



## Canada and the U.S. Update the Great Lakes Water Quality Agreement

*By Julia Schatz\* and Neil Morgan\*\**

On September 7, 2012, after three years of negotiations, representatives from the Canadian and United States governments signed the updated Great Lakes Water Quality Agreement (the “Agreement”).<sup>1</sup>

Since the implementation of its predecessor in 1972, the Agreement has fostered significant progress in bi-national protection of the Great Lakes basin. After 25 years, however, an update was very much needed. Following substantial stakeholder consultations, the Agreement has been revised to address new issues and to clearly state that specific actions be taken within prescribed timeframes.

### History of the Agreement

The Agreement between Canada and the United States of America on Great Lakes Water Quality was first signed in 1972. Its primary focus was the prevention of eutrophication: the excessive algae growth which was caused by high phosphorus levels in the Great Lakes. The obligations under the Agreement were governed by the International Joint Commission (“IJC”) which facilitated communications and developed joint strategies through its Science Advisory Board and Water Quality Board.<sup>2</sup> As a result of the 1972 Agreement, both countries coordinated an approach to limit phosphorus inputs that resulted in a significant decline during the 1970s and 1980s.<sup>3</sup>

The Agreement was revised in 1978 to include a new focus on toxic substances. The 1978 revision broadened the goal “to restore and maintain the chemical, physical and biological integrity of the waters of the Great Lakes Basin Ecosystem.”<sup>4</sup> Further, the “ecosystem approach” was introduced, which recognized the interconnectedness of all components of the environment and the need for an integrated perspective in addressing human health and environmental quality issues. The new focus and approach resulted in significant decreases in the levels of toxic substances within the Great Lakes ecosystem.<sup>5</sup>

In the 1980s, the Agreement was amended twice. First, in 1983 an annex was introduced to enhance efforts to reduce phosphorus inputs into the lakes. Second, in 1987, the Agreement was amended to mandate the parties to meet twice a year and to create the Bi-national Executive Committee as a governing body, distinct from the IJC.<sup>6</sup> Further, the 1987 amendment included new annexes, such as Lakewide Management Plans for each lake, Remedial Action Plans to clean up Areas of Concern

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<sup>1</sup> [http://www.ec.gc.ca/Publications/9DD80B8C-7E7A-4131-8055-D47B0B3E004F%5CEN-Canada-USA-GLWQA-FINAL\\_web.pdf](http://www.ec.gc.ca/Publications/9DD80B8C-7E7A-4131-8055-D47B0B3E004F%5CEN-Canada-USA-GLWQA-FINAL_web.pdf).

<sup>2</sup> *Backgrounder and Brief: The Great Lakes Water Quality Agreement Renegotiation*, online: Great Lakes United <[http://www.glu.org/en/system/files/GLWQA\\_Negotiation\\_Guide\\_2011.pdf](http://www.glu.org/en/system/files/GLWQA_Negotiation_Guide_2011.pdf)> [Backgrounder].

<sup>3</sup> *History of the Great Lakes Water Quality Agreement*, online: Environment Canada <<http://www.ec.gc.ca/grandslacs-greatlakes/default.asp?lang=En&n=647DC488-1>>.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Backgrounder, supra* note 2.

("AOCs") (the most severely degraded locations within the Great Lakes), and actions to address airborne sources of toxic pollution.<sup>7</sup>

The Agreement was noteworthy as being the first international agreement to embrace an ecosystemic approach to water management, to foster important research regarding toxic substances, to seek the elimination of persistent toxic substances, and to call for "zero discharge" of such substances.<sup>8</sup>

In 2006 and 2007, nine bi-national review working groups consisting of over 350 participants conducted an extensive review of the Agreement. Representatives included: federal, provincial, state and municipal governments; aboriginal groups; non-governmental organizations ("NGOs"); academics; industry representatives; and the interested public. The strong consensus was that the Agreement was out of date. Key findings included a desire to find: (i) an improved approach, such as watershed management planning;<sup>9</sup> (ii) strategies to deal with emerging threats, such as climate change, aquatic invasive species, biodiversity and urbanization; (iii) ways to ensure adequate and consistent funding; and (iv) opportunities to improve the overall governance and collaboration between stakeholders.<sup>10</sup>

