

A Framework for Ontario's Environmental Leaders Program (Formerly Known as Cooperative Agreements)

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**Ministry of the Environment
Environmental Innovations Branch**

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1.0 INTRODUCTION

In the spring of 2000, the Government of Ontario, through the Secretary of Cabinet, commissioned the Executive Resource Group (ERG) to prepare an independent review of best practices with respect to how other jurisdictions meet environmental challenges. The report positions Ontario within the context of these best practices, and makes recommendations to the government for establishing Ontario as a leading environmental jurisdiction. In January 2001, the ERG delivered the *Managing the Environment* report, and the Government has embraced the vision contained in the report as the direction for environmental management in Ontario.

The report presents a number of *strategic shifts* that form an essential backdrop against which management decisions should be made. These strategic shifts include:

- a strategic approach to managing the environment, building on the strengths of traditional regulation and the command and control model, and integrating it with a broader, more comprehensive approach;
- the formation of a government-wide vision and goals for environmental management with implementation shared across Ministries;
- emphasis on strategies to promote continuous improvement in environmental outcomes and accountability;
- development of a place-based approach to environmental management;
- implementation of a more comprehensive and flexible set of regulatory and non-regulatory compliance tools and incentives; and
- an approach to environmental management based on shared responsibility with the regulated community, non-governmental organisations (NGOs), the scientific community and the public.

The report also contains a series of recommendations for establishing Ontario as a leading environmental jurisdiction. One recommendation is for Ontario to implement an *integrated approach to environmental compliance assurance*, with one component being the development of Ontario's Environmental Leaders Program (formerly known as Cooperative Agreements).

Ontario's Environmental Leaders Program (OEL) is intended to result in an improved environment, with a long-term view to establishing new norms of environmental protection. This concept is being tested through the use of government-industry Leadership Agreements. Under these Agreements the government provides incentives to environmental leaders that commit to meeting beyond compliance environmental

targets. The purpose of the program is to test the delivery of such an instrument and to document its success in motivating continuous improvement.

The framework includes the following elements, as recommended by the *Managing the Environment* report and the *New Directions Group*:

- transparency through public involvement and public reporting;
- clear accountability, with specific performance-based targets;
- clear monitoring and reporting requirements;
- third-party verification of performance; and
- continuous improvement, through the use of incentives and consequences.

This approach is a fundamentally new direction for the Ministry that will further the province's move towards environmental management based on shared responsibility with the regulated community, NGOs, the public, and the scientific, academic, and technical communities. Leadership Agreements, entered into under OEL, are one of the many tools that will be available to motivate both the government and regulated entities to continuously improve the way the environment is managed, ultimately leading to an improved natural environment for current and future generations.

This document includes the following sections:

Section Two: Requirements and Commitments

- Details the conditions of entry and the commitments that participants must make and meet in order to remain in the program. It indicates the monitoring, reporting and verification requirements, as well as the Ministry's responsibilities in the implementation and delivery of Leadership Agreements.

Section Three: Incentives

- Describes the suite of incentives that are available under a Leadership Agreement.

Section Four: Administration

- Details the various administrative supports, Agreement terms, and the consequences and appeals processes.

2.0 REQUIREMENTS AND COMMITMENTS

This section outlines the entry requirements, ongoing commitments of industry participants and the monitoring, reporting and verification requirements.

2.1 *Entry Requirements*

2.1.1 Demonstrated Record of Environmental Compliance

For the purpose of the program, compliance refers primarily to direct environmental impacts. Entry into Ontario's Environmental Leaders Program (OEL) is at the discretion of the Ministry. In evaluating compliance, the Ministry will be guided by the following:

- Each Facility will disclose environmental charges, convictions, outstanding fines, Ministry-issued control documents, and litigation involving environmental matters at the Facility during the previous five years.
- In the event that any of the foregoing exists, there must be a Ministry approved plan in place to address the issue(s) as may be appropriate, and the Facility must be in compliance with all control documents.
- The most senior official at the Facility will sign a Statement of Sustained Compliance.
- The Ministry will conduct an internal compliance check based on information existing within the Ministry at the time of application, including interviews with district staff, information on Ministry databases, and other research the Ministry considers appropriate.

Strict non-compliance with all environmental laws, regulations and policies will not be the only basis for decisions regarding either denial of entry to, or removal from, OEL . The Ministry will consider all facts, including the existence of approved plans to address non-compliance. However, a deliberate or direct event that has adversely impacted the environment or human health is a significant non-compliance matter that is considered contrary to the purpose and intent of the program.

