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Voluntary Greenhouse Gas Emission Reduction: The Rise and Fall of VCR Inc.

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PREFACE

The energy sector has been a dominant factor in Alberta's development and growth over the last half-century. The large capital investments and operating expenditures associated with finding and producing oil and gas have directly provided a major stimulus to the economy. But the indirect and induced impacts have been equally important. The development of many other industries supplying inputs to the energy sector, the generation of substantial export and government revenues, and the stimulus for large inflows of people have resulted in large 'multiplier' effects. In combination, these have also played a major role in shaping Alberta's 'character' which is generally distinguished by its highly educated, adjustable and entrepreneurial labour force, low unemployment and high labour force participation rates, strong work ethic and sense of self reliance, and its optimistic outlook.

In recent years the energy sector has become even more dominant and has increasingly made Alberta a key driver of the national economy. In a world with a rapidly growing demand for energy, having one of the largest concentrations of energy resources in the world might seem to translate into an assured, prosperous future. There is clearly huge potential associated with unconventional oil and gas, coal, remaining conventional resources and with alternative and renewable energy. However, translating this potential into reality will be daunting. Increasing constraints related to resource access, environmental impacts, infrastructure requirements, and availability of highly qualified people need to be addressed. Other challenges include the massive long-term investments in developing and implementing new technologies and making the right changes in the policy and regulatory framework. Indeed, the fact that relatively few nations have managed to convert resource wealth into high standards of societal welfare is a useful reminder of the magnitude of the challenges.

Alberta is in many respects at a crossroads. On the one hand complacency will almost certainly mean a dimming of the province's long-term prosperity. Declines in the conventional oil and gas sector will significantly dampen growth and prosperity. There are no other sectors of the province's economic base that could realistically expand sufficiently to offset significant declines in the dominant energy sector. On the other hand, visionary, strategic investments today can unlock non-conventional and other energy resources critical to securing a strong and prosperous long-term, sustainable future for the province.

It is in this context that ISEEE has undertaken a series of papers focused on Alberta's energy futures. The intent is to take a longer term look at the challenges, opportunities and choices and what they mean for Alberta's future.

ISEEE ENERGY FUTURES PROJECT
VOLUNTARY GREENHOUSE GAS EMISSION REDUCTION:
THE RISE AND FALL OF VCR INC.

Alastair R. Lucas and Veronica Potes*

Abstract

Assessment of the joint government-industry Voluntary Challenge and Registry Program (VCR) suggests that the program, originally a major element of federal climate change strategy, was by 2005 removed from the federal Climate Change Plan because:

1. *When the federal government understood the magnitude of the GHG emission reduction necessary to meet Canada's Kyoto Protocol commitment, that the Kyoto Protocol 2008-2012 commitment period was imminent, and that the voluntary program would not make a significant contribution, formal regulation was required; and*
2. *When the Large Final Emitter industry groups realized that potentially expensive beyond business as usual emission reductions were necessary, their expectations shifted to formal regulation.*

VCR had value primarily as an initial education and early action record mechanism.

I. INTRODUCTION AND SCOPE

A. Voluntary Greenhouse Gas Emission Reduction

In January, 2005, the Toronto Globe and Mail reported in a headline story¹ on a leaked Government of Canada document entitled 'Climate Change: Lessons Learned and Future Directions'. The draft document was quoted as stating that the 'voluntary approach and limited incentives [are] not sufficient to drive substantial change'. Policy makers would, 'need more consideration of regulation and taxation to drive behavioral change and technology development and uptake'.

This represents the final step in a shift from a Canadian climate change strategy in which voluntary greenhouse gas emission reduction (GHG) measures were to play a major role. In the late 1990s, voluntary initiatives and particularly the Voluntary Challenge and Registry Program (VCR), were thought to be preferred instruments for implementing Canada's commitments under the Framework Convention on Climate Change and later under the Kyoto Protocol. This was particularly the case for 'large final emitters' of greenhouse gases of which the energy sector is a major part. For the first time, the federal government acknowledged clearly the limits of voluntary instruments for greenhouse gas emission reduction. Why did this policy about-face occur? Does it represent a major abandonment of voluntary approaches to regulation of Canada's energy sector?

