



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

February 25, 2011

Carolyn O'Neill
Ministry of the Environment
Manager Integrated Environmental Policy Division
Land and Water Policy Branch, Great Lakes Office
135 St. Clair Avenue West Floor 6
Toronto, Ontario
M4V 1P5
carolyn.o'neill@ontario.ca
Fax 416 326-0461

To Whom It May Concern
Great Lakes Environment Office
Environment Canada
COA.Extension@ec.gc.ca

**RE: EBR Registry Number 011-1929 and Environment Canada-Acts and Regulations
CEPA Environmental Registry 2007-2010
Re: Second Extension of the 2007 Canada-Ontario Agreement Respecting the Great
Lakes Basin Ecosystem:
Proposed Extension to June 24, 2012**

The Canadian Environmental Law Association has been a participant on the Stakeholder Advisory Panel to the Canadian negotiators of the renewed Great Lakes Water Quality Agreement (GLWQA) that is now underway. In this capacity we are aware of delays in the negotiating schedules between the Parties and the current projected dates for completion of a new Agreement. Along with this submission on the COA renewal to June 24, 2012, we are also providing you with a link to the previous submissions that CELA made on the 2007 Canada Ontario Agreement (COA) in May 2007 http://s.cela.ca/files/uploads/563_COA.pdf. As well, we have attached our response last year when the first COA extension was proposed in March 2010. These submissions detail our historical recommendations and priorities for COA which we will not repeat extensively in this submission.

While this COA extension is necessary at this time to allow for synchronization with the new GLWQA, each year that there are delays, there is less engagement of the public in Great Lakes protection and inadequate resources in government to address new emerging issues. The public perceives little is being accomplished and that the ecosystem is being overwhelmed by the enormity of cumulative impacts from chronic and emerging threats. CELA has high expectations that the new GLWQA and the new COA must contain a vision with plans and resources for the renewal of public engagement and building of a new constituency for the Great Lakes in the 21st century.

While we applaud efforts to update and refresh issues in the 2007 COA, the comprehensive new vision that is needed to protect the Great Lakes in the 21st century remains a growing challenge. The scope, detail and reach of the new GLWQA will have significant impact for a renewed COA. CELA is concerned that it is the current stated intent of the two Parties to hold

only two public meetings on the new Agreement. The timing of these meetings is likely to occur prior to the release of the actual language of the draft agreements. We learned in the Advisory Review Committee (ARC) report on the review of the Agreement that the text of the Agreement was essential to areas that were successfully implemented. The more prescriptive and programmatic Annexes resulted in more actions. As this Agreement matures it needs to move beyond general statements of purpose and intent to mandated specific actions which achieve goals that are measurable.

CELA sponsored a resolution recommending an alternative public consultation process for the new GLWQA which was endorsed by the membership of Great Lakes United during their 2010 Annual Meeting found at http://www.glu.org/en/system/files/resolution_glwqa.pdf.

Our specific comments on the new elements for the COA extension follow.

Harmful Pollutants

CELA has long advocated that place-based reductions in loadings and continued commitment to virtual elimination of persistent toxic substances are needed for complex ecosystems such as the Great Lakes St. Lawrence River Basin. In the summer of 2010 CELA made presentations with US and Canadian Groups to the Great Lakes staff of USEPA Region 5, Environment Canada and the Ontario Ministry of the Environment on the findings of our April 2010 report *Partners in Pollution 2: an update on the continuing Canadian and United States Contribution to Great Lakes-St Lawrence River Ecosystem Pollution* http://www.pollutionwatch.org/pub/Partners_in_Pollution_2_FINAL.pdf.

We agree that renewed efforts are needed to integrate and coordinate chemical management programs of Canada and Ontario to meet these goals. These goals must still be based on virtual elimination and zero discharge commitments pioneered and retained in the new Great Lakes Water Quality Agreement. Additionally new cooperative ecosystem based programs are needed to address emerging chemicals and categories of chemicals of concern. CELA co-authored the following report to the International Joint Commission Multi Board Work Group on Chemicals of Emerging Concern in the Great Lakes Basin. <http://www.cela.ca/sites/cela.ca/files/667IJC.pdf>. We urge that the recommendations of this report be taken under advisement as the governments consider harmful pollutants and that the added human health impacts of these threats also be considered.

In addition to the recommendations outlined in the two noted reports, we seek additional emphasis on:

- Enhanced commitment towards prevention and precaution to address threats from harmful pollutants (toxic pollutants including radionuclides);
- the virtual elimination of persistent toxic chemicals and other toxic substances;
- the promotion of safe alternatives to toxic chemicals through pollution prevention strategies including application of Green Chemistry (as outlined in the report to the IJC Multi Work-Group); and
- determination and development of actions to address cumulative and synergistic impacts from toxic chemicals released to all Great Lakes media (air, water and land).

Nearshore Framework

While it is important to address aquatic ecosystem health in the nearshore, it is also vital to protect the onshore ecosystem habitats on the water's edge to ensure biodiversity in the Great Lakes. The nearshore focus cannot ignore the threats to human health from contaminants released from non-point and point sources to Great Lakes drinking water intakes and recreational beaches.

