Working with Others:

Policy on Revenue and Collaborative Arrangements

Financial and Administrative Framework for User Charging, Collaborative Arrangements and Intellectual Property Licensing

Commercialization and Management Practices Branch
Environment Canada

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Appendices

Companion Document

"Putting the Policy Framework into Practice: A Manager's Toolkit"
[to be developed]

1. Introduction

1.1 Background and Scope

Environment Canada frequently works with other federal departments, other levels of government, non-governmental organizations, the private sector, universities and individual Canadians to advance the Department's objectives. These relationships typically involve the sharing or exchange of resources that enhance the Department's capacity to fulfill its mission and respond to the needs of other organizations. Environment Canada derives revenue from some of these relationships through the recovery of costs, user fees and the licensing of intellectual property. In other cases, Environment Canada derives a benefit equivalent to revenue in the sense that external arrangements enable the Department to deliver some programs at reduced cost and/or greater impact. These latter activities may achieve these benefits through collaborative arrangements that allow cost-sharing, pooling of resources and/or access to specialized expertise and facilities.

For purposes of this policy, the term *"revenue and collaborative arrangements"* will be used to describe the range of activities defined below:

- *User charging*: Charging a fee to, or recovering costs from, those specific users who receive a direct benefit from a departmental service or product, which is beyond that received by the general public.

- *Collaborative arrangements*: Entering into a relationship with an organization or organizations having common objectives to share in or reduce program delivery costs and/or increase program effectiveness. This policy focuses on those relationships where Environment Canada is making a tangible commitment of departmental resources.

- *Intellectual property licensing*: Licensing external parties who will pay royalties to exploit intellectual property (e.g. environmental technologies, software, etc.) developed by, or on behalf of Environment Canada.

This policy addresses a departmental need for principles, terminology, authorities and guidelines for managing the unique opportunities and risks associated with revenue and collaborative arrangements. In particular, this document identifies overarching principles for establishing proper "business" relationships with outside organizations and the specific financial and administrative requirements that ensure the propriety of these activities, their value to Canadians, accountability of the parties and financial control. Additional sources of guidance and contacts are cited in Appendix A.

1.2 Why are These Activities Important?

Experience has shown that there are significant benefits associated with revenue and collaborative arrangements.

Extending Departmental Capacity and Impact
At Environment Canada our work is principally for the public good and resourced primarily through tax dollars. At times, Environment Canada can enhance its capacity to fulfill its public role by collaborating (e.g., sharing costs, pooling resources) with other organizations who may share one or more of the Department's objectives. In other instances, Environment Canada may extend its capacity to provide services beyond the public good by recovering from users the costs of providing specialized services. This may be particularly beneficial to these users when the Department has the expertise to provide a service not readily available in the private sector.

Fostering Capacity in Other Organizations
In part, Environment Canada collaborates in order to build both the scientific and technical capacities of other organizations working towards environmental goals.

Building Consensus
In addition to providing the Department with access to resources or expertise, collaborative arrangements should support consensus-building among other organizations, including other government agencies, communities and non-profit organizations. Collaboration should promote a culture of environmental responsibility, and help link knowledge to those who have the means to realize environmental objectives.

Supporting Canadian Industry
Canada's overall competitiveness in the global economy is enhanced by allowing Canadian industry access to the expertise of the federal government. The scientific and technological capacity of Environment Canada can be used to develop specialized products and services that support industry. For example, specialized meteorological and hydrological products and services can positively influence the profitability of weather-sensitive industries.

Transferring Environmental Technology
Generating much of Environment Canada's core research and knowledge requires long-term effort. Sometimes this effort results in the development of technology which can be successfully exploited by the private sector to solve environmental problems. At times, it may be appropriate to look to these firms to compensate the Department for its research and development investment through the payment of license fees and royalties.

Matching Services to Client Needs
Revenue and collaborative arrangements provide Environment Canada with a means for engaging clients/partners regarding the services they require. This can lead to the elimination of under-valued services and improvements in the delivery of those services most valued by our clients/partners.

1.3 Policy Rationale

Various internal reviews[1] have identified the need to bring clarity and consistency to the ways in which Environment Canada conducts revenue and collaborative arrangements. Staff need guiding principles, clear criteria for decision-making, and flexible tools to conduct these activities in ways that respect Treasury Board and departmental policies, direction and authorities.

A number of discrete policies exist to guide departmental activities, but there is a need to update and harmonize this guidance if the Department is to assess and manage its efforts in a consistent manner. Without an overarching policy, revenue initiatives and collaborations may become somewhat arbitrary and uneven across the Department. Opportunities to realize the benefits of revenue and collaborative arrangements may be lost. Finally, lack of attention to a principled and controlled approach to working arrangements with other organizations creates risks related to inappropriate activity and financial liability.

In addition to the need for overarching policy principles, guidance is also required on the specific authorities and accountabilities associated with entering into revenue and collaborative arrangements.

