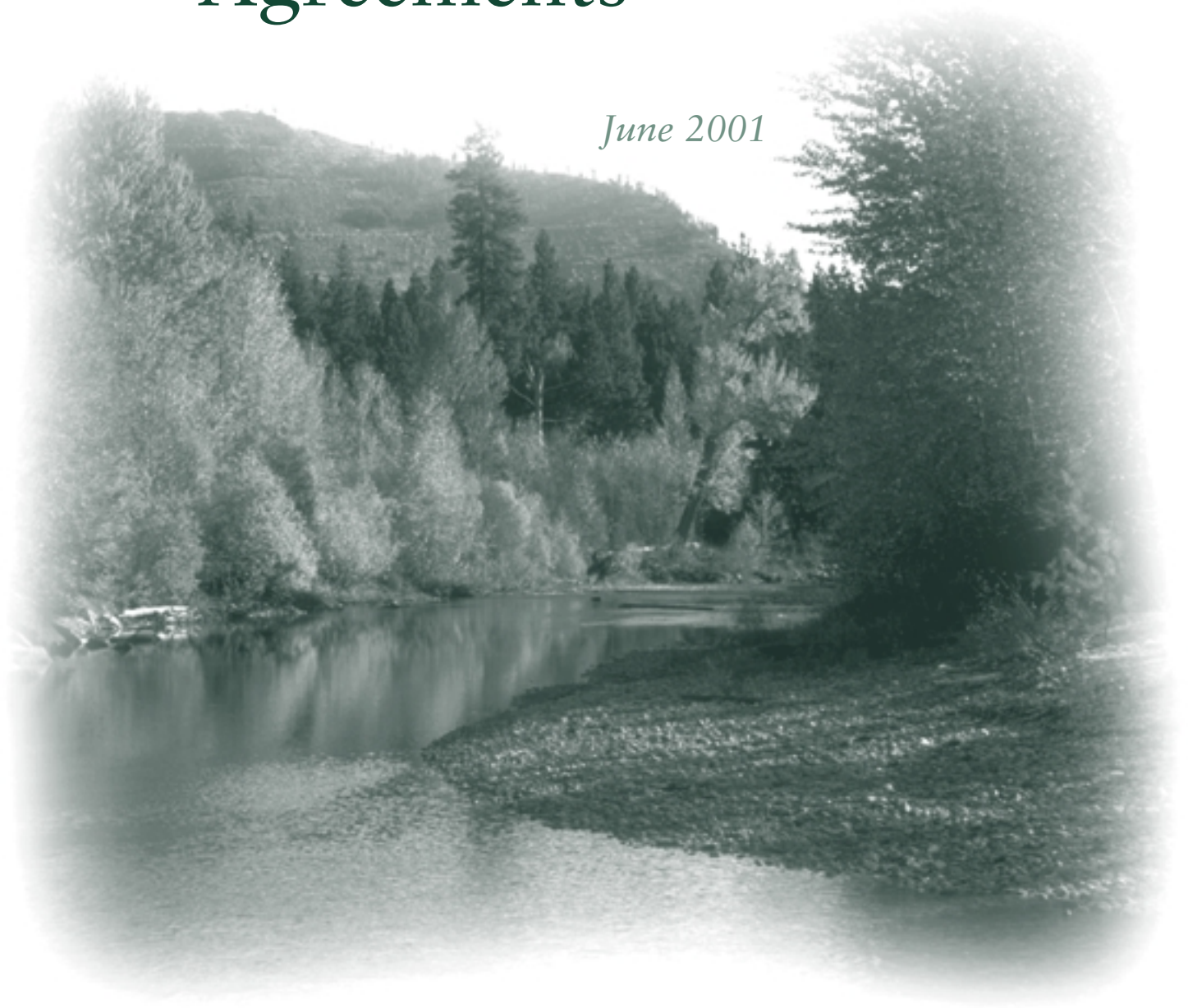


# *Environment Canada*

## Policy Framework for Environmental Performance Agreements

*June 2001*



Environment  
Canada

Environnement  
Canada

Canada

National Library of Canada Cataloguing in Publication Data

Canada. Environment Canada

Policy Framework for Environmental Performance Agreements

Text in English and French on inverted pages.