2.1.2 Environmental Management System

Facilities participating in OEL must have an environmental management system (EMS) in place. The EMS must include all Ministry-identified elements as outlined in Schedule One: EMS.

An environmental management system is that aspect of an organisation's overall management structure that addresses the immediate and long-term environmental impact of its products, services and processes on the environment. An EMS provides a Facility with an organisational framework that increases its ability to identify and mitigate environmental impacts arising from its activities. Environmental management system elements add rigour to the Facility's measurement and reporting mechanisms.

2.1.3 Emission Summary and Dispersion Modelling Report

Each Facility must submit a completed Emission Summary and Dispersion Modelling (ESDM) report that reflects current emission rates to the Ministry. Facilities must prepare this report using procedures set out in Ontario Regulation 346 and the guidance document entitled, *Procedure for Preparing Emission Summary and Dispersion Modelling Report* (MOE, 1998). Regulation 346 includes point of impingement limits that are intended to protect communities against local adverse impacts from stationary industrial/ commercial sources. Compliance verification with Ontario Regulation 346 typically includes a Ministry review of the ESDM report submitted by each industrial/commercial Facility. Thus, ESDM reports provide the Ministry and the Facility with compliance information and may inform the target-setting process. If the ESDM report identifies a previously unknown situation of non-compliance, the Facility must immediately develop and implement a Ministry-approved plan that will bring the Facility into compliance. Failure to develop and implement such a plan will result in denial of the request to enter into a Leadership Agreement with the Ministry.

2.1.4 Ontario Regulation 127/01 - Table Seven

Ontario Regulation 127/01, Airborne Contaminant Discharge Monitoring and Reporting, requires industrial and commercial sources to report on emissions of a wide variety of compounds when they are emitted above prescribed thresholds. In addition, each Facility must keep on site record keeping information required by Table Seven of the Step by Step Guideline that accompanies the regulation (the Guideline as defined in Regulation 127/01).

Table Seven sets out some of the detailed data used to calculate air emission. This information will provide evidence that emissions have been calculated accurately, and will allow the Ministry to verify that emission reductions were not achieved through, for example, changes in production levels (which is not credited under this initiative).

2.1.5 Provincial Priority Reduction Plans

Facilities must submit a Provincial Priority Reduction Plan (PPRP) to the Ministry with the application. The PPRP must contain issue-specific goals and beyond compliance environmental objectives including the following:

- the targeted substances, baseline emissions, reduction targets and measures of success;
- site-specific and local issues;
- industry objectives;
- strategies and actions including the steps the Facility will take in order to achieve the emissions reduction targets, including capital investment and process changes; and
- the timetable for implementation.

Facilities' choice of emissions reductions targets must reflect both the Ministry's priorities and the significant environmental impacts and aspects as identified within a Facility's EMS. Facilities may choose from a long list of targets developed by the Ministry. Alternatively, participating Facilities may choose to develop their targets by engaging in a consultative risk management process with the Ministry.

The PPRP should also contain information including, but not limited to:

- alternative implementation options considered;
- previous commitments and achievements related to priority substance reduction and continuous improvement;
- enhancement of environmental management systems;
- training programs;
- staffing and organisation considerations; and,
- data or information gathering programs and projects.

Since Leadership Agreements focus on new environmental improvements that take participants beyond compliance, Facilities may not rely on actions that represent compliance with existing legal requirements under municipal, provincial or federal jurisdiction. Previous emissions reductions will not be considered for commitments under Leadership Agreements. Facilities will not receive credit for reductions achieved through outsourcing production, closing production lines or by replacing one substance

with another that causes or is capable of causing pollution in similar or greater levels of toxicity.

2.2 Ongoing Commitments

Facilities entering into a Leadership Agreement must make commitments in several areas, as follows: the meeting of explicit, measurable emission reduction targets set out in the PRRPs (see above); stakeholder communications requirements; and monitoring and reporting requirements.

2.2.1 Communication and Outreach

The Ministry considers that environmental protection and innovative solutions can be significantly advanced through stakeholder communication and involvement. As such, the Ministry is interested in working with environmental leaders who wish to be transparent and open with their stakeholders regarding their environmental management.

