

National Environmental Compliance & Enforcement Report 2008- 9

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Key:

CN:	Cape Nature
DACE:	North West Department of Agriculture, Conservation and Environment
DAEA:	Kwa-Zulu Natal Department of Agriculture and Environmental Affairs
DEAT:	Department of Environmental Affairs and Tourism
DEDEA:	Eastern Cape Department of Economic Development and Environment
DETEA:	Free State Department of Economic Development, Tourism and Environmental Affairs
DG:	Director-General
DTEC:	Northern Cape Department of Tourism, Environment and Conservation
ECPB:	Eastern Cape Parks Board
EMI:	Environmental Management Inspector
EQP:	Environmental Quality and Protection (DEAT)
GDACE:	Gauteng Department of Agriculture, Conservation and Environment
EKZNW:	Ezemvelo KwaZulu Natal Wildlife
LEDET:	Limpopo Department of Economic Development, Environment and Tourism
MCM:	Marine and Coastal Management (DEAT)
MDALA:	Mpumalanga Department of Agriculture and Land Affairs
MTPA:	Mpumalanga Tourism and Parks Agency
NCER:	National Compliance and Enforcement Report
NPA:	National Prosecuting Authority
SANPARKS:	South African National Parks
SAPS:	South African Police Service
IWPA:	Isimangaliso Wetland Park Authority
WCDEADP:	Western Cape Department of Environmental Affairs and Development Planning

Key:

APPA:	Atmospheric Pollution Prevention Act 45 of 1965
ECA:	Environment Conservation Act 73 of 1989
MLRA:	Marine Living Resources Act 18 of 1998
NEMA:	National Environmental Management Act 107 of 1998
NEM:BA	National Environmental Management: Biodiversity Act 10 of 2004

Key:

CNECO:	Cape Nature and Environmental Conservation Ordinance 19 of 1974
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

General

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1. Introduction

The primary objective of the annual National Compliance and Enforcement Report (NCER) is to provide a national overview of environmental compliance and enforcement activities undertaken by relevant institutions across the country during the period 1 April 2008 to 31 March 2009. This report reflects the work of all environmental compliance and enforcement officials operating at national and provincial levels; even though certain sections focus particularly on the Environmental Management Inspectorate.

2008-9 marks the third year in which institutions submitted their statistics to DEAT for compilation and publication; following similar reports in the 2006/7 and 2008/9 financial years. Although every effort has been made to ensure the accuracy of this report, the following constraints must be noted:

- the statistics reflected in this report are based solely on figures provided by reporting institutions – no independent verification has been undertaken;
- a slight variation in the format in which institutions have submitted their statistics;
- difference in understanding of the definition of certain information fields required (for example, the inclusion of ongoing cases straddling the 2007/8 and 2008/9 financial years);
- possible inconsistency in the reporting of cases that are led by other law enforcement agencies, for example, the South African Police Service.

New features in the 2008/9 report include more detailed information on the Inspectorate, comparative analyses of key enforcement activities (convictions and administrative notices), statistics on complaints and emergency incidents, legislative developments affecting compliance and enforcement and an update on stakeholder engagement.

There is room to further develop the consistency, reliability and accuracy of statistics included in the NCER before its potential can be realised as a practical, strategic tool to inform the decisions of environmental regulatory authorities. However, the increasing collaborative effort between various institutions to compile the NCER and participate in related projects (such as the National Compliance and Enforcement Information Management System and the EMI Case Administration System) marks the beginning of a new national understanding of environmental compliance and enforcement activities in South Africa.

1.1 Explanatory notes:

“Admission of guilt fines” means fines issued or paid in terms of Section 56 of the Criminal Procedure Act, 1977. In instances where fines are received by the institution issuing them, such as SANParks, the “fines paid” figure is more reliable. In instances where fines are simply paid to the Clerk of the Court and paid to National Treasury, the “fines issued” figure is less reliable.

Summons/Arrests: This number simply indicates the number of individuals arrested/summonsed to court by environmental enforcement officials during the financial year.

Civil court applications: Where notices or directives are ignored, and / or urgent damage is being caused to the environment, institutions may need to institute civil proceedings (e.g. interdict) in the High Court.

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

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



Notices/directives issued: Notices and directives to take corrective action (e.g. ceasing an activity, undertaking rehabilitation, submitting information) are used extensively by environmental enforcement officials, particularly in relation to developments and industrial activities. This type of administrative enforcement action is often used in parallel with criminal investigations.

“Reported cases” means all matters reported by institutions for the purposes of the NCER, irrespective of whether compliance and enforcement responses have been taken or not.

“Warning letters” are written documents that afford the opportunity to the offender to comply without the instigation of formal administrative, civil or criminal enforcement proceedings. These would often be the first enforcement step in relation to non-compliant organs of state.

2. Key findings

2.1 The Environmental Management Inspectorate

- There has been an increase of 37(4.3%) EMIs on the national register, from 866 in 2007/8 to 903 in 2008/9.
- There are a total of 903 EMIs on the national register, with 634 (70.2%) originating from SANPARKS.
- Of the remaining 269 EMIs, there are 37 in the employ of provincial parks boards, leaving a maximum of 232 EMIs to undertake functions related to “blue” and “brown” sub-sectors.
- The total number of EMIs includes a number of officials who do not undertake operational compliance and enforcement activities (for example, in DEAT, only 23 of the 44 EMIs are operational – 52%).
- The national register does not capture 42 local authority EMIs that have been trained, but not yet designated.

- Even though there has been an overall increase in the number of EMIs, 75 EMIs resigned from their place of employment in the 2008/9 FY, representing a 22% decrease from 344 to 269, excluding SANParks.

2.2 Overall National Statistics

- The total number of reported cases in 2008/9 was 4661.
- The total number of criminal dockets registered increased from 1762 in 07/08 to 2412 in 08/09 (increase of 37%).
- The total number of cases in which the NPA declined to prosecute increased from 16 in 07/08 to 100 in 08/09 (increase of 525%).
- The total number of acquittals decreased from 441 in 07/08 to 18 in 08/09 (decrease of 96%).
- The total number of convictions decreased from 748 in 07/08 to 258 in 08/09 (decrease of 50%).
- The total number of admission of guilt fines issued nearly doubled, from R 744 706 in 07/08 to R 1 446 709 in 08/09;
- There has been an increase in the total number of notices/directives issued from 246 in 07/08 to 273 in 08/09 (increase of 11%);
- The total value of S24G fines paid has more than doubled from R6 880 246 in 07/08 to R 15 499 518 in 08/09, despite the fact that 267 fewer fines were issued in 08/09.

2.3 Statistics per Institution/Province

- Marine and Coastal Management recorded the highest number of convictions (206).
- Eastern Cape had 15 convictions, followed by Limpopo (11), Cape Nature (10), Mpumalanga Parks and Tourism Agency (6) and Eastern Cape Parks Board and North-West (2 each);



- Just over half of the participating institutions (8 out of 15) recorded no convictions during this period;
- GDACE issued the highest number of administrative notices (pre and final) with a total of 97;
- Western Cape issued 32 pre-compliance notices, no pre-directives and only 2 final directives/notices;
- Limpopo issued 21 administrative notices, followed by DEAT EQP (20) and the Eastern Cape (18);
- SANPARKS, MCM, Cape Nature, Eastern Cape Parks Board, Mpumalanga Parks and Tourism Agency and Northern Cape recorded no administrative notices issued during this period.

2.4 Industrial Compliance and Enforcement

- Following on from the work conducted in the previous financial year, further inspections were undertaken at facilities, which had not previously been inspected, as part of Operation Ferro and the Refineries Project. Inspections of facilities within these sectors continue to detect non-compliances related to, inter alia, exceedances in emissions, illegal waste sites and contraventions of conditions across the range of different authorisations applicable to such facilities. Although commitment to address these issues is made as part of the representations received in response to the inspection findings and in some cases facilities have taken fairly drastic measures to address the non-compliances (eg. the voluntary shutting down of a coke battery by ArcelorMittal), it is felt that enforcement action needs to be stepped up. The legislative amendments as well as new legislation regulating both waste and air quality, which should commence in the next financial year, will provide the mechanisms needed to ensure more effective enforcement.
- With regard to the blitz conducted on the cement sector, the major problem identified was dust pollution. Following these inspections,

management of all nine facilities committed to addressing, inter alia, this issue by, for instance, upgrading air pollution abatement equipment and further investigating possible fugitive dust emission sources as well as measures to minimise air pollution.

- The Inspectorate has also begun focussing on the Paper and Pulp Sector and a number of facilities were inspected towards the end of this reporting period.

