



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'Association canadienne du droit de l'environnement



Indiana Toxics Action

TO: Binational Toxics Strategy Sectors Group
 (Frank Anscombe, Environmental Protection Agency; Edwina Lopes,
 Environment Canada)
 Binational Toxics Strategy New Substances Group (Edwin Smith,
 Environmental Protection Agency; Allan Paul Dane, Environment
 Canada)

FROM: Canadian Environmental Law Association (Fé de Leon)
 Great Lakes United (John Jackson)
 Indiana Toxics Action (Lin Kaatz Chary)
 National Wildlife Federation Great Lakes Office (Michael Murray)

Re: Comments on Binational Toxics Strategy Guide to the Substance and Sector
 Groups

DATE: September 15, 2008

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This letter constitutes brief comments of the nongovernmental organization (NGO) representatives involved in the Binational Toxics Strategy (BTS) on the BTS Guide to the Substance and Sector Groups (or “Guide”) document. These comments supplement comments we submitted on August 28, 2008 to the work group chairs, which included a letter discussing general principles around the BTS, a revised framework for identifying substances to be addressed via the BTS, and a narrative document in support of the framework.

As stated in our August 28 letter, a central issue for us is developing and implementing a BTS process that is consistent with the language in both the Great Lakes Water Quality Agreement (GLWQA) and the Binational Toxics Strategy founding document itself, in particular concerning the goal of virtual elimination of persistent toxic substances in the Great Lakes Basin.

We are concerned that the draft Guide appears to develop new policy goals that are not formally consistent with the goals of the GLWQA or the BTS, including, in the Mission

section of the Guide, that the "...the Parties to the GLBTS agree to make an effort to eliminate or reduce to the maximum extent practicable the discharge of toxic pollutants into the Great Lakes Basin."

Within the GLWQA, Article II on the Purpose of the Agreement states:

"Consistent with the provisions of this Agreement, it is the policy of the Parties that:
 (a) The discharge of toxic substances in toxic amounts be prohibited and the discharge of any or all persistent toxic substances be virtually eliminated;..."

This is a general policy applicable to any or all persistent toxic substances. (The Agreement references reduction to the "maximum extent practicable" on only one occasion, concerning phosphorus in Annex 3, and "maximum extent possible" only concerning "point source impact zones" in Annex 2 on Remedial Action Plans and Lakewide Management Plans, and in that case, only as part of cases "Pending the achievement of the virtual elimination of persistent toxics substances...") ***Thus, we urge the work group chairs to work with the existing goals of the GLWQA and the BTS, and develop official policies for the new work groups consistent with those goals.*** Approaches that fall short of this approach will not effectively protect the Great Lakes ecosystem and human health.

Similarly, concerning work of these new work groups, while it is reasonable that the work not be duplicative of existing national programs (as noted in the third paragraph of the Mission), we believe it is important to build a process based on the GLWQA and with a specific focus on the Great Lakes basin. The national programs may not address specific challenges that exist for different regions such as the Great Lakes. For example, concerning surveillance and monitoring, the Agreement does not state that the Parties should defer to national programs on these activities – the emphasis and assumption is on a binational approach. In fact, section 2 of Annex 11 (Surveillance and Monitoring) of the Agreement states:

"A joint surveillance and monitoring program necessary to ensure the attainment of the foregoing purposes shall be developed and implemented among the Parties and the State and Provincial Governments..."

There is no guarantee that national programs in either country will identify and prioritize appropriately all chemical substances for action (including virtual elimination) that are a threat to the Great Lakes Basin ecosystem. While there may not be a need for a separate, comprehensive technical tool for identifying and prioritizing chemical substances in the Basin, there must be a clear process for identifying and targeting substances for virtual elimination in the Basin through a binational process. In addition, there is clearly a need to promote greener development in the region (which would include identifying and promoting safe alternatives through approaches such as green chemistry, greener manufacturing, and green engineering), and the BTS should be able to help lead in those efforts, in order to promote the prevention of releases of problematic chemical substances in the Basin.

In summary, we believe the purpose and activities of the new BTS Work Groups need to be strengthened – including recognizing the key principles in the Great Lakes Water Quality

Agreement, identifying a binational approach for addressing toxic chemical threats to the Basin, and more actively considering ways to help promote greener development – if the BTS is to have a clear purpose in furthering implementation of the Great Lakes Water Quality Agreement.

