

National Environmental Compliance & Enforcement Report 2012/13



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA



National Environmental Compliance & Enforcement Report 2012/13

Directorate: Compliance and Enforcement Services

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

First publication in 2013, by the Department of Environmental Affairs (DEA)

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Design and layout by

Department of Environmental Affairs

Chief Directorate Communications

Private Bag X447, Pretoria 0001

South Africa

ISBN: 978-0-621-423167

RP: 320/2013

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FOREWORD

This report, which outlines the work and achievements of the environmental compliance and enforcement sector over the 2012/2013 period, is the sixth of its kind since the inception of the Environmental Management Inspectorate (EMI). As the EMI institutions become better at reporting the information each year, so the accuracy of the statistics in the report improve, providing us with a more comprehensive understanding of the important work being done by the environmental compliance and enforcement sector.

We have seen an emphasis in this financial year on joint operations, which highlight the importance of working together with other enforcement agencies in order to ensure that we extend our efforts across a larger area and focus on high priority issues (including the tannery and taxidermist sector, sand mining and the reptile trade). Substantial efforts were also made during the year to focus our enforcement activities in order to combat rhino poaching which remains a priority for the Inspectorate, and the more significant cases that were finalised during this year are highlighted in the report. It is clear from the direct imprisonment sentences that are being handed down by our courts, that the justice system is also now recognising the devastating impact associated with environmental crime and understanding the important deterrent effect of the punishment associated with convictions.

A review of the statistics set out in the report shows an increase in much of the work being undertaken by the Inspectorate. We have embarked on an important project to assess the impact of the work of the Inspectorate since its creation and to develop a strategy to guide this work into the future. I would like to commend the EMI's for their dedication and for the valuable contribution they are making to upholding and protecting the environmental rights in our Constitution. Within this context, I am proud to present to you the 2012/13 National Environmental Compliance and Enforcement Report.

ISHAAM ABADER



DEPUTY DIRECTOR-GENERAL: LEGAL AUTHORISATIONS, COMPLIANCE AND ENFORCEMENT, DEPARTMENT OF ENVIRONMENTAL AFFAIRS

ACRONYMS

Key:	General
DEA:	National Department of Environmental Affairs
DG:	Director-General
ECPTA:	Eastern Cape Parks and Tourism Agency
EMI:	Environmental Management Inspector
Isimangaliso:	Isimangaliso Wetland Park Authority
MPA:	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
TOPS:	Threatened or Protected Species
Key:	National Legislation
APPA:	Atmospheric Pollution Prevention Act No. 45 of 1965
ECA:	Environment Conservation Act No. 73 of 1989
MLRA:	Marine Living Resources Act No.18 of 1998
NEMA:	National Environmental Management Act No.107 of 1998
NEM:AQA	National Environmental Management: Air Quality Act, No.39 of 2004
NEM:BA	National Environmental Management: Biodiversity Act, No.10 of 2004
NEM:PAA	National Environmental Management: Protected Areas Act, No.57 of 2003
NEM:WA	National Environmental Management: Waste Act, No. 59, 2008
NWA	National Water Act, No. 36 of 1998

GLOSSARY OF TERMS:

“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.

“Arrests by EMIs” indicates the number of individuals arrested/summoned to court by EMIs for the purposes of criminal prosecution.

“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. This 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).

“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.

“Initial inspection” means that it is the first time that the particular facility/person has been the subject of a compliance inspection by EMIs. 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.

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

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

“Notices/directives issued” means administrative enforcement tools, such as

notices and directives that are issued in response to 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 EMI 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 EMI 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.

“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.

“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.

“Warning letters” are written documents that afford an opportunity for 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.

I. INTRODUCTION

2012/13 marks the 6th year in which the national Department of Environmental Affairs (DEA) has collaborated with its provincial counterparts and statutory bodies to develop the National Environmental Compliance and Enforcement Report (NECER), a joint publication that aims to provide an overview of environmental compliance and enforcement activities undertaken by the various environmental authorities over the period of a financial year.

The NECER is aimed at a broad spectrum of stakeholders, including a range of private, public and community-based institutions. In this respect, the report seeks to fulfil some of the information requirements of regulators, the regulated, the general public and other interested organisations. The report is designed to meet this objective, by providing:

- the general public with an overview of the measures being taken by the environmental compliance and enforcement sector to give effect to section 24 of the Constitution;
- the community-based/non-governmental organisations with information related to specific compliance and enforcement activities being taken in respect of certain sectors or facilities;
- the national, provincial and local environmental authorities with an overall perspective of their compliance and enforcement performance, both in relation to previous financial years, as well as in relation to their counterparts; and
- a deterrence for would-be offenders who realize that there are dire consequences for those who choose to flout environmental laws.

The NECER is accordingly divided into various sections, including information on the compliance and enforcement capacity; the enforcement (criminal, administrative, civil) and compliance monitoring activities (proactive, reactive inspections) being undertaken by various authorities; the most prevalent types of environmental crimes being reported and responded to; the legislation and court cases relating to environmental matters; as well as the capacity-building interventions and engagement with key stakeholders in the sector.

Constraints that should be noted with the report are the fact that it focuses solely on the activities of “environmental” authorities; and does not reflect the compliance and enforcement work being undertaken by other “related” sectors, such as water affairs,

agriculture, forestry and fisheries, mineral regulation, labour, health etc. In addition, the indicators included in the report are primarily output-based (for example, reflecting the number of inspections or investigations) and do not link directly with environmental outcomes (for example, reduction on pollution load or health of ecosystems) at this stage. Finally, the statistics reflected in this report emanate directly from the input received from the respective environmental authorities – no independent auditing/verification of this input is conducted by DEA or any other third party. In this respect, the report should be regarded as indicative of the general nature, scope and volume by environmental compliance and enforcement authorities in this reporting period.

Despite these constraints, it is hoped that the NECER 2012/13 will continue to be a valuable information source for its readers and highlight the critical work currently being undertaken by the environmental compliance and enforcement sector to implement the vast number of provisions that make up the legislative regime of environmental regulation in South Africa today.

2. KEY FINDINGS

2.1 THE ENVIRONMENTAL MANAGEMENT INSPECTORATE

- There has been a 22% increase in the total number of EMIs on the national register from 1399 in 2011/12 to 1705 in 2012/13.
- Of the 1705 EMIs on the national register, 1055 (62%) are Grade 5 EMI/field rangers employed at national and provincial parks authorities.
- There has been a 25% (214) increase in the number of Grade 5 EMI field rangers from 841 in 2011/12 to 1055 in 2012/13.
- Of the EMIs who reported their sub-sectoral mandates, 21% are responsible for brown, 76% for green; and 3% for blue legislation. The ratio of males to females comprising the Environmental Management Inspectorate stands at almost 5:1, revealing a sector that continues to be dominated by males.
- SANParks (670), KZN Wildlife (423) and Eastern Cape Park and Tourism Agency (107) have the most EMIs (majority are Grade 5 field rangers) followed by Limpopo (92), DEA (63) and Western Cape (57), while Mpumalanga (12), Mpumalanga Tourism and Parks Agency (11), and Isimangaliso (5) have the least.
- Eastern Cape Parks and Tourism Agency showed an annual increase from 62 EMIs in 2011/12 to 107 in 2012/13 followed by Gauteng with an increase of 63%. CapeNature recorded a 175% increase from 8 to 22 EMIs and KZN Wildlife which had a 36% annual increase of EMIs.

2.2 OVERALL NATIONAL COMPLIANCE AND ENFORCEMENT STATISTICS

Enforcement:

- There has been a 13.85 % increase in the number of reported environmental incidents, from 3944 in 2011/12 to 4479 in 2012/13.
- There was a general increase in the number of criminal dockets registered in the three year cycle, from 718 in 2010/11, to 1080 (50.42% increase) in 2011/12 and 1488 (37.7% increase) in 2012/13 financial years.
- The total number of J534s issued dramatically increased by 389% from 1498 in 2011/12 to 5825 in 2012/13.
- The number of criminal dockets handed to the NPA increased by 33.33%, from 201 in 2011/12 to 268 in 2012/13.
- The total number of arrests by EMI's increased by 35.77% from 1399 in 2011/12 to 1818 in 2012/13.
- The total number of acquittals increased from 7 in 2011/12 to 8 in 2012/13.
- Convictions reported have slightly decreased from 82 reported in 2011/12 to 70 in 2012/13.
- There has been a 7.69% (14) increase in the number of plea and sentence agreements reached in 2012/13, compared to the 13 reported in 2011/12.
- The total value of admission of guilt fines paid in 2012/13 was R 654 250.00, which has increased by 39.17% from R 470 080.00 in 2011/12.
- The total number of warning letters issued has significantly decreased from 495 in 2011/12 to 187 in 2012/13 which equates to a 62% drop.
- The total number of administrative notices issued has increased slightly from 521 in 2011/12 to 577 in 2012/13.
- The number of civil court applications launched decreased from 7 in 2011/12 to 4 (42.86%) in 2012/13.
- There was a dramatic decrease in the total value of section 24G administrative fines paid from R17 627 233 in 2011/12 to R 5 385 215 in 2012/2013 (69.4%)

Compliance Monitoring:

- There were a total of 2766 facilities inspected in 2012/13, which reflects a 60% increase from 1724 facilities in 2011/12.
- Of the total number of facilities inspected, 48% (1321) were against brown legislative requirements, while 52% (1445) were in the green subsector.
- There has been a decrease in the number of proactive inspections from 2196 in 2011/12 to 1215 in 2012/13 reflecting a decline of 45%.
- The total number of non-compliances detected during inspections has increased from 1116 in 2011/12 to 2482 in 2012/13, representing an increase of 122%.
- There has been a slight increase in the total number of reactive inspections from 558 in 2011/12 to 639 in 2012/13.
- There has been a decrease in follow-up inspections conducted from 833 in 2011/12 to 675 in 2012/13. The total number of inspections that required enforcement actions to be taken has increased from 433 in 2011/12 to 524 in 2012/13.

2.3 STATISTICS PER INSTITUTION/PROVINCE

- Ezemvelo KZN Wildlife recorded the highest number of criminal dockets registered (652), followed by SANParks with 446 criminal dockets; and thirdly the National Department of Environmental Affairs with 99 dockets registered. Mpumalanga provincial department reported three criminal dockets while KwaZulu-Natal provincial department reported no criminal cases.
- Ezemvelo KZN Wildlife recorded the highest number of arrests (812) followed by Limpopo provincial department with 643 arrests.
- SANParks have issued the highest value of admission of guilt fines (J534s) amounting to R 2 429 260 followed by Limpopo with a value of R 326 580.
- Gauteng Department of Agriculture and Rural Development has recorded the highest number of administrative enforcement notices with 107 pre-compliance notices and pre-directives and 36 final compliance notices and directives. Isimangaliso reported two civil court applications and no other administrative tools issued; while SANParks, CapeNature, Ezemvelo KZN Wildlife and MPTA had no administrative enforcements recorded.
- The KwaZulu Natal provincial department issued 71 warning letters, the highest compared to other EMI Institutions followed closely by the Eastern Cape provincial department who issued 59 warning letters.
- Gauteng provincial department recorded the highest total value of S24G fines paid, being R2 391 215 while the National Department of Environmental Affairs recorded a total payment of R2 228 500.
- North West recorded the highest number of facilities inspected (274 on brown and 883 on green issues), followed by KwaZulu-Natal with 593 and Limpopo with 341 (80 brown and 261 green issues). Free State has recorded nine facilities inspected during the reporting year.
- National Department of Environmental Affairs recorded the highest number of non-compliances detected (833) during the execution of compliance inspections, followed by KwaZulu-Natal provincial department that detected 370 non-compliances, and Western Cape with 160. North West reported nine non-compliances and Free State detected seven non-compliances.

2.4 INDUSTRIAL COMPLIANCE AND ENFORCEMENT

Although there is still a substantial amount of compliance and particularly enforcement action taking place in relation to the proactive strategic inspections (details of which are set out in section 8 of the report), we have seen some positive results following enforcement action, particularly in the cement sector. Many of the facilities within the ferro- alloy, steel and iron industries are still subject to enforcement action, and it is clear that in relation to many of these facilities (which have been impacting on the environment over many years), a number of the measures required to achieve full compliance will take both time and substantial resources. The Inspectorate will continue to exert pressure on these facilities through enforcement action, where necessary, and build up accurate compliance records to inform future actions. The refinery sector appears to be improving on its environmental performance and through administrative enforcement have implemented or undertaken to implement various mitigating measures since the inception of the National Refineries Environmental Compliance Project. However, the Inspectorate will in future conduct follow-up inspections to these facilities in order to determine as to whether or not improvement has indeed taken place after these facilities were inspected since 2007.

2.5 NATIONAL COMPLAINTS AND INCIDENTS

- In 2012/13, the total number of complaints and emergency incidents reported through any mode of reporting was 680, while in 2011/12 there were 708 incidents reported.
- The reported number of section 30 NEMA emergency incidents has dramatically increased from 144 in 2011/12 to 213 in 2012/13, while the number of complaints reported has decreased by 17% from 564 in 2011/12 to 467 in 2012/13.
- The highest number of section 30 NEMA emergency incidents reported were from the petroleum and transport sectors, amounting to 68 (32%) of the total of 144.
- There has been a fluctuation in the reporting of certain types of incidents, with a slight decrease in reports of air pollution from 104 in 2011/12 to 93 in 2012/13.
- There has been an increase in the number of complaints referred to provincial departments from 183 in 2011/12 to 203 in 2012/13 and those referred to local authorities have decreased from 192 in 2011/12 to 110 in 2012/13.

2.6 ANNUAL COMPLIANCE AND ENFORCEMENT HIGHLIGHTS

CATEGORY	RESULT	INSTITUTION	LEGISLATION
Most inspections conducted	Green issues = 883 Brown issues= 274 Total= 1157 inspections	North West: Department of Economic Development, Environment, Conservation, and Tourism	Multiple
Highest sentence of direct imprisonment without a fine option	40 years direct imprisonment	South African Revenue Service	Section 80(1)(i) of the Customs and Excise Act, section 57(1) of NEM:BA
Highest sentence for a pollution and waste case	Accused 1: sentence to a fine of R200 000 or 6 years imprisonment and half suspended for 5 years. Accused 2: sentenced to R20 000 and wholly suspended	National Department of Environmental Affairs	Contravention of section 26(1) read with section 67(1) of NEM:WA
Highest number of Section 24G fines	36 were issued and 28 were paid amounted to R 2 391 215 67.	Gauteng: Department of Agriculture and Rural Development	NEMA section 24G
The highest number of administrative enforcement notices issued	143 issued	Gauteng: Department of Agriculture and Rural Development	NEMA, sections 24F and NEM:WA
Highest number of admission of guilt fines issued	4374 issued amounting to R 2 429 260	SANParks	NEM: Protected Area Act and MLRA

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 functions. However, only EMIs are mandated to enforce and monitor compliance with NEMA and specific environmental management acts.

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. As at 31 March 2013, there were 1705 EMIs (all Grades) on the national 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	2010-2011	2011-2012	2012-2013
SANPARKS	603	603 ¹	672
Ezemvelo KwaZulu-Natal Wildlife	159	310	423
Limpopo	33	75	104
National DEA	51	66	63
Western Cape	43	64	68
Eastern Cape Parks and Tourism Agency	3	62	107
Gauteng	51	43	70
Eastern Cape	26	39	39
KwaZulu-Natal	25	37	34
North West	22	25	26
Free State	21	22	30
Northern Cape	11	16	19
Mpumalanga	14	14	12
Mpumalanga Parks and Tourism Agency	11	11	11
CapeNature	2	8	22
Isimangaliso Wetland Park Authority	1	4	5
TOTAL	1076	1399	1705

3.1.1 Grades 1- 4 Environmental Management Inspectors

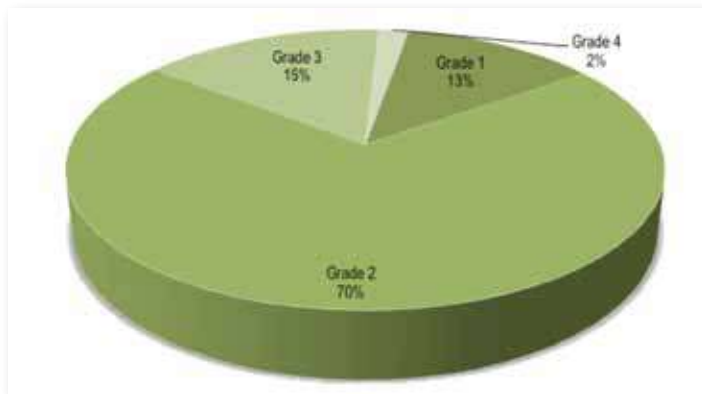
Grades 1, 2, 3 and 4 EMIs are found across all EMI Institutions and undertake compliance monitoring, administrative and criminal enforcement activities in the brown, green and blue sub-sectors.

GRADES	GRADE 1	GRADE 2	GRADE 3	GRADE 4	TOTAL
CapeNature	0	21	1	0	22
Eastern Cape	4	33	1	1	15
ECPTA	0	9	1	0	10

1. The number of designated EMIs within SANPARKS remained unchanged from the 2010-11 totals as no updated register was available at the time of publishing.

GRADES	GRADE 1	GRADE 2	GRADE 3	GRADE 4	TOTAL
Free State	1	28	1	0	30
Gauteng	3	26	41	0	46
iSimangaliso	1	2	0	0	3
Limpopo	11	36	4	2	41
KZN Wildlife (EKZNW)	24	28	0	0	52
KZNDEA	12	22	0	0	34
Mpumalanga	3	6	3	0	12
MTPA	2	9	0	0	11
National DEA	5	15	35	8	63
North West	1	25	0	0	26
Northern Cape	1	18	0	0	18
SANParks	4	134	0	0	138
Western Cape	5	31	32	0	57
Totals	77	443	119	11	650

Pie Chart 1: Overall percentage distribution on EMLs Grades 1-4.



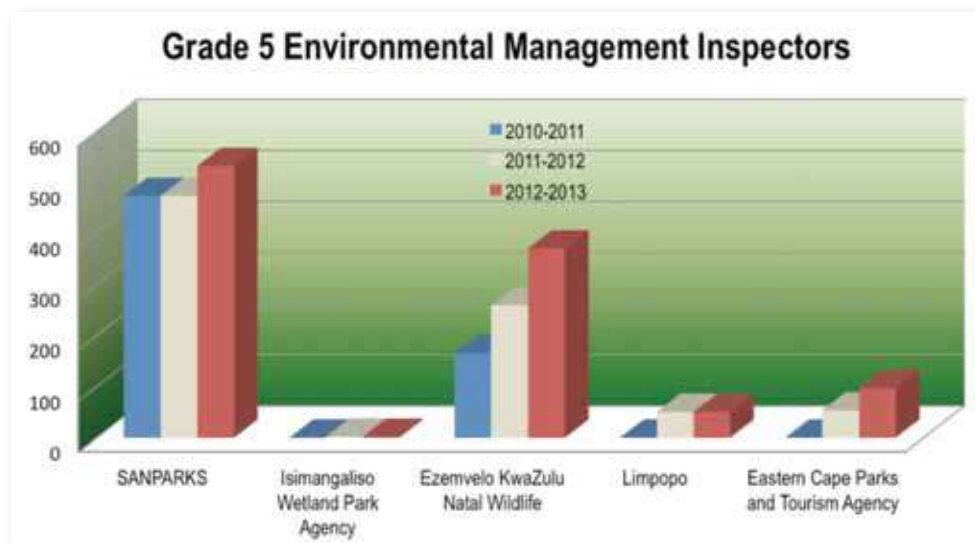
3.1.2 Grade 5 Environmental Management Inspectors

Grade 5 EMIs are appointed as “field rangers” in order to execute compliance and enforcement duties within various national and provincial protected areas. These officials are therefore predominantly spread across EMI Institutions that have a significant management responsibility in respect of protected areas. Grade 5 EMI play a critical role in monitoring activities within these protected areas by conducting routine patrols and other compliance and enforcement activities.