2.5 National Complaints and Incidents

- There has been a significant decline in the number of cases reported to DEAT in 2008/9 through the Environmental Crimes and Incidents hotline, through the Ministry, Office of the DG or directly.
- In 2007/8, the total number of complaints was 333, while in 2008/9 there were only 219 complaints reported.
- The reported number of emergency incidents decreased from 49 in 2007/8 to 16 in 2008/9.
- Illegal operation and cycad related complaints were the only categories of complaints that rose by 1 each in 2008/9.
- In 2008/9, 47 complaints were referred to provinces which is 6 times greater than those referred to province in 2007/8 (7).

3. Environmental Management Inspectors

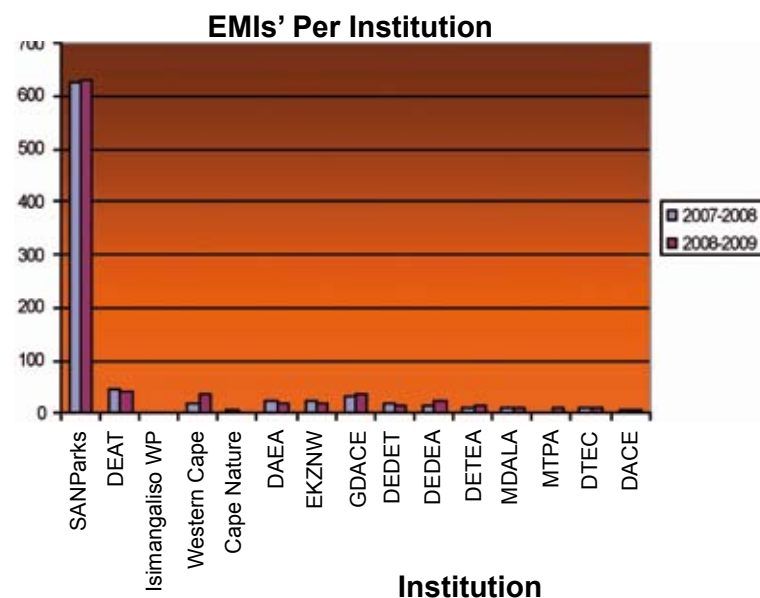
As at 31 March 2009, there were 903 Environmental Management Inspectors (EMIs) on the EMI Register kept by the Department of Environmental Affairs and Tourism in terms of regulation 6(2) of the Regulations relating to Qualification Criteria, Training and Identification of; and Forms to be used by Environmental 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

	2007- 2008	2008-2009
SANParks	630	634
Department of Environmental Affairs and Tourism	48	44
Isimangaliso Wetland Park	1	1
Western Cape Department of Environmental Affairs and Development Planning	23	39
Cape Nature	6	4
KwaZulu-Natal Department of Agriculture and Environmental Affairs	27	21
Ezemvelo KZN Wildlife	26	22
Gauteng Department of Agriculture, Conservation and Environment	32	38
Limpopo Department of Economic Development, Environment and Tourism	20	16
Eastern Cape Department of Economic Development and Environmental Affairs	15	24
Free State Department of Tourism, Environmental & Economic Affairs	10	15
Mpumalanga Department of Agriculture and Land Administration and the Mpumalanga Tourism and Parks Agency	10	14
Northern Cape Department of Tourism, Environment and Conservation	12	11
Northwest Department of Agriculture, Conservation and Environment	6	7
TOTAL	866	903

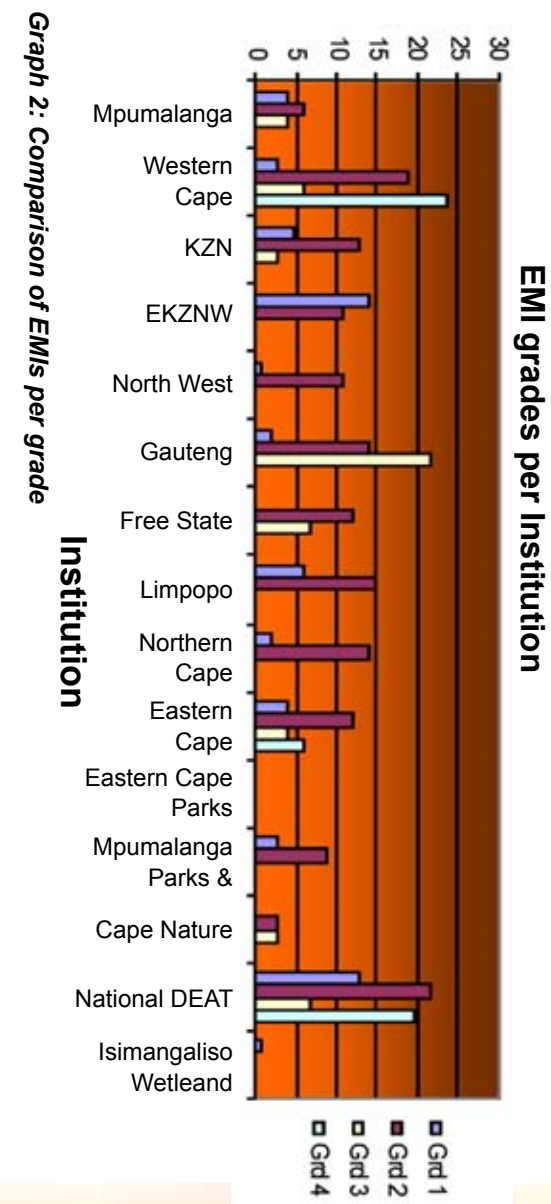


Graph 1: Comparison of EMIs per institution in 2007/8 and 2008/9



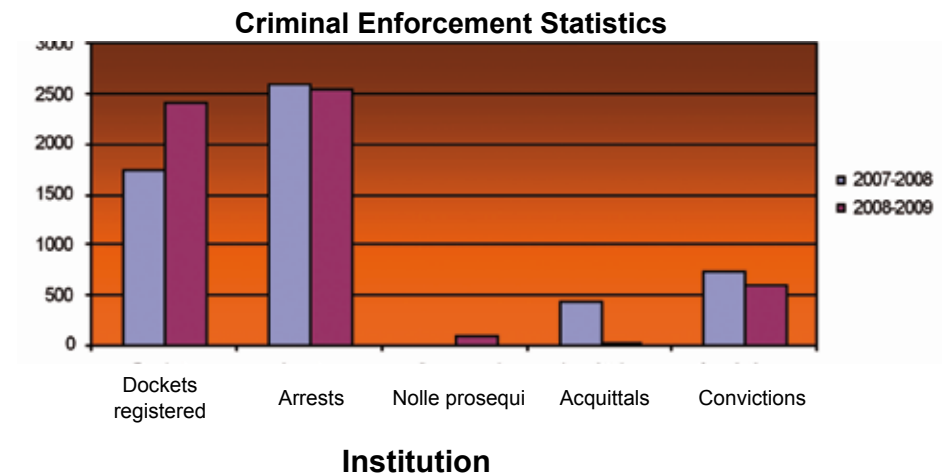
3.2 Environmental Management Inspectors per Grade

Institution	EMI – 2008/9	Grd1	Grd2	Grd3	Grd4	Grd5	Withdrawn/ Resigned	Total
Mpumalanga	14	4	6	4	0	0	0	14
Western Cape	52	3	19	6	24	0	13	39
KZN	21	5	13	3	0	0	0	21
EKZNW	25	14	11	0	0	0	3	22
North West	12	1	11	0	0	0	5	7
Gauteng	57	2	14	22	0	0	19	38
Free State	19	0	12	7	0	0	4	15
Limpopo	21	6	15	0	0	0	5	16
Northern Cape	16	2	14	0	0	0	3	13
Eastern Cape	26	4	12	4	6	0	2	24
Eastern Cape Parks	0	0	0	0	0	0	0	0
Mpumalanga Parks & Tourism Agency	12	3	9	0	0	0	1	11
Cape Nature	6	0	3	3	0	0	2	4
National DEAT	62	13	22	7	20	0	18	44
Isimangaliso Wetland Park	1	1	0	0	0	0	0	1
SUB-TOTAL	344	58	161	56	50	0	75	269
SanParks								634
TOTAL								903



4. Overall national statistics

	2006-2007	2007-2008	2008-2009
Number of reported cases	-	-	4661
Criminal dockets registered	-	1762	2412
Summons/Arrests	898	2614	2547
NPA declined to prosecute ("nolle prosequi")	-	16	100
Acquittals (per accused)	-	441	18
Convictions (number of accused convicted)	134	748	258
Section 105A agreements (plea bargains)	-	97	4
Admission of guilt fines issued (amount and number)	R 1,570,360	R 744,706	R 1,469,899.00 (2390)
Admission of guilt fines paid (amount and number)	-	R 657,700	R 823,936.00 (907)
Warning letters written	-	102	109
Pre directives/ compliance notices issued	235	246	179
Final directives/ compliances notices issued			94
Civil court applications launched	11	2	3
S24G administrative fine paid (amount and number)	-	R 6,880,246.00 (707)	R 15,499 518.19 (440)



