

US EPA ARCHIVE DOCUMENT



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'Association canadienne du droit de l'environnement



ITAP Analysis -
Education - Action

Criteria for a Great Lakes Regime:
*Identification and Action for
Substances of Concern*

**Binational Toxics Strategy
Combined Substance and Sector Workgroup
Burlington, ON
June 3, 2008**

Reaffirming the original intent of the BTS as
the mandate of the parties to implement
the intent and obligations of the Great
Lakes Water Quality Agreement,
Annex 12.

The GLWQA specifically mandates the parties to employ practical precautionary methodology, defining precaution as the:

"principle of taking a cautious, environmentally conservative approach to avoid and prevent pollution, according to threats of serious or irreversible damage, even with a lack of full scientific certainty."

International Joint Commission on the Great Lakes Eighth Biennial
Report, 1996, Chapter 3

"The Agreement's principles of virtual elimination and zero discharge are neither impossible nor impractical as long-term goals. . .

Virtual elimination is not a technical measure but a broad policy goal . . .

Zero discharge does *not* mean simply less than detectable. It does *not* mean the use of controls based on best available technology or best management practices that continue to allow some release of persistent toxic substances, even though these may be important steps in reaching the goal.

Zero discharge means no discharge or nil input of persistent toxic substances resulting from human activity. It is a reasonable and achievable expectation for a virtual elimination strategy. The question is no longer *whether* there should be virtual elimination and zero discharge, but *when* and *how* these goals can be achieved." [emphasis added]"

International Joint Commission on the Great Lakes, Eighth Biennial Report, 1996, Chapter 3.

The BTS should establish a consultative process that is participatory, transparent, and accountable.

- The process to engage public stakeholders in the development of a regime within the BTS to identify substances of concern is fragmented.
 - Updates provided, but no structured process between meetings
 - No clear blueprint for how public can review information or proactively contribute to process as activities proceed; no substantive plan to assure comprehensive public engagement

It is critical to identify when, where, and how substantive discussions will be undertaken on each activity, particularly if that activity is identified as feeding into or contributing to overall process of screening.

- Dedicated meetings or conference calls to discuss workgroup activities accessible to broader audience
- Public comment for written responses

Do the existing national toxics programs on which the BTS screening process relies adequately address the range and scope of substances that should be identified and evaluated for action in the Great Lakes?

An Integrated Approach
to
Identifying and Screening
Substances of Concern
in the
Great Lakes Basin

The hierarchy of screening efforts and appropriate action on substances of concern in the Great Lakes should **prioritize hazard over risk in classifying chemicals as targets for action including sunseting and/or substitution.**

Existing data which include historical experience with similar chemicals and chemicals classes, along with laboratory data, should be used to develop hazard profiles to help identify substances for priority action.

The BTS program should also look to other available lists including, but not limited to

- the International Agency for Research on Cancer (IARC)
 - California Proposition 65
 - Canada's Cosmetic Hot list

to identify carcinogens and reproductive and developmental toxicants to assure a more comprehensive scope.

The process for identifying what chemicals will be addressed by the BTS should include all substances that may be relevant to the Great Lakes even if they have been identified by other jurisdictions outside the U.S. and Canada

In order to meet this objective, the process should ensure that the framework for screening substances is *proactive* and *grounded in prevention*.

Substances that display particular hazardous properties and characteristics such as:

- persistence and/or pseudo-persistence (e.g., toxic chemicals used in sufficient quantities to cause elevated levels near release points),
- bioaccumulative potential, and/or act as
- neurodevelopmental toxicants,
- endocrine disruptors,
- carcinogenic, reproductive or developmental toxicants,
- respiratory toxicants, and are
- mutagenic and/or genotoxic

must be priorities for identification and then targeted for the most appropriate level of action.

Screening Protocols which rely on
quantity/volume data
can result in critical omissions
of chemicals to the priority list.

Where inadequate data are available to complete screening chemicals in a timely manner, the policy of "reverse onus" should be employed with responsibility shifted to the producer and user of the chemical to demonstrate that it is *not* hazardous. If this is not possible, *precaution* should be the *default* action.

Reliance on expert judgement must be situated in a framework of precaution in the face of unconfirmed and/or as-yet-unquantified risks.

Evidence of chemicals found in the tissues of wildlife and humans must be given adequate weight in the screening process in addition to existing parameters

These data of detection are
sentinel indicators of exposure.

By the time health effects are reported,
decades of exposure have continued;
the chemicals are more integrated into the
economy and market
and their removal from use and from the
environment is vastly more complicated,
expensive, and difficult.

Recommendations

- Screening to identify substances for action should be completed no later than June, 2010
- Development of action plans to reduce and eliminate substances of concern should be initiated in January, 2010, to mark the completion of screening requirements. These action plans should outline benchmarks for reductions for 2- and 5-year intervals.
- Incorporate the development of substitution plans in action plans with timelines for implementation of safer substitute within 2 years of completion of action plans

- The governments should commit to dedicated financial resources to support and assure completion of technical and policy activities needed by the BTS for implementation of the outcomes of current screening process
- Adequate resources should be dedicated to support public consultation and participation in BTS activities

Implementation efforts
under the current national toxics plans
underpinning the BTS new substances
process must demonstrate
their efficacy in achieving the goals of
zero discharge and virtual elimination
as mandated by the Great Lakes Water
Quality Agreement

- Canadian Environmental Law Association (Fé de Leon)
- Great Lakes United (John Jackson)
- Indiana Toxics Action (Lin Kaatz Chary)
- National Wildlife Federation Great Lakes Office (Michael Murray)