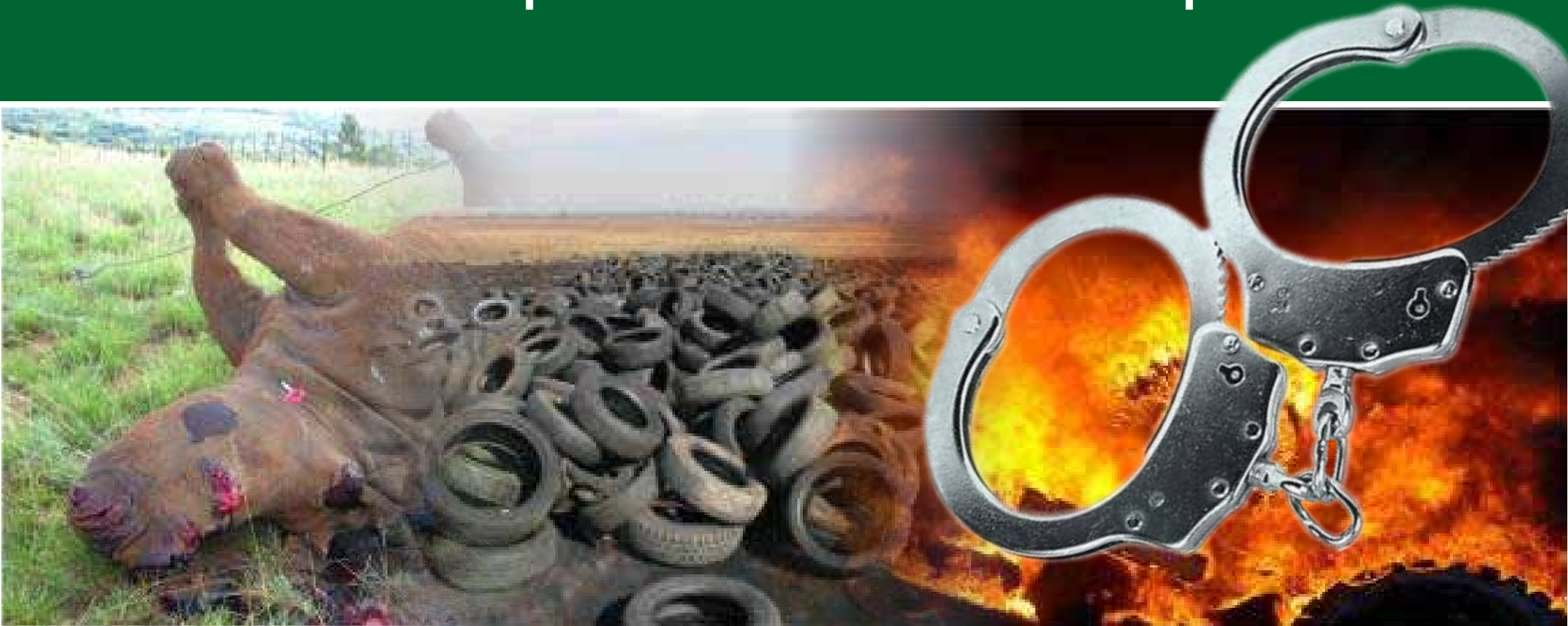


2010-11 National Environmental Compliance & Enforcement Report



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA





National Environmental Compliance & Enforcement Report 2010-11

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ACRONYMS

Key:	General
DEA:	National Department of Environmental Affairs
DG:	Director-General
EMI:	Environmental Management Inspector
EQP:	Environmental Quality and Protection (DEA)
MTPA:	Mpumalanga Tourism and Parks Agency
NECER:	National Environmental Compliance and Enforcement Report
NPA:	National Prosecuting Authority
SANPARKS:	South African National Parks
SAPS:	South African Police Service
ECPTA:	Eastern Cape Parks and Tourism Agency
TOPS:	Threatened or Protected Species
Key:	National Legislation
APPA:	Atmospheric Pollution Prevention Act 45 of 1965
ECA:	Environment Conservation Act 73 of 1989
GTA:	Game Theft Act 105 of 1991
MLRA:	Marine Living Resources Act 18 of 1998
NFA:	National Forestry Act 84 of 1998
NEMA:	National Environmental Management Act 107 of 1998
NEM:AQA:	National Environmental Management: Air Quality Act 39 of 2004
NEM:BA:	National Environmental Management: Biodiversity Act 10 of 2004
NEM:PAA:	National Environmental Management: Protected Areas Act 57 of 2003
NEM:WA:	National Environmental Management: Waste 59 of 2008
NWA:	National Water Act 36 of 1998
OHSA:	Occupational Health and Safety Act 85 of 1993
NVFFA:	National Veld and Forest Fires Act 101 of 1998
Key:	Provincial Legislation
CNECO:	Cape Nature and Environmental Conservation Ordinance 19 of 1974
CNCA:	Ciskei Nature Conservation Act 10 of 1987
LEMA:	Limpopo Environmental Management Act 7 of 2003
MNCA:	Mpumalanga Nature Conservation Act 10 of 1998
TNCO:	Transvaal Nature Conservation Ordinance 12 of 1983
FSO:	Free State Ordinance 8 of 1969

GLOSSARY OF TERM

“Admission of guilt fines (J534)” means fines paid for less serious environmental offences in terms of Section 56 of the Criminal Procedure Act, 1977. For the purposes of this report, admissions of guilt fines are not recorded as convictions.

“Civil court applications” means civil proceedings instituted in the High Court (e.g. interdict, declaratory order etc.) by regulatory authorities usually in circumstances where notices or directives are ignored, and / or urgent damage is being caused to the environment.

“Convictions” reflects the number of convictions by a court, whether pursuant to a trial or a guilty plea. Note that this number excludes admissions of guilt by way of the payment of admission of guilt fines.

“Criminal dockets” means the number of criminal dockets registered with the South African Police Service (with allocated CAS numbers) in that financial year.

“Enforcement action required” means that the environmental authority has decided that the nature of the non-compliance identified through an inspection warrants the initiation of an enforcement action (criminal, civil or administrative).

“Environmental crime” is the violation of a common law or legislative obligation related to the environment that may incur the imposition of a criminal sanction.

“Follow-up” means inspections that are conducted subsequent to the initial inspection. These types of inspections are typically more focused on the progress that has been made on non-compliant areas identified in the initial inspection.

“Green, Blue and Brown” refers to the compliance and enforcement activities taking place in the biodiversity, protected areas (green), integrated coastal management (blue) and pollution, waste and EIA(brown) sub-sectors respectively.

“Unlawful commencement of listed activity” means activities which may have a detrimental effect on the environment and require an environmental authorisation prior to commencement. It is a criminal offence to commence or undertake these activities without such an authorisation in terms of S22 of ECA and S24F of NEMA.

“Initial inspection” means that it is the first time that the particular facility/person has been the subject of a compliance inspection by EMLs. These types of initial, baseline inspections may cover a broad range of environmental requirements (for example, air, water, waste) as is the case with the sector-based strategic compliance inspections described in 8 below.

“No. of non-compliances” means the total number of non-compliances related to environmental legislation, regulations, authorisation and permit conditions that were identified by EMLs when conducting inspections.

“Non-compliance” refers to any breach of an environmental legislative obligation or permit conditions, irrespective of whether such a breach constitutes a criminal offence or not.

“Notices/directives issued” means administrative enforcement tools, such as notices and directives that are issued in response to a suspected non-compliance with environmental legislation. These tools instruct the offender to take corrective action (e.g. ceasing an activity, undertaking rehabilitation, submitting information, etc), failing which they may be guilty of a criminal offence.

“Proactive Inspections” means inspections that are initiated by the EML without being triggered by a specific complaint, but rather as part of the institutions’ broader compliance strategy. These inspections assess compliance against legislative provisions as well as permit conditions.

“Reactive inspections” means inspections that are initiated in reaction to a specific report or complaint. In these circumstances, the EML is required to conduct a site visit to verify the facts alleged in the complaint; and assess the level of non-compliance.

“Reported incidents” means all incidents of suspected non-compliance with environmental requirements reported by institutions for the purposes of the NECER, irrespective of whether compliance and enforcement responses have been taken or not.

“Section 105A agreement” means a plea and sentence agreement entered into between the accused and the state in terms of which the accused admits guilt and the conditions of the sentence are set out and confirmed by the court.

“Arrests by EMLs” indicates the number of individuals arrested/summoned to court by EMLs for the purposes of criminal prosecution during the financial year.

“S24G administrative fines” are paid by applicants who wish to obtain an ex- post facto environmental authorisation despite the fact that they have illegally commenced with a listed activity in terms of S24F of NEMA.

“Warning letters” are written documents that afford the opportunity to the offender to comply without the instigation of formal administrative, civil or criminal enforcement proceedings.

Note: for the purposes of the statistics represented in this report, “-” means that no statistics are available for this information field, whereas “0” means zero.

1. Introduction

The primary objective of the annual National Environmental Compliance and Enforcement Report (NECER) is to provide a national overview of environmental compliance and enforcement activities undertaken by environmental authorities across the country during the period 1 April 2010 to 31 March 2011. 2010/11 marks the fifth year in which institutions have submitted their statistics to DEA for compilation and publication; following similar reports in the 2006/7, 2007/8, 2008/9 and 2009/10 financial years. The initiation of this report coincided with the creation of a common set of national compliance and enforcement powers through the establishment of the Environmental Management Inspectorate in 2005. However, it must be noted that the scope of this report extends beyond the work of the Inspectorate, and also includes other regulatory functions executed in terms of provincial legislation.

The aim of the report is to provide a broad overview of:

- the compliance and enforcement capacity in the country (confined to the Environmental Management Inspectorate; and does not include other environmental compliance and enforcement officials);
- the enforcement (criminal, administrative, civil) and compliance monitoring activities (proactive, reactive inspections);
- the most prevalent types of environmental crimes per institution;
- the legislation and court cases relating to environmental matters;
- the capacity-building interventions and engagement with key stakeholders.

The statistics reflected in this report spans the period of 3 financial years, in order to enable a comparison of performance with preceding years. In drawing any conclusions from these comparisons, however, a few cautionary notes must be highlighted. Firstly, the scope of institutions reporting for the purposes of this report may have changed due to the restructuring of government departments, such as the transfer of marine and coastal management to the Department of Agriculture, Fisheries and Forestry. In addition, the national Department is still working to develop a common understanding of the various information fields and utilisation of a single reporting template amongst all reporting institutions. Finally, the statistics reflected in this report emanate directly from the input received from the respective EMI Institutions – no independent auditing/verifications of this input is conducted by DEA or any other third party.

New additional information in the 2010/11 report includes a summary of the types of sentences handed down for successful convictions, more detailed breakdown of the criminal enforcement activities and a categorisation of EMI capacity according to subsector (green, brown and blue) and function (compliance and enforcement).

With the increasing collaboration between various environmental compliance and enforcement

authorities in the compilation of this report, it is hoped that the findings will provide not only a broad perspective to the public on the general work activities of environmental compliance and enforcement institutions, but also support the institutions themselves to develop effective strategies and mechanisms to combat environmental crime.

2. Key findings

2.1 The Environmental Management Inspectorate

- There has been a slight (0.3%) increase in the total number of EMIs in the national register from 1073 in 2009/10 to 1076 in 2010/11. The annual increase can mainly be attributed to the increase by 136 from KZN Wildlife, including 126 Grade 5 field rangers.
- Besides SANPARKS, there are 413 operational compliance and enforcement EMIs that are divided into the following sub-sectors: 183 are responsible for brown issues, 229 are responsible for green issues and 1 is responsible for blue issues.
- The national register does not include officials who were trained, but not yet designated (e.g. local authorities, ECPTA etc.).
- The ratio of males to females comprising the Environmental Management Inspectorate stands at almost 4:1, revealing a sector that continues to be dominated by males. The actual figures were 848 males and 228 females.
- There is more than double the number of enforcement officials (298) as compared to compliance monitoring officials (145) in the Inspectorate.
- KZN Wildlife (majority are Grade 5 field rangers), national DEA and Gauteng provincial department have the most EMIs, while Cape Nature, ECPTA and Isimangaliso have the least.
- KZN Wildlife showed the highest annual increase in EMIs (136). Isimangaliso, KZN, Mpumalanga and MTPA showed no annual increase, while Cape Nature and Northern Cape reported less EMI capacity than in the previous reporting period with a decrease of one each.

2.2 Overall National Statistics

Enforcement:

- The overall national statistics must be read in the context of the Marine Coastal and Management Branch being formally transferred to the Department of Agriculture, Forestry and Fisheries; and therefore not included in the statistics of 2010/11. A dramatic decrease in certain compliance and enforcement activities may be attributable to this restructuring.
- There has been a 31.27 % decrease in the number of reported environmental incidents, from 5739 in 2009/10 to 3944 in 2010/11.
- There has been an 18.2% decrease in the number of criminal dockets and J534s registered in the past financial years from 2412 in 2008/9, 2877 in 2009/10 and 2353 in 2010/11. Of the total of 2353 reported for this period, only 31.3% (738) were registered criminal dockets and 68.7% (1615) were J534s.
- There has been a slight decrease in the number of cases handed to NPA from 282 in 2009/10 to 234 in 2010/11. Out of the 234 reported to this period, only 9.4% (22) were subject to nolle prosequi by the NPA, displaying a dramatic decrease from the 36% (101) from the 2009/10 financial year.
- There has been a general decline in the number of arrests reported by EMIs with 2614 cases reported in 2008/9, 2384 in 2009/10 and 1988 in 2010/11.
- There has been a dramatic decrease in the number of acquittals from 18 in 2008/9 and 1026 in 2009/10 to 22 in 2010/11.
- There have been 72 convictions reported in the 2010/11 financial year, dropping dramatically from 673 in 2009/10.
- There has been an 85.82% (19) decrease in the number of plea bargain agreements reached in 2010/11, compared to the 134 reported in 2009/10.
- The total amount for admission of guilt fines issued has decreased from R 2,509,703.00 in 2009/10 to R 867,010.00 in 2010/11, which reflects a 65.45% decrease.
- The total number of warning letters in 2010/11 was 176 as compared to the 109 issued in 2009/10 financial year.
- The total number of administrative notices issued was 547, with 266 pre-compliance notices accounting for the highest number in the total amount.
- There has been a 40% (6) decrease in the number of civil court applications launched as compared to the 10 launched in the 2009/10 financial year.
- There has been a slight decline in the total amounts paid in respect of section 24G administrative fines from R 8 874 966.10 in 2009/10 to R 8,364,870.00 in 2010/11.

Compliance Monitoring:

- There were a total of 1954 facilities inspected in 2010/11, which reflects a slight decline from 2380 facilities in 2009/10 nationwide in the Brown and Green sub-sectors.

- There has been a decrease in the number of proactive inspections from 5701 in 2009/10 to 2196 in 2010/11 reflecting a decline of 61.48%.
- The total number of non-compliances detected during inspection has also decreased from 1594 in 2009/10 to 1116 in 2010/11.
- There has been a slight decline in the total number of reactive inspections from 596 in 2009/10 to 558 in the 2010/11 financial years.
- There has been a dramatic increase in follow-up inspections conducted from 283 in 2009/10 to 833 in 2010/11.
- The total number of inspections that required enforcement actions to be taken has increased from 289 in 2009/10 to 433 in 2010/11.

2.3 Statistics per Institution/Province

- SANPARKS recorded the highest number of criminal dockets registered (250) with 28 of those handed to the NPA, followed by Ezemvelo KZN Wildlife with 168 criminal dockets; and thirdly the Limpopo provincial department with 83 dockets registered. The lowest numbers of criminal dockets registered were in the Western Cape, Mpumalanga and Eastern Cape provincial departments.
- Limpopo recorded the highest number of arrests (832) by EMIs and they also handed 51 criminal dockets to NPA.
- Eastern Cape collected the highest amount of admission of guilt fines (J534s) amounting to R 262, 600.00.
- Mpumalanga has recorded the highest number of administrative enforcement tools with 58 pre-compliance notices and pre-directives and 60 final compliance notices and directives.
- There were 24 cases dealt with by prosecutors who attended the training course on environmental crimes in relation to matters investigated by SANPARKS.
- The Western Cape provincial department issued 76 warning letters, the highest compared to other EMI Institutions.
- Gauteng recorded the highest amount collected through the issuing of S24G fines, being R 3, 597, 370.00 from 43 cases.
- North West recorded the highest number of facilities inspected with a total of 823, followed by KwaZulu-Natal with 337 and Gauteng with 243 facilities. The least recorded institute was Mpumalanga which recorded 82 facilities inspected.
- Kwa-Zulu Natal recorded 433, which is the highest number of non-compliances detected, followed by the National Department of Environmental Affairs with 257 and Western Cape with 143. The least number of non-compliances detected was North West with 10.