The 2012/13 reporting period has seen a significant rise in the number of designated Grades 5 EMIs: an increase of 212 Grade 5 EMIs was recorded in 2012/13, comprising 62% of the total increase in EMI capacity. This increase can be attributed to the continued roll-out of the Grade 5 EMI training programme in Ezemvelo KZN Wildlife, Limpopo and the ECPTA.

INSTITUTION	2010-2011	2011-2012	2012-2013
SANPARKS	474	474	534
Isimangaliso Wetland Park Agency	0	2	2
Ezemvelo KwaZulu Natal Wildlife	166	260	371
Limpopo	0	51	51
Eastern Cape Parks and Tourism Agency	0	54	97
TOTAL	640	841	1055

Graph 1: Numbers of Grade 5 EMIs (field rangers) per institution



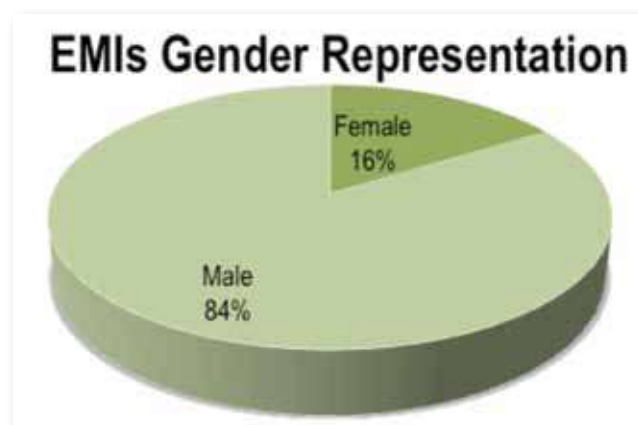
3.1.3 Local Authority Environmental Management Inspectors

The 2012/13 financial year also saw the commencement of the designation of EMIs at local authority level. The addition of this sphere of government to the capacity of the Inspectorate is aimed at providing compliance and enforcement capacity for those environmental issues which local authorities are mandated to regulate in terms of Schedules 4 and 5 of the Constitution, for example, the compliance and enforcement activities related to air pollution.

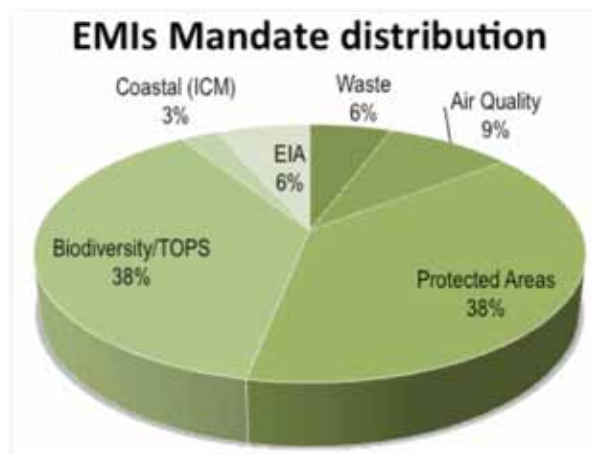
PROVINCE	NUMBER OF LOCAL AUTHORITY EMIS DESIGNATED
Limpopo	12
Gauteng	24
Western Cape	11
TOTAL	47

3.1.4 Environmental Management Inspectors: Gender and Mandate representation.

Pie chart 2: Overall EMI gender representation



Pie chart 3: Overall percentage distribution for EMI mandate



4. OVERALL NATIONAL COMPLIANCE AND ENFORCEMENT STATISTICS

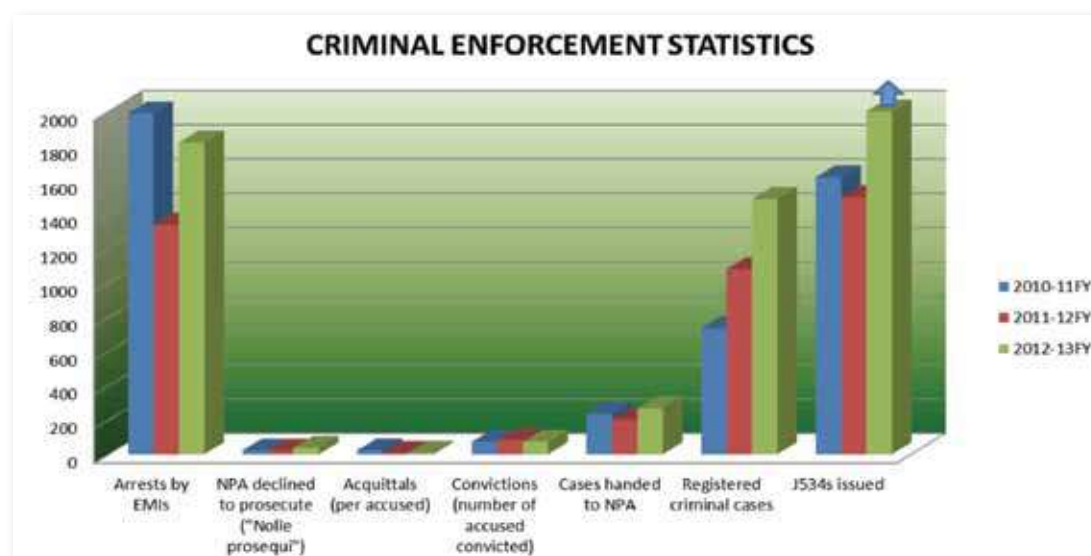
4.1 Enforcement

	2010-11FY	2011-12FY	2012-13FY
Criminal Enforcement			
Arrests by EMIs	1988	1339	1818
Criminal dockets registered	718	1080	1488
Cases handed to NPA	234	201	268
NPA declined to prosecute ("nolle prosequi")	21	20	37
Section 105A agreements (plea bargains)	19	13	14
Acquittals	22	7	8
Convictions	72	82	70
J534 (Admission of Guilt Fines): Total number issued	1615	1498	5825 ²
J534: Total number paid	1245	759	993
J534: Total value of fines paid	R 867,010	R 470,080.00	R654 250

2. The reason for the sharp increase in admission of guilt fines issued (J534) is the expansion of the reporting from other national parks under the administration of SANParks, whereas in previous years, the statistics focused on activities only in the Kruger National Park.

	2010-11FY	2011-12FY	2012-13FY
Administrative Enforcement and Civil Actions			
Warning letters written	176	459	187
Pre-directives issued	60	86	84
Pre-compliances notices issued	266	276	333
Directives issued	95	49	36
Final compliance notices issued	126	110	124
Civil court applications launched	6	7	4
S24G administrative fines: Total value paid	R 8 364 870	R 17 627 233	R 5 385 215
S24G: Total number of fines issued	58	86	49

Graph 2: Overall Criminal Enforcement Statistics 2010-11FY to 2012-13FY, note 5825 were J534s issued in 2012-13FY



4.1.2 Most prevalent crimes reported

The 2012/13 financial year continued to display a similar pattern in relation to the most prevalent types of environmental crimes being detected by the various EMI Institutions. For the “brown” sub-sector, the unlawful commencement of environmental impact assessment listed activities continues to be the most common non-compliance, while in the “green” sub-sector, illegal hunting continues to be the predominant environmental crime.

PROVINCE	INSTITUTION	PREVALENT CRIMES	NUMBER OF INCIDENTS REPORTED
National Institutions	SANPARKS	Illegal hunting of rhino in a national park (NEM: Protected Area Act)	454
	National Department of Environmental Affairs	Waste related cases (NEMWA)	107
Western Cape	Department of Environmental Affairs and Development Planning	Unlawful commencement of listed activities (NEMA)	149
	CapeNature	Illegal possession of animals (Ordinance 19 of 1974)	40
KwaZulu-Natal	Department of Agriculture & Environmental Affairs	Unlawful commencement of listed activities (NEMA)	81
	Ezemvelo KZN Wildlife	Permit contravention / No permit (Ordinance 15 of 1974)	599
	Isimangaliso Wetland Authority	Illegal hunting and snaring (NEM: PAA Section 50(5)& Regulations Section 4(1)(G))	3
Gauteng	Department of Agriculture and Rural Development	Unlawful commencement of a listed activity (NEMA)	150
Limpopo	Department of Economic Development, Environment and Tourism	Illegal cutting and collection of wood (LEMA)	281
Eastern Cape	Department of Economic Development and Environment Affairs	NEMA (operating a motor vehicle in a Coastal Area without a permit)	84
	Eastern Cape Parks and Tourism Agency	Illegal hunting inside protected area (NEM:PA Act and ECPTA Act)	14
Free State	Department of Economic Development, Tourism and Environmental Affairs	Illegal hunting and possession of wild animals (Ordinances No.8 of 1969)	23
Mpumalanga	Department of Economic Development, Environment and Tourism	Illegal commencement of listed activities (NEMA)	14
	Mpumalanga Tourism and Parks Agency	Illegal rhino hunting (NEM:PA Act 10/98 Sec 5)	27
Northern Cape	Department of Environment Affairs and Nature Conservation	Illegal hunting activities (Act 9/2009 Sec 4)	47
North West	Department of Economic Development, Environment, Conservation, and Tourism	Illegal hunting and netting (Ordinance 12 of 1983)	51

4.1.3 National Environmental Legislation contravened

The table below displays the national pieces of environmental legislation being contravened and correlates to the most prevalent types of environmental crime. The National Environmental Management Act (listed activities, duty of care provisions), the National Environmental: Protected Areas Act (illegal hunting) and the Marine Living Resources Act (illegal activities related to marine species) appear as the top three pieces of national environmental legislation contravened.

	LEGISLATION	KZN WILDLIFE	GAUTENG	FREE STATE	NORTH WEST	LIMPOPO	NORTHERN CAPE	DEA	WESTERN CAPE	EASTERN CAPE PARKS BOARD	EASTERN CAPE	MPUMALANGA	KZN DAEA	CAPENATURE	SANPARKS	ISIMANGALISO	MPUMALANGA TOURISM AND PARKS AGENCY	TOTAL
National Legislation	NEMA	32	243	25	51	8	30	69	149	1	56	24	108	-	-	-	-	796
	NEM:BA	73	72	23	35	2	2	-	-	-	5	-	-	-	-	3	-	215
	TOPS Regulations	-	-	22	-	-	-	-	-	-	1	-	-	-	-	-	-	23
	NEM:PAA	73	-	-	-	-	-	-	-	14	-	-	-	-	454	2	-	543
	APPA	-	-	-	-	-	-	15	-	-	-	-	-	-	-	-	-	15
	EIA Regulations	-	2	-	-	8	15	9	-	-	-	-	-	-	-	-	-	34
	NEM:AQA	-	3	-	-	1	-	14	4	-	-	-	-	-	-	-	-	22
	NEM:WA	-	47	20	9	1	3	107	27	-	-	-	5	-	-	-	-	219
	ECA	-	157	-	-	-	-	40	-	-	-	-	1	-	-	-	-	198
	MLRA	555	-	-	-	-	-	-	-	-	-	-	-	39	101	1	1	697
	NWA	-	-	-	-	1	-	8	-	-	-	-	-	-	-	-	-	9
Sub-Total		733	524	90	95	21	50	262	180	15	62	24	114	39	555	6	1	2771

4.2 Compliance Monitoring Inspection Activities of EMI Institutions

The conducting of compliance inspections against the legislative provisions, as well as the authorisations and permits issued in terms of environmental law plays a critical component in ensuring the integrity of the regulatory function. Without the implementation of effective compliance monitoring activities, there is no way to determine whether the regulated community is complying with the environmental authorisations and permits being issued, nor would there be a legal basis to pursue enforcement action in the case of non-compliance.

The following table shows the “brown” and “green” compliance inspections conducted for the 2012/13 financial year. It is important to note that a single facility may require a number of environmental authorisations against which compliance inspections need to be conducted. It is also crucial for ongoing monitoring that initial “baseline” inspections are followed up with further inspections to assess any improvement or deterioration in the level of environmental compliance.

4.2.1 Brown Issues

INSTITUTION	NUMBER OF FACILITIES INSPECTED	NUMBER OF AUTHORIZATIONS INSPECTED	PROACTIVE	REACTIVE	INITIAL	FOLLOW-UP	NUMBER OF NON-COMPLIANCES	ENFORCEMENT ACTION REQUIRED
National DEA (Legal Authorisations, Compliance and Enforcement)	42	150	15	29	41	3	833	21
Western Cape	266	–	28	238	167	99	162	162
KwaZulu-Natal	593		419	142	304	262	370	169
Gauteng	279		232	47	128	151	97	50
Free State	1	7	1	0	1	0	7	1
Limpopo	80	–	56	24	38	42	129	29
Mpumalanga	60	3	2	58	60	0	37	24
North West	274	–	268	6	221	53	0	0
TOTAL	1321	160	1021	544	960	610	1635	456

4.2.2 Green Issues

INSTITUTION	NUMBER OF FACILITIES INSPECTED	PROACTIVE	REACTIVE	INITIAL	FOLLOW-UP	NUMBER OF NON-COMPLIANCES	ENFORCEMENT ACTION REQUIRED
Free State	8	8	0	8	0	0	0
Northern Cape	303	151	152	302	1	–	–
Limpopo	261	118	58	135	99	76	75
North West	883	692	72	803	78	9	33
TOTAL	1445	969	282	1248	178	85	108

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	LEGAL AUTHORISATIONS, COMPLIANCE AND ENFORCEMENT		
	2010-11FY	2011-12FY	2012-13FY
Criminal enforcement			
Arrests by EMIs	8	2	44
Criminal dockets registered	64	29	99
Cases handed to NPA	7	16	62
NPA declined to prosecute ("nolle prosequi")	1	1	17
Section 105A agreements (plea bargains)	3	1	1
Acquittals	0	0	1
Convictions	7	15	14
J534s issued	–	–	0
J534s paid	–	–	0
Administrative Enforcement and Civil Actions			
Warning letters written	10	15	14
Pre-directives issued	9	24	16
Pre-compliance notices issued	49	35	40
Final directives issued	4	11	3
Final compliance notices issued	12	14	9
Administrative Enforcement and Civil Actions			
Civil court applications launched	0	4	0
S24G administrative fine paid (total value/number)	R 0	R 11,028,000 ³	R2 228 500
	17	10	5

³ In 2011/12, national DEA issued a fine of R9.25 million to Vele Colliery for the illegal commencement of listed activities.

5.1.2 SANPARKS and Isimangaliso Wetland Authority



	SOUTH AFRICAN NATIONAL PARKS ⁴			ISIMANGALISO WETLAND PARK		
	2010-11FY	2011-12FY	2012-13FY	2010-11FY	2011-12FY	2012-13FY
Criminal Enforcement						
Arrests by EMIs	390	328	92	57	7	10
Criminal dockets registered	250	391	446	10	14	3
Cases handed to NPA	28	32	25	10	14	4
NPA declined to prosecute ("nolle prosequi")	1	1	0	0	0	0
Section 105A agreements (plea bargains)	0	0	1	0	–	1
Acquittals	1	1	0	0	0	0
Convictions	18	16	0	5	3	0
J534s issued	170	222	4374 ⁵	0	2	0
J534s paid (number)	170	4	–	0	2	–
J534 paid (value)	R 91,700	0	–	R 0.00	–	R0
Administrative Enforcement and Civil Actions						
Warning letters written	–	–	–	0	0	0
Pre-directives issued	–	–	–	0	0	0
Pre-compliance notices issued	–	–	–	0	0	0
Final directives issued	–	–	–	0	0	0
Final compliance notices issued	–	–	–	0	0	0
Civil court applications launched	–	–	–	2	3	2
S24G administrative fine paid (amount & number)	–	–	–	–	0	0

⁴ These statistics do not reflect the performance of all national parks on all of the indicators: many of them focus on the work undertaken in the Kruger and Table Mountain National Parks.

⁵ The reason for the steep incline in the number of admission of guilt fines issued in the 2012/13 financial year is the expansion of the reporting on this indicator by other national parks (in addition to Kruger and Table Mountain).

5.2 Western Cape



	DEPARTMENT OF ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING			CAPE NATURE		
	2010-11FY	2011-12FY	2012-13FY	2010-11FY	2011-12FY	2012-13FY
Criminal Enforcement						
Arrests by EMIs	0	0	0	26	12	38
Criminal dockets registered	0	8	4	23	18	23
Cases handed to NPA	0	8	4	4	0	5
NPA declined to prosecute (nolli prosequi)	0	0	0	1	0	2
Section 105A agreements (plea bargains)	0	0	0	1	0	1
Acquittals	0	0	0	0	0	0
Convictions	0	0	0	1	2	6
J534s issued	0	0	0	53	133	88
Criminal Enforcement						
J534s paid (number)	0	0	0	20	13	30
J534 paid (value)	0	0	0	R17,650 20	R10,690	R 22,870
Administrative Enforcement and Civil Actions						
Warning letters written	76	109	17	-	-	0
Pre directives issued	3	26	14	-	-	0
Pre-compliance issued	4	56	61	-	-	0
Final directives issued	3	4	4	-	-	0
Final compliance notices issued	12	23	9	-	-	0
Civil court applications launched	1	-	0	-	-	0
S24G administrative fine paid((total value/	-	R1,275,675	R67,500	-	-	0
number)	-	42	3			

5.3 KwaZulu-Natal



agriculture
& environmental affairs
Department:
Agriculture
& Environmental Affairs
PROVINCE OF KWAZULU-NATAL



	DEPARTMENT OF AGRICULTURE & ENVIRONMENTAL AFFAIRS			EZEMVELO KZN WILDLIFE		
	2010-11FY	2011-12FY	2012-13FY	2010-11FY	2011-12FY	2012-13FY
Criminal Enforcement						
Arrests by EMIs	57	0	0	534	424	812
Criminal dockets registered	168	1	0	158	392	652
Cases handed to NPA	29	0	0	0	0	..6
NPA declined to prosecute ("nolli prosequi")	0	0	0	0	-	-
Criminal Enforcement						
Section 105A agreements (plea bargains)	2	0	0	0	-	-
Acquittals	0	0	0	0	-	-
Convictions	9	0	0	0	-	-
J534s issued	0	0	0	320	287	445
J534s paid (number)	R 73,000	0	0	-	140	251
J534 paid (value)	-	0	0	R 145,550	R 152,700	R254 350
Administrative Enforcement and Civil Actions						
Warning letters written	2	57	71	1	0	-
Pre-directives issued	-	8	10	0	0	-
Pre-compliance notices issued	19	44	64	0	0	-
Final directive issued	-	10	4	0	0	-
Final compliance notices issued	4	9	19	-	0	-
Civil court applications launched	0	0	0	2	0	-
S24G administrative fine paid (total value/	R 1,485,000	R 892,333	R261 500	-	-	-
number)	4	1	3			-

6 The reason for the lack of information on the outcomes of criminal investigations within Ezemvelo KZN Wildlife is that criminal dockets are generally handed over to the SAPS, while EMIs provide a support function to the investigation and prosecution process. (Pg17)

5.4 Gauteng



GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT	2010-11FY	2011-12FY	2012-13FY
Criminal Enforcement			
Arrest by EMIs	18	0	20
Criminal dockets registered	40	44	36
Cases handed to NPA	30	23	21
NPA declined to prosecute ("nolle prosequi")	3	11	4
Section 105A agreements (plea bargains)	4	7	6
Acquittals	1	1	1
Convictions	5	11	8
J534s issued	26	26	33
J534s paid (number)	21	19	23
J534 paid (value)	R 12,950	R14,250	R14,200
Administrative Enforcement and Civil Actions			
Warning letters written	15	3	2
Pre-directives issued	16	2	17
Pre-compliance notices issued		40	90
Directives issued	11	5	6
Final compliance notices issued		10	30
Civil court applications launched	0	0	0
S24G administrative fines paid (total amount and number)	R3,597,370	R2,341,083	R2,391,216
	43	8	28

