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Legal Tools for International Environmental Protection

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The Stakes for Mexico

- Global environmental issues affect Mexico
- Regulatory programs have international components
 - Air: ozone-depleting substances, long-range transport of air pollutants, climate change
 - Water: Ocean pollution
 - Waste: Notification process and controls on trans-boundary movements of hazardous waste
- Pollution Does Not Respect Borders
 - U.S. has two of the world's longest borders
 - Pollution flows in both directions at both borders

Range of International Instruments Includes:

- Treaties
 - Environmental Treaties
 - Trade Treaties with Environmental Impacts / Provisions
- Non-binding instruments
- Partnerships

International Law Framework

- Environmental Treaties

- The United States plays a significant role in implementation of environmental treaties, such as:

- Montreal Protocol on ozone-depleting substances
 - London Convention on ocean dumping
 - MARPOL Convention on pollution from ships
 - Convention on Long Range Transport of Air Pollutants
 - Great Lakes Water Quality Agreement
 - La Paz Agreement (U.S.–Mexico)
 - North American Agreement on Environmental Cooperation
 - Stockholm Convention on Persistent Organic Pollutants (POPs) and Rotterdam Convention on Prior Informed Consent (PIC)

Some Current Treaty Issues

- Border Issues
 - Great Lakes
 - Commission for Environmental Cooperation
- Global Issues
 - Mercury
 - CO2 sequestration at sea
 - Ship recycling
 - Climate Change
- Trade and environment
 - Trade litigation involving environment
 - Environmental obligations in trade treaties

Great Lakes Region

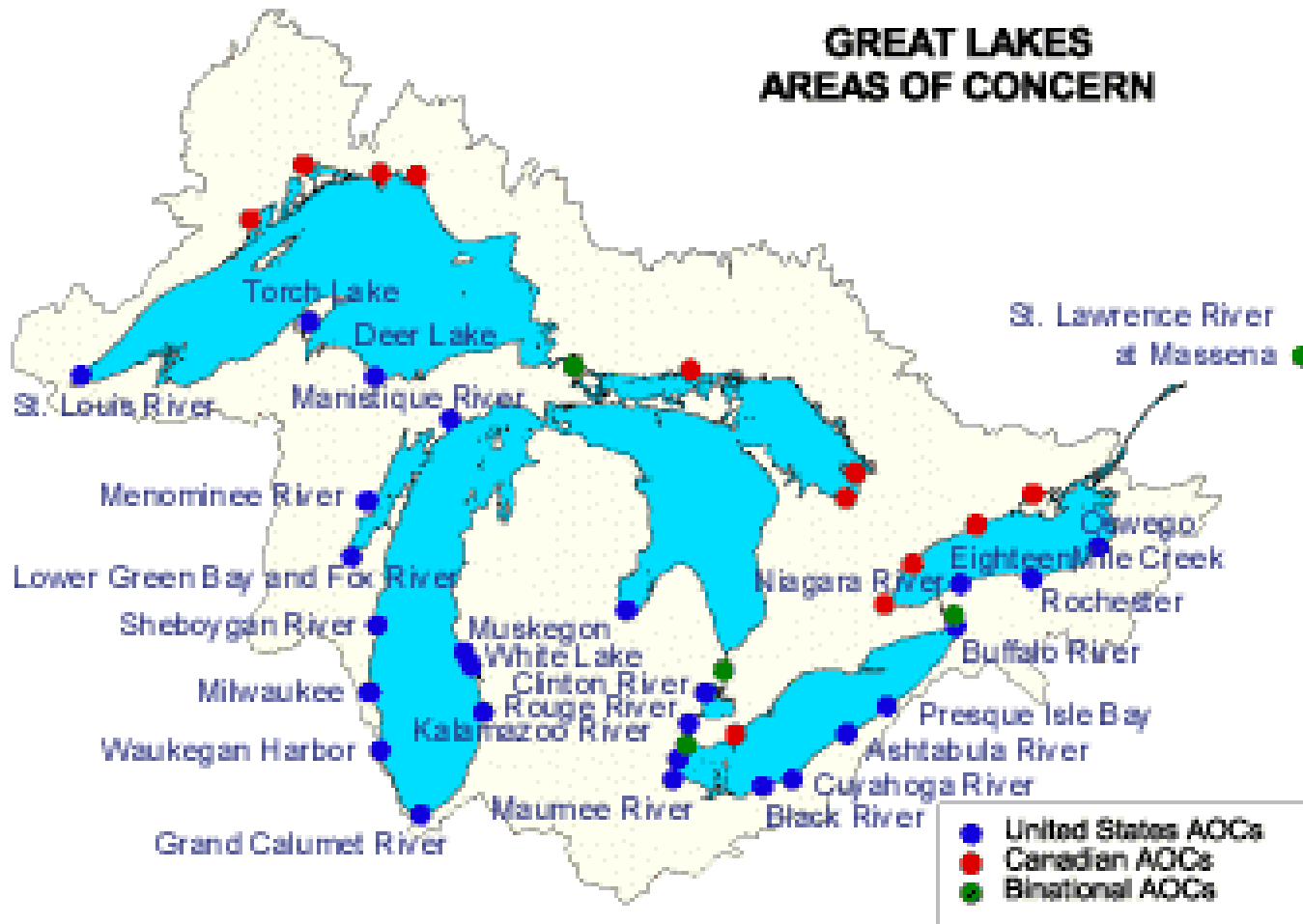


Great Lakes Water Quality Agreement

- United States EPA and State governments are working with Canada and its provincial governments to address the most severely polluted areas in Great Lakes Basin

