



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

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Dear Ms. O'Neill and Ms. Humphrey:

RE: EBR Posting PA07E0001 – Renewal of the Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem

Please consider the following comments by the Canadian Environmental Law Association (CELA) in response to the EBR Posting PA07E0001 – Renewal of the Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem.

CELA is aware that the governments of Canada and Ontario will be releasing a draft Canada-Ontario Agreement (COA) for public comment in the near future. In anticipation of that announcement, CELA is taking this opportunity to provide initial comments and reiterate the urgent need for governments to take aggressive action under a renewed COA that embraces prevention, precaution and transparency for the protection and restoration of the Great Lakes. The opportunity provided to non-governmental organizations to review the draft COA several weeks ago was very much appreciated. However, we are expressing our concern that current draft is lacking a number of key elements in the administrative framework as well as the specific annexes such as the Areas of Concern and toxics can other harmful substances, to name a few. If these areas are not significantly strengthened, COA may not be able to address the threats to the Great Lakes today and in the future. The comments in this submission are preliminary in nature and are intended to outline some immediate concerns and concepts that should be integrated into a draft COA. Substantive comments will be submitted during the formal comment period on the draft COA.

In the efforts to renew COA, the federal and provincial governments should be aware that a number of reports have been released by various non-government organizations around the Great

Lakes basin over the past two years. These reports demonstrate that the Great Lakes continue to be under tremendous threat from historical and current pollution sources, contaminated sediments, climate change, and invasive species, among others. Groups are concerned that as the stressors on the Great Lakes grow we have reached a tipping point where it is no longer possible to clearly distinguish the impacts that are contributing to declines in species and ecosystem health. Without strong government commitment and effective action plans to address these threats, the quality of the ecosystem and the health of Great Lakes' citizens will be significantly compromised. We strongly urge the federal and provincial governments to review these reports and consider the recommendations included therein.

Non-governmental organization Resources

- 1) PollutionWatch, "Great Lakes, Great Pollution: Canadian Pollutant Releases and Transfers to the Great Lakes." February 2005.
<http://www.pollutionwatch.org/pub/Canadian%20Great%20Lakes%20Report%20Final.pdf>

PollutionWatch is a joint project of CELA and Environmental Defence. Through the PollutionWatch project, CELA and Environmental Defence demonstrated that Canadian facilities released over 1 billion kilograms of pollutants into the air and about 28 million kilograms of pollutants into the water for 2002. Based on these findings, both organizations submitted a number of recommendations to the federal and provincial governments, including the need to:

- *accelerate timelines for the virtual elimination of persistent, bioaccumulative toxics by 2010 and provide assurances that targets under COA and the GLWQA will be met on time; and*
- *virtually eliminate all carcinogens and endocrine disrupting substances by 2015. At a minimum, there should be a 50% reduction of endocrine disrupting and carcinogenic substances within five years.*

- 2) National Wildlife Federation, "Prescription for Great Lakes Ecosystem Protection and Restoration: Avoiding the Tipping Point of Irreversible Changes." December 2005.
[www.snre.umich.edu/news/newsdocs/Prescription%20for%20Great%20Lakes%2008%2030%202006%20\(2\).pdf](http://www.snre.umich.edu/news/newsdocs/Prescription%20for%20Great%20Lakes%2008%2030%202006%20(2).pdf).

This report, supported by approximately 60 U.S.-based scientists, provides scientific evidence of the continued degradation of the Great Lakes.

