THE CLEAN AIR STRATEGY FOR ALBERTA:
A CASE STUDY IN CONSENSUS DECISION MAKING FOR
SUSTAINABLE DEVELOPMENT

by

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ABSTRACT

The purpose of this study is to assess the capacity of consensus decision making to assist modern industrial states to achieve sustainable development. "Sustainable development has become the "cause celebre" of the international community, and modern industrial states in particular, since it was officially endorsed by the World Commission on Environment and Development in its five year study of the state of the global environment, Our Common Future.

The World Commission assumes that the state will play a leadership role in directing the sweeping and perhaps deep restructuring of modern industrial societies that is required to achieve sustainable development. The magnitude and scope of the complexity of sustainability issues poses a daunting challenge to government decision makers. Unfortunately, recent history has shown that existing mechanisms for governance in the industrialized democracies are already overwhelmed by the burdens imposed by the complexity of modern industrial societies. Over the past twenty years, there has been increasing evidence that liberal democratic governments are less able to accommodate and reconcile competing social interests through traditional political institutions, such as political parties.

Consensus decision making has been put forward as a mechanism that can help government to operate in an environment of competing interests. This study examines whether it can serve this purpose and also be adapted to deal with the special problems associated with sustainable development, using as its example the use of consensus decision making to develop the Clean Air Strategy for Alberta. The study concludes that the political effectiveness of an ecosystemic approach to air quality management can be enhanced through the use of consensus decision making.

ACKNOWLEDGEMENTS:

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I.   <u>INTRODUCTION</u>:

The purpose of this study is to assess the capacity of consensus decision making to assist democratic governments to achieve "sustainable development". The concept of "sustainable development" has become the "cause celebre" of the international community, and industrialized states in particular, since it was officially endorsed by the World Commission on Environment and Economy in its report to the United Nations on the future of the global environment in 1987. <u>Our Common Future</u>,[1] called the Brundtland Report after the chairman of the Commission, Gro Brundtland, conveys the message that our current course of social and economic development will eventually lead to environmental disaster on a global scale. "Sustainable development" is offered as the beacon that will guide the successful transformation of the global community from this path of destruction.

"Sustainable development" is defined by the Brundtland Commission as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[2]   The concept of "sustainable development" did not originate with the Brundtland Report; but it was the public profile provided by the Report that lead to the broad political acceptance of sustainable development as a conceptual framework for developing a new social paradigm in which environment and economy

are viewed as interdependent rather than opposing forces. The primary obstacle to social change is not how we act, but how we think; and a stable solution to our current situation ultimately depends on our ability to reconceptualize the relationship between human activity and the natural environment in a way that is not dysfunctional. The Report, however, gives very little direction as to what sustainable development means in practice.

Sustainablility poses a unique and daunting challenge to decision makers in terms of the magnitude and scope of complex issues that it raises. First, sustainable development is a new and evolving concept, whose meaning is still not clear: Should we attempt to preserve biological diversity by directing resources towards protection of endangered species; or are those resources better spent preserving key wildlife habitats? Despite the sense of urgency surrounding many sustainability issues, and the potential for disastrous consequences if the wrong decision is made, it is difficult to avoid trial and error in dealing with these problems as the only alternative to inaction.

Secondly, sustainable development requires long-term planning, and an understanding of complex systems. The integration of environment and economy involves complex systems - social, political, economic and physical - that function interdependently, and whose interrelationships must be understood to address sustainability issues. The best decision in terms of benefit to the environment may have adverse impacts to the local economy

and the community it supports. All of these factors must be taken into consideration.

The intergenerational aspect of sustainable development requires decision makers to look to the future and address problems whose adverse environmental effects may not be experienced by the current generations, let alone during the current political term of office. Similarly, adverse environmental effects may not be commensurate with their causes. Global warming raises both these problems. The concern is that environmental disaster in the future will be irreversible, if present conduct is not changed; and that the worst impacts will be experienced by equatorial island and coastal countries, rather than the northern industrialized countries that have contribute most to the problem.

Thirdly, sustainable development issues tend to be scientifically complex and involve scientific uncertainty. Our understanding of issues such as global warming is incomplete and subject to change; but at the same time, the potential consequences of not acting may require that decisions be made on the basis of imperfect knowledge.

Finally, sustainable development will require cooperation and coordination between governments and from numerous affected social interests. While global problems will ultimately need to be addressed by local solutions, there must be government cooperation at the international, national and local levels to remove the political and economic barriers to

unilateral action, and ensure that responsibility for the economic costs of sustainable development are shared equitably. Similarly, significant and perhaps deep restructuring cannot be imposed on a society without some level of participation in the decision making process.

The World Commission assumes that the state will play a leadership role in steering the course of collective action towards sustainable development. Unfortunately, recent history has shown that existing mechanisms for governance in the industrialized democracies are already overwhelmed by the burdens imposed by modern industrial societies. Over the past twenty years, there has been increasing evidence that liberal democratic governments are less able to accommodate and reconcile competing interests through the traditional political and administrative institutions - political parties, legislatures, bureaucracy, and the judicial system.[3]

One problem is that the authoritative, technocratic style of government associated with the rise of the modern regulatory state is no longer acceptable in these societies. This situation is compounded by an increasing unwillingness to accept that the public good is synonymous with traditional socio-economic interests: What is good for General Motors is no longer universally accepted as good for the country. Western governments are now challenged by the demands of a post-material society, who want quality of life as well as economic progress. The environmental

movement has become the primary medium for the expression of these concerns. In the past two decades, environmentalists have succeeded in putting the environment on the political agenda, and legitimized its status as a competing interest within the existing political matrix. However, the legitimacy of state action depends upon the broader consent of the governed. Today, the design and implementation of policies directed at sustainability will be constrained by the difficulty in cultivating the necessary social consensus. This situation is complicated by the fact that these competing interests are replicated within the state, and reinforced by the institutional rivalries that accompany any compartmentalized bureaucratic structure. Eventually, there may be a redefinition of societal norms regarding the proper balance between economic and non-economic values; but in the meantime, governments are searching for alternative mechanisms for arriving at government decisions that can be effectively implemented without public opposition.

Consensus decision making has been put forward as a mechanism that can help government to operate in an environment of competing interests. A further question posed by this study is whether it can be adapted to meet the specific process needs called for by sustainable development. The first half of this study focuses on the existing steering capacity of government, and examines the prospect of achieving sustainable development using traditional approaches to government decision making.

Chapter two of this study analyzes the causes of the current ungovernability of modern industrial societies, identified by Claus Offe in his theory of the modern regulatory state. Chapter three presents a set of criteria developed by Julia Gardner for evaluating the capacity of decision making processes for achieving sustainable development, and discuss the utility of these criteria under the current conditions of ungovernability outlined in Chapter two.

The second half of the study focuses on consensus decision making, and its potential for improving upon the status quo of government decision making, using the Clean Air Strategy for Alberta as a practical example of how it may be applied. Chapter four presents a general explanation of consensus decision making and how it might help alleviate the problem of ungovernability confronted by public sector decision makers. Chapter five describes how consensus decision making was used to develop the Clean Air Strategy for Alberta. Finally, Chapter six provides an evaluation of the Clean Air Strategy, and recommendations as to how CDM can work in practice to achieve the normative requirements of Offe and Gardner. The analysis is complex, but the general thrust of the inquiry is to determine: (1) can consensus decision making alleviate the conditions of ungovernability faced by government, and (2) if so, can it also be adapted to satisfy the special problems associated with sustainable development?

II. THE STEERING CAPACITY OF THE MODERN REGULATORY STATE:

Political observers at both ends of the political spectrum agree that the steering capacity of the modern regulatory state is inadequate to satisfy the social demands it faces. Although the diagnosis of the problem and prescriptive solutions differ,[4]   there is basic agreement that the "ungovernability" of the state is a product of social democracy itself: The state should never have assumed responsibility for meeting a broad spectrum of social needs, most of which were formerly provided for by private institutions (primarily the family). Despite the enormous bureaucracy that has grown to administer the regulatory and social welfare functions of the state, it is still unable to meet the volume of claims made against it; this, in turn, leads to disappointed expectations, loss of flexibility to respond proactively to changing circumstances, and the loss of government legitimacy. This situation is exacerbated by the inefficiency and lack of coordination within the bureaucracy itself. In prosperous years, the government could afford to indulge the public (and itself) in the provision of a wide range of services and protections. Those years are now gone, but the pattern of public expectations of government and continues to generate new demands.

The neo-conservative school has proposed to enhance the capacity of the state to act with strategies intended to either reduce the level of social

demand, or to improve the performance of government. The primary recommendation for the reduction of demands is, of course, deregulation. Alternatively, claims that cannot be dealt with through market solutions can be processed by decision-making mechanisms that are "independent", or beyond the influence of government, and whose purpose is to decide intra-group conflicts in the interests of the "common good". In this way, government can isolate itself from the political controversy surrounding such disputes. Administrative tribunals serve this purpose. Measures to improve the performance of government itself is directed at improving the bureaucracy through institutional coordination, management techniques, fiscal controls and consultation with interest groups.[5]

Claus Offe, a critical theorist, questions the prospects of success of the neo-conservative agenda, because it only addresses the symptoms and not the cause of the problem - the level of social expectations. The market system is the primary social welfare mechanism in the industrialized countries - it orchestrates the production and distribution of goods and services within these society. However, the market system has its shortcomings, both in terms of its ability to ensure a fair distribution of material benefits (especially essential human needs, such as housing), and the socially unacceptable social conditions that are a byproduct of the system.[6] The market system needs the state to harmonize and reconcile its activities with social expectations, since the transaction costs of self-

regulation are too difficult to overcome; but neither the state nor the market has much control over the level of these expectations. Furthermore, the state is not in a position to change these expectations, due to the complexity of the problem and the informational costs required to effect the behaviour of individual voters and interest groups.

The legitimacy of government depends on public support, which makes it difficult to unilaterally withdraw, or privatize, services that are popular with the public, or that benefit vested interests. It is similarly difficult to deregulate the economy in the face of public demand for greater protection from market externalities, even if the level of regulation demanded is an impediment to the functioning of the market system. Finally, institutional reform of the bureaucracy is not likely to significantly improve the steering capacity of government, because it does not assist the government to make and implement decisions which will affect political or institutional interests. As Offe explains:

> Reflection and experience demonstrate rather quickly that this kind of expansion of horizons [of the state's capacity to engage in political reform, long-range planning and problem anticipation] is possible only if the consensual basis or the ability of the political-administrative system to absorb conflict can also be expanded. In other words, [policy integration] can be adequately considered and long-term policies adequately conceptualized only if the requisite basis of trust and confidence is successfully consolidated. The objective and temporal expansion of the performance capacity of government policy can succeed only if this corresponds to an expansion of the social alliances and mechanisms of integration on which it is to be based. Thus 'consensus' becomes the decisive bottleneck.[7]

Offe's analysis is consistent with the performance of conservative governments in Canada and the United States in the past decade. The reduction in services has been focused in areas unlikely to provoke strong political opposition (social services targeted at disadvantaged groups, research councils), and whose contribution to reducing the size of government is more symbolic than real. The social demand for protection through state intervention has increased during this period, as well as the level of regulation. Government spending has not been significantly reduced through efficiency measures, and any gains that were made have been counteracted by the recession.

The significance of this situation for sustainable development is that government is poorly situated to embark on a bold new agenda of social change. The current scarcity of government resources means that very little money is available to satisfy the demand for new initiatives, and yet it is also very difficult to obtain the necessary funding from existing programs without provoking political opposition. Similarly, political resistance of the established institutional and social interests to changes in the social order that adversely effect their position within the system will make it difficult for government to accomplish more than adjustments at the margins, unless a consensus for change is established.

Offe's explanation of the predicament of the modern regulatory state is that its two primary functions - to protect the market system and to

respond to social demands - are inherently vulnerable to conflict, and yet the state is not equipped to balance these systems when they do come into conflict. Offe employs a systems-analysis approach as the vehicle for explaining his thesis. According to his model, the social system of the modern regulatory state consists of three interrelated subsystems: the economic system, the political-administrative system and the normative (legitimation) system.

The economic system is the dominant subsystem, because the market is the primary mechanism of social organization. This position is reflected in its relationship with the political-administrative subsystem (the state). The state has the role of positively contributing to and creating the conditions for the functioning of the economy. This includes intervening to compensate or adjust for social conditions created by the economic system that are socially unacceptable, such as environmental degradation. In this sense, the state mediates the interests of society and economy, to prevent social conflict from developing between the two; however, there are limits on the nature and extent of state intervention that the market system can and will tolerate. Direct control of the economy is unacceptable, because such "politicization" of the market system will undermine its independence and threaten its survival. For this reason, the state has approached its task indirectly through regulation - the setting down of standards that must be met by private industry.

Offe describes the regulatory state as "self-limiting", because of the way that it must refrain from direct or undue interference in the market system; but this deference also reflects the subordinate position of the state. First, the state cannot afford to undermine the market system unless it is prepared to assume responsibility for its social welfare function. Second, the fiscal resources of the state are dependent upon the performance of the economic system; and third, the state must always be sensitive to the threat of disinvestment - especially in light of the increasing global integration of the international economy.

The normative (legitimation) system is the political culture of the society, or the system of cultural norms, social values and social expectations that are articulated and reproduced within the broader community. The social institutions that traditionally performed this function were the family and the church; but these institutions have been substantially replaced by sectoral "interest" groups. The political-administrative system is linked to the normative system "by the expectations, demands and claims...with which it is confronted and to which it reacts through welfare state and organizational services."[8] The legitimacy of the state depends upon its ability to maintain the "mass loyalty" of the normative system, or "genuine acceptance for its structures, processes and actual policy outcomes".[9]

The political-administrative system in liberal democracies provides

the institutional framework for processing these societal demands. While the specific constitutional arrangements vary between the industrialized countries (e.g. parliamentary democracy in Canada, separation of powers in the United States), the formal liberal democratic model of government has certain basic features: Political parties are responsible for integrating social demands into the political system; elected public officials decide public policy, for which they are held directly accountable to the public through the electoral process, and the bureaucracy provides the elected officials of the day with the technical expertise required to design and implement their policies. According to this model, the bureaucracy is considered politically neutral, because it performs a purely technical function; and is only held accountable to the political masters it serves.

Offe argues that the relationship between these three systems has become "self-obstructing" under the social welfare state, due to the expansion of administrative action. The rise of the social welfare state during the 1950's was based on the notion that the legitimacy of the state (in modern industrialized countries) is a function of its ability to compensate for the dysfunctional consequences of the market system. However, this postwar vision of the state did not anticipate that this role would continue to expand until it challenged the capacity of the regulatory resources of the state.

At the political level, the tendency of the social welfare state toward

'global' regulation has brought into question whether the political-administrative system "can politically regulate the economic system without politicizing its substance and thus negating its identity as a capitalist economic system based on private production and appropriation."[10] In other words, the level of state intervention needed to "safeguard" the market from its unwanted social consequences has begun to threaten the independent (and dominant) status of the market as the primary social organizing mechanism. In this sense, state regulation is "self-obstructing" by nature, because of the contradiction that has developed between its responsibility to protect the economic system and its responsibility to protect the public from the economic system. Satisfaction of the social demands of the normative system leads to "overregulation" of the economic system and the flight of capital (and, as a result, the loss of mass loyalty); but the failure to address these demands may lead to social conflict and the loss of mass loyalty. This situation is complicated by the vulnerability of the state to the psychological perception of harm in either sphere.

