



15 February 2010

**Comments Regarding
Governance issues as input to the binational negotiations to amend the
Great Lakes Water Quality Agreement (GLWQA)**

The Council of Great Lakes Industries (CGLI) is a non-profit organization representing the common sustainable development policy interests of U.S. and Canadian industrial organizations from the manufacturing, utilities, transportation, natural resources and trade sectors that have investments in the Great Lakes Basin. The mission of CGLI is to promote the growth and vitality of the region in harmony with its human and natural resources (sustainable development.) CGLI has substantial experience in working with the Parties on implementation of the Agreement and programs within each government intended to directly address GLWQA goals and objectives.

Agreement Scope and Purpose – Continue to Serve as a “North Star:”

CGLI is supportive of revising the GLWQA. We agree that the GLWQA should continue to serve as the “North Star” for cooperative binational collaboration to protect and improve the Great Lakes fresh water system. The GLWQA should be modernized to provide policy guidance for sustainable development and recognize that the starting point for this new version of the Agreement is much different than that of the existing document. There is much progress in our effort to restore and protect the Lakes. The knowledge and science needed to guide efforts going forward are much advanced over what they were in 1987. And, the Parties have many more National programs available with which to carry out their individual roles of providing restoration and protection measures for the Great Lakes Basin. The recommendations contained in these comments are offered in the belief that a new structure is necessary for the Agreement to serve as a visionary document coordinating the engagement and participation of multiple government and non-government institutions and organizations required for continued long term protection and restoration of the Great Lakes.

The scope of the GLWQA must certainly include, but also be limited to, the geographic and political boundaries of the Great Lakes watershed. The purpose must be to provide a tool for coordination and cooperation of the protection of the Great Lakes ecosystem as a whole by the multiple jurisdictions that must accomplish the task. While doing so, the Agreement must recognize the sovereignty of each of the Parties and the necessity for them to pursue GLWQA goals and objectives through their individual legal and regulatory structures.

The Agreement scope must also include provisions that encourage not only environmental restoration and protection, but those needed for restoration and development of robust economic and social structures. As stated in the multi-stakeholder developed Great Lakes Futures Roundtable statement regarding Great Lakes Saint Lawrence Vision, Mission and Goals (October 2007) the Region must seek a business climate in which “revitalized natural and built environments increase the region’s attractiveness”, with investments that enhance the underpinning for strong social and environmental programs. This is essential if the Region is attract and maintain “a workforce that is highly educated and motivated” by its environmental quality, social systems and opportunities provided by a vibrant economy. “People and goods must move with great efficiency and with the lowest impact on the environment” with “production supported by sustainable use of available natural resources.” The scope of a revised GLWQA must include and set the stage for these needs.

Agreement Structure – A Clearer Path Forward:

Because of the nature of the challenge it addresses, the GLWQA needs to be a motivating and coordinating document demonstrating the commitment of the Parties while specifying the many roles required of the multiple organizations and institutions.

CGLI supports replacing the existing GLWQA with a brief, permanent – or, evergreen - core document that provides for statement of overall objectives and guidance for Agreement provisions supplemented by Annexes that have clear, issue specific, substantive focus. These Annexes would also be limited in effective duration with specific targets and time tables for actions.

The structure of the permanent or evergreen portion of the GLWQA would include:

- Protocol, Affirmations, and Determinations
- Definitions
- Statement of the mission of the GLWQA (including a re-statement of goals for ability to eat the fish, drink the water, swim in the water, utilize the water for commercial purposes, etc.)
- Description of the scope of the GLWQA, including recognition of the sovereignty of each of the GLWQA Parties and a clear definition of the type of issues to be addressed through the GLWQA. Issues of global or National scope must be addressed in global and National venues – not within the GLWQA
- General objectives for the GLWQA (coordination of ecosystem status assessments, planning of programs to pursue Agreement goals, public reporting commitments, etc)
- Operating principles, including guidelines for engagement of stakeholders

CGLI further suggests that the first Annex be developed by the Parties in consultation with stakeholders within nine to 12 months of signing of the evergreen document. It is important that this first Annex provide an analysis of Basin specific ecosystem threats that exist today. The completed Annex would include:

- A summary listing of existing threats to the Basin eco-system
- An assessment of the current extent and status of each threat
- A determination of how each threat compares or relates to each of the others
- A clear and, if possible, measurable statement of where the Governments want the Basin to be relative to each specific threat at a specific time in the future
- Strategies to move the ecosystem to the desired state relative to each specific threat
- A target data for review and revision of this Annex

Production of this first Annex would constitute a “gap analysis” between current conditions and desired future conditions. The analysis would result in a set of goals to be addressed by the following Annexes, each to be focused on a specific threat. This analysis should be re-examined and the Annex updated every half-dozen years.

This first Annex would lay the groundwork for the following Annexes by identifying the threats that need to be addressed, ranked in order of their significance relative to overall Basin restoration. The following Annexes would identify specific actions, and establish specific targets, and timetables for each threat.

