

Issue: MI Environment

Democrats Protecting Michigan's Water

The COVID-19 pandemic has brought into sharp focus how essential clean water is for health. One of the first actions Governor Whitmer took to 'flatten the curve' of the pandemic was to end water shut-offs and restore water service to all residences.¹

Ignoring the basic human right to clean, affordable water for all, especially society's most vulnerable, turns out to be exponentially more expensive than ensuring it.² Moreover, many of the workers who provide our essential services are also among the most vulnerable—proving that what touches one touches all.³

During the 2018 midterm election, Democrats gained four Republican-held battleground district seats in the Michigan House, running on a platform that emphasized clean drinking water, holding corporate polluters responsible, ending the Line 5 Pipeline threat to protect the Great Lakes, and fixing infrastructure. However, the will of the people has been obstructed by anti-environmental House and Senate Republican majorities, funded by industries responsible for much of the corporate pollution. Important Democratic bills written to protect water and the environment have been held up in legislative committees. As a result, the fundamental human right to clean, safe drinking water is being held hostage by simple Republican majorities in the Michigan Legislature.

Water Shut-offs and Governor Whitmer's Executive Order

Michigan possesses one of the world's greatest natural resources, the Great Lakes. Together they comprise 21 percent of the earth's surface fresh water, yet since 2007 the average cost of water in Detroit has risen to \$1,151 a year for a family of four, and between 2010 and 2018 more than 142,953 water shut-off notices were issued.^{4,5}

In 2014, when shut-offs became an official cost-cutting strategy for the city, Detroit residents argued in court that lack of water would lead to unsanitary conditions, causing the spread of diseases like hepatitis and influenza, threatening the health of the community.⁶ Despite Democrats' attempts to pass legislation to provide clean, affordable water to all Michiganders (HB4122⁷, SB49⁸), the GOP-controlled Senate and House have deliberately ensured that these bills are held up in committee.

It took the COVID-19 pandemic for Governor Whitmer to issue an executive order to reverse the water shut-offs, saying: "Now more than ever, the provision of clean water to residences is essential to human health and hygiene, and to the public health and safety of this state."⁹ However, the reprieve in water shut-offs due to non-payment is only temporary. Previously-due water bills will still have to be paid when the Executive Order expires.¹⁰ And despite the order, there are still people whose water has not yet been restored.¹¹ We need Democratic majorities in the House and Senate to clear the way for the enactment of bills that guarantee the right of all people to clean, affordable water, not just in a time of crisis but always.

Corporate Responsibility for Chemical Cleanup

PFAS: “Per- and polyfluoroalkyl substances (PFAS) are a group of man-made chemicals that [...] are very persistent in the environment and in the human body [...] and] can accumulate over time. There is evidence that exposure to PFAS can lead to adverse human health effects.”¹²

“PFAS have been used globally during the past century in manufacturing, firefighting, and thousands of common household and other consumer products [...] In recent years, experts have become increasingly concerned by the potential effects of high concentrations of PFAS on human health.”¹³

Highly toxic chemicals used in industry, PFAS can be contained in consumer products or discharged into the environment, and because they take so long to break down, they accumulate in the environment and in our bodies. The biggest source of human exposure to PFAS is through contaminated drinking water, the result of unfettered corporate dumping of these chemicals into rivers, streams, and the Great Lakes.¹⁴ PFAS have been linked to autoimmune disorders, thyroid disease, pregnancy complications, and cancer.¹⁵

After decades of ignoring mounting evidence of PFAS poisoning in our water, a Democratic governor and Democrats’ recent gains in the legislature mean that the state’s leadership is finally taking action.¹⁶ The issue gained traction in December 2019 when a bright green slime was noticed gushing onto I-696 in Madison Heights, after toxic chemicals escaped from the defunct business Electro-Plating Services and mixed with rain and groundwater.