The expansion of administrative action has also generated problems within the structure of the state itself. The growth in the size of the bureaucracy, and the departmentalization of sectoral interests has made it difficult to coordinate state action, both to maintain internal coherence between the independent activities of separate departments, and to facilitate cooperation amongst departments where integrated solutions are

required. This coordination problem is compounded by the competing institutional interests between departments that can serve as a barrier to effective planning. As Offe states, the expansion of the state has been accompanied by "an internal irrationalization of the organizational structure of the state administration."[11]

Finally, the politicization of the bureaucracy has challenged the constitutional limits of the liberal democratic system of government. The regulation of complex social phenomenon is necessarily dependent on the application of technical expertise. (Indeed, the concept of the modern regulatory state reflects the postwar faith in science and technology toe eventually achieve "the good society".) In this situation, the growth of the bureaucracy (as the state's source of technical expertise) was inevitable; however, the degree of discretion that has been delegated to the bureaucracy to design and implement regulatory schemes makes it impossible to maintain that its function is purely technical.

First, the bureaucracy has become an important source of public policy. Although elected officials decide which policies are advanced in the political arena, they require the advice and assistance of technical experts to identify problems and propose solutions. Naturally, the bureaucracy is an important and influential resource to elected representatives, especially in the absence of alternative sources of advice. But it has raised concerns in the past as to the degree of effective political control over the

bureaucracy that is exercised by the political branch of government.

Secondly, while the implementation of public policy may require technical analysis, the social consequences that flow from administrative decision-making make it inherently political - choices made amongst "acceptable" alternatives invariably affect the distribution of costs and benefits imposed on the community. Even if the scope of analysis takes into consideration the socio-economic consequences of the alternatives, the final decision involves the exercise of political judgment. The public demand for greater access to bureaucratic decision-makers merely reflects the public's understanding that participation at the political level is no longer sufficient for effective public involvement in government decision-making.

Traditionally, the formal institutional framework of government made no provision for direct public involvement in the regulatory process, because the bureaucracy has no formal political function to perform. Indeed, its exposure to external political influences raises concerns about the political accountability of the political branch of government. However, as government intervention has become more pervasive, the ability of bureaucracy to distance itself from the social environment has been severely eroded.

The ability of government to regulate effectively has come to depend upon the cooperation of regulatees at both the design and implementation

stages of the regulatory process. The government cannot design regulatory schemes that are technically competent and practically feasible without sufficient and reliable information. This often includes information that is only available from the regulatees themselves. Regulatees may also take advantage of opportunities to obstruct the regulatory process, either by challenging the exercise of administrative authority, or by using political influence to mobilize competing interests within the state.[12]

The successful implementation of a regulatory scheme directed at a large community of regulatees depends upon substantial voluntary compliance, because it is beyond the capacity of government, both financially and administratively, to effectively enforce such a scheme without it. Even the criminal justice system would collapse, if citizens did not obey most of the laws most of the time. In the environmental context, the detection of non-compliance by individual violators depends upon the monitoring of individual pollution sources. Since these sites are privately owned, there are limits on how intrusive the inspection process can be without the cooperation of regulatees. The reliance on enforcement to achieve compliance is further complicated by the incongruous relationship between the measurement of scientific uncertainty and the legal standard of proof.

Underlying these technical problems is the political ambivalence towards the enforcement of environmental legislation. The state has the

authority to strictly enforce the laws; but as Offe points out, there are limits on how much the state will directly interfere with the economic system. While public support for environmental protection has grown steadily over the past decade, it is not clear that the public recognizes or will accept the costs involved (both in terms of the increased price of goods and lifestyle changes). It is unlikely that governments will accept the political risk of imposing short term economic costs on industry and society, until there is the public commitment to support it.

The scope of public involvement in the regulatory process has expanded to include participation by other social interests who demand inclusion, and who demonstrate an ability to obstruct government action through legal or political activism. Thus, government decision making at the bureaucratic level is confronted by the same need to reconcile competing social interests as the political arena.

The overall effect of this heightened political conflict is that the state can no longer act independently to determine the course of public policy. The traditional "announce and defend" approach to government decision making has become a source of political intractability, due to public resistance to unilaterally imposed decisions. The response of government has been to "socialize" government decision making by developing mechanisms to allow for public involvement in the process. In Canada and the United States, governments have chosen use of public consultation

mechanisms to involve the public in the planning process, and to expand the use of administrative tribunals to allow public participation in making specific decisions. However, these mechanisms have not significantly reduced the degree of public resistance to state action.

Offe maintains that the social welfare state lacks the capacity to reconcile the growing discrepancy between the social demands that flow from the shift towards post-material values and its ability to directly interfere with the market:

> Developed capitalist industrial societies do not have at their disposal a mechanism with which to reconcile the norms and values of their members with the systemic functional requirements underlying them. In this sense, these societies are always ungovernable, and it is largely due to the favourable circumstances associated with a long wave period of economic prosperity prior to the mid 1970s that they were able to live with this phenomenon of ungovernability.[13]

Offe's pessimistic diagnosis of the steering capacity of liberal democratic governments may be an accurate description of the status quo, but it does not reflect the possibility that the state will adapt to its changed social environment by developing mechanisms for the reconciliation of competing social interests. Similarly, Offe's systemic model does not capture the dynamic relationship between the normative subsystem (society) and the economic subsystem. As a result, he underestimates the potential that direct social pressure and market forces may provide an incentive for industry to act voluntarily to improve its environmental

performance.[14] For the moment, let us consider the prospects of effective environmental management in the existing political environment.

III. SUSTAINABLE DEVELOPMENT AND GOVERNMENT PROCESS:

In her article, "Decision Making for Sustainable Development: Selected Approaches to Environmental Assessment and Management",[15] Julia Gardner identifies four process-oriented principles that are prerequisites to sustainable development:

1. The process must be goal-seeking:

According to Gardner, a process is goal-seeking" if it: (1) is directed at achieving pre-identified goals "in a normative, proactive way", (2) seeks to identify new goals, and (3) takes into consideration "a wide range of options and a convergence of individual and societal interests."[16] The basic idea is that the process should be proactive, not reactive, and involve strategic rather than crisis management.

2. The analytical aspect of the process must be "relational or systems-oriented":

This means that the process must be "comprehensive" in the sense that it reflects an understanding of the linkages within and between the ecological, political, and economic systems; and that it is sensitive to

temporal and spatial scale. "Temporal scale" refers to the need to consider future generations (i.e. long-term planning), while "spatial scale" refers to the assignment of political responsibility for the design and implementation of policy to the appropriate decision-making arena.

3. The process must be adaptive:

Just as the process of sustainable development is expected to produce change, the process itself must be able to adapt and respond to changes in the social and economic environment, scientific knowledge and technology. Above all else, sustainable development is a learning process (if not quite an act of faith). It requires that a society commit itself to moving forward before we have all of the answers - to engage in a process of intelligent muddling through to proper solutions. Planning in the face of moral and scientific uncertainty - and a relative scarcity of resources - makes it essential that decision making processes have a capacity for innovation, so that new knowledge can be taken advantage of as it becomes available; they must be flexible in terms of tailoring solutions to accommodate regional differences, and they must include monitoring and evaluation of the performance of implemented programs in relation to established objectives and possible alternatives. Gardner emphasizes the importance of scientific experimentation and learning, but it is clearly just as relevant that processes be able to adapt and respond to political, social

and economic realities.

4.   The process must be interactive:

The achievement of sustainable development will obviously require a broad basis of participation. The successful design and implementation of an environmental management strategy requires the interdisciplinary collaboration of technical experts; coordination and cooperation between levels of government and amongst departments within government, and the participation of the public. As Gardner states: "Participatory processes provide for the melding of sociocultural, technical and institutional objectives in the goal-seeking process, so that decision making fully takes into account both environmental and economic concerns."[17]

Gardner's criteria provide a useful vehicle for framing a discussion about process and sustainable development, but like any normative model must itself be evaluated in terms of its usefulness as a practical guide to improvement. Has she established an achievable goal? If not, should we conclude that sustainable development is not achievable, or that Gardner's criteria require modification? Gardner acknowledges that some of her principles "may conflict with one another in current practice;"[18] but does not offer much insight as to how they may be combined in a single process, given the existing environment of competing institutional and political interests. An evaluation of consensus decision making needs a context

from which to judge whether it at least offers an improvement over existing approaches to government decision making.

Given the current steering capacity of the state, what are the prospects that government decision making will meet Gardner's criteria? The general implication of their combined effect is that government should take a leadership role in planning for the future in a way that is comprehensive, rational and participatory, but it does not appear that government is well situated to achieve these goals, even when taken individually:

Goal-seeking:

The "preidentification of goals" implies that the government must play a leadership role in identifying and pursuing goals. In the context of government decision making, a distinction must be drawn between reacting to external pressures and demands and taking the initiative to identify and pursue goals independently. To the extent that the legitimacy of government action depends upon the consent of the governed, government has three basic options for developing and implementing policy: (1) it can assume from its electoral mandate that it has the delegated authority to decide what is in the public interest and seek to implement it on a unilateral basis; (2) it can proactively seek to build social consensus to legitimize and facilitate its goals, or (3) it can simply allow public demand to dictate the course of public action.

The proactive approach implied by the first option is problematic for government for several reasons. First, government is generally overburdened and lacking in resources required to cope with the collective challenges posed by sustainable development in a proactive way. Secondly, internal competition and lack of coordination make it difficult for government to commit itself to a coherent set of goals. This situation was apparent to non-government participants in the Canadian federal government's Green Plan consultations, who saw a public demonstration of the intense competition of interests between Environment Canada and Energy Mines and Resources.[19]

Third, the traditional "decide, announce and defend" approach to government decision making has increasingly led to political intractability due to public resistance to unilateral government action. The public is no longer as willing to trust that the government knows what it is doing. Finally, government has been, for the most part, ineffective at addressing the later problem.

The second option has been pursued through the mechanism of public consultation without success. If there is a way to cultivate social consensus for government policy amongst competing social interests, governments have yet to find it. The issue of consent is particularly difficult, when the community of interests that will likely oppose government policy at the implementation stage is not actively interested or

aware of the issues at the policy development stage. In this situation, the government basically faces a political vacuum. The result has been that government is often left in the situation of reacting to political pressures rather than pursuing a directed course of action.

Systems-oriented:

As indicated above, Gardner wants government decision making to be "comprehensive", in the sense that decisions are based on an understanding of the "interconnections" between social, economic and physical systems. The term "comprehensive" has fallen from grace in public policy and planning circles, because of its association with unsuccessful attempts to affect radical social change during the sixties and seventies through top-down, technocratic social engineering; however, its essence has been reincarnated in the environmental field through the ecosystemic approach to resource management.

No one disagrees that comprehensive planning is a good idea - in theory. What is questioned is whether our political have the capacity for it. There are two primary problems with the "scientific" or "synoptic" approach to public policy making. The first is epistemic - complex social problems cannot be analyzed completely.[20] As Charles Lindblom argues, the aspiration to synopsis is misguided, because people can only effectively deal with complex social problems if they are first broken down into smaller increments. In his view, what is needed is not better models but better

strategies for "skillful incompleteness":

> Achieving impossible feats of synopsis is a bootless, unproductive ideal. Aspiring to improving policy analysis through the use of strategies is a <u>directing</u> or <u>guiding</u> aspiration. It points to something to be done, something to be studied and learned, and something that can be successfully approximated.

....

> For complex problems, tied to an unhelpful aspiration that simply admonishes "Be complete!"an analyst unknowingly or guiltily muddles badly. Or, pursuing a guiding ideal or strategic analysis, he knowingly and openly muddles with some skill. Hence his taking as an ideal the development of better strategic analysis will be far more helpful than his turning away in an impossible pursuit for approximations to synopsis. Is the appropriate ideal for the commuter miraculously long legs or better bus service? What can actually be done in pursuit of each of the two?
>
> For social complex problems, even formal analytic techniques - systems analysis, operations research, management by objective, PERT, for example - need to be developed around strategies rather than as attempts at synopsis. Some theoretical formulations of these techniques and all examples of their successful application to complex problems reflect this important point.[21]

In the environmental context, the difference between Lindblom's "muddling through" and Gardner's "systems orientation" is especially significant because of the degree of scientific complexity and uncertainty often involved with environmental issues. To use the tortoise and hare analogy, it is sometimes more effective to move towards a defined goal by a process of incremental change than it is to attempt to design a grand solution for achieving that goal. The global warming issue is a good example of how a pretence to synopsis can become a formula for inactivity:

Do we begin to take modest steps towards reducing carbon dioxide emissions now, based on the implications of what we know so far? or, do we wait for greater scientific certainty and more comprehensive solutions? Ironically, a dogmatic adherence to "comprehensive" analysis to produce radical change can be an obstacle to any change at all.

Even if there were no analytical limitations on synoptic planning, a second problem is that it ignores the fact that political interactions are a necessary feature of the public policy making process. In other words, it is difficult to find a process that is "systems-oriented" and "interactive", because of the tension between those who wish to control its direction. The political reality of "integrated planning" is that it depends upon the coordination and cooperation of distinct interests inside and outside government, and as Offe points out, this kind of accommodation is difficult to achieve:

> In particular, long-range bureaucratic planning is continually pushed and pulled by social and political forces. Social turbulence and political resistance is continually internalized within the welfare state apparatus....and the opposition of social movements to state decisions are specific and concrete forms of resistance that tend to hinder or 'privatize' attempts by the welfare state to engage in 'public' planning guided by general or synoptic rules.[22]

Offe's conclusion is that planning in the public sector is inevitably incremental and disjointed, because government cannot consistently pursue a unified agenda.

Adaptive:

Lindblom makes a strong argument that a process of incremental adjustments is better able to adapt to changing circumstances, and allows for more concrete action in the face of scientific uncertainty than does comprehensive planning. People are more willing to take risks, when the potential losses are minimized; it is easier to redirect social behaviour through a gradual process of incremental changes than imposing fundamental change all-at-once, and it is possible to take corrective measures as problems arise without threatening the coherence of the entire system. It is important to recognize, however, that muddling is only "intelligent" if it is guided by a rational strategy: without it, incrementalism is merely arbitrary.

The complaint that industry, in particular, has expressed about the existing incremental approach of government decision making is that it lacks direction and innovation.[23] The incremental steps taken by government occur within the existing regulatory web of command and control measures; and the measures themselves are not made on a rational basis, in the sense that they do not "map out" against real problems, nor reflect consideration of all the relevant factors (i.e. economic costs as well as environmental benefits). The result is that government does not make cost-effective use of the limited resources that are available to address environmental issues, and imposes a similar burden on those who must

comply with these measures.

A process of incremental adjustments that is driven solely by competing political demands is bound to be unpredictable, unless these demands can be rationalized at the policy level. Perhaps the best way to take advantage of the benefits offered by both comprehensive and incremental planning is to put each to its best use. At the policy level, government can benefit from a strategic approach by identifying its goals in terms of what it hopes to achieve, whereas incremental measures may be the most realistic method of moving towards these goals.

Interactive:

Gardner's notion of "interaction" has two dimensions: (1) coordination within and between levels of government, and (2) public participation in government decision making.

