



National Environmental Compliance & Enforcement Report 2013/14



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA



National Environmental Compliance & Enforcement Report 2013/14

October 2014

**Directorate: EMI Capacity Development and Support
DEPARTMENT OF ENVIRONMENTAL AFFAIRS**

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FOREWORD

In a recent report titled “The Environmental Crime Crisis: Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources”, the UN Under-Secretary General and UNEP Executive Director, Mr Achim Steiner, noted that “In the international community, there is now growing recognition that the issue of the illegal wildlife trade has reached significant global proportions. Illegal wildlife trade and environmental crime involve a wide range of flora and fauna across all continents, estimated to be worth USD 70–213 billion annually.... The illegal trade in natural resources is depriving developing economies of billions of dollars in lost revenues and lost development opportunities, while benefiting a relatively small criminal fraternity....”

South Africa is not beyond the reaches of those that choose to contravene environmental legislation, both international and domestically. It is now widely recognised that the nature, extent and impacts of environmental crime in this country go well beyond environmental impacts, but also undermines economies and livelihoods, good governance and the rule of law. On the other hand, ensuring an effective environmental compliance and enforcement regime benefits the public by securing a healthier and safer environment for themselves and their children. It benefits individuals, firms and others in the regulated community by ensuring a level playing field governed by clear rules applied in a fair and consistent manner. Countries benefit by creating a predictable investment climate based on the rule of law thereby promoting economic development.

The seventh National Environmental Compliance and Enforcement Report represents the efforts of the Environmental Management Inspectorate (EMI), the network of compliance and enforcement officials at national, provincial and local spheres of government, in achieving these objectives. The 2013/14 financial year has seen the number of EMIs more than double since their inception in 2007. Compliance and enforcement activities, such as the finalisation of criminal investigation dockets, as well as the issuing of directives and compliance notices has increased appreciably as compared to the previous reporting period. The power generation and refineries sectors have shown improved environmental performance in direct response to compliance and enforcement action by the Inspectorate. Of on-going concern, however, is the high incidence of illegal activities related to biodiversity and environmental impact assessment requirements. The report reveals, for example, that despite the handing down of a number of heavy sentences to those perpetrators involved in illegal rhino hunting activities, the numbers of animals poached continues to escalate at an unacceptable level.

Two events have highlighted the need for the Inspectorate to think ‘outside of the box’ at measures and strategies other than traditional compliance and enforcement approaches; as well as to leverage the potential benefits of effective collaboration with other relevant role-players. Firstly, the fifth National Environmental Compliance and Enforcement Lekgotla saw the Inspectorate gather together with its key stakeholders in the Western Cape in November 2013 and was aptly titled, “The EMI Evolution: Unlocking the Potential”. Secondly, the development of a National Environmental Compliance and Enforcement Strategy gave EMIs an opportunity to reflect on successes and failures of the past 8 years; and develop proposals for strengthening the ability of the Inspectorate to meet its Constitutional imperative. I am hopeful that these processes will allow the Inspectorate to build on the solid foundation created by the dedicated individuals that make up this critical law enforcement network; and accordingly present to you the 2013/14 National Environmental Compliance and Enforcement Report.



ISHAAM ABADER

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

ACRONYMS

Key:

DG	Director-General
EMI	Environmental Management Inspector
GEF	Global Environmental Facility
NECER	National Environmental Compliance and Enforcement Report
TOPS	Threatened or Protected Species

Key:

DEA	National Department of Environmental Affairs
Eastern Cape DEDET	Eastern Cape Department of Development, Environment and Tourism
Eastern Cape Parks	Eastern Cape Parks and Tourism Agency
Ezemvelo	Ezemvelo KwaZulu-Natal Wildlife
Free State DEDTEA	Department of Economic Development, Tourism and Environmental Affairs, Free State
GDARD	Gauteng Department of Agriculture and Rural Development
Isimangaliso	Isimangaliso Wetland Park Authority
KwaZulu-Natal DAEA	Department of Agriculture and Environmental Affairs, Kwa-Zulu Natal
Limpopo DEDET	Limpopo Department of Development, Environment and Tourism
Mpumalanga DEDET	Mpumalanga Department of Development, Environment and Tourism
Mpumalanga Parks	Mpumalanga Tourism and Parks Agency
Northern Cape DEANC	Department of Environmental Affairs and Nature Conservation, Northern Cape
North West DEDECT	Department of Economic Development, Environment, Conservation and Tourism, North West
NPA	National Prosecuting Authority
North West Parks	North West Park and Tourism Board
SANParks	South African National Parks
SAPS	South African Police Service
Western Cape DEADP	Department of Environmental Affairs and Development Planning, Western Cape

Key:

APPA	Atmospheric Pollution Prevention Act 45 of 1965
ECA	Environment Conservation Act 73 of 1989
MLRA	Marine Living Resources Act 18 of 1998
NEMA	National Environmental Management Act 107 of 1998
NEM:AQA	National Environmental Management: Air Quality Act 39 of 2004
NEM:BA	National Environmental Management: Biodiversity Act 10 of 2004
NEM:PAA	National Environmental Management: Protected Areas Act 57 of 2003
NEM:WA	National Environmental Management: Waste Act, No. 59, 2008
NWA	National Water Act 36 of 1998

National Legislation

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, admission of guilt fines are reported separately from convictions otherwise imposed by a court.

“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) by regulatory authorities, usually in circumstances where notices or directives are ignored, and / or actual or imminent significant harm is being caused to the environment.

“Convictions” reflects the number of convictions imposed by a court, whether pursuant to a trial or a guilty plea. This excludes convictions 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 which carries a criminal sanction.

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

“Green, Blue and Brown” refers to the compliance and enforcement activities taking place in the biodiversity and 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 EMI. These types of initial, baseline inspections may cover a broad range of environmental aspects (for example, air, water, waste) as is the case with the sector-based strategic compliance inspections described in 8 below.

“No. of non-compliances” means the total number of non-compliances related to environmental legislation, regulations, authorisations, licences and/or permits including conditions thereto identified by EMI when conducting inspections.

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

“Notices/directives issued” means administrative enforcement tools, such as compliance 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). Failure to comply with such compliance notice / directive is a criminal offence.

“Proactive inspections” means inspections that are initiated by an EMI without being triggered by a specific complaint, but rather as part of the institution’s broader compliance strategy. These inspections assess compliance with 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, an EMI is required to conduct a site visit to verify the facts alleged in the complaint, and to assess the level of non-compliance.

“Reported incidents” means all incidents of suspected non-compliance with environmental

obligations reported by institutions for the purposes of the NECER, irrespective of whether or not compliance and enforcement responses have been taken.

“Section 105A agreement” means a plea and sentence agreement entered into between an 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” fines paid by applicants who wish to obtain an *ex-post facto* environmental authorisation after having unlawfully commenced with a listed or specified activity in terms of S24F(1) of NEMA or after having unlawfully commenced, undertaken or conducted a waste management activity without a waste management licence in contravention of section 20(b) of NEM:WA.

“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 first obtaining such an authorisation.

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

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

1. INTRODUCTION

The 2013/14 financial year marks the 7th 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 a 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 realise there are dire consequences for those who choose to flout environmental laws.

The NECER is divided into 14 chapters. It commences with a summary of the key findings of the report, followed by a section outlining the capacity and profile of the Environmental Management Inspectorate. An overall perspective of the national compliance and enforcement statistics is followed by a more detailed breakdown per institution/province. The subsequent legal chapters include recent court cases related to the environment; as well as the legislative developments that came into effect in the past financial year. We then turn to operational activities related to industrial and biodiversity sectors; as well as the joint stakeholder operations. The nature and scope of environmental complaints and incidents received through the national hotline is followed by a chapter detailing the capacity-building efforts for EMIs, magistrates, prosecutors and other law enforcement authorities. We end the report off with chapters on stakeholder engagement and look ahead to plans for the 2014/15 financial year.

The NECER is not without constraints. Constraints that should be noted include the fact that the NECER 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 and certain cases that are investigated independently by the South African Police Service. In addition, it should be noted that the indicators included in the report are, at this stage, primarily output-based (reflecting the number of inspections or investigations) and do not link directly with environmental outcomes (such as reduction on pollution load or impact on health of ecosystems). Finally, the statistics reflected in this report emanate directly from the input received from the respective environmental authorities – no independent auditing or verification of this input is conducted by DEA or any other third party. In this respect, the report should be regarded as indicative (but not conclusive) of the general nature, scope and volume of activities undertaken by environmental compliance and enforcement authorities in this reporting period.

Despite these constraints, it is hoped that the NECER 2013/14 will continue to provide a valuable information resource to its readers as it strives to highlight the critical work currently being undertaken by the environmental compliance and enforcement sector.

2. KEY FINDINGS

2.1 The Environmental Management Inspectorate

- There has been a 12.26% increase in the total number of EMIs on the national register from **1705** in 2012/13 to **1915** in 2013/14.
- Of the total **1915** EMIs on the national register, **1252** (65%) are Grade 5 EMIs (field rangers employed at national and provincial parks authorities).
- There has been an 18.7% (**197**) increase in the number of Grade 5 EMI field rangers from **1055** in 2012/13 to **1252** in 2013/14.
- SANParks (**686**), Ezemvelo (**474**), Limpopo DEDET (**226**) Eastern Cape Parks (**107**) have the most EMIs (majority are Grade 5 field rangers) followed by DEA (**65**) and Western Cape DEADP (**52**), while Mpumalanga DEDET (**13**), Mpumalanga Parks (**10**), and Isimangaliso (**5**) have the least.
- Limpopo DEDET showed an annual increase of 128% from **104** EMIs in 2012/13 to **226** in 2013/14, followed by Eastern Cape DEDET and North West DEDET which each reported an increase of 23%. CapeNature recorded a 175% increase from **8** to **22** EMIs and Ezemvelo showed a 36% annual increase of EMIs.



2.2 Overall National Compliance and Enforcement Statistics

Enforcement:

- There has been a 34.52% increase in the number of reported environmental incidents, from 4479 in 2012/13 to 6025 in 2013/14.
- There was a general increase in the number of criminal dockets registered in the previous three financial year cycles, from 1080 (50.42% increase) in 2011/12, 1488 (37.7% increase) in 2012/13 and 1862 (25% increase) in 2013/14.
- The total number of admission of guilt fines (J534s) issued has dramatically decreased by 71.04% from 5825 in 2012/13 to 1687 in 2013/14.
- The total value of admission of guilt fines paid in 2013/14 was R 498 230, which has decreased by 23.85% from R 654 250 in 2012/13.
- The number of criminal dockets handed to the NPA increased by 41.42% from 268 in 2012/13 to 379 in 2013/14.
- The total number of arrests by EMIs has decreased by 35.77% from 1818 in 2012/13 to 1371 in 2013/14.
- The total number of acquittals has remained the same at 8 in 2012/13 and 2013/14.
- Convictions reported have slightly increased by 11.43% from 70 reported in 2012/13 to 78 in 2013/14.
- There has been a decrease in the number of plea and sentence agreements reached from 14 in 2012/13 to 11 reported in 2013/14.
- The total number of warning letters issued has increased from 187 in 2012/13 to 228 in 2013/14 which equates to an increase of 21.93%.
- The total number of administrative notices issued increased by 22.88% from 577 in 2012/13 to 709 in 2013/14.
- The number of civil court applications launched decreased by 50% from 4 in 2012/13 to 2 in 2013/14.
- There was a dramatic increase by 199.48% in the total value of section 24G administrative fines paid from R 5,385,215 in 2012/2013 to R 16,127,751 in 2013/14.

Compliance Monitoring:

- There were a total of 2849 facilities inspected in 2013/14, which reflects a 3% increase from the 2766 facilities inspected in 2012/13.
- Of the total number of facilities inspected 71% (2019) were against brown legislative requirements, while 29% (830) were in the green subsector.
- There was a significant increase of 60% in the total number of proactive inspections conducted bringing the total from 1215 in 2012/13 to 1953 in 2013/14.
- The total number of reactive inspections conducted in 2013/14 amounted to 896, which reflects a 40.21 % increase from the 639 conducted in 2012/13.
- The total number of non-compliances detected during inspection has decreased from 2482 in 2012/13 to 1539 in 2013/14, representing a significant 61.23% decrease. Of the total number of non-compliances detected, 623 (616 Brown and 7 Green) resulted in enforcement action being taken. This figure represents an increase in non-compliances resulting in enforcement action of 18.3 % in comparison to the 2012/13 figure of 524. Put differently, while the total number of non-compliances detected has decreased significantly, those that require enforcement action have increased.
- A total of 2271 inspection reports were finalised in the 2013/14 financial year.
- Of the 2849 inspections conducted, the greater majority (832) were as a result of routine inspections, 658 emanated from complaints and 343 were triggered by permit inspections.

2.3 Statistics per Institution/Province

- SANParks recorded the highest number of criminal dockets registered at 532, followed closely by Ezemvelo with 531 criminal dockets. The third highest was Limpopo DEDET with 435 dockets registered while Mpumalanga DEDET, North West DEDECT and KwaZulu-Natal DAEA reported no criminal cases.
- Ezemvelo recorded the highest number of arrests at 538, followed by Limpopo DEDET with 514 arrests.
- Admission of guilt fines (J534s) issued by Ezemvelo achieved the highest value bringing in a total of R 462 350 from the 395 fines issued. This was followed by SANParks with a value of R 341 685.00 from 549 fines issued.
- With a total of 173, the Western Cape DEADP recorded the highest number of administrative enforcement notices comprising of 113 pre-compliance notices, 21 final compliance notices, 29 pre-directives and 10 directives. With a total of 9, Limpopo DEDET reported the lowest number of administrative enforcement notices. These comprised of 2 pre-compliance notices and 7 pre-directives. SANParks, CapeNature, Ezemvelo, Eastern Cape Parks and Mpumalanga Parks recorded no administrative enforcement.
- Limpopo DEDET issued 80 warning letters, the highest of the EMI Institutions. They are followed by Mpumalanga DEDET who issued 52 warning letters.
- DEA recorded the highest total value of S24G fines paid, being R 5 931 000 while the Western Cape DEADP had recorded R 3 495 975 and GDARD recorded a total payment of R 3 109 026.
- North West DEDECT recorded the highest number of facilities inspected at 943 of which 382 were in respect of brown issues and 561 on green issues. This was followed by KwaZulu-Natal DAEA with 872 (867 brown and 5 green) and Western Cape with 291 brown issues only. At 30 inspections, the Free State DEDTEA recorded the lowest number of facilities inspected.
- DEA recorded the highest number of non-compliances detected (708) during the execution of compliance inspections, followed by KwaZulu-Natal DAEA which detected 525 non-compliances and Western Cape DEADP with 184. Both Limpopo DEDET and the North West DEDECT reported 40 non-compliances. Free State DEDTEA detected 22 non-compliances while Mpumalanga DEDET reported 20 non-compliances.

2.4 Industrial Compliance and Enforcement

Proactive strategic inspections (details of which are set out in chapter 8 of the report) which led to enforcement action have yielded positive results guiding offenders toward compliance; particularly in the cement sector.

Ongoing enforcement action in respect of the ferro-alloy, steel and iron industry (responsible for a significant negative impact on the environment to date) has resulted in the industry taking steps to increase compliance. Although this is a step in the right direction, the magnitude of the measures required to be taken by the sector in order to achieve full compliance will require both time and substantial resources. The Inspectorate will continue to exert pressure on this sector through enforcement action, where necessary. The ongoing compilation of accurate compliance records will continue so as to inform future action.

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. Notwithstanding this improvement, the Inspectorate will conduct follow-up inspections at these facilities in order to determine whether or not, and what level, of improvement has taken place at these facilities post the initial 2007 inspections.

2.5 National Complaints and Incidents

- In 2013/14, the total number of complaints and emergency incidents reported through any mode of reporting was **796**, which indicates a slight increase of 12% (88) incidents reported from **708** in 2012/13.
- The reported number of section 30 NEMA emergency incidents has increased from **213** in 2012/13 to **260** in 2013/14 and the number of complaints reported has shown a slight increase by 14% from **467** in 2012/13 to **536** in 2013/14.
- The highest number of section 30 NEMA emergency incidents reported were from the petroleum and transport sectors, amounting to **143** (55%) of the total of **260**.
- There has been a fluctuation in the reporting of certain types of incidents, with a significant increase in reports of illegal development from **44** in 2012/13 to **147** in 2013/14.
- There has been an increase in the number of complaints referred to Department of Mineral Resources from **14** in 2012/13 to **28** in 2013/14 followed by DEA mandated matters which has increased from **82** in 2012/13 to **112** and those referred to local authorities have increased from **110** in 2012/13 to **130** in 2013/14.

2.6 Annual Compliance and Enforcement Highlights

CATEGORY	RESULT	INSTITUTION	LEGISLATION
Most inspections conducted	Green issues = 561 Brown issues= 382 Total= 943 inspections	North West DEDECT	Multiple
Highest sentence of direct imprisonment without a fine option	S v W Mawala. The accused was convicted on 18 June 2013 of murder, illegal hunting and trespassing. Sentenced on 20 June 2013 to 15 years for Murder, 9 years for illegal hunting and 1 year for trespassing. Effective sentence is 21 years imprisonment.	Ezemvelo	Including NEM:BA
Highest sentence for a pollution and waste case	<i>The State v Nkomati Anthracite (Pty) Ltd.</i> The accused was sentenced to a fine of R1 000 000 wholly suspended for a period of 5 years and R4 000 000 paid to DEA towards the proper execution of their enforcement duties, environmental rehabilitation and enforcement training.	DEA	Contravention of section 24F(1)(a) of NEMA
Highest number of Section 24G fines	56 were issued. To date 34 have been paid in the total sum of R 5 931 000	GDARD	Section 24G of NEMA
The highest number of administrative enforcement notices issued	173 issued	Western Cape DEADP	NEMA and NEM:WA

2.6 Annual Compliance and Enforcement Highlights

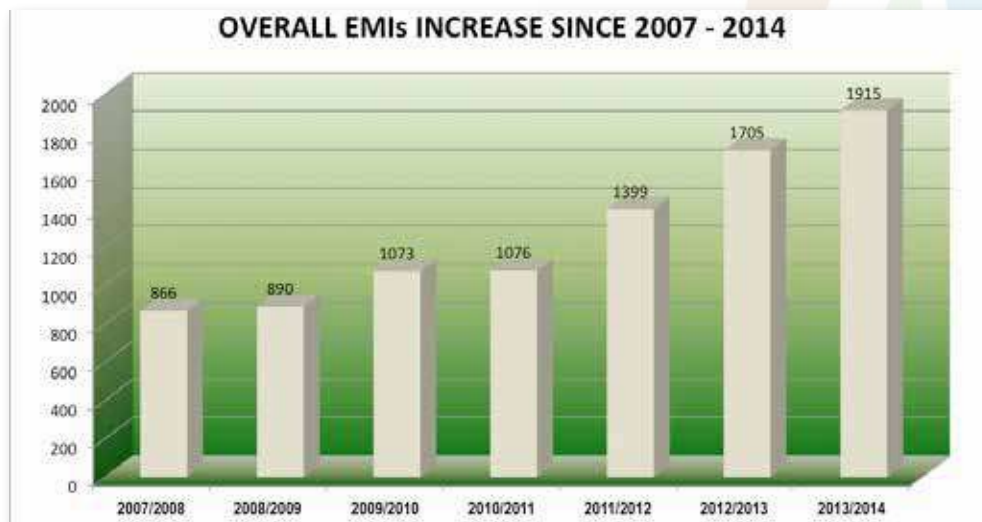
CATEGORY	RESULT	INSTITUTION	LEGISLATION
Highest number of admission of guilt fines issued	564 issued amounting to R159 380	Limpopo DEDET	Limpopo Environment Management Act (LEMA)

3. ENVIRONMENTAL MANAGEMENT INSPECTORS

Environmental Management Inspectors (EMIs) represent the environmental compliance and enforcement capacity in respect of NEMA and the specific national environmental management Acts. There are, of course, officials appointed in terms of provincial legislation and local authority by-laws who also carry out environmental compliance and enforcement functions in terms of that legislation.

EMIs are categorised according to various grades which reflect the compliance and enforcement powers bestowed on them in terms of Chapter 7 of NEMA. The grading system is intended to align the function of the EMI with the appropriate legislative powers. As at 31 March 2014, the national EMI Register (kept by DEA 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)) reflected a total of 1915 EMIs. The distribution (or annual increase) of EMIs is reflected in the table below.

3.1 The distribution of EMIs since 2007



3.2 Environmental Management Inspectors per Institution

INSTITUTION	2011-2012	2012-2013	2013-2014
CapeNature	8	22	21
DEA	66	63	65
Eastern Cape DEDECT	39	39	48
Eastern Cape Parks	62	107	107
Ezemvelo	310	423	474
Free State DEDTEA	22	30	30
GDARD	43	70	64
Isimangaliso	4	5	5
KwaZulu- Natal DAEA	37	34	38
Limpopo DEDET	75	104	237
Mpumalanga DEDET	14	12	13
Mpumalanga Parks	11	11	10
Northern Cape DEANC	16	19	19
North West DEDECT	25	26	32
SANParks	603	672	686
Western Cape DEADP	64	68	66
TOTAL	1399	1705	1915

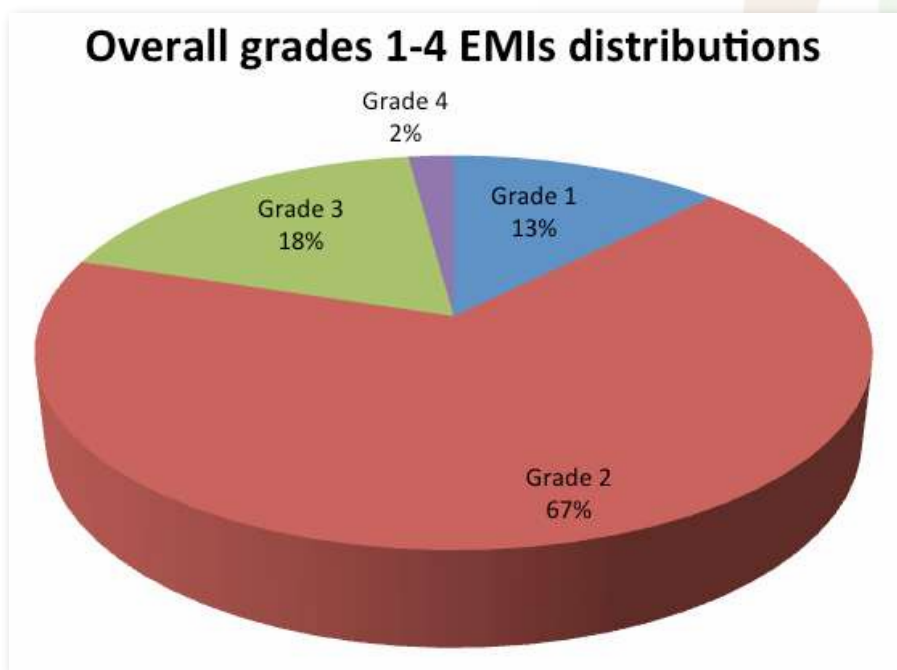
3.2.1 Grades 1- 4 Environmental Management Inspectors

Grades 1, 2, 3 and 4 EMI's 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
DEA	5	15	35	10	65
Eastern Cape DEDET	4	33	10	1	48
Eastern Cape Parks	0	9	1	0	10
Ezemvelo	22	29	0	0	51

GRADES	Grade 1	Grade 2	Grade 3	Grade 4	Total
Free State DEDTEA	1	28	1	0	30
GDARD	3	26	34	0	63
iSimangaliso	1	2	0	0	3
KwaZulu-Natal DAEA	12	26	0	0	38
Limpopo DEDET	10	40	4	2	56
Mpumalanga DEDET	4	6	3	0	13
Mpumalanga Parks	2	8	0	0	10
North West DEDECT	2	30	0	0	32
Northern Cape DEANC	1	18	0	0	19
SANParks	4	133	0	0	137
Western Cape DEADP	7	25	31	3	66
Total	78	449	120	16	663

Pie Chart 1: Overall percentage distribution on EMI's Grades 1-4.



