

**TOWARD STRENGTHENED GREAT LAKES POLLUTION PREVENTION**  
*A Critical Evaluation of the International Joint Commission*

(ELI #931200)

With funding from the Joyce Foundation, the Environmental Law Institute is now undertaking an in-depth study of the International Joint Commission (IJC) to determine how the IJC can most successfully address the unique environmental challenges presented by present and potential pollution of the Great Lakes. The study will identify the major strengths and weaknesses in the existing structure and functions of the IJC, and will present options for promoting the more effective operation of the IJC within its current structure. In addition, the study will develop options for modifying the IJC's structure and authority in order to strengthen its capacity to advance concrete environmental protection goals in the Great Lakes region. Finally, the study will inform current efforts to develop a trilateral institution addressing North American environmental priorities.

The International Joint Commission (IJC) has commanded global recognition as a leading bilateral institution for the coordination of national and sub-national environmental laws and policies. To its credit, the IJC has conducted some very notable and comprehensive surveys of boundary water pollution problems, and has played a catalytic role in the development and amendment of the Great Lakes Water Quality Agreements of 1972 and 1978. Yet serious questions arise regarding the IJC's track record in translating these agreements into effective programs within either of the two affected nations.

The pollution control achievement for which IJC officials most confidently claim credit is the reduction of phosphate levels in the Great Lakes beginning in the 1970s. While some important gains have been made in this area, the IJC's role must be viewed within the broader context of mounting environmental awareness and growing public and citizen group pressure on national, provincial, and state governments to take strong remedial action addressing the phosphate problem. Certainly the IJC helped raise the visibility of this issue, but many have questioned its actual contribution to addressing the much tougher challenge of developing and ensuring the vigorous implementation and enforcement of phosphate reduction laws in the states and provinces where the problem originated.

More revealing of the IJC's relative ineffectuality in advancing urgent, identified environmental priorities is the Commission's lack of a clear strategy or mandate to fulfill the "zero discharge" goal for persistent toxic substances set forth in the Water Quality Agreement of 1978. In the decade and a half since the signing of that agreement, progress toward this admittedly ambitious goal has been negligible, in part due to the IJC's failure to develop and build public support for concrete measures that could be taken to give it practical effect. When amendments to the Great Lakes Water Quality Agreement were negotiated in 1988, progress in addressing toxics reduction resulted substantially from the public education efforts and determined lobbying of Great Lakes United and other non-governmental organizations dedicated to advancing an ecosystemic approach to Great Lakes environmental protection.

An examination of the IJC's past performance and future potential is of particular significance now. The heightened demand for North American environmental cooperation that has arisen during the North American Free Trade Agreement (NAFTA) negotiations requires a better understanding of the strengths and weaknesses of existing regional mechanisms which purport to address, and satisfactorily resolve, international environmental disputes within the region. A fundamental reassessment of the role of institutions such as the U.S.-Canada International Joint Commission is crucial to understanding how proposed trilateral mechanisms can be structured and implemented to avoid some of the pitfalls that have hampered the effectiveness of past North American pollution control and pollution prevention efforts.

In developing practical proposals for strengthening the IJC's environmental protection capabilities, the ELI research project will focus substantially on the relationship between the IJC and key constituencies in the United States and Canada, both within government agencies at the national, regional and local levels and in the non-governmental sector. ELI will conduct its research in close consultation with leading environmental attorneys and policymakers from Canada and the United States, as well as Mexico.