



### The New Directions Group

The New Directions Group (NDG) provides an informal and neutral forum for leaders from progressive Canadian businesses and NGOs to debate potentially divisive sustainability issues. In addition to advancing policy, the purpose of the NDG is to enhance capacity building, mutual learning and collaboration on significant sustainability issues.

The NDG is a virtual entity that operates with a core group of sponsors and supporters, including Suncor Energy, Alcan, Falconbridge, Dow Chemical Canada, Pollution Probe, and the Pembina Institute for Appropriate Development. The NDG is administered through Pollution Probe. While these organizations provide the NDG's foundation, specific project teams comprise individuals from the business and NGO communities who are recognized as thought leaders on the issue to be addressed. In recent years, NDG initiatives have benefited from the input of leaders from the agricultural, chemicals, energy, forestry and mining sectors, to name a few, as well as from conservation, environmental, health and academic NGOs.

Over the years, NDG initiatives have had a direct impact on environmental policy in Canada. For example

- its inaugural report, *Reducing and Eliminating Toxic Substance Emissions: An Action Plan for Canada*, became the basis for the Accelerated Reduction/Elimination of Toxics (ARET) partnership administered by Environment Canada;

- the report, *Criteria and Principles for the Use of Voluntary or Non-regulatory Initiatives to Achieve Environmental Policy Objectives*, provided the foundation for Environment Canada's Environmental Performance Agreement Policy Framework and for the Cooperative Agreements of the Ontario Ministry of Environment and influenced the design of numerous voluntary programs in Canada and internationally;
- another report, *Developing Credible and Effective Covenants for the Management of Greenhouse Gas Emissions*, had a clear influence on the Draft Model Covenant proposed by the Large Final Emitters group of Natural Resources Canada; and
- the NDG's latest report, *Applying Precaution in Environmental Decision-Making in Canada*, was highlighted by the External Advisory Committee on Smart Regulations in its report to the Prime Minister.

In addition to dedicated projects, the NDG conducts a variety of experts' workshops and networking initiatives. NDG projects are well received because the resulting reports reflect the current thinking, if not a consensus, of leaders of Canada's business and NGO communities on topical sustainability issues. This provides valuable guidance to other businesses and NGOs, but more specifically to governments, in understanding the range of views on the issues and formulating effective policy and strategic responses.

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### Preamble

In 1997, the New Directions Group developed *Criteria and Principles for the Use of Voluntary or Non-regulatory Initiatives to Achieve Environmental Policy Objectives* which were endorsed by 19 corporations and NGOs. Participants involved in developing these criteria and principles were concerned that, while voluntary approaches to environmental protection were proliferating, there were no standards against which these approaches could be assessed. This was of particular concern where government was involved either by sanctioning a program or engaging as a signatory and thus there was a significant public interest. The NDG criteria and principles have since had a substantial impact on the design and evaluation of voluntary approaches to environmental protection across Canada.

In 2001, the NDG followed up this initial work with the project *Developing Credible and Effective Covenants for the Management of Greenhouse Gas Emissions* which engaged major GHG emitters and NGOs working on climate change. This project was an attempt to apply the NDG's criteria and principles and it also introduced a discussion of the relationship between incentives and consequences and the performance expectations of such a covenant. This concern was further explored through an NDG experts' workshop entitled *Incentives in Covenants and Negotiated Agreements*, held in April 2003 and sponsored by the Ontario Ministry of Environment.

Voluntary approaches to environmental protection take a wide variety of forms and are applied to a broad range of issues. While voluntary approaches to environmental protection are now commonplace, analyses of the effectiveness of these approaches are compromised by the lack of a framework or typology to enable "like" to be compared with "like." Initiatives designed to do different things in different circumstances with differing rigour continue to be grouped under the generic banner of "voluntary." This causes particular confusion when examining the relationship between performance expectations, incentives and consequences, and the level of verification required of participants. In 2005, the NDG determined that it was time to revisit its earlier work and review those learnings with respect to the development and implementation of various types of voluntary initiatives (herein referred to as Environmental Performance Agreements, or EPAs) with a view to providing more targeted guidance in the application of these policy instruments.

This report is based on a review of 28 EPAs from around the world. These EPAs were classified into three categories based on their commonality of purpose and an assessment was made of how design features differ among them, with an emphasis on incentives and consequences. The preliminary results of this analysis were provided as background information to a North American experts' workshop on negotiated performance agreements convened by the NDG in February 2006 in Ottawa. A record of this workshop is attached as Appendix IV and the results have been incorporated into this report.

## **Acknowledgements**

The New Directions Group would like to thank the following sponsors for their support of this initiative:

Alberta Environment  
Dofasco  
Environment Canada  
Ontario Ministry of Environment

The contributions of the following individuals, who comprised an advisory committee which reviewed drafts of this report, are also greatly appreciated:

Claude-André Lachance, Dow Chemical  
Canada  
Mark McDermid, Wisconsin Department of  
Natural Resources  
George Murphy, Alberta Environment  
Ken Ogilvie, Pollution Probe  
Stephan Sylvan, US Environmental Protection  
Agency  
Kernaghan Webb, Industry Canada

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### Executive Summary

Environmental performance agreements (EPAs) are used by many governments as a means of achieving policy and regulatory objectives through a non-regulatory instrument. They can be entered into through independent agreements between governments and individual firms or between an industry sector and a government agency, or through the creation of government programs to which a number of unrelated companies can subscribe if they meet the qualification requirements.

As EPAs are negotiated and consent based, they can be a useful adjunct to conventional regulatory approaches if developed and applied appropriately. Although industry enters these agreements voluntarily, performance expectations are generally clear and there are specific consequences for failing to achieve the objectives of the agreement. If designed and implemented properly, EPAs offer an approach to solving environmental problems based on shared responsibility and co-operation, with companies and other parties assuming greater ownership of their environmental responsibilities than they might have otherwise. To be most appropriate and effective, EPAs should reinforce existing regulatory requirements, assist parties to meet or go beyond regulatory limits, and not compromise the ability of government to set future regulatory targets.

While EPAs are becoming commonplace, analyses of the effectiveness of these approaches are hindered by the lack of a framework or typology to enable “like” to be compared with “like.” Initiatives designed to do different things in different circumstances with differing rigour continue to be grouped under the generic banner of “voluntary”. Through this project, the NDG set out to review learnings with respect to the development and implementation of various types of EPAs so that it could provide more targeted guidance in the application of these policy instruments.

This analysis entailed a detailed review of 28 environmental performance agreements from around the world. The preliminary results of the analysis were provided as background information to a North American experts’ workshop on negotiated performance agreements convened by the NDG in February 2006 in Ottawa.

The NDG approached this analysis by first examining the spectrum of application of EPAs and then grouping the 28 selected EPAs into three broad categories within that spectrum based on their commonality of purpose:

- **Quasi-Regulatory EPAs** may be used in place of formal regulations to achieve an explicit performance target that is written into the EPA or subsequently negotiated between a government and signatories as part of an implementation plan.
- **Capacity Building: Performance-Based EPAs** encourage participants to go beyond compliance with regulation or to achieve performance targets that are not currently the subject of regulation.
- **Capacity Building: Activity-Based EPAs** encourage participants to improve their environmental performance by putting in place mechanisms such as environmental management systems and they may also be used to provide a framework for information gathering prior to taking further action, but they may not contain absolute performance targets.

This categorizes EPAs according to what they are intended to do; stated another way, it indicates who the potential participants in an EPA should be. Consider a bell curve of compliance, with the left tail representing companies that go beyond compliance, the right tail representing companies that are out of compliance, and the bulk of companies operating in between. Ideally, EPAs should move the curve to the left and narrow the bell.

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This can be done by

- pushing the leaders further to the left in the hopes of pulling the curve with them
- encouraging those companies in the middle to go beyond compliance, moving the curve to the left
- encouraging the laggards on the right to move towards compliance, narrowing the bell.

Obviously, the same instrument can not be applied in a standardized fashion in all areas as the expectations and needs of participants in the three groups will differ substantially from one another.

The NDG next considered the relative importance of the eight design principles put forward in its *Criteria and Principles for the Use of Voluntary or Non-regulatory Initiatives to Achieve Environmental Policy Objectives* in 1997 ([www.newdirectionsgroup.org/projects/voluntary.php](http://www.newdirectionsgroup.org/projects/voluntary.php)) to each category of EPA. The design principles require that EPAs

- be developed and implemented in a participatory manner;
- be transparent in their design and operation
- be performance-based with specified goals, measurable objectives and milestones
- specify the incentives for good performance and the consequences of not meeting performance objectives
- encourage flexibility and innovation
- have prescribed monitoring and reporting requirements
- include mechanisms for the verification of performance
- encourage continual improvement.

While the NDG design principles are generally relevant to all types of EPAs, the NDG acknowledged that, although they are intended to be applied as a set, the importance of each principle will vary according to the type of EPA and the stage of its development. The analysis confirmed that many of the NDG design principles are closely linked or interdependent; for example, the principles

addressing “performance”, “incentives/consequences” and “verification” are closely intertwined. Generally, as the requirements for one increase, so do those for the other two. Quasi-regulatory (QR) EPAs tend to have specific goals and targets and are a clear alternative to regulation. Thus the performance principle ranks higher in importance for this type of EPA than it does for capacity-building performance-based (CB-PB) and capacity-building activity-based (CB-AB) EPAs. As expected, the same is true of the principles for incentives/consequences and verification. Conversely, as the specificity of performance decreases, in CB-AB EPAs for example, the importance of incentives/consequences similarly decreases (and the type of incentives/consequences changes) as does the level of verification required. In contrast, the importance of the “continual improvement” principle increases.

In the course of the analysis and subsequent workshop, a number of key issues germane to the future application and credibility of EPAs were identified. Further work is needed in the following areas:

**1. Clarifying the Role of EPAs** — There is continued confusion as to the circumstances in which EPAs are most appropriate and how they relate to other policy and regulatory options. A better understanding of how different categories of EPA can each contribute to the achievement of environmental policy objectives can help to ensure the strategic application of these instruments and thus contribute to their greater effectiveness.

**2. Applying and Designing EPAs** — This analysis is a first step towards a more rigorous approach to a typology of EPAs that can provide more in-depth guidance as to the application of EPAs in each category and the relative importance of various design principles to each category. Proponents of EPAs need a clear understanding of what they are intended to do (i.e., where on the spectrum of applications they fit) and who is intended

to participate (i.e., where on the bell curve of compliance they are to be applied) and design features follow from that. Additional research in this area is required.

**3. Confirming the Benefits of EPAs** — It is generally believed that EPAs provide a number of ancillary benefits to signatories. Governments can use them to break down traditional programmatic silos and to overcome interdepartmental or interjurisdictional barriers. Participating companies are provided with a constructive, non-traditional avenue to interact with stakeholders (government and community). They also secure opportunities to experiment with new approaches to problem-solving that may be more risky in a regulatory environment. These “soft” benefits of EPAs are a form of incentive, particularly to governments, and merit further study.

**4. The Need for Harmonization** — Across Canada and in the United States a wide range of EPAs are offered by both federal and state/provincial governments addressing very similar, or interconnected, issues. The costs to industry of participating in multiple initiatives can be substantial and the process can be very haphazard and opportunistic. Some degree of harmonization or linkage of EPAs is warranted before things become unmanageable and potential participants begin to opt out.

**5. Baselines and Continual Improvement** — Sceptics of EPAs suggest that these agreements simply formalize and provide approval and/or incentives for things that signatories are doing or may have been planning to do anyway. EPAs should be subject to an ongoing process of evaluation to ensure that they remain relevant to their goals of advancing action on a particular issue and that they are the most

effective way of achieving the desired environmental outcome. Setting a baseline and applying continual improvement can help to demonstrate the progress being made through an EPA.

**6. Understanding Incentives and Consequences** — The issue of incentives and consequences within EPAs remains poorly understood. Simply put, there needs to be a compelling argument for all parties both to enter into the EPA and to meet performance objectives once engaged. These factors will vary depending on the type of EPA, the circumstances in which it is applied and the business realities of the companies that are expected to join. Further, the need to relate incentives and consequences to the performance objectives of the EPA and to tie these back to the level of verification of performance that is required merits further study.

Ten years ago, when the NDG began its work on voluntary initiatives such as EPAs, these instruments were relatively new. When these new voluntary initiatives were intended to achieve an environmental policy objective (i.e., when government was involved as a sponsor of or was party to the initiative) the NDG believed that they must be designed in such a way as to be credible and effective. Today, voluntary initiatives are proliferating at all levels of government. We are in a position to learn from the experiences of the past decade to enhance the ability of instruments such as EPAs to contribute to environmental policy. This project has been an attempt to bring a more rigorous approach to the development and evaluation of EPAs and identifies areas in which additional analysis is required.

### A. Introduction

Environmental performance agreements (EPAs) are used by many governments as a means of achieving policy and regulatory objectives through a non-regulatory instrument.<sup>1</sup> They can be entered into through independent agreements between governments and individual firms or between an industry sector and a government agency, or through the creation of government programs to which a number of unrelated companies can subscribe if they meet the qualification requirements.

As EPAs are negotiated and consent-based, they can be a useful adjunct to conventional regulatory approaches if developed and applied appropriately. Although industry enters these agreements voluntarily there are specific consequences for non-compliance. If designed and implemented properly, EPAs offer an approach to solving environmental problems based on shared responsibility and co-operation, with companies and other parties assuming greater ownership of their environmental responsibilities than they might otherwise. To be most appropriate and effective, EPAs should reinforce existing regulatory requirements, encourage parties to go beyond regulatory limits, and not compromise the ability of government to set future regulatory targets.

There are a variety of reasons that governments choose to achieve environmental policy objectives through EPAs. These include the

need to gather information on substances of interest; recognize, encourage and reward exemplary environmental performance; inform and educate consumers; and address areas that are difficult to address through current regulatory approaches. EPAs are increasingly viewed as a critical tool for policy makers and are gaining in popularity as they encourage leadership, innovation and flexibility in addressing environmental issues, particularly those issues not currently covered by regulation.

EPAs are common in most member countries of the OECD and their use as a policy tool is increasing in other countries. Many European countries make extensive use of EPAs and most are negotiated at the national level. The highest number of environmental agreements can be found in the Netherlands, including the Energy Efficiency Benchmarking Covenants. In the United States, there are over 100 voluntary partnership programs such as the ENERGY STAR program. EPAs are also used at the state level, and include leadership recognition programs, such as the Green Tier program in Wisconsin, and agreements negotiated with individual firms or groups of firms.

At the federal level in Canada, Environment Canada has developed a *Policy Framework for Environmental Performance Agreements* and currently has four agreements in place that were negotiated based on this framework.<sup>2</sup> One agreement is an arrangement between Environment Canada and a single company (Dow Chemical); the other three have been negotiated with sectoral groups of companies. Other EPAs have been developed by the provinces, such as the Environmental Leaders program in Ontario and EnviroVista in Alberta.

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<sup>1</sup> Such agreements may also be referred to as negotiated agreements, voluntary partnership programs, voluntary environmental agreements, memoranda of understanding and a variety of other appellations. Whatever the nomenclature, these are all “consent based non-legislatively required initiatives in which government is one of the parties” as defined by Kernaghan Webb of Industry Canada.

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<sup>2</sup> See [www.ec.gc.ca/epa-epe/en/index.cfm](http://www.ec.gc.ca/epa-epe/en/index.cfm) for further information.

## Developing and Implementing Credible and Effective Environmental Performance Agreements

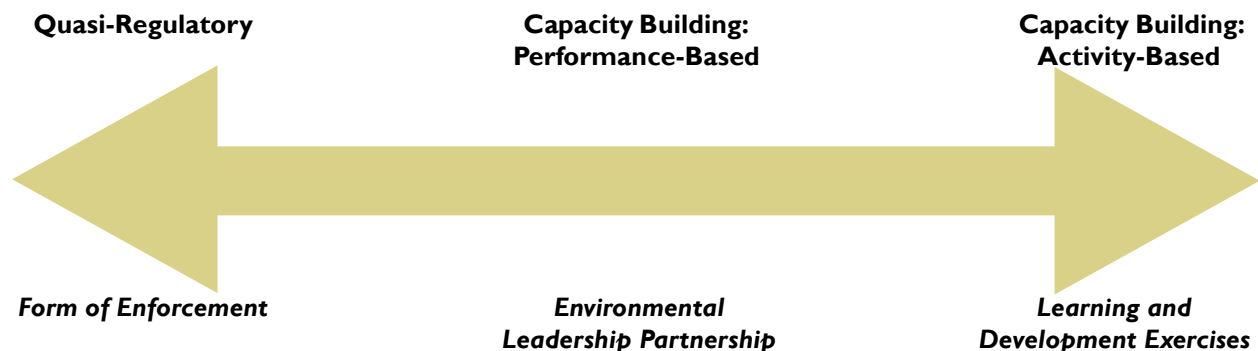
EPAs take many forms, in large part because they reflect the political and cultural environments of the different countries and jurisdictions employing them. For that reason, comparisons among them are difficult and those designing new initiatives need to select carefully the reference points around which to build their programs. While voluntary approaches to environmental protection, such as EPAs, are now commonplace, analysis of the effectiveness of these approaches is compromised by the lack of a framework or typology to enable “like” to be compared with “like.” Initiatives designed to do different things in different circumstances with differing rigour continue to be grouped under the generic banner of “voluntary.” This causes particular confusion when examining the relationship between performance expectations, incentives/consequences, and the level of verification required of participants.

As a result, the NDG determined that it was time to review learnings with respect to the development and implementation of various types of EPAs with a view to providing more targeted guidance in the application of these policy instruments. This report is based on a review of 28 EPAs from around the world.