1. Government Coordination:

The most disturbing feature of the modern regulatory state is the degree to which competing institutional interests have become a barrier to effective state action, and the apparent intractability of this situation. As an area of ascending political importance, the environmental field is particularly sensitive to the internal conflict generated as departments and governments scramble to preserve or claim jurisdiction that may be classified as environmental: Everyone wants to be where the action is.[24]

Unfortunately, it is not a problem that is very easily addressed. On the one hand, any attempt by a line department to act as the vehicle for coordinating other departments will be perceived as a threat by other line departments and resisted. This dynamic became apparent, when the former Canadian federal Minister of the Environment, Lucien Bouchard, proposed as part of the Green Plan that Environment Canada assume responsibility for reviewing legislation from other departments to ensure consistency with environmental objectives and assist in the integration of environmental and economic decision making. This proposal was very quickly killed by opposition at the Cabinet level. On the other hand, separate institutional mechanisms created for the purpose of coordinating or integrating policy tend to develop their own institutional interests, adding another layer of complexity to the whole decision making policy.

What is most ironic about this situation is that departments or agencies often perceive, or at least express, their institutional interests in terms of "the public interest." For example, in the United States, the Environmental Protection Agency (EPA) has found that its initiatives in the area of negotiated rule making are being undermined by the Office of Management and Budget (OMB) and the Council on Competitiveness, both White House agencies created to protect the interests of the business community through the review and revision of line agency regulations. Ordinarily, officials from the OMB and the Council have their red pens

poised for action when the EPA submits its regulations; but negotiated rule making has presented a challenge to these organizations: If the business community represents itself at a negotiation conducted by the EPA, how can the OMB or the Council claim that the regulations are not in the best interests of business? The OMB is particularly well situated to cause problems in this regard, since it must approve the allocation of funds to the Regulatory Negotiation Program, but the Council on Competitiveness has also intervened to cancel a major negotiation under the Clean Air Act the day before it was scheduled to begin.[25]

The same dynamic is apparent in Canada. Environment Canada formed the National Advisory Committee on Atmospheric Change to assist it in developing the federal position on global warming for the Earth Summit. The Committee included industry representatives from the oil and gas industry in particular, and Energy Mines and Resources (EMR). The coordinator of the Committee process, an executive from the oil industry on secondment to Environment Canada, found that EMR was more conservative on the global warming issue than the oil representatives themselves, and yet justified their positions on the basis of the best interests of the oil industry.[26] It is difficult to imagine how competition within government can be resolved without somehow making this dynamic more transparent to the public.

2. Public Involvement:

The current problem with public consultation is not quantity but quality. Community interests complain that they are consulted "to death" by government; but they are also frustrated that their efforts bear so little relationship to the final decision made by government. This situation is particularly vexing for the environmental community, whose limited resources demand that they focus their time and effort on areas that produce the best results. The message that the environmental community is sending government is that it intends to discriminate in the future, and restrict its participation to those processes where there is a sense that the government is genuinely committed to listening its advice and making productive use of it.[27]

The traditional approach to "public consultation" is that government invites members of the public to comment on proposed government action before the final decision is made. The public participants are not brought together; instead, government reserves for itself the role of broker to the social interests that compete for its approval. Decision making authority lies completely with the government agency, including decisions about the appropriate trade-offs between the competing positions put forward by the private participants.

This discrete contact with interest groups is not well suited to an environment of competing claims. Private meetings with just the regulatees

raises suspicion and concern that the private sector is in control of the regulatory process at the expense of the public interest.[28] However, broadening private access to include opposing interests (e.g. environmental groups) has not restored confidence in the legitimacy of government decision making.

First, dealing with the competing parties on an individual basis only reinforces suspicion and adversarial relations between them. Without interaction and communication amongst the interested parties as well as government, there is no opportunity for them to learn and evaluate the legitimacy of each others claims, and in this way come to appreciate some of the limitations on government's ability to respond to their own.

Secondly, it is unlikely that participants will accept the legitimacy of a decision, if they do not know how it was reached. If government's approach to deciding between competing claims is to receive the respective wish lists of the participants and then produce a decision from within the "black box", it gives every participant the opportunity to criticize the government when the final decision does not meet their expectations. In this respect, public consultation is not significantly different from the "decide, announce and defend" approach to decision making, to the extent that it treats public representations as just another source of information to consider within its analysis of the problem, without taking into account the expectations that are raised amongst the participants.

Thirdly, public access to government through consultation has become unpredictable, since regulated parties have been joined by opposing public interest groups. Industry groups have expressed dissatisfaction with informal accommodation, because it cannot always be depended upon to work.[29] Organized interests who ordinarily enjoy a close relationship with government can sometimes find themselves shut out of the decision making process, once public interest groups become involved. From the perspective of those concerned about the cozy relationships between government departments and their regulatees, this development has its benefits, but points to the need for greater openness and consistency in the way that government interacts with special interests. The public obviously has an interest in knowing about the involvement of special interests in the regulatory process, and the groups themselves can benefit from certainty about the process in the long-run.

Government has attempted to address the problems with accountability and openness associated with informal consultation by formalizing government decision making through the use of quasi-judicial processes based on our adversarial legal system. In the United States, the Administrative Procedures Act has institutionalized a notice and hearing process for rule making generally. Canada has not yet taken this step, but administrative tribunals are a common feature of the administrative landscape. The use of adversarial processes to resolve public policy issues

has raised its own set of problems. Administrative hearings satisfy the need for openness in government decision making, but are not well-suited to deal with complex social issues that require integrative solutions. While the final decision may be guided by technical criteria, the outcome may still be questioned by the parties, because of the value judgments that are embedded in many "scientific" decisions (e.g. what is an acceptable level of risk), and the choices that have been made between competing scientific claims.

As Offe's theory implies, it is somewhat unfair to solely blame government for its inability to satisfy social demands and pressures that significantly outdistance its available resources. The time has come for society to take responsibility for assisting government in meeting the challenges of an emerging era of social transformation. Be that as it may, government cannot afford to procrastinate in dealing with public frustration over what is perceived as the inability of government to provide competent leadership.

There is a growing sentiment that more can be accomplished if industry and public interest groups meet amongst themselves to discuss the future direction of society, rather than submit to the divide and conquer process of parallel consultations with government. The Canadian Petroleum Association now refuses to participate in consultations with government unless the environmentalists are also present.[30] The

Canadian oil industry is at the point of recognizing that it has more to gain from a process of political compromise based on rational discussion with public interests and transparency of government decision making than pursuing its interests through the exercise of political influence.[31]

Other reactions to government decision making have been more extreme. In the Great Lakes region, chief executive officers from the mining, pulp and paper, refining and chemical industries formed the New Directions Group, to engage the environmental community in a negotiation around the issue of zero toxic discharge. The Group has since expanded to attempt to deal with toxics on a national basis; but from the outset, government was not asked to participate on the basis that it would slow down the process.[32]

Clearly, the exclusion of government from a process directed at developing environmental policy is as counterproductive as the exclusion of affected interests whose cooperation is later required for its implementation. It is unrealistic to expect that government officials will accept with open arms the product of a process in which they have played no part. A more important concern is the legitimacy of allowing government policy to be determined by private interests completely outside the processes of government. The remainder of this study will examine the potential advantages and disadvantages that consensus decision making has to offer government in addressing these problems.

IV.   WHAT IS CONSENSUS DECISION MAKING?

"Consensus decision making" (CDM) refers to the use of structured negotiations to make decisions by way of common agreement. In the public sector context, CDM serves as a mechanism for direct public involvement in government decision making. Commonly referred to as the "multi-stakeholder" approach to public consultation, CDM gives public and private interest groups the opportunity to participate in the decision making process as equal partners with government, to the extent that they are able to reach a consensus. In the absence of an agreement, the decision is made by the relevant authority - the government department, the administrative tribunal or the courts.

CDM is a process tool that can be adapted to existing institutional processes and used by government officials as appropriate. The obvious advantage is that institutional reform is not required. However, CDM does have implications for the exercise of decision making authority within the system - the most obvious of which is that government must commit itself to share power directly with the public (or at least organized special interests within the public). While CDM does not necessarily remove final decision making authority from the responsible government agency, the degree of direct accountability of government decision makers is increased by the need to seek public acceptance of its plans prior to making its decisions. Why, then, have governments in Canada and the United States

shown a growing interest in recent years in the use of CDM to facilitate government decision making, and especially in the environmental context?

The basic advantage offered by CDM over other approaches to public involvement in government decision making is that it facilitates and encourages the public participants to engage in collaborative problem-solving, rather than treating the process as an adversarial competition to exert influence over the final decision maker by whatever means are available (political pressure, technical expertise, etc.). The purpose behind CDM is to create a forum where rational discourse is the primary basis for decision making, not the exercise of political power.

The basic features of a public sector negotiation are outlined by Lawrence Susskind and Denise Madigan in, "New Approaches to Resolving Disputes in the Public Sector".[33] The process follows three stages: pre-negotiation, negotiation and consensus-building, and post-negotiation. In the pre-negotiation stage, "the salient stakeholding interests must be identified along with credible spokespersons or representatives."[34] These parties are then brought together to agree upon the "ground rules" (or procedures) that will be followed by the parties during the negotiation. In other words, the first order of business is to engage the parties in the design of the procedural framework that will structure and guide them in reaching agreement on substantive issues. Some of the areas ordinarily covered by the ground rules are:

1. **The parties** - Who has an interest in the outcome, or whose participation is necessary for the effective implementation of a potential agreement? Are there other parties that should be added to the process? Are there any parties that must be present to have a legitimate process?

2. **The purpose** - What are the goals of the process?

3. **The structure** - Should the parties organize themselves into working groups? Can these groups include persons who are not part of the decision making process? How will decisions be made based on the progress of these groups? How will meetings of the group be documented? What will be the role of technical experts? Can a party change its representatives with or without permission of the other parties?

4. **Timetable** - should the parties establish a deadline for reaching agreement? Can this deadline be changed by agreement of the parties?

5. **Schedules and agendas** - Who determines the schedule and agenda of meetings? How often should the parties meet?

6. **Confidentiality** - Will meetings be open to the public or the press? If meetings are private, how may the parties communicate with the press? Are the parties entitled to withhold relevant information on the grounds of confidentiality? Can information exchanged during negotiations be used in a subsequent legal proceeding?

7. **Role of the Mediator** - Should the parties employ the services of a mediator? Who should pay for His/her services? What role should the mediator play?

8. **Agreement** - Is the object of the process to reach unanimous agreement? What happens if a party withdraws from the process? Can there be an agreement with less than unanimous support?[35]

The most difficult aspect of the pre-negotiation stage is setting the

agenda, since it requires the parties to define the purpose of the negotiation

exercise - what is "the problem", and what range and order issues will be addressed? In the environmental context, there is plenty of room for disagreement on how to proceed, given the scientific complexity that is usually involved, and the divergent professional and political perspectives of the parties involved: Business interests may want proof that there is a problem, while environmentalists are more likely to want action as quickly as possible. The negotiation of agenda may be assisted by the exchange of "statements of concern"[36] prior to the agenda negotiations, to identify the topics each party wants included on the agenda (and why); or after the agenda has been decided, to clarify the parties concerns about each agenda item.

The parties must also decide what resources are required for the administrative and technical support the process, which may include the services of a "neutral" facilitator or mediator to assist the parties in managing the negotiations. Technical assistance is especially important in the environmental context, because of the significant role played by science and technology. An advantage offered by CDM is that the parties may engage in <u>joint</u> fact-finding to provide the information base they need to collaborate on solutions (thus eliminating the cost in time and money of the battle of experts that usually results from adversarial proceedings). Individual parties may also require financial assistance to participate effectively in the process.

Finally, it is recommended that the parties participate in a negotiation training before the process begins, to provide the parties with a base level of knowledge of negotiation techniques. Negotiation training is useful, not just for the uninitiated, but anyone who has not been introduced to "integrative" bargaining techniques, intended to facilitate collaborative problem-solving.

During the negotiation and consensus-building stage of the process, the parties have an opportunity to determine the substance of government decisions or policy, if they can find an agreement that is better than the results they expect to achieve by pursuing other avenues. As indicated above, CDM is associated with a particular style of negotiation, called "principled negotiation", which emphasizes the power of rational persuasion, as opposed to the use of coercive tactics. In his article, "Negotiating Power: Getting and Using Influence," Roger Fisher (of the Harvard Negotiation Project) argues that negotiating power, or "the ability to influence others," is not enhanced by threats; rather it is dependent upon six factors:

1.   Skill and knowledge

2.   A good relationship

3.   A good alternative to negotiation

4.   An elegant solution

5.   Legitimacy

6.   Commitment to the process[37]

The prescriptive model of negotiation that follows from this analysis has three basic features:

1.   A focus on interests, not positions

2.   The creation and claiming of joint gains

3.   The use of objective decision making criteria[38]

In adversarial settings, people approach negotiations with a list of demands, or positions, that they wish to see incorporated into the final decision. This approach is a hinderance to collaborative problem-solving, because it prevents the parties from discovering alternative ways to address the concerns that underlie these demands that are satisfactory to both; or from uncovering the "pattern of adjustment [of these demands] which will most nearly meet the interests of both parties."[39] Principled negotiation requires the identification of the parties needs and concerns, or "interests", so that the parties may address the legitimacy of these concerns, and explore ways that they can be met. In other words, principled negotiation is consciously directed toward finding the optimum settlement.

A certain amount of trust is usually required before parties will move away from a discussion of positions to a discussion of interests, because of the vulnerability they may feel about having to justify their demands in

relation to their interests, or the interests themselves; or the fear that other parties will take advantage of any weaknesses that are exposed. The initial exercise in process-building gives the parties an opportunity to incorporate whatever procedural protections they need to make them feel secure with the process, and to build trust in their working relationship before the substantive issues are addressed.

The identification of interests allows the parties to proceed to the inventing of options that meet the mutual interests of the parties, or at least the presenting of potential packages in which "each party gives up what he values less, in return for what he values more."[40] The ideal situation is that the parties are able to uncover the "elegant solution", that meets everyone's most important needs, and would have been overlooked if the parties had focused their energies on an adversarial pursuit of their original positions.

The practice of principled negotiation does not overlook the fact that not all differences between the parties are the result of misconceptions about each others' true interests; nor that not all differences lend themselves to resolution through a trade-off of interests. What is recommended is that the parties try to find a mutually acceptable objective standard for making decisions on issues that are equally important to the parties. Resorting to objective criteria will not succeed, where the disagreement between the parties is based on a difference in fundamental

values; but the purpose of CDM is not to obtain an agreement at any cost, nor to encourage compromise of people's social values. If a final agreement is reached, the next step is to prepare and sign it.

The post-negotiation stage involves the implementation of the agreement, and/or evaluation of the process. Unlike judicial proceedings, CDM offers flexibility to design mechanisms for monitoring at the implementation stage. The agreement ordinarily provides for renegotiation and remediation, in the event that the conditions and circumstances of the original agreement change. In the private sector, a consensus-building initiative is generally judged by its ability to produce an agreement; but in the public sector context, other criteria must be considered in evaluating "success". Even if the parties only manage to define the issues and identify their interests, government will be in a better position to make an informed decision; and the parties will be less able to complain about unilateral action. If the process results in substantial consensus, government will be that much better off in terms of its ability to judge what is politically acceptable to the community of interests that will be affected by the decision.

The parties to a CDM process should decide at the outset whether they require the services of a third party "neutral" to assist them in managing the process. A facilitator assists the parties by taking responsibility for the administrative aspects of the negotiation process:

convening the participants, handling the logistics of the meetings, keeping the minutes of the meetings, and assisting the parties to exchange and organize information during and between meetings. A mediator performs the functions of a facilitator, but also plays an active role in assisting the parties to design and manage the negotiation process itself, and to engage in creative problem-solving.