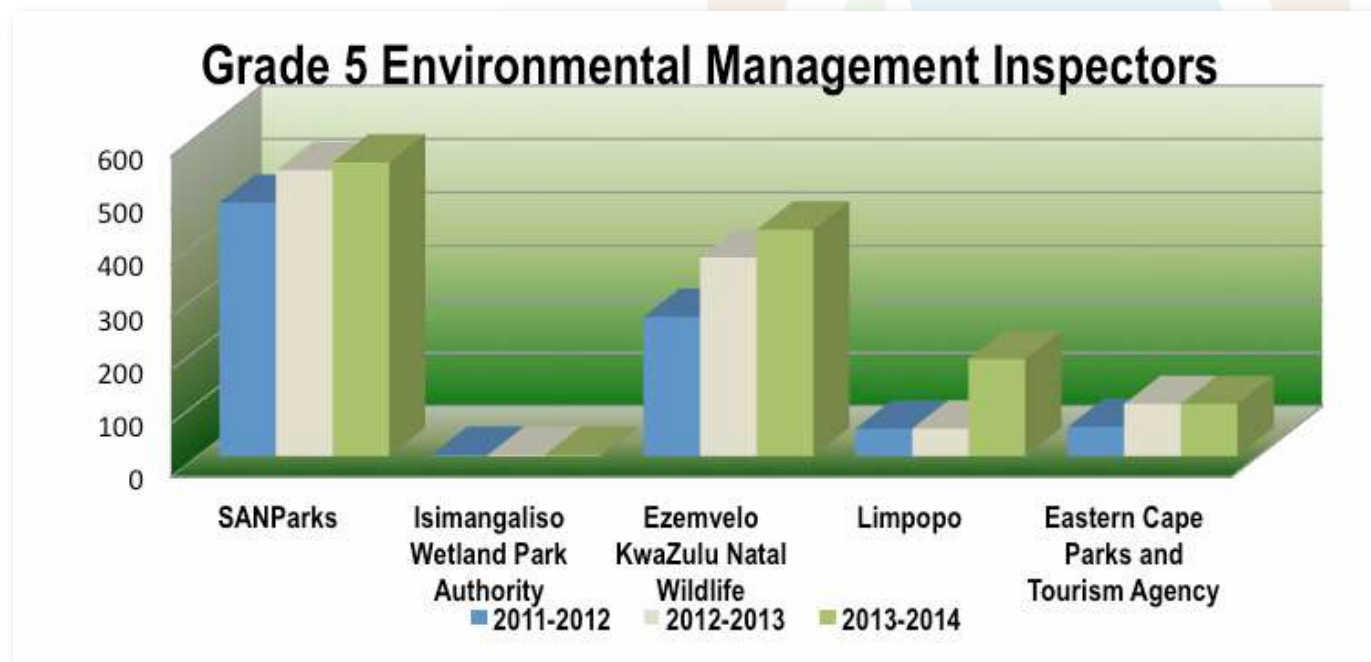
3.2.2 Grade 5 Environmental Management Inspectors

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 EMIs play a critical role in monitoring activities within these protected areas by conducting routine patrols and other compliance and enforcement activities.

There has been a general increase in the number of Grade 5 designated EMIs since 2011/12. In the past year an increase of 18.67% or 197 Grade 5 EMIs was recorded. This increase can be attributed to the continued roll-out of the Grade 5 EMI training programme in Ezemvelo, Limpopo DEDET and SANParks.

INSTITUTION	2011-2012	2012-2013	2013-2014
Eastern Cape Parks	54	97	97
Ezemvelo	260	371	423
Isimangaliso	2	2	2
Limpopo DEDET	51	51	181
SANParks	474	534	549
TOTAL	841	1055	1252

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



3.2.3 Local Authority Environmental Management Inspectors

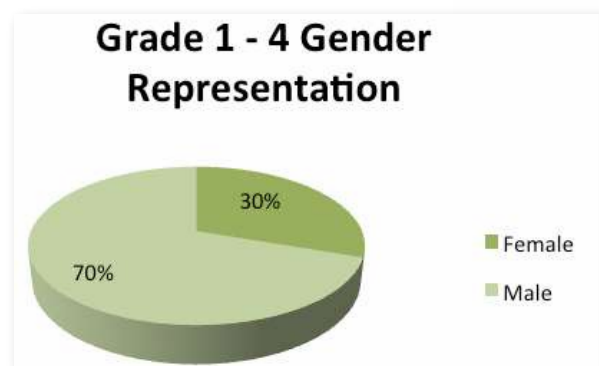
The 2012/13 financial year marked the roll out of local authority EMIs. The addition of this sphere of government to the capacity of the Inspectorate is aimed at capacitating local authorities, mandated to enforce certain environmental issues (in terms of Schedules 4 and 5 of the Constitution) with the tools to do so. The total number of local authority EMIs has virtually doubled as compared to the previous financial year.

Table Number of local authority EMIs designated

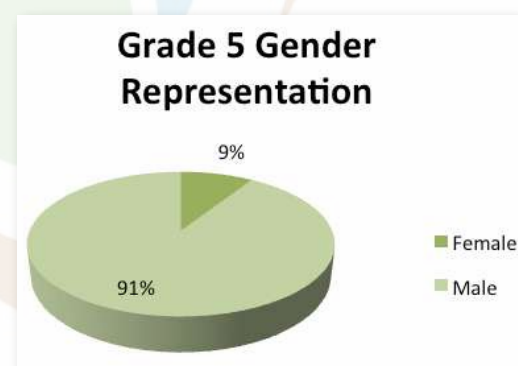
Province	Local Authority	2012-13-FY	2013-14FY
Gauteng	City of Johannesburg	11	9
	City of Tshwane	–	2
	Mogale City	–	5
	Sedibeng	–	1
	Emfuleni	4	1
	West Rand	8	1
	Ekurhuleni Metropolitan	–	2
Limpopo	Capricorn District	8	7
	Mopani District	2	2
	Waterberg District	2	2
Western Cape	Drakenstein	1	1
	City of Cape Town	10	13
Grand Total		47	46

3.2.4 Environmental Management Inspectors: Gender and Grades pie charts per institution

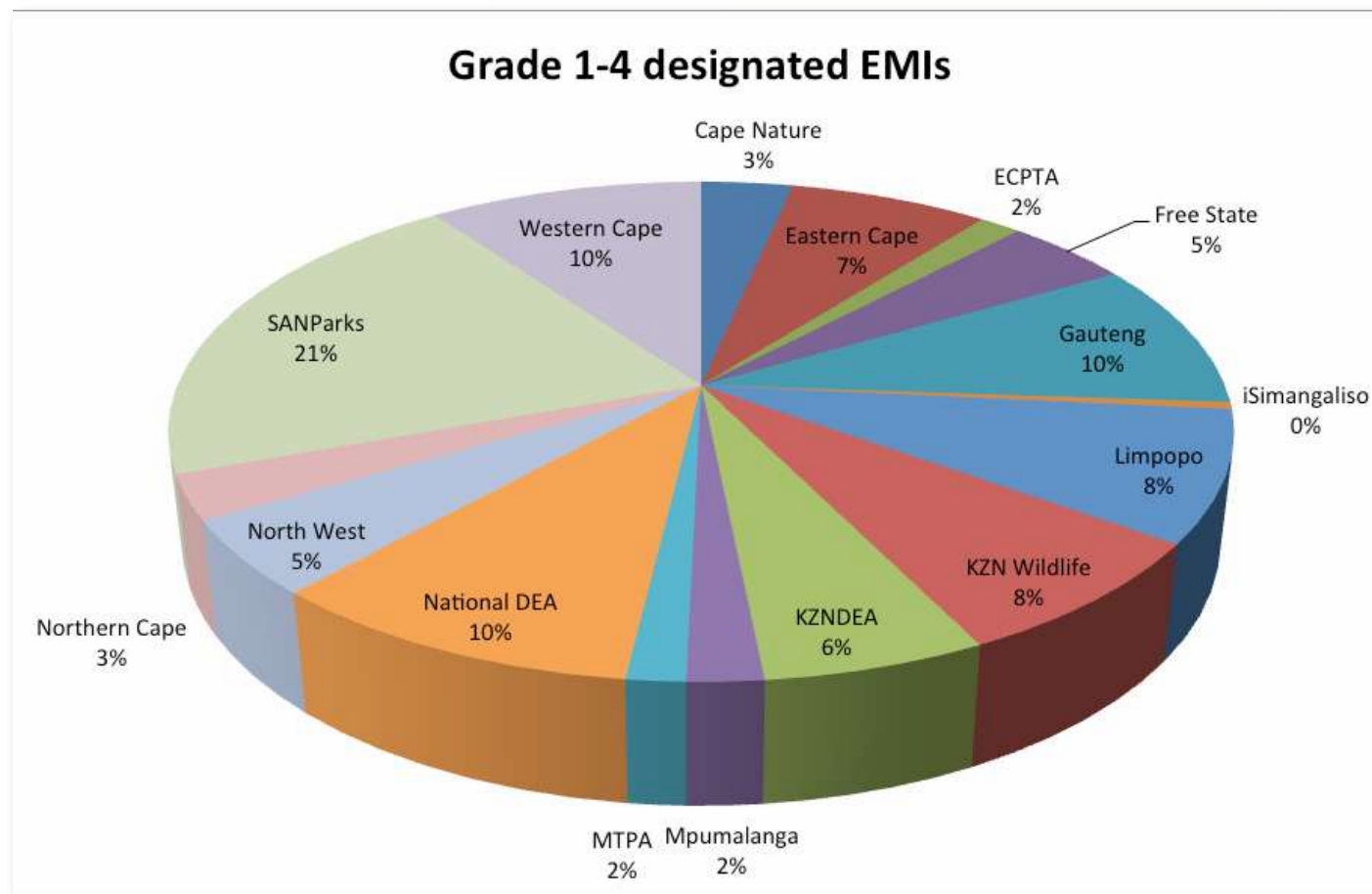
Pie chart 2: Grade 1- 4 Gender representations



Pie chart 3: Grade 5 Gender representation

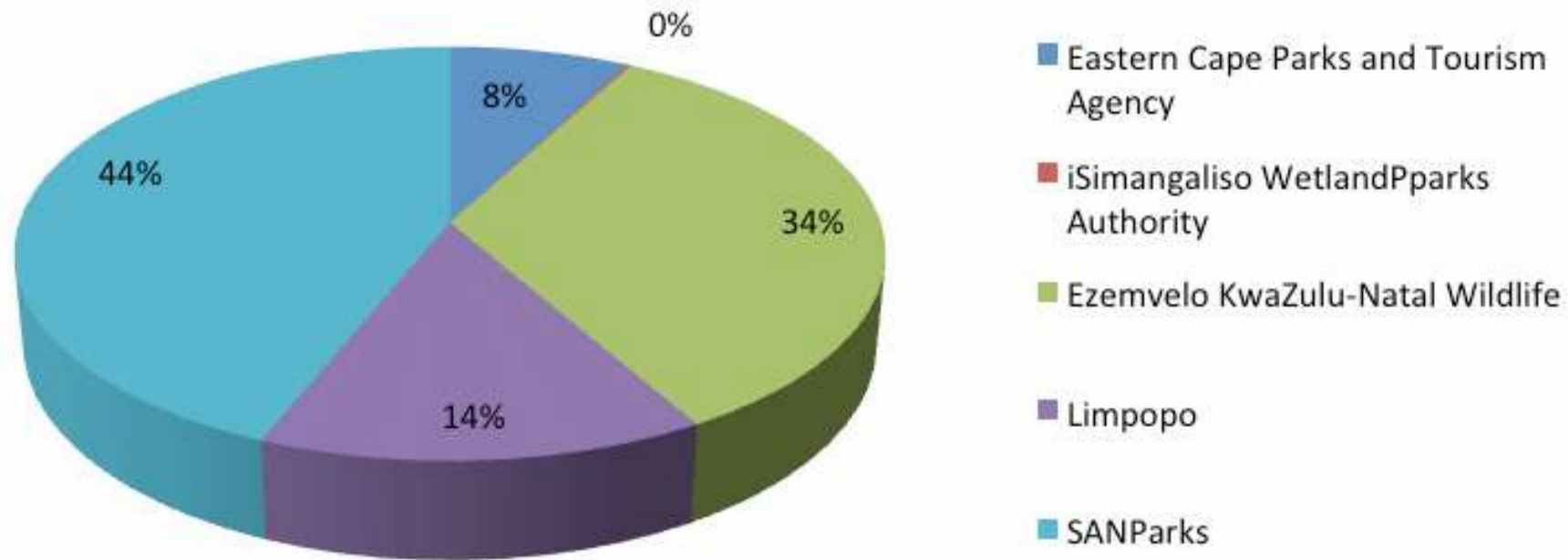


Pie chart 4: Distribution of designated Grade 1-4 EMIs available per EMI institutions



Pie chart 5: Distribution of designated Grade 5 EMIs available per EMI institutions

Grade 5 designated EMIs

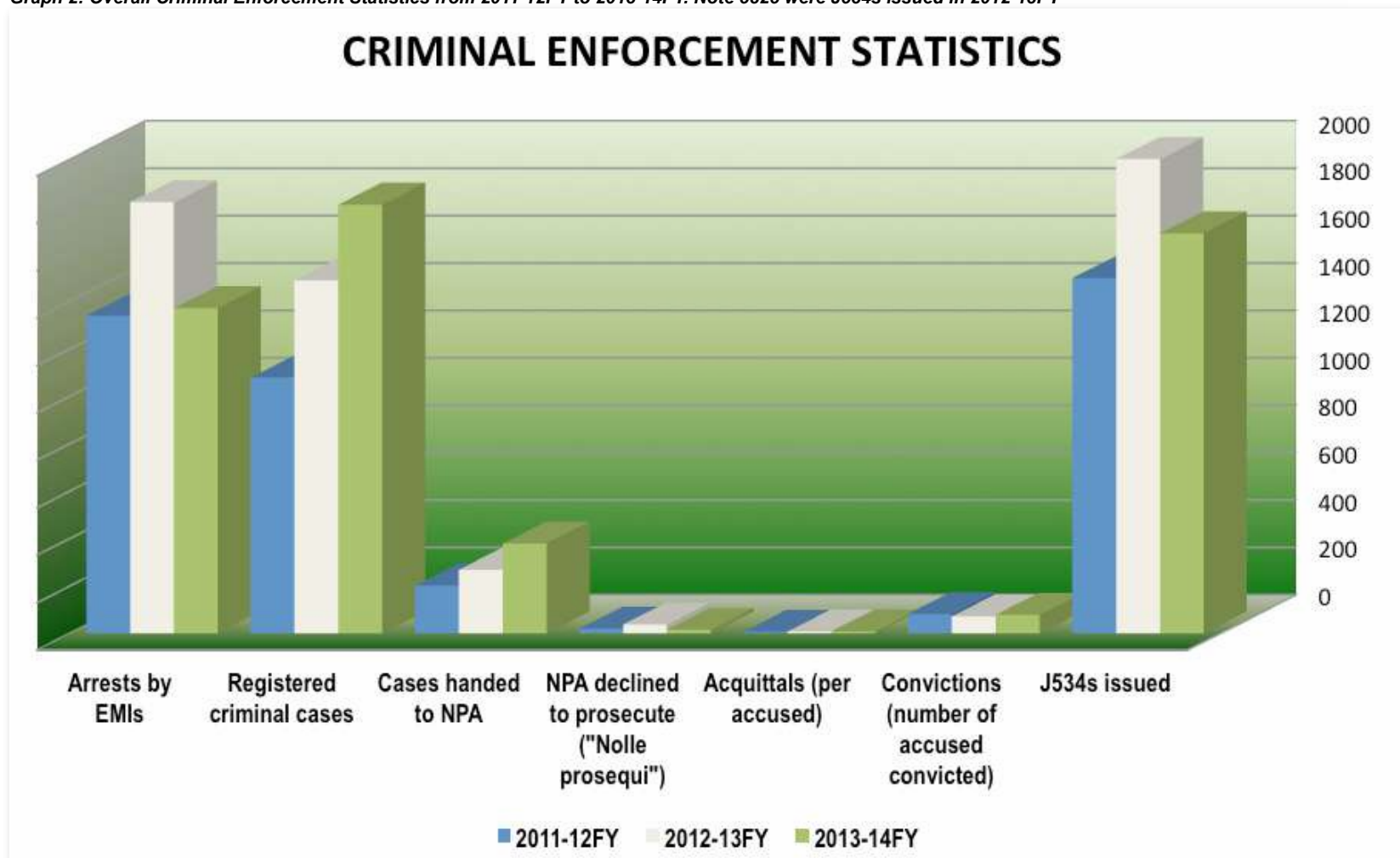


4. OVERALL NATIONAL COMPLIANCE AND ENFORCEMENT STATISTICS

4.1 Enforcement

	2011-12FY	2012-13FY	2013-14FY
Criminal Enforcement			
Arrests by EMIs	1339	1818	1371
Criminal dockets registered	1080	1488	1861
Cases handed to NPA	201	268	378
NPA declined to prosecute (nolle prosequi)	20	37	15
Section 105A agreements (plea bargains)	13	14	11
Acquittals	7	8	5
Convictions (excl. J534s)	82	70	78
J534 (Admission of Guilt Fines):Total number issued	1498	5825	1687
J534: Total number paid	759	993	854
J534: Total value of fines paid	R 470,080.00	R 654 250	R 498 230
Administrative Enforcement and Civil Actions			
Warning letters issued	459	187	228
Pre-directives issued	86	84	95
Pre-compliances notices issued	276	333	400
Directives issued	49	36	60
Final compliance notices issued	110	124	154
Civil court applications launched	7	4	2
S24G administrative fines: Total value paid	R 17,627,233	R 5 385 215	R 12 517 026
S24G: Total number of fines paid	86	49	73

Graph 2: Overall Criminal Enforcement Statistics from 2011-12FY to 2013-14FY. Note 5825 were J534s issued in 2012-13FY



4.1.1 Most prevalent crimes reported

The 2013/14 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 continued to be the most common non-compliance, while in the “green” sub-sector, illegal hunting continued 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: PAA)	463
	DEA	Waste related cases (NEM:WA)	76
Western Cape	Western Cape DEADP	Unlawful commencement of listed activities (NEMA)	197
	CapeNature	Angling without an angling permit (MLRA)	29
Kwa-Zulu Natal	KwaZulu-Natal DAEA	Unlawful commencement of listed activities (NEMA)	245
	Ezemvelo	Illegal entry / Poaching Prohibited activity (Ordinance 15 of 1974)	1219
	Isimangaliso	Illegal hunting and snaring (NEMBA)	10
Gauteng	GDARD	Import hunting trophies (CITES)	392
Limpopo	Limpopo DEDET	Illegal cutting and collection of wood (LEMA)	256
Eastern Cape	Eastern Cape DEDEA	Illegal activities (Ordinance 19 of 1974 Sec 63)	84
	Eastern Cape Parks	Illegal hunting inside protected area (NEM:PAA, MLRA and ECPTA Act)	17
Free State	Free State DEDTEA	Illegal possession of wild animals and import (NEMBA, TOPS & CITES)	34
Mpumalanga	Mpumalanga DEDET	Illegal commencement of listed activities (NEMA S24 F)	43
	Mpumalanga Parks	Illegal rhino hunting (Mpumalanga Nature Conservation Act 10/ 1998 sec 5)	74
Northern Cape	Northern Cape DEANC	Failure to comply with condition (NC Nature Conservation Act 9 of 2009)	47
North West	North West DEDECT	Illegal hunting and netting (Transvaal Nature Conservation Ordinance Act 12 of 1883)	29
	North West Parks	Illegal hunting of rhino (NEMBA S57)	28

4.1.2 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 (unlawful commencement of listed activities) and the National Environmental Management: Biodiversity Act (in particular the TOPS and CITES Regulations) appear as the top 2 pieces of national environmental legislation contravened.

	Legislation	Ezemvelo	GDARD	Free State DEDETA	North West DEDECT	Limpopo DEDET	Northern Cape	DEA	Western Cape DEADP	Eastern Cape Parks	Eastern Cape DEDET	Mpumalanga DEDET	KwaZulu-Natal DAEA	CapeNature	SANParks	Isimangaliso	Mpumalanga Parks	North West Parks	TOTAL
National Legislation	NEMA (including EIA Regulations)	32	167	21	15	17	69	94	197	-	105	52	423	-	-	-	-	-	1192
	NEM:BA including TOPS & CITES Regulations	553	737	66	31	-	2	-	-	3	26	-	-	-	-	10	-	28	1456
	NEM:PAA	74	-	-	2	-	-	-	-	3	1	-	-	-	-	7	-	-	87
	APPA	-	-	-	-	-	-	15	-	-	-	-	-	-	-	-	-	-	15
	NEM:AQA	-	12	-	-	-	-	8	-	-	-	-	-	-	-	-	-	-	20
	NEM:WA	-	28	-	1	-	-	76	-	1	6	-	3	-	-	-	-	-	115
	ECA	-	44	20	-	-	-	33	-	-	-	-	5	-	-	-	-	-	102
	MLRA	469	1	-	-	-	-	-	-	7	-	-	-	29	-	-	1	-	507
	NWA	-	-	-	-	-	-	8	-	-	-	-	-	-	-	-	-	-	8
	Sub-Total	1128	989	107	49	17	71	234	197	14	138	52	431	29	-	17	0	28	3501

4.2 Compliance Monitoring Inspection Activities of EMI Institutions

Conducting compliance monitoring inspections to ascertain whether or not the regulated community is complying with the relevant legislative provisions, as well as with any and all authorisations, licences and permits issued in terms of this legislation, plays a critical role in ensuring continued compliance. Without effective compliance monitoring activities, non-compliance may go undetected and thus the necessary enforcement action in the case of non-compliance would, in many cases, not be perused.

The following table highlights both “brown” and “green” compliance inspections conducted during the 2013/14 financial year. It is important to note that any single facility may require a number of environmental authorisations, licences or permits. Put differently, one facility does not mean one authorisation. Compliance with each and every authorisation, licence and permit held by a facility must be ascertained. It is critical that this initial or “baseline” inspection is then followed up with further inspections so that any improvement or deterioration in the level of environmental compliance by that facility may be assessed.