These EPAs were classified into three categories based on their commonality of purpose. These categories fall along a spectrum of applications from programs designed to make companies more aware of their environmental responsibilities to those that are almost regulatory in nature (see Figure 1). An assessment was then made of how essential design features differ among the categories, with an emphasis on incentives/consequences. The preliminary results of this analysis were provided as background information to a North American experts’ workshop on negotiated performance agreements convened by the NDG in February 2006 in Ottawa. A record of this workshop is attached as Appendix IV and the results have been incorporated into this report.

One objective of this report is to illustrate the way in which design elements change in importance according to the category of EPA and how the level of incentives/consequences and the operational attributes of EPAs also change across the spectrum. Other objectives are to assess lessons learned to ensure that future agreements are designed appropriately for their circumstances and to review the incentives/consequences necessary to enable EPAs to achieve the desired results.

**Figure 1: Environmental Performance Agreements — A Spectrum**



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Section B defines the categories of EPAs used in the analysis. Section C outlines the design elements used to assess EPAs. These design elements are drawn from the criteria and principles governing voluntary or non-regulatory initiatives developed by the NDG.<sup>3</sup> Section D summarizes the analysis of 28 EPAs. This includes information on the minimum design requirements for each of the categories of EPAs. Section E assesses the incentives and consequences in agreements, examining how these changes across the spectrum from entry-level to *de facto* regulations. Section F concludes with recommendations for further research. Detailed information on the EPAs assessed in this analysis is provided in the appendices.

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<sup>3</sup> New Directions Group. 1997. *Criteria and Principles for the Use of Voluntary or Non-Regulatory Initiatives to Achieve Environmental Policy Objectives* ([www.newdirectionsgroup.org/projects/voluntary.php](http://www.newdirectionsgroup.org/projects/voluntary.php)).

## B. Positioning Environmental Performance Agreements

To differentiate effectively among the various possible types of EPAs and determine the relevance of the design criteria to each of them, a linear categorization is required. Many attempts to classify voluntary initiatives have aggregated them according to sector or issue but neither approach lends itself well to a rigorous analysis. This analysis is based on the assumption that it is much more appropriate to contrast EPAs according to their purpose and objectives; hence the introduction of the spectrum of applications described in Figure 1. For the purposes of this report, then, EPAs are distinguished by the *degree of specificity of their environmental performance expectations and the accountability for achieving them*. There are a multitude of potential categories that could be used but, for ease of reference, EPAs are placed into three categories within the spectrum, which are also broadly reflective of the manner in which governments and industry have been developing the agreements.

### B.1 Quasi-Regulatory (QR)

These agreements may be used in place of formal regulations to achieve an explicit performance target that is written into the EPA or subsequently negotiated between a government and signatories as part of an implementation plan. The principal drivers are the threat of regulation, some degree of policy certainty, and the flexibility provided the signatory in achieving what is a *de facto* regulatory target; therefore QR EPAs are a means of providing direction in lieu of formal regulation.

### B.2 Capacity Building: Performance-Based (CB-PB)

These agreements generally encourage participants to go beyond compliance with regulation or to achieve performance targets that are not currently the subject of regulation. Generic performance targets may be included in the agreement with individual facilities given the flexibility to self-select their own targets that contribute to the aggregate performance of all participants. A variety of incentives may be offered. In general, participants in these types of programs likely have a track record of compliance and have a recognized environmental management system in place. CB-PB EPAs can be seen to be environmental leadership partnerships.

### B.3 Capacity Building: Activity-Based (CB-AB)

Activity-based EPAs encourage participants to improve their environmental performance by putting in place mechanisms such as environmental management systems. They may also be used to provide a mechanism for information gathering prior to taking further action, for example, where little is known about the actual use and emissions of substances of concern. Specific performance targets are usually not included as the focus is on enhancing the ability of the participants to comply with existing or proposed regulations. Incentives may take the form of technical assistance and training. CB-ABs can also be a mechanism to avoid future regulation, particularly if they lead to early action on substances of concern. As such, these are principally learning and development exercises.

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While this project concentrated on an analysis of EPAs categorized according to the specificity of the performance target they are intended to achieve, a complementary approach — presented here for comparison — would be to consider the targeted participants in an EPA and what the proponents want them to do.

Consider, for example, a bell curve of compliance, with the left tail representing companies that go beyond compliance, the right tail representing companies that are out of compliance, and the bulk of companies operating in between. Ideally, the application of an EPA should move the curve to the left and/or narrow the bell. This can be done by:

- pushing the leaders further to the left in the hopes of pulling the curve with them
- encouraging those companies in the middle to go beyond compliance, moving the curve to the left
- encouraging the laggards on the right to move towards compliance, narrowing the bell.

Obviously, the same instrument can not be applied in a standardized fashion in all areas as the expectations and needs of participants in the three groups will differ substantially from one another; hence the importance of the discussion of incentives/consequences within an EPA.

In practice, there is no clear dividing line between the three selected categories of EPA and it is useful to consider them as overlapping segments of the spectrum of potential types of EPAs. For example, a very progressive CB-PB EPA could contain very specific performance objectives consistent with a QR EPA for some substances but not for others. Similarly, a progressive CB-AB EPA may contain performance objectives for some substances and that number may expand over time as the EPA evolves. Rather than being a static process, the flexibility inherent in this categorization may allow EPAs and the companies participating in them to evolve according to their needs as learnings and the capacity for action improve.

## C. Criteria and Principles for the Design and Implementation of EPAs

In 1997, the New Directions Group (NDG) developed five criteria and eight principles to govern the design of voluntary or non-regulatory initiatives used to achieve environmental policy objectives. Broadly accepted by proponents of such programs in Canada, these criteria and principles are intended to guide the design of voluntary initiatives used by governments in order to ensure their credibility and effectiveness and secure public trust.

### C.1 NDG Criteria for the Establishment of an EPA

The NDG's criteria are important considerations in the decision to develop an EPA and provide context for the ensuing discussion. They are not, however, a direct component of this analysis as the EPAs being examined are already in existence and, presumably, exist because parties agreed on their appropriateness. However there are some considerations in the application of the criteria to the development of various forms of EPA that merit comment. The five criteria, with annotations, are as follows:

1. *EPAs should be positioned within a supportive public policy framework that includes appropriate legislation and regulatory tools.* This is particularly important for QR and CB-PB EPAs in which signatories may be provided with an alternative to regulation or may be challenged to perform beyond compliance.
2. *Interested and affected parties should agree that an EPA is an appropriate, credible and effective method of achieving the desired environmental protection objective.* No form of EPA will be successful unless potential parties, likely business and government but possibly NGOs or community groups, agree that it provides advantages to them over alternative methods of achieving the desired outcome.
3. *There should be a reasonable expectation of sufficient participation in the EPA over the long term to ensure its success in meeting environmental protection objectives.* If the intent of the EPA, particularly a CB-PB or CB-AB EPA, is to rally a sector around an issue of concern or to secure multisectoral action on a broader issue the penetration rate of the EPA is critical. This is easier when a small number of firms contribute disproportionately to an issue and is more difficult when a large number of firms all contribute a small amount to the problem. If leaders are engaged early, then there should be a process for "rolling out" the EPA or using the performance of leaders as a future regulatory benchmark.
4. *All participants in the design and implementation of the EPA must have clearly defined roles and responsibilities.* This includes government signatories as the EPA may often imply a non-traditional way of doing business for the agencies involved. It should be clearly understood under what circumstances government participants will resort to traditional command-and-control approaches.
5. *Mechanisms should exist to provide all those involved in the development, implementation and monitoring of an EPA with the capacity to fulfill their respective roles and responsibilities.* This is of particular importance when the EPA may be available to SMEs or when NGOs or other public interest groups are engaged. Further, EPAs are often erroneously viewed as a cost-cutting measure. Their transaction costs can, in fact, be substantial and the costs of developing and implementing them may be shared to a greater extent among government and participants than is likely with regulation. Both government and industry participants should thus ensure that resources commensurate to the demands of administering the EPA are available over the life of the agreement.

### C.2 NDG EPA Design and Implementation Principles

In terms of its eight design principles, the NDG emphasized that their application should reflect the nature and objectives of the voluntary initiative, and that the importance of the individual principles varies depending on the type of EPA and the stage of its development. This report expands on that approach as, while the principles were intended to be applied as a set, this was not to be done in a so-called “cookie cutter” fashion. The typology has been developed to underscore that aspect of the NDG’s original report and to illustrate how the principles can be interpreted differently in different types of EPAs. For example, an EPA used in place of regulation may have stronger provisions regarding the consequences of not meeting performance objectives than would be expected in an EPA intended to gather information on emissions of a substance not currently subject to regulation.

The NDG principles are listed below with annotations in italics to set the stage for the subsequent analysis and conclusions. According to the NDG, credible and effective EPAs

1. *Are developed and implemented in a participatory manner that enables the interested and affected parties to contribute equitably.* This signifies that the terms and conditions of an EPA can not be imposed on any party to it. As EPAs are consent-based, parties must have the opportunity to contribute to their design. Stakeholder engagement should also be considered in the application of this principle, whereby the public and interested parties are able to provide input into the development and implementation of the agreement.
2. *Are transparent in their design and operation.* The development, implementation and monitoring of EPAs must be done in a clear and open manner, and the roles of participants should be clearly defined to prevent

misunderstanding and to ensure accountability. Legality, fairness and the public’s right to know are important transparency considerations but there must also be recognition of the need to protect proprietary information. Procedural fairness is needed, and proponents must be aware of a broader fairness (e.g., EPAs are voluntary, so how should companies who choose to not sign on be treated?).

3. *Are performance-based with specified goals, measurable objectives and milestones.* The development of baselines and benchmarking measures are important considerations. “Performance” will be interpreted differently according to the type of EPA. It may mean the implementation of an environmental management system or it may mean achieving a reduction of  $x$  in emissions of substance  $y$  by a specified date. The important thing is that signatories are required to take some form of action. Good baselines and effective benchmarking are needed to ensure that the EPA is truly securing enhanced performance.
4. *Clearly specify the incentives for good performance and the consequences of not meeting performance objectives.* The level of incentives or consequences required to drive performance is a direct function of the objectives of the EPA and influences the selection of mechanisms for verifying the performance of participants. The incentives for all parties to the agreement, including government, should be clear. Agreements may include a hierarchy of consequences to be applied if the performance goals are not met, and this can include regulatory backstops (depending on the nature of the EPA).
5. *Encourage flexibility and innovation in meeting specified goals and objectives.* Well-designed EPAs should stimulate the development of creative approaches to solving environmental problems, which can have spin-off benefits in other areas and which can also provide competitive

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advantages to the developer. Due to the nature of EPAs, as opposed to regulations, the flexibility to add new performance targets, increase existing ones, or broaden the agreement to incorporate more issues over time are added advantages.

6. *Have prescribed monitoring and reporting requirements, including timetables.* Generally, the more the signatory is expected to do or receives in benefits (or avoids in consequences) for participating in the EPA, the greater the need for clear and specific monitoring and reporting requirements to protect the public interest.
7. *Include mechanisms for verification of the performance of all participants.* Verification can take a number of forms and should be appropriate to the performance objectives of the EPA and the incentives or consequences it provides for. Verification procedures can vary from internal audits to random inspections to third-party evaluations and, as above, the more participants receive in benefits or avoid in consequences the more stringent the verification requirements ought to be. Parties should be provided the opportunity to take corrective action in response to problems identified through verification.

8. *Encourage continual improvement of both participants and programs themselves.* Most EPAs are intended to build capacity either by challenging industry leaders to demonstrate what they can do, gather information about substances or issues of concern, or enable industry to better address their environmental responsibilities. Thus the experience of signatories needs to be reinvested into the EPAs to ensure that they continue to reflect their intent.

One reason why the NDG advocated applying these design principles as a set, even though the importance of each might change according to the type of EPA, is that so many of them are linked. There is an obvious connection between transparency, participatory and prescribed monitoring and reporting, for example. Similarly, performance is linked to incentives/consequences and to mechanisms for verification — the more that is expected, the greater the incentives or consequences and the greater the need for verification. Flexibility and innovation is linked to continual improvement.

## D. Application of the NDG Design Principles to the Typology of EPAs

Twenty-eight EPAs from around the world were analyzed to suggest how the NDG design principles change in importance across the three broad categories of EPAs. The selected EPAs are a mix of company-specific and sectoral agreements — eight are quasi-regulatory, twelve are capacity building: performance-based and eight are capacity building: activity-based.

Appendix I lists the selected agreements according to category, providing a short description of each EPA and its objectives. Appendix II identifies how the eight NDG design principles are reflected in the agreement itself (Note: this analysis does not consider how the design principle was reflected in the development of the agreement or its importance in any subsequent evaluation of the EPA.). Appendix III is a more detailed summary of the known incentives or consequences attached to each of the 28 EPAs and this is discussed in Section E.

The raw data provided by the analysis is summarized and interpreted in Table 1 and Table 2.

Table 1 describes how each of the design principles differs in importance across the three categories of EPA and suggests a minimum level of rigour to be applied to each design principle in each type of EPA. There is nothing to prevent a higher standard from being incorporated into an EPA, of course, as long as it is appropriate to the circumstances and the potential signatories agree that it is warranted.

In analyzing the 28 selected EPAs, differences were also noted between those entered into directly with companies or a group of companies and those that are entered into with a sectoral association that then acts as an intermediary with participating companies. Sectoral EPAs serve as a framework for a series of company-specific agreements, each of which should reflect the performance requirements for the design principles relevant to the type of agreement being put in place. Table 2 offers some specific suggestions as to how the design principles ought to be interpreted when an EPA is developed with a sector.

**Table 1: Minimum Design Requirements for Differing Types of EPAs**

Based on the review of the 28 selected EPAs, this table proposes the minimum interpretation of the NDG’s design principles for each category of EPA. Each cell contains an interpretation of the design principle within the context of the specific type of EPA followed by a further rationale (in italics).

Design Principle	Proposed Minimum Application of Design Principle		
	Quasi-Regulatory (QR)	Capacity Building: Performance-Based (CB-PB)	Capacity Building: Activity-Based (CB-AB)
<b>Developed and Implemented in Participatory Manner</b>	<p>Potential signatories ought to be fully engaged in the development of the EPA but requirements for formal consultation with external stakeholders will be context-specific. At a minimum, signatories to the EPA should be required to ensure that those stakeholders directly affected by the EPA are informed of activities and have an opportunity for input.</p> <p><i>As these EPAs are an alternative to regulation, the performance objectives are clear and do not need to be developed through broader consultation. There may be circumstances in which the anticipated methods of complying with the EPA may require further consultation with stakeholders (e.g. should a process change result in a decrease in employment) but it would be expected that in most cases these eventualities would be addressed in the negotiation of the agreement itself as it is difficult to undertake meaningful consultations when the end result has been determined.</i></p>	<p>Parties to the EPA should ensure that those stakeholders directly affected by the EPA are consulted and have the opportunity for input. This may take the form of</p> <ul style="list-style-type: none"> <li>• a multistakeholder oversight or advisory committee</li> <li>• periodic workshops or meetings with stakeholders</li> <li>• interactive communications with stakeholders.</li> </ul> <p><i>As the targets in this type of EPA may be flexible it increases the range of options for setting and achieving them. Thus, the opportunities for discussing both the targets and the options for achieving them with affected and interested parties are greater here than in a QR agreement.</i></p> <p><i>Some form of formal process to provide oversight or guidance to the EPA can be beneficial as it not only provides a source of external expertise and insight it also provides a ready constituency for transferring the results of the agreement. The relationship-building potential of these EPAs is significant and good consultation provisions can engender the trust necessary to take an agreement to the next level.</i></p>	<p>Parties to the EPA should ensure that those stakeholders directly affected by the EPA are consulted and have the opportunity for input. It may also be appropriate to engage other stakeholders in the EPA, particularly those who possess knowledge that could contribute to the success of the program. As with CB-PBs, this could take the form of an advisory committee or of periodic meetings or workshops with stakeholders who can contribute.</p> <p><i>A large part of developing capacity is increasing the understanding and awareness of issues on the part of the signatories. As such, interaction with a broad range of interested and affected parties can contribute to the success of the initiative. As CB-ABs tend to be process-oriented, it may be more difficult to engage certain stakeholders, but if it is evident that the CB-AB is setting the stage for a more performance-oriented approach in the future stakeholders are more likely to engage early.</i></p>

Table 1: Minimum Design Requirements for Differing Types of EPAs *continued*

Design Principle	Proposed Minimum Application of Design Principle		
	Quasi-Regulatory (QR)	Capacity Building: Performance-Based (CB-PB)	Capacity Building: Activity-Based (CB-AB)
<b>Transparent in Design and Operation</b>	<p>The roles and responsibilities of all parties to the agreement should be explicit. Fairness and the legality of the agreement should be considered.</p> <p><i>For any agreement to be effective, the actions to be taken by all parties should be clear. As the principal driver of a QR EPA is avoidance of regulation, the actions that the government will take, and when, should be particularly clear (e.g. in the case of non-compliance). The actual environmental performance of signatories should be made public, as it acts as an additional incentive to meet targets.</i></p> <p><i>Fairness and the rigour with which all players are treated are critical – there should be both procedural fairness and substantive fairness.</i></p>	<p>The roles and responsibilities of all parties to the agreement should be explicit. Fairness and the legality of the agreement should be considered.</p> <p><i>All parties should be clear about their roles and responsibilities and should understand how others will contribute. In the case of CB-PBs, the actions that the government will take in situations where benefits have been transferred but performance has not met targets (or where targets have been met or exceeded but benefits have not been transferred as expected) need to be explicit. Fairness is also a consideration (e.g., selection of community representatives for an oversight committee).</i></p>	<p>The roles and responsibilities of all parties to the agreement should be explicit.</p> <p><i>As these EPAs are mechanisms for transferring learning and enhancing the ability of signatories to comply with existing or future regulations, the government’s role in their implementation may be greater than for other forms of EPAs. As such, the contribution that government will make towards developing the capacity of signatories should be explicit.</i></p>

