for virtual elimination without compromising competitiveness poses difficult challenges: how can governments help achieve ongoing societal reductions of pollutant loadings in the near-term? The current wave of government budget reductions makes it even harder. Still, some firms regard zero discharge as a worthwhile goal, even if never attained, because it drives innovation and improvement.

III. Voluntary Initiatives

Voluntary business initiatives to prevent pollution may seem at first blush to be win-win for all parties, including the public interest. If businesses genuinely cut back on use and releases of

toxic substances and if they impose no additional administrative costs to governments, then the voluntary initiatives are desirable and praiseworthy.

The main question is whether voluntary investments leading to pollution reductions are adequate in terms of sustainable development. If businesses can do so much voluntarily--prior to agreements with governments--and still make a profit for shareholders, can governments elicit further reductions in the public interest, contributing to sustainable development, without compromising competitiveness and without resorting to regulations?

"Voluntarism" has received bad press, from ENGOs and from businesses. Some perceived drawbacks to voluntary efforts:

The great bulk of firms pay attention only to compliance and enforcement requirements.

Voluntary steps are taken only if they make money for the firm.

"Voluntary agreements" are cozy deals between industry and governments, and they avoid public consultation and participation.

"Voluntary agreements" always have only limited coverage in an industrial sector.

"Voluntary compliance" is an oxymoron.

There is no track record that voluntary approaches are cheaper or faster than regulation.

Businesses expect dispensation from governments, relieving them of compliance requirements.

Voluntary efforts work against environmental leaders because of free rider competitors who do not do anything.

Voluntary processes take time and resources and divert bureaucratic efforts from the important role of improving regulations.

Voluntary processes, especially if they relate to enforcement, can pre-empt regulatory actions.

Governments abdicate from their accountability.

Governments open themselves up to claims of regulatory negligence.

The range of approaches to encouraging and mandating pollution prevention is illustrated in Figure 2.

Figure 2 *
Tools for Preventing Pollution

- 1A. Voluntary initiatives by individual firms or sectors
 - 1B. Technical assistance, public recognition, and public education
 - 1C. Principles and codes of ethics
 - 1D. Codes of conduct; Industry standards for planning, auditing, and environmental management
 - 1E. Plans, pledges, public undertakings
2. Memoranda of Understanding
3. Negotiated Performance Agreements; Eco-Covenants
4. Regulations; Permits prescribing equipment and operating practices

Self-Initiated

Government-Directed

The first five categories in Figure 2, 1A through 1E, are strictly voluntary actions, generally undertaken with very low levels of government involvement.

Examples abound; businesses undertake these initiatives with their own self-interests in mind without coercion by governments. Those self-interests include saving money (such as energy efficiency investments) and also being recognized publicly as responsible, leading kinds of businesses. The Conference Board of Canada (April 1996) has profiled a number of voluntary initiatives by many different kinds of businesses. The degree of innovation and diversity of approaches are remarkable, and the environmental gains in the public interest can be significant; this is win-win.

What happens when performance falls short of plans or intentions? Public embarrassment, loss of credibility, and even loss of consumer markets can follow if expectations had been high to begin with. The power of public pressure can be a greater threat than penalties for non-compliance with regulations.

Many business associations and organizations have been formed in recent years to show common cause in setting codes of ethics, or of conduct, or of environmental management practices. The most notable may be the current international efforts to adopt a uniform set of standards for corporate environmental management, the ISO 14000 series, which is scheduled for publication in 1996.

For the most part, ISO 14000 specifies process and procedure, not performance or environmental results. The Eco-Management and Audit Scheme (EMAS) adopted by the European Union also focuses on planning, process, and management, with the addition of being site- or facility-based, and is being harmonized with ISO 14000. The EMAS objectives are listed in Appendix 1.

ISO 14000 and EMAS help consumers and businesses to identify commodities or organizations that meet widely recognized environmental management standards. Adherence to ISO 14000 or EMAS assures a benchmark level of environmental management capability but does not assure achievement of any specific level of environmental performance. Similarly, commodity rating and labelling systems such as EcoLogo can set standards for customer choices but do not provide incentives for continued improvement.

In 1983, the Canadian Chemical Producers' Association (CCPA) established Responsible Care™, which is a self-administered, mandatory code of conduct and operating practice for CCPA members. Since then, Responsible Care™ has been adopted by chemical industries in 40 countries; it is in many ways an international success story begun in Canada, leading to continuous improvement.