2.4 Industrial Compliance and Enforcement

In relation to proactive industrial compliance and enforcement work, this financial year has seen the undertaking of a large number of follow-up inspections. These were conducted primarily to evaluate whether levels of compliance had increased through action taken by facilities following the initial baseline assessments. It should be noted that there is a gap of approximately two to three years between the initial inspection and the follow-up inspection, more than sufficient time for facilities to take meaningful steps towards achieving compliance. In general, however, it appears as if the approach adopted (i.e. providing the facilities a period of time to come into compliance) has not achieved the desired results. Many of the follow-up inspections have identified the need for enforcement action, particularly in relation to contraventions of the National Environmental Management: Waste Act. This action has taken the form of both administrative and criminal enforcement action, and in some cases, a combination of both.

During this financial year, we have also seen some positive results of enforcement action taken in previous years. The enforcement action taken by DEA against ArcelorMittal Vereeniging, for example requiring the implementation of measures to address the significant fugitive emissions resulted in the commissioning of a secondary extraction system at a cost of R220 million. Assmang Cato Ridge also commissioned its R100 million extraction system in response to enforcement action taken by the DEA in 2007.

2.5 National Complaints and Incidents

- There has been an increase in the number of incidents reported to DEA in 2010/11 through the Environmental Crimes and Incidents Hotline, through the Ministry, Office of the DG or directly.
- In 2010/11, the total number of complaints reported was 612, while in 2009/10 there were 389 incidents reported.
- The reported number of emergency incidents increased from 38 in 2009/10 to 42 in 2010/11 reflecting an increase of 10.5%.
- There has been a general increase in certain types of complaints received, with substantial increases in terms of illegal dumping parenthesis (60 in 2009/10 to 130 in 2010/11) and water pollution (44 in 2009/10 to 123 in 2010/11)
- There has been a dramatic increase in the number of complaints referred to local authorities from 6 in 2009/10 to 134 in 2010/11 and those referred to provinces increased from 122 in 2009/10 to 210 in 2010/11.

2.6 Summary of Outstanding Performance

CATEGORY	RESULT	INSTITUTION	LEGISLATION
Most inspections conducted	823	North West: Department of Agriculture, Conservation, Environment and Rural Development	Multiple
Highest sentence of direct imprisonment without a fine option	10 years without option of fine	Limpopo: Department of Economic Development, Environment and Tourism	LEMA Section 64(1)(a)
Highest sentence for a pollution and waste case	Acc 1: R2 000 000 of which R1 000 000 suspended for 5 years; Acc 3: R100 000 of which R50 000 suspended for 3 years;	National Department of Environmental Affairs	NEMA section 24F; ECA section 20 Gauteng Health Care Risk Waste Regulations
Highest number of Section 24G fines	58 issued of which 43 of them were paid amounting to R 3 597 370	Gauteng Department of Agriculture and Rural Development	NEMA section 24G
The highest number of administrative enforcement notices issued	118	Mpumalanga Department of Economic Development, Environment and Tourism	NEMA Section 24
Highest number of admission of guilt fines issued	762 fines issued and 754 paid, amounting to R 298, 960.00	Limpopo: Department of Economic Development, Environment and Tourism	LEMA Section 64(1)(d)

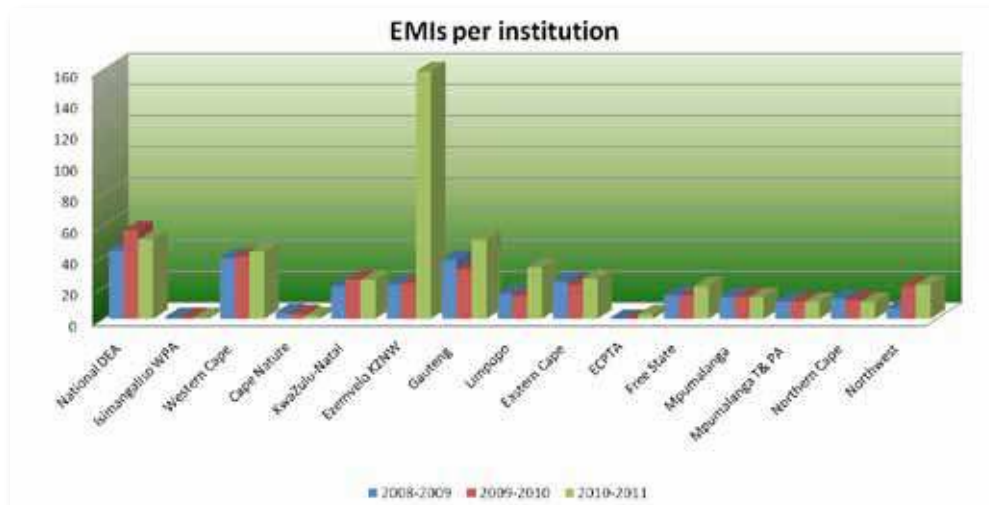
3. Environmental Management Inspectors

Environmental Management Inspectors (EMIs) represent the environmental compliance and enforcement capacity in respect of specific pieces of national environmental legislation. There are, of course, officials appointed in terms of provincial legislation and local authority by-laws that also carry out environmental compliance and enforcement function. However, only EMIs are mandated to enforce and monitor compliance with NEMA and specific environmental management Acts. As at 31 March 2011, there were 1076 Environmental Management Inspectors (EMIs) on the EMI Register kept by the Department of Environmental Affairs in terms of Regulation 6(2) of the Regulations relating to Qualification Criteria, Training and Identification of; and Forms to be used by Environmental Management Inspectors (GN R494 in GG 28869 of 02 June 2006).

The distribution of EMIs is reflected below:

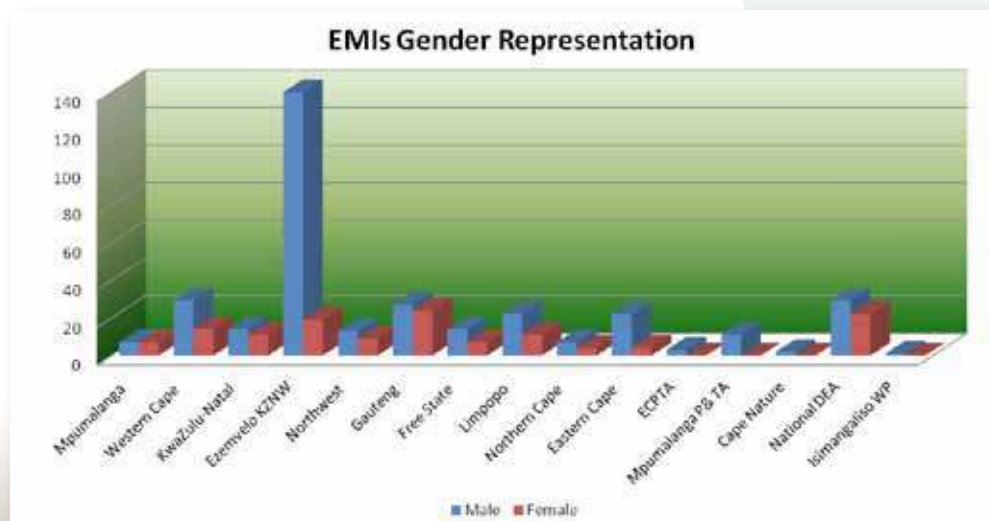
3.1 Environmental Management Inspectors per Institution

INSTITUTION	2008-2009	2009-2010	2010-2011
SANPARKS	634	782	603
National DEA	44	57	51
Isimangaliso WPA	1	1	1
Western Cape	39	40	43
Cape Nature	4	3	2
KwaZulu-Natal	21	25	25
Ezemvelo KZNW	22	23	159
Gauteng	38	32	51
Limpopo	16	15	33
Eastern Cape	24	22	26
Eastern Cape Parks and Tourism Agency	-	-	3
Free State	15	15	21
Mpumalanga	14	14	14
Mpumalanga T& PA	11	11	11
Northern Cape	13	12	11
Northwest	7	21	22
TOTAL	903	1073	1076



Graph 1: Comparison of EMIs per institution NB: Excluding 603 SANPARKS figure.

3.2 Environmental Management Inspectors: Genders and Grades



Graph 2: Comparison of EMIs genders per institution: Excluding SANPARKS figures



EMIs are categorised according to various grades which reflect the legislative compliance and enforcement powers that they have in terms of Chapter 7 of NEMA. The grading system is intended to align the function of the EMI with access to appropriate legislative powers.

Institution	Grd1	Grd2	Grd3	Grd4	Grd5	Male	Female	Function		Mandate		
								Enforcement	Compliance Monitoring	Brown	Green	Blue
Mpumalanga	3	5	6	0	0	7	7	3	11	11	0	0
SANPARKS	4	76	-	-	475	507	96	-	-	-	-	-
Western Cape	4	22	0	17	0	29	14	13	30	43	0	0
KwaZulu-Natal	4	21	0	0	0	14	11	11	14	25	0	0
Ezemvelo KZN Wildlife	20	13	0	0	126	140	19	157	2	0	159	0
Northwest	-	22	0	0	0	13	9	9	13	9	13	0
Gauteng	3	21	27	0	0	27	24	31	20	42	9	0
Free State	1	20	0	0	0	14	7	12	3	2	10	0
Limpopo	8	18	3	4	0	22	11	17	17	3	13	0
Northern Cape	1	7	3	0	0	7	4	3	8	3	3	0
Eastern Cape	4	22	0	0	0	22	4	12	0	-	-	-
Eastern Cape Parks and Tourism Agency	0	2	1	0	0	3	0	2	1	0	3	0
Mpumalanga Parks & Tourism Agency	2	9	0	0	0	11	0	6	5	0	11	0
Cape Nature	0	2	0	0	0	2	0	2	0	0	2	0
National DEA	6	10	26	9	0	29	22	19	21	45	5	1
Isimangaliso Wetland Park	1	0	0	0	0	1	0	1	0	0	1	0
SUB-TOTAL	61	270	66	30	601	848	228	298	145	183	229	1

* Reason sub-totals don't correlate with the totals for EMI institutions is because some institutions did not make use of the prescribed template, as well as the fact that some EMIs either do not execute a compliance and enforcement function or are officials at a senior level. There are also institutions where officials are required to do both compliance monitoring & enforcement and may operate across brown, green and blue subsectors.

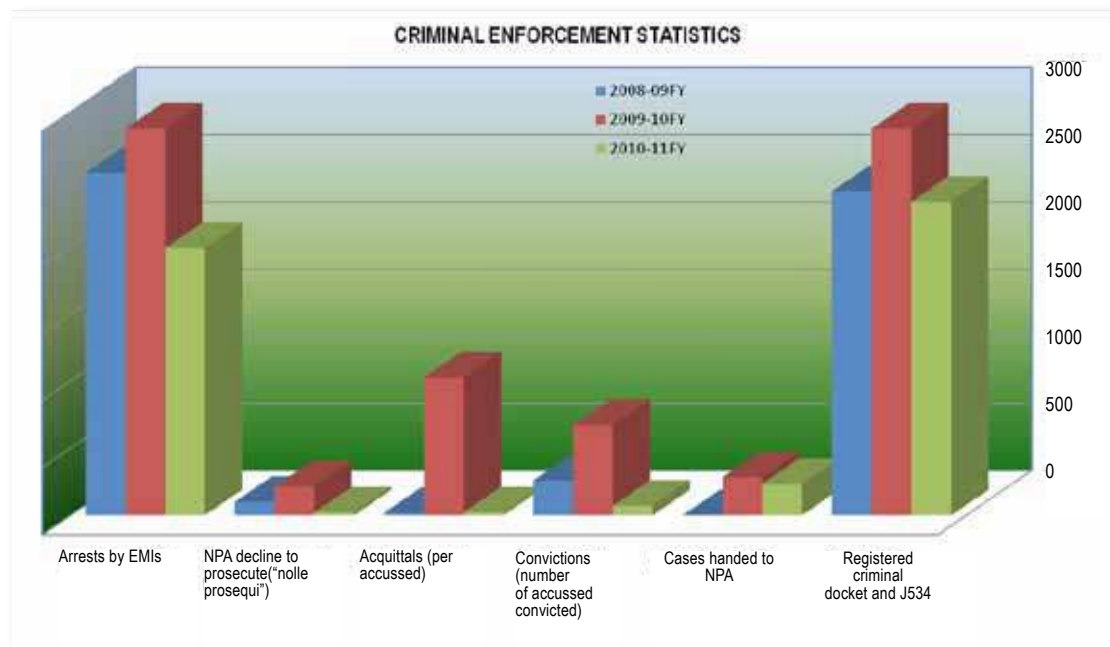
4. Overall National Statistics

4.1.1 Enforcement

	2008-9FY	2009-10FY	2010-11FY*
Criminal Enforcement			
Criminal dockets	-	2877	738
J534s issued	-		1615
Cases handed to NPA	-	282	234
Arrests by EMLs	2547	2384	1988
NPA declined to prosecute ("nolle prosequi")	100	214	22
Acquittals	18	1026	22
Convictions	258	673	72
Section 105A agreements (plea bargains)	4	134	19
Amount of admission of guilt fines paid (total amount)	R 824 886	R 2 509 793	R 867 010
Administrative Enforcement and Civil Actions			
Warning letters written	109	827	176
Pre-directives issued	179	249	60
Pre-compliance notices issued			266
Final Directives issued	94	172	95
Final compliance notices issued			126
Civil court applications launched	3	10	6
S24G administrative fines paid (total amount and number)	R 15 499 518	R 8 874 966	R 8 364 870

*The 2010-11 national statistics excludes Marine and Coastal Management who reported the following for the 2009-10 FY (latest figures received on 29/08/11):

- Criminal dockets and J534 registered – 689
- Summons/Arrests – 901
- Convictions – 290
- Warning letters issued – 613
- Cases handed to the NPA – 12
- Acquittals – 381
- Admission of Guilt Fines paid – R1 832 558



Graph 3: Overall Criminal Enforcement Statistics 2008-09FY to 2010-11FY

4.1.2 Most prevalent crimes reported

PROVINCE	INSTITUTION	PREVALENT CRIMES
National Institutions	SANPARKS	Illegal hunting of rhino
	Environmental Quality and Protection	Unlawful commencement of listed activity
Western Cape	Department of Environmental Affairs and Development Planning	Unlawful commencement of listed activity
	Cape Nature	Angling without a permit
Kwa-Zulu Natal	Department of Agriculture, Environmental Affairs and Rural Development	Unlawful commencement of listed activity
	Ezemvelo KZN Wildlife	Permit contravention / No permit
	Isimangaliso Wetland Park Authority	Unlawful commencement of listed activity

“Unlawful commencement of listed activity” means activities which may have a detrimental effect on the environment and require an environmental authorisation prior to commencement. It is a criminal offence to commence or undertake these activities without such an authorisation in terms of S22 of ECA and S24F of NEMA.

