

National Environmental Compliance & Enforcement Report 2009-10



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA



LIMPOPO
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA
DEPARTMENT OF
ECONOMIC DEVELOPMENT, ENVIRONMENT & TOURISM

the dacerd
Department:
Agriculture, Conservation, Environment
and Rural Development
North West Provincial Government
Republic of South Africa



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Department:
Economic Development, Environment and Tourism
MPUMALANGA PROVINCIAL GOVERNMENT

Mpumalanga
TOURISM AND PARKS AGENCY



the detea
the department of economic
development, tourism and
environmental affairs
FREE STATE PROVINCE



agriculture, environmental affairs
& rural development
Department:
Agriculture, Environmental Affairs
& Rural Development
PROVINCE OF KWAZULU-NATAL

isimangaliso
Wildland Park



EASTERN CAPE
PARKS

Province of the
EASTERN CAPE
ECONOMIC DEVELOPMENT &
ENVIRONMENTAL AFFAIRS



CapeNature

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Environmental Affairs
REPUBLIC OF SOUTH AFRICA

**South African
NATIONAL PARKS**



National Environmental Compliance & Enforcement Report 2009-10

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ACRONYMS

Key:	General
CN:	Cape Nature
DACERD:	North West: Department of Agriculture, Conservation, Environment and Rural Development
DAEARD:	Kwa-Zulu Natal: Department of Agriculture, Environmental Affairs and Rural Development
DEA:	National Department of Environmental Affairs
DEDEA:	Eastern Cape Department of Economic Development and Environment Affairs
DETEEA:	Free State Department of Economic Development, Tourism and Environmental Affairs
DG:	Director-General
DEANC:	Northern Cape Department of Environment Affairs and Nature Conservation (former DTEC)
ECPB:	Eastern Cape Parks Board
EMI:	Environmental Management Inspector
EQP:	Environmental Quality and Protection (DEA)
GDARD:	Gauteng Department of Agriculture and Rural Development (former GDACE)
EKZNW:	Ezemvelo KwaZulu Natal Wildlife
LEDET:	Limpopo: Department of Economic Development, Environment and Tourism
MCM:	Marine and Coastal Management (DEA)
DEDET:	Mpumalanga Department of Economic Development, Environment and Tourism (former MDALA)
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
IWPA:	Isimangaliso Wetland Park Authority
WCDEADP:	Western Cape Department of Environmental Affairs and Development Planning

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 59 of 2008"
NWA:	National Water Act 36 of 1998
OHSA:	Occupational Health and Safety Act 85 of 1993

Key:	Provincial Legislation
CNECO:	Cape Nature and Environmental Conservation Ordinance 19 of 1974
CNCA:	Ciskei Nature Conservation Act 10 of 1987
LEMA:	Limpopo Environmental Management Act 7 of 2003
MNCA:	Mpumalanga Nature Conservation Act 10 of 1998
TNCO:	Transvaal Nature Conservation Ordinance 12 of 1983
FSO:	Free State Ordinance 8 of 1969

GLOSSARY TERM

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

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

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

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

“**Enforcement action required**” means that the environmental authority has decided that the nature of the non-compliance identified in the 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 inspections. These types of inspections are typically more focussed 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), marine and coastal (blue) and pollution, waste and EIA(brown) respectively.

“**Illegal listed activity**” means activities which may have a detrimental effect on the environment and require an environmental authorisation prior to commencement. It is a criminal offence to commence or undertake these activities without such an authorisation in terms of s22 of ECA and S24F of NEMA.

“**Initial inspection**” means that it is the first time that the particular facility/person has undergone 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 a suspected non-compliance with environmental legislation. These tools instruct the offender to take corrective action (e.g. ceasing an activity, undertaking rehabilitation, submitting information), failing which they are often 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 institution's 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 prosecutor in which the terms of conditions of the sentence are set out and confirmed by the court.

Summons/Arrests: indicates the number of individuals arrested/summonsed to court by EMIs for the purposes of criminal prosecution during the financial year.

“**S24G administrative fines**” are paid by applicants who wish to administratively rectify their offence of the illegal commencement of listed activities in terms of S24F of NEMA.

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

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

1. Introduction

The primary objective of the annual National Environmental Compliance and Enforcement Report (NECER) is to provide a national overview of environmental compliance and enforcement activities undertaken by relevant institutions across the country during the period 1 April 2009 to 31 March 2010. 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.

2009/10 marks the fourth year in which institutions submitted their statistics to DEA for compilation and publication; following similar reports in the 2006/7, 2007/8 and 2008/9 financial years. In an effort to improve the accuracy of the national statistics provided in this report, DEA included reporting guidelines for each information field included, however, there may still be differences in which these guidelines were interpreted by reporting institutions, leading to slight inconsistencies in the figures represented below. In addition, it must be noted that the statistics are a direct translation of the input submitted by reporting institutions – no independent verification or audit has taken place.

Key new features in the 2009/10 report include more detailed information on industrial and biodiversity compliance and enforcement activities. Furthermore, compliance monitoring activities such as proactive and reactive inspections are included in a new section of the report. Finally, the report attempts to identify the most prevalent types of environmental crimes that are currently facing environmental authorities in the country and the sentences handed down in response thereto.

With the increasing collaboration between various environmental compliance and enforcement authorities in the compilation of this report, it is hoped that the findings will provide assistance to institutions in developing effective strategies and mechanisms to combat environmental crime.

2. Key Findings

2.1 The Environmental Management Inspectorate

- There has been an increase of 170 (18.8%) EMIs on the national register, from 903 in 2008/9 to 1073 in 2009/10.
- There is a total of 1073 EMIs on the national register, with 782 (68.7%) originating from SAN PARKS.
- Of the remaining 291 EMIs, there are 38 in the employ of provincial parks boards, leaving a maximum of 253 EMIs to undertake functions related to “blue” and “brown” sub-sectors.

- The national register does not include officials who were trained, but not yet designated (e.g. local authorities, ECPB etc.).
- 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. Note however, that this gender information was not available from SANParks that makes up the large majority of the Inspectorate.
- SANParks, national DEA and Western Cape DEADP have the most EMIs, while Cape Nature and Isimangaliso have the least.

2.2 Overall National Statistics

- There has been a 22.9% increase in the number of reported environmental incidents, from 4661 in 2008/9 to 5739 in 2009/10.
- There has been a relative increase in the number of criminal dockets and J534 registered in the past financial years from 1762 in 2007/8, 2412 in 2008/9 and 2877 in 2009/10.
- There were 282 cases handed to NPA of which approximately 35.8% received a nolle prosequi from the NPA, making this percentage relatively similar for the past two financial years of 100 (2008/9) and 101 (2009/10).
- There has been a general decline in the number of arrests by EMIs since 2007/8, 2614 cases in 2007/8 to 2384 in 2009/10.
- There has been a dramatic increase in the number of acquittals from 18 in 2008/9 to 1026 in 2009/10.
- The number of convictions has increased from 258 in 2008/9 to 673 in 2009/10, which is 160.9% increase.
- There has been a significant increase in the number of plea bargains from the 4 in 2008/9 to 134 in 2009/10.
- The amount of admission of guilt fines issued has dramatically increased from R 1 469 899.00 in 2008/9 to R 2 5099 703.00, with an increase of 61.9%.
- There has been an increase in the number of warning letters, pre-directives, pre-compliance, final directives and final notices issued as well as civil court applications launched with a total number of 385 in 2008/9 to 1260 in 2009/10.
- There has been a decline in the total amount paid in respect of section 24G administrative fines from R15 499 518.19 in 2008/9 to R 8 874 966.10 in 2009/10.
- There were 2380 facilities inspected nationwide in the Brown and Green sub-sectors. Marine and Coastal Management reported 65 567 inspections of vessels, and other marine-related activities (see section 4.2.1).



2.3 Statistics per Institution/Province

- Marine and Coastal Management recorded 4 343 885 items seized while 204 seized items in Limpopo were forfeited to the state.
- Marine and Coastal Management recorded the highest number of cases handed to NPA (382).
- A greater percentage (87.1%) of nolle prosequi cases nationwide were recorded from Limpopo (88).
- Limpopo also recorded the highest number of acquittals (646), convictions (539) and Section 105 plea and sentence agreements (92).
- There were more cases (22) dealt with by trained prosecutors in relation to matters investigated by Mpumalanga Tourism and Parks Agency compared to the other EMI Institutions.
- Marine and Coastal Management issued 613 warning letters which is the highest compared to all other EMI Institutions.
- The Western Cape (Department of Environmental Affairs and Development Planning) issued most pre-directives (20) and pre-compliance notices (61) while Free State (Department of Economic Development, Tourism and Environmental Affairs) issued the most directives (15). Mpumalanga (Department of Economic Development, Environment and Tourism) issued 52 of the total compliance notices issued.