Responsible Care™ is not a code with targets and timetables to achieve measurable levels of performance in reducing pollutant releases. The environmental management plans of CCPA members, the reductions to be achieved, and the implementing steps are self-selected, not set

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by prior agreement with a regulatory authority. Nonetheless, Responsible Care™ does require each member to gain public buy-in to the objectives each firm sets for itself. CCPA and some of its members have been exploring approaches to extend Responsible Care™ to supplement or defer future regulations. CCPA forecasts as part of Responsible Care™ that CCPA's environmental emissions will be reduced by more than 70% between 1992 and 1999. Reductions of that order of magnitude would be very difficult to achieve through normal regulatory routes; on the other hand, these are Responsible Care™ forecasts, not commitments.

In recent years, firms in several industry sectors have tried to move beyond voluntary initiatives, for which recognition and credit often seem elusive. Regular reporting and third party verification or auditing of outcomes can help. Getting some form of prior agreement from governments could provide credit and legitimacy, stability of objectives, a more nearly level playing field, as well as improved public relations.

IV. Cooperative Agreements

There has been recent experience in Canada of businesses agreeing with governments to undertake self-specified actions that verge on offering levels of environmental performance. One example is the Voluntary Challenge Registry (VCR) on Climate Change, which is under development. The VCR addresses reductions of greenhouse gas emissions, which are not toxics and are not treated under pollution prevention programs. Nevertheless, the challenge is similar: how can reductions in energy-related emissions be achieved without compromising competitiveness, when front-end investments are needed?

Another example of a cooperative agreement in the form of a challenge, with targets and timetables, is what has become the Accelerated Reduction/Elimination of Toxics (ARET) Challenge Program. In 1991 several CEOs and executive directors of ENGOs formed the New Directions Group and proposed "Reducing and Eliminating Toxic Substances Emissions: An Action Plan for Canada". The Group's recommendations for federal action were:

- to proceed immediately in establishing the emissions inventories as committed to in the federal Green Plan,
- to initiate a process for targeted reductions including phasing-out of some substances.

Though having industry CEOs partnering a proposal to phase-out some substances may seem surprising, the context of the times was that bans, phase-outs, and reductions were being raised on many fronts, including the International Joint Commission on the Great Lakes.

An operational level ARET committee and subcommittees were formed; criteria for defining toxicity (essentially, persistent, bio-accumulative, and a toxic hazard) were agreed upon; a list of target substances was developed; and targets and implementation means were to be developed. Lack of agreement on this last point, mainly on the question of elimination vs. reduction, led the environmental and labour groups to withdraw from the main ARET committee in September 1993. This happened essentially because fundamental objectives were not agreed to.

The ARET Challenge has resulted in the setting of near-term, aggregate targets of a 90% reduction by 2000 of 29 persistent, bio-accumulative, toxic substances and a 50% reduction by 2000 of another 89 substances that do not meet all three criteria. Appendix 2 lists the classes of substances and targets.

These targets were made public by the federal Minister after lengthy negotiations at the ARET committee level; but the targets are significantly more ambitious than those actually negotiated by the stakeholders.

More than 270 firms or government agencies have committed to the ARET Challenge, though 53 of them have negligible emissions. A participating firm chooses its substances from the lists and selects its own methods and costs of reduction while accepting the overall, aggregate targets specified by the federal government. ARET is termed a cooperative agreement because firms agree voluntarily to pursue the objectives, but there is no accountability provision for signatories that fall short.

The ARET process has been praised and also criticized strongly, mainly on the elimination vs. reduction issue. Some ENGOs believe that Environment Canada has permitted the ARET Challenge to replace federal efforts to eliminate toxics by regulation. Others observe that the ARET Challenge has already led to far greater reductions of a consensual list of persistent, bio-accumulative toxics than could have been achieved by regulation.

A common critique of voluntary business initiatives such as the VCR and ARET is that they lead to grand-sounding plans but not to commitments to implement specific actions, even when those initiatives are backed up by transparency and verifiability through codes of environmental management such as ISO 14000 or EMAS. Plans are necessary but are not sufficient; actions leading to outcomes are needed.

