Enforcing Private Environmental Governance Standards Through Community Contracts

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One of the greatest challenges in private environmental governance is enforceability. If we depend on corporations like banks and insurance companies to formulate and implement standards that curb greenhouse gas emissions and discourage environmental harm, how do we know whether these firms are living up to those commitments? And, if they are not living up to those commitments, what is the remedy? While the problem of enforcement and accountability in private environmental governance is a moving target, the continued lack of comprehensive federal action on climate change—and the unlikelihood of any such action in the near future—means that finding new avenues of enforcement is still necessary.[1] The use of third-party monitoring firms is one possibility, but it is undeniable that some companies choose to participate in environmentally friendly programs and initiatives because of the goodwill it engenders with the public. Thus, public accountability may be an even more effective way to enforce private environmental governance obligations.[2]

The growing public consensus on the dangers posed by climate change does not only affect the industries involved in the funding of hydrocarbon projects.[3] The environmental harms of hydrocarbon extraction and processing also impacts communities.[4] Long seen as the greatest threat to the environment and the primary corporate driver of climate change, the energy industry—especially those companies involved in oil and gas extraction—has struggled in recent years to maintain goodwill and positive relationships with some of the communities it once enjoyed.[5] In particular, the communities where hydraulic fracturing takes place, have experienced such significant adverse impacts to their quality of life, including pollution of air and drinking water, that for the first time the majority of Americans view hydraulic fracturing ("fracking") in a negative light.[6]

While it may be possible to reforge the trust between the energy industry and citizens through the use of contracts

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1. *See, e.g.*, Michael P. Vandenbergh & Jonathan A. Gilligan, *Beyond Gridlock*, 40 Colum. J. Envtl. L. 217, 226–33 (2015) (arguing that private environmental governance is needed because of the urgent action required to effectively respond to the dangers of unchecked climate change).
2. Even simply providing the public with the information they need to make environmentally friendly choices—where a choice actually exists—is itself a form of private environmental governance. *See id.* at 245–46 (noting the changing of social norms by providing information to drive private environmental governance).
3. *See* Art Swift, *Opposition to Fracking Mounts in the U.S.*, Gallup (Mar. 30, 2016), http://www.gallup.com/poll/190355/opposition-fracking-mounts.aspx (showing that domestic public opposition to fracking has increased from 40 to 51% from 2015 to 2016).
4. *See, e.g.*, Mark Squillace, *Managing Unconventional Oil and Gas Development as if Communities Mattered*, 40 Vt. L. Rev. 525, 529–39 (2016); *see generally* Evan J. House, *Fractured Fairytales: The Failed Social License for Unconventional Oil and Gas Development*, 13 Wyo. L. Rev. 5 (2013) (discussing the negative impacts of fracking on communities, and suggested a framework for addressing those impacts).
5. *See* Swift, *supra* note 3; *We're Losing the War on Fracking*, Marcellus Drilling News (Apr. 4, 2016), http://marcellusdrilling.com/2016/04/latest-gallup-poll-shows-were-losing-the-war-on-fracking/ (providing a pro-fossil fuel response to the Gallup poll numbers by saying "[w]e have to do more to win the American public to our side–to show them that fracking is not evil and does not harm the environment but is, instead, a modern day miracle . . . [W]e have mainstream media against us. We have the vast majority of the Democrat Party against us."); *see generally* Hilary Boudet et al., *"Fracking" Controversy and Communication: Using National Survey Data to Understand Public Perceptions of Hydraulic Fracturing*, 65 Energy Pol'y 57, 60 (Feb. 2014), http://environment.yale.edu/climate-communication-OFF/files/2013_Boudet_et_al_Fracking_Public_Perceptions.pdf (providing an empirical analysis of community opinions on fracking). Indeed, the public discourse over fracking, which tends to favor the good versus evil paradigm that pits certain environmental devastation against negligible public benefits, seems to be eroding public support for fracking in the United States. *See* Swift, *supra* note 3.
6. *See, e.g.*, Suzanne Golden, *Fracking Hell: What It's Really Like to Live Next to a Shale Gas Well*, The Guardian (Dec. 14, 2014), https://www.theguardian.com/environment/2013/dec/14/fracking-hell-live-next-shale-gas-well-texas-us; Associated Press, *Fracking Boom Producing Deadly Side Effect,* CBS News (May 5, 2014), http://www.cbsnews.com/news/fracking-boom-producing-deadly-side-effect/ (detailing the rise in traffic fatalities near fracking site and noting that "the frenzy of drilling activity contributes heavily to the flood of traffic of all kinds that has overwhelmed many communities"); Swift, *supra* note 3.