Gauteng	Department of Agriculture and Rural Development	Unlawful commencement of listed activity/export and import contraventions
Limpopo	Department of Economic Development, Environment and Tourism	Unlawful commencement of listed activity/Illegal cutting and collection of wood
Eastern Cape	Department of Economic Development and Environment Affairs	Unlawful commencement of listed activity
	Eastern Cape Parks and Tourism Agency	Illegal hunting with a trap
Free State	Department of Economic Development, Tourism and Environmental Affairs	Unlawful commencement of listed activity/Illegal hunting
Mpumalanga	Department of Economic Development, Environment and Tourism	Unlawful commencement of listed activity
	Mpumalanga Tourism and Parks Agency	Rhino poaching
Northern Cape	Department of Environment Affairs and Nature Conservation	Hunting of game animals without permit
North West	Department of Agriculture, Conservation, Environment and Rural Development	Unlawful commencement of listed activity

4.1.3 Examples of Court Sentences Obtained per Institution

Limpopo Department of Economic Development, Environment and Tourism			
Sentence	Suspended Sentences	Legislation	Description
R 60 000 or 3 years imprisonment	R55 000 suspended for 5 years	NEMA:Sec 24F, EIA Regs, 2006	Commencement of listed activity using a fraudulent ROD issued by an official
5 years imprisonment	None	Fraud	Fraudulent EA issued
3 years imprisonment wholly suspended for 5 years	None	Fraud	Fraudulent EA issued
R60 000 fine or 3 years imprisonment and accused compensate complainant with amount of R6000	R55 000 or two (02) years suspended over 3 years	Fraud	Fraudulent EA issued
R130 000 fine or 5 years imprisonment	None	Section 57 of NEMBA	Illegal sale – rhino horn
None	6 accused sentenced 3 years suspended for 5 years	LEMA Sect. 64(1)(a)	Illegal possession: protected plants
R30 000 or 3 years imprisonment	None	LEMA Sect. 64(1)(a)	Illegal possession: cycads
10 years imprisonment without option of a fine		LEMA Sect. 64(1)(a)	Illegal possession: protected plants

R10 000 or 1000 days imprisonment	None	LEMA Sect. 64(1)(a)	Illegal possession: protected plants
R1000 or 6 months imprisonment	None	LEMA Sect. 38(1)(b)(iv)	Hunting with dogs
R1000 or 6 months imprisonment	None	LEMA Sect. 38(1)(b)(iv)	Hunting with dogs
16 months under correctional supervision	None	LEMA Sect. 38(1)(b)(iv)	Hunting with dogs

Free State Department of Economic Development, Tourism and Environmental Affairs			
Sentence	Suspended Sentences	Legislation	Description
2 accused fined R300 each	12 months imprisonment	Ordinance 8 of 1969, Sec 5(2), 6, 9, 14(4)	Illegal hunting
R30 000 fine and/or 3 years imprisonment	3 years imprisonment suspended for 5 years	NEMBA Sec 57(1)	Illegal possession of TOPS species
R20000 fine and/or 3 years imprisonment	2 years imprisonment suspended for 3 years	NEMBA Sec 57(1)	Illegal possession of TOPS species
5 months		Veld & Forest Fires ActS25(2)b	Starting veld Fire
R25000 or 1 year imprisonment	A further R25000 or 1 year suspended for 3 years	NEMWA S24(1)a	Illegal dumping: medical waste dumping
R1000 fine and 5 months Suspended for 5 years	5months imprisonment suspended for 5 years	Veld & Forest Fires ActS25(2)b	Starting veld Fire
	12 Months imprisonment suspended for 3 years	Explosives Act Reg 10(23)	Illegal dumping: explosives
R1000 fine	6 months imprisonment suspended for 5 years	NWA S125(2)b	Sewage spillage

North West Department of Agriculture, Conservation, Environment and Rural Development

Sentence	Suspended Sentences	Legislation	Description
R 5000 fine or 2 years imprisonment	None	TVL Ord 12 of 1983 Sec 26(1)	Illegal possession and selling: giraffe skins
R 2000 fine or 6 months imprisonment	None	TVL Ord 12 of 1983 Sec 26 (1)	Illegal transportation: Lechwe and Nyala without a permit
R 5000 fine and pay storage fee of R 45000.00	None	NEMBA Sec 57 (2)(b), TOPS Reg 73,74	Illegal import: 42 black wildebeest from Free State without a permit
Fine of R5000	None	NEMBA Sec 57 (1), TOPS Reg 73, 74	Keeping of 3 cheetahs without a permit and non-compliance with fencing specification
Fine of R2000	None	Ord 12/1983 Sec 18 (1)	Hunting of 2 bushbuck without a permit
Fine of R2000	None	Ord 12/1983 Sec 17 (1)	Hunting of game without a permit
Fine of R5000 and to settle storage fee of R2800	None	TVL Ord 12 of 1983 Sec 39 (1)	Transporting of springbok without a permit

Gauteng Department of Agriculture and Rural Development

Sentence	Suspended Sentences	Legislation	Description
3 months in prison with an option of a fine	None	Ordinance 12 of 1993, Section 43	Keeping of wild animals without a permit.
R20 000 and 5 years	None	NEMWA Sec24F(2)	Illegal Disposal of Waste
R 10 000	None	ECA S22(1) read with S29(4)	Construction of communication networks on top of rooftops
R 10 000	None	ECA S22(1) read with S29(4)	Construction of communication networks on top of rooftops
R 10 000	None	ECA S22(1) read with S29(4)	Construction of communication networks on top of rooftops
R 10 000	None	ECA S22(1) read with S29(4)	Construction of communication networks on top of rooftops

Cape Nature			
Sentence	Suspended Sentences	Legislation	Description
R1000 or 3months imprisonment each	None	W.Cape N. Cons Ord. 19 of 1974, Sec 42(1) r/w Sec 72	Possession of Flora without documentation
R1000 fine or 3months imprisonment each	None	W.Cape N. Cons Ord. 19 of 1974, Sec 42(1) r/w Sec 72	Possession of Flora without documentation
R60 000 fine, and 5 years imprisonment	5 years imprisonment suspended for 5years	W.Cape N. Cons Ord. 19 of 1974, Sec 42(1) (b)	Possession of Flora without documentation
R10 000 fine	None	W.Cape N. Cons Ord. 19 of 1974, Sec 44 (1)(a) and Sec 44(1)(e)	Transport and Possession of protected wild animals without permit

SANPARKS			
Sentence	Suspended Sentences	Legislation	Description
Accused 1 and 3 sentenced to 9 years imprisonment; Accused 2 sentenced 5 years imprisonment without the option of a fine	None	Protected Areas Act 57/2003 Reg 45(2)(a)(i)	illegal hunting of rhino in a National park
6 accused, each fined R2 500	None	MLRA 18/1998	abalone poaching
	3 months imprisonment suspended for 5 years	MLRA 18/1998	abalone poaching
R10 000 fine & 5 months imprisonment suspended for 5 years	5 months imprisonment suspended for 5 years	MLRA 18/1998	abalone poaching
R 2 500 fine	None	MLRA 18/1998	illegal fish
R 40 000 or 8 months imprisonment;	R 30,000 or 6 months imprisonment suspended for 5years	MLRA 18/1998	abalone poaching
R40 000 fine	R20,000 suspended for 5years	MLRA 18/1998 & PAA 57/2003	abalone poaching
R500 fine	None	MLRA 18/1998	abalone poaching
2 accused were fined R 3000 each & the 3rd accused was fined R 1000	None	MLRA 18/1998	abalone poaching
3 accused fined R1000 each	4months imprisonment suspended for 4years	MLRA 18/1998	abalone poaching

Isimangaliso Wetlands Authority			
Sentence	Suspended Sentences	Legislation	Description
R50000 or 6 months imprisonment	None	Contempt of High Court Order	Contempt of Court Order
12 months imprisonment	None	MDTP & NEM:PAA	Destruction of fencing
3 years imprisonment for both accused	None	MDTP & NEM:PAA	Destruction of fencing
5 years imprisonment	None	MLRA	Poaching of Loggerhead turtle

Mpumalanga Tourism and Parks Agency			
Sentence	Suspended Sentences	Legislation	Description
R 1 500 or 3 months	Suspended for 5 years	MNCA sec 24 Purchase of game	Dealing in animal products

4.2 Compliance Monitoring

4.2.1 Compliance Inspection Activities of EMI Institutions

INSTITUTION	No. of facilities inspected	Proactive	Reactive	Initial	Follow-up	No. of Non Compliances	Enforcement Action Required
National DEA (Environmental Quality and Protection)	129	62	59	1	21	257	54
Western Cape	141	0	142	0	142	143	0
KwaZulu-Natal	337	460	54	242	277	433	195
Gauteng	243	345	136	196	281	133	77
Limpopo	199	86	37	143	82	87	78
Mpumalanga	82	12	63	76	7	53	29
North West	823	1231	67	1272	23	10	0
TOTAL	1954	2196	558	1930	833	1116	433



4.3 Reported Legislative Contraventions

	Legislation	KZN Wildlife	Gauteng	Free State	North West	Limpopo	Northern Cape	DEA	Eastern Cape Parks Board	Eastern Cape	Mpumalanga	KZN DAEA	Cape Nature	SANPARKS	KZN Isimangaliso	Mpumalanga Tourism and Parks Agency	TOTAL
National Legislation	NEMA	28	138	13	24	5	2	36	2	190	65	50	-	-	-	-	553
	NEM:BA	14	32	14	19	3	2	-	8	13	-	-	-	1	-	4	110
	TOPS Regulation 73 & 74	-	-	-	24	-	-	-	-	13	-	-	-	-	-	-	37
	NEM:PAA	4	1	-	-	-	-	-	-	-	-	-	-	302	9	-	316
	Game Theft Act 105 of 1991	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	2
	National Forestry Act, No. 84 of 1998	-	-	4	-	1	-	-	-	2	-	-	2	1	-	-	10
	APPA	-	7	-	-	-	-	25	-	1	-	-	-	-	-	-	33
	EIA regulations	-	1	-	13	6	26	7	-	55	-	10	-	-	4	-	122
	NEM:AQA	-	3	-	-	-	-	11	-	1	-	-	-	-	-	-	15
	NEM:WA	-	15	7	3	1	11	40	-	13	2	8	-	-	-	-	100
	OHSA	-	-	-	-	-	-	3	-	-	-	-	-	-	-	-	3
	ECA	-	130	12	8	-	-	44	-	12	-	4	-	-	-	-	210
	MLRA	317	-	3	-	-	-	-	-	-	-	-	44	277	1	-	647
	NWA	-	3	3	-	-	1	-	-	-	-	-	-	-	-	-	7
	SUB TOTAL	363	329	58	94	16	42	166		300	67	73	46	581	14	4	2165
Provincial Legislation	KZN Conservation Act 29 Of 1992	11	-	-	-	-	-	-	-	-	-	-	-	-	-	-	11
	Limpopo EMA	-	-	-	-	888	-	-	-	-	-	-	-	-	-	-	888
	Ciskei NCA 10 of 1987	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	1
	NMCA	-	-	-	-	-	-	-	-	-	-	-	-	-	-	21	21
	Transvaal NCO, 1983	-	53	-	22	-	-	-	-	-	-	-	-	-	-	-	75
	Free State Ordinance, 1969	-	-	10	-	-	-	-	-	-	-	-	-	-	-	-	10
	Ordinance 19 of 1974	82	-	-	7	-	97	-	-	50	-	-	31	-	-	-	267
	Transkei Decree 1992	-	-	-	-	-	-	-	-	241	-	-	-	-	-	-	241
	SUB TOTAL	93	53	10	27	888	97	0	8	292	0	0	31	0	0	21	1514
	TOTAL	456	382	68	123	904	139	143	8	592	67	73	75	581	14	25	3679

5. Statistics per national institution/province

5.1 National Institutions

5.1.1 DEPARTMENT OF ENVIRONMENTAL AFFAIRS



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

NATIONAL DEPARTMENT OF ENVIRONMENTAL AFFAIRS	ENVIRONMENTAL QUALITY & PROTECTION		
	2008-9FY	2009-10FY	2010-11FY
Criminal Enforcement			
Criminal dockets	10	37	64
J534s issued			-
Cases handed to NPA	-	25	37
Arrests by EMLs	-	30	8
NPA declined to prosecute ("nolle prosequi")	1	0	1
Acquittals	-	0	0
Convictions	-	2	7
Section 105A agreements (plea bargains)	-	0	3
Admission of guilt fines paid	-	0	-
Administrative Enforcement and Civil Actions			
Warning letters written	3	5	10
Pre-directives issued	13	28	9
Pre-compliance notices issued			49
Final directives	7	8	4
Final compliance notices issued			26
Civil court applications launched	-	1	0
S24G administrative fine paid (specify amount)	-	R 93 000	R 0.00 (17)

5.1.2 SANPARKS AND ISIMANGALISO WETLAND AUTHORITY



	SOUTH AFRICAN NATIONAL PARKS			ISIMANGALISO WETLAND PARK	
	2008-9FY	2009-10FY	2010-11FY	2009-10FY	2010-11FY
Criminal Enforcement					
Criminal dockets	382	327	250	7	10
J534s issued	-	-	170	0	0
Cases handed to NPA	-	0	28	7	10
Summons/Arrests	343	173	390	12	57
NPA declined to prosecute ("nolle prosequi")	-	0	1	0	0
Acquittals	-	0	1	0	0
Convictions	-	0	18	3	5
Section 105A agreements (plea bargains)	-	0	0	2	0
Admission of guilt fines paid	R 191 100	0	R 91 700 (170)	R 0	R 0
Administrative Enforcement and Civil Actions					
Warning letters written	0	0	-	6	0
Pre-directives issued	-	0	-	1	0
Pre-compliance notices issued			-	1	0
Final directives issued	-	0	-	1	0
Final compliance notices issued			-	1	0
Civil court applications launched	-	0	-	4	2
S24G administrative fine paid (specify amount)	-	-	-	-	-

5.2 WESTERN CAPE



	DEPARTMENT OF ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING			CAPE NATURE		
	2008-9FY	2009-10FY	2010-11FY	2008-9FY	2009-10FY	2010-11FY
Criminal Enforcement						
Criminal dockets	-	1	0	33	111	23
J534s issued			0			53
Cases handed to NPA	-	0	0	6	6	4
Arrests by EMIs	-	0	0	8	19	26
NPA declined to prosecute ("nolli prosequi")	-	0	0	0	5	1
Acquittals	-	-	0	2	2	0
Convictions	-	-	0	10	5	5
Section 105A agreements (plea bargains)	-	-	0	0	1	1
Admission of guilt fines paid	-	-	R 0	R 11400 (8)	R270 500	R17 650 (20)
Administrative Enforcement and Civil Actions						
Warning letters written	-	10	76	-	-	-
Pre directives issued	32	81	3	-	-	-
Pre-compliance issued			4	-	-	-
Final directives	2	15	3	-	-	-
Final compliance notices issued			12	-	-	-
Civil court applications launched	-	-	1	-	-	-
S24G administrative fine paid(number& amount)	R459 285 (12)	-	0	-	-	-

5.3 KWAZULU-NATAL



agriculture, environmental affairs
& rural development

Department
Agriculture, Environmental Affairs
& Rural Development
PROVINCE OF KWAZULU-NATAL



	DEPARTMENT OF AGRICULTURE, ENVIRONMENTAL AFFAIRS & RURAL DEVELOPMENT			EZEMVELO KZN WILDLIFE	
	2008-9FY	2009-10FY	2010-11FY	2009-10FY	2010-11FY
Criminal Enforcement					
Criminal dockets	6	2	3	258	158
J534 Registered			-		320
Cases handed to NPA	-	1	-	-	-
Summons & Arrests	-	-	-	118	534
NPA declined to prosecute ("nolli prosequi")	-	-	-	-	-
Acquittals	-	-	-	-	-
Convictions	-	-	-	-	-
Section 105A agreements (plea bargains)	-	-	-	-	-
Admission of guilt fines paid	-	R 0	R 0	R 171 415	R 45 550 (167)
Administrative Enforcement and Civil Actions					
Warning letters written	14	39	36	-	-
Pre-directives issued	25	44	6	-	-
Pre-compliance notices issued			25	-	-
Final directive issued	27	36	6	-	-
Final compliance notices issued			6	-	-
Civil court applications launched	-	1	-	-	-
S24G administrative fine paid (number & amount)	R3 508 800 (28)	R 1 726 100	R 1 485 000 (4)	-	-

5.4 GAUTENG



GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT	2008-9FY	2009-10FY	2010-11FY
Criminal Enforcement			
Criminal dockets	30	86	40
J534s issued			26
Cases handed to NPA	-	57	30
Arrests by EMIs	6	85	18
NPA declined to prosecute ("nolli prosequi")	6	1	3
Acquittals	-	0	1
Convictions	6	90	5
Section 105A agreements (plea bargains)	3	37	4
Admission of guilt fines paid	R 5000 (1)	R 63 850	R 12 950 (21)
Administrative Enforcement and Civil Actions			
Warning letters written	3	15	12
Pre-directive issued	81	16	4
Pre-compliance notices issued			72
Final directives issued	16	11	3
Final compliance notices issued			33
Civil court applications launched	2	0	0
S24G administrative fine paid (number & amount)	R 8 408 905 (>333)	R 5 898 000 (17)	R 3 597 370 (43)

5.5 LIMPOPO



LIMPOPO DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM	2008-9FY	2009-10FY	2010-11FY
Criminal Enforcement			
Criminal dockets	462	1315	83
J534s issued			762
Cases handed to NPA	-	107	51
Arrests by EMIs	930	1315	832
NPA declined to prosecute ("nolli prosequi")	-	201	6
Acquittals	2	643	20
Convictions	11	534	16
Section 105A agreements (plea bargains)	-	92	2
Admission of guilt fines paid	R 182 730 (391)	R 118 070	R 298 960 (754)
Administrative Enforcement and Civil Actions			
Warning letters written	55	4	2
Pre-directive issued	8	9	1
Pre-compliance notices issued			7
Final directives issued	13	4	0
Final compliance notices issued			5
Civil court applications launched	-	0	2
S24G administrative fine paid (number & amount)	R 1 987 203	R 77 966	R 0 (6)

5.6 EASTERN CAPE



	DEPARTMENT OF ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS			EASTERN CAPE PARKS AND TOURISM AGENCY		
	2008-9FY	2009-10FY	2010-11FY	2008-9FY	2009-10FY	2010-11FY
Criminal Enforcement						
Criminal dockets	82	25	-	4	8	0
J534s issued			247			0
Cases handed to NPA	-	-	14	-	0	0
Arrests by EMIs	43	39	44	5	17	0
NPA declined to prosecute ("nolle prosequi")	5	3	0	-	0	0
Acquittals	0	0	0	-	0	0
Convictions	15	9	3	2	0	0
Section 105A agreements (plea bargains)	1	1	0	-	0	0
Admission of guilt fines paid	R25 700	R 31 900	R 262 600 (247)	-	0	R 0
Administrative Enforcement and Civil Actions						
Warning letters written	22	67	9	1	0	1
Pre-directive issued	13	45	6	-	0	1
Pre-compliances issued			30	-	-	1
Final directive issued	5	8	40	-	-	1
Final compliance notices issued			5	-	0	1
Civil court applications launched	3	3	1	-	0	-
S24G administrative fine paid (number & amount)	-	R 378 500	R 758 750 (6)	-	0	-