In a subsequent statement Governor Whitmer blamed the incident on a lack of support for the Department of Environment, Great Lakes, and Energy (EGLE), saying “This situation demonstrates the need for broad reforms to address problems of critical underfunding and understaffing at the department following eight years of one-party control in Lansing. It’s time for Republicans in the legislature to ensure EGLE has the technology and resources it needs to keep the public safe.”¹⁷

Governor Whitmer also urged state legislators to pass the bad actor bills proposed by Democrats in February 2019 holding polluters accountable for cleaning up after themselves, but these bills have been held up by the Republican-led legislature.¹⁸

On January 14, 2020, Dana Nessel, MI Attorney General, filed the first legal action against 17 companies including 3M and DuPont, in (*Michigan v. 3M, Du Pont Nemours et al.*, 2020) for damages and injury caused by contamination from PFAS chemicals.¹⁹ A statement from the Attorney General’s office asserts these companies “deliberately concealed the dangers of PFAS and withheld scientific evidence, and intentionally, knowingly and recklessly sold, distributed, released, transported, supplied, arranged for disposal or treatment, and handled and used PFAS and PFAS-containing materials in Michigan in a way that they knew would contaminate natural resources and expose Michigan residents to harm.”²⁰

On February 4, 2020, in another suit brought by AG Nessel, Wolverine Worldwide agreed to pay \$69.5 million to bring municipal water to 1,000 properties whose wells were contaminated by PFAS due to the company’s activities. They also agreed to ongoing responsibility for clean drinking water by maintaining water filters and to regularly mandated water testing.²¹

Setting Our Own Safety Standards for Water Contaminants

On June 29, 2018, Governor Snyder signed into law Public Act 267 of 2018 (2017 Senate bill 652) which established an Environmental Rules Committee made up of his hand-picked appointees from the fossil fuel, manufacturing, waste management and agricultural industries to oversee the Michigan Department of Environmental Quality.^{22,23} He also signed the Public Act 268 of 2018 which created the Environmental Permit Review Commission and the Environmental Review Panel (2017 Senate Bills 653-654), to be part of the MDEQ.²⁴ Republicans blocked Democratic amendments which would have limited lobbyists and those with conflicts of interest from serving on the Commission.²⁵

Natural Resources Defense Council senior policy advocate, Cyndi Roper commented that this would give control to the industries it should be holding accountable. “The fox isn’t even pretending like it will guard the henhouse,” Roper said.

In December 2018, outgoing Governor Snyder signed into law the “No Stricter than Federal” Public Act 602 that prevents the state from setting its own standards for water and environmental contamination that are more stringent than federal regulations.²⁶

On February 4, 2019, Governor Gretchen Whitmer signed an Executive Order to permanently establish the Michigan PFAS Action Response Team (MPART) to counter the threat of PFAS contamination, protect the health of the public, and preserve our land, water, and air.²⁷

Also signed on February 4, 2019 Executive Order 2019 02. The 02 EO was for the complete restructuring of the DEQ (Dept of Environmental Quality along with other agencies) with the creation of the Dept of Environment, Great Lakes, and Energy and the dissolution of the industry-dominated “polluter” panels created in Snyder’s 2018 Public Act 267.²⁸ Unfortunately, on Feb. 14, 2019, the Republican-controlled Senate formally voted to disapprove of EO 2019 02.²⁹

On March 19, 2019 Democratic lawmakers introduced a bill (HB 4386) to repeal the “No Stricter than Federal Law,” citing grave concerns about the ability of the state to protect its residents from the harmful effects of PFAS.³⁰ “Treating Michigan like any other state ignores the unique challenges we face and prevents us from tackling our most serious environmental threats,” said state Representative Donna Lasinski (D-HD52, Washtenaw County).³¹ This bill, too, has been stalled in committee.