between communities and energy companies, existing examples (both in energy and in other contexts) often lack clear standards of conduct to ensure air and water quality.[7] Even where they do exist, many community parties are unable to enforce the requirements set forth in those contracts.[8] This Article explores whether coupling private environmental governance concepts with community contracts could strengthen the effectiveness of, and provide a level of enforcement for both—or at least a measure of public accountability. To accomplish this, compliance with specific private environmental governance standards and principles could be expressly included in the community contract, making compliance an obligation of the corporate party. This Article uses the Carbon Principles as an example of a private environmental governance initiative that could be bolstered through communities' use of contracts with energy companies. This is not a "silver bullet" to the problem of enforcement. However, by making the public aware of these types of standards and including them in contracts, a "soft" enforcement mechanism could be created by connecting the failure to comply with negative publicity and public opinion.

I. "Greenwashing": The Carbon Principles and the Enforcement Problem

Innovative energy policy capable of responding to modern environmental challenges has not materialized through the political process.[9] Private environmental governance, which depends upon corporate decision-making instead of government action, is one possible alternative. The arguments are compelling: there is certainly reason to believe that major multinational corporations, especially financial institutions and insurance companies, are interested in making long-term investments without being bound by one particular country's policies.[10] So, if the long-term future for carbon-heavy fossil fuels like coal is bleak, and if a number of countries are still complying with aggressive domestic environmental policies and the Paris Agreement, it makes sense that large companies taking the long view in their investments might impose their own pro-environmental guidelines for the firm and its clients.[11]

In fact, a number of multinational corporations have done this. One example is the establishment of the Carbon Principles. Created in 2008 by three major U.S. banks—Morgan Stanley, J.P. Morgan Chase, and Citigroup, Inc. (collectively, the "Banks")—the Carbon Principles are a set of guidelines that the Banks agree to follow when deciding what electric power generation projects to finance.[12] The Carbon Principles begin with a declaration requiring the Banks to acknowledge the role that carbon emissions play in anthropogenic climate change and embrace the idea that energy efficiency and carbon mitigation technologies are crucial to curbing these effects.[13] To that end, the Banks agreed to create and implement an Enhanced Environmental Diligence Process (the "Process"), by which the Banks will assess proposed financing opportunities.[14] Accordingly, the Banks considered their long-term risk of being subject to climate change-related regulations.[15] They also pledged to evaluate the possible impact of these regulations based on "a range of potential [greenhouse gas] emissions assumptions and parameters," including the cost and feasibility of mitigating technologies.[16]

The Carbon Principles then set out three commitments: (1) to encourage clients to undertake renewable generation, demand response programs, efficiency measures, and other low-carbon solutions; (2) to create and implement an "Enhanced Diligence" process for evaluating the wisdom of investing in fossil fuel-related projects; and (3) to educate a number of actors, including clients and regulators, on the need for increased diligence of electric generation projects.[17] After the Banks released the Carbon Principles, Wells Fargo, Bank of America, and Credit Suisse also signed the agreement.[18] Internationally, a number of global financial institutions, including Crédit Agricole, Munich Re, Standard Chartered, Swiss Re, and HSBC, have adopted a similar initiative called the Climate Principles.[19] In 2015, twenty-six financial institutions signed on to the Principles to Mainstream Climate Action within Financial Institutions.[20]