Communication and outreach should include all interested parties, including governments, the community and other stakeholders. Outreach will vary across facilities depending on their size, setting and type of operation, however, it must be proactive and include opportunities for two-way communication with those interested in the activities of the Facility. Communication and outreach must include the following features:

- community consultation;
- an open and accessible public response system; and
- a system that informs the community of important issues related to the Facility's environmental management.

2.3 Monitoring, Reporting and Verification

Credible monitoring and reporting of environmental performance is key to ensuring transparency, monitoring Facility progress and evaluating the impact of the program on beyond compliance performance of regulated entities.

2.3.1 Monitoring and Reporting

Participating facilities must monitor releases and emissions of substances targeted for reduction and report incidents in accordance with the template provided by the Ministry. Facilities must submit these reports to the Ministry and make them available to the public on an annual basis. The Ministry requires that the second and fifth (final) reports be verified by an independent third party (see Section 2.3.2 Verification, below for more details). The Ministry will make reports available to the public on its Internet site: www.ene.gov.on.ca/envision/general/leadership/

2.3.2 Verification

OEL participants must have credible third-party verification mechanisms in place. The purpose of independent, third-party verification is to provide assurance to stakeholders that the facilities' monitoring and reporting are accurate. The third-party verifiers must visit the Facilities and document evidence that proves the program participants have met their commitments as described in their PPRPs. With their second and fifth annual reports, each Facility must submit a verification report prepared by a qualified, independent third party.

Qualified external parties that are independent from the process of data collection and the generation of the report will conduct the verifications. Although the verification team may include a representative from the Facility or the company, an individual who is not in any way affiliated with either the Facility or company that owns the Facility must lead, be responsible for, and sign to confirm the validity of the verification audit.

Specifically, the third party verifier must verify the following:

- the reported emission amounts (for annual reports) of each target substance; and
- the progress made towards fulfilment of the Facility's Provincial Priority Reduction Plan.

Facilities may choose to add the verification audit to the regularly scheduled EMS audit, provided the EMS auditor fulfills the requirements for third party auditors set forth above. The Facility must provide the verification report, signed by the independent third party, to the Ministry within twenty (20) days of its completion. The report shall include, at minimum:

- the name of the firm and the individual(s) who performed the verification;
- a description of how the verification was undertaken; and
- the progress the Facility has made according to its PPRP.

3.0 INCENTIVES

Through Ontario's Environmental Leaders Program (OEL), the Ministry is creating and offering incentives to motivate a continuous improvement ethic and find specific ways to help environmental leaders continue to move beyond the compliance level. Offering incentives represents a new way of doing business for the Ministry of Environment that can be used to augment our traditional approaches. The incentives outlined below are available to all facilities upon acceptance into the program.

3.1 *Technical Assistance*

Senior Ministry staff will provide technical assistance to support the Facility in meeting its targets and to address issues related generally to the program and its objectives and principles. Facility Agreements will further describe the nature and extent of the technical assistance available to each Facility.

3.2 *Enhanced Comprehensive Certificate of Approval*

The Enhanced Comprehensive Certificate of Approval (C of A) is only available to OEL participants. The Enhanced C of A consolidates some or all of the existing C of A requirements into one approval. It includes the following:

- site-specific pollution limits;
- may address releases to air and water;
- operational flexibility to make process changes and production increases without the need to obtain an amendment, subject to compliance with all applicable emission limits and requirements for monitoring, inventories, record keeping and notification; and
- as determined by a risk-based review, it may incorporate tailored administrative provisions.

A Basic Comprehensive C of A also exists and is available to facilities not participating in OEL. The Basic Comprehensive C of A addresses air releases only, is more limited with respect to operational flexibility, and does not offer tailored administrative provisions.

3.3 Technology Approval Incentives

Facilities participating in OEL will be given the opportunity to submit proof of the success of a technology in another jurisdiction for consideration by the Ministry. Pending review of the information, full bench scale and pilot scale testing may not be necessary.

3.4 Guaranteed Approval Turn Around Time

To provide OEL participants with superior service, the Ministry commits to providing decisions on proposed C of A amendments in 45 days or less. The Ministry will continue to provide its usual high level of rigour when reviewing amendments.

3.5 Single Window Access to the Ministry

To enhance customer service, a Ministry Project Coordinator will be assigned to each participating Facility. The Project Coordinator will be familiar with the specifics of the Leadership Agreement and will act as a single window of contact with the Ministry. The Project Coordinator will be responsible for ensuring good customer service including tracking applications and approvals and acting as a liaison between the Facility management and technical and policy contacts within the Ministry.