The use of a third party neutral offers two advantages over proceeding with negotiations without such professional assistance: First, it often takes the involvement of a neutral third party to overcome the barriers to effective communication that exist between competing interests. Especially at the outset of the process, it is unlikely that any of the parties would have the credibility to orchestrate the process on behalf of the group without raising suspicions. In the public sector context, the government has also to be concerned that the initiative not be interpreted as an attempt to manipulate the groups that are invited to the table. The integrity of the process is more secure if someone other than the stakeholders is responsible for its management.

Secondly, a professional mediator can be a critical resource to parties who are uninitiated in the art of (principled) negotiation. In their study, "Negotiation-Based Approaches to the Settlement of Environmental Disputes in Canada," Dorcey and Riek observe that: "Poor communications skills, negative and adversarial challenging, and a lack of negotiation skills

predominate and cause serious problems in settling environmental disputes throughout the Canadian governance system."[41] Mediators are often chosen on the basis of their substantive knowledge of the issues as well as their process skills, so that a fresh perspective can be brought to bear at the problem-solving stage as well. It is possible that someone from within government may possess the skills to act as facilitator or mediator to the process, but the confidence of the parties in the impartiality of the process is more secure if a professional mediator/facilitator is chosen by the parties themselves.

What does CDM have to offer as a mechanism for legitimizing government action, and serving to advance the achievement of sustainable development? In essence, CDM proposes to enhance government action by "privatizing" the decision making process. The role of government as the autonomous broker of interests is eliminated to accommodate a shift of responsibility for government policy to those interests most likely to complain about the decision if government acts on its own. The assumption is that these interests will accept the partisan adjustments that they make themselves, and perhaps gain an appreciation of the difficulties that government face in making these choices as an added bonus. In this sense, CDM is a compromise between discrete private consultations and adversarial public hearings. It satisfies the demand for greater transparency in government decision making without sacrificing the

advantages of informality.

Is Consensus Decision Making "Consensus Building"?

If we assume that CDM can facilitate agreement amongst the representatives of competing interests, is this process sufficient to establish the broader social consensus that Offe claims is necessary to legitimize government action? There are three factors that are relevant to an evaluation of CDM in this regard:

1. Does CDM ensure sufficient representation of affected and interested social groups?

2. If so, does an agreement amongst representatives ensure the support of their broader constituencies? and

3. Can it be used to secure a broader basis of public support, or "mass loyalty?

1. Representation:

A critical issue that arises with respect to CDM is the need to secure adequate public representation to make the process feasible and legitimate. From a purely utilitarian perspective, there is little point in conducting a CDM process if any of the "key" interests - those whose cooperation is necessary to implement the decision - are not part of the process. The standard recommendation by CDM practitioners is that all affected and interested parties should be invited to the table; but this goal may be difficult to achieve in practice. First, it will not always be easy to identify

the affected and interested parties. Secondly, as a voluntary process, the government cannot require the participation of affected interests. Finally, not all groups that have the capacity to influence government decision making in other forums will have the skills and resources required to participate effectively in a negotiation process, and especially not on a regular basis.

The rationale behind CDM is that the locus of influence can be shifted from the exercise of political power to the exercise of "negotiating power", but this does not automatically ensure that economically and politically powerful groups will not be able to dominate a "principled negotiation". The sources of negotiation power identified by Roger Fisher above are clearly dependent upon the financial and technical resources of the group, and its organizational capacity, both in terms of its internal cohesion, and its ability to confidently marshall its resources for effective participation in the negotiation process. In this situation, issue-oriented groups with modest financial resources may not find CDM an attractive option, compared to an agenda of political activism.

The use of social conflict can shift political debate to a forum where conventional sources of political power are no longer useful to either the state or established interests in dealing with less powerful groups. In other words, public confrontation is the means by which issue-oriented groups may force the state to reevaluate the costs and benefits of shutting them

out of the political process. In some respects, these groups are at risk of losing the most if CDM does not meet their needs, because it usually expected that they will not use one of their primary tools for influencing the government - media publicity and public exposure. Limited resources also makes it more difficult to pursue multiple strategies.

The environmental movement in Canada has grown in sophistication and political clout in the last two decades, but the active membership and resource base of many environmental organizations is still small. In this situation, do environmental groups have any incentive to engage in negotiations? There are a few reasons why environmental groups may agree to participate in negotiations. First, the political influence derived from political opposition can be transitory and unpredictable. Secondly, the CDM process can provide access to resources not ordinarily available to these groups, if a joint fact-finding approach is used. No such benefits are made available by consultation. Finally, and most importantly, CDM gives participants the power of veto. If government and industry want an agreement, they must meet the environmental groups on their own terms. This is a powerful bargaining chip, and may be used to mitigate the imbalance of resources, if the group has good negotiation skills.

The willingness to of groups to participate in CDM cannot be the only determinant for its use. The government has an interest in obtaining consensus in a hostile political environment, but also has the added

responsibility to ensure that the process is politically legitimate: If fairness of outcome is dependent on fairness of process, then the public has an interest in ensuring that negotiations in the public sector are not dominated by powerful private interests. The failure to deal with power imbalances renders CDM susceptible to use as an instrument of social control. This situation is problematic, not only because the process may produce results that are unfair to the weaker parties, but because can stifle broader social reforms by silencing the only vocal elements of society that might have spearheaded the change.

The implication is that CDM should not be used in situations where the inequality between the parties is too great, but this begs the question of what standard should be used to decide whether CDM is appropriate. In his article, "Intervention and Self-determination in Environmental Disputes: A Mediator's Perspective,"[42] Gerald Cormick argues that "self-determination" is the "basic ethical principle that the intervenor should espouse...for all parties to a conflict."[43] On this basis, mediation should only be held if all of the parties are in a position to make informed decisions. To make an informed decision, a party must have full knowledge of its legal rights, its alternatives to mediation, and have the capacity to exercise independent judgment in deciding how best to protect its interests. The ability to exercise independent judgment requires that the party has the technical knowledge to grasp the factual issues at hand; otherwise, the

party will be unable to assess the merits of the proposals put forward by other parties in relation to its own interests.

This approach has the advantage of distinguishing between an imbalance of power that results from the strength of the party's claims, and a disparity of negotiating power between the parties. A group whose bargaining position is weak because its claims are ill-founded does not need protection, so long as it is able to adequately articulate its claims. In situations where inequality of bargaining power does exist, it is open to the government to provide the resources that are necessary to enhance the negotiation power of the weaker party. In other words, as a precondition to negotiations, a group may be provided with the resources it needs to become an effective bargainer.

Overall, the circumstances appropriate for the use of CDM may be constrained by the need to secure adequate representation of the affected interests. Given the likelihood that representation will not be perfect, and the state's continued responsibility to represent and protect the interests of the broader public upon which "mass loyalty" depends, it is critically important to the legitimacy of the process itself that government recognize that it must be prepared to play an active role as a participant in the process and represent these community interests.

2. Continuing Support:

It is difficult to evaluate whether a consensus amongst the members

of the Advisory Group will facilitate the cooperation of their constituencies. The involvement of the representatives at the time of implementation. The involvement of the representatives may help to ensure the feasibility of government policy and improve industry's understanding of what is expected of it, but the agreement itself is not binding on their constituencies. Broader constituency support will depend upon the effective communication representatives and their client groups.

3. Public Support:

The importance of public support will vary depending upon the impact that the policy will have on the general public. For example, a policy to reduce energy consumption directed at reducing or restricting the sue of automobiles would definitely solicit a reaction from the public. Another dimension of public support in the policy making context is the need for the political support of elected representatives.

CDM cannot accommodate direct participation by the general public within the negotiation process itself, for reasons that are obvious: the process would be too unwieldy. It is possible to involve elected representatives in the process and supplement the negotiation process with other consultative mechanisms.

Overall, CDM has the potential for developing social consensus for government policy amongst affected and interested social interests, but its use is somewhat constrained by the voluntariness of the process, and the

need to maintain the legitimacy of the process itself.

Is CDM Consistent with Sustainable Development?

In one sense CDM improves upon Gardner's criteria for sustainability. Not only is it "interactive," but it specifically addresses the need for a mechanism that can help build scientific as well as social consensus in the same forum. Whether it is goal-seeking, adaptive and systems-oriented cannot be answered in the abstract, since the process is designed by the participants to suit their needs and the nature of the problem to be addressed. The Government of Alberta used a multistakeholder process to develop a strategy for dealing with an issue central to sustainability - atmospheric emissions that contribute to global warming. The remainder of this study will examine how CDM was adapted to deal with this subject, and whether it provides any advantages over existing decision making processes in addressing the concerns of Offe and Gardner.

V.   THE CLEAN AIR STRATEGY FOR ALBERTA: AN OVERVIEW:

On March 15, 1990, the Ministers of Energy and Environment for the Province of Alberta, Canada announced the commencement of a public consultation process to "develop a strategic plan to achieve clean air, through public discussion on atmospheric emissions resulting from the

production and use of energy in Alberta."[44] The "Clean Air Strategy for Alberta" (CASA), as the process became known, has three stated purposes:

1. To help identify and clarify the most important issues associated with energy production and use, which need to be addressed in developing a clean air strategy;

2. To outline practical and achievable actions that can be taken by consumers and producers to reduce emissions; and

3, To develop policy and program recommendations to present to the provincial government.[45]

This focus on energy-related emissions is explained by the political motivation for CASA. As is stated in the final Report to the Ministers submitted to the Government of Alberta on November, 1991:

The initiative was in response to continuing national and international discussions on the impact of fossil fuels on global warming, acid deposition and smog. These concerns are of particular significance for an energy-producing province like Alberta.[46]

Alberta is the largest producer of fossil fuels - oil, natural gas and coal - in Canada. Approximately 75% of the oil and gas produced in Alberta is exported to other provinces in Canada or the United States. Coal is used to generate over 90% of the provinces own electricity, but 40% of the coal produced is exported primarily to the United States (See Figure 1). The energy industry is the cornerstone of the Alberta economy, both in terms of government revenues,[47] and employment in the province.

Canada's contribution to global atmospheric emissions of sulphur dioxide, carbon dioxide, nitrogen oxides, volatile organic compounds (VOCs) and chloroflourocarbons (CFCs) is relatively small compared to other industrialized countries (See Table 1); but Canadians are amongst the highest per capita emitters of carbon dioxide, the gas considered to be the primary contributor to global warming.[48] Within Canada, Alberta is the highest per capita emitter of carbon dioxide and nitrogen oxides, and the second highest per capita emitter of sulphur oxides.[49] The production of energy is a major contributing source of atmospheric emissions in Alberta.

Constitutional jurisdiction over the environment is primarily a provincial matter of jurisdiction, although the federal government has managed to establish its own sphere of concurrent jurisdiction by virtue of having taking a leadership role in the area at a time when most provinces were not interested in occupying the field. More recently, the federal governments' jurisdiction to enter into international treaties has enhanced federal involvement in determining the direction of environmental policy in Canada; however, the treaty-making power does not include the authority to implement treaties that affect provincial powers without their agreement.

The Canadian federal government has entered into several international agreements dealing with atmospheric emissions in recent years.[50] Most recently, Canada committed the country to stabilizing emissions of carbon dioxide and other greenhouse gases at 1990 levels by

the year 2000 at a conference in Bergen, Norway in early 1990. This commitment, known as the Bergen Declaration, was confirmed at the Second World Climate Conference in Geneva, Switzerland later that year, and essentially represents the position that has been taken by the federal government in negotiations on global warming in anticipation of the United Nations' Earth Summit, to be held in Brazil in June, 1992. The same goal is stated in the Green Plan, the federal government's "comprehensive" environmental strategy.

This flurry of activity at the international level raises ambiguities as to which level of government has the jurisdiction to implement these agreements: Is provincial cooperation required, or may the federal government act unilaterally? The federal government was the first to attempt to use public consensus to establish the legitimacy of a federal initiative on atmospheric emissions with its Green Plan consultation; but the result was widespread criticism of the process from the stakeholders. The CASA process has given the Alberta Government the opportunity to flex its muscles in terms of its ability to marshall the public support that is needed to implement an air quality management strategy. The primary motivation behind CASA is the Alberta Government's decision to take control of the situation by playing a leadership role in the field of air quality management.

The CASA Process:

The CASA process actually got started in January, 1990, when Alberta Energy and Alberta Environment retained facilitator, Susie Washington, of Western Environmental and Social Trends (W.E.S.T.) to act as convener and facilitator of a public consultation on energy-related atmospheric emissions. Ms. Washington contacted 40 representatives from the public health sector, major energy producers and users and the environmental community to assess the level of public interest in participating in a consultation process on air quality; to scope out the substantive issues these key interests wanted addressed, and to ask them what kind of process they wanted. As a result of these preliminary inquiries, the government and consultant designed a four stage consultation process and established a multi-stakeholder Advisory Group to assist and advise the government throughout the policy making process.

The Advisory Group:

In June, 1990, an Advisory Group of 13 stakeholders, including Alberta Energy and Alberta Environment, was formally appointed by the Ministers of Environment and Energy. The departments were represented by the Assistant Deputy Ministers (ADMs) for those departments. Non-government stakeholders were permitted to choose their own

representatives. This is a significant point, as it prevented the process from becoming politicized and controlled by government.[51]

The membership of the Advisory Group reflected an attempt to ensure that all social groups with an interest in air quality in the province were somehow represented:

1. Independent Petroleum Association: Bob Fiek/Bill Anderson

2. Alberta Public Health Association: Nick Bayliss

3. Electric Utilities Planning Council: Al Brekke

4. Coal Association of Canada: Giacomo Capobianco

5. Canadian Chemical Producers' Association: Andy Day

6. Small Power Producers' Association: Jason Edworthy

7. Alberta Health: George Flynn (observer)

8. Alberta Environmental Network: Robert MacIntosh
   Brian Stazenski

9. Canadian Petroleum Association: Doug Bruchet/David Powell

10. Energy Resources Conservation Board: Dr. Phil Prince

11. Alberta Urban Municipalities Ass'n: Lillian Staroszik
    Sharon Fisk

12. Alberta Environment: Ken Smith

13. Alberta Energy: Norm MacMurchy

The role of the Advisory Group is described in the final Report to the Ministers as "advising on the consultation process, reviewing and

commenting on information material developed for the Clean Air Strategy and facilitating communications between the Advisory Group and the organizations."[52] In practice, the Advisory Group functioned as a collective decision-making body that essentially directed the consultation process. As ADM Ken Smith described it, there was a gradual devolution of responsibility for the process and its outcome to the stakeholders.[53]

The Group met three days a month, and meetings were co-chaired by the Assistant Deputy Ministers. Technical assistance for the Advisory Group was primarily provided by Alberta Energy and Environment: both departments assigned four technical staff members to respond to the information and research needs of the Group. The stakeholders themselves brought their own technical resources to the process.

Administrative support for the process was primarily provided by Susie Washington and her colleagues at W.E.S.T., but Bob Mitchell, a senior manager in the Environmental Affairs division of Alberta Energy, and John Shires, Head of the Community Affairs Branch of Alberta Environment were also responsible for coordinating the two departments and liaising with the stakeholders.[54] The process was funded jointly by Alberta Energy and Alberta Environment, and included a per diem stipend to the stakeholders for the attendance of meetings, and payment of a consulting fee for background research conducted by the stakeholders.

The CASA process was conducted in four phases:

Phase One: Issues and Options Workshop:

Participants from a broad spectrum of stakeholder groups attended a 3-day workshop held on September 6,7,8, 1990, to identify the environmental issues associated with energy-related emissions, areas of uncertainty, short- and long-term priorities, policy options and areas requiring more information and research.

