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**LETTER SENT VIA EMAIL**

December 10, 2010

Ms. Patricia W. Silvery  
Director, Office of Standards  
MSHA  
1100 Wilson Boulevard, Room 2350  
Arlington, VA 22209-3939

RE: RIN 1219-AB70 – Metal & Nonmetal Standards for Dams

Dear Ms. Silvery:

On behalf of the Membership of the Colorado Stone, Sand & Gravel Association (CSSGA), we would like to submit our official comments regarding MSHA's current rule-making process pertaining to Standards for Dams.

CSSGA strongly believes that the current FEMA Standards for Dams are more than adequate. We do not believe MSHA needs to embark on a regime of new rules for two critical reasons:

- 1) The current rules and regulations for dam safety in Colorado are being overseen and enforced admirably by the State Engineers Office (SEO) and the Division of Reclamation, Mining and Safety (DRMS). Both of these agencies are within the Colorado Natural Resources Department. FEMA and their state affiliate, the Colorado Water Conservation Board (CWCB), are also doing an outstanding job of protecting public safety as it pertains to dam safety and floods.
- 2) MSHA is currently doing an excellent job of overseeing metal and nonmetal miner safety and CSSGA doesn't believe that it is necessary for MSHA to create a new and duplicitous dam safety division.

Here is some additional information in support of our comments:

SEO and DRMS Current Jurisdiction: The State Engineers Office (SEO) and the Division of Reclamation, Mining and Safety (DRMS) are doing an excellent job of protecting public safety and the safety of dams and impoundments. I'd like you to consider the following two critical points:

- A) The SEO has a "Dam Safety" division that is very active and engaged with some of our members. Above grade dams are inspected regularly by the SEO's district engineers. Below grade dams are required to be engineered and in many instances, a clay liner is required for stability and to help with evaporative loss. Public safety is not compromised, nor is safety ever in doubt.

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- B) Before any aggregate mining can be conducted in Colorado, the Division of Reclamation, Mining and Safety (DRMS) reviews the permittee's application. The DRMS process includes many components, and where dams are in play, DRMS has regulatory authority over public safety as it pertains to the creation of pits, ponds, impoundments and dams.

Creation of a Duplicitous Dam Safety Division: The Membership of CSSGA strongly believes that it is not necessary to create another bureaucratic division within MSHA. Joe Main and the leadership of MSHA are correctly focused on miner safety and the safe conduct of metal and nonmetal mining operations. There are numerous details and logistical items that are still unresolved from the initial wave of programs and proposals that have been implemented during the first two years of the Obama Administration.

Summary: We encourage MSHA to stay focused on the successful implementation of their new programs without creating additional layers of inspectors, inspections, rules and regulations in an area that does not fall under MSHA's normal purview. The mere fact that MSHA is asking the aggregate industry to offer detailed suggestions for the creation of a series of rules and regulations pertaining to dam safety is indicative that this is new terrain for MSHA. MSHA has neither the time nor the technical expertise to effectively evaluate dams and impoundments. This lack of knowledge and expertise will directly lead to more inconsistent enforcement and confusion within the mining industry. FEMA and the CWCB have more than enough information and knowledge as it pertains to the creation of safe dams and impoundments.

Why not let the current state agencies (SEO, DRMS & CWCB) with dam safety jurisdiction in Colorado continue to do their respective jobs? The private sector and government agencies, both state and federal, are working very hard with their current jurisdictional responsibilities. We believe that it is not the time, especially in a down economy, for government agencies to be creating new rules and regulations which will require new FTE's and their associated costs.

Please let me know if you have any follow-up questions or comments. We look forward to hearing from you.

Best regards,

Pete Jacobson  
Managing Director

cc: CSSGA Membership  
NSSGA