Source of trigger for inspection										
Institution	Complaint	Compliance Monitoring	Enquiry	Follow-up	Permit	Pro-active Inspection	Referral	Routine Inspection	Unspecified	Grand Total
CapeNature	-	-	-	-	152	-	-	-	-	152

Source of trigger for inspection										
Institution	Complaint	Compliance Monitoring	Enquiry	Follow-up	Permit	Pro-active Inspection	Referral	Routine Inspection	Unspecified	Grand Total
DEA	-	16	-	-	-	26	-	-	-	42
Free State DEDTEA	4	-	-	2	-	23	-	-	1	30
GDARD	-	-	-	-	-	-	-	-	182	182
KwaZulu-Natal	175	-	31	-	52	-	1	606	7	872
Limpopo DEDET	53	4	2	17	10	57	-	1	-	144
Mpumalanga	68	28	-	-	-	5	-	-	-	101
North West DEDECT	70	2	-	-	37	182	-	225	427	943
Northern Cape DEANC	-	-	-	-	92	-	-	-	-	92
Western Cape DEADP	288	-	-	-	-	3	-	-	-	291
Grand Total	658	50	33	19	343	296	1	832	617	2849

4.2.1 Brown Issues

Institution	Number of facilities inspected	Proactive	Reactive	Number of non-compliances	Enforcement action required
DEA	42	42	-	708	8
Free State DEDTEA	9	6	3	11	4
GDARD	182	160	22	0	57
KwaZulu-Natal DAEA	867	670	197	523	317
Limpopo DEDET	144	142	2	40	27
Mpumalanga DEDET	101	38	63	20	48
North West DEDECT	382	311	71	40	67
Western Cape DEADP	291	0	291	184	88
TOTAL	2018	1369	649	1526	616

4.2.2 Green Issues

Institution	Number of facilities inspected	Proactive	Reactive	Number of non-compliances	Enforcement action required
CapeNature	152	–	152	–	–
Free State DEDTEA	21	18	3	11	5
Ezemvelo		–		2	2
North WestParks	561	474	87	–	–
Northern Cape DEANC	92	–		–	–
TOTAL	830	584	246	13	7



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		
	2011-12FY	2012-13FY	2013-14FY
Criminal Enforcement			
Arrests by EMIs	2	44	27
Criminal dockets registered	29	99	54
Cases handed to NPA	16	62	52
NPA declined to prosecute (nolle prosequi)	1	17	3
Section 105A agreements (plea bargains)	1	1	4
Acquittals	0	1	2
Convictions	15	14	12
J534s issued	–	0	0
J534s paid	–	0	0
Administrative Enforcement and Civil Actions			
Warning letters written	15	14	14
Pre-directives issued	24	16	11
Pre-compliance notices issued	35	40	40
Final directives issued	11	3	3
Final compliance notices issued	14	9	9
Civil court applications launched	4	0	1
S24G administrative fines paid (total value / number)	R 11 028 000 ¹	R2 228 500	R 5 931 000
	10	5	6

1. 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 ²			ISIMANGALISO WETLAND PARK AUTHORITY		
	2011-12FY	2012-13FY	2013-14FY	2011-12FY	2012-13FY	2013-14FY
Criminal Enforcement						
Arrests by EMIs	328	92	129	7	10	12
Criminal dockets registered	391	446	532	14	3	15
Cases handed to NPA	32	25	69	14	4	18
NPA declined to prosecute (nolle prosequi)	1	0	0	0	0	0
Section 105A agreements (plea bargains)	0	1	0	–	1	0
Acquittals	1	0	0	0	0	0
Convictions	16	0	26	3	0	3
J534s issued	222	4374	549	2	0	0
J534s paid (number)	4	–	49	2	–	0
J534s paid (value)	0	–	R 67 250	–	R 0	0
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	–	–	–	3	2	0
S24G administrative fines paid (total value / number)	–	–	–	0	0	0

2. These statistics do not reflect the compliance and enforcement activities of all national parks on all of the indicators, but rather reflect those parks, such as the Kruger and Table Mountain National Parks, where such information is available.

5.2 Provincial Institutions and Parks

5.2.1 Western Cape



	DEPARTMENT OF ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING			CAPENATURE		
	2011-12FY	2012-13FY	2013-14FY	2011-12FY	2012-13FY	2013-14FY
Criminal Enforcement						
Arrests by EMIs	0	0	0	12	38	5
Criminal dockets registered	8	4	6	18	23	5
Cases handed to NPA	8	4	6	0	5	0
NPA declined to prosecute (nolli prosequi)	0	0	2	0	2	1
Section 105A agreements (plea bargains)	0	0	0	0	1	0
Acquittals	0	0	0	0	0	0
Convictions	0	0	0	2	6	4
J534s issued	0	0	0	133	88	54
J534s paid (number)	0	0	0	13	30	22
J534s paid (value)	0	0	0	R 10 690	R 22 870	R 14 950
Administrative Enforcement and Civil Actions						
Warning letters written	109	17	19	–	0	–
Pre directives issued	26	14	29	–	0	–
Pre-compliance issued	56	61	113	–	0	–
Final directives issued	4	4	10	–	0	–
Final compliance notices issued	23	9	21	–	0	–
Civil court applications launched	–	0	0	–	0	–
S24G administrative fines paid (total value / number)	R1 275 675	R 67 500	R 3 495 975	–	0	–
	42	3	72			

5.2.2 Kwazulu-Natal



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



	DEPARTMENT OF AGRICULTURE & ENVIRONMENTAL AFFAIRS			EZEMVELO KZN WILDLIFE		
	2011-12FY	2012-13FY	2013-14FY	2011-12FY	2012-13FY	2013-14FY
Criminal Enforcement						
Arrests by EMIs	0	0	0	424	812	538
Criminal dockets registered	1	0	0	392	652	531
Cases handed to NPA	0	0	0	0	- ³	-
NPA declined to prosecute (nolli prosequi)	0	0	0	-	-	-
Section 105A agreements (plea bargains)	0	0	0	-	-	-
Acquittals	0	0	0	-	-	-
Convictions	0	0	0	-	-	-
J534s issued	0	0	0	287	445	395
J534s paid (number)	0	0	1	140	251	235
J534 paid (value)	0	0	R0	R 152 700	R 254 350	R 245 500
Administrative Enforcement and Civil Actions						
Warning letters written	57	71	15	-	-	-
Pre-directives issued	8	10	1	-	-	-
Pre-compliance notices issued	44	64	104	-	-	-
Final directive issued	10	4	0	-	-	-
Final compliance notices issued	9	19	31	-	-	-
Civil court applications launched	0	0	0	-	-	-
S24G administrative fine paid (total value / number)	R 892 333	R 261 500	R 349 000	-	-	-
	1	3	8			-

3. 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.

5.2.3 Gauteng



GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT	2011-12FY	2012-13FY	2013-14FY
Criminal Enforcement			
Arrests by EMIs	0	20	8
Criminal dockets registered	44	36	57
Cases handed to NPA	23	21	12
NPA declined to prosecute (nolle prosequi)	11	4	5
Section 105A agreements (plea bargains)	7	6	4
Acquittals	1	1	0
Convictions	11	8	6
J534s issued	26	33	40
J534s paid (number)	19	23	18
J534s paid (value)	R 14 250	R 14 200	R 11 350
Administrative Enforcement and Civil Actions			
Warning letters written	3	2	2
Pre-directives issued	2	17	7
Pre-compliance notices issued	40	90	74
Directives issued	5	6	16
Final compliance notices issued	10	30	35
Civil court applications launched	0	0	0
S24G administrative fines paid (total value / number)	R 2 341 083	R 2 391 216	R 3 109 026
	8	28	34

5.2.4 Limpopo



	2011-12FY	2012-13FY	2013-14FY
Criminal Enforcement			
Arrests by EMIs	413	643	514
Criminal dockets registered	31	45	435
Cases handed to NPA	29	87	161
NPA declined to prosecute (nolle prosequi)	1	8	0
Section 105A agreements (plea bargains)	1	1	0
Acquittals	0	3	0
Convictions	18	15	20
J534s issued	639	791	564
J534s paid (number)	522	653	503
J534s paid (value)	R 176 740	R 326 580	R 128 230
Administrative Enforcement and Civil Actions			
Warning letters written	1	0	80
Pre-directives issued	1	0	7
Pre-compliance notices issued	14	8	2
Directives issued	1	1	0
Final compliance notices issued	2	4	0
Civil court applications launched	0	2	0
S24G administrative fines paid (total value / number)	R 17 142	R 27 700	R 0
	1	2	0

5.2.5 Eastern Cape



	DEPARTMENT OF ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS			EASTERN CAPE PARKS & TOURISM AGENCY		
	2011-12FY	2012-13FY	2013-14FY	2011-12FY	2012-13FY	2013-14FY
Criminal Enforcement						
Arrests by EMIs	28	16	48	17	20	43
Criminal dockets registered	77	37	50	12	23	32
Cases handed to NPA	40	4	22	12	5	4
NPA declined to prosecute (nolle prosequi)	6	3	2	0	1	0
Section 105A agreements (plea bargains)	1	0	0	0	0	1
Acquittals	2	0	1	1	0	0
Convictions	8	0	0	1	3	0
J534s issued	183	67	35	0	0	1
J534s paid (number)	54	15	5	0	0	0
J534s paid (value)	R 110 400	R12 300	R 7 350	R 0	R 0	R 0
Administrative Enforcement and Civil Actions						
Warning letters written	265	59	38	0	–	–
Pre-directives issued	6	0	1	0	–	–
Pre-compliances issued	50	8	16	0	–	–
Final directives issued	4	0	0	0	–	–
Final compliance notices issued	17	1	2	0	–	–
Civil court applications launched	0	0	0	–	–	–
S24G administrative fines paid (total value / number)	R 191 000	R 0	R 756 000	–	–	–
	8	–	7			

5.2.6 Free State



DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS	2011-12FY	2012-13FY	2013-14FY
Criminal Enforcement			
Arrests by EMIs	15	51	19
Criminal dockets	14	31	21
Cases handed to NPA	12	27	19
NPA declined to prosecute (nolle prosequi)	0	1	1
Section 105A agreements (plea bargains)	0	1	2
Acquittals	0	1	0
Convictions	2	20	7
J534s issued	4	8	7
J534s paid (number)	3	4	7
J534s paid (value)	R 3 000	R 1 700	R 5 500
Administrative Enforcement and Civil Actions			
Warning letters written	1	12	7
Pre-directives issued	10	15	20
Pre-compliance notices issued	10	18	2
Directives issued	3	6	2
Final compliance notices issued	7	17	16
Civil court applications launched	0	0	0
S24G administrative fines paid (total value / number)	R 0	R 25 000	R11 4750
		1	4

5.2.7 Mpumalanga



	DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM			MPUMALANGA TOURISM AND PARKS AGENCY		
	2011-12FY	2012-13FY	2013-14FY	2011-12FY	2012-13FY	2013-14FY
Criminal Enforcement						
Arrests by EMIs	0	0	0	53	15	15
Criminal dockets registered	0	3	1	18	35	75
Cases handed to NPA	0	1	1	8	6	8
NPA declined to prosecute (nolle prosequi)	0	0	0	1	0	1
Section 105A agreements (plea bargains)	0	0	0	0	0	0
Acquittals	0	0	0	0	0	0
Convictions	0	0	0	3	0	0
J534s issued	0	0	0	0	3	0
J534s paid (number)	0	0	0	0	1	0
J534s paid (value)	0	0	0	R 0 00	R 1 500	R 0
Administrative Enforcement and Civil Actions						
Warning letters written	8	12	52	0	0	0
Pre-directives issued	7	12	10	0	0	0
Pre-compliances issued	16	12	29	0	0	0
Final directives issued	0	5	27	0	0	0
Final compliance notices issued	11	5	25	0	0	0
Civil court applications launched	0	0	0	0	0	0
S24G administrative fines paid (total value / number)	R 215 000	R0	R 2 272 000	0	0	0
	7	1	17			

5.2.8 Northern Cape



DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND NATURE CONSERVATION	2011-12FY	2012-13FY	2013-14FY
Criminal Enforcement			
Arrests by EMIs	-	3	5
Criminal dockets	-	33	20
Cases handed to NPA	-	0	5
NPA declined to prosecute (nolle prosequi)	-	0	0
Section 105A agreements (plea bargains)	-	1	0
Acquittals	-	0	0
Convictions	-	0	0
J534s issued	-	0	25
J534s paid (number)	-	0	0
J534s paid (value)	-	R 0	R 0
Administrative Enforcement and Civil Actions			
Warning letters written	0	0	0
Pre-directives issued	0	0	6
Pre-compliance notices issued	0	4	10
Directives issued	10	4	0
Final compliance notices issued	10	18	11
Civil court applications launched	0	0	0
S24G administrative fines paid (total amount and number)	R 0	R 0	R 0
	1	6	0

5.2.9 North West



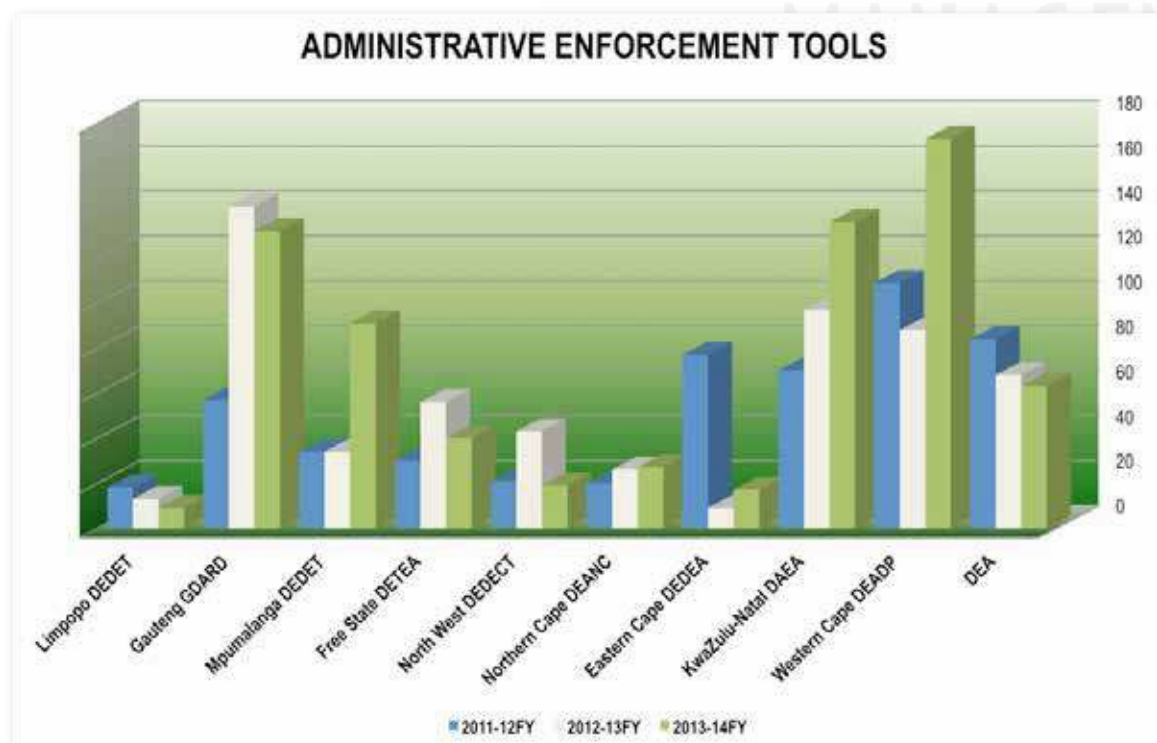
the DEDET
Department:
Economic Development, Environment, Conservation and
Tourism
North West Provincial Government
Republic of South Africa



	DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT, CONSERVATION, AND TOURISM			NORTH WEST PARKS AND TOURISM BOARD
	2011-12FY	2012-13FY	2013-14FY	2013-14
Criminal Enforcement				
Arrests by EMIs	41	54	2	2
Criminal dockets	31	33	0	28
Cases handed to NPA	15	17	0	2
NPA declined to prosecute (nolle prosequi)	0	1	0	0
Section 105A agreements (plea bargains)	3	1	0	0
Acquittals	3	2	0	2
Convictions	3	4	0	0
J534s issued	2	16	16	0
J534s paid (number)	–	16	14	0
J534s paid (value)	R 2 300	R 20 750	R 18 100	0
Administrative Enforcement and Civil Actions				
Warning letters written	0	0	1	–
Pre-directives issued	2	0	3	–
Pre-compliance notices issued	11	28	10	–
Directives issued	1	3	2	–
Final compliance notices issued	7	12	4	–
Civil court applications launched	0	0	0	–
S24G administrative fines paid (total value / number)	R1 667 000	R 383 800	R 100 000	–
	9	–	1	–

The following 2 graphs compare the use of administrative and criminal enforcement mechanisms by each of the EMI Institutions. The comparison for the 2013/14 financial year reveals that the use of administrative enforcement (i.e. directives and notices) remains the preferred tool of the authorities dealing with “brown” issues, with the Western Cape DEADP, GDARD and KwaZulu-Natal DAEA showing the highest numbers issued for this reporting period. Although the number of criminal convictions continue to be dominated by the “green” subsector, with SANParks recording the most convictions, a significant number convictions have been secured in respect of brown offences (see for example DEA, Free State and Gauteng).

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



Graph 5: Comparative number of convictions obtained per institution



6. ENVIRONMENTAL JURISPRUDENCE

In 2013/14, both the higher and lower courts considered and pronounced on several cases involving the interpretation and application of environmental law. The judgments summarised below are just a few examples of both civil and criminal matters heard during the reporting period. The civil matters relate to the scope of a directive issued in terms of section 19 of the National Water Act, *ex post facto* authorisation pursuant to a NEMA section 24G application as well as a request for access to information brought under to the Promotion of Access to Information Act. The criminal cases consider issues such as director liability for offences committed by a company, search and seizure powers and the unlawful commencement of EIA listed activities.

Parties	HARMONY GOLD MINING COMPANY LIMITED V REGIONAL DIRECTOR: FREE STATE DEPARTMENT OF WATER AFFAIRS & OTHERS 971/12
Category	Administrative: Directive issued in terms of section 19 of the National Water Act, 1998
Court	Supreme Court of Appeal
Facts	Five gold mining companies (including the appellant, Harmony) conducted gold mining operations in an area in the North West known as the KOSH area. On 1 November 2005 these 5 companies were issued with a directive in terms of section 19(3) of the NWA. The directive required the companies to take anti-pollution measures in respect of ground and surface water contamination caused by their gold mining activities and to continue taking such measures until such time as an agreement, and a joint proposal towards the long term sustainable management of water arising from mining activities in the KOSH area, was submitted to, and approved by, the Department of Water Affairs (DWA). Since about 2003 Harmony conducted its gold mining operations in the KOSH area on certain immovable property belonging to ARMGold. ARMGold then sold its immovable property and gold mining business to Pamodzi. In terms of the sale, and in February 2008, Pamodzi assumed Harmony's obligations both in terms of the gold mining operations and the directive. During March 2009, Pamodzi was finally liquidated. Accordingly, it no longer had the finances to comply with the directive. DWA and the other mining companies argued that, notwithstanding Harmony's agreement with Pamodzi, Harmony retained the duty to comply with the directive. Harmony disagreed and argued that a directive issued under section 19(3) of the NWA remains valid only for as long as the person to whom it was issued owns, controls, occupies or uses the land in question. Thus, so the argument went, the directive became unenforceable against Harmony from the date upon which Pamodzi took ownership of the land and control of the mining operations conducted thereon. Harmony applied to the North Gauteng High Court in terms of which it sought the review and setting aside of the directive, or of the refusal to withdraw it and a declaration that it became invalid when Pamodzi took ownership of the land and control of the gold mining operations. The High Court dismissed the application giving rise to the present appeal.
Judgment:	Severing ties with the land In coming to its decision the court had regard to the constitutionally entrenched environmental right, the purpose of the NWA as well as the NEMA principles. It endorsed the polluter pays principle. The court confirmed that section 19(3) of the NWA is triggered when a landholder fails to take those measures necessary to prevent pollution of a water resource from occurring, continuing or reoccurring. Harmony exercised control over the land from 2003 to 2007 and thus fell into the category of landholder. The contention advanced by Harmony that once it ceased to be landholder its obligations in terms of the directive came to an end was dismissed by the court. The court held that such an interpretation was absurd and defeatist of the purpose of the legislative provision and would render it ineffective; because a landholder directed to take measures under subsection 3 would simply evade its obligations under the directive by severing its ties with the land. It said that rationale of section 19(3) is to direct the landholder to address the pollution or risk of pollution for however long it may take to do so. That rationale does not fall away when the landholder ceases to own, control, occupy or use the land. Directive to specify a date by when the measures referred to therein were to be complete Harmony argued further that paragraphs (a) to (c) of section 19(3) of the NWA are cumulative and that the word 'and' must be read conjunctively. Accordingly, so the argument went, a mandatory requirement is that a directive must specify a given date by when the required measures must be completed. Hence, the directive issued was invalid because it did not specify a date upon which those measures to be taken were to be completed. The court disagreed. It held that the above argument overlooks the discretionary element contained in the section (i.e. that the Minister may decide to issue the directive and prescribe specific measures; and that in any event, the directive envisaged a date on which the measures would terminate; namely when agreement was reached on an acceptable future solution.



ENVIRONMENTAL MANAGEMENT INSPECTORATE

Picture 1: Illustration of decant of acid mine drainage taken from a mine shaft in the Wonderfontein catchment. Pumping prevents or at least mitigates against the risk of contamination of water found in the deeper mines.

Parties	THE STATE v BLUE PLATINUM VENTURES (PTY) LTD & MATOME SAMUEL MAPONYA RN126/13
Category	Criminal: Director liability in terms of section 34 of the National Environmental Management Act, 1998
Court	Limpopo Regional Magistrates' Court
Facts	During October 2007, in the Mopani district in Limpopo Province, Blue Platinum Ventures (Pty) Ltd commenced with a listed activity (more specifically item 1(e) of Listing Notice 2 of 2006: the construction of facilities or infrastructure, including associated structures or infrastructure, for any process or activity which requires a permit or licence in terms of legislation governing the generation or release of emissions, pollution, effluent or waste which has not been identified in Listing Notice 1 of 2006) without first obtaining the necessary environmental authorisation as it was obliged to do in terms of Section 24 of NEMA. This activity, and in particular the clearance of vegetation and the excavation of large holes and pits caused large scale soil erosion and other serious harm to the surrounding environment; including health and safety implications for the neighbouring village and its livestock. Charges against the company were laid by a community representative of the neighbouring village at the Maake Police Station. The Police notified the Inspectorate about the matter and a joint investigation team was formed between DEA and the Limpopo Commercial Crime Unit. On 17 October 2010, the company was formally charged in terms of, inter alia, section 24F of NEMA. In addition, section 34 of NEMA was utilized to charge the managing director, Mr Maponya, in his personal capacity, for failing to take all reasonable steps that were necessary in the circumstances to prevent the commission of the offence by the company (i.e. for failing to ensure that the company obtained the necessary environmental authorisation prior to commencing with the listed activity in question). Knowing that authorisation was required prior to commencing with the listed activity, Mr Maponya nevertheless allowed, or caused, the company to act in contravention of the relevant laws. On 9 January 2014, Mr Maponya pleaded guilty to this charge in the Lenyenye Magistrates' Court, Limpopo. The matter was postponed to 14 January 2014 for sentencing.
Sentence	Mr Maponya was sentenced to 5 years' imprisonment, suspended for 5 years, on condition that he does not commit the same or similar offence, and that he ensures that the affected area is rehabilitated within 3 months. There was no separate sentence or fine imposed on the company. The rehabilitation is estimated to cost some R6.8 million.



Picture 2 : Bathlabine brickyard factory area (owned and operated by Blue Platinum Ventures (Pty) Limited), which is approximately 100 meters from the nearby village, showing signs of sever soil erosion. This erosion is a result of the unlawful excavations undertaken in furtherance of a listed activity and negatively affects the nearby village especially during the rainy seasons.



