



July 3, 2014

Chris Korleski, US GLEC Secretary
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Jennifer McKay, Canadian GLEC Secretary
glwqa-aqegl@ec.gc.ca

Re: Comments of the Council of Great Lakes Industries to the Great Lakes Executive Committee Following the June 4, 2014 Meeting

Dear Mr. Korleski and Ms. McKay:

The Council of Great Lakes Industries (CGLI) appreciated the opportunity to attend the Great Lakes Executive Committee (GLEC) meeting in Chicago on June 4 as an official observer to the GLEC and as a member of the Annex 3 Extended Subcommittee. We were pleased to attend such a substantive meeting and to hear that much activity is underway to implement the 2012 revisions to the Great Lakes Water Quality Agreement (GLWQA).

As a follow-up to the meeting, we would like to offer the following comments and observations for your consideration.

Proposed Process for Article 6(c) Notifications

CGLI and its members are very concerned about the process that has been proposed for notifications under Article 6(c) of the GLWQA. While we appreciate the effort that was made to outline a process for implementation and to define the key terms, much more detail and guidance is required to ensure that the process is interpreted and applied consistently by the various jurisdictions required to participate, and does not unnecessarily impede future development in the region. Our specific comments and suggestions follow.

Only truly significant activities or events should be subject to the notification requirement. As drafted, the proposed process would require Great Lakes jurisdictions to report virtually any activity that might cause “something bad to happen” or hinder in any way the achievement of the General Objectives of the GLWQA. As a practical matter, virtually any new industrial development, plant expansion, or permit modification could be perceived to “potentially compromise” water quality in the Great Lakes or “potentially hinder the achievement of one or more of the General Objectives.” The sweeping approach taken in the proposed process could significantly expand the number and types of projects and incidents that are subjected to notice and extra-jurisdictional scrutiny, especially given the incredible breadth, generality, and comprehensiveness of the General Objectives. Subjecting virtually all new projects to the notification requirement could be a major disincentive for economic development.

We suggest that Article 6(c) notifications be required only with respect to activities or incidents that already are subject to notice under existing domestic programs. A multi-jurisdictional legal framework already exists in the Great Lakes region for reporting pollution incidents and providing notice of significant development activities. The existing framework is sufficiently comprehensive to satisfy the purpose of Article 6 (“anticipating, preventing and responding to threats to the Waters of the Great Lakes”). Moreover, linking the Article 6(c) process to the requirements of existing statutes and regulations would assist GLEC members in identifying the activities and incidents that must be reported. This is especially true since members must provide information about “opportunities to provide input and pertinent deadlines for comment.” Such opportunities are described in existing programs.

At the very least, a “significance” qualifier must be applied to activities and incidents subject to Article 6(c) notification. Such a qualifier might require GLEC members to notify the Secretariat only of activities and incidents that “*create a significant risk of material impairment to the chemical, physical, or biological integrity of the Waters of the Great Lakes, or are reasonably likely to significantly impede the achievement of one or more of the General Objectives of the Agreement.*”

The proposed definitions are subject to multiple and conflicting interpretations and should be refined or clarified. In several important respects, the proposed definitions are too broad or imprecise to provide a reliable basis for implementation by the multiple jurisdictions that will be required to report. For example, what actions are “under development”? This term could include activities in the earliest planning stages, such as conceptual plans presented to a board of directors, shareholders, or investors as options for meeting expected future demand or launching a new product. Likewise, “reasonably foreseeable future actions” could include (for example) conceptual ideas that appear in a company’s annual report, even if specific plans have not yet been developed. Reporting these types of activities would not further the ultimate purpose of Article 6(c).

Defining the terms in Article 6(c) with precision is essential to developing an effective implementation process. Imprecise definitions will promote uncertainty regarding the scope and applicability of the provision and will subject the provision to multiple (and potentially conflicting) interpretations. We suggest re-visiting and refining the definitions with the assistance of the multi-stakeholder work group recommended below.

Article 6(c) notification should promote information exchange between the Parties but should not be construed to expand or extend existing opportunities for public notice and comment. CGLI acknowledges and supports the fundamental purpose of Article 6, which is to enhance collaboration and cooperation between the US and Canada with respect to significant activities that have the potential to adversely impact the Waters of the Great Lakes. We believe, however, that the implementation of Article 6(c) should not be used to create additional impediment to development. Importantly, while nothing in Article 6(c) extends the time permitted for public notice and comment or creates a “second bite at the apple” for persons who oppose a permit or other activity, such an expansion of existing notice and comment opportunities could be implied. We suggest that the Article 6(c) notification process state very

clearly that it does not create opportunity for public notice and comment beyond procedures already provided in existing (domestic) legislative and/or administrative programs.

