



June 8th, 2023

To: House Natural Resources Committee

RE: Testimony in support of SB 14, repeal no stricter than federal

Dear House Natural Resources committee members,

The Michigan Environmental Council (MEC) is a coalition of more than 90 member organizations across the state and a leading advocacy organization for policies that protect Michigan's land, air, and water. In 2018, the Environmental Council strongly opposed the adoption of legislation that prohibited the state from adopting rules that are more protective than federal regulations. We are very supportive of SB 14 that would repeal this clumsy and harmful law.

Federal regulations are inherently meant to be a floor for protections from which states can build upon to meet their needs. The Great Lakes State should not rely on one-size-fits-all federal standards that only provide minimum protections for our water, air, land and public health.

Over the last few years, the no stricter than federal prohibition has created a chilling effect on our regulatory agencies, extended an already lengthy rule-making process, and deferred the power to make critical decisions about the protection of our natural resources and public health to the federal government.

Historically, Michigan decision-makers have gone above and beyond these federal standards to protect the health and natural resources of Michigan. Governor Snyder did so when his administration adopted a more protective lead and copper rule. The state also went above federal standards under Governor Miliken. In 1976, Governor Milliken issued a rule that limited the amount of phosphorus flowing into Lake Erie at a time when algae blooms threatened the survival of the Lake and the legislature was not taking action. His requirements were stricter than existing federal standards and they are credited with saving the Lake.

In the years since the adoption of the no stricter than federal bill, the biggest impact we have felt has been a chilling effect on rule promulgation. The law has opened up new avenues for lawsuits that challenge state regulations. Agencies are weary of a proliferation of lawsuits and higher litigation costs for Michigan, so they avoid looking to rule promulgation as an opportunity to put in place better protections. Environmental rules are often challenged in court and had the agencies attempted

to adopt more stringent rules, they would have been open to even more legal challenges. For example, it is difficult to sort out what exactly constitutes an “applicable federal standard” and courts could disagree on how that should be interpreted. It is also difficult to determine if a standard is “more stringent.” In addition, while there is a path in the bill to promulgate more stringent rules, the path itself is rife with legal complexity. The “clear and convincing evidence” standard is a vague legal standard and also a higher burden to clear than other legal standards like “preponderance of evidence.”

Going forward there are many places where Michigan should consider adopting more protective standards. One of these key places would be improving protections for overburdened communities from harmful air pollution. Recently, the Department of Environment, Great Lakes, and Energy (EGLE) issued permits for the Ajax asphalt plant on the border of Flint and the Stellantis’ expansion on the eastside of Detroit, even though the residents of those communities already suffer from poor air quality and were opposed to the projects. In issuing those permits, EGLE said they lacked the authority to block them or to put in place more protective measures. Our regulators need the ability to adopt rules that will protect Michigan residents from harmful air quality.

We urge members to vote yes on SB 14. We should not have laws in place that tie our hands when overcoming challenges and threats that impact our state. SB 14 will remove bureaucratic red-tape and give our regulatory experts the ability to be adaptive to the needs of Michiganders.

Sincerely,
Charlotte Jameson
Chief Policy Officer
Michigan Environmental Council