3.6 Internet Recognition

The Ministry will promote the participation of the facilities through the Ministry's web site, as part of recognising Ontario's environmental leaders.

3.7 Public Acknowledgement

OEL participants will be recognised by the Ministry in appropriate communications.

3.8 Industry-Government Round Tables

The Ministry will invite senior representatives from participating Facilities to attend annual forums with the Minister of Environment and other senior Ministry officials. The aim of these forums is to engage industry stakeholders in discussions on the development of Ministry policy.

3.9 Phase Two Development

The Ministry plans to expand the framework to include additional requirements and incentives. The second phase would further foster and recognize continuous improvement and environmental leadership. The Ministry will invite representatives from each Facility to participate in the development of the second phase.

3.10 Greater Regulatory Certainty

Leadership Agreements made between the Ministry and the Facility will be substantive in nature and will require the participating environmental leaders to: demonstrate a record of sustained environmental compliance; develop a Provincial Priority Reduction Plan including commitments to reduce specific priority substances to beyond compliance levels; have an environmental management system in place; ensure detailed emission monitoring, reporting and verification; and, commit to open and transparent stakeholder outreach and communication. This Agreement is intended to serve as a summary of the environmental requirements for the Facility for the duration of the five year Agreement.

Within the term of the Leadership Agreement, it is possible that new regulations may be contemplated. In the event that new regulations are considered, the Ministry will consult on their development with participating facilities, and provide as much advanced notice of changes as possible, with a view to integrating new regulatory requirements with existing Agreements. Although it is the intention of OEL to provide greater certainty, the government continues to retain the right to introduce and enforce new regulations at any time.

This incentive is designed to step beyond current environmental management approaches and outcomes. It is intended to increase certainty sufficiently so that demonstrated environmental leaders are able and willing to commit to superior environmental performance.

4.0 ADMINISTRATION

4.1 Term

Leadership Agreements will be in effect for a period of five years. The five year term facilitates realistic planning of environmental objectives while allowing facilities to implement capital plans that allow them to meet their targets. The parties may agree to renew the Agreement at the end of the first term, with a new commitment to environmental performance activities.

After two years the Ministry will conduct a review of the program. During the fifth and final year, the Management Committee will develop a Terms of Reference and commission a consultant to conduct a broader, third-party evaluation of the program.

4.2 Amendments

Ontario's Environmental Leaders Program includes provisions for amendments to be made with the agreement of the signing parties, since it is recognized that changes may be necessary from time to time. In a case, for example, where unforeseen circumstances make the reduction targets or other aspects unworkable, the Facility may re-negotiate targets, with the agreement of the signatories and with input from affected parties.

4.3 Consequences

The Ministry will work in close partnership with facilities on an ongoing basis to help ensure that Leadership Agreements are successful. However, consequences will be considered in cases where a Facility demonstrates wilful non-performance with regard to the terms of an Agreement.

Consequences have been developed, as part of OEL, to preserve the value of the program and to serve as an accountability mechanism for all stakeholders. Consequences are designed to reflect the nature of the issue at hand and will be determined on a case by case basis. The Ministry will consider the advice of the Management Committee, which includes industry representation, when determining consequences.

In the event that a Facility demonstrates wilful non-performance in meeting the terms of its Agreement, some or all of the following consequences may apply:

- Leadership Agreement may be terminated;
- lose access to the majority of their incentives;
- placed on probation (temporary suspension of some incentives); and
- status of the Agreement will be reported through annual MOE summaries.

It should be noted that standard Ministry remedies and processes continue to apply where there is non-compliance with existing laws and regulations.

4.4 Management Committee

4.4.1 Management Committee Role

The multi-stakeholder Management Committee will have an advisory role. The Management Committee will provide recommendations to the Ministry regarding applications, consequences and complaints. The Management Committee will review the template developed by the Ministry for the annual progress reports that are to be prepared by each Facility. A multi-stakeholder management committee furthers the goal of moving towards shared responsibility for managing the environment.

4.5 Appeals

If a Facility disagrees with a decision taken by the Ministry relating to its status in the program, it may request a review by the Management Committee.