Title on added t.p.: Politique-cadre relative aux ententes sur la performance environnementale.

ISBN 0-662-65879-5

Cat. No. En40-633/2001

1. Environmental management -- Government policy -- Canada.
2. Industrial management -- Environmental aspects -- Canada.
3. Environmental policy -- Canada.
4. Environmental protection -- Government policy -- Canada.
- I. Titre.

QH77.C3C32 2001      363.7'00971      C2001-980191-2E



Her Majesty the Queen in Right of Canada (Environment Canada) 2001

# Table of Contents

Foreword	2
Introduction	3
What are Environmental Performance Agreements?	4
What Role can Environmental Performance Agreements play?	5
What Design Criteria must Environmental Performance Agreements meet?	6
What is Environment Canada's Role?	8
When will Environment Canada use Environmental Performance Agreements?	10
Conclusion	14



# Foreword

Over recent years, industry, environmental non-government organizations and government have demonstrated that they can work together to protect the environment. Environment Canada has entered into a number of partnerships through Memoranda of Understanding and other written agreements that lead to environmental improvements.

Countries around the world are increasingly relying on public/private partnerships and agreements to protect the environment. As a result of experience acquired both in Canada and internationally, there is a growing understanding of the design and conditions required to make such agreements work.

In this policy framework, Environment Canada sets out the design criteria that it believes are essential to make these agreements both effective and credible. Environment Canada is signaling its willingness to engage in Environmental Performance Agreements with industry and other interested stakeholders to protect the environment. The Department looks forward to working with industry, provincial governments and non-government organizations in these new partnerships, which will benefit Canadians and the environment.

In his appearance before the House of Commons Standing Committee on the Environment and Sustainable Development in May 2000, Environment Minister David Anderson stated that Canadians need to harness the forces of competition, innovation and entrepreneurship to make the environment cleaner and safer. This policy framework is an important element of the “new architecture” of environmental management that the Minister discussed with the Committee—an architecture based on partnerships, knowledge and incentives.

As experience is gained in applying this policy framework, this document may be revised from time to time.



# Introduction

Environment Canada uses a range of tools to protect the environment, including regulations, guidelines, codes of practice, economic instruments, challenge programs and educational campaigns. Included in this toolbox are agreements with industry that commit certain sectors or companies to specific challenges or performance levels. While features vary, and their names differ, environmental agreements have become increasingly common in Europe, Japan, the United States and Canada.

Such agreements are possible where the parties involved share common objectives and each can derive benefits from addressing a particular environmental issue. On industry's part, interest may stem from the increased flexibility an agreement may allow in achieving an environmental objective, and the increased certainty that such an agreement can provide. Industry may also be interested in the opportunity to enhance its public image or to improve its relations with government. At the same time, Canadians can benefit by having government address an environmental problem and get comparable results at lower costs than by using conventional regulatory instruments. For government, ensuring that the environmental objectives will be met is a key consideration.

Non-government organizations and the public can also benefit from industry taking a more proactive approach to environmental protection, provided the

approach is open to public participation and yields measurable and verifiable results.

These types of agreements can provide industry, government and the public with a consensus-building opportunity to establish environmental goals, identify a course of action, recognize achievement and agree to monitoring and consultation approaches that are mutually beneficial.

Environment Canada recognizes that the right circumstances are needed to ensure that environmental agreements meet their stated environmental objectives. Key elements are a credible process and design criteria that provide assurance of effective delivery of results. To reflect their results-based nature, Environment Canada calls these Environmental Performance Agreements.

To guide the development of future Environmental Performance Agreements, this policy framework:

- describes Environmental Performance Agreements;
- stipulates the core design criteria for agreements;
- sets out Environment Canada's role in support of this policy; and
- identifies the circumstances in which Environment Canada will consider entering into the agreements.



# EPAs What are Environmental Performance Agreements?

An Environmental Performance Agreement is an agreement with core design criteria negotiated among parties to achieve specified environmental results. Environment Canada may negotiate a performance agreement with a single company, multiple companies, regional industry associations, a sector association or a number of sector associations. Other government agencies (federal, provincial, territorial or municipal) and third parties (non-government organizations) may also be parties to such agreements.