5.7 FREE STATE



DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS	2008-9FY	2009-10FY	2010-11FY
Criminal Enforcement			
Criminal dockets	12	27	31
J534s issued			4
Cases handed to NPA	-	23	29
Arrests by EMIs	16	38	21
NPA declined to prosecute ("nolli prosequi")	3	0	0
Acquittals	2	0	0
Convictions	0	21	9
Section 105A agreements (plea bargains)	0	1	2
Admission of guilt fines paid	R23 100 (18)	R 11 800	R 7300 (4)
Administrative Enforcement and Civil Actions			
Warning letters written	7	5	2
Pre-directive issued	5	10	11
Pre-compliance notices issued			8
Final directives issued	8	18	3
Final compliance notices issued			1
Civil court applications launched	-	1	0
S24G administrative fine paid (number & amount)	R 22 200 (6)	R 0	R 0 (2)

5.8 MPUMALANGA



	DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM			MPUMALANGA TOURISM AND PARKS AGENCY		
	2008-9FY	2009-10FY	2010-11FY	2008-9FY	2009-10FY	2010-11FY
Criminal Enforcement						
Criminal dockets	1	2	0	15	36	24
J534s issued			0			2
Cases handed to NPA	1	0	0	-	23	14
Arrests by EMIs	-	0	0	21	67	30
NPA declined to prosecute ("nolle prosequi")	-	0	0	2	2	0
Acquittals	-	0	0	-	0	0
Convictions	-	0	0	6	5	1
Section 105A agreements (plea bargains)	-	0	0	-	0	0
Admission of guilt fines paid	-	-	0 (247)	-	R 1 500	R 600 (1)
Administrative Enforcement and Civil Actions						
Warning letters written	-	54	25	-	0	0
Pre-directive issued	-	5	19	-	0	0
Pre-compliances issued			39	-	-	-
Final directive issued	13	63	23	-	-	-
Final compliance notices issued			37	-	0	0
Civil court applications launched	-	0	0	-	0	0
S24G administrative fine paid (number & amount)	R 427 500 (7)	R 584 500	R 1 178 750 (3)	-	R 0	R 0

5.9 NORTHERN CAPE

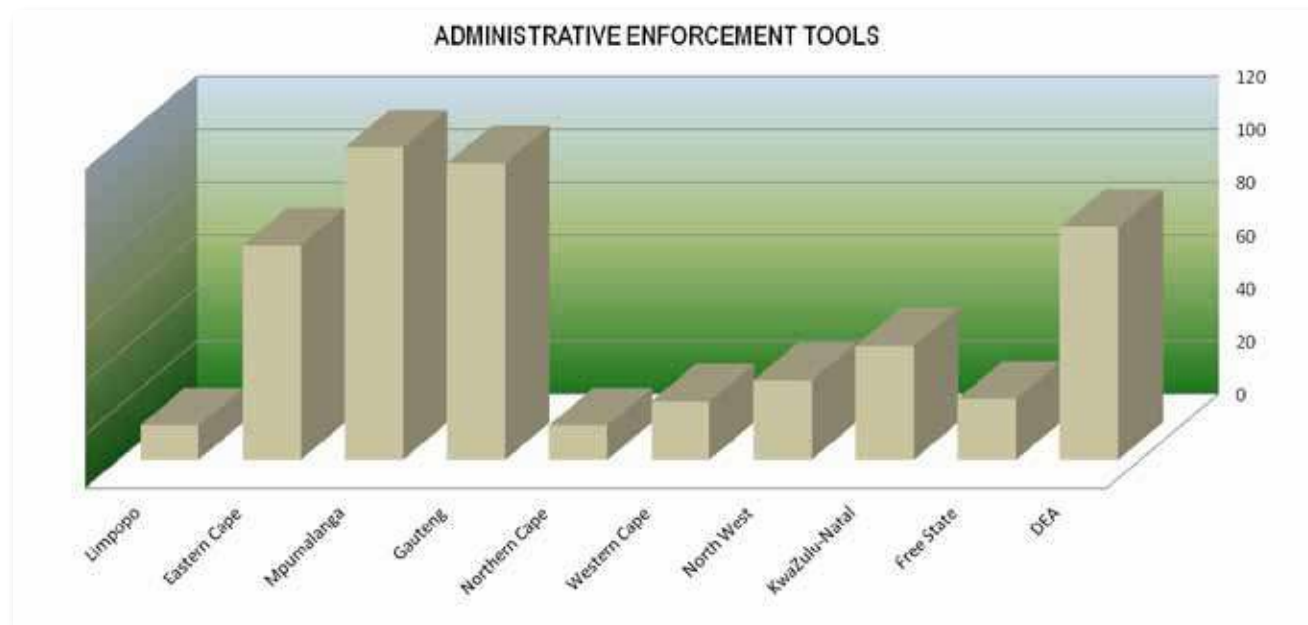


DEPARTMENT OF ENVIRONMENT AND NATURE CONSERVATION	2008-9FY	2009-10FY	2010-11FY
Criminal Enforcement			
Criminal dockets	–	16	20
J534s issued			14
Cases handed to NPA	-	7	-
Arrests by EMIs	15	30	24
NPA declined to prosecute ("nolli prosequi")	8	2	9
Acquittals	–	0	0
Convictions	–	0	0
Section 105A agreements (plea bargains)	-	0	0
Admission of guilt fines paid	R 6 800 (3)	R 8 200	R 10 700 (14)
Administrative Enforcement and Civil Actions			
Warning letters written	5	6	1
Pre-directive issued	–	0	0
Pre-compliance notices issued			10
Final directives issued	–	0	3
Final compliance notices issued			-
Civil court applications launched	-	0	-
S24G administrative fine paid (number & amount)	R 44 694 (5)	R 0	R- (2)

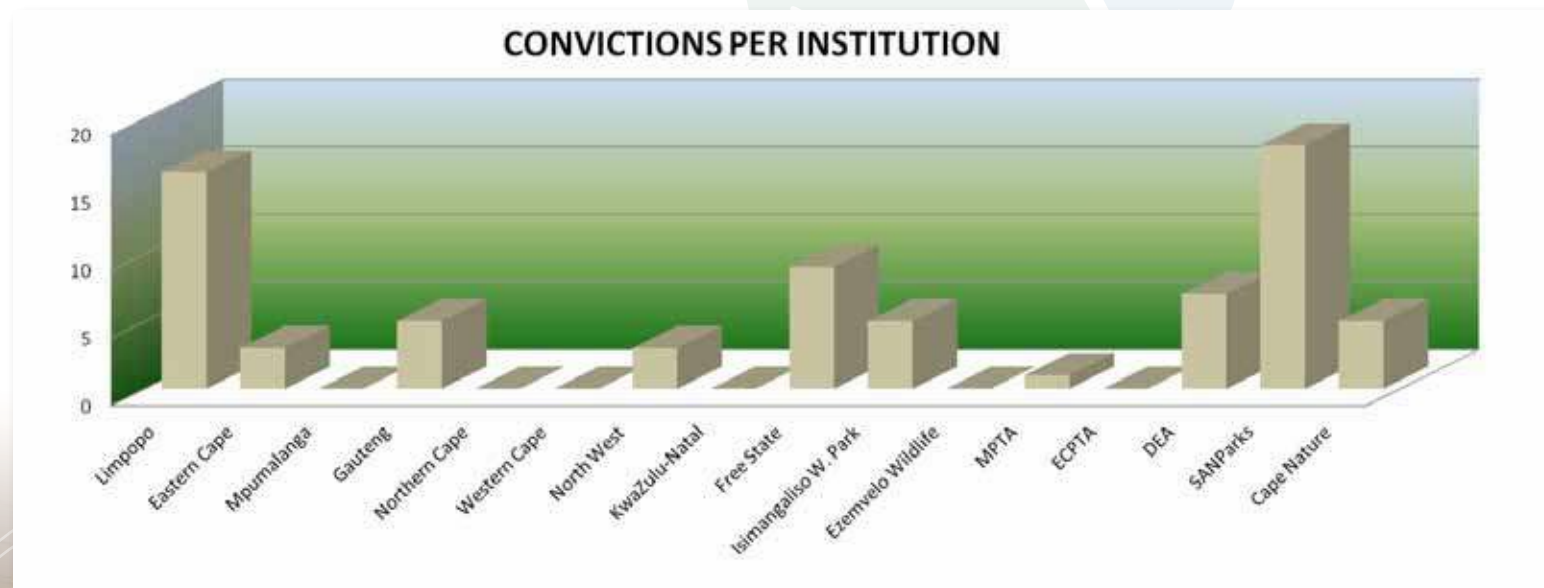
5.10 NORTH WEST



DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS	2008-9FY	2009-10FY	2010-11FY
Criminal Enforcement			
Criminal dockets	12	27	31
J534s issued			4
Cases handed to NPA	-	23	29
Arrests by EMIs	16	38	21
NPA declined to prosecute ("nolli prosequi")	3	0	0
Acquittals	2	0	0
Convictions	0	21	9
Section 105A agreements (plea bargains)	0	1	2
Admission of guilt fines paid	R23 100 (18)	R 11 800	R 7300 (4)
Administrative Enforcement and Civil Actions			
Warning letters written	7	5	2
Pre-directive issued	5	10	11
Pre-compliance notices issued			8
Final directives issued	8	18	3
Final compliance notices issued			1
Civil court applications launched	-	1	0
S24G administrative fine paid (number & amount)	R 22 200 (6)	R 0	R - (2)



Graph 4: Comparative number of administrative enforcement tools issued per institute



Graph 5: Comparative number of convictions obtained per institute

6. Environmental jurisprudence

Parties	THE STATE v AID SAFE WASTE (PTY) LTD AND 5 OTHERS (CASE NUMBER 182/09)
Court	Benoni Regional Court
Type of case	Health Care Risk Waste
Facts	Aid Safe Waste is a company whose main business is to incinerate medical waste. In order to carry out their business activities, they applied for, and were granted an Environmental Authorisation in the form of a Record of Decision (ROD) for the activity of establishing a medical waste generator on their premises. The company was also in possession of an Atmospheric Pollution Prevention Act (APPA) registration certificate. However, although the company stored and treated waste on their premises, they were not in possession of the requisite permit in order to do so, in terms of the Environment Conservation Act (ECA).  In October 2006, the Gauteng Provincial Department (GDACE) started receiving complaints from neighbouring businesses regarding smoke pollution. On the 29th of January 2007, a site inspection was conducted by officials from GDACE, who reported that numerous conditions of the ROD were not being complied with by Aid Safe. In March 2007, a Pre-Compliance Notice in terms of NEMA was issued

to Aid Safe Waste. Further complaints were also received from neighbouring businesses regarding smoke pollution and a notice of intention to issue an APPA notice was issued by the Department of Environmental Affairs (DEA). On the 14th of March 2007, a Compliance Notice in terms of section 31L of NEMA was issued to Aid Safe, wherein they were instructed, inter alia, to cease all treatment of health care risk waste on site and to refrain from accepting any further waste on site, until authorised to do so.

In April 2007, the Ekurhuleni Municipality discovered medical waste being dumped and burned on a deserted mine, to which a director of Aid Safe admitted guilt, adding that they intended to subsequently clean up and dispose of the medical waste legally.



GDACE and DEA thereafter informed Aid Safe that their Environmental Authorisation and APPA registration certificate had been temporarily suspended pending proof of performance, as a result of non compliance with the Compliance Notice and APPA Notice, as well as their non-compliance with the conditions of the ROD.

In April 2007, DEA commenced with a criminal investigation against Aid Safe Waste (Pty) Ltd, as well as David Sekete, Johan Le Roux, Loraine Le Roux and Clifford Durrheim (as directors of Aid Safe) and Cornell Smith (as an employee of Aid Safe). The five accused were charged with contraventions of the waste disposal provisions in terms of ECA, the Gauteng Health Care Risk Waste Management Regulations, the Ekurhuleni Metropolitan Municipality Solid Waste By-Laws, as well as a

**Section 105A
Plea and
Sentence
agreement.
Sentence**

number of contraventions of the conditions of their ROD and Section 24F of the National Environmental Management Act (NEMA). In terms of the plea and sentence agreement reached between the State and the Accused, charges were withdrawn against Accused 2 (David Sekete), Accused 4 (Clifford Durrheim), Accused 5 (Loraine Le Roux) and Accused 6 (Cornell Smith).

Accused 1 pleaded guilty in terms of Section 112(2) of the Criminal Procedure Act, to 23 counts brought by the State, relating to contraventions of the ROD issued in terms of Section 22(1) of ECA, and in contravention of Section 24F of NEMA.



Accused 3 pleaded guilty to contravention of the Gauteng Health Care Risk Waste Management Regulations, by unlawfully and intentionally disposing of health care risk waste without written approval of the method of disposal from GDACE, and to non-compliance with the said regulations.

Accused 1 was sentenced to a fine of R2 million, half of which was suspended for 5 years;

Accused 3 was sentenced to a fine of R100 000, half of which was suspended for 3 years.

Further conditions were attached to the sentences and both Accused were afforded the opportunity to pay the fine in installments.

Parties	STATE vs M ZATHALI
Court	INGWAVUNA REGIONAL COURT KZN
Type of case	Endangered species – Loggerhead Turtle
Facts	The accused was found by Ezemvelo KZN Wildlife officials chopping up the carcass of a mature female Loggerhead Turtle who had come out to the beach in the sanctuary area of the Isimangoliso Wetland Park (a world heritage site) to lay her eggs. She had been tagged by a marine scientist just three days prior for monitoring and research of this critically endangered species. The loggerhead is a protected endangered species and the iSimangaliso Wetland Park is one of the last remaining breeding sites in the world for the animal. The accused pleaded not guilty to the charges and stated that he was in the area attempting to fish and also denied killing or possessing the turtle. Dr Scotty Kyle, a marine scientist from Ezemvelo KZN Wildlife, testified about the critically endangered status of these turtles worldwide and their value to tourism and the local economy.
Judgment	The accused was convicted in terms of section 57(1) read with sections 1, 56(1), 101(1)(a), 102 and Chapter 7 of the National Environmental Management Biodiversity Act, and further read with The Threatened or Protected Species Regulations, and Section 250 of the Criminal Procedure Act.
Sentence	The accused was sentenced to 5 years imprisonment which allows for conversion of a portion thereof into correctional supervision. State Advocate Waldo Smith from the specialized environmental crime section of the Directorate of Public Prosecutions KZN argued in aggravation, that the accused should be sentenced to direct imprisonment under the provisions of the Criminal Procedure Act, arguing that the offence committed was extremely serious and that a strong message needed to be sent to those persons wanting to destroy protected animals

	protected animals that have a high biodiversity and tourism value. Magistrate Khumalo highlighted the fact that the offence was extremely serious, having regard for the penalty provisions of the Biodiversity Act of up to 10 million Rand or 10 years imprisonment or both. The offence the accused committed was so serious that it outweighed the personal circumstances of the accused, who was a first offender. He further stated that the accused did not show any remorse and that a strong message needed to be sent to those people wanting to poach and destroy this country's endangered animals.
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Parties	CITY OF CAPE TOWN (APPLICANT) v MACCSAND (PTY) LTD AND 4 OTHERS (RESPONDENTS) (CASE NUMBER 4217/2009 – 5932/2009)
Court	Western Cape High Court (Cape Town)
Type of case	Relationship between mining and land use/environmental law
Facts	The second respondent (Minister of Minerals and Energy) granted the first respondent, a mining company, mining rights in terms of Section 23 of the Mineral and Petroleum Resource Development Act 28 of 2002 (MPRDA). The applicant and the fourth respondent (Western Cape Provincial Department) contended that the Land Use Planning Ordinance (LUPO) requires, in addition to any right acquired in terms of the MPRDA, that authorisation needs to be obtained prior to the exercise of these mining rights. The central issue in this case was therefore whether a mining permit or mining right granted under the MPRDA exempts the holder from having to obtain authorisation for its mining activities in terms of other laws which regulate the use of land, i.e. LUPO and NEMA. The application by the applicant was therefore brought for an order interdicting and restraining the first respondent from conducting mining activities on the relevant erven, unless and until the necessary authorisations in terms of LUPO had been obtained.

