

**Environmental and Citizens' Groups Comments and Recommendations
In Response to Canadian & U.S. Negotiators Final Consultation
On the Renegotiation of the Great Lakes Water Quality Agreement**

September 20, 2011

Submitted by the following:

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Forty-one citizens' groups from throughout the Great Lakes and St. Lawrence River basin submit the following comments at this the critical final stage of public consultation of the renegotiation of the Great Lakes Water Quality Agreement (GLWQA).

Our original intention at this concluding stage of public consultation on the Canada–U.S negotiations to amend the Agreement was to compare and contrast our detailed 2010 recommendations with the negotiators' proposed draft Agreement.

Regrettably, we are unable to fulfill this aim, as the two Parties have not provided the public with sufficient information regarding the significant changes they are contemplating. We have participated in good faith with lengthy constructive submissions over the past few years. These include:

- July 2007: "The Future of the Great Lakes Water Quality Agreement: The ENGO Perspective." A collaborative effort of 64 Canadian, American and international groups working in the Great Lakes basin, 67 pages, prepared at the end of the final stage of the Governments' review.
- February 15, 2010: "Preliminary Comments and Recommendations on Governance Issues for Consideration during the 2010 Renegotiation of the Great Lakes Water Quality Agreement," signed by 32 groups, 24 pages, prepared in response to materials provided by the negotiators for the for consultation in 2010.
- July 9, 2010: "Comments and Recommendations on Governance and Specific Issues for Consideration during the 2010 Renegotiation of the Great Lakes Water Quality Agreement," signed by 36 groups, 33 pages, prepared following the June 2010 Webinars hosted by the negotiators.

The superficial degree of consultation at this the final stage seriously impedes our efforts to undertake the detailed comparison of our proposals with the negotiators proposals. As a result we call on the negotiators to undertake such a detailed comparison of each of our recommendations with their proposals before they finalize the agreement. Because we are unable to determine the extent to which our recommendations were considered or are reflected in the new Agreement, we are appending these previous comments to our submission to reiterate the scope of our concerns.

Despite our deep commitment to work with the negotiators to develop a strong GLWQA, the manner in which the negotiators conducted "public consultation" does not enable us to effectively engage in providing detailed, substantive input at this critical, final stage because they have not given us sufficiently detailed materials on the new Agreement to make such input.

Thus, our final comments are based on limited information available in a very general PowerPoint presentation on the binational.net website (only half of the 33 slides in the presentation refer to the content of a new agreement), and the sometimes inconsistent answers that the negotiators gave in response to questions and comments at the Toronto and Chicago Forums and the webinar. Our concerns include:

DESIGN, STRATEGY, and GOVERNANCE

Overall design and strategy of the new Agreement appears to result in a loss of specificity, clarity, transparency and continuity.

It appears that the new Agreement will be dramatically different in structure and substance than the current Agreement. Instead of a detailed statement of goals, objectives, targets, priority toxic chemicals and commitments, our impressions are that the new version will be largely thematic with general language outlining various annex topics, and that development of most of the substantive details will be delegated to the newly named Great Lakes Executive Committee (GLEC) or its annex subcommittees. Thus the Agreement itself will no longer serve as the explicit statement of our nations' specific intentions, but will merely provide the outline that various subcommittees will flesh out on unknown timelines and with yet-undetermined participants, under the constraints of resources that are either undetermined or unspecified, working with "best available science," and led by federal agencies whose mission is shaped by the mandate to carry out the wishes of their current Administrations. A conceptual agreement would be a mere shadow of the historic precedents of the previous Great Lakes Water Quality Agreements, and inadequate for the challenge at hand. Further, it allows for shifting targets, timelines and priorities with each changing federal administration, (and potentially each state and provincial administration) as participants on GLEC committees may change with each election cycle or at least will be operating under changed instructions from their administrations.

GLEC structure does little to build constituencies, promote participation, or foster transparency to improve and sustain the Great Lakes.