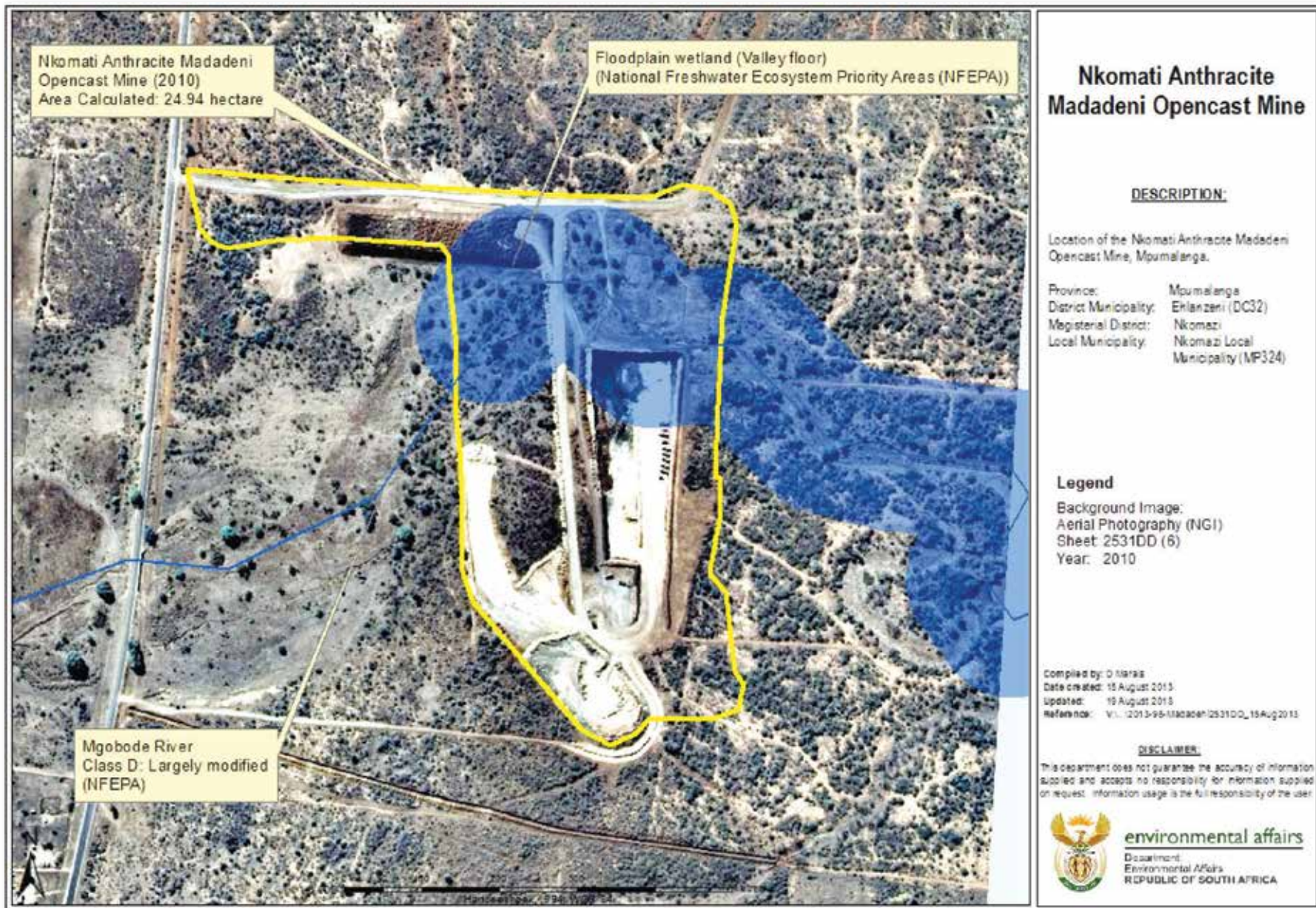
Picture 3: Hilltop 01 with a gabion placed thereon by the offenders in an attempt to prevent or minimise the soil erosion.

Parties	MARK JONATHAN GOLDBERG v THE DIRECTOR OF PUBLIC PROSECUTIONS: WESTERN CAPE - CASE NUMBER: A446/12
Category	Criminal: Search and seizure
Court	Western Cape High Court
Facts	Mr Goldberg was convicted and sentenced under the Nature Conservation Ordinance 19 of 1974 ("the Ordinance") for charges of possession of items made of ivory, as well as possessing or exposing this ivory for the purposes of sale without the requisite permits. The ivory was found at a curio shop (belonging to his late mother and) at which Mr Goldberg was employed, Mr Goldberg's home and at his mother's home. Mr Goldberg, aggrieved by the sentence, noted an appeal to the Western Cape High Court. Although a number of issues were raised, we deal here only with those aspects relating to the search and seizure of the ivory. On 17 August 2009, two conservation officials, accompanied by a number of police officials, visited the curio shop. The majority of the ivory items found were on display and could be seen even before entering the shop. Mr Goldberg could not produce the necessary documentation to prove that this possession was lawful. He was arrested and the items seized. The police officers and conservation officials were acting without a warrant as they were authorized to do by the Ordinance. Section 21(1)(f), (h) and (i) confers the powers to conduct an investigation without a warrant and without permission to enter land or premises and seize anything that, in the authority's opinion, may afford evidence of the commission of an offence. These powers are exercisable by nature conservation officers. Mr Goldberg's counsel argued that section 21(1) of the Ordinance unjustifiably violated Mr Goldberg's constitutionally entrenched right to privacy. Counsel asked the court to find paragraphs (f), (h) and (i) of section 21(1) of the Ordinance constitutionally invalid. The court declined to entertain the constitutional challenge. It said that even if the provisions were found to be unconstitutional, and this was confirmed by the constitutional court, the declaration was unlikely to operate retrospectively and would thus be of no assistance to Mr Goldberg in this instance.
Judgment	The court balanced Mr Goldberg's right to privacy with the law officials' duties. It noted that the shop was open to the public, that the items were on public display, could be seen from outside of the shop and were thus in plain view of the officials. This being so, the court held that there was no reasonable right to privacy in relation to the items displayed in the shop; that the officials were entitled to enter the public part of the premises to make enquires and when the documents required could not be produced they were entitled to arrest Mr Goldberg and to seize the ivory. The conduct of the officials was accordingly found not to have violated Mr Goldberg's right to privacy in the circumstances. The court went further. It said that even if the search was not lawful, section 35(5) of the Constitution provides that evidence obtained in a manner that violates any right in the Bill of Rights must be excluded only if the admission thereof would render the trial unfair or otherwise be detrimental to the administration of justice. In the circumstances, the court allowed the evidence to be admitted as it was considered not to be subject to the section 35(5) exclusion. The court noted that the illegal trade in ivory is a scourge which has attracted united international attention. It is important that it should be combatted.

Parties	THE STATE v NKOMATI ANTHRACITE (PTY) LIMITED
Category	Criminal: unlawful commencement of an EIA listed activity and authorised water uses
Court	Magistrates' Court, Nelspruit
Facts	During October 2010 certain unlawful activities taking place by Nkomati Anthracite in Mpumalanga came to the attention of the Mpumalanga Department of Economic Development and Environment and Tourism ("the provincial department"). The provincial department issued Nkomati Anthracite with a notice of its intention to issue a compliance notice in respect of the unlawful commencement of a listed activity without authorisation. Shortly thereafter, the Department of Water Affairs ("DWA") become aware of these unlawful activities. DWA issued Nkomati Anthracite with a notice of intention to issue a directive and thereafter with a directive in respect of diverting the flow of water in a watercourse, disposing of waste in a manner which may detrimentally impact on a water resource, altering the characteristics of a watercourse and by storing water. The DWA proceeded to open a criminal case against Nkomati Anthracite which was handed over to the South African Police Service. Having received the docket from DWA, the North Gauteng offices of the director of public prosecutions requested the DEA to further investigate the criminal matter insofar as contraventions of section 24F of NEMA were concerned (i.e. undertaking activities listed or specified in terms of section 24 of NEMA without the necessary environmental authorisation). DEA conducted the necessary investigations. During August 2013 Nkomati Anthracite was charged with eight counts. Nkomati Anthracite pleaded guilty to all eight charges. Five in respect of contraventions of section 24F(1)(a) of NEMA (conducting EIA listed activities without the requisite environmental authorisation) and three in respect of section 151(1)(a) of the NWA (diverting the flow of water in a watercourse, disposing of waste in a manner which may detrimentally impact on a water resource, altering the characteristics of a watercourse and by storing water).
Judgment and Sentence	The parties entered into a plea and sentence agreement in terms of section 105A of the Criminal Procedure Act, 1977 in terms of which Nkomati Anthracite was sentenced to a fine of one million Rand (R 1 000 000) suspended for a period of 5 years. In addition, and in terms of section 34(3)(b) read with Schedule 3 of NEMA, Nkomati Anthracite was ordered to pay, as a remedial measure, an amount of four million Rand (R4 000 000) (within 14 days from the date of the sentence) to the Environmental Management Inspectorate within DEA to be used to further the execution of the Inspectorate's enforcement mandate; including environmental rehabilitation and enforcement training.



Picture 4: Unlawful commencement of an EIA listed activity and unauthorised water uses.



Picture 5: Aerial photograph taken Nkomati Anthracite Madadeni Opencast Mine for unlawful commencement of listed activity.

Parties	MAGALIESBERG PROTECTION ASSOCIATION v THE MEC: DEPARTMENT OF AGRICULTURE, CONSERVATION ENVIRONMENT AND RURAL DEVELOPMENT NORTH WEST PROVINCIAL GOVERNMENT AND TWO OTHERS - CASE NO: 563/12
Category	Challenge of a decision to grant ex post facto authorisation in terms of section 24G of the National Environmental Management Act, 1998.
Court	Supreme Court of Appeal
Facts	Kgaswane Country Lodge (Pty) Limited ("Kgaswane") unlawfully (i.e. in the absence of the requisite EIA approval) constructed phase one (i.e. a hotel and conference centre "the Country Lodge") of an intended multiphase development within a protected environment in the Magalisberg area. The Magalisberg Protection Association ("the MPA") (a voluntary association with the objective of fostering and encouraging conservation and protection of the Magalisberg mountain range) caught wind of this in July 2008. Alarmed at the massive development taking place within an ecologically sensitive area, the MPA informed the DEADP of the suspected unlawful activity. DEADP advised the MPA that it had indeed recently become aware of the construction and was investigating the matter. During March 2009, it came to the MPA's attention (after it received a letter from Kgaswane) that Kgaswane had in fact both applied for and obtained <i>ex post facto</i> environmental authorisation for the development, in terms of section 24G of NEMA. Aggrieved by the decision, the MPA lodged an internal appeal with the MEC to have the authorisation set aside. It was unsuccessful. The MPA then approached the High Court to have the appeal decision reviewed and set aside. In addition it sought an order that the Country Lodge be demolished, accompanied by an order to rehabilitate the affected environment. Again, it was unsuccessful. It appealed the High Court's decision to the SCA. In its SCA appeal, the MPA contended that the MEC's decision to dismiss the appeal against the <i>ex post facto</i> authorisation ought to have been declared invalid and set aside by the High Court on <i>inter alia</i> the following grounds. That the MEC: - failed to consider the applicable Environmental Management Framework and other relevant planning documents; - relied on a flawed public participation process; - failed to consider remedies consequent upon the finding of invalidity, namely to set the decision aside and to order the demolition of the Country Lodge; and - was biased, alternatively the MPA had reasonable apprehension that the MEC was biased.
Judgment	In coming to its decision the court distinguished between a prospective EIA and the retrospective process pursuant to an application in terms of section 24G. It said as follows: <i>"In the first instance it might be possible to avoid any disturbance of the environment and proper surveys could be conducted to determine the precise impact of intended development. In the second instance one is regrettably left with an already disturbed environment which then requires thought to be given to whether any further degradation might occur, coupled with how much actual disturbance of the environment has already occurred."</i> Against this background the court considered the expert studies submitted pursuant to the section 24G application. It found these studies to be credible and detailed. Although the EMF was not specifically considered in the application process, it was shown that there was nothing additional contained in the EMF which was not considered in the various specialist studies. Insofar as procedure was concerned the court noted that although the MPA was not involved in the actual 24G application, it had an opportunity to and did, actively participate in the wide appeal. This participation would have cured (and did cure) any defect in their lack of participation during the section 24G phase. In regard to the order sought by the MPA for the demolition of the Country Lodge; the Court recognised that this is a far reaching remedy, and it is incumbent on an applicant to prove why the remedy should be ordered. The MPA failed to discharge this onus. The Court dismissed the appeal.
Costs order	In determining the issue of costs, the Court took into account section 32(2) of NEMA. This section provides the Court with a discretion not to award costs against a person or group of persons that fail to secure the relief sought, in respect of any breach or threatened breach of any of the provisions of NEMA or of any provisions of a specific environmental management Act, or any other statutory provision concerned with the protection of the environment, if the court is of opinion that a person or group of persons acted reasonably out of concern for the public interest and/or in the interests of protecting the environment. Taking note of the fact that the MPA embarked in the litigation in the interests of the environment, each party was ordered to pay its own costs. In granting the cost order as it did the Court noted that <i>"Kgaswane might be aggrieved in having to pay its own costs but that it should not be forgotten that the malfeasance that led to all the trouble and the subsequent costly litigation was of its own making."</i>

Parties	VAAL ENVIRONMENTAL JUSTICE ALLIANCE V COMPANY SECRETARY OF ARCELORMITTAL SOUTH AFRICA LIMITED AND ARCELORMITTAL SOUTH AFRICA LIMITED - CASE NO: 36946/12
Category	Access to information in terms of the Promotion of Access to Information Act
Court	South Gauteng High Court, Johannesburg
Facts	Vaal Environmental Justice Alliance ("VEJA") sought an order declaring invalid and setting aside Arcelormittal SA's decision to refuse requests for access to information in terms of the Promotion of Access for Information Act 2 of 2000 ("PAIA"). On 15 December 2011 VEJA submitted a request for a copy of the Environmental Master Plan, including progress reports and updated versions relating thereto. A second request was made on 13 February 2012 in terms of which records in respect of the closing and rehabilitation of Arcelormittal SA's Vaal disposal site in Vereeniging and the compliance inspections by DEAD and GDARD. Arcelormittal SA refused the request, in the first instance, because it held the view that VEJA had not shown that the information sought was <i>required</i> for the protection of VEJA's constitutional environmental right. The court disagreed. It held that the use in PAIA of the word "<i>required</i>" rather than the word "<i>necessary</i>" created a lower threshold. Thus an applicant is required only to put up facts which establish a <i>prima facie</i> right. The court formed the view that a community based civil society organisation (such as VEJA) is entitled to monitor, protect and exercise the rights of the public, at least by accessing information to enable it to assess the impact of various activities (by a company such as Arcelormittal SA) on the environment. Accordingly, the court found that VEJA had met this threshold and proved that it required the information sought for the protection of its environmental right. Secondly, Arcelormittal SA contended that VEJA's approach effectively usurped the State's enforcement role as VEJA effectively sought directly to enforce the environmental legislation. The court disagreed with this argument. It held that participation in environmental governance, assessment of compliance, motivation of the public, mobilisation of the public and dissemination of information do not usurp the role of the State. Instead, the approach constitutes a vital collaboration between the State and private role plays in an effort to ensure the achievement of constitutional objectives. Finally, counsel for Arcelormittal SA argued that the requested Master Plan was irrelevant, outdated, and obsolete and that it accordingly could not be relied upon to assess Arcelormittal SA's environmental commitments and impacts and was consequently irrelevant. The court disagreed. It said that the Master Plan was at the very least relevant as a baseline. It came about as a result of years of environmental tests and investigations and provided a basis for further tests and investigations. The document would, at the least, provide VEJA with baseline test results, which they could compare with current results to see if Arcelormittal SA was living up to its environmental commitments. In respect of Arcelormittal SA's site inspection records, it is not disputed that these records are relevant. They were simply not provided because Arcelormittal SA took a view that VEJA did not require them for the exercise of its right under section 24 of the Constitution. It was shown above that the court disagreed with this argument. The court consequently found that Arcelormittal SA wrongfully declined VEJA's request.
Decision	The court held that Arcelormittal SA wrongfully declined VEJA's PAIA request, that it failed to apply its mind to the request, and that it could not, and did not, demonstrate any real prejudice which it may suffer should the information be released. Arcelormittal SA was directed to supply VEJA with copies of the documentation requested and to pay the costs of the application. During December 2013, Arcelormittal SA applied for and obtained leave to appeal the judgment to the Supreme Court of Appeal.



Picture 6: VEJA Representatives outside the South Gauteng High Court, Johannesburg.

7. LEGISLATIVE DEVELOPMENTS

The body of legislation that EMIs are expected to monitor compliance against and to enforce continued to expand rapidly in 2013/14, as law-makers sought to provide the “nuts and bolts” of environmental regulation through amendments to many of the principal Acts as well as through the promulgation of subordinate legislation (in the form of regulations, notices and norms and standards) under NEMA and the specific environmental management Acts. 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 Acts

- National Environmental Laws Second Amendment Act 30 of 2013
- National Environmental Laws Third Amendment Act 25 of 2014

7.1.2 Regulations

- Amendments to Environmental Impact Assessment Regulations Listing Notice 1 of 2010 GNR 922 of 29 November 2013
- Amendments to Environmental Impact Assessment Regulations Listing Notice 2 of 2010 GNR 923 of 29 November 2013

7.2 National Environmental Management: Biodiversity Act 2004

7.2.1 Regulations

- Convention on International Trade in Endangered Species (CITES) GNR 629 of 23 August 2013
- Publication of prohibited alien species GNR 508 of 19 July 2013
- Amendment to CITES Regulations GNR 323 of 29 April 2014
- Alien and Invasive Species GNR 598 of 1 August 2014
- Publication of alien and invasive species lists GNR 599 of 1 August 2014

7.2.2 Notices

- Publication of exempted alien species GN 509 of 19 July 2014

7.2.3 Draft Regulations

- Draft amendment regulations on bio-prospecting, access and benefit-sharing GN 79 of 17 February 2014
- Draft regulations for the registration of professional hunters, hunting outfitters and trainers GN 846 of 13 August 2013
- Draft threatened or protected species regulations GN 388 of 16 April 2013

7.3 National Environmental Management: Air Quality Act 2004

7.3.1 Amendment Act

- National Environmental Management: Air Quality Amendment Act 20 of 2014

7.3.2 Regulations

- National Dust Control Regulations GNR 827 of 1 November 2013
- 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 GNR 893 of 22 November 2013

- Declaration of a small boiler as a controlled emitter and establishment of emission standards GNR 831 of 1 November 2013
- Declaration of temporary asphalt plants as controlled emitters GNR 201 of 28 March 2014
- Regulations prescribing the format of the atmospheric impact report GNR 747 of 11 October 2013

7.3.3 Draft Regulations

- Draft declaration of greenhouse gas as priority air pollutants GN 172 of 14 March 2014
- Draft National pollution prevention plans regulations GN 171 of 14 March 2014

7.4 National Environmental Management: Waste Act 2008

7.4.1 Amendment Act

- National Environmental Management: Waste Amendment Act 26 of 2014

7.4.2 Regulations

- Waste Classification and Management Regulations GNR 634 of 23 August 2013
- Regulations for phasing out and management of ozone depleting substances GNR 351 of 8 May 2014

7.4.3 Draft Regulations

- Draft regulations to phase out the use of PCB materials and PCB contaminated materials GN 849 of 15 August 2013

7.4.4 Norms and Standards

- National standards for the scrapping or recovery of motor vehicles GN 925 of 29 November 2013
- National norms and standards for the storage of waste GN 926 of 29 November 2013

- National standards for the extraction, flaring or recovery of landfill gas GNR 924 of 29 November 2013
- National norms and standards for the assessment of waste for landfill disposal GNR 635 of 23 August 2013
- National norms and standards for disposal of waste to landfill GNR 636 of 23 August 2013
- Norms and standards for the remediation of contaminated land GNR 331 of 2 May 2014

7.4.5 Notices

- Commencement notice chapter 4 part 8 of NEMWA proclamation 26 of 11 April 2014 *Government Gazette* 37547
- Removal of listed activity: remediation of contaminated land of 2 May 2014 GN 332 *Government Gazette* 37603

7.5 National Environmental Management: Integrated Coastal Management Act 2008

7.5.1 Amendment Bill

- National Environmental Management Integrated Coastal Management Amendment Bill [B8F-2013]

7.5.2 Regulations

- Control of use of vehicles in the coastal area GNR 496 of 27 June 2014

7.6 National Environmental Management: Protected Areas Act

7.6.1 Amendment Act

- National Environmental Management: Protected Areas Act 21 of 2014

7.6.2 Regulations

- Administration of special nature reserves, national parks and world heritage sites GNR 1061 of 25 October 2013

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

A summary of some of the monitoring and enforcement activities, as it crosses over from one reporting period to the next is set out in the table below. Although it is not possible to include all the facilities in a report of this nature, the table provides an indication of some of the important work that has been undertaken to bring these sectors into compliance with environmental legislation.

NECER 2013-2014: DETAILED INFORMATION TABLE RELATING TO STRATEGIC INSPECTIONS

ADDITIONAL ACRONYMS SPECIFIC TO THIS TABLE	
WML	Waste management licence
AEL	Air emission licence
EA	Environmental authorisation issued in terms of section 24 of NEMA read with the Environmental Impact Assessment Regulations
D:SAE	DEA's Directorate: Environmental Impact and Pollution
RoD	Record of Decision in respect of a decision issued in terms of activities listed under ECA
INSPECTIONS	
Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
FERRO-ALLOY, IRON AND STEEL	
Assmang Cato Ridge, Kwa Zulu Natal	An initial inspection was conducted in February 2007. The findings included: significant uncontrolled dust emissions containing heavy metal manganese; serious non-compliance with the facility's WML in respect of a hazardous waste site; and at least one unpermitted hazardous waste site. In January 2013, a follow up inspection was conducted. The inspection focused solely on the waste disposal sites at the facility (including 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 these findings was drafted. In addition to the inspection report, DEA compiled an enforcement strategy regarding the way forward. During November 2013, and prior to the finalisation of the above-mentioned report, a complaint was received regarding the dumping of slag in a valley situated just outside the boundary of the facility. During March 2014 and upon further investigation by DEA, it was ascertained that the slag in question had been dumped by the facility. Pursuant to these further investigations, DEA issued a notice in terms of section 31H of NEMA and investigations are ongoing.
Foskor Richards Bay, Kwa Zulu Natal	An initial inspection was conducted in March 2007 followed-up by an inspection in January 2008. EMIs detected 28 non-compliances during the baseline inspection, most of which related to air quality. The facility was not conducting monitoring as required in terms of its APPA Registration Certificate. In addition, numerous complaints were received regarding odour. The EMIs further established that certain waste management activities which required licensing were being undertaken on site illegally in the absence of any permits issued in terms of ECA. Historic groundwater contamination was found to be present on the site. A further follow-up inspection was conducted during 29 March 2012. The following non-compliances were identified: • two of the waste sites were being operated in the absence of the necessary authorisations; • groundwater contamination was present; • lack of monitoring of fugitive emissions; • erosion on the wall of the storm water retention dams – a potential for groundwater contamination; • accumulation of sediments inside the storm water retention dams - reduces the capacity of the dam and increases the possibility of contaminated water overflow from the dams; • severely damaged liner at the gypsum cut-off trench. The gypsum contained a high concentration of sulphates and ammonia and was found to be radioactive - potential to pollute both ground and surface water; • storage of hazardous waste in an unroofed and unbunded area; and • non-compliance with conditions of both the AEL conditions and WML (which had been obtained by the facility post the initial inspection). During February 2013 three administrative notices were issued to the facility; namely: • a pre-directive in terms of section 28(4) NEMA;

INSPECTIONS	
Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
FERRO-ALLOY, IRON AND STEEL	
ArcelorMittal Vereeniging, Gauteng Province	• a pre-directive in terms of 31A of ECA; and • a pre-compliance notice in terms of section 31L NEMA. During August 2013, and pursuant to corrective actions implemented by the facility following the pre-notices mentioned above, DEA took a decision that no further administrative against the facility was necessary at the time as the issues and concerns raised had adequately been addressed. Criminal investigations are, however, ongoing. An inspection was conducted at the facility in May 2007. The following non-compliances were identified: • dumping of hazardous waste on an unpermitted site, despite repeated instructions from authorities to cease such activities; • particulate emissions 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; and • a failure by the facility to submit the required audit reports. The facility ceased certain activities and submitted a rehabilitation plan to GDARD in January 2008. It was re-submitted in March 2010 and approval was requested. During July 2010 GDARD inspected the facility and found that: • all activities at Vaal dump site had ceased; • 99% of magnetite had removed from the site; • the magnetite was disposed of at Holfontein H:H landfill site and the disposal certificates had been submitted; • monthly progress reports were submitted regarding the removal of magnetite from Vaal dump site. In the light of the above findings, pre-compliance notices were issued to the facility by DEAT and GDACE (as they then were). The facility was instructed <i>inter alia</i> to cease dumping of hazardous waste on its Vaal Dump, and to submit a revised rehabilitation plan for that site. During October 2007, DEAT (now DEA) also instructed the facility to implement a major dust emission control project within 18 months, and to submit proposals on interim measures to control fugitive dust emissions. The facility failed to submit an application to DEA for the rehabilitation of the Vaal disposal site and a dispute in relation to the legal interpretation and whether or not a waste management license is required persisted. The site was again visited in August 2012 where it was found that: • certain waste disposal sites were being operated without a Section 20 ECA permit; • non-compliance with the provisions of the NEM:WA in respect of the storage and handling of waste and non-compliance with conditions of the waste management licence; • effluent discharge limits in terms of a water use licence issued by DWA had been exceeded and unauthorised water uses were detected; • non-compliance with conditions of APPA registration certificate; • undertaking of certain listed activities without the necessary EA and where an EA was held, non-compliance with the conditions thereof; • generally environmentally harmful activities, including irregular waste storage, exceeding of water limits stipulated in water permits, significant dust emissions, storm water management and potential soil and groundwater pollution. During the inspection, various documents requested by the EMIs were not provided by the facility. In November 2012, DEA issued the facility with a letter, providing it with a final opportunity to provide all the information requested during the inspection. Some of this information was eventually submitted and an Enforcement strategy is being developed including a decision with regards to the appropriate enforcement action, if any. The dispute in respect of the waste management license for rehabilitation remains unresolved. The Department's Directorate: Legal Services is currently in discussion with the facility in this regard. A criminal investigation is running parallel to the abovementioned administrative action. The criminal investigation was initially only related to the unlawful operation of a waste disposal site in terms of section 20 of ECA. The DPP North Gauteng declined to prosecute in respect of the ECA section 20 contravention but has requested that a further on-site investigation is undertaken so as to establish whether or not there has been other non-compliance, particularly in respect of section 28(14) of NEMA. This follow-up investigation is in the process of being conducted.