	In analysing the dispute, including the respective competence of national, provincial and local government, the court took cognisance of the Constitutional Court judgment in the City of Johannesburg Metropolitan Municipality v The Gauteng Development Tribunal and Others, where the court concluded that: • Municipal planning includes the control and regulations of the use of land which falls within the jurisdiction of municipality; • National and provincial spheres of government cannot by legislation give themselves power to exercise and execute municipal powers, nor the right to administer municipal powers, nor the right to administer municipal affairs. The Fourth Respondent also contended that an environmental authorisation in terms of NEMA was required for mining in the affected areas, because it falls within item 20 of GNR 386 of GG 28753 of 21 April 2006 (the EIA Regulations). In addition, Section 24(8)(a) of NEMA also provides expressly that an authorisation obtained under any other law for an activity listed in terms of NEMA does not absolve the person concerned from obtaining authorisation under NEMA. The courts view in this regard was that the provisions of NEMA made it clear that notwithstanding the processes and authorisations under other laws, including the MPRDA, that environmental authorisations under NEMA must be obtained unless the competent authority empowered to use the NEMA authorisation decides to regard the authorisation under another law as compliance with NEMA because it meets all the relevant NEMA requirements.
Judgment / Court Order	The court held that the first respondent may not commence or continue with its mining operations on the properties until or unless authorization had been granted in terms of LUPO and an environmental authorisation had been granted in terms of NEMA. The costs of the application were to be paid by the first and second respondents, jointly and severally, including the costs of two counsels.

Parties	ISIMANGALISO WETLAND PARK AUTHORITY AND 2 OTHERS (APPLICANTS) V MADOLWANE MTHEMBU AND ANOTHER (RESPONDENTS) (CASE NUMBER: 3188/2010)
Court	KWA-ZULU NATAL HIGH COURT (DURBAN)
Type of case	Illegal development within World Heritage Site
Facts	Isimangaliso Wetland Park is a world heritage site in terms of section 13(2) of the World Heritage Act and therefore the first applicant, as the management authority of the park, is obliged to take effective and active measures for the protection, conservation and preservation of the cultural and natural heritage of the park. Over time the respondents and other illegal developers had cleared plants and vegetation and constructed a tourist resort and holiday accommodation in the heart of the park. Because these developments were illegal in terms of a number of statutes and provisions, various applications were launched against the developers. On 25 September 2009, the applicants sought to obtain an order against the respondents in the form of a rule nisi which was confirmed on 23 November 2009. The order interdicted and restrained the respondents from continuing any construction work in the park, removing or destroying any plants or vegetation or conducting any commercial or tourism activities. In addition, the respondents were directed at their cost to commence by no later than the 30th of April 2010 and to complete by the 1st of June 2010, the removal of all structures and rehabilitation of the site to its pristine state. In the event of the respondents failing to remove the structures and rehabilitate the area, the applicants were entitled to carry out the removal and rehabilitation at the respondents' cost. The applicants alleged that the said order had been flouted and brought an application for a declaration that they were in contempt of court and committing them to 3 months in prison. In addition, the applicants sought an interim interdict that the respondents be restrained from threatening or assaulting employees of the applicants in the lawful execution of their duties.

	In proving the requisites for a contempt application, the court held that the applicants successfully proved the following requirements; that a court order existed, that service of the court order had taken place and non-compliance and willfulness in the form of mala fides, beyond reasonable doubt. The court further held that an inaccurate picture had been painted of the respondents as bona fide rural folk who were entitled to reside on the land as a result of lengthy cultural and indigenous considerations, whereas they were in fact businessmen who were seeking profit out of a commercial activity in an area where the law had reserved land for lovers of nature.
Order	The court declared that the respondents were in contempt of court for wrongfully and intentionally failing to comply with the orders granted on 25 September 2009 and 25 November 2009, and for acting in contravention of the aforesaid orders. The respondents were each sentenced to a fine of R50 000 or 6 months imprisonment, wholly suspended for 5 years on condition they cease any construction work, interfering with, removing or destroying of any plant or vegetation and conducting any commercial or tourism activities. The court further ordered that the respondents, at their own cost, commence by 1 August 2010 and complete by 1 October 2010, the removal of all structures and foreign material erected and the rehabilitation of the site to conditions it was before construction commenced. Failing compliance with these conditions, the applicants were authorised to remove the said structures and foreign material and rehabilitate the site to the condition in which it was and recover from the respondents the actual costs incurred. The Respondents were further interdicted and restrained from threatening, assaulting or in any way interfering with the lawful execution of the duties by any employees of the applicants.

Parties	STATE v S FRYLINCK (ACCUSED 1) ; MPOH ENVIROMENTAL SOLUTIONS CC (ACCUSED 2) CASE NUMBER 14/1740/2010
Court	Pretoria Regional Court
Type of case	Duty of Environmental Assessment Practitioner breached
Facts	Accused 1 was an adult male who works as an environmental consultant. Accused 2 was a close corporation, within the meaning of section 332 of the Criminal Procedure Act (CPA). Accused 1 appeared in his representative capacity of Accused 2. In this case, which was investigated by the DEA, the accused were charged in count 1 with Fraud, and in count 2 with contravening Section 81(1)(a) of the NEMA Environmental Impact Assessment Regulations of 2006. The dispute was a result of whether the construction site contained a wetland on which a building development for the Pan African Parliament took place. In order for this piece of land to be developed, a Basic Assessment Report ("BAR") was required in terms of NEMA.  A BAR was compiled by the 1st Accused and submitted to DEA. In the submitted BAR, the Accused stated that a "river, stream or wetland does not occur within a 500m radius on the site". GDACE after reviewing the BAR, they requested the 2nd Accused to undertake further studies with regard to wetland delineation, hydrological study, delineation of the watercourse and headwater and

specialist invertebrate studies.

Johan van der Waals, who holds a PhD in soil science and soil chemistry and is a professional scientist, testified on behalf of the State. He stated that when the site was inspected, he found a distinct canal that existed and that he also saw typical wetland grey soils which are usually an indication of the presence of a wetland. He stated further that wetlands are defined in the National Water Act as: "land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adopted to life in saturated soil."



The court held that the 1st accused did not consult an expert on wetlands, nor did he appoint a wetland specialist to determine whether or not a wetland was present. His finding of the absence of a wetland was drawn from inferences made by other reports available to him. The court also held that he failed to adhere to the requests submitted to him by the National or Provincial Department. The court found that the state had conclusively proved the existence of a wetland on the site.

The court also held that the conduct of the accused suggested non-conformity with prescribed norms as well as a negligent approach to the framework of his study. This was manifested in his decision not to appoint a wetland specialist and his repeated argument as to why no wetland exists without such study or assessment. He did not apply his mind and was not cautious of the consequences of the implied ramifications.

	The court however held that it did not believe that in the circumstances described that the accused acted with knowledge of its falsity or with intent to deceive. Intention by the accused to deceive was therefore not established. The court found the area to be a wetland and that by not appointing a wetland specialist or consulting such specialist the accused was negligent in the execution of his mandate and did not adhere to the required standard of conduct expected of a specialist. The court found that the recommendations in the BAR to DEA were in conflict with the accepted facts that a wetland exists on the site.
Judgment	In respect of count 1, Accused 1 was given the benefit of the doubt and acquitted of fraud. In respect of count 2, the evidence adduced by the state overwhelmingly proved the guilt of the accused, and both Accused 1 and Accused 2 were convicted of contravening Section 81(1) of the Environmental Impact Assessment Regulations of 2006.
Sentence	Accused 1 was sentenced to R80 000.00 or two years imprisonment. Accused 2 was sentenced to R80 000.00. Half of both accused sentences were suspended for 5 years.

Parties	WRAYPEX (PTY) LTD V BARNES AND OTHERS (NORTH GAUTENG HIGH COURT) CASE NUMBERS: 30729/05; 30730/05; 32648/05; 32649/05
Court	North Gauteng High Court
Type of case	Rights of interested and affected parties
Facts	The Plaintiff in this matter instituted four actions in which it claimed damages against four activists (Mervyn Gaylard, Helen Duigan, Lise Essberger and Arthur Barnes) for a combined total of R170 million for alleged defamation and other damages.

The plaintiff is a company engaged in property development. In 2003, it intended to establish a golfing estate on a number of farms collectively known as Blair Athol, which would incorporate 300 residences, a hotel and an 18 hole golf course. The site of the proposed development was at the time rural land, situated in, or adjoining the Rhenosterspruit Nature Reserve. In order to achieve its object, the plaintiff was obliged to obtain township approval from the Tshwane Municipality in terms of the Gauteng Town Planning and Townships Ordinance, as well as a Record of Decision from GDACE. The conservancy, of which the four defendants were members, opposed the development of the golfing estate, which they saw as an unwelcome intrusion into the community, as well as a threat to the flora and fauna in the area. The defendants, as interested and affected parties, also made their concerns known to GDACE and to the city council. The cause of the defamation arose from a letter addressed to the Town Planner by the conservancy, which the judge ruled as doing no more than to bring to the attention of the Town Planner that in the view of the defendants, the plaintiff had not proceeded properly in its application for the establishment of the townships or for obtaining approval from the environmental authorities. The plaintiff also alleged that when the defendant made the alleged defamatory statements, they knew that the plaintiff was seeking the necessary statutory approval, had already expended a considerable amount of money to this end and would suffer damages in the event of the necessary approvals being refused or delayed. This claim was not substantiated by evidence as there was no proof connecting the statements causally with any additional time taken in obtaining the necessary approvals. The evidence further disclosed that both the township application and the ROD were eventually granted and that a number of interested and affected parties apart from the defendants pursued an appeal against the issue of the ROD, resulting in further protracted legal proceedings.

	.There was therefore no proof that any of the words complained of by the plaintiff delayed the proceedings at all. The court also held that there was nothing to show that the plaintiff's rights to dignity and fair administrative action were disturbed. Furthermore, the court held that the defendants' objections against the development were understandable, as some officers at GDACE also viewed the social impact of the development as being strongly negative. As a result, the defendants were entitled to place before the authorities their fears and concerns and to oppose the applications made by the plaintiff as strenuously as they did.
Relief Sought	Damages of a combined total of R170 million.
Judgment	The application against all four defendants was dismissed with costs, including the costs of two counsels. This case is widely regarded as a test case for so-called SLAPP suits (strategic litigation against public participation). The case has been followed closely by environmental activists and organisations across the country, many of whom have been similarly threatened by developers, some of whom had even used the existence of this case to intimidate interested and affected parties with prodigious law suits.

SUMMARY OF CONVICTIONS IN RELATION TO THE ILLEGAL HUNTING OF RHINOS AND THE DEALING AND POSSESSING OF RHINO HORN

S v Renaldo Franchesco Masiki, Joao Sendelani Malangute and Elvis Mdaka (Skukuza CAS 35/10/2010)

The Accused were found guilty on 25 October 2010 on charges of Illegal hunting of rhino in a National Park and possession of unlicensed fire arms and ammunition. They were sentenced on 14 March 2011 as follows:

Accused numbers 1 and 3 were sentenced to effectively 9 years imprisonment without the option of a fine.

Accused number 2 was sentenced to 5 years imprisonment without the option of a fine.

Accused number 2 was sentenced to 5 years imprisonment without the option of a fine.

S v Ban Thi Van (Ortia CAS 35/12/2010)

The Accused was arrested on 7 December 2010 at the Oliver Tambo International Airport while in possession of 1 rhino horn with a weight of 4 kg. She explained that she purchased the rhino horn in Mozambique for personal medicinal reasons as she was suffering from cancer. She pleaded guilty to the charge of the illegal possession of rhino horn and was sentenced to a fine of R 300 000.00 or 5 years imprisonment, which was suspended for 5 years, despite the state calling a witness in aggravation of sentence.



S v Graeme Bosch (Case Number BRC/10/11)

The Accused pleaded guilty to the dealing in and transporting of 2 rhino horns. He was the legal owner of a rhinoceros, who died after being struck by lightning. He wanted to sell the horns in order to recover the difference between what his insurance had paid out and what the rhino was actually worth. However, by the time he actually sold the horn, the moratorium prohibition the selling of horns had come into operation. He was sentenced to R 130 000 or 5 years imprisonment.

S v Venter & Nel (Case Number RC 445/10)

Both accused pleaded guilty on 6 December 2010 in the Cullinan regional court. They were convicted in terms of Section 57(1) of the Biodiversity Act for the following:

- Count 1 - Dehorning of 5 rhino's;
- Count 2 - Possession of 8 rhino horns;
- Count 3 - Unlawful selling of 8 rhino horns;
- Count 4 - Unlawful selling of 3 rhino horns.

In terms of the plea and sentence agreement, they were sentenced to 6 years imprisonment which was suspended for 5 years on certain conditions, inter alia that they will testify regarding

the information supplied to the investigating officer. A confiscation order to the amount of R 660 000.00 was also granted.



S v J Monyana, J Vineni, E Manyiki and A Baloyi

The Accused were convicted on charges of the illegal hunting of a rhino as well as illegal possession of fire-arms, in the Modimolle Regional Court. Accused 1 was sentenced to 6 years imprisonment and Accused 2 and 3 to 3 years imprisonment.

S v Gumedede

The Accused was convicted in Kwa-Zulu Natal on a charge of illegal hunting of a rhino, and was sentenced to R 50 000 or 2 years imprisonment of which R 30 000 / 2 years was suspended for 5 years.

S v Xaba

The Accused was convicted on charges of illegal hunting of a rhino and illegal possession of a firearm in Kwa-Zulu Natal. He was sentenced to 10 years imprisonment, of which 3 years was suspended for 5 years.

S v K Khoza and S Luthuli (Ulundi Regional Court Case Number RC 225/2010)

The two accused were convicted in terms of Section 57(1) of the Biodiversity Act, in relation to the illegal hunting of a rhino, possession of rhino horn and contraventions of the Firearms Control Act. The accused were sentenced to an effective 20 years imprisonment. Both accused were arrested in the park by game rangers, after a shoot out. They were found in possession of the firearms and rhino horn. The rangers managed to trace the carcass the following day. The state proved by means of DNA, that the rhino horns found were linked to the carcass. The state also called evidence in aggravation of sentence, which contributed to the impressive sentence.

7. Legislative Developments

7.1 Principal Acts commenced None

None

7.2 Amendments to Principal Acts

Commencement of section 51 of the National Environment Laws Amendment Act No. 14 of 2009.

7.3 Regulations promulgated

National Environmental Management Act, 1998

- Environmental Impact Assessment Regulations, 2010 [GN R. 543/2010]
- Listing Notice 1: List of activities and competent authorities identified in terms of section 24(2) and 24D [GN R.544/2010]
- Listing Notice 2: List of activities and competent authorities identified in terms of section 24(2) and 24D [GN R.545/2010]
- Listing Notice 3: List of activities and competent authorities identified in terms of section 24(2) and 24D [GN R.546/2010]
- Environmental Management Framework Regulations, 2010 [GN R. 547/2010]

National Environmental Management: Protected Areas Act, 2003

- Declaration of Land to be part of Namaqua National Park [GN 521/2010]
- Declaration of the Tsitsikamma and Wilderness National Parks to be part of the Garden Route National Park and assign South African National Parks as the management of the consolidates Garden Route National Park [GN 95/2011]

National Environmental Management: Waste Act, 2008

- National domestic waste collection standards [21/2011]

8. Industrial Compliance and Enforcement

8.1 Pro-active Compliance Inspections

Proactive compliance monitoring and enforcement work continues in relation to the following priority sectors as well as in relation to other strategic projects regulated through the issuing of authorisations in terms of environmental legislation:

- Ferro-Alloy, Steel and Iron Sector
- Refineries Sector
- Cement Sector

- Cement Sector
- Paper and Pulp Sector
- Health Care Risk Waste Treatment / Disposal
- Hazardous landfill sites
- Power Generation

As the monitoring and enforcement process stretches over a period of time and crosses over from one reporting period to the next, a summary has been provided in the table below. Although it is not possible to include all the facilities in a report of this nature, the table will give an indication of some of the important work that is being undertaken to bring these sectors into compliance with environmental legislation.

