

2011-12 National Environmental Compliance & Enforcement Report



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA





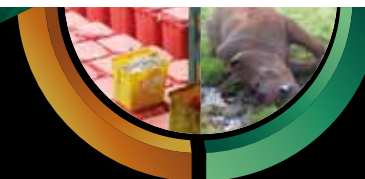
National Environmental Compliance & Enforcement Report 2011-12

TABLE OF CONTENTS

GLOSSARY OF TERMS	3
1. Introduction	4
2. Key Findings	5
3. Environmental Management Inspectors	7
4. Overall national statistics	11
5. Statistics per national institution/province	17
6. Environmental jurisprudence	29
7. Legislative developments	34
8. Industrial compliance and enforcement	34
9. Biodiversity enforcement and compliance	54
10. National department complaints and emergency incidents register	56
11. Capacity building for EMIs, magistrates and prosecutors	59
12. Stakeholder engagement	62
13. What is ahead for 2012-13?	65

ACRONYMS

Key:	General
DEA:	National Department of Environmental Affairs
DG:	Director-General
EMI:	Environmental Management Inspector
EQP:	Environmental Quality and Protection (DEA)
MTPA:	Mpumalanga Tourism and Parks Agency
NECER:	National Environmental Compliance and Enforcement Report
NPA:	National Prosecuting Authority
SANPARKS:	South African National Parks
SAPS:	South African Police Service
ECPTA:	Eastern Cape Parks and Tourism Agency
TOPS:	Threatened or Protected Species
Key:	National Legislation
APPA:	Atmospheric Pollution Prevention Act 45 of 1965
ECA:	Environment Conservation Act 73 of 1989
GTA:	Game Theft Act 105 of 1991
MLRA:	Marine Living Resources Act 18 of 1998
NFA:	National Forestry Act 84 of 1998
NEMA:	National Environmental Management Act 107 of 1998
NEM:AQA	National Environmental Management: Air Quality Act 39 of 2004
NEM:BA	National Environmental Management: Biodiversity Act 10 of 2004
NEM:PAA	National Environmental Management: Protected Areas Act 57 of 2003
NEM:WA	National Environmental Management: Waste Act, No. 59, 2008
NWA:	National Water Act 36 of 1998
OHSA:	Occupational Health and Safety Act 85 of 1993
NVFFA:	National Veld and Forest Fire Act 101 of 1998
Key:	Provincial Legislation
NECO:	Nature and Environmental Conservation Ordinance 19 of 1974
CNCA:	Ciskei Nature Conservation Act 10 of 1987
LEMA:	Limpopo Environmental Management Act 7 of 2003
MNCA:	Mpumalanga Nature Conservation Act 10 of 1998
TNCO:	Transvaal Nature Conservation Ordinance 12 of 1983
FSO:	Free State Ordinance 8 of 1969
WCNCBA:	Western Cape Nature Conservation Board Act, 15 of 1998



FOREWORD

This report marks the sixth of its kind since the inception of the Environmental Management Inspectorate. It outlines the work and achievements of the environmental compliance and enforcement sector over the 2011/2012 period. The landscape of environmental legislation in South Africa has shifted dramatically in the past decade, with a major legislative review producing one of the most comprehensive regulatory environmental frameworks in the world. This framework includes a “potpourie” of emerging and novel international concepts such as sustainable development; the polluter pays principle and the public trust doctrine. The bringing into effect of various Acts, regulations and norms and standards signifies a step towards fulfilling the state’s constitutional duty to give effect to the environmental right of each and every South African citizen. Now that the legislative foundation has, for the most part been set, a different and perhaps even greater challenge awaits – that of implementation and delivery – and that is largely the responsibility of the environmental compliance and enforcement officials - the Environmental Management Inspectorate.

Ensuring the effective implementation of environmental legislation is a pervasive challenge faced by all environmental authorities across the globe. Locally, the South African environmental compliance and enforcement sector has been criticised for being fragmented, ineffective and disorganised – a “barking dog without a bite”. However, given the wide extent and scope of environmental crimes currently plaguing the country, including but not limited to the much publicised rhino poaching, the decimation of our cycad populations and the illegal emission of solid, liquid and gaseous waste into sensitive environments, one may be tempted to regard these criticisms as justified.

While this report does not purport to defend all of these criticisms, it does highlight the significant efforts of the environmental compliance and enforcement sector to ensure that principles of sustainable development, the polluter pays and the public trust doctrine do not remain as an ideological wishlist, but are practically implemented through the many inspections, investigations and other compliance and enforcement activities that make up the daily routine of these officials. The impact of this work is clearly evident in the statistics contained in this report that show that an unprecedented number of environmental matters have reached the courts and landmark decisions, most notably the prosecution of offenders, have been before the courts both in the “brown” and “green” subsectors. Within this context, I am proud to present to you the 2011/12 National Environmental Compliance and Enforcement Report.



Ishaam Abader

Deputy Director-General, Legal, Authorisations, Compliance and Enforcement Branch, Department of Environmental Affairs.

GLOSSARY OF TERMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1. Introduction

2011/12 marks the 6th year in which the national Department of Environmental Affairs (DEA) has collaborated with its provincial counterparts and statutory bodies to develop the National Environmental Compliance and Enforcement Report (NECER), a joint publication that aims to provide an overview of environmental compliance and enforcement activities undertaken by the various environmental authorities over the period of a financial year.

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

- the general public with an overview of the measures being taken by the environmental compliance and enforcement sector to give effect to section 24 of the Constitution;
- the community-based/non-governmental organisations with information related to specific compliance and enforcement activities being taken in respect of 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 accordingly divided into various sections, including information on the compliance and enforcement capacity in the country; the enforcement (criminal, administrative, civil) and compliance monitoring activities (proactive, reactive inspections) being undertaken by various authorities; the most prevalent types of environmental crimes being reported and responded to; the legislation and court cases relating to environmental matters; as well as the capacity-building interventions and engagement with key stakeholders in the sector.

Constraints that should be noted with the report are the fact that it focuses solely on the activities of “environmental” authorities; and does not reflect the compliance and enforcement work being undertaken by other “related” sectors, such as the Departments of Water Affairs; Agriculture, Forestry and Fisheries; Mineral Regulation; Labour; Health etc. In addition, the indicators included in the report are primarily output based (for example, reflecting the number of inspections or investigations) and do not link with outcomes (for example, reduction on pollution load or health of ecosystems). Finally, the statistics reflected in this report emanate directly from the input received from the respective environmental authorities – no independent auditing/verification of this input is conducted by DEA or any other third party.

Despite these constraints, it is hoped that the NECER 2011/12 will continue to be a valuable information source for its readers and highlight the critical work currently being undertaken by the environmental compliance and enforcement sector to implement the vast number of provisions that make up the legislative regime of environmental regulation in South Africa today.

2. Key findings

2.1 The Environmental Management Inspectorate

- There has been a 30% increase in the total number of EMIs on the national register from 1076 in 2010/11 to 1399 in 2011/12.
- The increase in the number of Grade 5 EMI field rangers (201) constitutes 62% of the total increase in the number of EMIs designated in 2011/12 (323).
- Of the total of 1399 EMIs on the national register, 841 (60%) are Grade 5 EMI/ field rangers employed at national and provincial parks authorities.
- Of the EMIs who reported their sub-sectoral mandates, 32% (297) are responsible for brown, 64% (596) for green; and 4% for blue legislation. The ratio of males to females comprising the Environmental Management Inspectorate stands at almost 3:1, revealing a sector that continues to be dominated by males. The actual figures were 601 males and 228 females.
- SANPARKS (603) and KZN Wildlife (310) have the most EMIs (majority are Grade 5 field rangers) followed by Limpopo (75), DEA (66) and Western Cape (64), while Mpumalanga Tourism and Parks Agency (11), Cape Nature(8) and Isimangaliso (4) have the least.
- Eastern Cape Parks and Tourism has showed an annual increase from 3 in 2010/11 to 62 in 2011/12 followed by Limpopo with an increase of (127%) and KZN Wildlife which had a 95% annual increase of EMIs. Mpumalanga and Mpumalanga Tourism and Parks Agency showed no annual increase, while Gauteng reported less EMI capacity than in the previous reporting period with a decrease from 51 to 43.

2.2 Overall National Statistics

Enforcement:

- There has been a 0.25 % decrease in the number of reported environmental incidents, from 3944 in 2010/11 to 3934 in 2011/12.
- There has been a 9.5% increase in the number of criminal dockets and J534s registered in the past financial years from 2877 in 2009/10, 2353 in 2010/11 and 2577 in 2011/12. Of the total 2577 reported for this period, 42% (1080) were registered criminal dockets and 58% (1498) were J534s.
- There was a slight decrease in the number of cases handed to the NPA from 234 in 2010/11 to 201 in 2011/12. Of the 201 reported during this period, 10% (21) were declared nolle prosequi by the NPA, displaying a decrease of 4.8% from the 2010/11 financial year.

- There has been a general decline in the number of arrests reported by EMIs with 2384 cases reported in 2009/10, 1988 in 2010/11 and 1339 in 2011/12.
- The total number of acquittals has decreased from 22 in 2010/11 to 8 in 2011/12.
- Convictions reported have slightly increased from 72 reported in 2010/11 to 82 in 2011/12.
- There has been a 31.58% (13) decrease in the number of plea and sentence agreements reached in 2011/12, compared to the 19 reported in 2010/11.
- The total value of admission of guilt fines paid in 2011/12 was R 470,080.00, which has decreased significantly from R 867,010.00 in 2010/11.
- The total number of warning letters issued has increased slightly from 176 in 2010/11 to 194 in 2011/12.
- The total number of administrative notices issued has decreased slightly from 547 in 2010/11 to 521 in 2011/12.
- The number of civil court applications launched remained stable, with an increase from 6 in 2010/11 to 7 in 2011/12.
- There has been a dramatic increase in the total value of section 24G administrative fines paid from R 8,364,870.00 in 2010/11 to R 17,627,233 with Vele Colliery contributing more than half of the amount (R 9,250,000).

Compliance Monitoring:

- There were a total of 1724 facilities inspected in 2011/12, which reflects a 12% decline from 1954 facilities in 2010/11.
- Of the total number of facilities inspected, 75% (1292) were against brown legislative requirements, while 25% (432) were in the green subsector.
- There has been a decrease in the number of proactive inspections from 2196 in 2010/11 to 1215 in 2011/12 reflecting a decline of 45%.
- The total number of non-compliances detected during inspection has increased from 1116 in 2010/11 to 2482 in 2011/12, with an increase of 122%.
- There has been a slight increase in the total number of reactive inspections from 558 in 2010/11 to 639 in 2011/12.
- There has been a decrease in follow-up inspections conducted from 833 in 2010/11 to 675 in 2011/12.
- The total number of inspections that required enforcement actions to be taken has increased from 433 in 2010/11 to 524 in 2011/12.

2.3 Statistics per Institution/Province

- Ezemvelo KZN Wildlife recorded the highest number of criminal dockets registered (392), followed by SANPARKS with 391 criminal dockets; and thirdly the Eastern Cape provincial department with 77 dockets registered. Western Cape reported one criminal docket while Mpumalanga provincial department and Northern Cape reported no criminal cases.
- Ezemvelo KZN Wildlife recorded the highest number of arrests (424) by their enforcement officials.
- Limpopo provincial department collected the highest value of admission of guilt fines (J534s) amounting to R 176,740.00.
- National Department of Environmental Affairs has recorded the highest number of administrative enforcement notices with 59 pre-compliance notices and pre-directives and 25 final compliance notices and directives, while Limpopo has recorded the lowest number of administrative enforcement notices with 1 pre-directive, 14 pre-compliance notice 1 directive and 2 compliance notices.
- The Western Cape provincial department issued 109 warning letters, the highest compared to other EMI Institutions.
- National Department of Environmental Affairs recorded the highest value of S24G fines paid, being R11 028 000 from 10 cases.
- North West recorded the highest number of facilities inspected (462 - 243 on brown and 219 on green issues), followed by Gauteng with 347 and Kwazulu-Natal with 339 on brown issues. Mpumalanga Tourism and Parks Agency has recorded 3 facilities inspected during the reporting year.
- National Department of Environmental Affairs recorded the highest number of non-compliances detected (1439) during the execution of compliance inspections, followed by Kwa-Zulu Natal provincial department that detected 362 non-compliances, and Gauteng with 260. North West reported 4 non-compliances detected.

2.4 Industrial Compliance and Enforcement

This year has seen a focus in enforcement activities in relation to proactive industrial compliance and enforcement work. It was identified during the previous financial year that the approach that had been adopted (i.e., providing the facilities a period of time to come into compliance) was not achieving the desired results. Accordingly, resources are now being focussed on criminal as well as administrative enforcement processes. Progress in relation to the different facilities is set out in section 8 of this report. We have seen some positive results following such enforcement action and many of the facilities have begun applying additional resources to addressing the contraventions identified. It is envisaged that by the next annual report we will be able to give feedback on the specific facilities which should be commended in responding to the action taken and moving towards full compliance.

2.5 National Complaints and Incidents

- In 2011/12, the total number of complaints and emergency incidents reported through any mode of reporting was 708, while in 2010/11 there were 612 incidents reported.
- The reported number of section 30 NEMA emergency incidents has dramatically increased from 42 in 2010/11 to 144 in 2011/12.
- The highest number of section 30 NEMA emergency incidents reported was from the petroleum and transport sectors, amounting to 31(22%) of the total of 144.
- There has been a fluctuation in the reporting of certain types of incidents, with a substantial decrease in reports of water pollution from 123 in 2010/11 to 92 in 2011/12, while air pollution – related reports have increased from 78 in 2010/11 to 104 in 2011/12.
- There has been an increase in the number of complaints referred to local authorities from 134 in 2010/11 to 192 in 2011/12 and those referred to provinces decreased from 210 in 2010/11 to 183 in 2011/12.

2.6 Summary of Outstanding Performance

CATEGORY	RESULT	INSTITUTION	LEGISLATION
Most inspections conducted	Green issues = 226 Brown issues = 311 Total = 537 inspections	North West: Department of Economic Development, Environment, Conservation, and Tourism	Multiple
Highest sentence of direct imprisonment without a fine option	12 years direct imprisonment without the option of a fine	Gauteng Department of Agriculture and Rural Development	NEMBA, Section 57
Highest sentence for a pollution and waste case	Fine of R2,000,000 of which half was suspended for 5 years for NEM: AQA contravention and R1,000,000 of which half was suspended for 5 years for NEMA contravention	National Department of Environmental Affairs	NEM:AQA and NEMA contravention

2.6 Summary of Outstanding Performance

Highest number of Section 24G fines	14 were issued amounting to R 12,104,000 and 10 were paid amounting to R 11,028,000	National Department of Environmental Affairs	NEMA section 24G
The highest number of administrative enforcement notices issued	109 issued	Western Cape: Department of Environmental Affairs and Development Planning	NEMA, sections 31L and 28
Highest number of admission of guilt fines issued	639 issued amounting to R 205,690 and 522 were paid amounting to R 176,740	Limpopo: Department of Economic Development, Environment and Tourism	LEMA Section 64(1)(d)

3. Environmental Management Inspectors

Environmental Management Inspectors (EMIs) represent the environmental compliance and enforcement capacity in respect of specific pieces of national environmental legislation. There are, of course, officials appointed in terms of provincial legislation and local authority by-laws that also carry out environmental compliance and enforcement functions. However, only EMIs are mandated to enforce and monitor compliance with NEMA and specific environmental management acts. As at 31 March 2012, there were 1375 Environmental Management Inspectors (EMIs) on the EMI Register kept by the Department of Environmental Affairs in terms of Regulation 6(2) of the Regulations relating to Qualification Criteria, Training and Identification of, and Forms to be used by Environmental Management Inspectors (GN R494 in GG 28869 of 02 June 2006).