2.4 Industrial Compliance and Enforcement

The number of prioritized sectors targeted for proactive compliance monitoring increased with the addition of the Health Care Risk Waste treatment / disposal, hazardous waste disposal and power generation sectors. This has necessitated an increase in the capacity required to undertake the inspections as well as to manage the enforcement processes and dedicated units have therefore been set up at national level (and some provincial departments) to deal only with these sector-based projects.

This increased capacity has also enabled the authorities to conduct a number of follow-up inspections which focus specifically on whether or not operations have executed on the undertakings made by them within the timeframes proposed following the initial inspection and whether or not the non-compliances identified have been addressed. Where these follow-up inspections still identify serious non-compliances, the department will not hesitate to move directly into enforcement action. This is evident from the action taken after the follow-up inspection to the Highveld Steel facility in Witbank.

The National Environmental Management: Waste Act (No. 59 of 2008) came into effect on 3 July 2009 and the relevant sections of the National Environmental Management: Air Quality Act (No. 39 of 2004) will become enforceable on 1 April 2010 together with legally binding emission standards. Maximum penalties in terms of these Acts in respect of various offences range between R5 million and R10 million or 5 to 10 years imprisonment or both. Numerous contraventions of the Waste Act have already been identified since its commencement and it is critical that facilities ensure compliance with the provisions of the Act to avoid criminal prosecution.

2.5 National Complaints and Incidents

- There has been an increase in the number of incidents reported to DEA in 2009/10 through the Environmental Crimes and Incidents hotline, through the Ministry, Office of the DG or directly, compared to the decrease experienced in the 2008/9 financial year.
- In 2008/9, the total number of complaints was 219, while in 2009/10 there were 389 incidents reported.
- The reported number of emergency incidents increased from 16 in 2008/9 to 38 (72.7%) in 2009/10.
- Cases categorised as "others" that represented general concerns, enquiries/queries, etc. increased from 3 in 2008/9 to 40 in 2009/10 and spillages also increased from 3 in 2008/9 to 29 in 2009/10.
- There has been an increase in the number reported incidents referred to provinces from 47 in 2008/9 to 122 in 2009/10, an increase of 160%.

2.6 Summary of Outstanding Performance

CATEGORY	RESULT	INSTITUTION	LEGISLATION
Most inspections conducted	65567	Department of Environmental Marine and Coastal Management's (now Agriculture, Fisheries and Forestry)	Contraventions of Marine Living Resources Act, 1998



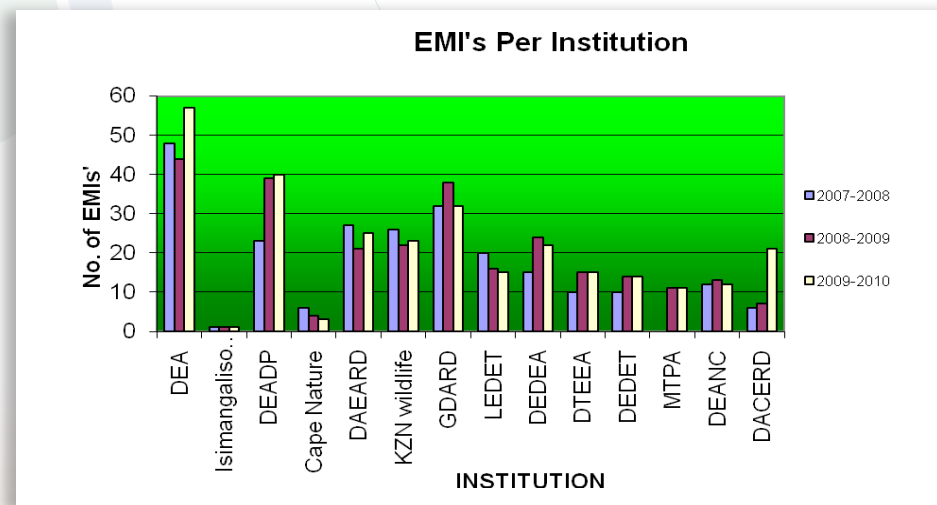
CATEGORY	RESULT	INSTITUTION	LEGISLATION
Highest sentence period of direct imprisonment with option of a fine	R 250, 000.00 or 5years with R220,000.00 or 2 years suspended for five years	Cape Nature	Illegal possession of 4 rhino horns, 8 rhino feet, and 1 rhino penis
Highest number of Section 24G applications processed	83 and 17 of them were paid amounting to R 5 898 000	Gauteng Department of Agriculture and Rural Development	NEMA section 24G
The highest number of items seized	Abalone units = 123 673 Fish & other = 254 455 Vehicle = 86 Boats = 17	Department of Environmental Affairs Marine and Coastal Management (now Agriculture, Fisheries and Forestry)	Contraventions of Marine Living Resources Act, 1998
Highest number of admission of guilt fines issued	1527 fines issued and amounted to R 1,832,558.00	Department of Environmental Affairs and Tourism Marine and Coastal Management (now Agriculture, Fisheries and Forestry)	Contraventions of Marine Living Resources Act, 1998

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 activities, however, only EMIs are mandated to enforce and monitor compliance with NEMA and specific environmental management Acts. As at 31 March 2010, there were 1073 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:

INSTITUTION	2007-2008	2008-2009	2009-10
SANParks	630	634	782
National DEA	48	44	57
Isimangaliso Wetland Park Authority	1	1	1
Western Cape DEADP	23	39	40
Cape Nature	6	4	3
KwaZulu-Natal DAEARD	27	21	25
Ezemvelo KZN Wildlife	26	22	23
Gauteng DARD	32	38	32
Limpopo DEDET	20	16	15
Eastern Cape DEDEA	15	24	22
Free State DETEEA	10	15	15
Mpumalanga DEDET	10	14	14
Mpumalanga Tourism and Parks Agency	-	11	11
Northern Cape DEANC	12	13	12
Northwest DACERD	6	7	21
TOTAL	866	903	1073



Graph 1: Comparison of EMIs per institution NB: Excluding SANParks (782).



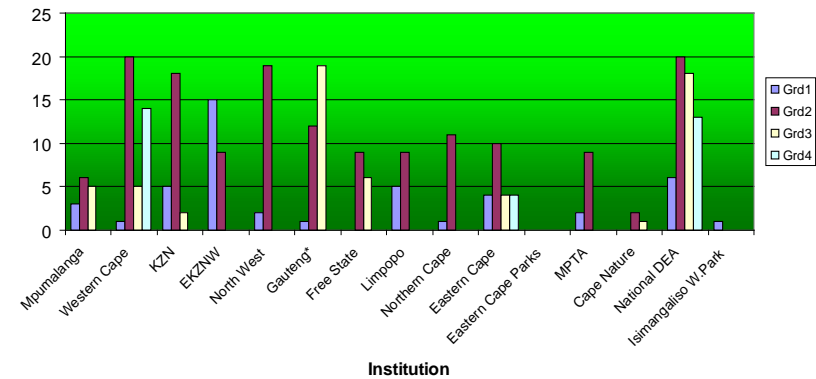
3.2 Environmental Management Inspectors: Grades and Gender

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 the access to appropriate legislative powers.

