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**EDISON ELECTRIC
INSTITUTE**

VIA E-MAIL

September 9, 2005

COMMENTS Great Lakes Regional Collaboration
c/o U.S. Environmental Protection Agency
Great Lakes National Program Office
77 W. Jackson Boulevard (G-17J)
Chicago, Illinois 60604-3511

**Re: Comments on the Great Lakes Regional Collaboration Draft Action Plan
titled, *A Strategy to Restore and Protect the Great Lakes* dated July 2005.**

Dear Great Lakes Regional Collaboration Executive Committee Members:

The Edison Electric Institute (EEI), the Utility Solid Waste Activities Group (USWAG), and the Utility Water Act Group (UWAG) submit the following comments on the Great Lakes Regional Collaboration Draft Action Plan titled, *A Strategy to Restore and Protect the Great Lakes* dated July 2005. Please contact me at 202/508-5641 or Rbozek@eei.org if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads 'C. Richard Bozek'. The signature is written in a cursive, flowing style.

C. Richard Bozek
Director, Environmental Policy

BACKGROUND

EEI is the association of U.S. shareholder-owned electric companies, international affiliates, and industry associates. Our members generate almost 60 percent of all electricity generated by electric companies in the country, and serve approximately 70 percent of all ultimate customers nationwide. EEI's members pride themselves on careful and proactive management of their environmental responsibilities. These efforts yield positive results for the environment, electricity consumers, and shareholders.

USWAG was formed in 1978 and is an informal consortium of approximately 80 utility operating companies, EEI, the National Rural Electric Cooperative Association (NRECA), and the American Public Power Association (APPA). NRECA is the national association of rural electric cooperatives. APPA is the national association of publicly owned electric utilities. Together, USWAG member companies and trade associations represent more than 85% of the total electric generating capacity of the U.S. and service more than 95% of the nation's consumers of electricity. USWAG is responsible for addressing solid and hazardous waste issues on behalf of the utility industry. USWAG's mission is to address the regulation of utility wastes, byproducts and materials in a manner that protects human health and the environment and is consistent with the business needs of its members.

UWAG is an association of 203 individual electric utilities and four national trade associations of electric utilities, the EEI, NRECA, APPA, and the Nuclear Energy Institute (NEI). The individual utility companies operate power plants and other facilities that generate, transmit, and distribute electricity to residential, commercial, industrial, and institutional customers. NEI establishes industry policy on legislative, regulatory, operational, and technical issues affecting the nuclear energy industry on behalf of its member companies, which include the companies that own and operate commercial nuclear power plants in the United States, as well as nuclear plant designers and other organizations involved in the nuclear energy industry. UWAG's purpose is to participate on behalf of its members in EPA's rulemakings under the Clean Water Act (CWA) and in litigation arising from those rulemakings.

EEI's, USWAG's, and UWAG's members (Utility Industry) operate steam electric and hydroelectric generating facilities and these facilities often rely on water drawn from waters of the United States for cooling and other processes ranging from generation through waste disposal and treatment. The Utility Industry also operates electric transmission and distribution systems throughout the Great Lakes basin. As a result, the Utility Industry located in the Great Lakes region stands to be substantially and directly affected by water quantity and quality management initiatives that may result from recommendations adopted as part of the Great Lakes regional collaboration process.

We appreciate the opportunity to comment on this important initiative and remain committed to working with the Great Lakes Regional Collaboration Stakeholders Group throughout the public policy process. We hope that informed comment on this initiative will lead to programmatic improvements resulting in progress toward improving the management of the Great Lakes' basin waters in an effective and efficient manner while doing so in a way consistent with other regional and national policy objectives. The Utility Industry located in the Great Lakes region supports a collaborative dialogue for stakeholders to discuss regional environmental concerns and to help plot a course forward for effective protection of the region's resources. EEI is also a member of the Council of Great Lakes Industries and supports the comments submitted separately by that organization.

SUMMARY

Energy is the lifeblood of our nation's economy. The U.S. economy is highly dependent on affordable and reliable supplies of energy. In fact, economic growth and energy growth follow similar trends. The Great Lakes Regional Collaboration Draft Action Plan titled, *A Strategy to Restore and Protect the Great Lakes* (Strategy) recognizes the importance of the Great Lakes as a vast national and regional resource that supports a wide array of environmental, commercial, and recreational uses. It also notes that numerous multi-governmental and non-governmental stakeholders are presently engaged and have already demonstrated a long history of effectively collaborating on a variety of complex issues facing the Great Lakes. Many of these initiatives have benefited the region. It will be counterproductive if, in an effort to take an informed and focused look at the region's water issues, actions are taken that reinvent existing programs rather than balancing new concerns with existing programs.

