October 5th, 2017

Senate Oversight Committee
Lansing, Michigan

Re: HB 4205 – Weakening Protection for the Great Lakes

Dear Senators,

The Michigan Environmental Council is a council of more than sixty-five conservation, environmental, and faith-based groups located across the state of Michigan. Those groups are proud of Michigan's amazing natural resources and take seriously their stewardship role in protecting those resources, especially the Great Lakes. Those groups adamantly oppose ceding authority over protecting those resources to the federal government.

This proposal weakens protection for the Great Lakes and drinking water by stripping the Governor of Michigan of the power to independently protect the Great Lakes. This is bad policy for Michigan and makes us vulnerable to special interests promoting gridlock at the legislature. Importantly, the legislature will always retain the ability to overrule a Governor and nullify any action they do not believe is warranted.

Most federal environmental laws establish a minimum standard of protection for natural resources and public health. Pursuant to the Constitution of the United States, unless specifically prohibited, states are allowed to exceed those standards if they believe that their citizens deserve or demand greater protection. HB 4205 would amend the Administrative Procedures Act (APA) to prohibit a state agency from adopting a rule more stringent than the applicable federal standard unless the director can show that there is a clear and convincing need for the rule and the unique characteristics of the state that make it necessary. Additionally, if the federal government did not mandate rule making, this law adds another criteria of having specific legislation authorizing the ability to be more stringent.

This legislation will simply open up our rulemaking process to more and more litigation. In addition to the newly created challenge that a rule is stricter that a federal standard, the clear and convincing standard added to the law adds another area for litigation. The clear and convincing standard's definition is that it is substantially more likely than not that the claims are true. This is a high standard, and is closer to the criminal standard of beyond a reasonable doubt than the civil preponderance of the evidence standard. This will create a large burden on state agencies and will hinder efforts to protect the Great Lakes.

In the 1970s, Lake Erie was dying due in large part to phosphorus in detergents. The legislature refused to act. When cities tried to act independently, the legislature pre-empted their authority to restrict phosphorus. So in 1976, Governor Milliken acted independently and promulgated a rule restricting phosphorus in detergent. The lake rebounded and the algae beds subsided. The legislature adopted that same restriction in detergents 32 years later in 2008.

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