INSPECTIONS	
Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
FERRO-ALLOY, IRON AND STEEL	
Hernic Ferrochrome, North West	An initial inspection was conducted in June 2007. It was found that no section 20 ECA permits had been issued for the various waste storage and disposal facilities and a rehabilitation or closure plan for the capped slimes dams, particularly in view of past serious groundwater contamination with hexavalent chrome was non-existent. In addition there was found to be poor storm and surface water management throughout the site; regular and serious exceedances of permitted air emission limits and inadequate dust control throughout the site. A follow-up inspection was undertaken in May 2013 and the DEA is finalising reviews of certain reports and documentation before engaging with the facility.
Arcelor-Mittal Newcastle Works, Kwa Zulu Natal	In September 2007 an initial inspection took place at the facility. The findings were as follows: • air emission exceedances; • unauthorised waste disposal sites; • inability to demonstrate compliance with certain conditions of the APPA registration certificate due to a lack of monitoring; • non-compliance with a number of conditions of the section 20(1) ECA waste permit; • contravention of certain conditions of the EA; • 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 application had been submitted; • failure to comply with NEMA and NEM:WA duty of care; and • failure to report an emergency incident to the authorities. Subsequent to the initial inspection, a number of authorisations were issued to the facility. A follow-up inspection took place in February 2011. It was found that there was continued non-compliance with conditions of the EA; significant air emissions from some of the operations on site; potential ground and surface water pollution and soil pollution from activities conducted on site and unauthorised waste disposal sites. A further follow-up inspection was conducted during February 2013. An inspection report detailing the findings of this inspection has been finalised and issued to the facility. Representations were received in this regard, pursuant to which a notice in terms of section 31H of NEMA was issued to the facility in March 2014 in which additional information was requested.
BHP Billiton Metalloys Meyerton, Gauteng	An initial inspection was conducted at the facility in October 2007. The following was observed: • non-compliance with conditions of the EA; • all waste disposal sites were being operated without the requisite permits; • several activities for which an EA was required were unlawfully being conducted. Applications for ex post facto authorisation had been submitted to GDARD in terms of S24G; • a significant number of activities causing pollution to the environment; • outstanding water use license; • a detailed EMP was not submitted to DEA prior to commencement of the Project as was required; • no Material Safety Data Sheet on the hazardous waste; and • no records of waste stored at the salvage yard. EMIs revisited the facility in August 2011 and found that non-compliance with conditions of the EA persisted. In addition, historic unlined waste disposal sites had not been rehabilitated posing a risk to underground water. Applications to legalise these disposal sites had not been submitted despite the facility committing to apply for WMLs. The unlined Amcor Dam was still being used for disposal of contaminated storm water, excess process water and treated sewage effluent. There was a general failure to comply with the duty of care in respect of waste management on site. Based on the findings of the baseline inspection, a pre-compliance notice in terms of section 31L of NEMA and a pre-directive in terms of Section 28(4) of NEMA were issued to the facility by GDARD. Representations were received and included proposed action plans.

INSPECTIONS	
Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
FERRO-ALLLOY, IRON AND STEEL	
BHP Billiton Metalloys Meyerton, Gauteng	Further information was required and a notice in terms of section 31H of NEMA was issued to the facility. The response has been received and reviewed and numerous meetings between the facility and DEA have taken place to discuss the site improvements, as well as progress on the action items and commitments made. A follow-up site inspection was conducted in March 2014 to verify site conditions and improvements. DEA is currently in the process of communicating its findings to the facility. In addition to the above administrative process, criminal investigations were initiated against the facility post the 2011 inspection. These investigations are running parallel to the administrative enforcement process. A search warrant was executed at the facility in September 2012 during which various documentation was seized.
Old Vanchem Vanadium Calcine Waste Disposal Facility ("CWDF"), Witbank	During an initial inspection of the facility in November 2007, it was found that unauthorised waste disposal sites were being operated A follow up inspection took place in May 2011. During the inspection the EMIs found that there was a serious need for intervention to prevent the contamination of water resources and soil resulting from the existing unauthorised waste disposal site, which contained hazardous waste. DEA held a meeting with representatives of the facility during December 2013 regarding the current status of the EA and WML applications as well as the outcome of the current trials into the re-working of the dump. During the meeting the facility informed DEA that financial constraints had resulted in a delay in the project and that EIA and WML applications would be submitted in 2014. Subsequent to the meeting DEA issued the facility with a notice in terms of section 31H of NEMA in which more detailed information regarding outcome of the trials as well as new anticipated timelines for the completion of the project was requested. This information has been provided to DEA and it is currently being reviewed.
Evrast Highveld Steel, Mpumalanga	The following non-compliances were uncovered on an initial inspection of the facility in November 2007: • air emission exceedances; • lack of adequate monitoring; • undertaking unauthorised APPA scheduled processes; • exceedances in relation to production and use of raw materials; • contraventions of an EA; • the operation of unauthorised waste disposal sites; and • generally environmentally harmful activities that could have been prevented / should have been rehabilitated in terms of the NEMA duty of care. A follow up inspection took place on 9 July 2009 where it was found that: • the shut-down and start-up process of the plants was problematic; • a need for improved maintenance procedures was evident; • a secondary emission extraction plant had been installed, but it was plagued with challenges and constraints; • 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; and • there was ineffective gas cleaning equipment. After a review of documentation provided pursuant to the inspection, a glaring pattern of periodical and regular breakdowns at the iron plants which resulted in uncontrolled emissions to atmosphere became obvious. During 2010 two administrative notices were issued to the facility and representations were received as follows: In February 2010 a pre-compliance notice / pre-directive was issued and in March 2010 representations and action plans were received. A further pre-compliance notice / pre-directive was issued to the facility in November 2010 to which representations and amended action plans were received during December 2010. Highveld Steel continued to submit monthly monitoring reports and action plans and this information was used to determine whether or not there have been improvements on site. Between May 2012 and January 2013 DEA issued the facility with 3 notices in terms of Section 31H of NEMA to request information in relation to the emission improvement projects at the iron-making and steel plants. Various information is still be reviewed and decisions will be made on whether or not further administrative enforcement action is required. Parallel criminal enforcement action was pursued and these investigations have been finalised. The investigating officer is in the processes of obtaining final warning statements from the facility prior to handing over the docket to the NPA for a decision.

INSPECTIONS	
Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
FERRO-ALLOY, IRON AND STEEL	
Xstrata Wonderkop, North West	An initial inspection in January 2008 uncovered a lack of adequate monitoring, air emission exceedances, unauthorised waste disposal sites, contraventions of an EA, absence of a required water use licence and environmentally harmful activities that should have been prevented and/or rehabilitated in terms of the NEMA duty of care. To ascertain whether or not there had been an improvement at the facility, EMIs conducted a follow-up inspection on 16 and 17 August 2011. It was found that the facility had submitted applications to legalise the waste management activities on site. Although a water use licence had been issued, the facility was found not to be compliant with all the conditions attached thereto. Similarly, the facility was found not to be compliant with the conditions of its APPA registration certificate in that specified limits were exceeded. Significant fugitive emissions from the Pelletising Plant and the Metal Recovery Plant had caused air pollution and there was a general failure by the facility to comply with its duty of care in respect of waste management on site. 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 and Section 28(4) NEMA directives, was issued to the facility on 27 November 2012. 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. It is currently being reviewed, after which DEA will decide what enforcement action, if any, is required.
ASA Metals, Limpopo	The facility was first inspected in November 2009. The principle findings were as follows: • construction and operation of four furnaces on site without an EA; • waste disposal sites operated without WMLs; • groundwater pollution from activities on site; • disposal of hazardous waste on unlined areas; and • non-compliance with APPA permits and EA conditions. DEA issued a notice in terms of section 31H of NEMA to the facility in May 2011. A Section 31L NEMA pre-compliance notice, and S31A ECA pre-directive and S28 NEMA pre-directives was issued to the facility in September 2011. A response was received timeously and reviewed. Before issuing a final directive and/or compliance notice, further information was requested pursuant to a 2nd notice in terms of Section 31H of NEMA in December 2011. A response was received in January 2012. In March 2012, a compliance notice and directive was issued to the facility and in April 2012 DEA received a request to suspend the compliance notice and directive as well as an objection to the notice and directive. In relation to the objection (and in November 2012) the Minister decided to modify some of the instructions contained in the compliance notice. A letter requesting further information in respect of the facility's compliance with the modified instructions in the Minister's Objection Decision was issued to the facility in March 2013 and in May 2013 a letter requesting information on the facility's slag stability was issued. DEA is now satisfied that all instructions have been complied with and does not intend taking further administrative enforcement against the facility at this time.
Samancor Tubatse Ferro Chrome, Limpopo	During an initial inspection in November 2010, EMIs noticed: • non-compliance with conditions of an EA; • lack of air quality monitoring as required by the APPA registration certificate; • failure to submit required audit reports (in respect of air and waste); • groundwater pollution from activities on site, including waste disposal sites; • unauthorised waste storage and disposal areas; and • failure to comply with the general duty of care in respect of waste management on site. Pursuant to the above findings, a notice of intention to issue a compliance notice in terms of section 31L NEMA, and directives in terms of section 31A ECA and section 28(4) of NEMA, were issued to the facility in November 2012. The facility responded with representations in January 2013. A notice in terms of section 31H of NEMA was issued in January 2014.

INSPECTIONS	
Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
FERRO-ALLLOY, IRON AND STEEL	
Samancor Tubatse Ferro Chrome, Limpopo	On the criminal side, the first case docket was registered as Burgersfort CAS 103/07/2008 and the investigation has been finalised. The DPP decided to prosecute and summons was issued. The case has been postponed to September 2014 for plea and sentence agreement at Lydenburg Regional Court. The investigation was initiated as a result of a complaint to DEA. The second alleged non-compliance relates to findings of the EMIs after the inspection in 2012. These are still under investigation.
Assmang Machadodorp, Mpumalanga	During the initial inspection of the facility in February 2011 several non-compliances with conditions of the facility's WML, EA and APPA registration certificate were detected. In addition it was found that there was a lack of continuous air quality monitoring as required by APPA, operation of a slag disposal site without the necessary WML, groundwater pollution from unlined slag dump and a general failure to comply with the duty of care in respect of waste management on site. A notice in terms of section 31H of NEMA was issued to the facility in May 2012. The facility responded with the requested information. This additional information was reviewed and the initial inspection report was updated accordingly. An enforcement strategy has been drafted and DEA is currently in the process of making a decision as to how to proceed further.
Exxaro Base Metals: Zincor, Gauteng	An initial inspection took place in October 2011 where the following was ascertained: • non-compliance with conditions of authorisations; • disposal of hazardous waste on an unlined dam without WMLs; • groundwater contamination as a result of activities on site; • failure to comply with general duty of care in respect of waste management on site; • surface and groundwater pollution. Groundwater contamination at the refinery area and an old neutral leach residue storage area with an extremely damaged liner and potential ground and surface water pollution from the plant storm and waste water retention dam due to the liner being damaged at the spillway. The EMIs returned to the site in June 2012 in order to confirm cessation of operations and the environmental status of the site. After this visit and in October 2012 a notice in terms of section 31H of NEMA was issued to the facility to obtain further information prior to taking any enforcement action. A response was received and the facility informed DEA that it intends to decommission the facility. A decision is still required in relation to enforcement action based on the findings of the final inspection report.
Transalloys (Pty) Ltd, Mpumalanga	A site inspection was conducted by EMIs from DEA, MDEDET, as well as officials from DWA and the Nkangala District Municipality in August 2013. Non-compliances with numerous conditions contained in the RoD, WML, water use licence and APPA registration certificate applicable to the site were found. In addition there was a failure to comply with the provisions of NEM:WA and ECA in that the facility was undertaking of a number of activities listed in terms of NEM:WA (and previously in terms of ECA) without the required authorisation. The facility was also conducting a number of water uses listed in terms of NWA without the required authorisation. An inspection report detailing these findings of non-compliance will form the basis for enforcement action
Silicon Smelters, Polokwane, Limpopo	An inspection was conducted at the facility in February 2012. The findings were as follows: • non-compliance with conditions of the EA and APPA registration certificate; • non-compliance with the provisions of NEM:WA; • undertaking of activities listed in terms of NEM:WA and ECA without the required authorisation; • undertaking of activities listed in NWA without the required water use licence; • excessive dust emissions; • disposal of hazardous waste in unlined areas; and • high levels of e-coli. A Notice in terms of Section 31H of NEMA was issued to the facility in January 2014 and a response was received. A decision regarding administrative enforcement action is pending.

INSPECTIONS	
Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
FERRO-ALLOY, IRON AND STEEL	
Samancor Ferrometals, Mpumalanga	A criminal case was registered as per Middleburg CAS 328/06/2011. The case is under investigation.
Cape Gate Vanderbijl and Cullinan, Gauteng	EMIs visited the facility in October 2012 and noticed the following: • non-compliance with conditions of the EA, WML and APPA registration certificate; • undertaking of listed activities in terms of NEMA without the required authorisation; • non-compliance with the provisions of NEM:WA; • undertaking activities listed in terms of NEM:WA and ECA without the required authorisation; • undertaking of activities listed in NWA without the required licence; • storage of used oil drums containers on an unbunded, unlined area; • poor maintenance of outlet and channels; • poor stormwater management; • fugitive emissions from the kilns; and • use of slag as building material. A notice in terms of section 31H of NEMA was issued to the facility in August 2013. A response was received. The inspection report was finalised and issued to the facility and in April 2014 the facility made representations on the findings of the inspection report. The facility requested a meeting with DEA to make oral representations. A decision regarding administrative enforcement action will be taken once the facility has made its oral representations.
Mogale Alloys, Gauteng	The facility was inspected in June 2013. The findings were as follows: • significant non-compliance with conditions of authorisations (AEL, WMLs, EA); • failure to comply with duty of care in relation to improper storage of Electric Arc Furnace dust on unlined and uncovered areas, poor storm water management, fugitive emissions; and • failure to comply with general duty in respect of waste management and requirements for the handling and storage of waste. An inspection report was issued to the facility in March 2014. The facility submitted its representations to DEA and after perusal and review of these representations, it was decided that further information was required.
REFINERIES	
Sasol Secunda Refinery, Mpumalanga	In initial inspection took place at the facility on 4 and 5 March 2008. Significant non-compliance with conditions of numerous authorisations applicable to the facility, including APPA registration certificates, EA and the two Section 20 (1) ECA permits relating to the fine ash dump and the Charlie 1 Waste Disposal Site was evident. In addition, EMIs noticed environmentally harmful activities that should have been 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. A follow-up inspection took place in August 2010. The findings were as follows: • non-compliance with authorisations remained on-going; • environmentally harmful activities with regards to raw material storage, coal storage and spillages of hazardous substances has still not been addressed; and • failure to comply with general duty of care in respect of waste management on site. Against this background, and in 2011, DEA undertook an extensive and in-depth APPA registration certificate and WML review process. During this process a number of compliance related challenges and concerns were raised with the facility. It was acknowledged that these challenges and concerns had to be dealt with in an efficient and effective manner. Pursuant to a consideration of all the information gathered during the review process, new air and waste related licences are being finalised to ensure that the issues and concerns identified at the facility are addressed. The new set of licence conditions are aimed at ensuring the facility operates in a compliant manner. Accordingly, DEA has decided not to take any enforcement action against the facility at this juncture. DEA will, however, continue to monitor compliance at the site.

INSPECTIONS	
Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
POWER GENERATION	
Eskom Matimba Power Station, Limpopo	An initial inspection was conducted in January 2010. The findings were as follows: • non-compliance with conditions of the water use licence; • operation of waste disposal site without a WML; • storage of coal without the required AEL; • potential soil, ground and surface water pollution as a result of unlined waste disposal area; coal storage areas and waste water dam damaged liners; and • fugitive dust emissions from ash transfer points. In March 2013 EMIs again inspected the facility. Although a WML had been obtained, the facility was not complying with the conditions thereof. A notice in terms of section 31H of NEMA was issued to the facility A pre-compliance notice in terms of section 31L of NEMA and pre-directive in terms of section 31A of ECA and Section 28(4) NEMA was issued to Eskom Matimba in October 2012. Representations were received in December 2012. A follow up compliance inspection in relation to the WML was conducted in March 2013. Pursuant to this inspection, a 3rd notice in terms of section 31H of NEMA was finalised and issued to the facility. Said notice requests updates/ progress on projects that were outlined by the facility in response to the pre-compliance notice and pre-directive. A report for the WML inspection conducted in March 2013 was attached to the notice.
Eskom Grootvlei, Mpumalanga	An inspection was conducted in July 2012. The findings were as follows: • significant non-compliance with conditions of an AEL, EA and WML; • illegal waste sites; • poor storm water management leading to potential pollution of water resources; • potential water pollution due to unlined ash return water dam; and • storage of waste: oily waste, old transformers, etc on unlined and unroofed areas. The inspection report was finalised and issued to facility. DEA is awaiting a response from the facility.
PULP & PAPER	
Sappi Ngodwana Mpumalanga	An inspection was conducted at the facility in March 2011. The findings were as follows: • non-compliance with conditions of the APPA registration certificate; • non-compliance with conditions of the ECA Section 20 permit; • operation of 2 waste sites without authorisation; • lack of proper bund walls and measures to contain spillages of hazardous chemicals; • after the initial inspection (August 2008) the facility has constructed a chemical storage facility without the required EA; • potential groundwater and surface water pollution from poor storm water management around the coal storage area; • undertaking environmentally harmful activities; and • poor management of waste. A follow-up inspection was conducted in March 2013 in order to verify / confirm the information received, as well as the commitments made during the 2011 compliance inspection. During this inspection EMIs gathered and requested a substantial amount of additional information from the facility. Said information has been provided and is currently being reviewed by DEA, following which, a decision will be made on the next step in the enforcement process.

INSPECTIONS	
Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
CEMENT	
Calsiment, Mpumalanga	The facility was inspected by EMIs from DEA in April 2011. It was found that the facility had: - failed to obtain an EA/ROD for listed activities that require(d) an authorisation in terms of Section 22(1) of the ECA or Sections 24 and 24D of the NEMA; - commenced or continued with listed activities without the required APPA registration certificate and thereafter without the required AEL; - failed to obtain a WML for waste management activities that require a WML in terms of Section 20(b) of NEMWA. DEA issued a pre-compliance notice in May 2013. The facility submitted representations in response thereto. A notice in terms of section 31H of NEMA was issued in August 2013, which requested the first set of bi-annual monitoring results as per condition 7.4 of the facility's Provisional AEL that should have been conducted and compiled by July 2013. The facility responded with a letter dated August 2013, which informed DEA that it had appointed an independent consultant to perform the said monitoring but that the results were not yet available. The facility undertook to provide the DEA with the first set of sampling by end of September 2013. A 2nd notice in terms of Section 31H NEMA was issued to the facility in March 2014. No representations were received. DEA has been advised that the facility is under business rescue and not operating. A criminal investigation into this matter is in progress. The investigation is finalised and docket will be forwarded to the DPP for decision.
OTHER	
Goswell Aluminium, KwaZulu Natal	A site inspection was conducted by EMIs from DEA and KZN-DAEARD, as well as officials from DWA and the eThekweni Municipality in February 2013. Several non-compliances were identified, including: - non-compliances with numerous conditions contained in the two RoDs for the site; - non-compliance with various conditions contained in the waste permit issued in terms of ECA; - non-compliance with various conditions contained in the WML for the site; - failure to comply with the provisions of the NEM:WA; and - failure to comply with the requirements of ECA as well as the associated Waste Tyre Regulations. DEA issued the facility with a notice in terms of section 31H of NEMA in March 2014, requesting further information and documentation to determine their compliance status. The information is currently in the process of being reviewed.



8.2 Eskom Responses to Reactive Administrative Enforcement

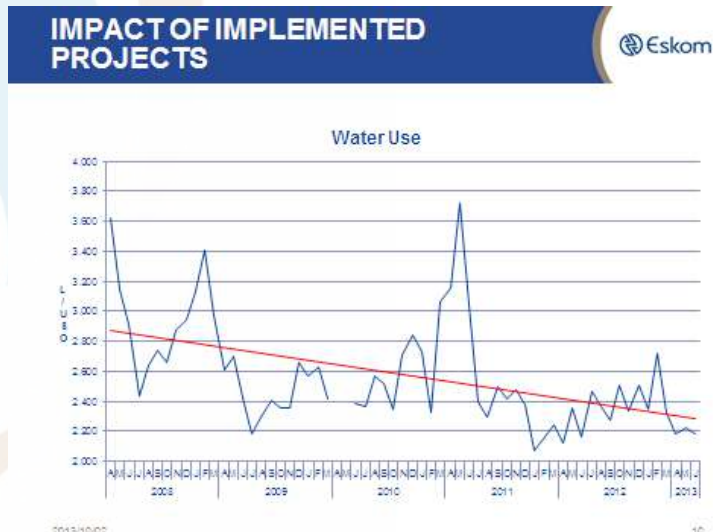
8.2.1 Eskom Camden Power Station, Ermelo, Mpumalanga Province

In July 2011, EMIs from various departments conducted an environmental compliance inspection at the facility.

During August 2012, DEA issued Eskom Camden with a notice of intention to issue: a compliance notice and directive in terms of Section 31L and Section 28 of NEMA respectively, as well as a directive in terms of Section 31A.

Eskom Camden made representations in response to the administrative notices and has had numerous meetings and correspondence with the DEA to discuss the progress made and improvements that have been effected on site. A follow-up inspection was conducted in November 2013 to confirm and verify whether or not all action items to which Eskom committed, had been implemented.