A key challenge for the collaboration is how to effectively integrate and prioritize new and ongoing resource management challenges to meet human and ecological needs in a cost effective manner without duplicating or otherwise reinventing existing programs. Ultimately, the task is to take a fresh look at the range of the region's water quality and quantity issues and to identify where common interests are still aligned, where gaps exist in programmatic and funding needs, and where cost-effective changes should be made in programs designed to manage and protect the Great Lakes. To that end, we offer some principles for the Interagency Task Force to consider when balancing the diverse interests of the region and deciding the best way to chart a course that is designed to benefit the economic, environmental, and social needs of the region.

Whatever actions may be taken as a result of the collaboration process, they should not create a disproportionate burden on the electric industry, which lies at the heart of the Great Lakes basin's electric energy supply and economy. Initiatives instituted as a result of the collaboration should be comprised of measures that balance the need for environmental protection with economic prosperity and that support uses by all the Great

Lakes citizens, businesses, and industry. The Utility Industry is committed to assisting the Stakeholders Group in establishing an effective Great Lakes collaboration process that is simple, efficient, and effective.

In May 2004, President Bush issued an Executive Order recognizing the Great Lakes as a "national treasure" and directing EPA to convene a regional collaboration to design and implement a strategy for the restoration, protection, and sustainable use of the Great Lakes. The Utility Industry has participated in the Strategy Teams since their inception. After a six-month intensive process to set priorities, a draft report was released for public comment in July. The process, while not perfect, produced an inventory of issues of concern in each of eight areas. The next phase of the process is prioritizing those issues and deciding what actions may be warranted. This will be the more difficult and critical step. The following remarks are intended to help guide the decisionmaking and prioritization process.

- The draft recommendations were developed through an inclusive process aimed at achieving the broadest consensus possible. In contrast, the appendices attached by some of the Strategy Teams introduce issues, recommended actions, and detailed goals that do not represent the consensus of the Strategy Teams. Many teams assembled these appendices simply as a means to record discussions. Therefore, only the formal recommendations made in the body of the report should be considered by the Great Lakes Regional Collaboration Stakeholders Group and the Interagency Task Force. This is particularly important if the process is to remain focused and maintain the collaborative nature of the initiative.
- The Great Lakes Regional Collaboration Stakeholders Group and the Interagency Task Force should incorporate accepted risk-based decision principles, scientifically sound analytical approaches, and a results-oriented policy when deciding how best to address new and existing challenges in the region. The objective should remain to integrate existing programs with collaboration recommendations.

In addition, the Utility Industry submits the following perspective on three specific issues discussed in the Strategy.

1. MERCURY

On May 18, 2005, EPA published the Clean Air Mercury Rule (CAMR) – the first-ever federal rule to permanently cap and reduce mercury emissions from power plants. This rule makes the United States the first country in the world to regulate mercury emissions from coal-based power plants. The Utility Industry believes that CAMR represents a

common-sense approach to reducing mercury emissions from the electric utility sector and is the appropriate policy that should be adopted in the final Great Lakes Regional Collaboration Action Plan.

CAMR sets stringent control requirements and utilizes a market-based cap-and-trade approach under Section 111 of the Clean Air Act (CAA) to reduce mercury emissions from coal-based power plants in two phases. The rule sets a first-phase cap of 38 tons that is effective in 2010, and a second-phase cap of 15 tons in 2018, for a total reduction of 70 percent from current levels. The rule went into effect on July 18, 2005.

CAMR is designed to work in tandem with the Clean Air Interstate Rule (CAIR) – issued on March 10, 2005, to reduce sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions from electric power generators in 28 eastern states and the District of Columbia – to reduce utility-attributable mercury deposition throughout the United States. EPA issued the two rules as an integrated regulatory plan to cost-effectively reduce SO₂, NO_x and mercury emissions from the utility sector.

CAMR's first-phase emissions cap of 38 tons in 2010 will be met primarily through the use of air pollution control technologies used to reduce NO_x and SO₂ emissions; the so-called "co-benefits" approach. Compliance with CAMR's second-phase cap of 15 tons will require significant effort for coal-based power plants, including the development and installation of mercury-specific control technologies.

CAMR's two-phased approach is vital to ensuring a robust market for the development of new control technologies. The second-phase deadline of 2018 allows time for continued development, installation, and demonstration of new mercury-control technologies. Much of this work, already in the planning and design stages, will be accomplished through industry and government cooperation. This 13-year window also will help to ensure that the most promising technologies are commercially deployed with little impact on the reliability and security of the electric grid in the United States.

Under the rule, each state is subject to a mercury emission budget, as determined by EPA. States then allocate emission allowances to utilities within their borders, with each allowance being equal to one ounce of mercury emitted. The CAMR cap-and-trade program allows power plants that reduce more emissions than required to sell excess allowances to companies for which cutting emissions is not as cost-effective.

