



October 31, 2019

Via Online Comment Portal

International Joint Commission
Great Lakes Regional Office
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Windsor, ON
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Re: 2019 Progress Report of the Parties

Thank you for the opportunity to provide comments on the 2019 Progress Report of the Parties (PROP) pursuant to the 2012 Canada-United States Great Lakes Water Quality Agreement (GLWQA). The triennial reporting on actions taken to pursue the objectives of the GLWQA is essential to ensuring progress is made. And, the opportunity to engage with the International Joint Commission (IJC), and its obligation to summarize the public's commentary, is an important feedback loop that we expect will lead to increased accountability toward meeting the Parties' commitments under the 2012 GLWQA. The following comments are broken up into two sections. In Part A, we present high level observations and recommendations regarding the structure of the report (including observations about transparency and accountability) and public engagement. In Part B, we provide a more detailed review regarding progress on Chemicals of Mutual Concern. We trust that this feedback will be helpful in further improving future iterations of the PROP and other reports published under the GLWQA by the Parties and by the IJC.

Part A: Public Engagement, Information Accessibility, and Progress Reporting

In order to generate greater support for the Great Lakes and actions that will protect and restore them, public engagement in this work is extremely important. We commend the IJC and the Parties for ensuring reports, such as this one, are public and open to feedback with reasonable comment period timelines. The additional effort on public engagement made by the IJC in the summer of 2019 with the "Step In and Speak Out for the Great Lakes" series is applauded. In-person engagement is important for disseminating the dense and often jargon-heavy information included in GLWQA related work. As Canadian organizations, we appreciate the IJC's effort to meet Canadians by the water in communities that rely greatly on Lake Huron. We note, however, that no meetings were held in the Canadian portion of Lakes Superior, Erie, and Ontario this year.

We hope that there will be future iterations of the “Step In and Speak Out for the Great Lakes” series in the years to come. We particularly encourage a set of meetings that visits the watersheds of every Great Lake and includes meetings on both the Canadian and the US side of each Lake.

Recommendation 1: Continue the best practice of meeting with the public in person within the watershed of each Great Lake. Extend the 2019 “Step In and Speak Out for the Great Lakes” series into the future, ensuring that meetings are held within the watersheds of every Great Lake and include meetings on both the Canadian and the US side of each lake.

Turning to the report itself, the primary recommendations are laid out consistently through the Annexes and sections. The way the PROP flows through the priorities for science and priorities for action in each section is a good format. However, it is often difficult upon reviewing the PROP to determine if those same priorities for science and action have been adequately addressed in the time period. There are sections of the PROP that are very specific in demonstrating progress, success, and gaps. There are other sections of the PROP where it is impossible for a reader to know if the priority item is on track or completed without going beyond the report to research the details separately. From a public engagement perspective, this is a consistency issue that needs addressing.

To illustrate this, it’s best to begin with a review of the Areas of Concern (AOC) Annex, where progress and achievements are well defined and illustrated. Close tracking of beneficial use impairments and status of remedial action plans allows for a progress trajectory that is easy to follow and can be visually demonstrated. Tables 3, 4, and 5 do this well (PROP, pp 16, 17, and 21, respectively). Such tables can be further improved by employing a progress bar or chart illustrating the proportion of removed, projected removal and existing beneficial use impairments. An additional recommendation is to restate the connection of progress to the priority science and action items as is done in other areas of the report. Although this is inherent in the structure of those priority items and progress on AOCs, it is important to address this directly and ensure consistency across the entire report’s structure.

In the AOC section, the reader can clearly understand the progress that has been made and the additional actions that are required in order to meet the objectives of the GLWQA. Other sections of the report are much less clear in illustrating progress under the GLWQA. For example, in the Nutrients Annex the priority for action is to implement the Domestic Action Plans (DAPs) bi-nationally. Speaking specifically to the Canada-Ontario Lake Erie Action Plan (Canada’s Domestic Action Plan), this action item has not been achieved although this is not stated directly in the PROP. While certain projects that were already in development during the drafting of Canada’s DAP are ongoing, comprehensive implementation is not yet underway. Canada’s DAP implementation plan was scheduled to be released and shared with the public in February 2019. Now, near the end of 2019, no such plan has been shared. The projects and investments described in the Canadian domestic actions section of the PROP are very positive steps toward implementing key DAP action items. This feedback is not intended to undervalue those projects. However, this list is by no means comprehensive to the full set of DAP actions

that are necessary to achieve 40 per cent reduction in phosphorus loads to Lake Erie. The PROP should reflect true progress on this and other actions that have not yet been achieved. Where delays have impacted progress on Annex priorities, the delay and a plan for adjusting course should be described.

