

# Great Lakes Water Quality Agreement Renegotiation 2011-2012

## 1. What is the Great Lakes Water Quality Agreement?

The Great Lakes Water Quality Agreement is a formal agreement between the governments of the United States and Canada established under the authority of the 1909 Boundary Waters Treaty. The Agreement sets out shared goals and objectives for protecting and restoring Great Lakes water quality. It was first signed in 1972 under the Nixon and Trudeau administrations. It was revised in 1978 and 1987.



*credit: T. Lawrence, Great Lakes Fishery Commission*

## 2. What does it require the U.S. and Canada to do?

Under the Agreement the two countries pledged to “restore and maintain the chemical, physical, and biological integrity” of the Lakes, and virtually eliminate “the discharge of any or all persistent toxic substances” into the waters of the Great Lakes. The Agreement also sets out objectives for controlling phosphorus pollution, addressing contaminated sediments, preventing contamination from airborne pollution, and controlling pollution from shipping activities. These and many other provisions spell out priorities and actions. However, compliance with those and other commitments under the Agreement relies on the good will and actions of each nation.

## 3. Why are we renegotiating the Agreement now?

While many of its fundamentals are sound, the Great Lakes environment and global environmental conditions have changed dramatically over the last 24 years. Water quality and the integrity of the Great Lake ecosystem are still being compromised by old problems but also threatened with many new ones. While the Agreement addresses conventional sources of water pollution and many toxic chemicals, it does not address issues like:

- » the new wave of toxic chemicals in the Great Lakes foodweb such as PBDEs, or pharmaceutical compounds and their implications for aquatic, wildlife and human health;
- » the water quality impacts of overlapping stresses, such as the combined effect of invasive species and warmer water (from climate change) exacerbating the return of dead zones, which is driving other damage to water quality and wildlife;
- » changes in flows, levels and pollution distribution from increasingly intense storm events, and the impacts on sewer overflows and human health.

Both governments have called for bringing the Agreement up to date with current challenges, as have many citizens’ groups. In June of 2010, Secretary Hillary Clinton (United States) and Foreign Affairs Minister Lawrence Cannon (Canada) announced their intent to renegotiate the Agreement. That effort is now underway.

## 4. What are key issues for the Great Lakes as we consider revising the Agreement?

### Management and Cooperation

- » Inconsistent enforcement and compliance with the Agreement through domestic programs in each nation.
- » The ineffectiveness of the Great Lakes governance structures and systems (including, but not limited to those related to the Agreement), which are complicated by multiple jurisdictions and agencies and the lack of clear roles and responsibilities among them.
- » Lessening of binational cooperation in jointly planning and implementing Great Lakes protection.
- » Erosion of scientific capacity and the loss of the leading edge in protecting the Great Lakes from emerging threats.

### Environmental Challenges

- » The lack of actions to prevent and reduce impacts from climate change for the entire Great Lakes system.
- » The impact of invasive species on water quality.

- » Pollution from drugs, medications and cosmetics that end up in sewage effluent, and thus the Great Lakes and other waters.
- » Unfinished pledges to clean up toxic sediments, control phosphorus and address airborne pollutants that contaminate the foodweb.

## 5. So, what's in the new Agreement?

Good question. Unlike previous processes, there has been very limited discussion with citizen's groups or anyone else not on the negotiating team, and there are no citizen observers in this process as there were in 1987. The Canadian delegation does have an advisory group. The U.S. delegation declined to provide this opportunity, claiming the inconvenience of dealing with FACA (Federal Advisory Committee Act) rules.

Last year Great Lakes United and other groups requested that the negotiators release a draft position or options paper on key points in the new Agreement followed by a 60-day public comment period, and then provide another comment period after the governments have completed their first round of negotiations. They also requested that the team release a final draft of a complete revised Great Lakes Water Quality Agreement for comment prior to completing negotiations and to hold public hearings in both countries on this draft. There are no indications that this open approach to the negotiations is likely to happen.

## 6. How can we improve compliance with the Agreement and accountability by both nations for their actions (or lack of action)?

The Agreement is structured to place compliance within the parties—the two nations that signed it. There are no sanctions or penalties for failing to meet the goals of the Agreement. Thus, the strength of the Agreement is only as good as the commitments, leadership and actions from both nations' national governments. These commitments have fallen short of reaching the goals and objectives under the Agreement in recent years. The reasons for lackluster compliance include:

- » a lack of clarity in roles and responsibilities across the many jurisdictions and agencies in the region;
- » lack of reliable and sufficient funding for cleaning up contaminated sites, and shrinking enforcement capacity linked to state and provincial budget cuts;
- » diminished and fragmented scientific capacity, due in part to cutbacks in agency funding for government science programs and for university research programs, as well as a lack of focus on research priorities, and limited commitment to long-term monitoring and surveillance;
- » low priority for meaningful public engagement among the agencies that administer the Agreement.