Environment Canada, for example, has been engaged in several three-party agreements with industry groups and provincial environment ministries. These agreements benefit all parties (e.g., more comprehensive coverage of environmental issues, greater certainty for industry). Environment Canada will invite provincial ministries to participate, as appropriate.

For industry participants, an Environmental Performance Agreement will stipulate clear and measurable performance standards and include effective accountability mechanisms.

For its part, Environment Canada will assume certain obligations depending on the nature of the specific Environmental Performance Agreement. These will include supporting agreements by facilitating information exchange and performance monitoring, and may include providing incentives such as public recognition of good performance or relief for participating parties from other management and control tools (see page 10 for more details). Similar undertakings may also be provided by other federal, provincial or territorial agencies that are parties to an Environmental Performance Agreement.

# Role of EPAs

## What Role can Environmental Performance Agreements Play?

Due to their flexible nature, Environmental Performance Agreements can address a wide variety of environmental issues affecting human health and the environment, such as:

- reducing the use and emission of selected pollutants, including substances deemed toxic under the *Canadian Environmental Protection Act, 1999* (CEPA 1999);
- advancing product stewardship;
- conserving sensitive habitat; and
- providing for remedial action where project monitoring indicates a need (e.g., after an environmental assessment) or where environmental effects monitoring associated with an ongoing operation shows a similar need.

It is important to note that Environmental Performance Agreements will not replace the regulatory framework. Rather, they represent an additional tool that Environment Canada can use to achieve its environmental protection mandate. Its selection as a risk management tool will depend on factors such as the nature of the risk being managed and the performance history of companies being considered for such an agreement.

Note too that in designing the mix of tools to be used in addressing an environmental issue, Environment Canada will take participation and performance in an agreement into account and will, to the extent possible, eliminate or minimize the impact on good performers of other tools addressing the same issue. As with past agreements, the wording of an agreement will allow each party to give notice and withdraw from the agreement, if necessary. Where a company is unwilling or unable to meet its obligations under an Environmental Performance Agreement, Environment Canada will consider alternative means, such as regulations or pollution prevention planning, to achieve its environmental objectives. To a large extent the choice of alternatives may be limited by other factors, especially whether the performance agreement is addressing a matter that cannot be regulated.

*This policy framework is directed mainly at environmental agreements which address environmental protection.*

# What Design Criteria must Environmental Performance Agreements meet?

Environment Canada will be guided by the following principles in negotiating Environmental Performance Agreements:

- **Effectiveness:** Environmental Performance Agreements must achieve measurable environmental results;
- **Credibility:** the public must have confidence in the approach and in the parties' capacity to deliver on their commitments;
- **Transparency and accountability:** all parties to an Environmental Performance Agreement must be publicly accountable for the commitments they make and for their performance against the commitments; and
- **Efficiency:** Environmental Performance Agreements should be no more expensive to the parties than alternatives for equivalent environmental results.

To ensure that these principles are embedded in agreements, Environment Canada will require that each Environmental Performance Agreement it signs addresses the following core design criteria:

- **Senior-level commitment from participants.** Voluntary action has been demonstrated to be most effective when the senior management of each participating company is clearly supportive of this approach to environmental protection. Environment Canada will ask for a signed commitment from

senior management within companies participating in an agreement.

- **Clear environmental objectives and measurable results.** These are essential to establish performance expectations, monitor progress and develop public trust. Environmental Performance Agreements will include numerical performance standards and timelines wherever feasible. Where standards, guidelines or indicators are used, their relevance to the agreement's objectives will be periodically reviewed.
- **Clearly defined roles and responsibilities.** These are necessary to assign accountability, ensure the achievement of performance objectives and secure public confidence. Environmental Performance Agreements will stipulate the roles and responsibilities of all parties to an agreement, including Environment Canada.
- **Consultation with affected and interested stakeholders.** Stakeholder consultation will enhance the agreement's credibility. While the nature of the consultation will depend on the environmental issues to be covered, it must provide a meaningful opportunity for interested parties to influence decision-making.
- **Public reporting.** Public reporting on performance is necessary to make an Environmental Performance Agreement transparent and credible. Reporting will be required at least annually. Environment Canada will develop protocols with Environmental



