

THE NETHERLANDS TARGET-GROUP COVENANTS:
SETTING PRIORITIES & DRIVING CHANGE

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TABLE OF CONTENTS

I.	OVERVIEW.	1
II.	INTRODUCTION.	5
III.	OVERVIEW OF TARGET GROUP COVENANTS & NATIONAL GOALS	8
	A. Unique Elements of the Netherlands' System.	9
	1. <i>Environmental themes/goals.</i>	9
	2. <i>Target Groups.</i>	13
	3. <i>Covenants.</i>	15
	B. Perceived Benefits of the Target Group Covenant System.	19
IV.	GOVERNMENTAL/REGULATORY BACKGROUND.	21
	A. Legislation/Regulation.	22
	B. Roles With Respect to Licensing/Enforcement.	23
	C. Roles With Respect to Target Groups/Covenants.	25
V.	THE COVENANT PROCESS: THE CHEMICAL INDUSTRY.	28
	A. Negotiations.	29
	B. The Goals: The Integrated Environmental Target Plan (IETP).	30
	C. The Vehicle: Company Environmental Plans (CEPs).	35
	D. Establishing Continuity: The Consultation Process.	39
	E. The Agreement.	41
	F. Implementation.	43
VI.	THE COVENANT PROCESS: THE PRINTING INDUSTRY.	47
	A. Negotiations.	47
	B. Environmental Goals.	50
	C. Developing Consensus on an Implementation Program.	50
	E. The Agreement.	54
	F. Implementation.	56
VII.	RE-DIRECTING ENVIRONMENTAL MANAGEMENT: INTERIM LESSONS AND APPLICATIONS FOR THE U.S. CONTEXT.	59
	A. Key Elements & Results.	59
	B. Relevance for the U.S..	63

I. OVERVIEW

During the last ten years, the Netherlands has developed a new management framework for solving environmental problems. The major features of this approach include:

- specific environmental goals defined by the government;
- the establishment of relatively long time-frames (e.g., 15 years) for planning and meeting the most ambitious goals;
- transferring to the sources of pollution the burden of determining how best to meet the goals (rather than continuing further development of government-determined best available technologies);
- developing new forms of relationships between government and industry, and within industrial sectors, through negotiated sectoral agreements involving all levels of government and the various industrial sectors;
- linking the sector agreements and facility-based environmental plans into the existing regulatory enforcement framework.

Agreements between the government and the targeted sectors are in the form of “covenants,” which are negotiated agreements between the government and industrial sectors to spell out comprehensive environmental goals for a sector and a schedule for achieving those goals. The covenants, which are signed by all participating parties in the negotiations, are in the form of a legal agreement. But few people in either government or industry believe that the agreements would be enforceable in a court. What makes the agreements work? In the view of the staff in the federal environmental agency responsible for developing the agreements, it is primarily the structural relationships between the parties involved in the negotiations that create the "enforceability" of the covenant:

- incorporation of measures to meet the goals of the covenants in licenses (permits) issued by provincial, municipal and water board authorities;

- continuing authority of the federal environmental agency to utilize regulatory means to pursue the goals of the agreements, should the covenants not result in realization of the environmental goals;
- opportunity of sector representatives to participate jointly, during negotiations, in design of alternative environmental measures, and/or increased flexibility provided to companies through the process;
- industry sector pressure on laggards in the sector in order to avoid the risk of return to standard regulatory relationships as a result of non-performance.

In industry's view, the major benefits of the new approach include:

- The covenant process eliminates the threat of bit-by-bit regulations and compliance.
- Companies are free to coordinate environmental and business plans, and have more control over the timing and sequence of environmental actions.
- Regulators now provide companies room to develop their own solutions. Instead of specifying technologies, the new attitude toward facility efforts to meet environmental standards is, "Let us know how you do it."

There are significant variations between the form and structure of the various industry target sector agreements which have been signed so far. But the chemical industry covenant, the first such agreement to be signed, illustrates some of the major features.¹

Under the chemical industry covenant, companies establish their goals, and how they plan to achieve those goals, every four years (starting in 1993) in company environmental plans (CEPs). The overall adequacy of all chemical facility plans is assessed by a continuing industry/ governmental Consultation Group which reviews both the plans themselves and plan implementation. The minimal starting point in developing the environmental plans must be current Best Available Control Technology (BACT) levels. Beyond meeting all current

¹The chemical and printing sector covenants are reviewed below in the report.

specific BACT requirements and near-term environmental targets, companies should examine additional targets for the years beyond the four-year time-period of the plan. The CEP is submitted to the appropriate regulatory authorities (provincial, municipal and/or water board), which must approve the plan (or require revisions) and issue permits based on the plan. For the first round of chemical industry plans, some of the preliminary results included:

- On the basis of evaluation of the plans submitted in 1993, it appears that a large proportion of the environmental goals for the sector for 2000 will be met under the plans for 1993-1997. Year 2000 goals are likely to be achieved by 1997 for climate change, acidification, eutrophication, waste-processing and 2/3 of the chemicals included under dispersal of toxics; soil protection goals are uncertain.
- In meeting requirements for first round plans, most companies primarily planned to meet BACT requirements (largely end-of-pipe). These were sufficient to achieve many of the environmental goals, because existing permits had sometimes been outdated, and company emission inventories were incomplete.
- Several companies linked CEP development to implementation of more comprehensive environmental management systems (EMSs), whether BS 7750 or some other approach (EMAS, independently developed systems, or precursors to ISO 14000).
- There was substantial pressure by industry participants on non-participants to either join or conform to the covenant.
- There was also substantial pressure on local regulatory authorities to improve coordination, and to utilize whole-facility evaluations in reviews of company plans and permits.

What can the U.S. learn from the Netherlands experiment? What aspects of the covenant system are applicable in the U.S., and under what circumstances? The Netherlands is approximately twice the size of New Jersey, with twice the industry base and population, as well as with major agricultural production and related environmental problems. The comparable scope of environmental problems or goals in the U.S. is not the nation as a whole, but regions (perhaps as large as the Great Lakes basin), states or metropolitan areas.

Within those limits, the following would seem to be features which could be beneficial in tackling environmental problems in the U.S.:

- establishment of defined environmental goals (e.g., for a region or metropolitan area);
- use of longer time-frames for meeting comprehensive environmental objectives, to provide industry the opportunity to link environmental improvement to production and R&D plans;
- negotiated approaches to meeting longer-term goals, solving complex problems, with specific industrial or other sectors;
- shifting the burden of discovering the best solutions to environmental releases from the government to the polluters, allowing the government to focus on overall environmental objectives and sectoral obligations;
- linking innovative approaches into the existing regulatory framework, to ensure adequate enforcement.

Aspects of this approach already exist in the U.S., although not in any comprehensive form. Examples include the voluntary agreement between the pulp and paper industry and the Wisconsin DNR for the industry to achieve specific pollution reduction goals by the year 2000, experiments with ISO 14000 and regulatory flexibility, cap-and-trade programs with decreasing limits over time (e.g., Los Angeles' RECLAIM program), and some of the elements of the many state and federal voluntary programs (although it is important to note that the Dutch system is not really "voluntary," even though sometimes characterized as such). To move from these approaches to a more systematic, multimedia approach in a particular geographical area, however, would require substantial joint planning and consensus-building by state and local governments and affected stakeholders, and substantial federal flexibility. EPA would have to provide leeway, support and oversight. The framework for such a role for EPA has been created under the NEPPS system, though further refinement of the relationships, at least administratively and possibly legislatively, would still be necessary.

II. INTRODUCTION

The Netherlands is in the process of developing and implementing a new management framework for solving environmental problems. The new strategy focuses on longer-term objectives, and on new forms of relationships both between government and industry and between government and other sectors of society. One of the major vehicles of the new approach is the "covenant" -- a negotiated agreement between government and another group or sector which may involve both short- and long-term obligations for all signatories.

While the Netherlands central government still plays the critical role in defining environmental problems and goals, it relies increasingly on such negotiated agreements and other economic levers to foster efforts by industrial, agricultural and other sectors to develop their own solutions to those problems. The search for new approaches rose out of a realization of the growing complexity of a new generation of environmental problems, the inability of central government to determine effective solutions for many of those problems, and an increasing frustration with the inefficiencies of the standard regulatory system. A senior policy maker for the Netherlands Ministry of Housing, Spatial Planning and the Environment (VROM) noted about the inherent limitations of traditional Dutch regulatory approaches:

"One-sided government regulations often tend to put companies on the defensive. Their response to stricter government standards is reactive; often they appeal to the courts. In the Netherlands, companies as well as 3rd parties have legal remedies to address the administrative courts when they disagree with the regulations of licensing authorities. Litigation often takes up several years, and meanwhile authorities and companies live in animosity to the detriment of the environment. For the most part, the burden of proof with regard to whether a company can meet stricter standards rests on the authorities and not on the polluter."²

²Jit Peters, "Voluntary Agreements Between Government and Industry: The Basic Metal Covenant as an Example," in Environmental Contracts and Covenants: New Instruments for a Realistic Environmental Policy?, Jan M. Van Dunne, editor (Vermande Lelystad, 1993), pp. 19-32.

The evolving framework of voluntarily-negotiated "contracts" involving increased flexibility and communications over the means for achieving definite environmental goals could provide a dynamic structure for a more proactive means of meeting environmental objectives within an expanding economy. Such an approach -- in an appropriate state, regional or local context -- could be useful in promoting more rapid and cooperative changes in environmental management in the U.S.

With passage of the federal U.S. Pollution Prevention Act in 1990, and of similar legislation at the state level before and since, there is increasing emphasis on gaining the active participation of companies in developing strategies for environmental improvement. From state pollution prevention facility planning requirements to the federally-sponsored XL (beyond compliance) program, there is tacit or explicit recognition that designing the next major steps in environmental improvement requires active participation of industrial facilities -- not passive acquiescence. This recognition, and the gradual emergence of efforts to encourage more active partnership between industry and government in meeting environmental objectives, is part of a general trend in many major industrialized countries. Many of these initial efforts, however, are piecemeal, and there is often little consensus over either objectives or approaches.

The traditional command-and-control, top-down, predominantly end-of-pipe regulatory framework was developed to rapidly attack critical media-specific problems -- severely polluted air causing numerous incidents involving acute human health risks, water pollution requiring extensive closing of areas once used for bathing or swimming, and losses of drinking water to groundwater contamination. The primary mechanism for tackling such extreme conditions was to mandate environmental management standards based on readily understood and easily transferable control, management and remediation technologies -- heavily oriented toward media-specific solutions. While source reduction was sometimes incorporated in individual rules, source reduction solutions were the exception, not the norm, as the basis either for the rules themselves or for standards implementation.

There is general agreement that this traditional model can not be widely effective in encouraging companies to jointly optimize production and environmental performance. Only the companies themselves can understand production options and priorities adequately to design such alternatives. The point of state facility planning laws, for example, has been to

encourage companies to look carefully at their own material use, production processes and (in some cases) product designs to determine if there are available opportunities which are both more cost-effective and environmentally beneficial. The assumption is that, to some extent, companies will choose to implement alternatives which appear to be cost-effective. In most cases, however, there is no mandate for the companies to implement alternatives they identify through this process, and any of a number of factors -- e.g., information barriers, hurdle rates for competing investments, customer specs, concern about changing a process that currently works -- may either limit the options identified or inhibit implementation.

The Netherlands model, which is specifically referenced as an option to consider for sector-based approaches under EPA's XL program, involves government/industry cooperation within a context of specific environmental goals. It combines defined objectives and flexible, cooperative means of achieving them. Advocates of more flexible approaches to environmental management in the U.S. often invoke the Netherlands approach,³ but sometimes selectively. If we are to learn practical and applicable lessons from the Netherlands experiment in joint industry/government environmental management, it is important to view the elements in context.