This policy serves as a foundation for addressing departmental needs for improved financial and administrative accountability for revenue and collaborative arrangements. It establishes a common set of principles that frame departmental expectations concerning appropriate "business-like" behaviour when working with external organizations and individuals. It provides a rationale and standard set of definitions for the various mechanisms used for revenue initiatives and collaborations, and the authorities that allow them to be carried out. Finally, it clarifies roles and responsibilities for implementing revenue and collaborative arrangements.

This policy will establish the basis for improved monitoring of the application of revenue and collaborative arrangements throughout the Department. Such monitoring will enhance the transparency of various arrangements being established and provide assurance that proper control is being exercised over any financial and administrative risks.

1.4 Objectives

The primary objectives of this policy are to ensure transparency, fairness, and consistency in Environment Canada's revenue and collaborative arrangements, improve accountability, and allow better management of the related risks. The policy is not intended to change the level of these activities within the Department. Rather, it clarifies for the Department's managers what is expected of them when considering and entering into arrangements by providing:

1 See for example - Planning Phase Report, Review of Environment Canada's Commercial Services (Cost Recovery and User Charging), June, 1999; also see - Consultations and Partnerships: Working Together with Canadians, June, 1992

- an overarching set of principles for establishing proper "business" relationships with outside organizations;
- a standard set of definitions and descriptions of these activities;
- a rationale for explaining to clients when and why the Department enters into these activities;
- an outline of the specific, relevant financial and administrative requirements; and
- an overview of the relevant authorities and accountabilities.

The policy draws on, and is supported by, a number of departmental and central agency policies and documents (see Appendix A). Additionally, a companion "toolkit" document will provide managers with step-by-step guidance on assessing opportunities, determining costs, and setting prices.

2. Guiding Principles

Managers involved in revenue and collaborative arrangements are accountable for ensuring that they are assessed and implemented in accordance with the guiding principles presented below. As well as demonstrating a commitment to transparency, fairness, and consistency, these principles articulate the values guiding the Department's user charging, collaborative, and intellectual property licensing activities. The financial and administrative requirements related to these activities are contained in Section 3, while details on the specific authorities and accountabilities for revenue and collaborative arrangements can be found in Section 4.

As an overarching statement, Environment Canada approaches revenue and collaborative arrangements in a manner which is consistent with all applicable federal policies, particularly Treasury Board Secretariat's "Cost Recovery and Charging Policy".

The guiding principles for revenue and collaborative arrangements are:

1. Environment Canada will only enter into revenue and collaborative arrangements where these activities are consistent with the Department's mandate, priorities, and strategic direction, and do not compromise other objectives or applicable policies of the federal government.

2. Any decision to proceed with revenue and collaborative arrangements will be accompanied by a compelling policy rationale consistent with the arrangement-specific rationales outlined in Section 3.

3. The impact of revenue and collaborative arrangements on the public and the private sector will be assessed and the results factored into the decision of whether and how to proceed.

4. Revenue and collaborative arrangements will be conducted in an open, transparent and fair manner. To the extent practical, Environment Canada will meaningfully and effectively consult with those who pay for a service. Consultation will provide users with a voice in the design and delivery of these services including where appropriate, establishment of service standards and performance measures.

5. Prior to finalizing any arrangement, the full cost of Environment Canada's involvement will be considered and compared to the expected benefits.

6. Environment Canada will charge a fee to those receiving a direct benefit from a service, product, or access to Environment Canada resources that is beyond the benefit received by the general public except in the following cases: such a fee would be contrary to public policy objectives, or the cost of administering such a fee outweighs its benefit.

7. When the Department offers products and services in commercial markets, it will refrain from competing unfairly with private sector suppliers. Cost-recovered services will not be subsidized with appropriations except when there is an explicit public policy reason for doing so. The rationale for any such subsidies will be open and transparent. Collaborative arrangements which involve the private sector will be conducted to minimize competition with that sector.

8. All activities, and in particular, sponsorship activities will be carefully assessed to ensure that they do not expose the Department to real or perceived conflict of interest or undue risk.

9. Consistent with draft Treasury Board Secretariat policy[2], Environment Canada must not accept advertisements for placement, or sell advertising space or time, in their communication products, services or materials regardless of medium.

10. The public will have access to data that is collected, maintained and distributed for the public good. When accessing this data, the public will not pay more than the direct incremental cost or the amount permitted by applicable policies and regulations.

11. If client complaints respecting the application or calculation of any fee have reached an impasse, Environment Canada will use its established Dispute Resolution Process. (See Appendix B.)

These principles are compatible with those set out in related departmental documents. However, real property managers should refer to the specific revenue principles set out in Environment Canada's "Real

2 Draft Consultation Document - Communications Policy of the Government of Canada, Treasury Board Secretariat, 26 May 2000

Property Framework". Also, Environment Canada's "Science and Technology Partnering: Principles and Practices" sets out six principles to guide the Department's S&T partnering activities.

3. Rationale and Requirements

The definitions and rationales for the various types of revenue and collaborative arrangements addressed by this policy are presented below. Administrative and financial requirements, as well as information on assessing opportunities and structuring the arrangements are also provided. The specific authorities and associated accountability for the various arrangements are presented in Section 4.