Great Lakes

GREAT LAKES AREAS OF CONCERN



London Convention

- Sequestration of CO₂ in sub-seabed geological formations is a promising new technology
- Would such sequestration constitute “dumping” under the London Convention?
- Parties amended 1996 Protocol to London Convention to allow issuance of permits for sequestration of CO₂ in sub-seabed geological formations.

Ship Recycling

- Increasing recognition of risks of ship recycling (asbestos, PCBs, dangerous workplace practices)
- Countries are undertaking negotiations through the IMO of legally binding ship recycling regulations that would address ship design as well as operation of recycling facilities
- To ensure safe and environmentally sound ship recycling and establish appropriate enforcement mechanisms









Climate Change

- In recent years, climate change has taken the stage as a lead international environmental issue at Kyoto and Copenhagen.
- While Kyoto Protocol resulted in multinational binding obligations, successor has not be adopted.
- Some regions are attempting to impose climate change controls unilaterally, such as EU ETS imposition of GHG tariffs on international aircrafts.

What's At Stake in Trade Treaties

- U.S. trade treaties include obligations which can affect EPA's domestic programs
- U.S. trade treaties also include environmental provisions pursuant to U.S. negotiating objectives as defined in 2002 Trade Act



Avoiding Trade and Environment Conflicts

- The WTO, in its first case found EPA regulations to violate WTO requirements (EPA revised the rule to comply (Reformulated Gasoline, 1994))
- U.S. successfully defended California ban on MTBE in gasoline to protect groundwater when Canadian investor brought NAFTA expropriation claim (Methanex 2006)
- U.S. successfully challenged EU moratorium on agricultural biotech products, supporting the principle that such regulations must be science-based (EU Biotech, 2006).

Advancing Environmental Protection in Trade Treaties

- Trade Act (2002) sets US trade negotiating objectives, which include:
 - High levels of environmental protection
 - Effective enforcement of environmental laws, and
 - Strengthening the capacity of US trade partners to protect the environment.
- Recent US Free Trade Agreements include these provisions
 - Agreements with Central America/Dominican Republic, Chile, Colombia, Peru, Bahrain, Jordan, Oman, United Arab Emirates, Morocco, Australia, and Singapore
 - Negotiating Agreements with Korea and Malaysia

Trade-Related Environmental Cooperation

- Many FTA partners are still developing environmental law and enforcement frameworks
- State Dept. and USTR have asked EPA to help develop this capacity pursuant to Trade Act and FTA obligations
- U.S. offers assistance in a targeted and efficient manner
 - Seeks to maximize efficiency by often working in partnership with others, including
 - Environmental Law Institute
 - International Network for Environmental Compliance and Enforcement
 - American Bar Association
 - Smithsonian Institution.

Non-binding Instruments

- Include:
 - Rio Declaration (1992)
 - Agenda 21 (1992)
 - WSSD Plan of Implementation (2002)
- Advanced task of integrating *environment* and *development*.

Trend Towards Focusing on Actions & Results

1992 Rio Summit:

Focus on Negotiating Treaties and
Declarations

2002 WSSD:

Focus on Implementing Partnerships

Now

Focus on Implementing Partnerships *and*
Measuring results

Emphasis on being able to show what results the
partnerships have produced

US-Mexico Border:



U.S. Leadership in Global Environmental Partnerships

- Partnership for Clean Fuels & Vehicles
- Global Partnerships for Mercury Reductions
- Methane to Markets

Global Partnerships for Mercury Reduction

- Goal: Reduce mercury consumption and emissions
- Focus sectors:
 - Coal Combustion
 - Chlor-alkali Production
 - Artisanal Gold Mining
 - Mercury-containing Products

These sectors together account for about 80% of total anthropogenic mercury emissions

How do we achieve success in Partnerships?

- Clear, quantifiable, and achievable goals
- Clear communication and transparency
- Credible & Measurable Results

Evaluating Partnerships

- On-the-ground environmental results?
- Quantifiable measures?
- Sharing information and reporting on these measures?
- Is there an outside evaluation of the Partnership?



Conclusion

- Environmental problems do not respect borders and can even be global, requiring an international focus
- We address these problems through a variety of mechanisms, including treaties, non-binding instruments and programs, and other forms of int'l cooperation such as partnerships