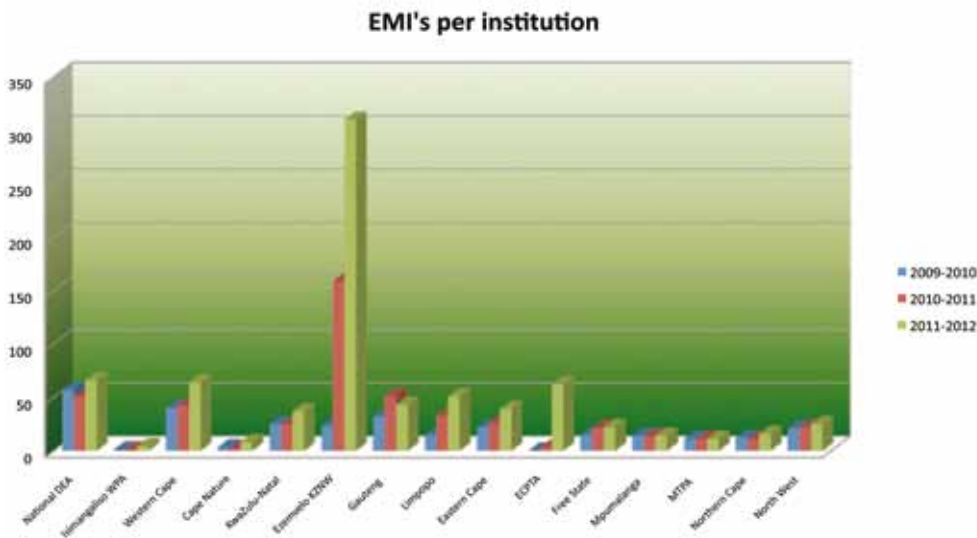
The distribution of EMIs is reflected below:

3.1 Environmental Management Inspectors per Institution

INSTITUTION	2009-2010	2010-2011 ¹	2011-2012
SANPARKS	782	603	603
Ezemvelo KwaZulu Natal Wildlife	23	159	310
Limpopo	15	33	75
National DEA	57	51	66
Western Cape	40	43	64
Eastern Cape Parks and Tourism Agency	–	3	62
Gauteng	32	51	43
Eastern Cape	22	26	39
KwaZulu-Natal	25	25	37
Northwest	21	22	25
Free State	15	21	22
Northern Cape	12	11	16
Mpumalanga	14	14	14
Mpumalanga Parks and Tourism Agency	11	11	11
CapeNature	3	2	8
Isimangaliso Wetland Park Authority	1	1	4
TOTAL	903	1076	1399

¹ The number of designated EMIs within SANPARKS remains unchanged from the 2010-11 totals as no updated register was made available.





Graph 1: Comparison of EMIs per institution (Excludes SANPARKS).

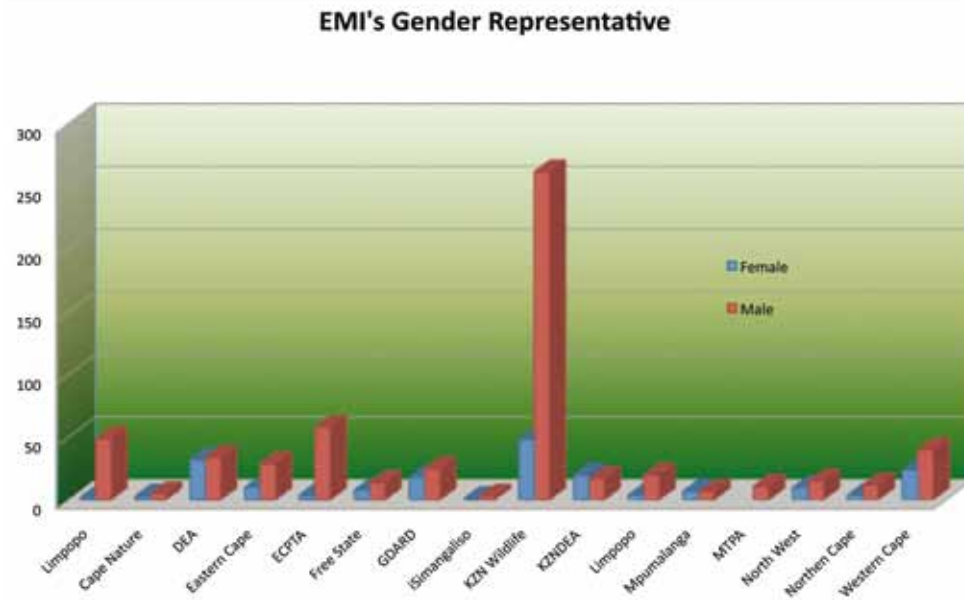
3.1.1 Grade 5 Environmental Management Inspectors

EMIs are categorised according to various grades which reflect the legislative compliance and enforcement powers that they have in terms of Chapter 7 of NEMA. The grading system is intended to align the function of the EMI with access to appropriate legislative powers. The 2011/12 reporting period has seen a significant rise in the number of designated Grades 5 EMIs, who are typically appointed as “field rangers” in order to execute compliance and enforcement duties within various national and provincial protected areas. A total of 201 Grade 5 EMIs were designated in 2011/12, comprising 62% of the total increase in EMI capacity – this can be attributed to the roll-out of the Grade 5 EMI training programme in Ezemvelo KZN Wildlife, Limpopo and the ECPTA.

3.1.1 Grade 5 Environmental Management Inspectors

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

3.1.2 Environmental Management Inspectors: Genders and Grades



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



Sergeant Henry Mahlase (L) and Sergeant Sibonelo Zulu (R) with all female 17 week, KZN Wildlife Basic Field Ranger training.



EMI: national distribution according to grade, gender and mandate

Institution	Grd1	Grd2	Grd3	Grd4	Grd5	Male	Female	Mandate		
								Brown	Green	Blue
CapeNature	0	7	1	0	0	5	3	0	8	0
National DEA	5	17	35	9	0	34	32	40	50	2
Eastern Cape	4	10	0	1	0	29	10	16	0	0
Eastern Cape Parks and Tourism Agency	0	7	1	0	54	58	4	11	71	0
Free State	1	17	0	0	0	14	8	17	6	0
Gauteng	3	17	23	0	0	25	18	46	7	0
Isimangaliso Wetland Park	1	1	0	0	2	3	1	3	5	5
Ezemvelo KZN Wildlife	23	27	0	0	260	262	48	2	310	0
Kwazulu Natal	12	25	0	0	0	17	20	39	0	0
Limpopo	6	13	3	2	51	69	6	20	43	0
Mpumalanga	3	8	3	0	0	7	7	20	68	0
Mpumalanga Tourism & Parks Agency	2	9	0	0	0	11	0	0	16	0
North West	1	24	0	0	0	15	10	14	12	0
Northern Cape	1	14	0	0	0	12	4	5	10	1
SANPARKS	4	76	-	-	474	507	96	-	-	-
Western Cape	5	32	27	0	0	40	24	64	33	35
SUB-TOTAL	71	304	93	12	841	1108	291	297	639	43

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

4. Overall National Statistics

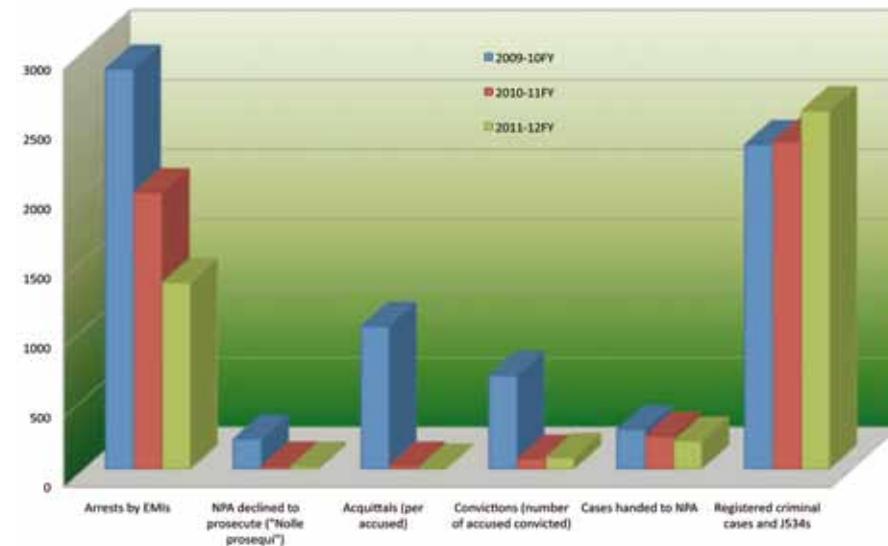
4.1.1 Enforcement

	2009-10FY ²	2010-11FY	2011-12FY
Criminal Enforcement			
Criminal dockets	2877	718	1080
J534s issued		1615	1498
Cases handed to NPA	282	234	201
Arrests by EMIs	2384	1988	1339
NPA declined to prosecute ("nolle prosequi")	214	21	20
Acquittals	1026	22	7
Convictions	673	72	82
Section 105A agreements (plea bargains)	134	19	13
Amount of admission of guilt fines paid (total amount)	R 2,509,793	R 867,010	R 470,080.00
		1245	759

²The elevated figures for this year as compared to the 2 subsequent years can be attributed to the inclusion of statistics from compliance and enforcement with the MLRA, which has subsequently moved to the Department of Agriculture, Forestry and Fisheries.

	2009-10FY ²	2010-11FY	2011-12FY
Administrative Enforcement and Civil Actions			
Warning letters written	827	176	459
Pre-directives issued	249	60	86
Pre-compliances notices issued		266	276
Directives issued	172	95	49
Final compliance notices issued		126	110
Civil court applications launched	10	6	7
S24G administrative fines paid (total amount and number)	R 8, 874, 966	R 8,364,870	R 17,627,233
	53	58	86

CRIMINAL ENFORCEMENT STATISTICS



Graph 3: Overall Criminal Enforcement Statistics 2009-10FY to 2011-12FY

4.1.2 Most prevalent crimes reported

PROVINCE	INSTITUTION	PREVALENT CRIMES (NUMBER OF INCIDENTS REPORTED)
National Institutions	SANPARKS	NEM: Protected Area Act (Illegal hunting of rhino in a national park) (286)
	Environmental Quality and Protection	NEMWA (Unlawful disposal of waste) (59)
Western Cape	Department of Environmental Affairs and Development Planning	NEMA (Unlawful commencement of listed activities) (196)
	CapeNature	G.N. R1111 of 1998 (Driving in the coastal zone without a permit) (53)
Kwa-Zulu Natal	Department of Agriculture & Environmental Affairs	NEMA (Unlawful commencement of listed activities) (100)
	Ezemvelo KZN Wildlife	Ordinance 15,1974 Parks (Permit contravention / No permit) (426)
	Isimangaliso Wetland Authority	NEM: PAA Section 50(5)& Regulations Section 4(1)(g) (Illegal development) (7)
Gauteng	Department of Agriculture and Rural Development	ECA (Unlawful commencement of listed activity) (92)
Limpopo	Department of Economic Development, Environment and Tourism	LEMA (Illegal cutting and collection of wood) (701)
Eastern Cape	Department of Economic Development and Environment Affairs	NEMA (Unlawful commencement of listed activity) (191)
	Eastern Cape Parks and Tourism Agency	NEM PA Act and ECPTA Act (Illegal hunting inside protected area) (7)
Free State	Department of Economic Development, Tourism and Environmental Affairs	Ordinances No.8 of 1969 (Illegal hunting and possession of wild animals) (9)
Mpumalanga	Department of Economic Development, Environment and Tourism	NEMA (Illegal commencement of listed activities) (23)
	Mpumalanga Tourism and Parks Agency	NEM:PAA Act 10/98 sec 5 (Rhino poaching) (28)
Northern Cape	Department of Environment Affairs and Nature Conservation	NEMA 24F (Illegal commencement of listed activity) (24)
North West	Department of Economic Development, Environment, Conservation, and Tourism	Ordinance 12 of 1983, (Illegal hunting and netting) (31)

4.1.3 Highlights of Court Sentences Obtained per Institution

Limpopo Department of Economic Development, Environment and Tourism		
Sentence	Legislation	Description
8 years and R 1,000,000	LEMA 07 of 2003	Suspect Dehorned Rhino
12 Months Imprisonment or R 2000	LEMA Sec.43(2)a	Illegal possession of game meat

Free State Department of Economic Development, Tourism and Environmental Affairs		
Sentence	Legislation	Description
R 3,000.00	NEMWA	Illegal dumping of medical waste

North West : Department of Economic Development, Environment, Conservation, and Tourism		
Sentence	Legislation	Description
6 months imprisonment or R 500 (suspended for 3 years)	Ordinance No. 12 of 1983, Sec 73, 83	Illegal fishing
R 1500 fine	Ordinance No. 12 of 1983, Sec 39(1)	Transportation of wild animals without permits

Gauteng Department of Agriculture and Rural Development		
Sentence	Legislation	Description
R1,000,000 or 4 year imprisonment (further 4 years suspended for 5 years)	NEMBA, Section 57	Illegal possession of TOPS species
10 years direct imprisonment without the option of a fine	NEMBA, Section 57	Illegal possession of rhino horns

CapeNature		
Sentence	Legislation	Description
R 5000 or 5 months (suspended for 5 years)	Ordinance no. 19/1974 S42(1)	Illegal possession of African elephant ivory
R 2000 - J175 issued by State Prosecutor	Ord. 19 of 1974, S27(1)(b), S29(b)&(e), S33(1), S40, S42(1)(a)	Illegal hunting



SANPARKS		
Sentence	Legislation	Description
Fined R 1000 or 3 months imprisonment (Trespassing); R 1000 or 3 months (Possession of Ammunition); 6 years imprisonment 3 years suspended for 3 years (Possession of unlicensed firearm)	NEMPA	Illegal hunting of rhino in a national park
6 months imprisonment;	NEMPA	Illegal hunting of rhino in a national park

Eastern Cape Park and Tourism Agency		
Sentence	Legislation	Description
6 month imprisonment (suspended for 3 years)	NEM PA Act and ECPTA Act	Illegal hunting inside protected area

National Department of Environmental Affairs		
Sentence	Legislation	Description
1. R 300 000.00 or 18 months imprisonment, wholly suspended for a period of five (5) years on condition that accused are not found guilty on the same offence. 2. Sentenced to a fine of R200 000.00 or 12 months imprisonment, wholly suspended for a period of 5 years also on condition that accused are not found guilty on the same offence. 3. Fine of R75 000.00 or 6 months imprisonment.	1. Section 16(1)(e) of the NEMWA and 2. Sec 20(b) of NEMWA	Commencement of waste management activity without waste management licence
R50 000 fine of which R25 000 was suspended for a period of 5 years with conditions.	Section 26(1) read with Section 67(1) of NEMWA and Section 16(1)(e) read with Section 67(1)	Illegal disposal of waste
Fine of R5000 and Accused no2 was convicted and sentenced to a fine of R30 000 or 6 years imprisonment of which R20 000 or 4 years imprisonment was suspended for 5 years.	7 offences in terms of the NEMWA.	Conducting a waste Management activity without a waste management license and illegal disposal of waste
Fine of R20 000 or 4 years imprisonment of which R15 000 or 3 years imprisonment was suspended with conditions.	NEMWA	Conducting a waste Management activity without a waste management license and illegal disposal of waste

4.2 Compliance Monitoring Inspection Activities of EMI Institutions

4.2.1 Brown Issues

INSTITUTION	No. of facilities inspected	Proactive	Reactive	Initial	Follow-up	No. of Non-Compliances	Enforcement Action Required
National DEA (Environmental Quality and Protection)	79	35	53	85	3	1439	30
Western Cape	239	0	261	87	174	259	258
KwaZulu-Natal	339	262	92	190	164	332	136
Gauteng	347	291	60	225	121	260	77
Limpopo	21	18	3	14	7	12	5
Mpumalanga	24	9	15	18	6	30	14
North West	243	254	55	308	0	4	4
TOTAL	1292	869	539	927	475	2336	524

4.2.2 Green Issues

INSTITUTION	No. of facilities inspected	Proactive	Reactive	Initial	Follow-up	No. of Non-Compliances	Enforcement Action Required
Mpumalanga Tourism and Parks Agency	3	0	3	1	2	3	0
KwaZulu-Natal	7	5	2	3	4	30	4
Limpopo	203	162	47	79	130	113	34
North West	219	179	48	163	64	0	0
TOTAL	432	346	100	246	200	146	38



4.3 Reported Legislative Contraventions

	Legislation	KZN Wildlife	Gauteng	Free State	North West	Limpopo	Northern Cape	DEA	Eastern Cape Parks Board	Eastern Cape	Mpumalanga	KZN DAEA	Cape Nature	SANPARKS	KZN Isimangaliso	Mpumalanga Tourism and Parks Agency	TOTAL
National legislation	NEMA	23	124	15	19	16	2	75	-	103	23	100	-	-	2	-	502
	NEM:BA	13	24	6	27	1	2	-	1	24	-	-	-	-	2	-	100
	TOPS Regulation 73 & 74	-	-	5	-	-	-	-	-	-	-	-	-	-	-	-	5
	NEM:PAA	37	-	-	-	-	-	-	7	-	-	-	-	289	7	46	386
	APPA	-	-	-	-	-	-	18	-	1	-	-	-	-	-	-	19
	EIA regulations	-	4	-	9	2	21	2	-	9	-	7	-	-	-	-	54
	NEM:AQA	-	3	-	-	-	-	25	-	4	-	-	-	-	-	-	32
	NEM:WA	-	19	10	4	1	12	90	-	13	-	7	-	-	-	-	156
	ECA	-	90	13	1	-	-	21	-	9	-	2	-	-	-	-	136
	MLRA	325	-	1	-	-	1	-	-	-	-	-	45	158	1	-	531
NWA	-	-	9	-	-	-	-	-	-	-	-	-	-	-	-	9	
Sub-Total		398	264	59	60	20	38	231	8	163	23	116	45	447	12	46	1930
Provincial legislation	KZN Conservation Act 29 Of 1992	34	-	-	-	-	-	-	-	-	-	-	-	-	-	-	34
	Limpopo EMA	-	-	-	-	701	-	-	-	-	-	-	-	-	-	-	701
	Ciskei Decree no.9 1992	-	-	-	-	-	-	-	7	1	-	-	-	-	-	-	8
	Transvaal NCO, 1983	-	-	-	31	-	-	-	-	-	-	-	-	-	-	-	31
	Free State Ordinance, 1969	-	-	9	-	-	-	-	-	-	-	-	-	-	-	-	9
	Ordinance 15 of 1974	419	43	-	-	-	-	-	-	15	-	-	-	-	-	-	477
	Cape Ordinance 19 of 1974	-	-	-	-	-	97	-	-	-	-	-	44	-	-	-	141
	Transkei Decree 1992	-	-	-	-	-	-	-	-	361	-	-	-	-	-	-	-
Sub-Total		453	43	9	31	701	97	0	7	377	0	0	44	0	0	-	1762
TOTAL		851	307	74	91	722	139	231	15	542	23	116	89	447	12	46	3692