NECER 2010-2011: DETAILED INFORMATION TABLE RELATING TO STRATEGIC INSPECTIONS

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
REFINERIES						
PetroSA Refinery, Western Cape	5-6 July 2007	• Management of waste disposal sites in serious non-compliance with waste site permits • Disposal of hazardous waste on sites not permitted to receive such waste • The absence of liner integrity testing and sludge ponds overflowing freeboard • Serious groundwater contamination at refinery's tank farm	21 February 2008	20 May 2010	• Failure to comply with general duty of care in respect of waste management on site (spillages of hazardous waste, overflowing waste ponds). • Rehabilitation work at the refinery tank farm is ongoing; however, work is behind rehabilitation timeframe schedule.	Enforcement strategy developed. Administrative enforcement action to be taken.
Chevron Refinery, Western Cape	May 2008	• Lack of waste permits for areas used for the temporary storage of hazardous waste on a continuous basis • Contraventions of environmental authorisation • Disposal of waste at unpermitted waste site	13 October 2009	20 July 2010	• Chevron has submitted applications for a Waste Management Licence for waste storage areas on site. • Remediation of groundwater pollution is ongoing at several areas on site. • Failure to comply with general duty in respect of waste management on site "(storage of waste in unlined areas; spillages of hazardous waste on site)"	Follow-up compliance inspection report in vetting process, after which an enforcement strategy will be developed

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
		• Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care • Excessive emissions • Potential groundwater and soil contamination				
Sasol Secunda Refinery, Mpumalanga	March 2008	• Significant non-compliance with conditions of numerous authorisations applicable to the facility, including APPA registration certificates; environmental authorisations and the two waste permits relating to the fine ash dump and the Charlie 1 Waste Disposal Site • Environmentally harmful activities that could be prevented rehabilitated in terms of the NEMA duty of care, particularly in relation to the raw material and coal storage areas and the spillage of hazardous substances	18 August 2009	August 2010	• Non-compliances to authorisations still ongoing • Environmentally harmful activities with regards to raw material storage, coal storage and spillages of hazardous substances still not addressed. • Failure to comply with general duty of care in respect of waste management on site	Follow-up compliance inspection report in vetting process and enforcement strategy will then be developed
Sapref Refinery, Kwa Zulu Natal	August 2008	• Non-compliances to conditions of APPA permits, including lack of records to verify compliance with the emission limits • Storage of hazardous waste without required authorisations • Potential water and soil pollution from improper storage of hazardous waste	18 December 2009	None		Additional information was requested in June 2010 and once received, this information together with the representations provided clarity in relation to the non-compliances identified and set out actions that had been taken to address the issues identified. The Department's concerns from the 2008 inspection were therefore adequately addressed and the facility was advised that enforcement action would not be taken based on the findings of the 2008 inspection

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
						The facility will be monitored through quarterly compliance meetings
Engen Refinery, Kwa-Zulu Natal	November 2008	- Failure to submit certain reports - Storage tanks without required permits - Decommissioning activities without required environmental authorisation - Storage of hazardous chemicals in unbunded areas	10 October 2009	None		The representations received in response to the findings of the inspection, as well as that which was received in response to the Department's letter requesting further information, provided clarity in relation to the non-compliances identified and set out actions that had been taken to address the issues identified. No significant issues remained that justified the need for an enforcement intervention based on the findings of the 2008 inspection. The facility will be continuously monitored through quarterly compliance meetings
FERRO-ALLOY, IRON AND STEEL						
Samancor Middelburg, Mpumalanga	25-26 June 2008	- Non-compliances with conditions of the APPA permits - Six unauthorized waste disposal sites - Disposal of contaminated water in unlined dams - Poor storm water management on site - Fugitive emissions from the material stockpiles - Non-reporting of emergency incidents	12 November 2009	11 August 2010	- Disposal of contaminated water on unlined dams still continuing - Groundwater pollution from historical disposal sites - Unauthorised waste and listed activities on site - Breach of duty of care in terms of S28 of NEMA	Enforcement strategy developed. Both administrative and criminal enforcement action to be taken.

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
Highveld Steel, Mpumalanga	28-29 November 2007	• Air emission exceedances • Lack of adequate monitoring • The undertaking of unauthorised APPA scheduled processes • Exceedances in relation to production and use of raw materials • Contraventions of environmental authorisations • Unauthorised waste disposal sites • Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care	7 August 2008	9 July 2009	• Shut-down and start-up of the plants are problematic • Need for improvement in maintenance procedure • A secondary emission extraction plant had been installed, but challenges and constraints exist in relation to this plant • Emissions related to the basic oxygen furnace pouring process, the charging process, the emergency by-pass stacks and the transfer of molten metal in the ladling process. • Ineffective gas cleaning equipment • Review of documentation provided showed pattern of periodical and regular breakdowns at the iron plants resulting in uncontrolled emissions to atmosphere	Notice of intention to issue a Section 12(3) (a) APPA notice & Section 31A ECA directive & Section 28(4) NEMA directive, was issued to facility in February 2010 Representations and action plans received from facility in March 2010. Notice of intention to issue a Section 31L NEMA notice & Section 31A ECA Directive, was issued to the facility in November 2010 Representations and amended action plans received from the facility in December 2010. Amendment to enforcement strategy to include both administrative and criminal enforcement action.
Samancor Tubatse Ferro Chrome, Limpopo	16 November 2010	• Non-compliances to conditions of environmental authorisations • Lack of air quality monitoring as required by the APPA permit • Failure to submit required audit reports (air and waste) • Groundwater pollution from activities on site, including waste disposal sites • Unauthorised waste storage and disposal areas • Failure to comply with general duty of care in respect of waste management on site				Inspection report is in vetting process and the detailed findings will then be presented to the facility

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
Xstrata Wonderkop, North West	January 2008	• Lack of adequate monitoring • Air emission exceedances • Unauthorised waste disposal sites • Contraventions of environmental authorisation; • Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care • Lack of water use license	16 September 2008	Scheduled to be conducted in the 2010-11 financial year, but could not be undertaken		Additional information was requested in April 2010, relating primarily to APPA contraventions After review of the received information, it was still unclear whether or not the facility was in compliance with environmental legislation Follow-up inspection needs to be undertaken, prior to a decision on enforcement approach Inspection planned for July 2011
SCAW Metals in Gauteng	22-25 April and 13 June 2008.	• Air emission exceedances • Inability to demonstrate compliance with some conditions of registration certificates and EIA exemptions • Non-compliance with a number of conditions of the waste permit • Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care • Disposal of waste at a facility not authorised to accept such waste • Unauthorised activities for which section 24G rectification applications had been submitted	16 September 2008	No follow-up inspection conducted but; complaint was investigated on the 22nd February 2011	• Reclamation of the site prior to submission of motivation report; • Failure to keep the record of volume and nature of waste materials that are reclaimed; • Failure to take steps to prevent nuisance or health hazard caused by portion 3 of the site; • Dust generation from the separation plant and valve/s.	Pre-compliance notice issued in March 2011.
BHP Billiton Metalloys Meyerton, Gauteng	23-24 October 2007	• Non-compliances to conditions of the authorisations • All waste disposal sites were not permitted • Several EIA unauthorised activities for which S24G applications had been submitted to GDACE • Significant number of activities causing pollution to the environment	15 September 2008	None	None	Notice of intention to issue a Section 31L NEMA notice and Section 28(4) NEMA directive issued. Representations received in response to pre-notice, including action plans Further review required by national department in order to determine way

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
		- Outstanding water use license. - Detailed EMP was not submitted to the Department prior to commencement of the Project. - No Material Safety Data Sheet on the hazardous waste - No records of waste stored at the salvage yard.				forward A follow-up inspection will need to be undertaken in next financial year
Hernic Ferrochrome, North West	28-29 June 2007	- Absence of a rehabilitation or closure plan for the capped slimes dams, particularly in view of groundwater contamination - Lack of permits for various waste storage and disposal facilities - Poor storm and surface water management throughout the site - Regular and serious exceedances of permit limits on emissions to air - Inadequate dust control throughout the site	August 2007	None		Hernic's representations in response to the inspection report addressed most issues and concerns raised in the report. Hernic proposed a number of measures to deal with the pollution emanating from its various waste sites, many of which are historical. New scrubber system to manage emissions was installed and water sprayers introduced to suppress dust A follow-up inspection to Hernic will be undertaken in order to ensure that the facility is meeting timeframes and to confirm whether or not the environmental impacts, to air and ground water contamination, have been reduced and are being effectively managed
Arcelor-Mittal Vanderbijlpark, Gauteng	03-07 November 2008	- Lack of waste permits for areas used for the temporary storage of sludge waste on a continuous basis - Lack of registration certificates for certain scheduled processes - Non-compliance with some conditions of environmental	Detailed representations were received from the facility dated 14 May 2009.	23-27 August 2010	- Failure to appoint an appropriately knowledgeable independent Environmental Control Officer for various technical processes for the duration of construction and commissioning. - Failure to fulfil all information requirements in the amended EMP EMP (submitted to	Report still undergoing vetting process

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
		authorisation related to kilns 5 and 6 • Five unauthorised activities for which section 24G rectification applications had been submitted • Environmentally harmful activities as a result of, inter alia, waste management practices, uncontrolled emissions (specifically linked to blast furnace C and coke battery no.1) and dust emissions due to moving vehicles and activities at the off-loading and storage areas. It should be noted that it was not possible for inspectors to visit and assess compliance of all operations at the site due to the fact that 40% of the site was not operational as a result of the global economic crisis.	In addition, the authorities were informed that ArcelorMittal has decided to shut down coke battery no. 1 as a result of the findings of the inspection.		the GDARD; as well as the failure to submit the amended EMI timeously. • ArcelorMittal does not have a Section 20 (1) ECA Waste Disposal site Permit. • Failure to notify the Department within 24 hours if any condition of this authorisation is not adhered to. • Discharge of treated storm water that does not comply with the standards in the Water Use License.	
Arcelor-Mittal Newcastle Works, Kwa Zulu Natal	26-27 September 2007	• Air emission exceedances • Unauthorised waste disposal sites • Inability to demonstrate compliance with certain conditions of the registration certificates due to a lack of monitoring • Non-compliance with a number of conditions of the waste permit • Contravention of certain conditions of the EIA authorisations • Non-compliances detected were in relation to the management of the two permitted H:H and GSB landfill sites • Unauthorised activity for which a section 24G rectification application had been submitted	19 June 2008	23 February 2011	• Non-compliances to environmental authorizations conditions still continues • Significant air emissions from some operations on site • Potential ground and surface water as well as soil pollution from activities on site • Unauthorized waste disposal sites	Follow-up compliance inspection report being finalized, after which it will be vetted and an enforcement strategy developed

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
		- Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care; and - Failure to report an emergency incident to the authorities.				
Arcelor Mittal Vereeniging, Gauteng	May 2007	- Continued dumping of hazardous waste on an unpermitted site, despite repeated instructions from authorities to cease such activity. - Particulate emissions to air that cause, have caused or may cause significant and serious pollution of the environment - Significant and serious pollution of surface and groundwater with phenols, iron, oil, fluoride and other hazardous substances. - Failure to lodge audit reports. Pre-notices were issued to ArcelorMittal by DEAT and Gauteng Inspectors: Gauteng Inspectors ordered ArcelorMittal to cease dumping hazardous waste on its Vaal Dump, and to submit a revised rehabilitation plan for this site. In October 2007, DEAT Inspectors ordered ArcelorMittal to implement a major dust emission control project within 18 months, and to submit proposals on interim measures to control fugitive dust emissions. The Inspectorate currently believes that ArcelorMittal has made every effort to comply with authorities' requirements,	16 September 2007	Follow-up inspection was conducted 27 July 2010 by GDARD	- ArcelorMittal Vereeniging stopped with all activities at Vaal dump site - ArcelorMittal submitted a rehabilitation plan to GDARD in January 2008 and re-submitted it again in March 2010 requesting by the Department for approval. 99% of Magnetite was removed from the site - The magnetite was disposed off at Holfontein H:H landfill site and the disposal certificate has been submitted to the department and - Monthly progress reports were submitted to the department regarding the removal of magnetite from Vaal dump site.	DEA issued APPA Section 12(2) final Notice in 2007 to implement a major dust emission control project within 18 months, and to submit proposals on interim measures to control fugitive dust emissions. GDARD issued compliance notice in terms of Section 31L of NEMA and directive in terms of Section 28(4) of NEMA in 2007 which instructed ArcelorMittal Vereeniging to cease dumping hazardous waste on its unlicensed Vaal Dump, and to submit a revised rehabilitation plan for this site. Dumping at the site ceased and GDARD approved the revised rehabilitation plan. ArcelorMittal Vereeniging has been informed that it must apply to DEA for a waste management license to close and rehabilitate the site

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
		and will hold it to the timeframes set in the notices.				
Assmang Cato Ridge, Kwa Zulu Natal	26 February 2007	• Significant uncontrolled dust emissions, containing heavy metal manganese • Serious non-compliance with a hazardous waste site permit • At least one unpermitted hazardous waste site	November 2007	None		Notice of intention to issue a notice in terms of section 12(2) of APPA was served on the facility in 2007, in relation to exceedances of fugitive emissions (dust and fumes) as well as non-compliance to the APPA permit conditions. A notice of intention to suspend the class H:H permit due to Assmang's failure to comply with the waste permit conditions to operate a H:H disposal site in terms of section 20(1) of ECA was also issued in 2007. Notice of intention to issue a directive in terms of section 28(4) of NEMA, dated October 2007, due to Assmang's failure to comply with its general duty of care, to prevent air pollution, promote a healthy working environment for employees & prevent soil & water contamination. Following a review of the representations submitted by the facility in response to the above mentioned enforcement tools, the Department responded as follows: • A notice in terms of Section 12(2) of APPA, dated 1 April 2008, was issued to the facility • A decision on 6 March 2008 not to suspend the class H:H permit issued by DWAF, provided that certain conditions were strictly adhered to

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
						• An enforcement letter, dated 6 March 2008, informing the facility that the decision on whether or not to issue a Section 28(4) directive had been postponed, provided that the facility strictly adhered to the specific conditions contained in the letter • Assmang then sent a request letter, dated 15 December 2009, to the Department to amend a condition contained in the Department's letter, dated 6 March 2008 • After reviewing all the available information the Department responded with a letter, dated 10 March 2010, effecting the amendment provided that the facility adhered to certain conditions • Due to the continuous nature of the conditions contained in the above mentioned documents, the Department, through quarterly meetings, is in a process of monitoring the facilities movement towards compliance with all environmental legislation
ASA Metals, Limpopo	11 November 2009	• Construction and operation of four furnaces on site without environmental authorisation • Waste disposal sites operated without waste management licenses • Groundwater pollution from activities on site • Disposal of hazardous waste on unlined areas • Disposal of hazardous waste on unlined areas • Non-compliance to permit and environmental authorisation conditions	15 March 2011	None	N/A	• Enforcement Strategy drafted • S31H Notice to the facility requesting further information

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
Columbus Stainless Steel, Mpumalanga	28-30 September 2009	- Several non-compliances to conditions on authorisations (APPA permits; Environmental authorisations) - Unauthorised waste storage areas on site - Failure to comply with general duty of care in respect of waste management on site - Unlicensed waste water dams	24 March 2011		none	In the process of reviewing the representations and developing an enforcement strategy
Assmang Machadodorp, Mpumalanga	15-16 February 2011	- Several non-compliances to conditions on authorisations (APPA permits; Environmental authorisations) - Lack of continuous air quality monitoring as required by Atmospheric emission Licence - Operation of slag disposal site without the waste management licence - Groundwater pollution from unlined slag dump - Failure to comply with general duty of care in respect of waste management on site	Report not yet issued			In the process of vetting inspection report after which an enforcement strategy will be developed
HAZARDOUS WASTE						
EnviroServ Roodepoort Health Care Risk Waste Incinerator, Gauteng	July 2009	- Non-compliances to conditions of the Section 20 ECA permit - Emissions from the two incinerators exceeding the required emission		February 2011 following complaints	- Non-compliance to the Section 20 ECA permit - Non-compliance with Section 35(2) and section 22 of the NEM Air Quality Act	In February 2011 a Section 31L NEMA pre-notice/ Section 31A ECA pre-directive and Section 28 NEMA pre-directive was issued by DEA which led to the closure of

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
		limits • APPA registration certificate for the site has expired			• Non-compliance with various sections of the NEM: Waste Act • Non-compliance with numerous provisions of the Gauteng Health Care Risk Management Regulations, 2004 • Poor management of the incinerators, inefficient combustion and significant emissions • Absence of pollution control devices	the facility
PikiTup Health Care Risk Waste Incinerator, Gauteng	July 2009	• Significant non-compliances to conditions of the APPA permit • Operation of the facility without the required waste permit • Incomplete combustion of the medical waste • Lack of proper storm water management • Absence of effective pollution abatement equipment leading to emissions of black smoke from the stack causing air pollution				Section 31L NEMA pre-notice/ Section 31A ECA pre-directive and Section 28 NEMA Pre-Directive issued by DEA to PikiTup on 22 September 2010 which led to closure of the facility
Wasteman Bulbul Drive Waste Disposal site, Kwa Zulu Natal	July 2009	• Substantial non-compliance to the waste management licence • Failure to comply with certain duties / obligations in the NEM: Waste Act • Failure to comply with the duty of care in relation to, inter alia, leachate and stormwater management; landfill gas management; co-disposal and cover material				Based on the non-compliances reported to DEA by the provincial and local authorities, a decision was taken to initiate a criminal investigation. This investigation is still ongoing. Following the execution of a search warrant as part of the criminal process, a decision was taken that simultaneous administrative enforcement action was required in order to address the non-compliances resulting in harm to the environment. In March 2011 a Section

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
						31L NEMA pre-notice/ Section 31A ECA pre-directive and Section 28 NEMA Pre-Directive was issued by DEA. In May 2011 a notice was issued to Wasteman requiring the submission of a Waste Impact Report in terms of section 66 of the NEM:Waste Act.
EnviroServ Aloes Waste Disposal Site, Western Cape	3 November 2010	• Non-compliances to conditions of the Section 20 ECA permits • Closure of waste disposal site without requisite authorisations • Construction of stormwater dam, leachate dam without required authorisations • Several duty of care offences relating to nuisance conditions; lack of proper maintenance on the cut-off drains • Erosion on the walls of closed site, suspected damage to the disposal cell liners	21 February 2011			DEA in process of reviewing representations and deciding on enforcement approach
Vissershok Waste Disposal site, Western Cape	June 2009	• Non-compliance to conditions of Section 20 ECA permit • Lack of proper groundwater monitoring • Potential ground water pollution from unlined H:H evaporation dams • Possible illegal construction of additional cells and leachate dams without required environmental authorisation	27 November 2009			Following a review of the representations received by the Department, it was found that these representations adequately addressed all the concerns of the Department. A decision was taken not to take enforcement action based on the findings of the June 2009 inspection.