Graph 3: Overall Criminal Enforcement Statistics for 2007/8 and 2008/9



5. Statistics per national institution/province



environmental affairs
Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

5.1 NATIONAL INSTITUTIONS

	SOUTH AFRICAN NATIONAL PARKS			MARINE & COASTAL MANAGEMENT			ENVIRONMENTAL QUALITY & PROTECTION		
	2006-7	2007-8	2008-9	2006-7	2007-8	2008-9	2006-7	2007-8	2008-9
Number of reported cases	-	-	459	-	-	1057	-	-	24
Legislation most contravened (NEMA, APPA, ECA etc.)	-	-	NEMA(315)	-	-	Sect 58(1)(a) of MLRA 1998	-	-	Sect 24F(2) of NEMA
Criminal dockets registered	-	62	382	1756	207	1057	-	19	10
Summons/Arrests	61	127	343	1388	3884	1134	2	-	5
NPA declined to prosecute ("nolle prosequi")	-	-	-	16	-	72	-	-	1
Acquittals (per accused)	-	-	-	220	221	-	-	-	-
Convictions (number of accused convicted)	7	10	-	134	794	206	1	-	-
Section 105A agreements (plea bargains)	-	-	-	32	91	-	-	-	-
Admission of guilt fines issued	-	-	(283)	R 171 4186	R 271 0673	R 794 269 (897)	-	-	-
Admission of guilt fines paid	R 20 700	R 160,050	R 191 100	R 706 700	R 196 424	R 115 310 (180)	-	-	-
Warning letters written	-	-	-	102	316	-	-	5	3



	SOUTH AFRICAN NATIONAL PARKS			MARINE & COASTAL MANAGEMENT			ENVIRONMENTAL QUALITY & PROTECTION		
	2006-7	2007-8	2008-9	2006-7	2007-8	2008-9	2006-7	2007-8	2008-9
Pre directives/ compliance notices issued	1	2	-	260	235	-	14	16	13
Final directives/ compliance notices issued			-			-			7
Pre-directive/compliance notices issued	-	-	-	-	--	-	-	-	-
Civil court applications launched	-	-	-	11-	2	-	-	1	-
S24G administrative fine paid (specify amount)	-	-	-	-	-	-	-	-	-





5.2 WESTERN CAPE

	DEPARTMENT OF ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING			CAPE NATURE		
	2006-7	2007-8	2008-9	2006-7	2007-8	2008-9
Number of reported cases	-	-	167	-	-	55
Legislation most contravened (NEMA, APPA, ECA etc.)	-	-	-	-	-	CNECO
Criminal dockets registered	-	-	-	-	39	33
Summons/Arrests	-	-	-	-	5	8
NPA declined to prosecute (nolli prosequi")	-	-	-	-	1	-
Acquittals (per accused)	-	-	-	-	0	2
Convictions (number of accused convicted)	11	-	-	11	23	10
Section 105A agreements (plea bargains)	-	-	-	-	0	-
Admission of guilt fines issued	-	-	-	-	R38 700	- (15)
Admission of guilt fines paid	R2 000	-	-	R2 000	R23 000	R 11400.00 (8)
Warning letters written	-	-	-	-	-	-
Pre directives/compliance notices issued	32	71	32	32	-	-
Final directives/compliance notices issued			2			-
Civil court applications launched	2	-	-	2	-	-
S24G administrative fine paid (number& amount)	-	R119, 045.00 (29)	R 459, 285.00 (12)	-	-	-



5.3 KWAZULU-NATAL

	DEPARTMENT OF AGRICULTURE AND ENVIRONMENTAL AFFAIRS			EZEMVELO KZN WILDLIFE AND ISIMANGALISO WETLAND PARK		
	2006-7	2007-8	2008-9	2006-7	2007-8	2008-9
Number of reported cases	-	-	26	-	-	1880
Legislation most contravened (NEMA, APPA, ECA etc.)	-	-	NEMA	-	-	MLRA
Criminal dockets registered	-	7	6		939	265
Summons/Arrests	-	-	-	299	1436	9
NPA declined to prosecute (nolli prosequi)	-	-	-	-	7	2
Acquittals (per accused)	-	-	-	-	22	-
Convictions (number of accused convicted)	-	-	-	54	156	-
Section 105A agreements (plea bargains)	-	-	-	-	6	-
Admission of guilt fines issued	-	-	-	-	R514 400	R 402,650.00 (688)
Admission of guilt fines paid	-	-	-	R107 350	R344 600	R 226,046.00 (96)
Warning letters written	-	-	14	-	-	-
Pre directive/compliance notices issued	-	-	25	25	-	-
Final directive/compliance notices issued	-	-	27			-
Civil court applications launched	-	-	-	6	-	-
S24G administrative fine paid (number & amount)	-	-	R3, 508,800.00 (28)	-	-	-





5.4 GAUTENG

GAUTENG DEPARTMENT OF AGRICULTURE, CONSERVATION AND ENVIRONMENT	2006-7	2007-8	2008-9
Number of reported cases	-	-	30
Legislation most contravened (NEMA, APPA, ECA etc.)	-	-	Sect 22(1) of ECA
Criminal dockets registered	-	19	30
Summons/Arrests	19	11	6
NPA declined to prosecute (nolli prosequi)	-	-	6
Acquittals (per accused)	-	-	-
Convictions (number of accused convicted)	8	8	6
Section 105A agreements (plea bargains)		-	3
Admission of guilt fines issued	R33 100	R27 050	R 5000.00 (1)
Admission of guilt fines paid	-	R24 300	R 5000.00 (1)
Warning letters written	-	8	3
Pre-directive/ Pre compliance notices issued	83	122	81
Final directive/compliance notices issued			16
Civil court applications launched	1	1	2
S24G administrative fine paid (number & amount)	-	R4, 440 330.00 (30)	R 8,408 905.00 (>333)





**DEPARTMENT OF ECONOMIC
DEVELOPMENT,
ENVIRONMENT AND TOURISM**

5.5 LIMPOPO

LIMPOPO DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM	2006-7	2007-8	2008-9
Number of reported cases	-	-	658
Legislation most contravened (LEMA, APPA, ECA etc.)	-	-	Sect 31 & 64 of EMA
Criminal dockets registered	-	441	462
Summons/Arrests	16	736	930
NPA declined to prosecute ("nolle prosequi")	-	3	-
Acquittals (per accused)	-	414	2
Convictions (number of accused convicted)	6	477	11
Section 105A agreements (plea bargains)	-	-	-
Admission of guilt fines issued	-	-	R 240,080.00 (434)
Admission of guilt fines paid	R229 582	R 70 700	R 182,730.00 (391)
Warning letters written	-	3	55
Pre-directive/compliance notices issued	-	-	8
Final directive/compliance notices issued	-	-	13
Civil court applications launched	-	-	-
S24G administrative fine paid (number & amount)	-	R 61,126.00(4)	R 98,7203.57 (53)



5.6 EASTERN CAPE

	DEPARTMENT OF ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS			EASTERN CAPE PARKS BOARD		
	2006-7	2007-8	2008-9	2006-7	2007-8	2008-9
Number of reported cases	-	-	160	-	-	9
Legislation most contravened (NEMA, APPA, ECA etc.)	-	-	NEMA	-	-	NEM:BA (restricted activity)
Criminal dockets registered	-	54	82	-	2	4
Summons/Arrests	-	73	43	-	13	5
NPA declined to prosecute ("nolle prosequi")	-	1	5	-	-	-
Acquittals (per accused)	-	2	-	-	-	-
Convictions (number of accused convicted)	1	47	15	1	-	2
Section 105A agreements (plea bargains)	-	-	1	-	-	-
Admission of guilt fines issued	-	R7 1300	- (25)	-	-	-
Admission of guilt fines paid	R11 750	-	R 25,700.00(11)	R11 750	-	-
Warning letters written	-	17	22	-	1	1
Pre-directive/compliance notices issued	-	5	13	-	-	-
Final directive/compliance notices issued			5	-	-	-
Civil court applications launched	-	-	3	-	-	-
S24G administrative fine paid (number & amount)	-	-	-	-	-	-



5.7 FREE STATE

DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS	2006-2007	2007-2008	2008-2009
Number of reported cases	-	-	37
Legislation most contravened (NEMA, APPA, ECA etc.)	-	-	FSO
Criminal dockets registered	-	33	12
Summons/Arrests	10	33	16
NPA declined to prosecute ("nolle prosequi")	-	-	3
Acquittals (per accused)	-	-	2
Convictions (number of accused convicted)	5	2	0
Section 105A agreements (plea bargains)	-	-	0
Admission of guilt fines issued	1	R23 100	R 21,100.00 (18)
Admission of guilt fines paid	R11 350	R20 300	R 23,100.00 (18)
Warning letters written	-	3	7
Pre-directive/compliance notices issued	39	19	5
Final directive/compliance notices issued			8
Civil court applications launched	-	-	-
S24G administrative fine paid (number & amount)	-	-	R 22,200.00 (6)