Eskom Camden has implemented the following measures to ensure compliance with the pre-notice/directives:

Area of concern & improvements made	Photographs depicting the state of the facility during the inspection	Photographs / graphs depicting the improvements made after action was taken												
Air: • Replacement of ash lines and filter fabric bags. • Increase AWR to sluice pump pressure. • AWRR line to sluice pumps. • Replace 8 ash pumps • Replace pump impellers. • Ash line spillages clean-up / soil remediation. • Sprinkler system on ash dam.		 EMISSIONS: PERFORMANCE SUCCESS Concentration: mg/m³ Temp. units: mg/m³ (25.0 °C) <table><thead><tr><th>2012 / 2013</th><th>FW</th><th>SW</th><th>FW</th></tr></thead><tbody><tr><td>12.12.13</td><td>1.1</td><td>1.1</td><td>1.1</td></tr><tr><td>12.12.13</td><td>12.12.13</td><td>12.12.13</td><td>12.12.13</td></tr></tbody></table>	2012 / 2013	FW	SW	FW	12.12.13	1.1	1.1	1.1	12.12.13	12.12.13	12.12.13	12.12.13
2012 / 2013	FW	SW	FW											
12.12.13	1.1	1.1	1.1											
12.12.13	12.12.13	12.12.13	12.12.13											
Water: • A Water Use License amendment application has been submitted to the Department of Water Affairs to include various activities. • Appointed Golder Associates Africa to conduct bio-monitoring of aquatic ecosystems along Witpuntspruit. • Construction of a reverse osmosis plant. • Groundwater monitoring commenced.		 IMPACT OF IMPLEMENTED PROJECTS Water Use 4 000 3 800 3 600 3 400 3 200 3 000 2 800 2 600 2 400 2 200 2 000 2008 2009 2010 2011 2012 2013												

Area of concern & improvements made	Photographs depicting the state of the facility during the inspection	Photographs / graphs depicting the improvements made after action was taken
Waste & Land Management: • A waste management licence application has been submitted to DEA for the temporary storage of hazardous waste. • Capping of the asbestos area. • Updated emergency preparedness procedure. • Design for stormwater channels. • Ash dam stability analysis. • A rezoning application was submitted to the municipal town planner to rezone Camden's property from Agriculture to Industrial III.		
Overall expenditure spent/ to be spent over a three (3) year period = Approximately R 240 759 309.00		

8.2.2 Eskom: Lethabo Power Station

In November 2009, EMIs from all three spheres of government, conducted a joint environmental compliance inspection at Eskom's Lethabo Power Station in the Free State province. During said inspection numerous non-compliances and issues of concern were identified. These included non-compliance to a number of the conditions contained in the various environmental authorisations (EAs) issued to the facility, the undertaking of a number of activities without the required authorisations and conducting activities that have had and / or are likely to have a negative impact on the environment.

Following the compliance inspection, DEA generated a detailed compliance inspection report which was provided to the facility in 2010 and requested that the facility make representations to all the findings contained in the report within a specified time. In August 2010, the facility responded by providing the DEA with its representations.

Upon reviewing the representations, DEA found that some of the non-compliances and / or areas of concern were not adequately addressed and issued the facility with a Section 31H NEMA notice dated October 2011, requesting further information.

In November 2011 the facility provided DEA with its response. Upon reviewing the supplementary information provided in this response, DEA confirmed certain of its suspicions that the facility was in non-compliance with environmental legislation and issued the Lethabo Power Station with a combined pre-compliance notice and pre-directive in terms of NEMA dated July 2012.

The facility responded with new representations as to why DEA should not proceed to issue a final compliance notice and / or directive. Upon reviewing these representations in conjunction with all previous information, as well as taking into account all the various changes in legislation since the initial inspection in 2009, DEA issued the facility with a second notice in terms of section 31H of NEMA in March 2013 which requested further information on the outstanding non-compliances and / or issues of concern, which were either not adequately addressed and / or had not been affected by the legislative changes, as identified in the compliance inspection report. The facility responded in March 2013, by providing DEA with the requested information.

Upon reviewing all the information at its disposal, DEA has decided not to proceed with any further enforcement action. This decision was based on the fact that the facility has and / or is in the process of ensuring compliance with all conditions contained in all applicable environmental authorisations. In addition to this, the facility

has applied for authorisations for the unauthorised activities which remain applicable. However, only certain authorisations have been issued to date and DEA has not yet made a decision on the remaining applications. Furthermore, the facility has conducted the necessary rehabilitation on site and has put in place mitigation measures to prevent any negative impacts on the environment.

8.2.3 Eskom Ingula Power Station

During July 2009, EMIs from the DEA, the Kwa-Zulu Natal DAEARD and the Free State DEDTEA conducted an environmental compliance inspection at the Eskom Ingula Power Station and Pumped Storage Scheme.

Various concerns and non-compliances were identified in relation to conditions of EAs, Waste Management Licenses ("WMLs"), the undertaking of unauthorised listed activities in terms of Sections 24 of NEMA, waste management activities in terms of Section 20(1) of the ECA and scheduled processes or listed activities in terms of the APPA and NEM:AQA without the required APPA registration certificates or air emission licences, as well as activities which may cause serious and significant harm to the environment (i.e. potential surface and groundwater pollution, soil pollution, etc.). The facility was again inspected during January 2012 and inspection findings revealed that the baseline findings of concern and non-compliances were not yet addressed and additional non-compliances were detected.

After considering the findings and information obtained during the baseline inspection, the facility's representations, as well as the findings of the follow-up inspection, DEA decided to take administrative enforcement action against the facility to require the facility to come into compliance and to remediate any environmental degradation. A Section 31L NEMA pre-compliance notice and Section 31A ECA and Section 28(4) NEMA pre-directive was issued to Eskom Ingula Power Station in December 2013. Representations from the facility were received.

Whilst perusing the representations and additional information, EMIs found that amendment applications for conditions of the Water Use Licenses ("WULs") were submitted to the DWA, although approval was still pending. Eskom Ingula motivated that it has improved storm water control and management measures. The facility motivated that it has improved effluent quality, had obtained a WUL for most water uses on site and has applied to amend the Integrated Water Use License ("IWUL") to include more boreholes for abstraction. Pursuant to an application in terms of section 24G, Eskom Ingula also paid a fine of R1 million in October 2012 for the commencement of waste management activities in the absence of the necessary WML.

In addition to the above, Eskom Ingula motivated that it had established various monitoring programmes pertaining to water/effluent quality and that various investigations and assessments have been conducted by appropriate specialists. It also advised that it has rehabilitated various affected areas and that faulty/inoperable equipment was repaired. The facility motivated that the sources of potential pollution (i.e. vehicle wash bay, damaged pipes, areas where spillages were observed, unbunded areas) have been decommissioned, banded, overflowing ponds have been de-sludged and sewage treatment plants ("STPs") are operating according to their design capacity.

According to Eskom Ingula, monitoring, auditing, education activities, maintenance and repair activities continue on site. The facility has also provided DEA with various specialist reports (Bio-Monitoring) which indicate that water quality at the site is within the "the ranges conducive for acceptable water quality and can thus support a fairly diverse biotic community". Eskom Ingula has confirmed that it will initiate specialist studies pertaining to Fairy Shrimp in August 2014 as required by the EA.

Some of the activities unlawfully undertaken by Eskom prima facie appear no longer to be listed, however, an investigation and further consultation is still in process before a decision will be taken in this regard. Improvements in the recording of material sent to landfill (i.e. specific recording of volumes of material disposed of) has also been effected. Eskom provided groundwater monitoring results which indicate that no contamination is presently experienced. Eskom has now also submitted most documents which were requested by the EMIs during the inspections. The facility motivates that it has appointed a large number of personnel in an environmental management capacity and employs a wide range of independent environmental auditors and advisors to ensure continued compliance. A follow-up inspection will be conducted at the facility in order to ascertain whether or not these improvements and undertakings made by Eskom Ingula have been effected.

The significant amount of work that has been done by the EMI's in relation to Eskom facilities has resulted in greater levels of compliance and increased awareness of environmental issues at these facilities. It is hoped that compliance with legal requirements will continue to be a priority for Eskom and the DEA will continue to monitor these facilities through regular inspections and ongoing work in the sector.

9. BIODIVERSITY ENFORCEMENT AND COMPLIANCE

9.1 Biodiversity Crime Related to Rhinoceros

INSTITUTION	2010	2011	2012	2013	2014 (as at 5 March 2014)
SANParks (Kruger National Park)	146	252	425	606	111
SANParks (Marakele National Park)	0	6	3	3	0
Ezemvelo	38	34	66	85	10
Limpopo	52	74	59	114	17
Western Cape	0	6	2	0	0
Eastern Cape	4	11	7	5	3
Gauteng	15	9	1	8	0
Northwest	57	21	77	87	15
Free State	3	4	0	4	4
Northern Cape	1	0	0	0	0
Mpumalanga	17	31	28	92	6
TOTAL	333	448	668	1004	166

Table 9.1.1: Total Number of Rhinos poached in South Africa for 2010, 2011, 2012, 2013, 2104 (as at 05 March 2014)

INSTITUTION	2010	2011	2012	2013	2014 (as at 05 March 2014)
SANParks (Kruger National Park)	67	82	73	133	24
SANParks (Marakele National Park)	0	0	0	0	0
KwaZulu Natal	25	4	20	63	15
Limpopo	36	34	43	34	9
Western Cape	2	0	0	0	0
Eastern Cape	7	2	0	0	0
Gauteng	10	16	26	10	0
Northwest	2	21	32	26	4
Free State	0	0	6	7	0
Northern Cape	0	0	1	0	0
Mpumalanga	16	73	66	34	2
TOTAL	165	232	267	343	54

Table 9.1.2 : Total Number of Arrests made in South Africa for Rhino-Related Offences for 2010, 2011, 2012, 2013 and 2014 (as at 05 March 2014)

NATIONAL RHINO RELATED PROSECUTIONS: APRIL 2013 – MAY 2014			
		2013	2014
Number of cases finalised/ accused	Number of cases finalised (convicted and sentenced, acquitted, withdrawn, struck off roll)	50	70
	Number of accused involved in finalised cases	95	140
Number of court outcomes	Number of accused convicted	69	85
	Number of accused acquitted	2	13
	Number of accused against which case withdrawn	23	25
	Number of accused died after conviction but before sentence	1	–
	Number of accused convicted and sentenced to a fine	20	20
	Number of accused convicted and sentenced to direct imprisonment without the option of a fine	36	50
Number of conviction charges	Number of accused convicted for possession of rhino horns	16	9
	Number of accused convicted for dealing in rhino horns	8	7
	Number of accused convicted for illegal hunting of rhinos	20	24
	Number of accused convicted for illegal possession of fire-arm or ammunition/supplying fire-arms	23	32
	Number of accused convicted for trespassing	25	44

Table 9.1.3: Outcome of criminal prosecutions for rhino-related offences from April 2013 – May 2014

9.1.4 Significant court cases related to Rhino

In the 2013/14 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. A few of these matters are reflected below.

S v Huang Jiang Chu & Xion Binh Dang	
Province	Western Cape
Court	Khayelitsha Priority Court
Charge	Possession of 12 complete rhino horns and 2 pieces of rhino horn (38,14kg)
Judgment/Sentence	Both accused pleaded guilty and were sentenced to 10 years direct imprisonment. Accused 1 was sentenced to 10 years, 3 years suspended for 5 years (he has a previous conviction for a related offence). Accused 2 was sentenced to 10 years, 5 years suspended for 5 years. It was further ordered by the court that both accused are to be deported on completion of their respective sentences.
Note:	Accused 2 was previously convicted on the same charge and deported.

S v Sampson Manganyi and Joseph Lekena	
Province	North West
Court	Regional Court, Mafikeng
Charge	Illegal hunting of a rhino, illegal possession of fire arms and trespassing in a game reserve
Judgment/Sentence	<u>Accused 1</u> (Sampson Manganyi) pleaded guilty as an accomplice in the attempted hunting of a rhino – S57(1) NEMBA and was sentenced to R10 000.00 or 10 years imprisonment of which half was suspended for 5 years subject to conditions. <u>Accused 2</u> is awaiting trial.
Note:	Vehicle used to transport was seized by the Asset Forfeiture Unit. Accused 1 will testify against accused 2.

S v MB Siyaya and P Khanyile	
Province	KwaZulu-Natal
Court	Vryheid Court
Charge	Illegal killing of a black rhino, possession of 2 horns, theft of rhino horn, possession of arms and ammunition (AK 47)
Judgment/Sentence	<u>Accused 1</u> was convicted of illegal possession of AK 47 and sentenced to 10 years imprisonment. <u>Accused 2</u> was convicted of illegal hunting of rhino and sentenced to 10 years imprisonment.
Note:	The suspects were arrested in possession of the rhino horn and the horns were seized as exhibits by the SAPS.

S v W Mawala	
Province	KwaZulu-Natal
Court	Ubombo Court Ingwavuma Regional Court
Charge	Murder, hunting of rhino and trespassing
Judgment/Sentence	The accused was convicted on 18 June 2013 of murder, illegal hunting and trespassing. Sentenced on 20 June 2013 to 15 years for Murder, 9 years for illegal hunting and 1 year for trespassing. Effective sentence is 21 years imprisonment.
Note:	He was convicted for the murder of a ranger <i>via dolus eventualis</i> .

S v William Gezani Nkovani, Erie Famik Mahomane, Augustos Nkuna, Manyanga Shirinda, Foster Nyoni	
Province	Limpopo
Court	Regional Court Makhado (Louis Trichardt)
Charge	Illegal possession of rhino horn and leg, possession of automatic fire-arm and ammunition, trespassing.
Judgment/Sentence	<u>Accused 3</u> (Augustos Nkuna), <u>4</u> (Manyanga Shirinda) and <u>5</u> (Foster Nyoni) pleaded guilty to picking up and removing rhino horn, possession of fire-arms and trespassing. They were sentenced as follows: Count 1: 7 years ; Count 2: 3 years ; Count 3: 5 years suspended for 3 years; to run concurrently.
Note:	Case was withdrawn against <u>Accused 1</u> (William Gezani Nkovani) and <u>Accused 2</u> (Erie Famik Mahomane).

S v Honore Danilo and Gideon Mushegera	
Province	Gauteng
Court	Germiston Magistrates' Court
Charge	Possession of four horns. The accused was arrested with 4 rhino horns in his possession during an undercover operation.
Judgment/Sentence	<u>Accused 1</u> was acquitted on 12 April 2013 in terms of Section 174 of the Criminal Procedure Act. <u>Accused 2</u> convicted of contravening section 57(1) of NEM:BA and was sentenced to 8 years imprisonment.

S v Mfana Abel Mashabane	
Province	Mpumalanga
Court	Nelspruit Regional Court
Charge(s)	Illegal hunting of one rhino, possession of one rhino horn, theft, malicious injury to property and trespassing.
Judgment/Sentence	The matter was finalised on 24 May 2013. The accused was convicted of illegal hunting and trespassing and sentenced to 11 years imprisonment. (The court took into account that the accused had lost his leg in the incident.) A subsequent application for leave to appeal was dismissed.
Note:	R50 000 seized together with a fire-arm. Awaiting forensic report linking fire-arm with crime scene.

S v Antonio Malunga, Diniso Manuel Jardien, Julius Ngwenya (All Mozambican)

Province	Mpumalanga
Court	Nelspruit Regional Court
Charge(s)	Illegal hunting of 2 rhino in KNP, possession of 4 horns, possession of fire-arm and ammunition.
Judgment/Sentence	On 22 August 2013 the accused pleaded guilty and were convicted on the following counts: Count 1: Trespassing Count 2 and 3: Illegal hunting Count 4: Illegal possession of fire arm Count 5: Illegal possession of ammunition They were sentenced as follows : Count 1: 3 years, Count 2 and 3: Taken together for sentence, 8 years Count 4 and 5: Taken together for sentence, 5 years. Effective sentence: 16 years

S v Kenneth Ally Sibiya and Leonard Mhlongo (both Mozambicans)

Province	Mpumalanga
Court	Nelspruit Regional Court
Charge	Possession of fire-arm and ammunition; trespassing in the Kruger National Park and possession of 3 horns.
Judgment/Sentence	<u>Accused 2</u>, Leonard Mhlongo, pleaded guilty and was convicted on 2 counts of killing of rhino (cow and calf) and trespassing. He was Sentenced to 10 years imprisonment for killing of the cow, 8 years imprisonment for the killing of the calf and 4 years for trespassing. The 10 and 8 years run concurrent. Effective sentence 14 years. <u>Accused 1</u>, Kenneth Sibiya, was out bail and did not return to court. A warrant for his arrest was issued.
Note:	Accused 2 could not be charged for possession of a fire-arm as he told the court that it was accused 1 who possessed it. State witnesses could not counter this as they could not tell the court who held the fire-arm.

9.2 Biodiversity Crimes related to elephant

While the spotlight held by the media, 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.

S v Thi Phuong Nguyen and another (Vietnamese)	
Province	Gauteng
Court	Germiston
Charge	Intending to import endangered species or derivatives without the necessary permits in terms of section 57(1)(A) of NEMBA.
Judgment/Sentence	R 50 000 or 3 years imprisonment.
Note:	This was the first time a prosecution was conducted in terms of the recent amendment to NEM:BA, section 57(1)(A) which now allows for prosecutions where the accused is still in transit with endangered species or derivatives without the necessary permits and has not entered the Republic. These accused were importing ivory from Angola to the value of approximately R1.3 million which weighed 147.71 kg. They were arrested while in transit from Angola to the East.

S v Abdulha Ali	
Province	Gauteng
Court	Cleveland Magistrates' Court
Charge	Contravention of section 57(1) of NEM:BA
Judgment/Sentence	3 years imprisonment of which 1 year is suspended for 5 years on certain conditions.

S v Siqun Zhang and Peter Cela	
Province	Gauteng
Court	Florida Magistrates' Court
Charge	Contravention of section 57(1) of NEMBA
Judgment/Sentence	R 20 000 or 3 years' imprisonment.

S v Lu Qi	
Province	Western Cape
Court	Khayelitsha Regional Court
Charge	Illegal possession and sale of 10 056 elephant ivory items (708.215kg)
Judgment/Sentence	R1 million or 10 years imprisonment with 10 years suspended for five years



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S v Mei Ping Lin	
Province	Western Cape
Court	Khayelitsha Regional Court
Charge	Illegal possession of 342 elephant ivory items (9.535kg)
Judgment/Sentence	R200 000 or 2 years' imprisonment with R100 000 or 1 year suspended for five years
	

S v Mei Ping Lin	
Province	Western Cape
Court	Khayelitsha Regional Court
Charge	Illegal possession of 342 elephant ivory items (9.535kg)
Judgment/Sentence	R200 000 or 2 years' imprisonment with R100 000 or 1 year suspended for five years
	

9.3 Biodiversity Crimes Related to Cycads

S v S'phamandla Ngubane and Sibonelo Gcwabaza	
Province	KwaZulu-Natal
Court	Ingwavuma Regional Court
Charge	Contravention of sections 196 and 200 of the Natal Nature Conservation Ordinance.
Judgment/Sentence	3 years' imprisonment.
Note:	The accused harvested 134 <i>Encephalartos ferox</i> (Tonga) cycads worth more than R100 000 from the Tembe Elephant Park. The two accused were arrested during a trap operation in which they sold 134 recently harvested Cycads to an undercover police agent. The cycads in question are not listed under the national threatened or protected species regulations and the accused were therefore prosecuted for contravention of the Ordinance.

S v Nkosi and Mojake	
Province	Eastern Cape
Court	Cathcart Regional Court, Eastern Cape
Charge	Four charges: Theft of 22 cycads; Trespassing onto the farm property; and two counts of contravening the Eastern Cape Nature and Environmental Conservation Ordinance, 19 of 1974: Illegal picking/transporting/possession and illegal exporting of cycads.
Judgment/Sentence	<u>Accused 1</u> : Received 5 years' imprisonment (as first offender) with 2 years' suspended for 5 years. <u>Accused 2</u> : Received 7 years' imprisonment (with a similar previous conviction and 3 years' imprisonment hanging over his head) with 2 years' suspended for 5 years.
Note:	Both accused were at the time involved along with the aforementioned smuggler and others in a pending matter on similar charges at Jansenville.

9.4 Biodiversity Crimes Related to Other Species

S v A Stone	
Province	Free State
Court	Kroonstad Magistrates' Court
Charge	Contravention of section 57(1) NEM:BA – Illegal hunting of a brown hyena.
Judgment/Sentence	R10 000 or 2 years' imprisonment suspended for 5 years.

S v Bhekuyise Ndlovu and Mkhumbuzeni Phasela Mathenjwa	
Province	KwaZulu-Natal
Court	Obonjeni Magistrates' Court
Charge	Contravention of section 57(1) of NEM:BA for the illegal hunting two cheetah, which are specially protected species, in the iSimangaliso Wetland Park.
Judgment/Sentence	<u>Accused 1</u> : Ndlovu, who was the main hunter. He pleaded guilty and was sentenced to 5 years imprisonment. <u>Accused 2</u> : Assisted accused 1 in carrying the carcasses of the animals. He was sentenced to pay a fine of R4000 or face 12 months imprisonment.
Note:	Cheetahs are an endangered species with only 900 living in the wild in South Africa.

S v Sydney Matthews	
Province	Northern Cape
Court	Springbok Magistrates' Court
Charge	Northern Cape Conservation Act, section 26(1)(b) and section 4 of Act 9/2009
Judgment/Sentence	R 5 000 or 90 days imprisonment plus R 20 000 or 9 months imprisonment suspended for 5 years.
Note:	The accused was caught smuggling the following reptiles from Namibia to South Africa, three (03) Horned Adders (<i>Bitis caudalis</i>), three (03) Sebra spitting Cobras (<i>Naja nigricincta</i>), and one (01) Common Tiger snakes (<i>Teloscopus semiannulatus</i>).

10. JOINT COMPLIANCE AND ENFORCEMENT OPERATIONS

10.1 Verification of private rhino horn stockpiles

The rhino poaching phenomenon resulted in government and stakeholders developing the *National Strategy for the Safety and Security of Rhinoceros Populations in South Africa*. As part of the implementation of the strategy, EMLs from DEA in partnership with its provincial counterparts embarked on a joint compliance inspection project with the view of verifying rhino horn stockpiles under private ownership.

The verification and inspection exercise was executed in terms of the *National Norms and Standards for the Marking of Rhinoceros and Rhinoceros Horn*, and for the *Hunting of Rhinoceros for Trophy Hunting*. Officials were required to record the following information: microchip number of each individual horn; sizes in terms of circumference, inner length, outer length, weight, ZA number, DNA samples, photographs of each individual horn, and how the horn was obtained (either through poaching, dehorning, natural mortality or other reasons). This verification process is important firstly to ensure that there is compliance with the regulatory requirements; secondly to better understand the size of the stockpile in order to inform possible trade proposals (if any); and thirdly to provide a national basis from which the authorities are better able to understand the legal and illegal activities associated with rhino horn.



10.2 Operation Cobra II

This international operation was a follow-up to Operation Cobra (January 2013) co-ordinated between the parties to the Lusaka Agreement, with a focus on elephants, rhinos, pangolins, big cats, Tibetan antelope and great apes. Within South Africa, the operation was jointly co-ordinated by DEA and SAPS (Hawks) and took place in January 2014. Given that this was a difficult time of the year, the focus was on strengthening existing operations, with an emphasis on commencing with the verification of privately owned rhino horns and the importance of intelligence driven operations at ports of entry.