The subsequent Annexes designed to address each specific Basin ecosystem threat would be structured to:

- Clearly identify and define the threat being addressed by the Annex
- Amplify the specific goals designed to address the gaps identified in the Annex 1 analysis
- Specify strategies intended to achieve those goals – strategies that move the ecosystem to the desired state relative the specific threat or impairment
- Specify the actions that need to be undertaken to move from the current condition to the desired condition
- Outline the programs to deliver those actions
- Define how these programs can be accomplished within the structure of each of the sovereign Parties
- Identify organizational responsibilities, defining who does what and how they are to be held accountable
- Establish a timeline for moving forward, completing tasks, and reporting progress

Ideally, each Annex would identify and draw upon the Parties' existing resources to achieve the desired goals. If additional resources are needed to support programs identified by the Annex, the Annex should suggest potential sources and levels of support needed to achieve the desired goal. The Annexes must also identify a stakeholder process to be used in pursuing the objectives of the Annex.

Finally, the Annexes should be time-limited so that progress can be assessed and programs modified if necessary to achieve the applicable goal.

Agreement Management Framework – The Roles of the Participants

The roles of the Parties, “partners” and stakeholders should be established in the body of the evergreen document.

The Parties have the responsibility to:

- Work towards achievement of Agreement goals
- Establish mechanisms that enhance collaboration between the Parties on how GLWQA goals are being pursued, identify needs for filling gaps, reporting progress, and collecting stakeholder input
- Establish vehicles and venues to carry out collaboration activities that are open to stakeholder and public participation – separate vehicles and venues may be needed for policy review, management functions, and scientific information gathering and dissemination.
- Provide regularly scheduled public reporting events describing progress towards Agreement goals and objectives

CGLI is uncertain what is meant by “partners” in the context of GLWQA governance. The Federal government agencies and organizations of the two National governments are creatures of each of the Parties and subject to the legislative and administrative procedural authorities and processes of each government. Other participants involved represent the interests of other governmental entities (States, Provinces, Tribes, Cities and Counties, etc.) and stakeholders. The Agreement should not attempt to establish separate roles or status for participants outside of the categories of Parties and stakeholders. However, CGLI acknowledges and agrees that the interests and nature of various stakeholders can vary widely. It is important that the Parties recognize these differences. None-the-less, each stakeholder group must feel that they are given equal opportunities to participate in GLWQA processes.

The conduct of successful collaborative and multi-stakeholder processes is of great interest to the CGLI. CGLI's engagement in multi-stakeholder processes has been guided by a publication entitled “*Effective Collaborative Processes on Sustainable Development and Environmental Policy – The Boulder Principles*” written by CDR Associates of Boulder, CO. with significant input from a broad spectrum of stakeholders. It is available at <http://cgli.org/positions/IPPDbig.pdf>. An important principle discussed in this report reads, “Participation is a crucial

issue. Who sits at the table and how they get there is a major ethical question. All parties potentially affected by prospective policies or actions should be represented in a forum designed to discuss or negotiate them. Creating opportunities for constructive participation by less influential but equally concerned groups is essential.”

GLWQA “institutions” such as the Binational Executive Committee, Lakewide Management Plans (LaMPs), and others are creatures of the Parties. The Parties need to have the flexibility under the Agreement to establish and dissolve these institutions, through a collaborative process that includes stakeholder input, as they see fit. However, each must be developed and executed within the confines of the National legal and regulatory structures applicable to each Party.

Agreement Accountability – Must be Inherent in all Sections of the GLWQA

Throughout the lengthy GLWQA review process, much has been said about accountability. As the Parties work to address these concerns the following points must be considered:

- The nature of the GLWQA is one within which goals and objectives are expressed by the Parties. The Parties are each Sovereign nations with separate legal structures. The Agreement does not, and cannot, carry with it provisions that have the force of law.
- In the context of the GLWQA, accountability is largely a matter of trust. The Parties do need to set obtainable goals and work to attain them.
- The ability to demonstrate progress towards attainment of GLWQA goals requires careful wording of goals and objectives that respect legal and regulatory standards within each Party.
- The establishment of firm, achievable timelines and provision of frequent reporting events throughout the implementation of all Agreement processes – as has been suggested in the GLWQA model described in these comments – would greatly enhance accountability.

Engagement and Participation – An Essential Element for Great Lakes Restoration and Protection:

The GLWQA is really all about engagement and participation. The numerous formal political jurisdictions, institutional, commercial, and public interests that must come together to manage and protect this vast and unique fresh water resource have to be coordinated. The fact that this coordination must be accomplished across the border of two sovereign Nations results in these important points:

- It is essential that the Parties establish a collaborative multi-stakeholder process to build confidence, within the varied interests, that the Parties have the capacity and are exercising their abilities to protect the resource.
- The Parties must maintain respective Great Lakes Basin related restoration, protection, and management policies and programs reflective of their individual National legal and regulatory structures.

- The policies and governance actions that are put into effect in the Great Lakes Basin must not only protect the resource but ensure economic and sustainable development opportunity commensurate or in excess of that anywhere in North America.

For more information contact:

George H. Kuper, President and CEO

Council of Great Lakes Industries

Email: ghk@cgli.org

Telephone: 734 663-1944