5.8 MPUMALANGA

	DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION			MPUMALANGA TOURISM AND PARKS AGENCY		
	2006-7	2007-8	2008-9	2006-7	2007-8	2008-9
Number of reported cases	-	-	9	-	-	15
Legislation most contravened (NEMA, APPA, ECA etc.)	-	-	Sect 24(2) of NEMA	-	-	MNCA
Criminal dockets registered	-	-	-	-	23	15
Summons/Arrests	28	-	-	28	26	21
NPA declined to prosecute ("nolle prosequi")	-	-	-	-	-	2
Acquittals (per accused)	-	-	-	-	1	-
Convictions (number of accused convicted)	12	-	-	12	20	6
Section 105A agreements (plea bargains)	-	-	-	-	-	-
Admission of guilt fines issued	-	-	-	-	-	-
Admission of guilt fines paid	R 1 500	-	-	R 1 500	R 21 750	-
Warning letters written	-	-	-	-	R 9 750	-
Pre-directive/compliance notices issued	22	23	-	22	-	-
Final directive/compliance notices issued			13			-
Civil court applications launched	2	-	-	2	-	-
S24G administrative fine paid (number & amount)	-	-	R 427,500.00 (7)	-	-	-





5.9 NORTHERN CAPE

DEPARTMENT OF TOURISM, ENVIRONMENT AND CONSERVATION	2006-7	2007-8	2008-2009
Number of reported cases	-	-	11
Legislation most contravened (NEMA, APPA, ECA etc.)	-	-	CNECO S44(1)(a)
Criminal dockets registered	11	24	-
Summons/Arrests	-	66	15
NPA declined to prosecute ("nolle prosequi")	-	1	8
Acquittals (per accused)	-	2	-
Convictions (number of accused convicted)	5	2	-
Section 105A agreements (plea bargains)	-	-	-
Admission of guilt fines issued	-	R 6 000	R 6,800.00 (3)
Admission of guilt fines paid	R 6 100	-	R 6,800.00 (3)
Warning letters written	-	45	5
Pre-directive/compliance notices issued	15	8	-
Final directive/compliance notices issued			-
Civil court applications launched	-	-	-
S24G administrative fine paid (number & amount)	-	R 44,694.62(5)	R 44,694.62 (5)

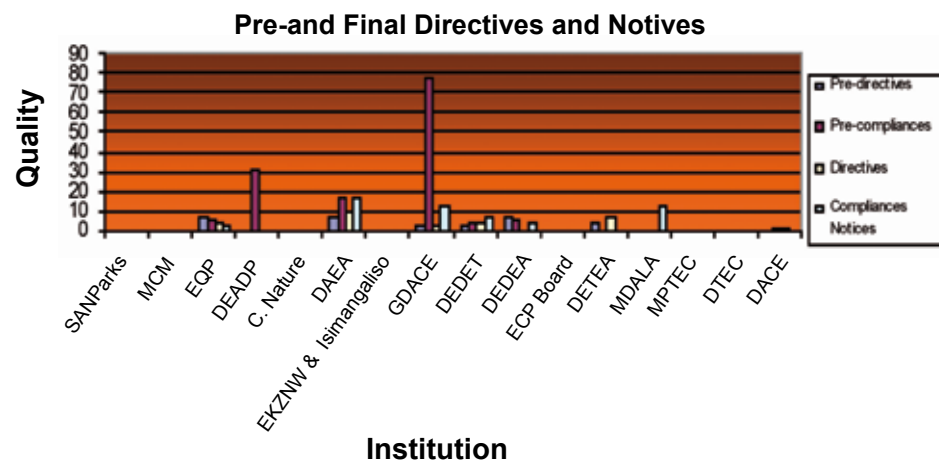




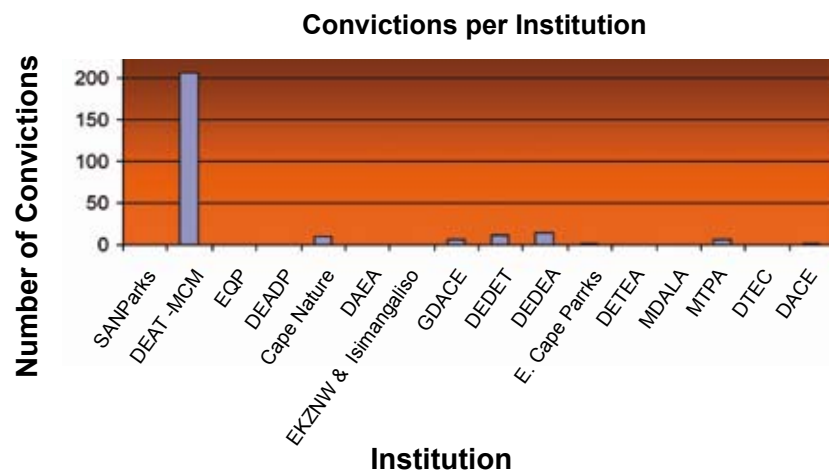
5.10 NORTHWEST

DEPARTMENT OF AGRICULTURE, CONSERVATION AND ENVIRONMENT	2006-7	2007-8	2008-2009
Number of reported cases	-	-	64
Legislation most contravened (NEMA, APPA, ECA etc.)	-	-	TNCO
Criminal dockets registered	-	32	54
Summons/Arrests	6	5	12
NPA declined to prosecute ("nolle prosequi")	-	3	1
Acquittals (per accused)	-	-	12
Convictions (number of accused convicted)	2	-	2
Section 105A agreements (plea bargains)	-	-	-
Admission of guilt fines issued	-	3	-(24)
Admission of guilt fines paid	R700	R5000	R36,750.00(16)
Warning letters written	-	20	2
Pre-directive/compliance notices issued	4	3	2
Final directive/compliance notices issued			3
Civil court applications launched	-	-	-
S24G administrative fine paid (number & amount)	-	R 2,115,050.00 (639)	R640,930.00 (66)





Graph 4: Comparative number of administrative enforcement tools issued



Graph 5: Comparative number of convictions obtained

6. Environmental jurisprudence

Parties	6.1 Bitou Local Municipality (applicant) v Timber Two Processors CC (first respondent) and Garden Era Investments (Pty) Ltd (second respondent), South African National Road Agency Ltd (third respondent), Minister for Environmental Affairs, Planning and Economic Development in the Government of the Province of the Western Cape (fourth respondent) CPD Case Number: 9221/07.
Facts	The second respondent gave permission to the first respondent to operate a commercial sawmill on the farm. The applicant contended that it did not give any permission to the respondents to carry on with their activities but the first and second respondents allege that the applicant's mayor had granted them informal permission to continue operating the sawmill until their rezoning application had been finalised. The fourth respondent was required to conduct the environmental impact assessment and to grant Authorization. It is common cause that such an assessment had not been done, nor had the authorization been obtained.



Relief Sought	<p>A declaratory order that the operation of the commercial sawmill on the farm and the use of certain buildings for the sawmill, were unlawful.</p> <p>A final interdict:</p> <ul style="list-style-type: none"> prohibiting the first respondent from operating a commercial sawmill on the farm and from using the buildings for the sawmill. prohibiting the second respondent from permitting the first respondent to operate a commercial sawmill on the farm and to use the buildings for the sawmill.
Judge-ment	<p>The court held that the operation of the sawmill constituted criminal offences in terms of:</p> <ul style="list-style-type: none"> Section 39(2), read with section 46(1), of the Land Use Planning Ordinance, No 15 of 1985; Sections 24F (1) and (2) of the National Environmental Management Act No.107 of 1998. The erection of buildings on the farm without applicant's prior written approval, an offence in terms of section 4(4) of the National Building Act. The failure to heed the applicant's notices to cease building work, an offence in terms of regulations A25 (6) and (11), promulgated under the National Building Act. <p>The court granted the declaratory order and final interdicts as sought by the applicant; and the first and second respondents were ordered to pay the costs.</p>
Lessons for EMI	<p>The judge found that he did not have the discretion to suspend the operation of the final interdicts, due to the fact that it would amount to a condonation of the</p>