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¹G. Galloway, 'Tougher Kyoto rules urged', *The Globe and Mail*, 11 January 2005 at A1.

This paper documents and assesses this shift from voluntary to regulatory through a case study of the VCR. It relies on a review of the development of Canadian Climate Change policy and on key informants from the energy sector, from government, and from the environmental nongovernmental organization (NGO) community.

B. The Canadian Energy Regulatory Context

Broader review of regulatory instruments and issues suggests that while Canadian energy regulation has moved increasingly from command and control regulation to a market-based track,² social and environmental values have continued to be addressed largely through more formal regulation. The latter, however, has shifted from classic command and control regulation to more flexible and collaborative approaches to meeting regulatory requirements. Traditional, relatively formal, often quasi-judicial, techniques for establishing these regulatory requirements have continued. But they have continued in streamlined form, incorporating consensual dispute resolution mechanisms and broadening the range of participation in decisions to include not only industry, government and affected landowners, but NGOs, indigenous people and citizens generally.

This is the regulatory context into which the proposed federal greenhouse gas emission reduction requirements³ will fit. Regulation of GHG emissions under federal legislation is likely to be administered by the federal Environment Ministry, particularly if programs are authorized under the Canadian Environmental Protection Act.⁴

II. THE CASE STUDY

A. VCR Inc.

Acknowledgment by the federal government⁵ that a largely voluntary approach is unlikely to permit Canada to meet its Kyoto Protocol targets, is no surprise to those who have followed the development of Canadian climate change policy.⁶ This includes Canada's energy sector, which in the 1990s, prior to the Kyoto Protocol, promoted establishment of the Voluntary Challenge and Registry Program (now VCR Inc.). Although VCR began as a joint federal-provincial programme, in 1997 it became a privately incorporated, nonprofit government-industry organization.⁷ About two thirds of its operating funds came from the private sector and the balance from the federal and provincial governments. VCR's governing bodies were a Council of Champions consisting of government and a majority of industry

²A. Lucas, 'Canada's Voluntary, Market-based Approach to Energy Security', in *Energy Security* (B. Barton, C. Redgwell, A. Rønne, and D. Zillman, eds, Oxford: OUP, 2004).

³Canada Department of the Environment, *Notice of intent to regulate greenhouse gas emissions by large final emitters*, Canada Gazette Pt1, 16 July 2005 2489.

⁴Natural Resources Canada, 'Large Final Emitters Group: Discussion Paper and Overview of Legislation', posted, November 2002, visited 11 April 2005, available at <www.nrcan.gc.ca>; Canada Department of the Environment (above n 3); Environment Canada Drafting Instructions, *Cross-Cutting Provisions Large Final Emitters Regulations* <www.ec.gc.ca/CEPARRegistry> consultation draft, visited 22 December, 2005. Policy preferences of the Government of Canada following the January 23, 2006 general election appear to include greater collaboration with provinces and no reliance on purchase of international Kyoto credits: Allan Woods, "Clean air, not Kyoto will guide minister", *Calgary Herald*, 18 February, 2006 at A-14.

⁵G. Galloway (above n 1).

⁶See, M. Bramley, 'The Case for Kyoto: The Failure of Voluntary Corporate Action', Pembina Institute October 2002, available at <www.pembina.org>.

⁷VCR's background and organization is available at <www.vcr-mvr.ca>.

representatives, with a board of directors drawn from the council.

Companies wishing to participate in VCR's registry must register and file annual submissions. While core registration requirements were basic – a signed statement of endorsement, a commitment to regular reporting, and a base year quantification of GHG emissions – the VCR Guide included more specific submission requirements. The latter governed the gold, silver and bronze status levels that may be achieved. There was also a high achievers 'Champions in Action' Program. Submissions filed with VCR remain public documents and are posted on the VCR website. At its peak in early 2003, the VCR Challenge Registry, including its energy sector, numbered 95 registrants.

