

Great Lakes Regulation: A view from Ontario

Dianne Saxe, PhD

October 29, 2015



Caveats

My opinion only

Not speaking (yet) for the Environmental
Commissioner of Ontario

Not legal advice



Overview

The Great Lakes matter more in Ontario

Some federal laws:

- Fisheries Act
- International Agreements

Some provincial laws:

- Ontario Water Resources Act
- Safe Drinking Water Act
- Clean Water Act

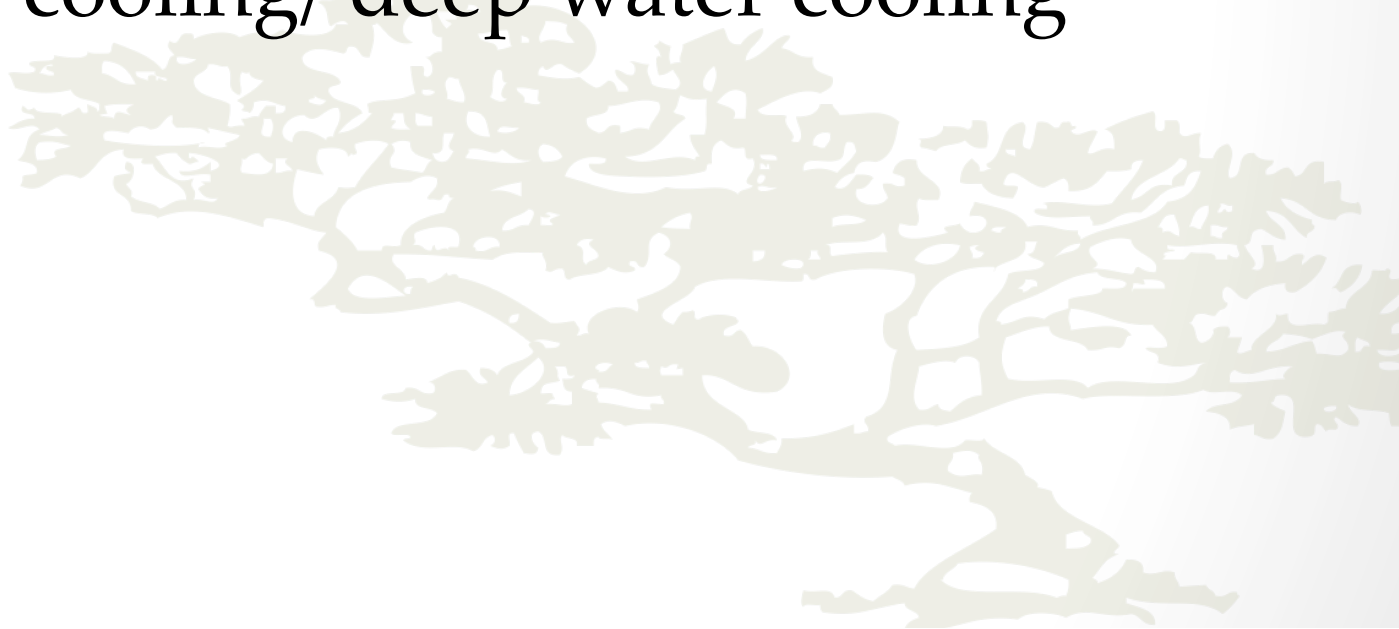


and our shiny new law

Great Lakes Protection Act

Plus: new industrial lake uses

- Offshore wind farms
- Geothermal/geo cooling/ deep water cooling
- Pipelines



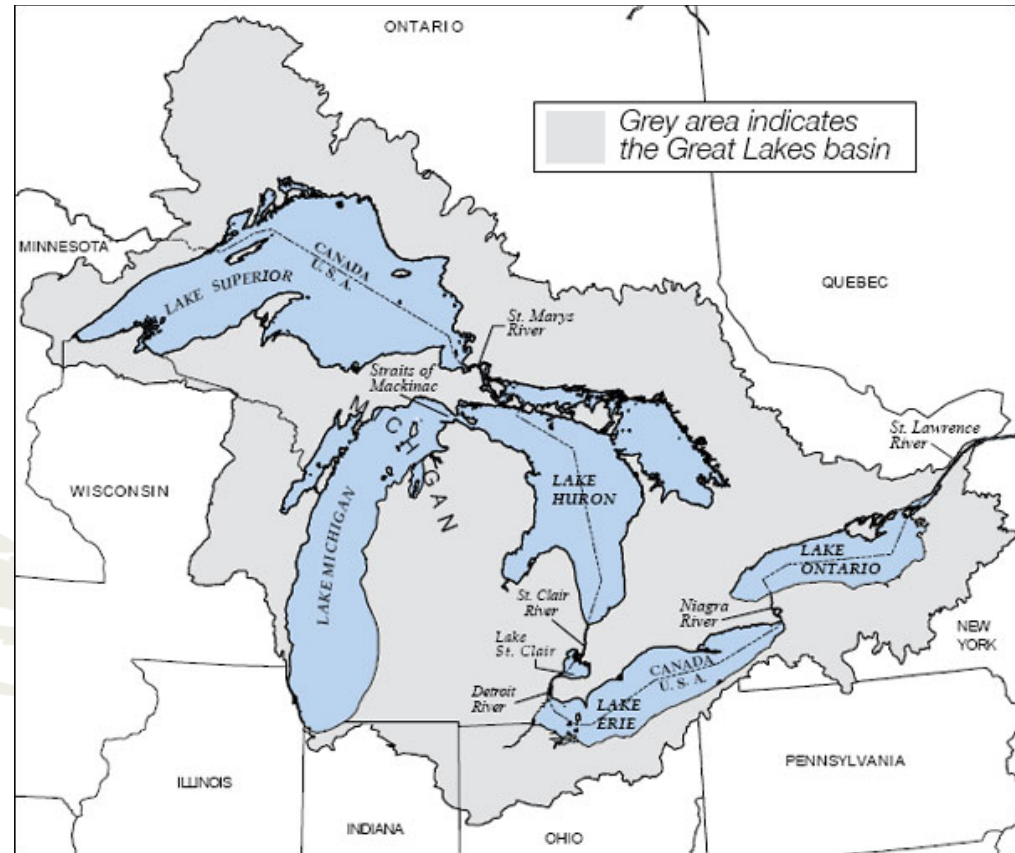
Role of the Great Lakes in Ontario

Four of five in
Ontario

Provide drinking
water for 80% of
population

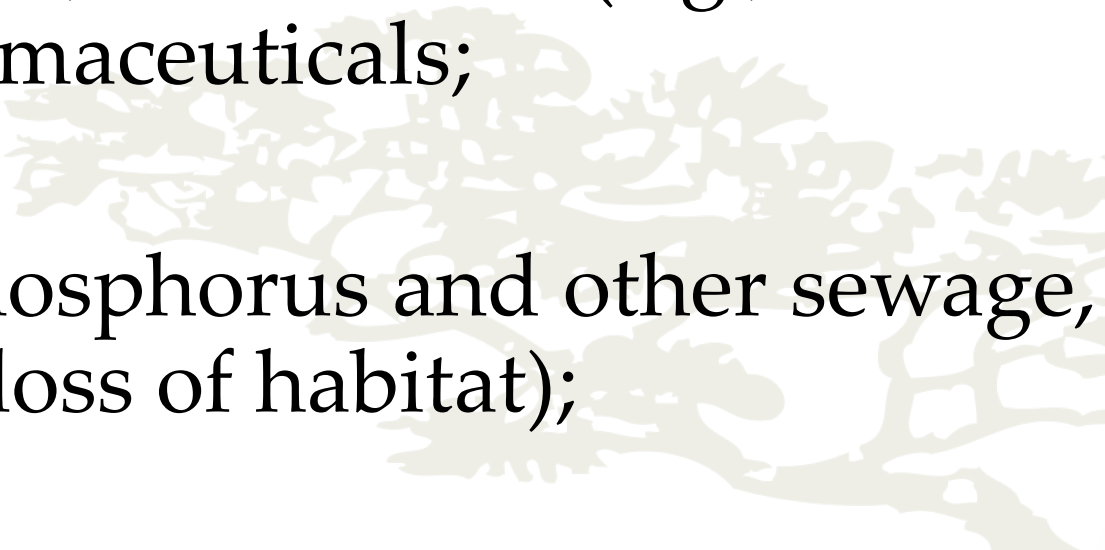
Our front door

Industry,
agriculture,
tourism, recreation



Ongoing Pressures

Ontario, Erie and Huron in decline;
air pollutant deposition;
nitrate levels, leading to algae blooms;
mercury and PCBs, other toxics (e.g., flame
retardants), pharmaceuticals;
invasive species;
development (phosphorus and other sewage,
water demands, loss of habitat);
climate change



Division of Powers

Constitution of Canada

Section 91 (federal):

- Sea coast and inland fisheries

Section 92 (provincial):

- Non-renewable and natural resources



fisheries Act

Regulates management of fisheries across
Canada

S. 35(1):

no work, undertaking or activity resulting in serious harm to fish
that are part of a commercial, recreational or Aboriginal fishery

S. 35(2):

such work, undertaking or activity requires a permit or
exemption through regulation

fisheries Act

Department of Fisheries and Oceans powers
of inspection, search, seizure, arrest

Significant fines and/or imprisonment

Recreational and aboriginal fisheries

Great Lakes commercial fisheries are down

- overharvest, habitat degradation, pollution,
species invasions

International Agreements

Exclusive Federal jurisdiction over international relations and treaty-making

All of Canada's Great Lakes share a border with the US

Great Lakes Water Quality Agreement (1972) :

- identifies shared priorities and coordinates international activities aimed at restoring and protecting the Great Lakes.

Great Lakes Fisheries Convention (1950s) :

- established the Great Lakes Fishery Commission, which largely coordinates cross-border research efforts.