One hundred individuals participated in the Workshop, representing industry, public health professionals, scientists, consumers, labour, the aboriginal community and the environmental community. The Workshop was introduced by the Ministers of Energy and Environment themselves to reinforce the government's commitment to the consultation process. The participants were then divided into eight Small Groups and assigned one of seven key topics: standards and regulations, economic instruments, efficiency measures, information/education, scientific and technological research, socio-economic measures and human health. A facilitator was assigned to each of the Groups.

The Workshop itself was organized into four sessions, and each session was followed by a plenary meeting to report and consolidate the progress made. At the first session, the Small Groups were asked to identify the issues that needed to be addressed in the Clean Air Strategy and to prioritize them. The second session was devoted to the creative

"brainstorming" of ideal solutions for dealing with these issues, free from any political, economic or jurisdictional constraints. Session three focused on identifying "the constraints, obstacles and uncertainties" associated with these options in the "real world".

Finally, the fourth session required the Groups to focus on its assigned topic, and identify the following:

1. What information is required before new strategies can be developed;

2. What actions can be taken now, and

3. What new institutional arrangements need to be in place before new approaches can be taken.

The discussions at the Workshop reflected a mixture of concerns: There was general agreement that Alberta should take a leadership role in addressing air quality issues; but it was also apparent that energy-related emissions reductions was a sensitive issue in a province whose economy rested on the energy sector. The final product of the Workshop was a list of nearly 100 concrete policy measures, which became the basis for the Advisory Group to begin developing the strategy. This work by the Advisory Group ran parallel to the second phase of the consultation process: the Regional Sessions.

Phase Two: The Regional Sessions:

At the Regional Sessions, the general public was given an opportunity to "ask questions about clean air issues, present their views and recommend options for action"[55] at eight Alberta centers during November and December, 1990.[56]

The regional sessions had two components - an afternoon open house and an evening public meeting. The primary purpose of the open houses was to provide the public with information on CASA and air quality issues. Exhibits were hosted by government and other Advisory Group members for this purpose. At the public meetings, members of the public presented oral regarding their air quality concerns. Written submissions were also welcome.

Publicity for the regional sessions was approached in three ways: Information about CASA and the regional session was sent to an extensive list of individuals and groups with a known interest in air quality issues; announcements were placed in provincial and local newspapers to advertise the sessions[57], and a schools program for which educational materials were prepared.

The discussion generated at the regional sessions was lively and informed, but the level of participation was a disappointment: 645 Albertans attended the open houses; another 210 came to the public meetings. The moderator of the sessions received 42 oral presentations and

96 written submissions. Approximately half of the attendance at the regional sessions was accounted for by the schools program - 17 schools gave oral presentations, and five others made written submissions.[58]

Members of the public who did participate tended to fall into two categories: those committed to environmental issues and prepared to address the "big picture" (including the global warming issue), and Albertans who had specific air quality complaints. In Edmonton and Calgary, ground level ozone was identified as an emerging problem for those who reside and work in these cities. In Northwestern Alberta, concern was expressed about the health and environmental effects of acid-forming "sour gas" emissions associated with energy production in that part of the province. Despite CASA's focus on energy-related emissions, Albertans set their own agenda to a certain extent by including air toxics on their list of concerns - primarily dioxins, furans and chlorinated organics associated with incinerators, pulp mills and asphalt plants.

While the number of participants may have been low, the quality of the presentations was high, and produced 65 recommendations to government that roughly mirrored the results of the first Workshop. Participants also echoed concerns raised at the Workshop regarding the need for improved air quality monitoring approaches, the lack of public information and education on air quality issues, and the importance of public consultation of interested and affected social groups. Industry was

particularly concerned that decisions be based on sound scientific information, and that new approaches to air quality management consider the global nature of energy markets and the effect that air emission reductions might have on the international competitiveness of the industry.

While the success of the schools program was encouraging from an intergenerational perspective, the conclusion that was drawn from the regional sessions by most of the Advisory Group members, including the government, was that the general public do not perceive air quality as a priority problem in Alberta. As the Moderator concludes in his Report on the Regional Sessions:

> The limited participation in the regional sessions suggests that only a small segment of society is seriously concerned about these issues. Those who did participate made it clear they want action to ensure we have clean air, and are asking the provincial government to do whatever is necessary to make that happen. On the one hand, while the public says they want a clean environment, there is great uncertainty whether the public overall understands the issues or is willing to pay the cost of doing things right and making the necessary changes.... The regional sessions suggest the greatest challenge to implementing an effective clean air strategy is to ensure Albertans understand the required commitments and are willing to make the necessary changes.[59]

The Advisory Group drew several conclusions about the air quality management needs of the province from the preceding consulations that were incorporated in the framework document presented at the Summary Workshop:

(1)   There is a need for a more comprehensive system for managing air quality;

(2)   Local air quality issues and problems need to be
        addressed as a priority;

(3)   Cumulative regional emissions and impacts need to be
        addressed;

(4)   A strong commitment to cost-effectiveness and flexibility in
        managing air quality is needed;

(5)   Scientific and economic uncertainties need to be
        addressed;

(6)   Alberta needs to develop a position on current and anticipated
        commitments by the federal government to reduce or stabilize
        gaseous emissions; and

(7)   Albertans need to understand the required commitment and be
        willing to make the necessary lifestyle changes.[60]

Phase Three: Summary Workshop:

A second 3-day Summary Workshop was held in September, 1991,

to give a broad cross-section of public stakeholders the opportunity to

review and discuss a 135-page framework document that had been

prepared by the Advisory Group. It was not possible to develop consensus

agreement amongst the delegates on the details of the framework

document. The facilitator did attempt to achieve this goal, but it became

apparent that issues like global warming were far too contentious to be

dealt with by such a large group with such conflicting views in such a short

time period.

What the Workshop did provide was general agreement on the basic

thrust of the proposed strategy; the endorsed some recommendations (like

the air quality management strategy), and suggested revisions to others; the proposal of new recommendations; and advise on changes in tone and general direction that were necessary for the final report.[61]

Feedback was incorporated into the final draft of the <u>Report to the Ministers</u>.

Phase Four: Report to the Ministers:

The final <u>Report to the Ministers</u>, unanimously agreed to by the Advisory Group members, was submitted to the Ministers in November, 1991. It recommends a set of 13 goals (See Table 2), and identifies the objectives and tasks necessary for implementation of these goals. The Report also establishes the priority in which these goals and objectives should be addressed. The goal established as a first priority is the implementation of a comprehensive air quality management system, consisting of a nine-step process outlined in Figure 2. A conclusion drawn by the Group was that the existing mechanisms in place for managing air quality - primarily point source command and control regulation - is inadequate to the task of addressing the air quality issues confronting the province, both in terms of environmental protection and cost-effectiveness. The rationale behind a comprehensive management scheme is that it will ensure that, in future, air quality management will be based upon long-term planning and demonstrate a greater capacity for adopting innovative approaches that are tailored to meet identified problems. and the creation

of a multi-stakeholder Clean Air Advisory Committee to administer it.

The Report also requires the creation of a Multistakeholder Clean Air Advisory Committee to administer this management system. The first order of business for the Committee will be the implementation of the specific measures identified as goals by the Strategy.

A secondary list of priorities recommends immediate action certain on specific measures, primarily in the area of energy efficiency and conservation. Environmental education is also given priority status, as well as Cabinet endorsement of the "Recommended Alberta Position Regarding Greenhouse Gases" included as part of the Strategy (See: Appendix A).

According to the Alberta system of government, the CASA Report required the approval of Cabinet before it became official government policy. A presentation of the Report was given to the Economic Planning Committee of the Alberta Cabinet shortly after its submission. At their own request, non-government members of the Advisory Group were granted permission to appear before the Committee and participate in the presentation of the Report.

In March, 1991, a Request for Decision was made to Cabinet by Alberta Energy and Alberta Environment for endorsement of CASA and approval for its implementation. Cabinet has since granted its endorsement of the entire document, and has approved the implementation of the priority items, including the multi-stakeholder Air Quality Advisory

Committee.

At the present time, Alberta Environment has assumed primary responsibility for CASA, and is in the process of establishing the permanent Air Quality Management Committee. As suggested by the Advisory Group it will include some former CASA Advisory Group members for the sake of continuity, but will place greater emphasis on technical expertise to facilitate the implementation process. The Department of Energy is drafting energy efficiency legislation. It should also be noted that the Report makes a corollary recommendation that the Government establish "CASA II", to address public concerns regarding air toxics. This recommendation is presently being evaluated by Alberta Environment.

The Negotiation of CASA:

The first two meetings were spent establishing the ground rules for the meetings, and subsequent meetings were devoted to substantive issues. The first task of the Advisory Group was to approve a set of fact sheets to be distributed in advance of the Issues and Options Workshop. The purpose of the fact sheets was to help Albertans understand the scientific, environmental and economic issues associated with air quality issues, and the challenges facing individuals, industry and government in addressing these issues (including lifestyle changes). The departments prepared the initial drafts of the fact sheets and submitted them for review by the Advisory Group. This proved to be a lengthy process, but it was a

good opportunity for the Advisory Group members to begin developing a working relationship and a sense of common achievement by coming to agreement issues less controversial than the primary policy issues, for example, a definition for "global warming". Eventually, fact sheets were sent to 5,000 organizations and individuals with a potential interest in air quality issues.[62]

After the Initial Workshop, the Advisory Group turned to its primary task of developing a clean air strategy for the province. It took as its starting point an evaluation of the 99 measures identified at the Issues and Options Workshop, by initiating eight information gathering projects to investigate the following areas:

1. A definition of clean air;
2. Full cost accounting;
3. Market-based approaches to managing air emissions;
4. Natural gas and electric utility incentives;
5. Energy efficiency legislation;
6. An inventory of transportation initiatives;
7. Coordination of science and technology; and
8. Energy and environmental education initiatives.

This research was conducted by establishing working groups of technical experts from within Alberta Energy and Alberta Environment to prepare a report on each project. Assistance was also provided by resource persons brought to into the process by the non-government Advisory Group members, and National Economic research Association, Inc. was retained to conduct a report on "Market-based approaches to Managing Air

Emissions in Alberta." The relationship between the Advisory Group members and the working groups varied: Some Advisory group members became actively involved in the working groups; others preferred to play a supervisory role. [63]

By June, 1991, the background reports were completed; but the ongoing efforts to evaluate these options had begun to reveal fundamental differences of opinion as to how to proceed. The focus on concrete measures and programs was consistent with the political status quo, which favoured incremental adjustments to the existing regulatory framework.[64] This approach also complemented the environmentalists' agenda, whose constituents want immediate action to reduce atmospheric emissions. But it eventually became apparent that industry representatives were not prepared to recommend to government a concrete set of measures for implementation, based on what could be accomplished before the Summary Workshop in September. The basic objection of the Canadian Petroleum Association in particular was that the Group could not properly evaluate concrete measures without first studying the problem and obtaining adequate information. [65]

First, industry representatives made it clear that many of their constituents were far from convinced that an air quality problem existed in Alberta - a view that seemed to be shared by many Albertans, based on the results of the Regional Sessions. Industry insisted that more research

supervisory role. [63]

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First, industry representatives made it clear that many of their constituents were far from convinced that an air quality problem existed in Alberta - a view that seemed to be shared by many Albertans, based on the results of the Regional Sessions. Industry insisted that more research needed to be done to clearly determine the nature and scope of the "real" problems, and then select measures that "map out" against these problems. For example industry was opposed to the notion of adopting provincewide

standards to regulate emissions whose adverse effects more localized.

Second, the concrete measures themselves could not be properly evaluated without better information. For example, the Energy Resources Conservation Board adapted its model of the Alberta economy to allow for an evaluation of the economic impacts that would result from various levels of emission reductions,[66] but the Advisory Group found itself estimating numbers in orders of magnitude to compensate for the lack of real data.

Thirdly, industry was fundamentally opposed to the incremental approach to air quality management that would result from the focus on concrete measures. If air quality was to be managed effectively, there had to be a process for rational and comprehensive planning. In particular, the decision making process had to compare the economic costs as well as the environmental benefits provided from alternative regulatory approaches, so that cost efficient use could be made od limited resources.

These differences smoldered under the surface until the process hit a flash point that nearly caused it to dissolve: When asked to cost out each of the 99 concrete measures, industry refused on the basis that it was a waste of time and resources to do so until it had been determined which of them related to defined problems. The environmentalists were understandably concerned that the industry position was a strategy to obfuscate the process. From a political perspective, the prospect of a delay in decision making would be a victory for industry and a defeat for the

environmentalists. The situation was finally resolved when a "strategic framework" for decision making presented to the Group by the CPA, representative for the Canadian Petroleum Association, was unanimously accepted as the guide to decision making (See Figure 3). This strategic framework is now included in the final Report to the Ministers.

In some respects, the adoption of the strategic framework marked a new beginning in the CASA process, but the previous years' work was not completely wasted. For example, the background report on a definition of clean air provided the basis for defining the "Vision" of the process: "The air will be odourless, tasteless, look clear and have no measurable short- and long-term adverse effects on people, animals and the environment."[67] By working through the stages of this model, the Group was able to develop a framework document for presentation at the Summary Workshop, but not without one last struggle between the environmentalists and (primarily) industry regarding the final recommendations to government. Several members felt that only the air quality management strategy should be recommended for immediate implementation, on the basis that all substantive measures should be evaluated collectively by the Committee. The environmentalists (successfully) demanded that certain measures, especially energy efficiency, did not require further study and should also be recommended for immediate action. The final Report to the Ministers reflects this political compromise.

VI. IS CASA A MODEL OF DECISION MAKING FOR SUSTAINABLE DEVELOPMENT?

Consistent with the analytical framework outlined above, an evaluation of CASA must address two questions:

(1) Did the use of CDM help reconcile competing social interests and build social consensus for the Strategy?

(2) If so, did the process incorporate the features that Gardner requires for achieving sustainability?

Was CASA Consensus-Building?

The CASA process did result in a strategy that was unanimously agreed to by the Advisory Group members. How significant is this "consensus," and to what degree can it be attributed to the use of CDM? The majority of the Advisory Group participants[68] interviewed did reveal that the use of a negotiation-based approach did facilitate collaborative problem-solving amongst the group. The use of joint fact-finding through the working groups was an effective use of resources, and built a commonly shared information base for the Group, and the parties themselves brought a wealth of information and resources to the process. The key contributing factor to consensus-building identified by the participants was the relationship of mutual trust and respect that was established through their direct dealings. The experience of Al Brekke, representative for the Electric Power Utilities Association, is typical of other Group members.

Al Brekke at the beginning of the process, did not know the environmental representatives, and initially came to view them as "the opposition": It took several meetings, but once a relationship of trust had been built, the process became exciting. We could lay our problems on the table, and begin to explore mutual goals." Through the process, Mr. Brekke came to understand why the environmentalists felt so strongly about the environment, and came to appreciate that "we could <u>do something together</u>." Similarly, the environmentalists came to understand and accept the financial constraints on the oil industry in the current economic climate, and the different needs of large versus small producers (e.g. the importance of cash flow to the survival of the small producers).[69] Overall, the development of direct relationships between interests was very effective at producing a common awareness and understanding of the issues.[70] It also gave non-government participants an appreciation and respect for the difficulties that government confronted in trying to deal with these problems.[71]

The relationship of trust also affected the way Advisory Group members interacted and made decisions. Participants could disagree with one another without sending the process into a tailspin. As participants came to view each other as "reasonable people," the basis for decision making with the groups became a process of rational discourse, whereby Group members resorted to rational and moral argument to persuade the

other Group members rather than politics.[72] This dynamic of "genuine discussion" had a reinforcing effect, as it tended to reveal political posturing[73].