³Kelly Richmond and Dunstan McNichol, "Following the Dutch Example, To a Point," The Bergen Record (Hackensack, NJ), June 23, 1996, p. A-11.

III. OVERVIEW OF TARGET GROUP COVENANTS & NATIONAL GOALS

In 1988, the independent research arm for the Netherlands environmental agency published a study, "Concern for Tomorrow,"⁴ reviewing the current and projected state of the environment in the Netherlands from 1985 through 2010. It described a series of interconnected environmental problems, from local to global, which posed significant threats to the environmental sustainability and economic well-being of the country. To prevent the degradation which would result from current trends, reductions of 80-90% would be required in levels of pollution by 2010. The report identified problems ranging from global warming (with the resulting potential sea rise a critical prospect for the Netherlands) to groundwater and soil contamination. Some of the problems have predominantly local sources (such as groundwater and surface water contamination resulting from the enormous volume of manure generated by over 40 million pigs and several million cattle). Other problems have major international as well as local sources -- such as metals contamination flowing across the border from Germany in the Rhine River.

The government's response was the Netherlands' first National Environmental Policy Plan (NEPP),⁵ published late in 1989 and modified in 1990 (NEPP Plus)⁶ by the Netherlands Ministry of Housing, Spatial Planning and the Environment (VROM). The NEPP established a long-term strategy for making major improvements in the state of the country's environment. It identified major problems to be addressed, target groups within the country which would need to take responsibility for finding some of the solutions, and a variety of policy tools which would be used to bring about the needed changes.

The NEPP is not a static document. NEPP 2⁷ was published at the end of 1993, and

⁴National Institute for Public Health and Environmental Protection, "Concern for Tomorrow," December, 1988.

⁵Netherlands Ministry of Housing, Spatial Planning and the Environment, The National Environmental Policy Plan (The Hague, 1989).

⁶Ministry of Housing, Spatial Planning and the Environment, National Environmental Policy Plan Plus (The Hague, 1990).

⁷Ministry of Housing, Spatial Planning and the Environment, The Netherlands' National Environmental Policy Plan 2 (The Hague, 1993).

focused on how to address those areas where progress toward the NEPP goals was, up to that date, inadequate. Further NEPP documents are to be published every four years.

One of the basic assumptions in the NEPP was that the scope of the environmental problem was beyond the ability of government alone to solve. The traditional tools of technological control, the standard means of regulation in the Netherlands as much as in the U.S., simply would not accomplish the pollution reductions required to meet the goal of a sustainable environment by 2010. A primary tool put forward for involving non-governmental sectors in the environmental effort was the environmental "covenant" -- an agreement entered into voluntarily between one or more government agencies and other parties to undertake relevant measures or efforts to achieve environmental objectives.

A. Unique Elements of the Netherlands' System

What makes the Dutch system distinctive is the way in which it combines elements of cooperation and definite goals, and its re-definition of the appropriate roles of government and other sectors of society. The role of the central government is no longer primarily one of defining the solutions to environmental problems, but of promoting, steering and supporting implementation of environmental objectives. Key components include environmental themes and goals, target groups and covenants.

1. Environmental themes/goals

The overall goals of the NEPP planning process are that environmental solutions to current problems in the Netherlands should be designed to achieve a sustainable environment, and that this goal should be accomplished to the extent feasible within a period of twenty to twenty-five years. These environmental goals require integration of environmental considerations both in the various sectors of Netherlands' economy and society, and in all aspects of government policy (e.g., for education, transportation, agriculture, etc.). Because of the country's size and geographical location, environmental issues also are a significant aspect of foreign policy -- including relationships with the European Union.

The plan identifies eight key themes for environmental action:

- change of climate (greenhouse effect) and depletion of the ozone layer,
- acidification of the environment,
- eutrophication,
- dispersion/diffusion of toxic substances,
- disposal of solid waste,
- disturbance of local environments (e.g., noise, odors),
- dehydration of soils (due to lowering of groundwater table),
- squandering of resources.

For all but the last (which is being studied), the NEPP sets goals for reduction in the pollutants or changes in the activities causing the problem, based on an evaluation of the point at which the environmental impact will be sustainable. For example, acidification of the environment is defined in terms of deposition of acidifying materials on the soil (acidification equivalents (Aeqs.) per hectare per year). The 1985 level was over 6,000 Aeqs., the goal for 2010 1,400 Aeqs. The major causes of acidification are emissions of SO₂ (principally from refineries, energy production, transportation and industry), NO_x (majority from transport, with major contributions from industry, energy production and refineries) and ammonia (overwhelmingly from agriculture). Emission reduction goals are therefore established to reduce release of these pollutants from Dutch sources (although almost 50% of acid deposition came from the Netherlands' European neighbors in 1990, a percentage contribution expected to increase to almost 60% by 2000). Achieving the target for 2010 will require approximately a 70-80% reduction in acidifying emissions both in the Netherlands

and its neighbors.⁸

The Plan identifies the sources of the pollutants causing the environmental impacts in order to identify the sectors which must contribute the most to solving the problem. In the case of environmental problems which can not be solved solely within the boundaries of the Netherlands, the Plan both speaks to the international actions which will be required, and the proportional reductions to be required of sources in the Netherlands.⁹ The chart on the next page is a summary by VROM of the emission reduction targets, quality objectives and scale of each of the NEPP themes.¹⁰

⁸Albert Adriaanse, Environmental Policy Performance Indicators: A Study on the Development of Indicators for Environmental Policy in the Netherlands (Sdu Uitgeverij Koninginnegracht, The Hague, 1993), pp. 17, 33-38.

NEPP 2 indicates a shortfall in the percentage reduction of acidifying emissions, principally due to projected continuing high releases of NO_x from transportation as a result of higher volume traffic than originally anticipated (part of which is due to the continuing expansion of Rotterdam as a major European port for imports and exports). NEPP 2, pp. 77-81.

⁹Ministry of Housing, Spatial Planning and the Environment, "Environmental Policy in the Netherlands" (The Hague, 1992), pp. 11-35.

For more information on environmental themes and goals, see section IV below.

¹⁰The chart is reproduced from "Towards a Sustainable Netherlands" by the Netherlands Ministry of Housing, Spatial Planning and the Environment (The Hague, January 1994), p. 10.

**Environmental Quality Objectives and Emission Reduction Targets in the NEPP
and NEPP+**

SCALE	NEPP THEME	QUALITY OBJECTIVE	EMISSION REDUCTION TARGET
Global	Climate Change	Restoration of quality of higher air layers such that human health risks negligible; agriculture & natural resources not damaged	Stabilise CO2 emissions at average 1989-1990 levels by 1995. Absolute reductions of 3-5% by 2000.
Continental, Regional & Local	Acidification	Improvement of environmental quality in Europe such that ecosystems, cultural heritage, human health, agriculture & groundwater can be protected with 'normal maintenance.'	Reduce emissions of acidifying substances (principally SO ₂ , NH ₃ , VOCs, & NO _x) by 70-80%.
Continental, Regional & Fluvial	Eutrophication	Lakes, rivers & coastal areas can provide good drinking water, safe recreation	Reduce emissions of eutrophying substances (principally P & N) by 70-90%.
Continental, Regional & Fluvial	Dispersion	Environmental quality of all media such that human health risks kept to acceptable levels and ecosystems, agriculture, natural resources not degraded or in need of elaborate remediation	Reduction in emissions of priority substances (e.g., heavy metals, pesticides, some hydrocarbons) by 50-70%.
Continental, Regional & Local	Waste Disposal	Risks from waste disposal to humans and the wider environment reduced to an acceptable or, where possible, negligible level.	Decrease in size of the Netherlands waste stream by 70-90%; decrease landfill of waste by 80-90%; dispose of all wastes, with a few exceptions, within the Netherlands' borders.
Local	Local Nuisance	Only negligible risks run in the ambient environment & no serious nuisance experiences that would cause people to be excessively restricted in their residential choice.	Number of people experiencing noise nuisance in 2000 no greater than in 1985. At most 750,000 households experiencing odor nuisance by 2000.
Regional & Local	Groundwater Depletion	Water consumption in equilibrium with capacity of surface water and groundwater resources.	Areas with signs of water depletion must be no larger in 2000 than in 1985 and reduced by 25% by the year 2020.

2. *Target Groups*

In addition to identifying key themes for environmental action, the Dutch plan identifies target sectors which are responsible for significant aspects of environmental problems. A key ingredient of the strategy is that environmental goals and a sustainable environment are to become the responsibility of each of the target groups, and not just of the government. Each target group was selected both as a significant source of some or all of the environmental problems, and as an identifiable group for purposes of developing action plans to resolve those problems. As is readily apparent from the following target group list, however, not all target groups are equally coherent or accessible:

- agriculture (especially livestock, which is both a major industry and source of pollution),
- traffic and transport (cars, trucks, shipping, air traffic),
- industry (including most manufacturing),
- refineries,
- energy (e.g., electricity and gas companies),
- building trade/construction,
- consumers and retail trade (sometimes considered separately),
- public utilities (drinking water and sewage facilities),
- waste disposal.¹¹

¹¹The last two sectors are not included in all relevant policy documents on target group policy, but are evaluated in the report on target group policy in NEPP 2. To some extent, the issue is a pragmatic one of determining which groups it is fruitful to separate out in developing specific policies. See NEPP 2, pp. 20-25; "Environmental Policy in the Netherlands," pp. 37-45; Ministry of Housing, Spatial Planning and the Environment, Environmental Programme 1995-1998: Summary (The Hague, 1995).

Each target group's contribution to the various environmental themes is first established, as well as the most important forms of activity or pollution which creates those environmental impacts. The list below illustrates some of the target group/environmental theme/pollutant relationships:¹²

Agriculture

- ammonia (acidification)
- phosphate (eutrophication)
- agricultural pesticides (dispersion)

Industry

- carbon dioxide (climate change)
- SO₂ & NO_x (acidification)
- industrial and chemical waste (disposal)

Refineries

- carbon dioxide (climate change)
- SO₂ (acidification)
- priority substances (dispersion)

Traffic & transport

- carbon dioxide (climate change)
- NO_x (acidification)
- noise & odor problems (disturbance)

Energy

- carbon dioxide (climate change)

¹²Environmental Policy Performance Indicators, pp. 70-71.

- SO₂ & NO_x (acidification)
- discharge of fly ash and slag (disposal)
- stored radioactive waste (disposal)

Building Trade/construction

- CO₂ & CFCs (climate change)
- creosote for civil engineering (dispersion)
- dumped building & demolition waste (disposal)

Consumers/retail trade

- CO₂ (climate change)
- NO_x (acidification)
- household refuse (disposal)

The Ministry of Housing, Spatial Planning and the Environment (VROM) utilizes a range of different policy instruments and approaches, depending on the nature of the target group. These include regulation and enforcement, taxes and other financial incentives, public information, and negotiated agreements/covenants.

3. *Covenants*

The Netherlands environmental covenants for target groups -- primarily for priority industrial sectors -- are negotiated agreements between the government and specific industry sectors to spell out comprehensive environmental goals for a sector and a schedule for achieving those goals. VROM has adopted covenants as a primary means for dealing with those target groups which comprise coherent, accessible sectors with whom the government can negotiate -- such as many components of the industrial, retail trade, construction, refinery, and agricultural target groups.

Together, the groups with which the government is negotiating account for 80-90% of all pollution generated in the Netherlands. The covenants negotiations involve the central

government (including VROM, the Economic Affairs Ministry, the Transport, Public Works and Water Management Ministry), the Association of Provincial Authorities, the Association of Netherlands Municipalities, the Federation of Water Management Boards, and the appropriate industry association(s) and, in some cases, individual companies.