Institution	Grd1	Grd2	Grd3	Grd4	Grd5	Male	Female	Total
Mpumalanga DEDET	3	6	5	0	0	8	6	14
Western Cape DEADP	1	20	5	14	0	23	17	40
KwaZulu-Natal DAEARD	5	18	2	0	0	14	11	25
Ezemvelo KZN Wildlife	15	9	0	0	0	21	3	24
Northwest DACERD	2	19	0	0	0	14	7	21
Gauteng DARD	1	12	19	0	0	-	-	*32
Free State DETEEA	0	9	6	0	0	12	3	15
Limpopo DEDET	5	9	0	0	0	13	1	14
Northern Cape DEANC	1	11	0	0	0	8	4	12
Eastern Cape DEDEA	4	10	4	4	0	19	3	22
Eastern Cape Parks Board	0	0	0	0	0	0	0	0
Mpumalanga Parks & Tourism Agency	2	9	0	0	0	11	0	11
Cape Nature	0	2	1	0	0	3	0	3
National DEA	6	20	18	13	0	31	26	57
Isimangaliso Wetland Park	1	0	0	0	0	1	0	1
SANParks	-	-	-	-	-	-	-	*782
SUB-TOTAL	46	154	60	31	782	98	37	1073
TOTAL								1073

*Institution not submitted gender information

EMI grades per Institution



Graph 2: Comparison of EMIs per grade 2007-FY8 to 2009-10FY

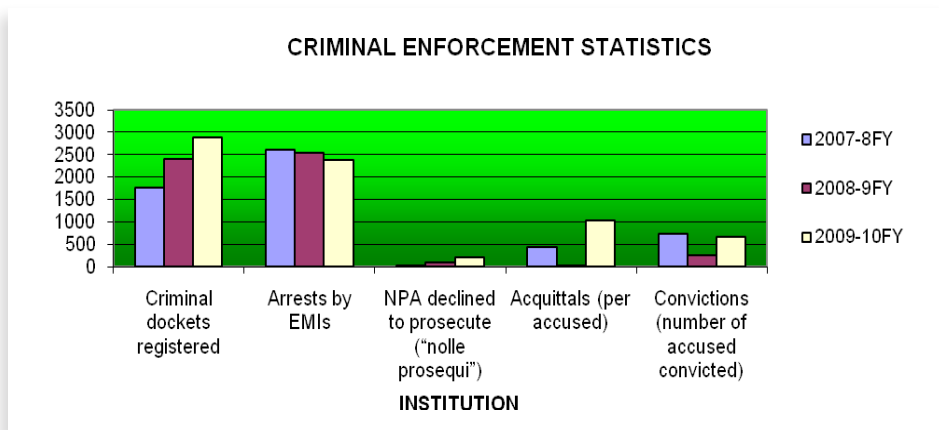
NB: The graphical representation exclude SANParks EMI's because the breakdown of grades was not available.

4. Overall National Statistics

4.1.1 Enforcement

	2007-8FY	2008-9FY	2009-10FY
Number of reported incidents	-	4661	5739
Criminal dockets and J534 registered	1762	2412	2877
Cases handed to NPA	-	-	282
Summons/Arrests by EMIs	2614	2547	2384
NPA declined to prosecute ("nolle prosequi")	16	100	214
Acquittals	441	18	1026
Convictions	748	258	673
Section 105A agreements (plea bargains)	6	4	134
Amount of admission of guilt fines paid (total amount)	R 657 700	R 824 886	R 2 509 793
Warning letters written	102	109	827
Pre directives/compliances issued	246	179	249
Final directives/compliances issued	246	94	172
Civil court applications launched	2	3	10
S24G administrative fine paid (total amount and number)	R 6 880 246 .00 (707)	R 15 499 518 .19 (440)	R 8 874 966 .10 (53)





Graph 3: Overall Criminal Enforcement Statistics 2007-FY8 to 2009-10FY

4.1.2 Most prevalent crimes reported

PROVINCE	INSTITUTION	PREVALENT CRIME
National Institutions	SANParks MCM EQP	Illegal fishing Abalone poaching Illegal listed activity
Western Cape	DEADP Cape Nature	Construction activities within 100m of the high-water mark of the sea and alleged illegal dumping cases Hunting at night without permit
KwaZulu Natal	DEADP Ezemvelo KZN Wildlife Isimangaliso Wetland Park Authority	Illegal listed activity Fishing and/or possession of sea life without permit Illegal listed activity

Gauteng	Gauteng DARD	Illegal listed activity
Limpopo	DEDET	Illegal cutting, collection of firewood, wetwood and indigenous protected plants
Eastern Cape	DEDEA Eastern Cape Parks Board	Construction of structures outside of and/or within the Coastal Conservation Area without a permit. Poaching of wild animals
Free State	DETEEA	Illegal listed activity
Mpumalanga	DEDET Mpumalanga Tourism and Parks Agency	Illegal listed activities and illegal Rhino poaching
Northern Cape	DEANC	Hunting of game animals without permit
North West	DACERD	Illegal listed activity



4.2 Compliance Monitoring

4.2.1 Compliance Inspections Activities of EMI Institutions

INSTITUTION	No. of facilities inspected	Proactive	Reactive	Initial	Follow-up	No. of Non-Compliances	Enforcement Action Required
DEA (EQP)	125	30	42	76	16	1056	6
Western Cape DEADP	197	152	26	7	147	22	14
KZN DAEARD	407	319	87	349	19	68	33
Gauteng DARD	42	26	15	21	19	200	14
Limpopo DEDET	138	118	19	114	24	34	8
Free State DETEEA	2	0	2	2	0	0	2
Mpumalanga DEDET	114	45	69	101	11	12	10
Northern Cape DEANC	180	0	180	180	0	180	180
North West DACERD	1175	690	156	1128	47	22	22
TOTAL	2380	5701	596	1978	283	1594	289

MCM	Vehicles Inspected	Permit Checks	Anglers permits inspected	Slipway Inspect	Coastal patrols	Road blocks	Sea patrols	Foreign vessel inspections	Vessels inspected	Divers prevented from diving Inspections	Inspections	FPE Inspections
		10264	15795	7568	8673	9627	629	107	114	6896	4105	1201

Legislation		KZN Wildlife	Gauteng Free State	Free State	MCM	North West	Limpopo	Northern Cape	DEA	Eastern Cape Parks Board	Eastern Cape	Mpumalanga	KZN DAEA	Cape Nature	Western Cape	SANParks	KZN Isimangaliso	Mpumalanga Tourism and Parks Agency	TOTAL
National Legislation	NEMA	29	7	21	32	6	12	-	33	-	121	52	83	-	169	-	-	-	565
	NEM:PA Regulations (National Parks, World Heritage Sites etc.)	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	1
	ECA: Administrators Notice 127 of 4 May 1994 (PNE)	-	-	-	-	3	-	-	-	-	-	-	-	-	-	-	-	-	3
	NEM:BA	7	15	7	-	-	-	8	-	-	13	-	-	-	-	-	-	-	50
	NEM:PAA	-	1	-	-	-	-	-	2	-	-	-	-	-	-	184	7	-	194
	Game Theft Act 105 of 1991	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2
	National Forestry Act, No. 84 of 1998	-	-	1	-	-	4	-	-	-	2	-	-	-	-	-	-	-	7
	APPA	-	-	-	-	-	-	-	18	-	-	-	-	-	-	-	-	-	18
	EIA regulations	-	1	-	-	4	22	-	2	-	-	-	-	-	-	-	-	-	29
	NEM:AQA	-	-	-	-	-	2	-	9	-	-	-	-	-	-	-	-	-	11
	NEM:WA	-	-	-	-	1	-	-	20	-	-	11	4	-	-	-	-	-	25
	OHSA	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	1
	ECA	-	53	-	-	8	-	-	34	-	8	-	6	-	-	-	-	-	109
	MLRA	476	-	-	350	-	-	-	18	-	1	-	-	-	-	151	-	-	996
NWA	-	-	-	-	-	-	-	3	-	-	-	-	-	-	-	-	-	3	
Sub-Total	512	77	31	38	22	40	8	141	-	145	63	93	-	169	335	7	-	2014	
Provincial Legislation	Ciskei Decree	-	-	-	-	-	-	-	-	-	80	-	-	-	-	-	-	-	80
	KZN Conservation Act 29 Of 1992	5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5
	Limpopo EMA	-	-	-	-	-	1298	-	-	-	-	-	-	-	-	-	-	-	1298
	Ciskei NCA 10 of 1987	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	1
	NMCA	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	29	29
	Transvaal NCO, 1983	-	66	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	66
	Free State Ordinance, 1969	-	-	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	18
	Cape Ordinance 19 of 1974	62	-	-	-	-	-	90	-	-	50	-	-	87	-	-	-	-	289
	Provincial Parks Board Act	-	-	-	-	-	-	-	-	8	-	-	-	-	-	-	-	-	8
	Regulation 18(1) of P.N. 955 of 1975	-	-	-	-	-	-	-	-	-	-	-	-	21	-	-	-	-	21
Transkei Decree 1992	-	-	-	-	-	-	-	-	-	70	-	-	-	-	-	-	-	70	
Sub-Total	67	66	18	0	0	1298	90	0	8	201	0	0	108	0	0	0	29	1896	
TOTAL	579	143	49	382	22	1338	98	143	8	346	63	93	108	169	335	7	29	3910	