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
PULP AND PAPER						
Sappi Enstra, Gauteng	October 2009	• Non-compliances with conditions of the APPA permits • Emissions from the Copeland Reactor and the boilers exceeding the required limits over a number of years • Non-compliances to conditions of the environmental authorizations, ECA Section 20 permit and the Water Use License	February 2010			Following the compliance inspection, an enforcement strategy was developed and both administrative and criminal enforcement action were recommended. The criminal investigation that was initiated is currently suspended in order to allow for submissions to be made by the sector as a whole in relation to the performance of Copeland Reactors.
Sappi Ngodwana, Mpumalanga	19-20 August 2008	• Non-compliance with conditions of the APPA permits • Non-compliance with conditions of the ECA Section 20 permit • Operation of three waste disposal sites without authorization • Upgrade of ESP and fly-ash collection system and the PF Boiler without the required environmental authorisation • Lack of proper bund walls and measures to contain spillages of hazardous chemicals • Non-reporting of emergency incidents to authorities	November 2009	8-9 March 2011	• Non-compliance with conditions of the APPA permits • Non-compliance with conditions of the ECA Section 20 permit • Operation of 2 waste sites without authorisation • Lack of proper bund walls and measures to contain spillages of hazardous chemicals. • After the initial inspection the facility has constructed a chemical storage facility without the required environmental authorisation • Potential groundwater and surface water pollution from poor storm water management around the coal storage area. • Conducting environmentally harmful activities • Poor management of waste	Follow-up inspection report still to be vetted and enforcement strategy then to be developed
Mondi – Richards Bay, Kwa Zulu Natal	February 2009	• Non-compliance with conditions of the APPA permits • Non-compliance with conditions of the ECA Section 20 permit	31 August 2009	08 March 2011	• During the follow-up inspection, Mondi was found to be in compliance with its amended APPA permit. • Prohibited waste is no longer being	Follow-up inspection report to be vetted and enforcement strategy developed

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
		• Operation of Kiln 2 with an expired APPA provisional registration certificate • Improper storage of crushed fluorescent tubes and spillages of hazardous material in unlined areas • Non-reporting of emergency incidents to authorities			• being disposed of at the Mondi Alton landfill site • Despite the facility's application for an amendment to waste management license, Mondi remains in non-compliance with the License • Iso-kinetic sampling is done annually by an external party.	
POWER GENERATION						
Eskom Lethabo Powers Station, Free State Province	November 2009	• Non-compliances to conditions of the authorisations (Section 20 ECA permits and APPA permits) • Closure of the waste disposal site without the required authorisations • Storage of waste water in dams without Water Use Licences • Failure to comply with general duty of care in respect of waste management on site	29 September 2010			Representations reviewed and require approval of enforcement approach
CEMENT						
Natal Portland Cement, Cimpor, Simuma, Durban, Kwazulu-Natal	27 and 28 May 2008	• Nineteen non-compliances were detected • Control of fugitive dust emissions is a major challenge	28 January 2009	17 September 2009	• Applications submitted for amendments to the APPA permit • The effectiveness of the dust control measures installed on site could not be established. • Bunding of chemical and oil storage areas to prevent spillages were still outstanding	Section 28 NEMA pre-directive and S31L NEMA pre-notice issued to the facility in May 2011
Afrisam Ulco Factory, Northern Cape	26 August 2008	• Fifteen non-compliances detected	28 January 2009	September 2009	• Some of the previous non-compliances had been addressed • Operation of general waste disposal site as well as storage of hazardous waste without the required waste management licenses	Enforcement Strategy developed

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
					• Fugitive emissions • Potential soil, groundwater and surface water pollution from storage of raw materials	
Lafarge Lichtenburg, North West Province	27 May 2008	• Nine non-compliances were detected on site • Facility started with the construction of Kiln 4 without authorisation • Excessive fugitive dust emissions	31 July 2009	11 May 2010	• Potential groundwater and surface water pollution from poor storage of coal stockpiles, condensate-oil mixture containers on unbunded and unlined area, and oil spillages on site • Unauthorised construction of kiln 4 has not yet addressed	Enforcement Strategy developed. Section 31H NEMA Notice issued by DEA to Lafarge Cement requesting further information
Pretoria Portland Cement ("PPC"), Riebeeck West, Western Cape	27 May 2008	• Significant dust emissions emanating from various sources on site • Non-compliances relating to the ECA permit	23 October 2008	3 December 2009	• The facility was still in the process of installing baghouse filters to address the air pollution issue from the mills • The study on measures to reduce the fugitive emissions on site was still underway • The facility had submitted requests for amendment of the waste management license conditions	Enforcement Strategy developed. Warning letter to PPC Riebeeck West requesting further information and notice of referral. Matter referred to West Coast District Municipality ("WCDM") and Western Cape Department of Environmental Affairs and development Planning ("DEADP") for further enforcement action
PPC, New Brighton, Port Elizabeth, Eastern Cape	27 May 2008	• Eleven non-compliance • Excessive fugitive dust emissions on site	22 December 2008	5 October 2009	• Potential groundwater and surface water pollution from poor storm water management, storage of coal ash on unlined area • Requests submitted for amendment of the APPA permit to address the stack height • Fugitive emissions from the clinker collection area were still observed • Installation of the bag filters to replace the ESP was still in progress during the follow-up inspection	Enforcement Strategy developed. Section 31A ECA & Section 28NEMA pre-directive dated 5 October 2010 issued by DEA The facility has provided a response and the Department found that the concerns were adequately addressed by the facility. A "spot inspection" will be conducted at the facility to confirm its compliance prior to making a final decision on whether or not to proceed with a directive

Name of Facility	Date of initial inspection	Principle findings related to environmental non-compliance	Representations received / reviewed	Date of follow-up inspection/s	Principle findings of follow-up inspection	Status of enforcement process
PPC, De Hoek, Western Cape	July 2008	Eleven non-compliances	9 December 2008	2 December 2009	- The non-compliances in relation to the section 20 ECA permit, which were listed in the initial inspection report, were not yet addressed - The facility had also not yet addressed the environmentally harmful activities listed in the initial inspection report - The facility still had to replace the Electrostatic Precipitators ("ESPs") with bag filters in order to reduce excessive emissions and a study to investigate the sources of fugitive emissions was still underway	Enforcement Strategy developed. Warning letter dated 6 December 2010 requesting further information and notice of referral. Matter referred to West Coast District Municipality ("WCDM") and Western Cape Department of Environmental Affairs and development Planning ("DEADP") for further enforcement action
PPC Slurry, Mafikeng, North West Province	16 July 2008	- Fourteen non-compliances - Non-reporting of certain incidents	12 August 2009	13 May 2010	- Conditions of the APPA permit were still not complied being with - Dust was still a significant problem across the site - PPC was unable to demonstrate the adequacy and efficacy of the dust abatement measures - Various issues pertaining to soil erosion at the landfill site were still outstanding	A warning letter was issued in November 2010 informing the facility that the matter has been referred to NWDACE:RD for enforcement action

8.2 Reactive Enforcement

8.2.1 BURIAL OF HEALTHCARE RISK WASTE

Welkom

The National Department of Environmental Affairs, through its Environmental Management Inspectorate (EMI), uncovered a significant quantity of Health Care Risk Waste (HCRW - medical waste) that was illegally disposed of in and around the Greater Welkom area after executing a search warrant on 27 November 2009 at a brick manufacturing facility (Maximus Bricks) and thereafter on three other properties. The discovery of the illegal disposal sites was highlighted in the previous NECER as well as the enforcement actions initiated by the Department in response thereto.

Wasteman, through the services of an independent waste management company, began the clean-up and rehabilitation operation of the four sites in Welkom in March 2010 in response to the compliance notice issued by the Department. The excavated materials consisted predominantly of chemical waste, sharps which included syringes, blood vials, needles and other general medical waste, such as swabs, intravenous bags, pharmaceutical matter and even anatomical waste. The process involved in the removal of the HCRW was closely monitored by an independent specialist as well as the authorities and the waste was safely disposed of at authorized high hazard landfill sites due to the fact that it was necessary to dispose of the HCRW mixed with large quantities of soil. The clean-up and rehabilitation operations were completed at the end of October 2010, with a total volume of approximately 18 000 tons (waste mixed with soil) being removed from the affected properties. During this enforcement process, a total of sixteen administrative enforcement notices (including pre-notices) were issued, of which four of the final notices were not complied with by other parties involved in the illegal operations. The total cost of the clean up and remediation was in the region of between R50 and R60 million.

The criminal case against seventeen accused continues. Although the State had intended to finalise the investigation by the end of February 2011, new evidence came to light, requiring further



investigation. The case will be arraigned at the Bloemfontein High Court when the final stages of the investigation have been completed. It is hoped that a trial date can be set during the next reporting period.

Vierfontein Farms – North West Province

During the investigation into the illegally disposed HCRW in Welkom, the Department also discovered HCRW buried on two farms (Altona and Rietvallei) in the North West Province. It was estimated that in the region of 4000 tons of contaminated materials needed to be removed from these properties. Final administrative notices were served on Wasteman as well as other parties involved and the Department has approved the methodology for the cleanup which was compiled by the independent specialist. The HCRW unlawfully disposed of on this property predominantly consists of sharps and this waste (which is mixed with soil) will also need to be removed to a high hazard landfill site. The clean up and rehabilitation of these sites is expected to commence in July 2011.

Klerksdorp landfill site

During the investigation into the illegally disposed HCRW in Welkom, it was further discovered that untreated HCRW had been illegally disposed on the old Klerksdorp landfill site. In the region of 10 000 tons of HCRW mixed with soil will need to be removed from this property. The enforcement action taken against Wasteman requires the company to remove the waste from this historically utilized landfill site and dispose of it at a high hazard facility. Final administrative notices were issued and the removal of the HCRW methodology was approved by the Department. This cleanup operation will follow after the one undertaken at Vierfontein. Both operations will be supervised by a highly qualified independent specialist well versed in the remediation of contaminated land.

8.2.2 COAL OF AFRICA'S VELE COLLIERY

This matter related to mining operations which commenced in close proximity to a declared World Heritage Site – the Mapungubwe Cultural Landscape Area, which encompasses the Mapungubwe National Park. Although the company was in possession of a new order mining right issued by the Department of Mineral Resources, it failed to obtain environmental authorisation for the associated activities which are listed and require authorization in terms of the National Environmental Management Act (NEMA).

The administrative enforcement processes related to this matter were addressed in three separate notices of intention to issue compliance notices, with a consolidated final notice of intent being issued on 18 June 2010 and a final Compliance Notice issued to Coal of Africa Ltd ("CoAL") and Limpopo Coal Company (Pty) Ltd ("LCC") on 5 of August 2010 after the Department had extensively engaged with CoAL and LCC as required by administrative justice.

Despite the arguments put forward that the issuing of the mining right effectively means that no other authorizations are required within the mining right area, the Department remained of the view that an authorisation issued in terms of the Mineral and Petroleum Resources Development Act does not equate to an authorisation in terms of the NEMA. This legal point of view was confirmed in the recent High Court judgment in the Western Cape in the matter between the City of Cape Town and Macsands (Pty) Ltd and others (see case summary on page 34w).

CoAL complied with the compliance notice and ceased with all relevant activities. An objection against the notice was submitted to the Minister together with a request to suspend the operation of the compliance notice pending a decision in relation to the objection. The Minister allowed the use of certain infrastructure (specifically roads) for environmental monitoring purposes; however, she dismissed the objection.

CoAL applied in terms of section 24G NEMA for rectification in respect of all the activities that commenced illegally and which were captured in the compliance notice. As of March 2011, these applications are being processed.



The criminal investigation is almost complete. The companies have allegedly committed 32 offences set out in the NEMA, NEMWA and the National Water Act. The criminal docket is currently with the Director of Public Prosecutions (DPP), Northern Gauteng Office, for review (Ref: 9/2/15/4-9/2011) and the Department is awaiting further instructions in order to finalise the docket prior to issuing summons.

8.2.3 NON-COMPLIANT GOVERNMENT ENTITIES

Eskom

Eskom has become one of the utilities in relation to which we have seen an increase in the numbers of contraventions of environmental legislation. Non-compliant activities were detected at their Kusile, Bethal and Camden facilities. This is extremely concerning in that Eskom has well capacitated environmental personnel which are dedicated to ensure compliance at most of its power generating facilities.

In addition, it should be noted that the contraventions detected do not relate to non-compliance with existing environmental authorisations but rather with the establishment of new infrastructure without any environmental authorisation as well as contraventions of legislation regulating waste and environmental impact assessments. A notice of intent to issue a compliance notice was issued in respect of the Kusile operations and in respect of the Camden power station, a final compliance notice/ directive. All of these matters have resulted in Eskom submitting applications to rectify non-compliances in terms of section 24G of NEMA. Many of the transgressions detected had been undertaken in sensitive ecosystems, primarily wetlands.

SANRAL

SANRAL continues to display non compliant behaviour, for example, in the construction activities associated with the Nelspruit N4 Ring Road, where despite numerous written warnings; infrastructure was constructed in sensitive environmental features. Phase two of this project will be commencing soon, and the Department will be intensely monitoring this project.

The Department is also in the process of amending Section 34 of NEMA, to enable criminal prosecutions to be brought against organs of state; in line with the basic principle that all persons/entities are equal before the law.

9. Biodiversity Enforcement and Compliance

During the 2010/11 financial year, a total of 389 rhinoceros were illegally hunted in South Africa. Of the 389 animals, 202 were illegally hunted in the Kruger National Park (KNP). During the same period, a total of 214 suspected rhino poachers were arrested. Of the 214 arrested persons, 92 were arrested in the KNP. During the report period, a total of 16 suspected rhino poachers lost their lives in armed contact with park officials in the KNP, KZN Province and North West Province. In October 2010, 3 Mozambique nationals, arrested in the KNP for suspected rhino poaching were found guilty and sentenced to imprisonment ranging from 5 to 9 years each. During December 2010 a Vietnamese national was arrested in possession of illegal rhino horn was found guilty of being in illegal possession of 1 rhino horn at OR Tambo International Airport and sentenced to a fine of R 300,000 or 5 years imprisonment.

- During a Rhino Summit held in October 2010, the Minister of Environmental Affairs (DEA) launched the national strategy for rhino security, entitled the National Strategy for the Safety and Security of Rhinoceros Populations in South Africa. This policy was drafted at the request of the Minister of DEA and was necessitated by a drastic increase in the number of incidents of rhino poaching in the country and the continued leakage of certain horn stocks into the international illegal trade. This state of affairs had raised concern with conservation bodies, private landowners and attracted international attention including media coverage worldwide, and increased the focus on South Africa at the International Convention on Trade in Endangered Species (CITES).

- The Minister of DEA also approved the formulation of an Interim National Wildlife Crime Reaction Unit (NWCURU).

This unit is coordinated by SANPARKS and comprises of seconded officials (Environmental Management Inspectors) from the nine provincial conservation agencies as well as SANPARKS and DEA. A budget of R 2,000,000 was approved by the Minister to supplement operational expenditure incurred by the units' activities. The unit will implement the rhino safety and security strategy along with the support of the South African Police Service (SAPS), South African Defense Force (SANDF) and all other relevant roll players. The NWCURU was launched in October, 2010 by the Minister of DEA.

- A request from the Minister of DEA to the Chairman of the National Joints Security Committee (NATJOINTS) has resulted in the rhino poaching problem in South Africa being elevated to this committee. A national project, "Operation Rhino", has been officially tabled and approved. A NATJOINTS, Priority Committee to manage the project, has been officially mandated and instituted and is currently functional. As a result of the Priority Committee a National Instruction to all National and Provincial security clusters, including the DEA and SANPARKS has been carried out and therefore the current rhino poaching threat in the country, including the KNP will receive high

priority from all the relevant security agencies. These agencies include the SAPS, SANDF, National Intelligence Agency (NIA) and all other important stakeholders such as the SA Civil Aviation Authority (SACAA), DEA, SANPARKS, Veterinary Council and the Department of Health (Medicines Control).

