

Comments on a Proposed Rule by the Mine Safety and Health Administration
Metal and Nonmetal Dams

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Kansas Department of Agriculture,
Division of Water Resources

General Comments

The Kansas Department of Agriculture's Division of Water Resources (DWR) is the state agency responsible for dam safety in Kansas. As the state dam safety office, we are providing comments on MSHA's proposed rule for metal and nonmetal mining dams as requested. Because the specific questions posed by MSHA seem oriented for operators, we are making only general comments.

In Kansas, all dams that are either (a) 25-feet or taller, or (b) 6-feet or taller and able to impound at least 50 acre-feet of water at the top of the dam, are regulated by DWR, except those owned and operated by the federal government or an Indian nation. This includes dams associated with the operation of metal and nonmetal mines. Kansas statutes and regulations involving dam safety can be found at:

www.ksda.gov/includes/statute_regulations/structures/Obstructions_in_Streams_Dam_regulations.pdf
www.ksda.gov/includes/statute_regulations/mainportal/Obstructions_in_Streams.pdf

Please note that these links will take you directly to the Adobe PDF files.

For states that regulate mining dams, we recommend MSHA subordinate its regulatory activities to those of the state dam safety agency. State dam safety agencies have clear authority and experienced personnel to regulate dams and protect public safety. Mine operators should not be faced with meeting both state and MSHA requirements. MSHA should not promulgate rules that apply to the same dams regulated under state regulatory programs. Such confusion will not promote safer structures.

If MSHA believes it must promulgate regulations, MSHA's safety requirements should be the same as those of the state in which the dam is located. This avoids subjecting the mine operator to multiple, possibly conflicting requirements. It leaves responsibility in the hands of the agency with the most expertise and experience in dam safety in the same geographical area as the dam is located. When a state declines to regulate dams at mine operations, MSHA should adopt the state's requirements, provided they meet some minimum MSHA standards.

In Kansas, there are specific minimum design criteria appropriate for the hazard classification and size of the dam, requirements that design and construction inspection be overseen by a professional engineer qualified in dam design and construction, and periodic inspections of high- and significant-hazard dams.

Furthermore, in Kansas we conduct inspections at critical points during construction and require as-built plans for all new dams. DWR also has the right of access to all dams. Dams may be

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inspected at any time for compliance with the approved plans and to make sure no unapproved modifications have been made.

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