Table 1: Minimum Design Requirements for Differing Types of EPAs *continued*

Design Principle	Proposed Minimum Application of Design Principle		
	Quasi-Regulatory (QR)	Capacity Building: Performance-Based (CB-PB)	Capacity Building: Activity-Based (CB-AB)
<p><b>Performance-Based with Specified Goals, Measurable Objectives</b></p>	<p>QR EPAs should contain a specific minimum performance target(s) as well as interim targets and timelines for achieving them. A baseline or business-as-usual scenario should be established to facilitate measurement.</p> <p><i>QR EPAs are employed where there is a clear regulatory option, which means that the desired environmental objectives are squarely in the public interest. The performance targets and the likelihood of achieving them will be the main focus of critics of this type of approach.</i></p>	<p>CB-PB EPAs may contain generic or aggregate targets that require signatories to achieve or go beyond compliance. Targets should be specified with interim targets and timelines identified. Baselines should be established, if possible.</p> <p><i>In situations in which a sector or company is being asked to demonstrate leadership by going beyond compliance, the “stretch” of the target(s) will be a function of the incentives being made available.</i></p> <p><i>Sectors or companies may also be expected to demonstrate leadership where the substance(s) of concern are not currently subject to regulation. In these cases, a “best efforts” approach is likely to be negotiated and targets should be mutually agreed. There may also be an acceptable degree of variation in the targets, recognizing that some of the “best efforts” may be innovative and may not produce desired results, but this flexibility should be commensurate with the incentives to be made available.</i></p>	<p>CB-AB EPAs should contain timelines for the full implementation of the desired activities with possible interim targets and timelines depending on the nature of the agreement.</p> <p><i>While some CB-AB EPAs may overlap with CB-PB EPAs most will be focused on an activity rather than the results of that activity, whether that be gathering information on emissions of a substance or establishing an environmental management system. The milestones relating to implementation of the activity and the methods for monitoring progress need to be established. As a CB-AB evolves, specific environmental objectives may be introduced for selected aspects.</i></p>

Table 1: Minimum Design Requirements for Differing Types of EPAs *continued*

Design Principle	Proposed Minimum Application of Design Principle		
	Quasi-Regulatory (QR)	Capacity Building: Performance-Based (CB-PB)	Capacity Building: Activity-Based (CB-AB)
<b>Incentives and Consequences</b>	<p>Principal drivers of these EPAs are</p> <ul style="list-style-type: none"> <li>flexibility in meeting a performance target</li> <li>policy certainty</li> <li>avoidance of a penalty.</li> </ul> <p>Provisions should be explicit for recapturing benefits or applying penalties in situations of material non-compliance.</p> <p><i>In general, the opportunity to achieve environmental objectives through a QR EPA rather than regulation is an incentive itself. As this affords favourable treatment to signatories, however, it is appropriate to delineate what will transpire should signatories not achieve the specified performance target(s) or milestones in the agreement. Regulatory backstops are important in these agreements.</i></p>	<p>There is a shopping list of incentives and consequences for this type of EPA ranging from avoidance of regulation to policy certainty, streamlined permitting and public recognition. The key issue is relating the incentives and consequences available to the environmental objectives expected.</p> <p><i>It can be difficult to establish minimum incentives and consequences for CB-PB EPAs due to their variability. The important thing is to ensure that the incentives and consequences are commensurate with the specified goals and measurable objectives. The specific incentives and consequences for each CB-PB EPA will depend on the business circumstances of signatories and the factors that will spur performance. Incentives that are attractive to one sector may be insufficient to secure a comparable level of performance in another. It is also likely that where a CB-PB is attempting to achieve multiple environmental objectives, a range of incentives may be offered within the EPA, each tied to different expectations.</i></p> <p><i>The incentives for government must also be clear and understood in order to secure broader support for the EPA, (eg., fewer resources may be required to monitor and inspect companies that have agreed to participate in an EPA than for those that have chosen not to participate).</i></p>	<p>Generally, CB-AB EPAs provide incentives in the form of technical assistance and training and public recognition.</p> <p><i>In many cases, the implementation of a CB-AB confers direct benefits on a signatory while providing only indirect benefits to the government. Therefore, little incentive other than technical support and perhaps training may be required. Where a CB-AB is used for information gathering, the above incentives may be useful as well as some form of recognition that the signatory is working in partnership with the authority to address emissions of a substance of concern.</i></p> <p><i>CB-ABs can also provide the incentive of avoidance of regulation as developing proactive means of securing compliance in a company or sector may obviate the need to mandate a process that must be followed through regulation or policy.</i></p>

Table 1: Minimum Design Requirements for Differing Types of EPAs *continued*

Design Principle	Proposed Minimum Application of Design Principle		
	Quasi-Regulatory (QR)	Capacity Building: Performance-Based (CB-PB)	Capacity Building: Activity-Based (CB-AB)
<b>Encourage Flexibility and Innovation</b>	<p>Flexibility is a principal driver of QR EPAs and provisions should be made to encourage flexibility and innovation.</p> <p><i>It is difficult to establish minimum requirements for innovation and flexibility. Yet, the end result of the EPA is more important than the means of achieving it, providing it does not create another environmental problem. Well-designed EPAs should stimulate the development of creative approaches to solving environmental problems, which can have spin-off benefits in other areas and which can also provide competitive advantages to the developer.</i></p>	<p>Provisions should be included to encourage flexibility and innovation.</p> <p><i>As the targets in this type of EPA may be flexible it increases the range of options for achieving them. Thus, while it may be difficult to establish minimum requirements, creativity should be encouraged and it should be recognized that this entails some risks, i.e. experimental or new approaches may not produce the desired results. Built-in provisions can allow signatories to adjust targets to take advantage of learning.</i></p>	<p>Provisions should be included to encourage flexibility and innovation.</p> <p><i>The capacity to innovate and provide flexibility need to be developed and some forbearance may be required as that process evolves (e.g., in dealing with problems that may be detected during the process of gathering new environmental information).</i></p>

Table 1: Minimum Design Requirements for Differing Types of EPAs *continued*

Design Principle	Proposed Minimum Application of Design Principle		
	Quasi-Regulatory (QR)	Capacity Building: Performance-Based (CB-PB)	Capacity Building: Activity-Based (CB-AB)
<b>Prescribed Monitoring and Reporting Requirements</b>	<p>An annual performance report should be published and distributed according to an agreed-upon format.</p> <p><i>Depending on the nature of the QR EPA, it may be advisable to be very specific in terms of the type of information to be made available, the format and frequency with which information is to be presented and the manner in which it will be distributed. Reporting is essential for keeping track of performance improvements and avoiding failure.</i></p>	<p>An annual performance report should be published and distributed according to an agreed-upon format.</p> <p>Depending on the agreement, more procedural vs. substantive forms of public reporting may be employed tailored to the interests of stakeholders.</p> <p><i>The extent of public reporting is related to the participatory nature of the EPA. If interaction and consultation is high, it can be assumed that communication with key stakeholders is an integral component of the agreement and thus the need for reporting to a broader audience takes on lesser importance. Where there are limited provisions for consultation, the onus is on the signatories to ensure that accurate, comprehensive and timely information on the progress of implementing the agreement is made available.</i></p>	<p>An annual performance report should be published and distributed according to an agreed-upon format.</p> <p><i>As these EPAs are, by nature, not directly tied to quantitative environmental results, the form of reporting performance may be less rigorous than for those demonstrating their performance toward targets.</i></p> <p><i>It is important, though, that stakeholders know that the “capacity” is actually being developed and that once developed can be sustained by the signatories. This means having measures in place that determine whether the EPA is actually producing results i.e. that the actions have been integrated with other business decision-making systems or that the desired number of signatory companies is being achieved.</i></p>

Table 1: Minimum Design Requirements for Differing Types of EPAs *continued*

Design Principle	Proposed Minimum Application of Design Principle		
	Quasi-Regulatory (QR)	Capacity Building: Performance-Based (CB-PB)	Capacity Building: Activity-Based (CB-AB)
<p><b>Mechanisms for Verifying Performance of All Participants</b></p>	<p>Independent third-party audits should be employed with the potential for public authorities to commission their own audits should they be required.</p> <p>Clear provisions for corrective action in the case of non-compliance should be incorporated into the agreement.</p> <p><i>As environmental objectives, incentives/ consequences and the public interest are of high importance, it is essential that performance be verified to a high standard. Depending on the circumstances, authorities may wish to conduct spot audits of participating companies or insist on independent third-party verification.</i></p> <p><i>The actions taken by the signatory may, in practice, mean that projected milestones are exceeded or not achieved. In either case, an evaluation needs to be undertaken of the impact this has on the specified performance target and, especially in the latter case, adjustments made to bring performance back on track.</i></p>	<p>Depending on the nature of the EPA, a variety of verification options may be employed (even within the same agreement), including</p> <ul style="list-style-type: none"> <li>• the provision of verifiable information</li> <li>• self-audits (through an EMS, for example)</li> <li>• review panels</li> <li>• independent third party audits.</li> </ul> <p><i>A minimum requirement is difficult to establish for this type of EPA as it is closely tied to the specificity of environmental objectives and the nature of incentives/ consequences. The closer a CB-PB EPA is to a QR EPA, the more rigorous the verification requirements. As CB-PBs may contain a mix of hard and soft performance targets (when addressing multiple substances, for example) a range of verification options may even be included within a single EPA.</i></p>	<p>Verification may vary from self-certification of results to independent third-party audits depending on the environmental objectives and incentives/ consequences.</p> <p><i>In many respects, the mechanism for verification is tied to the interests of the parties. For example, where an EPA calls for the implementation of an EMS then the first audit conducted through that EMS provides evidence of the progress in implementing the EPA. Where information gathering is the focus of the EPA, signatories may choose to provide verifiable information as opposed to securing independent audits (which may later be required if the information leads to the substance becoming managed more directly).</i></p>

Table 1: Minimum Design Requirements for Differing Types of EPAs *continued*

Design Principle	Proposed Minimum Application of Design Principle		
	Quasi-Regulatory (QR)	Capacity Building: Performance-Based (CB-PB)	Capacity Building: Activity-Based (CB-AB)
<b>Encourage Continual Improvement</b>	<p>Signatories should always strive to embrace the learnings gained through the EPA but there may not be a need for an explicit reference to continual improvement.</p> <p><i>As hard targets are set in these EPAs, there is little opportunity for improving performance during the life of the agreement, although the potential always exists for the signatory to improve the means by which the target is achieved (e.g. through process enhancements that bring about reductions more quickly or at a lower cost). Signatories will find these improvements themselves out of self-interest so there is no need to specify them in the agreement. Continual improvement of QR EPAs is most likely to occur as part of the renegotiation process at the end of an agreement.</i></p>	<p>Provisions should be built into the EPA to enable signatories to review their performance through the life of the agreement and build upon their learning.</p> <p><i>As targets may be flexible and as these EPAs may address substances that are not currently the subject of attention, there is considerable potential for learning and knowledge transfer. The mechanisms for adjusting targets (up or down) over time and for exploring new mechanisms for achieving targets should be stipulated. In a CB-PB EPA, continual improvement will likely be addressed by periodic reviews during the life of the agreement.</i></p>	<p>As these are learning and developmental in nature, continual improvement should be embedded in the EPA through regular reviews of performance.</p> <p><i>The benefit of CB-AB EPAs is that as information is gathered, personnel are trained or an EMS is established, there is a natural evolution toward doing more and setting targets for one or more substances. It should be clear in the EPA why the capacity is being developed and what steps will be taken as capacity is put in place. Continual improvement is thus an embedded feature of these EPAs.</i></p>

**Table 2: Specific Interpretation of Design Principles for Sectoral EPAs**

One of the distinguishing features in the development of many EPAs is the ability to engage more than one company at a time, or calling together a number of companies to create an agreement. Developing EPAs by sector or through sectoral associations can engage a wide range of businesses and address a wide range of issues. Learning from existing agreements, the application of the design principles may need to vary in approach when a sector is the focus of the agreement. This table suggests areas in which the design of sectoral EPAs would benefit from an approach different from company-specific EPAs.

Design Principles	Recommended Approach
<b>Developed and Implemented in a Participatory Manner</b>	<p>Those signing the agreement need to effectively represent the governing body for the sector association and represent a level of participation sufficient to lend credibility to the overall agreement (either comprising a significant percentage of members or a significant percentage of emissions). This includes being able to command senior level commitment from member companies, though the direct commitment to the agreement of the senior executives of member companies is preferable.</p> <p>It should also be clear whether there is a role for consultation with external stakeholders in the development, implementation and review of company-specific agreements under the sectoral framework.</p>
<b>Transparent in Design and Operation</b>	<p>The roles and responsibilities of all parties to the agreement should be explicit. In particular, the role of the sectoral association in initiating and developing company-specific agreements should be clear and the capacity and resources necessary to fulfill that role should be assured.</p>
<b>Performance-Based with Specified Goals, Measurable Objectives</b>	<p>While an aggregate performance target may be set, the procedure for engaging individual companies and negotiating company-specific targets should be clear in order to ensure that progress toward the aggregate target is assured and can be measured.</p>
<b>Incentives and Consequences</b>	<p>There may be a need to differentiate between the incentives/consequences available to the sectoral association for success/failure and the incentives/consequences available to participating companies.</p>
<b>Encourage Innovation and Flexibility</b>	<p>Sectoral associations may have a role to play through the provision of information on best practices and technologies.</p>
<b>Prescribed Monitoring and Reporting Requirements</b>	<p>A consistent reporting framework that enables the “rolling up” of individual company reports into a sectoral report should be required. Reporting mechanisms should provide environmental agencies with the information that is needed while protecting the competitiveness of the participants.</p>
<b>Mechanisms for Verifying Performance of All Participants</b>	<p>It should be clear how audits of participating companies will be aggregated and/or integrated into a sectoral audit.</p>
<b>Continual Improvement</b>	<p>There is benefit to assessing and using the agreement to establish the desired future state for the sector as the framework within which development will occur sets the stage for the objectives in a long-term agreement and working relationship.</p>

## E. Importance of Incentives and Consequences in EPAs

For government and industry to enter into an EPA, there must be a clear understanding that the benefits of the EPA are greater to all parties than those conferred by other policy or regulatory instruments that may be employed to address the issue of concern. Parties must be convinced that EPAs are “better” than regulatory instruments; however, the agreements themselves suggest that as tools they are simply different in that they focus on shared values, build shared responsibility and pursue shared benefits, all of which should complement environmental outcomes expected from the regulatory system.

Industry has a number of internal drivers for participating in an EPA, which can include things such as the potential for development of internal efficiencies, securing a strategic advantage over competitors, provision of a mechanism to ensure structured and constructive interaction with stakeholders, and the opportunity to enhance the company’s reputation. Governments, too, have internal drivers. These can include opportunities for better interdepartmental or interjurisdictional cooperation, the ability to secure early action (or at least prepare for action) on issues that may currently be difficult to regulate, and the potential to transfer costs and responsibility (not accountability) for monitoring performance to industry (e.g., independent third-party audits reducing the need for government inspectors).

EPAs generally seek to overcome the win/lose predisposition of traditional regulatory approaches; however, over and above these internal drivers, most EPAs include provisions for government to reward or punish participants in an EPA that achieve or fail to achieve the performance targets to which they commit. Consequences are important, however the nature of an EPA (which is a partnership) suggests that an immediate fallback to “command-and-control” in all

cases of non-compliance is unwarranted and should be seen as a last resort. There needs to be a hierarchy of response to non-compliance and clear consequences for both firms and governments if they do not meet the terms of the agreement. This can include the option of removing non-performing parties from the agreement (e.g., in a CB-PB leadership or recognition program) or recapturing any incentives provided in the case of non-compliance. Where EPAs are used to complement or replace regulation, a regulatory backstop should exist to ensure credibility that can be employed if the terms of the agreement are not met to a degree that compromises the public interest (especially important for QR EPAs).

One obvious incentive/consequence available to government is the threat of regulation as a result of failure of the EPA, which, depending on the issue, may be more perceived than real. A plethora of other incentives and consequences are available, though, limited only by the capacity of government or the needs of industry. Incentives that appeal to one industry may not appeal to another, those that are attractive to some companies in a sector may not be sufficient to motivate others, and some incentives may even be attractive to some departments within companies but not to other departments. An EPA is more likely to be successful when the benefits of meeting performance objectives (or costs of not meeting them) are clear to all participants and the associated incentives are valuable to a company; however, tailoring the incentives in an EPA to the needs of participating companies is not a simple task and may need to be done over time with the forbearance of all parties as they learn what produces real value.