In June 2009, the Canadian and US governments announced they would begin formal negotiations to amend the Agreement.<sup>11</sup> Negotiating parties included Environment Canada, Foreign Affairs and International Trade Canada, the US Department of State, and the US Environmental Protection Agency.<sup>12</sup> In addition to formal negotiations, bi-national webinars were initiated to facilitate dialogue between the agencies, the IJC, stakeholders, and the public.<sup>13</sup>

## New Agreement

After three years of negotiations, Environment Canada and the US Environmental Protection Agency announced the signing of the revised Agreement. The update is set up as a protocol which attaches the Agreement as an appendix. The agencies' joint backgrounder states that the amended Agreement commits the US and Canada to cooperate and coordinate efforts in respect of issues such as:

- (i) preventing environmental threats before they turn into actual problems;
- (ii) updating phosphorus targets for open waters and nearshore areas of each lake and taking actions to reduce phosphorus levels that contribute to harmful algae;
- (iii) preventing the introduction and spread of invasive species;
- (iv) developing plans to protect and restore nearshore areas, as the primary source of drinking water for Great Lakes communities;
- (v) reaffirming actions necessary to restore and delist AOCs;

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> This would implement strategies and remedies that reach into inland tributaries and headwaters of the Great Lakes system.

<sup>10</sup> John Lawrence, "Renewal of the Canada-United States Great Lakes Water Quality Agreement" (Lake Erie Millennium Conference, delivered at the University of Windsor, 27-29 April 2010) online: University of Windsor <[http://web2.uwindsor.ca/lemn/LEMN2010\\_files/Presentations/Lawrence%20GLWQA%20Renewal%20April2010\\_v2.pdf](http://web2.uwindsor.ca/lemn/LEMN2010_files/Presentations/Lawrence%20GLWQA%20Renewal%20April2010_v2.pdf)> [Lawrence].

<sup>11</sup> *Amending the Great Lakes Water Quality Agreement*, online: Binational <[http://binational.net/glwqa\\_2010\\_e.html](http://binational.net/glwqa_2010_e.html)>.

<sup>12</sup> Jim Vollmershausen, "Negotiations to Amend the Great Lakes Water Quality Agreement" (Presentation to the Great Lakes Commission, October 7, 2010) online: Great Lakes Commission <<http://www.glc.org/announce/10/pdf/Vollmershausen101007.pdf>>.

<sup>13</sup> *Ibid.*

- (vi) identifying new toxic substances, and implementing pollution prevention and control strategies;
- (vii) preventing and controlling harmful discharges from ships and other vessels;
- (viii) developing conservation strategies to protect native species and restore habitat;
- (ix) identifying and helping coastal communities understand the impacts of climate change on water quality;
- (x) developing water quality and ecosystem health objectives;
- (xi) reviewing Great Lakes science and establishing bi-national priorities for future work;
- (xii) providing notification of activities that could impact the Great Lakes; and
- (xiii) reporting progress to the public regularly.<sup>14</sup>

The amendments seem to have addressed nearly all of the concerns raised by the review committee. The overall purpose has remained the same: “to restore and maintain the chemical, physical, and biological integrity of the waters of the Great Lakes.”<sup>15</sup> The ten annexes are more precise; each one using a streamlined and consistent format. Emerging threats such as climate change, biodiversity, and aquatic invasive species have been addressed through individual annexes.

There has been an attempt to improve governance through the creation of the Great Lakes Public Forum, the Great Lakes Executive Committee and sub-committees and by directing the IJC to establish boards to assist in exercising its powers and responsibilities. The Agreement specifically recognizes the need for involvement and participation from all stakeholders as part of the Public Forum, and explicitly refers to those stakeholders throughout. Further, a Great Lakes Summit will be held every three years to discuss and receive public input on trends in environmental quality and the progress of implementing the Agreement. Unlike its predecessors, the Agreement now expressly incorporates the “polluter pays” principle, and purposes and measures are effectively linked throughout the Agreement.