3.1 User Charging

Definition

In the context of this policy, "user charging" is defined as charging a fee to or recovering costs from those recipients of products, services or privileges who receive direct benefits beyond the benefits received by the general public. Common examples of federal user charges include recovering costs for customized weather forecasts, charging market rates for leasing space in federally-owned buildings, and charging for the privilege of access to commercial fisheries or ocean disposal.

Why and When?

The economic rationale for levying user charges is to improve the efficiency with which departments and agencies make use of available resources.[3] Charging is not to be used, however, simply as a means of revenue to meet the financial requirements of the Department.

User charging recognizes that sometimes other parties derive direct benefits from Environment Canada's expertise, data, technology, and other resources beyond those received by the general public. In such cases, it is the responsibility of the Department to examine whether it is appropriate to charge these users, thus redistributing the financial burden from taxpayers to the individuals or organizations deriving the direct benefit.

User charging is not appropriate for all government activities. It is inappropriate when the startup and ongoing costs to the federal government of administering the charges outweigh the benefits, both financial and other. As well, programs provided for the benefit of the general public and programs which, for public policy reasons, are specifically designed to assist recipients are more appropriately funded by tax revenue. In general, user charges should be considered when the

3 Cost Recovery and Charging Policy, Treasury Board Secretariat, 1997

following criteria apply:

- The departmental mandate allows for the activity and the arrangement would support the objectives of the Department;
- The activity is a legitimate and necessary role for the government and one that cannot be provided adequately by the private or voluntary sectors;
- Environment Canada's products or services are being provided primarily for the benefit of specific user groups that have the ability to pay;
- Charging fees will not compromise regulatory objectives or broader public policy objectives;
- A link can be drawn between expenditures to produce the good or service and the revenue;
- Charging fees does not undermine competition or impose undue hardship on users relative to other similar groups; and
- The size of the operation is large enough to warrant the investment in developing and maintaining the necessary administrative systems.

Managers should be aware of the spending restrictions that apply to revenues derived from user charges and are referred to the Treasury Board Policy on Special Revenue Spending Authorities cited in Appendix A for detailed discussion of this issue.

Administrative and Financial Requirements

Determining Costs and Prices

Treasury Board guidance[4] states that there must be a relationship between the charge and either the cost of providing the good or service, or the value of the privilege provided to the client. That is, prices should be:

- Cost-based for goods, information products, use of public facilities, and rights and privileges of a personal nature;
- Based on market value for the sale, lease or licensing of public property; or,
- Based on market value for rights and privileges which are *de-facto* commercial inputs for users.

It is essential that the *full cost* of providing a product or service (including overhead and non-cash items such as depreciation of capital items) be known prior to determining its price. As a general rule, where the price is to be cost-based, the Department will seek to recover the full cost. However, when there is a mix of public and private benefits or there are special public policy considerations, the established price can be lower than full cost. When the user is another department of the federal government, cost

4 Cost Recovery and Charging Policy, Treasury Board Secretariat, 1997

recovery is governed by the Treasury Board Secretariat's Policy on Interdepartmental Charging and Transfers Between Appropriations.

In general, Environment Canada recovers costs from other federal departments for specialized services in a manner consistent with the above noted Treasury Board Secretariat policies. There may be situations, however, where the Department may decide to forego revenues from the provision of specialized services in light of competing program objectives, priorities or needs.

When the price is to be market-based, the Department normally should determine the current market value of the good, service or property in question. This may not be warranted in all cases, such as when the cost of determining market value outstrips potential recoveries. In these cases, compensating processes such as negotiations with multiple users may provide a sufficient proxy for market value.

In all cases, the Department should conduct meaningful consultations with clients to ensure that the charging process is open, fair, and transparent. The Department should also:

- Ensure that clients are notified in advance of new or amended charges;
- Ensure clients are provided with the rationale for user fees (and the applicability of departmental and central agency policies);
- Provide clients with a description of program costs, cost avoidance/reduction opportunities, service standards/performance measures, and if applicable, a breakdown of the mix of public and private benefits bestowed;
- Give affected parties reasonable opportunity to provide input; and
- Where necessary, make use of the Department's dispute resolution process to address complaints (see Appendix B for more detail).

User charging activities must be governed by an agreement which specifies at a minimum: the parties, product, service or privilege, timing of deliverables, price, legal requirements (e.g. intellectual property, copyright, liabilities), billing and payments, and contracting authority.

Regulatory Fee Setting

The unique nature of regulatory fee setting is recognized within the user charging regime. While the preceding principles apply to the setting of regulatory fees, managers should seek guidance from practitioners who have been involved with regulatory fee-setting consultations and the development of fee schedules.

Advertising

Accepting (selling) corporate advertising is a concern for the Department as it may be perceived as being most often pursued as a source of revenue only (i.e. there is no policy rationale beyond the

financial benefit) and has the potential to place the Department in a real or perceived conflict of interest. Currently, a draft Treasury Board Secretariat "Communications Policy for the Government of Canada" specifies that departments are not to accept advertisements regardless of medium.