This approach, similar to the successful emissions trading program adopted in the 1990 Clean Air Act Amendments to reduce acid rain, encourages deep reductions in mercury emissions where they are the most cost-effective, reducing costs to consumers while ensuring environmental protection and compliance throughout the nation.

CAMR reflects nearly 15 years of deliberation, culminating in a four-year rulemaking. The scientific record underlying the final rule is the most detailed of any rulemaking undertaken under this section of the Clean Air Act. CAMR's cap-and-trade program also creates incentives for continued development and testing of promising mercury-control technologies that are efficient and effective, and that could later be used in other parts of the world. EPA believes that the cap-and-trade approach of both CAMR and CAIR is the best regulatory action to reduce mercury emissions from coal-based power plants and to effectively minimize utility-contributed mercury to the environment.

In addressing mercury contributions to the Great Lakes basin, the draft report puts undue emphasis on coal-fired electric utility air emissions of mercury. In addition, the draft report fails to reflect the substantial reductions in those emissions that already have been achieved under federal and state clean air programs and the further reductions that will be achieved under CAMR and CAIR.

The draft report characterizes coal-fired electric utilities as the largest remaining domestic source of mercury emissions (page 36, closing bullet). But in fact, air emissions are only one source of mercury contributions to water in the Great Lakes basin. According to EPA, approximately 144 tons of mercury are deposited throughout the United States per year from all sources. This includes natural, man-made, international and domestic sources – including emissions from U.S. electric utilities. Of these 144 tons, only 11.1 tons – or 7.8 percent – come from U.S. utilities. EPA estimates that after the Clean Air Mercury Rule and CAIR are fully implemented, only 3.4 tons of mercury will be deposited by U.S. utilities. The draft report should reflect this.

Furthermore, though the draft report mentions CAMR and a few of its benefits, the report does so only in passing in a brief footnote that does not sufficiently reflect the rule and its benefits (page 35, footnote 30). In fact, CAMR and CAIR require substantial further reductions in mercury emissions from coal-based electricity generating facilities throughout the country. As noted earlier, the rules were carefully developed by EPA following years of careful research into and analysis of mercury's health effects, sources, fate, transport, and control technology. Moreover, CAMR and CAIR are aggressive rules, requiring significant reductions in mercury emissions in the coming decade at a cost that EPA has said will exceed by several times the anticipated benefits of the rules.

The Utility Industry believes CAMR offers the most effective way to address state and local concerns about mercury. CAMR's cap-and-trade program is an efficient and flexible approach for states. Adoption by the Great Lakes' states of the federal program will minimize interstate conflicts and create a consistent regulatory framework for states and regulated sources, which will reduce impacts on related state resources. Ultimately, this flexibility translates to a low-cost option for the states' electric consumers – households, small businesses, and industry – while achieving significant reductions in

mercury emissions and deposition. We encourage the Great Lakes Regional Collaboration Stakeholders Group and the Interagency Task Force to work with EPA and the industry in implementing these new rules.

2. PCBs

The draft report states a goal of eliminating the discharge of persistent toxic substances, including polychlorinated biphenyls (PCBs). The Utility Industry is engaged in an effort to reduce the use of PCB-containing electrical equipment.

The Great Lakes Binational Toxics Strategy 2004 Progress Report (http://binational.net/bns/2004/2004glbts_05.pdf) discusses the wide range of voluntary PCB reduction efforts within the Great Lakes basin and in other regions of the country. The Utility Industry has implemented efforts to ensure that virtually all equipment containing PCBs in concentrations ≥ 50 ppm ("PCB-contaminated") identified during repair/servicing are disposed and/or retrofilled and not returned to service as PCB-regulated equipment. These reduction efforts, combined with voluntary retrofit/reclassification programs, are resulting in the continued reduction of PCB-containing equipment from utility inventories across the country. This continuing progress underscores the determined efforts of the Utility Industry to systematically remove PCB-containing equipment from their operating systems. In addition to the systematic retirement of PCB-containing equipment identified during repair/servicing, the Utility Industry also undertakes, where practical, dedicated efforts to identify and remove PCB-containing equipment from service.

The Toxic Substance Section of the report includes a milestone of "full phase-out of all PCB equipment in the basin" by 2025 (see Interim Milestones, Goals 1 – 4, pg. 35). This milestone should be revised as follows:

"By 2025, reduce the use of PCB equipment in the basin consistent with the Stockholm Convention on Persistent Organic Pollutants;"

This revision will clarify both the goal and milestone, making it explicitly consistent with the recommendations referencing the Stockholm Convention that follow on page 37.

