

PUBLIC CONSULTATION LETTER: DEVELOPING A PROPOSED PROCESS FOR THE REVIEW OF THE GREAT LAKES WATER QUALITY AGREEMENT

Dear Sir or Madam:

1. PURPOSE

The Governments of Canada and the United States invite your assistance in developing a "process" to review the Canada-United States Great Lakes Water Quality Agreement. This includes defining your role in the review, as well as the role of all interested members of the Great Lakes community. This letter presents the proposed process for reviewing the Agreement and raises the two questions (which are set out below) on which the Governments are particularly interested in receiving your input and advice.

The review of the Great Lakes Water Quality Agreement is an opportunity to ensure that the Agreement continues to be a visionary statement that will guide and foster shared commitments throughout the Great Lakes Basin to the Great Lakes' continued protection and restoration.

Your comments and recommendations will contribute to finalizing the Agreement review process.

2. WHAT WE NEED FROM YOU?

All comments on the proposed review process are welcome; however, the Governments would particularly appreciate responses to the following two questions:

1. How should the public be involved in the review of the Great Lakes Water Quality Agreement?
2. What key issues should be considered during the review of the Great Lakes Water Quality Agreement?

3. TIMING

We need your comments by **March 8, 2005**. This is to ensure the timely commencement of the review. The review and analysis of the Great Lakes Water Quality Agreement is expected to get underway during **spring 2005** and is expected to take 12 to 18 months to complete.

4. BACKGROUND

The Great Lakes Basin constitutes one of the largest ecosystems on earth and plays a pivotal role in the physical, social and economic well-being of the 40 million people who live within the basin. Beyond being an abundant source of drinking water, the Great Lakes Basin ecosystem is North America's industrial heartland and home to some of its largest and most influential metropolitan areas. Yet, it is also home to a rich natural heritage, rare species and habitat, the continent's largest freshwater fishery and a considerable portion of North America's most fertile agricultural lands.

The Great Lakes Water Quality Agreement (GLWQA) is an agreement between Canada and the United States which commits the two countries to restore and maintain the chemical, physical and biological integrity of the waters of the Great Lakes Basin Ecosystem. The Agreement was originally signed in 1972 and was subsequently amended in 1978 and 1987.

The GLWQA is a successful model of Canada-United States partnership, showing that bilateral cooperation is strong, working and productive. Places like Lake Erie, once considered 'dead', have become prized sportfishing locations. Bald eagles are once again soaring over the shorelines. The Collingwood Harbour and Severn Sound, once listed as two of the 43 "Areas of Concern" in the Great Lakes, have been fully restored and the others are well on their way. What is clear from these, and many other, successes is that a relevant binational GLWQA is essential to ensuring a healthy Great Lakes Basin ecosystem.

The terms of the GLWQA require the Governments of Canada and the United States (the "Parties") to undertake a comprehensive review of the operation and effectiveness of the Agreement every six years. This requirement was formally triggered with the release of the International Joint Commission's 12th Biennial Report on September 13th, 2004.

Since the 1987 amendment to the GLWQA, Canada and the United States have consulted twice, in 1992 and 1998, on reviewing the Agreement.

The Binational Executive Committee (BEC), a committee co-chaired by Environment Canada and the U.S. Environmental Protection Agency and comprised of representatives from Canadian and U.S. federal, state or provincial agencies responsible for co-ordinating Canada and U.S. efforts under the GLWQA, have endorsed a three-stage approach to review of the Agreement:

- (a) Stage One: Design and Scope of the review process;
- (b) Stage Two: Review and Analysis; and
- (c) Stage Three: Implementation of actions by the Parties.

In March 2004, the BEC formed a task group named the Agreement Review Scoping Committee (ARSC). Members on the ARSC included officials from federal, state and provincial agencies, as well as staff from the International Joint Commission (IJC), a body which has observer status on the BEC. The ARSC was co-chaired by Environment Canada-Ontario Region and the U.S. EPA Great Lakes National Program Office. The ARSC was tasked with developing a review process that was open, transparent and inclusive. It is this draft process which is presented here for public comment.

5. THE DESIGN AND SCOPE OF THE REVIEW PROCESS (STAGE ONE)

A. What is the scope and objective of the Review?

In developing the review process, the task group looked at the direction provided by Article X of the Agreement. Article X requires the Governments of Canada and the U.S. to undertake a “comprehensive review of the operation and effectiveness of the Agreement.”

Comprehensive is interpreted as meaning “complete, including all or nearly all elements, aspects, etc.” Applying this definition, it was determined that a “comprehensive” review of the Agreement should examine all aspects of the Agreement, including articles, annexes and terms of reference. This would include a review of the role of the IJC, its institutional arrangements and the Great Lakes Regional Office, as defined under the Agreement. The review will also explore demonstrated linkages with other agreements and institutions in the Great Lakes to the extent that they may affect the operation and effectiveness of the GLWQA.

Operation is defined as, “the action or process or method of working or operating.” Effectiveness is defined as “having a definite or desired effect.” Operation is therefore a measure of how something works, while effectiveness is a measure of goal achievement.

Applying these definitions, it was determined that in order to effectively address the requirement of Article X, a review of the Articles and Annexes of the Agreement is required both in terms of prescribed processes and activities (i.e., operations) and the achievement of prescribed goals or objectives (i.e., effectiveness).

B. How will the Review be conducted?

It is proposed that an Agreement Review Committee (ARC) be established and responsible for leading and co-ordinating the review process. The ARC will be co-chaired by Environment Canada and the U.S. Environmental Protection Agency and consist of representatives of federal, provincial and state agencies.