Critics are concerned, however, that funding issues have not been appropriately addressed.<sup>16</sup> The only two explicit references in the Agreement to funding are found in Article 4. Section 4 of Article 4 is related to publicly-owned waste treatment works,<sup>17</sup> while section 5 relates to the process for obtaining funds.<sup>18</sup> There are no express statements of actual amounts or even the concept of proportional contributions.

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<sup>14</sup> *United States – Canada Joint Backgrounder*, online: US Environmental Protection Agency <[http://www.epa.gov/grtlakes/glwqa/20120907-GLWQA\\_joint\\_backgrounder.pdf](http://www.epa.gov/grtlakes/glwqa/20120907-GLWQA_joint_backgrounder.pdf)>.

<sup>15</sup> *Appendix to the Protocol Amending the Agreement Between the United States of America and Canada on Great Lakes Water Quality, 1978*, 7 September 2012 (as amended on 16 October 1983 and on 18 November 1987) online: Environment Canada <[http://www.ec.gc.ca/Publications/9DD80B8C-7E7A-4131-8055-D47B0B3E004F/EN-Canada-USA-GLWQA--FINAL\\_web.pdf](http://www.ec.gc.ca/Publications/9DD80B8C-7E7A-4131-8055-D47B0B3E004F/EN-Canada-USA-GLWQA--FINAL_web.pdf)> [Agreement].

<sup>16</sup> Kim Mackrael, “Canada and U.S. update protection of Great Lakes” *The Globe and Mail* (7 September 2012), online: The Globe and Mail <<http://www.theglobeandmail.com/news/national/canada-and-us-update-protection-of-great-lakes/article4529083/>> [Mackrael].

<sup>17</sup> *Agreement, supra* note 15 (“[t]he parties’ policy is to ensure that a combination of local, state, provincial, and federal participation provide financial assistance to construct and improve publicly owned waste treatment works”).

<sup>18</sup> *Ibid* (“[t]he Parties’ respective obligations are subject to the appropriation of funds in accordance with their respective constitutional procedures”).

## Implementation

As the over-arching goal, the Agreement requires the parties to “develop and implement programs and measures to fulfill the purpose of the Agreement, in accordance with the Principles and Approaches set forth in Article 2; and to achieve the General and Specific Objectives set forth in Article 3.”<sup>19</sup> Article 3 states that the parties must use best efforts to ensure that the water quality standards and other regulatory requirements of the parties and all stakeholders are consistent with the General and Specific Objectives.<sup>20</sup> To achieve these objectives, commitments have been established to take action within specific time frames as follows:<sup>21</sup>

Timeline	Action Required
2 Years	Develop and implement an early detection and rapid response system relating to threats from invasive species.
2 Years	Develop lake-wide habitat and species protection and restoration conservation strategies for each of the Great Lakes.
2 Years	Develop a baseline report on all relevant and available groundwater science.
3 Years	Develop a near-shore assessment and management framework.
3 Years	Develop achievable, science-based phosphorus reduction targets for Lake Erie.
5 Years	Develop a bi-national phosphorus-reduction strategy for Lake Erie.
5 Years	Develop detailed domestic action plans to meet objectives for phosphorus concentrations, meet loading targets and divide the phosphorous loads between the countries.

Successful implementation of the Agreement and achieving the above deadlines will take significant funding commitments from both parties. The US has committed more than \$1 billion over the past three years to its Great Lakes Restoration Initiative.<sup>22</sup> Canada has committed close to \$50 million to remediate contaminated areas, \$8 million per year for remediation of AOCs, \$16 million to combat toxic algae, and \$17.5 million to protect against invasive species.<sup>23</sup> Environmentalists are concerned that Canada’s monetary commitment is lacking and, as a result, the Agreement may not achieve its desired effects.<sup>24</sup>

<sup>19</sup> *Ibid* at Article 4 s 1.