Government and industry signed the first target-group covenant, involving the primary metals industry, in March 1992.¹³ Since that time, VROM has completed covenants with several additional industry sectors, including printing, the chemical industry, the dairy industry, the metal and electrical engineering industry, the construction industry, petroleum stations, the paper and cardboard industry, and the textile and carpet industry.

The target group covenants are not the first examples of covenants in the Netherlands. In the 1980s, covenants were frequently used to deal with environmental pollution resulting from products (e.g., batteries, packaging), as well as other issues. The early covenants were widely criticized by environmental groups and others on the grounds that they were little more than "gentlemen's agreements," lacking any significant attention to enforceability.¹⁴

As covenants have become an increasingly important element of the Netherlands' comprehensive strategy, and particularly of its target group approach, VROM has given much greater attention to the actual function and status of the covenant. Even within VROM, however, while there is general agreement that the covenants have teeth, there are differences in perspective on the exact shape of the teeth.

- Does the enforceability of the covenant derive primarily from its relationship to existing, and newly-developed, institutional relationships? For example:
 - incorporation of covenant obligations into enforceable permits,
 - implicit threat of a return to more rigid regulation if the covenant fails.

¹³"Declaration of Intent on the Implementation of Environmental Policy for the Primary Metals Industry," The Hague, March 10, 1992.

¹⁴Kees Bastmeijer, "The Covenant as an Instrument of Environmental Policy in the Netherlands" (The Hague, 1994), pp. 4-9.

- Or does enforceability derive directly from the formal legal structure of the covenant?

VROM's report on "Working with Industry" refers to covenants as:

*"voluntary agreements concluded between a number of actors (including different levels of government and representatives of industry) with the state status of binding contracts in civil law. Covenants are being used within industry as implementation instruments in areas where legislation already exists and government can exercise control -- e.g., through issuing licenses. In such cases, covenants serve as a management tool by providing a concrete implementation programme within a more general legal framework...; they do not take precedence over existing law."*¹⁵

VROM's Department for Legal Policy Affairs developed a "Provisional Code of Conduct for Concluding Environmental Covenants" which states the legal argument most clearly:

"The environmental covenants to which this code of conduct applies can generally be regarded as agreements under private law. It will therefore be possible in principle to institute proceedings in a civil court to enforce them, should the need arise...."

*"The parties to the covenant may not want the agreement to be enforceable under civil law of contract. If so, they will have to state this explicitly in the covenant, since in principle a covenant will be regarded as an agreement under civil law which is designed to create certain obligations."*¹⁶

The staff in VROM responsible for management of the target group program and

¹⁵Ministry of Housing, Spatial Planning and the Environment, "Working with Industry," (The Hague, 1994).

¹⁶C.J. Bastmeijer, "Provisional Code of Conduct for Concluding Environmental Covenants" (VROM, Department for Legal Policy Affairs, The Hague, March 1994), p.4.

negotiation of the covenants, however, emphasizes that it is primarily the structural relationships between the parties involved in the negotiations that create the "enforceability" of the covenant. These include the incorporation of measures to meet the goals of the covenants in licenses (permits) issued by provincial, municipal and water board authorities, and the continuing authority of VROM to utilize regulatory means to pursue the goals of the agreements.

The staff also emphasizes the at least equal importance of the actual process of the negotiations:

- the opportunity of the sector representatives to participate jointly in the design of alternative environmental measures, and/or
- the increased flexibility provided to companies by the process.

Industry would be loathe to lose these advantages and return to the standard regulatory relationship as a result of non-performance, and in fact pressure is created within sectors on laggards. While the legal structure of a covenant makes clear its importance, actual litigation over non-fulfillment of a covenant, beyond the difficulty of making the case, would mean the collapse of the whole target-group negotiation system. As a result, in spite of appearances, strict legal enforceability of covenant provisions is an empty threat. The covenant "fulfills its main task, not as a primary legal instrument, but as a management tool."¹⁷

B. Perceived Benefits of the Target Group Covenant System

Both government and industry have discovered benefits to the target group covenant system which make the considerable effort required to negotiate the covenants worthwhile. One of the architects of the target group covenant process for VROM characterizes the following as principal benefits of the consensus-building approach:

¹⁷Peters, op.cit., p. 32. Interviews with M. M. de Hoog and C.M. Moons, Industry, Building, Manufacture and Consumers Directorate, VROM, The Hague, 5/6/96 & 5/13/96.

- a. *it shifts the burden of proof from the government to the company;*
- b. *it provides a more proactive attitude;*
- c. *it is more flexible than regulation;*
- d. *it is less time consuming than the legislative and licensing processes;*
- e. *it can lead to internalization of environmental issues within the company;*
- f. *enforcement costs are lower;*
- g. *it is a multi-media approach;*
- h. *it coordinates multiple authorities in reaction to the multi-media proposals of the company;*
- i. *there is security of environmental investments.*¹⁸

The views of companies on the covenant process reflect some similar perspectives. Some of the benefits described by company representatives include:

- The covenant process eliminates the threat of bit-by-bit regulations and compliance. A company is able to coordinate environmental and business plans within the usual business cycle of planning.
- Regulators now provide companies the room to develop their own solutions. Instead of specifying technologies, the new attitude toward facility efforts to meet environmental standards is, "Let us know how you do it."
- The covenant process provides companies with more control over the timing and sequence of environmental actions.
- The covenant process promotes better coordination of the various regulators

¹⁸Jit Peters, op.cit., p. 22.

who the company has to work with.¹⁹

¹⁹Interviews with J.I.H. Kann, Environmental Affairs Manager, EXXON Chemical Holland, Botlek, 5/15/96; Ad J. Vos, Manager Environmental & Public Affairs, General Electric Plastics, Bergen op Zoom, 5/14/96; Fritz de Groot (by phone), past environmental director VGO (printing association), now with VNO (industry association), 7/15/96. Herman A. van Karnebeek, Member of Board of Management, Akzo Nobel, "Corporate Environmental Long-Range Strategies," presentation at conference on Moving from Command-and-Control to Cooperative Environmental Management: Policy Innovations in the Netherlands and the United States (Washington D.C., 9/25/95).

IV. GOVERNMENTAL/REGULATORY BACKGROUND

Both under the traditional regulatory system and the emerging NEPP target group policy, the Dutch system of environmental management has a significant degree of decentralization. Ultimately, the new relationships being defined under the NEPP programs could give greater coherency to government strategy and direction, but lead to still further decentralization with respect to implementation.

The Netherlands national government, the provinces, the municipalities and the water boards all play a significant role in environmental management. At the national level, there are 13 ministries, several of which play a significant role in environmental management. The two most important are the Ministry of Housing, Spatial Planning and the Environment, with responsibility for the major part of environmental legislation, and the Ministry of Transport, Public Works and Water Management, with responsibility for water policy and legislation, and for management of water quality in the Rhine (and other major rivers), estuaries and the North Sea.

Below the national level, the country is divided into twelve provinces administered by elected Provincial Councils. Each province has an environmental management department, and is required to draw up a provincial plan for all aspects of environmental management within their boundaries. Within the provinces, there are about 650 municipalities, each of which has at least a designated department for environmental management. Municipalities are required to develop annual environmental programs. Finally, the country is divided among 70 water boards, 28 of which have water quality responsibilities; in some areas there are functional divisions of responsibilities between the boards. The water boards have had a major role for centuries in preventing flooding, and have added responsibility for implementation of water quality goals since the 1950s.²⁰

²⁰Ministry of Housing, Spatial Planning and the Environment, "Environmental Policy of the Netherlands" (The Hague, 1994), pp. 4-7; interview with F. Folkertsma, Association of Water Boards, The Hague, 5/8/96.

A. Legislation/Regulation

A new environmental law, the Environmental Management Act (EMA), came into effect in 1993, superseding a wide variety of environmental legislation which burgeoned in the 1970s. The EMA consolidates some, but not all, of existing environmental legislation -- including the Air Pollution Act, the Nuisance Act, the Waste Substances Act, the Chemical Waste Act and the Noise Abatement Act. Not included under the EMA are the Pollution of Surface Waters Act and the Marine Pollution Act, both of which are within the jurisdiction of the Ministry of Transport, Public Works and Water Management, which retains responsibility for all legislation relating to surface water pollution and water quality, and direct management responsibility for major rivers, estuaries and the North Sea.

The purpose of the EMA is to provide a more inclusive multimedia legislative framework, consistent with the comprehensive thrust of the NEPP. One immediate result is a reduction in the number of permits a facility must have. Instead of a separate permit to meet the conditions of each environmental statute, a facility will only need two permits in the future -- one for surface water and one for everything else. The lack of the last element of consolidation is due to the separate responsibilities of the Ministries, and the long independent history of the water boards and water management. Permit consolidation contributes to the efforts to involve companies in the development of longer-term multimedia process-technology strategies.²¹

Determinations of regulatory requirements for companies have usually been based on media-specific assessments of Best Available Control Technologies (BACT). The starting points for these determinations have been federal technology guidelines such as the Dutch Emission Guidelines and the guidelines of the Coordination Committee for the Implementation of the Pollution of Surface Waters Act. Specific determinations for individual facilities tend to be standard, but may emerge from negotiations between companies and the provincial, municipal or water board authorities. Such technology-based performance standards remain the baseline for environmental management at facilities under the covenant process, and may also be applied stringently to companies not participating in covenants. But the covenant process is designed to encourage increased multi-media,

²¹"Environmental Policy of the Netherlands," pp. 18-19; interview with Joop Blenkens.

process-based changes. As discussed further below, the covenant process in many cases will change the relationship of the regulatory agency and the company by empowering the company to propose the basis for its own regulation.²²

B. Roles With Respect to Licensing/Enforcement

As noted above, the vast majority of environmental permits are issued to companies by the provinces, municipalities and water boards. Similarly, these agencies have primary responsibility for enforcement of the permits. In the past, permits have not been subject to the kind of frequent updating which will be required under the covenant process; the EMA calls for issuance of new or revised permits every four years, which is the same time cycle as the revisions of corporate environmental plans required by the covenants. By contrast, water boards generally have issued permits for terms of 5-10 years. Municipal environmental permits often have been issued without expiration dates.

In general, the division of responsibilities between provincial and municipal environmental authorities is that the provinces are responsible for licensing and enforcement of the larger industrial facilities, while municipalities are responsible for licensing and enforcement of smaller industrial facilities. For example, provinces are responsible for environmental issues (other than water) related to chemical facilities, while municipalities are responsible for most printing facilities.

The reduction in the number of permits to be issued by provinces and municipalities due to the consolidation of all the permits they issue to facilities into a single permit should help, but not all observers are confident that smaller municipalities, in particular, can meet the goal of a four-year permit cycle and provide adequate inspection oversight of facilities. Another measure to improve has been to consolidate the technical environmental resources of several smaller municipalities; where municipal environmental organizations represent

²²"Declaration of Intent on the Implementation of Environmental Policy for the Chemical Industry," (The Hague, 4/1/93), pp. 6-7; interviews with M.M. de Hoog, C. M. Moons, Joop Blenkers, F. Folkertsma.

approximately 70,000 people, they receive staff and financial support from VROM.²³

There has been a major national effort to upgrade the quality of enforcement over the last decade, an improvement which all stakeholders agree is critical to the success of the innovative, flexible target group covenant program. Even though VROM plays only a limited role in permit issuance, it does play a significant role in oversight and support for enforcement and permitting efforts of the provincial, municipal and water board environmental programs. VROM's Environment Inspectorate has nine regional inspectorates (about to be consolidated into 5) which give advice to the provinces, municipalities and water boards on enforcement, and audit the quality of permits and adequacy of enforcement. All licenses/permits must be sent to the Inspectorate for review.²⁴

Increased attention, training and resources have led to some significant improvements in enforcement. The provinces, for example, achieved major increases in the proportion of warning letters and other actions taken in response to identification of violations during inspections. The water boards tripled the number of inspections from 1991 to 1994 (from 17,000 to 47,000). With respect to municipalities, annual evaluations by VROM's Environment Inspectorate of their enforcement planning, organization and performance showed major improvements from 1990 to 1993. In 1990, the Inspectorate evaluated the enforcement programs of 15% of the municipalities as poor, and over 60% as insufficient; only about 20% were rated as reasonable, and about 2% as good. By 1993, the poor and insufficient ratings had fallen to <1% and about 25%, while the proportion of municipal enforcement programs rated as reasonable or good had risen to roughly 70% and 5%.²⁵

²³Interviews with J.J. Feenstra, Association of Provincial Authorities, The Hague, 5/13/96; E. Gerding, Association of Dutch Municipalities, The Hague, 5/13/96; F. Folkertsma, the Association of Water Boards, The Hague, 5/8/96; Jan-Willem Biekart, the Netherlands Society for Nature and Environment, Utrecht, 5/15/06.