This trend continues beyond the Nutrients Annex; the style of reporting in certain sections can be somewhat misleading to true progress on the Annex in question. For example, in the Chemicals of Concern Annex the domestic actions and achievements for Canada note that “457 existing chemicals have found to be harmful to the environment”, and that for those substances 90 risk management actions have been implemented. This represents only 20% of chemicals having risk management plans in the implementation phase. While the PROP mentions further plans are in development, lack of a discrete number or percentage means the public isn’t able to grasp the progress to date. Further transparency is needed for the readers of the PROP to better understand the true progress and what can be projected on issues such as addressing harmful chemicals. This can be further illustrated visually through bar or pie charts indicating the percentage complete, in development, and not started. This recommendation can be carried through to many sections of the report. Further, in relation to reporting on progress in relation to Chemicals of Mutual Concern, the bi-national progress is significantly lacking (see detailed comments on Annex 3, in Part B below).

Finally, we note that in many situations the priorities for science and the priorities for action contain commitments that are too vague to be able to ensure accountability and measure progress toward achieving the overall purpose of the GLWQA. Commitments that involve wording such as “continue to” or “make progress on” do not provide the necessary specificity. The AOC Annex is a positive example of sufficient detail that the public can determine whether or not the priorities have been achieved and/or whether progress has been made toward their achievement. Unfortunately the priorities listed for other annexes are not as specific.

Recommendation 2: Quantify progress on priority action items consistently throughout the PROP. Ensure that all progress on priority items, or lack of progress, is accurately captured in the PROP in a format that is transparent for readers.

Recommendation 3: Ensure that there is specificity in the commitments made under the priorities for each Annex of the GLWQA, such that progress can clearly be measured and reported upon.

In the interest of transparency, an additional recommendation is to urge the Parties to ensure stated actions related to funding are as closely tied to the Great Lakes issue as possible. For example, in the Habitat and Species Annex and the Nutrients Annex, massive Canadian funds are mentioned as contributing to domestic action. The \$1.5 billion Canada Nature Fund and \$180 billion Canada Plan for Infrastructure are nation-wide projects with several different applications for the funds. While the PROP is clear in stating what types of Great Lakes projects are funded through these large national funding sources, it is not clear in what proportion or level of funding the projects are receiving. Transparency on the role this funding plays specifically for the Great

Lakes and of the actual amount of money spent would move the public's ability from being able to evaluate anecdotally through examples to evaluate quantitatively with a clearly defined proportion of the funding that feeds Great Lakes priority actions.

Recommendation 4: Wherever possible throughout the PROP, ensure that any mention of funding sources also contains contextual details as to the proportion of the fund allocated toward Great Lakes priority actions specifically.

Overall, the PROP can be strengthened by clarifying where priorities for action have been accomplished. This could be done in a similar style to the AOC Annex, or as simply as a colour coding for "complete, in progress, or not started". This will allow the reader to gain a better sense of progress more quickly and without needing to go beyond the PROP and conduct additional research. Shifting the PROP's overall style toward a more progress focused and interpretive format will make the report more accessible to a broader public and allow for better interpretation.

Recommendation 5: Clarify where the priority actions have been accomplished or not yet accomplished. Throughout the PROP use visuals and charts to clearly illustrate progress, similar to the Tables in Annex 1 (Areas of Concern).

Additionally, in an overall sense, there is opportunity for more integration with other reports that the Parties and the IJC produce under the GLWQA. For example, use of high level indicators from the State of the Great Lakes 2017 report could be integrated to give a reader a sense of the urgency or condition surrounding an Annex issue nationally or bi-nationally. There are various reports under the GLWQA, likely more than the average member of the public could keep up with. The Progress Report of the Parties would be a great venue to consolidate some of this information, even at a high level, to further contextualize the progress against the threats to the Great Lakes and their relative severity by issue.