Performance Agreement signatories specifying what is to be measured, how often, and where it is to be reported. The Department will avoid a proliferation of different reporting formats and venues in order to minimize the administrative expense for reporting companies and simplify access by the public. In the case of performance agreements addressing pollutants, Environment Canada will rely as much as possible on the protocols developed under the National Pollutant Release Inventory (NPRI) and, to the extent practicable, will use the NPRI as a common reporting platform. Where it makes sense, Environment Canada will endeavour to integrate existing provincial reporting and monitoring mechanisms.

- **Verification of results.** This is essential for both credibility and accountability. Environment Canada will use different approaches to verification depending on the nature of the Environmental Performance Agreement, including internal audits and third-party verification.
- **Incentives and Consequences.** The nature of incentives and consequences will be related to the type of agreement and the performance expectations of participants.
- **Continual improvement.** Environment Canada will encourage continual improvement in performance through renewal of performance agreements where significant additional environmental progress can be achieved. This is consistent with the environmental policy and goals of high-achieving companies. Environment Canada also

recognizes that companies will progress to the point where this type of tool may no longer be a factor in their successful pursuit of environmental results.

How these criteria are reflected in individual agreements will vary with the nature and objectives of the agreement. For example, Environmental Performance Agreements addressing issues that could be regulated may have stronger provisions for public reporting and verification than those dealing with matters that go beyond what can be regulated. Alternatively, performance agreements may be put in place to build capacity and therefore could have a stronger commitment to continual improvement.



# What is Environment Canada's Role?

Environment Canada will commit the resources needed to negotiate Environmental Performance Agreements and oversee their implementation, and will develop and offer incentives. Environment Canada can take on a number of roles ranging from initiating discussions and negotiations to monitoring compliance and, when necessary, introducing additional measures to ensure achievement of negotiated environmental results. The Department will continue to track the experience of other jurisdictions with negotiated agreements and will reflect the lessons learned from that experience in the implementation of this policy framework.

Environment Canada will support Environmental Performance Agreements by:

- **providing scientific and technical expertise**, establishing information databases, facilitating information exchange, coordinating reporting, or providing for prior consultation;
- **providing incentives to support industry action**, where appropriate. Where practicable, Environment Canada will also coordinate its incentives with those of provincial environmental agencies. These incentives could include:
  - **Applying statutory discretion**  
Environment Canada may consider performance under an Environmental Performance Agreement when determining such matters as whether and how to regulate, what reporting requirements to impose and the

frequency of inspections for a regulated facility. The Minister may also take into account performance under an Environmental Performance Agreement when assessing what complementary tools are needed to ensure adequate environmental protection (e.g., in determining which firms should be required to prepare pollution prevention plans under CEPA 1999). Where Environment Canada decides to regulate an issue that is the subject of an Environmental Performance Agreement, it will seek to do so in a way that minimizes the burden on companies meeting the requirements of the agreement.

- **Recognition**  
Environment Canada will publicly recognize the environmental achievements of Environmental Performance Agreement participants.
- **Technical assistance**  
Environment Canada may provide specific technical assistance to Environmental Performance Agreement participants that need it, or help direct participants to other federal programs providing such assistance.
- **Economic instruments**  
Under the *Canadian Environmental Protection Act, 1999*, the Minister of the Environment has the authority to apply economic instruments, such as deposit/refund schemes and tradable permits, to achieve the goals of the Act. Where appropriate, the Minister could develop economic instruments to support certain Environmental Performance Agreements, and will explore additional options under the authority of other government departments.



Environment Canada will also work with provinces participating in performance agreements to allow for provision of similar incentives.

Environment Canada will seek to provide incentives on the basis of performance (i.e., once an agreed performance level has been achieved). Environment Canada will terminate incentives to companies unable to meet their performance commitments and, ultimately, will rescind its agreement should it not be possible to come to a solution.

