

**MINISTRY OF MINERAL RESOURCES & ENERGY**

REPUBLIC OF SOUTH AFRICA

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**Memorandum from the Parliamentary Office**

**National Assembly: 2569**

Please find attached a response to Parliamentary Questionfor***written reply*** asked**byMs S J Graham (DA)** to ask the **Minister of Mineral Resources and Energy**

**Mr. Tseliso Maqubela**

**Deputy Director-General: Mineral & Petroleum Regulation**

**………………/………………/2020**

Recommended/ Not Recommended

**Adv. T.S Mokoena**

**Director General: Department of Mineral Resources and Energy**

**………………/………………/2020**

Approved / Not Approved

**Mr. S.G Mantashe**

**Minister of Mineral Resources and Energy**

**………………/………………/2020**

**2569. Ms S J Graham (DA) to ask the Minister of Mineral Resources and Energy:**

(1) With reference to borrow pits being required to meet certain statutory requirements, (a) what pre-planning and licensing requirements exist where borrow pits are being mined on land belonging to a traditional authority, (b) how does this differ from borrow pits on state-owned land, (c) who is responsible for monitoring compliance of borrow pits, (d) what measures are taken against the company responsible for the borrow pit where there is material non-compliance and (e) what measures should be taken against the company by the family of the injured and/or deceased where there is injury and/or loss of life as a result of a borrow pit that does not comply;

**Reply**

1. The requirements as it relates to borrow pits are not informed by the nature of ownership of the land over which they are to be undertaken, but the distinction revolves around the entity that intends to undertake such borrow pit activities. The distinction is in the following manner.;If a natural person or an entity that intends to undertake the borrow pit activities does not form part of those that are not exempted in terms of Section 106 of the Mineral and Petroleum Resources Development Act (Act 28 of 2002), they will be required to lodge an application for either a mining permit(Where the area does not exceed 5 hectares and the period of activities may not be longer than the period for which a mining permit can be valid for) or a Mining right (Where the area exceeds 5 hectares and the activities may take longer than the period provided for mining permit). It is important to highlight that the applications for either mining permit or mining right are to be lodged simultaneously with the application for Environmental Authorization in terms of the National Environmental Management Act (Act 107 of 1998).

In case of entities, that are exempted from applying for either a mining permit or a mining right in terms of Section 106 of the MPRDA, they were previously only required to submit the application for an environmental authorization, however following the delisting of this activity from the listing notices, they are currently under no obligation to submit such unless if any of the activities to be undertaking over and above the mining of material may fall under the listing notices.

1. As indicated above, the requirements are not informed by the nature of land ownership. Whether it’s Private or State-owned land, the requirements as outlined above would apply.

(c) The Department of Mineral Resources and Energy is the authority responsible for ensuring compliance by the entities/persons that are undertaking borrow pits activities. It is however imperative to highlight that following the delisting of activities exempted in terms of Section 106 of the MPRDA IN 2017, the activities that are currently undertaken by the exempted State Owned Entities are excluded from this compliance monitoring, although the DMRE and the Department of Environment, Forestry and Fisheries have now embarked on a process of effecting the amendments to overcome this gap. The draft documents are already in place and DEFF is in the process of finalizing the same to enable the DMRE to resume this responsibility of regulating the entities that are exempted from applying for either mining permits or mining rights.

1. The measures to ensure compliance are invoked as necessitated by the nature of non-compliance and differs from one case to the other. This may amongst others include, a Compliance Notice being issued in terms of Section 31L of NEMA with the instructions for corrective measures/steps to be effected. Failure to adhere to these administrative measures in terms of NEMA may also lead to Criminal measures being invoked.

In a case where the said borrow pit would have necessitated that the mining permit or mining right be issued (those that are not exempted in terms of Section 106 of the MPRDA), the said activity may also be suspended in terms of MPRDA. In severe cases of non-compliance, such a mining permit or mining right may be cancelled in terms of Section 47 of the MPRDA, after all the due administrative processes have been followed.

1. Firstly, if the nature of non-compliance warrants that the DMRE should take the appropriate steps as provided for in the legislation, such a family may bring the aspect to the Department’s attention, so that the measures as outlined above can be considered.

(2) With regard to the six children who have reportedly died in three borrow pits in the Moretele Local Municipality, North West, in the past few years, what (a) measures is his department taking to ensure that there is stricter compliance and enforcement and (b) support will his department provide to the families of the deceased children if the deaths were found to have been preventable and due to negligence and/or non-compliance?

**Reply**

1. The Department will conduct an investigation to establish the facts before responding comprehensively.

(b) It is imperative to be familiar with the actual circumstances in order to offer appropriate assistance.