ARC will coordinate a series of Working Groups that will conduct a detailed review of the Agreement. Working Groups will be established to review the Articles and Annexes of the Agreement. In addition, Working Groups may be established to consider special issues which may not be encompassed by an Article and Annex review.

A Working Group will be established to review the Articles and 'Terms of Reference' pertaining to the role, responsibilities and functions of the International Joint Commission under the GLWQA.

The ARSC recommends that all Working Groups shall be established in accordance with the following principles:

- All Working Groups will report to the Agreement Review Committee (ARC) and will be comprised of an equal number of Canadian and United States representatives.
- Each shall have a Canadian and United States co-chair.
- Membership may include representatives of federal, state, provincial, or municipal agencies, Tribes, First Nations, NGOs, industry representatives, academics, and other members and organizations of the Great Lakes community.
- Working Group members will be identified by the BEC in coordination with the ARC.

C. How will the Agreement be assessed?

Working Groups responsible for reviewing Articles and Annexes will employ a comprehensive and systematic approach. To accomplish this, a series of questions and a framework for evaluating the Agreement was developed which will be applied by each Working Group in the review of Articles and Annexes.

The key overarching questions that Working Groups will use to assess the Agreement are:

- Does the Agreement achieve the desired effect of restoring and maintaining the chemical, physical, and biological integrity of the waters of the Great Lakes Basin ecosystem?
- Is the Agreement sufficient to protect and restore the lakes, or does it fail to address critical issues? If so what are they?
- In which situation/cases does the Agreement successfully fulfil its current goals and where does it fall short? Are there common features that characterize successes or best practices, and are there areas needing improvement?

- What new approaches, if any, should be instituted to improve the operation and effectiveness of the Agreement?

Working Groups will also be asked to evaluate the Articles and Annexes in relation to the elements of an evaluation framework which consists of five major avenues of enquiry:

- **Clarity:** An assessment of the clarity of the goals, objectives, programs and other measures set out in the Agreement and whether there exists a shared common understanding or acceptance of the meaning of the terms of the Agreement.
- **Relevancy:** An assessment of the continued relevance of terms found in the Agreement.
- **Achieving Results:** An assessment of the implementation and appropriateness of prescribed programs, policies and measures, and demonstrated progress, including the application of sound science.
- **Management Framework:** An assessment of institutional structures set out in the Agreement, including co-operation and co-ordination and assessing potential duplication with other initiatives or instruments of a similar nature, and synergies and linkages with other initiatives.
- **Accountability:** Issues to be addressed include: the ease of access to, and quality of monitoring data for reporting purposes; the role of the IJC; and the long-term commitment of the Great Lakes community.

Working Groups will be tasked with conducting a line-by-line review of the Agreement using the evaluation framework and addressing these issues in a logical fashion.

D. How will the public be involved in the review?

A key consideration in the review process is effective public involvement. To facilitate effective public participation, the Governments propose to have expert public participation on Work Groups, hold public meetings within the Great Lakes Basin and solicit public input through a Web-based approach.

The following principles for public consultation have been developed to guide the review process:

- Consultation mechanisms used during the review must be flexible and promote inclusiveness in order to be responsive to the economic, social and cultural differences among and within Canada and the United States.
- Promote opportunities for the participation of the public in Canada and the United States, within the Great Lakes Basin.
- Inform the public of how and when their comments will be considered in the ongoing activities of the Agreement Review Committee.

- Provide the public with a means to interact constructively with ARC and the review Working Groups.
- Establish clear objectives for public participation in advance of meetings.
- Undertake targeted calls for sector specific comments, as needed (e.g., with NGOs, industry or other governmental departments).
- Keep records of public meetings that contain minutes of the meetings. The summary reports of meetings should include the recommendation(s) made and should be circulated to participants using registration addresses or other means the ARC deems appropriate.
- Make available all documents for public consultation simultaneously in English and French. These documents should be, as much as possible, accessible electronically and in hard copy in both languages through the Internet.
- Public notice of any meetings should provide the information on how the public can participate and on any restrictions that may apply.
- The IJC will have a role assigned to them by the Governments of Canada and the United States to solicit public input regarding the GLWQA that preserves the integrity and independence of the commission and respects the mandate and stature of the IJC.

E. What happens after the Review is completed?

At the end of the review period (i.e. Stage Two), the results of the Working Group reviews and any other analyses conducted, as well as a synthesis of public comments, will be compiled in an Agreement review report and provided to the Binational Executive Committee (BEC) for its consideration.

The BEC will make a formal recommendation to the Governments of Canada and the United States on what, if any, actions should occur as a result of the review.

The Governments of Canada and the United States will consider the findings and recommendations of the BEC and determine next steps (Stage Three).

6. HOW TO SUBMIT YOUR COMMENTS?

Please send us your comments by **March 8, 2005**. A summary of public comment and the final process for the review of the Great Lakes Water Quality Agreement will be posted on <http://www.binational.net/>. Comments may be submitted in writing, via e-mail, or fax to either:

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Further details of the GLWQA and links to related documents can be found at <http://www.on.ec.gc.ca/glwqa/>. For your convenience, in addition to this summary document, we are also including a full copy of the detailed proposed Review Process document.

In closing, we do appreciate your interest in the Great Lakes Water Quality Agreement review and welcome your active participation.

Sincerely,

Pradeep Khare,
Regional Director General,
Environment Canada

Thomas Skinner,
Great Lakes National Program Manager,
U.S. Environmental Protection Agency