5.5 Limpopo



LIMPOPO DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM	2010-11FY	2011-12FY	2012-13FY
Criminal Enforcement			
Arrest by EMIs	832	413	643
Criminal dockets registered	85	31	45
Cases handed to NPA	51	29	87
NPA declined to prosecute ("nolle prosequi")	6	1	8
Section 105A agreements (plea bargains)	2	1	1
Acquittals	20	0	3
Convictions	16	18	15
J534s issued	762	639	791
J534s paid (number)	-	522	653
J534 paid (value)	R298 960	R176 740	R326 580
Administrative Enforcement and Civil Actions			
Warning letters written	2	1	0
Pre-directives issued	1	1	0
Pre-compliance notices issued	7	14	8
Directives issued	0	1	1
Final compliance notices issued	5	2	4
Civil court applications launched	2	0	2
S24G administrative fines paid (total amount and number)	R0	R17 142	R27 700
	6	1	2

5.6 Eastern Cape



	DEPARTMENT OF ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS			EASTERN CAPE PARKS & TOURISM AGENCY		
	2010-11FY	2011-12FY	2012-13FY	2010-11FY	2011-12FY	2012-13FY
Criminal Enforcement						
Arrests by EMLs	44	28	16	0	17	20
Criminal dockets registered	–	77	37	0	12	23
Cases handed to NPA	14	40	4	0	12	5
NPA declined to prosecute (“nolle prosequi”)	0	6	3	0	0	1
Section 105A agreements (plea bargains)	1	1	0	0	0	0
Acquittals	0	2	0	0	1	0
Convictions	3	8	0	0	1	3
J534s issued	247	183	67	0	0	0
J534s paid (number)	247	54	15	0	0	0
J534 paid (value)	R 262 600	R 110 400	R12 300	R 0	R 0	R 0
Administrative Enforcement and Civil Actions						
Warning letters written	9	265	59	1	0	–
Pre-directive issued	6	6	0	1	0	–
Pre-compliances issued	30	50	8	1	0	–
Final directive issued	40	4	0	1	0	–
Final compliance notices issued	40	17	1	1	0	–
Civil court applications launched	1	0	0	–	–	–
S24G administrative fine paid (total value/	R 758 750	R 191 000	R0	–	–	–
number)	6	8	–			

5.7 Free State



DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS	2010-11FY	2011-12FY	2012-13FY
Criminal Enforcement			
Arrest by EMIs	21	15	51
Criminal dockets	31	14	31
Cases handed to NPA	29	12	27
NPA declined to prosecute ("nolle prosequi")	0	0	1
Section 105A agreements (plea bargains)	2	0	1
Acquittals	0	0	1
Convictions	9	2	20
J534s issued	4	4	8
J534s paid (number)	4	3	4
J534 paid (value)	R 7 300	R3 000	R1,700
Administrative Enforcement and Civil Actions			
Warning letters written	2	1	12
Pre-directives issued	11	10	15
Pre-compliance notices issued	8	10	18
Directives issued	3	3	6
Final compliance notices issued	1	7	17
Civil court applications launched	0	0	0
S24G administrative fines paid (total amount and number)	R0	R0	R25,000
	2		1

5.8 Mpumalanga



	DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM			MPUMALANGA TOURISM AND PARKS AGENCY		
	2010-11FY	2011-12FY	2012-13FY	2010-11FY	2011-12FY	2012-13FY
Criminal Enforcement						
Arrests by EMIs	0	0	0	30	53	15
Criminal dockets registered	0	0	3	24	18	35
Cases handed to NPA	0	0	1	14	8	6
NPA declined to prosecute ("nolle prosequi")	0	0	0	0	1	0
Section 105A agreements (plea bargains)	0	0	0	0	0	0
Acquittals	0	0	0	0	0	0
Convictions	0	0	0	1	3	0
J534s issued	0	0	0	2	0	3
J534s paid (number)	0	0	0	0	0	1
J534 paid (value)	0	0	0	R 600	R 0.00	R1 500
Administrative Enforcement and Civil Actions						
Warning letters written	25	8	12	0	0	0
Pre-directive issued	19	7	12	0	0	0
Pre-compliances issued	39	16	12	0	0	0
Final directive issued	23	0	5	0	0	0
Final compliance notices issued	37	11	5	0	0	0
Civil court applications launched	0	0	0	0	0	0
S24G administrative fine paid (total value/	R 1 178,750	R 215 000	R0	0	0	0
number)	3	7	1			

5.9 Northern Cape



DEPARTMENT OF ENVIRONMENT AND NATURE CONSERVATION	2010-11FY	2011-12FY	2012-13FY
Criminal Enforcement			
J534s issued	14	–	0
Admission of guilt fines paid	14	–	0
Total value of fines paid	R10 700	–	R0
Arrest by EMIs	24	–	3
Criminal dockets	20	–	33
Cases handed to NPA	–	–	0
NPA declined to prosecute (“nolle prosequi”)	9	–	0
Section 105A agreements (plea bargains)	0	–	1
Acquittals	0	–	0
Convictions	0	–	0
J534s issued	14	–	0
J534s paid (number)	14	–	0
J534 paid (value)	R10 700	–	R0
Administrative Enforcement and Civil Actions			
Warning letters written	1	0	0
Pre-directives issued	0	0	0
Pre-compliance notices issued	10	0	4
Directives issued	0	10	4
Final compliance notices issued	–	10	18
Civil court applications launched	–	0	0
S24G administrative fines paid (total amount and number)	–	R0	R0
		1	6

5.10 North West



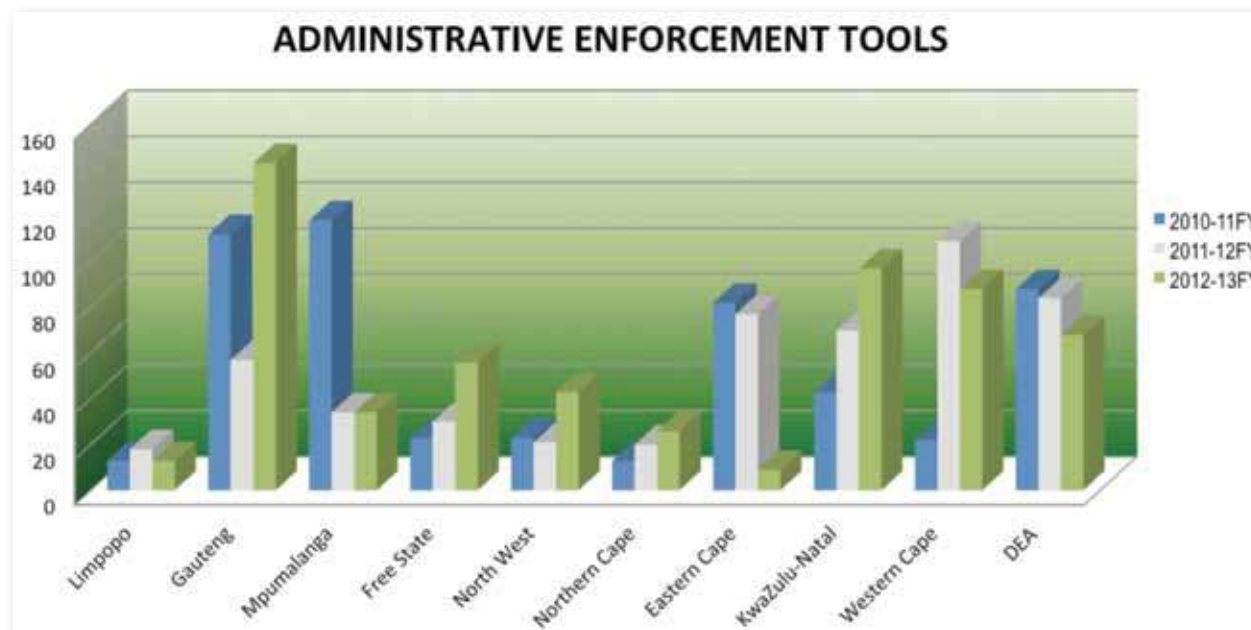
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Department:
Economic Development, Environment, Conservation and
Tourism
North West Provincial Government
Republic of South Africa

DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT, CONSERVATION, AND TOURISM	2010-11FY	2011-12FY	2012-13FY
Criminal Enforcement			
Arrest by EMIs	5	41	54
Criminal dockets	32	31	33
Cases handed to NPA	17	15	17
NPA declined to prosecute ("nolle prosequi")	1	0	1
Section 105A agreements (plea bargains)	7	3	1
Acquittals	0	3	2
Convictions	3	3	4
J534s issued	17	2	16
J534s paid (number)	17	–	16
J534 paid (value)	R19 000	R2 300	R20 750
Administrative Enforcement and Civil Actions			
Warning letters written	1	0	0
Pre-directives issued	0	2	0
Pre-compliance notices issued	21	11	28
Directives issued	9	1	3
Final compliance notices issued	0	7	12
Civil court applications launched	0	0	0
S24G administrative fines paid (total amount and number)	R1 345 000	R1 667 000	R383 800
	18	9	–

The following two graphs compare the use of administrative and criminal enforcement mechanisms between the various EMI Institutions. The comparison for the 2012/13 financial year reveals that the use of administrative enforcement (in the form of directives/notices) remains the domain of the authorities dealing with “brown” issues, with the Gauteng, KwaZulu-Natal and Western Cape environmental authorities having the highest number issued for this reporting period. However, the number of convictions, which has previously been largely confined to the “green” subsector, is now being obtained in a significant number of brown offences, for example, the national Department of Environmental Affairs (“brown” issues only), registering the second highest number of convictions for the 2012/13 financial year.

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



Graph 5: Comparative number of convictions obtained per institution



6. ENVIRONMENTAL JURISPRUDENCE

In 2012/13, both the higher and lower courts considered and pronounced on several cases involving the interpretation and application of environmental law. The cases summarised below are just a few examples of both civil and criminal cases heard during the reporting period. The civil matters relate firstly to an application by Vietnamese nationals to hunt white rhinos in South Africa and secondly, to the role of local authorities in the regulation of the environment. The criminal cases involve the exercise of customary fishing rights in a marine protected area, mining within a wetland, the application of the Prevention of Organised Crime Act to environmental crimes, as well as two notable sentences handed down for illegal activities related to rhino and cycads.

Parties	JAN WALTERS SLIPPERS T/A INGOGO SAFARI'S V THE MEC: ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM (FIRST RESPONDENT) AND THE MINISTER: DEPARTMENT OF WATER AND ENVIRONMENTAL AFFAIRS (SECOND RESPONDENT)
Category	Civil: Refusal to issue hunting permits to Vietnamese nationals
Court	North Gauteng High Court
Facts	Five Vietnamese nationals applied to hunt white rhinoceros and submitted their duly completed application forms to the provincial conservation authorities from where they were processed and sent to the national office. Hunting permits were initially authorised by the provincial conservation authorities and Mr Slippers (the applicant), a registered hunting outfitter, was informed of the authorisation. The applicant paid the prescribed fees for the permits and awaited the issuance of the permits in respect of the hunters who were still to arrive in the country. However, prior to the hunting permits being issued by the first respondent, a letter was dispatched from the national Department of Environmental Affairs to all nine provinces, advising the relevant Departments, in terms of Section 59 (d) of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) to refuse all applications for white rhinoceros hunting by foreign hunters whose state of usual residence is Vietnam. These recommendations to the provinces were made due to concerns relating to so-called “pseudo-hunts” conducted by Vietnamese clients. The applicant was subsequently informed that the permits for the Vietnamese hunters would no longer be issued because of a directive from the national office. An urgent application was launched by Mr Jan Walters Slippers against the Department. Mr Slippers sought an order that the decision be reviewed and set aside and that the first respondent must within 48 hours of the granting of the order, issue the relevant hunting licences as initially approved by the provincial authorities. The court ordered that the five Vietnamese applicants submit themselves to the designated officials from the national and provincial environmental authorities for the purpose of being interviewed to verify their personal details, backgrounds, financial ability and related information. The court further ordered that, should the environmental authorities still have legitimate concerns about the applicants following such interviews, the permits be withheld and such concerns shall be placed before the court at a later date. On the other hand, should the authorities be satisfied, the permits shall be issued to the applicants, subject to the respondents right, through its designated officials, to visit, unannounced, the farm/s on which the applicants would be hunting, to satisfy themselves that their concerns are monitored, in particular, that previously dehorned rhino are not hunted. During the preparations for applicant interviews, it subsequently came to light that the husband of the Vietnamese interpreter, a Mr Burger, was actually also acting as the hunting agent for Mr Slippers; and had paid R400 000.00 on behalf of the hunters. Both Mr and Mrs Burger (the interpreter) submitted themselves to being questioned by government officials present at the interview where serious doubt was later cast on the integrity of the entire hunting party arrangements. The matter was once more brought before the court, at which point the second respondent's Counsel argued that, based on the findings of the interview, the decision not to issue the hunting permits should not be reviewed and set aside; and that the refusal to issue the permits must stand.
Judgment:	An order was made that the first and second respondent were not obliged to issue hunting permits to the five Vietnamese individuals and the applicant was ordered to pay the costs.

Parties	LE SUEUR AND ANOTHER V THE ETHEKWINI MUNICIPALITY AND OTHERS
Category	Civil: Constitutional authority of local authorities to legislate and regulate the environment.
Court	KwaZulu-Natal High Court
Facts	Le Sueur and Another, the applicants in this matter, in their personal capacities and in their capacity nomine officio as trustees of the trust, are the owners of the property situated in the province of KZN. The applicants were aggrieved by certain resolutions adopted by the Ethekewini Municipality, including the introduction of split zonings and the D-MOSS (Durban Municipality Open Space Systems) – both of these were argued to be unconstitutional and set aside. It was further argued that the said resolutions were passed in terms of a repealed ordinance and were without legality at the time of their passing. Arguments were made by the applicants that the amendments introduced by the first respondent were introduced in terms of the Town Planning Ordinance but completed under the Planning and Development Act and are therefore invalid. It was further argued that the municipality has no constitutional power to introduce such amendments; and they did not have the power to enact these measures because 'environment' is a matter falling outside local government competence. The first respondent, however, argued that environmental conservation is an integral part of urban planning and therefore must be regarded as forming part of the municipal planning mandate. The environmental right, as specified in Section 24 of the Constitution, obliges an organ of state to take legislative and other measures to ensure sustainable development – this clause both empowered and imposed a duty on municipalities to consider the environment in their planning activities. The court came to the conclusion that, contrary to the submission by and on behalf of the applicants, municipalities have traditionally been involved in regulating environmental matters at the local level and that their functions at this level have been recognised by the drafters of the Constitution. Although environmental matters stood as the apparently exclusive area for national and provincial governance, it is clear that the authority of the municipalities at local government level to manage the environment at that level has always been and is still recognised.
Judgment	The court was satisfied that municipalities are authorised to legislate in respect of environmental matters to protect the environment at the local level and that the D-MASS Amendments in no way transgressed or intruded upon the exclusive purview of national and provincial governance in respect of environmental legislation. The application was dismissed with costs, and as far as the split zoning is concerned, the first respondent was directed to pay the applicants' costs.

Parties	THE STATE V DAVID GONGQOZE AND TWO OTHERS
Category	Criminal: Customary Fishing Rights in a Marine Protected Area
Court	Willowvale Magistrates Court
Facts	Three male accused, who were all members of the Hobeni people, were alleged to have entered a national wildlife reserve area, the Dwesa-Cwebe Nature Reserve, without authorization, while being in possession of fishing rods, lines and hooks with the intention to fish in the Reserve. The three accused were charged jointly with the following four counts: • Count 1 being that the accused persons fished or attempted to fish in a marine protected area, in contravention of Section 43(2)(a) of the Marine Living Resources Act No. 18 of 1998. • Count 2 being that the accused persons entered a national wildlife reserve area, without authorization thereto by permit in contravention of Section 29(1)(a) of the Environmental Conservation Decree No. 9 of 1992. • Count 3 being that the accused persons entered a national wildlife reserve area, while being in possession of any weapon, explosive, trap or poison, to wit fishing rods, lines and hooks in contravention of Section 29(1)(b) of the Environmental Conservation Decree No. 9 of 1992. • Count 4 being that the accused persons entered a national wildlife reserve area, and willfully killed or disturbed any wild animal other than fish caught in accordance with such regulations as may be prescribed in terms of the Decree in contravention of Section 29(1)(c) of the Environmental Conservation Decree No. 9 of 1992. The accused pleaded not guilty to all the charges and elected to make a detailed plea explanation. The state indicated that since a written plea explanation by the accused contained admissions to all the elements of the various charges they faced and these had been recorded as formal admissions, it did not intend leading further evidence save for reserving its right to call rebuttal evidence if it deemed this necessary. Accused 1 testified that he, as well as the other two accused were born and raised in Hobeni, and were all fishermen by trade. He further testified that he and his fellow fishermen were dependent on the sea and the fish for food for their families and to sell the surplus to maintain and educate their children. He confirmed the hardship experienced by the entire community brought about by the enforcement of the ban on fishing in the Dwesa-Cwebe Reserve, the frustration of his community at not being consulted, the continuous empty promises and lack of results from numerous meetings between the affected communities and state authorities. Dr. Derick Fray testified for the defence, and his field of expertise related to land usage, customs and impact of proclaimed areas on the residents of coastal areas and the Hobeni area in particular. The state applied to re-open its case to lead the rebuttal evidence of Dr. Peter Fielding. Dr. Fielding is a marine biologist and environmental expert and practices as such under the business name of Fieldwork. In the state's closing address, it argued that it had proved its case beyond a reasonable doubt in respect of all four counts and asked for a finding of guilty in respect of all accused based entirely on their own formal admissions. The defence argued that, in light of the customary rights of the accused, the court was entitled to acquit the accused persons on all counts, despite the formal admissions made. The reliance on customary rights to fish and enter the Reserve without permits by the accused persons had to be sustained with a ruling that the conduct of the accused persons was thus consequentially, not unlawful. In coming to a decision the court was guided by the section 2, 9, 31 and 24 of the Constitution, as well as the Marine Living Resources Act, the National Environmental Management Act, Biodiversity and Protected Areas Acts.
Judgment	The court found the three accused guilty on count 1, as the accused, on their own version confirmed that they intended to fish in the marine protected area, and are therefore guilty of this offence. In relation to counts 2, 3 and 4, the court found the three accused not guilty of the said offences.



