



19 August 2009

Mr. Anthony Kizlauskas
USEPA Great Lakes National Program Office (G-17J)
77 West Jackson Blvd.
Chicago, IL 60604

Dear Tony:

This letter contains the written comments of the Council of Great Lakes Industries (CGLI) regarding the Great Lakes Multi-Year Restoration Action Plan Outline (Restoration Initiative or Action Plan). They are intended to both compliment and supplement those that I provided verbally during the Public Meeting held on this plan August 3, 2009 in East Lansing, Michigan.

There are many commendable aspects of the Restoration Plan. CGLI recognizes and appreciates the considerable effort that has been devoted to its production. However, CGLI is also troubled that the general impression from close examination of the comprehensive program plan is that it is primarily a continuation or expansion of existing Federal agency activity rather than a new plan designed in response to the December 2005 Great Lakes Collaboration Strategy to Restore and Protect the Great Lakes (Restoration Strategy). As you know well, the Restoration Strategy is the work product of an intense, major, multi-stakeholder, basin-wide activity. Although it did not establish priorities, the science community, through the State of The Lakes Ecosystem Conference (SOLEC), has provided information that clearly establishes what those priorities should be. The results of both these Basin efforts need to be specifically reflected in this plan.

The following detailed comments regarding the elements of this draft Restoration Action Plan provide our aggregate reaction. We strongly believe that the government should utilize the output from the programs of the past to chart a new course, based on ecosystem needs, which will leverage the significant and important funds that appear to be coming available to our Region. Merely continuing to pursue long standing programs of the past that have provided the remarkable progress that we have achieved will not assure success in meeting Restoration Initiative goals. Specific priority based programs are needed for that.

The Introductory Background Paragraph:

The introductory paragraphs provided in bold italic type at the top of the first page state that the Interagency Task Force (IATF) has developed this Action Plan Outline. The agencies involved have been listed, but who specifically are the members of the IATF? The indication is that participants are entirely government personnel. Additionally interested parties such as States, Tribal governments, and ENGO personnel are said to have been consulted. We believe that broader stakeholder participation – especially - from our perspective - those with industry expertise and background must also be involved. CGLI requests that either stakeholders be included in IATF meetings and activities; or an Advisory Panel made up of stakeholders from all sectors be established to work with the IATF in developing Restoration Initiative priorities. Broader stakeholder involvement, we believe, would provide better tie-in with the comprehensive stakeholder developed Restoration Strategy and the SOLEC established ecosystem based needs assessment outcomes. From these the most appropriate priorities can be established.

An additional element not provided in this background paragraph, or anywhere else within the Action Plan Outline, is the necessary tie between Restoration Initiative actions and the Region's economy. The Action Plan must be developed from a perspective of improving and maintaining the economic health of the Region. Action Plan measures should not place significant financial burdens or exposures on the Region's industry, especially in this critical time of economic recovery. As the detailed comments that follow point out, implementation of the sediment remediation elements in the Action Plan, in particular, will have to be planned, funded, and advanced very carefully to avoid such burdens and exposures.

Executive Summary:

The following comments apply to the Executive Summary section of the Outline.

- The listed focus areas in paragraph two place Toxic Substances and Areas of Concern at the top, number one, spot on the list. This placement appears to put toxics at a different apparent priority level than in the Collaboration focus areas. From discussions at the public meetings held to review this Action Plan, we understand that the text in this outline does not necessarily represent priorities. But, given the distribution of funds within the 2010 budget proposal also provided, and placement in the discussion these items appear to be regarded as high priority. This leads to the question, just how are priorities to be established? CGLI members invested heavily in the Great Lakes Collaboration process. They have also participated in and appreciated the work of the SOLEC team that has provided a perspective on the relative importance of the various stressors that impact the Great Lakes ecosystem. Unless the priorities suggested by outputs from these efforts have been re-aligned by more recent scientific analysis, the Restoration Initiative priorities should reflect the Collaboration Restoration Strategy and SOLEC perspectives.
- The last paragraph in the summary states that funds will not be directed towards water infrastructure programs. This raises two questions. 1). Since a primary

need relative to the “toxics” issues currently under discussion is the rehabilitation or modification of treatment systems to address CSO or “new chemicals” issues, will the Revolving Fund programs receive funding to satisfy this need? 2). Addressing non-point source issues will involve shoreline buffer restoration, wetland based treatment systems, etc. Are these to be funded via the Initiative? They could be considered “infrastructure,” for non-point treatment needs. The Restoration Initiative and Action Plan needs to be given the flexibility to partner with revolving fund programs such that these needs can be funded through either or a combination of these programs. The Restoration Initiative should not be viewed as competing with or interfering with Revolving Fund appropriations. The “stove pipes” should be bureaucratically removed from both programs so that there is assurance that these needs can be met.