The Carbon Principles appeared to be the harbinger of strong private environmental governance in the financial sector. However, as promising as the Carbon Principles seemed, an evaluation of the program by the nonprofit Rainforest Action Network ("RAN") indicated that it might be little more than symbolic.[21] The group compared the underwrit-

7. *See, e.g.*, Alejandro E. Camacho, *Community Benefits Agreements: A Symptom, Not the Antidote, of Bilateral Land Use*, 78 Brook. L. Rev. 355, 372 (2003), http://scholarship.law.uci.edu/cgi/viewcontent.cgi?article=1011&context=faculty_scholarship; Janet V. Siegel, *Negotiating for Environmental Justice: Turning Polluters Into "Good Neighbors" Through Collaborative Bargaining*, 10 N.Y.U. Envtl. L.J. 147, 182 (2002).
8. *See* sources cited in *supra* note 7.
9. *See* Michael P. Vandenbergh, *Private Environmental Governance*, 99 Cornell L. Rev. 129, 131–32 (2013), http://www.vanderbilt.edu/csdi/events/prvtgov_van.pdf; *see also* Karen Bradshaw Schulz & Dean Lueck, *Contracting for Control of Landscape-Level Resources*, 100 Iowa L. Rev. 2507, 2513 (2015), https://ilr.law.uiowa.edu/assets/Uploads/ILR-100-6-Schulz-Lueck.pdf.
10. *Cf.* Vandenbergh, *supra* note 9, at 150–52.
11. *See* Schulz & Lueck, *supra* note 9, at 2513; *see also* Sarah Kent, *Big Oil CEOs Pledge $1 Billion to Fund Low-Carbon Technology*, Wall St. J. (Nov. 4, 2016), https://www.wsj.com/articles/big-oil-ceos-pledge-1-billion-to-fund-low-carbon-technology-1478258955.
12. *See* Vandenbergh & Gilligan, *supra* note 1, at 266; Patrick Parenteau, *Lead, Follow, or Get Out of the Way: The States Tackle Climate Change With Little Help From Washington*, 40 Conn. L. Rev. 1453, 1462 (2008).
13. *The Carbon Principles*, Morgan Stanley, www.morganstanley.com/globalcitizen/environment/CarbonPrinciplesFinal.pdf (last visited May 5, 2017).
14. *See id.*
15. *See id.*
16. *See id.*
17. *See id.*
18. *Cf.* Nat'l Research Council, Informing an Effective Response to Climate Change 67 (National Academies Press, 2011).
19. *See id; see generally The Climate Principles*, The Climate Group (Jan. 26, 2011), https://www.theclimategroup.org/news/climate-principles [https://perma.cc/U4G6-CH65].
20. *See Major Financial Institutions Move to Integrate Climate Change*, The World Bank, http://www.worldbank.org/en/news/press-release/2015/12/07/major-financial-institutions-move-to-integrate-climate-change (last visited May 5, 2017).
21. *Cf.* Rainforest Action Network, The Principle Matter: Banks, Climate, and The Carbon Principles (2010), https://www.banktrack.org/download/the_principle_matter_banks_climate_and_the_carbon_principles/ran_the_principle_matter_carbonprinciplereport.pdf.

ing in the electricity sector between banks that had signed on to the Carbon Principles and those that had not, and found no difference in the number of carbon-intensive projects approved between the two sets of banks.[22] This is not to say that the banks are not complying with the principles; in fact, it is not possible to say for certain whether they are complying or not, because none of the six banks were reporting the kind of information necessary to determine whether they were applying the Process or implementing the directives of the Carbon Principles.[23]

