



State of Idaho

DEPARTMENT OF WATER RESOURCES

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December 13, 2010

C. L. "BUTCH" OTTER
Governor

2010 DEC 21 A 10:48

GARY SPACKMAN
Interim Director

PostMarked on 12-15-2010

Patricia W. Silvey, Director
Mine Safety and Health Administration
Office of Standards, Regulations, and Variances
1100 Wilson Blvd, Room 2350
Arlington, VA 22209-3939

RE: Proposed Rulemaking: Metal and Nonmetal Dams
30 CFR Parts 56 & 57
RIN 1219-AB70

Dear Ms. Silvey,

In Idaho, the regulation of mine tailings impoundment structures (MTIS) is assigned to the Department of Water Resources (IDWR). IDWR's dam safety program is staffed, funded, and tasked with performing design review and approval for construction or enlargement, supervision during construction, and both inspection and monitoring during the life of the project. Idaho Code presently provides in statute and rules for the regulation of all metal and nonmetal mine storage impoundment structures exceeding 30 feet height. In addition to the listed requirements is a mandate that the dam owner prepare an abandonment plan and establish an active surety bond for the life of the project. The bond must be payable to the state in an amount sufficient to provide a means by which the tailings impoundment can be placed in a safe and maintenance-free condition if deserted by the owner without conforming to the abandonment plan approved by the Director.

Our review of the referenced proposed regulation as announced in the *Federal Register* (Vol.75, No. 156) appears to lack any substantive discussion about or consideration of existing individual state statute, rule or practice that would serve to address the items enumerated therein; specifically, requirements for a professional engineered design, review and design approval prior to construction, supervised construction, inspection and monitoring of the completed works by trained personnel, and preparation of emergency action plan(s) for structures that pose a significant or high hazard potential to downstream life and property in the event of failure.


It is acknowledged some states may not currently regulate metal and nonmetal tailings dams. However, it is important that any proposed legislation offered by MSHA fully consider the fact that many states and territories of the United States already operate under a set of comprehensive rules that provide regulation of MTIS in general accordance with Federal Emergency Management Agency (FEMA) *Federal Guidelines for Dam Safety*. IDWR

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respectively requests that MSHA work directly with our existing state program for safety of dams and mine tailings impoundment structures in order to avoid unnecessary, confusing, and potentially costly duplication of established regulations that presently exist for the prevention of dam failures and the protection of life and property.

We look forward to working with you for review of draft language added to the *Advanced Notice* that will ensure the concerns and suggestions expressed on behalf of Idaho's existing state dam safety program have been included, as appropriate.

Sincerely,


for Gary Spackman
Interim Director

John Moyle – President, Association State Dam Safety Officials

Sandra Knight – Administrator, DHS-FMEA

John Falk – Dam Safety Manager, IDWR

Robert Haynes – Northern Region Office Manager, IDWR