- The last paragraph also states that funds will be distributed via existing avenues “through grants and cooperative agreements or through interagency agreement transfer of funds to other federal agencies...” Does this then rule out the funding of partnership efforts with NGOs?
- The Executive Summary states that annual reports will detail progress in meeting ecosystem goals. A majority of goals described in the outline are stressor related goals with no indication that they are keyed to a particular ecosystem response or attribute. What is the real objective of the Initiative - improve ecosystem attributes or reduce individual stressor presence? A clear tie between stressor presence and ecosystem impacts needs to be expressed in order to justify the efforts (i.e. apply a risk based approach).
- The last focus area listed is Accountability, Monitoring, Evaluation, Communication, and Partnerships. This is an extremely important area. The Great Lakes Task Force has at its disposal the extensive output from the SOLEC process to track ecosystem health and restoration progress. This information coupled with the Great Lakes Observing System (GLOS) data management and communications (DMAC) capability can serve a large share of the Restoration Initiatives accountability needs. CGLI urges the use of these existing resources rather than initiation of efforts to establish new ones.

Restoration Plan Outline Text:

The following comments pertain to Restoration Initiative process matters.

- The introduction to the Restoration Plan Outline text that begins on page three mentions the reality of a resource shared with Canada. How will coordination with Canada to accomplish Initiative goals occur? What mechanism is there for Canada to express support (as in commitment of resources) for the Initiative?
- The opening paragraph in the Challenges section states that the Great Lakes restoration process is “slowing or even reversing.” This is a flawed concept – or at best, an oversimplification of the situation in two respects. First, from the standpoint of toxics issues, contaminant reduction dynamics are non-linear functions. There seems to be little disagreement on this point. However, governments and even academic practitioners frequently continue to use linear data plots to draw conclusions regarding clean-up progress. The Restoration

- Initiative cannot be seen to be successful unless appropriate trends analysis procedures are used. Second, we do continue to make progress and significant progress at that, in the areas we have been working on. This progress needs to be recognized. It must be recognized that new issues can arise as successes are achieved. If the system was unable to support certain ecosystem components in the past, but can now do so because primary needs of those components have been at least partially satisfied, “new” factors can control additional progress. In addition, new issues can arise as societal practices change. This is to be expected over a period of decades. Restoration Initiative objectives need to be able to recognize and react to these factors in order to be assured long term success.
- The second paragraph under Challenges mentions fish consumption advisories posted in all Great Lakes States and the Province of Ontario. It’s an oversimplification to state that these are all due to increased contamination or failed restoration efforts. The protocols driving when and how to post consumption advisories have all changed significantly in the past few years. This factor may be driving many of the “increased” advisories. This paragraph also states that only one of the 31 “toxic hotspots identified as Areas of Concern” in the U.S. has been delisted. This characterization mixes the “hot spots” with the “AOCs.” Each AOC is a large area that contains many different “hot spots.” The fact is that lots of progress has been made within each AOC at cleaning up numerous “hot spots.” It’s misleading to state that only one has been “delisted” when significant progress has been made in the others. It is unrealistic to expect that the Restoration Initiative will completely address entire AOCs. To assure that progress can be demonstrated, this focus on sediment remediation must include accounting for and reporting progress on clean-up in individual areas, not just entire AOCs.
 - The fourth paragraph under Challenges discusses combined sewer overflows. However, the “fix” needed for this is sewer infrastructure improvements which this outline says will not be funded by the Initiative. If these issues are to be identified as an area of need (and CGLI certainly agrees that they should be), the document must identify how they will be addressed. If the Restoration Initiative cannot fund these infrastructure needs, clear tie-ins with Revolving Fund programs (coupled with requests for needed Revolving Fund appropriations) must be made.
 - The discussion of habitat issues that starts at the bottom on page three and carries over to page four under the Challenges heading fails to recognize that these are not new issues but the result of long term development activities. In fact, many of these problem areas have been under remediation for a long time and have been improved. In addition, new policies and practices have slowed the rate of decline. We must be able to track (and count as partial success) this reduced rate of decline. The SOLEC indicators can be used for this purpose.
 - The “more frequent extreme rains” item listed in the first full paragraph on page four as a climate change impact is one that has not been previously highlighted. If it is to be included in this paper, and tracked as a climate change element to be monitored, the basis for doing so needs to be referenced.