The nature of the incentives and consequences associated with each of the 28 EPAs examined in this analysis are described in Appendix II and a more detailed list is provided in

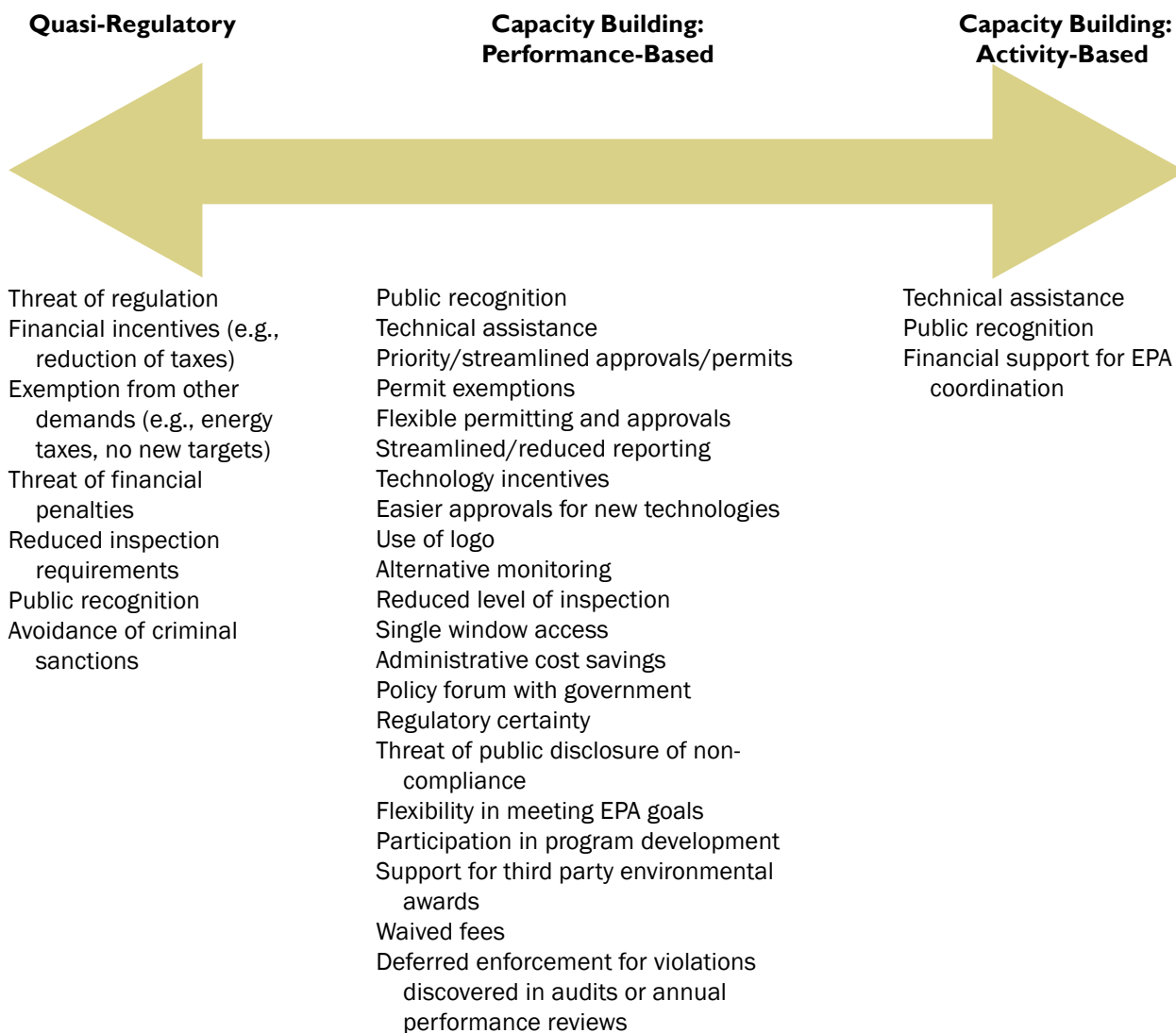
Appendix III. It is important to note how the type of incentives changes with the type of EPA. Incentives for QR EPAs tend to emphasize the threat of regulation, financial incentives (e.g., reduction in climate change levy, relief from energy/ecological taxes) and a guarantee of no new regulations if targets are met. CB-PB agreements offer the greatest range of incentives, including public recognition, streamlined reporting, technical assistance/training and priority approvals. CB-AB EPAs offer public recognition and technical assistance/training. Of the seven CB-AB agreements, two do not include incentives and one agreement with a single company (Dofasco) offers streamlined approvals. A summary of the types of incentives provided across the spectrum of EPAs analyzed is included below.

Although a wide range of incentives is offered in EPAs, many governments have had difficulty developing incentives that are substantive enough to encourage either “stretch” targets or widespread participation by industry. One reason is that the “right” incentives may be outside of the jurisdiction of the government department promoting the EPA. Another is that governments may lack understanding of the needs of participating companies or the industry sector in question. Governments may need to offer a suite of incentives within EPAs designed to include multiple companies or sectors; individual companies will react differently to proposed incentives, and governments may need to improve their knowledge of the target industries to negotiate effectively and provide compelling incentives that encourage industry participation.

Creativity at the front end of the design process can help parties develop an appropriate mix of incentives commensurate with the performance expectations of the EPA; however, the transaction costs associated with negotiating EPAs, particularly in matching incentives to performance, can be high and need to be considered carefully by all parties. All parties have to benefit from the EPA, meaning that incentives both for the government, and business should also be examined in the EPA development process. For example, one incentive to government may be that an EPA with well-performing companies (i.e. those with a demonstrated track record of compliance) can enable government to focus its limited monitoring and inspection resources on higher risk facilities.

The evolution of environmental policy toward a sustainable development framework further broadens the range of incentives and potential participants in EPAs; however it also makes more complex the process of finding incentives that are appropriate both to the type of EPA and its performance expectations. Governments, for example, may need to engage multiple authorities — interdepartmental and interjurisdictional — to find the range of partners necessary to provide appropriate incentives and consequences. Designed properly, with the correct incentives and consequences, EPAs can help society move beyond a conventional regulatory approach to a broader framework of a “social license to operate” that offers the opportunity to bring more stakeholders to the table to deal with environmental problems.

**Figure 2: Environmental Performance Agreements — A Spectrum of Incentives**



## F. Conclusions and Recommendations

This analysis has confirmed the diversity of applications of EPAs and of the need to design them appropriate to their intended purposes. While the eight design principles put forward by the NDG in 1997 are generally relevant to all types of EPAs, the importance of each will vary according to the type of EPA. A principal conclusion of this project, then, is that a more rigorous analysis of the design features of differing EPAs is warranted based upon more detailed case studies.

Further, the analysis confirms that many of the NDG design principles are closely linked or interdependent. For example, the principles addressing performance, incentives/consequences and verification are closely intertwined. Generally, as the requirements for one increase, so do those for the other two. QR EPAs tend to have more specific goals and targets, thus the performance-based with specific goals principle ranks higher in importance in the negotiation, implementation and review phases than in CB-PB and CB-AB agreements. The same is true of the principles for mechanisms for verification and incentives and consequences. Conversely, as the specificity of performance-based goals decreases, the degree of importance of incentives/consequences and verification decreases but the importance of the continual improvement principle increases.

A number of specific issues arose from this analysis and in the discussions at the experts' workshop convened by the NDG in February 2006.

### F.1 Clarifying the Role of EPAs

There is continued confusion as to the circumstances in which EPAs are most appropriate and how they relate to other policy and regulatory options. In Canada, the application of EPAs is somewhat opportunistic. Recognizing the complexity of sustainability issues, some governments are starting to complement their traditional command-and-control approach by moving to a more results-oriented method of operations, to which properly applied and designed EPAs can contribute. The relationship between the role of traditional approaches (regulation) and the role of consent-based instruments (problems and solutions are shared) merits further examination. Better understanding of how different categories of EPA can each contribute to the achievement of environmental policy objectives can help to ensure the strategic application of these instruments and thus contribute to their greater effectiveness.

### F.2 Confirming the Benefits of EPAs

EPAs will need to be measured differently than are traditional regulatory approaches. Measuring the number of agreements and the environmental outcomes is not sufficient. Benefits to signatories are the development of shared values, social license, shared management of resources and reduced reliance on output (permits, inspections and compliance assistance) in lieu of a focus on a desired future state. EPAs present an opportunity to break down traditional programmatic silos and to overcome interdepartmental or interjurisdictional barriers in both business and government, so the measures will need to look across program boundaries.

Participating companies are provided with a non-traditional avenue to interact with stakeholders (government and community) regarding their priorities and issues of concern, and with opportunities to experiment with new approaches to problem solving that may be more risky in a regulatory environment. Further, EPAs may allow participating companies to extend their influence through the “drag along” factor. This can happen through demonstrating leadership to their peers or through influencing the supply chain. These “soft” benefits of EPAs are a form of incentive, particularly to governments, and merit further study.

### **F.3 The Need for Harmonization**

In Mexico, the environmental agency PROFEPA offers a nationwide EPA through its environmental audit program. The rules are clear to all sectors in all regions of the country. Conversely, in Canada and the United States, a wide range of EPAs are offered by both federal and state/provincial governments. The costs to industry of participating in multiple initiatives can be substantial and the process can be very haphazard (e.g., differing issues/substances addressed in differing jurisdictions with potentially large gaps in the issues addressed or differing standards to be achieved). Province by province (and nationally) there are different approaches and different philosophies in Canada and the application of EPAs continues to be opportunistic rather than strategic. Some degree of harmonization or linkage of EPAs is warranted before things become unmanageable and potential participants begin to opt out.

### **F.4 Baselines and Continual Improvement**

Sceptics of EPAs suggest that they simply formalize and provide approval and/or incentives for things that signatories may have been planning to do anyway. How should baselines and expectations be set for different categories of EPA? Should the baseline be

what is feasible through a regulatory approach at the time the EPA is negotiated? If EPAs are learning and capacity building exercises, at what point should the information secured through the EPA be used to shift the baseline or performance objective? How can standards set within a voluntary EPA be transferred to those companies not participating in the agreement? Further, EPAs should be subject to an ongoing process of evaluation to ensure that they remain relevant to their goals of advancing action on a particular issue. Has the performance of all target companies (within and outside the EPA) improved to the point where the targets of the EPA now represent a floor? Have other policy instruments emerged or has the issue evolved to the point where the EPA is no longer the most effective means of addressing the issue?

### **F.5 Understanding Incentives and Consequences**

As discussed in Section E, the issue of incentives and consequences within EPAs remains poorly understood. Finding the right motivation for a single company addressing a single issue through a QR EPA can be relatively straightforward (and may simply be avoidance of a regulatory threat). In other types of EPAs, particularly CB-PB EPAs, which may be open to a wide range of participants from a number of sectors addressing multiple environmental issues, the construct of incentives and consequences becomes far more complex. The need to relate incentives and consequences to the performance objectives of the EPA and to tie these back to the level of verification of performance that is required further complicates matters. Moreover, the incentives most desired by industry participants may be outside of the mandate of the government agency negotiating the EPA and interdepartmental and interjurisdictional cooperation may be required. More extensive research into these issues is necessary if EPAs are to be an effective tool of environmental policy.

### Appendix I — Inventory of EPAs Used in the Analysis

The acronym or short title for each environmental performance agreement (EPA) is used in the appendices in place of the full title of the agreement. As indicated in Section B, categories of EPAs may overlap reflecting the features of each. For the purposes of this analysis, selected NPAs have been assigned to the category that is deemed to be most reflective of their intent. For example, while the Algoma and Dofasco NPAs are similar in that they contain a mix of performance-based and activity-based requirements, Algoma's is more focused on the reduction of emissions for specific substances with associated verification provisions and is thus placed in CB-PB while Dofasco's is more general and thus is placed in CB-AB.

#### Quasi-Regulatory (QR)

**ATM CCA** — *Umbrella Climate Change Agreement for the Aluminium, Titanium and Magnesium Sector in the United Kingdom (March 2001)*, [www.defra.gov.uk/Environment/ccl/pdf/202af.pdf](http://www.defra.gov.uk/Environment/ccl/pdf/202af.pdf) — Climate change agreements allow facilities in the UK to qualify for a reduced rate under the government's climate change levy.

**CAI GHG** — *Memorandum of Understanding between the Government of Canada (represented by Natural Resources Canada) and the Canadian Automotive Industry respecting Automobile Greenhouse Gas Emissions (April 2005)*, [www.nrcan-rncan.gc.ca/media/mous/2005/20050405\\_e.htm](http://www.nrcan-rncan.gc.ca/media/mous/2005/20050405_e.htm) — Light-duty passenger cars and trucks account for 12.5 percent of Canada's total greenhouse gas (GHG) emissions. A key consideration in choosing a voluntary approach was that the emissions result from a product purchased by Canadian consumers, not from a production process in a Canadian manufacturing facility.

**DICHLORO** — *Environmental Performance Agreement Respecting the Production and Distribution of 1,2-Dichloroethane Between Her Majesty the Queen in Right of Canada, as represented by the Minister of the Environment and Dow Chemical Canada Inc. (October 2001)*, [www.ec.gc.ca/epa-epe/1\\_2-DCE-Dow/en/index.cfm](http://www.ec.gc.ca/epa-epe/1_2-DCE-Dow/en/index.cfm) — Although this is an emissions reductions agreement, 1,2-dichloroethane has been declared toxic under CEPA. As Dow Chemical is the only major Canadian producer/user, a voluntary approach to management has been chosen as an alternative to regulation.

**EEBC** — *Energy Efficiency Benchmarking Covenant between the Minister of Economic Affairs, the Minister of Housing, Spatial Planning and the Environment and the Inter-Provincial Consultation Forum and the Confederation of Netherlands Industry and Employers and six industry associations (July 1999)*, [www.benchmarking-energie.nl/pdf\\_files/covteng.pdf](http://www.benchmarking-energie.nl/pdf_files/covteng.pdf) — This agreement encourages facilities to comply with best international energy efficiency standards. This agreement follows on the Long Term Agreements on energy efficiency, which were contracted with a number of sectors since 1992 as part of the energy conservation policy.

**FRG GB GHG** — *Agreement on Climate Protection between the Government of the Federal Republic of Germany and German Business (November 2000)*, [www.bmu.de/english/climate\\_change/doc/3313.php](http://www.bmu.de/english/climate_change/doc/3313.php) — Five umbrella organizations and 14 sectoral associations developed a declaration on global warming prevention. Through subsequent talks with the government, a joint agreement was developed. Command-and-control measures will not be introduced as long as the agreement is successfully implemented.

**NPE/OPE — Voluntary Agreement: Risk Reduction for Nonylphenol, Nonylphenol Ethoxylates, Octylphenol and Octylphenol Ethoxylates, Chemical Supply Industry and Downstream Users and the United Kingdom government (April 2004),** [www.defra.gov.uk/Environment/chemicals/phenols-va/voluntary-ag.pdf](http://www.defra.gov.uk/Environment/chemicals/phenols-va/voluntary-ag.pdf) — Restrictions on the sale of NPEs and OPEs will come into effect across the EU in January 2005. This agreement between the chemical supply industry and the UK government is intended to reduce risk by fostering early action on the EU goal.

**OIG CSA — Corporate Integrity Agreement between the US Office of Inspector General of the Department of Health and Human Services and Endovascular Technologies, Inc. (June 2003),** <http://oig.hhs.gov/fraud/cia/agreements/GuidantCorp.EndovascularTechnologiesInc.6302003.pdf> — The agreement is intended to promote compliance by the officers, directors, employees, contractors, and agents of Endovascular with the statutes, regulations, and written directives of Medicare, Medicaid, and the Food and Drug Administration.

**PROFEPA — The Office of the Attorney General for Environmental Protection's (PROFEPA) National Environmental Audits Program (1992),** [www.profepa.gob.mx/Profepa/AuditoriaAmbiental](http://www.profepa.gob.mx/Profepa/AuditoriaAmbiental) — PROFEPA, Mexico's primary enforcement agency, runs the voluntary environmental audit program. The audit covers discharges into all media (including water) and determines the degree of compliance not only of existing law, but also of items not yet regulated but controlled internationally by good engineering practices. Following the audit, the company signs an agreement with PROFEPA on the steps it will take to clean up its operations.

### **Capacity Building: Performance-Based (CB-PB)**

**ALGOMA — Environmental Management Agreement between Algoma Steel Inc. and Her Majesty the Queen in Right of Canada, as represented by the Minister of the Environment (EC) and Her Majesty the Queen in Right of Ontario, as represented by the Minister of the Environment (MOE) (2000–2005),** [www.ec.gc.ca/epa-epe/Algoma/en/index.cfm](http://www.ec.gc.ca/epa-epe/Algoma/en/index.cfm) — A key goal of this EPA was to bring together several federal and provincial objectives in a single concise document and provide one window through which Algoma Steel Inc. could deal with government agencies. Progress towards reduction or elimination of the “beneficial use impairments” (as defined in the Canada–US Water Quality Agreement) and pollution incident reports were important objectives considered in the development of this EMA. This agreement expired on 31<sup>st</sup> December 2005.

**APMA EPA — Environmental Performance Agreement between Her Majesty the Queen in Right of Canada as represented by the Minister of the Environment and Her Majesty the Queen in Right of Canada as represented by the Minister of Industry and the Automotive Parts Manufacturers' Association a non-profit organization and the participating member companies (June 2002),** [www.ec.gc.ca/epa-epe/apma/en/details.cfm](http://www.ec.gc.ca/epa-epe/apma/en/details.cfm) — The purpose of this EPA is to achieve verifiable reductions in the use, generation and release of specified priority substances in the automotive parts sector.

**APMA FCA — Automotive Parts Manufacturers Association Framework Cooperative Agreement with the Ontario Ministry of Environment (September 2004),** [www.ene.gov.on.ca/envision/general/leadership/leaders/apma\\_agreement.htm](http://www.ene.gov.on.ca/envision/general/leadership/leaders/apma_agreement.htm) — This framework cooperative agreement is one of three agreements signed under the Environmental Leaders Program, an initiative launched in September 2004 under which the Ministry of Environment provides incentives to

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environmental leaders who commit to meeting environmental targets beyond compliance. The program is intended to motivate continuous improvement beyond compliance in environmental leaders. The APMA agreement was originally signed under a pilot project and then included in the new program.