While the goals of the Agreement are bold, its success depends on equally bold leadership from both nations. This requires:

- » clear delineation of roles and responsibilities of federal agencies, state and provincial governments and other jurisdictions;
- » outcome-based work plans designed to achieve specific Agreement objectives (which include benchmarks and timelines);
- » revised and reinvigorated domestic laws and policies that enable enforcement of programs to achieve objectives;
- » funding and resources committed to research, monitoring, clean-up programs, and enforcement of domestic environmental quality programs;
- » robust public involvement;
- » sound science for applied, baseline, trend, modeling, surveillance and monitoring needs.

## 7. So how is the agreement enforced now?

The primary mechanism for compliance is domestic action. The International Joint Commission (IJC), the body established to oversee government actions under the Boundary Waters Treaty and the GLWQA, has the ability to investigate and assess government progress toward Agreement objectives and to provide reports and undertake special studies. However, the IJC does not have the power to impose penalties or sanctions for failure to achieve the objectives and carry out the objectives in the Agreement. Historically, independent reviews have been undertaken within each nation. For example, relevant Congressional committees have conducted oversight hearings in the U.S. Congress. The Canadian Environmental Commissioner in the Federal Auditor-Generals office has periodically issued excellent in-depth critiques of Canadian Federal actions. Nongovernmental organizations have also issued independent assessments and recommendations, designed to draw attention to challenges and concerns; these reports include Unfulfilled Promises (1986), and Promises to Keep; Challenges to Meet (2007).

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Canada has the Canada-Ontario Agreement (COA), which delineates the roles and responsibilities of the federal government and the province of Ontario for carrying out the Great Lakes Water Quality Agreement. The U.S. does not have a parallel federal-state agreement.

Renewed commitment from the very top levels of government is essential to reinvigorate and update this framework for bi-national strategies and cooperation.

## 8. In the U.S., what's the relationship between the Great Lakes Restoration Initiative and the Agreement?

The Great Lakes Restoration Initiative is designed to provide a springboard for funding projects in the United States with a focus on contaminated sediments, degraded near-shore waters, habitat restoration and invasive species. Many of its objectives complement those within the Agreement. However, they are not formally linked nor does the GLRI have any formal coordination with Canadian programs. To truly protect and restore the Great Lakes it is essential that Canada and the United States work in tandem.

## 9. What mechanisms are citizens groups recommending to improve accountability and compliance?

Great Lakes United and other citizens groups are recommending actions such as:

- » Replacing the current administrative body for the Agreement, the Binational Executive Committee, with a new binational committee that would have a larger role for the public, and would produce specific work plans to meet Agreement objectives that include benchmarks for measuring progress.
- » Analysis of domestic environmental laws and regulations in both nations to determine where there are gaps or outdated provisions that stand in the way of addressing the complex problems of the Great Lakes. A similar analysis is also needed for research programs.
- » Commitments of funding by both nations, including efforts already in place, such as the U.S. Great Lakes Restoration Initiative (GLRI). However, the GLRI does not address enforcement of environmental laws nor does it focus on preventive measures (such as preventing the degradation of important watersheds or habitats).
- » Periodic reports to Congress and Parliament on progress towards objectives, as well as anticipated threats and recommended responsive actions, accompanied by oversight hearings in which the public can participate and provide comment.

## 10. How has the Agreement benefited the Great Lakes, the U.S., and Canada?

Many credit the 1972 Agreement for helping drive a new generation of water pollution control in both nations. For example, the U.S. Clean Water Act was signed into law that year, and aggressive new controls on phosphorus pollution and a massive investment in modern sewage treatment helped revive Lake Erie and other areas choked with algae blooms and pollution.

The 1978 Agreement focused increased attention on toxic chemicals that were accumulating in the Great Lakes food web, and embraced the concept of managing for the health of the ecosystem. DDT had been banned in 1972, but as evidence mounted, many other "chlorinated" pesticides were banned from use in both nations. PCBs—one of the most widespread groups of contaminants in the Great Lakes—were also banned from further use.

The 1987 Protocols (additions to the 1978 Agreement) identified 43 highly contaminated harbors and other toxic hotspots, (diplomatically called "Areas of Concern") and called for their clean-up and restoration to standards that restored beneficial uses, including those such as drinking water quality and other conditions that protect human health and the environment. They also called for monitoring and controls on airborne sources of toxic pollution to the lakes, including mercury, and other measures to strengthen water quality protections.

These investments improved conditions for human health and wildlife, stimulated building booms in wastewater infrastructure, fostered a recreational fishing renaissance in Lake Erie, and built scientific capacity in freshwater ecology and related fields that has solved problems around the world.