A separate policy on Advertising and Sponsorship is presented in Appendix C. (See also reference to Sponsorships in Section 3.2 of this overarching policy).

Real Property

All federal real property transactions are governed by the *Federal Real Property Act*. The Treasury Board Secretariat Policy on "Real Property: 1-04 Revenue" directs how departments can generate revenue from their property holdings. The objectives of this Policy are to ensure that:

- Custodian departments seek opportunities to earn revenue from the real property they administer for program purposes; and
- Revenues received from government real property reflect market value.

There are two main types of real property revenue opportunities:

1. Selling real property no longer needed by Environment Canada; and
2. Leasing or licensing surplus space in Environment Canada facilities.

Reference should be made to Environment Canada's "Real Property Framework" (Final Draft, September 1999) for further guidance.

3.2 Collaborative Arrangements

Collaborative arrangements provide a means by which Environment Canada can lever its own resources, know-how and expertise with that of external parties to further the Department's goals and objectives. Collaborative arrangements provide an avenue to build consensus on solutions to specific environmental problems and challenges. They can provide the means for transferring skill sets and capabilities to Canadians.

Definition

Collaborative arrangements are defined as a form of partnering in which all parties have shared or compatible objectives in a project or a program[5]. Typically, under collaborative arrangements all parties:

5 Draft Consultation Document - Communications Policy of the Government of Canada, Treasury Board Secretariat (26 May 2000)

- contribute resources (e.g., money, information, facilities, or expertise);
- share in the benefits of the collaboration;
- agree to a fair allocation of risk-taking[6]; and
- formalize the terms of the arrangement in an explicit agreement, contract or other instrument.

For the purposes of this policy, collaborative arrangements involving the tangible commitment of departmental resources can be classified according to three common, general categories:

- *Task-shared projects* where the Department and its partners agree to each carry out specified activities without exchanging money. Provisions are made for sharing the outcomes of the work.
- *Joint projects* where the Department and its partners agree to share a mix of specified costs and/or activities. For example, each party to the agreement would generally provide one or more of the following: personnel, financial resources and facilities. Provisions are made for sharing the outcomes of the work. Any funds flowing to Environment Canada under a mixed project agreement are generally deposited into a "Specified Purpose Account" or if the partner is another federal department, a "Suspense Account".[7]
- *Third party arrangements* where the Department unilaterally, or through shared funding with other partners agrees to provide funds to a third party, such as a university, which actually performs the work. The participants who provide the funds are not involved directly in the work, no money exchanges hands between the fund providers, and provisions are made for sharing the outcomes of the work.

Funding Mechanisms

The following is a list of some of the various types of funding mechanisms used in collaborative arrangements. Many are designed for particular types of activities. The definitions are descriptive and have no legal authority:

- *Cost-sharing agreements* allow the federal government to share in financing specified outcomes without necessarily participating in any other way;
- *Cooperative agreements* provide non-financial input by government into undertakings of mutual benefit to the federal government and another incorporated body without involving the government in day-to-day operations;

6 Normally, liability is not shared or altered by a collaborative arrangement. Each party operates within its own administration for liability purposes. In this sense, they are not legal partnerships.

7When the Department is spending a partner's money, and not just its own, a separate accounting system must be maintained to show how the money was spent. See 'Guide on Financial Arrangements and Funding Options', Treasury Board Secretariat (1995) for detail.

- *Corporate sponsorship agreements* cover a specific performance of work. The corporation provides resources (e.g., money, staff, products or services) and receives a benefit (e.g., a specific image and marketing opportunities). This is a pragmatic exchange, not a charitable donation.
- *Joint project agreements* commit the federal government to share in financing specified outcomes and to participate in other ways such as sharing non-monetary resources, and hiring personnel;
- *Contracts* spell out one party's expectations of another and the "consideration" that will be exchanged if the expectations are met. Contracts of interest are only those that give effect to collaborations, not standard procurement contracts with commercial suppliers.
- *Grants* have particular purposes but do not involve recipient accountability for use of the funds. Grants are quasi-legislative and require parliamentary authority.
- *Contributions* contain terms and conditions specifying outcomes for which the recipient is accountable.

Care must be taken in ensuring that the appropriate mechanism is employed to give effect to collaborative arrangements. In particular, managers should be aware of the additional policy requirements set out for grants and contributions. Guidance for these arrangements is provided in Treasury Board Secretariat's "Policy on Transfer Payments" and Environment Canada's "Grants & Contributions - A Guide for Managers".

Differentiating Between Collaborative Arrangements and Other Initiatives

Collaborative arrangements can be confused with other activities including user charging, contracts, and legal partnerships. The main distinctions are described below.

- User charging: The Department enters into user charging activities to provide a direct benefit to specific users. User charging improves the efficiency and accountability associated with the use of departmental resources.

- Contracting: Contracts entered into with suppliers for the provision of goods or services. Where the supplier does not have a vested interest in the outcome of the Department's initiatives, it is not a collaborative arrangement.

