

COOPERATIVE AGREEMENTS

By: Shari Elliott, Dan Kirby and Sean Love

In January 2001, the Government of Ontario delivered a report *Managing the Environment*. One recommendation of this report is for Ontario to implement an integrated approach to environmental compliance assurance. One component of this approach is the development of a framework for Cooperative Agreements. The Ministry of the Environment "MOE" has now released a proposal for individual companies to enter into these agreements directly with the MOE under an overall agreement developed with the MOE and the relevant industry association. This concept is currently being implemented through a series of pilot projects.

The MOE has posted on their website the pilot agreement with the Automotive Parts Manufacturing Association "APMA" for comment. This agreement requires the APMA to encourage and assist member companies to enter into agreements with the MOE. In exchange APMA members have been promised public recognition, technical assistance, meetings with the Minister, 45-day turnaround on C of A amendments, increased flexibility in equipment approvals and front-of-the-line access to C of As. There are also two smaller pilot agreements being developed with the Associations of Metal Finishing and Autobody Refinishing industries.

The framework that has been designed includes the following elements:

- Transparency through public involvement and public reporting;
- Clear accountability, with specific performance-based targets, clear monitoring and reporting requirements, and third-party verification of performance; and
- Continuous improvement, through incentives and sanctions.

In this discussion we focus on three main aspects of this framework. First, the conditions of entry into the pilot projects and the commitments that participants must make and meet in order to remain in the pilot projects. Second, a description of the incentives that are available. Third, the administration of the agreements including the sanctions and appeal process.

Requirement

Entry into the pilot projects is at the discretion of the Ministry. However, the Ministry have set out the following criteria:

- Disclosure of environmental charges, convictions, outstanding fines, Ministry-issued control documents, and civil litigation involving environmental related matters in the past five years;
- If any of the items listed above do exist there must be a Ministry-approved plan in place to any issues and the facility must be in compliance with all control documents;
- An executed Statement of Sustained Compliance by the most senior official;
- An internal compliance check by the Ministry; and
- The implementation of a Ministry-approved environmental management system (EMS) to address the immediate and long-term environmental impact of its products, services and processes on the environment (the EMS must include all Ministry identified elements).

If accepted into a pilot project, the facility must:

- Submit to the Ministry within ninety days of entry a complete Emission Summary and Dispersion Modeling report, using procedures set out in Ontario Regulation 346;
- Comply with the requirements of Table Seven, Airborne Contaminant Discharge Monitoring and Reporting under Ontario Regulation 127/01 to report on emissions of prescribed compounds when discharged above prescribed thresholds.

Commitments

Participants must make the following commitments:

- Submit a Provincial Priority Reduction Plan (“PPRP”) to the Ministry, within ninety days of acceptance, containing issue-specific goals and beyond compliance environmental objectives. Since the focus of the pilots is environmental improvements beyond compliance, facilities cannot rely on previous achievements as the basis for entering into a pilot agreement. Additionally, facilities will not receive credit reductions achieved through outsourcing production, closing production lines or by replacing one substance with another that is capable of causing similar or greater levels of pollution;
- Participate in communication and outreach programs that must include opportunities for two-way communication with individuals and groups in the local area as well as those interested in the activities of the facility;

- Annually submit a report of discharges of substances targeted for reduction that have been monitored and any incidents involving these substances(?). the second and fifth reports must be verified by an independent third party. These reports will be available to the public on the Ministry website; and
- Implement credible third-party verification mechanisms. The verifiers must visit the facilities and document evidence that proves participants have met their commitments. The verification report must be submitted within twenty days of completion.

Incentives

The incentives summarized below are available to all pilot participants upon acceptance:

- Provision of technical assistance to support the participant in meeting the targets;
- Qualification for a flexible site-wide Certificate of Approval (“C of A”) that consolidates some or all of the existing C’s of A. This certificate provides the flexibility to meet facility-wide emission limits without the requirement to obtain or amend C’s of A;
- Ability to submit proof of the success of technology in another jurisdiction for consideration for the Ministry;
- Decisions on proposed C of A amendments in forty-five days or less;
- A single window of contact through a Ministry customer service representative for pilot participants;
- Provided with and encouraged to use a pilot identifier to signify participants in the project on promotional materials and on letterhead;
- Promotion of the participants by the Ministry as Ontario’s environmental leaders on its website as well as referring to the pilot projects in appropriate communications;
- Senior representatives at pilot facilities will be invited to attend annual forums with the Ministry and other high level Ministry officials.

Administration:

The agreements will be in effect for a period of five years with a renewal option at the end of the first term to implement new targets and incentives. The Ministry will conduct a review of the pilot projects after two years. There is a multi-stakeholder management committee who will have an advisory role. This committee will provide recommendations

to the Ministry regarding applications, sanctions and complaints. The Ministry will consider sanctions against participants that breach the terms of the agreements.

A participant that is found to be in non-compliance with existing laws, regulations and policies may have their pilot agreement terminated. The Ministry has set out the following reasons to terminate agreements:

- Providing false or misleading information;
- Serious misrepresentation of either environmental performance or pilot status;
- Failure to meet requirements of the Agreement and in particular its PPRP;
- If a Control Document is issued to the participant; or
- The finding of fault in any civil litigation involving environmental impairment.

The Ministry also has the ability to place a participant on probation and limit its access to the full range of incentives if environmental problems arise. The Ministry has also provided for the following consequences if an agreement is terminated:

- Participants can be refused re-entry to the pilot projects;
- Participants lose access to their incentives;
- The participant will be required to report its failure to meet objectives included in the EMS to the EMS registrar, where applicable;
- An immediate inspection will be ordered of the facility; and
- The name and location of the facility will be posted on the Ministry website for sixty days and otherwise publicized at the Ministry's discretion.

However, there is an appeal available to any participant that feels they have not been treated appropriately. Participants may request a review by the Management Committee. Requests for a review of a decision may be submitted in writing to the Director within thirty days of such a decision. Complaints will be considered by the Management Committee at its monthly meeting, and may recommend the Ministry confirm, vary or revoke the initial decision.