Cwebe Nature Reserve viewed from DWESA Nature Reserve



Parties	THE STATE V GOLFPVIEW MINING (PTY) LTD
Category	Criminal: Illegal Mining within a Wetland
Court	Ermelo Regional Court
Facts	Golfview Mining (accused) was granted a mining right in respect of coal on the Leliesfontein farm in Mpumalanga. The charges arose from mining operations undertaken on the farm during the period of 4 March 2009 until 17 August 2010. It was alleged that the mining was conducted in contravention of a number of provisions of the National Environmental Management Act and the National Water Act. The accused was charged with the following offences: • Count 1: contravening section 28(14)(a) of the National Environmental Management Act 107 of 1998 (NEMA); • Count 2: contravening section 151(1)(a) of the National Water Act 36 of 1998 and read with section 90 and 250(1) of the Criminal Procedure Act 51 of 1977 (CPA). • Count 3: contravening section 24F(1)(a) read with sections 1, 24F(4), 32, 34, 34B, 34C and 34H and schedule 3 of the National Environmental Management Act 107 of 1998. The accused and the state entered into a plea and sentence agreement in terms of section 105 A of the CPA. The accused pleaded guilty to the charges as follows: Count 1: The accused admitted that it was guilty of contravening Section 28(14)(a) read with Sections 1, 28(15), 32, 34, 34B, 34C and 34H of the National Environmental Management Act No.107 of 1998. The accused admitted that during the period March 2009 to August 2010 it wrongfully and negligently committed acts or omissions which are likely to affect the environment in a significant manner by mining within a wetland; and/or • the diversion of the Holbankspruit as well as an unnamed tributary to the Holbankspruit; and/or • the inadequate pollution control and evaporation dams on site; and/or • failure to separate dirty and clean water at the mining site; and/or • failure to construct an evaporation dam with specific requirements outside the box-cuts according to the EMP; and/or • constructing and using a washing bay on site on a downslope towards the Holbankspruit; and/or

Parties	THE STATE V GOLFVIEW MINING (PTY) LTD
Category	Criminal: Illegal Mining within a Wetland
Court	Ermelo Regional Court
Facts	• failing to deposit the 'run of mine coal' (ROM) within each opencast box-cut area. Count 2: The accused admitted that during the period March 2009 to August 2010 it wrongfully and negligently used water otherwise than in a manner permitted under the National Water Act Count 3: The accused admitted that during the period March 2009 to August 2010 it commenced with activities listed in terms of section 24(2)(a) and (b) without an environmental authorisation issued by the Department of Environmental Affairs for the activity.
Judgment and Sentence	The following sentence and additional orders were handed down: • That counts 1 – 3 are taken together for purposes of sentence. • The accused is sentenced to a fine of R 1 000 000. • The payment of the R 1 000 000.00 fine is suspended for a period of five years on condition that the accused is not convicted of contravening section 28(14)(a) of NEMA; section 151(1) read with 21 (c) or (i) of the National Water Act, and section 24F(1)(a) of the National Environmental Management Act No.105 of 1998, in relation to mining activities at Portion 18 Leliefontein 136 IT and Portions 6 and 8 of Joubertsvei 260 IT committed during the period of suspension and for which a fine per contravention is imposed in the amount of not less than R 500 000.00 Additional Court Order: The following additional orders were granted by the court with reference to the provisions of section 34(3)(b) of NEMA and the fact that asset forfeiture was not ordered the court orders for the following, inter alia, that : • an amount of R1 million be paid towards the Water Research Council (a research institution), • an amount of R1 million be paid towards the Environmental Empowerment Services of MDEDET • an amount of R1 million be paid toward the Mpumalanga Tourism and Parks Agency. • the said funds may only be utilised for environmental research, awareness, protection and training within Mpumalanga; The parties agreed that the court order shall be enforceable as a civil judgment.

Parties	THE STATE V YORK TIMBERS (PTY) LTD
Category	Criminal: Use of the Prevention of Organised Crime Act in Environmental Case
Court	NELSPRUIT REGIONAL COURT Nelspruit Regional Court
Facts	The accused, a company by the name of York Timbers (Pty) Ltd (York Timbers), who operates a sawmill and plywood manufacturing facility in Mpumalanga, was charged with contravening certain provisions of NEMA, after the national Department of Environmental Affairs (DEA) in conjunction with the then Mpumalanga Department of Agriculture and Land Administration (MDALA) conducted an investigation at the premises of the accused. The accused was charged and pleaded guilty on one count, which relates to the commencement of a listed activity in the absence of an environmental authorisation.

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Judgment and sentence	In placing his argument before the court, the prosecution likened York's failure to incur the costs involved in obtaining an environmental authorization before the commencement of a listed activity with the more well-known evasion of tax or customs and excise duties. In both of these circumstances, there is a deliberate avoidance or evasion of a regulatory regime and the financial consequences thereof. In this instance, the financial benefit sought by York Timbers was the pecuniary savings that accrued to it by avoiding the costs it would have needed to incur in order to comply with its statutory environmental obligations. The granting of the confiscation order of R450 000 followed a sentence of R180 000 handed down by the Nelspruit Regional Court after York Timbers pleaded guilty to the commencement of a listed activity in the absence of an environmental authorisation in contravention of S24F of NEMA. It was further submitted that this type of order would not only provide an appropriate sanction for existing offenders, but would also send a strong deterrent message to people and companies who may be thinking of engaging in similar unlawful activities.

Parties	STATE V CHUMLONG LEMTONGTHAI AND FIVE OTHERS
Category	Criminal: Offence in terms of NEM:BA and the Customs and Excise Act No.91 of 1964
Court	Kempton Park Regional Court
Facts	Chumlong Lemtongthai, a Thai national, was alleged to have been trading in and exporting rhino horns from South Africa, which were then sold to the underground traditional medicine market in Asia. He was using prostitutes to pose as hunters in order to smuggle the horns out of the country, and was believed to be one of the kingpins of an international rhino horn smuggling syndicate. The accused was charged with contravening section 80(1)(i) of the Customs and Excise Act, Act 91 of 1964, making improper use of a licence, permit or other document issued in respect of goods in terms of the Act and section 57(1) of NEM:BA carrying out a restricted activity involving a specimen of a listed threatened or protected species without a permit issued. The accused entered into a plea agreement and pleaded guilty to 52 counts. This plea agreement, however, exonerated his five co-accused when charges against them were withdrawn after he claimed that they were unaware they were taking part in a crime.
Judgment and Sentence	The accused was found guilty and sentenced to 40 years direct imprisonment.



Parties	STATE V LOYISO BOOI AND FEZELE MAFUYA STATE V F SMALL, L KHUMALO AND D MBOSA
Category	Criminal: Cycad Syndicate
Court	Uitenhage Magistrates Court
Facts	The Department of Economic Affairs Environment & Tourism (Eastern Cape) received information relating to a syndicate that was alleged to have been poaching cycads in the Eastern Cape. The Department's EMIs acted on the information received and an investigation was lodged into the alleged poaching. While conducting surveillance, two suspects, Loyiso Booi and Fezele Mafuya were arrested in the Keibridge area while in possession of 35 cycads (Species E. Princeps), valued at R150 000.00. Further information was received on the 17th of January 2012 relating to the middle man of the syndicate. The Department sent a team to investigate and a further three people were arrested. Frederick Small, Lenathi Khumalo and Daniel Mbosa were found in possession of 43 cycads, which included 31 E. Horridus plants, 10 E.Princeps and 2 E.Altensteinii plants originating from Uitenhage and Nqamakwe.

Parties	STATE V LOYISO BOOI AND FEZELE MAFUYA STATE V F SMALL, L KHUMALO AND D MBOSA
Category	Criminal: Cycad Syndicate
Court	Uitenhage Magistrates Court
Judgment and Sentence	On the 13th of December 2011: • Booi and Mafuya were found guilty of the said offence and sentenced to R3000.00 or 3 months imprisonment, wholly suspended for 5 years. • Mr F Small was sentenced to 6 years imprisonment of which 3 years were suspended for 5 years and LDV Bakkie and Trailer was forfeited to the state. • Mr L Khumalo and Mr D Mbosa were sentenced to R12 000.00 or 3 years imprisonment, wholly suspended for 5 years. The cases against three other accused alleged to be involved in this syndicate are still pending in the Uitenhage Magistrates Court.



Eastern Cape EMIs with confiscated cycads.

7. LEGISLATIVE DEVELOPMENTS

The body of legislation that EMIs are expected to implement continued to expand rapidly in 2012/13, as law-makers sought to provide the “nuts and bolts” of environmental regulation through the promulgation of subordinate legislation (in the form of regulations, notices, norms and standards etc. under NEMA and the SEMAs). There were also substantive amendments proposed to NEMA and the NEM:ICM. Note that the list provided below includes both draft and finalised pieces of legislation.

7.1 National Environmental Management Act ,1998

7.1.1 Amendment Bills

- National Environmental Laws First Amendment Bill [B13D-2012];
- NEMLA 2nd Amendment Bill [B13B of 2013B];
- National Environmental Laws Second Amendment Bill [B()-2013B]

7.1.2 EIA Guidelines

- Companion Guideline on the Implementation of the Environmental Impact Assessment Regulations, 2010 GN 805 of 10 October 2012;
- Environmental Management Framework Guideline for Implementation GN 806 of 10 October 2012; and

- Public Participation Guideline GN 807 of 10 October 2012.

7.2 National Environmental Management: Biodiversity Act 2004

7.2.1 Proposed Regulations

- Prohibition of Trade in certain Encephalartos (cycad) species, GN 382 of 14 May 2012;
- Publication of norms and standards for Biodiversity Management Plans for Ecosystems, GN 532 of 2 July 2012;
- Draft Biodiversity Management Plan for Spheniscus demersus, GN 663 of 20 August 2012; and
- Non-detriment findings GN 54 of 1 February 2013.

7.2.2 Regulations: Norms and Standards

- Norms and Standards for the marking of Rhinoceros and Rhinoceros Horn, and for the hunting of Rhinoceros for Trophy Hunting purposes GN 304 of 10 April 2012; and
- Prohibition of trade in certain Encephalartos (Cycad) species GN 371 of 14 May 2012

7.3 National Environmental Management: Air Quality Act 2004

7.3.1 Proposed Regulations

- Draft Regulations prescribing the format of the Atmospheric Impact Report GN 945 of 23 November 2012;
- Draft declaration of Small Boilers as controlled emitters GN 946 of 23 November 2012;
- List of activities which result in atmospheric emissions which have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage GN 964 of 23 November 2012;
- Draft National Dust Control Regulations GN 1007 of 7 December 2012;
- Draft regulations regarding Air Dispersion Modelling GN 1035 of 14 December 2012; and

- Proposed amendments to the 2007 National Framework for Air Quality Management in the Republic of South Africa GN 115 of 15 February 2013.

7.3.2 Notices

- National ambient air quality standard for particulate matter with aerodynamic diameter less than 2.5 micron metres (PM_{2.5}) GN 486 of 29 June 2012; and
- Declaration of the Waterberg National Priority Area GN 495 of 15 June 2012.

7.4 National Environmental Management: Waste Act 2008

7.4.1 Proposed Regulations

- Draft Integrated Industry Waste Tyre Management Plan of the Recycling and Economic Development Initiative of South Africa (REDISA) GN 337 of 17 April 2012;
- Fee structure for consideration and processing of applications for Waste Management Licences, GN 396 of 18 May 2012;
- Draft Health Care Risk Waste Management Regulations, GN 452 of 1 June 2012;
- Draft National Standards for validation of the treatment efficacy and operation of a non-combustion technology for the treatment of health care risk waste, GN 453 of 1 June 2012;
- Draft standard for assessment of waste for landfill disposal, GN 613 of 10 August 2012;
- Waste Classification and Management Regulations, GN 614 of 10 August 2012;
- Standard for disposal of waste to landfill, GN 615 of 10 August 2012; and
- List of waste management activities that have, or are likely to have, a detrimental effect on the environment GN 779 of 28 September 2012.

7.4.2 Notices

- Withdrawal of approval of the Integrated Industry Waste Tyre Management Plan of the Recycling and Economic Development Initiative of South Africa GN 987/2012.

7.4.3 Regulations

- National Waste Information Regulations GNR.625 of 13 August 2012.

7.5 National Environmental Management: Integrated Coastal Management Act 2008

7.5.1 Amendment Bill

National Environmental Management: Integrated Coastal Management Bill [B-2012]

7.5.2 Proposed Regulations:

- Draft National Estuarine Management Protocol GN 336 of 4 May 2012;
- Draft Control of Use of vehicles in the Coastal Area Regulations GN 150 of 1 March 2013; and
- Draft Management of public launch sites in the Coastal Zone Regulations GN 151 of 1 March 2013.

7.5.3 Notices:

- National Action List for the Screening of Dredged Material Proposed for Marine Disposal in terms of section 73 of the National Environmental Management: Integrated Coastal Management Act GN 635 of 24 August 2012.

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
- 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 2012-2013: DETAILED INFORMATION TABLE RELATING TO STRATEGIC INSPECTIONS