- Partnerships: None of the arrangements covered by this policy constitute a legal partnership wherein partners share profits and losses.

Why and When?

Environment Canada has a long tradition of working with others and such collaboration is increasingly important as environmental solutions become more global in nature. Collaborative arrangements allow

the Department to optimize the involvement of all relevant players in a meaningful and often long-term way. Through collaborative arrangements, Environment Canada builds synergy with other organizations, levers resources, enhances human resources development, and increases its credibility while sharing the costs, risks and benefits. Collaborative arrangements can range from small, one-time efforts (e.g. conference sponsorship, data sharing) to large, multi-year research projects or ongoing public education efforts. In the main, the Department engages in collaborative arrangements to support the following activities:

- Research and development;
- The collection, dissemination and exchange of information;
- Public outreach and communications;
- The coordination of program delivery; and
- Regulatory activities and enforcement.

The opportunity for entering in a collaborative arrangement should be considered when the following criteria apply:

- The proposed collaborative arrangement supports departmental priorities (i.e. the activity has not been elevated from a position of low priority based solely upon the interest of another party);
- All partners are committed to the success of the arrangement and willing to share both benefits and risks;
- The initiative calls for expertise that exceeds in-house capability or requires resources beyond EC's capacity;
- Goals and expectations can be developed to which all parties can commit.

Administrative and Financial Requirements

The following principles and guidance address key implementation and management issues, including: appropriate financial mechanisms, appropriate levels of contribution, conflict of interest, accountability and intellectual property management. Much has been written about planning and implementing a partnership arrangement. The reader is referred to: 'S&T Partnering: Principles and Practices', Environment Canada (1999) and 'The Federal Government as Partner: Six Steps to Successful Collaboration', Treasury Board Secretariat (1995).

Agreements

Good management practice suggests that a collaborative arrangement involving the tangible commitment of departmental resources be governed by a formal agreement. One should choose the style of arrangement that best suits the needs of particular "business" relationships. A contract should be employed, for example, when there is a need to ensure that the terms and conditions of the arrangement are legally binding, particularly when there are concerns about liability. Less formal arrangements, such

as memoranda of understanding between public sector institutions, may be more appropriately used when there is a desire to clarify commitments but no real intention to ensure the agreements are legally enforceable.

When collaborative arrangements use contribution agreements, reference should be made to the specific instructions set out in Environment Canada's "Grants and Contributions - A Guide for Managers".

For other agreements (e.g., cost-sharing, cooperative, corporate sponsorship and joint project agreements) it is necessary to ensure good management and administrative practices without restricting the creativity and innovation in collaborative arrangements. The legal and financial aspects of collaborative arrangements demand precision and consistency, and appropriate departmental functional specialists should be consulted. It is useful to refer to Treasury Board Secretariat's document "The Federal Government as "Partner": Six Steps to Successful Collaboration" as a guide to prudence and propriety issues as well as legal, financial and contracting concerns.

Monitoring and evaluating collaborative arrangements (including contributions) requires careful and sensitive articulation of performance criteria and diplomacy in their application. Chosen criteria may vary with the different objectives and motives of various parties. The bottom-line questions are straight forward: Did the intended activities take place? Were the intended products produced? Were services offered as intended? Were the intended benefits or outcomes achieved?[8]

Collaborative arrangements often involve the use or development of intellectual property. In drafting agreements managers should consider the following intellectual property issues:

- Potential for the agreement to produce new intellectual property
- Identification of who will own the intellectual property and have rights related to future improvements
- Disclosure and protection of intellectual property arising from the activity;
- The Crown's right to use, and have others use, the intellectual property for Crown purposes.

Sub-section 3.3 discusses the issues associated with licensing intellectual property and Appendix D contains excerpts from the Department's intellectual property policy.

Sponsorships

Sponsorship is a unique area of activity under the collaborative arrangement umbrella. Sponsorship is defined as any arrangement by which a sponsor provides financing or other support in order to establish

8 Successful implementation of a performance monitoring regime is particularly important, yet difficult for third party arrangements. Performance expectations in funding mechanisms must be clearly expressed and measurable to ensure that the Department's interests are not compromised where a number of competing (albeit like-minded) interests are involved.

a positive association between the sponsor's image, identity, brands, products or services, and a sponsored event, activity or individual.

When implementing sponsorship arrangements, managers should consider the possibility of real or perceived conflict of interest, especially if the arrangement appears to put the Department in a position of dependence upon the sponsoring entity. Sponsorship arrangements, like the others covered by this policy, should not be pursued solely for financial benefit.

A separate policy on Advertising and Sponsorship is being developed by Environment Canada; excerpts are presented in Appendix C.