Even with the addition of tribal, first nations, métis and municipal members, GLEC will remain an instrument for agency personnel, largely closed to outside influences and input, whose primary function is to represent their agencies and their agencies' interests in Great Lakes decisions. While exchange between these agency leaders is valuable and essential, it is not sufficient to develop and support a robust Agreement and its implementation. There is no provision for citizen or "at large" seats for other organizations including environmental non-government organizations, industry, business, and academics on GLEC. No justification for excluding citizen representation has been provided in the forums. We again emphasize that independent voices are critical in this governing structure to provide perspectives that are not bounded by the missions and priorities of environmental management agencies at the federal, state, provincial or municipal level, or even those of tribal, first nations, or métis governments. Further, these independent voices are needed to serve as a channel for unfiltered communication about GLEC actions and decisions to the public. Citizen inclusion can uncover new paradigms for Agreement implementation.

The negotiators' statements regarding potential citizen participation in Annex subcommittees of GLEC were welcome. It is unclear, however, how subcommittees will be constituted, who will have the decision-making power to select participants, and what role citizens will be able to play.

Finally, there is no clear path of how the GLEC will receive information on progress of efforts to resolve problems or on emerging concerns, nor is there a pathway on how they will instruct committees on how to proceed. Every three years for review of progress is not enough. Verbal communication and ongoing consultation is needed.

Timelines, benchmarks, chemical lists and targets are the muscle of the Agreement; without them it will have little weight or value.

Although it was difficult to ascertain from the forums whether there will be any timelines, chemical lists and targets *at all* in the new Agreement, our general impression was that there would be few if any embodied in the Agreement text. Timelines in particular seemed to be discounted in the answers at the forums with “what can you do about Congress or Parliament?” One of the things we *can* do is to pressure them to take action to fulfill commitments stated by the leaders of our nations *in* the Great Lakes Water Quality Agreement. If our nations are unwilling to state to each other and their citizens their commitment to address Great Lakes challenges on a timeline that will rise to the challenge ahead, of what value is the Agreement itself?

If subcommittees will be delegated major decision-making authority on establishing targets and chemical priorities, the Agreement itself must provide explicit criteria for their charge. There was no indication that this is currently within the new Agreement text.

Under no circumstances should existing lists and targets be suspended until new lists and targets are in place, which is likely to be a period of many years, and the Agreement should explicitly state that current lists and targets remain active until such time as any new GLEC-derived lists and targets are adopted. It is better to have the existing targets and lists with a commitment from the governments stating by when they will have completed updating of the targets and lists than to have no targets or lists in the Agreement.

There must be no waiting period to get going. After almost 40 years, we know enough to act.

The redesign of Agreement actions through new annexes and annex subcommittees should not suspend ongoing actions or commitments on already well-documented threats and challenges. We should not need to wait for these new committees to get organized and develop detailed plans (assuming they will produce detailed plans) to continue to make progress on long-standing commitments

SPECIFIC ANNEXES AND ISSUES

Climate Change: good start, but not enough.

We welcome and applaud the addition of a Climate Change annex. However, the described focus of the anticipated climate change annex falls far short of the needs for a visionary and anticipatory strategy in the new Agreement. While information exchange is valuable, the greater need is for rapid development of adaptation and mitigation actions that dovetail with other objectives, with a particular emphasis on habitat protection, water quality protection, nutrients, and the undefined “nearshore” framework. The Great Lakes are already suffering ecological damage from climate disruption. This annex must address challenges such as:

- the needs for green infrastructure in Great Lakes tributaries to reduce impacts of storm intensity, including loadings of bacteria and pathogens that threaten human health;
- habitat changes and losses due to warming waters, higher evaporation, etc.;
- negative synergies between warming waters, the spread of invasive species and degraded water quality.

Further, it should seek to identify and implement strategies that benefit water quality and habitat and also provide carbon sequestration or reduce greenhouse gas emissions. These could include reforestation projects in key watersheds, reductions of nutrient loadings and methane emissions through projects like strategic use of manure digesters, incentivizing “green farming” or similar practices, and many other actions.