- Footnote No. 1 at the bottom of page four identifies, but only in general terms, who the members of the IATF are. What is needed is a more complete roster of IATF members and their contact information. In addition a formally established stakeholder advisory group similar to those seated for the Great Lakes – St. Lawrence River Basin Compact/Agreement implementation processes should be seated to assure on-going efficient and effective stakeholder engagement for the Restoration Initiative.
- Under the heading, The Great Lakes Restoration Initiative and Action Plan, the five focus areas described in the bulleted list on page five roughly track the topics that were identified as needs via the Great Lakes Regional Collaboration. However, the apparent priority of these focus areas differs from that suggested by Collaboration Restoration Strategy text. Priorities needed to be clarified and the process by which Restoration Initiative priorities will be set needs to be identified. CGLI recommends establishment of priorities consistent with Collaboration indications. Doing so would be consistent with the credibility established via the extensive stakeholder based process that resulted in the Collaboration Restoration Strategy.
- “High Priority Basinwide and Localized Issues” are described in the middle of page five. The basis for identifying the “highest priority projects” has not been described. It is not clear whether this prioritization effort has already been completed or is yet to come. What process was or will be used? The appearance is that “toxics” has been identified as the number one issue. This would be contrary to the results from SOLEC 2008, the highlights from which were just released. Toxics were down the list of primary stressors in that report.
- Near the bottom of page five the Focus Area action plan elements are identified under the heading Goals, Objectives, and Targets. What process is being used to establish these for each of the focus areas? CGLI recommends that a working group that includes stakeholder advisors for each focus area provide the important guidance needed for this work.
- The bottom of page five and top of page six states that the Initiative will use only the “best available science.” They will also use “independent science panels” to seek this science. How will these panels be established? What will the make-up be? Who can nominate panelists? CGLI believes that these panels must be stakeholder based and balanced with respect to potential points of view.
- CGLI appreciates the description of criteria and principles provided on page six under the heading Project Selection. These will provide useful and needed guidance for selection teams asked to evaluate Restoration projects. These teams must also include stakeholder members.

Focus Area Problems, Goals and Measures of Progress:

Comments regarding the individual focus areas follow.

Toxic Substances and Areas of Concern:

- In the opening sentence on page nine “persistent toxic substances (PTS)” are said to be “present at levels above those considered safe for humans and wildlife...” This generalization overstates the situation as it does not explain where, when, and in what context levels are not “considered safe.” More detail both from the standpoint of issues and progress made should be provided in this section.
- The last sentence in the opening paragraph in this section similarly generalizes the AOC clean-up situation. All lakes have fish consumption advisories (FCA). Advisories can be the result of AOC contamination, but the AOCs make up only a small portion of the overall area of the lakes. So, making a connection between AOC clean-ups and FCA lifting is a stretch; especially since the Restoration Initiative goals, if met, would only address seven out of the 43 million cubic yards of sediments in the AOCs – just 16 percent. What is needed is an in-depth description of the AOCs, what “hot spots” are in each of them, what has been cleaned-up, what not, etc. as well as a justification for tying FCAs to them and identifying which might be positively impacted vs. those which may not be. Given the contributions from long range transport, it is questionable whether or not any FCAs would be lifted because of AOC clean-up. If they were, it would only be locally. Unfortunately, this issue is much more complicated than the Restoration Initiative Outline discussion states. In order to describe successes that come from the Initiative, a means for dealing with – and communicating – these complicating factors must be provided. CGLI recommends establishing a workgroup, including stakeholders, charged with establishing a process for reporting outcomes from the AOC remediation effort.
- The “Proposed Long Term Goals” listed on page five, like the focus areas, appear to be loosely based on the Collaboration Restoration Strategy goals. But, they have been substantially modified. In addition to wording changes, the order of the goals has been changed. This suggests an ordering of priorities. Given that the Collaboration report was the result of extended stakeholder input and involvement, the justification for this prioritization needs to be provided. If the apparent prioritization has not occurred, it is recommended that the list of goals be reworded and reordered to be more consistent with the Collaboration Strategy report.
- The “interim objectives” goal to “delist” “x” number of AOCs and/or “x” number of beneficial use impairments by any date cannot be established without identifying and understanding the barriers to delisting. There is no consideration of this in the Initiative description. As stated above, delisting of entire AOCs is a difficult matter given that the focus of the Restoration workplan is on several individual “hot spots” within a large number of AOCs.
- Restoration Initiative outline text does not describe how the figure “seven million cubic yards” of sediment clean-up stated in the second bullet on page 10 was selected. Was it on the basis of a cost formula? Also, what “remediation” options are anticipated in this work? Only dredging? Or, will other techniques be explored? To be most effective, the full array of available remediation options, including monitored natural recovery must be applied.