Recommendation 6: Integrate key indicators and findings from other reports under the GLWQA where appropriate, to further contextualize Great Lakes issues for readers of the PROP.

Part B: Annex 3 Chemicals of Mutual Concern Comments

Introduction:

Annex 3 of the GLWQA states that

The Parties shall report on progress toward implementation of the Annex every three years through the Progress Report of the Parties. The report shall include:

1. an identification of chemicals of mutual concern; and
2. the status of initiatives to develop binational strategies to address issues involving chemicals of mutual concern and the status of implementing binational strategies for chemicals of mutual concern. [Section D, GLWQA]

The 2019 Progress Report was posted by the governments on June 13, 2019. This is six months prior to the end of the reporting period (December 2019). As a result, one must read the Progress Report with considerable caution because it includes items that are “projected” to be completed by the end of 2019. As you will see in this section, significant actions that are projected to be completed by the end of December 2019 have not been finished and will not be finished by the end of 2019. The Parties do not intend to update this report so it will stand for the record as reflecting the reality of what was done by the end of 2019. That is a misleading document to leave on the records for today and the future.

Recommendation 7: The Parties should find a way to make sure the record is accurate. A couple of approaches could be taken to do this.

1) adjust the three-year cycle so that the Progress Report of the Parties and the Public Forum occur near the end of the three-year period, in this case, nearer the end of 2019. We know that it would have been inappropriate to have these occur this year during the formal Canadian Federal election period. But please make sure that the Forum period and progress report release is switched back to the fall near the end of the next three-year cycle.

2) The parties should release a brief report in January 2020, which is in effect an errata sheet that lists things that the original Progress Report stated would be done or were expected to be done by the end of the reporting period, but which were not actually completed. A similar errata sheet should be released after every three-year reporting period. This addition is essential to ensure that there is an accurate Progress Report on the record.

Part 1: Identification of chemicals of mutual concern:

One of the two priorities for action from 2017 through 2019 under this Annex that the Parties committed to was to “identify and assess additional substances for consideration as CMCs ...” [March 3, 2017].

In this reporting period, the period from the beginning of 2017 through the end of 2019, four substances were nominated to become chemicals of mutual concern (CMCs). Two of these were nominated by the public: radionuclides and sulfates. The other two were nominated by Environment and Climate Change Canada (ECCC): lead and polyaromatic hydrocarbons.

All four of these nominations were made by March 2017. Over two and a half years later, none of these have gone through the process of being formally assessed and identified or rejected by the Parties (the Canadian and U.S. federal governments) as CMCs. The 2019 Progress Report is in error because in all four cases the Parties report that the nominated substances “have been evaluated against the binational screening criteria for nominated CMCs.” In all four cases that word “projected” appears in brackets after the sentence stating that it has been done.

About a year after receiving the nominations, the Parties decided that they needed to develop “binational screening criteria” before carrying out the individual assessments. In May 2018, the Parties gave an initial draft set of criteria to the Annex 3 Extended Subcommittee for discussion and comments. After some comments, the criteria went back to ECCC and EPA to be refined.

Since then, there have been reports almost every month that keep promising the revised criteria “shortly.” The governments have promised that once they have agreed on “draft criteria”, they will be posted on binational.net for formal public comment before going back to the governments to be completed. This means that even if the governments agree on draft criteria very soon there won’t be enough time for them to go out for public comment and to go back to the governments for final revision and approval before the end of 2019. And there certainly will not be enough time to put the nominated substances through this new evaluation process using these criteria.

Summary of Progress On Identifying CMCs: No additional substances were identified and assessed for consideration as CMCs during this reporting period, even though four were nominated. In addition, the Parties have not called for additional nominations.

Annex 3 of the GLWQA as amended in September 2012 committed the governments to identify Chemicals of Mutual Concern across the Canada-US Great Lakes border. When the Agreement was signed, no substances were given a CMC designation. By the end of 2016, the governments had designated eight substances as CMCs. No substances have been added since.