Closest to strictly voluntary initiatives are cooperative agreements between industry associations and governments in the form of Memoranda of Understanding (MOUs). While MOUs are not binding in the sense of penalties for non-compliance, they are not entered into lightly because they become public documents and are signed by CEOs. If an MOU bears the signature of a firm's CEO, the firm's employees regard it as the equivalent of a regulation.

In 1992, acting on a suggestion by federal officials, the Motor Vehicle Manufacturers' Association (MVMA) and its three largest members, Chrysler, Ford, and General Motors, signed an MOU with the federal and Ontario governments to conduct a Pollution Prevention Project. The MVMA'S Project was the first of the cooperative agreements signed by an industry association, by its individual companies, and by both governments. The Project's goal is:

to produce a verifiable reduction of persistent toxic substances as well as other environmental contaminants of concern used, generated or released by the participating member companies of the Canadian MVMA.

The substances chosen and the reductions to be achieved are determined by the companies in

conjunction with a joint steering group including government officials. From an initial list of 65 targeted substances, the MVMA identified 29 of them in their facilities and targeted them for reduction and elimination. A sophisticated tracking system was established to identify targeted substances contained in supplies. Annual reports list case studies of actions taken and reductions achieved. Public meetings are held with ENGOs and other stakeholders. The list of targeted substances has since been extended to include 83 substances. The MVMA's MOU was renewed in 1994 and is in the process of renewal in 1996.

In 1994, the CCPA and 5 members proposed and signed an MOU with the Ontario government. The CCPA MOU committed to data and experience sharing, to extensive reporting on chemical releases (308 substances, well beyond just the regulated substances), and to development and implementation on a demonstration basis of site-based environmental management plans. The CCPA MOU also established a joint steering committee and an ongoing reporting mechanism.

MOUs with five other industrial sectors have been signed with the federal and Ontario governments, including auto parts manufacturers and drycleaners. All are different, as some of the industrial sectors include unique, site-specific facilities (heterogeneous) while others involve similar equipment or facilities at many locations (homogeneous).

These cooperative agreements are "voluntary" in the sense that business itself determines the projects to be undertaken, informed but not directed by government officials' views of what is in the public interest. A concern for the shadow of impending regulation may motivate the MOU process, but the ability of the firms to finance projects sets limits on which projects and how fast reductions are undertaken. Targets for performance are not part of the MOU process because of its bottom-up nature--"we agree to do what we can, cost-effectively, and something good will happen."

Some conclusions about MOUs are:

- A joint industry/government working group is established.

- There is joint scoping of issues and objectives.

- Environmental objectives are generally not spelled out; targeted reductions for specific projects are determined by industry using jointly developed protocols and selection procedures.

- There is joint determination of substances, planning frameworks, action plans, reporting, and verification.

- Industry selects its projects.

- These are best efforts agreements, with no penalties for falling short of expectations.

- On the other hand, no specific incentives are offered for meeting expectations.

- MOUs are signed by CEOs and Ministers or as high a level of officers and officials as possible.

- Public participation and involvement of ENGOs or other stakeholders comes after the fact, through public accountability reporting at public meetings and in case studies, not in the planning or negotiating stages.

- At the time for MOU renewal, additional firms generally sign on.

These MOUs are well-regarded by the participants involved. Most valuable are the lines of communication and the trust relationships that have been built through the working group process. Government officials and businesses learn more about each other's implicit priorities. Governments incur no obligations in signing the MOUs; there is no "quid pro quo". The degree of business buy-in and ownership of the sustainable development agenda is viewed positively by both government officials and business. The actual environmental improvements resulting from these MOUs are in the early stages of documentation.

V. Negotiated Agreements

There is no easy, fine line between cooperative and negotiated agreements. A cooperative agreement is the result of a process at the officials' and middle management levels to come up with plans, processes, and implementation steps that can be agreed to with little downside risk to either party, other than withering public scrutiny of failure, if actual performance falls short of expectations.

For negotiated agreements, what gets negotiated? among whom? With the understanding that the role of environmental management in sustainable development is a continuing responsibility, no agreement is permanent. All components of a society's environmental management system are always subject to change, within the current regulatory framework, which itself is subject to change. Negotiations could occur on:

- environmental objectives and targets (e.g., ARET);
- strategies (e.g., including carbon sequestration or not in the VCR);
- process and participants--when and how are third parties and their technical and policy capacities included?
- substantive issues and degree of comprehensiveness (e.g., multi-media);
- scope of implementation options (e.g., avoiding precedents for other issues);
- action plans for reductions;
- measures of performance;
- accountabilities;
- reporting and verification;
- involvement of stakeholders;
- timing.