**CCPA** — *Memorandum of Understanding for Environmental Protection through Action under CCPA Responsible Care® between the Canadian Chemical Producers' Association (CCPA) and Her Majesty the Queen in Right of Canada as represented by the Minister of the Environment, the Minister of Industry and the Minister of Health, hereinafter referred to as the Government of Canada and Her Majesty the Queen in Right of Ontario as represented by the Minister of the Environment hereinafter referred to as the Government of Ontario and Her Majesty the Queen in Right of Alberta as represented by the Minister of the Environment hereinafter referred to as the Government of Alberta (2002–2005)*, [www.ec.gc.ca/epa-epe/ccpa-acfpc/en/mou.cfm](http://www.ec.gc.ca/epa-epe/ccpa-acfpc/en/mou.cfm) — The objective of the MOU was to reduce the release of chemical substances through voluntary, non-regulatory action under CCPA Responsible Care® by encouraging and publicly recognizing progress on the part of the CCPA and its member companies. This agreement expired in December 2005.

**ENERGY STAR** — *US EPA's Energy Star Program (1992)*, [www.energystar.gov](http://www.energystar.gov) — Energy Star is a family of EPA Voluntary Partnership Programs that use a wide variety of market-based approaches in overcoming barriers to substantially greater energy efficiency. The program identifies leaders in specific sectors and uses the Energy Star label to differentiate approved products and create wedges in the market (e.g., through government procurement) with the goal of market transformation. Energy Star has partnerships with over 8,000 private and public sector organizations and delivers technical information to assist organizations and consumers in choosing energy-efficient

solutions and best management practices. The Energy Star program includes product labelling, superior energy management and residential energy efficiency.

**ENVIROVISTA** — *Alberta Environment's EnviroVista Environmental Leadership Program (2005)*, [www3.gov.ab.ca/env/protenf/approvals/factsheets/enviroVista.html](http://www3.gov.ab.ca/env/protenf/approvals/factsheets/enviroVista.html) — The EnviroVista program is an incentives-based capacity building agreement. The Alberta Environment provides recognition to facilities with a history of five years of exemplary emissions performance, an EMS, and five years with no enforcement activity. Program participants must maintain or improve their performance levels each year in order to renew their status as EnviroVista leaders. The program has a two tier structure: a “leader” level that provides recognition for demonstrated leadership; and a “champion” level that provides recognition and other incentives through a stewardship agreement where facilities commit to a higher level of environmental performance.

**GREEN TIER** — *Green Tier Program, a system of legally binding charters and contracts signed between the Wisconsin Department of Natural Resources and participating companies (2004)*, <http://dnr.wi.gov/org/caer/cea/environmental> — Green Tier, a Wisconsin law, is an incentive, market-based approach to systematically achieve continual improvement and superior environmental performance as defined in the law. The program pursues superior environmental performance through two tiers: Tier 1 is designed to encourage innovation, collaboration and new environmental goal setting with a standard suite of incentives and a limited but rigorous set of environmental expectations. Tier 2 allows the Department of Natural Resources to create customized contracts that offer incentives proportional to the superior environmental performance offered. The law also provides for a new environmental tool called “Charters” that allows customized working relationships for an association of entities addressing

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environmental issues. Charters could be used for trade associations, geographic areas, supply chains, and others jointly addressing environmental risk.

**MPCA** — *Minnesota Pollution Control Agency Voluntary Mercury Reduction Agreements Program Guidelines*, [www.pca.state.mn.us/air/pubs/merc-guidline.pdf](http://www.pca.state.mn.us/air/pubs/merc-guidline.pdf) — The MPCA voluntary agreement program challenges mercury sources in Minnesota to design and carry out their own creative, cost-effective mercury reduction plans. Rather than requiring formal, complicated agreements with the MPCA, this program strives to be simple and flexible. In their voluntary agreements, mercury sources can lay out plans to reduce their own mercury releases or releases from other sources. Participants can team up with others and they can conduct or fund research or other activities aimed at reducing mercury releases.

**NEPT** — *US Environmental Protection Agency, National Environmental Performance Track (March 2003)*, [www.epa.gov/performance/track/program/index.htm](http://www.epa.gov/performance/track/program/index.htm) — Although not an NPA, *per se*, the National Environmental Performance Track allows organizations with a good compliance record to apply for a program that provides them with a range of incentives for continued good compliance, or exceeding regulatory requirements.

**OEL** — *Ontario Ministry of Environment, Environmental Leadership Program (2004)*, [www.ene.gov.on.ca/envision/general/leadership/index.htm](http://www.ene.gov.on.ca/envision/general/leadership/index.htm) — Ontario's Environmental Leaders Program is a cooperative program that offers incentives to leading companies that commit to beyond compliance environmental improvements. In order to participate, facilities must have an Environmental Management System and a good environmental compliance record, and complete an emissions inventory. Companies work with the Ministry to develop a reduction plan for three to five substances of priority.

**SFTG** — *Agreement between the Solid Fuel Trade Group and the Ireland Minister for the Environment and Local Government Concerning a Reduction in the Sulphur Content of Bituminous Coal and Petcoke and the Extension of the Ban on the Marketing, Sale and Distribution of Solid Fuels (June 2002)*, [www.environ.ie/DOEI/DOEIPub.nsf/0/7d411c497cb4fbd80256f88003b0961/\\$FILE/sfvolagree%5B1%5D.pdf](http://www.environ.ie/DOEI/DOEIPub.nsf/0/7d411c497cb4fbd80256f88003b0961/$FILE/sfvolagree%5B1%5D.pdf) — This agreement sets requirements for the sulphur content of solid fuel imported into Ireland and establishes bans on the sale of certain fuels in certain regions, which will be phased in over time.

**WEPCO ECA** — *Environmental Cooperative Agreement between Wisconsin Electric Power Company (doing business as WE Energies) and Wisconsin Department of Natural Resources (2001, renewed and amended February 2006)*, [www.dnr.state.wi.us/org/caer/cea/ecpp/agreements/wepco/agreements/finalagreement.pdf](http://www.dnr.state.wi.us/org/caer/cea/ecpp/agreements/wepco/agreements/finalagreement.pdf) — This is one of seven pilot agreements implemented under a law passed in 1996. The purpose of this particular agreement is to provide an alternative method for the regulation of the environmental impacts from We Energy's Pleasant Prairie Power Plant. The company commits to going beyond what would otherwise be required in environmental regulations by setting specific goals in the areas of reduced natural resource usage, reduced waste generation, improved land use and reduced risk of environmental contamination, implementation of ISO 14001 equivalent EMS, supplier environmental management system audits, mercury monitoring system installation and evaluation, mercury removal system evaluation and particulate monitoring evaluation. The agreement allows the company to use alternative monitoring, to reduce reporting, and to streamline the permitting and approval processes.

### Capacity Building: Activity-Based (CB-AB)

**AAC** — *Framework Agreement on Voluntary Greenhouse Gas Reductions in Quebec entered into between the Government of Quebec and the Aluminium Association of Canada* (January 2002), [www.ec.gc.ca/lfeg-gef/fptc/nscr/documents/Initial%20Assessment/Protocols/Framework%20Agreement%20on%20GHG%20Aluminium%20Association-2002.pdf](http://www.ec.gc.ca/lfeg-gef/fptc/nscr/documents/Initial%20Assessment/Protocols/Framework%20Agreement%20on%20GHG%20Aluminium%20Association-2002.pdf) — The signatories to the agreement agree to work in close cooperation towards goals and objectives listed below and to assume related responsibilities in order to:

- acknowledge and recognize emissions and reductions covered by this agreement for the purpose of accepting an accounting of same and attest that they are in accordance with the rules as defined in an appendix to this document;
- improve, on a voluntary basis, the aluminum industry performance in terms of GHG emissions, by maintaining the level of reductions already achieved and securing additional reductions;
- allow for the growth of the aluminum industry;
- establish a general framework for the definition of specific agreements taking into account differences between entities and ensuring the necessary flexibility in the means to achieving objectives of this agreement;
- recognize the relevance of promoting the life cycle approach in order to value the use and reuse of aluminum in an effort towards GHG reductions;
- develop and promote, as partners (industry-government), such activities that relate to the use and recycling of aluminum and to energy efficiency so as to contribute to the reduction of GHG emissions; and
- promote an overall approach for managing GHG emissions with respect to the aggregate of an entity's activities.

**DOFASCO** — *Environmental Management Agreement among Dofasco Inc. ("Dofasco"); Her Majesty the Queen in right of Canada as represented by the Minister of the Environment ("EC"); and the Ministry of Environment, Province of Ontario ("MOE")* (November 1997–2005), [www.dofasco.ca/bins/doc.asp?rdc\\_id=579](http://www.dofasco.ca/bins/doc.asp?rdc_id=579) — The purpose of this agreement is:

- to protect and enhance the natural environment;
- to advance the prevention and abatement of releases to the environment from Dofasco's facilities, and move towards the achievement of sustainable development in the community of Hamilton-Wentworth and the Lake Ontario Basin, consistent with the environmental laws and regulations administered by EC and the MOE;
- to allow Dofasco to achieve greater operational flexibility while committing to achieve performance beyond compliance with such environmental laws and regulations; and
- to address the environmental priorities set out in this Agreement as agreed to among the parties; and to enable the parties to focus their efforts to implement measures to address such environmental priorities.

This agreement expired in 2005.

**IPSCO** — *Environmental Management Agreement between Her Majesty the Queen in right of the Government of Saskatchewan as represented by the Minister of Saskatchewan Environment and IPSCO Saskatchewan Inc. (1999, renewed 2004)* — The agreement provides a framework process to jointly address and discuss management of the environment in regard to IPSCO's steel manufacturing facility located near Regina. The areas to address may include the following:

- government priorities with respect to environmental management;
- Practicalities and schedules of implement Company-approved environmental improvements at the Facility;

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- Regulatory approaches, priorities, policy and jurisdictional matters and proposed environmental regulatory and guideline measures;
- Facility operations and environmental effects and monitoring; and
- Related environmental science, which for example, may include, but is not limited to such items as risk evaluation, climate change, ambient air monitoring, etc.

**MEEA** — *Model Eco-Efficiency Agreement, Australian Government Department of Environment and Heritage (2003)*, <http://eriss.erin.gov.au/settlements/industry/corporate/eecp/agreements/model.html> — These are agreements between industry associations and the Australian Government to

- develop and champion a range of eco-efficiency initiatives for association members to continuously improve their environmental performance;
- demonstrate their commitment to eco-efficiency, environmental best practice and continuous improvement;
- improve environmental performance of association members specifically in relation to consumption of natural resources including energy and water, air emissions (including greenhouse gases), discharges to water, solid and hazardous waste, noise and other amenity aspects;
- increase association members' use of eco-efficiency tools, such as public environmental reporting, environmental management systems in alignment with ISO14001, environmental auditing, product stewardship, life cycle assessment, supply chain management and design for environment;
- increase communication and promotion to and between members, and across production and supply chains where feasible, of eco-efficiency and environmental management issues;
- identify appropriate eco-efficiency indicators for the association's members, benchmark and track the eco-efficiency

- performance of members, and report publicly on the results; and
- increase opportunities for industry sectors to learn from each other's experiences in eco-efficiency by sharing information and developing industry networks.

**NPC** — *The National Packaging Covenant, Australian and New Zealand Environment and Conservation Council (July 1999)*, [www.deh.gov.au/settlements/waste/covenant/index.html](http://www.deh.gov.au/settlements/waste/covenant/index.html) — The objectives of this covenant are to establish

- a framework based on the principle of shared responsibility for the effective life cycle management of packaging and paper products including their recovery and utilization;
- a collaborative approach to ensure that the management of packaging and paper throughout its life cycle and the implementation of collection systems including curb side recycling schemes, produces real and sustainable environmental benefits in a cost-effective manner; and
- a forum for regular consultation and discussion of issues and problems affecting the recovery, utilisation and disposal of used packaging and paper, including costs.

**RCF EPA** — *A Cooperative "Environmental Emissions Monitoring, Inspection and Product Stewardship Program" Between Her Majesty the Queen in Right of Canada, as represented by the Minister of the Environment and Members of the Refractory Ceramic Fibre Industry (June 2001)*, [www.ec.gc.ca/epa-epe/rcf/en/index.cfm](http://www.ec.gc.ca/epa-epe/rcf/en/index.cfm) — Environment Canada and Canadian companies manufacturing and processing RCFs have agreed to gather actual emission data to determine if additional controls are needed and to confirm the commitment of industry to establish and maintain a product stewardship program using a voluntary action approach based on an agreement.

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**SGIA** — *Environmental Performance Agreement between Her Majesty the Queen in Right of Canada as represented by the Minister of the Environment represented by the Regional Director General, Environment Canada, Ontario Region (herein after called Environment Canada) and Screenprinting and Graphic Imaging Association International (SGIA) and Participating Facilities in Ontario (January 2004)*, [www.ec.gc.ca/ceparegistry/documents/agree/sgia\\_agree/index\\_sgia.cfm](http://www.ec.gc.ca/ceparegistry/documents/agree/sgia_agree/index_sgia.cfm) — The purpose of this EPA is to achieve verifiable reductions in the use, generation and release of specified priority substances that are used in the screenprinting and digital imaging sectors. An outcome of this EPA will be the development of a business sustainability model. Reductions are to be obtained principally through the implementation of EMS and pollution prevention planning.

**VICSUPER** — *Sustainability Covenant between State of Victoria Environment Protection Authority and VicSuper Pty. Ltd. (VicSuper) Under Section 49aa of The Environment Protection Act 1970 (August 2005)*, [www.epa.vic.gov.au/bus/sustainability\\_covenants/vicsuper.asp](http://www.epa.vic.gov.au/bus/sustainability_covenants/vicsuper.asp) — This voluntary sustainability covenant is a statutory agreement between the State of Victoria Environment Protection Authority and VicSuper Pty. Ltd. In which VicSuper undertakes to increase the efficiency with which it uses resources to produce its products and services and reduce the ecological and social impact of those products and services. This is the second sustainability covenant. Sustainability principles will be applied to internal operations, member services such as superannuation advice, administration, communications and education, and to professional relationships and the supply chain.

Appendix II — Comparison of Design Principles from Selected EPAs

	Developed and Implemented in Participatory Manner	Transparent in Design and Operation	Performance-Based with Specified Goals, Measurable Objectives	Incentives and Consequences	Encourage Innovation and Flexibility	Prescribed Monitoring and Reporting Requirements	Mechanisms for Verifying Performance of all Participants	Encourage Continual Improvement
<b>Quasi-Regulatory</b>								
<b>ATM CCA</b>	Role of sector association and of Secretary of State clearly described.	Calculation of units of energy in agreed manner. Secretary of State can disclose information.	Sector, sub-sector and facility targets included.	Reduction in a levy by participating. If fail to comply, agreement shall cease to have effect.	Periodic reviews to ensure that changes in technical or market circumstances are accounted for.	Proper records to be kept and supplied to Secretary of State.	Potential for independent audit at discretion of minister.	None.
<b>CAI GHG</b>	Joint industry government committee to ensure accountability.	Role of CAI and government defined.	Agreed to reduce GHG emissions in 2010 by 5.3 Mt.	Threat of regulation.	Encourage the introduction of advanced technologies.	Performance shall be reported for each year. Committee will be responsible for monitoring and reporting of progress.	A third party may be used to assist in assessing internal and external factors impacting the measures required by CAI to meet the GHG reduction goal.	CAI to support R&D.
<b>DICHLORO</b>	Developed in response to multi-stakeholder issue table recommendations.	Dow's responsibilities defined but not those of Environment Canada.	To be set through an environmental management plan agreed to by the minister but at least equivalent to US EPA requirements.	Threat of regulation. In the event of non-compliance, Dow must provide justification and the matter is then referred to the minister for a decision.	Flexibility in meeting targets.	Annual report to be provided to Environment Canada for publication.	Verifiable audit of environmental management plan every three years. Terms and objectives to be reviewed after five years to determine if EPA is still an effective instrument.	Audit and management review includes assessment of progress in continual improvement.
<b>EEBC</b>	Benchmarking Commission formed to coordinate work and activities.	Roles of industry organizations, government and individual companies clearly set out. Energy efficiency plans to be assessed by independent auditor before submission to competent authority.	Companies aim to ensure facilities comply with best international energy efficiency standards, as determined by an independent third party, no later than 2012.	No imposition of additional measures aimed at further energy conservation of CO <sub>2</sub> reduction (e.g., no energy tax). If company fails to comply, government can tighten the terms of the company's environmental licence, and if necessary take other measures.	Innovation encouraged through realization of best international energy efficiency standards.	Each company to report annually on improvements in energy efficiency. Reports to comply with protocol on monitoring and reporting. Benchmarking Commission to publish annual reports.	Independent authority will verify the reports and report to the Benchmarking Commission in aggregate form. Parties shall evaluate the implementation and effects of the covenant every four years.	Based on evaluation, contents of covenant may be amended. Natural developments in energy efficiency will be included in calculation of best international standard.