There was general agreement that a skilled process manager was essential to the process. A smaller number felt that the process had be managed by a "neutral," non-governmental person to avoid the appearance or temptation of government to take control of the process.[74] Susie Washington was effective in that role. She ensured that work got done on time, materials were distributed in advance of meetings, acting as liaison between the various groups and generally providing the process the administrative support it needed. During the meetings, Ms. Washington also made an important contribution by dealing with participants one-on-one to diffuse conflicts and encourage understanding of alternative views, interests, and constituency demands.[75]

It was also widely acknowledged that Ken Smith, ADM of Environment, in his work as co-chair, played an instrumental role as facilitator of the meetings, and demonstrated considerable skill and leadership in managing the negotiations and identifying potential areas of agreement. As one participant stated: " He is why we got movement and closure."[76] His treatment of the global warming issue is particularly instructive. In his role as co-chair of CASA, he intentionally sought to keep the issue out of the mainstream discussion until the time was ripe for an

agreement:

> As the strategy started to become more and more visible, and people began to see a bigger picture - 'hey, there are a whole bunch of things here for us that are important to us' - global warming was viewed in a different context.[77]

In fact, the global warming issue was negotiated at the end of the process, and was, indeed, a contentious issue to resolve. A log jam between the environmental representatives and the oil industry representatives was finally settled when the two representatives from each were sent out of the room to reach consensus amongst themselves, and present the results to the rest of the Group for approval; otherwise, the government would proceed unilaterally to develop its position for presentation before the Council of Canadian Ministers of the Environment. The result was the "Recommended Position on Global Warming" that is now included in the Report to the Ministers.

Is there reason to believe that the non-governmental Advisory Group members will continue to support CASA? For the most part, there is a strong sense of ownership in CASA amongst the private stakeholders. When a member of the opposition criticized CASA in the legislature, he received telephone calls from Advisory Group members to express this anger.

This support is not completely unqualified. The representatives of the Coal Association and Independent Petroleum Producers' Association were not convinced that government should resort to CDM as an alternative

to making difficult political choices on their own. It was strong support for the air quality management system that secured their signatures on the Report. The environmentalists were strongly in favour of the process, but tentatively in favour of the Strategy itself, in the sense that a commitment to concrete measures beyond energy efficiency (especially CO_2 emission reductions) is attendant upon the establishment of the management system. Overall, it can be said that the CASA process was successful in producing a policy that has the general approval of the non-governmental representatives that were involved in it.

An additional benefit of the process has been the lasting relationship that have resulted from it. For example, Mr. Brekke employer, Alberta Power, Ltd. has retained Robert MacIntosh, one of the environmental representatives, to participate in their internal policy review and advise them environmental matters.

While the CASA process was successful is producing a consensus within the Advisory Group, it must be considered whether it will generate sufficient social consensus to facilitate its implementation.

1. Representation:

Two organizations that were invited but refused to participate were the Alberta Department of Health and Labour. The poor relationship between Alberta Health and Alberta Environment may have been a

contributing factor to its decision not to participate. Labour objected to the process on the grounds that CDM is a form of corporatism.[78] So far, their absence has not led to serious opposition to CASA (the Departments of Energy and Environment were successful in securing the support of the Department of Labour before the Reference for Decision was filed with Cabinet).

Participants remarked that the process could have been improved by stronger representation from the health community in light of the public concern regarding air toxics expressed at the Regional Sessions, and the contribution that was made by the Alberta Public Health Association representative, Nick Bayliss. At the outset of CASA, the participation of Alberta Health may not have been viewed as critical to developing a strategy on energy-related atmospheric emissions, but its involvement will almost definitely be required for the proposed CASA II, dealing with air toxics.

A potentially more significant absence was a representative of the building trades. Again, at the outset of the process, the decision was made to start with the energy industry, but in the final analysis one of the few concrete recommendations made beyond the management strategy was reform of the building code to improve energy efficiency. Certainly, energy efficiency was an important issue for the environmental representatives, but it may not be coincidental that the oil industry representatives were willing to make concessions on concrete measures that did not affect them.

The representative of the Energy Resources Conservation Board found himself in the position of making the case against exempting the energy efficiency recommendations from the necessity of review under the air quality management system, to fill the vacuum.[79] It may have been appropriate to invite the building trades to provide a representative to the process when it became apparent that the building code was an important issue, even though the process would have been delayed by the necessarily to bring this individual up to speed with the rest of the Group.

A representative of the Alberta native community participated in the early process, but no replacement could be found for this person after he withdrew from the process. The absence of native representation was recognized as on omission, although it is not clear why representation was not provided by the native community. It was suggested that the community's involvement in other issues at that time may have diverted their attention and limited resources away from CASA.[80] John Shires', the community liaison director for Alberta Environmental indicated that it has been difficult to involve the native community in previous consultations, and may indicate that these processes, CASA included, pose cultural or technical obstacles to native participation.

Participation by the environmental community was assisted to some degree through financial assistance and payment for work that was done on the concrete measures. The environmental representatives felt

comfortable that they were able to hold their own in the negotiation process, and it is clear that the industry representatives were impressed and persuaded by their ability to marshall technical information and arguments to support their views. It is still important to reflect upon the reason why CASA was not able to produce a consensus on prescriptive measures.

The explanation given by the participants interviewed was that the Group was finally convinced by its own experience that a permanent body with greater technical and scientific resources was required to properly evaluate and implement concrete measures. This may have been a responsible and intelligent approach to take under the circumstances, but it leaves unresolved the political decisions that must ultimately be made regarding the reduction of atmospheric emissions. Better information may improve the quality of decision making by allowing more intelligent use of limited resources, but it will not necessarily generate the political will to act once this information is available. In other words, rational analysis is a necessary but not sufficient condition for political action, and it is a mistake to assume that the implementation of CASA will be a purely technical process.

Finally, it must be considered whether any precautions were taken by government to ameliorate lapses in representation within the Advisory Group. The multistakeholder workshops provided a useful vehicle for

involving a broader spectrum of interests than those included in the Advisory Group itself, especially since the Group took the recommendation of the Initial Workshop as the basis for developing the Strategy and was required to report back to this forum before submitting Report to the Ministers.

The role played by government as a member of the Advisory Group was primarily to facilitate the process, rather than engage in the process as an active participant with its own agenda.[81] Several non-governmental participants felt that the process would have benefitted from clearer government direction in this regard. Although there was no specific intention to compensate for the "empty chair" left by interests such as the building trades, the co-chair did interject its views as to the political feasibility of various proposals under consideration, and generally served to remind the Advisory Group that their own interests had to be considered in the context of what was best for Albertans.[82] The Regional Sessions also provided a perspective on the views of Albertans that had an effect on the deliberations of the Advisory Group. While the government may have played a stronger role in identifying its own interests as the elected representatives of the public, the CASA process was, for the most part, successful at generating consensus amongst key interests for a policy intended to pursue the best interest of the Province.

2. Constituency Support:

An expected benefit of the multistakeholder approach to CASA is that it will facilitate implementation of the strategy without public resistance.[83] The implementation of CASA will directly affect the constituencies of those interests represented on the Advisory Group, so it is important to consider to what extent the agreement of the Advisory Group members is reflective of the cooperation that may be expected from the broader group.

The use of CDM at the implementation stage can assist this process by improving the technical feasibility of programs. CASA cannot be evaluated in these terms, because the process did not achieve consensus on technical measures. What can be considered the goals and management system prescribed by CASA have the political support of these constituencies. A certain amount of speculation is required at this point, since the answer to this question will only be known when the Strategy is implemented. An indication of the level of constituency support for CASA may be provided by the relationship that was maintained by Advisory Group members with their constituencies during the CASA process, and the degree to which the final agreement is reflective of the wishes of these constituencies.

The representatives from the trade associations were in the best position to communicate and receive instructions from their constituents because of the mechanisms already in place for this purpose. For example,

the representative for the Canadian Petroleum Association was able to use the committee system of that organization to communicate with the senior environmental managers of its member companies, and the board of the CPA.[84]

The environmentalists required as a condition of their involvement that they be provided with resources and given a reasonable amount of time to consult with the 60 organizations that they represented from across the Province.[85] All of these groups wanted to be kept informed about the process, and 31 groups actively participated in regular workshops that were led by these representatives.

The representative for the Small Power Producers' Association of Alberta was in a more difficult situation. The loose and cumbersome structure of his constituency made effective communication difficult, so that direct contact with the Board (beyond informational reports) was restricted to issues that he deemed controversial. Fundamental to the CASA process itself was the relationship that was maintained between the government ADMs and the sponsoring Ministers, to ensure that the process was sufficiently plugged into the political system.

Overall, the response of these constituencies has been favorable, but there are indications that the situation is somewhat unstable. The environmental community is largely supportive of CASA, but there is a contingency that feels very strongly that the proposal for establishing a

management system is not an adequate substitute for concrete measures. The ambivalence of the representatives of the coal industry and the independent petroleum producers may reflect a reluctance amongst their constituencies to accept the need to address energy-related atmospheric emissions at all. While industry support for the management system appears to be strong, it does not mean that even those measures that were advanced by the industry representatives themselves will not meet with resistance from its constituents. For example, the CPA strongly advocated the use of market permits as an alternative to point source command and control mechanisms, but Gordon Lambert acknowledged that there is presently more resistance to the notion of permits from industry than the environmental community, because of the uncertainty that will result from changing the rules of the game. The implication, recognized by the Advisory Group members, is that further efforts at consensus building will be required to ensure the successful implementation of CASA. Despite these elements of instability, the CASA process has created momentum in favor of its implementation and has arranged for mechanisms that should assist this stage of the process.

3. Public Support:

As indicated above, CDM is not a mechanism that can be used for broad public involvement. This difficulty was addressed in the CASA

through the Regional Sessions. The limited attendance at these public meetings highlights the challenge that government faces when it decides to take a proactive approach to complex social problems. It is difficult to consult the general public on such a complex global problem, especially when adverse local effects have yet to appear. The Literature Review on the Greenhouse Effect and Global Warming prepared by the Alberta Research Council reveals that a doubling of global carbon dioxide levels is predicted to occur by 2050 at current emission rates. The consequences for Alberta are that the province would be, on average, be 3 degrees celsius to 7 degrees celsius warmer, and receive 7% to 30% more precipitation, resulting in a climate similar to present day Colorado.[86] At the risk of sounding facetious, it may be difficult to convince residents of a Northern climate that a potential increase in the average temperature is a priority problem compared to the air toxic concerns that were brought forward by residents at the Regional Sessions (especially if it will impose costs on the public). People primarily perceive the world as they experience it, unless awareness is consciously received through education.

The use of public hearings may not have been the most effective communication strategy for consulting the public, in the sense that people feel that they must be informed on the subject to participate. A public survey may have been a more convenient and less intimidating means of gauging public concern surrounding air quality issues. Public education

may be a necessary component of a longer-term strategy, but ultimately the government will have to take responsibility for the decision to act.

Despite the limitations of CDM as a mechanism for broader public involvement in the decision making process, it can empower the elected representatives of the public to advance policy objectives within the institutions of government. There is a political risk in using CDM for developing policy in the event that it fails; but if consensus amongst the key affected interests is achieved, the political risk is shifted to those within the political system who would oppose it.

In the case of CASA, the Ministers of Energy and Environment were in a much stronger position to gain Cabinet approval for the clean air strategy than would have been the case without the consensus of the key affected interests (and especially the oil industry).[87] This situation is reflected in the Ministers' decision to seek approval for the entire strategy, and their success in doing so.

The general conclusion that can be drawn regarding the use of CDM in the CASA process is that it did facilitate consensus amongst competing social interests, and that this consensus enhanced the capacity of government to achieve its policy objectives. The development of consensus beyond the Advisory Group itself was enhanced by the multistakeholder workshops, and to a lesser degree, by the Regional Sessions. It is recognized, however, that the implementation of CASA is not ensured as a

result of this process. Further efforts at consensus building will be required at this later stage.

Is CASA Consistent With Sustainability?

At this stage, a comparison needs to be made between the CASA process, and the multistakeholder air quality management system that will result from it. The recommendation to establish the air quality management system is, in a sense, an acknowledgement by the Advisory Group that CDM alone is not a sufficient condition for achieving sustainable development, in the area of air quality management. If we look at the design of the management system that has been proposed, it is clear that Gardner's process concerns have been addressed.

Goal-seeking:

The management system anticipates that the multistakeholder committee will seek to identify current and future issues, set priorities, and revise these its priorities to reflect new knowledge.

Systems-orientation:

The management system proposes to establish "comprehensive" air quality management to ensure long-range rational planning (the temporal dimension); and it identifies the need to ensure that "plans and actions are targeted to the specific problem of concern, i.e. that local solutions are used to resolve local problems, regional solutions are used to resolve regional problems, etc (the spatial dimension)."[88] An important omission from the

management plan, from a sustainable development perspective, is recognition of the need to act locally to address certain global problems, global warming providing the prime example. Industry did raise the subject of global tradeable permits, as a means of addressing atmospheric emissions at the global level in a cost efficient manner and without the necessity of industry regulation; but it is unlikely that the political and administrative obstacles to such a system will be overcome any time soon.

Adaptive:

As a permanent body, the Air Quality Management Committee will be in a position to monitor and evaluate the implementation of the clean air strategy, and respond to change as it occurs.

Interactive:

The multistakeholder character of the Committee will allow for the continued representation of public interests in the government decision making process. The expectation is that a management system administered by a multistakeholder advisory committee will facilitate rational planning that is also open and flexible. Gordon Lambert, the primary architect of the scheme, describes it as "a way of structuring a conversation around air quality":

> We are not going to have all the answers around these issues, but if we structure the conversation properly, so that we can move towards making sure that we make the best use of limited resources, then that is going to be a productive conversation.[89]

According to Mr. Lambert, acceptance of the air quality management system reflects an appreciation that it offers a way of achieving more concrete results over the long-term than relying on the existing political mechanisms. To some extent, this will depend upon how the Committee is designed to function.

While the management system appears more faithful to the Gardner criteria than the CASA process in terms of its attention to systematic analysis, the criteria themselves do not adequately address the political dimension of government decision making. Before any conclusions can be drawn regarding the superiority of the management system, it is necessary to consider whether the multistakeholder approach can so easily be adapted to the management system framework. A number of lessons can be learned form the use of CDM in the CASA process should not be overlooked in the design of the management system.

The adoption of the management system satisfied the primary interest of industry to "improve the quality of decision making"[90] and lay the ground work for fundamental reform of the air quality management system in Alberta. The basic complaint about the existing regulatory system expressed by industry representatives is the lack of rational planning on the part of government.[91] The basic problem that this creates for industry is that it cannot plan itself to deal with the long-term cost implications of future environmental regulations. It should be noted, however, that CASA

also includes a set of concrete recommendations as a result of the political compromise that was struck between industry and the environmentalists.

The current wisdom is that greater emphasis should be placed on technical expertise in appointing the members of the permanent Air Quality Advisory Committee. There is a risk that a body whose function is primarily technical will also be more cautious in its approach to dealing with scientific uncertainty, and less disposed to deal effectively with the political dimensions as well as the technical issues that will arise during the implementation of CASA. If the Committee is to operate as a viable public policy making body, it is important that it continue to be sensitive to political interests, otherwise, it will lose its credibility as a mechanism for reconciling political as well as technical conflict. A sole emphasis on expertise is problematic in this regard, because it excludes from effective participation any group that does not have the appropriate technical resources to keep up with the rest of the pack. One possible way to this situation is to establish a Committee that is not (necessarily) technical, but to provide the Committee with a staff of technical experts.