However, on October 11, 2019, EGLE issued a press release stating it would be establishing maximum contaminant levels for seven types of PFAS compounds in drinking water and putting operations in place to monitor them.³²

Line 5: Jeopardizing Drinking Water for Millions of Michiganders

Line 5 is a 645-mile-long pipeline built and operated by the Canadian company Enbridge, running from Lake Superior in Wisconsin across the Upper Peninsula and through the Mackinac Straits to Sarnia, MI, carrying almost 23 million gallons of oil and natural liquid gas every day.³³

Since 1968, Line 5 has failed 29 times, including in 2010 when a rupture in Enbridge’s 6B pipeline caused the second-largest inland oil spill in US history, pumping over 1 million gallons of heavy tar sands oil into the Kalamazoo River, fouling 4,435 acres of land and closing the river for almost two

years. While less than 10 percent of Line 5 oil and gas is used by Michigan, the pipeline endangers the drinking water for 5 million Michiganders and threatens vial revenues from Michigan tourism.³⁴ Enbridge's own data shows the most vulnerable section is in the Mackinac Straits where it is projected that in the case of an oil spill less than a third could be cleaned up. The result would be the devastation of up to 720 miles of shoreline.

In June 2019 AG Dana Nessel filed a lawsuit against Enbridge claiming the pipeline violates public trust doctrine and the MI Environmental Protection Act. She is also pursuing an appeal regarding a law passed by the previous Republican Governor Snyder permitting the tunnel project to move forward, which the state of Michigan argues is unconstitutional.³⁵

Coke, Pepsi, and Nestle: Plundering Our Natural Resources

Last year, Coca-Cola made more than a billion dollars in US sales of Dasani bottled water. Since the outbreak of COVID-19, bottled water sales have risen more than 57 percent over the same period last year.

Ironically, while the people of Detroit go without municipal water, it is Detroit's municipal water that Coca-Cola and Pepsi bottle and sell at a huge mark-up as Dasani and Aquafina. The processing and infrastructure Coke and Pepsi rely on to access this water is paid for by taxpayers, so consumers end up paying twice. And unlike regular citizens, beverage companies are allowed to accumulate tens of thousands of dollars in unpaid bills with no penalty from local authorities.³⁶ Furthermore, this issue isn't limited to Detroit: residents of Osceola Township, a small town in western Michigan, accuse Nestle of damaging their Twin Creek river and its trout because of the amount of water the company pumps for its Ice Mountain brand.³⁷

In response to Michigan's 2018 decision to allow Nestle to increase water withdrawals from 250 to 400 gallons per minute out of the Great Lakes water basin, State Reps. Yousef Rabhi (D-Ann Arbor), Rachel Hood (D-HD76-Grand Rapids), and Laurie Pohutsky (D-HD19-Livonia) introduced three bills in December 2019 to safeguard Michigan's surface and groundwater resources.^{38,39,40} The bills (HD 5290, 5291, and 5292) affirm that "all the waters of the state are held inalienably in the public trust, bans the diversion of bottled water outside the Great Lakes watershed and explicitly authorizes the Department of Natural Resources (DNR) to protect water in its jurisdiction."⁴¹

An Update on Flint

April 25, 2020 was the sixth anniversary of the Flint water crisis precipitated by a change in the water supply from Lake Huron to the toxic Flint River to save money, which resulted in between 6,000 and 12,000 children to be exposed to dangerous levels of lead in the drinking water and an outbreak of Legionnaires' disease that sickened 87 and killed 12 people.

Since 2016 there have been serious efforts to replace the pipes and implement a rigorous testing schedule, but the job is not yet completed and residents as well as officials are still not confident about the purity of the water. Gov. Snyder ended the free bottled water program in April 2018 and the people of Flint continue to use bottled water at their own expense.⁴² Work continues in 2020 to replace lead pipes in the estimated to be as many as 29,000 homes affected.⁴³ As of March 20, 2020, the city had checked over 25,000 homes and replaced lead pipes in 9554 and confirmed that nearly 16,000 had copper pipes.⁴⁴

In June 2019, AG Nessel dropped charges against the remaining eight defendants implicated in the scandal due to concerns about improper evidence collection. Seven officials had already pleaded guilty. Prosecutors have opened a new investigation to hold accountable those who may be criminally responsible.^{45,46}

With Right to Water and Clean Water Bills stalled in committee, now more than ever, a Democratic majority in the House and Senate can assure these bills are enacted.

