



Date: June 8, 2023

To: Members of the Michigan House Natural Resources, Environment, Tourism, and Outdoor Recreation Committee

From: Ethan Petzold and Logan Vorce, Michigan League of Conservation Voters

Re: Support SB 14; Repeal of 'No Stricter Than Federal'

Chairwoman Pohutsky and Members of the House Natural Resources, Environment, Tourism, and Outdoor Recreation Committee:

Thank you for the opportunity to express our support for Senate Bill 14. This legislation would repeal PA 602 of 2018 which stifles Michigan's ability to set unique, best-fit standards to protect our environment and the health of Michiganders by barring state agencies from adopting environmental protections that are stronger than parallel federal standards.

The only exceptions include if the Director of an agency could demonstrate that there was "clear and convincing" need or "emergency rule." The clear and convincing evidence standard is used in U.S. courts, many jurisdictions do not have a clear definition of the term and judges have interpreted it in a variety of different ways. Unlike the evidentiary level of the "preponderance of the evidence" or "beyond a reasonable doubt" where there are clear numerical estimates for the amount of evidence needed, there's no similar numerical estimate for the "clear and convincing evidence" standard.

End the one-size-fits-all approach; Michigan is a special place

Michigan is a special place with unparalleled natural resources. Our Great Lakes hold 20% of the world's fresh water supply and our 3,288 miles of freshwater coastline are the longest in the world with globally unique ecosystems.

Instead of giving state agencies the flexibility they need to develop a regulatory structure that fits Michigan's unique attributes, our current law defers critical decisions about the protection of our natural resources and public health to the federal government. In fact, federal standards are often developed to be a floor, not a ceiling. They do not account for the unique attributes or needs of individual states. Flexibility in agency rulemaking is an essential governance tool.

Regulating in response mode → An ounce of prevention is worth a pound of cure. Michigan's regulators need the authority and confidence bestowed on them by the legislature to be more proactive in protecting our environment and quality of life. Under current law when a parallel federal standard exists, agencies may not update Michigan's standards to address emerging issues or stave off future issues.

Michigan's PFAS Drinking Water Standard

Michigan was able to develop our current drinking water MCL's based on a deep review of the latest science because NO parallel federal standard existed. If a federal standard had existed, it would have been the ceiling



- whether or not it reflected the latest and best science. Likewise, elements of the high quality work by MPART prioritizing PFAS sites and issues, and the regulatory authority to quickly and efficiently address the presence of PFAS in Michigan's waste and drinking water supplies would not exist.

Michigan's Lead and Copper Rule would not have been possible under "No Stricter"

The lead action level of 15 parts per billion (ppb) remains in effect through December 31, 2024. The new lead action level of 12 ppb will take effect January 1, 2025. Lead and copper 90th percentiles are now calculated using highest lead and highest copper results from each site. Michigan's lead and copper rule was developed before "No Stricter" was in place, and our current regime and programming would not have been possible if it was in place at the time.

In 1976, toxic algal blooms plagued Lake Erie to such an extent that the lake was labeled "dead." Governor Milliken issued a rule that limited the amount of phosphorus, the root cause of algal blooms in freshwater environments, flowing into Lake Erie. That rule was stronger than federal standards and since has been credited as a critical step that helped to drastically reduce the growth of toxic algal blooms in the lake. We know the problem isn't solved, but the lake is doing much better.

Historical, bipartisan support for state-specific regulatory authority

Michigan is seen as a leader on our elevated ballast water treatment standards for shipping to protect the Great Lakes from invasive species. Former Attorney General Bill Schuette signed onto a letter to the U.S. Senate Commerce and Trade committee opposing federal legislation that would preempt any state's authority to take necessary action to protect their water resources from harmful pollutant discharges and invasive species.

It is important for regulators to understand federal standards, and to carefully weigh the variables that led to their establishment within the context of Michigan's unique history, culture, climate, topography, and natural resources. But we should not voluntarily remove any tools from our toolbox in stewarding our one-of-a-kind natural resources.

Passing Senate Bill 14 will empower Michiganders to make decisions that impact our state, our residents, and our Michigan way of life. Thank you so much for your time and consideration.

Respectfully,

Two handwritten signatures in black ink. The first signature on the left is "Ethan Petzold" and the second signature on the right is "Logan Vorce".

Ethan Petzold and Logan Vorce,
Michigan League of Conservation Voters