There is thus no set of reporting standards or metrics by which to accurately gauge compliance with the Carbon Principles, nor is there any third-party that would be able to enforce compliance where it is lacking.[24] However, this is by design since the Carbon Principles are voluntary.[25] And, because they are voluntary, compliance with private environmental governance initiatives by corporate actors does not necessarily have to be perfect in order to be successful. Nonetheless, more direct public accountability would encourage adherence to the Carbon Principles (and other similar standards) without actually requiring compliance, and provide a means of addressing criticisms that the Carbon Principles are a form of "greenwashing".[26] In order to fight the problem at its root, the public needs to know whether corporate actors are truly following through on their internal environmental commitments, including the Carbon Principles, even if the only repercussions might be a downturn in public opinion.[27] Accordingly, once a company agrees to take steps to limit greenhouse gases, public approval will hold it accountable for failure to follow through.

II. Community Contracts and the Lack of Clear Standards

Regulatory gaps in the environmental context also create a lack of comprehensive protection of air and water quality at the local level.[28] For decades, communities have been increasingly shut out of state and local decisions to allow industries to carry on disruptive, and in some cases, harmful activities near residential areas.[29] In response, citizen groups have increasingly turned to private contracts with industry actors.[30] Two examples are community benefits agreements ("CBAs") and good neighbor agreements ("GNAs"). CBAs are considered proactive and emerged as a response to large-scale real estate projects that displaced low-income residents and changed the character of communities.[31] For communities dealing with environmental damage caused by chemical plants and other facilities, GNAs are reactive in that they provide a way to bypass litigation in favor of direct negotiation and bargaining in order to mitigate damage and prevent future incidents.[32]

Although CBAs are proactive and GNAs are reactive, both types of contracts have proliferated because citizens continue to be shut out of local decision-making, and because federal, state, and local laws have not adequately addressed the problem. For citizens entering into CBAs, concerns include displacement of residents, especially in low-income neighborhoods made up primarily of renters, the loss of affordable housing, green space, neighborhood character and cohesion.[33] With GNAs, the problem is unaddressed environmental damage caused by pollution coupled with slow or insufficient responses from state and federal agencies tasked with enforcing environmental laws.[34] In both cases, corporate and industrial actors have agreed to enter into these agreements in order to avoid litigation and promote goodwill with the people living in nearby communities.[35] Although I have suggested that similar contracts could be used in the