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	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	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.	A pre-directive in terms of section 28(4) NEMA and/or 31A ECA and a pre-compliance notice in terms of section 31L of the NEMA was issued on 19 August 2011. Representations from PetroSA were received on 23 September 2011. Follow-up inspection to the site in November 2011 in order to review the facility's waste permit in terms of section 20 of the ECA for conversion into a waste management license in terms of section 20 of the NEM:WA. Additional information was received from the facility in early 2012 and forwarded to DWA for review and comment. The sludge ponds design plans have been approved by DEA and DWA and the construction of these ponds has commenced. PetroSA has obtained approval for disposal at the ponds. The progress of rehabilitation at the Voorbaai tankfarm is being closely monitored and further information in this regard will be requested in due course.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
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.	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	Enforcement strategy has been developed which has incorporated APPA review process, as well a Waste Management Licence review process in which the facility is currently engaged. Due to the nature of the above-mentioned processes a significant number of these non-compliances will be addressed. A follow-up inspection to the facility (during which compliance with the newly issued AEL and WML will be assessed), will determine the type of enforcement action, if any, to be taken against the facility.
Engen Refinery, KwaZulu-Natal	11 – 12 November 2008: - Failure to submit certain reports - Storage tanks without required permits - Decommissioning activities without required environmental authorization - Storage of hazardous chemicals in unbunded areas	No follow-up undertaken to date	The previous NECER reported that no significant issues remained as a result of the findings of the 2008 inspection that justified the need for an enforcement intervention; however, through the quarterly compliance meetings, the authorities became concerned by the ongoing Section 30 NEMA emergency incidents taking place at the facility. Accordingly, a pre-directive was issued to Engen Refinery by the KZN-DAEARD in November 2012.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
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	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	Both administrative and criminal enforcement action is in process. A pre-compliance notice in terms of Section 31L of NEMA and/ pre-directive in terms of Section 28(4) of the NEMA and/or a Section 31A of the ECA was issued to the facility on 14 June 2011. Representations from Samancor were received on 18 July 2011 but did not sufficiently address all the issues and concerns which were highlighted to the facility. A compliance notice in terms of section 31L of the NEMA and directive in terms of section 31A of the ECA was issued to the facility in December 2011 The timeframes were varied based on applications submitted and a number of the instructions have been complied with. Samancor also submitted a request for suspension of the notice pending the outcome of an objection. The Minister refused to suspend the notice and required the facility to comply with the instructions in line with the timeframes as varied by the DEA. The objection from Samancor was received in 29 February 2012. In relation to the criminal investigation a case docket was registered as per Middleburg CAS 10/04/2011. The case is still under investigation. An inspection was conducted on 18 October 2012 by EMIs to determine whether the facility is complying with the instructions contained in the compliance notice and directive, as well as to inform the Minister's decision with regards to the objection. Additional information was also requested during the inspection to prove the facility's compliance. It was determined that most of the instructions in the compliance notice and directive had been complied with. The objection is still in the process of being finalised.
Highveld Steel, Mpumalanga	• Air emission exceedences • Lack of adequate monitoring • The undertaking of unauthorised APPA scheduled processes • Exceedences in relation to production and use of raw materials	• 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	Notice of intention to issue a Section 12(3)(a) APPA notice and Section 31A ECA directive & Section 28(4) NEMA directive, was issued to the facility in February 2010. Representations and action plans received from the facility in March 2010.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
Highveld Steel, Mpumalanga	28-29 November 2007: - Contraventions of environmental authorisations - Unauthorised waste disposal sites - Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care	9 July 2009: - 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 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. Highveld continued to submit monthly monitoring reports and action plans and this information has been used to continuously monitor this facility. On 24 May 2012, the DEA issued Highveld with a Notice in terms of S31H of the NEMA and requested the facility to submit all continuous in-stack monitoring results for the past two years at the Iron Plant and an update of any studies conducted for the improvement of secondary gas capture at the Steel Plant. Highveld submitted its representations on 7 June 2012. On 3 August 2012 the DEA issued Highveld with its 2nd Notice in terms of S31H of the NEMA and requested the facility to submit an explanation regarding the delay in specific environmental improvement projects and the identification of areas in the project schedule, in relation to which timelines can be shortened. On 27 August 2012, Highveld submitted its representations to the S31H NEMA notice.
Highveld Steel, Mpumalanga	28-29 November 2007: - Contraventions of environmental authorisations - Unauthorised waste disposal sites - Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care	9 July 2009: - 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	On 25 January 2013 DEA issued Highveld with its 3rd S31H NEMA notice to request an update on the progress with the emission improvement projects at the Iron-Making and Steel Plants. Highveld submitted its representations on 11 February 2013 and presented the information to the DEA in March 2013. The meeting revealed certain challenges with the some of the projects. Submission of internal monitoring data was requested for the last 12 months (only at 24 hour averages) to the DEA. Upon receipt of this information, DEA will decide if further enforcement action is required. A criminal investigation has been finalised and the investigating officer is in the processes of obtaining warning statements from the facility prior to handing over the docket to the NPA for a decision.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
Old Vanchem Vanadium waste site in Witbank ("CWDF") CWDF to be rehabilitated by Highveld Steel, as agreed in the sale agreement between Highveld Steel and Vanchem Vanadium	28-29 November 2007: Unauthorised waste disposal sites-CWDF	12 May 2011: EMIs found that there was a serious need for intervention to prevent further impacts resulting from the existing unauthorized waste disposal site, which contains hazardous waste.	A NEMA Section 28(4) pre-directive was issued to Vanchem in April 2008, to which Vanchem responded by providing the Department with an action list for achieving compliance Subsequently, and with the sale of Vanchem Vanadium, Highveld Steel retained the responsibility of the unauthorised CWDF In the action list submitted to the Department in April 2008, Vanchem committed to the capping and closing of the CWDF and initiated the necessary EIA process. However, in the latter part of 2010 Highveld Steel approached the DEA with a new proposal to re-work the CWDF and a new pre-directive was issued to Highveld Steel in September 2011. Numerous meetings and discussions took place which resulted in Highveld Steel applying for the relevant WMLs and WULs for the re-working process. The relevant EIA and WML applications are in process. The DEA is meeting with Highveld in May 2013 regarding the status of these applications and a decision with regards to the necessity for further enforcement action will be made based on the outcome of the said meeting. An administrative enforcement process continues in relation to the impacts from this disposal site.
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		Notice of intention to issue a Section 31L NEMA notice & Section 31A ECA & S28(4) NEMA directives, was issued to the facility in on 27 November 2012. The facility responded with representations on 12 January 2013. The representations are in the process of being reviewed and the enforcement strategy will be amended accordingly. The first case docket was registered as Burgersfort CAS 103/07/2008 and the investigation is finalised. The DPP decided to prosecute and summons were issued. The case will appear for trial on 08-09 July 2013 at Lydenburg Regional Court. In relation to the second case, a criminal investigation was initiated and on-site investigation was conducted. The case is still under investigation.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
Xstrata Wonderkop, North West	January 2008: • Lack of adequate monitoring • Air emission exceedences • 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	16-17 August 2011: • Xstrata has submitted applications to legalise the waste management activities which were found to be operated without permits in terms of Section 20 of the ECA. • Xstrata has been issued with a water use licence, however, non-compliances to licence conditions were found. • Non-compliance to APPA R/C • Failure to comply with general duty of care in respect of waste management on site • Air pollution caused by significant fugitive emissions from the Pelletising Plant and the Metal Recovery Plant • Exceedences of the limits set out in the APPA R/C	Based on the findings of the follow-up inspection, an enforcement strategy was developed. A Notice of intention to issue a Section 31L NEMA notice and Section 31A ECA & S28(4) NEMA directives, was issued to the facility on 27 November 2012 and representations were received in January 2013. Meetings were held with the facility on the 18 March 2013 during which certain issues pertaining to ground and surface water monitoring, waste removal and the facility's AEL application were discussed. Further information was requested and was received on 26 March 2013. Said information is currently being reviewed, upon which the DEA will decide what enforcement action, if any, is required.
SCAW Metals in Gauteng	22-25 April and 13 June 2008: • Air emission exceedences • 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.	No follow-up inspection conducted but a complaint was investigated on 22 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 by GDARD in March 2011. GDARD, jointly with DEA and all relevant municipalities conducted a follow-up inspection on 04-06 June 2012. Compliance was achieved in relation to the issued directive and pre-compliance notices, although certain NEM:AQA non-compliances were only partially achieved. Ongoing monitoring of the level of compliance will determine what further action is required.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
BHP Billiton Metallurgy 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 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.	23-24 August 2011: - Non-compliances to conditions of authorisations still ongoing - Historical waste disposal sites which are unlined still not rehabilitated and creating potential for groundwater pollution. Applications to legalise these disposal sites were not yet submitted despite Samancor committing to apply for waste management licences. - Unlined Amcor Dam still used for disposal of contaminated stormwater, excess process water and treated sewage effluent - Failure to comply with general duty of care in respect of waste management on site	Notice of intention to issue a Section 31L NEMA notice and Section 28(4) NEMA directive was issued by GDARD based on the findings of the baseline inspection. Representations were received by GDARD in response to pre-notice, including action plans. Based on the findings of the follow-up inspection, a decision was taken to initiate a criminal investigation, which is running parallel to an administrative enforcement process. A search warrant was executed at the facility on 12 September 2012 during which various documentation was seized. Based on the information obtained, a S31H NEMA notice was issued to the facility as part of the administrative enforcement process. A request for extension to submit the information requested in the S31H NEMA notice was received and was granted until 19 March 2013. The information submitted will be reviewed and determine the administrative enforcement action, if any, to be taken against the facility.
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 authorisation related to kilns 5 and 6 - Five unauthorised activities for which section 24G rectification applications had been submitted	- 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 (submitted to 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.	Due to the consolidation of the facility's APPA permit by DEA, certain sections of the plant were not inspected during the follow-up inspection conducted by GDARD in August 2010 and a decision was made to delay further monitoring until after the AEL was issued (which has recently occurred). A pre-compliance notice was issued to Mittal Vanderbijlpark on 24 July 2012, regarding its non-compliance with conditions stipulated in its AEL which specifically related to the exceedances of particulate matter release limits. A final compliance notice in this regard was issued to Mittal Vanderbijlpark on 26 September 2013, which included an instruction to cease operations of certain facilities and its associated activities. On 9 February 2013 a fire occurred at the Vanderbijlpark plant which caused severe damage to three Basic Oxygen Furnaces (BOFs) in the steel making facility.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
Arcelor-Mittal Vanderbijlpark, Gauteng	03-07 November 2008: 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.	23-27 August 2010: Discharge of treated storm water that does not comply with the standards in the Water Use License.	AMSA in February/March 2013, applied to the Minister for an exemption to operate its two Electric Arc Furnaces for a period of three months while rebuilding the Furnaces that recently burnt down. The matter was referred by the Minister to the Atmospheric Emission Licensing Authority, Sedibeng District Municipality. AMSA obtained an AEL application from the Sedibeng District Municipality. Repairs to the steel making facility have been completed and the three BOFs have been re-commissioned and are now fully operational. The issuance of the application and the conditions contained therein, as well as the information obtained during the ongoing criminal investigation will further inform the administrative enforcement process.
Arcelor-Mittal Newcastle Works, Kwa Zulu Natal	26-27 September 2007: - Air emission exceedences - 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 - 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.	23 February 2011: - Non-compliances to environmental authorizations conditions still continue - Significant air emissions from some operations on site - Potential ground and surface water as well as soil pollution from activities on site - Unauthorised waste disposal sites	Due to a number of authorisations issued to ArcelorMittal subsequent to the baseline inspection in 2007, a follow-up inspection was conducted in February 2013. An inspection report detailing the findings of this inspection is still being finalised. Upon finalisation of the inspection report and the vetting thereof, an enforcement strategy will be drafted.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
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-notice was issued to ArcelorMittal by DEAT and GDACE (Gauteng Department of Agriculture, Conservation and Environment as it was then known): GDACE 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.	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 of 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.	(For previous enforcement action taken refer to previous reports) ArcelorMittal has still not submitted an application to the DEA for the rehabilitation of the Vaal disposal site and there remains a dispute in relation to the legal interpretation and whether or not a waste management license is required. The NPA has requested the Department to undertake further investigation in relation to the criminal case. A follow-up inspection was conducted on 27-28 August 2012, an inspection report detailing the findings of the inspection is still being reviewed prior to finalisation. During the inspection, various documents were not provided to the EMIs upon request. On 13 November 2012, the DEA issued the facility with a letter, providing it with a final opportunity to provide all the information requested during the inspection. Some of the information requested was submitted and is being used to finalise the inspection report. The DEA however remains of the opinion that the Vaal disposal site requires a waste management license for the rehabilitation thereof and is awaiting the application. Upon finalisation of the inspection report, an enforcement strategy will be drafted and a decision with regards to the appropriate enforcement action will be made.
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	February 2013, The inspection only focused on the waste management licenses issued to the facility.	During this financial year (for previous action taken refer to previous reports), Assmang was issued with a WML for the construction of a new slag dump facility, as well as a WML for the capping and closure of the old "historical" slag dump. In a letter dated 27 January 2012, Assmang requested an extension of time to comply with certain conditions contained in the notices and directives issued by the DEA, which was granted. Due to the continuous nature of the conditions contained in the above mentioned documents, the DEA, through quarterly meetings, is in a process of monitoring the facility's compliance with environmental legislation.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
Assmang Cato Ridge, Kwa Zulu Natal	26 February 2007:	February 2013,	An inspection was conducted in February 2013. The inspection only focused on the waste disposal sites at the facility (New and old Slag Disposal Sites as well as the Baghouse Dust and Slimes Dams Facilities). Several non-compliances were identified and an inspection report detailing the findings of the inspection is still being finalised.
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 • Non-compliance to permit and environmental authorisation conditions.	N/A	The DEA issued the 1st S31H NEMA notice to the facility on 25 May 2011. Representations were received on 22 June 2011. A S31L NEMA Pre-Compliance Notice & S31A ECA & S28 NEMA Pre-Directives was issued to the facility on 30 September 2011. Representations from the facility were received timeously and reviewed. A 2nd S31H NEMA Notice was issued to ASA Metals on 19 December 2011. A response was received on 20 January 2012. On 20 March 2012, a compliance notice and directive was issued to the facility. On 3 April 2012, the DEA received a letter from ASA Metals requesting the compliance notice to be cancelled in terms of section 31M(2)(a) of the NEMA. DEA issued a variation notice in terms of instructions 11.1-11.4 dated 16 April 2012 and the timeframes were extended. On 12 April 2012, the DEA received a request to suspend the compliance notice and directive as well as an objection to the notice and directive. The application for suspension was approved on 4 May 2012. In relation to the objection the Minister decided to modify some of the instructions in the CN in November 2012. A letter requesting further information in relation to the facility's compliance with the modified instructions in the Minister's Objection Decision was issued to the facility on 19 March 2013. By the time of compiling this report, the requested information was not yet due for submission.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	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	None	S31L Pre-Compliance & S31A ECA & S28 NEMA Pre Directive was issued on 1 October 2012. Representations were received on 23 January 2013 and are in the process of being reviewed after which an enforcement strategy will be drafted.
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		A NEMA Section 31H Notice was issued to Assmang in May 2012. Assmang responded to the notice and the inspection report was updated to include the additional information. An enforcement strategy is being developed.
Exxaro Base Metals: Zincor in Gauteng	18-19 October 2011: - Non-compliances to conditions of authorisations - Disposal of hazardous waste on an unlined Dam without waste management licenses - Groundwater contamination as a result of activities on site - Failure to comply with general duty of care in respect of waste management on site - Groundwater contamination at the refinery area and an old neutral leach residue storage area with an extremely damaged liner		A S31H NEMA Notice was issued to the facility on 9 October 2012 in order to obtain further information prior to taking any enforcement action. Representations have been received on 31 October 2012 and the facility informed the DEA that it is planning to decommission the facility. A follow-up inspection is planned in order to confirm cessation of operations and the environmental status of the site.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
Exxaro Base Metals: Zincor in Gauteng	18-19 October 2011: Potential ground and surface water pollution from the Plant Storm and Waste Water Retention Dam with liner are damaged at the spillway		A S31H NEMA Notice was issued to the facility on 9 October 2012 in order to obtain further information prior to taking any enforcement action. Representations have been received on 31 October 2012 and the facility informed the DEA that it is planning to decommission the facility. A follow-up inspection is planned in order to confirm cessation of operations and the environmental status of the site.
PULP AND PAPER			
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 - 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	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 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.	Enforcement strategy is in the process of being finalised.
Mpact (previously known as "Mondi Piet Retief")	25-26 August 2009: - Non-compliance with conditions of the APPA permits - Non-compliance with conditions of the ECA Section 20 permit - Undertaking of a NEMA listed activity without the required authorisation - Undertaking of water activities listed under the NWA without the required authorisation - Undertaking of waste management activities without the required authorisation - Non-compliance with the requirements contained in the NEM:WA - Non-reporting of emergency incidents to authorities.		Representations reviewed and a Section 31H notice issued to the facility on 10 October 2011. Response received in November 2011. S31L NEMA PCN & S31A ECA Pre-Directive to Mpact issued on 17 July 2012. Meeting held between DEA and Mpact on 11/12/12. It was requested that Mpact provide additional information to DEA before any further enforcement action is taken. These documents are in the process of being reviewed after which it will be decided whether further, if any, enforcement action is required.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
POWER GENERATION			
Eskom Lethabo Powers Station, Free State Province	3 November 2009: • Non-compliances to conditions of the authorisations (Section 20 ECA permits and APPA permits) • 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.		Section 31H notice was issued to the facility on 18 October 2011. Response was received in November 2011. S31A ECA Pre-Directive and S31L NEMA PCN dated 17 July 2012 issued. Representations received on 31 August 2012. More information required in terms of S31H NEMA notice issued on 1 March 2013. Representations to S31H NEMA notices were received on 13 March 2013 and is in the process of being reviewed.
Eskom Matimba Power Station in Limpopo	26 January 2010: • Non-compliances to conditions of the Water Use Licence • Operation of waste disposal site without a waste management licence • Storage of coal without the required Atmospheric Emission Licence • Potential soil, ground and surface water pollution as a result of unlined waste disposal area; coal storage areas and waste water dam damaged liners. • Fugitive dust emissions from ash transfer points.		S31H NEMA Notice was issued to the facility on 15 November 2011. Re-issued 2nd S31H NEMA Notice 7 February 2012. Representations to Notice received on 15 February 2012. S31L NEMA PCN and S28 NEMA & S31A ECA PDs issued to Eskom Matimba on 15 October 2012. Representations received on 10 December 2012. D:CM and D:Enforcement undertook a follow-up compliance inspection in relation to the WMLs in March 2013. Once an inspection report has been finalised and forwarded to the Directorate: Enforcement, a decision will be taken on whether enforcement action, if any, is required.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
Eskom Camden Power Station in Mpumalanga	26-27 June 2011: - Significant non-compliances to conditions of authorisations - Ash water return dam, Oils skimming dams; discharging of contaminated water into the De Jagers Pan into Witspruit operated without water use licenses - Failure to comply with general duty of care in respect of waste management on site - Exceedances of the emission limits set out in the APPA R/C - Lack of monitoring and reporting Green House Gas ("GHG") annually to the Chief Air Pollution Control Officer		A S31L NEMA PCN and S31A ECA and S28 NEMA Pre-Directives dated 8 August 2012 were issued to Eskom. Representations received on 29 September 2012. S31H NEMA Notice issued to Eskom Camden on 12 April 2013. DEA awaiting response. Criminal enforcement was initiated but the NPA decided not to prosecute Eskom (due to S48 of NEMA). The docket has been returned for further investigation in relation to individuals who may be criminally liable in their personal capacities.
CEMENT			
Natal Portland Cement, Cimpor, Simuma, Durban, Kwazulu-Natal	27 and 28 May 2008: 19 non-compliances were detected - Control of fugitive dust emissions is a major challenge.	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 on 6 May 2011. Representations received on 12 August 2011. Final Compliance Notice issued on 6 February 2012. Application for Suspension received on 6 March 2012. Application for Objection received on 6 March 2012. Suspension denied on 28 March 2012. A site inspection to check compliance with the CN was conducted on 02 October 2012. Further information was requested from the facility on 15 October 2012 after the site inspection was conducted. Response from the facility was received 16 October 2012. On 9 April 2013, DEA sent a letter to NPC requesting further information based on the information provided after the follow-up inspection. The objection is currently being processed and reviewed.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
Foskor Richards Bay in KwaZulu-Natal	15-16 March 2007 and 16 January 2008: EMIs detected 28 Non-compliances during the baseline inspection. Most non-compliances were related to air quality. The facility was not conducting monitoring as per the requirement of the APPA Registration Certificates. In addition to that, the facility has numerous complaints regarding odour from its operations. The EMIs further established that some waste activities which were being undertaken on site were illegal as there was no permit in terms of ECA. There is also historic groundwater contamination on site.	• Two waste sites operated without authorisations • Groundwater contamination on site • Lack of fugitive emissions monitoring on site • Erosion on the wall of the stormwater retention dams causing potential for groundwater contamination • Accumulation of sediments inside the stormwater retention dams which reduces the capacity of the dam increasing chances of contaminated water to overflow from the dams	A S28 NEMA and S31A ECA Pre-Directive and S31L NEMA PCN was issued to Foskor on 22 February 2013 and the Department is awaiting representations.
OTHER			
Foskor Richards Bay in KwaZulu-Natal	15-16 March 2007 and 16 January 2008: EMIs detected 28 Non-compliances during the baseline inspection. Most non-compliances were related to air quality. The facility was not conducting monitoring as per the requirement of the APPA Registration Certificates. In addition to that, the facility has numerous complaints regarding odour from its operations. The EMIs further established that some waste activities which were being undertaken on site were illegal as there was no permit in terms of ECA. There is also historic groundwater contamination on site.	26-29 March 2012: • Severely damaged liner at the gypsum cut-off trench. The gypsum contains high concentration of sulphates and ammonia and it is radioactive therefore potential to pollute both ground and surface water. • Storage of hazardous waste on an unroofed and unbunded area. • Non-compliance to AEL conditions and WML conditions	A S28 NEMA and S31A ECA Pre-Directive and S31L NEMA PCN was issued to Foskor on 22 February 2013 and the Department is awaiting representations.

NAME OF FACILITY	PRINCIPLE FINDINGS RELATED TO ENVIRONMENTAL NON-COMPLIANCE	PRINCIPLE FINDINGS OF FOLLOW-UP INSPECTION	STATUS OF ENFORCEMENT PROCESS
Transnet, Richards Bay, KZN	12-13 October 2010: Forty non-compliances were detected. Non-compliance in relation to the conditions of various authorisations, activities commencing without APPA and AEL's and in terms of the storage and disposal of waste in terms of NEM:WA.		Enforcement Strategy drafted. S31H NEMA Notice issued to the facility on 19 June 2012. 2nd 31H NEMA Notice issued on 20 July 2012. A S28 NEMA and S31A ECA Pre-Directive and S31L NEMA PCN issued on 25 January 2013. Request for extension received on 13 March 2013. Response to PCN/PD received 20 March 2013. Representations being reviewed after which it will be decided as to whether further enforcement action, if any, is required.
King-Shaka International Airport in KwaZulu-Natal	13 January 2010 and 24 February 2010: • Non-compliance to numerous RoD conditions • Undertaking of activities listed in terms of NEMA without the required authorisation • Non-compliance with the provisions of the NEM:WA • Undertaking of activities listed in terms of NEM:WA without the required authorisation	30 January 2012: • Non-compliance to RoD conditions, however, a number of these had already been addressed • Undertaking of activities listed in terms of NEMA without the required authorisation, however, Airports Company South Africa (ACSA) had begun the process of submitting 24G applications for these activities	Section 31H NEMA Notice issued to ASCA on 17 November 2010. After a review of the representations submitted in response to the S31H NEMA notice, the DEA decided to issue ACSA with a combined NEMA Section 31L notice, 28(4) directive and ECA Section 31A directive on 28 June 2011. ACSA provided their representations in July 2011 A site inspection was conducted by officials in January 2012. During this inspection officials noted that ACSA had made good progress and was working towards achieving compliance in relation to most of the issues raised during the initial inspection.
King-Shaka International Airport in KwaZulu-Natal	13 January 2010 and 24 February 2010: • Non-compliance to numerous RoD conditions • Undertaking of activities listed in terms of NEMA without the required authorisation • Non-compliance with the provisions of the NEM:WA • Undertaking of activities listed in terms of NEM:WA without the required authorisation	30 January 2012: • Undertaking of activities listed in terms of NEM:WA without the required authorisation, however, ACSA had begun the process of submitting 24G applications for these activities	However, the issue of the Rehabilitation and Restoration area, including the conservation area, is still under dispute between the I&AP's and the DEA intends to take further enforcement action, should this not be resolved. S31H NEMA Notice was issued to KSIA on 13 November 2012 in relation to earthworks undertaken at the site. Representations received indicate that ACSA is acting lawfully and the earthworks are legal.

8.2 Reactive Administrative Enforcement

Over the last few years there has been momentum behind adopting an intergovernmental compliance and enforcement approach when dealing with environmental concerns. These projects, a number of which are discussed below, have delivered important lessons when initiating environmental compliance and enforcement related activities.

8.2.1 Pelts Products – Cooperative Environmental Enforcement

Over the last few years there has been momentum behind adopting an intergovernmental compliance and enforcement approach when dealing with environmental concerns. These projects have delivered within their own rights, important lessons when initiating environmental compliance and enforcement related activities in this way.

As a case in point, the DEA, the Eastern Cape Department of Economic Development and Environmental Affairs and the Buffalo City Metropolitan Municipality addressed a facility which has been part of previous high court litigation *nl. Hichange v Cape Produce* 2004 2 SA 393 (E). In this decision Leach J held that the threshold limit of “significance” (in terms of an environmental impact) is not particularly high. This has become one of the most highly acclaimed environmental jurisprudence that has come from the courts. Although the matter went through a judicial process, this facility, which trades as Pelts Products (“Pelts”), continued to operate in a manner which was continuously causing an odour nuisance. This resulted in the various authorities receiving numerous complaints from neighboring businesses.

The site investigation revealed far more contraventions than mere odour. The contraventions included waste-related activities which were not authorised by the national Department of Environmental Affairs, activities which were conducted in the absence of the necessary environmental impact assessment regulations (which required authorisation from the provincial environmental authority); and activities which were being conducted in the absence of the necessary air emissions licenses. This even included contraventions of the Threatened or Protected Species Regulations GN R. 152 dated 23 February 2007 (“TOPS”) relating to unauthorised possession and trade in certain threatened or protected species. In order to coordinate the enforcement approach it was necessary for all the affected authorities to adopt a strategy that would incorporate the relevant concerns of all

of the affected authorities into a single process. This was necessary as it would ensure that the authorities communicate all of the respective concerns in a clear and unambiguous fashion. As the National Environmental Management Act 107 of 1998 makes provision for Compliance Notices to be issued in cases of non-compliance with the suite of environmental legislation, the authorities decided to pursue this matter through administrative enforcement proceedings. This process was initiated on 25 October 2011 which resulted in engagements between the authorities, the legal representatives appointed by Pelts products, relevant specialists and the management of Pelts products itself. The final Compliance notice was served on the 08th of February 2012 which outlined the various steps which Pelts had to comply with. Considering the specialist nature of the studies which eventually informed the work that had to be done in order to comply with the instructions that were set in Compliance Notice, the authorities agreed on several occasions on the timeframes for compliance with some of the instructions contained in the Compliance Notice needed to be varied. The work required consisted of the following:

- Site characterization which included an extensive surface and subsurface soil assessment together with sampling of surface and groundwater, sludges and hair and screenings sampling; the water sampling in particular required the following actions *nl.*
 - A. Liquid level gauging in all monitoring wells using a suitable interface probe;
 - B. Well purging using either a specialist sampling pump or bottom loading disposable bailers – dependant on the individual well characteristics..
 - C. Sampling was undertaken using new bottom loading disposable bailers;
 - D. Samples were placed into the appropriate bottles and vials and then placed on ice in a cooler before despatch to an accredited laboratory;
 - E. All samples were sent to the laboratory by overnight courier within acceptable holding times;
 - F. Bulk samples were taken of the screenings, hair and skin sludges. These are being analysed for full toxicity characteristic leaching procedure tests as per the new classification requirements
- Total wastewater refurbishment which consisted of the following phases *nl.*
 - A. Civil works which comprised of holding tanks with fat traps, external strong

effluent sumps, internal strong effluent sumps, a chemical bund, rotary drum screen bund and plinths, channel constructions and deepening, coring and the construction of suitable overflows.