	<p>respondent's ongoing criminal behaviour and an abrogation of the duty of the court as an enforcer of the law. He also noted that such a suspension would also undermine sound and effective local government and be contrary to public policy.</p> <p>Note: in this case the respondents conceded that the final interdicts should be granted.</p>
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Parties	<p>6.2 Krisp Property (Pty) Ltd v MEC for the Department of Agriculture, Conservation and Others</p> <p>High Court of South Africa WLD Case number: 7718/08</p>
Facts	<p>Krisp Property (Pty) Ltd (the applicant) applied to the Gauteng Development Tribunal (the Tribunal) for the establishment of a land development area in terms of the Development Facilitation Act (Act 65 of 1995) (DFA). It also applied to the Gauteng Department of Agriculture, Conservation and Environment (GDACE) for authorisation to undertake a development in terms of section 22 of the Environment Conservation Act, 1989 (Act 73 of 1989) (ECA).</p> <p>On 28 September 2004 the land development area was approved by the Tribunal. Despite numerous requests, GDACE did not make a decision on the application in terms of ECA. On 5 January 2005, GDACE requested an extension until 23 January 2005 to make a decision. When it failed to meet this deadline, the applicant did not approach the courts for an order compelling GDACE to make a decision. Instead it gave notice (on 25 February 2005) that it intended to apply to the Tribunal for the suspension of section 22 of ECA in terms of section 33 of the DFA.</p>



Facts	The Tribunal hearing took place on 29 April 2005. GDACE did not attend the hearing. The Tribunal suspended the provisions of section 22 of ECA in a decision dated 18 May 2005. In between the Tribunal hearing and the finalisation of its decision, GDACE issued a record of decision (ROD) i.e. on 9 May 2005. The applicant did not believe that it had to comply with the ROD because the Tribunal had suspended section 22 of ECA. On 16 August 2007 GDACE issued a notice in terms of section 31L of the National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA) requiring the applicant to comply with the ROD.
Relief Sought	Declaratory order in respect of the effect of the Gauteng Development Tribunal's suspension of the Environment Conservation Act, 1989 (Act 73 of 1989) on the application of section 22 of the Environment Conservation Act and the power to issue a notice in terms of section 31L of the National Environmental Management Act, 1998 (Act 107 of 1998).
Judge-ment	<p>The respondents argued that:</p> <ul style="list-style-type: none"> • that the suspension of section 22 of ECA by the Tribunal could not operate retrospectively and that the decision of the Tribunal could not override the validity of the ROD which was in effect at the time; • the applicant should have approached the court for a mandamus (order) compelling DACE to make a decision; • that the Tribunal's decision was unlawful because the applicant was not entitled to apply for authorisation in terms of section 22 of ECA and then request the suspension of ECA; • power in the DFA to make the decision to suspend laws is unconstitutional because it violates the principle of separation of powers and the provisions of the Constitution which deal with passing and amending legislation; • the court should not grant a declaratory order because of the public policy implications of such an order, including serious threats to the environment. <p>The judge rejected the respondent's abovementioned arguments and subsequently granted the declaratory order.</p>

Lessons for EMI	<p>A Tribunal exercising powers under section 33 of the DFA can override environmental legislation which regulates land use. Since most environmental legislation will fall within the scope of section 33, the implications of this are that the power of an environmental department to regulate developers and to protect the environment is significantly reduced or even ousted where a Tribunal has suspended the application of an environmental law. This also means that an authorisation issued in terms of such legislation would be of no force and effect in instances where the Tribunal has suspended the application of such legislation in a particular case and EMIs will not be able enforce compliance with the conditions of such an authorisation.</p> <p>Note that this decision has been appealed by the relevant Department.</p>
Parties	6.3 Tergniet and Toekoms Action Group & Others v Outeniqua Kreosooppale (PTY) LTD (first respondent), Chief Air Pollution Control Officer (second respondent), Mossel Bay Municipal Council (third respondent), MEC Environmental Affairs & Development Planning, Western Cape (fourth respondent) and Minister of Environmental Affairs and Tourism (fifth respondent) CPD Case number: 10083/2008
Facts	The first respondent Outeniqua Pale (Pty) Ltd was alleged to have conducted unlawful activities where it was manufacturing creosote poles without an item 16 registration certificate issued in terms of the provisions of the Atmospheric Pollution Prevention Act (Act 45 of 1965) (APPA). The first respondent was a holder a of an item 67 registration certificate which is necessary for wood burning and wood drying processing but does not authorise the carrying on of item 16 processes on the site. The applicants complained that the operations of the first respondent were causing headaches, infected sinuses, coughing, respiratory problems and



Facts	<p>irritations of the nasal passages (resulting in nose bleeds), the eyes and the skin (resulting in rashes).</p> <p>The first respondent submitted an application for an item 16 registration certificate to DEAT on 21 August 2007 which was subsequently refused by the second respondent on 6 May 2008. The first respondent lodged an appeal against the Chief Officers' decision on 5 June 2008 but by the time this matter came before court to be argued, the appeal had not commenced yet.</p>
Relief Sought	<p>A declaratory order that:</p> <ul style="list-style-type: none"> the decision dated 6 May 2008 of the Chief Control Officer does not authorise the first respondent to operate any item 16 processes at the property and that the operation of such processes at the property is unlawful; the applicants are entitled to be notified and heard in respect of any application made by the first respondent under the provisions of APPA in respect of the property; <p>An interdict restricting the first respondent from operating any item 16 processes at the property unless and until it is issued with a registration certificate authorising it to carry on such processes or is granted permission in terms of section 13(1)(b) of APPA to carry on such process; or the property is rezoned as Industrial 11.</p>
Judge-ment	<p>The court held that the applicants had discharged the onus of showing that their physical well-being as well as the amenities they are entitled to enjoy are adversely affected by the first respondent's unlawful conduct.</p> <p>The first respondent was interdicted and restrained from conducting any activity described in item 16 of the Second Schedule of the APPA unless and until it is issued with a registration certificate authorising it to do so; and the said property has been rezoned Industrial II.</p>

Lessons for EMI	<ul style="list-style-type: none"> The court indicated that having regard to the evidence on record as regards the different steps that are involved in the process of producing wooden creosote poles, the court was satisfied that the end product so produced is different from what existed before and that the process performed by the first respondent constituted a "manufacturing process" within the meaning of item 16 of the APPA. According to the wording of section 9(1)(a)(1) of APPA, the registration certificate authorises the carrying on of only the process which is specified therein and only on the premises mentioned therein, and that the item 67 registration certificate does not authorise the carrying on of item 16 processes on the site. That <i>locus standi</i> concerns the sufficiency and directness of interest in litigation and that sufficiency of interest depend on the particular facts of each individual case. The applicants succeeded in proving that they enjoy <i>locus standi</i> in respect of any claim for relief flowing from the first respondent's non-compliance with the provisions of APPA. The respondent is not entitled in terms of section 13(1) (b) of APPA to continue to carry on the scheduled process that forms the subject matter of the appeal. The noting of the appeal automatically suspended the whole of the Control officer's decision, including the 90 days determination.
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Parties	6.4 Lone Creek River Lodge (Pty) Ltd & Others v Global Forest Products (Pty) Ltd & Others TPD Case number: 16994 / 2005
Facts	<p>The applicant is a luxurious guesthouse, situated a couple of kilometres west of Sabie with a number of guest rooms. The first, second and third applicants, directly or indirectly, own the Lodge. The first to fourth respondents are related companies who directly or indirectly own the Sawmill and the Plywood Plant.</p> <p>The applicants seek an interdict restraining the first to fourth respondents from causing noise pollution generated by their business operations and by vehicles travelling to and from the mill and the plant. Heavy trucks transport wood from timber plantations to the Sabie sawmill and the Plywood Plant. On their way to and from the mill and the plant, these trucks pass, as they have to, the lodge. The noise of the trucks disturbs the guests staying at the lodge, especially at night.</p> <p>The applicants also contended that Global is guilty of a variety of unlawful acts causing harm to the environment, and therefore sought further restraining and mandatory interdicts.</p>
Relief Sought	<p>An interdict restraining the first to fourth respondents from causing noise pollution generated by their business operations and by vehicles travelling to and from the mill and the plant.</p> <p>An order prohibiting Global from allowing any trucks in and out of its premises on weekdays between 18h00 and 08h00 and allowing any such trucks at any time over weekends and on public holidays.</p> <p>A general order to compel Global to limit “any noise generated by the business operations of the Sabie Sawmill and Plywood Plant”.</p>

Judge-ment	<p>The court granted the interdict against the first, second, third and fourth respondents from causing noise pollution generated by vehicles travelling to and from the Sabie Sawmill and Plywood Plant as follows:</p> <ul style="list-style-type: none"> • by prohibiting first to fourth respondents to allow any trucks in and out of the property where the Sabie Sawmill and Plywood Plant is situated during the hours 20h00 pm to 08h00 am, from Mondays to Fridays, • by prohibiting any trucks to enter and leave the said property after 14h00 pm on Saturdays until 08h00 am on Mondays; • the interdict shall only apply to trucks that have used, before entering the property, or are about to use, after leaving the property, the Old Lydenburg Road past the applicant's property; • the interdict shall take effect on 1 December 2007’;
Lessons for EMIs	<p>The State Attorney never alerted any of the authorities (who were cited as respondents in the original application) to the case; and judgement was given in their absence. This unfortunately meant that the order in certain respects does not make sense and the obligations on the government departments cited are extremely challenging given the differences in mandates and functions. The execution of this order has therefore taken some time and continues to pose a number of challenges.</p> <p>In the absence of proper C&E, there will be an increase in these types of court orders compelling authorities to undertake their functions. The close working relationship with the State Attorneys office must be maintained.</p>