3.3 Intellectual Property Licensing

Intellectual property issues touch on a broad spectrum of the Government's program and service responsibilities to Canadians. Environment Canada's "Intellectual Property Policy" discusses these issues in detail. In the context of revenue and collaborative arrangements, we are concerned primarily with the *proceeds from the commercial exploitation of Crown-owned intellectual property.*

Definition

For the purpose of this policy, intellectual property is defined as: "any rights resulting from intellectual activity in the industrial, scientific, technology, literary, or artistic fields including all intellectual creations legally protected through patents, copyright, industrial design, integrated circuit topography, and plant breeders' rights or subject to protection under the law as trade secrets and confidential information".

Why and When?

The Department carries out considerable research and development (R&D), some of which results in innovations with commercial and/or broad public good potential. The objectives of the Department's intellectual property policy are to transfer suitable technologies thereby:

- Encouraging beneficial application of environmental technologies to improve the quality of life for Canadians;
- Supporting the sustainable development of Canadian economic activity for increased international competitiveness and job creation; and
- Helping to support further R&D activity by returning royalty and licensing revenues to the originators of the intellectual property.

The Department's core R&D efforts can be exploited by private sector firms and may lead to new technologies or market opportunities. Where an organization has benefited from long-term work performed by the Department, it is fair that they pay back some of the development costs incurred by the Department. In some cases, the return to Environment Canada may be entirely financial; in other

instances there may be an additional benefit of having the private sector firm promote and distribute a key environmental solution. In either case, revenue from these activities comes in the form of royalties arising from licensing arrangements.

In the determination of fees and royalties, it is possible to establish a licensing arrangement that is royalty-free or that defers the receipt of revenues. The decision to waive or defer fees and royalties may be warranted where outside parties require time or special support to generate environmental or long-term economic benefits from technology transfer arrangements.

Administrative and Financial Requirements

Environment Canada's Intellectual Property Office (IPO) works with departmental managers in the protection and promotion of Environment Canada's technologies. The IPO provides advice on intellectual property management, develops and administers intellectual property-related polices, drafts licenses and other agreements, and provides training and support.

The process for identifying and selecting licensees must be open and transparent. To the extent reasonable and practical, opportunities should be advertised broadly within Canada, and interested companies given the opportunity to provide a statement of interest and capability.

Licensing agreements are negotiated on a case-by-case basis, but should normally include:

- The nature of the rights being transferred (e.g. is sole vs. non-exclusive license);
- The specific applications of products and processes relating to the licensed intellectual property;
- The licensing fees or royalties payable;
- Protection of the intellectual property and any subsequent improvements;
- Performance conditions which provide for termination of the agreement or cancellation of any degree of exclusivity where the licensee is not demonstrating effective use of the rights granted;
- Rights on improvements or additions;
- Confidentiality obligations for both parties; and,
- Duration, termination and general terms and conditions.

If clarification of a specific situation is required, Legal Services and the IPO should be contacted.

The sale or transfer of Crown-owned intellectual property is governed by the *Public Servants Inventions Act*, the *Financial Administration Act* (Section 61), the *Surplus Crown Assets Act* and the Treasury Board Secretariat's policies on "Cost Recovery and User Charging" and the "Disposal of Surplus Moveable Crown Assets".

Related policies and references include:

- Environment Canada's "Intellectual Property Policy" (1996);

- Treasury Board Secretariat's "Awards Plan for Inventors and Innovators" (1993) (Note: Environment Canada's Awards Policy is not yet approved);
- "Policy on Title to Intellectual Property Arising Under Crown Procurement Contracts", Treasury Board Secretariat (2000)
- "Data and Copyright Ownership - S&T Management Report No. 5" (2000).

4. Authorities and Accountability

4.1 Authorities and Delegation

User Charging

Setting User Charges

Three legal authorities exist for setting user charges. The two authorities for setting regulatory fees for access to rights or privileges are grounded in either departmental legislation (including the *Canadian Environmental Protection Act*) or the *Financial Administration Act* (*FAA*, Sections 19 and 19.1). The third authority is the common law authority of the Minister to enter into contracts negotiated with individual clients. Over 75% of Environment Canada's revenue comes from contracts negotiated with individual clients – primarily contracts for products, and scientific and professional services.

Committing Departmental Resources

In the process of entering into revenue agreements, the departmental manager is committing the use of departmental resources. The authority to expend departmental resources associated with these arrangements is governed by the *Financial Administration Act* spending authorities (Section 34). A draft delegation of authority instrument has been developed to limit the Department's financial exposure in these arrangements as follows (applied on a transaction basis for each agreement):

Level 1	ADM/RDG	Full Authority
Level 2	DG	Full Authority
Level 3	Director	Full Authority
Level 4	Chief/Head	$ 500,000

The draft delegation of authority associated with revenue agreements stipulates that the manager complies with the requirements of this policy and has sufficient resources to commit the Department to the arrangement.

Collaborative Arrangements

The signing authority for collaborative arrangements is set out in Section 3.2 of the Department's Financial Directives Manual. Agreements that are high profile, due to size or political considerations (e.g. federal-provincial agreements) are candidates for senior level approval and announcement.