3. HYDROMODIFICATION

At various places in the draft report, in particular in several of its appendices, there is some discussion of issues associated with dams and other forms of hydromodification. On the one hand, for example, the draft report recognizes that dams and other facilities can help prevent the spread of invasive species (see rationale for enacting measures that ensure the region's waterways are not a vector for aquatic invasive species on p.11). On

the other, the draft report calls for restoring or emulating natural river flows (see riverine and riparian long term goals on p. 17).

From the Utility Industry perspective, it is important to note that dams provide multiple societal and environmental benefits. In particular, they provide hydroelectric power – one of our oldest and best-developed sources of clean, domestic, renewable electric energy. In addition, they provide drinking water, flood control, wetlands, fish and wildlife habitat, and recreation. The draft report should reflect that dams and other hydromodifications have been built specifically because they do provide such important benefits.

As to hydroelectric power, dams are particularly important because they help meet peak electricity needs, avoiding the need to build and run additional fossil-fuel generating plants. They also help maintain electric system reliability by enabling utilities to respond quickly to stresses on the system and to restart the system in the event of outages. As to flood control, dams help smooth runoff from significant precipitation and snowmelt events, reducing the impact of floods that would otherwise cause damage to habitat and property in a watershed. The draft report should recognize such benefits and ensure that they are fully considered before calling for rivers to be restored to natural flow regimes.

In addition, most of the nation's non-federal hydropower dams are licensed by the Federal Energy Regulatory Commission (FERC), undergoing an extensive licensing process that carefully weighs and balances the social and environmental benefits and effects associated with the projects. The draft report should recognize that such dams are within the purview of FERC, which already fully addresses these issues with substantial input by state and federal agencies, interest groups, and the public.

4. DECISION MAKING PRINCIPLES

Each of the eight Strategy Teams developed a list of actions for inclusion in the final strategy. While the direct cost of implementing these actions is included in most cases, there is no indication that these resources are available. The draft Action Plan recognizes that these resources may not be available to carry out the proposed actions, but it does not indicate how policymakers will allocate what resources are available between proposed actions.

The Utility Industry does not have specific suggestions regarding which actions to fund first. However, there are a few general principles that should guide such decisions.

First, if a program is in place that addresses a recommendation, it may be appropriate to assess whether that program has provided the expected or appropriate results. If so,

unless that program needs additional resources, new resources may be better allocated to another newly identified need rather than attempting to re-engineer the existing program.

Second, actions with measurable results should be favored over those with speculative or unmeasurable results. Given constraints on available resources, it makes sense to spend time and money in those areas where we can judge the effectiveness of the expenditure of resources. This may shift spending in the short-term toward measurement and assessment to ensure that future resources are spent most cost-effectively.

Ideally, decisionmakers will have information (such as monetized value) that allows programs in different areas – say, reduction of invasive species and toxic substance reduction – to be compared against each other to determine which represents the best expenditure of limited resources. In other words, given good enough information, resources should go to those projects that maximize net benefits to society. However, at the very least, decisionmakers must have quantifiable information on the expected results of various actions to allow for meaningful prioritization among actions aimed at achieving the same outcome. Resources should be used in the most cost-effective manner.

Third, decisionmakers must resist the temptation to view private – that is, non-government – resources as free. Actions should be evaluated based on the results they will achieve and the cost to society of achieving those results. Whether the resources necessary to implement an action come out of government coffers or private sector resources, they remain costs to society. As a result, the origin of resources should not influence the priority of pursuing a particular action.

In drafting the final Strategy, the authors should also take care to avoid goals and actions that are expressed as absolutes, where possible. History has shown repeatedly that goals such as “eliminate any” and “avoid all” limit a decisionmaker’s ability to make reasonable policy tradeoffs between programs where resources are limited. As a rule, eliminating or avoiding the last one of anything becomes prohibitively expensive and can lead to a diversion of resources away from actions with less lofty goals but greater net benefits to society.

Finally, it is crucial that risk-based decisionmaking principles, such as weighing the information known about an issue with the likelihood of impact and probability of success, be incorporated in prioritizing recommended actions. Applying scientifically sound analytical methods to the assessment of an issue is the starting point for good environmental public policy decisionmaking.

CONCLUSIONS

We are encouraged that the Collaboration specifically acknowledges existing regulations, efforts and programs (*e.g.*, The Clean Air Mercury Rule and the Stockholm Convention on Persistent Organic Pollutants) that will control substances of concern. It is imperative that the Collaboration rely on such programs, policies, regulations, etc., in lieu of developing and implementing additional programs and efforts. It would be a waste of resources – governmental agencies' and the regulated community's – to develop, implement and comply with new efforts, in essence re-inventing the wheel and superceding recognized efforts/programs/regulations. The Utility Industry remains committed to participating in the regional collaboration process in order to create a sustainable approach promoting the use and protection of the Great Lakes.