²⁴Interviews with Mr. Kesselaar, Environment Inspectorate, VROM, The Hague, 5/10/96; Joop Blenkens, Regional Inspectorate for the Environment in the Province of North Brabant, Endhoven, 5/10/96.

²⁵Ministry of Housing, Spatial Planning and the Environment, "Sixth Progress Report on Environmental Law Enforcement," The Hague, 1995.

C. Roles With Respect to Target Groups/Covenants

The Ministry of Housing, Spatial Planning and the Environment (VROM) is the lead central government environmental agency. It plays the key role in the most important central government environmental responsibilities:

- development of environmental strategy and policy,
- general implementation of the NEPP,
- development of target group priorities and strategies,
- negotiation of target group covenants,
- support of implementation of covenants by provinces, municipalities and water boards.

But several other ministries also have important functions. The Ministry of Agriculture, Nature Management and Fisheries, for example, has responsibilities with respect both to planning of agricultural environmental policy and to negotiations with the agriculture target group (e.g., participating in negotiations for the dairy industry covenant). Because of its responsibility for water policy, as well as transportation management, the Ministry of Transport, Public Works and Water Management is involved both in policy deliberations and sector negotiations. In addition, the Ministry of Economic Affairs co-chairs the target group covenant negotiations with VROM, ensuring that international trade and economic growth concerns are adequately considered.

The central government has a major continuing role after a covenant is signed. While the associations representing the provinces, municipalities and water boards sign the covenants, the central government can not just tell them to go and implement the covenant. Even efforts by the industry sector are likely to need various kinds of support, depending on the nature and size of the operations involved. The process remains a partnership. The needs may include funding technical or market research; disseminating information, either directly or through support of association programs; tracking and evaluation of covenant

implementation; or utilization of other policy implements to spur action by companies (e.g., use or discharge taxes of various kinds).

For the provinces, water boards and municipalities, the covenants involve both some role in the negotiations themselves, and substantial new responsibilities with respect to implementation of the covenant process through licensing and enforcement:

- The Association of Provincial Authorities (IPO), the Association of Netherlands Municipalities and the Association of Water Control Boards are all participants in the covenant negotiation process. For the municipalities and provinces, the importance of their role in specific negotiations may vary with the typical size of the facilities of the industry sector involved. Primary metal or chemical facilities, for example, are more likely to be subject to provincial licensing (only five cities issue licenses to primary metal manufacturers), whereas print shops most commonly have municipal licenses.

In the case of the municipalities, a group of eight or nine municipalities may serve as advisers to the Association representative participating in the negotiations. Coordinating the radically diverse views of major cities and small towns is a significant challenge, and important for the implementation phase; the Association can not bind its members through its signature on a covenant. In the case of IPO, the signature of the Board is binding on the provinces; provincial representatives are concerned that it be clear in the covenant exactly what the obligations of the provinces are under the covenant.

- In the implementation phase, the extent and nature of the new roles varies. With smaller industry sectors and companies usually subject to municipal licensing, specific sets of technical options are generally developed as part of the covenant process. The major needs (either for municipalities or water boards) involve information dissemination and the issuance of large numbers of new permits. For larger companies, the issuance of new licenses will involve a significantly different relationship between the company and the provincial or water board authority. Companies will develop corporate environmental plans, and submit those plans as the proposed basis for their

permits. The province or water board will need to be able to review the plan to evaluate its adequacy, and to develop a license based on the plan. Further, the responses of the province and water board or municipality and water board are supposed to be coordinated.²⁶

²⁶Information in this section generally from interviews with Folkertsma, Feenstra, Gerding, Blenkers, de Hoog; VROM, "Environmental Programme 1996-1999 (The Hague, 1995) & "Environmental Policy in the Netherlands" (The Hague, 1994).

V. THE COVENANT PROCESS: THE CHEMICAL INDUSTRY

While covenants between industry and government are not new in the Netherlands, the scope of the national environmental plan and of the proposed industrial sector negotiations make the target group covenants²⁷ substantially different than previous agreements. The new covenants represent binding agreements by an industry sector to work with government to achieve a series of comprehensive environmental goals for that sector over a time-period extending to 2010. The sector goals, in turn, are based on a comprehensive range of scientifically-driven national environmental objectives. An industry spokesman involved in the covenant negotiations observed that the science might not be perfect, and some of the specific environmental and economic assumptions involved in making the long-term projections might be open to question, but the overall plan and analysis were credible and compelling.

The first three industry sectors to begin covenant negotiations were the printing industry, the primary metals industry and the chemical industry, the latter two among the four first priority branches of industry identified by VROM.²⁸ The printing industry started the process first, approaching VROM to indicate its interest in negotiations in 1989.²⁹ The first two large-industry sectors to begin negotiations for a covenant were the primary metals and chemical industries. Dominated by a single giant company (Hoogovens), the primary metals industry agreed quickly to participate in the covenant process in 1990, although it had to overcome some initial reluctance by another major corporation.³⁰ The chemical industry began negotiations with the government a few months later.

²⁷The covenant document for the chemical industry agreement is formally designated as a "Declaration of Intent."

²⁸The other two initial priority branches were the metal products and food processing industries. Peters, *op.cit.*, p. 24.

²⁹See Section V below for more discussion of the printing industry covenant.

³⁰The primary metals covenant was the first to be signed, in March 1992.

Interviews with M.M. de Hoog; Bart J. Witmond and Fred Couzy, Directorate General for Industry, Ministry of Economic Affairs, 5/7/96. "Declaration of Intent on the Implementation of Environmental Policy for the Primary Metals Industry," The Hague, 3/10/92.

A. Negotiations

VROM was responsible for establishing and managing the process of the chemical sector negotiations. The initial workshops involved all parties, represented at the highest level. During the course of the negotiations, which from the beginning until the signing of the Declaration of Intent (the covenant) lasted over a year, there were numerous meetings of personnel at various levels from the participating organizations. National government participants included VROM, the Ministry of Economic Affairs, and the Ministry of Transport, Public Works and Water management. Other government parties to the negotiations included the Association of Provincial Authorities, the Union of Netherlands Municipalities, and the Association of Water Control Boards. The Chemical Industry was represented by the Association of the Dutch Chemical Industry (VNCI), as well as representatives of individual chemical companies.³¹

Two groups not invited to participate in the negotiations were the unions and the environmental public interest groups. The Netherlands does not have requirements for participation of all potentially interested parties in such discussions. The unions, at the time these discussions began, had only recently developed any capability to participate in environmental discussions; their concerns had primarily been linked to plant health and safety issues (which were not covered by the covenant discussions).³²

Public interest groups generally exert influence over environmental policy through lobbying in parliament, and through the ability to sue over permit provisions and other public regulatory actions. Some public interest groups were initially concerned that the use of private legal agreements between the government and industry would leave them without recourse for affecting policy. Since, as

³¹"Declaration of Intent on the Implementation of Environmental Policy for the Chemical Industry," The Hague, 4/2/93. Interviews with M.M. de Hoog and C.M. Moons (VROM), D.J. van Namen (VNCI), J.I.H. Kann (EXXON).

³²Interview with Jup van 't Veld, Federation of Dutch Labor Unions, Amsterdam, 5/8/96. The unions are now represented on the steering committee for the NEPP process.

discussed above, legal enforceability is not a significant factor in the actual operation of the covenants, this specific legal issue has receded in importance.³³

One of the major objectives of the national government was to get all the stakeholders to commit to the negotiation process. The government also sought to get agreement from industry to an ultimate mechanism for working to reach the environmental targets based on the NEPP (or, where appropriate, more stringent requirements already agreed to or specified in regulation). The principal objectives of the negotiations, therefore, were to gain agreement to a process by which companies would work toward the targets in the NEPP, and to establish an on-going process of consultation to facilitate progress toward that goal. The covenant negotiations were themselves the first phase toward developing a consultative and cooperative relationship involving all industry and governmental participants.

B. The Goals: The Integrated Environmental Target Plan (IETP)

VROM made it clear from the outset that the negotiations were not over the environmental targets themselves. They were, instead, over a process for reaching those targets. The targets themselves were established by the government, based on the NEPP. The final language of the "Declaration of Intent on the Implementation of Environmental Policy for the Chemical Industry" (DI for Chemical Industry) states this clearly:

"Based on the National Environmental Policy Plan (NEPP), the National Environmental Policy Plan Plus (NEPP-plus) and other relevant plans published at the time of signature of this Declaration of Intent..., the authorities have drawn up an Integrated Environmental Target Plan for the Chemical Industry... relating to environmental pollution caused by the Chemical Industry in the Netherlands."³⁴

The Declaration of Intent further states that realizing these goals is the aim of all parties signing the agreement. But the government acknowledged that this was a process of striving

³³Interviews with Paul van Sambeek, Friends of the Earth, Amsterdam, 5/9/96, and Jan-Willem Biekart, the Netherlands Society for Nature and Environment, Utrecht, 5/15/96.

³⁴DI for Chemical Industry, p. 3.

for the goals, that there was no certainty that all the goals would be realizable, and that some revisions might be found to be necessary over time:

"An adjustment of the IETP for the Chemical Industry may be called for, amongst other things if difficulties of a general nature arise as a result of circumstances which deviate substantially from the position assumed at the time the National Environmental Policy Plan was published. Difficulties likely to constitute a particular reason for adjusting the IETP may arise in the following areas:

- 1. the economic development of the chemical industry and its various subsectors;*
- 2. the deviation of environmental policy within the EC [European Community] from policy formulated at the national level;*
- 3. the lack of technical possibilities to reduce levels of environmental pollution."³⁵*

But the starting assumption for the agreement is that the targets are to be reached. If changes in economic or other circumstance occur that appear to require change subsequent to approval of the covenant, then potential changes should be discussed through the on-going consultation process established in the covenant.

"For the moment it is assumed that the procedures laid down in the Declaration of Intent and the criteria governing them provide sufficient assurance that such developments can be accommodated."³⁶

The IETP itself is spelled out in an appendix to the Declaration of Intent. It encompasses six themes: climate change, acidification, diffusion, eutrophication, waste disposal and disturbance. The document notes that for any waste streams for which specific targets have not been set within the IETP, reductions should be made based on criteria in the

³⁵DI for Chemical Industry, p. 4.

³⁶DI for Chemical Industry, p. 5.