The federal government's CEPA Review proposed to consult on whether the Minister should be provided with authority to enter environmental performance agreements with binding accountabilities. There would be a clear expectation of verifiable performance and "quid pro quo", which could take the form of simpler permits or streamlined reporting requirements. There is an expectation of penalties or loss of incentives in the event of non-performance.

An early example of a negotiated agreement was the process leading to opening of the Dona Lake gold mine by Placer Dome in 1987. Native groups in 1985 requested the Ontario Minister of Environment to designate the project for environmental assessment, which would have been precedent-setting for private projects in Ontario and which would have subjected

Placer Dome to a protracted, expensive process charged with political risks. The federal and Ontario governments, Placer Dome, and native groups agreed to form the negotiating group, excluding other parties. Non-designation of the project under environmental assessment was won by the firm. Socio-economic concessions were won by native groups. The environmental approvals affecting mine tailings, impacts on traditional hunting, trapping, and fishing, and site restoration were basically unaffected by the working group. The backstop of invoking the environmental assessment process was sufficient to motivate the parties to complete a negotiated agreement.

A recent report for Environment Canada titled, "Review of Voluntary Environmental Protection Memoranda of Understanding" (April 1995), proposed six criteria to evaluate MOUs. These are sensible criteria but are better applied to negotiated agreements that carry potential gains and losses for the signatories, than to MOUs. Table 1 lists the 6 proposed criteria, and adds a seventh:

Table 1
Evaluation Criteria

1. Net environmental benefits and innovation;
2. Equity within and across industrial sectors;
3. Cost-effectiveness;
4. Clear and measureable objectives or standards;
5. Openness and transparency during development and in implementation, including measuring and verifying results;
6. Accountability and redress, or penalties.
7. Incentives for joining partnership agreements.

These suggested criteria essentially outline the features of negotiated, environmental performance agreements. Such agreements would be negotiated between governments and industry sectors or individual firms. The objectives could be:

set in advance by the government,
negotiated between the parties, or
negotiated with multi-stakeholders.

This last approach, if all stakeholders are involved from the beginning, is essentially how regulations are developed now.

The 7th criterion added, relating to incentives, addresses the flip side of accountability and penalties for non-compliance. If the value of a negotiated agreement to industry is flexibility of investment planning, some assurance of regulatory stability, faster permits, and trust and better understanding of government's priorities, then the potential loss of these benefits may be powerful incentives for firms to become signatories to negotiated performance agreements.

In other jurisdictions, negotiated agreements have proved promising as alternatives supplementing normal regulatory processes. Examples include Denmark, Germany, Japan,

the Netherlands, Sweden, and the US. The "binding" nature of these agreements--what is at stake for the signatories to gain or to lose on the basis of performance--is the main attraction of going beyond cooperative agreements, the MOUs. On the other hand, if performance agreements are negotiated with the direct threat of "regulation in the drawer", then a rational business response would be, "Go directly to regulation, if you think you can gain a societal consensus. We won't play ball in negotiating an agreement if you think you know what you can impose anyway."

The prime example of a country making extensive use of negotiated agreements is the Netherlands. There have been a number of agreements negotiated between the Dutch federal government and industry associations. The Dutch experience is instructive, but there are many features of the agreements that are uniquely Dutch.

In 1989, the Dutch Parliament, led by a coalition government, approved the National Environmental Protection Plan (NEPP), which was later amended in 1990 (NEPP+) and 1993 (NEPP2). NEPP2 is a multi-media plan emphasizing pollution prevention and contains many target objectives, including greenhouse gas reductions. The objectives in NEPP2 are unchanged from those adopted in 1990, in NEPP+, so there has been stability.

The Dutch federal government developed a "target group approach", dealing with industry associations. A comprehensive, integrated agreement, called a Declaration of Intent on the Integrated Environmental Target Plan (IETP), or "covenant", is negotiated with the target group. These IETPs are plans that are consistent with the overall, national NEPP2 objectives, and they set specific targets for substances relevant to the industry sector. For example, the IETP with the primary metals industry, negotiated in 1992, contains industry-specific targets for climate change, acidification, VOCs, air and water toxics, soil protection, radiation, eutrophication, waste disposal, noise, odor, and occupational risks of fatalities. Energy efficiency is covered in a separate agreement. The government commits to issue permits consistent with these IETPs.