22. *See id.*; *see also* Benjamin J. Richardson, *Socially Responsible Investing Through Voluntary Codes*, *in* Harnessing Foreign Investment to Promote Environmental Protection: Incentives and Safeguards 399 (Pierre Marie Dupuy & Jorge E. Vinuales eds., 2013) (noting that the Carbon Principles, according to Research Action Network's report, "did not appear to have reduced the financing of fossil fuel projects").
23. *See* Rainforest Action Network, *supra* note 21, at 8.
24. *See id.*
25. *See id.* at 13.
26. "Greenwashing" is defined as "expressions of environmentalist concerns especially as a cover for products, policies, or activities." *See* "Greenwashing," Merriam-Webster Online Dictionary (2017), https://www.merriam-webster.com/dictionary/greenwashing [https://perma.cc/85Y2-RCZG]; *see also* Sarah E. Light & Eric E. Orts, *Parallels in Public and Private Environmental Governance*, 5 Mich. J. Envtl. & Admin. L. 1, 67–68 (2015), http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1043&context=mjeal (describing the problem of "greenwashing," particularly with private environmental governance programs).
27. Light & Orts, *supra* note 26, at 67.
28. *See* sources cited in *supra* note 6*; see also* Hannah J. Wiseman, *Disaggregating Preemption in Energy Law*, 40 Harv. Envtl. L. Rev. 293, 339 (2016) (noting that state enforcement of environmental laws can often be lax in low-income communities, and advocating for local governments to have some concurrent authority to prevent this); *see generally* Michael Wines & John Schwartz, *Unsafe Lead Levels in Tap Water Not Limited to Flint*, N.Y. Times (Feb. 8, 2016), https://nyti.ms/2jLogr4 (detailing the water crisis in Flint, Michigan, where unregulated chemicals and lack of anti-erosion efforts contributed to lack of access to clean drinking water for local residents).
29. Schulz & Lueck, *supra* note 9, at 2513 ("Environmental governance is increasingly characterized by public-private approaches, in which state actors collaborate with non-state actors to decide how to use and conserve resources."); Camacho, *supra* note 7, at 358 (2013); Christopher Serkin & Gregg P. Macey, *Post-Zoning: Alternative Forms of Public Land Use Controls*, 78 Brook. L. Rev. 305, 309 (2013).
30. *See, e.g.*, Camacho, *supra* note 7, at 358; Light & Orts, *supra* note 26, at 14.
31. CBAs are contracts "negotiated between prospective developers and community representatives." Patricia E. Salkin & Amy Lavine, *Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations*, 26 UCLA J. Envtl. L. & Pol'y 291, 293 (2008), http://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1522&context=scholarlyworks.
32. GNAs are "legally binding agreement[s] negotiated by stakeholders and industry in which the violating industry agrees to reduce or eliminate pollution risks to the surrounding community." Thalia Gonzalez & Giovanni Saarman, *Regulating Pollutants, Negative Externalities, and Good Neighbor Agreements: Who Bears the Burden of Protecting Communities?*, 41 Ecology L.Q. 37, 38–40 (2014), http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2049&context=elq; *see* Dara O'Rourke & Gregg P. Macey, *Community Environmental Policing: Assessing New Strategies of Public Participation in Environmental Regulation*, 22 J. Pol'y Analysis & Mgmt. (2003), http://nature.berkeley.edu/orourke/PDF/CEP-JPAM.pdf.
33. *See* Salkin & Lavine, *supra* note 31, at 292; *see also* Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?*, 77 U. Chi. L. Rev. 5, 9–10 (2010), http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5489&context=uclrev.
34. *See* Gonzalez & Saarman, *supra* note 32, at 38–40.
35. *See* Salkin & Lavine, *supra* note 31, at 292; Gonzalez & Saarman, *supra* note 32, at 38–40.

context of fracking, the solutions proposed in this Article apply similarly to CBAs and GNAs.[36]

Both CBAs and GNAs face similar challenges when it comes to environmental standards and enforcement. Neither CBAs nor GNAs are primarily (or even secondarily) concerned with big-picture issues like climate change. Instead, they are contracts that reflect the concerns of particular communities.[37] Both types of contracts attempt to mitigate the negative impacts of industrial activity (real estate development, industrial pollution, etc.) that occur regardless of whether or not an agreement is reached with the community. This puts community groups at a bargaining disadvantage, potentially incentivizing them to agree to nonbeneficial terms such as confidentiality and penalties for noncompliance with industry activity.[38] The lack of expertise on matters like climate change—and even local air and water quality more generally—can also contribute to the lack of clear standards the other party is to uphold.[39]

This is particularly worrisome given what communities entering into these agreements must give up in order to bring the corporate party to the bargaining table and obtain their consent. Concessions by community parties commonly include the right to sue—the avoidance of litigation stemming from the commercial activity is one of the main incentives prompting industry parties agreeing to enter contractual arrangements.[40] While waiving the right to a legal remedy in the future may seem like a fair trade for present benefits, communities may regret that concession. This is due to the lack of clear standards, monitoring, and enforcement of obligations, especially environmental ones.[41] When the promises obtained from the industry party include the use of specific technology, chemicals, methods, and/or processes intended to mitigate environmental harms, there is an information and experience gap that may be difficult for communities to overcome.[42]

To combat this problem, communities could hire experts to craft their demands and address concerns over water, air, and soil conditions, but the community may not be able to locate or afford monitors to ensure that the industry party is truly complying with its obligations.[43] Even if they are able to monitor, they may not be able to enforce the obligations.[44] If the industrial party simply refuses to fulfill its contractual promises once an agreement has been signed, the community group may face several unpleasant options.[45] The group could try to withhold permits or other local support more broadly (this is the "loss of the social license" to operate, which can in some circumstances be a significant blow to energy companies[46]), but if the contract contains noncompliance provisions, the industrial actor could argue breach. If the community brings an action to enforce the contract, it may have already lost if the true aim was to prevent harms from occurring in the first place. And, in the meantime, an industrial party that never intended to keep its promises would have the benefit of time, since the community group would have allowed its activities without impediment until finally discovering the breach.