For additional information, contact:

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 Environment Canada)
 Binational Toxics Strategy New Substances Group (Edwin Smith, Environmental
 Protection Agency; Suzanne Easton, Environment Canada)
 Gary Gulezian, Director, GLNPO
 Danny Epstein, Regional Director, Environment Canada

FROM: Canadian Environmental Law Association (Fé de Leon)
 Great Lakes United (John Jackson)
 Indiana Toxics Action (Lin Kaatz Chary)
 National Wildlife Federation Great Lakes Office (Michael Murray)

Re: Recent Binational Toxics Strategy Discussions, and Proposed NGO BTS
 Framework and Narrative

DATE: August 28, 2008

Based on recent discussions on the Binational Toxics Strategy (BTS), including the June 2-3 meeting in Burlington, Ont., and the August 7th conference call, we are expressing our concerns regarding the positions taken by the Canadian Federal government representatives who have been saying that virtual elimination should not be used in the BTS because it has a specific legal meaning in Canada under the Canadian Environmental Protection Act (CEPA). The position of U.S. EPA participants in the BTS on this matter is not clear to us, based on discussions thus far. It is our belief that removing virtual elimination from the BTS undermines the intent of the BTS and is incompatible with the mission and purpose of the BTS as originally articulated by the parties. The BTS has always been seen as a mechanism by which to push forward international efforts to address existing and future toxic contamination of the binational Great Lakes.

These recent declarations, however, indicate a significant shift and weakening of the government's approach on protecting the Great Lakes basin from impacts of toxic contaminants.

As we look forward to the September 2008 meeting of the BTS we call on the governments to promote the original intent and purpose of the Great Lakes Binational Toxics Strategy as articulated in the document signed by Carol Browner, representing the U.S., and Sergio Marchi, representing Canada, on April 7, 1997. With regard to the issue of virtual elimination, this document states that the governments:

“...will work in cooperation with their public and private partners toward the *goal of virtual elimination of persistent toxic substances* resulting from human activity, particularly those which bioaccumulate, from the Great Lakes Basin, so as to protect and ensure the health and integrity of the Great Lakes ecosystem. In cases where this Strategy addresses a naturally-occurring substance, it is the anthropogenic sources of pollution that, when warranted, will be targeted for reduction through a lifecycle management approach so as to achieve naturally occurring levels. *An underlying tenet of this Strategy is that the governments cannot by their actions alone achieve the goal of virtual elimination. This Strategy challenges all sectors of society to participate and cooperate to ensure success. The goal of virtual elimination will be achieved through a variety of programs and actions, but the primary emphasis of this Strategy will be on pollution prevention.* This Strategy reaffirms the two countries' commitment to the sound management of chemicals, as stated in Agenda 21: A Global Action Plan for the 21st Century and adopted at the 1992 United Nations Conference on Environment and Development. The Strategy will also be guided by the principles articulated by the International Joint Commission's (IJC) Virtual Elimination Task Force (VETF) in the Seventh Biennial Report on Great Lakes Quality¹.

[emphasis added] (See Appendix 1 for complete text of "Purpose", *Binational Toxics Strategy*, http://binational.net/home_e.html)

In contrast with this commitment, however, recent discussions in the BTS have contradicted the virtual elimination commitment in the BTS and dismissed fundamental IJC Biennial Reports and the work of the IJC's Virtual Elimination Task Force as irrelevant. For example, at the June, 2008 BTS meeting in Burlington, a representative of U.S. EPA stated that zero discharge is impossible and will never happen, and a leading industry representative asserted without disagreement from the governments present that "the precautionary principle is not on the table". We believe that

¹ Which, it should be noted, was specifically characterized by the Canadian co-chair in Burlington in June, 2008, as just "some IJC document."

these comments emphasize what we find to be a disturbing trend of increasing deviation from the baseline tenets of the Great Lakes Water Quality Agreement (GLWQA), and the original Binational Toxics Strategy as signed by the governments in 1997.

We call on the governments to pursue the zero discharge and virtual elimination goals of the GLWQA and the BTS (as understood in those agreements, and neither amended nor limited by later Canadian or U.S. legislation) for toxic chemicals into the Great Lakes. These efforts would also be supportive of the 2020 goals established through the Johannesburg Plan of Implementation and the Strategic Approach to International Chemicals Management (SAICM).²

In response to the governments' invitation to articulate our proposal for achieving the above goals and implementing the mandates of the GLWQA and the BTS, we are submitting the attached framework and narrative for the future work and activities of the BTS. Fundamental to the framework we have drawn up is the original goals of the Great Lakes Water Quality Agreement, the Virtual Elimination Task Force, and the Binational Toxics Strategy. We look forward to discussing this framework with the governments and all stakeholders at the September, 2008 meeting of the BTS in Chicago.