This means that after seven years the governments are stating that there are only eight substances of mutual concern in the Great Lakes and St. Lawrence River basin. This conveys a very misleading and dangerous message to the public and to those who manufacture or have such substances in the products that they manufacture or sell. It implies that only those eight substances are of concern in the Great Lakes. This, of course, is far from the truth. It is important to put out a more complete list of CMCs in the Great Lakes basin soon so the public are more aware of them and can act appropriately. It is also important that manufacturers be given the message that there are many other CMCs that the governments will be taking action on at some point so that industry is warned against switching to or expanding their use of these other CMCs but instead focuses on reducing or eliminating their use of all the CMCs even if a binational strategy has not yet been developed for many of the CMCs.

The Parties have said that they don’t want to designate CMCs more quickly than they can develop Binational Strategies to address the CMCs because of their limited resources to carry out the work. This approach is very dangerous because it seriously understates the threats to the Great Lakes.

Recommendation 8: One way to speed up the designation of CMCs would be to designate whole classes instead of doing them individually one by one. An example of this issue is the PFAS class of chemicals. Over 4,700 members of the PFAS class are known to be in commercial use, but ECCC and USEPA have only designated PFOS, PFOA and LC-PFCAs. This is despite the fact that all PFAS are shown to have similar toxic impacts. A major problem with not designating the entire class is that PFAS users often switch to other members of the PFAS class when certain members of the class are put under restricted use or banned from use. This encourages substitution with substances that will prove in the future to be CMCs in the basin.

This type of situation exists for many classes of substances. Therefore, we urge the governments to designate CMCs by entire classes.

Part 2: Develop and Implement Binational Strategies for the CMCs:

In the governments' statement of binational priorities for action for 2017-2019, the governments committed to "continue the development of Binational Strategies that identify cooperative and coordinated measures to reduce anthropogenic inputs of CMCs into the waters of the Great Lakes" [March 3, 2017].

In 2016, the governments designated eight substances as CMCs: mercury, PCBs, PFOA, PFOS, LC-PFCAs, PBDEs, HBCD, and SCCPs.

The governments state in their progress report that they will have finalized the binational strategies for all of these by the end of 2019. Thus far, this is true, only for three of the eight substances: PCBs, HBCD, and PBDEs.

As of October 2019, the mercury binational strategy has been sent to the GLEC co-chairs for final approval. This may be finished by the end of 2019. Public comments have been submitted on the SCCPs and this strategy is now undergoing revision. This also may be completed by the end of the year.

However, for the other three substances - PFOA, PFOS, LC-PFCAs, the strategies are still under discussion and have not been put out for public comment. It is highly unlikely that any of these will be completed by the end of the year. These are other examples of the Progress Report's misleading use of the word "projected".

The binational strategies that have been finalized include some recurring flaws and limitations:

- The primary focus in the binational strategies should be pollution prevention, zero discharge and virtual elimination. These should be the core of the binational strategies because these are core government commitments in the GLWQA. Unfortunately the governments give little weight to these guiding principles in the binational strategies. The pollution prevention strategies that the governments include in the binational strategies are overwhelmingly education and outreach activities. While these are important, such actions on their own will fall far short of achieving the full potential of the pollution prevention, zero discharge and virtual elimination approach in the GLWQA. In November 2017, the IJC raised a similar concern to ours and recommended that the Governments emphasize pollution prevention [First Triennial Assessment of Progress on Great Lakes Water Quality, Highlights Report, page 18].
- The Strategy should contain reduction targets with timeframes for the substance in terms of presence in the Great Lakes ecosystem, releases to the environment, presence in biota, including humans, and presence in the Great Lakes basin in use and in products.