B. Mechanical installation

C. Electrical installation; and,

D. The commissioning of the plant.

- Regular H₂S monitoring of the site

Pelts have been completed during the 2012/2013 reporting period with the significant upgrades to this facility in line with the Compliance Notice that was issued. With the exception of the rehabilitation of an old dam/effluent pond as well as outstanding authorisations which are subject to an ex pose facto decision making process nl. S24G of the NEMA, the authorities are satisfied that there is substantive compliance with this joint administrative enforcement process and that there is a strong commitment by the facility to obtain the relevant environmental authorisation. At this point in time there has not been a single complaint against this facility which is evident from the respective upgrades that were undertaken at this facility.



General housekeeping practice at this facility

8.2.2 Vunene Mine – The Interplay between Criminal and Administrative Enforcement

Vunene commenced open-cast mining of coal on portion 14 of the farm Janhendriksfontein 263-IT in early 2010 which covered an extent of over 85 ha without environmental authorisation. A mining right was granted to Vunene Mining on 13 August 2010, with a very specific mine layout, it was however confirmed that mining activities extended far outside the boundaries that were stipulated within this mining right. Over and above the fact that mining was not covered by the mining right, it was found that no environmental authorisation was issued for any part of the Vunene operation, for the establishment of bulk fuel storage tanks, clearing of vegetation, construction of access roads 25 m in width, extraction of coal within a wetland, clearing of vegetation in excess of 120 ha and storage in excess of 250 t of coal. Based on these findings, a notice of intent to issue a compliance notice dated 12 July 2012 was issued to Vunene. Representations to this notice followed

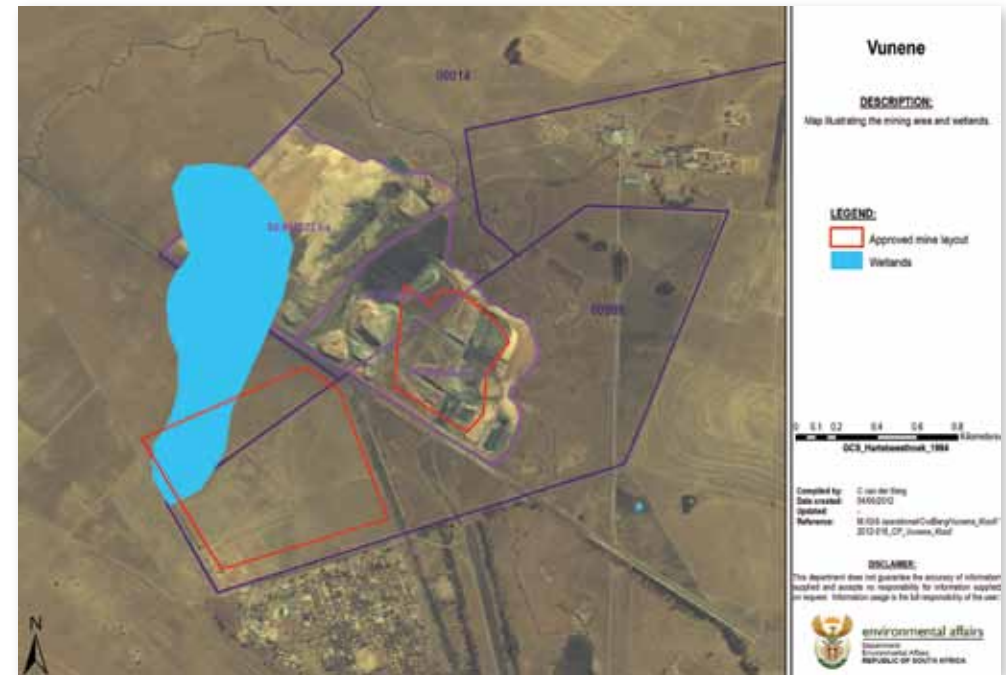


Decommissioning of unlawful waste disposal facility in process

on 14 August 2012. At the same time the National Prosecuting Authority was in the process of formally prosecuting Vunene in relation to the various non-compliances with environmental legislation that was detected at this facility. This process was concluded in the form of a plea and sentence agreement which included the following admissions on that the accused:

- mined within a wetland;
- stripped top- and subsoil layers, disrupting soil profiles;
- altered the land capability of the area;
- altered and removed the natural vegetation of the area;
- exposed soils which may lead to increased silt loads in surface water run off;
- excavation of large boxcuts, creating large voids, resulting in the disturbance of the geographical profile;
- water captured in the pits were exposed to carbonaceous material and which resulted in elevated mining related contaminants such as SO₄ concentrations;
- altered local topographical patterns due to the formation of overburden stockpiles;
- constructed a pollution control dam without lining it and creating a topographical void resulting in the change of local topographical patterns of the mentioned area;
- conducted mining activities within 100m of the Witpuntspruit;

The plea and sentence agreement concluded with a cumulative fine of R3 million being imposed on the accused together with the appointment of an independent environmental consultant to investigate and assess the damage caused by the unlawful mining and to set the limits within which rehabilitation must take place with the goal to rehabilitate to the pre-mining state. This rehabilitation must be completed within five years.



Vunene mine aerial photograph.

8.2.3 What's The Deal With Dealetech: Holders of Waste?

Dealetech/WasteXpress approached the North Gauteng High Court as a result of a criminal investigation that is being undertaken by the Department of Environmental Affairs regarding the alleged illegal waste management activities conducted by Dealetech.

The investigation was undertaken pursuant to section 16, 20, 21 and 26 of National Environmental Management: Waste Act, Act no. 59 of 2008 (NEM:WA). The DEA obtained information from these sources that, already in the early stages of the investigation, confirmed the DEA's prima facie findings of non-compliance with the relevant environmental legislation. On the 4th of October 2012, the Environmental Management Inspectors (EMIs) from the Criminal Investigations and Administrative Enforcement sections of the DEA obtained authorisation from the Magistrate's Court in Brits and Pretoria respectively to conduct a search on the applicants' premises

at Brits, i.e. Portion 1137 of the Farm 410, Hartebeesport, BJQ; and Plot 20, Midas Avenue, Olympus. The search warrants were conducted in terms of section 20, 21 and 25 of the Criminal Procedure Act, Act 51 of 1977 (Criminal Procedure Act), read with sections 31H(5) and 31G(2)(b) of the National Environmental Management Act, Act 107 of 1998 (NEMA). The EMIs listed in the warrant were, in terms of section 31H(5), were deemed to be peace officers which are entitled to exercise all the powers assigned to peace officers, or to police officials in terms of the Criminal Procedure Act. The searches were conducted simultaneously and a substantial number of non-compliances with environmental legislation were detected, as well as contraventions of other pieces of legislation pertaining to pharmaceutical products. This included amongst others the storage and incineration of chemical, pharmaceutical and medical waste on properties in Brits and Payrs; disposal of waste destined for destruction by incineration to wild pigs held on the Brits property and storage of medical waste including schedule-6 medication such as Thalidomide. Large amounts of this waste bore the names of several different companies. As it could not be assumed that Dealetech disposed of the waste on the site, these companies were also considered to be suspects. A few days after certain warning statements were taken from these suspects, Dealetech brought an application against the Department of Environmental Affairs in the Pretoria High Court.

The application was brought in order to compel the DEA to refrain from obtaining warning statements from the clients of Dealetech, while the DEA averred that it is entitled to do so as their clients are considered to be the generators whose waste was identified by the DEA during the search of the respective premises. Therefore warning statements must be taken from them as they are possible suspects in this investigation. After a protracted argument by the advocate for Dealetech in relation to whether the clients are considered to be 'holders of waste' as defined by the NEM:WA the judge in the matter agreed with the submissions made by the DEA and concluded that there is a duty on "holders of waste" to ensure their waste is managed properly, including ensuring that it is disposed of properly. At the same time the DEA instituted an administrative enforcement process in essence compelling Dealetech from unlawfully storing and treating hazardous waste on the respective properties where Dealetech stored, treated and disposed of hazardous waste without authorisation. The instructions of this notice has not been complied with fully and the non-compliances that were detected will ultimately be included in the criminal case against Dealetech/WasteXpress.



EMI holding some of found waste material at Dealetech facility.

8.2.4 How a Bank Stepped Up To the Plate in Knysna

In 2006 Mr Mike D'Aguiar decided to level erf 4012, Knysna. Levelling an erf to build a house shouldn't be problematic under normal circumstances. However, this erf is within 75 m of the Knysna lagoon, which is part of the Garden Route National Park, on a steep slope immediately above a house built in the 1930's and also right next to and above the N2. In an interview with Die Burger in 2006, he stated that he paid R15 million for the property and that it would cost R 500 000 to repair the damage he caused. Both those figures turned out to be quite different. Upon discovery of the matter, the Knysna municipality issued directives in terms of section 31A of the Environment Conservation Act, 1989 (Act No. 73 of 1989) ("ECA") for the serious environmental damage and contravention of the Outeniqua Sensitive Coastal Area Extension Regulations (OSCAER).

In August 2006 a rainfall event caused a large erosion event of the unconsolidated fill material, covering the erf below with the whitish clay exposed by the earthworks. The

family had to evacuate the house for fear that the entire mass of several thousand cubic metres of unconsolidated clayey fill material could slip and obliterate their homes.

After several years of failing to act according to the municipal directives, the matter was referred to the DEA, and the DEA served a pre-notice on D'Aguiar in November 2012. It so happened that he had lost several of his properties including erf 4012 after the credit crunch and couldn't afford any rehabilitation work. Standard Bank of South Africa ("SBSA") became the new owner in 2012, with erf 4012 now a property in possession. Accordingly, the DEA served a pre-notice on SBSA as the landowner in January 2013 followed by a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") in February 2013. The salient instructions included an urgent engineering intervention to prevent possible collapse and further erosion from the site, as well as revegetation with endemic species.

Although SBSA had no part in the initial contraventions of the law, SBSA's Group Legal accepted that something needed to be done and done quickly. Accordingly, SBSA are well on their way not only to full compliance with the Compliance Notice within the timeframes, but also the provisions of the law, to the benefit of the residents of Knysna, users of the N2 between Knysna and George as well as the sensitive ecosystem of the Knysna lagoon. As a testament to their commitment to environmental protection, while the property was only sold for approximately three million rand, the earthworks and rehabilitation will cost nearly six million rand. SBSA must be commended for their co-operation with the DEA, and apart from the work in respect of the property itself, have already developed safeguards to prevent such an event from recurring.

9. BIODIVERSITY ENFORCEMENT AND COMPLIANCE

9.1 Criminal Enforcement related to Rhinos

The spectre of rhino poaching continued unabated in the 2012/13 financial year. In attempting to provide an effective deterrent to this scourge, it is critical that those arrested are properly investigated, prosecuted and convicted with an appropriate penalty in the form of imprisonment and/or a monetary fine. The following three tables show the numbers of rhinos poached and arrests made from 2010 – 2012, while the last table shows the outcome of court cases related to rhino poaching in the 2012/13 financial year:

INSTITUTION	2010	2011	2012
SANPARKS (Kruger National Park)	146	252	425
SANPARKS (Mountain-Zebra National Park)	0	6	3
KwaZulu-Natal	38	34	66
Limpopo	52	74	59
Western Cape	0	6	2
Eastern Cape	4	11	7
Gauteng	15	9	1
North West	57	21	77
Free State	3	4	0
Northern Cape	1	0	0

INSTITUTION	2010	2011	2012
Mpumalanga	17	31	28
TOTAL	333	448	668

Table 9.1.1: Total Number of Rhinos poached in South Africa for 2010, 2011 and 2012

INSTITUTION	2010	2011	2012
SANPARKS (Kruger National Park)	67	82	73
SANPARKS (MNP)	0	0	0
KwaZulu-Natal	25	4	20
Limpopo	36	34	43
Western Cape	2	0	0
Eastern Cape	7	2	0
Gauteng	10	16	26
North West	2	21	32
Free State	0	0	6
Northern Cape	0	0	1
Mpumalanga	16	73	66
TOTAL	165	232	267

Table 9.1.2 : Total Number of Arrests made in South Africa for Rhino-Related Offences for 2010, 2011 and 2012

NATIONAL RHINO RELATED PROSECUTIONS: APRIL 2012 – APRIL 2013		
Number of cases finalised/ accused	Number of cases finalised (convicted and sentenced, acquitted, withdrawn, struck off roll)	50
	Number of accused involved in finalised cases	95
NATIONAL RHINO RELATED PROSECUTIONS: APRIL 2012 – APRIL 2013		
Number of court outcomes	Number of accused convicted	69
	Number of accused acquitted	2
	Number of accused against which case withdrawn	23
	Number of accused died after conviction but before sentence	1
	Number of accused convicted and sentenced to a fine	20
	Number of accused convicted and sentenced to direct imprisonment without the option of a fine	36

NATIONAL RHINO RELATED PROSECUTIONS: APRIL 2012 – APRIL 2013		
Number of conviction charges	Number of accused convicted for possession of rhino horns	16
	Number of accused convicted for dealing in rhino horns	8
	Number of accused convicted for illegal hunting of rhinos	20
	Number of accused convicted for illegal possession of fire-arm or ammunition/supplying fire-arms	23
	Number of accused convicted for trespassing	25

Table 9. 1. 3: Outcome of criminal prosecutions for rhino-related offences from April 2012 – April 2013

9. 2. Significant court cases related to Rhino

In the 2012/13 reporting period, there have been a number of significant sentences handed down by the criminal courts in respect of rhino poaching. The charges on which these accused were convicted include both common law and legislative offences.

9. 2.1 S V CHEMLONG LEMTONGTHAI (THAI CITIZEN), PUNPITAK CHUNCHOM (THAI CITIZEN), MARNUS STEYL, TOOL SRITON (THAI CITIZEN) , HARRY CLAASSENS (S204 WITNESS) AND 2 FARMWORKERS	
Province	Gauteng
Court	Kempton Park
Charge	s80(1)(i) of Customs and Excise Act (26 counts) Trade 26 rhino horns
9. 2.1 S V CHEMLONG LEMTONGTHAI (THAI CITIZEN), PUNPITAK CHUNCHOM (THAI CITIZEN), MARNUS STEYL, TOOL SRITON (THAI CITIZEN) , HARRY CLAASSENS (S204 WITNESS) AND 2 FARMWORKERS	
Judgement/Sentence	Accused 1 (Lemtongthai) pleaded guilty Sentence: 40 years
Note:	Matter withdrawn against the remaining accused

9.2.2 S V RENBULWANE PATRICIA MUKWEVU MTHOBE, TSHAMANO SECRET KUTAMA, ABRAHAM MATLHODI STOCKS KGALUSHI, LEWIS MASHUDU MUSEKWA	
Province	Limpopo
Court	Modimolle Regional Court
Charge	Illegal hunting of rhinos

9.2.2 S V RENBULWANE PATRICIA MUKWEVU MTHOBE, TSHAMANO SECRET KUTAMA, ABRAHAM MATLHODI STOCKS KGALUSHI, LEWIS MASHUDU MUSEKWA

Judgement/Sentence	Accused 1 & 2: Not guilty Accused 3: Guilty s57(1) of NEMBA (illegal hunting), unlawful possession of firearm & ammunition. Sentence: five years imprisonment Accused 4 Guilty s57(1) of NEMBA (illegal hunting). Sentence: three years imprisonment
Note:	Court ordered vehicle to be handed back to accused 1 who is the registered owner of the car, rest of exhibits forfeited to the State. No rhino was killed – Accused 3 and 4 arrested on the property before they could find a rhino.

9.2.3 S V ALI NKUNA AND GERSON KHOZA (MOZAMBICAN CITIZENS)

Province	Mpumalanga
Court	Nelspruit Regional Court
Charge	Illegal hunting of two rhinos, alternatively possession of four horns etc. on 3/6/2011
Judgement/Sentence	Count 1: Being illegally in RSA: Acc 1 guilty, acc 2 acquitted Count 2: Trespass in KNP without permit: Both guilty Count 3: Illegally hunting rhino cow: Both guilty Count 4: Illegally hunting rhino calf: Both guilty Count 5: Theft of rhino horns: Both acquitted (duplication of charges) Count 6: Unlawful possession of hunting rifle: Both guilty Count 7: Unlawful possession of ammo: Both guilty Sentence: Acc used 1: 29 years and three months imprisonment; Acc used 2: 29 years imprisonment.

9.2.4 S V SIFISO SUBUYI

Province	Mpumalanga
Court	Nelspruit Regional Court
Charge	Illegal hunting of two rhino

9.2.4 S V SIFISO SUBUYI

Judgement/Sentence	Accused convicted of hunting of one rhino. Sentence: eight years imprisonment.
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9.2.5 S V MANUEL MOROMBE AND 2 OTHERS

Province	Mpumalanga
Court	Nelspruit Regional Court
Charge	Trespassing, illegal possession of fire arm and ammunition, Immigration Act
Judgement/Sentence	Accused convicted on all charges. Sentence: 10 years imprisonment.

9.2.6 S V MDULI, MBUYASI AND 2 OTHERS

Province	KwaZulu-Natal
Court	Richards Bay Regional Court
Charge	Unlawful hunting or rhino, dealing in rhino horn.
Judgement/Sentence	Accused 1: warrant of arrest issued and bail forfeited to the State; Accused 2: pleaded guilty to dealing in rhino horns – he was the driver of the vehicle transporting the other accused. Sentence: R 10 000-00 and a further five years imprisonment wholly suspended Accused 3/4: Accused 3 sentenced to five years imprisonment wholly suspended and accused 4 sentenced to five years imprisonment.
Note	Magistrate imposed these sentences as accused were in custody for lengthy time period and the postponements were not due to their fault.

9.2.7 S V LIU ZIHOU

Province	Gauteng
Court	Germiston Court
Charge	Illegal possession of two rhino horns (sold to the accused in an undercover operation), three pieces of elephant ivory and two leopard skins.
Judgement/Sentence	Sentence: Count 1: 3 years imprisonment; Count 2: three years imprisonment. Count 3: two years imprisonment; Effective term of imprisonment: eight years imprisonment.

9.3. Significant court cases related to Elephant Ivory

While the spotlight of the media, the public and law enforcement agencies continues to focus primarily on rhino poaching, several court cases in this reporting period indicate the ongoing threat to other species, such as elephants and cycads.

9.3.1 S VM.J. GOLDBERG

Province	Western Cape
Station	Sea Point CAS 311/08/2009
Charge	Illegal possession and sale of 44 284 elephant ivory items (approximately 1500kg)
Judgement/Sentence	Sentence: seven years imprisonment with two years suspended for five years

9.3.2 S V CHANGSEN XIONG

Province	Western Cape
Station	Table View CAS 514/12/2011
Charge	Illegal possession of 211.021kg of elephant ivory
Judgement/Sentence	Sentence: 10 years imprisonment and a fine of R50 000, with four years suspended for five years



9.3.3 S V ABDOULAYE THIAM

Province	Western Cape
Station	Milnerton CAS 170/06/2011
Charge	Illegal possession of seven elephant tusks with mass of 98.53kg
Judgement/Sentence	Sentence: three years imprisonment fully suspended for five years, with a fine of R100 000

9.3.4 S V MUSAMBAYI TAMBWE

Province	Western Cape
Station	Philadelphia CAS 312/09/2012
Charge	Illegal possession of 21 elephant tusks with a total mass of 312.72kg.
	