For additional information, contact:

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attachment

² http://www.chem.unep.ch/saicm/SAICM%20texts/standalone_txt.pdf

APPENDIX 1- Excerpt from the Great Lakes Binational Toxics Strategy (with highlighted section covering virtual elimination)

PURPOSE

In keeping with the objective of the Revised Great Lakes Water Quality Agreement of 1978, as amended by Protocol signed November 18, 1987 (1987 GLWQA) to restore and protect the Great Lakes, the purpose of this binational strategy (the Strategy) is to set forth a collaborative process by which Environment Canada (EC) and the United States Environmental Protection Agency (USEPA), in consultation with other federal departments and agencies, Great Lakes states, the Province of Ontario, Tribes, and First Nations, will work in cooperation with their public and private partners toward the goal of virtual elimination of persistent toxic substances resulting from human activity, particularly those which bioaccumulate, from the Great Lakes Basin, so as to protect and ensure the health and integrity of the Great Lakes ecosystem. In cases where this Strategy addresses a naturally-occurring substance, it is the anthropogenic sources of pollution that, when warranted, will be targeted for reduction through a lifecycle management approach so as to achieve naturally occurring levels. An underlying tenet of this Strategy is that the governments cannot by their actions alone achieve the goal of virtual elimination. This Strategy challenges all sectors of society to participate and cooperate to ensure success. The goal of virtual elimination will be achieved through a variety of programs and actions, but the primary emphasis of this Strategy will be on pollution prevention. This Strategy reaffirms the two countries' commitment to the sound management of chemicals, as stated in Agenda 21: A Global Action Plan for the 21st Century and adopted at the 1992 United Nations Conference on Environment and Development. The Strategy will also be guided by the principles articulated by the International Joint Commission's (IJC) Virtual Elimination Task Force (VETF) in the Seventh Biennial Report on Great Lakes Quality. This Strategy has been developed under the auspices of the Binational Executive Committee (BEC), which is charged with coordinating the implementation of the binational aspects of the 1987 GLWQA. The BEC is co-chaired by EC and USEPA, and includes members of the Great Lakes states, the Province of Ontario, and other federal departments and agencies in Canada and the United States (U.S.).