- **monitoring performance:** Environment Canada will review progress made under individual performance agreements periodically to ensure that they are on track and, where appropriate, take action to ensure the achievement of environmental results.

- **taking action with regard to non-performance:** Environment Canada will not make commitments that constrain future enforcement action or law and policy development. A case in point would be the negotiation of an Environmental Performance Agreement to reduce the emission of toxic substances as an alternative to a regulation. If such an agreement does not achieve the reduction limits or other identified performance standards within the negotiated timelines, the Department would consider other approaches to reach these limits, including regulation.

Where Environment Canada negotiates an agreement with a focus on group goals and objectives, it will focus on the group with regard to significant non-performance. Measures to be taken would include rescinding the Environmental Performance Agreement and using alternative tools such as pollution prevention planning and regulation to achieve environmental objectives. Where Environment Canada negotiates an agreement based on individual facility performance, non-performers could be addressed individually and the Environmental Performance Agreement would not necessarily have to be rescinded.

# Implementation

## When will Environment Canada use Environmental Performance Agreements?

Environment Canada will consider Environmental Performance Agreements where these offer the prospect of significant, measurable environmental results. The factors that Environment Canada will consider when determining whether to use an Environmental Performance Agreement include:

- cost-effectiveness;
- supportive policy and regulatory framework;
- capacity of participants; and
- appropriateness.

It should be noted that these factors can help to indicate whether a performance agreement is an appropriate tool, but no one factor, on its own, is enough. Environmental Performance Agreements may be designed for many different objectives—reduction of pollution emissions, broad-based pollution prevention planning, extended producer responsibility and hazardous waste management, etc.—and a situation that is appropriate for one type of performance agreement may not be appropriate for

another. Therefore, these factors are intended to provide a summary of issues that should be considered on a case-by-case basis in determining whether an Environmental Performance Agreement is appropriate for meeting the specific objectives/outcomes desired.

### *Cost-effectiveness*

The potential of an Environmental Performance Agreement to secure comparable results at a lower cost is very important. Can companies and government get the same or better results faster and at less cost than may be possible through alternative approaches such as regulatory action? This element includes consideration of the costs involved in negotiating and administering the agreement (i.e., transaction costs).

Environment Canada will attach significant weight in decision-making to cost-effectiveness, in keeping with statements in the Government of Canada Regulatory Policy. That policy states, in particular, that “The government will weigh the benefits of alternatives to regulation, and of alternative regulations, against their cost, and focus resources where they can do most good. To these ends, the federal government is committed to working in partnership with industry, labour, interest groups, professional organizations, other governments, and interested individuals.”

## ***Supportive Policy and Regulatory Framework***

It is important to have strong policy and legislation in place to address environmental matters, and to have the capacity and willingness to act. The federal Toxic Substances Management Policy and the Pollution Prevention Strategy both support the *Canadian Environmental Protection Act, 1999* and the *Fisheries Act*. CEPA 1999, in particular, contains obligations for government to act with regard to substances of concern. This policy framework provides significant impetus to take action ahead of regulation and ensures that ineffective action will be followed by development of enforceable measures where substances are found to be CEPA-toxic.

This “regulatory backstop” reduces the likelihood of “free riders” and allows government to intervene where necessary. Depending on the circumstances, Environment Canada can use performance agreements as a complement, a precursor or an alternative to regulations:

- ***a complement to regulations:*** In some cases, an Environmental Performance Agreement will formalize a commitment by a firm or an industry sector to exceed regulatory requirements, or to take action on issues that would not be addressed through regulatory initiatives. For example, an agreement could be used to complement

existing regulations where the regulations do not or cannot satisfactorily address all of the environmental issues at a particular site or within a given region.

- ***a precursor to regulations:*** While Environment Canada carries out formal risk assessment, or while it identifies, develops and puts in place prevention and control measures, industry sectors or companies that are well placed to address the problem immediately may negotiate an agreement as a means of “staying ahead” of the regulatory agenda.
- ***an alternative to new regulations:*** There may be some issues for which regulation is not the best solution or not immediately contemplated. These issues may be addressed more effectively through an Environmental Performance Agreement.

