

August 2, 2016

International Joint Commission
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International Joint Commission
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Re: Comments on Polybrominated Diphenyl Ethers (PBDEs) in the Great Lakes

Dear Messrs. Toope and Bunch:

The Council of Great Lakes Industries (CGLI) provides the attached comments regarding the report entitled *Polybrominated Diphenyl Ethers (PBDEs) in the Great Lakes*, which was prepared by the Great Lakes Water Quality Board (WQB) Legacy Issues Work Group and for which the International Joint Commission (IJC) has requested public comments. CGLI is a binational non-profit organization representing the common policy interests of Canadian and US industrial organizations that have significant assets 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).

CGLI has worked with the IJC, the Canadian and U.S. governments, and the Great Lakes states and provinces on chemical management issues since our organization was established in the early 1990s. More recently, CGLI representatives played key roles in the evaluation of the first set of substances that have now been listed as Chemicals of Mutual Concern (CMCs) pursuant to Great Lakes Water Quality Agreement 2012 (GLWQA) Annex 3 objectives. These representatives provided technical expertise, specific compound data and information, and distribution and use information for the chemicals under assessment. They collaborated with government scientists on chemical assessment procedures and protocols, assisted in individual chemical assessment exercises, and participated in the production of the resulting Binational Summary Reports for each of the evaluated substances. As you are aware, PBDEs was one class of substances reviewed by this process which included a broad range of stakeholders. It is from this perspective that CGLI provides the attached comments.

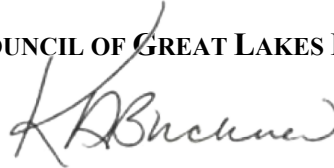
Overall we are concerned that the WQB Legacy Issues Work Group report seems to be a duplicative, and potentially conflicting, effort with the Parties' existing GLWQA efforts on

PBDEs. Governments and stakeholders have limited resources and we would encourage a more coordinated approach to chemicals management issues in the region. To this end, we strongly urge the IJC to direct its efforts to supporting the Parties GLWQA PBDE process.

CGLI appreciates the opportunity to provide these comments and we offer these in an effort to support enhanced coordination within the Great Lakes region on chemicals management policy. Please contact us with questions or requests for additional information.

Very truly yours,

COUNCIL OF GREAT LAKES INDUSTRIES



Kathryn A. Buckner, President



Dale K. Phenicie, Technical and Projects Director

Attachment 1

**Comments of the Council of Great Lakes Industries
on the WQB Draft Work Group Report
*Polybrominated Diphenyl Ethers (PBDEs) in the Great Lakes***

The IJC has asked for answers to three questions regarding the WQB's draft PBDE Work Group report (Work Group Report).

1. Is the problem accurately characterized?
2. Are the recommendations sound?
3. Are any important considerations overlooked?

In short, important information regarding PBDEs, and management actions already in place, is not fully reflected in the Work Group report, conclusions, and recommendations. In addition, the fact that binational strategies for PBDE management will be forthcoming as a result of the recent identification of these substances as a Chemical of Mutual Concern (CMC) under the Great Lakes Water Quality Agreement (GLWQA) has not been considered. Recommendations provided by the report are premature (given the fact that Canada and the U.S. governments must now prepare these binational strategies) and fail to take into account local, national and international actions that have already been established.

We offer the following comments to inform the IJC's approach to this issue and urge the IJC not to make policy recommendations that would divert resources outside of the established GLWQA CMC process. We further urge the IJC to post the underlying consultant report for public hearing. It appears to contain several inaccuracies and assumptions. Addressing these could change the recommendations outlined in the Work Group report.

Is the Problem Accurately Characterized?