Remedial Action Plans (RAPs): Why doesn't the New Agreement evaluate and revise the RAP strategy to address its shortcomings and changes since the RAPs were created?

It appears that other than “streamlining” (a process through which the potential impact on the substance of the Agreement remains unknown) the new Agreement intends to continue the RAP process for addressing Areas of Concern with only minor changes. Although there have been a handful of notable successes, the overall track record for RAPs argues for a revised approach, based on a straightforward evaluation of what has worked thus far, and what hasn't and why, and then moving forward based on the lessons learnt thus far. In the absence of this analysis, there is no reason to expect any change in the rate of progress towards the restoration of beneficial uses. Lack of funding and local resources is one of the largest reasons for RAPs stalling out, and there is no indication that new federal, provincial, state or local resources will be made available under the new Agreement.

Lakewide Management Plans/ “Nearshore Framework”, Watersheds, Tributaries, and Groundwater: What *is* the strategy?

The new Agreement appears to place a greater emphasis on the LaMPs as the mechanism for delivering a strategy and programs to address nearshore, watershed, tributary, and groundwater issues. But the presentation to the public, the forums and the webinar shed little light on the specifics of how LaMPs will achieve this, or what a “nearshore framework” means in terms of real work and actions. The negotiators' stated intent to not even define “nearshore” in the Agreement is very troubling. How can an undefined concept serve as the basis for a major new water quality initiative? Successful nearshore strategies will require the participation of local and municipal governments, and watershed organizations, but there is no indication that the Parties intend to provide resources to enable them to deliver programs at a meaningful scale, and no information is available on their expected role. We should examine the lessons learned from the RAPs process and not replicate failed strategies for the nearshore framework. New governance models are essential to enable place-based approaches to succeed, with federal support. For example, local expectations without local resources, targets and measurable objectives are among the reasons the RAPs process failed to achieve its goals following the 1987 Protocols. Let's not do this again.

We have stressed in previous comments the importance of embracing the full Great Lakes basin/watershed in Agreement strategies, and feedback from the forums indicated that the full tributary system and groundwater would be embraced in the Agreement. This is a positive and hopeful improvement. However, there is some question based on responses at the forums as to whether tributaries and groundwater will only be factored in when they are direct pollution vectors to the Great Lakes. We again urge you to truly incorporate an ecosystemic approach to water quality, chemical, physical, and biological integrity, from headwaters to deep waters in the Great Lakes.

Chemicals instead of Substances?

The combination of all annexes addressing toxic substances into one annex raises questions as to whether the depth and detail in the current annexes, including lists, strategies and objectives, will be lost in the consolidation of content. Moreover, precision in language and terms is important and the use of the word “chemicals” potentially precludes attention to radioactive materials, bacteria, viruses, pathogens, and begs the question of where thermal pollution might fit into the Agreement.

At the public sessions, the negotiators consistently explicitly stated that they will not include Green Chemistry and Green Infrastructure in the Agreement as leading tools to address pollution issues. Leaving out such basic and widely-accepted pollution prevention tools indicates that this proposed Agreement is not aligned with 21st Century strategies.

Science

We were pleased to note the strong emphasis on Science indicated by a Science Annex. However, while a commitment to use “best available science” is valuable, these words shouldn’t be used to negate the need for new research and strategic investigations and pursuing “better” science. This investigative research needs to again rise to become a driving force for science priorities within the Agreement.

Invasive Species

The addition of a new annex on invasive species is very welcome, but it is unclear whether all vectors of entry will be addressed, and how rapid response planning will be determined. Given the lack of detail provided during the negotiation period, we are uncertain whether actions under the Agreement will actually challenge federal, state and provincial leadership to better address invasive species. First and foremost this annex must prioritize preventing the introduction of new invasive species into the Great Lakes region, and articulate the goal of zero new introductions into the region. This means the Agreement must challenge the federal governments to significantly improve national policies and regulations that govern major vectors of introduction into North America, such as the live trade of plants and animals and commercial shipping. The Agreement must also challenge the federal, state and provincial governments to significantly modify infrastructure that facilitates new introductions into the region, such as artificial canals and waterways.