A multi-stakeholder work group could help the Parties frame a notification process that satisfies the requirements of Article 6(c) without imposing an unnecessary burden on the reporting jurisdictions or causing unintended regional consequences. CGLI would be pleased to serve on such a work group if one were convened.

GLWQA Annex Reports

- *Annex 1 – Areas of Concern:* CGLI supports an “area in recovery” designation for AOCs. Such a designation provides an important tool for accurately characterizing the state of the lakes and can provide incentives for continued cleanup action. We look forward to reviewing the expected guidance.
- *Annex 2 – Lakewide Action and Management Plans:* CGLI supports the preparation (and/or refinement) of comprehensive and meaningful LAMPs for each individual lake. LAMPs ideally address the ecosystem objectives that are practical, obtainable, and appropriate for each lake. However, an important aspect of LAMP development is the continued participation of a wide variety of stakeholders. A multi-stakeholder approach is necessary to ensure that LAMPs reflect the perspectives of all interested parties.
- *Annex 3 – Chemicals of Mutual Concern*
 - CGLI strongly suggests that the selection process for candidate chemicals of mutual concern be based on existing national chemical assessment programs in Canada and the US. Existing national programs have been developed over long time horizons with the assistance of numerous stakeholders and create a robust process for identifying chemicals of concern. The Annex 3 CMC process should not second guess these existing programs. Additional candidate chemicals suggested by stakeholders should be evaluated under the Annex 3 process only if stakeholders demonstrate that Annex 3 evaluation is necessary because national assessment programs are inadequate.
 - Chemical assessment and evaluation processes that support regional management approaches must include risk considerations. Moving forward with actions based solely on hazard considerations must be avoided.
- *Annex 4 – Nutrients:* Target nutrient loadings should be based on monitoring data and analysis, not entirely on model results. The algae uptake issues described by Annex 4 leadership during the GLEC meeting can be addressed by carefully adjusting sampling timing to occur when algae activity is low.
- *Annex 8 – Groundwater:* The groundwater report that was described by Annex 8 leadership during the GLEC meeting should be posted for public review and comment before it becomes final.

- *Annex 9 – Climate Change*: The gap analysis and “state of the science” reports described by Annex 9 leadership during the GLEC meeting should be posted for public review and comment before becoming final.
- *Annex 10 – Science*
 - The region has long needed “state of the lakes” data coordination, management, and distribution. As the Annex 10 team takes up this challenge, they should support and advocate the use of currently available resources, such as the Great Lakes Observing System, and should not try to invent new systems. The comprehensive GLOS infrastructure was developed through a coordinated effort that bridged several regional monitoring efforts, and has steadily matured over the years. Attempts to build and continually support individual and separate systems have failed to produce reliable and usable systems for the region as a whole.
 - The Annex 10 work on indicators sounds promising, but it is important to preserve the scientific integrity that the SOLEC process has established over the past 30 years. The quest for a “short list” of indicators should not overshadow the need to recognize, preserve, and utilize the science needed to support state of the lakes assessment systems and programs. In many ways, the challenge of succinctly answering the question, “How are the lakes doing?” is primarily a communications issue, not an overly-complicated science issue. An adequate data management and distribution system and potentially a streamlined set of indicators is needed to answer this question, but not a comprehensive overhaul of the Great Lakes indicator system.

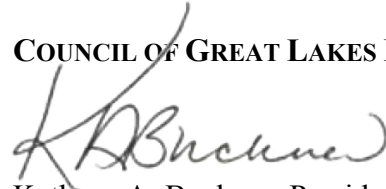
CGLI sincerely appreciates the opportunity to attend GLEC meetings and to participate in the implementation of the GLWQA as an observer and as a member of the Annex 3 Extended Subcommittee. Please contact me or Dale K. Phenicie (dkphenicie@cgli.org) if you have any questions about these comments or need additional information not provided in this letter.

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CGLI is a binational non-profit organization representing the common policy interests of Canadian and US industrial organizations from the manufacturing, utilities, transportation, natural resources, and trade sectors that have investments in the Great Lakes region. The mission of CGLI is to promote the growth and vitality of the region in harmony with its human and natural resources (sustainable development).

Very truly yours,

COUNCIL OF GREAT LAKES INDUSTRIES



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