A nearshore focus will require participation and partnerships from municipalities. This means that all riparian communities in addition to the large Areas of Concern will need to be engaged and resourced to participate and implement programs. This calls for an unprecedented level of public engagement in the Great Lakes. Much of the Governance discussions leading up to and during the GLWQA negotiations have focused on the role of municipalities and First Nations in future governance of the Great Lakes. Inclusion and resourcing of their involvement at the highest levels will need to be a priority in Canada and articulated in the next COA if these constituencies are expected to carry out their responsibilities to remediate and limit threats to the nearshore zone.

A nearshore focus should not result in neglect of the whole Lake impacts of stressors originating from the nearshore or from upstream.

Stewardship Activities

While control of Agricultural activities is crucial to the upstream watershed contributions of nutrients and other pollutants to the Great Lakes, stewardship and upstream watershed contributions from other sectors are equally important to the health of the Great Lakes a source of drinking water for 1/3 of all Canadians. Ontario Source Protection Drinking Water Protection Plans need to include assessment and responses to chronic and new loadings to our Great Lakes. In the meantime, land use decisions continue to be approved that channel new sources of sewage generated great distances from Lake Ontario from York Region and potentially from the Simcoe Region into Lake Ontario. The Great Lakes deserve to be protected as a source of drinking water not as a source for dilution.

Implement Binational Cooperative Monitoring Programs

The new interim programs described in this posting for 2011 do not extend to all four of the Great Lakes in Canadian waters. The failure to include new Lakewide initiatives except for the cooperative monitoring programs for Lake Superior, the most pristine of the Great Lakes is a concern. The middle and lower Lakes are more polluted need equal if not accelerated attention from scientists in the next COA. Additionally, each Lake should have a strategic scientific needs assessment to determine what actions should flow from the monitoring evidence gathered on the Canadian and US sides of the Lake.

Our priority for a renewed Agreement includes support for an integrated ecosystem gap analysis for the Great Lakes to direct, integrate science and programs which are all too often done in silos and establish priorities for areas where there is a lack of science. Consideration should be given to designating an arms length agency to do this. This would avoid political influences on outcomes. The last several years in the Great Lakes has been marked by scientific uncertainty and disputes in the Great Lakes over the threats poised by Asian Carp, the causes of declining Lake Levels, impacts of climate change and the causes for declines in the health of Lake Erie. We have moved beyond simple science with simple remedies. We need a new

unprecedented commitment to a new science for the Great Lakes that can address the complexities of cumulative stressors and interactions and prioritise solutions that most benefit ecosystem integrity.

Implement the Aquatic Invasive Species Complete Prevention Plan

CELA of course supports that this work be done in Lake Superior. However we must prevent invasions from all vectors in the Canadian portions of the Great Lakes because we have learned the difficult and expensive lesson that it is impossible to eradicate these species once they are introduced. The reason we need to do all we can now is so that we can demonstrate this to the US who is embarking on a study by the Army Corps of Engineers on preventing the introduction of Asian Carp into the US waters of the Great Lakes at the most likely point of vulnerability at Chicago. Ontario's attempt to gain Amicus Curia party status in US courts with other US States to support the option of separating the Chicago River from the Mississippi River was denied. For Canadian voices to be heard we will need the moral suasion to demonstrate we have exhausted all prevention remedies to protect Canadian waters from invasive species.

Spills Prevention and Responses

The last year has been a sobering one, with the oil spill in the Gulf, the Enbridge pipeline spill in Michigan and the approval of shipment of radioactive generators through the Great Lakes. These all necessitate a review of our emergency preparedness, the need for new spill prevention tools in the Great Lakes and clarity on who is responsible in case of mishap for recovery, remediation and compensation for mishaps in the Great Lakes St. Lawrence River Basin. CELA is particularly concerned about federal CEAA review and determination of the liability for the shipment of radioactive materials through the Great Lakes.

Conclusion

CELA believes that work should begin immediately on preparing a new COA. CELA supports that COA set out actions in the Great Lakes that address all Canadian program needs not simply those that flow from the GLWQA. We urge Canada and Ontario to commitment to and commence the much more extensive public engagement which was originally described for the 2010 COA.

CELA requests that the next COA review include public disclosure of the costs of all contemplated programs shared between Canada and Ontario. In the US, the Healing Our Waters Coalition has been able to secure exceptional funding for the US side of the Great Lakes because they were confident in the costs of restoration and prevention that allowed them establish and budget for priorities. While it remains difficult to maintain those commitments in hard economic times, US advocates for the Great Lakes have the ability to gage the consequences of inaction when they work with their Great Lakes political representatives next week in their Washington Great Lakes week <http://www.glc.org/email/09/newsbriefs01-09.html>. It is ironic that the Provinces of Quebec and Ontario will be hosting a reception for the US delegates and citizens attending Washington to campaign for retention of US Great Lakes commitments. Few if any of the Canadian public will be there with comparable commitments for new protections for Canadian waters. We hope the next COA could be the vehicle to secure comparable commitments.

Thank you for the opportunity to comment of the extension of the 2007 COA. CELA sincerely hopes that work on the next Canadian COA agenda for the Great Lakes will commence immediately.

Yours truly,
Canadian Environmental Law Association



Sarah Miller
Water Policy Researcher
millers@lao.on.ca
416 960-2284 ex. 213



Fe de Leon
Researcher
deleonf@cela.ca
416 960-2284 ex.223

CELA Publication: 774