- Establishing a goal, in the third and fourth bullets on page 10, that seeks to Reduce PCB levels five percent annually in fish and seven percent annually in air ignores the basic fact that these declines are not linear. We have reached the point where continued declines in PCB levels in both fish and the atmosphere are influenced more by factors other than point source – or even nonpoint source – inputs. Current water column PCB levels, air-water exchange rates, etc. are more determinant of reduction rates. Goals for further reductions will have to reflect these realities.
- The numbers 50 million pounds of e-waste, five million pills, and five million pounds of household hazardous waste described as collection goals in the fifth bullet on page 10 seem arbitrary. Are they significant, reasonable, achievable, and measurable? Either some background information that establishes the validity of these numeric goals should be provided in the Outline text, or a process should be set up to establish the final goals in order to assure success in attaining them.
- The first bullet under the Principal Actions to Achieve Progress heading on page 11 states that existing programs will be utilized to accomplish AOC clean-up goals – including Natural Resource Damage Assessment (NRDA) processes. This substantially suggests a business-as-usual approach to sediment remediation. Costs, litigation, and economic impacts on Basin private and public institutions must be assessed before moving forward on these plans. An objective behind implementation of the Great Lakes Legacy Act has been to expedite or encourage remediation activities by removing, to the extent possible, the barriers that have frustrated the “standard” processes. Focusing on NRDA and other traditional legal processes will not assure goal attainment.
- The second bullet under Principal Actions states that “a variety of strategic actions” will be used to implement enhanced pollution prevention and reduction efforts within the Basin. These actions can also represent substantial liabilities for Great Lakes industries and municipal entities. These liabilities need to be assessed before the ability to meet specific reduction targets can be accomplished in a cost effective manner.
- The aggressive fish consumption advisory (FCA) programs mentioned in the third bullet in the Principle Actions list can run counter to the goal of reducing FCAs within the Basin. Aggressive programs can result in use of more conservative assumptions for establishing FCA – therefore, the number of advisories could increase.

Invasive Species:

- Proposed long term Goal 1 under this focus area calls for application of the “virtual elimination” concept to this area – “introduction of all invasive species ... via ballast water is virtually eliminated.” No authority has been cited for the use of this very specific term. The attempts over the years to define this term have applied only to “toxics” – not other areas. It comes to us via the Water Quality Agreement, where it applies only to toxics, and is used nowhere else in U.S. regulatory policy. Expansion of the use of this term without specific legal authority to do so, we believe, is a bad precedent.

- Goal 3, states that the spread of invasives via recreational activities and canals is to be “prevented”. This is a very absolute desired outcome. Can it be accomplished? Is it realistic? A proper basis for setting this goal needs to be provided.
- Developing integrated pest management programs for invasive species management as described in Goal 5 may be an effective tool. But, to be successful, the effort must include establishing partnerships with pest control professionals from industry and other sectors. The Initiative will have to include a partnership building framework in order to be successful.
- Specific goals and measures of progress for this focus area are largely not yet described in this outline. The process for setting these needs to include stakeholder participation to ensure achievable outcomes.
- The principal actions for this focus area regarding ballast water treatment option implementation and integrated pest management program development must include stakeholder processes to ensure success.