An important factor in the success of CASA was the degree of commitment to the process from the highest political levels of government. Non-government participants indicated that their decision to participate in the process was strongly influenced by the fact that the involvement of the Ministers of Environment and Energy provided them with a sense of

security that the process, and their participation in it, would produce results. Similarly, the cooperative relationship between the Assistant Deputy Ministers of Environment and Energy gave them encouragement that the process had a chance of success. One of the risks in establishing a separate institution for making political decisions that is separate from the political mainstream is that it will be cut off from the rest of the system and viewed as an outsider by the line departments. If the Committee is to be effective as a source of advice, and continue to attract public representatives to participate, it will be important to maintain strong linkages with the political system. This factor should also be considered in determining whether the Committee should be primarily technical. A technique that works well for the International Joint Commission, that deals with water resources management in the Great Lakes, is to strike different technical committees as issues arise, but draw on experts from different government departments to help build constituency support for the Commission's work within the bureaucracy. The Advisory Committee might want to draw on both government and non-government personnel.

It has been suggested that the Advisory Committee might be given final decision making authority as opposed to and advisory role. This proposal requires careful consideration. The multistakeholder approach may become less creative and innovative if its role is to make final decisions rather than recommendations. More importantly, there is always the

possibility that a multistakeholder committee will not reach consensus. In this sense, there is always an element of instability associated with CDM that is acceptable so long as the final decision making authority lies elsewhere. It is the threat of unilateral action by a higher authority that is a primary impetus for the parties to reach an agreement. If this element of the process is removed, the Committee could become a source of obstruction to government action.

Finally, multistakeholder character of the proposed Advisory Committee will not be sufficient to resolve conflicts that will inevitably arise the implementation stage of CASA. The Advisory Group members appreciate this need and expect that the Committee itself will have to make use of CDM to assist in the implementation process. Another aspect of public legitimacy that the Advisory Committee must consider as a public body is the need for public openness. The matters to be dealt with by the Committee will be controversial, and members of the public will want information about its activities.

VII.   CONCLUSION:

The process to develop the Clean Air Strategy for Alberta demonstrated that CDM can assist government to reconcile competing interests and build social consensus for government policy. The difficulty with the process is that its use is only feasible and/or appropriate in

with the process is that its use is only feasible and/or appropriate in limited circumstances. Most of the participants were very happy with the process, but most also felt that the process was so time, cost and labour intensive that it was a process that should be used selectively.

The process also revealed that the process does not necessarily incorporate the process values identified by Gardner as prerequisites, but might be adapted to work within the kind of comprehensive approach to resource management that she requires.[92]

1. World Commission on Environment and Development, <u>Our Common Future</u>, Oxford, Oxford University Press, 1987.

2. Ibid., at p. 42.

3. Neil Nevitte, Herman Bakvis and Roger Gibbins, "The Ideological Contours of New Politics in Canada: Mobilization and Partisan Support", <u>Canadian Journal of Political Science</u>, XXII: 3 (September, 1989), pp. 475-503; Neil Nevitte and Herman Bakvis, "In Pursuit of Postbourgeois Man: Postmaterialism and Intergenerational Change in Canada", <u>Comparative Political Studies</u>, vol.20, no. 3 (October, 1987), pp. 357-389; Claus Offe, Challenging the Boundaries of Institutional Politics: Social Movements Since the 1980s," in Charles S. Maier (ed.), <u>Political Essays on the Evolving Balance Between State and Society, Public and Private in Europe</u>, Cambridge: Cambridge University Press, 1987, pp. 66-77; Ronald Englehart, "Postmaterialism in an Environment of Insecurity," <u>American Political Science Review</u>, 75 (1981),pp.880-900.

4. Claus Offe, "'Ungovernability': the Renaissance of Conservative Theories of Crisis," <u>Contradictions of the Welfare State</u>, ed. John Keane, Cambridge, The MIT Press, 1984, pp. 65-87.

5. The issue of consultation mechanisms will be dealt with in more detail at a later stage.

6. What a community considers "socially unacceptable" may vary over time, in response to changes in the physical and social environment, and social values. The environment is a good example of how social attitudes can change in response to changes in the physical environment.

7. <u>Ibid.</u>, at p. 72.

8. Claus Offe, "'Crises of Crisis Management': Elements of a Political Crisis Theory", <u>Contradictions of the Welfare State</u>, ed. John Keane, Cambridge, MIT Press, 1984.

9. <u>Ibid.</u>, at p. 60.

10. <u>Ibid.</u>, at p. 52.

11. <u>Ibid.</u>, at p. 59.

12. Opportunities to obstruct or delay the regulatory process are far greater in the United States than in Canada, both in terms of legal and political manipulation of the system. The availability of judicial review of administrative decisions is much broader in the United States. The formalization of administrative procedures under the Administrative Procedures Act provides a stronger basis for legal challenges, and the scope of review granted by the courts tends to be broader.

   The emphasis on "checks and balances" in the American political system, and the resulting diffusion of political power, provides interest groups (and especially business groups) with more points of access to exercise political influence than the Canadian parliamentary system. In the United States, interest groups can take advantage of the institutional separation of the political and administrative branches of government by appealing to Congress to exercise stricter supervision over the implementation of legislation.

   In Canada, the executive branch of government is formed by the political party that holds a majority of the seats in the Legislature, so that the executive and political branches of government are integrated. The leader of that party becomes Prime Minister, who then chooses his or her executive (or, Cabinet) from the other elected representatives of that party. The administration is held accountable to the Legislature through the Cabinet rather than directly, since each Cabinet member is responsible for the actions of his or her department. In other words, political supervision of the administration occurs from within.

   Competition between departments or agencies occurs in both the United States and Canada, but Canada does not yet have the equivalent of the Office of Management and Budget, or the Council on Competitiveness - both executive agencies that have the power to review and veto the regulatory instruments produced by line agencies. This difference is highly significant to the business community, which essentially has been given a powerful leverage point within the process. Overall, Canadian interest groups have a much stronger interest in obtaining effective access to government line departments, since there are fewer alternatives.

13. Ibid., at pp. 83-84.

14. The "green marketing" phenomenon is one demonstration of how changing public attitudes is affecting industry performance. Another is the appearance of environmental codes of practice. (For example, Members of the Canadian Petroleum Association must adopt its Environmental Code of Practice, and the Canadian Chemical

Producers' Association has taken similar action with its Community Care policy.)

Environmentalist may be cynical about the motivation for these changes, but the important question is, do they help to improve the environment? The difficulty with "voluntary" environmental codes is how to determine whether they are being followed. However, any such commitment to the public (with specific guidelines attached) provides one more foothold for holding industry directly responsible to the community. Whatever the law states, these industries have acknowledged that they have a moral responsibility to the community to maintain a high standard of environmental performance.

It is also important to note that social pressure on industry to improve its environmental performance may also encourage industry to cooperate with government to develop environmental standards that apply to all firms, because no one wants bear the economic risk of acting individually.

15. Julia E. Gardner, "Decision Making for Sustainable Development: Selected Approaches to Environmental Assessment and Management," Environmental Impact Assessment Review, 1989; 9: 337-366.

16. Ibid., at p. 343.

17. Ibid., at p. 344.

18. Ibid., at p. 344.

19. The Green Plan is the federal government's comprehensive environmental plan, that was announced in 1990 as the document that would direct the federal government's environmental agenda in the 1990s. The public credibility of the document was greatly diminished by the public disappointment and criticism of the public consultation process that was conducted in conjunction with its development: stakeholders were only invited to participate after the draft document had been substantially completed; announcements were made during the national workshop that the government had committed itself to programs that had been rejected by the stakeholders during the workshop meetings; the process was generally disorganized, and it was obvious that Environment Canada did not have the support from other key departments, such as Energy Mines and Resources to follow through on the process. (Several of the non-government participants of CASA also participated in the Green Plan consultations, and were able to provide their insights as to both processes. Many of the same observations were obvious from the Report on the Green Plan Consultation Process,

prepared by the Green Plan consultation team, October, 1990.)

20. As Charles Lindblom points out in his article, "Still Muddling, Not Quite Through", Democracy and the Market Place, Oxford, Oxford University Press, 1988, pp. 237-259, current theories of scientific knowledge by Michael Polanyi and Thomas Kuhn postulate that the scientific learning is an incremental process: "Even Kuhn's "scientific revolutions" are the accomplishment of partisan increments. Their [Polanyi's and Kuhn's] reconsiderations of how science is practised are, I think, conclusive objections to the synoptic ideal." (p.257)

21. Ibid., at pp. 241-242.

22. John Keane, Introduction to Contradictions of the Welfare State, supra., at p. 20.

23. CASA participants, Andrew Day. Canadian Chemical Producers' Association; Gordon Lambert, of Imperial Oil, and Douglas Bruchet, Canadian Petroleum Association, all expressed their concern regarding the arbitrariness of government action in the environmental field.

24. For example, preparation by the Canadian delegation to the Earth Summit, was plagued by competition between the federal Canadian International Development Agency, Environment Canada and External Affairs as to which one should be the "lead" department.

25. Interview with Chris Kirtz, Director of the EPA Regulatory Negotiation Program, February 24, 1992.

26. Interview with Edward Caldwell, Environment Canada on February 28, 1992. Mr. Caldwell coordinated the Atmospheric Advisory Committee. It is interesting to note that environmentalists were asked but eventually refused to participate in on the Committee for reasons that are somewhat obscure.

27. Interview with Brian Stazenski, Director of the Alberta Environmental Resources Centre, March 6, 1992.

28. Theodore J. Lowi has argued that, through the process of accommodating "client" interests, government agencies have become captive to their interests in his seminal work on interest group politics, The End of Liberalism, 2nd edition, New York, W.W. Norton & Company, 1979.

29. This opinion was expressed by Douglas Bruchet, Vice-President Environment of the Canadian Petroleum Association, and Brian Hull, Vice-President Environment for the Conference Board of Canada during thesis interviews conducted in February and March, 1992.

30. Interview with Douglas Bruchet, Vice President Environment, Canadian Petroleum Association, on March 9, 1992.

31. Interview with Gordon Lambert, Senior Manager, Imperial Oil, March 9, 1992.

32. Interview with Gordon Lloyd, Vice President Environment, Canadian Chemical Producers' Association, November, 1991.

33. Lawrence Susskind and Denise Madrigan, "New Approaches to Resolving Disputes in the Public Sector", The Justice System Journal, vol. 9, no. 2 (1984), pp. 179-203.

34. Ibid., at p. 184.

35. Taken from "'Ground Rules' for a Negotiation Based Process" prepared by S. Glenn Sigurdson, Q.C.

36. Ibid., at p. 185.

37. Roger Fisher, "Negotiating Power: Getting and Using Influence," American Behavioral Scientist, 27:2 (Nov.-Dec., 1985), pp. 149-166, at p. 153.

38. See: Roger Fisher and William Ury, Getting to Yes, New York, Penguin Books, 1981, for a practical guide to "principled negotiation".

39. Lon Fuller, "Collective Bargaining and the Arbitrator," Proceedings, Fifth Annual Meeting, National Academy of Arbitrators" (1962), reprinted in Goldberg, Green and Sander, Dispute Resolution, Little Brown and Company, Boston, 1985, pp. 247-255, at p. 248.

40. Ibid., at p. 248.

41. Anthony H.J. Dorcey and Christine L. Riek, "Negotiation-Based Approaches to the Settlement of Environmental Disputes in Canada," Proceedings from the conference, The Place of Negotiation in EIA Processes: Institutional Considerations, organized by the Canadian Environmental Assessment Research Council (March 1987).

42.   Gerald Cormick, "Intervention and Self-determination in Environmental Disputes: A Mediator's Perspective," Resolve, Washington,D.C.: The Conservation Foundation (Winter 1982).

43.   Ibid., at p. 2.

44.   Clean Air Strategy for Alberta, Report to the Ministers, p. 1.

45.   Ibid., at p. 1.

46.   Clean Air Strategy for Alberta, Report to the Ministers, Alberta Department of Energy and Alberta Department of Environment, Edmonton, Alberta, November, 1191, at p. ix.

47.   Provincial royalties from energy production constitutes 24% of total government revenues in Alberta. (Clean Air Strategy, An Overview (fact sheet), Alberta Department of Energy and Alberta Department of Environment, Edmonton, Alberta, 1990, at p. 4.

48.   Ibid., at p. 20.

49.   Vern Mallard, Report on the Regional Sessions, Volume I: Moderator's Report, Department of Energy and Department of Environment, Edmonton, Alberta, 1991, at p. 3.

50.   In recent years, the Canadian federal government has committed the country to the following limits to domestic atmospheric emissions:

(1) In 1985, the Canadian government signed a United Nations Economic Commission for Europe Protocol that requires countries to reduce national sulphur dioxide emissions by 50%;

(2) In 1987, Canada signed the Montreal Protocol, which calls for a complete phase-out of chloroflourocarbons by the year 2000;

(3) In 1988, Canada signed a United Nations Protocol agreeing to freeze nitrogen oxide emissions at the 1987 level by the year 1994, and

(4) In 1990, at a conference in Bergen Norway, Canada committed to stabilizing emissions of carbon dioxide and other greenhouse gases at 1990 levels by the year 2000.

51.   According to Susie Washington, the facilitator for the process, the Ministers had to be convinced to appoint representatives that had been outspoken critics of the government.

52.   Clean Air Strategy for Alberta, Report to the Ministers, Alberta Department of Energy and Alberta Department of Environment, Edmonton, Alberta, 1991, at p. 1 (Interview, March 9, 1992).

53.   Interview, Ken Smith, Assistant Deputy Minister, Environment, March 6, 1992.

54.   The entire process cost the departments approximately $900,000. (Interview, Bob Mitchell, Senior Manager, Alberta Environmental Affairs, Alberta Energy, March 4, 1992.)

55.   Clean Air Strategy for Alberta, Report to the Ministers, Edmonton, Alberta Energy and Alberta Environment, at p.2.

56.   The regional workshops were held at the following locations:

Location	Date
Bonnyville	November 6
Fort McMurray	November 8
Peace River	November 13
Edmonton	November 16
Medicine Hat	November 28
Calgary	December 5
Red Deer	December 6
Pincher Creek	December 13

57.   It was concluded after the Bonnyville session that newspapers were not as effective a means of notifying the public as had been hoped. Subsequently, the newspaper notices were supplemented with public posters.

58.   A full description of the regional sessions is presented in the Report on the Regional Sessions, vol. I, Moderator's Report, prepared for the Clean Air Strategy by the moderator of the regional sessions, Vern Mallard - a former chair of the Energy Resources Conservation Board.

59.   Ibid., at p. 13.

60. A.H. Legge and H.S. Sandhu, "Cleaning the Air: The Clean Air Strategy foe Alberta," paper presented at the Air and Waste Management Association International Specialty Conference: "Cooperative Clean Air Technology Advancement Through Government-Business Partnership", Santa Barbara, California, March 29-April 1, 1992. (A.H. Legge is a member of the Alberta Research Council, Environmental Research and Engineering Section, and H.S. Sandhu is a member of the Corporate and Strategic Management Division of Alberta Environment.)