- 3) PollutionWatch, "Partners in Pollution: An Assessment of Continuing Canadian and United States Contributions to Great Lakes Pollution." February 2006. Link:
<http://www.pollutionwatch.org/pub/partners.jsp>

This report highlights the fact that approximately 4000 U.S. and Canadian facilities reporting to the US Toxic Release Inventory and Canada's National Pollutant Release Inventory reported pollution releases and transfers of over 627 million kilograms into the Great Lakes and St. Lawrence River basin in 2002. This report contained fifteen recommendations including:

- Develop an **inclusive, common database** to determine the annual loading of all pollutants, including all persistent toxic substances, to the Great Lakes.
 - Develop and implement a **bi-national pollution elimination and reduction strategy** that builds upon, and significantly expands, the Bi-national Great Lakes Toxics Strategy.
 - Reconfirm the commitment to the **virtual elimination of persistent toxic substances** and expand that goal to include carcinogens and endocrine disruptors.
 - Commit to reaching the prescribed targets through **pollution prevention measures which would include the application of green chemistry and materials substitution.**
- 4) Alliance for the Great Lakes, Great Lakes United, and Canadian Environmental Law Association, “The Great Lakes Water Quality Agreement - Promises to Keep; Challenges to Meet. Perspectives of Citizens - In Consultation with the Great Lakes Basin's Environmental Community.” December 2006.
http://cela.ca/uploads/f8e04c51a8e04041f6f7faa046b03a7c/553GLWQA_promises.pdf

This report was a collaborative effort by U.S. and Canadian NGOs to demonstrate the extensive threats to the Great Lakes which need to be addressed in the review of the Great Lakes Water Quality Agreement (GLWQA). The report canvassed issues such as assessment and management of toxic chemicals (point-source and non point-source pollution); emerging issues such as pharmaceuticals and endocrine disruptors in water sources; contaminated sediments; impacts to habitats; aquatic invasive species; and impacts of global warming. The report also highlighted the need for increased research, surveillance and monitoring, and broader opportunities for public participation in protecting the Great Lakes. The prevention, protection and restoration regimes outlined in this report are highly relevant in the context of COA.

- 5) Ontario Public Advisory Council, “Great Lakes Hotspots: Ontario Citizens Speak Up (Highlights)”. October 2006.

This report provides evidence that more work needs to be done around Areas of Concern in the Great Lakes. There is a need for a commitment by the federal and provincial governments to effectively address AOCs. The report includes a number of recommendations regarding resources, strategy and effective public participation.

- 6) Botts, Lee and Paul Muldoon. Evolution of the Great Lakes Water Quality Agreement. Michigan State University Press. 2005.

This report provides extensive documentation on the history of the GLWQA and the governance framework that is currently in place to implement obligations outlined in the Agreement. It makes recommendations on how to improve the governance arrangements for the Great Lakes as well as the review of the GLWQA and strengthening public involvement.

In addition to the references noted above, CELA also acknowledges the importance of 17 recommendations outlined in the Draft Report “Review of the Canada-Ontario Agreement on the Great Lakes Basin Ecosystem” (Fall 2006) by Ogilvie, Ogilvie & Company, a consulting firm to the Government on COA. We are highlighting the following recommendations:

Recommendation 1: COA is making a difference to the environment in the Great Lakes Basin ecosystem and should be renewed, enhanced and expanded.

Recommendation 3: Canada and Ontario should develop a comprehensive environmental strategy for the Great Lakes Basin prior to or as part of the process to reach a new Agreement.

Recommendation 6: The new COA should update existing Annexes to reflect recent progress, and consider adding new Annexes that address urgent and emerging issues affecting the Great Lakes Basin,...

Recommendation 8: It will be necessary to increase the allocations, reallocate, raise or leverage resources from the public and private sectors to restore, protect and conserve the Great Lakes Basin ecosystem.

Recommendation 9: Improving and expanding stakeholder relations should be a priority in the development and implementation of the new Agreement.

The upcoming renewal of COA should effectively address the findings and recommendations outlined in this Draft Report.

Federal government's legal obligation to implement the Great Lakes Water Quality Agreement

Given that the government of Canada is a signatory to the GLWQA, the federal government has a legal obligation to implement the Agreement in cooperation with the provincial governments around the basin. As the main federal-provincial agreement to implement the GLWQA in Ontario, COA should recognize the federal government's role as leader in these efforts. The clear leadership role by the federal government in protecting the Great Lakes is paramount to an effective implementation of COA. The COA should ensure that both levels of governments outline measures to be undertaken that restore degraded and contaminated regions, set timelines and targets that address current pollution sources and operationalize precaution to address future threats to the Great Lakes.