Nearshore Health and Nonpoint Source Pollution:

- These focus area goals appear to be a restatement of items taken from the Non-point, Habitat/Species and perhaps other Collaboration topic areas. They also vary from those stated in the Collaboration Restoration Strategy. The process for developing this different approach needs to be explained.
- The opening paragraph in the Problem Statement on page 15 describes uses and interactions between users of nearshore waters but fails to acknowledge that treated effluent discharges also do and must occur in these areas. This is an important concept that must be included.
- Another factor not included in the Problem Statement is the role that invasives (especially mussels) have in the transformation or availability of phosphorus. It can be more significant than just the quantities of phosphorus present.
- The blanket statement in the second paragraph of the Problem Statement that control strategies have “failed” to protect and maintain the Great Lakes is an oversimplification. Much progress has been made and needs to be acknowledged.
- A public process needs to be established for the prioritization of watersheds to be selected for implementation of control measures as described in the first bullet under Interim Objectives on page 16.
- The blanket percent reduction in phosphorus loadings described in bullet four under Interim Objectives may or may not be justified. A process needs to be established to determine what measures are appropriate and how such a reduction target, if appropriate, could be achieved. Stakeholders need to be parties to this work to ensure successful outcomes. If this target has been established via a phosphorus loading reduction task force, that information needs to be acknowledged and referenced.
- The development of a “standardized sanitary survey tool” for the identification of beach contamination sources, as described in the seventh bullet on page 16, should take place via a stakeholder process. Many entities are currently involved in beach management programs. To keep the momentum going for the good work

these groups are doing, they must be consulted and allowed to apply their expertise.

- The same stakeholder participation concept must be applied to the establishment of conservation tillage goals or targets contemplated in the last bullet at the top of page 17. Much experience is available regarding the utilization of these techniques. A blanket application of these practices may or may not provide a beneficial outcome. Agricultural professionals must participate in establishing these goals.

Habitat and Wildlife Protection and Restoration:

- Some Interim Objectives described under this focus area on pages 19 and 20 are completely new and do not appear to have come from the Collaboration Strategy. Most notably, bullet number one – the measure that calls for 3,000 miles of rivers and tributaries to be “reopened.” The removal or bypass of “500 barriers to fish passage” can have enormous impacts on hydroelectric, industrial, and municipal water flow management facilities currently operating within the Basin. No justification or reasoning behind this “Objective” has been provided. This objective should be re-evaluated and fully vetted with Great Lakes Basin dam owners and operators to determine viability and impacts.
- The means or assurance of success for accomplishing blanket percent “improvement” or existence at “sustaining levels” for threatened, endangered, and native non-threatened species as is called for in the last two bullets on page 19 has not been provided. Some connection between restoration actions and outcomes must be made if these goals are to be achieved.

Accountability, Monitoring, Evaluation, Communication and Partnerships:

- The overarching pledge to utilize existing structures for implementation of the Restoration Initiative needs to apply to the Accountability tasks as well. In particular, Goals 1 through 3 on page 22 and Interim Objective bullet three on page 23 are examples of tasks that can capitalize on the long experience and ecosystem monitoring infrastructure gained through the SOLEC process. In addition, data management, reporting and communication needs can be met by utilization and enhancement of existing systems such as the Great Lakes Observing System. Utilizing existing systems and processes, rather than developing new ones will improve on the likelihood of success for the Restoration Initiative.

The impressive coordination effort among 16 Federal agencies that went into the development of this draft plan should reflect the current needs of the Basin’s ecosystem with priorities determined by science based need. We view this ***Great Lakes Multi-Year Restoration Action Plan Outline*** as a start. And, we look forward to working with you on implementation.

CGLI appreciates the opportunity to provide these comments. Please contact me with any questions or need for additional information.

Respectfully,

A handwritten signature in black ink, appearing to read "George H. Kuper". The signature is fluid and cursive, with a large initial "G" and a long horizontal stroke at the end.

George H. Kuper

cc: Dr. Gary Gulezian