5. Statistics per national institution/province

5.1 National institutions

5.1.1 DEPARTMENT OF ENVIRONMENTAL AFFAIRS



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

NATIONAL DEPARTMENT OF ENVIRONMENTAL AFFAIRS	ENVIRONMENTAL QUALITY & PROTECTION		
	2009-10FY	2010-11FY	2011-12FY
Criminal Enforcement			
Criminal dockets registered	37	64	29
J534s issued		-	-
Cases handed to NPA	25	7	16
Arrests by EMIs	30	8	2
NPA declined to prosecute ("nolle prosequi")	0	1	1
Acquittals	0	0	0
Convictions	2	7	15
Section 105A agreements (plea bargains)	0	3	1
Admission of guilt fines paid (total value/ number)	-	-	-
Administrative Enforcement and Civil Actions			
Warning letters written	5	10	15
Pre-directives issued	28	9	24
Pre-compliance notices issued		49	35
Final directives issued	8	4	11
Final compliance notices issued		12	14
Civil court applications launched	2	0	4
S24G administrative fine paid (amount & number)	R 93,000	R 0	R 11,028,000
		17	10

5.1.2 SANPARKS AND ISIMANGALISO WETLAND AUTHORITY



	SOUTH AFRICAN NATIONAL PARKS			ISIMANGALISO WETLAND PARK	
	2009-10FY	2010-11FY	2011-12FY	2010-11FY	2011-12FY
Criminal Enforcement					
Criminal dockets registered	327	250	391	10	14
J534s issued		170	222	0	2
Cases handed to NPA	0	28	32	10	14
Arrests by EMLs	173	390	328	57	7
NPA declined to prosecute ("nolle prosequi")	0	1	1	0	0
Acquittals	0	1	1	0	0
Convictions	0	18	16	5	3
Section 105A agreements (plea bargains)	0	0	0	0	-
Admission of guilt fines paid (total value/ number)	0	R 91,700	0	R 0.00	-
		170	4		2
Administrative Enforcement and Civil Actions					
Warning letters written	0	-	-	0	-
Pre-directives issued	-	-	-	-	-
Pre-compliance notices issued		-	-	0	-
Final directives issued	-	-	-	-	-
Final compliance notices issued		-	-	0	-
Civil court applications launched	-	-	-	2	3
S24G administrative fine paid (amount & number)	-	-	-	-	-

5.2 WESTERN CAPE



	DEPARTMENT OF ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING			CAPE NATURE		
	2009-10FY	2010-11FY	2011-12FY	2009-10FY	2010-11FY	2011-12FY
Criminal Enforcement						
Criminal dockets registered	1	0	8	111	23	18
J534s issued		0	0		53	133
Cases handed to NPA	0	0	8	6	4	0
Arrests by EMLs	0	0	0	19	26	12
NPA declined to prosecute (nolli prosequi")	0	0	0	5	1	0
Acquittals	–	0	0	5	0	0
Convictions	–	0	0	1	1	2
Section 105A agreements (plea bargains)	–	0	0	1	1	0
Admission of guilt fines paid (total value/ number)	–	0	R 0.00	R 270,500	R 17,650	R 10,690
					20	13
Administrative Enforcement and Civil Actions						
Warning letters written	10	76	109	–	–	–
Pre directives issued	81	3	26	–	–	–
Pre-compliance issued		4	56			
Final directives issued	15	3	4	–	–	–
Final compliance notices issued	–	12	23	–	–	–
Civil court applications launched	–	1	–	–	–	–
S24G administrative fine paid (total value/ number)	–	–	R 1 275 675	–	–	–
			42			



5.3 KWAZULU-NATAL



	DEPARTMENT OF AGRICULTURE & ENVIRONMENTAL AFFAIRS			EZEMVELO KZN WILDLIFE	
	2009-10FY	2010-11FY	2011-12FY	2010-11FY	2011-12FY
Criminal Enforcement					
Criminal dockets registered	2	168	1	158	392
J534s issued		0	0	320	287
Cases handed to NPA	1	29	0	0	0
Arrests by EMIs	0	57	0	534	424
NPA declined to prosecute ("nolli prosequi")	0	0	0	0	-
Acquittals	0	0	0	0	-
Convictions	0	9	0	0	-
Section 105A agreements (plea bargains)	0	2	0	0	-
Admission of guilt fines paid (total value / number)	0	R 73,000	0	R 145,550	R 152,700
				167	140
Administrative Enforcement and Civil Actions					
Warning letters written	39	2	57	1	0
Pre-directives issued	44	-	8	-	-
Pre-compliance notices issued		19	44	-	0
Final directive issued	36	-	10	-	-
Final compliance notices issued		4	9	-	0
Civil court applications launched	1	0	0	2	0
S24G administrative fine paid (total value / number)	R 1,726,100.00	R 1,485,000	R 892,333	-	-
		4	1		

5.4 GAUTENG



GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT	2009-10FY	2010-11FY	2011-12FY
Criminal Enforcement			
Criminal dockets registered	86	40	44
J534s issued		26	26
Cases handed to NPA	57	30	23
Arrests by EMIs	86	18	0
NPA declined to prosecute (Nolli prosequi)	1	3	11
Acquittals	0	1	1
Convictions	90	5	11
Section 105A agreements (plea bargains)	37	4	7
Admission of guilt fines paid (total value/ number)	R 63,850	R 12,950	R 14,250
		21	19
Administrative Enforcement and Civil Action			
Warning letters written	15	15	3
Pre-directive issued	16	16	2
Pre-compliance notices issued			40
Final directives issued	11	11	5
Final compliance notices issued			10
Civil court applications launched	0	0	0
S24G administrative fine paid (total value/ number)	R 5,898,000	R 3,597,370	R 2,341,083
	17	43	8

5.5 LIMPOPO

LIMPOPO DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM	2009-10FY	2010-11FY	2011-12FY
Criminal Enforcement			
Criminal dockets registered	1315	85	31
J534s issued		762	639
Cases handed to NPA	107	51	29
Arrests by EMIs	1315	832	413
NPA declined to prosecute ("nolle prosequi")	201	6	1
Acquittals	643	20	0
Convictions	534	16	18
Section 105A agreements (plea bargains)	92	2	1
Admission of guilt fines paid (total value/ number)	R 118,070	R 298,960	R 176,740
			(522)
Administrative Enforcement and Civil Actions			
Warning letters written	4	2	1
Pre-directive issued	9	1	1
Pre-compliance issued		7	14
Final directive issued	4	0	1
Final compliance notices issued		5	2
Civil court applications launched	0	2	0
S24G administrative fine paid (total value/ number)	R 77,966	R 0	R 17,142
		(6)	(1)

5.6 EASTERN CAPE



	DEPARTMENT OF ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS			EASTERN CAPE PARKS & TOURISM AGENCY		
	2009-10FY	2010-11FY	2011-12FY	2009-10FY	2010-11FY	2011-12FY
Criminal Enforcement						
Criminal dockets registered	25	247	77	8	0	12
J534s issued			183		0	0
Cases handed to NPA	-	14	40	0	0	12
Arrests by EMIs	39	44	28	17	0	17
NPA declined to prosecute ("nolle prosequi")	3	0	6	0	0	0
Acquittals	0	0	2	0	0	1
Convictions	9	3	8	0	0	1
Section 105A agreements (plea bargains)	1	1	1	0	0	0
Admission of guilt fines paid (total value/ number)	R 31,900	R 262,600 247	R 110,400 54	R 0	R 0	R 0.00
Administrative Enforcement and Civil Actions						
Warning letters written	67	9	265	1	1	0
Pre-directive issued	45	6	6	-	1	0
Pre-compliances issued		30	50	-	1	0
Final directive issued	8	40	4	-	1	0
Final compliance notices issued		40	17	-	1	0
Civil court applications launched	3	1	0	-	-	-
S24G administrative fine paid (total value/ number)	R 378,500	R 758,750 (6)	R 191,000 (8)	-	-	-



5.7 FREE STATE



DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS	2009-10FY	2010-11FY	2011-12FY
Criminal Enforcement			
Criminal dockets registered	27	31	14
J534s issued		4	4
Cases handed to NPA	23	29	12
Arrests by EMLs	38	21	15
NPA declined to prosecute ("nolle prosequi")	0	0	0
Acquittals	0	0	0
Convictions	21	9	2
Section 105A agreements (plea bargains)	1	2	0
Admission of guilt fines paid (total value/ number)	R 11,800	R 7,300	R 3,000
		4	3
Administrative Enforcement and Civil Actions			
Warning letters written	5	2	1
Pre-directive issued	10	11	10
Pre-compliance notice issued		8	10
Final directive issued	18	3	3
Final compliance notices issued		1	7
Civil court applications launched	1	0	0
S24G administrative fine paid (total value/ number)	R 0	R 0.00	R 0.00
		2	

5.8 MPUMALANGA



	DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM			MPUMALANGA TOURISM AND PARKS AGENCY		
	2009-10FY	2010-11FY	2011-12FY	2009-10FY	2010-11FY	2011-12FY
Criminal Enforcement						
Criminal dockets registered	2	0	0	36	24	18
J534s issued		0	0		2	0
Cases handed to NPA	0	0	0	23	14	8
Arrests by EMLs	0	0	0	67	30	53
NPA declined to prosecute ("nolle prosequi")	0	0	0	2	0	1
Acquittals	0	0	0	0	0	0
Convictions	0	0	0	5	1	3
Section 105A agreements (plea bargains)	0	0	0	0	0	0
Admission of guilt fines paid (total value/ number)	0	0	0	R 1,500	R 600	R 0.00
Administrative Enforcement and Civil Actions						
Warning letters written	54	25	8	-	-	-
Pre-directive issued	5	19	7	-	-	-
Pre-compliances issued		39	16	-	-	-
Final directive issued	63	23	0	-	-	-
Final compliance notices issued		37	11	-	-	-
Civil court applications launched	0	0	0	-	-	-
S24G administrative fine paid (total value/ number)	R 584,500	R 1,178,750	R 215,000	-	-	-
		3	7			

5.9 NORTHERN CAPE



DEPARTMENT OF ENVIRONMENT AND NATURE CONSERVATION	2009-10FY	2010-11FY	2011-12FY
Criminal Enforcement			
Criminal dockets registered	16	20	-
J534s issued		14	-
Cases handed to NPA	7	-	-
Arrests by EMIs	30	24	-
NPA declined to prosecute ("nolle prosequi")	2	9	-
Acquittals	0	0	-
Convictions	0	0	-
Section 105A agreements (plea bargains)	0	0	-
Admission of guilt fines paid (total value/ number)	R 8,200	R 10,700	-
		14	
Administrative Enforcement and Civil Actions			
Warning letters written	6	1	0
Pre-directive issued	0	0	0
Pre-compliance issued		10	0
Final directive issued	0	0	10
Final compliance notices issued		-	10
Civil court applications launched	0	-	0
S24G administrative fine paid (total value/ number)	R 0	-	R 0
			(1)

5.10 NORTHWEST

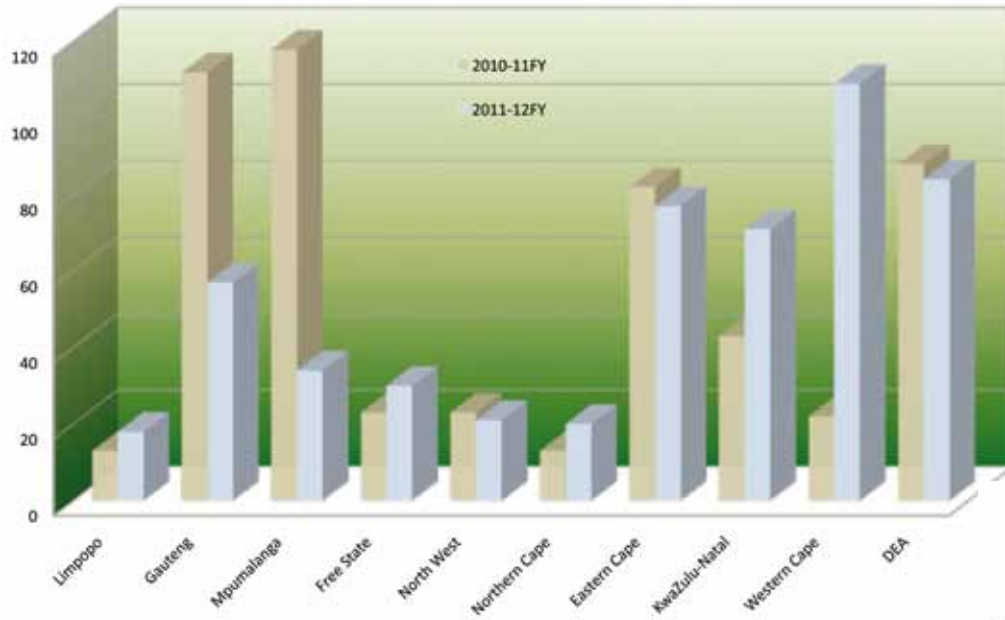


the DEDECT

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

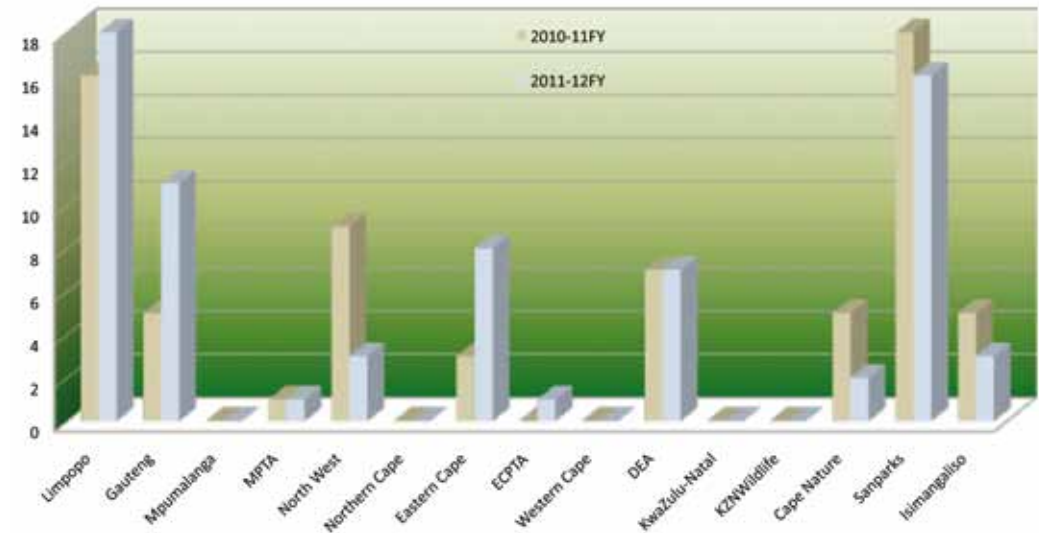
DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT, CONSERVATION, AND TOURISM	2009-10FY	2010-11FY	2011-12FY
Criminal Enforcement			
Criminal dockets	14	32	31
J534s issued		17	2
Cases handed to NPA	14	17	15
Arrests by EMIs	0	5	41
NPA declined to prosecute ("nolle prosequi")	0	1	0
Acquittals	0	0	3
Convictions	0	3	3
Section 105A agreements (plea bargains)	0	7	3
Admission of guilt fines paid (total value/ number)	0	R 19,000	R 2,300
		(17)	
Administrative Enforcement and Civil Actions			
Warning letters written	3	1	0
Pre-directive issued	9	0	2
Pre-compliance notices issued		21	11
Final directive issued	7	9	1
Final compliance notices issued		0	7
Civil court applications launched	0	0	0
S24G administrative fine paid (total value/number)	R 20,000	R 1,345,000	R 1,667,000
		18	9