5. Statistics per national institution/province

5.1 NATIONAL INSTITUTIONS



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

	SOUTH AFRICAN NATIONAL PARKS			MARINE & COASTAL MANAGEMENT			ENVIRONMENTAL QUALITY & PROTECTION		
	2007-8FY	2008-9FY	2009-10FY	2007-8FY	2008-9FY	2009-10FY	2007-8FY	2008-9FY	2009-10FY
Number of reported incidents	-	459	335	-	1057	1909	-	24	88
Criminal dockets and J534 registered	62	382	327	207	1057	382	19	10	37
Cases handed to NPA	-	-	0	-	-	12	-	-	25
Summons/Arrests	127	343	173	3884	1134	441	-	5	30
NPA declined to prosecute ("nolle prosequi")	-	-	0	-	72	0	-	1	0
Acquittals	-	-	0	221	-	381	-	-	0
Convictions	10	-	0	794	206	4	-	-	2
Section 105A agreements (plea bargains)	-	-	0	91	-	0	-	-	0
Admission of guilt fines paid	R 160,050	R 191,100	0	R 196,424	R 115,310(180)	R 1, 832, 558	-	-	0
Warning letters written	-	-	0	316	-	613	5	3	5
Pre-directives/ compliance notices issued	2	-	0	235	-	0	16	13	28
Final directives/ compliance notices issued	-	-	0	-	-	0	-	7	8
Civil court applications launched	-	-	0	2	-	0	1	-	1
S24G administrative fine paid (specify amount)	-	-	R0.00	-	-	R96 900	-	-	R93 000

5.2 WESTERN CAPE



	DEPARTMENT OF ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING			CAPE NATURE		
	2007-8FY	2008-9FY	2009-10FY	2007-8FY	2008-9FY	2009-10FY
Number of reported incidents	-	167	169	-	55	140
Criminal dockets and J534 registered	-	-	1	39	33	111
Cases handed to NPA	-	-	0	-	-	6
Summons/Arrests	-	-	0	5	8	19
NPA declined to prosecute (nolli prosequi")	-	-	0	1	-	5
Acquittals	-	-	0	0	2	2
Convictions	-	-	0	23	10	5
Section 105A agreements (plea bargains)	-	-	0	0	-	1
Admission of guilt fines paid	-	-	0	R23 000	R 11400.00 (8)	R 270,500.00
Warning letters written	-	-	10	-	-	0
Pre directives/compliance notices issued	71	32	81	-	-	0
Final directives/compliance notices issued	71	2	15	-	-	0
Civil court applications launched	-	-	0	-	-	0
S24G administrative fine paid(number& amount)	R119, 045.00 (29)	R 459, 285.00 (12)	0	-	-	0



5.3 KWAZULU-NATAL



agriculture, environmental affairs
& rural development

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



	DEPARTMENT OF AGRICULTURE, ENVIRONMENTAL AFFAIRS & RURAL DEVELOPMENT			EZEMVELO KZN WILDLIFE AND ISIMANGALISO WETLAND PARK		EZEMVELO KZN WILDLIFE	ISIMANGALISO WETLAND PARK
	2007-8FY	2008-9FY	2009-10FY	2007-8FY	2008-9FY	2009-10FY	2009-10FY
Number of reported incidents	-	26	105	-	1880	579	7
Criminal dockets and J534 registered	7	6	2	939	265	481	7
Cases handed to NPA			1			0	7
Summons/Arrests	-	-	0	1436	9	118	12
NPA declined to prosecute (nolli prosequi)	-	-	0	7	2	0	0
Acquittals	-	-	0	22	-	0	0
Convictions	-	-	0	156	-	0	3
Section 105A agreements (plea bargains)	-	-	0	6	-	0	2
Admission of guilt fines paid	-	-	R 0.00	R344 600	R 226,046(96)	R 171 415	R 0.00
Warning letters written	-	14	39	-	-	0	6
Pre directive/compliance notices issued	-	25	44	-	-	0	2
Final directive/compliance notices issued	-	27	36	-	-	0	2
Civil court applications launched	-	-	1	-	-	0	4
S24G administrative fine paid (number & amount)	-	R3, 508,800 .00 (28)	R 1,726,100 .00	-	-	0	R 0.00

5.4 GAUTENG



GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT	2007-8FY	2008-9FY	2009-10FY
Number of reported incidents	-	30	144
Criminal dockets and J534 registered	19	30	86
Cases handed to NPA	-	-	57
Summons/Arrests	11	6	85
NPA declined to prosecute (Nolli prosequi)	-	6	1
Acquittals	-	-	0
Convictions	8	6	90
Section 105A agreements (plea bargains)	-	3	37
Admission of guilt fines paid	R24 300	R 5000 (1)	R 63,850
Warning letters written	8	3	15
Pre-directive/ Pre compliance notices issued	122	81	16
Final directive/compliance notices issued		16	11
Civil court applications launched	1	2	0
S24G administrative fine paid (number & amount)	R4, 440 330.00 (30)	R 8,408 905 (>333)	R 5, 898 000 17



5.5 LIMPOPO

GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT	2007-8FY	2008-9FY	2009-10FY
Number of reported incidents	-	658	1381
Criminal dockets and J534 registered	441	462	1315
Cases handed to NPA	-	-	107
Summons/Arrests	736	930	1315
NPA declined to prosecute (Nolli prosequi")	3	-	201
Acquittals	414	2	643
Convictions	477	11	534
Section 105A agreements (plea bargains)	-	-	92
Admission of guilt fines paid	R 70 700	R 182,730 (391)	R 118 070
Warning letters written	3	55	4
Pre-directive/ Pre compliance notices issued	-	8	9
Final directive/compliance notices issued	-	13	4
Civil court applications launched	-	-	0
S24G administrative fine paid (number & amount)	R 161,126.00 (4)	R 198,7203.57(53)	R 77 966.10



5.6 EASTERN CAPE

	DEPARTMENT OF AGRICULTURE, ENVIRONMENTAL AFFAIRS & RURAL DEVELOPMENT			EASTERN CAPE PARKS BOARD		
	2007-8FY	2008-9FY	2009-10FY	2007-8FY	2008-9FY	2009-10FY
Number of reported incidents	-	160	598	-	9	8
Criminal dockets and J534 registered	54	82	25	2	4	8
Cases handed to NPA	-	-	0	-	-	0
Summons/Arrests	73	43	39	13	5	17
NPA declined to prosecute (nolli prosequi)	1	5	3	-	-	0
Acquittals	2	-	0	-	-	0
Convictions	47	15	9	-	2	0
Section 105A agreements (plea bargains)	-	1	1	-	-	0
Admission of guilt fines paid	-	R 25,700	R 31,900	-	-	R 0.00
Warning letters written	17	22	67	1	1	0
Pre directive/compliance notices issued	5	13	45	-	-	0
Final directive/compliance notices issued		5	8	-	-	0
Civil court applications launched	-	3	3	-	-	0
S24G administrative fine paid (number & amount)	-	-	R 378,500	-	-	R 0.00



5.7 FREE STATE



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the department of economic
development, tourism and
environmental affairs
FREE STATE PROVINCE

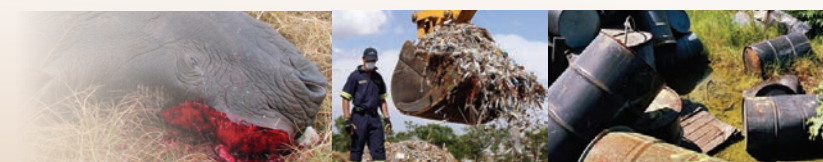
DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS	2007-8FY	2008-9FY	2009-10FY
Number of reported incidents	-	37	50
Criminal dockets and J534 registered	33	12	27
Cases handed to NPA	-	-	23
Summons/Arrests	33	16	38
NPA declined to prosecute (Nolli prosequi")	-	3	0
Acquittals	-	2	0
Convictions	2	0	21
Section 105A agreements (plea bargains)	-	0	1
Admission of guilt fines paid	R20 300	R 23,100(18)	R11,800
Warning letters written	3	7	5
Pre-directive/ Pre compliance notices issued	19	5	10
Final directive/compliance notices issued	19	8	18
Civil court applications launched	-	-	1
S24G administrative fine paid (number & amount)	-	R 22,200 (6)	R 0.00



