



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

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INTERNAL MEMO

Date	09 March 2012	File no:	
To:	ALL Principal Inspectors	From:	Mr. David Msiza Chief Inspector of Mines

SUBJECT NOTIFICATION: MINE HEALTH AND SAFETY ACT, 1996 NOT APPLICABLE IN BRICK FACTORIES

SUBJECT

1. This notification serves to inform all Principal Inspectors that the Department had a court order that had placed on record that a brick factory is not a mine in terms of the provisions of the Mine Health and Safety Act, 1996, ("MHSA") as amended and therefore is out of the Inspectorate's jurisdiction with regard to enforcing the provisions of the MHSA.

BACKGROUND

2. Two crucial judgments were delivered against the Department which clearly established that a brick factory is not a mine in terms of the provisions of the Mine Health and Safety Act, 1996.
3. These judgments had emanated from Terra Bricks 2007 and the very recent Bert's Bricks (Pty) Ltd 2012 High Court cases by the Transvaal Provincial Division in Pretoria.

a) Terra Bricks 2007

- (i) The primary subject on review in this case was what constitutes a "mine" with regard to the MPRDA and MHSA

and whether any brick making activities constitute a “mine” or “mining” thereof.

- (ii) In his judgment, the Judge’s had deliberated on the “*brick making process*” and had in turn justified it by defining “*processing*” in terms of the Act as a pure form of winning a mineral which is aimed at the manufacturing of a new product such as bricks, which no longer constitute processing of a mineral as contemplated in the definition. According to his interpretation, put differently, bricks in its final form are not mined, they are manufactured.
- (iii) On further deliberations the judge’s interpretation of a “*brick factory*” even though situated in a mining area, he was of the view that “even though that can be perceived as reasonable, but it must not be based on a subjective view of one party and should not and cannot have any effect on the question of whether the brick factory is in fact a mine or not.
- (iv) This rational was based on the fact that the court basis its decision on objective facts, which are opinions of experts not of persons and the wording of the Act. Thus the Department’s argument at the time was seen as more subjective rather than objective in nature as it was not supported by fact.
- (v) This case was never appealed by the Department.

b) Bert’s Bricks (Pty) Ltd 2012

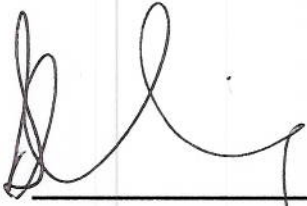
- (i) The Bert’s Bricks application had also challenged the provisions of the Mine Health and Safety Act, 1996 and still holds the opinion that a “*brick factory*” is not a mine and therefore the provisions of the MHSa are not applicable.

RECOMMENDATION

- 4. Taking the above-mentioned judgments into consideration, we are of the view that the Inspectorate must cease to conduct our activities

including inspections and audits in brick factories until such time that this matter is addressed accordingly.

5. Your cooperation is appreciated.



D. MSIZA
CHIEF INSPECTOR OF MINES
DATE: 8/03/2018