From Crisis Comes Opportunity

On April 28, 2020, Michigan House Democrats unveiled “Michigan Strong,” a broad legislative plan to safely pilot the state through the COVID-19 crisis and beyond. It specifically addresses the urgent need for clean air and water by preventing new sources of pollution, prohibiting all water shut-offs, and ensuring clean, affordable water for all Michiganders.⁴⁷ Democrats in the Michigan Legislature have already submitted bills that address these vital issues (Table 1).

Table 1. Bills Introduced by Democrats in 2019-2020, stalled in committee by GOP

Bills	Issue	Sponsor	Most Recent Action
SB 240 SB 241 SB 242 SB 243	Water Justice	Alexander (D-SD5-Detroit) Chang (D-SD1-Detroit) Irwin (D-SD18-Ann Arbor) Wojno (D-SD9-Warren)	Referred to Senate Committee on Environmental Quality 2019 Session
HB 4386	Repeal of No Stricter than Federal	Pohutsky (D-HD19-Livonia)	Referred to House Oversight Committee 3/19/19
HB 4122	Accessible and Affordable Water	Hammoud (D-HD15-Dearborn)	House referred to Committee on Natural Resource and Outdoor Recreation 2/5/19
SB 49	Human Right to Water Act	Bayer (D-SD12-Oakland County)	Senate referred to Environmental Quality Committee 2019 Session
HB 5290	The bill “clarifies that the waters of the state, including groundwater, are held in the public trust. This means they belong to the people of the state collectively and must be protected from pollution, impairment and destruction.” ^{48,49}	Yousef Rabhi (D-HD53-Ann Arbor)	House referred to Committee on Natural Resources and Outdoor Recreation 12/10/2019

Bills	Issue	Sponsor	Most Recent Action
HB 5291	Prevents shipping bottled water out of the Great Lakes watershed and removes a loophole that allows unlimited amounts of water to be removed when packaged in small containers. ^{50,51}	Rachel Hood (D-HD76-Grand Rapids)	House referred to Committee on Natural Resources and Outdoor Recreation 12/10/2019
HB 5292	Natural resources; expand water under Department of Natural Resources control; provide for protection and conservation of. ^{52,53}	Laurie Pohutsky (D-HD19-Livonia)	House referred to Committee on Natural Resources and Outdoor Recreation 12/10/2019
HB 4212	Requires corporations and industries responsible for polluting air, land, and water to pay for clean-up.	Rabhi (D-HD53-Ann Arbor)	House referred to Committee on Natural Resource and Outdoor Recreation Senate referred to Committee on Environmental Quality 2/19/19
HB 5456	Repeals Public Act 581 of 2018 which weakens polluter cleanup criteria	Sowerby (D-HD31-Macomb)	Referred to Committee on Natural Resources and Outdoor Recreation 2/4/20
HB 5452	Repeals “polluter panel” bills (Public Act 0267/8 of 2018) allowing corporate polluters to determine environmental regulations and permit decisions.	Kuppa (D-HD41-Troy)	Passed both chambers 2/05/20
SB 116	Polluter Pay	Irwin (D-SD18-Ann Arbor)	Senate referred to Committee on Environmental Quality 2/19/19

Until now all of these bills have been stalled in committee. But Democratic majorities in the House and Senate could bring these urgent issues to a speedy resolution. Michiganders can lead the way in demonstrating how responsible governance raises not only the standard of living for those most in need, but the quality of life for all.

