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**From:** Dallas Jackson [mailto:dallas@georgiamining.org]  
**Sent:** Friday, December 10, 2010 12:00 PM  
**To:** zzMSHA-Standards - Comments to Fed Reg Group  
**Subject:** RIN 1219-AB70

To Whom It Concerns;

Please accept the attached Georgia Mining Association comments for submission on RIN 1219-AB70.

If we can provide further information or assistance, please do not hesitate to contact us.

Best Regards,  
Lee Lemke

AB70-COMM-13



December 10, 2010

MSHA  
Office of Standards, Regulations, and Variances  
1100 Wilson Boulevard, Room 2350  
Arlington, Virginia 22209-3939

RIN 1219-AB70

**Comments Submitted on Behalf of the Georgia Mining Association (GMA) Regarding Proposed Rule: Metal and Nonmetal Dams. Advance Notice of Proposed Rulemaking (ANPRM)**

The Georgia Mining Association (GMA) is pleased to submit these comments to MSHA as part of the ANPRM for dams at metal and nonmetal operations which was published in the Federal Register on August 13, 2010. GMA represents 46 mining companies with operations in Georgia and 170 associated companies that service the mining industry in Georgia. Our mining members and associate members provide over 10,000 jobs in Georgia and produce mineral products with a value of over \$1.8 billion annually.

All of GMA's members share a common objective to provide a safe workplace for our miners along with operating our facilities in an environmentally responsible manner. Our mining members take pride in our collective safety and environmental accomplishments. GMA has included dams safety management topics at our environmental workshops and committee meetings. We would also welcome a dams safety professional from MSHA to speak on this subject at our Spring 2011 safety and environmental workshops.

Dams are constructed and managed at many of GMA member sites. Safe and cost efficient operation of these structures are a critical part of the operation as most of the structures are associated stormwater and wastewater management which is regulated by the Georgia Environmental Protection Division. The GMA and its members look forward to working with the Mine Safety & Health Administration regarding safe operation of dams and impounds.

General Comments

In the ANPRM, MSHA provides background information regarding the basis for further regulation of dams and impounds at mining operations. MSHA states that the agency has information on nearly 2,000 dams at metal and nonmetal mines in its database and "dam failures and near failures continue to occur". Five examples of failures are provided beginning in 1990 through 2004. However all but one of these examples occurred before MSHA began a program in the early 2000s. In addition, as part of this effort, dams safety professionals with MSHA also have conducted detailed inspections of dams throughout the



industry. MSHA inspects these structures twice per year as part of the it's required site inspection obligations for all above ground mining operations and has recently updated it's dams database during inspections at mining operations in Georgia. MSHA's Procedural Instruction Letter (#109-IV-1) of September 14, 2009 already includes procedures for inspections of dams and mines and mills and includes classification of dams by size and hazard potential. The letter also includes a detailed checklist for inspectors and operators to use as part of on-going inspections and dams management. MSHA also requires that operations have emergency procedures associated with dams. Finally, MSHA has requirements for notification to the agency within 15 minutes in the event of an unstable condition which requires emergency action to prevent failure of an impound and/or which causes individuals to evacuate an area . GMA requests that MSHA reevaluate it's information regarding dam failures since the development of the enhanced dams safety inspection program regarding a proposed rule. Based on GMA member experience, we believe that the agency already has adequate tools and regulations to address dams safety at metal and nonmetal operations in Georgia.

#### Regulation of Dams

Question #3 - In addition to existing regulation of structures by MSHA, dams are also regulated by the various states. As an example, dams in Georgia are regulated by the Georgia Environmental Protection Agency under the "Georgia Safe Dams Act of 1978." Dams are classified by hazard potential and further classified based on size. In addition, most states already regulate dams within their jurisdictions, including California, Illinois, and Mississippi. Many of MSHA questions in the ANPRM (design and construction standards, operation, inspection and maintenance) are addressed in the State requirements and as such these structures would be needlessly regulated by two different agencies.

#### Closure of Dams

Question #24 - GMA believes that MSHA should provide a process to close a dam with respect to existing regulations and potential new rules. GMA recommends that MSHA consider the following to meet the requirements of closure:

- A structure associated with an operation where mining has been completed and reclaimed under a Mine Land Use Plan as issued by the Georgia Environmental Protection Division.
- A structure associated with an operation where no mining and/or processing solids are being introduced into the impound and has been reviewed and approved for closure by a Professional Engineer.

#### Economic Impact

GMA does not have economic information regarding cost of design, construction, and operation of dams to provide at this time. However GMA does have a greater concern regarding the impact of additional



regulation of structures by the agency. Over the past couple of years, our mining members have seen many of MSHA's regulations being construed by inspectors into requirements for which the rule was never intended to cover. In addition, interpretation of requirements by individual field inspectors has been very inconsistent and unpredictable. One inspector will indicate that a specific situation is in compliance and the next inspector will issue a S&S citation and assign high negligence for the same situation. When we have tried to address these concerns, mining companies are told that they are free to contest the citation but must obviously still abate the situation to the inspectors satisfaction even if the citation is vacated months later. With this recent experience, GMA is extremely concerned regarding how the requirements of a new and complex regulation for dams and impounds will be interpreted and enforced by the agency.

The Georgia Mining Association appreciates the opportunity to provide comment to MSHA on the ANPRM for Metal and Nonmetal dams and is committed to safe management of dams and the safety of our miners.

Sincerely,

Lee R. Lemke

Executive Vice President