A regulatory backstop does not exist in all areas where environmental improvements are required or desired. Environment Canada will also consider negotiating Environmental Performance Agreements to address environmental matters where regulation is not an alternative and where these agreements offer the prospects of demonstrable and significant environmental gains.



### *Capacity of Participants*

The existence and implementation of environmental policy within the private sector is an important indicator of capacity and willingness to undertake non-regulatory environmental activities. The development of environmental policy to guide operations, and the use of environmental management systems and pollution prevention planning, are indicators that companies can deliver on environmental protection commitments. As well, at the industry association level, the development and use of voluntary environmental codes for members and the potential for making adherence to these a condition of membership also lend credibility to the promise for success of performance agreements.

To meet obligations under an Environmental Performance Agreement, companies need to be able to identify appropriate measures, as well as track, analyze and report on performance. Environment Canada believes that this industrial capacity adds to the potential for success. In some cases, Environment Canada will consider helping prospective participants build the capacity required to participate effectively in an Environmental Performance Agreement.

### *Appropriateness*

#### *Scope of the problem to be addressed:*

In addition to the above factors that should be considered when deciding whether to use an Environmental Performance Agreement, the complexity

of a problem (one substance of concern or many; one medium or more), the availability of proven solutions, the number and variability of the industry sectors involved, the number of facilities involved, etc., all play a part in determining whether a performance agreement is best suited to effect environmental improvement. Experience has shown that regulation can be very effective at tackling precisely defined problems. Environmental Performance Agreements can also be used effectively in these situations.

As the variables (industry sectors, facilities, substances to be addressed, etc.) increase in number, the transaction costs of regulations can be high. The transaction costs for Environmental Performance Agreements, on the other hand, may be lower than for regulation. Lower transaction costs for all parties are only one consideration, however. The many other factors described in this section are also important in determining whether performance agreements are to be used.

#### *Level of risk posed by the issue:*

Environment Canada encourages early action on all substances of concern, especially those that have the potential to be high-risk, and will explore the use of Environmental Performance Agreements as a means of getting early action. This desire to get fast results will not inhibit work on risk assessment of substances of concern and should complement future risk management actions where some of these substances may be found to be

CEPA-toxic. Early action through Environmental Performance Agreements may be considered less appropriate where certainty of outcome is the primary consideration. Yet even where a regulation is viewed as necessary, the environmental and health benefits of taking early action (prior to regulation) through a performance agreement may outweigh the costs of implementing both options.

As well, Environmental Performance Agreements show significant potential as tools to motivate behavioral change related to encouraging broad adoption of environmental management tools, such as environmental management systems, pollution prevention planning and life-cycle management. These are low-risk/high-benefit activities that Environment Canada believes should be encouraged through Environmental Performance Agreements.

***Environmental track record of the company/sector:*** This factor must be considered in relation to the issue at hand. Environment Canada will negotiate with companies where there is high likelihood of good performance. The due diligence and good faith shown by companies, as well as the efforts made to systematically address environmental issues, will be considered. These factors become more significant where the level of risk posed by a substance may be high, or where certainty of action carries a lot of weight.

***Level of interest in the sector:***

Environment Canada believes that negotiation of an Environmental Performance Agreement requires the willingness of key people or companies within a sector to address the issue at hand. The likelihood that an Environmental Performance Agreement will satisfactorily address an environmental problem increases in direct proportion to the participation of the contributors to the problem. Although full participation in a performance agreement may not be possible at first, Environment Canada will consider the probability of additional participation in deciding whether such an agreement is an appropriate tool.

***Likelihood of support from external stakeholders:***

Environment Canada believes that, while ultimately the Environmental Performance Agreements will be judged on their results, the support of external stakeholders, such as the community, health, labour and environmental organizations, concerned about the issues being addressed will be very important to the credibility of these agreements, particularly in their early stages.