Below is a summary of some of the successes reported during the period for this operation:-

Date	Offence	Seizure	Follow-up Investigation	Prosecution outcome
2013/12/13	Possession and trade in elephant ivory: CITES Regulations and National Environmental Laws	12,4Kg - valued at +- R45 000 of raw and processed elephant ivory. <u>In transit</u> from Mozambique to Hong Kong. One person arrested	Investigation completed	Accused convicted and fined R50 000
2014/01/16	Unlawful possession of abalone (<i>Haliotis Midea</i>)	326kg (8535 units) of dried product destined for Hong Kong via SAAir Cargo - valued at R1.2 million	Investigation ongoing	No prosecution initiated yet

Date	Offence	Seizure	Follow-up Investigation	Prosecution outcome
2014/01/28, 19:17	Possession and trade in elephant ivory: CITES Regulations and National Environmental Laws	Worked ivory as well as raw elephant ivory tusk pieces (409 pieces) were <u>in transit</u> from Angola to Hong Kong, estimated value R1.3million Four (4) suspects arrested.	Investigation completed	Accused convicted and sentenced to R 50 000 or 3 years imprisonment.
2014/01/01 to 2014/02/12	Crime Combating operation against Rhino Poachers: Kruger National Park and nationally	43 suspects arrested; 108 rhinos killed nationally	Investigation still in process	Prosecutions still in process

10.3 Off-Road Vehicle Task Team

The Off-Road Vehicle (ORV) Policy of April 1994 allowed 4x4 driving for recreational purposes within the coastal zone. Due to the degradation of coastal dunes, loss of habitat and endangered species, recreational beach driving was banned in terms of ORV Regulations for the Control of Use of Vehicles in the Coastal Zone published under NEMA in *GNR 1399 of 21 December 2001*. In 2004, the 2001 ORV Regulations were amended by, a new set of ORV Regulations again published under NEMA in *GNR 1426 of 7 December 2004*. The 2004 ORV Regulations made provision for permitting. Uses for which a permit could be acquired included research/scientific purposes, film-making/advertisement, persons with mining or harvesting rights, exemptions under the MLRA, disabled people, access to private property and certain tourism and organised recreational sport-fishing subject to conditions. On 27 June 2014, new ORV Regulations were published in *GNR 496*. These new Regulations bring the control of vehicles in the coastal zone under the regulatory realm of the Integrated Coastal Management Act 24 of 2008 (ICM Act).

An ORV Task Team was established by virtue of the 2004 NEMA ORV. Its primary function is to encourage cooperative governance amongst the different spheres of government within the coastal area, and in so doing to ensure the implementation and enforcement of the ORV regulations as a priority.

Since the establishment of the ORV Task Team there have been numerous compliance and enforcement challenges. Certain “hot-spots” were identified, particularly within the Western Cape (in the West Coast District, the Eden & the Overberg Districts) and parts of the City of Cape Town Metro. These challenges (i.e. illegal driving and quad biking) hamper the fundamental role of the regulations (i.e. the fair and equitable use of the coastal areas and the coastal public property (CPP)).

10.3.1 Overberg Joint Operation: 16-18 June 2013

A Joint Blitz Operation initiated by CapeNature and led by DEA was held from 16-18 June 2013 targeting the areas of Waenhuiskrans, De Mond Nature Reserve, Cape Agulhas and Quoin Point. The degradation of the coastal environment was clearly visible due to ORV illegal driving, as well as the disturbance of the African Black Oystercatcher which uses the coastal area as its breeding habitat. Three ORV illegal drivers were apprehended and issued with J534 (admission of guilt) notices. Abalone poachers were also apprehended and charged during the operation in terms of the Marine Living Resources Act.



10.3.2 West Coast Joint Operation: 20-21 August 2013

A joint ORV inspection was conducted on 20 August 2013 with participants from DEA, WC DEADP, DAFF, Cederberg Municipality, Matsikamma Municipality, Berg River Municipality, Swartland Municipality, Saldanha Municipality, SAPS, CapeNature, Verlorenvlei Estuary Forum, and Olifants River Estuary Forum. The Strandfontein, Olifants River Mouth and Estuary and surrounding coastal areas were identified as areas to be targeted during this operation. On 21 August 2013 an ORV Workshop was hosted by DEA reflecting on the previous day's inspection and highlighting limitations that served to frustrate effective enforcement. The planned Blitz Operation of the 14th, 15th and 16th December 2013 unfortunately could not proceed due to unforeseen circumstances. These areas remain areas of concern due to be addressed in the near future.



10.3.3 City of Cape Town Joint Operation: 04 March 2014

On 4 March 2014 the ORV Task Team conducted a Joint ORV Inspection facilitated by the City of Cape Town in the coastal areas of Khayelitsha and Strandfontein. On Macassar Beach, Khayelitsha ORV illegal driving was evident. There is a dysfunctional building adjoining this beach which is used as a bath/ablution facility. This building was largely destroyed due to sand movement. The City of Cape Town intends to relocate the defunct amenities to a venue far-away from the high Water Mark. On Mnandi Beach (also in Khayelitsha), it was observed that ORV illegal driving signage and barricades closing off access had been destroyed as a result of vandalism. A part of a national road had also been destroyed due to sea-level rise and coast line movement, and another closed as a result of sand movement due to loss of dunes. The ORV Task Team is currently planning interventions such as Joint Blitz Operations, education and awareness programmes and compliance promotion. The success of these interventions is, however, largely dependent on increased compliance and enforcement capacity.

11. NATIONAL ENVIRONMENTAL COMPLAINTS AND EMERGENCY INCIDENTS

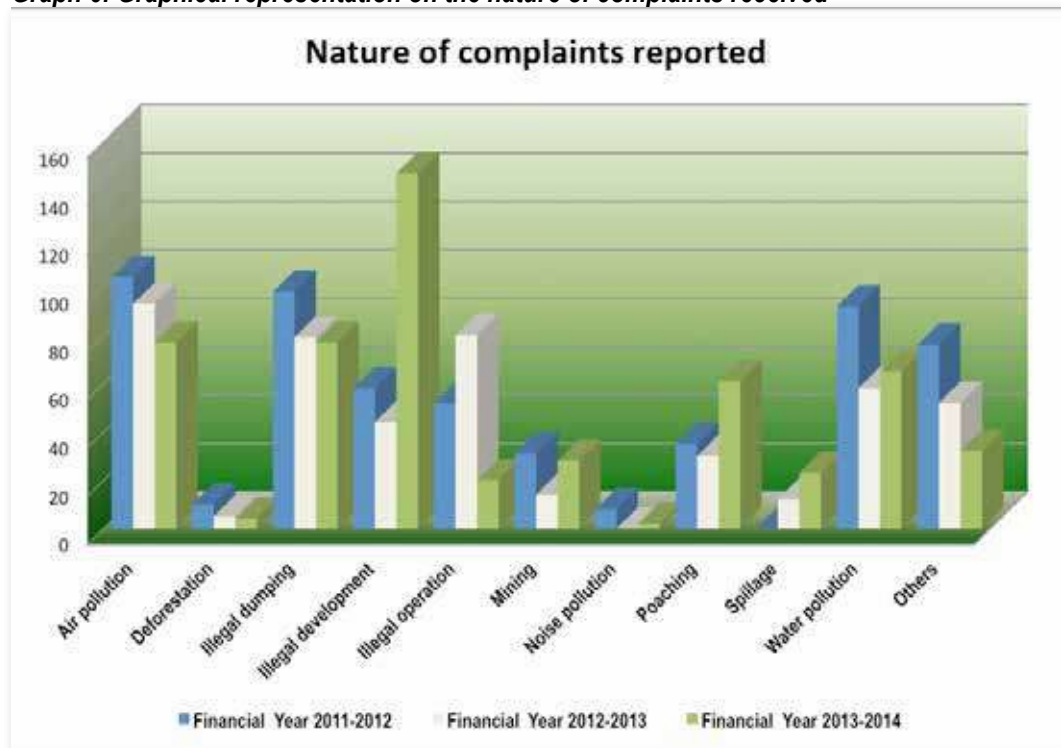
11.1 Environmental Crimes and Incidents Hotline

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 and 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 an increase in the overall number of complaints reported from **467** in 2012/13 to **536** in the 2013/14 financial year. Illegal development and poaching have shown a significant increase with illegal operation showing the highest decrease.

Nature of Complaint	Financial Year			Total
	2011-2012	2012-2013	2013-2014	
Air pollution	104	93	77	274
Deforestation	10	5	4	19
Illegal dumping	98	79	77	254
Illegal development	58	44	147	249
Illegal operation	52	80	20	152
Mining	31	14	28	73
Noise pollution	8	0	2	10
Poaching	35	30	61	126
Spillage	0	12	23	35
Water pollution	92	58	65	215
Others	76	52	32	160
Total	564	467	536	1567

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	
2011-2012	81	59	30	192	183	545
2012-2013	82	58	14	110	203	467
2013-2014	112	65	28	130	201	536
Total	275	182	72	432	587	1548

Table 8: Number of DEA referred complaints

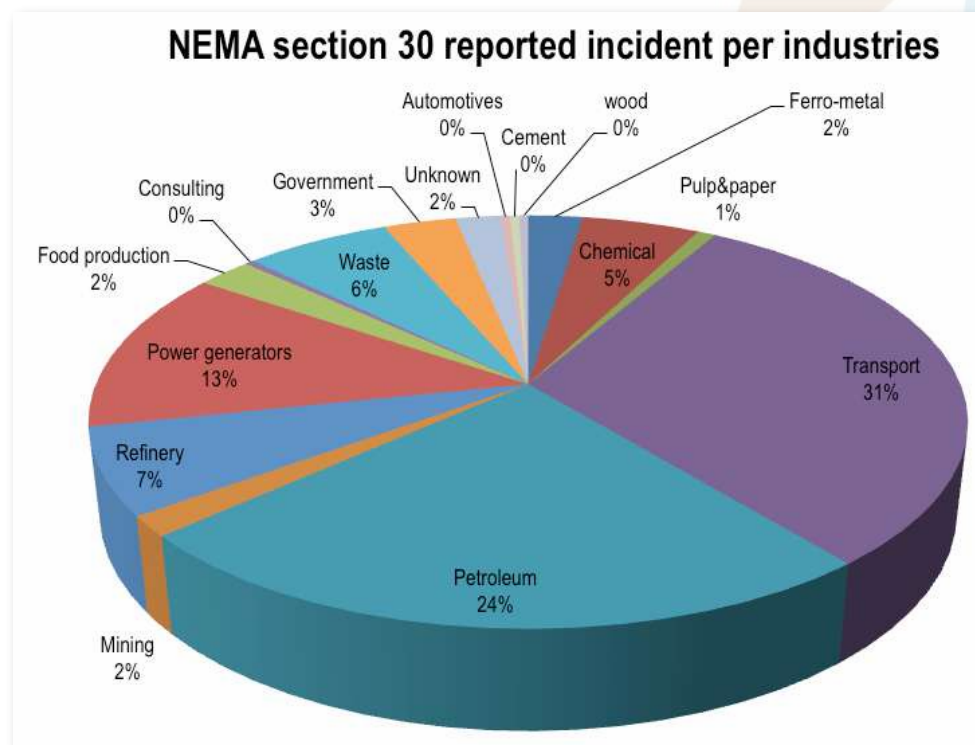
11.2 Emergency Incidents as contemplated in Section 30 of NEMA

There has been an increase in the number of reported Section 30 incidents from the 2012/2013 financial year (**213**) to the 2013/2014 financial year (**260**). 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, two workshops were held with key industry sectors in the 2013/2014 financial year:

- Petroleum Retailers Industry on 11 June 2013, and
- Transporters/Road Users Industry on 17 July 2013

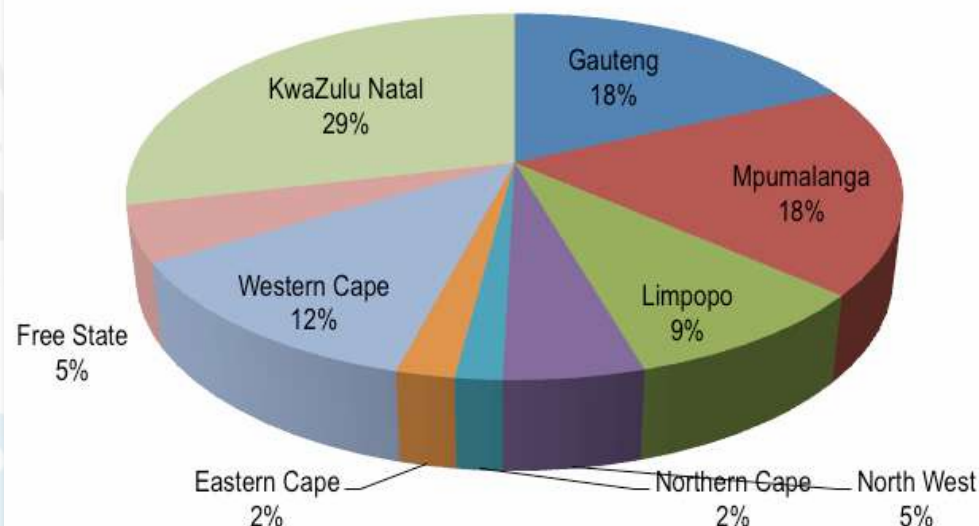
During the 2013/14 financial year most reported Section 30 incidents were received from the petroleum retail/storage sector and the road transport sector. This is mainly attributed to the wide scale use and occurrence of petroleum products across the country and the fact that vast quantities of hazardous substances are transported on our roads every day. Most of the incidents occurred in four provinces: KwaZulu-Natal, Mpumalanga, Gauteng and Western Cape, 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 DEA.

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



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

NEMA section 30 Incident reported per province



12. CAPACITY BUILDING FOR EMIS, MAGISTRATES AND PROSECUTORS

12.1 EMI Basic Training

The EMI Capacity Development and Support Directorate within the DEA coordinated and presented two EMI Basic Training Courses during the 2013/2014 financial year. The first of the two courses was presented in KwaZulu-Natal from 6–24 May 2013. Different from previous DEA EMI Basic Training courses the number of attendees approved to attend the course increased from 50 to 74 officials. The main reason for the increase was that, based on a decision taken within WGIV, the second DEA EMI Basic Training course (scheduled for October 2013) was to be reserved exclusively for prospective EMIs within the local authorities.

The 74 prospective EMIs who attended the May course represented 12 different EMI institutions, these being: CapeNature (5), SANParks (2), Western Cape DEA&DP (1) Free State DEDTEA (7), ECPTA (8), Isimangaliso Wetland Park (4), KZN DAEEA (17), Ezemvelo KZN Wildlife (6), Limpopo-DEDET (8), Mpumalanga DEDET (3), North West DEDECT (12) and DEA (1).

During the three weeks, officials were afforded the opportunity to interact with numerous experienced EMIs on relevant topics ranging from a legislative overview of

NEMA and the SEMAs to practical compliance and enforcement aspects. As part of the mock inspection practical, the prospective EMIs found themselves faced with a large composting facility, which had a number of non-compliances forcing all learners to get “down and dirty” in order to gain hands-on experience.



Officials that attended the EMI Basic Training course presented in KwaZulu Natal, May 2013

At the end of the day (apart from the hard work) a lot of fun was also had. In effect, the course took control over a hotel, as is evident from an e-mail received from the hotel management... “Trust you have settled down having spent time away from home and the office. It was truly a pleasure hosting your workshop, in fact all the staff really miss having the group here. We must commend everyone that attended as they were by far the best behaved and most professional group we’ve had the pleasure of hosting at the hotel.” 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.

The second DEA EMI Basic Training course was presented at SANBI Pretoria (Gauteng) from 07 – 25 October 2013. This marked the first EMI basic training course presented exclusively to Local Authority officials who require EMI designation. 33 officials representing 18 different local authorities, from the provinces of Gauteng, Eastern Cape, Mpumalanga, KwaZulu-Natal, Western Cape and North West were in attendance.



Officials that attended the EMI Basic Training course presented in KwaZulu-Natal, May 2013

As always, the DEA EMI Basic training course is not the result of any one person, and DEA wishes to thank all the dedicated and passionate presenters and role-players who assisted.

EMI CITES AWARENESS COURSES FOR SARS CUSTOMS DETECTOR DOG UNITS

Anybody who has had the opportunity of working at one of South Africa's many Ports of Entry and Exit will tell you that it is no easy duty, and that it takes a certain someone special to face these challenges on a daily basis. During December 2013, the DEA presented a series of courses to a number of these officials currently undergoing basic training within the SARS CUSTOMS Detector Dog Unit section. There are currently three units undergoing training: at Musina, Zeerust and Kempton Park. After completion of the training, these officials will be performing their border control duties at ports within their vicinity.

The purpose of this training was to present these officials with an overview of CITES and associated smuggling techniques; as well as guidance on the identification of prominent endangered species being smuggled.



SARS CUSTOMS DDU members from Musina who attended the CITES awareness training December 2013



SARS CUSTOMS DDU members from Zeerust who attended the CITES awareness training December 2013

The Customs Operations Detector Dog Unit was established on 1 March 2007 with the appointment of a National Commander, two trainers and three handlers.

The handlers and dogs have the ability to detect inter alia the following substances and / or goods in vehicles, vessels, aircraft, cargo, containers, mail and luggage: narcotics (including mandrax, heroin, cocaine, cannabis, crystal meth); explosives (including firearms and ammunition); endangered species (including rhino horn, abalone, ivory, crayfish and lion bones); currency; tobacco products; cell phones; copper wire and DVDs.

The three units were evaluated, subsequently designated, and deployed to their respective stations. In total 52 handlers and dogs were deployed. Although this number is higher than the indicated 39 officials that attended the CITES training session, it includes both the handlers as well as the dogs that also underwent training and certification.

With this addition there is now a total number of 90 regionally based Detector Dogs and Handlers in South Africa. The senior manager of the Customs Detector Dog Unit had the following to say during the certificate hand-out ceremony held in Zeerust: "The commitment, passion and drive of the trainees must be acknowledged as this contributed to the successful training of the new handlers and dogs. The teams performed extremely well, achieving pass rates ranging from between 92% to 99.8%, and this could only be achieved with positive team work and the drive to go the extra mile and make a difference. The teams proved their commitment and passion to playing an impactful role in the prevention of smuggling".



SARS CUSTOMS DDU members from Kempton Park who attended the CITES awareness training December 2013

Phase 2 of the programme is planned for 7 April 2014 with the establishment of three new units, these being: Port Elizabeth, Ladybrandt and Ermelo.

From the Environmental Management Inspectorate's side we would like to congratulate all involved and wish them all the success in their careers as SARS CUSTOMS Detector Dog handlers.

These three CITES awareness sessions form part of a much larger initiative which will be rolled-out to other border enforcement units in the years to come.

It is indeed an exciting time as this enhanced capacity at the ports will increase awareness and hopefully combat the smuggling of endangered species; and in the near future with increasing capacity, expand to other environmental crimes such as international smuggling of hazardous waste.

12.2 EMI Field Ranger Training (Grade 5) - Train the Trainer course, Hoedspruit

In further support of the EMI Grade 5 (predominantly field rangers) basic training project the DEA, on behalf of the Environmental Management Inspectorate, negotiated a Memorandum of Understanding (MoU) with the South African Wildlife College (SAWC). The main purpose of the MoU was to approve SAWC as an institution that could provide EMI Grade 5 Basic Training, particularly to those EMI institutions that currently do not have the internal capacity to deliver the course in-house.

The North West Parks and Tourism Board was the first to bring the MoU into action when they made use of the SAWC to present the EMI grade 5 basic training to a total of 95 field ranger trainees at Pilansberg from 8 July to 29 July 2013.

During this course the trainees were divided into five groups comprising of officials from the different Parks in the North West Province including: Madikwe; Molemane; Highveld; Mafikeng; Botsalano; Pilansberg; Borakalalo; Molopo; Wolwespruit; Boskop dam; S.A. Lombard; Bloemhof; Baberspan; Kgaswane and Vaalkopdam Nature Reserves.

The content and layout of the courses ensured that attendees were provided with theoretical training on NEMA and the associated SEMAs (the Biodiversity Act and the Protected Areas Act in particular), the powers, functions, mandate and duties associated with a Grade 5 EMI, the EMI Code of Conduct as well as the proper keeping of the EMI pocket book. The course also included a number of practical training sessions to ensure that the field rangers properly understand and are able correctly to execute these theoretical principles.

In an effort continuously to improve on the training provided, attendees were asked to provide feedback on the course. This feedback revealed that they would appreciate that more time be spent on practical application of law and associated powers, as well as the fact that learning should not stop with the basic training and time should be made available to re-fresh the newly trained EMI's from time to time.

World Ranger day was celebrated on 31 July and serves to highlight the work done by rangers in conservation. The purpose of the day is to show appreciation to the ranger, field ranger and staff involved in conservation. During these celebrations, a moment of silence is set aside to pay tribute to those rangers who have made the ultimate sacrifice in the course of their duties, and also to reflect on rangers who are placed remotely and operate in difficult circumstances.

SANParks, celebrated World Ranger day with a show of force. Demonstrations of Anti-Poaching Units combined with aerial support as well as a show of discipline were presented. The state of readiness of the Field Rangers in the Kruger National

Park was clearly demonstrated through live exercises and static displays. New technology and old methodology combined to show the true application of the field ranger in the fight against poachers.

The effect of this celebration of Field Rangers must not be underestimated. Positive feedback and the opportunity to be the center of attention goes a long way to encourage and empower field rangers in their tasks and deployments. This day, in essence, focusses on the unsung heroes of nature conservation.

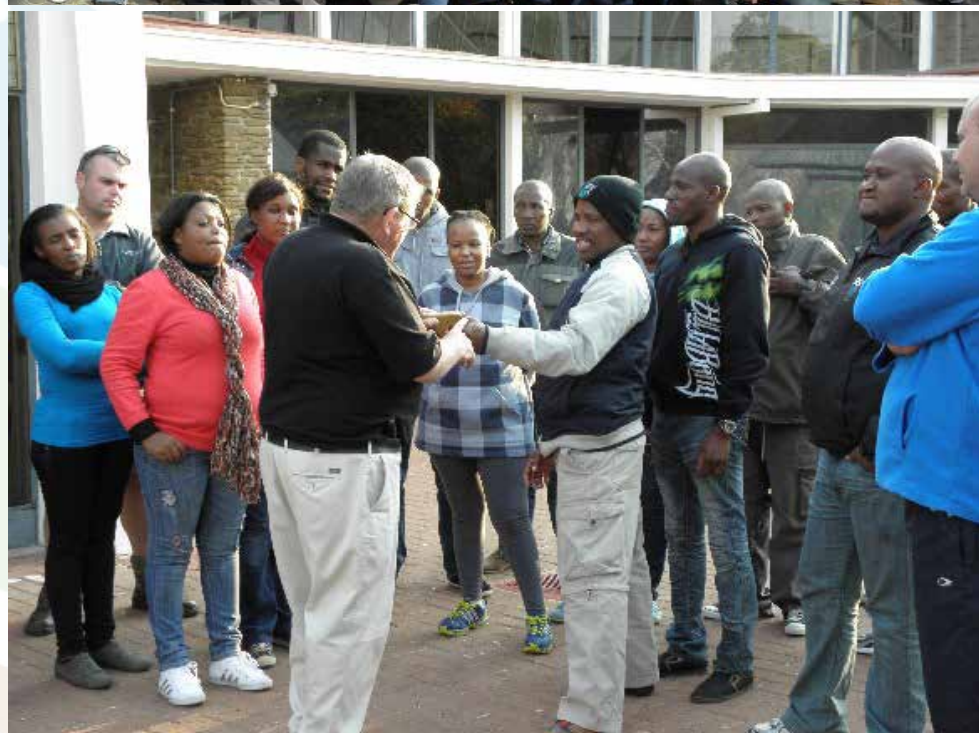
12.3 EMI Specialised Training

In addition to the EMI basic training four specialised training courses were presented during the financial year. The purpose of the specialised courses is to provide designated EMIs with in-depth topic specific training presented by internal as well as external experts.