The SANDF, who have taken over the responsibility of international borderline control in the country from the SAPS, has initiated its first phase deployment in the KNP (Sand River Base) and are currently actively deployed as of March 2011 to implement their mandate along the eastern boundary of the KNP south of the Olifants river. A Memorandum of Understanding (MOU) between SANPARKS and the SANDF has been jointly drafted and will be signed off during May 2011.

Official SA delegation (South African Police Service (SAPS), SANPARKS, Department of Environmental Affairs and the Provincial authorities) travelled to Vietnam to meet with Vietnam officials regarding the challenges SA are facing with the involvement of Vietnam nationals in illegal rhino horn and rhino hunting activities and to obtain a better understanding of the consumer dynamics in Vietnam.

9.1 Biodiversity Enforcement and Compliance Capacity

Along with the implementation of the rhino security policy and the National Joints Initiative the following has been implemented in the KNP during the report period to address the current upsurge of rhino poaching in the KNP.

- Deployment of 58 new field rangers into poaching "hot spots" within the KNP;
- Radio communications facilities and equipment, within the KNP, is being upgraded to include the latest in digital technology;
- Ranger section specific safety and security plans which guide the identification and countering of all poaching threats in parks;
- Change in conditions of service for field rangers to facilitate adequate deployments over weekends and public holidays;
- Feasibility study – deployment of tracker dogs in anti-poaching and follow-up operations;
- Acquisition of 19 motorbikes to assist in patrolling and follow-up actions. 7 bikes received to date;
- Acquisition of new "night vision" equipment to boost existing equipment for night deployments;
- Purchase of an ultra-light Bantam aircraft for deployment to the Shingwedzi area which will boost the existing ultra-light aircraft fleet to 2, for anti-poaching operations in the KNP;
- Establishment of effective joint liaison and cross border operational mechanisms with Mozambique to support cross border anti-poaching operations into Mozambique;
- Acquisition of a new SANPARKS intelligence / investigation management system, MEMEX to assist with the capture, storage and analysis of environmental crime related information.

9.2 INTERPOL Wildlife Crime Working Group

Across South Africa provincial authorities participated in three INTERPOL coordinated operations, these being – Operations **TRAM, Mogatle and RAMP**

Of the three operations organised and led by the Programme, one was a regional operation:

- Operation MOGATLE – this focused on combating the illegal possession and trade of elephant ivory in five African countries

The other two were global operations namely:

- Operation TRAM – this focused on the illegal trade in and possession of traditional medicines containing wildlife products
- Operation RAMP – this focused on the illegal trade in reptiles and amphibians

Brief overview of each mentioned operation:

Mogatle: A transnational operation co-ordinated by INTERPOL targeting wildlife crime across southern Africa which resulted in the location and closure of an illegal ivory factory, the seizure of nearly 400 kilos of ivory and rhino horn with a market value of more than one million dollars, as well as the arrest of 41 people. The two-day operation (13-14 May 2010), codenamed Mogatle, involved nearly 200 officers from police, national wildlife, customs and national intelligence agencies across six countries – Botswana, Namibia, South Africa, Swaziland, Zambia and Zimbabwe – who carried

out inspections and raids on markets and shops. (INTERPOL media release 18 May 2010)

TRAM: In September 2009, the INTERPOL Wildlife Crime Working Group, an expert advisory group that meets under the auspices of the General Secretariat's Environmental Crime Programme, recommended that INTERPOL takes the lead in co-coordinating international operations combating wildlife crime. As a result, the Environmental Crime Programme led its first global operation in February 2010. This operation, referred to as Operation TRAM brought together 18 countries in a collaborative effort to combat the illegal trade in traditional medicines containing wildlife products. Operation TRAM resulted in the seizure of over 10 million euro of products, the arrest and prosecution of numerous criminals and the exchange of over 150 intelligence reports. (INTERPOL 2010/337/SCA/PST/ECP/DH)



RAMP: As the second global operation led by INTERPOL against wildlife crime, results to date from Operation RAMP follow those of its precursor, Operation TRAM (February 2010), which targeted the illegal trade in traditional medicines containing wildlife products. A worldwide operation co-ordinated by INTERPOL and involving 51 countries across all five continents against the illegal trade and possession of reptiles and amphibians has resulted in arrests worldwide and the seizure of thousands of animals as well as of products worth more than 25 million Euros.

"Our goal in Operation RAMP was to detect and apprehend suspected wildlife criminals, whilst also furthering co-operation and collaboration between agencies and countries in an effort to enhance the fight against organized environmental crime," said the Director of INTERPOL's Specialized Crime unit, Bernd Rossbach. Whilst Operation RAMP focused on detecting and apprehending suspected criminals and criminal groups, emphasis was also placed on ensuring the compliance of lawful traders such as private license holders, public retail outlets and wholesale distributors alongside targeted enforcement actions at national ports where imports and exports transit, collectively resulting in thousands of inspections during the two-month operation. (INTERPOL media release No 89/2010)

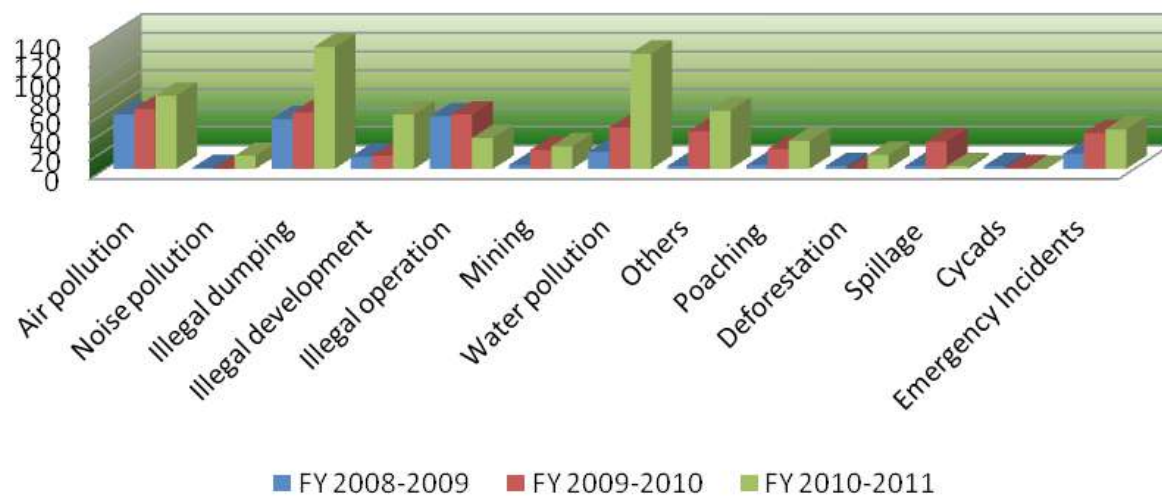
10. National Department Complaints and Emergency Incidents Register

DEA continued to collect statistics on environmental complaints received from the Environmental Crimes and Incidents Hotline, from the Minister and Director-General's office as well as direct and referred complaints/incidents from other organs of state or the public. The hotline serves as the main entry point for complaints on environmental crimes and emergency incidents and does not include complaints reported directly to provinces and local authorities or other EMI Institutions. There has been a significant increase in the number of complaints reported during 2010/2011 as compared to 2009/10, which can probably be attributed to a number marketing interventions aimed at raising awareness to the public regarding the hotline services. Most of the complaints received were matters classified as illegal dumping and water pollution and there has been a slight increase in the number of NEMA section 30 incidents reported. Out of the 42 emergency incidents received 86 percent were reviewed and finalized, with seven yet to be finalized.

Nature of Complaint	Financial Year			
	2008-2009	2009-2010	2010-2011	TOTAL
Air pollution	58	64	78	200
Noise pollution	1	0	14	15
Illegal dumping	53	60	130	243
Illegal development	13	14	58	85
Illegal operation	56	58	33	147
Mining	4	20	24	48
Water pollution	18	44	123	185
Others	3	40	62	105
Poaching	4	21	30	55
Deforestation	3	0	15	18
Spillage	3	29	3	35
Cycads	3	1	0	4
Emergency Incidents	16	38	42	96
Total	235	389	612	1236

Table 7: Number and classification of complaints and Emergency Incidents

Nature of Complaints



Graph 6: Graphical representation on the nature of complaints received

Financial Year	INSTITUTION REFERRED TO					
	DEA	DWA	DMR	LOCAL GOVERNMENT	PROVINCES	TOTAL
2008-2009	123	34	4	11	47	219
2009-2010	138	63	22	6	122	351
2010-2011	87	123	24	134	210	612
Total	348	220	50	185	379	1182

Table 8: Number of DEA referred complaints and incidents

11. Capacity Building for EMIs, Magistrates and Prosecutors

11.1 EMI Basic Training

A total of 177 attendees completed the Environmental Management Inspector (EMI) Basic Training Programme in 2010/11 at the University of South Africa, University of Pretoria and Cape Peninsula University of Technology in five courses delivered during this period.

	2008	2009	2010	Total per Institution
CPUT	33	35	53*	121
UNISA	55	84*	88 *	227
UP	55	105	36	196
Total per Year	143	224	177	

**These totals represent 2 courses per year*

Despite the fairly large annual intake of learners registering for the basic training programme at these tertiary education institutions, only a fraction of these attendees were eventually designated as EMIs, shown by the fact that the number of EMI appearing on the national register has risen by only 33 in 2007/8, 22 in 2008/9 and 182 in 2009/10 (this total excludes SANPARKS officials). It is important to note that included within the reported 182 increase within the current reporting period, 126 are Grade 5 EMIs, which equates to an increase of 53 (Grade 1 - 4) EMIs designated.

DEA further engaged in a once – off training needs analysis project in late 2010 to gather a broad-based perspective from all EMI Institutions of various aspects of capacity-building interventions led by the Department, including EMI Basic and Specialised Training, EMI Information Resources etc. This survey was conducted through the distribution of a comprehensive questionnaire that was e-mailed to all EMI Institutions with a request to complete. The results of this exercise will be taken forward in the new financial year.

The EMI basic training course material was supplemented by the distribution of 481 EMI Operating Manuals to all relevant institutions, consisting of a comprehensive set of 33 Standard Operating Procedures related to key compliance and enforcement activities.

11.2 Local Authority EMI Basic Training

On 2 December 2010, MINMEC approved the draft national guideline and the implementation protocol subject to a local government support programme with funding being in place. The department will continue to explore opportunities for the provision of financial and other required support to local government in the implementation of this project. In support of this project DEA held a stakeholder meeting with representatives from, 7 tertiary institutions (Universities of Technology), Health Professions Council of South Africa, South African Institute of Environmental Health Practitioners as well as the National Department of Health: Environmental Health Directorate, on the 21st of February 2011.

The objective of the meeting was to:

- Identify the key similarities and differences in the EMI-EHP qualifications;
- Develop a curriculum framework based on the “gap” between the two qualifications;
- Discuss the presentation of the EMI qualification through inclusion in the existing Nat.Dip/BTech (Environmental Health) and the development of a “bridging” short course for existing EHPs; Upon conclusion of the workshop a deadline specific implementation plan was agreed upon for roll-out during 2011-2012 financial year.

DEA also sought to provide support to the development of environmental compliance and enforcement capacity at local authority level through the undertaking of a feasibility exercise to develop a bridging course for Environmental Health Practitioners (EHPs). Due to the fact that a significant portion of these EHPs would be designated as EMIs to enforce certain provisions of SEMAs (especially the Air Quality and Waste Acts) at local authority level; and that they already required a formal qualification, the Department engaged with key stakeholders, such as the Health Professions Council of South Africa, the South African Institute of Environmental Health, the Department of Health, as well as the 7 Universities of Technology, with the aim of developing an appropriate EMI Basic Training model for qualified EHPs. It is envisaged that this project will gain momentum in the new financial year.

11.3 EMI Field Ranger Training (Grade 5)

DEA completed its collaborative project with the NGO TRAFFIC (East-Southern Africa) to develop training material for field rangers or Grade 5 EMIs through a Norwegian-funded project. The instructional training DVD in Sesotho, isiZulu, Xitsonga, isiXhosa, English and Afrikaans and facilitators’ guides were handed to the relevant EMI Institutions in July 2010. The implementation of the Grade 5 training programme is expected to be conducted internally by officials within the respective institutions.



11.4 EMI Specialised Training

In November 2010, 43 officials from across South Africa attended a one week intensive training course on criminal docket management in Thaba 'Nchu in the Free State province. In order to cover both investigative and prosecutorial aspects of docket management, key presenters were sourced from the Free State Director of Public Prosecution's Office; as well as the training division of the

South African Police Service in Bloemfontein. The aim of the course was to build the understanding of EMI's of the substantive and procedural requirements for comprehensively compiled criminal dockets, in order to strengthen their ability to effectively utilise the criminal sanction as an environmental enforcement mechanism.

11.5 Magistrates and Prosecutors

During the course of 2010/11, 67 magistrates and 177 prosecutors received training/awareness-raising interventions aimed at developing their capacity to understand the nature, scope, impacts and legislation related to environmental crimes. In addition to the provincially-supported Justice College workshops that took place in Mpumalanga, Gauteng, Western Cape, KwaZulu Natal and Limpopo, the Department also organised a 1 day workshop with magistrates through the Judicial Officers Association of South Africa; (August 2010) as well as two advanced prosecutors training workshops in Stellenbosch (May 2010) and St. Lucia (February 2011). The latter initiative was developed in order to supplement the existing Justice College programme by focussing on prosecutors within the National Prosecuting Authority that routinely prosecute environmental crimes and exposing them to in-depth aspects of environmental crime, including presentations from experts on land, air and water pollution.

A Magistrates' Benchbook (co-authored by several senior magistrates) as well as a 2nd edition prosecutors' manual of environmental crime was handed to Justice College for further distribution to course attendees. These information resources were designed to provide ongoing reference material for court officials involved in the prosecution and adjudication of environmental crimes.



12. Stakeholder Engagement

MINTEC Working Group IV remains the main forum of national and provincial coordination on environmental compliance and enforcement issues, which also saw the establishment of the National Biodiversity Investigators Forum (NBIF) as a sub group of WGIV. The (NBIF) serves as a platform for Biodiversity Enforcement Officers from across South Africa, to share information on a national and operational level.

The NBIF is playing its role in amongst others, the fight against rhino poaching including other high profile illegal activities pertaining to biodiversity such as criminal activities relating to cycads. This platform includes members from the SAPS on a provincial operational level. The NBIF is also interlinked with the NWCRU, PEPC and the DEA Enforcement & Compliance Directorate.

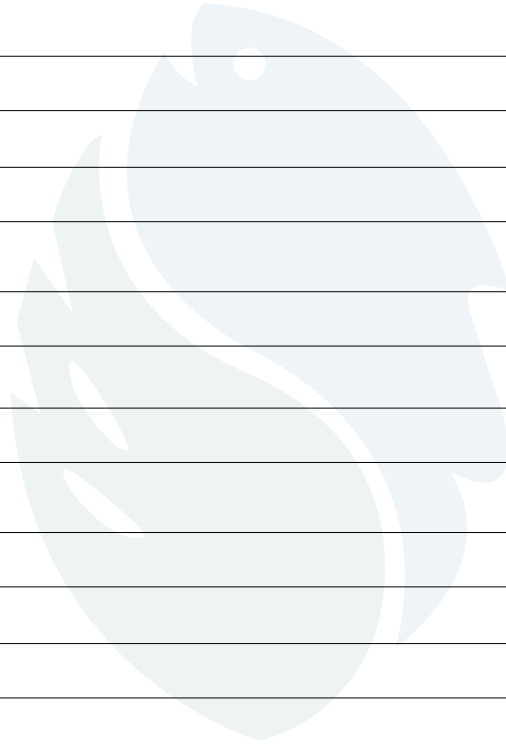
13. What is ahead for 2011-12?

The inclusion of the designation of EMLs at local authority level as a cross-cutting indicator in the Delivery Agreement for outcome 10 will drive the sector towards the development of much needed local authority EML capacity. This capacity is vital to ensure the effective implementation of specific environmental management Acts such as the Air Quality Act; as well as the integrity of the accompanying air emission licensing system. There will be workshops organised with air quality licensing authorities to capacitate officials on how to conduct compliance inspections against an air quality emission license.

The next financial year also will see the initiation of enforcement action in relation to many of the industrial facilities at which follow-up inspections have been conducted, as a sufficient time has now been given to facilities to demonstrate that measures are being taken to manage the impacts on the environment and to prevent and remediate the effects thereof.

The investigation, prosecution and adjudication of environmental crimes continue to be an area of focus for the inspectorate and several interventions are planned for the next financial year to focus on these aspects. Following from the training needs analysis project undertaken by DEA in 2010-11, specific attention will be focussed on specialised training for EMLs to address key areas of concern. In addition, DEA will continue to work with the Department of Justices' Justice College and the NPA in the training and awareness raising of environmental crimes to prosecutors and magistrates. DEA and the NPA will also continue to build on its positive existing relationships, to explore the feasibility of establishing a unit within the NPA, dedicated to the prosecution of environmental crimes.

Notes



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