TESTIMONY OF
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BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

21 MAY 2008

Good morning, Madame Chair and Members of the Subcommittee on Water Resources and Environment. I am George Kuper, President of the Council of Great Lakes Industries (CGLI). The Council of Great Lakes Industries represents U.S. and Canadian companies and industries with significant investments, facilities, products, or services in the Great Lakes Region. The CGLI is focused on policies that affect the region, particularly as they support sustainable development. Thank you for providing the Council of Great Lakes Industries with the opportunity to testify regarding the importance of reauthorizing and amending the Great Lakes Legacy Act.

Several years ago, with strong Congressional leadership, environmental, business and civic interests came together to support increased funding to accelerate contaminated sediment cleanups at Areas of Concern (AOCs) around the Great Lakes Region. The result was the Great Lakes Legacy Act of 2002 (GLLA), today one of the most touted Great Lakes Restoration legislative success stories. The GLLA authorized $54 million/year for five years to accelerate cleanups ($50 million/year for projects, $3 million/year for research, and $1 million/year for public information programs) and was successfully administered by the U.S. Environmental Protection Agency, Region 5, Great Lakes National Program Office.

The GLLA has made significant progress in its first five years of operation through its use of cost sharing to encourage public-private partnerships to achieve cleanup goals. The successes of the GLLA need to be continued and expanded for the benefit of the 35 million people who are dependent on the Great Lakes for drinking water, food, transportation, and

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recreation because contaminated sediment can be a continuing source of contaminants to the Great Lakes ecosystem.

In December 2005, the Great Lakes Regional Collaboration, which included Federal agencies, Great Lakes Governors, Great Lakes Mayors, Great Lakes Tribes, members of the Great Lakes States Congressional Delegation – with input from environmental groups, industry, and academia - released its *Great Lakes Regional Collaboration Strategy To Restore And Protect The Great Lakes*. The *Strategy* identified several inefficiencies and impediments to achieving the objective of the GLLA in light of several years of experience under this landmark legislation. Improvements in the reauthorizing legislation are called for to address these and other issues with the GLLA program. Business and civic interests, including the Council of Great Lakes Industries and several environmental non-governmental organizations, propose reauthorization of the GLLA with modifications to the GLLA to make it more effective. Specific inefficiencies and impediments to be addressed include:

(1) the narrow interpretation of certain eligibility criteria applicable to proposed GLLA projects, which is significantly and inappropriately limiting the full range of intended sources of the non-Federal match;

(2) the lack of funds for pilot or demonstration projects using innovative approaches, technologies, and techniques that have the potential to remediate as well as lead to more effective, enhanced, and/or efficient remediation techniques for contaminated sediment;

(3) application of the "Pick and Stick" Federal appropriations rule to categorically block the use of GLLA funds at Superfund sites; and

(4) some well-intended but counter-productive statutory provisions borrowed from other programs that were intended to address dissimilar circumstances.

These inefficiencies and impediments are unnecessary and should be removed in order to restore the strong promise of this important legislation.

1. Eligibility Criteria For The Non-Federal Match

To accelerate cleanups, the GLLA taps into available sources of funds for the non-Federal share of the cost of the cleanup. One major source of funds is parties who are potentially responsible (PRPs) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Congress recognized this and expressly authorized PRPs to serve as the non-Federal sponsor to help fund Great Lakes cleanups. The final rule implementing the GLLA, published in 71 Fed. Reg. 25504 (May 1, 2006), however, severely impedes the participation of PRPs through the rule's scoring system. The scoring system significantly penalizes projects with PRP participation and makes CERCLA sites less likely to receive funding. The net effect of this scoring system, which establishes arbitrary deductions in the scoring for PRP sites, is that the greatest source of potential matching funds for GLLA projects has now been extremely restricted. Correction of this problem is now more important than ever because the extreme budget crises at the State and local government levels are decimating two potential sources of the non-Federal share for GLLA projects.

The result of this scoring system is contrary to the Congressional intent behind the GLLA – accelerating cleanups in Great Lakes AOCs. It will emasculate the GLLA and severely restrict progress in further addressing contaminated sediment in the Great Lakes. Moreover, it is contrary to the multi-stakeholder consensus that was reached in the Fall of 2005 as part of the Great Lakes Regional Collaboration. The Great Lakes Regional Collaboration established legitimate and workable eligibility criteria for PRP participation in GLLA projects:

> The eligibility of PRPs to provide some or all of the non-Federal share of a Legacy Act package should be evaluated on its merits on a site-specific basis, in the context of the concept of "added value." Examples of circumstances where PRP participation in Legacy Act project funding would provide "added value" include, but are not limited to, sites where an "orphan share" exists or where the remedy will be enhanced (such as where the scope -- quality or quantity -- of the remediation is improved, innovative methods are employed or the remediation will be accelerated). *Great Lakes*

Regional Collaboration Strategy to Restore and Protect the Great Lakes, December 2005, p. 38.

The rule, rather than following the "added value" concept proposed by the consensus, arbitrarily penalizes PRP sites, regardless of the value that may be brought by the PRPs. This is especially critical given that in today's fiscal climate, States and municipalities are struggling to find funds to cover day-to-day operations let alone find funds to tee-up much needed, beneficial GLLA projects. As Congress originally recognized, PRPs can provide an excellent source of funds that may be leveraged to jump start projects with orphan shares or projects that bring added value to the AOC.

The consensus criteria for PRP participation should be used instead of the current rule.