VCR became a major element of the national strategy and action program for greenhouse gas emission reduction to implement Canadian obligations under the UN Framework Convention on Climate Change and the Kyoto Protocol.⁸ However, by 2002, when Canada released its National Climate Change Plan,⁹ the voluntary approach, and VCR in particular, was not among the instruments to be used and was only mentioned briefly under 'actions underway' by large industrial emitters.¹⁰ Under the Plan, voluntary covenants, a related element of the VCR scheme, were part of the approach to large industrial emitters – to be used (with a 'regulatory backstop') to establish emission 'targets'.¹¹ But by late 2003, descriptions of the proposed federal legislation included no reference to VCR, and covenants would be used to 'vary' regulatory obligations to, for example, adjust emission intensity targets or target deadlines for firms competitively disadvantaged as a result of capital replacement requirements.¹² When the National Climate Change Plan was updated in 2005, even the covenants were dropped as adding 'considerable complexity to the system.'¹³

The shift from a predominantly voluntary approach was also signaled by the 'transition' of VCR itself. In April 2004, the VCR Inc. Board resolved to wind down the government-industry partnership that supported the organization. The reasons given were, first, that the 'Large Final Emitters Group', of which energy corporations are significant members, concluded that the federal government intended to regulate them to require GHG emission reduction, 'beyond their business as usual capacity'.¹⁴ Subsequently, in September 2004, the Canadian Standards Association (CSA) signed a letter of intent to negotiate an agreement to transfer VCR Inc's programs to CSA for management as part of CSA's product certification and management systems.¹⁵

The second reason given was the federal government's conclusion that 'the cooperative governance structure of...VCR is not relevant in this regulatory climate'.¹⁶ In other words, the use of formal regulatory instruments had been judged necessary.

⁸Joint Meeting of Energy and Environment Ministers, Record of Decision, No. 8, The Voluntary Challenge and Registry Inc., 20 October 1998 available at <www.ec.gc.ca>.

⁹Government of Canada, Climate Change Plan for Canada, November 2002, available at <www.climatechange.gc.ca>.

¹⁰*Ibid* at 29.

¹¹*Ibid* at 30.

¹²Natural Resources Canada Discussion Paper, 'Overview of Legislation' (above n 4).

¹³Government of Canada, Moving Forward on Climate Change: A Plan for Honouring our Kyoto Commitment, 4 April 2005 at 15.

¹⁴VCR Inc., VCR's Transition - Important notice concerning the transition of VCR's programs over the course of 2004, available at <www.vcr.mvr.ca>.

¹⁵VCR Inc., Press Release, 'Letter of Intent signing by CAS Sets the Stage for the Continued Availability of VCR's GHG Registry Tools', 27 September 2004.

¹⁶VCR's Transition (above n 14).

1. **What Happened to VCR Inc.?**

What are the reasons for the change of direction from a predominantly voluntary approach? Was it simply a matter of miscalculation or incomplete information? Canada's Kyoto Protocol commitment – a 6 per cent GHG emission reduction from 1990 levels by the 2008-2012 commitment period – was essentially a guess. There was little research to support it. Effects of continued economic growth and perhaps particularly, of growth in the energy sector, were seriously underestimated. The idea that large industry could contribute a significant share of the required GHG emission reduction through voluntary measures now seems hopelessly optimistic. Larger emission reductions are required, and only in 2004 did industry and government clearly acknowledge this.¹⁷ Both also acknowledged, at least tacitly, that in these circumstances more formal regulation is the only appropriate policy instrument. This leads to a second, related factor, that may have contributed to the move away from a voluntary approach.