The Dutch IETPs are environmental performance agreements, with the signatories accountable for meeting the NEPP2 objectives (in aggregate) using their negotiated implementation plans. The IETPs are tailored to specific industry sectors and serve as the regulatory framework for issuing permits. Permits are based on the implementation plans. Failure to meet the NEPP2 objectives, or meeting them too easily, would presumably mean renegotiation of the covenants and a re-issuing of permits. The industries receive the benefits of flexibility in setting their investment plans and of assured stability of environmental priorities for 4-5 years, the cycle on which the NEPP is reviewed and revised.

About 20 of these IETPs have been negotiated with target groups, and another 25 energy conservation agreements as well as more than 120 other, special purpose agreements have been negotiated.

ENGOS have not been involved in the negotiation of the IETPs, and they do not object because the overall environmental objectives had been adopted previously in NEPP2 and were

not negotiable. Appendix 3 is a report of a 1994 round table discussion of covenants and the target group approach, among senior officials from several Dutch federal ministries.

In summary, the main features of Dutch IETPs are:

They are integrated multi-media plans.

They adhere to the objectives in NEPP2 (such as percentage reductions in specified substances).

They are the result of negotiations between the government and the industry sector association.

ENGOS do not participate in the negotiations.

Permits are issued on the basis of the contents of the IETPs; the cycle of permit renewals is 4 years.

The IETPs become public.

Regular reporting is required.

Accountability for performance and verification of results achieved are not yet clear.

Periodic updating is provided for.

In recent years, municipalities have begun to negotiate their own covenants with industries.

The Dutch IETPs have received interest as a possible model for negotiated performance agreements in Canada between governments and industry, going beyond Canadian experience with MOUs in terms of incentives and accountabilities for performance. There are, of course, many differences between Canada and the Netherlands in the historical relationships between corporations and the government, and in cultural norms and legal frameworks.

These bilateral agreements between the government and an industry group raise the question of regulatory capture--can government officials negotiate adequately in the public interest? What about other stakeholders? This is especially contentious in Canada because of the uncertain jurisdictional reaches of the different orders of government.

The inclusion of third parties, such as municipalities, communities, ENGOS, native groups, or other stakeholder groups, as signatories or negotiators at some stage, could address that concern.

VI. Eco-covenants

For the purposes of this Issues Paper, a **defining characteristic of an "eco-covenant" is involvement of the community.** Thus, an eco-covenant would be an extension of the concept of bilateral, negotiated performance agreements between government and industry.

Environment Canada officials are exploring how such "eco-covenants" that involve third parties could be a useful tool to extend the types of negotiated agreements. One of the key challenges is to identify who is empowered to represent "the community". When, how, with what resources, and to whom responsibilities are delegated are important questions for community involvement.

There have been examples in Canada of community involvement in environmental protection that may be relevant to eco-covenants. Several CCPA members under Responsible Care™ have established Community Advisory Panels to assist with implementation plans and reporting. The Windsor Air Quality Study established a multi-stakeholder approach to identify emissions reporting requirements and risks of exposure to air toxics. In Trail, BC, a task force including local representatives developed screening and remediation methods to lower lead levels in blood. The Dona Lake project cited earlier was an example of involvement of empowered community representatives, who brought social, cultural, and local development issues to the negotiating table.

VII. Next Steps

For cooperative and negotiated agreements to be used more widely by governments to supplement their regulatory powers, a number of issues merit detailed assessment and subsequently, wide public discussion. What are the roles and venues open to the National Round Table to assist?