Parties	6.5 Agritrans CC (first applicant), Swart Andries (second applicant) v Mafube Municipality (first respondent), Mahlaku Brutus (second respondent) High Court of South Africa (Free State Provincial Division) Case number: 1360 / 2008
Facts	<p>During January 2008 the Namahadi pumps were not operational and caused the pump house to overflow and spill raw sewerage directly into the Wilge River and neighbouring Namahadi Settlement. The applicant made the respondent aware of the sewerage spillage by writing a letter to them and the respondent's workers managed to fix only one pump after being notified by the applicant.</p> <p>The gravamen of the applicant's case is that the respondent is not maintaining the sewerage system as it is obliged to in terms of the contract between them and section 152 of the Constitution, as well as failing to prevent nuisance or unhygienic conditions from occurring in terms of section 20 (1) of the Health Act 63 of 1977.</p>
Relief Sought	<p>An order declaring:</p> <ul style="list-style-type: none"> the first respondent to be in contempt of the court order obtained by the first respondent; first respondent to comply with the Court order within 5 (five) days, failing which the second respondent be committed to prison for a period of 90 (ninety) days for contempt of court. <p>Alternatively,</p> <p>An order directing:</p> <ul style="list-style-type: none"> the first respondent to, within 5 (five) days repair and make operational the 2 (two) sewerage pumps in the sewerage pump house (the Namahadi pump house) which services the Namahadi settlement (the Namahadi sewerage works); the first respondent to maintain and operate the pumps at Namahadi pumps and Namahadi sewerage works;

	<ul style="list-style-type: none"> the first respondent to maintain and operate the pumps situate on the property from which sewerage effluent is pumped from Namahadi sewerage works to the pivot irrigation system.
Judge-ment	<p>The application to hold the respondent in contempt of the court order was dismissed.</p> <p>The respondent was ordered:</p> <ul style="list-style-type: none"> within twenty one (21) days of date of the order to repair and make operational the two (2) sewerage pumps situated in the Namahadi pump house which services the Namahadi settlement; to properly maintain and operate the two (2) pumps at the Namahadi pump house and the Namahadi sewerage works. to properly maintain and operate the two (2) pumps situate on the property with which sewerage effluent is pumped from the Namahadi sewerage works to the pivot irrigation system. to make available to the first applicant all effluent produced by the Namahadi sewerage works situate on the property as stipulated in the contract.
Lessons for EMI	<p>The judge found in these circumstances that <i>"the respondent has failed to properly maintain the two sewerage pumps housed at Namahadi sewerage house. Although the case raises some constitutional issues, amongst others the right to a healthy environment and adequate and proper service delivery the matter can be disposed of without resort thereto. It would be unfair and inequitable to deny the applicant its immediate right of access to courts as envisaged in section 34 of the Constitution."</i></p>



7. Industrial compliance and enforcement

Following on from the work undertaken in the previous financial year, the industrial branch of the Environmental Management Inspectorate continued to conduct compliance inspections in the prioritised industry sectors, namely Operation Ferro, focussing on the iron and steel and ferroalloy (ferrochrome, ferromanganese, ferrovandium and ferrosilicon) sector as well as the Refineries Project. Inspections were conducted jointly by Inspectors from the Department of Environmental Affairs and Tourism and provincial environment departments, as well as officials from municipalities and the Department of Water Affairs and Forestry.

An update on these inspections and the findings related thereto are set out in 7.1, 7.2 and 7.3 below.

7.1 Operation Ferro

7.1.1 The **ArcelorMittal Newcastle** site was inspected in September 2007. Inspectors found a total of 57 non-compliances which included:

- Lack of adequate monitoring;
- Air emission exceedances;
- Unauthorised waste disposal sites;
- Inability to demonstrate compliance with certain conditions of the registration certificates due to a lack of monitoring;
- Non-compliance with a number of conditions of the waste permit, specifically in relation to monitoring and contradictions in audit findings;
- Contravention of certain conditions of the EIA authorisations;
- 36 of the 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.

ArcelorMittal responded comprehensively to the findings of the inspection and no enforcement action was taken.

7.1.2 At the **Highveld Steel** site from 28-29 November 2007, Inspectors found a total of 54 non-compliances which included:

- Lack of adequate monitoring;
- Air emission exceedances;
- The undertaking of unauthorised scheduled processes;
- Exceedances in relation to production and use of raw materials;
- ROD contraventions;
- Unauthorised waste disposal sites; and
- Environmentally harmful activities that could be prevented/rehabilitated in terms of the NEMA duty of care.

With regard to air emissions, Highveld responded that the fugitive dust emissions originate from the charging of the Shaking Ladle and Basic Oxygen Furnaces and those emissions are contained within the building and extracted through the IST bag Filter. Reference was also made to agreements with previous DEAT representatives in relation to emission limits and equipment availability and that a medium to long term refurbishment programme has commenced to improve the availability of the equipment. They also advised that issues pertaining to surface and groundwater as well as soil



contamination will be addressed as part of Highveld's Integrated Waste and Water Management Plan application submitted to DWAF. All necessary applications have been submitted to the relevant authorities. A follow-up inspection will be conducted to ensure that the facility is meeting timeframes and those environmental impacts, particularly related to air emissions, are being reduced and effectively managed. Enforcement action would then follow if the authorities are not satisfied.

7.1.3 At the **Xstrata Wonderkop** site in Rustenburg which was inspected during January 2008, Inspectors found a total of 38 non-compliances, including the following:

- Lack of adequate monitoring;
- Air emission exceedances;
- Unauthorised waste disposal sites;
- ROD contraventions;
- Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care;
- Lack of water use license.

Xstrata argued that it is situated on an authorised mine and the disposal sites are therefore operated in accordance with mining legislation and the approved EMPR from DME. Since the inspection, it was noted that there had been a vast improvement in the storm water management system on site. The response received demonstrated that the company was willing and had started coming into compliance with environmental legislation and authorisations. A follow-up inspection in line with project's timeframes will determine whether or not it is necessary to take enforcement action.

7.1.4 **SCAW Metals** was inspected in April and June 2008. The following non-compliances were among those detected during the inspection:

- Air emission exceedances;
- Inability to demonstrate compliance with some conditions of registration certificates and EIA exemptions;
- Non-compliance with a number of conditions of the waste permit, specifically in relation to monitoring and contradictions in audit findings;
- 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;
- No registration certificates for re-heating furnaces;
- Unauthorised activities for which section 24G rectification applications had been submitted.

The facility made representations in relation to the findings set out in the report. SCAW has commenced with the review process for all APPA registration certificates which will tighten the legal requirements in the future in relation to air pollution issues.

7.1.5 At the **ArcelorMittal** site in **VanderBijlPark**, Inspectors made the following findings during the inspection in November 2008:

- Lack of waste permits for areas used for the temporary storage of sludge waste on a continuous basis;
- Lack of registration certificates for certain scheduled processes, including the re-heating furnaces and galvanising lines;
- Non-compliance with some conditions of ROD related to kilns 5 and 6;
- Five unauthorised activities for which section 24G rectification applications had been submitted;



- Environmentally harmful activities as a result of, inter alia, waste management practices, uncontrolled emissions (specifically linked to blast furnace C and coke battery no. 1) and dust emissions due to moving vehicles and activities at the off-loading and storage areas.

It should be noted that it was not possible for inspectors to visit and assess compliance of all operations at the site due to the fact that 40% of the site was not operational as a result of the global economic crisis. Detailed representations were received from the facility in relation to the findings set out in the inspection report. In addition, the authorities were informed that ArcelorMittal has decided to shut down coke battery no. 1 as a result of the findings of the inspection.

The Inspectorate is also in the process of finalising the report for Samancor Middelburg. These will be issued to the facilities as soon as they are completed and reported on in the next annual report.

7.2 Refineries Project

7.2.1 Sasol

The facility situated at Secunda was inspected on 4-5 March 2008. The non-compliances detected during this inspection included the following:

- Significant non-compliance with conditions of numerous authorisations applicable to the facility, including APPA registration certificates; EIA Records of Decision 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.

The Inspectorate is presently awaiting representations from the facility based on the findings set out in the inspection report.

7.2.2 Chevron

An environmental compliance inspection was conducted at the facility on 13-14 May 2008 during which 29 non-compliances were detected, which included:

- Lack of waste permits for areas used for the temporary storage of hazardous waste on a continuous basis;
- ROD contraventions;
- Disposal of waste at a site not authorised in terms of Section 20(1);
- Environmentally harmful activities that could be prevented / rehabilitated in terms of the NEMA duty of care;
- Excessive emissions; and
- Potential groundwater and soil contamination.