5.8 MPUMALANGA



	DEPARTMENT OF ECONOMIC DEVELOPMENT , ENVIRONMENT AND TOURISM			MPUMALANGA TOURISM AND PARKS AGENCY		
	2007-8FY	2008-9FY	2009-10FY	2007-8FY	2008-9FY	2009-10FY
Number of reported incidents	-	9	63	-	15	37
Criminal dockets and J534 registered	-	-	2	23	15	36
Cases handed to NPA			0			23
Summons/Arrests	-	-	0	26	21	67
NPA declined to prosecute (nolli prosequi™)	-	-	0	-	2	2
Acquittals	-	-	0	1	-	0
Convictions	-	-	0	20	6	5
Section 105A agreements (plea bargains)	-	-	0	-	-	0
Admission of guilt fines paid	-	-	R 0.00	R 21,750	-	R 1,500
Warning letters written	-	-	54	R 9,750	-	0
Pre directive/compliance notices issued	23	-	5	-	-	0
Final directive/compliance notices issued	23	13	63	-	-	0
Civil court applications launched	-	-	0	-	-	0
S24G administrative fine paid (number & amount)	-	R 427,500 (7)	R 584,500	-	-	R 0.00



5.9 NORTHERN CAPE



DEPARTMENT OF ENVIRONMENT AND NATURE CONSERVATION	2007-8FY	2008-9FY	2009-10FY
Number of reported incidents	-	11	102
Criminal dockets and J534 registered	24	-	16
Cases handed to NPA	-	-	7
Summons/Arrests	66	15	30
NPA declined to prosecute (Nolli prosequi")	1	8	2
Acquittals	2	-	0
Convictions	2	-	0
Section 105A agreements (plea bargains)	-	-	0
Admission of guilt fines paid	-	R 6,800 (3)	R 8,200
Warning letters written	45	5	6
Pre-directive/ Pre compliance notices issued	8	-	0
Final directive/compliance notices issued	8	-	0
Civil court applications launched	-	-	0
S24G administrative fine paid (number & amount)	R 44,694(5)	R 44,694 (5)	R 0.00



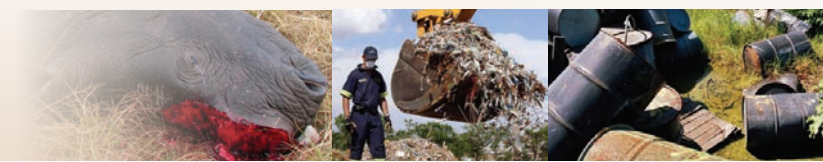
5.9 NORTH WEST



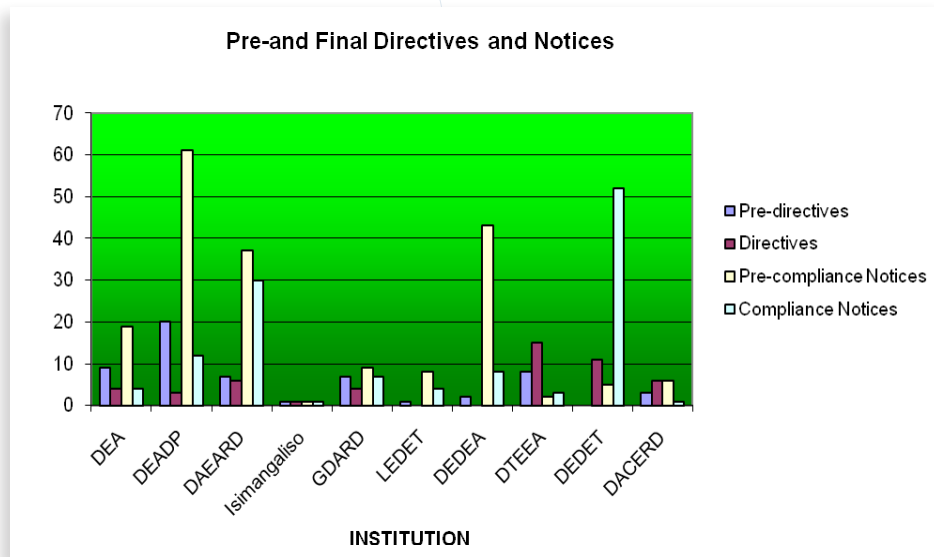
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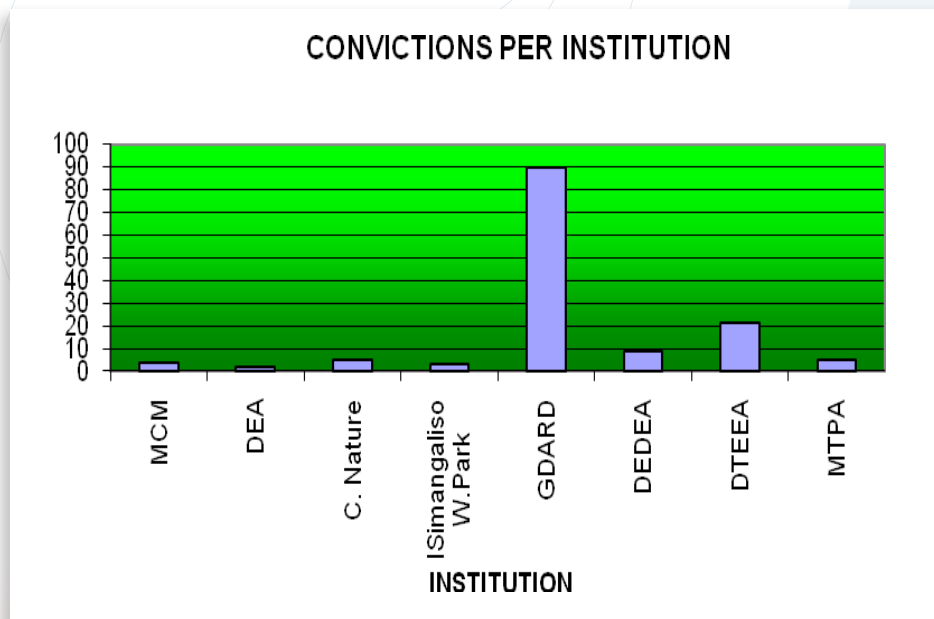
DEPARTMENT OF AGRICULTURE, CONSERVATION, ENVIRONMENT AND RURAL DEVELOPMENT	2007-8FY	2008-9FY	2009-10FY
Number of reported incidents	-	64	24
Criminal dockets and J534 registered	32	54	14
Cases handed to NPA	-	-	14
Summons/Arrests	5	12	0
NPA declined to prosecute (Nolli prosequi")	3	1	0
Acquittals	-	12	0
Convictions	-	2	0
Section 105A agreements (plea bargains)	-	-	0
Admission of guilt fines paid	R 5,000	R36,750 (16)	0
Warning letters written	20	2	3
Pre-directive/ Pre compliance notices issued	3	2	9
Final directive/compliance notices issued	3	3	7
Civil court applications launched	-	-	0
S24G administrative fine paid (number & amount)	R 2,115,050 >639	R640,930 (66)	R 20,000



6. Environmental jurisprudence



Graph 4: Comparative number of administrative enforcement tools issued



Graph 5: Comparative number of convictions obtained

Parties	Central Property Development Johannesburg (Pty) Ltd (First Applicant) and Silkstar Three (Pty) Ltd (Second Applicant) v The Member of the Executive (MEC) for Agriculture, Conservation and Environment (First Respondent) The Head Gauteng Department (HOD) of Agriculture, Conservation and Environment (Second Respondent), Case Number: 2009/17614 ZAGPJHC
Facts	<p>This matter concerns the validity of a compliance notice issued by the Second Respondent in respect of a development on the property referred to as "Extension 16". The Applicants were the developer and registered owners of Extension 16. The First Respondent was the MEC for the Gauteng Department of Agriculture, Conservation and Environment and the Second Respondent was the HOD for the Gauteng Department of Agriculture, Conservation and Environment. Extension 16 is the last phase of a development on Naturena Extension 13, approval for which was granted to the Second Applicant's predecessor in title on 5 June 1996. One of the conditions of the establishment of the township Naturena Extension 13 was that "Development may not take place until an environmental impact assessment has been submitted and accepted by the Johannesburg Administration". The township extension 16 was finally proclaimed on 9 May 2007 and site works commenced during March/April 2008.</p> <p>On 29 April 2008, the HOD informed the First Applicant that he intended to issue a compliance notice in terms of Section 31L of NEMA. On 28 May 2008, the First Applicant's attorneys addressed a letter to the HOD in which they expressed the view that the HOD had no jurisdiction over the development on Extension 16.</p> <p>However, on 8 October 2008, the HOD proceeded to issue the compliance notice. On 22 October 2008, the First Applicant's attorneys informed the HOD that the First Applicant intended objecting to the compliance notice in terms of section 31L and 31M of NEMA and requested an opportunity to lodge such an objection.</p> <p>On 27 October 2008, a further extension was sought and on 19 November 2008, a comprehensive objection was lodged, the main ground for the objection being that the HOD had no jurisdiction in respect of the development or activities on Extension 16.</p>