Important information is missing from the Legacy Issues Work Group report

- PBDE manufacturers, in cooperation with US EPA and several state governments, implemented a staged phase-out of PBDE materials starting as early as 2004. The phase-outs were completed in 2013. In Canada, PBDEs were identified as a high priority for action in the Chemicals Management Plan in 2006. Regulations promulgated in Canada in 2008 prohibit the manufacture, use, sale, and importation of PBDEs that meet the criteria for virtual elimination under the Canadian Environmental Protection Act 1999. These management programs are only casually mentioned in the Work Group report.
- The overarching Work Group report and recommendations also fail to note that international regulations are already in place for these substances. This includes the fact that several PBDEs are included in the Stockholm Convention for Persistent Organic Pollutants, which outlines specific requirements for both PBDE substances and manufactured products containing them. Processes and best practices for the management of wastes have already been developed under the Basel Convention in coordination with

the Stockholm POPs Convention. The Work Group report acknowledges environmental reductions in PBDE levels that have accompanied PBDE use phase-outs but does not support its conclusion that “Product use and end-of-product-life actions can be a significant source of PBDE contamination to the environment” (Emphasis added). Indeed, declining levels of PBDEs in the environment would indicate otherwise.

- The Work Group report provides no scientific information that establishes that the PBDE materials in these products are responsible for PBDE levels in the environment. Nor does the report make any effort to analyze whether the recommendations in the report will result in any actual meaningful reductions.
- The report does not acknowledge the action of the Great Lakes Executive Committee (GLEC) listing PBDEs as a CMC pursuant to Annex 3 of the GLWQA requirements. More importantly, this act requires the Parties (Canada and the U.S.) to the Agreement to develop binational strategies for management of these substances. It is not clear why the IJC is issuing this report at this time.
- The Work Group report is based on a much more comprehensive consultant report. Stakeholders should be asked to review and comment on that report. From our quick review, it is clear that there are a number of inaccuracies, misrepresentations and assumptions in the consultant’s report that could change the WQB’s recommendations. Providing stakeholders and governments an opportunity to review and comment on the underlying report is a critical need.

Are the Recommendations Sound?

The recommendations fail to fully consider new and existing chemical management actions

- International, national and local PBDE regulations and management actions have already been implemented, and more are underway. As noted in the Work Group report, these actions have already resulted in declining levels of PBDEs. These regulations and policy actions will continue to reduce PBDEs and benefit Great Lakes water quality.
- The recommendations also fail to take into account key elements of the Canada Chemical Management Plan and the recently enacted Lautenberg Chemical Safety Act in the U.S. Several recommendations are duplicative of those already in place. For example, under both Canada and U.S. laws, all new chemicals are required to undergo rigorous review before they can be approved for manufacture. The Work Group report recommendation 4A is not consistent with current laws.
- The overly broad recommendations regarding flame retardant substitution only emphasize one factor in overall product design without taking into account other life cycle considerations needed for overall sustainable product design. A broad range of factors need to be considered; a blanket anti-chemicals emphasis for product design in federal, provincial and state government policy is inappropriate. Product designers should be free to utilize all available methods and materials to meet product and performance based specifications and attributes.

- As noted above, the recommendations related to extended producer responsibility are not supported by data and do not take into account existing product and waste regulations that are already in place.
- The Work Group report itself recommends research and monitoring to improve the understanding of the extent to which, and how, PBDEs are released to the environment in the recycling and disposal life-cycle stages. This is needed in order to assess the effectiveness of policies aimed at reducing PBDEs in the environment. We support this as a way to inform good public policy. The identification of this need demonstrates a lack of assurance that specific recommendations, and likely many of the proposed recommendations regarding producer responsibility, will not result in further meaningful reductions in PBDEs. These recommendations should not be included in the report.
- The broad statement that the WQB believes that the recommended strategy components presented in the report, while specific to PBDEs, could also be adapted for other substances is simply not supported by the facts and should not be a policy recommendation. Any policy recommendations or regulations for other substances need to address specific issues, exposure levels and uses related to that product.

Are Any Important Considerations Overlooked?

An alternative approach would be more appropriate

Given the CMC listing status of PBDEs; the soon-to-occur development of a regional management strategy; and existing federal, state, provincial, and local measures already in place, or coming into place; a more appropriate action for the WQB to take regarding CMC management in the Great Lakes basin would be to provide a public review process for the underlying consultant report used as background for the Work Group report. After public review, and revision, use this report to inform the IJC's review and assessment of any actions that the Parties take under the GLWQA process.