As soon as the issue became one of achieving significantly larger emission reductions, likely to require major industry expenditure, the voluntary approach was perceived by the energy sector to be inconsistent with the established approach and general pattern of energy regulation that is within its range of expectations. The expectation is that if economically onerous requirements are to be imposed, they will be established through formal legal instruments – enforceable regulations or regulatory orders.¹⁸

2. **Did the Voluntary Approach Fail?**

There was no failure. There was simply a regulatory shifting of gears from a predominantly voluntary approach to a regime built on regulated emission targets. But VCR was not without benefit. Voluntary action, including VCR, was a beginning – a first stage. It served an educative purpose and was essentially exploratory. It was tested, partly through further GHG emission research, and partly through assessment of the VCR Program itself. When this testing revealed the magnitude of the initial emission target miscalculation and the voluntary program's incapability of meeting the new targets, the ground shifted. GHG emission reduction was revealed to be a matter for a more fundamentally regulatory approach.

B. **VCR Inc in Legal Theory**

VCR may be viewed from the perspective of reflexive law. Reflexive law influences behaviour rather than regulating directly. According to Orts, reflexive law,

‘... aims to establish self-reflective processes within businesses to encourage creative, critical and continual thinking about how to minimize environmental harms...’¹⁹

The corporate activities necessary to generate and file VCR submissions require just this kind of

¹⁷*Ibid.*

¹⁸B. Doern and M. Gattinger in *Power Switch: Energy Regulatory Governance in the 2¹ Century* (Toronto: University of Toronto Press, 2003) conclude that Kyoto Protocol implementation will require both commands and incentives. K. Brownsey argues that Canada's ratification of the Kyoto Protocol ‘signals a reregulation of the oil and gas industry by the federal government’; K. Brownsey, ‘Alberta's Oil and Gas Industry in the Era of the Kyoto Protocol’ in B. Doern, ed, *Energy Policy and the Struggle for Sustainable Development* (Toronto: University of Toronto Press, 2005) 200 at 218.

¹⁹E. Orts, ‘Reflexive Environmental Law’ (1995) 89 *Northwestern. U. L. Rev.* 1227 at1232.

responsible management behaviour.²⁰ But the VCR is not strictly an element of reflexive law because there never has been an explicit legal framework within which VCR could operate as a self-reflective process.

There is an element of ‘decenterdness’.²¹ VCR was developed in partnership with industry and nurtured,²² not designed and imposed by the state. It promoted self-regulatory initiative.

But self-regulatory traction ceased because it lacked connection to regulatory objectives and goals. It was not tied to any specific GHG emission reduction target and ultimately foundered in the raw ingredients of unformed policy. New policy on GHG reduction – a pioneering initiative – was required to set a course. But the November 2002 National Climate Change Plan²³ was vague on instruments to be used, particularly for large industrial emitters. By 2004, the magnitude of the necessary reduction had become clearer and quick action was necessary because of the pressure resulting from Canada’s Kyoto Protocol ratification, with the 2008-2012 commitment period already looming. Greater detail of a system to set enforceable emission targets for large final emitters and a market trading system was provided by the April 2005 National Climate Change Plan update.²⁴

It became apparent that in these circumstances instrument choice was limited. None of the interests were clear about how far voluntary instruments, including VCR, could go. There was federal-provincial controversy – particularly involving Alberta; and it seemed likely that Alberta’s first-off-the-mark climate change legislation was within its constitutional power to legislate.²⁵ A new federal direction was required, and a major new policy required legislation to move it ahead. This was the case even though a central technique of the legislation was to be an emissions trading system. Enforceable emission caps would be necessary, along with emission rights and mechanisms for rights allocation, monitoring and administration.²⁶

This suggests the importance of the pioneering policy context. New policies, especially on a short time fuse, require robust implementation. This can’t be done incrementally through instruments like education, persuasion and voluntarism. Legislative action is required.

C. The VCR and the Energy Sector

Interviews were conducted with relevant key individuals from the (government, industry and NGO sectors) concerning the establishment, operation, and transition of the VCR. In this section and the following two, the results are set out.

It appears to have been commonly understood in the energy and natural resources sector that establishment of the VCR offered opportunities. Highest among these was the opportunity to shape Canada’s developing climate change policies. A second opportunity, particularly for companies that had taken proactive steps to cut emissions, was to enhance public relations. A third opportunity,

²⁰A. Lucas, ‘Voluntary Commitment and Rule Development: Canada’s VCR Inc., Greenhouse Gas Limitation and the Energy Sector’ (2004) 12 *Env’t Liability* 229.