12.3.1 Compliance and Control for Law Enforcement Officers

DEA hosted the second Compliance and Control course for EMIs at the Maselspoort conference centre situated just outside Bloemfontein in the FreeState. The course was attended by EMIs from Western Cape, Eastern Cape, FreeState, Mpumalanga, North-West, Northern Cape, Limpopo, KwaZulu-Natal, and the National office. The 5 day course was presented by Don Gold from the Minimum Force Training Institute and ran from 8 to 12 July 2013, with a group of 30 EMIs in attendance. The training was centered around resolving conflicts and the use of minimum force where necessary.

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.



Attendees of Compliance and Control course for EMI's at Msselpoort.

The practical part of the course focused on the use of minimum force during arrests and searches, as well as ensuring the EMI's are trained in the proper use of issued equipment such as speed handcuffs, ASP tactical batons and oleoresin capsicum (pepper spray).

The training concluded with 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 themselves be exposed to the product during a confrontation.

12.3.2 Alien Invasive Species EMI Grade 4 Basic Training Course

A one week EMI Grade 4 bridging training course was presented to 30 officials associated within the Working for Water Environmental Programme from 29 July to 2 August 2013. The purpose of this training was to enable the designation of these officials as Grade 4 EMI's to ensure that they are able properly to fulfill a compliance monitoring role in respect of alien and invasive species; with specific focus on the eradication and subsequent management of these exotic and invasive plants.

Within the Working for Water Project owners of properties that are heavily affected by infestation of alien and invasive plants enter into an agreement with the DEA on mutual assistance in the eradication of these species. This agreement, in essence, provides for the initial eradication and treatment to be conducted by government with the subsequent duty falling on the landowner to manage any re-infestation. On many occasions landowners did adhere to the latter part of this agreement resulting in complete re-infestation of the property. In such instances officials are left with no option but to institute proceedings against the landowner for the recovery of monies spent eradicating the alien invasive species.



Officials from Working for Water that attended the EMI Grade 4 Training course August 2013

Due to the unique circumstances that these officials find themselves in, it was clear that they would only require the powers associated with a Grade 4 EMI. This designation will enable officials to monitor compliance on the affected properties in support of the administrative enforcement process as provided for by the (soon to be promulgated) Alien and Invasive Species Regulations.

12.3.3 EMI Biodiversity Crime Scene Management Training Course

During September 2013, 30 EMI's underwent Crime Scene Management training on how properly to process, assess and manage a biodiversity related crime scene. The course was attended by officials from the Free State, Limpopo, Mpumalanga, SANParks, CapeNature, North West Parks, Northern Cape, North West Environment, DEA, Eastern Cape Parks, Eastern Cape Environment and 1 member from the SAPS Forensic Science Laboratory.

The one week course was presented from 9 - 13 September 2013 in the Kruger National Park. The conference facility in Skukuza camp housed the lectures after

which the EMIs were taken into the park for some hands on practical training. A number of experienced EMIs: Mario Scholtz,(SANParks), Frik Rossouw (SANParks), Werner Boing (Free State), Rod Potter (Ezemvelu KZN Wildlife) and Juan de Beer (Mpumalanga Parks) were tasked with the coordination of this training.



Officials that attended the Biodiversity Crime Scene Training Course September 2013

With the general crime scene theory lectures out of the way, the second part of the course focused on the proper collection and submission of Rhino DNA collected from a crime scene. This aspect was presented by Dr. Cindy Harper and Amy Clarke, both from the Veterinary Genetics Laboratory (VGL) at the University of Pretoria. This component combined theoretical and practical sessions. It concluded with a practical assessment whereafter successful candidates were awarded a competency certificate.

The third topic turned its focus to the proper collection of flora and fauna exhibits in support of what is known as the DNA sequencing (barcoding) project. Again theory and practical's were intertwined in a session presented by Professor Michelle van der Bank, Olivier Maurin and Ronny Kabongo from the African Centre for DNA Barcoding; a division of the University of Johannesburg.

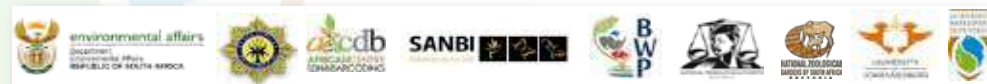
Other expert presenters who provided valuable input during the course included Senior State Advocate Dania Bruwer from the office of the NDPP who presented on proper chain of evidence and Lieutenant Colonel Gerhard Vermeulen from Forensic Science Laboratory (FSL) SAPS who covered crime scene management and proper exhibit submission to the FSL.



Although a number of theoretical aspects were covered, the ultimate focus of the course was to expose attendees to as much practical work as possible. EMIs were afforded the opportunity to work on recently processed carcasses of poached rhino's. This experience, although ideal, proved an emotionally draining exercise for the true conservationist hearts as they grew stronger in their effort battle rhino poaching.

All who attended executed their duties in a professional and dedicated manner, never did anyone complain about the daily 6am start nor did they whimper about the daily 6pm finish. We're aware that the road ahead is a hard and treacherous one, but with the passion and dedication shown during this week, let this be known... We will win this War!

12.3.4 Barcode of Wildlife Project Voucher Specimen Sample Taking Training



In support of the Barcode of Wildlife DNA project, which was initiated during 2013, a collaborative training course on "Voucher Specimen Sample Taking" was compiled and presented to 16 individuals. This was part of a project that focusses on bringing together the academic and enforcement world with a tool that will support criminal investigations in the identification of species based on DNA sequencing.

The course that was presented during March 2014 focused on training scientists, laboratory specialists and selected EMIs on the proper collection and management of samples in relation to the "Chain of Custody" principles. This initial collection and subsequent analysis will in essence form the database for the identification tool form where positive identification of a species will be provided to court. Members from dif-

ferent institutions received training, including, KZN Sharks Board, Veterinarians from the National Zoological Gardens, SANBI, EMIs, South African Institute for Aquatic Biodiversity as well as members from the African Centre for DNA Barcoding.

Topics covered during this part of the course were: (1) understanding the terminology used in the SOP; (2) legal principles relevant to Chain of Evidence; (3) sampling photography in support Chain of Evidence; (4) practical training in support of Chain of Evidence; as well as (5) an individual assessment on proper sampling against Chain of Evidence.

A special thank you goes out to those experts who assisted with the training, namely: M Hamer SANBI (Co-Chair of the Project), Snr State Adv D Bruwer NDPP, Prof M van der Bank, Dr. D Dalton, Col G Vermeulen SAPS FSL assisted by Lt. Col. H Espagh.



Attendees and presenters of the Voucher Specimen Sampling Taking Training Course March 2014

12.4 Prosecutors workshops

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

12.4.1 Gauteng Prosecutors Course



Prosecutors at the “Prosecuting Environmental Crime” course presented in the Gauteng in conjunction with Justice College, November 2013

The prosecutor course was presented during November 2013 in Pretoria, Gauteng. The workshop known as “Prosecuting Environmental Crime” was well attended, with 29 prosecutors from Gauteng, Free State, Mpumalanga, North West and Limpopo. These workshops form part of a cooperative agreement between Justice College and the Department of Environmental Affairs, representing the Inspectorate, in an effort to sensitise prosecutors to environmental crimes and intricacies within NEMA and related SEMAs. Topics covered during the week course included: the EMIs mandate functions and powers, the relevant legislation (i.e. the SEMAs), CITES, the Barcode of Wildlife project, Rhino and Cycad poaching, the Marine Living Resources Act as well as Marine Protected Areas.

13. STAKE HOLDER ENGAGEMENT

13.1 The Fifth National Environmental Compliance and Enforcement Lekgotla, 2013

The fifth National Environmental Compliance and Enforcement Lekgotla (ECEL) was held from 11 – 15 November 2013 just outside Hermanus in the Western Cape. Having held previous Lekgotlas in KwaZulu-Natal, Free State, Eastern Cape and Limpopo, the members of MINTECH WGIV decided that it was time to head to the Western Cape for the biggest gathering of Environmental Management Inspectors from around the country.

The chosen theme for the 2013 Lekgotla was, “The EMI Evolution: Unlocking the Potential”, the message conveyed being that the Environmental Management Inspectorate readily adapts itself to meet the ever changing threats to our environment.

The Lekgotla was officially opened by the DDG: Legal Authorisations, Compliance and Enforcement at DEA, Mr Ishaam Abader together with the HOD Western Cape DEADP, Mr Pieter Van Zyl. Day 1 of the Lekgotla was reflective as EMI institutions were invited to present on their respective highlights, challenges and priorities. This was followed by a brief overview of the compliance and enforcement statistics appearing in the 2012/2013 National Environmental Compliance and Enforcement Report, which was to be officially launched later that week. Key findings of the situational analysis of the National Environmental Compliance and Enforcement Strategy provided an appropriate preface to the 5 workshops that closed off the first day.

As has become the norm at these lekgotlas, a day is dedicated to the presentation of a series of EMI 1 day short-courses aimed at key skills development areas. These short courses are presented by subject matter experts ranging from experienced EMIs to tertiary institution lecturers and private sector specialists. The five short courses presented were: (1) using administrative enforcement mechanisms to tackle “green” non-compliances; (2) DNA Barcoding Project: what value for EMIs? (3) use of GIS/GPS technology – How is the Inspectorate positioned? (4) adapting to a dynamic legislative mandate: NEMA and SEMA update; and (5) essentials of criminal investigations: getting the basics right.



Group Photograph taken during the National Environmental Compliance and Enforcement lekgotla, November 2013

Day 3 of the Lekgotla was set aside as a plenary session affording a wide range of stakeholders opportunity to voice their concerns, praise and suggestions in respect

of the work undertaken by the Green Scorpions. The plenary members included, John Marais - Snakebite Institute of SA, Caroline Ntaopane – Vaal Environmental Justice Alliance, Environmental Lawyer Gregory Daniels – Enact International, Mogole Mphahlele – SANRAL, Dave Lucas – ESKOM, Melissa Fourie – Centre for Environmental Rights and Academia Professor Loretta Feris – UCT. This session saw some challenging questions being posed from both the podium and the floor.

The final day 4 of the Lekgotla saw the number of attendees swell to approximately 300, with the inclusion of other national departments, such as Water Affairs, Mineral Resources, Health, Agriculture, Forestry and Fisheries, Labour, as well as key role-players in the criminal justice system, namely SAPS, SARS and the NPA. The morning session kicked off with a memorable audio-visual clip outlining the significant progress made since the last National Environmental Crime Forum and ended with a sobering reminder of the long road ahead. This was followed by brief presentations from SARS and NPA representatives on their achievements and challenges in collaborating with the Inspectorate.

An overview of the various provincial environmental crime forums that are operating in some of the provinces was given, highlighting the critical importance of developing and maintaining proper working relationships with other role players. The afternoon sessions were once again allocated to various workshops.

The grand finale of the Lekgotla was the Deputy Minister’s Gala Dinner at which the EMI Awards of Excellence as well as Merit / Long Service Awards were handed out. This year, two new award categories were added in recognition of compliance and enforcement activities that do not readily share in the mainstream limelight, however, they form critical cogs in keeping the Inspectorate rolling: EMI Support Services and Field Ranger Services. The winners of the awards were:



13.2 The Google Award Barcode of Wildlife Project

“Google, famous for their internet search engine, has made a US\$3 million Global Impact Award to the Smithsonian Institution in Washington, DC for a project on endangered species. South Africa is one of six countries selected as partners in the

project. The Barcode of Wildlife project strives to take DNA barcoding to the next level in terms of real-world practical applications in order to test the effectiveness of DNA barcode evidence in investigation and prosecution of wildlife crime by combining scientific research and law enforcement to protect endangered species.

This is an effort to assist border and law enforcement officials, park rangers and other regulatory officials in the detection of illegal trafficking of protected species, which is currently ranked amongst the most lucrative industries in the world, slightly less than illegal drugs, human trafficking and arms dealing.

The identification of species is generally work for the taxonomists, but this is not possible at every border post, and in many cases the specimens have crossed the border before an identification could be made by a professional. If border officials, for example, confiscate a box of white powder - is it ground up rhino horn, lion bone, an endangered plant root or something more innocent? If a piece of red meat is presented - does it come from a cow, or from a primate? Identification can be difficult as traffickers are taking more drastic measure to cover their tracks. These questions, and many others like them, can only be answered by using DNA technologies, one of these being DNA barcoding.

DNA barcoding was proposed in 2003 as a way to identify species rapidly and cheaply using a short, standardised DNA sequence. According to Dr David Schindel from the Smithsonian Institute in Washington, it can be used to identify a species in the same way that the universal product code - the barcodes used on products in a supermarket - distinguish the product that you are buying from countless others on the shelf. DNA barcoding is similar in the sense that once a reference library has been created (by sequencing the barcode region of DNA) it would allow the user to quickly look up and identify the species in hand.

The project will bring together people from all sectors to ensure that all the relevant officials have access to this technology. In South Africa meetings have already been attended by a variety of parties, including numerous related law enforcement agencies, NPA, SANBI, as well as scientists from universities and museums to ensure that this truly is a cross-frontier operation, with all participants realising the importance of the opportunity at hand, and tackling their respective roles with passion and commitment. The ultimate goal of the project is that towards the end of 2014 DNA barcoding evidence will be used in a court of law”.

Insert from press release: Jamaine Krige, Online Journalist -Barcode of Wildlife project - South Africa

The Inspectorate supports and is directly involved within all the different levels of the project, from the co-chairs Frances Craigie, DEA together with Michelle Hamer, SANBI, down to the numerous working groups. This project will be a great asset to EMI in the performance of their day to day investigations.

14. WHAT IS AHEAD FOR 2014-15?

Although the Inspectorate will continue to extend its reach during the 2014-15 financial year and will continue to focus its efforts to achieve compliance in line with planned targets, some of the more strategic work lined up for this period is discussed below:

14.1 The Global Environmental Facility (GEF) Project



In December 2013, the national Department of Environmental Affairs (DEA) was informed that the project proposal, "Strengthening Law Enforcement Capabilities to Combat Wildlife Crime for Conservation and Sustainable Use of Species in South Africa (Target: Rhinoceros)", had been approved by the Global Environmental Facility (GEF). A Cooperation Agreement between the United Nations Environmental Program (UNEP) and the Ministry of Water and Environmental Affairs was signed on 8 May 2014, formalising the start of the program.

The GEF unites 183 countries in partnership with international institutions, civil society organisations (CSOs), and the private sector to address global environmental issues while supporting national sustainable development initiatives. An independently operating financial organisation, the GEF, provides grants for projects related to biodiversity, climate change, international waters, land degradation, the ozone layer, and persistent organic pollutants.

The South African GEF Wildlife Crime Law Enforcement project will focus on three main areas, namely:

1. use of forensic technology to combat rhino poaching and the illegal rhino horn trade;

2. information sharing and analysis for more effective law enforcement among role-players to tackle rhino poaching and the illegal trade in rhino horn; and
3. cooperation and exchange at the international level to tackle poaching and the illegal trade along the whole trafficking chain.

In order to achieve these objectives, GEF has allocated approximately \$2.7 million USD over a period of 4 years that will involve, not only national and provincial conservation authorities, but also key co-financing partners, such as the South African Police Service (SAPS) Forensic Laboratory, the University of Pretoria's Veterinary Genetics Laboratory (VGL), SANParks, CITES, ICCSWC, UNEP-DEPI and the World Wildlife Fund (WWF).

The United Nations Environment Programme (UNEP) will be the GEF implementing agency and the DEA is the executing agency for this project. DEA will therefore be responsible for the coordination, management and day-to-day administration of the project and its delivery of outcomes, outputs and activities. This project is likely to gain momentum in the new financial year; a project manager was appointed in May 2014 to concretise the 3 broad focus areas into clear and tangible deliverables.

14.2 Border enforcement agency awareness raising campaign

One of the 2013/2014 MINTECH Working Group (WG) IV work-plan key performance areas is the joint delivery of a compliance and enforcement capacity building programme for law enforcement agencies stationed at South Africa's national ports. This programme will focus on introducing these key agencies to CITES and domestic legislation that regulates the international movement of listed fauna and flora. Each EMI institution will take the responsibility of presenting a pre-developed curriculum to those border posts found within their respective province in support of the national project. The ultimate aim of the stakeholder engagement will be to educate border enforcement officials on the smuggling techniques commonly used for listed species of fauna and flora; highlight the predominant species currently being smuggled, and in the process, to build an enforcement support network.

14.3 National Environmental Compliance and Enforcement Strategy

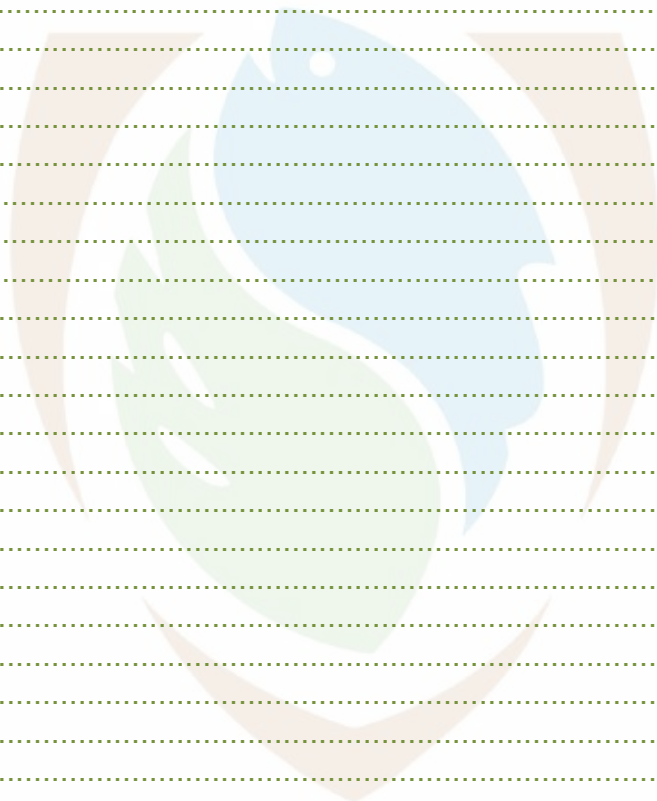
The project to develop a National Environmental Compliance and Enforcement Strategy commenced in January 2013 and is being driven by a Project Steering Committee comprising officials from national DEA, as well as provincial environmental authorities and parks boards. This project seeks to develop an overarching short to medium term strategy for the entire Inspectorate. The process will include the

undertaking of a situational analysis to identify the strengths and weaknesses of the current system, including an assessment of the current capacity, resources, structures, procedures and operations of the various national and provincial institutions that comprise the Inspectorate. The strategy will also identify priorities for future environmental compliance and enforcement work, in order to align the Inspectorate's efforts with the key risks to the environment.



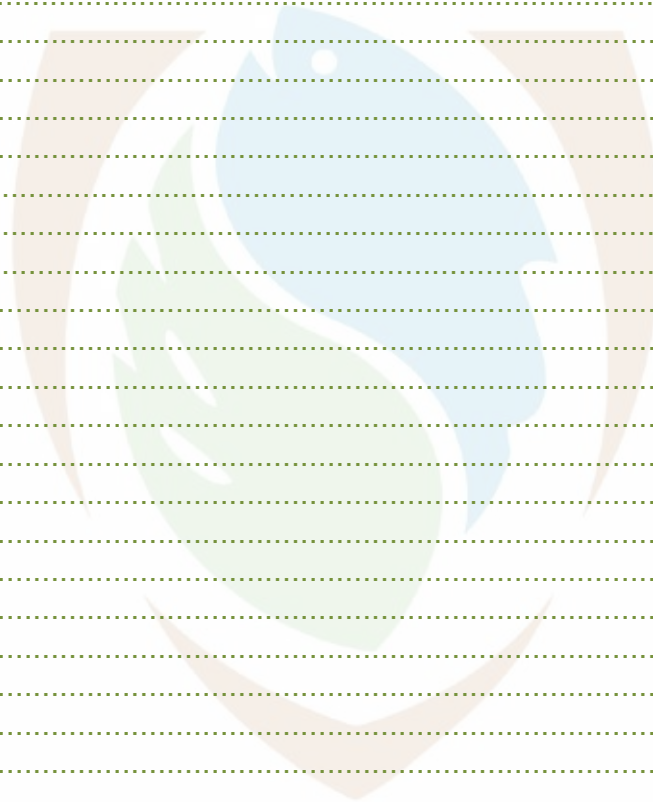
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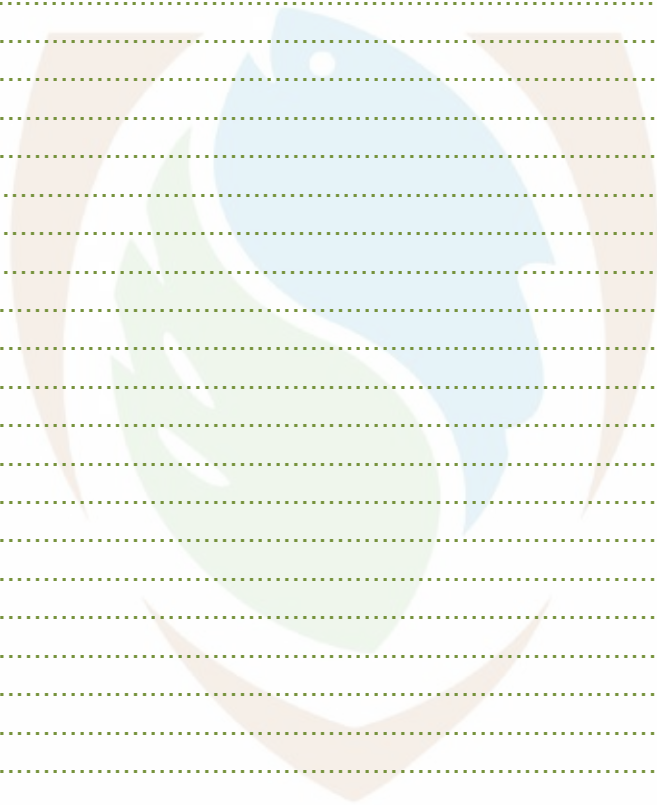
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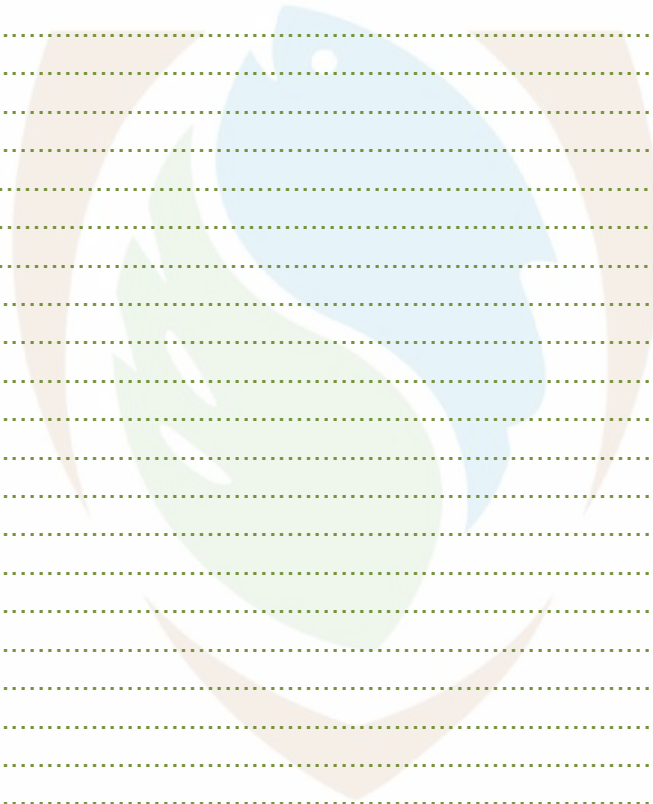
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