ADMINISTRATIVE ENFORCEMENT TOOLS



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

CONVICTIONS PER INSTITUTIONS



Graph 5: Comparative number of convictions obtained per institute

6. Environmental jurisprudence

Parties	MACCSAND v CITY OF CAPE TOWN AND OTHERS (THE CHAMBER OF MINES AND AGRI SOUTH AFRICA AS AMICI CURIAE) and MINISTER FOR MINERAL RESOURCES v SWARTLAND MUNICIPALITY AND OTHERS
Category	Constitutional: relationship between mining, land-use planning and environmental legislation
Court	CONSTITUTIONAL COURT
Facts	<p>In October 2007 the Minister for Mineral Resources granted Maccsand a mining permit in respect of the Rocklands dune. In August 2008 the same Minister issued a mining right to Maccsand in respect of the Westridge dune. Both dunes are zoned as public open spaces in terms of the relevant provincial legislation. This means that mining cannot be carried out on them until they are appropriately rezoned. In February 2009 the Minister granted Elsana a mining right to mine granite on Lange Kloof farm for a period of 30 years.</p> <p>In February 2009 Maccsand commenced mining operations without having the dunes rezoned. When the City of Cape Town pointed out that the mining was not done legally Maccsand contended that it was conducted in terms of the Mineral and Petroleum Resources Development Act 28 of 2002 (national law). This was the law under which the mining right and permit were issued. In an application to the High Court, the City obtained interdicts restraining Maccsand from carrying out mining until the dunes were rezoned and permits were issued in terms of the National Environmental Management Act 107 of 1998 (NEMA). In the other matter Swartland Municipality in whose jurisdiction Lange Kloof falls also obtained an interdict in the High Court on the ground that the farm was not zoned to allow mining.</p> <p>On appeal to the Supreme Court of Appeal, only the interdicts based on NEMA were set aside because at the time the High Court delivered its judgment, the notice in terms of NEMA on which they were based, had been withdrawn.</p> <p>In the Constitutional Court both Maccsand and the Minister for Mineral Resources argued that the provincial legislation that required rezoning does not apply to land used for mining.</p>

	<p>In support of this argument they submitted that mining falls under the exclusive competence of national government and to hold that provincial legislation regulating municipal planning applies to it would be tantamount to allowing municipal government to intrude into the terrain of the national sphere.</p> <p>In rejecting this argument the Constitutional Court held that the provincial law and the national law served different purposes which fall within the competences of the local and the national sphere. Each sphere was exercising power allocated to it by the Constitution and regulated by the relevant legislation.</p> <p>Although leave was granted in relation to interdicts based on the provincial legislation, the appeals were dismissed. The MEC for Local Government, Environmental Affairs and Development Planning: Western Cape had sought leave to cross-appeal against the refusal by the Supreme Court of Appeal to grant a general interdict based on NEMA. In the alternative, the MEC sought direct access. The Constitutional Court refused leave to cross-appeal and direct access on the basis that it was not in the interests of justice to grant either of the two requests.</p>
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Parties	STATE v SILICON SMELTERS
Category	Criminal: Offences in terms of NEMA and NEM:AQA
Court	PRETORIA REGIONAL COURT
Facts	<p>Silicon Smelters (Rand Carbide), a silicon metals producer located in Witbank and formerly owned by Highveld Steel and Vanadium (Pty) Ltd, was inspected by Environmental Management Inspectors (EMIs) from the Department of Environmental Affairs (DEA) on 3 November 2010. This inspection was initiated after the Inspectorate received complaints from members of the public in the vicinity of the facility. The EMIs found that Silicon Smelters was illegally operating several of its metallurgical processes without the necessary authorisations in terms of the National Environmental Management: Air Quality Act (NEM:AQA).</p> <p>In addition, certain processes were being operated in a manner which resulted in, or were likely to result in significant pollution and degradation of the environment, which is unlawful in terms of Section 28(14) of the National Environmental Management Act (NEMA). The manner in which these processes were conducted also failed to comply with other legislative requirements which had been in place as early as 1983.</p>

	<p>These processes included the combustion of coal and smelting of ores, which resulted in emissions containing lead, iron, manganese and nitrogen oxides. Dust emissions from the facility also measured as high as 1380 mg/Nm³ over the legislated limits, which is currently at 100 mg/Nm³. In response to these inspection findings, DEA instituted criminal proceedings and also issued Silicon Smelters with a Pre-Compliance Notice in early 2011.</p> <p>Silicon Smelters responded by initiating a number of measures aimed at bringing the facility into compliance with the provisions of the law, including installing and/or improving the extraction systems at furnaces, installing water sprayers for dust suppression on raw material stockpiles and the construction of stockpile enclosures. The value of the completed improvements amounted to nearly R13 000 000 (thirteen million rand), according to estimates provided by Silicon Smelters.</p>
Judgement and Sentence	<p>Silicon Smelters pleaded guilty on 15 August 2011 to two counts, i.e. contravening the provisions of the NEM:AQA for operating without an atmospheric emissions license, for which the facility was fined R2 000 000 (two million rand); and contravening the provisions of NEMA by unlawfully and intentionally committing an act which caused or was likely to cause significant pollution to the environment, for which the facility was fined R1 000 000 (one million rand).</p> <p>However, Silicon Smelters has only had to pay half the fine, totalling R1 500 000 (one and a half million rand), with the other half suspended for a period of five years on condition that the company is not found guilty of contravening any provision of NEM:AQA or NEMA within that period.</p>

Parties	STATE v AESTHETIC WASTE SERVICES (PTY) LTD
Category	Criminal: Offences in terms of ECA and NEM:AQA
Court	BUTTERWORTH REGIONAL COURT
Facts	<p>During July 2009, DEA received a complaint that Health Care Risk Waste (“HCRW”) was being stored unlawfully at a location in Butterworth, Eastern Cape. The complaint was followed up and a site investigation was executed by EMIs from DEA and the Eastern Cape Provincial Department, who discovered a large amount of HCRW being stored on site. As is often the case in matters of this nature, the area smelled of rotten and decaying human flesh and posed a threat to both human health and the environment.</p>

	 <p>Unlawful storage of healthcare risk waste in boxes and plastic bags in Butterworth</p> <p>A criminal investigation was then undertaken by DEA. During January 2010, further complaints were received and investigated by officials from the Eastern Cape Provincial Department, and a further criminal case was opened against the company and its directors. The various contraventions were thereafter collated for trial purposes and the matter was heard in February 2012 at the Butterworth Regional Court. The accused was charged with contravention of section 20(1) of the Environmental Conservation Act (operating a waste disposal site without a license); and section 35(2) of the National Environmental Management: Air Quality Act (failure to take reasonable steps to prevent the emission of noxious and offensive odours).</p>
Judgement and Sentence	<p>The company, represented by Mr. Nakin (a director) pleaded guilty on both counts and was sentenced to a fine of R200 000 suspended for 5 years.</p>

Parties	THE STATE v ARBAC SERVICES CC (GAUTENG) AND 2 OTHERS
Category	Criminal: Offences in terms of ECA
Court	GERMISTON MAGISTRATES COURT
Facts	<p>Arbac Services CC (Gauteng) operated a waste disposal company and collected medical, hazardous, chemical and other waste from various clients at its property in Roodekop, Germiston. However, it was not in possession of any environmental permits and authorisations from the Gauteng Department of Agriculture, Conservation and Environment (GDACE) or from the Department of Environmental Affairs (DEA) prior to commencing its business and was therefore operating illegally.</p>



Illegal storage of mixed waste types, including healthcare risk waste and hazardous chemicals at Arbac site in Germiston.

Since December 2004, the Ekurhuleni Municipality received numerous odour-related complaints emanating from the Arbac site in Germiston. Following site inspections, the municipality issued warning letters advising Arbac that its operations were illegal and that all operations on site must cease. Arbac ignored these warning letters and the municipality thereafter referred the matter to GDACE. Arbac was once again warned by GDACE to cease all operations at its Germiston site, after which it submitted an application for rectification of the unlawful activity in terms of Section 24G of NEMA. In response, GDACE requested Arbac to cease all operations pending the outcome of the application. This request was also not adhered to, after which Arbac was provisionally liquidated in March 2006 and the Germiston site left abandoned. Large quantities of extremely toxic waste remained on site and a joint investigation between GDACE and DEA was initiated.

A search was conducted at the Germiston site in October 2006 and samples were taken of the chemicals and waste on the site. A containment clean-up of the site was subsequently authorised by DEA at a cost of R227 269.05, with the remainder of the cleanup to be undertaken by the new landowner.

The matter was placed on the court roll in 2008, when Arbac, as well as its members, Armando Antonio Costa and Konrad Jones, were charged in their personal capacity. The Accused were charged on two counts, i.e. Contravention of Section 20(1) read with Section 1, 29(4) and 30 of the Environment Conservation Act, 73 of 1989 (Operating a waste disposal site without a waste permit); and Contravention of Section 22(1) read with Section 1, 29(4) and 30 of the Environment Conservation Act, 73 of 1989 (Undertaking a listed activity without an environmental authorisation).

Judgement and Sentence

The accused pleaded not guilty on all the charges and after 3 years in court, the accused were convicted on both counts on 25 August 2011. The case has now been postponed for the state to present evidence in aggravation prior to sentencing.

Parties

STATE v RICHARD BATSON

Category

Criminal: Offences in terms of NWA and NEMA

Court

GEORGE REGIONAL COURT

Facts

Mr Richard Batson, a 74 year old retired civil engineer, devised a plan to artificially increase the flow of water between the Swartvlei Lake and the Swartvlei Estuary. He did so by supervising the digging of a trench between the two water bodies, which when completed, was 50m long, 1m wide and 50cm deep. The salt-marsh vegetation and soil dug from the trench was then deposited along the sides adjacent to the trench, thereby covering the salt-marsh vegetation in the area.

This unlawful activity also established a new, artificial shortcut between the two water bodies and created a new point of entry for water into the estuary. SANParks registered a criminal case at the George SAPS, whereby the accused was charged with conducting illegal activities within the boundaries of the Wilderness National Park, and requested assistance from the Department of Environmental Affairs in finalising its investigation. The case was thereafter submitted to the Director of Public Prosecution (DPP) in the Western Cape, who took the decision to prosecute Mr Richard Batson in the George Regional Court.



Unlawfully created artificial new point of entry for water into the Swartvlei estuary.

	<p>Mr Batson requested the DPP to withdraw the criminal charges against him and informed them of his intention to request the court to suspend the proceedings and to refer the dispute to a conciliator, as provided for in Section 17(3) of the National Environmental Management Act 107 of 1998 (NEMA). The DPP declined this request and took the decision to proceed with the prosecution.</p> <p>Mr Batson then submitted an application in terms of Section 150 of the National Water Act, 36 of 1998 (NWA) to the Minister of Water and Environmental Affairs, stating his opinion that a criminal trial was not the most appropriate forum for the resolution of engineering and scientific disputes over the protection of the environment and that the parties should attempt to settle their dispute through a process of mediation and negotiation. The Minister declined this request, and pointed out that the relevant legislative provisions relate solely to instances involving civil processes and that she did not have the jurisdiction to withdraw the criminal charges against Mr. Batson.</p> <p>Mr Batson was subsequently charged on two counts, i.e. Contravention of section 151(1)(a), read with section 151(2) of the NWA (Unlawful water use by impeding or diverting the flow of water in a watercourse or altering the bed, banks, course or characteristics of a watercourse); and Contravention of section 24F (1)(a) of NEMA (Commencing with a listed activity without environmental authorisation).</p>
Judgement and Sentence	The Accused was convicted in the George Regional Court on both counts and was sentenced to a fine of R40 000 or 10 months imprisonment which was suspended for 3 years. He was also ordered to pay damages to SANParks in the amount of R20 000.

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

S v K Khoza and S Luthuli

The two accused were arrested and found in possession of firearms and rhino horn, with rangers managing to trace the carcass the following day. The State proved by means of DNA, that the rhino horns found were linked to the carcass. Both accused were subsequently convicted in terms of Section 57(1) of NEMA Biodiversity Act, in relation to the illegal hunting of a rhino, possession of rhino horn and contraventions of the Firearms Control Act. They were effectively sentenced to 20 years imprisonment on 20/4/2011.

S v S Makhobo

The accused, a Mozambican citizen, was arrested in the Kruger National Park whilst he and two others followed the spoor of a rhino. No rhino was hunted / wounded and no horns / firearms were found in the accused possession. The others ran away. The accused was charged with trespassing and illegal hunting in terms of the in terms of the Protected Areas Act. He pleaded guilty and was sentenced to 1 year imprisonment or a R 1000.00 fine on count 1 and 4 years imprisonment on count 2.

S v F Makamu

The accused, a Mozambican citizen, was arrested in the Kruger National Park, whilst being in possession of a freshly removed set of rhino horns and a firearm. Through DNA evidence it was proved that the horns matched the carcass found. The accused pleaded guilty on charges of trespassing and illegal hunting in terms of the Protected Areas Act; as well as the illegal possession of a firearm and ammunition. He was sentenced in terms of Count 1 to R 1000 / 1 year imprisonment, Count 2 to 5 years imprisonment, and Count 3 and 4 to 5 years imprisonment, amounting to an effective sentence of 11 years imprisonment.

S v Sibusiso Ncube, Siyabonga Ndlela and Senzo Sikhakhane

The three accused, all former Ezemvelo employees, were arrested by an EzemveloEMI, along with the SAPS, in October 2010 after trying to sell a rhino horn in Ulundi, which they had found inside the Hluhluwe-iMfolozi Park. Field Ranger Ncube picked up a black rhino horn following the animal's death from natural causes and thereafter colluded with the other two accused to try to sell the horn. All three pleaded guilty on a charge of unlawfully carrying out a restricted activity under the National Environmental Management Biodiversity Act. Ncube and Ndlela were each sentenced to an effective R15 000 fine or 24 months imprisonment while Sikhakhane was sentenced to a R5 000 fine or 12 months imprisonment.

S v Robert Ndou

The accused, a Zimbabwean citizen, was arrested for illegally hunting 1 rhino and was convicted in terms of the Limpopo Ordinance, as well as for the illegal possession of ammunition and sentenced to 8 years imprisonment in terms of count 1 and 2 years imprisonment, suspended for 5 years on count 2.

S v Joseph Mlambo, Dawid Mawelela and George Sibatane

The accused were charged for the illegal hunting of rhino and possession of the horns in the Kruger National Park. On 19 September 2004, the three accused shot a white rhino in the Kruger National park. SANParks received information that the accused wanted to sell the horns and set a trap in terms of Section 252A of the Criminal Procedure Act. Based on common purpose, the accused were all convicted of illegal hunting and the possession of a firearm and ammunition. They were sentenced to 10 years imprisonment or a R 100 000-00 fine on count 1 and 4 years imprisonment or a R 10 000-00 fine on count 2.

S v Duc Manh Chu

The accused, a Vietnamese citizen, was arrested at OR Tambo International Airport with 12 rhino horns in his luggage on his way to Hong Kong. He was convicted for contravention of the Customs and Excise Act, in relation to persons entering or leaving the Republic and smugglers (Count 1), as well as Section 57(1) of the Biodiversity Act (Count 2). Chu was subsequently sentenced to 2 years imprisonment on count 1 and a further 10 years imprisonment on count 2. This amounted to an effective sentence of 12 years direct imprisonment, with no option of a fine.

S v Phi Hung Nguyen

The accused, a Vietnamese citizen, was also arrested at OR Tambo International Airport, with 6 rhino horns in his possession and on his way to Hong Kong. Nguyen was also convicted on similar counts to Duc Manh Chu, and was sentenced to 2 years imprisonment on count 1 and a further 6 years imprisonment on count 2.

S v Hung Tai Tran

The accused, a Vietnamese citizen, was arrested at OR Tambo International Airport with 2 rhino horns and 184 ivory bracelets in his luggage whilst transiting South Africa from Mozambique to Vietnam. Tran was convicted in terms of Section 57(1) of the Biodiversity Act, and fraud. Both counts were taken together for the purpose of sentence, which was R1 000 000 or 4 years imprisonment, with another 4 years imprisonment suspended for 5 years, with certain conditions. Furthermore, the \$29 000(US) that the accused had in his possession at the time of his arrest was forfeited to the Klaserie Game Reserve.

S v Tiong Lim Kuok

The accused, a Malaysian citizen, was arrested at OR Tambo International Airport with 2 rhino horns in his luggage on route to Bangkok. Kuok was convicted in terms of Section 57(1) of the Biodiversity Act, and sentenced to a fine of R100 000 or 5 years imprisonment.

S v Anniba Mashaba

The accused, a Mozambique citizen, was arrested by game rangers, who tracked him through his foot prints. He was charged for illegal hunting in a protected area, possession of rifle, ammunition as well as trespassing. The accused was sentenced on Count 1 and Count 5 to 5 years imprisonment, Count 2 to 5 years imprisonment, and Count 3 to ten years imprisonment. It was ordered that the sentences should not run concurrently and he was effectively sentenced to twenty years imprisonment.

S v Jonas Tibane

The accused, a Mozambican citizen, was arrested for killing a rhino and removing the horns. He was charged and convicted under the Game Theft Act 105/1991, as well as for the hunting of specially protected wild animals in terms of the Limpopo Environmental Management Act. He was sentenced to 10 years direct imprisonment.

S v Hsien-Lung Hsu

The accused, a Chinese speaking South African citizen was arrested in possession of 2 rhino horns. He received the said horns earlier the same day (from the seller) who informed him that he required the accused to interpret the negotiations between the seller and the buyer, who was Chinese. It could not be established where the horns emanated from. He was charged in terms of Section 57(1) of the Biodiversity act, and was sentenced to 6 years imprisonment.