61. Ibid., at p.5.

62. The fact sheets covered the following subjects:

    1. An overview of CASA
    2. The greenhouse effect
    3. Acid deposition
    4. Ozone - stratospheric and ground level
    5. Carbon dioxide
    6. Sulphur oxides
    7. Methane
    8. Nitrogen oxides
    9. Volatile organic compounds
    10. Chloroflourocarbons and halons
    11. Energy efficiency
    12. Policy instrument
    13. Glossary of terms

63. There were some complaints from the non-government advisory group members that the Alberta Energy officials in particular were too controlling at times, and did not make the best use of the private sector resources that were provided to the process (Interview with Al Brekke, Electric Utilities Planning Council, March 6, 1992). The facilitator was made aware of this situation and took steps to rectify the situation (Interview with Susie Washington, March 9, 1992).

64. Interview with Gordon Lambert, March 9, 1992.

65. The point are compiled from interviews with Douglas Bruchet, Vice-President, Environment, Canadian Petroleum Association, March 9, 1992, Gordon Lambert, Imperial Oil (who was brought into the process by the CPA as a resource person), March 9, 1992, and Andy Day, Canadian Chemical Producers' Association, March 6, 1992.

66. Interview with Dr. Philip Prince, Chairman of the Energy Resource Conservation Board, March 10, 1992.

67. Clean Air Strategy for Alberta, <u>Report to the Ministers</u>, Alberta Department of Energy and Alberta Department of Environment, Edmonton, Alberta, 1991, at p. 45.

68. The participants in the CASA process interviewed for this study were:

Bob Fiek, Independent Petroleum Association, March 13, 1992.

Dr. Nick Bayliss, Alberta Public Health Association, March 6, 1992.

Al Brekke, Alberta Power Limited, March 6, 1992.

Giacomo Capobianco, Coal Association of Canada, March 11, 1992.

Andy Day, Canadian Chemical Producers' Association, March 5, 1992.

Jason Edworthy, Small Power Producers' Association, March 10, 1992.

Rob MacIntosh, Alberta Environmental Network (Energy/Clean Air Caucus), March 10, 1992.

Douglas Bruchet, Canadian Petroleum Association, March 9, 1992.

Dr. Philip Prince, Energy Resources Conservation Board, March 10, 1992.

Brian Stazenski, Alberta Environmental Network (Energy/Clean Air Caucus), March 5, 1992.

Ken Smith, Assistant Deputy Minister, Alberta Environment, March 6, 1992.

Jim Martin, Executive Director, Friends of Environmental Education Society of Alberta, March 4, 1992.

Bob Mitchell, Senior Manager, Alberta Energy, March 5, 1992.

Ian Burn, Executive Director, Energy Efficiency and Environmental Affairs, Alberta Energy, March 5, 1992.

John Shires, Head, Community Affairs Branch, Alberta Environment, March 5, 1992.

Susie Washington, Western Environmental and Social Trends, March 9, 1992.

Gordon Lambert, Esso Resources Canada, March 9, 1992.

69. Brian Stazenski, supra., note 68.

70. Ibid.

71. Dr. Phil Prince, supra., note 68.

72. Andy Day, Canadian Chemical Producers' Association, supra., note 68.

73. Jason Edworthy, Small Power Producers' Association, supra., note 68.

74. Ian Burn; Douglas Bruchet, supra., note 68.

75. Jason Edworthy; Gordon Lambert, supra., note 68.

76. Brian Stazenski, Alberta Environmental Network, supra., note 68.

77. Interview with Ken Smith, ADM Environment, March 6, 1992.

78. Ibid.

79. Dr. Phil Prince, Energy Resources Conservation Board, supra., note 68.

80. Brian Stazenski, Alberta Environmental Network, supra., note 68.

81. Ken Smith, Assistant Deputy Minister, Alberta Environmental, supra., note 68.

82. Ken Smith, ADM Alberta Energy, supra., note 68.

83. Ken Smith; Douglas Bruchet; Gordon Lambert, and Andy Day, supra., note 68.

84. Douglas Bruchet, Canadian Petroleum Association, supra., note 68.

85. Robert MacIntosh, Alberta Environmental Network, supra., note 68.

86. Clean Air Strategy for Alberta, Report to the Ministers, supra., at p. 27.

87. Ian Burn; Ken Smith, supra., note 68.

88. Clean Air Strategy for Alberta, Report to the Ministers, supra., at p. 52.

89. Interview with Gordon Lambert, March 9, 1992.

90. Gordon Lambert, Esso Resources Canada, supra., note 68.

91. This problem was raised by Doug Bruchet and Gordon Lambert (CPA) and Andy Day (Canadian Chemical Producers' Association).

92.   The International Joint Commission (IJC) established by the Boundary Waters Treaty between the United States and Canada is a good example of how scientific analysis and consensus-building techniques can be combined to provide an effective resource management scheme. The IJC was originally established to resolve transboundary water disputes, and to serve as a "neutral" joint fact-finding body, whose purpose is to produce a set of findings and propose technical solutions to problems that have been referred to it by the Governments. In 1972, it was also assigned the responsibility to assist in the implementation of the Great Lakes Water Quality Agreement (1978), whose purpose is to "restore and maintain the chemical, physical and biological integrity of the Great Lakes Basin Ecosystem."
        It is impossible to effectively communicate how the IJC performs its various functions in a footnote, but its successful record as a facilitator and coordinator of international environmental cooperation can be attributed as much to its sensitivity to the political environment as its reputation producing technically elegant solutions. When a matter is referred to the IJC for investigation, the IJC does not conduct the scientific research itself: it convenes a scientific advisory board of experts from the relevant disciplines, most of whom are usually drawn from government agencies in both countries. The boards have been successful in providing a forum for reconciling competing scientific views; allowing the scientists to engage in creative problem-solving without the constraint of institutional interests, and building constituencies of support within

the bureaucratic structures. (Goeffrey Thornburn, "Mediation of Transboundary Issues: Recent Experiences of the International Joint Commission" Unpublished article presented at the Waterscapes Conference, June, 1991).

The function of the IJC under the Great Lakes Water Quality Agreement (1978) is to monitor and report to the governments on the implementation of the Treaty. Its recommendations for strengthening pollution controls and implementation programs has generally been adopted. In 1987, the implementation scheme of the Treaty was further strengthened by the introduction of Remedial Action Plans (RAPS) - a recommendation of the Water Quality Board in 1985. The purpose of the RAPs is to restore impaired beneficial uses in 43 designated "Areas of Concern". Federal, state/provincial and municipal governments within these areas are required to develop a plan for eliminating toxic substances in their jurisdiction. The plans must include provision for public involvement, and a stakeholder approach is recommended. The IJC is responsible for monitoring the development and implementation of the RAPs, and is available to provide technical assistance to governments in fulfilling this responsibility.

Table 1: Alberta Emissions (Kilotonnes) in 1985 Compared to Other Jurisdictions:

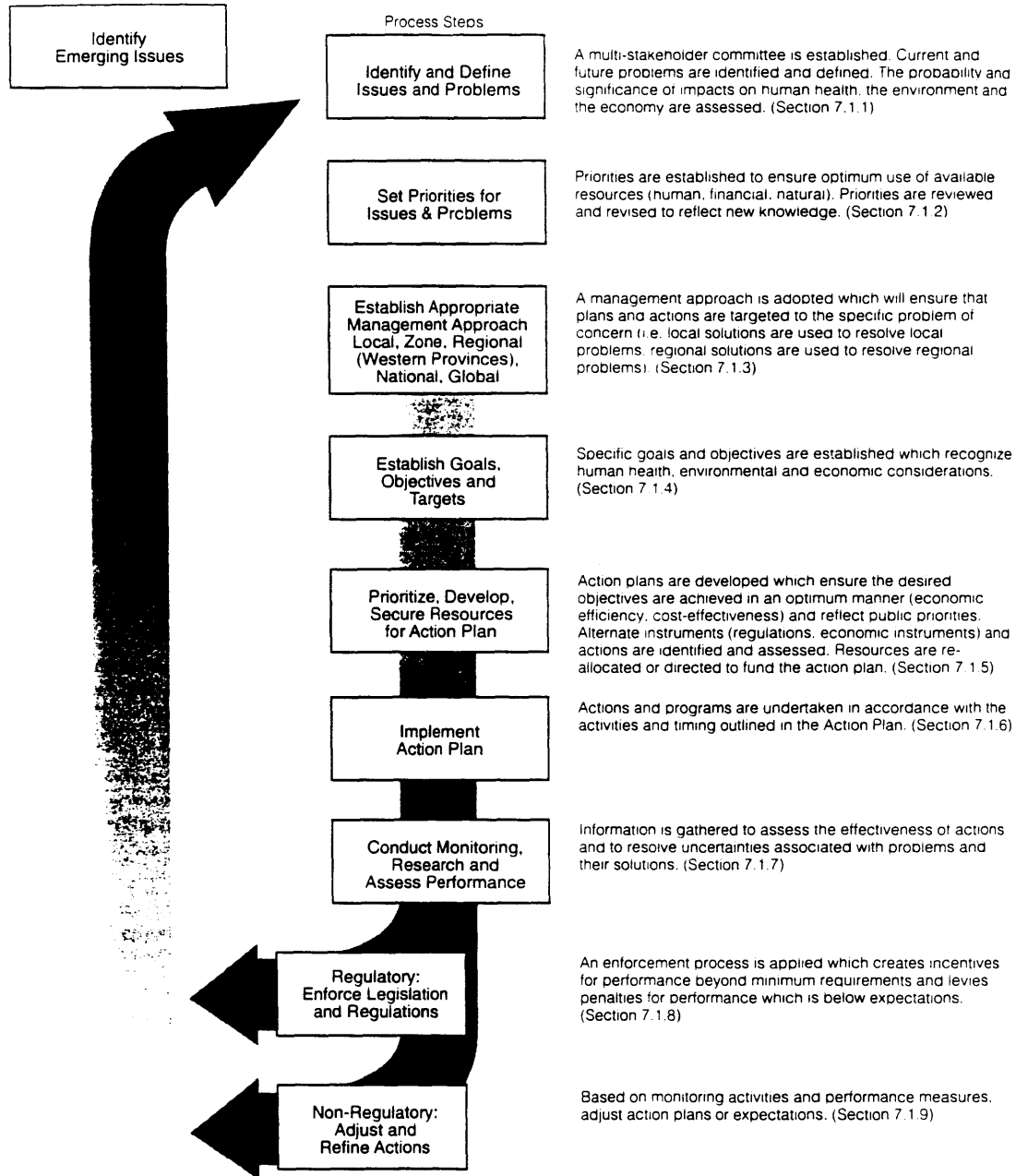| Jurisdiction	Population (millions)	SO$_2$	NO$_x$	VOC	CO$_2$*
Alberta	**2.4**	**539**	**440**	**196**	**124 300**
British Columbia	2.9	105	253	294	90 900
Manitoba	1.1	469	82	71	12 500
New Brunswick	0.7	138	46	45	19 400
Newfoundland	0.6	43	34	36	7 300
Northwest Territories	0.05	2	14	5	1 300
Nova Scotia	0.9	170	74	52	17 700
Ontario	9.1	1 457	558	631	164 300
Prince Edward Island	0.1	2	6	11	1 500
Quebec	6.5	693	223	356	66 700
Saskatchewan	1.0	86	155	83	31 800
Yukon	0.02	1	2	2	700
Canada	**25.4**	**3 704**	**1 887**	**1 782**	**538 400**
United States	245.8	20 998	18 633	20 020	4 808 000
Japan	122.8	1 079	1 416	1 301	990 000
United Kingdom	55.8	3 867	2 303	2 355	558 000
Australia	16.8	1 479	915	423	241 000
Sweden	8.5	231*	390	446	62 000
OECD countries	—	**37 073**	**32 224**	**29 049**	**21 630 000**

* 1988 figures

Source: Alberta Environment. 1991.

(Source: Clean Air Strategy for Alberta, Report to the Ministers, Alberta Department of Environment and Alberta Department of Energy, Edmonton, 1991, at p. 19.)

Table 2: Goals Recommended for the Clean Air Strategy for Alberta:

I. **Comprehensive Air Quality Management System**
   A. Implement a comprehensive air quality management system in Alberta that allows for identification of problems, prioritization of issues, allocation of resources, development of action plans and is based on full multi-stakeholder involvement.

II. **Energy Efficiency, Conservation and Renewables**
   B. Identify, evaluate and implement legislative and regulatory opportunities for energy efficiency and conservation.
   C. Identify, evaluate and implement cost-effective energy conservation and efficiency opportunities.
   D. Identify, promote and implement cost-effective energy developments that contribute to clean air.

III. **Point Source**
   E. Strengthen the management approach for all point-source emissions in Alberta in order to avoid adverse effects on human health and the environment.
   F. Identify and evaluate a range of options available for managing point source emissions to encourage greater innovation, improved environmental protection and cost-effectiveness.

IV. **Zone**
   G. Develop and implement a zone approach to managing air quality within specific airsheds.
   H. Develop innovative and targeted solutions to better manage cumulative emissions in and around urban areas.

V. **Regional**
   I. Manage emissions within western Canada to address regional air quality problems.

VI. **National/International**
   J. Encourage collaboration between the provinces and the federal government to pursue actions that are cost-effective and ensure maximum flexibility in addressing national and international air quality issues.

VII. **General**
   K. Improve the gathering, sharing, integration and application of scientific and technical knowledge and research regarding atmospheric processes and effects on health and ecosystems.
   L. Improve public awareness of air quality and enhance the public's capability of making choices and commitment to change through environmental education.
   M. Integrate clean air goals into the provincial economic development strategy.

(Source: A.H. Legge and H.S.Sandhu, "Cleaning the Air: The Clean Air Strategy for Alberta," paper presented at the Air and Waste Management Association International Specialty Conference: Cooperative Clean Air Technology Advancement Through Government-Industry Partnership, Santa Barbara, California, March 29 - April 1, 1992, at p. 5.)

Identify Emerging Issues

Process Steps

Identify and Define Issues and Problems

A multi-stakeholder committee is established. Current and future problems are identified and defined. The probability and significance of impacts on human health, the environment and the economy are assessed. (Section 7.1.1)

Set Priorities for Issues & Problems

Priorities are established to ensure optimum use of available resources (human, financial, natural). Priorities are reviewed and revised to reflect new knowledge. (Section 7.1.2)

Establish Appropriate Management Approach Local, Zone, Regional (Western Provinces), National, Global

A management approach is adopted which will ensure that plans and actions are targeted to the specific problem of concern (i.e. local solutions are used to resolve local problems, regional solutions are used to resolve regional problems). (Section 7.1.3)

Establish Goals, Objectives and Targets

Specific goals and objectives are established which recognize human health, environmental and economic considerations. (Section 7.1.4)

Prioritize, Develop, Secure Resources for Action Plan

Action plans are developed which ensure the desired objectives are achieved in an optimum manner (economic efficiency, cost-effectiveness) and reflect public priorities. Alternate instruments (regulations, economic instruments) and actions are identified and assessed. Resources are re-allocated or directed to fund the action plan. (Section 7.1.5)

Implement Action Plan

Actions and programs are undertaken in accordance with the activities and timing outlined in the Action Plan. (Section 7.1.6)

Conduct Monitoring, Research and Assess Performance

Information is gathered to assess the effectiveness of actions and to resolve uncertainties associated with problems and their solutions. (Section 7.1.7)

Regulatory: Enforce Legislation and Regulations

An enforcement process is applied which creates incentives for performance beyond minimum requirements and levies penalties for performance which is below expectations. (Section 7.1.8)

Non-Regulatory: Adjust and Refine Actions

Based on monitoring activities and performance measures, adjust action plans or expectations. (Section 7.1.9)