1. The experience in Canada with cooperative and negotiated agreements is not extensive but is growing. **A comparative assessment of agreements currently in place, their accomplishments, and the constraints limiting their reach would shape realistic expectations of future agreements.**
2. Various business sectors give high priority to developing cooperative and negotiated alternatives to supplement traditional regulatory approaches. Anecdotally, there are many possible incentives or reasons for seeking alternatives: trust relationships, flexibility in making investments, regulatory stability, streamlined permitting. **A critical assessment of the range of incentives that would serve the public interest as well as private business interests would identify issues and parties for future negotiated agreements.**
3. Given an understanding of the range of incentives, the "quid pro quo" for businesses to enter performance agreements and eco-covenants, **an assessment should be undertaken of which incentives can be and which should not be provided by the different orders of government.** What is legally admissible today is important to understand, but is not necessarily limiting; framework legislation is open to change.
4. The main distinction between performance agreements and eco-covenants is the involvement of communities, ENGOs, and other stakeholders in the actual processes of target-setting and negotiating. **A critical assessment should be undertaken of:**
 - which issues are suitable for cooperative agreements like MOUs;**
 - which ones are suitable for performance agreements negotiated bilaterally between government and business; and**
 - which ones should involve communities and other stakeholders, and when, in negotiating eco-covenants.**
5. Cooperative and negotiated agreements can be even more effective when developed in tandem with economic policies and instruments such as tax treatment of investments, financial

assurances, and tradeable permits. **A critical assessment should be undertaken of the links, and their rationales, between agreements and economic instruments.**

6. The fairness and equity of governments' treatment of businesses and industrial sectors must be assured, especially in the case of formal, negotiated agreements. Leading firms may negotiate ambitious agreements for themselves; over time such firms will insist on regulation to provide a "level playing field" with their domestic competitors. But in the transition there must also be fairness under competition and trade law, with no new barriers to entry by new firms. **An assessment is warranted of governments' liabilities and risks in entering agreements with firms already conducting business in Canada.**

7. The administrative costs to governments of developing and enforcing regulations are substantial. Cooperative and negotiated agreements may be more cost-effective for business in inducing investments to improve the environment, in terms of fewer dollars required per amount of reduction. **An assessment is needed of whether the speed and cost-effectiveness to governments of such agreements are improved, compared with the development and enforcement of regulations.**

8. **A framework needs to be developed for evaluating the success of agreements and the accountabilities of participants.**

Appendix 1

Eco-Management and Audit Scheme (EMAS)

Article 1

1. A community scheme allowing voluntary participation by companies performing industrial activities hereinafter referred to as "the community eco-management and audit scheme" or "the scheme", is hereby established for the evaluation and improvement of the environmental performance of industrial activities and the provision of relevant information to the public.
2. The objective of the scheme shall be to promote continuous improvements in the environmental performance of industrial activities by:
 - a) the establishment and implementation of environmental policies, programmes, and management systems by companies, in relation to their sites;
 - b) the systematic, objective, and periodic evaluation of the performance of such elements;
 - c) the provision of environmental performance information to the public.
3. The scheme shall be without prejudice to existing community or national laws or technical standards regarding environmental controls and without prejudice to the duties of companies under those laws and standards.

Appendix 2

ARET Candidate Substances List

A-1 Toxic, bio-accumulative, and persistent 90% Reduction by 2000

Benz(a)anthracene	1,6-dinitropyrene
Benzo(a)pyrene	1,8-dinitropyrene
Benzo(e)pyrene	
Benzo(b)fluoranthene	
Benzo(j)fluoranthene	Methyl mercury
Benzo(k)fluoranthene	Tributyltin
Benz(g,h,i)perylene	
Chrysene	
Dibenz(a,h)anthracene	Hexachlorobenzene
Dibenzo(a,i)pyrene	alpha-hexachlorocyclohexane
Dibenz(a,j)acridine	gamma-hexachlorocyclohexane
7H-dibenzo(c,g)carbazole	4,4'-methylenebis(2-chloroaniline)
Fluoranthene	Octachlorostyrene
Indeno(1,2,3-c,d)pyrene	Pentachlorophenol
Perylene	2,3,7,8-tetrachlorodibenzofuran
Phenanthrene	2,3,7,8-tetrachlorodibenzo-p-dioxin
Pyrene	

B-1 Toxic and bio-accumulative 50% Reduction by 2000

Anthracene	3,3' dichlorobenzidine
7,12-dimethylbenz(a)anthracene	Hexachlorocyclopentadiene
Dimethylnapthalene	2,4,6-trichlorophenol
bis(2-ethylhexyl)phtalate	
Tetraethyl lead	