NEPP and a separate policy document on water management. The IETP establishes reduction targets under each theme for 1995, 2000 and 2010. The IETP defines the reductions to be achieved by the chemical industry relative to a baseline year of 1985.³⁷

Examples of goals established under the IETP:

- Climate change: Under goals established through the EC and the Montreal Protocol, various phaseout dates have already been established for production and use of CFCs, halons, 1,1,1-trichloroethane and carbon tetrachloride. These requirements are incorporated into the IETP. Goals for carbon dioxide were established in the NEPP of maintaining 1989/1990 emission levels by 1994/1995, and then reducing that level by 3-5% by 2000. To achieve this goal, efficiency in energy consumption must improve 2% per year until 2000 - a 20% improvement in 2000 relative to 1989. This target was already agreed to by the chemical industry in an agreement signed with the Ministry of Economic Affairs in 1991, and is incorporated by reference into the IETP.³⁸
- Diffusion (of priority toxic substances): The IETP translates NEPP targets -- which define reductions in health risks due to exposure to toxics -- into percentage emission reductions "based on present-day understanding" of the relationships between emissions and risk levels. Reduction percentages are stated in the IETP for both air and water. For 1995, most percentage reduction requirements for major chemical industry releases to air are only for heavy metals (e.g., 70% for lead, cadmium and mercury) and a few organics (e.g., 50% for tetrachloroethane). By the year 2000, reductions also apply to a wide range of organics (e.g., 75% for benzene, 90% for tetrachloroethane, increasing respectively to 97.5% and 99% by 2010). It is noted in the IETP that current technology will only allow a reduction of 60% in mercury emissions by 2000, but that the 70% goal will be achievable by 2010. For toxic substance for which releases of the chemical industry amount to less

³⁷DI for Chemical Industry, p.4; appendix 2, p. 2.

³⁸DI for Chemical Industry, appendix 2, pp. 4-6.

than 1% of total industry emissions, general goals for industry are adopted.³⁹

If specific goals of the IETP appear unattainable, and the consultation group established under the covenant agrees changes are necessary:

- changes should be made with respect to the timing, rather than the substance of the requirement; and
- other requirements should be reviewed to see if they could be achieved at an earlier date.⁴⁰

The IETP goals are goals for the chemical industry sector, not specifically for individual companies. What individual companies can achieve will be spelled out in the environmental plans that they develop. For individual companies, the minimal starting point in developing their environmental plans must be Best Available Control Technology. Beyond meeting all current specific requirements, however, the companies should examine additional targets for the future.

*"For the company environmental plans to be drawn up in 1993, the IETP for the chemical industry is thus of limited use as a framework within which to set out the efforts of individual companies. However, within the cycle of company environmental plans to be drawn up periodically, the IETP forms a controlling and guiding framework for the contributions expected from individual companies to the realization of the IETP...."*⁴¹

For the chemical industry as a whole, BACT is not the measure of success. The purpose of the covenant process is to gain the cooperation of the industry in achieving the goals of the NEPP generally, and the IETP for the chemical industry specifically. It is anticipated that ultimately this will involve development and adoption of new pollution prevention/clean

³⁹DI for Chemical Industry, appendix 2, pp. 8-12.

⁴⁰Ibid., p. 6.

⁴¹Ibid., appendix 2, p. 3.

technologies:

"If it turns out that at chemical industry level the IETP, or parts of it, cannot be implemented through the application of guidelines based on Best Available Control Technology, consideration may be given to investigate the possibility of developing or specifying supplementary technologies; these will in many cases consist of more advance process-integrated solutions."⁴²

⁴²Ibid., p. 5 (emphasis added).

C. The Vehicle: Company Environmental Plans (CEPs)

The covenant establishes company environmental plans (CEPs) as the vehicle through which companies should establish their own environmental goals and their contribution to realization of the chemical industry IETP. The CEPs are to become the new basis for regulation of the companies under permits issued by the provinces, municipalities and water control boards.

The CEPs are the primary vehicle for changing the relative roles of the authorities and the companies. Under the traditional command-and-control system, the relevant authority would periodically issue a license to the company requiring that the company meet current BACT requirements. Since many of the provincial, municipal and water board regulatory bodies were stretched thin on resources, licenses often were outdated, and there was no incentive for companies to update them. In addition, negotiations between the company and the authority with respect to specific BACT requirements were limited in scope. Basically, the responsibility for defining and initiating steps to meet environmental objectives for the company lay with the relevant authority, not with the company.

With the advent of the CEPs, the initiative and responsibility for defining how to meet environmental goals passes to the company. While the starting point for the plans is the requirement to meet BACT, it is the company that now determines whether to install BACT or look for other alternatives. It is up to the company to link environmental, production and investment planning. And it is the company which proposes to the authority the basis for its license, rather than waiting for proposals from the regulator.

The covenant establishes the starting date for the initial plans as 1993, with updates required every four years. The plan should both specify actions to be taken within the initial four-year period, and provide some suggested scoping of activities to be undertaken or evaluated in the subsequent four-year period. In addition to specific measures to be taken within the four-year period, the CEPs should have a target-setting bias relative to the goals of the IETP.⁴³

⁴³Ibid., p.7; appendix 2, p. 3. Interviews with C.M. Moons, M.M. de Hoog, Joop Blenkers, Ad Vos, and J.I.H. Kann (Environmental Affairs Manager, EXXON Chemical Holland, Botlek, 5/15/96).

Minimum contents of the CEP (as spelled out in the covenant):

- **Baseline and current pollution levels:** the pollution levels of the company in the base year for the IETP reduction targets, and in the year when the plan is published.
- **Past or required reductions:** Reductions in pollution which have already been achieved relative to the baseline year for the IETP; reductions which will result from current measures being taken at the company; and reductions required under licenses or other agreements with relevant authorities.
- **Additional planned reductions:** Planned reductions by the company as its contribution to meeting the IETP, together with the schedule for those reductions.
- **Specific technologies or measures:** The measures already adopted to achieve past reductions, or planned to achieve the future required or planned reductions specified above.
- **Analysis of options:** description of analyses, both technical and financial, undertaken to evaluate additional reduction opportunities, and measures to be implemented on the bases of these analyses.
- **Statement of problems/barriers to implementing IETP goals:** These could include investment capital availability or required ROI limitations, deterioration in competitive position or profitability.
- **Requested assurances from authorities:** Any assurances needed from authorities with respect to implementation schedule for CEP.⁴⁴

What is meant by saying that the CEPs must have a target-setting bias? The covenant answers this by distinguishing between three categories of reductions which can be specified

⁴⁴Ibid., appendix 5.

in a CEP: definite, conditional and uncertain:

- Definite reductions -- reductions which will result from measures which are fully understood and can readily be implemented without obstacles or restrictions. These are the measures which can easily be incorporated into licenses.
- Conditional reductions -- reductions that may take place if one or more technical, environmental or international economic conditions are met.
- Uncertain reductions -- reductions linked to uncertainties which have to be resolved before the feasibility or applicability of the measures can be determined.

The target-setting bias becomes evident in the CEP's treatment of uncertain and conditional reductions. A plan with a target-setting bias will clearly describe the analysis or research necessary to change uncertain measures to definite measures, along with the schedule and decision-process involved in undertaking and drawing conclusions from these investigations. With respect to conditional reductions, the CEP should spell out exactly what steps will need to be taken to resolve the conditions, and the schedule for those steps.⁴⁵

Since the CEPs are to become the basis for licenses from the authorities, there are both informal communications and formal steps between the authorities and the company involving plan review. The formal steps specified in the covenant for review and approval of the first round of CEPs included:

- VNCI and the government jointly developed a model for the CEP.
- Companies were to submit the first draft of their CEPs to the authorities within eight months of completion (spring 1993) of the model. Companies and the relevant authorities should meet to discuss the CEP.

⁴⁵Ibid., appendix 2, pp. 3-4.

- The authorities have up to three months to respond in writing.
- The companies then have two months to make modifications to the CEP and to submit a "definitive" plan to the authorities. It is intended that this should not be a paper exchange exercise, but involve consultation and agreement.
- Within two months, the authorities must provide their final evaluation and comments on the plan. Both the comments and the CEP (excluding confidential data and information) then become public.⁴⁶

The definitive versions of the CEPs were sent to the Consultation Group established to provide continuity to the covenant process subsequent to the signing of the covenant. The Consultation Group evaluates all the CEPs to determine the extent to which the chemical industry as a whole is meeting the goals of the IETP.

The CEP process provides some new challenges for provincial, municipal and water control board authorities with respect to coordination, CEP review, and licensing. With respect to coordination, whereas the authorities previously acted independently, they are now supposed to act together, starting with joint meetings to discuss the CEP with the company. The covenant specifies that the Province concerned should play the coordinating role between authorities. This role "includes making an effort to ensure that the relevant authorities arrive at a uniform opinion on the company environmental plan." Actual experiences of both companies and authorities have varied widely. In some cases, companies have been pleased by the chance to deal with all of the regulators at one time, and have found that this has facilitated a holistic, facility-wide review of the plan. In other cases, after a rather pro forma initial meeting, each authority tended to act independently.

During the actual review of the CEP, the authorities must evaluate the accuracy of the facts in the plan, and "ensure that the company makes a satisfactory effort to reduce pollution against the background of the IETP over the period described in the plan, having due regard

⁴⁶DI for Chemical Industry, pp. 8-9.

to Best Available Control Technology."⁴⁷ The review must ensure that the company has considered technologies that are reasonably well-known and with which the maximum reductions can be achieved, and that the CEP includes implementation of measures already required under other agreements or regulations.

With respect to licensing, where the authorities find a plan to be acceptable, they should take account of the plan in developing the license. They can most easily incorporate into licenses those measures which are "definite" within the plan. In addition, the license could incorporate as mandatory any extensive investigations of future options proposed in the CEP.

D. Establishing Continuity: The Consultation Process

Since one of the principal purposes of the covenant process is to develop communication between industry and the government, it was important that the signing of the Declaration of Intent not be an end-point to the communication process. There needed to be an on-going structure both to evaluate the progress of the chemical industry with respect to the IETP; to provide for technical support for the CEP process for both industry and for the provincial, municipal and water board authorities required to implement the covenant through the licensing process; to make adjustments as needed to the process; and to build on the cooperation and communication which had developed during the course of the process.

The Consultation Group identified in the covenant includes most of the parties listed to the covenant itself: VROM, the Ministry of Economic Affairs, the Ministry of Transport, the Association of Provincial Authorities (IPO), the Association of Water Control Boards (UvW), and the Association of the Dutch Chemical Industry (VNCI). Individual companies are not formally part of the Consultation Group, although they can participate through VNCI. The Union of Netherlands Municipalities is not part of the Consultation Group because most of the companies in the chemical industry sector are regulated by the provinces. The Consultation Group has regular periodic meetings of the parties (twice a year at the senior level, every six weeks at the staff level).

⁴⁷Ibid., p. 9.

The central role of the Consultation Group is to determine whether the IETP goals are being achieved, and the technical and economic options available for correcting deficiencies. The determination will be based, at least in part, on information gained from review of the CEPs submitted by the companies.

The Declaration of Intent specifies the following responsibilities of the Consultation Group:

- coordination/harmonization of implementation of the covenant at the chemical industry level, taking into account other environmental efforts of the industry;
- discussion of problems and potential solutions for implementation of the policy;
- discussion of appropriate organizational framework for implementation of IETP;
- monitoring progress in IETP implementation;
- making proposals for amendments to IETP and other agreements under Declaration of Intent;
- if required, commissioning of investigations to provide information for issues being discussed by the Group (with the costs to be borne jointly by VNCI and the Authorities);
- issuance of annual report on its activities to VROM.⁴⁸

The agreement emphasizes that the process is designed to build cooperation:

"In its activities the Consultation Group aims at finding solutions to problem areas through joint consultation. It does not make proposals in the event of overriding

⁴⁸DI for Chemical Industry, appendix 1, p. 1.

objections on the part of one of the parties."⁴⁹

E. The Agreement

The Declaration of Intent was signed by all of the Ministries; the provincial, municipal and water board governmental associations; VNCI; and the majority of individual chemical companies on April 2, 1993. It remains in force until the end of 2010. It includes provisions for consultation and amendment in the case of either major unforeseen developments (e.g., legal, economic, international) which could affect its implementation or evidence that its implementation is having serious adverse effects on the chemical industry.