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	<b>Developed and Implemented in Participatory Manner</b>	<b>Transparent in Design and Operation</b>	<b>Performance-Based with Specified Goals, Measurable Objectives</b>	<b>Incentives and Consequences</b>	<b>Encourage Innovation and Flexibility</b>	<b>Prescribed Monitoring and Reporting Requirements</b>	<b>Mechanisms for Verifying Performance of all Participants</b>	<b>Encourage Continual Improvement</b>
<b>FRG GB GHG</b>	Signatories form an advisory committee that advises on the implementation and interpretation of the agreement.	Role of government and business defined.	Reduce specific emissions of six GHGs by a total of 35 per cent by the year 2012. Additional efforts to be made to reduce CO <sub>2</sub> by 28 per cent.	Targets will not be through regulation , but rather the threat of regulation if agreement not successful. Government decided against a binding energy audit. Industry's efforts accounted for in first steps of ecological tax reform. Government and industry to agree jointly on use of flexible instruments.	None.	Declarations of individual industry associations to be regularly checked by both parties on basis of monitoring reports. Monitoring reports to be submitted to the government and German business.	Agreed regular monitoring by an independent scientific institute.	Each party to use influence to encourage other industrial sectors to join the agreement.
<b>NPE/OPE</b>	Clear requirements for signatories to take responsibility for reducing NPE and OPE in advance of EU restrictions. Communication with customers on future restrictions.	Specific commitments for each sector association appended.	Monitor and report on annual sales of NPE and OPE. Implement classifications for NPE and OPE by 31 Dec 2003.	Threat of regulation.	Work to support substitution.	None.	None.	None.
<b>OIG CIA</b>	Independent Data Monitoring Committee required consisting of two physicians and a statistician. Whistleblower protection through a disclosure program.	Exhaustive requirements for company to establish compliance procedures. Includes role of OIG.	Company required to establish a Compliance Officer, Compliance Committee, a Code of Business Conduct, written policies and procedures.	Stipulated financial penalties for breaches of sections of the CIA.	None.	Implementation report required within 150 days. Annual reports to OIG.	Annual independent review required. Quarterly review by DMC for first two years and then semi-annually thereafter. OIG retains inspection and audit rights.	Company required to establish training and education programs.

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	<b>Developed and Implemented in Participatory Manner</b>	<b>Transparent in Design and Operation</b>	<b>Performance-Based with Specified Goals, Measurable Objectives</b>	<b>Incentives and Consequences</b>	<b>Encourage Innovation and Flexibility</b>	<b>Prescribed Monitoring and Reporting Requirements</b>	<b>Mechanisms for Verifying Performance of all Participants</b>	<b>Encourage Continual Improvement</b>
<b>PROFEPA</b>	PROFEPA approves action plans and meetings are held with participating companies.	Public document describes the program in detail and any proposed changes must be announced publicly.	Based on the audit outcomes, companies develop an action plan with a timetable that includes goals and objectives, preventive actions and corrective actions.	Low priority inspection. Granting of Clean Industry certificate. Avoidance of criminal sanctions. Reduced insurance premiums. Tax deductions for investments in environmental improvements.	Encourages improvements in environmental, health and safety performance at high-risk plants without penalizing the companies so harshly they can not afford to make improvements.	Environmental audits and action plans submitted to PROFEPA.	Third-party audits by verification unit. Inspectors and an independent auditor can seek out any environmental compliance violations.	Training programs for auditors. Independent evaluation of program carried out in 2000 to assess program and recommend improvements.
<b>Capacity Building: Performance-Based</b>								
<b>ALGOMA</b>	Two public members on an advisory committee to the agreement.	Algoma's responsibilities clear through range of specified activities.	Encompasses performance-based and activity-based objectives, all of which are clearly specified with targets and timelines.	Streamlining of management and reporting activities.	Encourages future improvements for equipment upgrades and energy use monitoring.	Semi-annual progress reports required.	Mix of verification with third-party audits required for priority substances.	None.
<b>APMA EPA</b>	Thirty-day consultation period before finalization of agreement. Provision for ENGO participation in implementation. APMA P2 Task Force Committee established to manage agreement.	Clear responsibilities outlined for APMA, APMA member companies, Environment Canada, Industry Canada and ENGOs (that aren't signatories).	To be developed by signatories but consistent with pollution prevention approach. List of substances for which targeted reductions must be made.	Public recognition and technical assistance/training. Some funding for administrative support and coordination. "Free riders" can be expelled. Companies not meeting targets will have to publicly comment.	Members to provide input to task force on action that could lead to improvements.	Pollution prevention case studies and annual progress reports published on Internet.	Monitoring and measuring required with corrective action reports prepared in cases of non-compliance. Third-party audits of APMA and member companies using protocol developed with CSA. Independent third-party audits of case study information. Not clear on the extent to which Environment Canada and Industry Canada will be audited.	Part of the ISO 14001 process.

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	<b>Developed and Implemented in Participatory Manner</b>	<b>Transparent in Design and Operation</b>	<b>Performance-Based with Specified Goals, Measurable Objectives</b>	<b>Incentives and Consequences</b>	<b>Encourage Innovation and Flexibility</b>	<b>Prescribed Monitoring and Reporting Requirements</b>	<b>Mechanisms for Verifying Performance of all Participants</b>	<b>Encourage Continual Improvement</b>
<b>APMA FCA</b>	Stakeholder communications program must be established.	Clearly indicates both APMA and OME requirements. Track record of compliance and existence of an EMS at the facility a condition of entry (attested by most senior official).	Facility plans set targets and schedules for addressing Provincial Priority Reductions and Targets substances.	Incentives are <ul style="list-style-type: none"> <li>• technical assistances</li> <li>• policy forums with ministry</li> <li>• reporting efficiency</li> <li>• regulatory certainty</li> <li>• site-wide certificates of approval</li> <li>• technology incentives</li> <li>• approval turnaround time</li> <li>• single window access</li> <li>• public recognition.</li> </ul> Consequences include removal from the program with refusal for re-entry, loss of incentives, immediate inspection and public notice of expulsion.	Primary objectives of the Leadership Program are to encourage businesses in the Ontario Auto Parts sector to engage in continuous improvement in environmental performance and to motivate environmental leadership.	Monitoring report according to prescribed protocols. Annual progress reports.	Independent third-party verification in years two and five.	Input into the development of the second phase of the program is provided for to ensure continual improvement.
<b>CCPA</b>	Member companies required to address local community concerns. Environmental Protection Steering Group co-chaired by senior management representatives established, with public interest representation.	Role of EOSG clearly stated; less clear on role of member companies and government departments.	Aggregate release reduction targets for CCPA.	None.	Promotes progressive implementation of pollution prevention measures and of management practices.	Progress toward aggregate reduction targets to be reported to EPSG and made available publicly.	Verification required upon request.	None, other than through Responsible Care.

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<b>ENERGY STAR</b>	Includes diverse set of public and private partners. EPA works closely with more than 1,000 manufacturers to determine energy performance levels for product. Works with organizations (retailers, utilities, state energy groups, public benefits funds administrators) to get information to consumers.	Hotline and website provide information to interested consumers. Must be top level commitment. Role of partners is clearly established.	Specific goals are set for different categories under the program.	ENERGY STAR Programs use a wide variety of market-based approaches to overcome barriers to substantially greater energy efficiency including: <ul style="list-style-type: none"> <li>• Recognition of ENERGY STAR logo – companies can gain edge in marketplace;</li> <li>• Visibility of an organization's achievement in public and financial markets;</li> <li>• ENERGY STAR Awards (e.g., partner of the year, award for excellence in energy management);</li> <li>• Training, including benchmarking sessions, for service and product providers; and</li> <li>• Analytical support to state to estimate macroeconomic impacts of RE and EE policies.</li> </ul>	Access to a network of partners, encouraging creative approaches to problem solving.	Peer reviewed methods to estimate the environmental and economic benefits of the program. EPA collects sales data. Industrial partners report on GHG emission reductions.	Sampling. Third-party verifiers provide data quarterly on a number of ENERGY STAR homes.	Programs designed to evolve. Initial bar is set at top 20 per cent of category (by product, facility, etc.); bar is ratcheted up when compliance reaches 50–60 per cent. Program adds new products.

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<b>ENVIROVISTA</b>	Public Advisory Committee to advise on program. Stakeholder consultations for individual level 2 agreements.	Roles are clearly defined.	Stewardship agreements at champion level include baselines and specific reduction targets. Regulatory backstop to agreements.	<p>Leadership level:</p> <ul style="list-style-type: none"> <li>• Certificate of recognition;</li> <li>• Use of logo; and</li> <li>• Public recognition/link on website.</li> </ul> <p>Champion level, as above and:</p> <ul style="list-style-type: none"> <li>• Streamlined or modified approvals;</li> <li>• Support for third-party environmental awards;</li> <li>• Participation in program development;</li> <li>• Policy forums; and</li> <li>• Fees charged by Alberta Environment for approvals, amendments and renewals waived.</li> </ul> <p>Consequences: Alberta Environment can initiate removal from program if a facility is in breach of agreement.</p>	Greater regulatory, operational and administrative flexibility at champion level.	Annual progress reports. Reporting should be accessible to the public.	Not specified.	Continual improvement through EMS.

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<b>GREEN TIER</b>	Participating facilities commit to working closer with local communities and those potentially affected by their operations. Tier 2 participants negotiate customized environmental contract with DNR and interested stakeholders, including the public.	Participation requirements clearly set out environmental compliance audit process. Roles are established in individual contracts. Participants are assigned a specific DNR professional as point of contact. Public and DNR provided ongoing information regarding environmental performance.	Participants commit to measurable environmental improvements that are set out in program commitments for Tier 1, Participation Contracts for Tier 2 and participation provisions in charters.	Permit and decision streamlining. Permit exemptions. Easier approval for testing and installation of new technologies. More efficient monitoring, record keeping and reporting. Public recognition. Use of Green Tier logo. Lowest level of inspection once EMS implemented. Deferred DNR enforcement for violations discovered in audits or annual performance reviews. Reduced administrative burden on DNR.	Companies encouraged to act creatively to improve environmental performance in ways that have economic and environmental benefits. Participation, contract and charter provisions are specific to a company's operations and needs. Incentives encourage participants to go beyond compliance and to address unregulated areas.	Audit reports submitted to DNR with plan for corrective action. Annual performance reviews submitted to DNR. DNR reports annually to the legislature on results of compliance reports received.	UW-Madison School of Public Affairs gathers and assesses information about the program. Third-party audits. Green Tier advisors: balanced panel evaluating results of the program and making recommendations to the secretary.	Continual improvement of environmental performance is a criterion for participation. Participants implement formal EMSs. Groups of companies can join together to establish charters and shared environmental performance goals. Participating companies share information to help DNR and others improve the Green Tier program (systems learning).
<b>MPCA</b>	Participants set their own targets and develop programs.	MPCA role clearly described.	Participants free to set their own targets and mechanisms free of criticism from MPCA provided that broad criteria are addressed.	Technical assistance. Public recognition. Potential for "early reduction credits" under any future federal or state mercury regulations.	Sources are challenged to develop their own reduction efforts, to use trial and error, and to conduct innovative research.	Annual progress reports using recommended methodology.	Participants required to provide sufficient information to enable MPCA to verify that release estimates are reasonable and defensible.	None; agreements to be reviewed in 2005 to determine potential for continued action.

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<b>NEPT</b>	Public outreach program required.	Clear responsibilities set for participants, EPA and state agencies.	Measurable objectives and performance requirements to meet policy and legal requirements.	Range of incentives in development including flexible permitting; priority approvals; streamlined reporting; and technical assistance.	Participants need to demonstrate a track record of sustained compliance, specific environmental achievements and the existence of an EMS (under authority of top management).	Must follow GRI framework. Annual Performance Report required.	Established compliance audit and EMS auditing procedures required. EPA site visits with a limited number of participants annually.	Commitment to CI required in environmental policy not limited to regulatory issues.
<b>OEL</b>	Open consultative mechanism for communication with community, public and interested parties. Public response system. Companies commit to a communications and outreach program. The most senior official at the facility will sign a Statement of Sustained Compliance. Multistakeholder advisory committee to provide recommendations to ministry.	Roles are clearly established and set out in individual contracts. Dedicated customer service representative for each company.	Five-year reduction programs include issue-specific goals for significant reductions of substances of priority (three to five per agreement). Includes baseline emissions and reduction targets with timetable.	Streamlined approvals and faster turn-around. Flexible compliance approvals. Technical assistance. Single window access. Faster decisions on applications for new technologies. Public acknowledgement / Internet recognition. Use of logo. Participation in the development of other incentives. Industry-government roundtables. Consequences: agreement may be terminated, loss of incentives, placed on probation.	Companies are encouraged to examine alternative means to make reductions.	Annual progress reports available to the public.	Third-party verification in years two and five.	Agreements include information on continual improvement. Companies must have EMS in place. Multistakeholder advisory committee to further to goal of shared responsibility for managing the environment.

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<b>SFTG</b>	Not specified.	Roles and responsibilities not specified.	Maximum sulphur content for import of petcoke and bituminous coal reduced to progressively lower levels annually. Specified percentage of smokeless fuels to be sold in certain areas in year one with bans or progressive reductions thereafter.	Not specified.	Not specified.	Bi-annual reports required on imports and sulphur content.	Not specified.	Agreement to be reviewed annually leading to stronger targets in future.
<b>WEPCO</b>	New amendment indicates that project managers shall solicit the opinions of employees, WDNR staff and interested stakeholders regarding the success of the agreement. Establishment of interested persons group that meets at least once every six months. Communications plan. Host an annual summary meeting.	Roles clearly established. A multi-discipline regulatory and compliance assistance team formed that meets quarterly with public authority. Assignment of a project manager from each party.	Specified targets in the agreement require the company to go beyond regulation. Specific indicators identified for each target. Baseline performance evaluation repeated annually.	Alternative monitoring and enhanced corrective action. Reduced reporting and decreased administrative expense. Permit streamlining (integrated permitting for the plant). Coal Combustion Waste Materials Utilization. WDNR shall provide technical assistance to the company in pollution prevention, waste minimization, and general environmental compliance best practices.	The company may conduct testing or research of new technologies without obtaining a minor source construction exemption.	Information to be reported is clearly specified in the agreement as well as timelines for reporting each element. Team to track progress in meeting goals and objectives. Semi-annual and annual performance reports required to WDNR, interested persons and public libraries. Compliance certification reports semi-annually.	Not required except through EMS system. Annual assessment of success of agreement.	Annual review of performance against baseline. Continual improvement of plant environmental system through ISO 14001. New amendment improved based on lessons learned.

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<b>Capacity-Building: Activity-Based</b>								
<b>AAC</b>	Signed by the minister, the association and heads of the participating companies.	Ensures same accounting methodologies for all participants. Roles not clearly specified. Agreement is meant to ensure a consistent approach to company-specific agreements.	Specific targets to be set through sub-agreements with entities.	None specified.	Aims to ensure the necessary flexibility in the means to achieve the objectives of this agreement.	Annual public reports.	Independent audit required.	Agreement to be reviewed in light of new information.
<b>DOFASCO</b>	Company required to continue participation in established consultative processes. Signed by Dofasco VP and Environment Canada RDG.	Specific commitments for Dofasco included but not for Environment Canada.	Like Algoma, contains a mix of performance and activity targets with specific targets set for air and water emissions and waste management.	Streamlined approvals from Ontario MOE.	Aims to allow Dofasco to achieve greater operational flexibility while committing to achieve performance beyond compliance with such environmental laws and regulations.	Company to continue its existing practices.	Not specified.	None.
<b>IPSCO</b>	Joint working committee that meets at least once every 12 months.	Roles and responsibilities not specified.	Specific goals and objectives not noted. Aims to facilitate discussion in respect to environmental management.	None specified.	Encourages the development of practical and sound measures and controls for environmental management.	Meetings of the joint working committee may be documented.	None specified.	Promotes environmental enhancements at the facility. Part of ISO 14001 process.
<b>MEEA</b>	An Eco-efficiency Working Group will be established to promote eco-efficiency and to work on the activities under this agreement.	Commitments of industry association and Australian government spelled out in agreement.	No specific targets - just the goal of expanding awareness and understanding of eco-efficiency. Performance indicators and benchmarks to be established.	Financial support. Public recognition. Technical/policy advice and support.	Activities to encourage process improvements.	Public environmental report from signatory associations.	None.	Increases opportunities for industry sectors to learn from each other's experiences.

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<b>NPC</b>	Establishment of a Covenant Council to manage the agreement drawn from senior management of signatories.	Responsibilities of signatories, commonwealth, state, territory and local governments included.	All signatories to produce action plans. Performance indicators to be set by Covenant Council.	None specified.	Not specified.	Annual report from Covenant Council.	Covenant Council to validate and determine compliance with action plans in accordance with an established audit process.	None.
<b>RCF EPA</b>	Unclear.	Clear requirements for what participating companies must do.	Establishment of a monitoring program.	Threat of regulation.	Not specified.	Annual NPRI report.	Records available for inspection by Environment Canada.	None.
<b>SGIA</b>	Develop links with NGOs and ensure NGO access to case studies. Task Force Committee to oversee agreement.	Responsibilities of all parties described in an appendix.	Aggregate 20 per cent reduction of VOC emissions and 6 per cent reduction in CO <sub>2</sub> among participants. Specific targets to be developed by facilities.	Support in developing PP plans and EMS. Public recognition. Facilities not meeting targets will have to make public comment.	Flexibility to meet targets.	Forum on website. Annual progress reports.	Spot verification of case studies.	Through implementation of EMS. Task Force to make recommendations for improvements.
<b>VICSUPER</b>	Steering committee reports to VicSuper Board and EPA Chairman.	Specific and detailed actions proscribed for both parties.	Clear list of actions rather than specific targets.	Public recognition. Technical assistance.	Encourages further developments and providing assistance in moving the rest of the superannuation industry further towards best sustainability practices and products.	Annual public progress report on the commitments made in the covenant and the activities undertaken by both parties. The covenant's progress will be reviewed by the steering committee bi-annually, which will involve the activities of the parties being reviewed and assessed for their effectiveness.	None.	Steering committee is responsible for the development and ongoing refinement of the commitments made in the annex of this covenant.