# Conclusion

The Environmental Performance Agreement process can enable parties to identify and address a broader range of aspects related to environmental matters than the traditional regulatory approach, which usually focuses on a medium, a substance of concern, a pollution stream, etc. An Environmental Performance Agreement can lead to a multi-media and multi-stakeholder perspective and the setting of environmental priorities based on the systematic consideration of all relevant issues. This may result in the inclusion of multiple environmental performance objectives within a single agreement. While providing a means of addressing matters that would not be affected by regulation, this proactive approach can also enable faster achievement of objectives than would be possible through regulations alone.

Environmental Performance Agreements are not a panacea, however. For example, where few contributors to an environmental problem are willing to participate, Environment Canada would have to give more weight to alternatives such as regulation. The existence of a large number of “free riders” would undermine the credibility of a potential Environmental Performance Agreement and discourage its consideration. As well, this may not be the best solution where multiple agreements are needed to address the same environmental issue, as this can impose significant transaction costs on all participants, including government, and thus reduce the cost-effectiveness of the approach. Environment Canada will weigh all factors described in this policy

framework before deciding whether to enter into an agreement with a company or group of companies.

All things considered, the growing international and domestic experience with environmental agreements demonstrates that Environmental Performance Agreements can both protect the environment and recognize business imperatives if they are properly applied and designed. Environment Canada is prepared to consider negotiating performance agreements with companies that are committed to achieving measurable and verifiable environmental results and to including public participation and reporting. This Environmental Performance Agreement policy approach will complement existing policy and regulatory tools while advancing Canada’s overall environmental agenda.



# Elements of the Policy Framework for Environmental Performance Agreements

## *Principles*

- Effectiveness
- Credibility
- Transparency/Accountability
- Efficiency

## *Design Criteria*

- Senior Commitment from Participants
- Clear Environmental Objectives & Measurable Results
- Clearly Defined Roles & Responsibilities
- Provision for Consultation
- Public Reporting
- Verification of Results
- Incentives & Consequences
- Continual Improvement

## *Environment Canada's Responsibilities*

- Determine when to use Environmental Performance Agreements based on Policy Framework:
  - Cost-effectiveness
  - Supportive Policy & Regulatory Framework (*Regulatory Backstop*)
  - Capacity of Participants
  - Appropriateness
- Provide Support & Develop Capacity
- Provide Incentives:
  - Statutory Discretion
  - Recognition
  - Technical Assistance
  - Economic Instruments
- Monitor Performance
- Deal with Non-Performance



# Printing

The printing processes used in producing this document conform to environmental performance standards established by the Government of Canada under *Canada's National Guidelines on Lithographic Printing Services*. These standards aim to ensure the environmental integrity of printing processes through reductions in toxic emissions to the environment, reductions in loading of wastewater, reductions in the quantity of materials sent to landfills, and the implementation of resource conservation procedures.

The paper used in the interior of this document conforms to *Canada's National Printing and Writing Paper Guideline* and/or *Uncoated Mechanical Printing Paper Guideline*. These guidelines set environmental performance standards for fibre-use efficiency, chemical oxygen demand, energy use, global warming potential, acidification potential, and solid waste.

The printing processes and the paper used in the interior of this document are fully certified under Canada's sole ecolabelling program – the **Environmental Choice<sup>™</sup> Program (ECP)**. The Program's official symbol of certification – the **EcoLogo<sup>™</sup>** – features three stylized doves intertwined to form a maple leaf, representing consumers, industry and government working together to improve Canada's environment.

For more information about the **Environmental Choice<sup>™</sup> Program**, please visit the ECP website at [www.environmentalchoice.com](http://www.environmentalchoice.com) or telephone (613) 247-1900.

Environment Canada's National Office of Pollution Prevention is proud to support environmental and quality performance standards, and the use of **Environmental Choice<sup>™</sup>** certified papers and environmentally responsible products and printing processes, throughout its development and distribution of information products. To obtain a copy of the catalogue *Environment Canada: Selected Publications and Websites*, please contact us toll-free at 1 800 734-3232, or (819) 953-5750; by facsimile at (819) 994-5629; or by e-mail at [epspubs@ec.gc.ca](mailto:epspubs@ec.gc.ca). For additional information on Environment Canada, visit the departmental website at [www.ec.gc.ca](http://www.ec.gc.ca).