Before the second round of CEPs (1997), consultations will be held to determine if any revisions are required, particularly in the relationship of CEPs and licensing. Finally, any of the parties can terminate the agreement if no agreement is reached on needed alterations, or on the basis of the results of the evaluation to be completed prior to the second round of CEPs.

Formally, it is a legal agreement: "This Declaration of Intent has the force of an agreement in civil law." For the reasons discussed previously, legal enforceability is probably not a particularly important factor; rather, the enforceability derives from the manner in which the agreement relates the undertakings in the Declaration to the existing structure of enforceable licenses.

There were, however, concerns about enforceability, legal and otherwise, raised by various parties to the Declaration. Some of these concerns related to doubts as to whether the guise of a civil legal agreement was in fact as irrelevant as most of the parties believed; at this point in the process, many of these concerns were raised by American-based corporations. Second, there was concern on the part of both the companies and the authorities that there be no free riders taking advantage of the flexibility of the system, but not contributing to the effort to achieve the environmental goals.

⁴⁹Ibid., appendix 1, p. 2.

At the beginning of the covenant process with industry, a Dutch company, which had experienced the shutdown of one of its facilities by a regulatory agency because of failure by a few weeks to complete a major facility overhaul on the originally-agreed target date, indicated concerns about the potential legal risks of being involved in so comprehensive an agreement with the government. But the company was soon convinced that the legal issues in the target group negotiations were not significant, and became a strong supporter of the process from the beginning of the chemical industry negotiations.

Some American-based companies (e.g., EXXON, Dow), however, remained uncomfortable. Corporate lawyers in the U.S. were not entirely convinced that the legal risk under the covenants was negligible. Most of these companies ultimately chose to sign the Declaration. Even companies which chose not to sign the covenant, however, stated that they would take all the actions required under the covenant as if they had signed it. They made clear that they supported the core structure of the covenant, if not the legal shell.⁵⁰

The other concern -- related to companies that did not fully participate in the process -- was addressed in the covenant itself. The companies themselves were insistent on this point. If a company "does not make sufficient effort" to carry out the agreement, the relevant licensing authority "will, inasmuch as their power allows, **unilaterally impose stricter conditions** on the licenses applicable to the companies...." Appropriate situations would include:

- failure of a company to draw up a CEP, or to report on its implementation;
- failure of the company, based on the CEP, to make an adequate effort to carry out the IETP;
- failure of a company to carry out planned measures under those sections of the CEP not specifically incorporated into its licenses;

⁵⁰DI for Chemical Industry, pp. 4,12. Interviews with Ad Vos (GE Plastics), C.M. Moons & M.M. de Hoog (VROM), D.J. van Namen (VNCI), Fred Couzy & Bart J. Witmond (Ministry of Economics).

- unnecessary delays in introducing actions previously set in motion for implementing its environmental policies.⁵¹

Both industry and the government assumed that once the majority of companies signed the Declaration, many of the companies initially hedging would join as well. Companies in the chemical sector which had signed the Declaration also made efforts to persuade those that had not to participate. The first annual report by the Consultation Group seemed to support this assumption. As of May 15, 1995, 103 of the 126 companies (82%) in the sector covered by the agreement had signed the Declaration. An additional 15 companies, while not signing the covenant, had stated that they intended to fully meet all the obligations for companies under the covenant. One of the remaining facilities was closing.⁵²

F. Implementation

Because the process called for under the covenant involves a wide range of actions by multiple players, several questions need to be answered to gain some understanding of the degree to which the process is being implemented. The questions involve both the extent of participation in the process by all parties, and the degree to which there appears to be both movement toward the objectives of the IETP and the evolution of a more effective way of responding to environmental problems.

Generally, there appears to be a significant level of implementation of the initial steps required under the covenant, with broad participation by both industry and local authorities. Some of the general observations by participants indicate a wide range in the nature of participation:⁵³

⁵¹Ibid., p. 10.

⁵²FO Industrie, "Consultative Group for the Chemical Industry: Annual Report 1994" (The Hague, 6/7/95), pp. 6-7.

⁵³Interviews with D.J. Van Namen, M.M. de Hoog, F. Folkertsma, Joop Blenkers, Ad Vos, J.I.H. Kann, E.R. Gerding, Wim T. Grothius (Manager Safety, Environmental Affairs and Quality, Amsterdam North Facility, Akzo Nobel, 5/9/96), and E.C.W.A. Geuze & J.H.M. Zijlmans (Water Control Board Technology Service -- East Brabant, Boxtel, 5/10/96); Joop Blenkers, "Developments in Industrial

- It appears likely that a large proportion of the IETP goals for 2000 will be reached or, in some cases, had already been reached. (An internal chemical industry study, for example, indicated that most of the water goals for 2000 would have been reached without the covenant and the IETP).
- In meeting requirements for the first round of plans, companies simply planned to meet BACT requirements; these are largely end-of-pipe requirements. That these actions were sufficient to achieve many of the IETP goals is due to the fact that existing licenses were sometimes outdated, that company emission inventories were incomplete, and that upgrading both licenses (to meet current BACT requirements) and inventories, as required for the CEPs, resulted in significant change.
- Several companies took steps to link CEP development to implementation of more comprehensive environmental management systems (EMSs), whether BS 7750 or some other approach (EMAS, independently developed systems, or precursors to ISO 14000). In a few cases, these companies and the authorities are experimenting with short permits which would do no more than reference the CEP and a short summary of the (certified or audited) EMS, essentially treating the commitments in the CEP as the permit.
- Both industry and governmental participants in the covenant process noted substantial pressure by industry participants on non-participants to either join or conform to the covenant. In addition, there was substantial pressure on local authorities to significantly improve the level of coordination and multi-media, whole-facility evaluations in their reviews of company plans and licenses.

Such qualitative observations on implementation of the covenant process can be supplemented by the very preliminary available information from the Consultative Group. (It should be noted that the operation of the Consultative Group itself is one element of the implementation of the Declaration of Intent):

Environmental Policy in the Netherlands."

- As of May 15, 1995, 107 of 126 chemical companies had completed their draft CEPs, and 92 of those had gone the next step and completed their "definitive" (or final) CEP. Companies completing definitive permits included 71 of the 87 (82%) companies for which the provincial government was the principal permitter, but only 21 of the 39 (54%) smaller companies licensed by municipalities.

Of the 34 companies which had not yet completed definitive CEPs, the Consultative Group obtained information that 28 were still in the process of drawing up their CEPs. Two additional companies were considering drawing up CEPs at the request of the relevant licensing authority. One company was closing. The Consultative Group had requested that the relevant authorities consider a review of the licenses of the remaining three companies (all small).

- With respect to signing of the Declaration of Intent by the licensing bodies, the situation for the provinces differed from that of the municipalities and water control boards. The 12 provinces are all bound under the agreement by the signature of their association (IPO). But the municipality and water board associations have no similar authority to bind their members.

As a result, municipalities and water boards with licensing responsibilities for chemical plants were requested, subsequent to the finalizing of the covenant, to join in signing it in the same manner as the individual companies. By May 1995, 11 of 35 municipalities and 15 of 18 water control boards had signed the Declaration of Intent. The Association of Water Control Boards and the Union of Netherlands Municipalities were each talking to those members who had not yet signed. There did not appear to be any delays, however, in review of the CEPs by the authorities; they had so far completed review of 57 of the 92 definitive CEPs.⁵⁴

- While actual reduction information was not yet available in May 1995, the Consultative Group was able to make an initial assessment of the degree to which the aggregated reductions in the CEPs would result in realization of the

⁵⁴Ibid., pp. 6-7.

IETP goals for the chemical industry for 2000. The report concluded that the objectives for the change-of-climate, acidification, eutrophication and waste processing themes were likely to be achieved. With respect to the dispersal-of-toxic-substances theme, objectives for two-thirds of the substances would probably be reached. No definite assessment could be made with respect to soil protection.⁵⁵

⁵⁵Ibid., pp. 10-14.

VI. THE COVENANT PROCESS: THE PRINTING INDUSTRY

The printing industry was the first sector to enter into negotiations for a covenant under the government's target group program. Because of the immense disparities in company size and in the complexity and individualization of technology between the chemical industry and the printing industry, the covenants for these two sectors are vastly different. Nonetheless, the central purpose of the covenant and the covenant-development process for the printing industry has been, as in the case of the chemical industry, to promote more proactive involvement by the industry in developing solutions to its environmental problems. Even though the technologies may be less complex and diverse in the printing industry than the chemical industry, VROM sees active involvement of the industry as essential both to discovery and adoption of optimal solutions.

The Netherlands' printing associations have about 3,000 members, which may not account for the entire universe. Approximately 80% of the printing shops in the Netherlands have 10 or fewer employees. The country's two printing associations are the Royal Association of Printing Industries (KVGGO), with about 3,000 members, and Kartoflex, with only about 80 members. Kartoflex members are all printers of flexible packaging materials. KVGGO represents all the rest of the printers.⁵⁶

A. Negotiations

It became clear in 1989, the year after publication of the report, "Concern for Tomorrow,"⁵⁷ that there was going to be substantial new environmental legislation and regulation involving a wide range of new requirements for industry. There were numerous different statements by local and national regulators as to the likely nature of new requirements -- for example, with respect to the extent of VOC reductions that would be

⁵⁶Interview with Fritz de Groot (7/15/96), currently with VNO (the Netherlands Industry Association); formerly with KVGGO, and served as negotiator for printing industry during discussions over covenant. Kees Le Blansch, "Offset Printing Companies and the Environment," in Business Strategy and the Environment (Vol. 4, 1995), John Wiley & Sons, Ltd., pp. 220-228.

⁵⁷See Section II.

required.

Confused about the potential expense of the changes they would have to make, many of the printers asked their associations to get clarification as to the extent and nature of new requirements. The trade associations went to both VROM and the Ministry of Economic Affairs, and indicated interest in starting a dialogue over how to develop economically reasonable environmental requirements for the printing sector. VROM, in the process of developing policy under the NEPP, was committed to undertaking negotiations for environmental covenants as part of the new target group approach. While all parties had an interest in pursuing negotiations over economically and environmentally sound regulations, there was little experience on which to base any assumptions as to the nature of the process or anticipated results.

There was some initial reluctance of association members to participate in the dialogue with the government. But as the potential significance of the negotiations became apparent, some of the most respected CEOs and members of the associations, from both large and small printing operations, increasingly took roles as the lead negotiators for industry.

A Steering Committee was established to formulate the conditions for a covenant. At this point, the principal participants in the negotiations were VROM, the Ministry of Economic Affairs, KVGO and Kartoflex. As the discussions continued, the Ministry of Transport, Public Works and Water Management and the associations representing the provinces, municipalities and water boards became increasingly involved.

The parties agreed that it was important to get a clear picture of the actual environmental emissions and economic condition of the industry, as well as of the environmentally-preferable technological options available and their potential costs. Initially VROM had not considered such an approach. While it had overall industry emission profiles and goals, it had no detailed specific information about particular industries. VROM and the Ministry of Economic Affairs jointly commissioned a study by respected independent outside consultants to develop the relevant information about the printing industry.⁵⁸ It was

⁵⁸The study was conducted by Berenschot Management Consultants BV in conjunction with the engineering consulting firm, Tebodin.

important to the trade associations that the study be jointly funded by both Ministries to ensure its objectivity.