The Compliance Inspection Report has recently been issued to Chevron and representations will be made in due course.

Reports have also been finalised in relation to the inspections conducted at both the Sapref and Engen refineries and will be issued to the companies shortly. They will then be provided with an opportunity to make representations in relation to the findings prior to a decision being taken in relation to enforcement action.



7.3 Operation Clean Cement

In addition to the abovementioned strategic projects, the industrial branch of the EMI conducted a blitz across the country in order to monitor environmental compliance within the cement manufacturing sector in line with the request received by the Department from the Parliamentary Portfolio Committee on Environmental Affairs and Tourism to prioritise this sector given the recent boom in the building and construction industry as a consequence of the 2010 world cup tournament preparations; and the potential environmental and health risks associated with this sector.

EMIs inspected nine facilities as part of the blitz. Below is an update of the findings of the inspections conducted at these facilities:

7.3.1 Natal Portland Cement, Cimpor, Simuma, Durban, Kwazulu-Natal

An environmental compliance inspection was conducted at the facility on 27 and 28 May 2008 during which nineteen non-compliances were detected. Seventeen of these have since been rectified. The facility is in the process of converting its APPA registration certificate into an atmospheric emission license as required by the NEM: Air Quality Act, 2004. Fugitive dust emissions remain a major challenge for the facility.

7.3.2 AfriSam, Ulco Factory, Northern Cape

The facility was inspected on 26 August 2008. Of the 15 non-compliances detected, the two outstanding issues that remain are the permitting of certain areas of the site and the submission of regular audit reports to the relevant authorities. EMIs observed that the company upgraded its air pollution equipment at cement mill 5 which improved the air pollution control capability of the mill. R20-million was invested on improving bag filter technology.

7.3.3 Lafarge Lichtenburg, North West Province

The facility was inspected on 27 May 2008. Nine non-compliances were detected on site. A major non-compliance that EMIs found was that the facility started with the construction of Kiln 4 without authorisation. Excessive fugitive dust emissions are a general problem across the site. This report has been recently forwarded to the company and the representations received still need to be reviewed.

7.3.4 Pretoria Portland Cement (“PPC”), Riebeek West, Western Cape

The inspection took place on 27 May 2008. EMIs observed significant dust emissions emanating from various sources on site. The company has budgeted for its dust abatement equipment to be upgraded in the new financial year. 10 non-compliances relating to the company’s permit in terms of the Environment Conservation Act, 1989 were detected. The company has since reviewed its operating procedures and compiled plans to rectify and address these issues.

7.3.5 PPC, New Brighton, Port Elizabeth, Eastern Cape

EMIs detected 11 non-compliances at the inspection held on 27 May 2008. EMIs observed excessive fugitive dust emissions on site. In order to address this issue, the company advised that it has upgraded its ESP in order to reduce the emissions emanating from the kiln stack and it has appointed a consultant to undertake an air quality investigation. Plans are in place to upgrade the dust abatement equipment at the raw mill stack.

7.3.6 PPC, Dwaalboom, Limpopo

All seven non-compliances have been rectified. With regard to the dust problem on site, the facility has commissioned a study to identify all dust source points and to recommend mitigation measures.



7.3.7 PPC, De Hoek, Western Cape

EMIs detected 11 non-compliances which have since been addressed. The company intends undertaking a R70-million project at the plant to improve air quality, reduce dust emissions and ensure the company complies with new environmental legislation. Old precipitators will be replaced with more efficient bag-filter technology. The project is expected to be completed in 2011.

7.3.8 PPC Slurry, Mafikeng, North West Province

EMIs detected 14 non-compliances at the inspection held on 16 July 2008. Aside from the dust emission problems, EMIs noticed that the company did not report certain incidents to the authorities that had the potential of giving rise to environmental and health risks. This report has been recently issued to the company and representations are expected in the near future.

7.3.9 PPC, Hercules, Pretoria, Gauteng Province

Thirteen non-compliances were detected on site. Aside from air pollution issues that were observed, EMIs found that the air quality monitoring as required by the SPL authorisation issued by the GGDACE to be inadequate. GDACE is currently reviewing a section 24G application from the company for a dry mortar mixer plant in terms of the NEMA

PPC, as a Group, has planned capital expenditure, subject to Board approval, for upgrades and expansion at all operations to improve dust emissions. Thus far, R40-million has been spent on improving environmental conditions at PPC's Slurry, Jupiter, Hercules and Port Elizabeth cement plants.

Given the positive response received from the above facilities and management's willingness to come into compliance with environmental legislation, there was no need for stringent enforcement action following the initial inspections. The pressing air quality issues will be addressed

by the new atmospheric emission licences and the license requirement of phased upgrading of air quality abatement equipment. It is encouraging to note that many of the above facilities have been proactive in this regard. Follow-up inspections will take place in the next financial year to confirm that the measures proposed have been effectively implemented. Where non-compliances are still being detected, enforcement action will follow.

7.4 Closing comments

Towards the end of the financial year, the Inspectorate also began conducting comprehensive compliance inspections in relation to facilities falling within the Paper and Pulp Sector, with inspections already having been conducted at Sappi Ngodwana and Mondi Richards Bay.

Significant challenges exist in relation to undertaking enforcement activities in relation to many of the older facilities in relation to both waste and air pollution issues. Coupled with extremely outdated legislation, for example, the Atmospheric Pollution Prevention Act, 1965, and the often vague and lenient permits issued to these facilities, is the outdated technology used on site which presents various challenges to the implementation of effective pollution abatement measures. The legislation currently regulating these facilities does not operate retrospectively and provides for extremely low penalties in relation to contraventions. The difficulties in relation to enforcement are further exacerbated by the lack of any enforceable emission standards or targets and the lack of legal enforceable obligations in relation to monitoring.

This is definitely set to change with the commencement in the next financial year of both the NEM: Waste Act and the NEM: Air Quality Act. Facilities need to understand that there will be more stringent obligations and that the new Acts provide effective enforcement mechanisms to enable the authorities to compel such facilities to meet these obligations. They must also understand



that, once the Inspectorate has already conducted comprehensive compliance inspections at a site and identified non-compliances, should follow-up inspections detect the same non-compliances and measures have not been implemented as required, much harsher enforcement action will be justified.

8. National Complaints and Emergency Incident Statistics

National DEAT collects 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. There has been a general decline in the numbers of complaints and incidents reported during the 2008/9 financial year, however, this could be due to a number of factors, including:

- Lack of public awareness of the national Environmental Crimes and Incidents Hotline;
- Greater reporting of alleged non-compliances to provincial and local environmental authorities rather than national;
- Decline in public confidence in follow-up action resulting from complaint/incident reports;
- Decline in public activism in reporting environmental non-compliances.

Nature of Complaint	Financial Year		Total
	2007-2008	2008-2009	
Air pollution	76	58	134
Noise pollution	7	1	8
Illegal dumping	58	53	111
Illegal development	40	13	53
Illegal operation	84	56	140
Mining	11	4	15
Water pollution	24	18	42
Sewerage spillage	10	3	13
Poaching	13	4	17
Deforestation	4	3	7
Spillage	4	3	7
Cycads	2	3	5
Emergency Incidents	49	16	65
Total	382	235	617

Graph 7: Number and classification of complaints from the hotline



REFERRAL OF COMPLAINTS AND EMERGENCY INCIDENTS										
CATEGORY	2007-2008					2008-2009				
	DEAT	DWAF	DME	LOCAL GOVERNMENT	PROVINCES	DEAT	DWAF	DME	LOCAL GOVERNMENT	PROVINCES
Complaints	248	46	6	26	7	123	34	4	11	47
Emergency Incidents	49	-	-	-	-	16	-	-	-	-
Total	297	46	6	28	7	139	34	4	11	47

Graph 8: Number of DEAT referred complaints and the incidents

9. Capacity Building for EMIs, magistrates and prosecutors

9.1 EMI Basic Training

2008 marked the first year in which the Environmental Management Inspectorate Basic Training was presented by three tertiary educational institutions (University of South Africa, University of Pretoria and Cape Peninsula University of Technology) in terms of a three-year agreement with DEAT. Just over 140 officials received basic training during this period, with an increase in the number of applicants from other national departments (Department of Water Affairs), local authorities, SADC countries (e.g. Swaziland) as well as the private sector. There is also an interest in students applying for this course as part of their post-graduate qualification.

9.2 EMI Field Ranger Training (Grade 5)

DEAT engaged the assistance of the NGO TRAFFIC (East-Southern Africa) to develop training material for field rangers or Grade 5 EMIs. This training programme is being developed to cater for over 2000 field rangers in various institutions who require EMI training at a different level than the basic training; and will result in the production of instructional DVD's in 6 official languages.