Habitat

This new annex is also welcome, especially if it leads to an aggressive effort to protect and restore Great Lakes habitat for native species. A basin-wide habitat inventory will be valuable. Please note that many organizations and agencies have completed various Great Lakes habitat inventories in recent years, and that compilation of existing work and gap analysis may provide a much more rapid profile of Great Lakes habitat needs than a new, independent research effort. That said, the projected impacts of climate change on lake levels, temperature, and precipitation patterns could seriously put existing coastal zones in jeopardy. This type of analysis is needed to move forward with habitat conservation strategies sooner rather than later.

Some critical threats are missing

For example, it was alarming to learn that the rising threat of a new generation of mining activities in the Great Lakes basin is not going to be addressed in the new Agreement. For Lake Superior in particular, the history of impacts from tailings and other mine pollution is a sobering reminder that the pollution legacy from mining can be extensive and lasting, and threaten human health.

Another critically serious and growing threat to the Great Lakes is the possibility of expanding nuclear power plants around the Great Lakes, the increasing storage of nuclear wastes on the shores of the Lakes, the proposals for waste disposal sites near the Great Lakes, and the transportation of radioactive materials on the Lakes.

The Great Lakes-St. Lawrence River ecosystem is truncated.

The materials given to the public clearly state that the Governments will continue to chop off the Great Lakes-St. Lawrence River ecosystem just downstream of Cornwall-Massena. How can one boast of having an ecosystem agreement when a lengthy section of the outflow of the system is left out?

The vision and scope isn't bold enough for the times and the challenges ahead

Several elements in the new Agreement as described by the negotiators constrain its vision and capacity to lead.

- Lack of clarity in expected outcomes. By shifting specifics to yet-to-be designed subcommittees, it fails to provide the blueprint for a new vision for protecting the Lakes in the 21st Century amidst complex challenges of an unprecedented scale. It doesn't provide a road map for the way forward that inspires and motivates the public or decision-makers. The subcommittees should not be responsible for charting the vision, but for implementing a vision made explicit in the Agreement.
- The limited scope of the Climate annex
- Vagaries about what a Lakewide management plan will include and how that plan will translate into action
- Absence of an effective binational governance framework in the face of multiple and synergistic threats to the Great Lakes
- The lack of stated commitments by the Parties to garner resources, strengthen domestic policy, etc.
- Very general and vague language about the role of the public
- Movement of priorities towards the nearshore with no definitions of either what the zone includes, or how local, community based initiatives will be governed.
- Increased marginalization of the role of the IJC
- Other than reporting mechanisms for GLEC, the accountability measures seem limited.

Process

We remain deeply concerned that the citizens of the Great Lakes-St. Lawrence River ecosystem have very little information regarding the specific substance and language of the proposed Agreement. We again request that, before the Parties sign the Agreement, they give the public and our elected federal officials details of the proposed content and the opportunity to comment.

Thank you for your consideration of our comments and proposals.

Attachments:

1. "The Future of the Great Lakes Water Quality Agreement: The ENGO Perspective," July 2007. [engo glwqa com. July 2007.pdf]
2. "Preliminary Comments and Recommendations on Governance Issues for Consideration during the 2010 Renegotiation of the Great Lakes Water Quality Agreement," February 2010. [Appendix 1 in ENGO-comments-July-9th-FINALVERSION.pdf]
3. "Comments and Recommendations on Governance and Specific Issues for Consideration during the 2010 Renegotiation of the Great Lakes Water Quality Agreement," July 2010. [ENGO-comments-July-9th-FINALVERSION.pdf]
4. "Letter to Negotiators on Essential Elements for a new Agreement," September 6, 2011. [Negotiators Letter + Criteria Sept 6, 2011.pdf]