The study divided the printing process into small specific segments, and developed a model for each segment. For each model, the study accounted for emissions of all kinds, reduction measures, and the costs of those measures. It took several months to complete and review the study, and for all parties to reach agreement that it provided an accurate picture of the industry.⁵⁹

Following completion of the study, all parties to the discussions signed a Principles Memorandum (June, 1990) in which they basically acknowledged agreement with the findings of the report, and agreed to continue with the process. Subsequent negotiations primarily focused on two topics: specific technology choices for meeting environmental targets, and the extent to which the technology options identified through the negotiation process would be adopted by licensing agencies in the provinces, municipalities and water boards. Representatives of the permitting authorities became more involved in the negotiations. There were discussions over whether to involve labor unions in the negotiations, since many of the options being raised had significant implications for health and safety issues, but the industry associations did not support their inclusion.⁶⁰

From the initial contacts of the trade associations with the government until the final completion of the covenant took approximately four years. That the duration of the negotiation process for the printing industry took significantly longer than the chemical or other industry negotiations was due both to the complexity of the specific technology discussions which became part of the negotiations, and the novelty of the target group covenant process.

⁵⁹Interviews with Paul Hofhuis, Counselor for Health and Environment, Royal Netherlands Embassy, Washington, D.C. (and formerly with VROM, and chairman of the Steering Committee for negotiations with the printing industry), 10/19/95; Fritz de Groot. "Environmental Policy Agreement with the Printing Industry," The Hague, 4/8/93.

⁶⁰"Environmental Policy Agreement with the Printing Industry," p.3; interview with Paul Hofhuis.

B. Environmental Goals

As with the chemical industry, the environmental goals established by the NEPP were not on the table for negotiation with the printing industry. Rather, the goals were applied to the contribution of the printing industry to the environmental impacts described under the environmental themes in the NEPP.

The detailed analysis of the printing industry in the consultant report provided a baseline to which the percentage reduction goals based on the NEPP themes could be applied, establishing the overall numeric goals for the industry. The report provided the kind of accurate information needed to assess industry progress.

What was more complex for the printing industry negotiations than for the chemical industry negotiations was that defining technology options for printing operations to enable the industry as a whole to meet the specific environmental goals became part of the actual covenant negotiations. By contrast, the chemical industry covenant left it to the companies to individually determine technology options which, it was hoped, would in aggregate enable the industry to realize its goals.

C. Developing Consensus on an Implementation Program

For the chemical industry, meeting VROM's goal of having the sector take responsibility for identifying solutions to environmental problems meant getting the companies to propose their own solutions in the CEPs which would serve as the basis of their licenses. For the printing industry, with thousands of small shops, VROM chose the route of involving industry representatives in developing solutions at the sector level. While some printers might choose to develop individual CEPs, most will follow standards established during the sector negotiations. The language of the agreement with the printing industry (signed six days after the chemical industry agreement) highlights the difference:

"The parties to this agreement have expressed their intention to develop a uniform environmental policy at the individual company level within the printing industry. One of the main aims of this exercise will be to determine environmental measures

*that are acceptable to all the parties and applicable as part of daily licensing and enforcement activities.... In some companies, there may be factors which necessitate a deviation from the standards applied to other companies, but this is expected in only a limited number of cases."*⁶¹

After the completion and approval of the consultant study, the negotiators had long lists of very specific options. But these still constituted only possible choices. To review these options, the associations involved specialists for a variety of technical processes and directors from small- and middle-sized companies who looked at the implementation issues involved in the alternatives. The technical people from the industry provided information to the people involved in the negotiating.

The outcome of the negotiating process was a comprehensive list of measures which now constitute Best Available Control Technology. All of the relevant technology choices are coordinated in a single extensive volume, the "Printing Industry Environmental Policy Implementation Programme." For 90% of printers, technical specifications in the "Programme" do not leave much by way of choice. The "Programme" handbook is divided into modules -- e.g., with respect to offset processes or binding and making books. The printing shop can establish its own requirements by looking at the appropriate module in the "Programme." In a few cases, there are options; in most, both the measures and the implementation deadlines are specified. This approach does not preclude a printer from proposing its own alternatives that meet the goals for the sector by developing and submitting a CEP, or by going to the local licensing authority and making a specific agreement.

The benefits of this process, from the perspectives of both VROM and the printers, were that the printers themselves were involved with the regulatory agencies in selecting the best technologies, and that the end result was a coordinated set of specifications across all environmental programs rather than a series of seven uncoordinated environmental program requirements developed by the agencies. Companies following the handbook will meet all environmental requirements. The technologies selected were generally both more modern and more efficient than older technologies. Finally, and perhaps most important, the whole process has played a major role in increasing awareness in the printing industry of its impact

⁶¹"Environmental Policy Agreement with the Printing Industry," p. 3.

on the environment, of the need to make environmentally-sound choices, and of clearly defined ways to accomplish that objective.⁶²

There are different perspectives, however, on the degree to which the process was effective in capturing process-oriented clean-technology opportunities. One view is that while the measures in the handbook are more oriented toward end-of-pipe, the important point is that the process resulted in a far higher proportion of pollution prevention options than would emerge through a standard regulatory program. In addition, part of the research agenda agreed to under the covenant was to investigate alternative inks; further pollution prevention-oriented research options can be pursued under the direction of the Steering Committee.

An alternative view is that participation in the process was not broad enough -- that an expanded role for suppliers and manufacturers might have involved them in examination and development of additional clean technology alternatives during the course of the negotiations, and might have made it possible to require more pollution prevention measures. Instead, in the absence of more technically compelling alternatives, "a number of measures that reduced the printers' free choice of materials and machines were deliberately dropped, because such measures might affect the quality of the printer's production and thereby endanger the legitimacy of the covenant."⁶³ Since these suppliers (other than agents) and manufacturers are not based in the Netherlands, the question is whether the market-size of the Netherlands would have been sufficient to secure their participation in so long a process.

The other implementation issue which had to be resolved was the relationship of the licensing bodies in the provinces, municipalities and water boards to any agreement which would emerge through the covenant process. For print shops, the issue was most important for municipalities. Municipalities have independent authority to issue environmental licenses. No decision involving the central government could restrict their authority. The Union of Netherlands Municipalities (VNG) participated in the negotiations, with

⁶²Interviews with M.M. de Hoog, Paul Hofhuis, Fred Couzy, E.R. Gerding, Jan-Willem Biekart, Fritz de Groot, C.G. Le Blansch (Center for Policy and Management Studies, University of Utrecht, 5/15/96); "Environmental Policy Agreement with the Printing Industry," p. 4.

⁶³Le Blansch, "Offset Printing Companies and the Environment," p. 226.

representatives from several municipalities serving as advisors to the association's negotiator. But VNG, unlike its provincial counterpart, does not have the authority to bind its members when signing an agreement. The decision was to communicate with the municipalities about the value of the information and options developed through the negotiation process, and to suggest that they adhere to the decisions in the covenant in their licensing.⁶⁴

D. Establishing Continuity: The Consultation Process

The covenant established a Steering Group to support implementation and continue the process of consultations. Membership of the Steering Group consists of representatives from the Association of Provincial Authorities, the Union of Netherlands Municipalities, the Association of Water Control Boards, VROM, the Ministry of Economic Affairs, the Ministry of Transport, Public Works and Water management, KVGGO (4 representatives) and Kartoflex (2 representatives). The coordinating efforts for the Steering Group were initially undertaken by VROM, and then handed off to the Union of Netherlands Municipalities.

The Steering Group has the responsibility:

- to manage evaluations of implementation and to monitor implementation progress under the printing sector agreement.
- to discuss implementation problems and progress.
- to coordinate and harmonize activities of all those parties involved in the various aspects of implementation.
- to follow technology developments in the printing industry and make sure that measures in the Implementation Programme are updated on a regular basis.
- to make recommendations to the relevant parties on revisions to the

⁶⁴Interviews with E.R. Gerding, Fritz de Groot.

Implementation Programme that would be beneficial to the sector.

Under the consultation process, parties to the agreement, all of whom are represented on the Steering Group, should inform the Steering Group as quickly as possible as to whether their membership will agree to recommendations being considered by the Steering Group. Changes to the Implementation Programme require the agreement of all parties.⁶⁵

Under the Steering Group process, a number of changes have been made to the Implementation Programme. The handbook was revised in 1995.

E. The Agreement

The printing industry covenant was signed in April 1993.⁶⁶ The parties to the covenant were the Ministry of Housing, Spatial Planning and the Environment, the Ministry of Economic affairs, the Ministry of Transport, Public Works and Water Management; the associations representing the municipalities (VNG), provinces (IPO) and water control boards; KVGGO and Kartoflex.

The covenant for the printing industry, unlike that for the chemical industry, specifically disclaims any contract status:

*"The parties are mutually aware that the measures laid down in the Implementation Programme do not give rise to obligations which can be enforced under civil law in respect of the parties to this agreement, the individual members of the parties ... or individual provinces and water control boards."*⁶⁷

Nonetheless, the agreement emphasizes that an effort will be made to ensure that the conclusions reached through the negotiations with respect to the Implementation Programme

⁶⁵Ibid., p. 8, appendix 1, pp. 11-12.

⁶⁶"Environmental Policy Agreement with the Printing Industry," April 8, 1993.

⁶⁷Ibid., p. 5.

are fully integrated into the regulatory framework:

"The parties commit themselves to promulgate the measures as correct, desirable and adequate and furthermore expressly state ... that they shall aim to ensure that the measures in the Implementation Programme are adhered to by all government bodies with duties or powers in this area under public law in so far as these duties and powers afford the opportunity for them to do so, and that they only deviate from these measures if and in so far as specific circumstances necessitate such a step in the public interest, or there are facts or circumstances which, according to the provisions of the Implementation Programme, justify a deviation from the measures in the Implementation programme."⁶⁸

Specifically, under the agreement, the government states that, "at the moment of signing," the technology options included in the "Implementation Programme" became BACT for the printing industry, and "that they constitute the concrete expression of the government's intended policy ... on the environmental burden caused by the printing industry...."⁶⁹

Since the Implementation Programme became BACT as soon as the covenant was signed, the issue of "free riders" did not exist in the same form as under the chemical or other industry agreements, in which the key element was "voluntary" participation. There remained, however, two issues with somewhat analogous effects. The first was the scope of coverage of the agreement. The second was the de facto barrier of making hundreds of municipalities and thousands of companies -- many of each very small and not especially attuned to environmental regulation -- aware of the existence and content of the agreement.

With respect to the scope of participation, with the purpose of "preventing distortion of competition," the covenant provides a broad definition of applicability. The environmental requirements:

⁶⁸Ibid., p. 5.

⁶⁹Ibid., p. 4.

*"shall apply to all companies in the printing industry, including companies which, although they do not belong to the sector, carry out similar production processes, irrespective of whether they are members of KVGGO or Kartoflex and irrespective of whether these companies or departments are referred to as 'in-house printers.'"*⁷⁰

The second issue, outreach and education, is one of the core issues for a sector involving so large a number of small companies (and, in this case, so large a number of small regulators). Several aspects of the agreement focus on these roles, with responsibilities assigned to VROM, VNG, KVGGO and Kartoflex.

F. Implementation

Several measures agreed to in the covenant were intended to spur the process of implementation:

- First, an information brochure based on the policy agreement was prepared for publication at the time the covenant was signed. The brochure, to be published by the Union of Netherlands Municipalities (VNG), was to contain sample applications for environmental licenses, and wording and conditions based on the environmental measures developed for the Implementation Programme.
- Second, VROM agreed to launch an information campaign coordinated with VNG's publication of the brochure to increase awareness both of the existence of the agreement and of its contents. The primary target of the campaign would be licensing agencies and waste management companies.
- Finally, both KVGGO and Kartoflex agreed to launch an information campaign for their members, and to establish a telephone hotline to provide information

⁷⁰Ibid., p. 6.

on the Implementation Programme.⁷¹

KVGO's education campaign has involved both development and dissemination of materials and direct training on the agreement. KVGO staff went throughout the country to make presentation to all local federations. They explained that the agreement was negotiated by senior managers and owners in the printing industry, not just by the Association staff. They also provided information on what the companies should do and where they could turn for help. In addition, KVGO placed articles in journals and sent information directly to companies. Finally, the association started a small technical assistance bureau which provides consulting services to companies on the measures they need to take; companies must pay for these services, although the cost depends to an extent on whether the company is a member of KVGO.