-
- ¹ https://content.govdelivery.com/attachments/MIEOG/2020/03/28/file_attachments/1413747/EO%202020-28%20Emerg%20order%20-%20water%20shutoffs.pdf
- ² <https://time.com/4441471/flint-water-lead-poisoning-costs/>
- ³ <https://www.kff.org/coronavirus-policy-watch/taking-stock-of-essential-workers/>
- ⁴ <https://www.epa.gov/greatlakes/facts-and-figures-about-great-lakes>
- ⁵ <https://www.npr.org/2019/02/08/691409795/a-water-crisis-is-growing-in-a-place-you-d-least-expect-it>
- ⁶ <https://www.theguardian.com/us-news/2020/apr/23/pepsi-coke-bottled-water-consumer-reports>
- ⁷ <http://legislature.mi.gov/doc.aspx?2019-HB-4122>
- ⁸ <http://legislature.mi.gov/doc.aspx?2019-SB-0049>
- ⁹ https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-523414--,00.html
- ¹⁰ <https://www.wxyz.com/news/coronavirus/whitmer-orders-all-shut-off-water-to-be-restored-during-covid-19-outbreak>
- ¹¹ <https://www.theguardian.com/us-news/2020/apr/23/pepsi-coke-bottled-water-consumer-reports>
- ¹² <https://www.cmdhd.org/copy-of-seasonal-flu>
- ¹³ <https://www.michigan.gov/pfasresponse/0,9038,7-365-96312-511634--,00.html>
- ¹⁴ https://www.localmajority.org/wp-content/uploads/2018/10/MI.PFAS_20181008.PG_Finalv2.pdf
- ¹⁵ <https://www.epa.gov/pfas/basic-information-pfas>
- ¹⁶ <https://www.bridgemi.com/michigan-environment-watch/heres-what-gretchen-whitmers-new-pfas-water-rules-mean-michigan>
- ¹⁷ <https://www.michiganradio.org/post/whitmer-more-criminal-charges-possible-owner-toxic-ooze-facility>
- ¹⁸ <https://www.bridgemi.com/michigan-environment-watch/green-ooze-michigan-freeway-prompts-calls-tougher-polluter-pay-laws>
- ¹⁹ <https://www.freep.com/story/news/local/michigan/2020/01/14/michigan-sues-3-m-dupont-15-others-over-pfas-pollution/4464769002/>
- ²⁰ https://www.michigan.gov/pfasresponse/0,9038,7-365-86513_96296-517280--,00.html
- ²¹ <https://www.crainsdetroit.com/environment/wolverine-worldwide-pfas-settlement-finalized-michigan-attorney-generals-office>
- ²² [http://www.legislature.mi.gov/\(S\(drtr01yox5mkvdzbhqwyc5e\)\)/mileg.aspx?page=GetObject&objectname=2017-SB-0652](http://www.legislature.mi.gov/(S(drtr01yox5mkvdzbhqwyc5e))/mileg.aspx?page=GetObject&objectname=2017-SB-0652)
- ²³ https://www.michigan.gov/formergovernors/0,4584,7-212-96477_90815_59871-480082--,00.html
- ²⁴ <https://dawdamann.com/blog/major-changes-to-michigans-permitting-appeal-process-part-1/>
- ²⁵ <https://www.michiganvotes.org/Legislation.aspx?ID=178813>
- ²⁶ <https://www.michiganradio.org/post/some-residents-upset-governor-snyder-signed-no-stricter-federal-bill;https://www.mlive.com/news/2019/01/ag-nessel-to-scrutinize-new-lame-duck-environmental-laws.html>
- ²⁷ https://www.michigan.gov/pfasresponse/0,9038,7-365-86513_95425---,00.html
- ²⁸ https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-488736--,00.html
- ²⁹ <https://www.freep.com/story/news/local/michigan/2019/02/14/gretchen-whitmer-environmental-executive-order/2869421002/>
- ³⁰ <https://upnorthlive.com/news/local/efforts-underway-to-repeal-michigans-no-stricter-than-federal-law-03-20-2019;http://legislature.mi.gov/doc.aspx?2019-HB-4386>
- ³¹ <https://housedems.com/article/pohutsky-bill-bring-environmental-oversight-back-mi>
- ³² https://www.michigan.gov/pfasresponse/0,9038,7-365-86513_96296-509831--,00.html