S v I Maluleke and two others

Whilst on patrol, game rangers found a freshly dehorned rhino carcass. They followed footprints found near the crime scene and heard shots being fired, after which they found and arrested four people lying underneath some bushes. The arrested persons had in their possession rhino horns, two rifles, ammunition and two axes. One of the arrested persons later died. The remaining three accused all pleaded guilty on the following four counts: hunting of rhino (count 1), possession of a prohibited firearm, being an AK47 (count 2), possession of a rifle (count 3), and possession of ammunition (count 4). They were all sentenced to 10 years imprisonment or R100 000 fine on count 1, 15 years imprisonment on count 2, 8 years imprisonment on count 3 and 15 years imprisonment on count 4, with counts 2 and 4 to run concurrently.



S v ES Sigauque

After hearing a gunshot early in the morning, a Limpopo farm manager and trackers found a dehorned rhino, which had been shot with an R5 firearm. They found footprints and tracked them for approximately 5km, where they found 4/5 persons sitting down to eat. Having been disturbed by the trackers, they all split up and ran into the mountains. An axe was later found, which DNA analysis later confirmed had carried blood from a white rhino. One person was later found and was shot in the hip. The evidence of the tracker, who testified that he matched the shoes which the accused was wearing at the time of his arrest to the tracks at the crime scene, formed the crux of the case. Having denied that the shoe belonged to him, the accused's foot was cast and the shoe sent for forensic analysis to make the necessary comparison, after which it was confirmed that the shoe was in fact that which was worn by the accused.

The accused was charged and convicted in terms of the Limpopo Environmental Management Act for illegal hunting of a rhino (count 1) and for trespassing (count 2). He was sentenced to 12 years imprisonment on count 1 and 1 year imprisonment on count 2, with both counts to run concurrently.

S v Els

A game trader in Thabazimbi pleaded guilty to the illegal buying, possession and conveyance of 30 rhino horns (count 1), which he bought from a now deceased acquaintance. The seller was the manager of Maremani Nature Reserve, owned by a Danish consortium, where rhino were dehorned and sold to the game trader. The game trader also dehorned 8 of his own rhino (count 2).

He was sentenced to 10 years imprisonment, 2 of which were suspended for 5 years in respect of count 1, and to 4 years imprisonment, wholly suspended in respect of count 2. He was further ordered to pay R100 000 per month over a ten month period to the National Wildlife Crime Reaction Unit to assist in rhino research.

7. Legislative Developments

7.1 Principal Acts commenced

Principal Acts commenced

None

Amendments to Principal Acts

None

7.2 Regulations Promulgated

National Environmental Management Act 1998

- Admission of Guilt Fines Regulations GNR 574/2011
- Third Edition Environmental Implementation Plan GNR 379/2011

National Environmental Management: Protected Areas Act 2005

- Regulations for the proper administration of nature reserves GNR 99/2012

National Environmental Management: Biodiversity Act 2004

- Biodiversity Management Plans for Albany Cycads, Encephalartos Latifrons GNR 416/2011
- Norms and standards for hunting methods in South Africa GNR 456/2011

8. Industrial Compliance and Enforcement

8.1 Pro-active Compliance Inspections

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

- Ferro-Alloy, Steel and Iron Sector
- Refineries Sector
- Cement Sector
- Paper and Pulp Sector
- Health Care Risk Waste Treatment / Disposal
- Hazardous landfill sites
- Power Generation

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

NECER 2011-2012: DETAILED INFORMATION TABLE RELATING TO STRATEGIC INSPECTIONS

Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
<div data-bbox="376 347 501 373" data-label="Section-Header"> <p>REFINERIES</p> </div> <div data-bbox="752 256 1140 485" data-label="Image"> </div> <div data-bbox="1155 256 1559 485" data-label="Image"> </div> <div data-bbox="1574 256 2107 485" data-label="Image"> </div>				
<p>PetroSA Refinery, Western Cape</p>	<p>Date of initial inspection 5-6 July 2007</p> <p>Representations received / reviewed 21 February 2008</p> <p>Date of follow-up inspection/s 20 May 2010</p>	<ul style="list-style-type: none"> • Management of waste disposal sites in serious non-compliance with waste site permits • Disposal of hazardous waste on sites not permitted to receive such waste • The absence of liner integrity testing and sludge ponds overflowing freeboard • Serious groundwater contamination at refinery's tank farm 	<ul style="list-style-type: none"> • Failure to comply with general duty of care in respect of waste management on site (spillages of hazardous waste, overflowing waste ponds) • Rehabilitation work at the refinery tank farm is ongoing; however, work is behind rehabilitation timeframe schedule 	<p>A pre-directive in terms of section 28(4) NEMA and/ or 31A ECA and a pre-compliance notice in terms of section 31L of the NEMA was issued on 19 August 2011. Representations from PetroSA were received on 23 September 2011.</p> <p>Follow-up inspection to the site in November 2011 in order to review the facility's current waste permit in terms of section 20 of the ECA for conversion into a waste management license in terms of section 20 of the NEM:WA.</p> <p>Additional information was received from the facility in early 2012 and forwarded to DWA for review and comment.</p> <p>The sludge ponds design plans have been approved by DEA and DWA and construction of these ponds has commenced. PetroSA has obtained approval for disposal at the ponds.</p> <p>The progress of rehabilitation at the Voorbaai tankfarm is being closely monitored and further information in this regard will be requested in due course.</p>




Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
Chevron Refinery, Western Cape	<p>Date of initial inspection May 2008</p> <p>Representations received / reviewed 13 October 2009</p> <p>Date of follow-up inspection/s 20 July 2010</p>	<ul style="list-style-type: none"> Lack of waste permits for areas used for the temporary storage of hazardous waste on a continuous basis Contraventions of environmental authorisation Disposal of waste at unpermitted waste site Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care Excessive emissions Potential groundwater and soil contamination 	<ul style="list-style-type: none"> Chevron has submitted applications for a Waste Management Licence for waste storage areas on site Remediation of groundwater pollution is ongoing at several areas on site Failure to comply with general duty in respect of waste management on site (storage of waste in unlined areas; spillages of hazardous waste on site) 	Enforcement strategy has been developed and appropriate enforcement tools are in the process of being drafted.
Sasol Secunda Refinery, Mpumalanga	<p>Date of initial inspection March 2008</p> <p>Representations received / reviewed 18 August 2009</p> <p>Date of follow-up inspection/s August 2010</p>	<ul style="list-style-type: none"> Significant non-compliance with conditions of numerous authorisations applicable to the facility, including APPA registration certificates; environmental authorisations and the two waste permits relating to the fine ash dump and the Charlie 1 Waste Disposal Site Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care, particularly in relation to the raw material and coal storage areas and the spillage of hazardous substances 	<ul style="list-style-type: none"> Non-compliances to authorisations still ongoing Environmentally harmful activities with regards to raw material storage, coal storage and spillages of hazardous substances still not addressed Failure to comply with general duty of care in respect of waste management on site 	<p>Enforcement strategy has been developed which has incorporated APPA review process, as well as a Waste Management Licence review process in which the facility is currently engaged.</p> <p>Following this engagement, a further decision will be required as to which non-compliances will be covered by the administrative enforcement process.</p>



Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
Engen Refinery, Kwa-Zulu Natal	<p>Date of initial inspection 11 – 12 November 2008</p> <p>Representations received / reviewed 10 October 2009</p> <p>Date of follow-up inspection None</p>	<ul style="list-style-type: none"> • Failure to submit certain reports • Storage tanks without required permits • Decommissioning activities without required environmental authorisation • Storage of hazardous chemicals in unbunded areas 		<p>Although it was reported in the previous NECER that no significant issues remained that justified the need for an enforcement intervention based specifically on the findings of the 2008 inspection, through the quarterly compliance meetings, the authorities have become concerned by the ongoing Section 30 emergency incidents taking place at the facility.</p> <p>Accordingly, a pre-directive was issued to Engen Refinery by the KZN-DAEARD in November 2011.</p> <p>The authorities are currently reviewing Engen's representations as well as all other relevant information prior to making a decision on the next steps in this enforcement action.</p>



Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
FERRO-ALLOY, IRON AND STEEL 				
Samancor Middelburg, Mpumalanga	<p>Date of initial inspection 25-26 June 2008</p> <p>Representations received / reviewed 12 November 2009</p> <p>Date of follow-up inspection/s 11 August 2010</p>	<ul style="list-style-type: none"> • Non-compliances with conditions of the APPA permits • Six unauthorized waste disposal sites • Disposal of contaminated water in unlined dams • Poor storm water management on site • Fugitive emissions from the material stockpiles • Non-reporting of emergency incidents 	<ul style="list-style-type: none"> • Disposal of contaminated water on unlined dams still continuing • Groundwater pollution from historical disposal sites • Unauthorised waste and listed activities on site • Breach of duty of care in terms of S28 of NEMA 	<p>Both administrative and criminal enforcement action is in process.</p> <p>A pre-compliance notice in terms of Section 31L of NEMA and/ pre-directive in terms of Section 28(4) of the NEMA and/or a Section 31A of the ECA was issued to the facility on 14 June 2011. Representations from Samancor were received on 18 July 2011 but did not sufficiently address all the issues and concerns which were highlighted to the facility.</p> <p>A compliance notice in terms of section 31L of the NNEMA and directive in terms of section 31A of the ECA was issued to the facility in December 2011</p> <p>The timeframes were varied based on applications submitted and a number of the instructions have been complied with. Samancor also submitted a request for suspension of the notice pending the outcome of an objection.</p> <p>The Minister refused to suspend the notice and required the facility to comply with the instructions in line with the timeframes as varied by the DEA.</p> <p>The objection from Samancor was received in 29 February 2012 and is currently being processed.</p> <p>In relation to the criminal investigation a case docket was registered as per Middleburg CAS 10/04/2011. The case is still under investigation.</p>

Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
Highveld Steel, Mpumalanga	<p>Date of initial inspection 28-29 November 2007</p> <p>Representations received / reviewed 7 August 2008</p> <p>Date of follow-up inspection/s 9 July 2009</p>	<ul style="list-style-type: none"> • Air emission exceedences • Lack of adequate monitoring • The undertaking of unauthorised APPA scheduled processes • Exceedances in relation to production and use of raw materials • Contraventions of environmental authorisations • Unauthorised waste disposal sites • Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care 	<ul style="list-style-type: none"> • Shut-down and start-up of the plants are problematic • Need for improvement in maintenance procedure • A secondary emission extraction plant had been installed, but challenges and constraints exist in relation to this plant • Emissions related to the basic oxygen furnace pouring process, the charging process, the emergency by-pass stacks and the transfer of molten metal in the ladling process. • Ineffective gas cleaning equipment • Review of documentation provided showed pattern of periodical and regular breakdowns at the iron plants resulting in uncontrolled emissions to atmosphere 	<p>Notice of intention to issue a Section 12(3)(a) APPA notice & Section 31A ECA directive & Section 28(4) NEMA directive, was issued to facility in February 2010.</p> <p>Representations and action plans received from facility in March 2010.</p> <p>Notice of intention to issue a Section 31L NEMA notice & Section 31A ECA directive, was issued to the facility in November 2010.</p> <p>Representations and amended action plans received from the facility in December 2010.</p> <p>Amendment to enforcement strategy to include both administrative and criminal enforcement action.</p> <p>Highveld continued to submit monthly monitoring reports and action plans and this information has been used to determine whether there are improvements on site.</p> <p>On 24 May 2012, the DEA issued Highveld with a Notice in terms of S31H of the NEMA and requested the facility to submit all continuous in-stack monitoring results for the past 2 years at the Iron Plant and an update of any studies conducted for the improvement of secondary gas capture at the Steel Plant.</p> <p>A criminal investigation has been initiated and on-site investigation was conducted. The investigation is not finalised.</p>



Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
<p>Old Vanchem Vanadium waste site in Witbank ("CWDF") CWDF to be rehabilitated by Highveld Steel, as agreed in the sale agreement between Highveld Steel and Vanchem Vanadium</p>	<p>Date of initial inspection 28-29 November 2007</p> <p>Representations received / reviewed 7 August 2008</p> <p>Date of follow-up inspection/s 12 May 2011</p>	<ul style="list-style-type: none"> Unauthorized waste disposal sites-CWDF 	<ul style="list-style-type: none"> EMI's found that there was a serious need for intervention to prevent further impacts resulting from the existing unauthorized waste disposal site, which contains hazardous waste 	<p>A NEMA Section 28(4) pre-directive was issued to Vanchem in April 2008, to which Vanchem responded by providing the Department with an action list for achieving compliance.</p> <p>Subsequently, and with the sale of Vanchem Vanadium, Highveld Steel retained the responsibility of the unauthorised CWDF.</p> <p>In the action list submitted to the Department in April 2008, Vanchem committed to the capping and closing the CWDF and initiated the necessary EIA process. However, in the latter part of 2010 Highveld Steel approached the DEA with a new proposal to re-work the CWDF and a new pre-directive was issued to Highveld Steel in September 2011.</p> <p>Numerous meetings and discussions took place which resulted in Highveld Steel applying for the relevant WML's and WUL's for the re-working process.</p> <p>An administrative enforcement process continues in relation to the impacts from this disposal site.</p>
<p>Samancor Tubatse Ferro Chrome, Limpopo</p>	<p>Date of initial inspection 16 November 2010</p> <p>Representations received / reviewed</p> <p>Date of follow-up inspection/s</p>	<ul style="list-style-type: none"> Non-compliances to conditions of environmental authorisations Lack of air quality monitoring as required by the APPA permit Failure to submit required audit reports (air and waste) Groundwater pollution from activities on site, including waste disposal sites Unauthorized waste storage and disposal areas Failure to comply with general duty of care in respect of waste management on site 		<p>The enforcement strategy has been finalised and an administrative notice is being drafted.</p> <p>The first case docket was registered as Burgersfort CAS 103/07/2008 and the investigation is finalised. The DPP decided to prosecute and summons were issued. It was discovered during the serving of the summons that the alleged accused (Tubatse Ferrochrome (Pty) Ltd) has been deregistered and further investigation was conducted to determine which entity to charge. The correct accused company has been identified and summons will be issued and served to Samancor Limited to appear in the Regional court.</p> <p>In relation to the second case, a criminal investigation was initiated and on-site investigation was conducted. The investigation is not finalised.</p>



Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
Xstrata Wonderkop, North West	<p>Date of initial inspection January 2008</p> <p>Representations received / reviewed 16 September 2008</p> <p>Date of follow-up inspection/s 16-17 August 2011</p>	<ul style="list-style-type: none"> • Lack of adequate monitoring • Air emission exceedences • Unauthorised waste disposal sites • Contraventions of environmental authorisation; • Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care • Lack of water use license 	<ul style="list-style-type: none"> • Xstrata has submitted applications to legalise the waste management activities which were found to be operated without permits in terms of Section 20 of the ECA • Xstrata has been issued with a water use licence, however, non-compliances to licence conditions were found • Non-compliance to APPA R/C • Failure to comply with general duty of care in respect of waste management on site • Air pollution caused by significant fugitive emissions from the Pelletising Plant and the Metal Recovery Plant • Exceedences of the limits set out in the APPA R/C 	Based on the findings of the follow-up inspection an enforcement strategy is being developed.
SCAW Metals in Gauteng	<p>Date of initial inspection 22-25 April and 13 June 2008.</p> <p>Representations received / reviewed</p> <p>Date of follow-up inspection/s No follow-up inspection conducted but a complaint was investigated on 22 February 2011</p>	<ul style="list-style-type: none"> • Air emission exceedences • Inability to demonstrate compliance with some conditions of registration certificates and EIA exemptions • Non-compliance with a number of conditions of the waste permit • Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care • Disposal of waste at a facility not authorised to accept such waste • Unauthorised activities for which section 24G rectification applications had been submitted 	<ul style="list-style-type: none"> • Reclamation of the site prior to submission of motivation report • Failure to keep the record of volume and nature of waste materials that are reclaimed • Failure to take steps to prevent nuisance or health hazard caused by portion 3 of the site • Dust generation from the separation plant and valve/s 	<p>Pre-compliance notice issued by GDARD in March 2011.</p> <p>GDARD, jointly with DEA and all relevant municipalities will conduct a follow-up inspection in June 2012. The outcome of the inspection will determine whether or not further enforcement action is required.</p>



Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
BHP Billiton Metalloys Meyerton, Gauteng	<p>Date of initial inspection 23-24 October 2007</p> <p>Representations received / reviewed 15 September 2008</p> <p>Date of follow-up inspection/s 23-24 August 2011</p>	<ul style="list-style-type: none"> • Non-compliances to conditions of the authorisations All waste disposal sites were not permitted • Several EIA unauthorised activities for which S24G applications had been submitted to GDACE • Significant number of activities causing pollution to the environment Outstanding water use license • Detailed EMP was not submitted to the Department prior to commencement of the Project. • No Material Safety Data Sheet on the hazardous waste • No records of waste stored at the salvage yard. 	<ul style="list-style-type: none"> • Non-compliances to conditions of authorisations still ongoing • Historical waste disposal sites which are unlined still not rehabilitated and creating potential for groundwater pollution. Applications to legalise these disposal sites were not yet submitted despite Samancor committing to apply for waste management licences • Unlined Amcor Dam still used for disposal of contaminated stormwater, excess process water and treated sewage effluent • Failure to comply with general duty of care in respect of waste management on site 	<p>Notice of intention to issue a Section 31L NEMA notice and Section 28(4) NEMA directive issued.</p> <p>Representations received in response to pre-notice, including action plans.</p> <p>Criminal investigation has been recently initiated.</p>
Arcelor-Mittal Vanderbijlpark, Gauteng	<p>Date of initial inspection 03-07 November 2008</p> <p>Representations received / reviewed Detailed representations were received from the facility dated 14 May 2009. In addition, the authorities were informed that ArcelorMittal has decided to shut down coke battery no. 1 as a result of the findings of the inspection.</p> <p>Date of follow-up inspection/s 23-27 August 2010</p>	<ul style="list-style-type: none"> • Lack of waste permits for areas used for the temporary storage of sludge waste on a continuous basis • Lack of registration certificates for certain scheduled processes • Non-compliance with some conditions of environmental authorisation related to kilns 5 and 6 • Five unauthorised activities for which section 24G rectification applications had been submitted • Environmentally harmful activities as a result of, inter alia, waste management practices, uncontrolled emissions (specifically linked to blast furnace C and coke battery no.1) and dust emissions due to moving vehicles and activities at the off-loading and storage areas <p>It should be noted that it was not possible for inspectors to visit and assess compliance of all operations at the site due to the fact that 40% of the site was not operational as a result of the global economic crisis.</p>	<ul style="list-style-type: none"> • Failure to appoint an appropriately knowledgeable independent Environmental Control Officer for various technical processes for the duration of construction and commissioning • Failure to fulfil all information requirements in the amended EMP EMP (submitted to the GDARD); as well as the failure to submit the amended EMI timeously. • ArcelorMittal does not have a Section 20 (1) ECA Waste Disposal site Permit. • Failure to notify the Department within 24 hours if any condition of this authorisation is not adhered to • Discharge of treated storm water that does not comply with the standards in the Water Use License 	<p>Due to the consolidation of the facility's APPA permit by DEA, certain sections of the plant were not inspected during the follow-up inspection conducted by GDARD in August 2010 and a decision was made to delay further monitoring until after the AEL was issued (which has recently occurred).</p> <p>A criminal investigation has been recently initiated in respect of the non-compliances and ongoing incidents at the site.</p>

Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
Arcelor-Mittal Newcastle Works, Kwa Zulu Natal	<p>Date of initial inspection 26-27 September 2007</p> <p>Representations received / reviewed 19 June 2008</p> <p>Date of follow-up inspection/s 23 February 2011</p>	<ul style="list-style-type: none"> • Air emission exceedences • Unauthorised waste disposal sites • Inability to demonstrate compliance with certain conditions of the registration certificates due to a lack of monitoring • Non-compliance with a number of conditions of the waste permit • Contravention of certain conditions of the EIA authorisations • Non-compliances detected were in relation to the management of the two permitted H:H and GSB landfill sites • Unauthorised activity for which a section 24G rectification application had been submitted • Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care; and • Failure to report an emergency incident to the authorities 	<ul style="list-style-type: none"> • Non-compliances to environmental authorizations conditions still continues • Significant air emissions from some operations on site • Potential ground and surface water as well as soil pollution from activities on site • Unauthorized waste disposal sites 	Based on the findings of the follow-up inspection, an enforcement strategy is being developed.



Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
Arcelor Mittal Vereeniging, Gauteng	<p>Date of initial inspection May 2007</p> <p>Representations received / reviewed 16 September 2007.</p> <p>Date of follow-up inspection/s Follow-up inspection was conducted 27 July 2010 by GDARD</p>	<ul style="list-style-type: none"> • Continued dumping of hazardous waste on an unpermitted site, despite repeated instructions from authorities to cease such activity • Particulate emissions to air that cause, have caused or may cause significant and serious pollution of the environment • Significant and serious pollution of surface and groundwater with phenols, iron, oil, fluoride and other hazardous substances. • Failure to lodge audit reports. <p>Pre-notices were issued to ArcelorMittal by DEAT and Gauteng Inspectors:</p> <p>Gauteng Inspectors ordered ArcelorMittal to cease dumping hazardous waste on its Vaal Dump, and to submit a revised rehabilitation plan for this site</p> <p>In October 2007, DEAT Inspectors ordered ArcelorMittal to implement a major dust emission control project within 18 months, and to submit proposals on interim measures to control fugitive dust emissions</p> <p>The Inspectorate currently believes that ArcelorMittal has made every effort to comply with authorities' requirements, and will hold it to the timeframes set in the notices</p>	<ul style="list-style-type: none"> • ArcelorMittal Vereeniging stopped with all activities at Vaal dump site • ArcelorMittal submitted a rehabilitation plan to GDARD in January 2008 and re-submitted it again in March 2010 requesting by the Department for approval • 99% of Magnetite was removed from the site • The magnetite was disposed of at Holfontein H:H landfill site and the disposal certificate has been submitted to the department and • Monthly progress reports were submitted to the department regarding the removal of magnetite from Vaal dump site 	<p>ArcelorMittal has still not submitted an application to the DEA for the rehabilitation of the Vaal disposal site and there remains a dispute in relation to the legal interpretation and whether or not a licence is required.</p> <p>The NPA has requested the Department to undertake further investigation in relation to the criminal case.</p>

Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
Assmang Cato Ridge, Kwa Zulu Natal	<p>Date of initial inspection 26 February 2007</p> <p>Representations received / reviewed November 2007</p> <p>Date of follow-up inspection/s None</p>	<ul style="list-style-type: none"> • Significant uncontrolled dust emissions, containing heavy metal manganese • Serious non-compliance with a hazardous waste site permit • At least one unpermitted hazardous waste site 		<p>During this financial year (for previous action taken refer to previous reports), Assmang was issued with a WML for the construction of a new slag dump facility, as well as a WML for the capping and closure of the old "historical" slag dump.</p> <p>In a letter dated 27 January 2012, Assmang requested an extension of time to comply with certain conditions contained in the notices and directives issued by the DEA, which was granted.</p> <p>Due to the continuous nature of the conditions contained in the above mentioned documents, the DEA, through quarterly meetings, is in a process of monitoring the facility's compliance with environmental legislation.</p>
ASA Metals, Limpopo	<p>Date of initial inspection 11 November 2009</p> <p>Representations received / reviewed 15 March 2011</p> <p>Date of follow-up inspection/s None</p>	<ul style="list-style-type: none"> • Construction and operation of four furnaces on site without environmental authorisation • Waste disposal sites operated without waste management licenses • Groundwater pollution from activities on site • Disposal of hazardous waste on unlined areas • Non-compliance to permit and environmental authorisation conditions 	N/A	<p>S31H NEMA notice issued to the facility in May 2011.</p> <p>Pre-compliance and pre-directive issued to the facility in September 2011.</p> <p>A second S31H Notice was issued to the facility in December 2011 and a final compliance notice was issued in 20 March 2012.</p>
Columbus Stainless Steel, Mpumalanga	<p>Date of initial inspection 28-30 September 2009</p> <p>Representations received / reviewed 24 March 2011</p> <p>Date of follow-up inspection/s</p>	<ul style="list-style-type: none"> • Several non-compliances to conditions on authorisations (APPA permits; Environmental authorisations) • Unauthorised waste storage areas on site • Failure to comply with general duty of care in respect of waste management on site • Unlicensed waste water dams 	None	<p>The appropriate administrative enforcement tools are being drafted.</p>




Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
Assmang Machadodorp, Mpumalanga	<p>Date of initial inspection 15-16 February 2011</p> <p>Representations received / reviewed Report not yet issued</p> <p>Date of follow-up inspection/s</p>	<ul style="list-style-type: none"> • Several non-compliances to conditions on authorisations (APPA permits; Environmental authorisations) • Lack of continuous air quality monitoring as required by Atmospheric Emission Licence • Operation of slag disposal site without the waste management licence • Groundwater pollution from unlined slag dump • Failure to comply with general duty of care in respect of waste management on site 		<p>In the process of developing enforcement strategy.</p> <p>A NEMA section 31H notice has been issued.</p>
Exxaro Base Metal: Zincor in Gauteng	<p>Date of initial inspection 18-19 October 2011</p> <p>Representations received / reviewed</p> <p>Date of follow-up inspection/s</p>	<ul style="list-style-type: none"> • Non-compliances to conditions of authorisations • Disposal of hazardous waste on an unlined Dam without waste management licenses • Groundwater contamination as a result of activities on site • Failure to comply with general duty of care in respect of waste management on site • Surface and groundwater pollution from • Groundwater contamination at the refinery area and an old neutral leach residue storage area with an extremely damaged liner • Potential ground and surface water pollution from the Plant Storm and Waste Water Retention Dam with liner a damaged at the spillway 		<p>An enforcement strategy is in process of being developed which will take into account that the facility is scheduled to cease operations.</p>

Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
PULP AND PAPER				
Sappi Ngodwana, Mpumalanga	<p>Date of initial inspection 19-20 August 2008</p> <p>Representations received / reviewed November 2009</p> <p>Date of follow-up inspection/s 8-9 March 2011</p>	<ul style="list-style-type: none"> • Non-compliance with conditions of the APPA permits • Non-compliance with conditions of the ECA Section 20 permit • Operation of three waste disposal sites without authorization • Upgrade of ESP and fly-ash collection system and the PF Boiler without the required environmental authorisation • Lack of proper bund walls and measures to contain spillages of hazardous chemicals • Non-reporting of emergency incidents to authorities 	<ul style="list-style-type: none"> • Non-compliance with conditions of the APPA permits • Non-compliance with conditions of the ECA Section 20 permit • Operation of 2 waste sites without authorisation • Lack of proper bund walls and measures to contain spillages of hazardous chemicals. • After the initial inspection the facility has constructed a chemical storage facility without the required environmental authorisation • Potential groundwater and surface water pollution from poor storm water management around the coal storage area. • Conducting environmentally harmful activities • Poor management of waste 	Enforcement strategy is being finalised.




Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
Mondi – Richards Bay, Kwa Zulu Natal	<p>Date of initial inspection February 2009</p> <p>Representations received / reviewed 31 August 2009</p> <p>Date of follow-up inspection/s 08 March 2011</p>	<ul style="list-style-type: none"> • Non-compliance with conditions of the APPA permits • Non-compliance with conditions of the ECA Section 20 permit • Operation of Kiln 2 with an expired APPA provisional registration certificate • Improper storage of crushed fluorescent tubes and spillages of hazardous material in unlined areas • Non-reporting of emergency incidents to authorities 	<ul style="list-style-type: none"> • During the follow-up inspection, Mondi was found to be in compliance with its amended APPA permit • Prohibited waste is no longer being disposed of at the Mondi Alton landfill site • Despite the facility's application for an amendment to waste management license, Mondi remains in non-compliance with the License • Iso-kinetic sampling is done annually by an external party 	Enforcement strategy in the process of being finalised.
Mpact (previously known as "Mondi Piet Retief")	<p>Date of initial inspection 25-26 August 2009</p> <p>Representations received / reviewed 12 April 2011</p> <p>Date of follow-up inspection/s</p>	<ul style="list-style-type: none"> • Non-compliance with conditions of the APPA permits • Non-compliance with conditions of the ECA Section 20 permit • Undertaking of a NEMA listed activity without the required authorisation • Undertaking of water activities listed under the NWA without the required authorisation • Undertaking of waste management activities without the required authorisation • Non-compliance with the requirements contained in the NEM:WA • Non-reporting of emergency incidents to authorities 		<p>Representations reviewed and a Section 31H notice issued to the facility in October 2011.</p> <p>Response received in November 2011 and administrative pre-notice in the process of being finalised.</p>

Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
POWER GENERATION 				
Eskom Lethabo Powers Station, Free State Province	<p>Date of initial inspection 3 November 2009</p> <p>Representations received / reviewed 29 September 2010</p> <p>Date of follow-up inspection/s</p>	<ul style="list-style-type: none"> • Non-compliances to conditions of the authorisations (Section 20 ECA permits and APPA permits) • Storage of waste water in dams without Water Use Licences • Failure to comply with general duty of care in respect of waste management on site 		<p>Representations reviewed and a Section 31H notice was issued to the facility in October 2011.</p> <p>Response was received in November 2011 administrative pre-notice is being finalised.</p>
Eskom Matimba Power Station in Limpopo	<p>Date of initial inspection 26 January 2010</p> <p>Representations received / reviewed</p> <p>Date of follow-up inspection/s 26-27 June 2011</p>	<ul style="list-style-type: none"> • Non-compliances to conditions of the Water Use Licence • Operation of waste disposal site without a waste management licence • Storage of coal without the required Atmospheric Emission Licence • Potential soil, ground and surface water pollution as a result of unlined waste disposal area; coal storage areas and waste water dam damaged liners • Fugitive dust emissions from ash transfer points 		<p>S31H Notice was issued to the facility.</p> <p>Administrative pre-notice in the process of being finalised.</p>

Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
Eskom Camden Power Station in Mpumalanga	<p>Date of initial inspection</p> <p>Representations received / reviewed</p> <p>Date of follow-up inspection/s</p>	<ul style="list-style-type: none"> • Significant non-compliances to conditions of authorisations • Ash water return dam, Oils skimming dams; discharging of contaminated water into the De Jagers Pan into Witspruit operated without water use licenses • Failure to comply with general duty of care in respect of waste management on site • Exceedances of the emission limits set out in the APPA R/C • Lack of monitoring and reporting Green House Gas ("GHG") annually to the Chief Air Pollution Control Officer 		<p>Criminal enforcement was initiated but the NPA has decided not to prosecute Eskom (due to s48 of NEMA). Docket has been returned for further investigation in relation to individuals who may be criminally liable in their personal capacities.</p> <p>Administrative pre-notice is in the process of being finalised.</p>



Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
CEMENT 				
Natal Portland Cement, Cimpor, Simuma, Durban, Kwazulu-Natal	<p>Date of initial inspection 27 and 28 May 2008</p> <p>Representations received / reviewed 28 January 2009</p> <p>Date of follow-up inspection/s 17 September 2009</p>	<ul style="list-style-type: none"> Nineteen non-compliances were detected Control of fugitive dust emissions is a major challenge 	<ul style="list-style-type: none"> Applications submitted for amendments to the APPA permit The effectiveness of the dust control measures installed on site could not be established Bunding of chemical and oil storage areas to prevent spillages were still outstanding 	<p>Section 28 NEMA pre-directive and S31L NEMA pre-notice issued to the facility in May 2011</p> <p>Representations received and reviewed and final Compliance Notice issued on 6 February 2012.</p> <p>An application for suspension and Objection were submitted to the Department in March 2012, DEA agreed to a suspension, subject to certain conditions being complied with. NPC has submitted the proof that these conditions have been complied with, as well as additional DEA information that had to be approved by the DEA.</p> <p>The objection is currently being processed and reviewed.</p>
Afrisam Ulco Factory, Northern Cape	<p>Representations received / reviewed 28 January 2009</p> <p>Date of follow-up inspection/s September 2009</p>	<ul style="list-style-type: none"> Fifteen non-compliances detected 	<ul style="list-style-type: none"> Some of the previous non-compliances had been addressed Operation of general waste disposal site as well as storage of hazardous waste without the required waste management licenses Fugitive emissions Potential soil, groundwater and surface water pollution from storage of raw materials 	<p>Pre-compliance notice in terms of section 31L of NEMA and pre-directive(s) in terms of section 28(4) of the NEMA and / or section 31A of ECA issued in September 2011.</p> <p>Representations in response thereto were received in October 2011.</p> <p>In December 2011, the DEA issued AfriSam Ulco with a letter requesting further information and progress reporting on some concerns and issues raised in the pre-compliance notice and pre-directive(s). The information satisfied the DEA and the matter will in due course be referred to the DWA for further monitoring.</p>

Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
Lafarge Lichtenburg, North West Province	<p>Date of initial inspection 27 May 2008</p> <p>Representations received / reviewed 31 July 2009</p> <p>Date of follow-up inspection/s 11 May 2010</p>	<ul style="list-style-type: none"> • Nine non-compliances were detected on site • Facility started with the construction of Kiln 4 without authorisation • Excessive fugitive dust emissions 	<ul style="list-style-type: none"> • Potential groundwater and surface water pollution from poor storage of coal stockpiles, condensate-oil mixture containers on unbunded and unlined area, and oil spillages on site • Unauthorised construction of kiln 4 has not yet addressed 	<p>Section 31H NEMA Notice issued by DEA to Lafarge Cement requesting further information.</p> <p>Pre-compliance notice and pre-directive was issued to the facility in September 2011.</p> <p>Representations were received and a meeting was held with Lafarge.</p>
OTHER				
Foskor Richards Bay in Kwa Zulu Natal	<p>Date of initial inspection 15-16 March 2007 and 16 January 2008</p> <p>Representations received / reviewed 19 August 2008</p> <p>Date of follow-up inspection/s 26-29 March 2012</p>	<p>EMIs detected 28 Non-compliances during the baseline inspection. Most non-compliances were related to air quality. The facility was not conducting monitoring as per the the requirement of the APPA Registration Certificates. In addition to that, the facility has numerous complaints regarding odour from its operations. The EMIs further established that some waste activities which were being undertaken on site were illegal as there was no permit in terms of ECA. There is also historic groundwater contamination on site.</p>	<ul style="list-style-type: none"> • Two waste sites operated without authorisations • Groundwater contamination on site • Lack of fugitive emissions monitoring on site • Erosion on the wall of the stormwater retention dams causing potential for groundwater contamination • Accumulation of sediments inside the stormwater retention dams which reduces the capacity of the dam increasing chances of contaminated water to overflow from the dams • Severely damaged liner at the gypsum cut-off trench. The gypsum contains high concentration of sulphates and ammonia and it is radioactive therefore potential to pollute both ground and surface water • Storage of hazardous waste on an unroofed and unbunded area • Non-compliance to AEL conditions and WML conditions 	<p>A criminal investigation is still underway in relation to this facility following various emergency incidents that took place at the facility from 2002. A decision will be made by the NPA as to whether the offences detected during the recent inspection should be included in the docket.</p> <p>A decision is also required as whether administrative enforcement action is required.</p>