	On 26 January 2009, the MEC however upheld the compliance notice, resulting in the application
Relief Sought	<p>The applicants sought an order reviewing and setting aside the decision:-</p> <ul style="list-style-type: none"> • of the HOD, in terms of which he issued the compliance notice; and • of the MEC, in terms of which he upheld the compliance notice despite an objection thereto. <p>These orders were sought by the Applicants on the basis that the Respondents had no jurisdiction over the development on Extension 16 and the MEC's actions, in upholding the compliance notice, were procedurally unfair.</p>
Judgment	<p>The court dismissed the application with costs including the costs consequent upon the employment of two counsel:-</p> <p>The court held:</p> <ul style="list-style-type: none"> • that the Applicants had failed to make out a case that they had a "vested right" not to have to comply with the provisions of NEMA before commencing with physical activities on Extension 16; and • that the HOD does have jurisdiction over the development on Extension 16; and • that in the circumstances of this matter, it cannot be said that the procedure was objectively unfair or that the MEC did not properly exercise his discretion in failing to afford the Applicants an oral hearing with legal representatives. <p>The court also, when interpreting Section 24F of NEMA, which makes it an offence to commence or continue with a listed activity without having an environmental authorization being granted by a competent authority for the activity, defined commencement in this court as follows; that "commence" in terms of NEMA means "when a spade is put in the ground".</p>
Parties	The South African Predator Breeders Association (first applicant), Matthys Christiaan Mostert (second applicant), Deon Cilliers (third applicant) v The Minister of Environmental Affairs & Tourism, Case Number: 1900/2007 ZAFSHC
Facts	The first applicant was an association with legal personality, comprising of 123 members, 65 of which were domiciled in the Free State Province where they breed lions in captivity and / or have hunting

	<p>operations in respect of lions bred in captivity.</p> <p>The second and third applicants are farmers in the Free State who breed lions. The respondent is the National Minister of Environmental Affairs and Tourism.</p> <p>The applicants brought an application to court where they challenged certain aspects of the Threatened or Protected Species (TOPS) Regulations (Government Notice No. R69 of January 2008) which came into effect on 1 February 2008. The applicants challenged the inclusion of lion as a listed large predator. They also challenged the 24 month period in which captive bred lions had to fend themselves in an extensive wildlife system before they could be hunted. The applicants' main argument was that this provision would destroy the industry and will have a negative economic and social impact. The applicants argued that there should be no such self-sustaining provision.</p> <p>What was essentially claimed by the applicants therefore were declaratory orders that the twenty four (24) month self-sustaining provision or regulation 71 and regulation 60 of the regulations be declared invalid if applicable or made applicable to lions.</p>
Relief Sought	A declaratory order that the definition of "put and take animal" in regulation 1, the whole of regulation 24 and the whole of regulation 60 of the regulations published in Government Notice No. R152 of 23 February 2007 be reviewed, corrected or set aside, and a declaratory order that the decision of the respondent not to provide in regulation 71 of these regulations for a transitional measure in respect of the hunting of lions bred in captivity, be reviewed, corrected and set aside.
Judgment	<p>The application was dismissed with costs, including the costs of two counsels.</p> <p>The court held that :</p> <ul style="list-style-type: none"> • the 24 month self sustaining provision was not unreasonable and could be practically implemented. • that the 24 month self sustaining provision will not necessarily put an end to the industry by making it financially unsustainable to the applicants.



Parties	City of Johannesburg Metropolitan Municipality(Appellant) v Gauteng Development Tribunal and Others (Respondents) Case Number: 335/08 ZASCA
Facts	<p>The City of Johannesburg (appellant) applied for Chapters V and VI of the Development Facilitation Act 67 of 1995 (DFA) to be declared constitutionally invalid. The court of first instance refused this application and an appeal was lodged.</p> <p>The Development Facilitation Act 67 of 1995 (DFA), more specifically in Chapters V and VI purports to confer equivalent authority upon provincial development tribunals that are established under that Act, thereby creating the potential for the two bodies to speak with different voices on the same subject matter. DFA chapters V and VI provide the power to provincial development tribunals to approve land use applications that may be in conflict with municipal laws. It also grants powers to the provincial tribunal to refuse or approve the application with conditions. It therefore has the potential to override municipal control and may even approve applications opposed by the municipalities.</p> <p>The Constitution establishes government at three levels. At national level legislative authority vests in Parliament and executive authority vests in the President (who exercises it together with other members of the Cabinet). At provincial level legislative authority vests in the provincial legislatures and executive authority vests in the provincial Premiers (who exercise that authority together with other members of the executive councils). At local level government comprises municipalities, which must be established for the whole of the territory of the Republic, and the legislative and executive authority of a municipality vests in its municipal council.</p> <p>Certain functions of government are therefore reserved for municipalities (section 156(1) of the Constitution), including executive authority for municipal planning. “Urban and rural development” are, however regulated in Schedule 4 of the Constitution (concurrent provincial and national power). The court of first instance held that municipalities’ functions are limited to planning and not to implementation of such planning. Urban development does not constitute municipal planning.</p>

	Therefore, while national and provincial government may legislate in respect of the functional areas in schedule 4, including those in Part B of that schedule, the executive authority over, and administration of, those functional areas is constitutionally reserved to municipalities. Legislation, whether national or provincial, that purports to confer those powers upon a body other than a municipality will be constitutionally invalid.
Relief Sought	That chapters V and VI of the Development Facilitation Act 67 of 1995 (DFA) be declared invalid.
Judgment	<p>Chapters V and VI declared invalid but for practical reasons declaration is suspended for 18 months with certain conditions, namely:</p> <p>(a) No development tribunal established under the Act may accept for consideration or consider any application for the grant or alteration of land use rights in a municipal area.</p> <p>(b) No development tribunal established under the Act may on its own initiative amend any measure that regulates or controls land use within a municipal area.</p>
Parties	Sea Front for all and another (Applicants) v The MEC: Environmental & Development Planning (Western Cape Provincial Government), The Director: Integrated Environmental Management, Department of Environmental Affairs and Development Planning, (Second respondent), On Track Developments Pty (Ltd) (Third respondent), The City of Cape Town (Fourth Respondent), Case Number 15974/07 ZAWCHC
Facts	The first applicant is a voluntary association and juristic person, bringing the application in its own interest, as well as in the interests of its members, the interests of the public in general and in the interests of protecting the environment. The second applicant is an interested party who owns a residential property across the road from the proposed development, and had previously lodged an appeal against the original authorization granted in respect of the proposed development.



	<p>The first respondent is the functionary responsible for determining appeals against authorizations granted in terms of section 22 of the ECA, and the second respondent was the functionary responsible for granting the original authorization on 16 August 2004 in terms of section 22 of the ECA, in respect of the proposed development of the Sea Point pavilion site. The third respondent is a private company incorporated under South African law. It was granted the original environmental authorization by second respondent in respect of the proposed development. The fourth respondent is the owner of the immovable property known as the Sea Point Pavilion site, which On Track intends to lease from the City and develop in accordance with the environmental authorisation granted by the MEC to On Track in terms of the 2007 Record of Decision (ROD).</p> <p>This review application concerns the proposed redevelopment of the unique Sea Point pavilion site in Cape Town, on which the third respondent seeks to erect an up-market hotel with 52 bedrooms and retail centre, which would extend below the high-water mark and onto the beach. The proposed development also entails activities which are prohibited except with a written authorisation issued under section 22 (1) of the ECA, 1989.</p> <p>On 8 August 2007, the first respondent issued an ROD, on appeal in terms of section 35 (4) of the ECA, thereby granting the third respondent the necessary environmental authorization for the proposed redevelopment of the site. It is this decision of the first respondent that was alleged to be impugned by the applicants.</p>
Relief Sought	<p>The applicants sought to have the ROD reviewed and set aside on one or more or all of the following grounds :</p> <ul style="list-style-type: none"> • That the MEC failed to consider alternatives to the proposed development, as the ECA required her to do; and • The MEC relied on an expert report co-authored by a party, Commlife Properties, which had an undisclosed financial interest in the approval sought; • The MEC's decision was based on information that was in material respects out of date; • The MEC took her decision on the basis of materially incorrect information, concerning the extent of loss of open space and the consequences of the proposed development for traffic and parking;