III. Bringing Private Environmental Governance and Public Accountability Together in the Energy Context

The Banks that created the Carbon Principles have given the public no means of measuring their compliance with them, but the repercussions may be quite limited. Part of the reason for this lack of fallout could be the lack of transparency and public accountability.[47] Simultaneously, both CBAs and GNAs suffer from a lack of clear standards to hold industrial parties accountable with respect to environmental issues, and the limited ability of community groups acting alone to enforce such standards even if they did exist. Yet both types of contracts, especially CBAs, continue to proliferate.[48] Using the Carbon Principles as one set of the standards to which an industrial party can be held through CBAs and GNAs is a potential solution to both sets of problems. This approach would give communities the power to ensure that signatory

36. *See* Kristen van de Biezenbos, *Contracted Fracking*, 92 Tul. L. Rev. (forthcoming 2018, on file with author).
37. *See* Gonzalez & Saarman, *supra* note 32, at 38–40.
38. *See* Camacho, *supra* note 7, at 356–57, 363; *cf.* Edward W. De Barbieri, *Do Community Benefits Agreements Benefit Communities?*, 37 Cardozo L. Rev. 1773, 1784–85 (2016), http://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1524&context=faculty (positing that CBAs are effective when: (1) community coalitions are "inclusive of, representative of, and accountable to a spectrum of community interests;" and (2) as long as "the government is not itself a party").
39. *See, e.g.*, Camacho, *supra* note 7, at 356; Gonzalez & Saarman, *supra* note 32, at 76 ("In large part, our environmental regulations have failed to successfully monitor, quantify, and mitigate the hazards of air pollution.").
40. *See* Janet V. Siegel, *Negotiating for Environmental Justice: Turning Polluters Into "Good Neighbors" Through Collaborative Bargaining*, 10 N.Y.U. Envtl. L.J. 147, 171 (2002).
41. *See id.*; *see also* Camacho, *supra* note 7, at 356; *see also* Gonzalez & Saarman, *supra* note 32, at 76.
42. *See* Gonzalez & Saarman, *supra* note 32, at 76. Gonzalez and Saarman discuss a GNA in Portland, Oregon that suffers from this problem. The GNA in question was a last resort for a community group that could not rely on the state's Department of Environmental Quality to monitor a polluting company. However, the community's attempt to take on this responsibility through the GNA did not ultimately solve this problem. *See id.* at 76–78.
43. *See id.*
44. *Id.*
45. An instructive example is that of Diamond, Louisiana, where an explosion at a Shell Chemical facility caused serious environmental damage and adversely impacted the health of its citizens. *See generally* Steve Lerner, Diamond: A Struggle for Environmental Justice in Louisiana's Chemical Corridor (MIT Press 2004). For decades, the community fought to have Shell address these harms, but while some residents accepted Shell's offer of buyout and relocation, others have waited in vain for a promised community revitalization project to materialize. *See id.*; *see also* Camacho, *supra* note 7, at 370–71. Camacho notes that the lack of formal procedures for negotiating CBAs and the lack of transparency surrounding them can make it difficult for communities to build on past mistakes. *See id.* It can also make it possible for developers to play different groups against one another and favor certain demands over others. *See id.*
46. The "social license to operate" refers to the constraining effect on company behavior that social norms and expectations can have. *See generally* Neil Gunningham et al., *Social License and Environmental Protection: Why Businesses Go Beyond Compliance*, 29 Law & Social License 307 (2004) (observing that, in some cases, managerial decisions at firms were influenced more by social pressures than legal ones—although is more true of large companies that are sensitive to poor publicity).
47. *See* Camacho, *supra* note 7, at 370–71.
48. *See* Been, *supra* note 33, at 6.

banks follow proposed principles by publicizing their failures to the public. There are at least two ways to accomplish this.