- The drafting and completion of the binational strategies for CMCs has faced long delays (particularly for PFOS, PFOA and LC –PFCAs) with implementation of finalized CMCs in its early phases.
- The binational strategies tend to be weak at committing to on-going monitoring of CMCs in the lakes and biota. Without this, we will not be able to assess whether levels are going down far enough and permanently.
- The strategies lack timelines for taking actions to ensure progress, and to allow for accountability regarding proposed actions. The IJC made similar comments in its First Triennial Report.
- The binational strategies rarely contain actions that the respective governments had not already decided to undertake in their own jurisdiction for the rest of Canada and the U.S. Because of the unusual nature of the Great Lakes and because of binational commitments that the governments have made in the GLWQA, these strategies may require some different types of goals, priorities and actions than are needed in other parts of each country.
- Few of the commitments in the strategies are binational. Most of them are focused on each jurisdiction. This means that we are not truly developing unique strategies focused on the special needs of the Great Lakes and the purposes behind the GLWQA.
- The strategy often shows differences between the regulatory regimes around a particular CMC on each side of the border, e.g., exemptions that regulations contain that may differ. The strategy contains no assessment of the significance of those differences and whether the regulations on both sides of the border need more consistency to achieve our basin-wide goals. In addition, each government usually accepts the current exemptions in their country instead of making commitments to remove the exemptions from strict standards or bans in their country. Such exemptions from strong action means that we will never achieve the necessary protection of the Great Lakes and their inhabitants from persistent toxic substances.
- The strategies are weak on commitments to ensure that CMCs are not replaced by another substance that may become a CMC down the road.
- The strategies are weak in their commitment to assess potential impacts of banned or substantially restricted-for-use CMCs that are already in products in the basin before the restrictions were put into place and continue to be in the basin. The strategies need to contain a plan for how to avoid releases of the restricted or banned CMCs during and after product use, when recycled, composted or disposed of in landfills, incinerators, or sewage treatment plants, instead of assuming that we have solved the problem once the CMC has been banned.

- The governments need to ensure that the resources will be available to carry out the strategy.

Recommendation 9: We have two recommendations for how the governments can substantially improve the content of the Binational Strategies while saving time. These are:

1. Develop binational guidance for inclusion of prevention actions and for actions that will lead to the zero discharge and virtual elimination goals of the GLWQA in each Binational Strategy. Also the guidance should make it clear that the pollution prevention methods should not just be add-ons, but should be given top priority in developing the strategy. This is necessary to be consistent with the goals and principles of the GLWQA.
2. Develop binational guidance on how to include requirements for informed substitution and alternatives assessment in order to avoid regrettable substitution of current designated CMCs with substances that may become CMCs at a later point. This alternatives assessment should include assessment of the need for the function that the substance provides, whether design changes could provide the same function without having to use a toxic substance, whether a different type of substance that is not toxic can fulfill the function, and whether the function could be provided by using a much lower level of the substance. Recommendations similar to this have been made by the IJC in their reports on PBDEs, and by the Great Lakes and St. Lawrence Collaborative in Canada in their Great Lakes Action Plan 2030, released in June 2019.

Part 3: Priorities for Science under Annex 3 – CMCs:

The Governments listed the following as their priorities for science under CMCs:

- 1) Undertake research, monitoring and surveillance activities identified in Binational Strategies in order to address information needs for CMCs in support of future measurement/indicators work.
- 2) Coordinate research, monitoring and surveillance activities to provide early warning for chemicals that could become CMCs.

Unfortunately, as with so much of the rest of the Parties' Progress Report, there is very limited and general discussion on science activities carried out for CMCs. For Annex 3 in particular we see a need for more detailed and explicit description of science-related work undertaken in this period. In addition, we believe the Parties should have a more systematic science program in place to address chemicals more broadly in the region, including related to identifying potential future CMCs (potentially based on characteristics such as use patterns/inventory assessments, physical-chemical characteristics – including via modeling estimates, and findings from research and monitoring on chemicals of emerging concern in the Basin or elsewhere).

Recommendation 10: The Parties should provide more details on science programs and activities carried out specifically to address both existing and potential new CMCs under Annex 3. In addition, going forward, as we have reiterated separately on the new Priorities for Science and Action for the next triennial period, we believe the Parties should have more specific

objectives related to science programs and activities addressing chemicals, including more systematic approaches to monitoring and surveillance for potential new CMCs.

Part 4: Domestic Actions on CMCs:

Since the Binational Strategic Plans have been finalized for only a short time and since almost half have still not been finalized, it is not valuable and is unfair to assess at this time the adequacy of the implementation of these plans by the government jurisdictions in each country. This will be more productive to assess after the 2022 Progress Report of the Parties.

We hope the above recommendations are productive and will be helpful in continuing to shape future PROPs to be increasingly accessible and informative. We'd be happy to meet to discuss any of the suggestions in more detail.

Sincerely,

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