	<ul style="list-style-type: none"> • The MEC failed to undertake the balancing exercise required of her in terms of the ECA, namely to weigh up the need for the proposed development against any adverse impact on the environment, particularly the loss of open space.
Judgement	<p>The court upheld the application by the applicants.</p> <p>The court held that :</p> <ul style="list-style-type: none"> • The first respondent's decision taken in terms of section 35 (4) of ECA, as contained in the first respondent's ROD dated 8 August 2007, granting written authorization to third respondent to undertake certain activities identified in section 21 (1) of the ECA on Erven 151, 153, and 318 Sea Point West, Cape Town, was to be reviewed and set aside; and • that the matter be remitted for consideration by the first respondent, taking account of the principles outlined in the judgment.
Parties	<p>Jan van Rensburg and Another (Applicants) v Dr Adeo Cloete and Another (Respondents), Case Number 8270/09 (Eastern Circuit Local Division)</p>
Facts	<p>The parties in this matter own and/or occupy neighbouring farms. The First Applicant carries on farming operations on the farm known as "Bulida" and, more particularly, stock-farming. He also operates an abattoir and a compost factory from the farm. The Respondents complained about the bad, noxious and offensive smells emanating from the property, the unhygienic conditions which prevailed at the farm, and the severe fly breeding problem which was created by the compost factory. These conditions are exacerbated by the two sewage dams which are situated on the marshy area near the confluence of the rivers which proximate their farm and from which the first Applicant flood irrigates portions of the farm which creates the overpowering stench.</p> <p>A further complaint is that reject material from the abattoir such as blood, intestines and offal is not handled properly. It is transported in a small tanker trailer to the municipal dumping site. The trailer is frequently overloaded resulting in spillage from the tanker onto the public road. They are also subjected to the squealing of the pigs 24 hours a day.</p>



	<p>The Respondents complained that these conditions constituted a health hazard and a nuisance that affected the well-being and quality of life of the Respondents.</p> <p>The authorities instituted an investigation arising from these complaints and prepared reports. From these reports it appears that at least six of the complaints made by the Respondents were well-founded.</p> <p>The relief sought by the Applicants was extraordinary and unprecedented in our legal history. It was rooted essentially in complaints made by the Respondent firstly, to various authorities such as the Municipality, the Department of Water Affairs and Forestry, Department of Environmental Affairs and the Public Protector and secondly, the communication of these complaints to neighbours and the media. These complaints, among others, included the zoning of the property, the validity of the licence to conduct an abattoir, and the pollution of rivers and the atmosphere.</p>
Relief Sought	<p>This matter involved an application for an interdict in terms of which the Applicants seek an order prohibiting the Respondents from:</p> <p>(a) defaming the Applicants, more particularly by making oral or written complaints concerning firstly, the zoning rights pertaining to the Applicants' farm "Bulida", ("the property"); secondly, Applicants' entitlement to conduct a business from the property; thirdly, Respondents' dealings with municipal and other officials and lastly, the effect of their activities on the environment ("the defamation complaint");</p> <p>(b) entering upon the Applicants' property without the consent of First Applicant ("the trespass complaint") and</p> <p>(c) infringing the Applicants' right to privacy and dignitas by keeping watch or observing their activities on the property ("the privacy complaint").</p>
Judgement	<p>The court concluded that the Applicants were effectively requesting to "gag" the Respondents from lodging any complaints to the relevant authorities or the media as they are meant to defame the Applicants. Such order, the court concluded, would have a serious impact on the Respondents' right to freedom of expression. It would also impose on the Respondents the onerous task of self-censorship.</p>

In a democracy, citizens, who are aggrieved, are entitled to raise their issues with the relevant authorities in the form of complaints and seek redress of such issues, whether in their own interest or the broader interest of society. They are likewise entitled to raise such issues for publication and public discourse in the media.

The court also dismissed, with costs, the trespass and privacy complaints.

7. Legislative Developments

7.1 Full set of SEMA's

The legislative landscape of national environmental legislation continued to develop in the 2009/10. The commencement of national pieces of legislation related to waste, air quality and integrated coastal management has seen a full set of specific environmental management Acts fall within the regulatory ambit of EMIs, namely the :

- National Environmental Management Act, 1998
- National Environmental Management: Biodiversity Act, 2004
- National Environmental Management: Air Quality Act, 2005
- National Environmental Management: Protected Areas Act, 2005
- National Environmental Management: Waste Act, 2008
- National Environmental Management: Integrated Coastal Management Act, 2009
- Environment Conservation Act, 2003
- Atmospheric Pollution Prevention Act, 1965; and
- National Water Act, 1998

7.2 Increased penalties:

Two important amendments to NEMA, i.e. the NELA Amendment Act 44 of 2008 and the NELA Amendment Act 14 of 2009 have been promulgated during this period. 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),

coupled with the increased jurisdiction of magistrates courts to hear these types of offences will provide the EMI's with the opportunity to obtain sentences that are commensurate with the damage caused to the environment.

7.3 Principal Acts commenced

- National Environmental Management: Waste Act 59 of 2008: except section 28 (7) (a), Part 8 of the Act (section 35-41) and section 46.
- National Environmental Management: Integrated Coastal Management Act 24 of 2008: except for sections 11, 65, 66, 95, 96 and 98.
- National Environmental Management: Air Quality Act 39 of 2004: sections 21, 22, 36 to 49, 51 (1) (e), 51 (1) (f), 51 (3), 60 and 61 of the Act came into effect.

7.4 Amendment to Principal Acts commenced

- National Environmental Laws Amendment Act 44 of 2008;
- National Environmental Management Amendment Act 62 of 2008;
- National Environmental Laws Amendment Act 14 of 2009; except for section 39 and 44 of the Act.

7.5 Regulations promulgated in terms of Principal Acts:

The past year has seen a host of regulations and norms and standards promulgated in terms of NEMA and the SEMA's, including the following:

7.5.1. National Environmental Management: Biodiversity Act:

- CITES Regulations (173/2010);
- Moratorium on the trade of individual rhinoceros horns and any derivatives or products of the horns (148/2009);
- National Norms and Standards for the Marking of rhinoceros horn and hunting of white rhinoceros for trophy hunting purposes (756/2009);
- Norms and standards for biodiversity management plans for species (214/2009);

7.5.2 National Environmental Management: Air Quality Act, 2005

- Vaal triangle priority area air quality management plan implementation Regulations (614/2009);
- Vaal triangle air-shed priority area air quality management plan (613/2009);
- National ambient air quality standards (1210/2009);
- List of activities which result in atmospheric emissions which have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions,

ecological conditions or cultural heritage (248/2010).

7.5.3 Environment Conservation Act, 2003

- Waste Tyre Regulations (149/2009)

8 Industrial Compliance and Enforcement

8.1 Proactive Compliance Inspections

The Department continues to undertake proactive inspections in relation to the following priority sectors:

- 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

Generally, the process entails the following steps:

1. Baseline Compliance Inspection;
2. Inspection Report issued to facilities;
3. Representations in response to findings of inspection received from facilities;
4. Review of representations;
5. Development of enforcement strategy (which will include administrative and/or criminal mechanisms);
6. Prior to the execution of the enforcement strategy a follow-up inspection may be undertaken.
7. Execution of enforcement action.

The process outlined above often stretches over a period of time and crosses over from one reporting period into the next. As such, the summary set out below deals with the full range of steps listed above. Some facilities have only recently been inspected while others were inspected in previous reporting periods and the process in respect of these facilities is therefore now moving into the execution of enforcement action.



8.1.1 Summary of findings related to inspections conducted this reporting period:

Full baseline comprehensive inspections were undertaken at ten (10) facilities during the 2009/10 financial year. Although five of these inspection reports (Mondi Piet Retief; Columbus Stainless Steel, Lethabo Power Station, ASA Metals and Matimba Power Station) were still being finalized at the end of this reporting period, below is a summary of the inspection findings for the other five facilities to which reports were issued:

HAZARDOUS WASTE (INCLUDING HEALTHCARE RISK WASTE) TREATMENT / DISPOSAL FACILITIES

Vissershok landfill site

This facility was inspected in June 2009 and the following findings were included in the inspection report:

- Non-compliance to conditions of Section 20 of the Environment Conservation Act, 1989 (Act No. 73 of 1998) ("ECA") permit
- Methane gas levels recorded to be higher than required
- Lack of proper groundwater monitoring
- Potential ground water pollution from unlined H:H evaporation dams
- Possible illegal construction of additional cells and leachate dams without required Environmental Impact Assessment ("EIA") authorisations.

