

**Committee on Energy and Commerce
Subcommittee on Oversight and Investigations**

**Hearing on
“On the Front Line: How Governors are Battling the COVID-19 Pandemic”**

June 2, 2020

The Honorable Gretchen Whitmer, Governor, State of Michigan

The Honorable Gus Bilirakis (R-FL)

1. The Paycheck Protection Program and Healthcare Enhancement Act included \$11 billion for states and local governments for purposes related to COVID-19 testing, including support for use by employers or in other settings
 - a. What role are employers playing in your state in your COVID-19 testing strategy as businesses begin to re-open in your state?

Employers have been key partners in Michigan’s COVID-19 response thus far and will remain essential to efforts to contain the disease on an ongoing basis. Michigan has worked with employers to promote preventative measures to decrease and detect COVID-19 spread, including through routine testing and ensuring that employers and employees are aware of free testing opportunities nearby. Michigan has distributed recommended testing guidelines for certain employees or employment types at higher risk of contracting COVID-19, as well as information on available testing options across the state.

- b. What, if any, challenges have employers shared with you that limit their ability to increase COVID-19 testing as employees return to the office?

Many employers have concerns around the cost of testing, particularly as federal guidance has indicated that commercial insurers do not need to cover testing of asymptomatic individuals. This means that employers seeking to offer testing to screen employees and detect COVID-19 cases as early as possible would be fully responsible for the cost of such a program. Additionally, employers have expressed concerns around what happens after an employee tests positive: how the employer can continue to operate with potentially many employees in quarantine and how employees can have the resources and financial means to quarantine rather than continuing to work and potentially spreading the disease.

2. Committee Republicans released a paper on COVID-19 testing and surveillance, highlighting among other things, the importance of surveillance in a pandemic.

- a. What surveillance efforts are underway in your state for COVID-19?

Michigan has numerous surveillance efforts underway. In addition to ongoing surveillance of cases, emergency department visits, hospitalizations, deaths and testing rates, the Michigan Department of Health and Human Services (MDHHS) is partnering with the University of Michigan, Michigan State University, local public health departments, and many employers to use results of symptom screening data to detect elevations in self-reported illness in communities.

Michigan is also in process of implementing a seroprevalence survey in long-term care facilities that will better describe the disease's prevalence and the earlier pandemic experience for impacted facilities, allowing for the design of effective control strategies moving forward.

Michigan is partnering with the department of Environment, Great Lakes and Energy, several universities to pilot wastewater surveillance for COVID-19, focusing on sentinel surveillance of effluent from selected facilities with congregate populations and in communities.

Finally, the state regularly analyzes results from community-based testing opportunities, county-by-county testing results, outbreak monitoring situation reports, and contact tracing efforts to understand the course of the pandemic in our state and identify key policy issues in the response moving forward.

- b. Are these surveillance systems new, or are they pre-existing systems that are being leveraged for COVID-19?

Michigan has adapted many pre-existing systems to meet needs during COVID-19, including our information technology system for disease monitoring (the Michigan Disease Surveillance System), sentinel surveillance (Michigan Syndromic Surveillance System), vital records (Electronic Death Registry System), and CDC systems for collecting influenza-like illness (ILI) surveillance, as well as hospital and laboratory influenza results. The Michigan Care Improvement Registry (statewide immunization registry) will be used to monitor the uptake of COVID-19 vaccine(s) when available. New technologies and adaptations are being evaluated to build on these systems.

- i. If they are pre-existing systems, what other illnesses do they track?

The Michigan Disease Surveillance System collects information on

all of the communicable disease reportable conditions for the State of Michigan and maintains this information in a patient-centric system. It has been enhanced to address COVID-19 specific needs and will continue to be enhanced to better support COVID-19 surveillance efforts.

- c. How do these systems report up to HHS/CDC?

Michigan reports to CDC directly from our surveillance system, in aggregate and line level uploads through the decipher system and line level laboratory information submitted electronically to the CDC as well.

- d. How often does your state's system(s) report to the CDC? Real time, daily, weekly?

For the most part, daily.

- 3. According to the CDC, the U.S. COVID-19 surveillance goals are to: (1) monitor the spread and intensity of COVID-19 disease in the U.S.; (2) understand disease severity and the spectrum of illness; (3) understand risk factors for severe disease and transmission; (4) monitor for changes in the virus that causes COVID-19; (5) estimate disease burden; and (6) produce data for forecasting COVID-19 spread and impact.
 - a. Do you feel that the surveillance systems in your state are sufficient to meet all of these goals?
 - i. If not, what improvements do you think need to be made?

Our communicable disease surveillance system is sufficient functionally but has faced new challenges during COVID-19 from the sheer volume of tests and cases, as well as the unprecedented external demands for data in analysis, reporting, and modeling. Michigan plans to use federal testing funding from the Paycheck Protection Act to invest in system enhancements that will strengthen our technical infrastructure to meet these new needs.