9.3 EMI Specialised Training

In addition to the basic training, specialized EMI courses are presented to further develop skills and expertise in specific areas of environmental compliance and enforcement. In 2008/9, 53 officials received a two-day training course on Interviewing Skills and Techniques by the United Kingdom Environment Agency.



9.4 EMI International Programme – United Kingdom Green Scorpions Project

The United Kingdom Environment Agency continues to be a key international partner for the Inspectorate, both in the capacity-building aspect (e.g. specialized, magistrates, prosecutors training) as well as operational activities (e.g. technical support to sector-based strategic compliance inspections). In addition, 6 EMIs were afforded the opportunity to travel the UK on a fellowship programme to gather skills and knowledge in relation to criminal investigation, industrial compliance inspections and prosecution of environmental crimes.

9.5 Magistrates and Prosecutors

Country-wide workshops with magistrates and prosecutors continue to provide a platform for EMIs to highlight their challenges in the enforcement of environmental legislation. This ongoing collaborative project with Justice College resulted in the presentation of 5 workshops taking place in Cape Town, Mpumalanga, Limpopo and the Free State in 2008/9. In addition to the presentations on the nature, scope and effect of environmental crimes, magistrates and prosecutors are also exposed to the daily work environment of local EMIs, with excursions including the Kruger National Park (snare- display) and Cape Town Harbour (environment protection vessels). A process is currently underway to develop a Magistrates Benchbook on Environmental Crime, following the publication of a similar guide for prosecutors.

10. Legislative Developments

10.1 Law Reform

2008/9 has seen a number of legislative developments that affect the activities of EMIs. The legal framework within which environmental

compliance and enforcement officials are required to operate is becoming increasingly complicated with the passing of various principal Acts, the promulgation of numerous Regulations and the declaration of norms and standards. Broadly speaking, these developments (not an exhaustive list) can be categorized as follows:

Principal Acts assented to by the President:

- National Environmental Management: Waste Act 59 of 2008;
- National Environmental Management: Integrated Coastal Management Act 24 of 2008.

Amendment to Principal Acts assented to by the President:

- National Environmental Laws Amendment Act 44 of 2008;
- National Environmental Management Amendment Act 62 of 2008;
- National Environmental Laws Amendment Act 14 of 2009.

Regulations promulgated in terms of Principal Acts:

- Environment Conservation Act: Waste Tyre Regulations (GN 149 in GG 31901 of 13 February 2009);
- Environment Conservation Act: Asbestos Regulations (GN 341 in GG 30904 of 13 February 2009);
- National Environmental Management: Biodiversity Act: Bioprospecting, Access and Benefit-Sharing Regulations (GN138 in GG30739 of 08 February 2008)

Most notably, many provisions included in amendments to principal Acts were driven by proposals made by the implementers of the legislation (magistrates, prosecutors and EMIs). This resulted, for example, in the increase and standardization of maximum penalties for environmental offences from hundreds of thousands of Rand to 5 years/5 million (first offence) and 10 years/10 million (second or subsequent offence).



10.2 Water and Mining

There are other legislative developments that may have an impact on the scope of compliance and enforcement activities that EMIs will be expected to carry out. The exact implications of these legislative amendments are still to be explored once implementation commences:

10.2.1 Water:

In terms of the National Environmental Laws Amendment Act 44 of 2008 (not yet commenced), the National Water Act is included as a specific environmental management Act; and the Minister of Water Affairs (and Forestry) is empowered to designate EMIs from staff within the Department or from any other organ of state (by agreement). This late inclusion into the Act was presumably done in anticipation of the merger of the departments of water and environmental affairs under one Ministry.

10.2.2 Mining:

Under the National Environmental Management Amendment Act 62 of 2008, complicated transitional provisions apply to the regulation of environmental aspects of mining and prospecting:

- For 18 months following the commencement of the MPRD Amendment Act the environmental aspects of mining and prospecting continue to be regulated under the Minerals and Petroleum Resources Development Act 28 of 2002 and NEMA;
- After this initial 18 month period the amendments regarding mining and prospecting commence; and are regulated under NEMA but the competent authority is the Minister of Minerals;
- 18 months later (ie 3 years after the MPRD Amendment Act itself commences) further amendments to NEMA kick in and mining and prospecting activities are regulated under NEMA but the authority is the Minister of Environmental Affairs or the provincial authority

11. Stakeholder Engagement

11.1 3rd Environmental Compliance and Enforcement Lekgotla (Port Alfred, Eastern Cape, 16 – 20 February 2009)

The Department of Environmental Affairs and Tourism hosted the third Environmental Compliance and Enforcement Lekgotla at the Mpekweni Beach Resort at Port Alfred in the Eastern Cape from 15 to 20 February 2009. Having launched the Environmental Management Inspectorate four years ago and having completed basic capacity building, the theme for the Lekgotla, “sharpening the sting” set the tone for intensified compliance monitoring and enforcement activities across the country.

The five day event, bringing together officials from all EMI institutions across the three spheres of government, as well as officials from SAPS, SARS, NPA and the UK Environment Agency comprised of a number of short courses and workshops and included the National Environmental Crime Forum meeting. The general focus of all the discussions was moving the Inspectorate beyond its establishment phase towards a phase of effective institutionalisation and management of its operations.

The Lekgotla was also used as a platform to recognise outstanding contributions of officials within the Inspectorate in the presentation of the Awards of Excellence for the 2008 calendar year. The adjudication panel for the awards comprised of senior members from the Inspectorate, SAPS, NPA and the legal profession, and was presented to the following officials:



- Outstanding contribution to inspections aimed at the detection of environmental non-compliances: Frances Craigie - DEAT
- Outstanding Contribution to the Investigation of Environmental Crimes: Mario Scholtz - SANParks and Nic de Kock - SAPS
- Outstanding Contribution to the Prosecution of Environmental Crimes: Antoinette Ferreira - Free State DPP

11.2 EMI-SAPS Standard Operating Procedure

The Standard Operating Procedure (SOP) between the South African Police Services and the Environmental Management Inspectorate was finalised during this year and publicly launched at the Environmental Compliance and Enforcement Lekgotla in February 2009. This SOP sets out the respective roles and responsibilities of the two law enforcement agencies in relation to the investigation of environmental crimes and is aimed at providing a sound platform from which more effective criminal enforcement can take place.

Of particular importance is that the SOP provides for a distinction between pure environmental crimes and those environmental crimes that are of an organised nature. In relation to organised environmental crimes the SAPS will continue to investigate these crimes with the assistance from the EMI. However, the investigation of pure environmental crimes will be undertaken by EMI's who will be responsible for carrying the dockets in relation to these cases. The SOP also provides mechanisms for better co-operation through the appointment of regional SAPS representatives who will be pivotal to the effective implementation of this SOP. Planning for the implementation of this SOP has commenced.

12. What is ahead for 2009-10

2009-10 is likely to be a year of transition in the environmental compliance and enforcement sector, with the consolidation of water and environmental affairs under a single ministry; as well as the commencement of a series of national environmental legislation, namely, the National Environmental Management: Waste Act 59 of 2008 (July 2009), the Air Quality Act 39 of 2004 and Integrated Coastal Management Act 24 of 2008 (September 2009). The bringing into effect of these laws will drive the need to have properly trained and designated EMIs at national, provincial and local spheres of government.

There is likely to be an increased expectation that environmental enforcement officials will utilise the significantly increased maximum penalties and jurisdiction of the magistrates' courts provided for in legislative amendments to achieve appropriate sentences in cases where there has been serious, irreparable harm to the environment. The staggered implementation of the EMI-SAPS Standard Operating Procedure through the release of a national directive will provide guidance on how these two law enforcement agencies will interact to maximise the investigation of environmental crime. In addition, the prospects of the return of specialised environmental courts has raised the hopes of environmental enforcement officials that dedicated resources in the criminal justice system will see environmental crimes enjoy the priority they deserve.

There is likely to be a more interactive process amongst the spheres of government and sister departments in dealing and finalizing Section 30



incidents. The inspectorate will not expand to new sectors when it comes to compliance inspections, but is rather looking at consolidating and undertaking more follow ups and media specific inspections. There will also be fewer resource intensive strategic inspections carried out as there is a need to try to balance the pro-active inspections with reactive inspections. There is a greater need to work even closer with municipalities in undertaking inspections to determine compliance with Air Emission Licenses or APPA registration certificate as we draw closer to the official hand over of the function to the local authorities later this year.

After 3 years since the inception of the EMI Basic Training, the 2009-10 period will see the Inspectorate take stock of the key skills and competencies that still need to be addressed through advanced/specialised training interventions. The release of an Operating Manual for EMIs will include a set of Standard Operating Procedures as well as an Enforcement Guideline that aims to activities.

