

Boyce Hydro Dam Chronology

INTRODUCTION

Prior to the catastrophic dam failures and flooding, Boyce Hydro and its affiliates owned and operated four dams on the Tittabawassee River system: Secord Dam, Smallwood Dam, Edenville Dam, and Sanford Dam. Three of the dams generate electricity and are regulated by the Federal Energy Regulatory Commission (FERC). The fourth dam, Edenville, did not generate electricity at the time of the incident, and is regulated by the state. The Edenville Dam FERC license was revoked in 2018 after years of communications over compliance issues at which point regulatory authority was transferred from FERC to the Michigan Department of Environment, Great Lakes, and Energy (EGLE). The following chronology focuses primarily on the state's activities related to the Edenville Dam site.

Chronology

September 13, 2010 – Violation Notice Request for Information 10-26-0026-V sent to Boyce Hydro, LLC for construction of fishing piers, filling and dredging bottomlands; dredging, filling and draining wetlands; and grading in the floodplain – contrary to Parts 31, 301, and 303.

January 13, 2011 – Second Violation Notice Request for Information.

April 5, 2011 – Violation Notice Order to Restore issued requiring restoration of alleged violations.

August 22, 2012 – Violation Notice VN-005377 issued to Boyce Hydro for failure to apply for Notice of Coverage under Part 31.

March 6, 2013 – Second Violation Notice issue for failure to apply for Notice of Coverage.

June 23, 2014 – DEQ issued a permit under Part 301 Inland Lakes and Streams to Boyce Hydro LLC, to drawdown Wixom Lake at the Edenville Dam. Permit Number 13-26-0014-P. This permit is unrelated to the unauthorized drawdowns Boyce performed in 2018 and 2019 that are the subject of the lawsuit the State filed against Boyce in April 2020.

July 7, 2015 – Violation Notice 15-26-0004-V & 14-26-0005-V sent to Boyce Hydro LLC for unauthorized dredging and filling in the floodplain and on bottomlands; failure to implement adequate soil erosion measures resulting in unauthorized discharge; and dredging, filling and draining of wetlands – contrary to Parts 31, 91, 301 and 303. In the VN, DEQ offered to enter into an Administrative Consent Agreement that would include restoration, among other components.

October 27, 2015 – Violation Notice VN-006215 issued to Boyce Hydro, LLC for failure to apply for Notice of Coverage under Part 31.

June 9, 2016 – Complaint Filed in Gladwin County for Case No. 2016-8538-CE alleging violations of Part 31, 91, 301 and 303.

July 22, 2016 – Violation Notice VN-006617 sent to Lee Mueller for additional Violations of Part 31, 91, and 301 including unauthorized filling bottomlands and floodplain, earth changing activities within 500 feet of a stream, and structurally interfering with stream flow; to be included in pending lawsuit.

September 10, 2018 – FERC revokes the Edenville Dam license. Upon revocation of the FERC license the dam became regulated under Part 315 Dam Safety of the NREPA MCL 324.31501 et seq.

October 2018 – DEQ alleges Boyce Hydro, LLC conducted a major drawdown of Wixom Lake without obtaining the necessary permits.

October 4, 2018 – DEQ Dam Safety Staff meet with dam owner and perform a cursory inspection of the dam to identify any critical deficiencies at the dam. Water levels were observed to be approximately 4.1 feet below normal lake level.

November 2 and 9, 2018 – Site inspection of Wixom Lake by DNR and DEQ staff following a citizen's complaint regarding drawdown of Wixom Lake.

May 16, 2019 – Permit WRP016343 v.1 issued to Boyce Hydro, LLC for refill of Wixom Lake back to normal summer pool elevation.

May 28, 2019 – Midland Circuit Court Order setting legal lake levels for Sanford Lake, Wixom Lake, Smallwood Lake and Secord Lake and confirming the Four Lakes Special Assessment District Boundaries.

September 12, 2019 – Staff from the Bay City District Office and Dam Safety Unit met with representatives of the Four Lakes Task Force and Spicer Group to discuss a pending proposed application to draw down Wixom Lake 8 feet over the winter of 2019/2020.

September 25, 2019 – an application was submitted for an eight-foot drawdown of Wixom Lake. The application for permit was subsequently denied on November 25, 2019.

November 17, 2019 – Dam Safety Engineer, Luke Trumble met with Spicer Group (representing Boyce and the Four Lakes Task Force) to discuss needed gate repairs and inspected the Edenville dam.

November 2019 – Boyce began drawing down Wixom Lake notwithstanding denial of their permit application.

December 5, 2019 – Consent Judgement entered resolving previous enforcement lawsuit requiring Boyce Hydro to obtain Part 91 permit and Notice of Coverage; restore impacted wetland and stream areas; conduct floodplain compensation; obtain an after-the-fact permit; and pay \$161,000 of enforcement costs and charges.

December 12, 2019 – Enforcement Notice issued for drawdown of Wixom Lake without authorization.

December 20 & 23, 2019 – DNR and EGLE conducted site inspection and performed mussel surveys.

January 2, 2020 – Boyce Trusts and Four Lakes Task Force signed purchase agreement for Four Lakes to acquire Wixom, Sanford, Secord, and Smallwood Dams and lake bottoms over the course of two years closing in January 2022.

February 6, 2020 – Pre-application meeting with Four Lakes Task Force consultants to discuss repairs, permitting, next steps.

March 16, 2020 – Pre-application meeting with Four Lakes Task Force consultants to discuss repairs, permitting, next steps.

May 1, 2020 – Complaint filed in Ingham Circuit Court. Case No. 20-000255-CE Attorney General Ex Rel the People of the State of Michigan; The Department of Environment, Great Lakes and Energy; and the Department of Natural Resources v. Lee Mueller; Boyce Michigan, LLC; Edenville Hydro Property, LLC; Boyce Hydro Power, LLC; Boyce Hydro, LLC; WD Boyce Trust 2350; WD Boyce Trust 3649; WD Boyce Trust 3650; Stephen B. Hulberg; and Michele G. Mueller. The purpose of the complaint is to recover natural resource damages for the harm caused by the unauthorized 2018 and 2019 drawdowns. **May 19, 2020** – Edenville and Sanford Dams breach and fail during flooding event. Secord and Smallwood Dams reported to be in stable condition by Boyce Hydro staff. Water reported to be receding at both dams.

May 20, 2020 – EGLE Dam Safety Staff onsite at both Secord and Smallwood Dams to confirm dams are in stable condition as previously reported. Both dams are observed to be in relatively stable condition with water levels receding. However, it is reported that Smallwood dam sustained significant damage next to the powerhouse, requiring Boyce staff to place fill overnight to stop active erosion and stabilize the embankment. This was not reported prior to the inspection on 5/20/20 when noticed and preventative actions were taken.

Michigan's Environmental Justice Policy promotes the fair, non-discriminatory treatment and meaningful involvement of Michigan's residents regarding the development, implementation, and enforcement of environmental laws, regulations, and policies by this state. Fair, non-discriminatory treatment intends that no group of people, including racial, ethnic, or low-income populations, will bear a disproportionately greater burden resulting from environmental laws, regulations, policies, and decision-making.

Meaningful involvement of residents ensures an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health.