

# Environmental Tools:

## Negotiated Agreements (Covenants)

### What are negotiated agreements?

Negotiated agreements are formal pledges voluntarily negotiated between government and one or more private or public organizations to achieve specific environmental objectives. The majority of these agreements are binding in nature, however in some circumstances they are not. Non-government organizations and other public interest associations are sometimes given opportunity for input through consultation but rarely as formal signatories to the agreements. Defining elements and features of these agreements include:

- Government sponsored incentives and potential consequences in exchange for commitments by organizations to meet stipulated performance targets and timelines.
- Flexibility for how performance targets are achieved by organizations.
- Sometimes provisions are added to agreements for the imposition of sanctions and/or penalties for non-performance.
- Regulatory backstop sometimes included in the agreements to ensure equality for all industry members.

Agreements negotiated between government and companies may be supported or facilitated through a broader “framework” agreement, established between the government and the sector association of the targeted parties – referred to as Sector Agreements.

Agreements are voluntary to the extent that participation is not mandatory, however once a decision is made to enter an agreement, terms and conditions become binding for signatories.

### Where are they used?

Negotiated agreements often serve as an alternative or complement to formal regulation. They are a relatively new policy in the Canada but have been applied extensively in European Countries, the United States and Japan. Negotiated agreements are structured to deal with a wide range of environmental objectives – they are gaining a more prominent profile around the world for managing greenhouse gas emissions.

**European Union:** Negotiated Agreements in Europe have increased in popularity since 1992, reflecting a trend towards shared responsibilities and the integration of environmental considerations into company management plans. It is estimated there are more than 300 agreements in place across Europe, the majority in the Netherlands, Italy and Germany.

Failure to meet performance targets results in the withdrawal of special benefits in the operating licence. Environmental applications focus on the manufacturing sectors, notably the chemical sector and packaging and waste management industries.

**United States:** Negotiated agreements represent one of several types of voluntary program initiatives in the United States, most of which are sponsored or administered by the Environmental Protection Agency. Negotiated agreements have been implemented to promote pollution prevention efforts and encourage action on climate change. Project XL, which began in 1995, represents a very broad federal plan to combine public and private interests to address complex environmental issues, however this specific program was discontinued due to high-administrative costs and lack of credibility. The United States has entered into environmental agreements with industrial facilities, communities and other federal agencies.

**Canada:** In 2001, Environment Canada published a broad policy framework setting out design criteria for Environmental Performance Agreements. The agreement designs are intended for single or multiple companies, industrial associations or sectors. Although environmental objectives will primarily be met through legislation, negotiated agreements may be used in unique circumstances of particular companies.

#### Ontario Environmental Leaders Program

Industrial parties in these agreements are eligible for a comprehensive suite of incentives. These incentives will bring significant benefits to facilities, including increased efficiency, recognition and an opportunity to forge a specialized relationship with the Ministry designed to improve their environmental performance.

#### Alberta Sector Agreements for Climate Change

*Albertans & Climate Change: Taking Action* (currently being renewed) addressed the department's negotiation of binding sectoral agreements with various sectors of the economy to set special and measurable goals for reduction of greenhouse gas emissions. Alberta Environment works with other relevant government departments to negotiate agreements tailored to the circumstances of each sector. The approach includes performance incentives and provides all participating companies within the sector the flexibility they need to achieve the performance targets. Agreements will be backed up through legislation and regulatory provisions, including sanctions and penalties to ensure agreements are met.

#### **Tool performance:**

##### **Pros**

- Design features are intended to provide better outcomes and environmental returns than would normally be achieved through traditional regulatory processes.
- Can be tailored to accommodate unique circumstances and economic issues of industry sectors and individual organizations within a sector.

- May include and incorporate a variety of elements and a combination of tools to enhance the strength and effects for achieving outcomes.
- Provides assurance and credibility through provisions for a regulatory backstop (sanctions for non-performance) and accountability processes (third party auditing).
- Offers a flexible method of collaboration between federal, provincial and international organizations.
- Can result in enhanced long-term relations between all participants.
- The flexibility of agreements has the potential to reduce overall compliance costs to participants.
- Financial incentives can be structured to offset costs to participants and help build a corporate business case for environmental actions.
- Can be tailored to account for individual sector or corporate circumstances rather than imposing a single, uniform standard across a sector.
- Financial incentive packages can be included within agreements to encourage development, advancement and application of new technology.

### **Cons**

- Credibility can be called into question unless assurance and accountability provisions to meet performance expectations are in place (i.e. independent third party auditing and verification).
- Some affected stakeholders may not feel they are adequately included in the negotiation process and implementation procedure.
- Recruitment of participants can be slow, as entry is voluntary, and potential participants remain uncertain of effects and risks.
- There is frequently a time lag between striking the agreements and making progress on commitments due to flexible provisions and the time it takes to make environmental change.
- Some participants predict inequality may be created between industry sectors (i.e. regulatory concessions may not be available to all industries).
- The cost of negotiating and managing/administering multiple agreements or covenants, requires considerable resources and skill sets for all participants in the agreement process.
- Governments must live up to their commitments within the agreement and face consequences for failing to deliver results.

### **Special considerations:**

In an effort to improve effectiveness and consistency in the application, design and implementation of negotiated agreements, criteria and principles have been derived and proposed by the New Directions Group, based on extensive review and evaluation of the effectiveness of policy instruments. They are as follows:

Agreements must:

- Be positioned within a supportive policy/regulatory framework, including regulations to ensure equality among participants and non-participants.

- Have reasonable expectations of sufficient participation over the long-term.
- Be perceived and accepted as an appropriate and effective policy approach by interested and affected parties.
- Provide mechanisms to ensure participants have the ability to fulfill assigned roles.
- Be developed and implemented in a participatory manner with meaningful input and contributions by interested and affected parties.
- Be performance-based, with specified and measurable goals.
- Provide incentives consistent with the level of expectation of performance targets.
- Be transparent in design and operations.
- Maintain an accountability processes to verify the performance of all participants.