<sup>20</sup> *Ibid* at Article 3 s 2.

<sup>21</sup> *A Renewed Commitment to Action: The 2012 Great Lakes Water Quality Agreement*, online: Environment Canada <<http://www.ec.gc.ca/grandslacs-greatlakes/default.asp?lang=En&n=B274CBC1-1>>.

<sup>22</sup> *Mackrael*, *supra* note 16.

<sup>23</sup> Letter from the Honourable Peter Kent to the Honourable Jim Bradley (15 June 2012) online: Environment Canada <[http://www.ec.gc.ca/lcpe-cepa/CD691860-53EE-4E63-BEDC-42201862C605/Kent\\_to\\_Bradley\\_20120615\\_eng.pdf](http://www.ec.gc.ca/lcpe-cepa/CD691860-53EE-4E63-BEDC-42201862C605/Kent_to_Bradley_20120615_eng.pdf)>.

<sup>24</sup> Andy Buschsbaum, director of the National Wildlife Federation's Great Lakes office stated that “Canada is not spending nearly as much as it should.” *Mackrael*, *supra* note 16.

In order for the updates to come into force, Article 3 of the Protocol requires that each party complete its domestic processes for approval.<sup>25</sup> This step has already been satisfied in the US.<sup>26</sup> By contrast, in Canada, the Agreement is considered a treaty and, thus, requires parliamentary approval. According to information obtained from a representative of Environment Canada, the Protocol and Agreement have not yet been tabled, but are expected to be approved this fall.<sup>27</sup>

## Conclusion

Canada and the US have recognized that the Great Lakes basin is an essential resource deserving of protection, calling it a “treasured natural resource” and a “cornerstone of the Canada-United States relationship upon which so many depend.”<sup>28</sup> By amending the Agreement and committing to specific deadlines, the parties have attempted to address the concerns brought forth by the 2006-2007 review. While the signing of this Agreement is a historic step, it remains to be seen if the parties’ financial commitments are sufficient to facilitate its successful implementation and to ensure its deadlines are met.

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<sup>25</sup> *Protocol Amending the Agreement Between the United States of America and Canada on Great Lakes Water Quality, 1978*, 7 September 2012 (as amended on 16 October 1983 and on 18 November 1987) online: Environment Canada < [http://www.ec.gc.ca/Publications/9DD80B8C-7E7A-4131-8055-D47B0B3E004F/EN-Canada-USA-GLWQA--FINAL\\_web.pdf](http://www.ec.gc.ca/Publications/9DD80B8C-7E7A-4131-8055-D47B0B3E004F/EN-Canada-USA-GLWQA--FINAL_web.pdf)>.

<sup>26</sup> This was confirmed during a telephone call with John Haugland of the Great Lakes National Program Office in the US on September 20, 2012.

<sup>27</sup> Telephone call with Jennifer McKay, Manager of Environment Canada’s Great Lakes Environment Office on September 20, 2012.

<sup>28</sup> US Environmental Protection Agency, News Release, “United States and Canada Sign Amended Great Lakes Water Quality Agreement/Agreement will protect the health of the largest freshwater system in the world” (7 September 2012) online: US Environmental Protection Agency <<http://yosemite.epa.gov/opa/admpress.nsf/bd4379a92ceceac8525735900400c27/9e6415ec5260e5c885257a7200669766!OpenDocument>> (“Minister Peter Kent stated that [j]oint stewardship of the Great Lakes – a treasured natural resource, a critical source of drinking water, essential to transportation, and the foundation for billions of dollars in trade, agriculture, recreation and other sectors – is a cornerstone of the Canada-United States relationship”; US EPA Administrator Lisa P. Jackson said that “[p]rotecting cherished water bodies like the Great Lakes is not only about environmental conservation. It’s also about protecting the health of the families – and the economies – of the local communities that depend on those water bodies for so much, everyday.”