Boundary Waters Treaty (1909):

- International Joint Commission mediates transboundary water disputes

provincial laws include

Ontario Water Resources Act, RSO 1990, c O.40

Ontario Safe Drinking Water Act, SO 2002, c 32

Clean Water Act, SO 2002, c 22

Great Lakes Protection Act (awaiting royal
assent)

Ministry of the Environment and Climate
Change (“MOECC”)

Ontario Water Resources Act

General prohibition against discharging
polluting material in or near water (s 30)

MOECC can issue orders (prevention,
reduction, alleviation of the impairment of
water quality) (S. 32)

Permit to take water for takings over 50,000 L/
day (s 34)

Permit to drill, construct wells (ss 36-50)

Ontario Water Resources Act

duty on corporate officers and directors to
“take all reasonable care to prevent”
contravention (s.116)

Fines, restitution, imprisonment

Applicable to individuals, corporations

Administrative Penalties for “regulated
persons”

Safe Drinking Water Act

Response to tragedy:

- E. Coli contaminated municipal drinking water in Walkerton, Ontario in 2000
- 7 dead, many sickened



Safe Drinking Water Act

Approvals required for municipal drinking water systems (s 31(1))

High standard of care (s 19)

Operators trained and certified (s 11(1) 3; s 12(1))

Standards for drinking water testing (s 11(1), O Reg 169/03)

By licensed, accredited labs (Part VII)

Clean Water Act

Also part of the response to Walkerton

Protection of drinking water

Complex, watershed-based “source water protection” approach that prevents contaminants from entering drinking water sources

Promotes locally led approaches to protecting source water

Clean Water Act

“Source Water Plans”:

- Local “Source Protection Committees”
 - assess threats to local drinking water sources
 - set out a plan for reducing/ eliminating these threats

Integration with existing Great Lakes
regulatory/ legal framework

Slow implementation, but all plans set to be
approved by MOECC by end of 2015

policies, plans, agreements

Canada-Ontario Agreement Respecting the
Great Lakes Basin Ecosystem 2002

Great Lakes Charter (ON, QC and several
states)



Great Lakes Protection Act

Two previous unsuccessful attempts

Carried on third reading, October 7, 2015

Comes into force upon royal assent

Is the optimism justified?



Great Lakes Protection Act

Purposes:

- to “protect and restore the ecological health of the Great Lakes-St. Lawrence River Basin” and
 - Plus a series of “included” purposes
- “create opportunities” for stakeholder participation



Great Lakes Protection Act

Key Features:

Heavy emphasis on public consultation and engagement

Huge multi-stakeholder Guardians' Council

Great Lakes Strategy

- To be updated in 2018 and every 6 years

Progress reports

Targets and Initiatives

Mandatory targets and plans for algae blooms, wetland destruction

“Geographically-focused initiatives”

- Proposals developed by public bodies
- Extensive multi-stage consultation with stakeholders (includes First Nations, environmental groups, nearby states and municipalities)
- Minister’s then Cabinet approval
- Override other laws if more protective of the Great Lakes.

How much will the new law help?

Depends how it's used...



New Industrial Uses?

In addition to all the challenges already facing the Great Lakes:

- Wind?
- HVAC?
- Pipelines?



New industrial uses– Wind?

Interest in offshore wind farms in the Great Lakes:

- Ontario's geography
- attractive feed-in tariff system created under the *Green Energy Act, 2009*

Momentum halted in 2011 by moratorium

Trillium Power Wind Corporation lawsuit

- in the midst of a long and expensive process of obtaining approvals for an offshore wind farm in Lake Ontario
- \$26 million financing deal immanent
- Suit dismissed.

MOECC in September 2014 seeking proposals for noise impacts study

- Will the moratorium eventually be lifted?

New industrial uses– HVAC?

Geothermal/geo cooling/ deep water cooling

- Small scale geothermal energy systems (open-loop, closed-loop) increasingly popular clean energy option in Ontario
- Enwave's Deep Lake Water Cooling
 - in operation since 2004
 - provides cooling to about 100 downtown Toronto buildings.
 - uses the natural cold of the deep water of the Great Lakes
- Although there is interest in exploring additional, or larger scale, projects in the Great Lakes, the regulatory steps required to get there somewhat unclear.

New industrial uses– Pipelines?

- the Great Lakes could become a major corridor for transportation of Canadian crude oil
- region now provides passage for shipment of petroleum products (little crude)
- Much of this expansion contemplated on the US side, but additional infrastructure would link up to that in in the Great Lakes region of ON and QC
- BUT, recent expansion efforts meeting opposition
- Pipeline expansion brings potential for harm to environment and local communities and faces inter-jurisdictional regulatory hurdles.

Sign up for our popular blog

Saxe Law Office

720 Bathurst Street, Suite 204

Toronto, Ontario M5S 2R4

Tel: 416 962 5009 / 416 962 5882

Fax: 416 962 8817

admin@envirolaw.com

envirolaw.com