Name of Facility	Significant dates	Principle findings related to environmental non-compliance	Principle findings of follow-up inspection	Status of enforcement process
Transnet, Richards Bay, KZN	<p>Date of initial inspection 12-13 October 2010</p> <p>Representations received / reviewed 20 October 2011</p> <p>Date of follow-up inspection/s</p>	<p>Forty non-compliances were detected</p> <p>Non-compliance in relation to the conditions of various authorisations, activities commencing without APPA and AEL's and in terms of the storage and disposal of waste in terms of NEM:WA</p>		<p>Enforcement Strategy drafted.</p> <p>S31H Notice issued to the facility and awaiting representations from Transnet</p>
King-Shaka International Airport in Kwa Zulu Natal	<p>Date of initial inspection 13 January 2010 and 24 February 2010</p> <p>Representations received / reviewed 23 November 2010 in response to S31H NEMA notice</p> <p>Date of follow-up inspection/s 30 January 2012</p>	<ul style="list-style-type: none"> • Non-compliance to numerous RoD conditions • Undertaking of activities listed in terms of NEMA without the required authorisation • Non-compliance with the provisions of the NEM:WA • Undertaking of activities listed in terms of NEM:WA without the required authorisation 	<ul style="list-style-type: none"> • Non-compliance to RoD conditions, however, a number of these had already been addressed • Undertaking of activities listed in terms of NEMA without the required authorisation, however ACSA had begun the process of submitting 24G applications for these activities • Undertaking of activities listed in terms of NEM:WA without the required authorisation, however ACSA had begun the process of submitting 24G applications for these activities 	<p>Section 31H Notice issued to ASCA in November 2010.</p> <p>After a review of the representations submitted in response to the s31H notice, the DEA decided to issue ACSA with a combined NEMA Section 3L notice & 28(4) directive and ECA Section 31A directive in June 2011</p> <p>ACSA provided their representations in July 2011</p> <p>A site inspection was conducted, by officials in January 2012. During this inspection officials noted that ACSA has made good progress and is working towards achieving compliance in relation to most of the issues raised during the initial inspection</p> <p>However, the issue of the Rehabilitation and Restoration area, including the conservation area, is still under much debate between all I&AP's and the DEA intends to take further enforcement action, should this not be resolved.</p>



8.2 Reactive Administrative Enforcement

8.2.1 GERHARD MINNEBRON

Following a request by an official from the Department of Agriculture, Forestry and Fisheries (DAFF) requesting support from DEA, and the joint inspection with officials from the Department of Water Affairs (DWA) and the DAFF, it was determined that severe degradation of the wetland on Portion 2 of the farm Gerhard Minnebron 139-IQ has resulted from unlawful peat extraction. The Gerhard Minnebron wetland is large enough to be of regional importance, being the single largest source of water for Potchefstroom, owing largely to the sub-aquatic artesian springs. It is worth noting at this point that peat is a rapidly depleting resource because of its slow growth rate (approximately 0,5mm per annum). The rate at which the peat was being extracted posed a serious risk to the scarce resource. Although a permit was granted in terms of the Conservation of Agricultural Resources Act (CARA) by DAFF, the excavation was taking place in the absence of the requisite water use licences.

Both the DWA and the DAFF took enforcement action against the companies extracting the peat at various stages but peat excavation continued in the wetland causing significant degradation to the degree that the wetland has been completely destroyed on Portion 2 and mere vestiges thereof remain. Furthermore, this situation is impacting negatively on the water security of Potchefstroom and surrounds. Following a meeting with officials from DAFF and DWA, it was decided that the DEA lead with both an administrative intervention (to address the ongoing significant harm) as well as a criminal investigation.



Unlawful extraction of peat may cause significant degradation of the wetland.

A combined notice of intent to issue a Directive in terms of section 31A of ECA, 28(4) and a Compliance Notice was issued on 19 August 2011. After considering written and oral representations, the DEA

issued a combined NEMA 31L-notice and ECA 31A-directive on 28 November 2011. The notice required the parties involved to undertake steps to remedy the effect of the environmental degradation from this site. The Minister is currently evaluating an objection that was submitted against the notice and has in the interim suspended the instructions which relate to the rehabilitation of the site. The instruction relating to the physical extraction of peat, however, remained in place and no further activities are currently being undertaken on the site.

8.2.2 ESKOM

Eskom remains the organ of state with the highest rate of non-compliance with environmental legislation. The Department has instituted several administrative enforcement interventions and criminal proceedings against this entity. Although the NPA declined to prosecute Eskom in relation to the Camden facility due to section 48 of the NEMA which essentially absolves an organs of state from criminal liability, the DEA is reviewing the manner in which investigations are being conducted and will pursue criminal proceedings against specific individuals in their private capacities where they were responsible for these non-compliances and the elements of a crime can be proved.

The number of Section 24G applications that have been submitted to the DEA by Eskom are evident of continued non-compliance and it would appear that the levying of these fines is not resulting in compliance or deterring the company from contravening the law. Eskom has paid in excess of R2 million in section 24G fines (four cases) in relation to commencing listed activities without the required authorisation and it seems that poor planning is to blame for many of the contraventions. Other situations which require attention is the procurement of goods and services by Eskom from individuals who cause damage to the environment or who contravene the law. The DEA has invested significant time in dealing with this organ of state and it is hoped that the work that has been done to date as well as a proposed changes in the legislation related to section 48 of NEMA will result in compliance in the future.

9. Biodiversity Enforcement and Compliance

In 2011, a total of 448 rhinoceros were illegally hunted in South Africa. Of these 448 rhinos, 254 were illegally hunted in the Kruger National Park (KNP), 74 in Limpopo, 34 in KZN, 31 in Mpumalanga, 21 in North West with the rest of the provinces bearing the loss of less than 20 rhinos. During the same period, a total of 232 suspected rhino poachers were arrested. Of the 232 arrested suspects, most arrests were done in KNP with 82 arrests, Mpumalanga with 73, Limpopo with 34 and North West with 21.

9.1 INTERPOL OPERATION WORTHY

South Africa participated in Operation Worthy, an INTERPOL operation relating to illegal killing of rhino and the related illegal trade in rhino horn. The conservation organisations in the provinces participated in the operation which was coordinated by the South African Police Service from 12 to 16 March 2012. The aim of the operation was to raise awareness on the current pressure on the rhinoceros and assist law enforcement by promoting a multi-dimensional approach to combat rhino poaching and the smuggling of rhino horns. The operation involved SAPS, DEA, the Interim National Wildlife Crime Reaction Unit, SANPARKS, and nature conservation officials in the participation provinces.

9.2 JOINTS OPERATIONS

As part of the SAPS Provincial Joints Initiative, the Free State province had monthly special visible proactive policing operations which were very successful and as a result, the province did not experience any poaching incidents. During this financial year, two Chinese Nationals were arrested on the border of the Sandveld Nature Reserve being in possession of a .270 rifle with a filled off number, they had already shot a warthog. The case is presently in court.

Through a lot of training and sensitising of provincial nature reserve personnel, three people were also arrested at Sandveld. The suspects were found in possession of tranquilisers and weapons. The Free State province currently has 850 permitted traditional healers. The province has one dedicated official managing these healers. Through the cooperation with Traditional Healers Organisation, the province has launched various compliance blitzes with many successes in curbing the sale and slaughtering of indigenous resources. The Nature Conservation Officials in the province have good working relationship with private Rhino owners and are in contact regularly on the best ways to protect their Rhinos. The province also have dedicated officials doing all private rhino horn stockpile in line with the Norms and Standard for the marking of rhinoceros and rhinoceros horn, and for the hunting of rhinoceros for trophy hunting purpose. The province has done DNA sampling of over 100 horns. All Rhino actions and Lion hunts in the province are attended by relevant officials and reports are compiled.

9.3 COMPLIANCE WITH BIOPROSPECTING, ACCESS AND BENEFIT SHARING REGULATIONS

During this financial year, twelve (12) non-compliant companies to the Bioprospecting, Access and Benefit Sharing (BABS) Regulations were identified. The provisions of the National Environmental

Management: Biodiversity Act (Act no. 10 of 2004) (NEMBA) and the BABS Regulations including an outline of permit application procedure in order to comply were communicated through official letters to the identified companies. Of these 12 non-compliant companies, only 4 responded to the letter through submission of completed permit applications and e-mail correspondences respectively. Further engagement with these non-compliant companies will take place in the 2012/2013 financial year.

9.4 INTERPOL 23RD WILDLIFE CRIME WORKING GROUP

The department participated in the 23rd Wildlife Crime Working Group meeting held in Thailand from 13 to 17 February 2012, organised by Interpol. The major current issues discussed during the meeting which are relevant to South Africa include the following:

- **The illegal wildlife trade over the internet**

The meeting noted the emergence of the problem of the illegal wildlife trade over the internet. IFAW presented on the challenges of countering the illegal wildlife trade on the internet and the difficulties that this poses, as it is very difficult to monitor the illegal wildlife trade. It highlighted the work that it has been doing with internet based market places and called for more action to ban CITES listed species on the internet



- **Rhino**

The meeting also noted that there has been a radical increase in the illegal rhino horn trade, leading many subspecies close to extinction. It was highlighted that demand for rhino horn is one of the greater challenges as people believe it can cure cancer. It was suggested that the regulatory system should be improved to ensure specimens that are given a permit as a trophy are not resold or laundered into the illegal trade. The need for better enforcement along the trade chain (from supply to demand) was also highlighted.

- **Forensic and the wildlife trade**

It was noted that forensics could be used to map the illegal trade hotspots, as well as for species identification. This data could then be used to for preventive action, as it could provide information to law enforcement on the main trade hotspots where efforts could be strengthened. It was suggested that INTERPOL could consider the development of a forensics manual for member states.

- **Tigers**

The importance of increased commitment at the highest levels was stressed, as well as the need for multiagency enforcement cooperation and intelligence-led policing. It was noted that despite the creation of many networks, most countries do not submit and share data on the illegal wildlife trade and commitments have not been translated into action in the field. One of the main reasons for this is that the necessary human and financial resources have not been committed to the fight against the illegal wildlife trade.

- **Elephant ivory**

The Lusaka Agreement Task Force (LATF) introduced the functions of the Task Force and highlighted the need for intelligence sharing and to cooperate with regional bodies to counter the illegal wildlife trade. The Task Force also highlighted the successes of the network and the current challenges faced, and called partners to support the task for with additional capacity building and sharing of information.

- **Illegal trade in birds**

It was highlighted that a large quantity of bird species are very endangered and in some cases more than tigers or rhinoceros. This should be taken into consideration and more importance should be given to such illicit trade.

9.5 CYCADS

South Africa is at risk of losing 70% of its cycad species in the immediate to near future (32% of South Africa's cycads are Critically Endangered, 11% are Endangered and 27% are Vulnerable). Three cycad species (possibly even 5) are already extinct in the wild. Trade in wild-collected plants is the predominant threat to South Africa's cycad populations. Wild cycad populations are targeted by collectors to supply the demand for large plants; the removal of wild plants affecting 84% of cycad species. It is estimated that over one million cycads exist in private collections, with large numbers originating from wild populations.

Recommendations to address this cycad conservation crisis, adopted by MINMEC in December 2010 were implemented in 2011/12, including the assessment of comments received relating to the proposed moratorium on certain activities involving wild and some artificially propagated cycads. Increased monitoring and enforcement actions are required to address the illegal collection of wild specimens. A strategy to address the threats faced by cycads will be developed in 2012/13.

10. National Department Complaints and Emergency Incidents Register

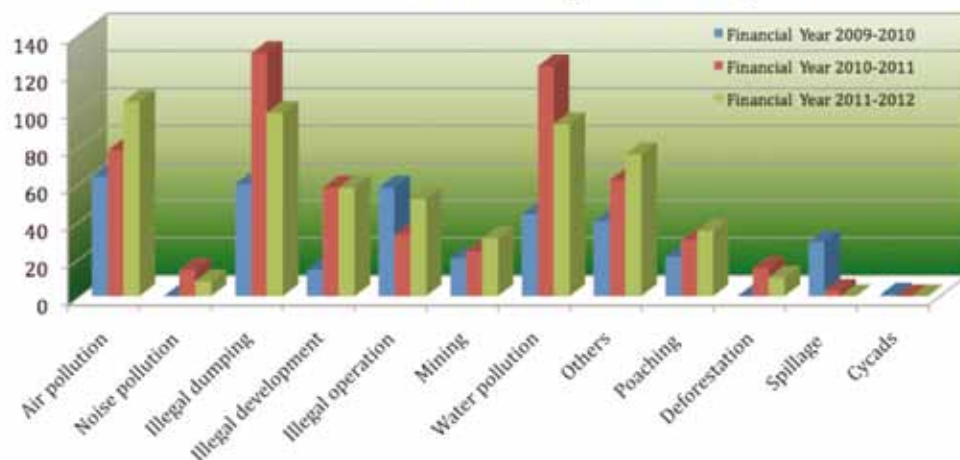
DEA continued to collect statistics on environmental complaints received from the Environmental Crimes and Incidents Hotline, from the Minister and Director-General's office as well as direct and referred complaints/incidents from other organs of state or the public. The hotline serves as the main entry point for complaints on environmental crimes and emergency incidents and does not include complaints reported directly to provinces and local authorities or other EMI Institutions. There has been a slight decrease in the overall number of complaints reported from 570 in 2010/11 compared to 564 in 2011/12 financial year. However, there has been a dramatic increase on the air pollution category and the decrease has been on water pollution which dropped from 123 in 2010/11 to 92 in 2011/12, which is a 25% decrease.

Nature of Complaint	Financial Year			Total
	2009-10	2010-2011	2011-2012	
Air pollution	64	78	104	246
Noise pollution	0	14	8	22
Illegal dumping	60	130	98	288
Illegal development	14	58	58	130
Illegal operation	58	33	52	143
Mining	20	24	31	75
Water pollution	44	123	92	259
Others ³	40	62	76	178
Poaching	21	30	35	86
Deforestation	0	15	10	25
Spillage	29	3	0	32
Cycads	1	0	0	1
Total	351	570	564	1485

Table 7: Number and classification of complaints and Emergency Incidents

³This category represent complaints, which doesn't fall within the above mentioned categories, i.e. biological and nuclear complaints

Nature of Complaints Report



Graph 6: Graphical representation on the nature of complaints received

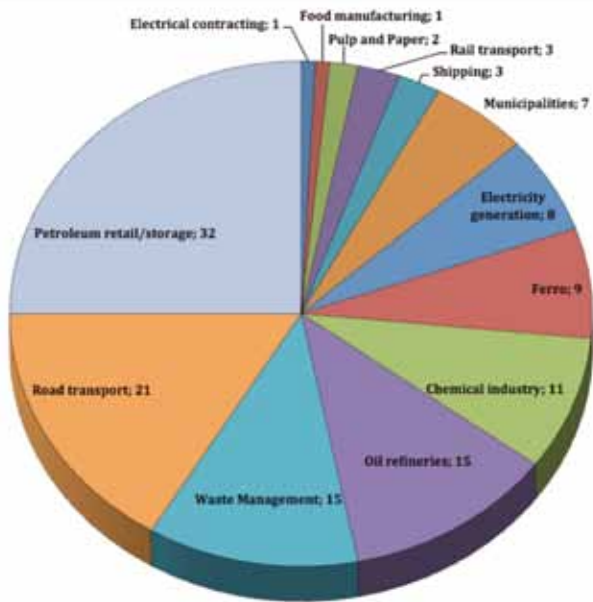
Financial Year	INSTITUTION REFERRED TO					Total
	DEA	DWA	DMR	LOCAL GOVERNMENT	PROVINCES	
2009-2010	138	63	22	6	122	351
2010-2011	87	123	24	134	210	612
2011-2012	81	59	30	192	183	545
Total	306	245	76	332	515	1508

Table 8: Number of DEA referred complaints and incidents

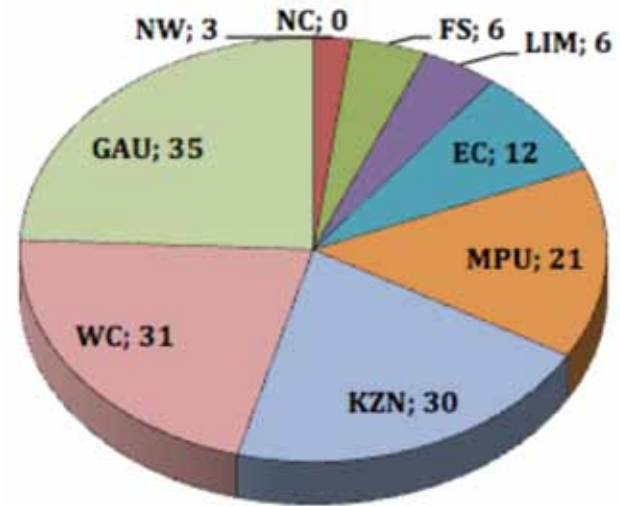
10.2 Emergency Incidents as contemplated in Section 30 of NEMA

A total of **144** incidents were reported during the period 01 April 2011 to 31 March 2012. Fifteen (15) of these incidents were deemed to be non-Section 30 incidents (i.e.10.42%). Non-Section 30 incidents are minor incidents that are deemed not to pose a serious risk to human health or the environment. The Department of Environmental Affairs has developed a Guideline Document on the Administration of Emergency Incidents that advises Relevant Authorities how to administer the flow of information emanating from an emergency incident. The Guideline also specifies threshold quantities of hazardous substances that, if released, must be reported to all three spheres of government as Section 30 incidents. Generally, the Department of Environmental Affairs expects the regulated community to report all major incidents to it and the authorities retains the competency to determine which incidents are Section 30 incidents and which are not.