2. Pilot or Demonstration Projects

Although specifically intended in the original legislation, no GLLA funds have been used for innovative pilot or demonstration projects that could remediate as well as lead to more effective and/or efficient remediation techniques for contaminated sediment. The lack of willingness to invest in these projects apparently stems from the misconception that these projects are solely research projects. And, because no funds have been appropriated in the research category, these projects could not be funded. The administrator of the GLLA program should be given discretion to award some appropriated GLLA project funds to innovative pilot or demonstration projects.

3. "Pick and Stick" Federal Appropriations Rule

The "Pick and Stick" maintained by the Office of Management and Budget Rule has become a very significant barrier to GLLA projects moving forward at CERCLA sites. The assertion is that once a site is under the CERCLA category, activities in that site cannot be funded out of more than one Federal "pot." In the context of the Legacy Act, GLLA funding has been flatly rejected at CERCLA sites because once the CERCLA appropriation is "picked" it must "stick". For example, at Waukegan Harbor, the fact that it is a former CERCLA site caused significant problems due to the contemplated simultaneous work under CERCLA and GLLA. This would have resulted in either a delay under CERCLA or a delay in the start of the GLLA

project in order to avoid simultaneous use of funds from two separate Federal programs. Delay under either program is antithetical to the express purpose of the GLLA. At some sites, this delay could in effect become a total bar if CERCLA proceedings stall.

The "Pick and Stick" Rule should be removed from the administration of the GLLA as it is a barrier to progress and the use of funds out of both programs simultaneously should be allowed. This will enhance, facilitate, and/or accelerate the recovery of Great Lakes sediment.

4. Administrative Inefficiencies

Finally, the multi-stakeholder consensus from the Great Lakes Regional Collaboration recommended several administrative corrections to enable the GLLA program to function more effectively and efficiently. These corrections include:

A. Dropping the "maintenance of effort" language because it is not appropriate in the context of sediment remediation where costs often vary widely from year to year and where excellent projects are arbitrarily disqualified because expenditures happened to occur in a prior year. For example, if the year prior to the GLLA project involved significant site investigation costs and the GLLA project costs in year one would be lower, the project would be ineligible for GLLA funding. This happened at the Estabrook Site (Milwaukee AOC), where Wisconsin has been caught in the "maintenance of effort" web. Ironically, the maintenance of effort requirement is either going to force a delay in other dredging work to be funded by Wisconsin in the same AOC or force a reduction in the amount of dredging so as not to trigger the "maintenance of effort" provisions under the GLLA. This is an absurd result, which is completely contrary to the express intent of the GLLA to accelerate cleanup.

B. Eliminating the current limitation in the GLLA that requires exclusive Federal agency project implementation because this precludes disbursal of funds to other entities, such as non-Federal contractors. This in turn, can restrict the effective and efficient implementation of remedial work. This is also a serious impediment to effective use of GLLA funding and can either preclude eligibility due to impracticability issues (e.g., multiple contractors) or simply increase project costs,

thereby wasting valuable GLLA funds. For example, the GLLA can pay for the material and supplies for an innovative cap installed by the non-Federal sponsor, but cannot pay for the labor to install the cap. Disbursal to non-Federal contractors is allowed under Water Resources Development Act (WRDA); and, should be permitted under the GLLA.

Reauthorization

As stated by the *Great Lakes Regional Collaboration Strategy to Restore and Protect the Great Lakes* (p. 38), the GLLA should be reauthorized for $154 million/year ($150 million/year for projects, $3 million/year for research, and $1 million/year for public information and participation programs) for an additional five years to continue the progress that is being made at Great Lakes AOCs.

Conclusion

Although the first five years of the GLLA have been successful, the program should be optimized and made more administratively practical in order to achieve its main goal - to accelerate the cleanup of contaminated sediments in Great Lakes AOCs. In addition, the goal of encouraging innovative sediment management approaches and research has been stymied. These issues and obstacles should be addressed so that the goal of the GLLA – accelerated and innovative cleanups of contaminated sediment in Great Lakes AOCs – may be achieved.

While I have focused my comments on the issues of particular interest to industry, we also support other proposed modifications to the GLLA including allowing GLLA funds to be used for restoration of aquatic habitat, prioritizing the use of GLLA funds for remedial projects, and adding a public participation program to the public information component of the GLLA.

In summary, the following changes should be made when reauthorizing the GLLA:

- Affirm the eligibility of PRPs to participate in the non-Federal share utilizing the consensus-based "added value" criteria;
- Provide for the use of project funds for innovative pilot or demonstration projects;

- Address the problem created by the "Pick and Stick" Rule by expressly allowing the use of GLLA funds at CERCLA sites;
- Drop the maintenance of effort requirement;
- Eliminate the current limitation in the GLLA that requires exclusive Federal agency project implementation;
- Allow GLLA funds to be used for restoration of aquatic habitat;
- Prioritizing the use of GLLA funds for remedial projects;
- Add a public participation program to the public information component of the GLLA;
- Increase the authorization to $154 million/year ($150 million/year for projects, $3 million/year for research, and $1 million/year for public information and participation programs); and,
- Reauthorize the GLLA program for five years.

Thank you again for this opportunity to provide you with a summary of industry's experience with a very important program. Industry representatives have been privileged to work with other stakeholders in developing these consensus recommendations for improvement of the GLLA.

This is important legislation. It is so important that diverse stakeholders have come together and worked together over the years to find solutions that benefit the Great Lakes. We appreciate your interest and hope that the program will be continued – and improved – without interruption.

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