Reaffirm COA as the main funding mechanism to implement GLWQA

Adequate resources are needed to implement the obligations of the GLWQA. The federal government, in working with its provincial counterparts, should recommit adequate resources to implement the obligations under the GLWQA. The federal government should highlight the need to budget for Great Lakes clean-up and restoration efforts. A new COA should outline the budget commitments from each the federal and provincial government to complete the tasks outlined in COA for timeframe of the Agreement.

Overarching Principles integral to the COA

The report, "Promises to Keep: Challenges to Meet" outlines three key principles on page 18:

- 1) be preventative through its ecosystem approach;
- 2) compel ecological recovery in its ecosystem approach; and

3) provide for implementation with public accountability with respects to the review of the review of the GLWQA.

In our view, these principles should also be applied to the new COA. In following these principles, COA should also explicitly recognized that the need to implement an ecosystem approach that would effectively ensure the protection of the watershed basins, wildlife populations and human health.

Need for timelines and targets for action

An effective COA should include timelines and targets for actions to be undertaken over the timeframe of the Agreement. The lack of clear timelines and targets will undoubtedly make COA ineffective in ensuring the restoration and protection of the Great Lakes Basin ecosystem. Further the need for timelines will establish accountability with the two levels of government responsible for the implementation of COA.

Principles and Concepts to consider in COA Annex on Toxic Substances and Harmful Pollutants.

The report, “**Promises to Keep: Challenges to Meet**” effectively documents the on-going concerns with toxic substances and their impact on the Great Lakes ecosystem, wildlife and human populations. To address these concerns, a number of recommendations (Pages 22-29) have been developed regarding the identification, assessment and action needed on persistent, bioaccumulative toxic substances and other hazardous substances. The report also outlines the need to address emerging substances of concern and hazardous substances from both point and non-point sources of pollution (including sewage overflow, waste water treatment, and agricultural runoff).

To effectively expand the current annex dealing with toxic substances in COA, several key principles should be integrated in the overall approach of this annex:

- Recognition of the unique exposure to toxic substances of children and other vulnerable populations, and
- Commitment to pollution prevention strategies that would promote toxic use reduction and elimination.

To support these key principles, the following components should be integrated into an expanded annex on toxic substances in a new COA:

- **A re-commitment to the goals of virtual elimination** of persistent toxic substances;
- **Emphasize the avoidance of toxic substance** use through pollution prevention strategies, including product and process design requirements that result in the elimination or reduction in the use and generation of toxic substances.
- **Promote the substitution** of less hazardous or non-hazardous substances or innovative technological processes to replace toxic substances.

- The **goal of virtual elimination should be broadened** to address other hazardous substances including carcinogens, mutagenic, neurological and reproductive toxicants, or endocrine disrupting toxicants.
- **Establish a new obligation and process in COA is needed to update the list of substances currently identified for action under Tier 1 and Tier 2.** This obligation should include a mechanism for screening, assessing and triggering action on substances. This new requirement would build upon the federal government’s recent categorization and prioritization of 23,000 substances for further work required under the Canadian Environmental Protection Act. Generally this obligation or process would aim to identify those substances that meet the following hazardous criteria: persistent, bioaccumulative, carcinogenic, mutagenic, endocrine disrupting, respiratory toxics, neurotoxics, or those having potential reproductive or developmental impacts on wildlife or human health. The relevant annex for listing substances should be revised as required and timelines for elimination and reductions strategies be established.
- **Shift the onus to industry to demonstrate safety of substances** that are used, manufactured, imported, released or disposed in the Great Lakes.
- **Expand and enhance research, monitoring, surveillance and reporting mechanisms in a new COA.** For example, the expanded use of biomonitoring data can provide evidence of where priority action may be needed.
- **Support the establishment of a toxics use reduction and elimination institute for the Great Lakes.** The goal of this institute would be to provide technical assistance to businesses so as to meet elimination and reduction goals, and promote innovation in green chemistry and clean production.
- **Support the establishment a Great Lakes Coordinating Office** to strengthen and enhance the profile of the Great Lakes in the federal government. The Coordinating Office would be mandated to be the primary implementing agency for Great Lakes programs federally and the primary coordinating body for inter-jurisdictional programs.