Appendix III — Summary of Incentives and Consequences in Assessed EPAs

	Incentives	Consequences
<b>Quasi-Regulatory</b>		
<b>ATM CAA</b>	Reduction in climate change levy.	If fail to comply, agreement shall cease to have effect.
<b>CAI GHG</b>	Threat of regulation.	
<b>DICHLORO</b>	Threat of regulation.	In event of non-compliance, Dow must provide justification and the matter is referred to the minister for decision.
<b>EEBC</b>	No imposition of additional measures aimed at energy conservation of CO <sub>2</sub> reduction (e.g., no energy tax).	If company fails to comply, government can tighten the terms of the company's environmental license and, if necessary, take other measures.
<b>FRG GB GHG</b>	Targets will not be achieved through regulation, but threat of regulation exists. No binding energy audit. Industry's efforts accounted for in first steps of ecological tax reform. Joint agreement on use of flexible instruments.	
<b>NPE/OPE</b>	Threat of regulation	
<b>OIG CSA</b>		Stipulated financial penalties for breaches of sections of the CIA.
<b>PROFEPA</b>	Low priority inspection. Granting of Clean Industry certificate. Avoidance of criminal sanctions. Reduced insurance premiums. Tax deductions for investments in environmental improvements.	
<b>Capacity Building: Performance-Based</b>		
<b>ALGOMA</b>	Streamlining of management and reporting activities.	
<b>APMA EPA</b>	Public recognition. Technical assistance/training. Some funding for administrative support and coordination.	"Free riders" can be expelled. Companies not meeting targets will have to publicly comment.
<b>APMA FCA</b>	Technical assistance. Policy forum with ministry. Reporting efficiency. Regulatory certainty. Site-wide certification of approval. Technology incentives. Approval turn-around time. Single window access. Public recognition.	Removal from program with refusal for re-entry. Loss of incentives. Immediate inspection. Public notice of expulsion.
<b>CCPA</b>	None specified.	

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	Incentives	Consequences
<b>ENERGYSTAR</b>	Recognition of ENERGY STAR logo means companies can gain edge in marketplace. Visibility of an organization's achievement in public and financial markets. ENERGY STAR Awards (e.g., partner of the year, award for excellence in energy management). Training, including benchmarking sessions, for service and product providers. Analytical support to state to estimate macroeconomic impacts of RE and EE policies.	
<b>ENVIROVISTA</b>	Leadership level: Certificate of recognition; Use of logo; Public recognition/link on website. Champion level: As above and Streamlined or modified approvals; Support for third-party environmental awards; Participation in program development; Policy forums; Fees charged by Alberta Environment for approvals, amendments and renewals waived.	Alberta Environment can initiate removal from program if a facility is in breach of agreement.
<b>GREEN TIER</b>	Permit and decision streamlining. Permit exemptions. Easier approval for testing and installation of new technologies. More efficient monitoring, record keeping and reporting. Public recognition. Use of Green Tier logo. Lowest level of inspection once EMS adopted. Deferred DNR enforcement for violations discovered in audits or annual performance reviews. Reduced administrative burden on DNR.	
<b>MPCA</b>	Technical assistance. Public recognition. Potential for "early reduction credits" under any federal or state mercury regulations.	
<b>NEPT</b>	Flexible permitting. Priority approvals. Streamlined reporting. Technical assistance.	
<b>OEL</b>	Streamlined approvals and faster turn-around. Flexible compliance approvals. Technical assistance. Single window access. Faster decisions on applications for new technologies. Public acknowledgement/Internet recognition. Use of logo. Participation in the development of other incentives. Industry-government roundtables.	Agreement may be terminated. Loss of incentives. Placed on probation.

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	Incentives	Consequences
<b>SFTG</b>	None specified.	
<b>WEPCO ECA</b>	Alternative monitoring and enhanced corrective action. Reduced reporting and decreased administrative expense. Streamlined permitting. Technical assistance.	
<b>Capacity Building: Activity-Based</b>		
<b>AAC</b>	None specified.	
<b>DOFASCO</b>	Streamlined approvals from Ontario MOE.	
<b>IPSCO</b>	None specified.	
<b>MEEA</b>	Public recognition. Technical assistance/training. Financial support.	
<b>NPC</b>	None specified.	
<b>RCF EPA</b>	Threat of regulation.	
<b>SGIA</b>	Public recognition. Technical assistance/training in PP plans and EMS.	Companies not meeting targets will have to publicly comment.
<b>VICSUPER</b>	Public recognition. Technical assistance.	

## Appendix IV — Summary of NDG Experts' Workshop on Negotiated Performance Agreements

### Experts' Workshop on Negotiated Performance Agreements

February 22–23, 2006

Victoria Park Suites, Ottawa, Ontario

#### Workshop Record

##### **Welcome and Introductions — Paul Griss, NDG Coordinator**

Paul Griss welcomed participants to the workshop, and a round of introductions took place. Mr. Griss noted that the aim of the workshop was to share experiences and knowledge on Negotiated Performance Agreements, which would round out and add to the background paper. Mr. Griss encouraged informal and open discussion, and thanked participants for their contribution of time. Supporters of the workshop were thanked and included: Environment Canada, Natural Resources Canada, Ontario Ministry of Environment, Alberta Ministry of the Environment, the North American Commission for Environmental Cooperation and Dofasco. All presentations from the workshop are posted on the Pollution Probe website, [www.pollutionprobe.org/whatwedo/voluntary.htm](http://www.pollutionprobe.org/whatwedo/voluntary.htm).

##### **Opening Remarks — Cassie Doyle, Associate Deputy Minister, Environment Canada**

Ms. Doyle noted that the NDG is viewed as a leader on voluntary environmental agreements and has been a catalyst for moving ahead in this area for 15 years. EC and the NDG have a history of cooperation. Early work by the NDG on toxic substances led to the Accelerated Reduction/Elimination of Toxics (ARET)

program. Later, the NDG's work on criteria and principles governing voluntary or non-regulatory initiatives heavily influenced Environment Canada's policy framework for Environmental Performance Agreements (EPAs). EC currently has five EPAs in place, and realizes that a full suite of policy instruments is required to improve environmental health and the economy of Canada.

The workshop has applicability to EC's current situation as the department is developing the Competitiveness and Environmental Sustainability Framework. The aim is to maintain the highest standards of environmental quality in a manner that creates wins for the environment as it improves competitiveness. One pillar in this framework is environmental performance and work is taking place under the Sector Sustainability Tables, which work in a multi-stakeholder manner that includes industry, NGOs and the government. The Tables are looking at the overall state of different sectors (e.g., mining, energy), examining how to make significant improvements in the environmental performance of the sectors and establishing long-term environmental goals. It is expected that EPAs will be a critical instrument in the policy toolbox to assist in achieving goals, and the outputs of this workshop will contribute to EC's learning about the design of performance agreements to put before the Sector Tables.

EC is completing the categorization of the domestic substances list, and will be the first country in the world to complete such a categorization. The department is now looking at risk management and a suite of policy tools to make good use of the information arising from the categorization exercise. Although regulation has been traditionally used as a policy instrument in this area, EC is looking at the option of fast tracking performance agreements to address specific substances and, again, is looking to the outputs of the workshop for direction and advice in this area.

### **Presentation of Workshop Background Document — Deb Murphy/Paul Griss**

Paul Griss gave a brief history of the NDG and reviewed work to date on voluntary initiatives. There has been a linear progression to the work of the NDG in this area — how they can be applied, how they can be designed, and how to apply incentives — and this workshop is the next step in this progression.

Deb Murphy provided an overview of the background paper, focusing on the framework and methodology used in the assessment of 22 NPAs. Key questions/issues that were raised in the discussion period were:

- There is a lack of background as to why we need NPAs. Is the main reason to avoid regulation? Are they a form of compliance? Are there no consequences because signatories don't want consequences? More attention needs to be paid to the criteria government would use to determine that an NPA is an appropriate policy tool.
- It is important to include flexibility in agreements, e.g., to add new targets if needed. CCPA experienced this, with changes recommended by a multi-stakeholder advisory group, and their EPA is flexible enough to move to quasi-regulatory in some areas.
- What are the incentives for government to participate?

### **Panel #1: Perspectives on Key Design Features of NPAs**

Ken Ogilvie, Executive Director, Pollution Probe, noted that we need to examine how to make voluntary initiatives work as part of a broader public policy tool kit, and a major NGO concern with NPAs is the possible displacement of the tool of regulation. Pollution Probe has undertaken work in this area, including the development of a website on voluntary initiatives that provides information on design and operation/implementation, and acting as an advisor to EC EPA initiatives and the Ontario MOE leadership program. He reviewed key points from a 1999 Pollution Probe report on voluntary initiatives, and noted that many issues are still unresolved and work remains to be done in this area.

NPAs are appropriate when they go beyond regulatory limits and do not compromise the ability to set future regulatory targets. Ogilvie noted that issues that need to be taken into account when designing NPAs include the need for:

- good baselines and effective benchmarking to ensure that the NPA is truly securing enhanced environmental performance;
- mechanisms to measure and verify performance and recognizing when it is appropriate to have independent verification (generally, the greater the risks and trade-offs for government, the greater the need for independent verification);
- regulatory backstops — what are the consequences if expected performance is not achieved? This is particularly important if agreements are an alternative to regulation. Many of the agreements in the analysis lack such consequences;
- incentives — we have not been able to develop a compelling package to gain industry participation. The evolution of environmental policy toward a sustainable development framework means that incentives will take on new meaning and there is a need to encourage a creative

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process in companies at the front end of the design process; and

- elements of recognition — there may be a need for recognition beyond those leaders that do new things.

**Kernaghan Webb, Industry Canada**, spoke about the “uneasy world” of NPAs, noting that voluntary agreements require us to step out of the “regulatory” box of thinking to develop approaches that do not fit in the regulatory stream and require us to move beyond the conventional. He noted that the current labels for such agreements may not be entirely accurate, and a more accurate name, although cumbersome, may be “Consent based non-legislatively required initiatives in which government is one of the parties.” A common element is that all agreements are consent-based, and they can be a useful adjunct to conventional, regulatory approaches — but should exist against the backdrop of regulation. To ensure credibility, governments must move to regulation if the terms of agreements are not met. There needs to be a hierarchy of responses to non-compliance, and consequences must be carried out or the credibility of such agreements will be undermined.

Two additional design principles that could be considered are legality/fairness and stakeholder engagement. Fairness and the rigor with which you treat all players is crucial, and transparency and openness with attention to fairness issues is needed (procedural fairness). Developers must also be aware of a broader form of substantive fairness — how did you pick community representatives? What about those companies that do not sign on?

These agreements help us move from conventional regulatory approaches that offer a narrow “license to operate” to a broader framework of a “social license to operate” that offers an opportunity to bring a broader set of stakeholders to the table, generally those who are interested in working out the problem. Webb noted the different motivations of

industry, government and communities/NGOs in adopting and designing NPAs. Mr. Webb concluded by noting that consent is the most powerful form of governing, but all parties need to be on the same page. As governments are a party to NPAs, all actors need to understand the peculiar constraints of government and be prepared to provide the required commitment and invest a tremendous amount of time at the front end. Flexibility is key for such agreements, and we should be able to get the flexibility to act in a voluntary initiative in a manner that is not typical in a conventional regulatory approach. He also noted that the current privacy legislation grew out of a voluntary initiative.

### Questions/Discussion

- Lawyers are needed at the front end of NPA development to draft terms, ensure that all parties understand the implications of drafting documents, screen for proper language (e.g., “breached terms of contract” or “not in compliance”) and ensure all required parties are included. This will help ensure the credibility of such agreements.
- What are the desired outcomes for government: policy outcomes? social objectives? All departments have an overarching piece of legislation and agreements may address those areas where departments do not have direct regulatory responsibility, but have broader environmental aims and objectives. Governments are not in the business of regulating, but in the business of achieving results and meeting objectives.

**François Bregha, Stratos**, put forward eleven considerations in thinking about incentives. He noted that both parties have to benefit from the agreement and benefits should be roughly proportional. Experience shows that it is difficult to develop comprehensive frameworks, and this has led to the development of relatively modest programs with modest incentives. Companies will react differently to incentives, and governments

need to offer a suite of incentives expecting that companies will act differently. A related point is that the incentives that may be of most interest to companies may not be incentives that the environmental agency controls — they may be under different jurisdictions. There should be clear consequences for both firms and governments if they do not live up to their side of the bargain. Without consequences, there may be a loss of confidence — and we may have to take such agreements out of the tool box.

### Questions/Discussion

- The fifth factor — increased knowledge of target industries — could be taken one step further. In terms of knowledge of industry, it is important to unpack companies into departments as different things may motivate different departments (e.g., manufacturing, engineering).
- It is important to deal with federal and provincial governments — the CCPA agreement is such an example, being the first formal agreement to include provinces — and there is a need to streamline the process of developing agreements in this regard. EC noted that any departmental agreement with another government currently needs approval at a high level (i.e., Cabinet). To streamline the process would require a change in the Environment Act or a different interpretation of the Act. The formalities/realities of law prevent a quick process, but it may be possible to accomplish the same result without signatures from provinces.
- The eleventh factor — not wanting to abrogate requirements of legislation — has validity, but is there not some benefit to improving compliance with regulation? Mr. Bregha noted there are ways to do this through agreements, without abrogating the requirements of legislation. There is a need to differentiate between regulatory compliance assistance programs and NPAs.
- Do NPAs have higher costs than other tools? Mr. Bregha noted that transaction costs for the negotiation of NPAs have

been very high, and this may limit application of NPAs.

**Ed Cocchiarella, Manager Environmental Affairs, Dofasco**, reviewed the 1997 environmental agreement signed between Dofasco, Environment Canada and the Ontario Ministry of Environment. The agreement dealt with a specific site and included a broad number of issues across the environmental spectrum. This is an example of a Capacity Building: Activity-based agreement, because of the phrase to “use all reasonable efforts” to meet commitments. He noted the preamble to the agreement was very important and recognized voluntary efforts that go beyond compliance.

Dofasco, though, treated the agreement as if it was a regulation and “hard-wired” it into corporate planning. Dofasco met 36 of 37 quantitative performance targets, and EC and MOE met their targets, which were qualitative and included improving the burden of manifesting waste and consolidating certificates of approval (but Dofasco is still looking for more help from the MOE — in further agreements, they would like recognition that they went beyond compliance and want approval to be quicker). Success factors for the agreement included that the parties could focus on site-specific issues, trust was built between the company and the government departments, targets were achievable, and top management was supportive.

The agreement expired in 2005, and drivers for a new NPA include the importance in overall business efforts to be sustainable; recognition as an environmental leader; flexibly to address priority issues; and the desire to avoid costly enforcement tools. In the design of agreements care must be taken not to penalize leaders, e.g., if a regulation comes in and a 50 per cent reduction is required, leaders may not get credit for action already taken.

### Questions/Discussion

- What were the direct and indirect costs and benefits? Dofasco put a lot of stake in being an environmental leader, exhibiting corporate social responsibility, and differentiating itself from other companies. The costs were over \$50 million to implement all actions. The drivers behind the agreement included that Dofasco had set a number of goals and decided to put the actions in the context of an NPA to gain benefit to the company's reputation.
- The results included a huge drop in levels of benzene — will the government require other companies to undertake such initiatives? Dofasco was the lead in this area and the government organized a deal with other companies to obtain reductions. Eventually, after working with the provinces and the CCPA, a Canada Wide Standard was established. Standards setting is tough — it is difficult to come up with a number. But once it is demonstrated that such reduction can be made, other companies have less of an argument.
- What did Dofasco expect from the federal government and did the government uphold its end of the agreement? There was very little in the way of consequences for the government not coming through on its part of the agreement. Realistically, Dofasco can not pull out because government does not fulfill its obligations. The only consequence is the reputation of government — e.g., not removing red tape.
- How do you introduce an NPA? What is the right time to introduce an agreement and where do you start? The introduction could arise from a company's environmental policy/statement, and it is desirable as a means for stakeholder dialogue — the creation of a forum for raising issues.
- Was the agreement triggered because of the threat of a regulatory standard? Why did Dofasco want an NPA when many companies do the work outside such agreements? Mr. Cocchiarella responded that when you have other parties at the

table, it can make your actions more credible. By involving government, you have the regulators at the table and it adds credibility to your actions. Working with governments can also assist with reputation — e.g., part of the process of buying a company will be to check with regulators to determine performance. Actions under the agreement become part of a public process, and the agreement indicates that the company is not afraid to share information.

- For most companies that are serious about improving environmental performance, the direction and the vision come from the top. An agreement can be one method of articulating that vision. Drivers also include a corporate culture to lead the way — and such companies will move fast if something moves toward a regulatory track.
- It is important to add an additional lens — the public interest. How does the public view these agreements? What are the experiences with public response and public engagement?

### Panel #2: Key Design Principles and Incentives for Quasi-Regulatory NPAs

Raul Tornel, Deputy Attorney General, Environmental Audits, PROFEPA, presented on the Mexican experiences with NPAs. The decision to introduce an NPA started with the Guadalajara explosion, where the government responded with both a coercive mechanism (mandatory inspections) and a voluntary mechanism (environmental audits). The existing environmental law allowed the development of a national environmental audit program — to comply with environmental regulations as included in legislation — but the intent of PROFEPA was to meet foreign and international standards through best engineering practices, and encourage companies to go beyond compliance. The program, which initially focused on high-risk industries, has been

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expanded to include health and safety standards. SMEs are an important part of the program, and the program is being expanded to include non-industrial installations. If irregularities are noted in an audit, an action plan with a time table is developed with the goal of protecting the environment and reducing risk for workers and surrounding stakeholders. The company must sign an agreement that sets out how it will meet goals and correct non-compliance. Incentives of the program include low priority inspection; the granting of an Industrial Limpia (Clean Industry) certificate that provides recognition of company's environmental efforts and is valid for two years; tax deductions for investments in environmental improvements; and reduced insurance premiums.