-
- ³³ <https://forloveofwater.org/line5/> ; <https://www.enbridge.com/projects-and-infrastructure/public-awareness/line-5-michigan/about-line-5>
- ³⁴ <https://forloveofwater.org/line5/> ; <https://insideclimatenews.org/news/03052018/enbridge-fined-tar-sands-oil-pipeline-inspections-kalamazoo-michigan-dilbit-spill>
- ³⁵ <https://www.bridgemi.com/michigan-environment-watch/michigan-enbridge-line-5-tunnel-permit-application-incomplete>
- ³⁶ <https://www.theguardian.com/us-news/2020/apr/23/pepsi-coke-bottled-water-consumer-reports>
- ³⁷ <https://www.pri.org/stories/2018-02-04/tiny-michigan-town-water-fight-nestle>
- ³⁸ <https://www.greatlakesnow.org/2019/12/nestle-bottled-water-michigan-bills/>
- ³⁹ <https://housedems.com/article/dems-introduce-legislation-protect-michigan-water>
- ⁴⁰ <https://housedems.com/article/rabhi-introduces-bills-preserve-michigan-water>
- ⁴¹ <https://housedems.com/article/dems-introduce-legislation-protect-michigan-water>
- ⁴² https://en.wikipedia.org/wiki/Flint_water_crisis; <https://www.nrdc.org/stories/flint-water-crisis-everything-you-need-know>; <https://www.nytimes.com/2018/04/08/us/flint-water-bottles.html>
- ⁴³ https://en.wikipedia.org/wiki/Flint_water_crisis
- ⁴⁴ <https://www.cityofflint.com/gettheleadout/>
- ⁴⁵ <https://www.cnn.com/2016/03/04/us/flint-water-crisis-fast-facts/index.html>
- ⁴⁶ <https://news3lv.com/news/nation-world/prosecutors-in-flint-water-probe-were-still-on-the-case>
- ⁴⁷ https://content.govdelivery.com/attachments/MIHOUSEDEMS/2020/04/28/file_attachments/1437769/Michigan%20Strong%20Plan%202020%20FINAL.pdf
- ⁴⁸ <https://housedems.com/article/dems-introduce-legislation-protect-michigan-water>
- ⁴⁹ [https://www.legislature.mi.gov/\(S\(xfyqnvbuviiht20phfz24nrf\)\)/mileg.aspx?page=getobject&objectname=2019-HB-5290&query=on](https://www.legislature.mi.gov/(S(xfyqnvbuviiht20phfz24nrf))/mileg.aspx?page=getobject&objectname=2019-HB-5290&query=on)
- ⁵⁰ [https://www.legislature.mi.gov/\(S\(xfyqnvbuviiht20phfz24nrf\)\)/mileg.aspx?page=getobject&objectname=2019-HB-5291&query=on](https://www.legislature.mi.gov/(S(xfyqnvbuviiht20phfz24nrf))/mileg.aspx?page=getobject&objectname=2019-HB-5291&query=on)
- ⁵¹ <https://housedems.com/article/dems-introduce-legislation-protect-michigan-water>
- ⁵² [https://www.legislature.mi.gov/\(S\(xfyqnvbuviiht20phfz24nrf\)\)/mileg.aspx?page=getobject&objectname=2019-HB-5292&query=on](https://www.legislature.mi.gov/(S(xfyqnvbuviiht20phfz24nrf))/mileg.aspx?page=getobject&objectname=2019-HB-5292&query=on)
- ⁵³ <https://housedems.com/article/dems-introduce-legislation-protect-michigan-water>