Principles and Concepts to consider in COA Annex on Source Protection

The Great Lakes serve as a major source of drinking water for populations on both sides of the border. As such, it is important that COA include measures to protect both the quality and quantity of this source. In Ontario, the new *Clean Water Act, 2006* includes a provision that requires COA to be considered in the source protection plan of any area containing water which flows into the Great Lakes. Just as local source protection legislation requires consideration of COA, so too should COA incorporate principles and measures to protect drinking water sources, including:

- **Precaution and prevention.** In Part 2 of the *Report of the Walkerton Inquiry*, Justice O’Connor suggests that “when the potential consequences of the hazard in question are large, the precautionary principle has a role to play in practical risk management and should be an integral part of decisions affecting the safety of drinking water” (page 77). Furthermore, he recognizes that “[t]he key features of a good approach to managing risk include being preventative rather than reactive” (page 75). By investing in source protection as the first step in a multi-barrier approach to providing safe drinking water, hazards are prevented from ever entering the water in the first place.

- **Ecosystem scale.** The threats to water sources do not respect political or jurisdictional barriers. Accordingly, it is important to organize planning, assessment and management processes according to an ecosystem, basin-wide, or watershed scale. Due to the distinct size of the Great Lakes and the concomitant complexity of that ecosystem, there is a particular need to ensure consistency of efforts. Source Protection for the Great Lakes should not just focus on areas adjacent to drinking water intake pipes but also extend to all threats in the near shore, tributaries, sediments and groundwater of the Great Lakes.
- **Public involvement.** The public is the group most directly affected by drinking water impacts, and in many cases the public also possesses the greatest knowledge of local threats. Thus, source protection initiatives should seek to engage members of the public as local stewards of the environment. In order to effectively engage the public, there need to be opportunities for the public to review information and proposed decisions, and have a real impact over the final decisions that are reached.
- **Cumulative impacts.** Cumulative impacts are a threat to all water sources. However, the immense size of the Great Lakes creates additional complexity in measuring cumulative effects and identifying their sources, particularly when those sources are non-point in nature. Addressing cumulative impacts requires an adequate investment in research and science, and a willingness to apply the precautionary principle to regulating small scale, dispersed emitters. The ultimate goal should be the protection of not only municipalities' intakes, but all other people and organisms which rely on the Great Lakes for their water.
- **Timelines.** As noted in the literature overview above, many threats to the Great Lakes are worsening, not improving. To the extent that local efforts are already underway to protect water sources, COA should include ambitious timelines which keep pace with, and ideally exceed, these local timelines. If COA sets and meets such targets, it can serve to drive and unite the regional initiatives. If not, it risks becoming reactionary and irrelevant.

Additional issues related to the renewal of COA

CELA is concerned about the proposal to move from a two year to a three year commitment. While we appreciate that this gives more program stability, we feel annual determination needs to be made to renew resources and increased funding for programs under COA.

To provide improved transparency and monitoring of progress under COA, CELA recommends that the final COA have an appendix in a matrix form that lists each commitment in the GLWQA, when it will be acted on, who is acting on it and who has committed to funding it. This could act both as a report on progress and program priorities as well as an accounting mechanism for equal cost sharing between Ontario and Canada.

Closing Comments

We are submitting these preliminary comments in preparation for the formal review process on the draft COA. CELA will provide additional details and commentary on the above issues as well as the overall structure of COA.

We would welcome the opportunity to expand on any of the points presented above. Please do not hesitate to contact us at 416-960-2284.

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