For the municipalities, the campaign has had varying impacts. There are two potential barriers -- dissemination of the information itself about the agreement and the new specifications of best Available Control Technologies, and availability of sufficient resources for implementation. For the larger municipalities, the technical information is not that much of an issue. But the re-allocation of resources may be. Amsterdam, for example, tends not to regard printing as a major issue, and sees no reason to go through the effort to issue all new licenses to printers; the authorities only tend to go to printing operations when they receive complaints. There tends to be more action where there are large concentrations of printers. In 1994, for example, the city of Haarlem, which has a large printing industry, launched a major campaign to provide information on and implement the printing agreement. As part of that campaign, the city provided information to the KVGO and Kartoflex whenever its staff encountered a printing shop that was unaware of the covenant, so that the associations could add the companies to their information efforts.

An extensive formal evaluation of implementation and results of the printing agreement will be made in the fall of 1996. The current best estimate of observers is that implementation has probably been fairly high among all but the smallest printers and municipalities, and that most environmental targets under the covenant will be realized. Some of the smaller municipalities are still applying old pre-covenant requirements, and

⁷¹Ibid., pp. 5-6.

some of the smaller printers may be equally unaware of the changes. By contrast, however, some of the larger companies are increasingly taking the initiative with the authorities themselves, either through developing and submitting CEPs, or submitting the more standardized progress reports developed under the covenant as a permit request.⁷²

⁷²Interviews with E.R. Gerding, Fritz de Groot, M.M. de Hoog, C.G. Le Blanch.

VII. RE-DIRECTING ENVIRONMENTAL MANAGEMENT: INTERIM LESSONS AND APPLICATIONS FOR THE U.S. CONTEXT

The Netherlands target group covenant program is an effort to resolve a problem familiar to the U.S.. The centralized, top-down command-and-control end-of-pipe environmental management program made enormous initial gains. But environmental progress is now slow. As the economy expands, problems grow, and tightening the system drives ever smaller increments of progress. In an economy and society in which information is growing more crucial, regulators are put in the odd situation of trying to manage thousands of individual situations about which they lack, and will continue to lack, crucial information on technology, operations, and opportunities for change. The Dutch system is an effort to overcome these limitations in current environmental management.

A. Key Elements & Results

The target group covenant system is still emerging and changing. It is different not only from the standard regulatory system (which is still very much a part of environmental management in the Netherlands); it is also different from other environmental covenants. Several people who noted fairly strong objections to other environmental covenants in the Netherlands commented that the target group covenants with industry sectors were very different -- and usually that they resolved some of the concerns.

As the examples of the covenants for the printing and chemical industry illustrate, the target group covenants are far from being a one-size-fits all approach. The nature and size of the companies in the two sectors required substantially different approaches to achieve a similar objective -- involvement of the industry in developing the solutions to the environmental problems it creates. While it made sense with the chemical industry to gain sector involvement in the process, and then let the individual companies seek their own solutions, such an approach would have been unrealistic with thousands of small print shops (even though some large printers could develop their own plans). Subsequent covenants have developed still more variants to these approaches.

While there are differing views on specific aspects of the target group covenant system,

there are several factors that many observers and participants describe as distinctive or crucial: goals; development of consultation/ communications networks; internalization; enforceability; availability of supplementary regulatory and policy levers; and perseverance.

Goals

The NEPP plays a critical role in setting a goal for environmental policy. Whatever doubts or caveats individual players may have about the specifics or adequacy of those goals, they provide a credible basis for pushing for change. A representative of an environmental group who felt the NEPP goals were not ambitious enough nonetheless commented that without NEPP, although many goals would have been reached, it would have been with more difficulty. He added that it is also important that people can see that goals are being reached. A businessman noted that the science might not be perfect, but that the basis of the system was adequately compelling to drive people to consider changes they would otherwise have resisted more strenuously.

Development of network of consultation, communications, societal and organizational pressures

Participants from all stakeholders commented in various ways on how this type of covenant, because of the degree to which it forces involvement in environmental decision-making and in a continuing structure for on-going consultations, has the potential for having an enormous impact on the awareness of the target group about their impact on the environment. Not only does it lead to the development of information, but it creates networks of communication about that information. In addition, the consultation catalyzes results by creating commitment of those involved to agreed changes or to the process, and pressure throughout their organizational networks to participate. An environmental group observer noted that a crucial component of the pressure must come from the public, and that it is important to keep public focus on performance of the industry after the covenant is signed. Both some of the industry and government people involved in the covenant process noted that widened participation in the networks and consultations, and specifically by environmental groups, would be beneficial.

Internalization

Through the CEP process, the target group covenants encourage internalization of managing for environmental goals. Industry spokesmen commented on the advantage of being able to meet with all the regulators to discuss their own proposals for meeting environmental requirements on a whole-plant basis. In the case of predominantly small-industry sectors like printing, the hope is to get the industry leaders to internalize the need, and additionally to participate in defining opportunities and helping to educate other companies. While most observers were enthusiastic about the direction, there were some concerns raised as to whether internalization is actually happening to the extent hoped, given that a lot of the CEPs do little more than pledge to meet BACT. Everyone agreed that the next round of CEPs would tell a lot more about the extent to which environmental management is in fact being integrated into production and research decisions -- e.g., with respect to pollution prevention-based production or product-design choices.

Enforceability

Enforceability is a critical component for success of the target-group system. The covenant is not a voluntary agreement. It is entered into voluntarily. (The refinery sector, after negotiations with the government, declined to proceed to a covenant). Once the covenant is signed, certain steps and actions are required. But the enforceability does not derive, as noted earlier, from direct enforceability of a contractual relationship, in spite of the fact that some of the target group covenants (although not the printing covenant) have that superficial appearance. Rather, the enforceability derives from the integration of the objectives of the covenant into the regulatory licensing system. This, of course, is an area where there is a potential for problems -- either because the licensing authorities do not buy into the process, because they lack the resources to implement it, or because they simply lack the necessary information or skills. Participation so far in the Netherlands appears to be uneven, with some authorities actively participating, others resisting the changes, and still others (primarily in smaller municipalities) still unaware of the process. This is both a longer-term communication issue (for awareness and basic information) and a training issue (for the skills necessary, for example, to effectively review a company's CEP). In

considering the adequacy of enforcement support for the covenant system, however, it is important to evaluate how much it differs from the adequacy of enforcement generally.

Availability of supplementary regulatory and policy levers

The covenant is not a substitute for regulation. It could be more accurately characterized as a management tool. Under the printing covenant, for example, one of the outcomes was the development of a manual of either required or alternative actions for each printing operation module; the specifications in the manual became the new regulatory BACT. In some of the other industry sectors, some of the initial results of the CEPs are used to re-define BACT. Companies that are parties to the covenants are concerned about the free-rider problem -- competitors who don't participate, slip through the regulatory cracks while attention is focused on CEPs, and end up with cheaper -- if dirtier -- operations. The standard regulatory framework is the vehicle for addressing these companies, and most covenants address the importance of using it.

In addition, there are other tools which the government may want to use to support the targets in the covenant. If, for example, it turns out that particular goals are not being met in an industry sector, application of fees or taxes as a supplement to other actions under an agreement may be necessary. Such a fee will be applied in the future, for example, to the difference between manure needed and manure applied per hectare per year, to support an agricultural agreement which includes reductions in manure use.

Perseverance

The target group covenant system is not a quick fix. Not only does it require considerable start-up effort, but the communication and consultation benefits are part of a long-term process. The environmental outcomes of what is structured to be an iterative process will take time to determine. All of the stakeholders have worked actively with the process, in part, because of the persistence with which the Netherlands government has developed and pursued it.

B. Relevance for the U.S.

The Netherlands is a small country. It is about twice the size of New Jersey, with a population density of over 1,100 people per square mile. (In the U.S., only New Jersey is in the same population density range; as a whole, the country is well under 100/square mile). It also has, approximately, an additional 3,000 cows and pigs per square mile. Both in size and in intensity of environmental impacts, its situation is less similar to the U.S. as a whole than it is to a heavily industrialized and urbanized state or region. These are the kinds of areas in which environmental problems are typically most severe, most costly, and most difficult to resolve through traditional approaches. And these are places in which workable solutions are urgently needed. This suggests that one of the criteria for potential applicability of a covenant-like approach to an environmental problem or set of problems might be geographical -- in urbanized states or regions.

An alternative might be to look at a broad national environmental theme for which specific overall goals could be used as a framework for actions by particular companies. The closest to such an example in the U.S. currently is the acid rain program, under which electrical power companies operate with considerable flexibility within an overall limit, which it is known will get tighter in 2000.

In the U.S., as in the Netherlands, there is considerable interest in avoiding exclusive reliance on the existing command-and-control environmental management framework. The same basic motives are relevant:

- From the perspective of many environmental agencies at the federal, state, and local level, the present system is stuck, using increasing resources to achieve limited gains. Many of the more difficult remaining environmental problems can not be readily solved using current tools.
- From the perspective of environmental groups, the current system is more defensive than proactive. The current structure of regulations is unlikely to lead to sustainable development.
- From the perspective of industry, the current system is time and resource

intensive, sometimes creates obstacles to the normal flow of production activities due to its inflexibility and, depending on where in the country the plant is located (e.g., severe non-attainment area), may create competitive disadvantages.

Current state and federal initiatives contain many of the elements described above. Illustration of such efforts include:

- There are efforts to encourage companies to internalize environmental management, such as the many state pollution prevention facility planning laws, and the current review by several states of incentives for companies to implement ISO 14000 and other environmental management systems.
- Programs such as compliance assistance and pollution prevention technical assistance are developing a more cooperative relationship with business.
- The Common Sense Initiative (CSI) is intended to encourage dialogue with specific industry sectors to achieve smarter, cleaner, cheaper environmental management.
- The Great Printers Project involves more direct cooperative efforts between government, industry and environmental groups.
- Wisconsin DNR and the state's pulp and paper industry reached an agreement under which the industry has voluntarily agreed to meet, by 1999, a range of reductions of pollutants about which DNR had indicated concerns, and a possible interest in developing state regulations.
- A variety of state and federal voluntary programs are targeted on specific problems (e.g., Climate Wise for CO₂ emissions). Under these programs, a company signs up and obtains specific assistance and/or recognition for any measures it decides to take to meet the specific goals of the programs.

- EPA has supported several state efforts to develop risk prioritization assessments to determine environmental goals and priorities for the states.

All of these efforts indicate a high level of interest in developing a different mode of achieving environmental objectives. But there tend to be important elements still inhibiting fundamental change from the current framework -- for example, the lack of goals in the CSI project, the absence of enforceability in the voluntary programs, or the lack of incentives for plan implementation under most of the state planning laws.

Introducing an innovative initiative at either the state or federal level is probably easier now than it used to be. EPA's XL program specifically references the Netherlands target group covenants approach as a possible model for a sector-wide XL project. In addition, under EPA's agreement with the states to support state initiatives and priorities through Environmental Performance Agreements and Performance Partnership grants, there is substantial flexibility for states to develop new approaches to environmental management. These vehicles could be utilized to facilitate piloting elements of a goal-oriented, binding government/industry partnership.