4.6 Program Procedures and Processes

OEL application forms will be available from the Ministry, in hard copy and online. Completed applications should be returned or e-mailed to the Environmental Innovations Branch. The application must include:

- General information about the Facility, its business and ownership, and future operational plans
- A completed, current Emission Summary and Dispersion Modelling Report for the Facility
- Description of environmental management system (policy, management endorsement, protocol for setting objectives/targets, training procedures, other Schedule One requirements)
- Description of environmental aspects and impacts, as revealed by the EMS
- Information on past environmental performance
- The Facility's Provincial Priority Reduction Plan
- Plan for third party verification of environmental performance

- Communications and Outreach Plan
- Keep on site record keeping information required by Ontario Regulation 127/01 (Table 7)
- Signed Statement of Compliance

The application form information will provide the Ministry and the Management Committee with overview information to assist in determining eligibility.

SCHEDULE 1- ENVIRONMENTAL MANAGEMENT SYSTEMS

The Environmental Management System (EMS) for the Facility may take various forms as appropriate to the Facility's organisation. However, the system must conform to generally accepted EMS standards and be acceptable to the Ministry.

In order to satisfy the requirements of OEL, the EMS must contain the following elements:

- clearly defined environmental policies, procedures and goals;
- a process to identify, document and assess Ministry identified sector priority pollutants as well as Facility-identified priority pollutants;
- documentation of the procedure and work instructions used in implementing the EMS;
- adherence, whenever possible, to pollution prevention principles;
- a disciplined management system, including roles, responsibilities and accountabilities that are clear to all;
- communications and outreach appropriate to address internal and external stakeholders, and to make successful implementation of the EMS possible;
- a day-to-day management system to identify and correct environmental problems;
- protocols for investigating incidents, providing training, operating and maintaining control equipment, documenting performance, managing compliance and reporting performance;
- environmental planning for the full range of planned activities;
- a fully maintained emergency preparedness program;
- a legislative and regulatory surveillance program to establish and track the requirements and environmental aspects associated with the Facility's activities, products and services;
- appropriate and sufficient resources, including training, to achieve targeted performance levels on an ongoing basis;.
- issue specific programs to improve performance;

- a management process to review and audit the EMS.

Facilities are responsible to implement their EMS. The following outlines the Plan-Do-Check-Act cycle:

Defining and Documenting the EMS

An EMS is an environmental policy endorsed by senior management that commits the Facility to minimising risks to the environment, meeting or exceeding regulatory compliance, and continuous improvement of environmental performance.

Identifying Significant Environmental Aspects and Impacts, and Legal Requirements

This includes a systematic identification of environmental impacts of the Facility's activities, products and services, as well as an identification of its legal and other requirements. Significant environmental aspects should include the following: resource use (energy, water and materials); negative effects (air emissions, water discharges, waste and accidental discharges); product impacts; and resource conservation and preservation.

Setting Measurable Objectives and Targets

Facilities must set objectives and targets to effectively manage the most significant aspects (or the most significant potential impacts), and establish action plans with the appropriate responsibilities and resources assigned to meet these objectives and targets.

Establishing Roles and Responsibilities for Meeting EMS and Legal Requirements

This step involves the engagement of employees by clearly defining and communicating roles and responsibilities, identifying and meeting training needs and establishing effective communication mechanisms. Furthermore, facilities must conduct training for personnel on EMS and legal requirements.

Evaluating Progress in Meeting the Established Objectives and Targets

Facilities are required to undertake steps and implement management processes to meet the established objectives and targets. An emphasis on continuous improvement through monitoring and tracking performance of key environmental aspects is critical.

Resulting plans should include the following elements:

- Structure and responsibility
- Employee training and awareness
- Ensure the presence of individuals with required skills
- Communication, including local-area stakeholders
- Environmental management system documentation
- Document control
- Operational control
- Emergency preparedness and response plans.

Installing a Compliance Tracking System

The compliance tracking system will ensure that Facility management verifies all regulatory requirements and the presence of systems that meet those requirements, on a regularly scheduled basis.

Completing a Compliance Audit

Facilities must verify their regulatory compliance and EMS functioning through the regular maintenance of documentation and records.

Correcting Areas of EMS Non-Conformance or Legal Non-Compliance

This requires continuous improvement through monitoring and tracking performance of key environmental aspects; implementing external audits to detect non-conformance and the effective functioning of the EMS; and prompt corrective actions.

Completing a Management Review of the EMS, and Results

There should be demonstrated involvement of senior management in reviewing environmental performance against objectives and targets, implementation of action plans, and the results of previous audits and reviews to ensure the EMS evolves to meet changing circumstances.