The working group on Delegation of Signing Authorities notes that collaborative arrangements may or may not have a dollar value assigned to them and recommends that the delegation authority rest at 'full' for all levels. The departmental manager is required to ensure that there are sufficient departmental resources available to execute the arrangement, and that collaborative arrangements are consistent with the requirements of this policy.

Proceeds from Intellectual Property

The *Public Servant's Invention's Act* or the Minister's Authority to Contract are the authorities for licensing Crown-owned intellectual property.

The licensing of intellectual property has specific requirements distinct from revenue authorities and is addressed in Section 7.4 of the Delegation Authorities document ('intellectual property including License Fees'). Managers identified in the Delegation of Authorities Policy are empowered to sign patent applications, licensing agreements and other documents relating to the development and use of intellectual property on behalf of the Minister. To assist Legal Services in managing the demands of intellectual property activity, the IPO will review documents and advise on consistency and compliance with the overall policy on intellectual property practice. (Environment Canada's Intellectual Property Policy, 1996). The IPO is available to provide advice and assistance in the discharge of these authorities.

Revenue Management

User charging and proceeds from intellectual property are accounted for through Vote-Netted Revenue (VNR) accounts or the Consolidated Revenue Fund (CRF). The spending of all revenues from user charges is governed by the *Financial Administration Act* and requires the prior approval of Parliament and Treasury Board. Resources received under collaborative arrangements are accounted for through Specified Purpose Accounts (SPA) or Suspense Accounts (for OGDs).

4.2 Accountability

User charging, collaborative arrangements and intellectual property licensing must be done in a manner that balances efficiency, accountability and results. Responsibility is shared between the Management, Administration and Policy Business Line and the Department's services and regions.

Management, Administration and Policy Business Line

The business line lead, (Assistant Deputy Minister, Corporate Services) is responsible for the overall policy and management framework including:

- Ensuring that the policy is up-to-date and consistent with central agency policies;
- Ensuring that management tools are in place and links are provided to current, supporting policies;
- Reporting on achievements in the Departmental Performance Report; and,
- Establishing methodologies for assessing the impact of cost recovery and collaborative activities.

Corporate Services (through the Commercialization and Management Practices Branch, and the Finance Directorate) and Legal Services are responsible for various duties related to developing relevant policies, guidelines and training, reviewing cost estimates, drafting contracts, ensuring legal compliance, and assisting with contract negotiations.

Services and Regions

Environment Canada's services and regions are responsible for the implementation of the policy and articulation of any subsidiary guidelines. For example, the Meteorological Service of Canada has developed a subsidiary framework for cost recovery and user charges and responsibility for this framework lies with the Assistant Deputy Minister, Meteorological Service of Canada. Assistant Deputy Ministers and Regional Directors-General are responsible for:

- Identifying program activities appropriate for user charging, collaborative agreements or intellectual property licensing;
- Consulting with clients to ensure that revenue and collaborative arrangements continue to be responsive to their needs;
- Reporting on the results of revenue and collaborative arrangements in annual plans and reports; and
- In cases where the Minister's authority to contract provides the legal basis for the user charges, overseeing the use of this authority.

Managers

The onus is on individual managers to ensure that their organization's revenue and collaborative arrangements abide by the principles presented in this policy and supporting policies, and to ensure that risk is managed in a responsible manner. Managers are accountable for ensuring that signed agreements are legally and financially sound.

Ministerial Accountability

Treasury Board Secretariat's Policy states that ministers are responsible for implementing or amending user charges within their areas of responsibility. Ministers must ensure that:

- TBS is informed of financial issues;
- Legal counsel is consulted with respect to legislative authority;
- The regulatory approval process is followed when required by statute;
- Information on user charging and spending is disclosed at an appropriate level of detail in departmental reports; and,
- Prior Treasury Board approval is obtained for setting or amending fees where required by statute, Treasury Board, or Cabinet, and when the Department is seeking authority to spend revenues.

Within Environment Canada, the Environmental Management Board acts on the Minister's behalf to ensure that the above conditions are met.

4.3 Performance Monitoring and Review

Performance monitoring of specific user charges and collaborative agreements varies depending on the nature and significance of the arrangement. Environment Canada will conduct periodic reviews of its revenue arrangements to examine whether the cost structure, mix of public and private benefits, or service levels have changed, and to assess the implications for specific user charges. Collaborative arrangements will be monitored to ensure that adequate accountability to the Minister and Parliament has been established

The Review Branch will periodically assess the Department's performance related to revenue and collaborative arrangements. These assessments may be broad in nature or specific to an individual activity or circumstance. Audits and reviews may also be conducted by external agencies.