**Roland Hosein, General Electric Canada,** provided an overview of GE's experience in Mexico with the clean industry program. The company has a commitment to the environment, which has been framed by the international CEO. In Mexico, Industrial Limpia is incorporated in internal policies with the aim of having all facilities in the program — seven are certified and 17 are participating in the program. GE entered the program voluntarily in 1992 and has made major investments to meet the goals of the program. Benefits of participation include increased learning at sites; the opportunity to know regulators; positive recognition by business groups and the community; use of the CI logo for promotion; a slight drop in PROFEPA inspections during certification periods; and a drop to zero for non-compliance issues (and no fines). Participation has enabled GE's Mexican facilities to be some of the best in the corporation so the payback is significant.

### Questions/Discussion

- Does GE have to make all environmental information public? There is recognition that certain information (e.g., business/markets information) is confidential.

- The program is available to micro and SMEs, as well as to services, commerce and municipalities. The program is expensive for micro and SMEs, who look to big companies to sponsor suppliers to enter the program and improve their level of performance.
- The program has 100 auditors and 600 inspectors for the entire country. To get accreditation is not an easy process.

**Peggy Whitmore, formerly Office of Inspector General of the Department of Health and Human Services, USA,** discussed corporate integrity agreements of the OIG, which are a means of dealing with alleged fraud against federal health programs. The CIAs are broad and can look at any issue that affects the operations of the health care industry participant involved, but typically focus on compliance with the laws that were allegedly violated. The agreements require the health care provider to develop, maintain, or improve a compliance program, and the focus is the implementation of processes to ensure legal compliance and on consequences for non-compliance (e.g., \$1,500 per day if access to records is not granted). The terms of the agreements vary according to the level of alleged non-compliance. Typically, initial implementation of a CIA's structural and process requirements must be completed in four months time. Many provisions of the CIAs are non-negotiable, and this is based on the concept of fairness — in some respects, such as with respect to penalties for noncompliance, companies should not be treated differently. There is little flexibility in the approach and little room for innovation — the focus is on procedures to ensure compliance. Are the CIAs voluntary? Many in industry would say the program is not voluntary, as a company must sign or risk losing the government as a client. Some agencies (e.g., California) have legislated compliance programs for certain companies modeled on the CIAs.

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### Questions/ Discussion

- The driver for the agreements was an agency decision to try a new approach in addressing fraud. Increased funding from Congress helped with this effort.
- Inspection can occur once the CIA is in place, and the OIG can show up at any time and makes a huge effort to discover CIA noncompliance, which may also reveal fraud.
- Why does a company not pay for inspections if non-compliant? Fees to undertake audits are very expensive and companies complain about the costs already.
- A success of the CIA is that industry will likely maintain the compliance program even after the agreement has ended, although they may cut back on the costs associated with maintaining the program. As well, there is a much greater sense among companies of the need for compliance.

Dave Shortt, Dow Chemical Canada Inc., presented on the Environmental Performance Agreement signed between Dow and Environment Canada. As Dow is the only producer in Canada and responsible for approximately 80 per cent of the releases of 1,2-dichloroethane, an NPA was chosen as the best risk management instrument for the substance. Dow was interested in the agreement because of its Responsible Care ethic, it felt the company could deliver better results, under an EPA (e.g., deliver greater reductions, more effectively use resources, and maximize cost savings). The EPA helped Dow Canada establish a reputation as a world leader within the global company. Issues that arose included, the limitations in the agreement that were needed for stability; use of a third party auditor to ensure Dow was providing EC with the right information and full disclosure; and who should pay for the audit to ensure credibility. Lessons learned included the need to have flexibility within the agreement to create solutions, and that the

agreement takes maintenance and effort from both partners.

### Questions/ Discussion

- Why was the EPA originally developed? If the company was doing the right things, was there a need for an EPA? Another way to read this is that an NPA allows you to do nothing — the company is just doing what would have been done under a business as usual scenario. Mr. Shortt replied that Dow viewed the EPA as one instrument to deal with a CEPA toxic substance. They looked at variety of possible actions and decided that the EPA was the best tool/instrument; and without the EPA there would have possibly been another instrument, likely regulation.
- Were there any financial benefits to Dow? Mr. Shortt noted that, while difficult to measure, there were likely not any net economic benefits to Dow.

### Panel #3: Key Design Principles and Incentives for Capacity Building: Performance-Based NPAs

Stephan Sylvan, Partnership Programs Coordinator, National Centre for Environmental Innovation, US Environmental Protection Agency, presented on the EPA's 100 Voluntary Partnership Programs using one Energy Star voluntary partnership program as an example. The EPA has been involved in such programs since 1991 and is currently developing standards and guidelines for these programs – 15 years after they began. The Energy Star program identified leaders in specific sectors, used the Energy Star label to differentiate their products, and created wedges of markets (e.g. government procurement) with the goal of market transformation. The aim was to create leaders and then bring others on-line. For example, Sony and Panasonic were offered first-mover benefits in the home electronics sector and gained an edge in the market place for brand reputation. Lessons learned for developing

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agreements include that guidelines should be developed and coordination should take place upfront — Canada should try to not get caught in trap of having over 100 agreements without overall guidelines.

While Mr. Sylvan believes the Canadian approach draws heavily on elements from the regulatory approach to environmental policy issues, the US EPA's most successful Partnership Programs represent a clean break from the regulatory approach. They can best be described as "market-based," in that they typically harness market forces instead of perceived regulatory threats and a streamlined regulatory program structure.

### Questions/Discussion

- How did you set the bar for the Energy Star program? A lesson learned included not setting the bar too high or too low. There many strategic benefits when you set the initial bar at top 20 per cent of the category (by product, by facility, by company, etc.) When compliance hits 50–60 per cent, you then ratchet up the bar. Set up programs to be evolutionary.
- How is it fair that the EPA picks the early adopters? The EPA can not turn down a company who comes and wants to talk, but the EPA is not obligated to go out to all companies at one time. The criticism of fairness is overcome by the idea that consumers have a right to know.

**Mark McDermid, Bureau Director, Cooperative Environmental Assistance, Wisconsin Department of Natural Resources,** presented on the Green Tier Program, a Wisconsin initiative passed in 2004 that promotes and rewards environmental performance while providing regulatory flexibility. The program uses voluntary, but legally binding, contacts to encourage beyond-compliance performance. The tool takes a participatory approach (at legal, legislative and governance levels), is transparent (through third party audits), and tailors programs specific to a company's need. Lessons learned

include: you need a solid base of command and control before building second generation tools; and use incentives to build value — don't get engaged in incentives "bingo" (incentives need to be proportional to environmental performance for each participant — earned, not simply given en masse).

### Questions/Discussion

- How do you know when you have enough incentives? Work with the companies — have them tell you what they want, invest in front-end work.
- Were the regulations applied to the coal-fired electricity sector? e.g., mercury? With the cooperative agreement, the government and companies were able to show that mercury could be recaptured.

**Steve Neville, Senior Programme Coordinator, Environmental Innovations and Emerging Sciences Branch, Ontario Ministry of Environment,** described the Ontario leadership program, which includes sector-level agreements (umbrella agreements) and agreements with individual firms that reduce pollutants that are of concern to the MOE. The program aims to reward good action — or those companies on the right side of the bell curve — and offers ten incentives. Experience to date has shown that the incentives are not meaty enough to attract widespread participation, and there are challenges to operationalizing the incentives. The program does not offer the right business benefits to attract a large number of companies, and the sector programs are not bearing a huge amount of fruit. To improve the program they want to: add to the suite of incentives, encourage harmonization with the federal government, and develop a tiered approach of entry-level and champions (mentors).

### Questions/Discussion

- How soon after basic regulations are passed can a company agree to go further? If you've worked for more than a year and come to agreement, you may give the perception that the regulation or agreement is too low. Mr. Neville responded that the program is intended to create and reward new actions.
- Why is compliance a prerequisite for membership? Mr. Neville noted that this prerequisite was included on advisement from stakeholders.

### Panel #4: Key Design Criteria and Incentives for Capacity Building: Activity-Based NPAs

Bob Schutzman, IPSCO, presented on IPSCO's voluntary environmental agreement with the Saskatchewan government. The agreement was based on the principle of shared information and cooperation, and allowed IPSCO to integrate business issues with environmental management. Joint committee meetings were used as discussion venues and allowed IPSCO to learn of government priorities (e.g., if the government plans to introduce a new regulation, that information will be shared with IPSCO) and discuss changes and upgrades to the IPSCO facilities (e.g., life-cycle analysis for upgrading facilities). The critical driver for the agreement was the relationship established with the government. Lessons learned included that the agreement was narrowly developed and a broader range of stakeholders should be included; and agreements must protect a company's commercial interests and release of information must account for the need for confidentiality.

### Questions/Discussion

- The style of agreement is unique with the Saskatchewan government. They have partnership agreements with other firms/facilities that look at specific issues that need to be addressed or deal with historic

issues that the government would like resolved.

- The aim of the agreement is to improve performance and build capacity. The focus is different than the categorizations in the background paper, and it might be considered as a precursor to entry-level NPAs.
- What was the driver behind the agreement? The usefulness of meeting to discuss issues/policy commitments was recognized by IPSCO, the decision reflected senior management's approach to environmental issues, the government wanted to enter discussions with the company, and IPSCO wanted to improve its relationship with the regulator.
- How is this different from regular on-going consultations? There is no advantage in regard to permitting, but in regard to the knowledge challenge, it allows the company to be aware of regulations/etc. in the pipeline. From a planning perspective, the head's up and ability to influence and suggest solutions is key.

Brad Fisher, Secretariat for Environmental Performance Agreements, Environment Canada, presented on EC's EPAs, noting that department uses EPAs for a variety of purposes, from information gathering to alternatives to regulation. He provided examples from an on-going agreement with the Refractory Ceramic Fibre Industry — a sector that includes a number of small industries located mainly in southern Ontario. EC entered into the agreement because they lacked information regarding releases from these facilities, and used the agreement to encourage ambient air monitoring and gather information. Two key findings after a year and half into the agreement: 1) not all companies signed onto the agreement (and those signing the agreement had to undertake activities, such as ambient air monitoring, that cost money); 2) emissions were extremely low — below standards. EC is looking at developing a new agreement that incorporates many elements of the first agreement and also builds on lessons

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learned to ensure more complete industry participation in the renewed agreement and more focus. A lesson learned is that when you work with a smaller number of companies or a single company, you can have more specific clauses and include more than you could with a regulation.

### Questions/Discussion

- How do you verify that companies do what they say they will do? Mr. Fisher replied that the level of verification should be commensurate with the aims of agreement. How you verify depends on what the agreement is supposed to accomplish.

**Marci Kinter, Vice President, Government and Business Information, Specialty Graphic Imaging Association**, described the EPA signed between the SGIA and EC. The SGIA is a small business trade association that signed the EPA to test the hypothesis that companies could reduce VOCs and CO<sub>2</sub> by implementing EMSs. It is difficult to use NPAs in the US because of the command and control framework, and the situation in Canada allowed the SGIA to test an alternative means to meet environmental performance targets. There was no overall requirement to reduce VOCs in Canada, meaning that an EPA could be negotiated that allowed firms' flexibility in selecting ways to reduce emissions. The goal was to reduce emissions by 20 per cent industry-wide (a goal chosen based on the aim of the agreement with the Automotive Parts Manufacturers Association). The baseline was compliance with provincial regulations. As the industry comprises SMEs (most companies have an average of 15 employees), they wanted to be able to give credit for things they have already done — and went back to 2000 for baseline. Lessons learned included: 1) It took two years to develop the agreement — much up-front effort is required; 2) You need regulation — the average small business does not see the need to be in compliance; they need to see the consequences of non-compliance for something to happen; 3)

Include a performance standard — e.g., if you have an EMS and baseline, here is what you need to maintain and report against the baselines; and, 4) It is very difficult motivate small businesses, they do not see the benefit of EMS; recognition is not important. You need to focus on the goal (e.g., reduction of VOCs), and less so on the process.

### Questions/Discussion

- Is it possible to green the supply chain, e.g., using government procurement as in the Energy Star program? Ms. Kinter noted that greening the supply chain has not moved printers toward EMS, and larger companies (e.g., Nike, Adidas) have not forced this on suppliers.
- How is the EPA funded? EC funding pays for an EPA coordinator who works with individual companies.
- The NPA is a learning and development agreement that includes 10 companies of a total 950 companies in the Greater Toronto area. The SGIA has 90 members (approximately 10 per cent of total companies) and 10 of these members are partners in the EPA. The EPA is not restricted to SGIA members.

**George Murphy, Manager, Pollution Prevention and Conservation, Alberta Environment**, presented on the Envirovista program, an incentives-based and capacity building agreement. The program was introduced as an alternative way to enhance the regulatory system. The government needed new tools in the regulatory toolbox, recognizing that the regulatory framework may stand in way of companies trying to improve performance, and that there may be a lack of flexibility in how command and control resources are applied (because under law, the element of fairness means all facilities are treated the same). The baseline for the program was developed by screening facilities involved in the pilot stage. The aim was to have the program include the top 20 per cent of companies, but the requirements as they now stand only allow for a participation rate

of 5 per cent. Broadening the opportunity for participation will be addressed, possibly through a study of industry to determine what level of performance could be used as an additional entry criterion. Alberta Environment launched the EnviroVista Leaders Level in June 2005. The department provided recognition to twelve facilities with a history of five years of exemplary emissions performance, a comprehensive, audited environmental management system and five years without any enforcement activity under Alberta's environmental legislation. The Leader Level will be open to additional applicants annually. A second stage of the program, the Champion Level, is under development. Champions will receive recognition for the same performance required of Leaders, but a Champion facility will also be required to commit to additional (emissions) performance enhancements in exchange for regulatory flexibility in its operating approval.

### Questions/Discussion

- What is the protocol to determine the veracity of an audit? Mr. Murphy indicated that the program uses self and third-party audits, with a requirement that audit reports be published.
- Has there been any discussion of alternatives? A precursor pilot program looked at minor changes to regulatory approvals, but provided insufficient incentives to attract applicants.
- If your program didn't exist, would there be different regulations for continuous improvement? The command and control system now drives continuous improvement, but we are experiencing severely diminishing returns. EnviroVista was developed to remove regulatory barriers, reward good behavior and to provide the flexibility to push beyond what is required under regulation. These incentives will encourage average performers to improve and become leaders.

### Identifying Key Issues/Learning from the Panel Discussions

The ensuing discussion identified a number of key issues in regard to NPAs. While a number of issues were raised throughout the workshop and are identified above, this section summarizes only those issues brought up in the final discussion session of the workshop.

- **Harmonization** is very important. Province by province (and nationally) there are different approaches and different philosophies. The harmonization of initiatives can be a struggle for national companies, and the linking/harmonizing of reporting would be helpful. EC has recognized this problem and is undertaking discussions in the area of linking programs. It was noted that a report is needed that outlines what we have and where we are (e.g. activities in provinces, at national level, by industry associations). A lesson learned from the US is that now is the time to harmonize if you are going to harmonize. (e.g., before you get too many programs). There is also a need to involve other departments in NPAs (e.g. forestry, natural resources).
- **Measurement** is important as "what gets measured gets managed". We have to look at how to move the bell curve to the right (see Mr. Neville's presentation). Is there a role for NPAs? How do you set targets? How do you set baselines? When do you shift the baselines in an agreement? Are current standards the best baseline or goal when we know that standards are not the best that can be met?
- **Benefits of NPAs** — A value to companies is the opportunity to talk to stakeholders (government and community) regarding priorities and issues of concern. There are also soft values/benefits on the periphery, such as the "drag along" factor. This includes other companies starting to consider actions to improve their

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performance; pressure on suppliers; etc. Is it possible to measure these “drag along” benefits in numeric way? Within government NPAs as one tool on a continuum may present an opportunity to break down traditional programmatic silos.

- **Are NPAs a viable alternative to regulation?** What businesses seek is certainty and regulation is certainty. Does command and control always work? Can we get to where we want by regulation alone? Regulations may work or be the best tool for those on the left side of the bell curve — making the non-compliant compliant. But NPAs offer an alternative where governments do not have the authority to regulate — i.e., for those on the right side of the bell curve. What gives you the best return on this side of the curve? Where can your resources best be spent? At what point does the performance of the leaders become the new regulatory bar?
- **Evaluation** and feedback is a key issue in regard to NPAs that was not mentioned in the presentations. For example, how do you evaluate continuous improvement? What are the rewards/results of using NPAs? What triggers investment by companies in new, clean technologies? We require a framework to evaluate and scrutinize how useful these agreements are and how they feed back into the overall system. A next step in the discussion could be an evaluation to determine if NPAs are the most useful trigger for advancing technology, and if they are an efficient means of achieving environmental performance targets. Useful resources for such an evaluation would be the measurement guidelines developed by the US EPA as well as two studies undertaken in Canada regarding drivers for investments in technology.

- **What is the role of NPAs?** — Do they offer a creative way to deal with a variety of problems that need to be addressed in meeting environmental goals (e.g., the lack of money for enforcement; slow approvals; dealing with SMEs; firms not in compliance; new and emerging environmental problems; unrealistic expectations by the public; business relationships with communities and governments). Do NPAs offer a new approach for addressing problems in the 21<sup>st</sup> century? Can they help us find a way to harness government, business and communities/NGOs in a model of sustainable governance? Do we need a new way of thinking that would mean a new spectrum of options? We have to identify the role of traditional approaches (regulation) and the role of consent-based instruments (problems and solutions are shared). A next step in this regard could be the development of case studies on NPAs to increase our learning from each experience.

**Paul Griss** provided concluding comments, thanked the participants for their time and noted that the outputs/learning from the workshop will be used to revise the background paper. The next iteration will include more detailed versions of the design criteria and more examples of and more information about NPAs, including updates on the ten programs that were described in the workshop.

Record of meeting prepared by Deb Murphy, February 27, 2006.