First, the contract could require that the corporate party obtain financing through a bank that has committed to the Carbon Principles. This would have the benefit of bringing the Carbon Principles into the public consciousness and could create pressure on other banks to sign on to the Carbon Principles as well. The contract could also specify that, in the event that the contracting party is not able to obtain financing from a participating bank, it would have to prove that it made a good faith attempt to do so. Although many smaller energy companies may not be able to obtain financing from large banks like Chase and Wells Fargo, there may be instances where companies prefer to use older, longstanding banking relationships instead of forming new ones.[49] Even so, requiring a good faith effort to obtain financing from a bank that has adopted the Carbon Principles could highlight the study done by RAN and put pressure on those banks to work on reporting and compliance.[50] This approach may also encourage other banks to adopt the Carbon Principles in the hopes of qualifying for projects subject to community contracts.

Second, the communities entering into CBAs and GNAs could ask their corporate parties to adopt relevant sections of the Carbon Principles themselves—particularly those requiring them to undertake efficiency measures and carbon capture technologies to minimize greenhouse gas emissions from worksites and facilities. The Carbon Principles themselves do not specify particular technologies required, thus best practices within a given industry could be used to supplement the Carbon Principles. Since real estate development companies and industrial facilities are already familiar with energy efficiency and low-carbon measures, those parties now need sufficient incentives to undertake them and pay the additional, yet worthwhile, costs associated with those measures. While companies may initially express some resistance to the Carbon Principles, just having them—or other private environmental governance measures—on the table could bring much needed public awareness to such measures, transforming what appears to be a case of greenwashing into a more powerful tool for nonregulatory responses to climate change and other environmental issues.

IV. Conclusion

Private environmental governance is a promising and necessary response designed to address the immense challenge of reducing the world's carbon footprint, especially in light of the slow and inadequate federal response.[51] While more limited in scope compared to other private environmental governance measures, community contracts are an important tool for protecting local environmental resources. However, CBAs and GNAs lack clear standards, reporting requirements, and enforcement methods. Although community contracts are not a comprehensive solution to all environmental governance issues, linking private initiatives like the Carbon Principles to community contracts by including them in CBAs and GNAs could strengthen both measures. Preferential treatment and good publicity developed by requiring financing of large real estate and industrial projects via banks that have signed on to the Carbon Principles could create competition among financial institutions to adopt the Carbon Principles and to demonstrate compliance. The Carbon Principles also provide consistent, objective standards for which communities can negotiate in order to ensure adequate air quality and power conservation, among other things. The Carbon Principles are just one example of how private environmental governance initiatives have the potential to become industry norms by encouraging enforceability through the power of public awareness and opinion.

49. *See generally* Radhakrishnan Gopalan et al., *Why Do Firms Form New Banking Relationships?*, 46 J. Fin. & Qualitative Analysis 1335 (2011) (looking at why "relationship banking" benefits large companies in particular, despite the existence of some costs).

50. *See generally*, Richardson, *supra* note 22, at 399.

51. *See, e.g.*, Nathan Rott, *Trump Signs Executive Order Rolling Back Regulation on Carbon Emissions*, Nat'l Pub. Radio (Mar. 28, 2017), http://www.npr.org/2017/03/28/521823487/trump-signs-executive-order-rolling-back-regulation-on-carbon-emissions; Tom DiChristopher, *Trump Signs Executive Order to Roll Back Obama-Era Climate Actions, Power Plant Emissions Rule*, CNBC (Mar. 28, 2017), https://www.cnbc.com/2017/03/27/trump-to-roll-back-obama-climate-actions-power-plant-emissions-rule.html.