Judgement/Sentence	Sentence: 10 years imprisonment with three years suspended for five years

9.3.5 S V VENGANI NHEMA AND SIPHOSENKOSI MHAKA; RANDBURG REGIONAL COURT, DOUGLASDALE 918/8/2101

Province	Gauteng
Station	Douglasdale 918/8/2101
Charge	Illegal possession of two pieces of elephant ivory tusk with a total weight of 4.48kg and a total length of 79cm
Judgement/Sentence	10 years imprisonment

9.4. Significant court cases related to Cycads

9.4.1 S V D MATHEBULA, KM CHAUKE, G NGOBENI AND K MALULEKE	
Province	Limpopo
Court	Mokopane District Court
Charge	Illegal activities in relation to two cycads to the value of R18 250
9.4.1 S V D MATHEBULA, KM CHAUKE, G NGOBENI AND K MALULEKE	
Judgement/Sentence	Sentence: Accused 1 and 3 was sentenced to 30 months imprisonment; Accused 2 was sentenced to four years imprisonment and Accused 4 were sentenced to two years imprisonment wholly suspended for five years conditionally not convicted of NEMBA or LEMA Act.
9.4.2 S V PAUL HUGO	
Province	KwaZulu-Natal
Station	Mbazwana CAS 63/05/2011
Charge	Illegal gathering of 95 Cycads (Encephalartos Ferox) from the Isimangaliso Wetland Park
Judgement/Sentence	Sentence: R90 000-00 or six years imprisonment of which R60 000-00 or four years imprisonment is suspended for a period of five years; In terms of section 215B(1)(c) the court ordered that any license or permit or other authority issued to the accused in terms of this Ordinance canceled forthwith, and the accused was declared ineligible for obtaining any such license or permit or other authority under this Ordinance for a period of three years.
9.4.3 S V S V B NYEREDZI AND 1 OTHER	
Province	Limpopo
Court	Mokopane Regional Court
Charge	Illegal gathering of four cycads (Eugene Maraisii) to the value of R 65 250 from Entabeni nature reserve

9.4.3 S V S V B NYEREDZI AND 1 OTHER

Judgement/Sentence

Sentence:

Six years imprisonment without the option of a fine

10. JOINT COMPLIANCE AND ENFORCEMENT OPERATIONS

Due to the concurrent nature of environmental compliance and enforcement in South Africa, the constitutional duty to give effect to s24 of the Constitution falls on national, provincial and local environmental authorities. In order to respond to key threats to the environment in a coordinated manner, the sector plans and implements joint compliance and enforcement operations that involve various spheres of government. In the 2012/13 financial year, illegal sandmining, illegal trade in reptiles and the tanneries and taxidermist industry was highlighted for the following joint operations:

10.1 Sand Mining Blitz

The Environmental Management Inspectors at national and provincial departments and other relevant government stakeholders, including the Department of Water Affairs, embarked on a sand mining enforcement blitz during the week of 26 – 28 February 2013. The blitz took place in the following five provinces: Northern Cape, Mpumalanga, KwaZulu-Natal, Limpopo and the Free State.

Since 2007, unlawful sand mining has been highlighted as a problem which causes deleterious impacts on the environment. The extraction of sand generally takes place in or under the ground, in water courses and in coastal areas. Unlawful sand mining in watercourses results in rivers being diverted which contributes towards habitat fragmentation eventually resulting in ecosystem service losses. The more common anthropocentric impacts relates to: the structural integrity of bridges being undermined, water quality relative to water users whose existence is dependent on a healthy riverine systems being compromised and unrehabilitated mining areas which causes water logged voids, which has subsequently caused drowning related incidents, raises serious concerns in relation to the safety aspects of unregulated sand mining activities.

Against this background Working Group IV (the technical working group responsible for compliance and enforcement that reports to the Minister and MEC's), identified unlawful sandmining operations as a project which requires a coordinated enforcement response, given that a suite of authorizations are required to conduct a sand mining operation lawfully. The focus of this project concentrated efforts in relation to those sand mining operations which do not have the required authorisations to conduct these type of activities lawfully.

The blitz involved the following activities:

10.1.1 KwaZulu-Natal:

Sand mining operators along the Umkomaas and uMvoti rivers were targeted by entering the respective sites with search warrants.

Three operators along the Umkomaas river were found to conduct sand mining activities without the requisite environmental authorization. The operator along the uMvoti river was issued with a Compliance Notice by the KwaZulu Natal Department of Agriculture and Environmental Affairs (KZNDEA). This operator has however refused to comply with this notice and displayed an aggressive behavior towards the officials of the KZNDAE. The matter was subsequently transferred to the DEA who

has subsequently issued the operator with a new compliance notice following a site inspection.

Criminal investigations were also initiated against each of the operators along the Umkomaas and uMvoti rivers and are in an advanced stage of investigation.

10.1.2 Limpopo:

The target areas for the blitz in this province were the Mogalakwena River in Steilloop, Klein Lethaba River, Bungeni and Indermark in the Capricorn District. The operation at the Mogalakwena River is being undertaken with none of the necessary authorisations and a criminal docket has been opened. In relation to the operations at Indermark, four arrests have been effected and the criminal investigation is ongoing.

10.1.3 Mpumalanga:

A significant illegal sand mining operation was observed to have taken place in the Sikhwahlane in the Nkomazi area. The operators were not in possession of the required environmental authorisations which subsequently resulted in the destruction of 3.6 hectares of indigenous vegetation as well as a wetland. Nineteen (19) arrests were made and the vehicles used in the operation were seized. This case will be arraigned in the Nelspruit regional court on the 26th of June 2013 where it is hoped that a trial date will be scheduled in August 2013.

10.1.4 Northern Cape:

The focus of the enforcement activities have been in the Namaqualand District, including Springbok, Kamieskroon and Port Nolloth. Two sand mining operations were targeted nl. one in the Stryd River (tributary of the Buffels River) and a dry river bed of the Buffels River. These cases are being investigated by the Northern Cape Department of Environmental Affairs and Nature Conservation and it is likely that both criminal and administrative enforcement action will follow.

10.1.5 Free State:

A compliance monitoring exercise in relation to the instructions contained in a Compliance Notice was the subject of the enforcement activities undertaken against a sand mining operator within the Aliwal North region of this province. The operator was found to be fully compliant and the affected area, which was the subject of the instructions contained in the Compliance Notice, was found rehabilitated.

10.2 Operation Skhumba focuses on the taxidermy and tannery industry

The National Enforcement Blitz entitled “Operation Skhumba” (“skin” in isiZulu) was conducted by the Green Scorpions during the week of 13-17 August 2012 and focused on the Tannery and Taxidermy industries in the Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, North West and Western Cape provinces. The Blitz was conducted jointly by officials from DEA, as well as provincial Environmental Departments. Approximately 28 facilities were inspected during the Operation. The blitz was executed by the Green Scorpions amidst an increase in the number of rhinos poached in South Africa.

The Green Scorpions conducted inspections to assess compliance with the legal requirements related to waste, pollution and biodiversity. Under biodiversity, the two main aims were to check compliance with regard to the Threatened Or Protected Species Regulations (TOPS), as well as compliance with the amended Norms and Standards on the marking of rhinoceros and rhinoceros horn and for the hunting of rhinoceros for trophy hunting purposes under the National Environmental Biodiversity Act No.10 of 2004, as published in Government Notice no. 304 on the 10th of April 2012. This is in line with the Department’s plan to ensure ongoing industry compliance in an effort to curb the number of environmental crimes, including rhino poaching.

The amended norms and standards are intended to strengthen the regulatory framework in terms of monitoring the legality of hunts and control over rhino horns. Stricter provisions relating to hunting were required to ensure that processes are standardised and to reduce possible abuse of the system. According to the amended norms and standards, rhino horns from trophy hunts are expected to be transported by a duly authorised person from the address where a hunt took place directly to a taxidermist for processing and exportation. The transportation of horns may only be authorised in terms of an individual permit granted by the issuing authority (it may not be authorised in terms of a standing permit or in combination with the hunting permit).

The permit authorising the hunt and a copy of the professional hunting register must accompany all rhino products when being transported between destinations. Also, by law, when taxidermies receive rhino horns, these need to be reported to the respective provincial conservation authorities.

Taxidermies are, in addition, required to keep a register detailing the date of receipt of the rhino horns, its weight, micro-chip numbers, as well as the numbers of the hunting permit, transport permit and professional hunting register. This register must be made available to the issuing authority for inspection upon request. Ensuring that these amended norms and standards are being adhered to, was also one of the focuses of the Operation.

Alongside taxidermies, Operation Skhumba also focused on some of the country's tanneries. During 2011, criminal investigations were initiated against tanneries in the Eastern Cape for non-compliance with environmental legislation. So, through Operation Skhumba, the Green Scorpions also aimed to inspect tanneries in other regions in order to ensure that such transgressions do not continue unabated. While it was found during the Operation that some of the inspected facilities were adhering to the relevant environmental legislation, most were not in compliance. The most frequent transgressions uncovered related to poor waste management processes. A smaller number of the inspected facilities were also found not to be in possession of the required licenses, including atmospheric emission and waste management licenses. From a biodiversity perspective, the most frequent issues of non-compliance related to the absence of hunting registers and the absence of TOPS permits.

10.3 Operation Cold Blood

Operation Cold Blood, a joint operation of the national and provincial branches of the EMI, focuses on the illegal trade in reptiles. As part of this operation, a compliance and enforcement blitz was undertaken nationally from 8 to 19 April 2013. In Kwazulu-Natal 10 facilities were inspected/investigated in the Port Shepstone, Durban, Pinetown and Pietermaritzburg areas. In the Northern Cape five pet shops were visited in addition to the six permit holders. In the Eastern Cape 23 facilities were inspected while in the Free State a total of 58 pet shops and 22 reptile keepers were visited. Specific breeders were also inspected in Gauteng, Limpopo and Mpumalanga.

Numerous exotic as well as indigenous species were found during the blitz which was conducted in order to determine compliance with both provincial and national legislation. The blitz was also used as an opportunity to raise awareness regarding the legislative requirements related to reptiles, including the CITES regulations. This operation will continue, and important lessons learnt during the blitz will inform recommendations related to the amendment of legislation (especially in KZN); follow-up actions required to check for specific permits; proactive enforcement in relation to specific individuals and the ongoing analysis of information to inform further work to be undertaken as part of this operation.

10.4 Provincial joint operations

In addition to the "national" joint operations, the provincial environmental authorities, on their own initiative, also readily engage with other law enforcement agencies, such as SAPS and SARS to plan and execute joint operations. An example is CapeNature that undertook the following activities in 2012/13:

- Joint operations with SARS, SAPS (Border Police and K9 Unit), Hawks at Cape Town International Airport in January 2013 (Operation Cobra). Information was used to identify and address certain individuals.
- Joint operations with SARS, SAPS K9 units and Hawks on 24 and 25 January 2013. Information was used to identify suspect containers, which were unpacked and searched.
- Joint operations with DAFF, SAPS (Border Police and K9 Unit) and Hawks addressing suspicious storage facilities in February 2013. Search warrants were executed at certain storage units.
- Joint operations with SAPS TRT and Hawks to address rhinoceros poaching in March 2013. Information-driven operation was launched to address possible rhino poaching.

11. NATIONAL ENVIRONMENTAL COMPLAINTS AND EMERGENCY INCIDENTS

11.1 Environmental Crimes and Incidents Hotline

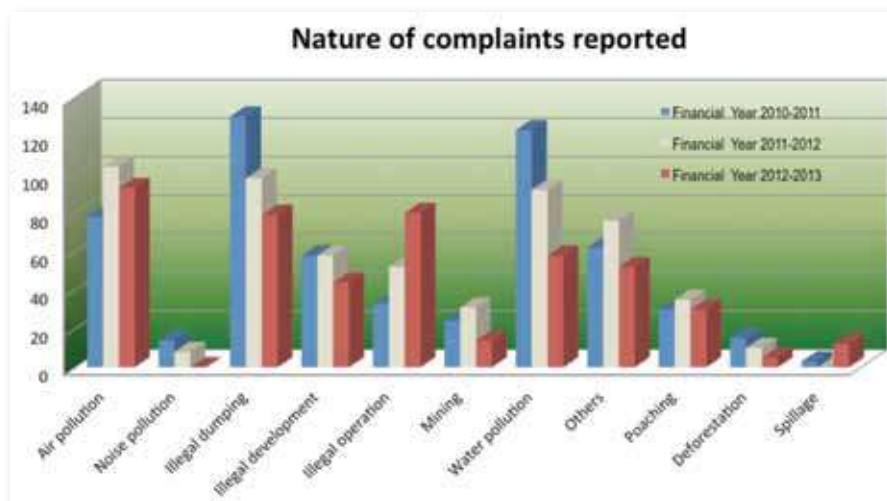
DEA continued to collect statistics on environmental complaints received from the Environmental Crimes and Incidents Hotline, from the Minister and Director-

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 general decrease in the overall number of complaints reported from 570 in 2010/11 to 467 in 2012/13 financial year. However, there has been a dramatic increase in relation to the spillage category of complaints and most categories have experienced a slight decrease when compared to the 2011/12 financial year.

NATURE OF COMPLAINT	FINANCIAL YEAR			TOTAL
	2010-2011	2011-2012	2012-2013	
Air pollution	78	104	93	275
Deforestation	15	10	5	30
Illegal dumping	130	98	79	307
Illegal development	58	58	44	160
Illegal operation	33	52	80	165
Mining	24	31	14	69
Noise pollution	14	8	0	22
Poaching	30	35	30	95
Spillage	3	0	12	15
Water pollution	123	92	58	273
Others ⁷	62	76	52	190
Total	570	564	467	1601

Table 7: Number and classification of complaints

Graph 6: Graphical representation on the nature of complaints received



FINANCIAL YEAR	INSTITUTION REFERRED TO					TOTAL
	DEA	DWA	DMR	LOCAL GOVERNMENT	PROVINCES	
2010-2011	87	123	24	134	210	578
2011-2012	81	59	30	192	183	545
2012-2013	82	58	14	110	203	467
Total	250	240	68	436	596	1590

Table 8: Number of DEA referred complaints

11.2 Emergency Incidents as contemplated in Section 30 of NEMA

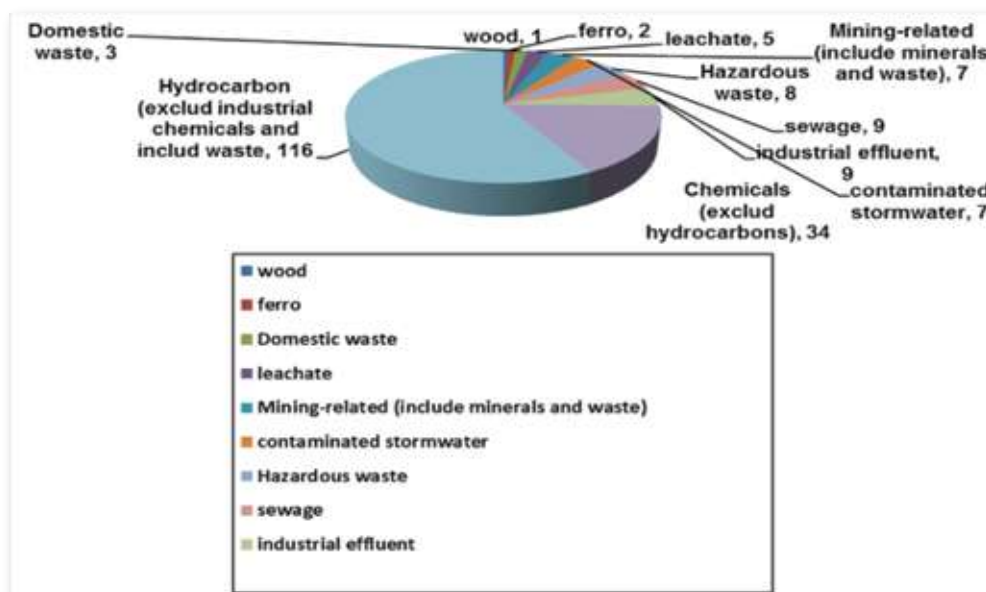
There has been an increase in the number of reported Section 30 incidents from the 2011/2012 financial year (144) to the 2012/2013 financial year (213). This is a direct result of efforts by the Sub-directorate: Section 30 to raise awareness among the regulated community on the reporting requirements of Section 30. In this regard, nine workshops were held with key industry sectors in the 2012/2013 financial year:

- Western Cape Air Quality Officers Forum;
- Oil and gas refineries;
- Richards Bay industries;

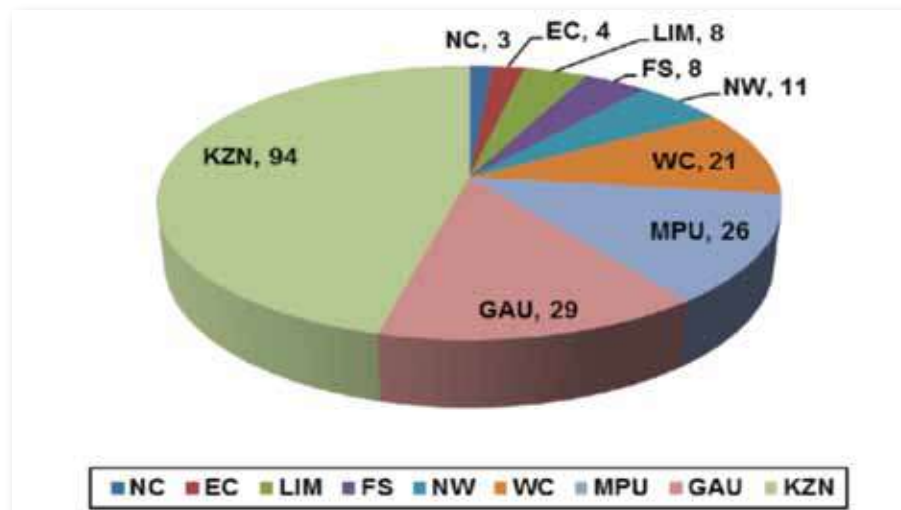
- Eskom;
- KZN Department of Agriculture and Environmental Affairs;
- Durban Chamber of Commerce and Industry;
- Enviroserv;
- Transnet; and
- ACSA

During the 2012/13 financial year most reported Section 30 incidents were from the petroleum retail/storage sector and the road transport sector. This is mainly attributed to the wide scale use and occurrence of petroleum products across the country and the fact that vast quantities of hazardous substances are transported on our roads every day. Most of the incidents occurred in four provinces: Western Cape, Mpumalanga, Gauteng and KwaZulu-Natal, with KwaZulu-Natal recording the most incidents out of all provinces. This is to be expected as these are the industrialised provinces in South Africa. The pie charts below illustrate the distribution of the reported incidents for different industries and the provinces in which they were reported. It is important to note that these statistics reflect only those incidents that were reported to and recorded by the DEA and the provinces.

Pie Chart 4: No. of Section 30 incidents reported per industrial sector



Pie Chart 5: No. of Section 30 incidents reported per province



12. CAPACITY BUILDING FOR EMIS, MAGISTRATES AND PROSECUTORS

12.1 EMI Basic Training

The EMI Capacity Development and Support Directorate at the DEA coordinated and presented two EMI Basic Training Courses during the financial year 2012 – 2013.

The first of the two EMI Basic Training courses was presented in Mpumalanga from 7–25 May 2012. The course was attended by 46 prospective EMIs, representing SANParks (10), Gauteng (4), Western Cape (3), Free State (9), Limpopo (4), Mpumalanga (9) and DEA (7). The scenic Lowveld National Botanical Gardens (SANBI) was selected as the venue for the course and proved to be ideal for both the practical and theoretical part of the course. The course was well received by the attendees and officials willingly spent many a late night struggling through inspection reports, compliance notices and compilation of criminal dockets. The following two comments best captures the attitude of the officials that attended the course: “I was never exposed to this kind of work before but now I am excited and ready to be an EMI” and “I am hoping to see the country green with green dockets in all the courts,

and green scorpions all over.” DEA wishes to commend the officials that attended for their dedication and positive attitude during the course, and wishes them all the best as Environmental Management Inspectors.