Appendix A
Related Policies, Selected Reference Materials and Contacts

Financial

Cost Recovery and Charging Policy, Treasury Board (1997)

Policy on Special Revenue Spending Authorities, Treasury Board (2000)

Financial Administration Act, Treasury Board Manuals, Program Management and Comptrollership (1995)

A Guide to the Costing of Outputs in the Government of Canada, Treasury Board (1994)

Stretching the Tax Dollar: A Guide to Costing Service Delivery for Service Standards, Treasury Board (1995)

Guide on Financial Arrangements and Funding Options, Treasury Board (1995)

Policy on Interdepartmental Charging and Transfers Between Appropriations, Treasury Board (1997)

Policy on Transfer Payments, Treasury Board (2000)

Grants & Contributions - A Guide for Managers, Environment Canada (1999)

Intellectual Property

Intellectual Property Policy, Environment Canada (1996)

Awards Plan for Inventors and Innovators, Treasury Board (1993)

Manager/Employee Guide on Data and Copyright Ownership, Environment Canada (2000)

Policy on Title to Intellectual Property Arising Under Crown Procurement Contracts, Treasury Board (2000)

Collaborative Arrangements

Partnerships for Sustainable Development: A Think Piece (2000)

Consultations and Partnerships: Working Together with Canadians

S&T Management Framework (1998)

Collaborative S&T Positions Policy (1999)

S&T Partnering: Principles and Practices, Environment Canada (1999)

The Federal Government as Partner: Six Steps to Successful Collaboration, Treasury Board (1995)

Other

Communications Policy for the Government of Canada, Treasury Board (Draft)

A Framework for Cost Recovery and User Charges, MSC, Environment Canada (1999)

Real Property Framework, Environment Canada (1999)

Delegation of Authority, Environment Canada (2000)

A Data Access Policy for MSC, Environment Canada (Draft)

Cost Recovery Dispute Resolution Process, Environment Canada (2000)

Toolkit Materials (to be developed)

Assessing Revenue or Equivalent Opportunities

Costing Guidelines and Worksheets

Guide to Assessing the Value of In-kind Support

Consultation Practices

Sample Cost Recovery Agreement/Contract

Sample Collaborative Arrangement Templates

Contacts

Organization	Name	Telephone
Commercialization and Management Practices Branch, Corporate Management and Review Directorate, Corporate Services	Mark Cuddy Philip Jacobson Clifford Stephens	(819) 953-3922 (819) 994-3277 (819) 994-3512
Finance Directorate, Corporate Services	David Bowie Randy Taylor Donnie Chisholm	(819) 953-0855 (819) 997-6708 (819) 953-0573
Services, Clients and Partners Directorate - Meteorological Service of Canada	Barry Green	(416) 739-4580
Intellectual Property Office, Environmental Protection Service,	Pat Wirth	(819) 994-7470
Commercial, Environmental Conservation Service	Mary-Ann Sharpe	(819) 997-3729
Legal Services	Micheal Jolicoeur	(819) 953-8680

Appendix B
Dispute Resolution Process

ENVIRONMENT CANADA COST RECOVERY DISPUTE RESOLUTION PROCESS

The following Dispute Resolution Process is established in accordance with the Treasury Board Cost Recovery and Charging Policy. The Process provides a flexible, fair and transparent mechanism by which any person who is subject to payment of a fee may seek resolution of any issue respecting the application or the calculation of any fee. While the Process may be engaged at any time, it is expected that most issues raised by clients will be settled informally by the responsible Program Manager (or regional equivalent), and that the Process will be used only in those instances where the Program Manager cannot otherwise resolve the issue. This process does not apply to the resolution of differences which arise through the regulatory process or which arise through contractual arrangements.

Making a Complaint

Any person who is subject to payment of a fee and who wishes to contest either the application or the calculation of that fee may submit a written statement at any time to the responsible Director General, his or her delegate, or appropriate regional equivalent, as the case may be (henceforth the "Director General"). The statement shall set out the issue to be resolved, the grounds upon which redress the issue is being raised. A letter acknowledging receipt of the statement will be sent to the person.

Dispute Resolution

The Director General will fully consider the information submitted by the person, and will take whatever steps the Director General considers to be appropriate to resolve the issue. A letter indicating the Director General's decision will be sent to the person, usually within 30 days. If the matter cannot be resolved within 30 days, an interim response will be sent.

Appendix C
Environment Canada's Advertising and Sponsorship Policy

NOTE:
Commercialization and Management Practices Branch is working in partnership with MSC's Services, Clients and Partners Directorate and the Communications Directorate in reviewing current advertising and sponsorship issues. The results of this work will be used as a basis for Environment Canada policy direction on sponsorships and any related management framework.

Currently, a draft Treasury Board Communications Policy indicates that departments are not to accept advertisements regardless of medium. Collaborative arrangements are acceptable but require ministerial approval.

Treasury Board instructions have also been developed regarding Common Look & Feel requirements for federal websites. These instructions prohibit the use of third party icons, symbols or logo on federal websites. There is a need to assess the impact of these requirements on collaborative activities. This issue is being followed up by Environment Canada's Government On-Line Project Office (GOL) as a possible concern given the federal emphasis on multi-jurisdictional partnerships in Tier 3 of the GOL initiative.

It will be important for Environment Canada to work within the emerging Treasury Board context to carefully define the scope of activities considered to be advertising versus sponsorship. This effort is vital to ensure Environment Canada avoids inappropriate advertising activities while not jeopardizing legitimate and valuable external sponsorships.