- 4. One of the keys to Florida's success was its early deferment to local officials who were able to use local data to inform a community-tailored approach instead of a "one-size fits the state" solution.
 - a. How important is local input and engagement in a responsible phased reopening?
- Vitally important. Michigan has pursued a regional strategy for re-engaging sectors of economic and social life, recognizing the differing experiences and risk levels across our state. Input on the metrics and**

mitigation for a phased reopening has been obtained through engagement with health care, education, and business sectors, through regular meetings and planning development with the Michigan Health and Hospital Association, the Michigan Economic Recovery Council, and the Michigan Association of Local Public Health. Partners from many sectors were included on multiple stakeholder groups to develop reopening guidance for specific sectors, including the Return to Learn education planning.

Michigan continues to carefully monitor regional trends and respond to developments in a targeted manner. Finally, state officials work extremely closely with local health departments and local emergency management on all aspects of the response.

- b. How do current data models you're consulting account for policy nuances like a regional patchwork of stay-at-home orders in your state or input from hospitals and doctors?

Michigan's modeling efforts do take into account differing patterns in re-engagement across the state, as well as actual data from hospitals, surveillance systems, and other sources. All of this information provides key inputs to model how the epidemic may progress in our state.

The Honorable Tim Walberg (R-MI)

1. On May 19th, the Edenville Dam failed after heavy rains, resulting in catastrophic flooding and the evacuation of approximately 10,000 residents in the areas downstream of the dam. This dam was under State jurisdiction, with a known history of safety violations. In October 2018, the Federal Energy Regulatory Commission revoked its hydropower license, but the State of Michigan continued to let it operate under dangerous conditions.
 - a. Governor Whitmer, is it true that your state dam safety inspectors sent emails raising concerns that the dam did not meet safety standards in January of this year?
 - i. If not, when did safety inspectors become aware of the dam's safety issues?

The Michigan Department of Environment, Great Lakes, and Energy (EGLER) did not "let [the dam] operate under dangerous conditions." Neither the Federal Energy Regulatory Commission (FERC) nor Boyce Hydro, the dam's owner, had indicated that the dam could not safely maintain the established normal water levels, and the visual inspection by EGLER staff in October 2018 did not reveal any imminent danger. FERC's primary concern was whether the dam could meet FERC's spillway capacity requirements (100% Probable Maximum

Flood, PMF), and it could not. Boyce Hydro refused to increase the spillway capacity, which is one reason FERC revoked their license. Once jurisdiction passed to EGLE, the question became whether the dam could meet Michigan's spillway capacity requirements (1/2 PMF). Boyce Hydro's engineer concluded in January 2019 that the dam could meet 1/2 PMF requirements. EGLE had concerns with some of the assumptions Boyce Hydro's engineer made to reach that conclusion and requested further study in March 2019. In the meantime, the Four Lakes Task Force planned to purchase the dam and increase its spillway capacity to 100% PMF by 2024 so it could obtain a license from FERC. During the course of the planning performed by the Four Lakes Task Force, their engineers performed gate tests and further analysis, and by August 2019, they did not believe the dam could meet Michigan's 1/2 PMF requirement. But the Four Lakes Task Force was already planning to increase the dam's spillway capacity to exceed Michigan's 1/2 PMF requirement.

In the meantime, there was little reason to believe that in the years it would take for the Four Lakes Task Force to increase the dam's spillway capacity, preemptively drawing down Wixom Lake to the extent feasible by the dam's equipment would serve a public safety purpose. Boyce Hydro's own analysis indicated that preemptive drawdown of the lake would not have prevented the failure of the Edenville Dam in the event of a major flooding event. On September 30, 2013, Boyce Hydro submitted an analysis to FERC that determined that while "feasible" to pre-emptively draw down Wixom Lake, doing so in anticipation of a major flooding event would not eliminate the dam's inability to handle the event. The analysis found it would only delay the point at which Wixom Lake reached its peak "by one hour." This was later confirmed by Boyce Hydro's engineer in a January 11, 2014, letter to FERC that stated that "pre-lowering the reservoir as a risk reduction measure" would yield "limited benefits." FERC's staff had reached the same conclusion as Boyce Hydro, which they confirmed in their letter to Congress on June 18, 2020, in which they explained that FERC had not required preemptive drawdowns of Wixom Lake because "preemptive drawdowns" would "not increase the ability of the facility to pass the Probable Maximum Flood."

- b. In May, Attorney General Nessel filed a lawsuit against the dam's operator alleging they illegally lowered the lake level threatening the health of the lake's mussel population.
 - i. With all the safety warnings about this dam, why did the Attorney General continue with a lawsuit, ordering the operators to raise the lake levels in order to save mussels?

The lawsuit was brought by Attorney General Dana Nessel at the request of EGLE and the Michigan Department of Natural Resources (MDNR). The lawsuit, which is still pending, does not seek to raise the water level in Wixom Lake. Instead, it seeks to recover for damages caused by Boyce Hydro's illegal drawdowns of the lake in violation of state statutes and a court order.

Boyce Hydro, who never intended to extend its drawdowns into May, had already refilled Wixom Lake when the lawsuit was filed. This is consistent with Boyce Hydro's September 25, 2019, permit application, in which Boyce Hydro specifically stated that the Wixom Lake refill would begin in March 2020. As noted, Boyce Hydro never indicated prior to the failure that it could not safely maintain the Wixom Lake summer water level.