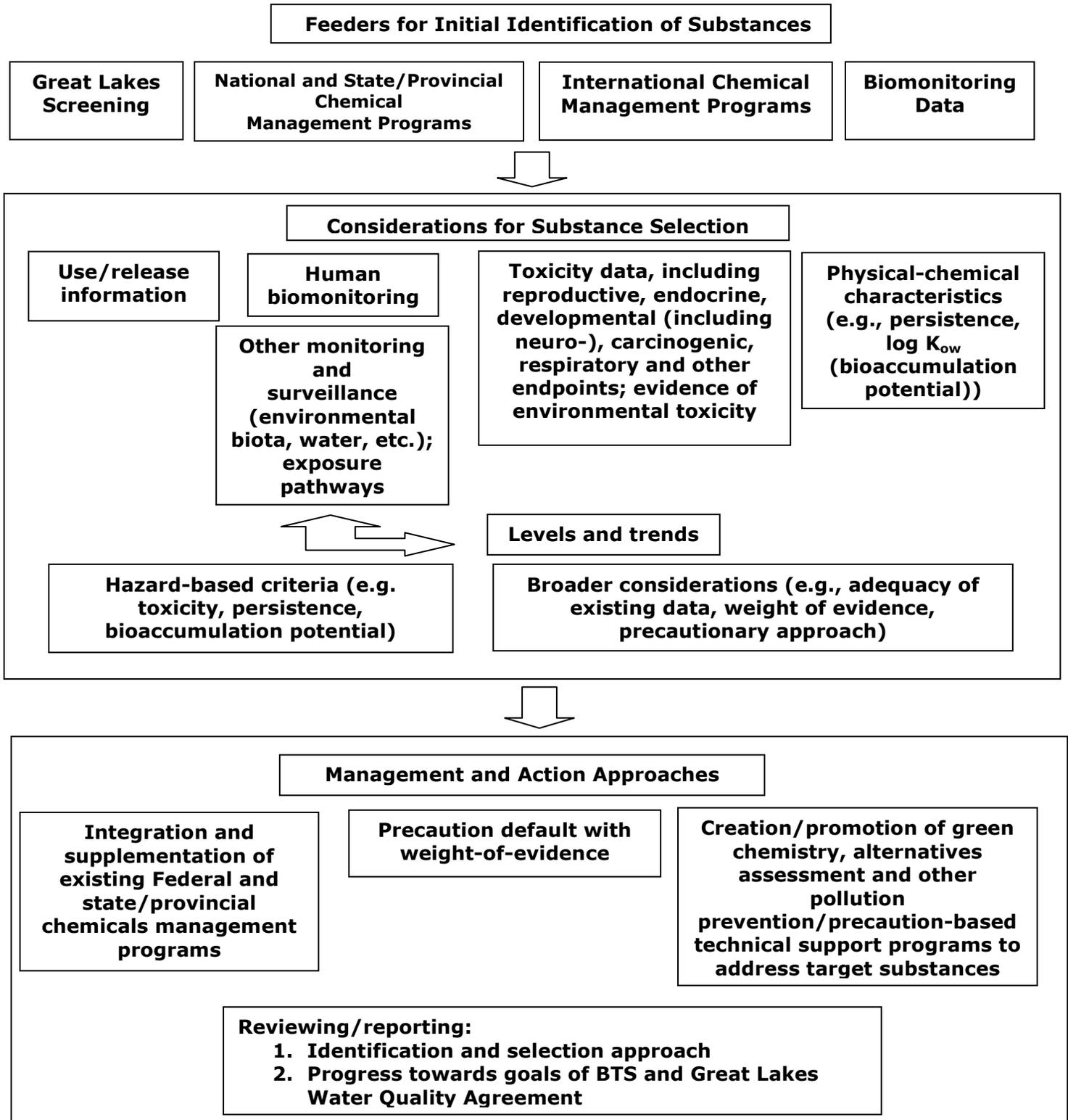


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**General Framework for Identifying Substances to be
Addressed via the Binational Toxics Strategy in the Great Lakes Basin
NGO Proposal – August 2008**





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Chemical Selection Framework for the Binational Toxics Strategy NGO Proposal August, 2008

Overview

The purpose of the Binational Toxics Strategy (BTS) chemicals selection framework is to delineate a process for protecting human health and the environment from toxic chemicals in the Great Lakes ecosystem, and to accomplish restoration and recovery of the Lakes from historical chemical contamination and damage. The intent is the continued implementation of the Great Lakes Water Quality Agreement (GLWQA), with the precautionary principle as the overarching principle, and zero discharge as the goal to which it aspires.

This framework must incorporate the specific focus on the sector approach and the identification of new chemicals for addition to the BTS while maintaining the integrity of the original goals and principles of the GLWQA and the BTS document signed by the governments in April, 1997. The objectives and intent of the proposed framework are to operationalize the goals and principles of the BTS by developing specific design, assessment, mitigation and prevention methods for identifying, eliminating, and preventing toxic contamination of the Great Lakes

NGO Framework Goals/Objectives:

1. Identify and list **all** chemicals used and produced in the binational Great Lakes basin which have a known or potential pathway of introduction into the Great Lakes ecosystem.

- a. This list will be compiled by the governments with input predicated on the good faith participation of all stakeholders: citizens, health and environmental non-governmental organizations (NGOs), relevant agencies from all levels of government in the Basin (municipal, provincial, state, federal, etc.), and industry.
 - b. The list will be organized by sectors, but not linked to any specific product, process, or source to assure the integrity of confidential business information (CBI) and any additional proprietary process/product concerns.
 - c. The list will be reviewed by independent agency staff and others for accuracy and completeness (to the extent practical).
 - d. The list will be published for public review and comment.
2. Prioritize chemicals on this list according to the following criteria:
- a. Human biomonitoring
 - b. Monitoring and surveillance (in addition to human biomonitoring).
 - c. Persistence and bioaccumulation
 - d. Human and (laboratory) animal health effects, including reproductive, endocrine disruption, and neuro-developmental, carcinogenicity, respiratory, and other health effects
 - e. Environmental toxicity
 - f. Use/release information
 - g. Levels and trends
 - h. Exposure pathways
 - i. Completeness/adequacy of data
 - j. Weight of the evidence with precaution default
3. Create a sector-specific classification of chemicals prioritized in Objective #2 and identify other significant source of releases for substances identified under Objective #2. This classification would also be published for public review and comment.

4. Facilitate the development and implementation of strategies and action plans for sunsetting, substitution with existing chemicals, and the creation of safe alternatives for the priority chemicals identified in Objective #2.
 - a. Set milestones for action [sunsetting, substitution, etc.] including the establishment of timelines for completing zero discharge (e.g., outline time frame for reduction of 75% by 2015 and complete zero discharge by 2020).
 - b. Incorporate the use of green chemistry, green engineering and other pollution prevention strategies to achieve target by 2020.
 - c. Utilize "12 Principles of Green Chemistry" and related approaches (e.g. alternatives assessment) to vet chemicals proposed for use as substitutes and alternatives to sunsetted chemicals
5. Provide a nexus for the exchange of information, resources, and technical assistance to achieve the goals of the framework.
6. Require a mechanism for 5-year review of existing list of priority chemicals and of new substances to be added to BTS list
7. Require regularly scheduled review and report on progress (qualitative and quantitative) of BTS screening and management activities.
8. Assure adequate funding is available for coordination, facilitation, monitoring and technical support of the BTS process, and inclusive participation of all stakeholders.