B-2 Toxic and persistent 50% Reduction by 2000

Benzo(a)fluorene	Arsenic	Asbestos
Benzo(b)fluorene	Beryllium	Chromium (Cr6+)
Dibenz(a,h)acridine	Cobalt (inorganic soluble)	
alpha-chlorotoluene	Copper (inorganic salts)	
bis(2-chloroethyl)ether	Lead	Mercury
Bromodichloromethane	Nickel (inorganic, respirable, soluble)	
Carbon tetrachloride	Silver (soluble inorganic salts)	
Chloroform	Uranium (inorganic, respirable, soluble)	
Chlorodibromomethane	Zinc (inorganic, respirable, soluble)	
1,2 dichloroethane	o-anisidine	
Methylene chloride	Cyanides	
1,1,2,2-tetrachloroethylene	4,6 dinitro-o-cresol	
2,3,4,6-tetrachlorophenol	1,4 dioxane	
	Ethylene oxide	
	2-naphthylamine	
	2-nitropropane	
	Thiourea	

B-3 Toxic

bis(chloromethyl)ether
Epichlorohydrin
1-bromo-2-chloroethane
1-chloro-4-nitrobenzene
1,2-dibromo-3-chloropropane
1,2-dichlorobut-3-ene
1,2-dichlorophenol
1,3 dichloropropene
1,1,2-trichloroethylene
N-nitrosodimethylamine
N-nitrosodiphenylamine
N-nitroso-di-n-propylamine
4-aminoazobenzene
4-aminobiphenyl
Aniline
Benzene
Benzidine
Dimethylphenol (mixed isomers)
2,6 dimethylphenol
2,4 dinitrotoluene
2,6 dinitrotoluene
1,2 diphenylhydrazine
2-methylpyridine
Phenol
Toluene diisocyanates

50% Reduction by 2000

Acetaldehyde
Acetamide
Acrolein
Acrylamide
Acrylonitrile
1,3 butadiene
Chlorine dioxide
n-dodecane
Ethanol
Ethylene dibromide
Ethylene thiourea
Formaldehyde
Hydrazine
Hydrogen sulphide
Methyl isobutyl ketone
4-nitrosomorpholine
Quinoline
Tetramethylthiuram disulphide
Vinyl bromide

Appendix 3

Round Table Discussion of the Target Group Approach (Environmental News from the Netherlands, 1994, No. 1)

1. "The target group approach is typically Dutch and would never work in another country."

Gerrit-Jan Bouuhuis (Finance):

I think there's something in it. The Netherlands is a society with a very fine structure, which is suited to a target group approach. If you don't have that level of organization, a target group policy will never work.

Paul de Jongh (Environment):

The target group policy didn't just appear out of thin air. It is part of a chain of developments which has led us to discover that you can't simply make environmental policy from behind a desk. You have to take account of the nature of your target group, its size and the economic and international context in which it has to operate. They are the ones who have to do all the work, after all. I think that you can't create a reasonable environmental policy, in any country in the world, if you don't take this into account. However, that doesn't alter the fact that there are some things about the target group approach policy which are typically Dutch. This is a small country and we are used to consultation and joint planning between government and industry.

2. "Consulting with target groups makes environmental objectives less ambitious."

Piet Ritsema (Agriculture):

But you have more chance that they are realistic. There's not much point in sitting in your ivory tower setting targets.

Marius Enthoven (Environment):

I think you have to bear the timescale in mind. Long-term objectives remain the same. Talks with target groups are about how to achieve them and, above all, how quickly we proceed.

Paul de Jongh (Environment):

I think that if you compare us with other countries, you can see the inaccuracy of this statement. We have a target group policy here in the Netherlands and our targets are very ambitious.

3. — "A company's most important motive for taking measures to protect the environment is the threat of action by a strict government."

Kees Kruijt (Economic Affairs):

I can imagine that might be the case with well-intentioned companies who have started to take account of the environment. If they hear stories about dirty companies they soon start calling for regulations, but then you've already made a good start.

Paul de Jongh (Environment):

I think it's a question of different phases. When they first become aware of the problems, companies need regulations. Then they know exactly what they have to do and don't have to think for themselves. But companies which are a little further down the road start thinking about what is facing them. They start to become interested in the long term, where they have a little room for manoeuvre. One stage further--I'm being idealistic now--and you don't need government policy anymore. Then people can interpret their relationship with the environment for themselves. This is the way things are

going in companies. They pass through a number of phases, some with greater ease than others. There are already companies whose policy is to eliminate all emissions.