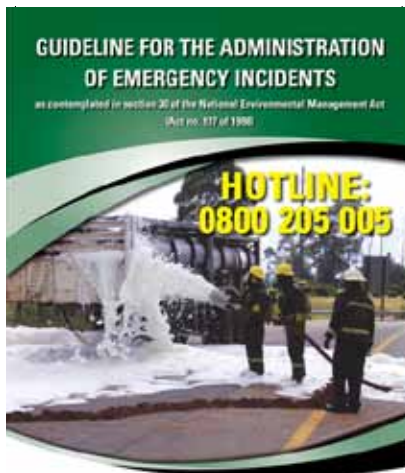
During the 2011/12 financial year most reported Section 30 incidents were from the petroleum retail/storage sector and the road transport sector. This is mainly attributed to the widescale use and occurrence of petroleum products across the country and the fact that vast quantities of hazardous substances are transported on our roads every day. Most Section 30 incidents were reported in Gauteng, the Western Cape and KwaZulu-Natal. The pie charts below illustrate the distribution of the reported incidents for different industries and the provinces in which they were reported. It is important to note that these statistics reflect only those incidents that were reported to and recorded by the Department of Environmental Affairs and provinces. Since there is significant underreporting of incidents these statistics should not be read as an accurate depiction of all emergency incidents occurring in the country during the period under review.



Pie Chart 1: No. of Section 30 incidents reported per industrial sector



Pie Chart 2: No. of Section 30 incidents reported per province



11. Capacity Building for EMIs, Magistrates and Prosecutors

11.1 EMI Basic Training

On the 19th of April 2011, a workshop addressing the future of EMI Basic Training was held in Gauteng, facilitated by the Department of Environmental Affairs. The purpose of the workshop was to discuss the current basic training approach together with feedback as derived from the "EMI needs analysis questionnaire". The workshop was well attended by representatives from Working Group IV and in accordance with the outcomes of this workshop, the Department embarked on a process of internalising the EMI Basic Training Programme which will be implemented in a phased manner, with tertiary institutions still playing a limited role in the programme for 2012.



Officials that attended the EMI basic training course in Cape Town.

The Compliance and Enforcement Support Directorate at the Department of Environmental Affairs subsequently piloted the facilitation and presentation of the EMI Basic Training Course, which ran from 11 - 29 July 2011.

The course was attended by 38 prospective EMIs, representing the Western Cape and Eastern Cape Provincial Departments, Eastern Cape Parks, Cape Nature, SANPARKS, Isimangaliso and officials from DEA. The scenic Kirstenbosch Botanical Gardens, Centre for Biodiversity, was selected as the venue for the course.

2011-12 also saw the continuation of the Environmental Management Inspectorate Basic Training programme presented by the two tertiary education institutions (University of South Africa and University of Pretoria). During this period, approximately 224 officials and students received EMI basic training.



Officials during a practical inspection during EMI basic training.

Provincial environmental authorities made some significant progress towards preparation for the designation of trained local authority officials as EMIs. In 2011/12, the conclusion and signature of an EMI Local Authority Implementation Protocol took place in 11 local authorities (6 in the Western Cape and 5 in Limpopo), paving the way for the relevant municipal officials employed within these jurisdictions, to be designated by the relevant MECs. In addition, DEA furthered negotiations with key stakeholders, including the Health Professions Council of South Africa, the national Department of Health, the South African Institute of Environmental Health and certain tertiary education institutions, towards developing and presenting a bridging course for qualified Environmental Health Practitioners to become eligible for designation of EMIs. This project is aimed at aligning the qualifications of these two professions; and fast-tracking the much needed local authority EMI capacity to undertake compliance and enforcement with specific pieces of national environmental legislation, most notably, NEM:AQA.

11.2 EMI Field Ranger Training (Grade 5)

As mentioned in 3.1.1 above, the 2011/12 financial year has seen a significant increase in the number of Grade 5 EMI field rangers trained and designated in various institutions across the country. The Grade 5 EMI training modules have been incorporated into the KZN Wildlife Basic Field Ranger programme since late 2009.

KZN Nature Conservation is accredited as a training provider by Cathsseta and SASSETA and the Grade 5 EMI training has been conducted by members of the Field Training and Firearms Unit. The KZN Nature Conservation Service currently has 202 Grade 5 EMIs, with the majority being deployed in the iSimangaliso Wetland Park World Heritage Site. The appointment of EMIs has allowed the KZN Nature Conservation Service to implement and enforce the Protected Areas Act and regulations applicable to national parks and world heritage sites and phase out the outdated KwaZulu Natal Provincial legislation.

A total of 57 Grade 5 EMIs have also been trained by ECPTA, conducted in-house by reserve managers, who had themselves received training and who were then able to conduct training of the field rangers using the training DVDs that were provided by DEA. Having the 57 field rangers trained as grade 5 EMIs has developed much needed capacity to implement NEM: PAA and to carry out effective law enforcement activities on the protected areas under ECPTA management.

11.3 EMI Specialised Training

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

The first specialised course presented at the OR Tambo International Airport, focused on the **Convention on Endangered Species of Wild Fauna and Flora (CITES)** and was presented during the month of June 2011. In addition to the EMIs who attended the course, a number of external enforcement agencies were also invited to attend. These enforcement institutions included officials from SARS Customs Border Control Unit, prosecutors from the National Prosecuting Authority and police officials from the Directorate Priority Criminal Investigations (Hawks).

Apart from the numerous experts that assisted in presenting the course attendees was privileged to be lectured to by John Sellar: Chief Enforcement Support CITES Secretariat Geneva (now retired).



Delegates that attended the CITES enforcement course together with now retired John Sellar from the CITES Secretariate.

The course further received acclamation from the CITES Secretary-General, John Scanlon, who said, *"The multi-agency collaboration demonstrated by this course is an excellent example for others to follow..."*

A second EMI specialised course was presented in November of the same year that focused on the **National Environmental Management Waste Act (NEM:WA)**. The purpose of the course was to train officials on various aspects of the Waste Act, including the legal framework, types of offences and regulations associated with the licensing of waste management activities, corporate liability, asset forfeiture as well as relevant norms and standards.

Similar to the approach followed within the CITES course that focused on capacitating EMIs, an invitation was extended to members of the NPA to foster the building of closer working relations between EMIs and Prosecutors. The course was attended by 52 delegates, 10 of whom were prosecutors currently dealing with waste-related court cases, as well as 42 EMIs spread across 10 institutions. A number of external speakers were invited as presenters at the training course, which included one of the drafters of the Waste Act, an environmental scientist, a civil engineer and a senior advocate specialising in company law.

The third and final specialised training course was also presented during the month of November, with EMIs from 4 provinces invited to attend a specialised course focused on **Administrative Enforcement**. In total, 30 officials attended the course presented in Limpopo, comprising of 15 officials from North West, 7 from Limpopo, 2 from Mpumalanga and 6 from Gauteng provinces.

The course will again be presented during the 2012 – 2013 financial year to other EMI institutions. The theme of the course was “The pen is mightier than the sword” and some of the objectives of the course were to provide EMIs with skills and knowledge in the types of administrative enforcement mechanisms available to EMIs; the legal framework for issuing of administrative enforcement mechanisms; the different circumstances in which to use a specific enforcement mechanism; The process and content considerations within these mechanisms; and lastly, the considerations when dealing with variations/suspensions/objections and appeals.



EMIs during Rhino crime scene management training at the Kruger.



EMIs' delegates during the Lekgotla 2012 held in Limpopo.

During the annual Permit and Enforcement Planning Committee (PEPC) meeting, a recommendation was made that the Department of Environmental Affairs (DEA) should organise a training session on rhino DNA sampling for officials in the provinces involved in biodiversity compliance and enforcement. As per the PEPC's recommendation, the Directorate: Regulation and Monitoring Services organized a three day training session on DNA sampling, which took place from 7 - 9 September 2011 at the Skukuza camp in the Kruger National Park. The training session was presented by Dr Cindy Harper from the Faculty of Veterinary Science at the University of Pretoria and officials from SANPARKS, and was aimed at equipping the officials with the necessary knowledge and practical experience in DNA sampling and the management of crime scenes where the illegal killing of rhino took place.

This training was also done in anticipation of the proposed amendments to the norms and standards for the marking of rhino horn. DEA was supported by SANPARKS, who provided a rhino carcass and demonstrated the manner in which a rhino autopsy should be conducted, the taking of samples, as well as information relating to crime scene management.

11.4 EMI short-courses

The Environmental Compliance and Enforcement Lekgotla held during March 2012 presented an ideal opportunity for the Department of Environmental Affairs to coordinate the presentation of four short courses. The topics and presenters for this day were carefully selected to provide EMIs with meaningful knowledge which they could use in their daily work environment. These courses were:

Short Course A: Getting to grips with the new EIA listed activities, aimed at developing the capacity of EMIs to identify and respond to EIA contraventions.

Short Course B: TOPS Amendments for successful prosecutions. This session focused on providing feedback on potential areas of improvement in the legislation, based on recent investigations / prosecutions.

Short Course C: Understanding criminal procedure in investigating of environmental crime. This short course explored the interrelationship between criminal procedure and environmental law through the discussion of relevant legislation and case studies.

Short Course D: Inspection report writing, doing it right. This course highlighted the key areas of successful report-writing, as well as potential pitfalls.

11.5 Magistrates and Prosecutors

The collaboration between the Environmental Management Inspectorate and Justice College continued and resulted in 3 workshops titled “Prosecuting Environmental Crime” being presented to prosecutors country-wide. The initiative focuses on providing prosecutors with an overview of all relevant environmental legislation as well as providing a platform for EMIs to highlight their challenges in the enforcement of environmental legislation.



Members of the NPA that attended the “Prosecuting Environmental Crime” course in Pretoria.

The first course was presented during the month of May 2011 in Gauteng, the second during August in KwaZulu Natal, and the third presented in the Western Cape during November of the same year. In

an effort to ensure continuous improvement of the initiative a course evaluation form is circulated for completion and the following comment received from one of the attendees at the course accurately captures the essence of this initiative:

“It is amazing that we as prosecutors place more focus on cases like robbery, theft etc. and ignore the seriousness of environmental crime. This course was an eye opener”

12. Stakeholder Engagement

The primary event for stakeholder engagement for the environmental compliance and enforcement sector in the 2011/12 financial year was the **4th Environmental Compliance and Enforcement Lekgotla (ECEL)**, which took place from 05-09 March 2012. Almost 200 Environmental Management Inspectors and other key roleplayers from across the country descended on the Protea Hotel: The Ranch in Polokwane to discuss critical issues of environmental compliance and enforcement. The theme of this year’s ECEL, “Pause, Hold, Engage: Green Scorpions: Half a Decade On”, was a call to the Inspectorate to pause and take stock of the last five years since the inception of operations of the Inspectorate; and critically assess key areas, such as performance, communication, stakeholder engagement and capacity.

As with previous events, the 2012 ECEL saw a wide range of participants in attendance, including the following:

National Institutions:

- Department of Environmental Affairs
- Isimangaliso Wetland Park Authority
- South African National Parks
- Department of Water Affairs
- Department of Agriculture, Forestry and Fisheries
- Department of Labour
- Department of Health
- National Prosecuting Authority
- South African Police Service
- South African Revenue Service
- Justice College

Provincial Institutions:

All provincial environmental authorities and parks boards were in attendance with the exception of Cape Nature and the Mpumalanga Parks and Tourism Agency, who tendered their apologies due to operational and financial challenges.



EMIs and members of the NPA that attended the Waste Act specialised course

Municipal Institutions:

Participating local authorities included the City of Cape Town, Ekurhuleni, eThekweni, Polokwane, Capricorn, Waterberg, Sekhukhune, Mopani, Fezile Dabi, Lepelle – Nkumpi, and Vhembe.

Expert Panellists/Facilitators:

A new innovation in the 2012 ECEL was the invitation of external expert panellists/ facilitators, whose participation was aimed to give the Inspectorate a wider perspective on its areas of strengths and weaknesses, and included representatives from the:

- NGO (Groundwork)
- Industry Associations (SA Petroleum Industry Association and Ferro Alloy)
- Environmental Lawyers (Smith, Ndlovu and Summers)
- Academia (Institute of Marine and Environmental Law, UCT and Tshwane University of Technology)
- Parastatal (SANRAL)
- Research (CSIR)



Awards of Excellence:

The ECEL, 2012, also included the handing out of the Environmental Management Inspectorate Awards of Excellence, which were conceived in order to give recognition to government officials who have made an outstanding contribution to the implementation of environmental legislation in South Africa. The awards were handed to the following individuals in 4 separate categories:

Category	Name and Employing Institution	Motivation
<p>The prosecution of environmental crime</p>	<p>Marilee van Heerden (NPA - South Gauteng)</p>	 <p>The successful prosecution of several rhino poaching matters in Gauteng, coupled with a 100% conviction rate in all the environmental cases prosecuted during the period 2010/11; and her management of the South Gauteng Environmental Prosecution section</p>

The investigation of environmental crime	<p>Carl Nortier (Sanparks, Environmental Crimes Investigations)</p>		<p>Fighting against abalone poaching in the Western Cape, which at times has placed his life at risk; the innovative ways in which he has attempted to tackle these crimes; and his ongoing commitment to sharing his vast knowledge through capacity building initiatives.</p>
	<p>Marie Louise Lume (DEA, Criminal Investigations)</p>		<p>Investigating pollution and waste crimes, including the securing convictions in two precedent-setting cases, i.e the PAN African Parliament and Silicon Smelters matters, both of which received much media attention.</p>

The inspection of environmental legislation	<p>Cecelia Petlane accepting on behalf of the winner. Motebang Molise (GDARD, Compliance Monitoring)</p>		<p>200 compliance inspections within the reporting period, often having to deal with difficult personalities during these inspections; with many of the sites inspected coming into compliance as a direct result of his inspection activities, including post-inspection report writing and the drafting of legally defensible administrative enforcement notices.</p>
The administrative enforcement of environmental legislation	<p>Frances Craigie, DEA, Enforcement</p>		<p>Preparation of legally defensible notices and directives, which have, in many instances achieved direct compliance, including the well-document Mapungubwe and Welkom Medical Waste cases; as well as her commitment to numerous capacity building initiatives and the support which she renders to other EMI institutions.</p>

13. What is ahead for 2012-13?

Having been given an opportunity to reflect on its performance in the last half a decade at the Environmental Compliance and Enforcement Lekgotla, the environmental compliance and enforcement sector will now focus on implementing the strategic recommendations emanating from this event. These initiatives will include the maintenance and improvement of working relationships with key role-players, such as the South African Revenue Service, South African Police Service and National Prosecuting Authority. There will also be a continued focus on the conducting of joint compliance and enforcement operations, both in the “brown” and “green” subsectors. Capacity building programmes will continue to provide specialist skills and knowledge to the existing environmental compliance and enforcement officials, and, at the same time, provide the impetus for the expansion of the Inspectorate to the local authority level.

While still focussing on the work set out above, the Inspectorate will also be embarking on the development of a National Compliance and Enforcement Strategy. This project will involve a review of the current environmental compliance and enforcement system, including an assessment of the impact that the work of the Inspectorate is currently having on the regulated sector. The project will provide the Inspectorate (across all institutions and mandates) with a strategy to undertake more effective compliance and enforcement of NEMA and the SEMAs, based on the identification of national priorities for the next five years.



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National Environmental Compliance & Enforcement Report 2011-12



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