Officials that attended the EMI Basic Training course presented in Mpumalanga, May 2012

The second Basic Training course was presented in Grahamstown (Eastern Cape) from 08 – 26 October 2012, with a total of 44 officials from 9 different EMI institutions attended, which included Eastern Cape (17), Western Cape (2), Limpopo (2), North-West (3), National Department DEA (2), Free State (5), SANParks (3) and Kwazulu Natal (10).

During each basic training course, officials are afforded the opportunity to interact with numerous external presenters as well as experienced EMIs on relevant topics ranging from legislative overview to conducting compliance inspections, administrative enforcement as well as criminal investigations and enforcement procedures. The DEA acknowledges the support of all presenters, organizations and support staff involved in the course that makes the EMI Basic Training a success.



Officials that attended the EMI Basic Training course presented in the Eastern Cape, October 2012

EMI EHP bridging training: Preparatory Workshop

On 31 May 2012, a workshop was held with relevant stakeholders to discuss areas of strategic interaction and collaboration to expedite the delivery of the EMI EHP bridging training project.

The objectives of this workshop were to:

- Inform attendees of the current status quo of the designation of local authority officials as EMIs within the respective provinces;
- Inform attendees of the current status quo of the EMI Environment Health Practitioner (EHP) bridging training programme with specific tertiary institutions;
- Discuss and clarify the roles and responsibilities of the various stakeholders (including the HPCSA, SAIEH, DOH, Tertiary Educational Institutions, DEA and provincial environmental authorities) in the future implementation of this project (including a draft MOU);

- Introduce the provincial EMI local authority nodal points to their corresponding tertiary education institutions representatives for purposes of future collaboration;
- Develop joint provincial action plans to facilitate the effective implementation of the EMI-EHP Bridging Training Programme.

As part of the meeting, tertiary institutions were paired up with their corresponding provinces (EMI institutions) to develop regional action plans on how this project would be rolled out. The outcome of this process was extremely fruitful and everyone was positive on the way forward. The future of this collaboration seems promising and the first courses should still be presented during the end of 2012. DEA wishes to thank all the EMIs and representatives from DOH, SAIEH, HPCSA and respective tertiary institutions for their inputs and dedication towards this important initiative.



Delegates from the tertiary institutions, SAIEH, HPCSA, DOH and EMI that attended the one day workshop

EMI Bridging courses for Environmental Health Practitioners

As a direct result of the preparatory workshop around the EMI EHP bridging training course, the first EMI EHP Bridging course was presented in KZN in a collaboration between the KZN Provincial Department and Mangosuthu University of Technology (MUT).

A total of 12 registered EHPs attended the course which included EHPs from Ethekwini Metro, Uthukela District Municipality and Ugu District Municipality. Lecturing staff were all designated EMIs selected from the KZN Provincial Department. The planning and coordination for the course was done by KZN DAEA (Jomo), MUT (Moeti Kgware & TT Poswa) and SAIEH (S. Mudaly).



Officials who attended EMI-EHP Training in September 2012 at Mangosuthu University of Technology

Subsequent to the first EMI EHP Bridging course presented in KZN, two more courses followed, one presented in the Free State and the other in the Western Cape. The

Western Cape course was presented to 30 EHPs from local authorities and was done in conjunction with the Cape Peninsula University of Technology (CPUT) and presentations provided by EMIs Dr. Eshaam Palmer (Director), Achmad Bassier (Dep Dir), specialist environmental officers – Nazeema Duarte and Fahd Said, as well as Shaina Naidoo (prosecutor from DPP Wynberg regional court) FROM THE Western Cape Environment office.



EHP officials who attended the EMI-EHP basic Training session at the Central University of Technology: Free State.

The third course was presented to 46 EHPs also from various local authorities and was undertaken in conjunction with Central University of Technology (CUT) and presentations done by Werner Boing, Control Biodiversity officer and Andre Schlemmer, from DETEA Free State.

Due to the fact that registered EHPs require peace officers training, more emphasis can be placed on EMI mandates, roles and responsibilities, Administrative Enforcement as well as Criminal Docket Management. This allows for extensive

interaction and questions were resulting in in-depth discussions. These courses also provide an opportunity for networking between provincial and future municipal EMIs.

EHP officials who attended the EMI-EHP basic Training session at the Central University of Technology: FreeState

12.2 EMI Field Ranger Training (Grade 5)

EMI Grade 5 Train the Trainer course, Hoedspruit

In further support towards the EMI Grade 5 basic training project officials from the EMI Capacity Development and Support Directorate at the National Department of Environmental Affairs provided a “Train the Trainer” course at the South African Wildlife College (SAWC) training centre just outside Hoedspruit (Mpumalanga) from 09 - 11 January 2013.

This initiative was undertaken as to provide EMI institutions with a possible external service provider to present the EMI Grade 5 basic training to field rangers operating within the numerous provincial parks. The current status quo, in specific EMI Grade 5 training, is that the responsibility for training rests with each respective EMI Institution who needs to identify and appoint suitably qualified and experienced trainers (either externally or internal EMI staff members) to deliver the training within their own institutions. Grade 5 EMI designation and training is predominantly geared towards “field rangers” who fulfill a very specific compliance and enforcement function within their respective institutions.

After careful consideration of all these facts it was decided to approach SAWC as they present a certificated field ranger course and would, due to their experience, be in an ideal position to potentially present an EMI Grade 5 basic training course. The three day “train the trainer” course were very productive and further resulted in the development of a one week day-to-day training programme, which will cater for theoretical training, practical scenario work as well as proper assessment upon completion of the course. The course would also cater for the possibility of trainers from SAWC to present the course within any one of the nature reserves thus limiting travel and accommodation costs associated with having to send field rangers to the training college in Hoedspruit for training. As always the passion and dedication that surrounds field rangers and their trainers made for an unbelievable course and DEA would like to commend everyone that was involved, in specific Theresa Sowry from SAWC and Ruben de Kock from AFRTS.



Trainers from both “the South African Wildlife College” and “African Field Rangers Training Services” that attended the workshop.

12.3 EMI Specialised Training

In addition to the EMI basic training three specialised training courses were presented by DEA during the financial year. The purposes of these courses are to provide designated EMIs with in-depth topic specific training presented by relevant internal as well as external topic experts.

12.3.1 Compliance and Control for Law Enforcement Officers

DEA hosted a Compliance and Control course for EMIs presented at the SANBI conference centre situated in the National Botanical Gardens, Pretoria, Gauteng. The five day course was presented by Don Gold from the Minimum Force Institute and ran from 30 July - 3 August 2012, with a group of 30 EMIs attending. The training was structured in such a way as to provide attendees with theoretical, as well as

practical lessons around dealing with conflict and the use of minimum force.

The theoretical side of the course focused on conflict management in the form of “Verbal Judo” which aimed at: Increasing Officer Safety, Enhancing Professionalism, Decreasing the potential for Citizen Complaints, Decreasing Vicarious Liability, Decreased Stress, Dealing with “Difficult People”, Decreased Cynicism and ultimately Increased Morale. The practical part of the course focused on the use of minimum force around arrest and proper search procedures, as well as being trained in the use of issued equipment, such as handcuffs, ASP Tactical Batons and Oleoresin Capsicum (Pepper Spray).

The training was concluded with attendees writing a theoretical test on the week’s lessons, as well as a practical session that involved being exposed to Pepper Spray. This served to ensure that officials understood the effects of the spray, as well as proper decontamination procedures in the event that they might be exposed to the product during a confrontation.



EMI officials that attended the “Compliance and Control for Law Enforcement Officers” course 2012



ASP Baton practical exercise



OC (Oleoresin Capsicum) Pepper Spray exercise

12.3.2 Administrative Enforcement Course for EMIs

An EMI specialised course that focused on Administrative Enforcement was presented from 11 to 14 September 2012 in George, Western Cape. The course was

attended by 27 EMIs from six institutions which included Western Cape, Eastern Cape, Kwazulu-Natal, Free State, Eastern Cape Parks and Tourism Agency and EMIs from the National Department. Based on comments received from a similar course presented during 2011, an extra day was included to allow for more presentation and practical time.

The four days were set aside to focus on proper legally defensible administrative enforcement in terms of PAJA and NEMA. The theme of the course was “The pen is mightier than the sword” and some of the objectives of the course were to provide EMIs with training in relation to: the types of administrative enforcement mechanisms available to EMIs; the legal framework for issuing of administrative enforcement mechanisms; the different circumstances in which to use a specific enforcement mechanism; the process and content considerations within these mechanisms, as well as considerations when dealing with variations / suspensions / objections and appeals



EMIs who attended the Admin Enforcement Course in George during September 2012

12.3.3 EIA Listed Activity Specialised Training for EMIs

Due to numerous requests for training around the EIA listed activities and associated regulations, a one week course was developed and presented from 17 – 21 September 2012 in Salt Rock, KZN. A total of 40 EMIs from 10 institutions which

included, Isimangaliso Wetland Park, Eastern Cape Parks and Tourism, Northern Cape, Gauteng, Free State, Ezemvelo KZN Wildlife, Eastern Cape, KwaZulu-Natal, Limpopo and DEA attended the course.

The purpose of the course was to provide EMIs with an understanding of:

- Overview on EIA authorisation process
- EIA listed activities: Common terminology and definitions: technical / criminal interpretation
- EIA activity cluster pertaining to Wetlands, Coastal Zones, Mining, Transformation of land / construction and Electricity generation
- 24 F Emergency defense clause, and relevance to EIA
- 24 G Strategy and considerations in terms of EIA listed activities
- Consistency around interpretation of listed activities

The course not only strived to inform EMIs of the numerous listed activities, but also to provide insight into certain grouped “sectors” that are commonly addressed within the listing notices such as: Wetlands, Electricity Generation, Coastal Zones, Transformation of Land and Mining. In order to best facilitate this approach numerous internal and external experts were invited to present.

The course was well received by the attendees and the general feedback can be summarised by the following statement made within one of the course evaluation feedback reports: “Course was very informative and relevant esp. due to the misinterpretations and understandings we sometimes have as EMIs”



EMIs who attended the EIA listed Activity Course during September 2012

12.4 Magistrates and Prosecutors workshops

The collaboration between the Environmental Management Inspectorate and Justice College continued and resulted in two workshops titled “Prosecuting Environmental Crime” being presented to prosecutors country-wide. The initiative focuses on providing prosecutors with an overview on all relevant environmental legislation as well as providing a platform for EMIs to highlight their challenges in the enforcement of environmental legislation.

12.4.1 Western Cape Prosecutors Course

The first prosecutor course for the year was presented during June 2012, this time in Cape Town. The workshop known as “Prosecuting Environmental Crime” was well represented, with 22 prosecutors from Eastern Cape, Northern Cape, KwaZulu-Natal and Western Cape attending. These workshops form part of a cooperative agreement

between Justice College and the Department of Environmental Affairs representing the inspectorate, in so far as sensitising prosecutors around environmental crimes and intricacies within NEMA and related SEMAs. Presenters from DEA as well as EMI from Western Cape (DEADP) and CapeNature assisted with presentations during this course.



Prosecutors at the “Prosecuting Environmental Crime” course presented in the Western Cape in conjunction with Justice College June 2012

12.4.2 Gauteng Prosecutors Course

The second “Prosecuting Environmental Crime Workshop” for prosecutors was presented during November 2012 in Pretoria, Gauteng. The workshop saw 24 prosecutors in attendance from Western-Cape, Gauteng, Mpumalanga and North West. The course was overall well received with a very interactive group that resulted in presenters being kept on their toes.

A number of presenters from external organizations as well as from EMI organizations are invited to present topics to the attendees as to ensure that prosecutors attending the course are comprehensively exposed to the numerous environmental legislation, external Departments including Tshwane University of Technology, Department of Water Affairs, Sanparks, Department of Agriculture Fisheries and Forestry as well as Justice College.



Prosecutors at the “Prosecuting Environmental Crime” course presented in the Western Cape in conjunction with Justice College, June 2012

In further support towards prosecutors within the NPA, the National Department of Environmental Affairs, supported by numerous provincial EMI institutions, in conjunction with the National Prosecuting Authority Human Resources initiated an advanced prosecutor training programme that focused on Biodiversity Enforcement. The collaboration resulted in two workshops titled “Advanced Prosecutor Biodiversity Training Course” being presented to prosecutors country-wide have already attended the “basic” prosecutor course presented in conjunction with Justice College. The initiative focuses on providing prosecutors with a more in-depth understanding on all issues related to Biodiversity Compliance and Enforcement.

12.4.3 NPA / DEA Advanced Prosecutor Training (Mpumalanga)

The 1st course for the year was presented from 11 – 15 June 2012, this time in Mpumalanga. Topics covered included sector specific regulatory mechanisms relating to hunting / game farms / taxidermy / CITES / Cycads / muti trade / and bio-prospecting, protocol around diplomats and diplomatic immunity, poisoning, use of

scheduled medicines/drugs, as well as marine protection in so far the Marine Living Resources Act. Numerous presenters from external departments and institutions presented during the course which included, SANBI, DIRCO, DAFF, Griffon, SANParks and UP Onderstepoort.

The course was attended by 38 prosecutors of various ranking from across South Africa. Apart from the daily programme, the course provided an opportunity for prosecutors to liaise and build networks-not only amongst themselves but also with the numerous experts who presented during the course. One highlight was on excursion to the KNP, and in particular the interaction which the prosecutors had with “Klokkies”, a White Rhino.



Prosecutors at the Advanced Biodiversity Focus Prosecutor course presented in Mpumalanga in conjunction with the NPA HR section, June 2012

12.4.4 NPA / DEA Advanced Prosecutor Training (Western Cape)

The second advanced prosecutor course was presented from 26 – 30 November 2012, this time around in Hermanus, Western-Cape. Similar to the first course a number of external departments and institutions presented during the course with the addition of SAPS, SAPS FSL.

The excursion this time round was an Abalone farm (Abagold) which provided prosecutors with an opportunity to interact directly with members of the industry, as well as understanding the threats of poaching not only on the natural resources but the livelihood of a potential sustainable industry.



Prosecutors at the Advanced Biodiversity Focus Prosecutor course presented in Mpumalanga in conjunction with the NPA HR section, November 2012

12.4.5 JOASA Environmental workshop

During 2012 the Director-General of DEA Ms Nosipho Ngcaba was approached by the Chairperson of JOASA Gauteng – (Judicial Officers Association of South Africa), Mr Xhanti Zeka, with a request from its members for DEA to present a workshop around Environmental Crime to its members.

The Judicial Officers Association of South Africa (JOASA) is a professional organisation (non governmental and non profit) which is recognised according to Regulation 41 of the Magistrate Act 90/1993. The Association is for Judicial Officers (Magistrates) and plays a vital role in ensuring that justice is dispensed without fear, favour or prejudice. It has a membership of no less than 1300 judicial officers out of a total of 2000 in South Africa. JOASA further seeks to expose judicial officers to education and training in order to equip them in all areas of the law. In order to achieve its goals, the organization has further also joined partnerships with other associations of judicial officers both internationally and nationally.

In the past both magistrates and prosecutors training was conducted by Justice College (a branch within the Department of Justice) with whom DEA, on behalf of the Environmental Management Inspectorate, has a standing agreement with in terms of the presentation of awareness workshops that focuses on environmental crimes in South Africa. Due to restructuring within Justice College, the function of training of magistrates has separated from the Justice College Programme; and will in the future, be combined with the awareness-raising with judges under a Judicial Training Institute.

As a result a three day weekend course was presented from (Friday evening till Sunday) 1 – 3 March 2013. These are typically presented over weekends, as the judicial officers are required to fulfill their normal duty within weekday court. The course was opened with the ever thought provoking session presented by Andrew Lowry from TUT, and continued the next day with topics being covered such as an overview of the EMI and legislative developments, crimes relating to the waste act, administrative enforcement against criminal prosecution, rhino and cycad poaching, CITES and an executive summary provided by DEA DDG, Ishaam Abader.

DEA would like to thank JOASA for the opportunity to facilitate the environmental crime workshop for its Gauteng members, and appreciates the professionalism and dedication shown by those in attendance. DEA will most definitely pursue the potential of presenting similar workshops with other provincial JOASA offices.



Judicial Officers that attended the DEA / JOASA environmental crime workshop.

13. STAKEHOLDER ENGAGEMENT

13.1 EMI SAPS SOP Implementation Workshop

On 25 – 26 April 2012, delegates from the South African Police Service and Environmental Management Inspectorate convened at the Protea OR Tambo Hotel for a two day workshop to develop an Implementation Guideline around the EMI SAPS Standard Operating Procedure (SOP). The aim of the guideline is to assist both parties in the practical implementation of the SOP in so far the investigation of environmental crimes as well as facilitating the carrying of specific dockets by the EMI in conjunction with the SAPS.

The outcome of the workshop was a draft implementation guideline which has been circulated amongst attendees for completion, which once done, will be submitted for final approval and implementation. As part of the implementation process the filming crew from the SAPS produced a media insert that was aired during “When Duty Calls” on SABC 2, highlighting the ground breaking work done between the EMI and SAPS. DEA wishes to thank everyone involved within the process and we look forward to strengthening this crucial partnership in the fight against environmental crimes.



Delegates from the SAPS and EMI that attended the two day workshop

13.2 City of Cape Town gets its first GREEN SCORPIONS



Back Row - Left to Right: Bethwell Mbete; Lynelle Matthys; Dave Arnott; David Oliver; Wendy Kloppers; Meroline Ockhuis Front Row - crouching left to right: Ed Filby; Linda Ndlela; Greg Howes

The designation of City of Cape Town staff as EMI (“Green Scorpions”) is now underway, thanks to the signing of an Implementation Protocol by the City’s Executive Mayor, Alderman Patricia de Lille, and the Provincial MEC for Environmental Affairs and Development Planning, Anton Bredell.

Ten staff members from Environmental Resource Management and City Health Specialised Services, have recently been designated as Environmental Management Inspectors (Green Scorpions) to enhance environmental compliance monitoring and enforcement within the City of Cape Town’s area of jurisdiction.

The designation is exclusively for the purpose of empowering City staff to execute their original local government compliance and enforcement mandate set out in Part B of Schedule 4 and 5 of the Constitution. City officials will for the first time be formally part of the national network that comprises the Inspectorate. This will allow for sharing of intelligence, experiences and standardised training and operational procedures. Most of all these staff members will now form part of the great EMI

team working to protect the environment. We see the City of Cape Town as a key role player in environmental monitoring and enforcement as we have staff on the ground to detect and respond to illegal activities, as well as a responsibility for regulating listed activities and air quality in terms of the National Environmental Management: Air Quality Act. Working closely with the Provincial Department of Environmental Affairs and Planning will assist the City’s designated officials to break through and enhance their powers of enforcement as the City currently has Grade 2 and Grade 3 EMI’s. These City EMI’s will not form part of one “unit”, based in a single directorate/department but instead, they form a network of environmental enforcement officials based in different directorates/departments across the City.

14. WHAT IS AHEAD FOR 2013-14?

As mentioned in our previous report, a project has commenced to develop a National Environmental Compliance and Enforcement Strategy for the Inspectorate and much of 2013/14 will focus on the situational analysis and understanding the impact of the work of the Inspectorate in order to inform the strategy development. Towards the end of the year we will host the seventh Environmental Compliance and Enforcement Lekgotla in the Western Cape, which will bring together the range of stakeholders that make up the environmental compliance and enforcement sector, to reflect on the implementation of the strategic recommendations emanating from the previous Lekgotla.

Within the national Department of Environmental Affairs, the 2013/14 financial year will see the integration of the compliance monitoring and enforcement functions, resulting in a more focused central structure dealing with all the “brown”, “green” and “blue” compliance and enforcement activities. Joint operations will continue to be co-ordinated through the Working Group structure based on the priorities identified by the Inspectorate, with a significant amount of resources being directed towards fighting the criminals threatening our rhino populations.

There will be a continued effort to develop EMI capacity in all spheres of government through the presentation of basic and specialised training programmes. In particular, there will be a focus on the training and designation of local authority officials and well as Grade 5 (field ranger) EMIs.

NOTES



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