

“Source: *Pollution Control in Canada: The Regulatory Approach in the 1980s, Administrative Law Series Study Paper, 1988.*

Department of Justice Canada.

Reproduced with the permission of the Minister of Public Works and Government Services Canada, 2007.”

Table of Contents

FOREWORD.....	1
INTRODUCTION.....	3
CHAPTER ONE: The Rise of Regulatory “Control” Legislation	11
CHAPTER TWO: Implementation.....	17
I. The Implementation Gap	17
II. Exploring the Gap.....	18
A. Misconceptions About Pollution Control.....	18
B. Problems with Legislation	24
(1) Unrealistic Legislative Language	24
(2) Blunt Sanctions.....	28
(3) The Call for Harsher Penalties.....	31
C. Courts, Pollution and Pollution Control.....	33
(1) Courts and the Polluting Activity.....	34
(a) Characterization of the Pollution Offence.....	34
(b) The Proof Process	39
(c) Sentencing	42
(2) Courts and Pollution Control	43
(a) Procedural Fairness	44
(b) Abuse of Process	46
D. Extra-legal Factors	49
(1) Political Factors	49
(2) Pro-development Tendencies of Government	51
(3) Bureaucratic Factors	52
CHAPTER THREE: Trends in Pollution Control	55
I. Increased Public Participation	55
II. Increasing Use of Prosecutions	60
III. Changing Roles and Responsibilities of Government	61
IV. Use of Incentives.....	63
V. Refinements in Legislation	65
VI. Changing Industry Attitude.....	67

CHAPTER FOUR: On the Horizon — The Proposed New Crime	69
CONCLUSIONS	77
RECOMMENDATIONS	81
APPENDIX A: Persons Consulted During Research.....	85
APPENDIX B: Table of Statutes	87