Gerrit-Jan Bouhuis (Finance):

We're only talking about direct regulation here. But you also have indirect regulation: influencing prices, which changes allocations and consequently, patterns of production and consumption. This is also a form of regulation. Impose taxes and prices will change.

4. "It is unlikely that small and medium-sized companies will ever reach the stage where they are ready for environmental self-regulation."

Marius Enthoven (Environment):

The interaction between government and industry has been given an enormous boost. The government plays a facilitating role. The better companies respond, the less the government needs to do. At a certain point industry starts to ask: "Would you do something about this, because it's more efficient if you do it? But leave the other things up to us, we'll sort them out ourselves."

Gerrit-Jan Bouhuis (Finance):

But it all has to be anchored in a system of standards, which is introduced through the target group policy, price changes and changing allocation. This has nothing to do with goodwill. These are fixed structures: costs are reflected in the price. We must use market mechanisms as much as possible.

5. "Trade restrictions on environmentally unfriendly goods are an important part of environmental policy."

Kees Kruijt (Economic Affairs):

We have fought for centuries for the liberalisation of trade. The GATT negotiations are about liberalisation. It's said that you should make exceptions for just two things: human rights and the environment. But that is a difficult issue. The Netherlands depends on other countries for half its trade. And then there's GATT and the EC. You can't just say: "Let's see whether this import product or that export product is environmentally friendly enough."

Paul de Jongh (Environment):

Maybe we should put things into perspective. Of course the general trend is towards liberalisation of world trade. We're already being overtaken by the growth in markets, but that's no reason why, as new markets open up, environmental policymakers shouldn't step in right at the start to ensure that the new trade causes as little environmental damage as possible. Just think about food. We don't import it just like that. There is a structure for it in the EC. We don't yet have that at the global level but here, too, the strongest factor is market forces.

6. "Direct regulation must be used only as a last resort in environmental policy."

Marius Enthoven (Environment):

You have to regulate things differently. You have to set standards which are universally acceptable. But that will take a lot of time because different groups of countries are at different stages. It could be done now, except for a few cases. Agreements have been made about phasing out ozone-depleting substances, but this was really a kind of last resort. It was necessary, though, because the problem is so acute.

Gerrit-Jan Bouhuis (Finance):

That underlines the importance of international environmental policy.

7. **"The integrated approach to environmental problems means that everything is being done at once, and only half as well as it should be."**

Klaas van Egmond (National Institute of Public Health and Environmental Protection, RIVM):

We have to tackle everything at once for technical reasons. You could of course say, "I'm only going to deal with certain aspects of energy in certain groups." But if you look, for instance, at the environmental loading of nitrogen and phosphates, you can't say "I'm only going to bother about agriculture and ignore households." If you base your approach on substance flows then you have to tackle all these things at once.

8. **"Integrated environmental policy has its drawbacks as well as its advantages. Take, for instance, building near public transport facilities to reduce car use--it also causes more disturbances."**

Klaas van Egmond (RIVM):

Of course there are contradictions. You have to choose the best option. It's not a question of contrasts.

Marius Enthoven (Environment):

But there are clear priorities. We began with water, air and waste and then--much later on--soil. The more we integrated environmental issues and scaled up our approach, the more difficult it became to say what should be given priority. You have to base your decision on the conditions in the location in question, and on what is happening at the time. We often run up against that kind of problem. It's more a matter of how you deal with it, than deciding that energy conservation will always be given precedence over SO2 reductions. You have to keep it manageable.

Klaas van Egmond (RIVM):

But I take the point that Dutch Shell has also made: how do you set priorities when the choice is acidification or climate? It's like comparing apples and oranges. You have to look at it in terms of environmental benefit. What efforts can I make on both fronts, and how serious are the problems in the Netherlands? It becomes more complicated on a global scale.

Paul de Jongh (Environment):

To get back to the target groups: you make certain long-term agreements with them, which must be as comprehensive as possible. Companies hate it if you come back to them to discuss a new issue every year. If we were to set priorities in the traditional sense ("first we'll do that, then that") without any cohesion and long-term perspective, things would go wrong. Indeed, it is an inherent part of our long-term strategy and our policy of concluding voluntary agreements that the target groups themselves should be partly responsible for setting priorities.