²¹J. Black, ‘Decentering Regulation: Understanding the Role of Regulation and Self-Regulation in a “Post-Regulatory” World’ (2001) 54 *Current Legal Problems* 103.

²²A. Lucas (above n 20).

²³Government of Canada, *Climate Change Plan for Canada*, November 2002, available at <www.climatechange.gc.ca>.

²⁴Government of Canada, *Moving Forward on Climate Change*, April 2005 <www.climatechange.ca>.

²⁵N. Bankes and A. Lucas, ‘Kyoto, Constitutional Law and Alberta’s Proposals’ (2004) 42 *Alberta L. Rev.* 355.

²⁶Natural Resources Canada, *Large Final Emitters Group, Discussion Paper, ‘Overview of Legislation’* (above n 4); *Notice of intent to regulate greenhouse gas emissions by large final emitters*, (above n 3).

for these proactive companies was to ensure that they would receive credit for their early actions under the national emission reduction scheme that was to be developed. Though quantitative evidence is unclear, there is general recognition that VCR helped to promote an interest in GHG emission reduction both among and within companies.

Industry did, however, recognize VCR's shortcomings. One problem was 'free riding' by nonparticipant companies. Another was the absence of explicit performance criteria. At some point, industry recognized that voluntary action alone would not achieve Kyoto Protocol targets. They were also aware that the federal government was evaluating mandatory instruments.

D. The VCR and Government

For Canadian federal and provincial governments, VCR was the centrepiece of the pre-Kyoto Protocol national climate change policy. It accomplished several things. First, a government-industry partnership was established and it did stimulate early corporate action. Secondly, VCR raised government expectations about what companies could do to manage and report emissions. Thirdly, some actual reduction of emissions can be ascribed to VCR.

The governments did recognize the limitations of the voluntary initiative. VCR's form of reporting lacked rigour; companies appeared to be reporting largely good news. But it was still thought that the VCR mechanism could have a place in a mandatory GHG reporting scheme.

However, when governments, particularly the federal government, understood the magnitude of the emission reduction required to meet the Kyoto targets, the VCR partnership began to founder. Alberta, legislated a scheme that included voluntarily negotiated but ultimately enforceable emission reduction covenants. The federal government pressed ahead with design of a regulatory scheme that would include emission credit trading. But, as Robert Flemington, former VCR Inc. president argues: '...it was the partnership that failed, not the [VCR] initiative. All members of the partnership agreed that the initiative was valuable and should continue.'²⁷

E. NGO Perspective

Nongovernmental groups are critical of VCR. While there is some recognition that VCR contributed to available information, there is concern that VCR encouraged 'greenwash' – inflated claims of emission reduction and good corporate citizenship. The fundamental concern is that VCR has not contributed to real quantified GHG emission reduction. Michael Bramley of the Pembina Institute, who assessed VCR submissions, concluded that emissions of most industrial firms filing submissions with VCR increased since 1990, and emissions of a higher proportion of the largest emitters (including major energy sector operators) increased significantly since 1990 than emissions of VCR submitters as a whole.²⁸

²⁷R. Flemington, Director of GHG Registries, VCR's private successor, personal communication, 12 April 2005.

²⁸M. Bramley (above n 6) at 21.

III. CONCLUSIONS

The key informant information from the industry, government and NGO sectors tends to support the likelihood that VCR slipped from its central policy role when both government and industry realized the magnitude of GHG emission reduction required to meet Canadian Kyoto Protocol commitments. At that point, government and industry expectations changed and use of regulatory instruments became inevitable. VCR had value primarily as a first stage kick-start, education and early action record mechanism.

The case study illustrates the benefits as well as the limitations of voluntary measures in the context of Canadian energy and environmental regulation. If pure voluntary initiatives, such as VCR, are used to implement major new policies, they are likely to be effective only in the early stages of policy development.