Representations in response to the findings were received from the facility in November 2009. Certain findings of non-compliance are being disputed by the facility. Additional information will be requested from the facility prior to a final decision being made on the appropriate enforcement intervention.

Holfontein Landfill site

The following findings were made during the inspection of this facility in May 2009:

- Non-compliance to certain conditions of the Section 20 ECA permit
- Possible illegal construction of waste disposal cells without the required EIA authorisations
- Storage of hazardous waste on unlined areas
- Traces of groundwater pollution
- Concerns relating to Basel Convention for cross-boundary transportation of hazardous waste.

Representations and additional information received in response to the inspection report, demonstrated that the non-compliances have been or are being addressed and that the most crucial issues identified during the inspection that could have a detrimental impact on the environment are

being mitigated. Accordingly, it was decided that enforcement action against this facility was not justified based on the findings of this inspection.

Pikitup Health Care Risk Waste Incinerator

This facility was inspected in July 2009 and the inspection report set out the following findings:

- Significant non-compliances to conditions of the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965) ("APPA") permit.
- Operation of the facility without the required waste permit.
- Incomplete combustion of the medical waste.
- Lack of proper storm water management.
- Emissions of black smoke from the stack causing air pollution.

The Compliance Inspection Report was issued by the Gauteng Department of Agriculture and Rural Development ("GDARD") and Pikitup's representations were submitted to the authorities in response thereto. The initial representations received from Pikitup stated that it intended to outsource the operation of the incinerator; however, a later correspondence informed the authorities that Pikitup was, in fact, in the process of closing and decommissioning the incineration plant as the plant is extremely old and has obsolete technology which does not comply with certain air quality emission standards. Should closure of the facility not take place within the timeframe advised, enforcement action will be taken to shut the incinerator down.

EnviroServ Roodepoort Health Care Risk Waste Incinerator

The following findings were made during the inspection of this facility in July 2009 in relation to the two older incinerators operating on the site:

- Non-compliances to conditions of the Section 20 ECA permit
- Emissions from the two incinerators exceeding the required emission limits
- The APPA registration certificate for the site has expired.

The Compliance Inspection Report was issued by GDARD during November 2009 and representations in response thereto were made to the authorities by EnviroServ. An enforcement strategy has recently been developed and enforcement action will be taken jointly by the national, provincial and local authorities.

PAPER AND PULP

Sappi Enstra

This facility was inspected during October 2009 and the main findings are reflected below:

- Non-compliances with conditions of the APPA permits



- Emissions from the Copeland Reactor and the boilers exceeding the required limits over a number of years
- Non-compliances to conditions of the EIA authorisations; ECA Section 20 permit and the Water Use License

Representations were received from Sappi in response to the Inspection Report issued by GDARD. An enforcement strategy has recently been developed, including the need for a criminal investigation in relation to the air emission contraventions. These enforcement actions will be initiated in the next reporting period.

8.1.2 Summary of findings of inspections conducted in previous financial years (inspection reports only issued during 2009/10 financial year or representations only received during 2009/10):

REFINERIES SECTOR

Sapref Refinery

The findings of the inspection conducted in August 2008 were the following:

- Non-compliances to conditions of APPA permits, including lack of records to verify compliance with the emission limits
- Storage of hazardous waste without the required authorisations
- Potential water and soil pollution from improper storage of hazardous waste

Representations received in response to these findings were reviewed and an enforcement strategy developed. The facility is currently involved in the APPA registration certificate review process. The department has requested additional information to inform the facility's state of compliance with specific issues identified in the inspection report. Based on a review of this information a follow-up inspection is likely to be conducted in order to decide on final enforcement action, if necessary.

Engen Refinery

The following findings were made during the inspection of the facility in November 2008:

- Failure to submit certain reports
- Storage tanks without required permits
- Decommissioning activities without required EIA authorisation
- Storage of hazardous chemicals in unbunded areas

The representations received in response to the findings provided clarity in relation to the non-compliances identified and set out actions that had been taken to address the issues identified. No significant issues remained that justified the need for an enforcement intervention. The facility will

be continuously monitored through the quarterly compliance meetings. Chevron Refinery inspected from 13-15 May 2008

The findings of the inspection are reflected in last year's National Compliance and Enforcement Report. In response to these findings, the facility made representations and commitments to implement certain measures over a specific timeframe, including the remediation of certain leaks and possible subsurface contamination. Chevron's representations also dispute the findings made in the inspection report. A follow-up inspection will be undertaken early in the 2010/11 financial year in order to compare the undertakings and statements made by the facility in its representations to the conditions on site.

Sasol Secunda

Representations were received in response to the inspection report findings which are reflected in last year's National Compliance and Enforcement Report. A follow-up inspection will also be conducted at this facility in 2010/2011 in order to check whether or not the commitments made by the facility to rectify certain of the non-compliances/issues have been met. This follow-up inspection will inform the Department's decision on whether or not to institute any enforcement action against the facility.

FERRO-ALLOY, STEEL AND IRON SECTOR

Samancor Middelburg

This facility was inspected during June 2008 and the following findings appear in the report:

- 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

Representations were received in response to the report which included information related to the APPA certificate conversion process and the submission of applications for various waste disposal sites and Integrated Water Use Licence. The undertakings made by the facility were reviewed together with all other information provided and a follow-up inspection will be conducted in the 2010/2011 financial year in order to determine compliance with these undertakings and assess the need for enforcement action.

ArcelorMittal Saldanha Works

The inspection in March 2009 resulted in the following findings:

- Non-compliance with conditions of the APPA permits
- Non-compliance with conditions of the ECA Section 20 permit
- Operation of two waste storage areas without required authorisations



- Groundwater pollution detected as a result of sewage
- Non-reporting of emergency incidents

Representations from the facility were received in October 2009. Certain findings of non-compliance are disputed by the facility. Information received from the facility partially satisfies the Department that the issues and concerns identified during the inspection in relation to air and waste permit conditions have been and are being addressed. Measures have been implemented to address the issues pertaining to groundwater pollution due to the seepage of sewage from the conservancy. The Department will still decide on whether or not enforcement action against the facility is required.

PULP AND PAPER SECTOR

Sappi Ngodwana

The findings made during the site inspection conducted in August 2008 are the following:

- 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 authorisation
- Upgrade of ESP and fly-ash collection system and the PF Boiler without the required EIA authorisation
- Lack of proper bund walls and measures to contain spillages of hazardous chemicals
- Non-reporting of emergency incidents to authorities

The undertakings contained in the representations made by this facility include the installation of dust suppression systems, the submission of various applications, changes to the monitoring programme and construction of bunded areas. Numerous other commitments were also made to rectify the non-compliances identified. The Department is still in the process of making a decision on whether or not any enforcement action against is required.

Mondi Richards Bay

The inspection undertaken in February 2009 identified the following non-compliances:

- 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

Based on a review of the facility's representations and commitments made, Mondi was required to provide clarity in relation to certain issues. This information is still outstanding. A follow up

inspection to the site will be conducted during the course of 2010 in order to check compliance, specifically in relation to the waste site, air pollution aspects and to ensure that actions have been taken in relation to the issues highlighted as potential contraventions of section 28 of the NEMA. Following this inspection a decision will be made as to whether or not enforcement action is necessary.

8.1.3 Summary of findings from follow-up inspections conducted during the 2008/09 financial year:

FERRO-ALLOY, STEEL AND IRON SECTOR

Highveld Steel and Vanadium

During the initial inspection in 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.

The representations received from the facility disputed a significant number of the findings but also made commitments to rectify various non-compliances and provided information on plans to address a number of the impacts, including, for example, a medium to long term refurbishment programme to improve the availability of pollution abatement equipment as well as the implementation of the Integrated Waste and Water Management Plan which would address soil contamination and water issues.

A follow-up inspection was conducted to the iron and steel plants on 9 July 2009 to ensure that the facility is meeting timeframes and to confirm whether or not the environmental impacts, particularly related to air emissions, had been reduced and were being effectively managed.

After conducting the inspection, an enforcement strategy was developed as the authorities' were not satisfied with the conditions on site. Significant emissions were still emanating from the



operations. In addition to continuous emissions escaping from the emergency by-pass / raw gas outlets, significant fugitive emissions are being generated by various operations at the facility. Despite the installation of a secondary emission extraction plant at the steel plant, there are still significant fugitive emissions emanating from this plant. This was of particular concern as the plant was only operating at 60% capacity at the time of the site inspection. The pattern of periodical and regular breakdowns at the iron plants is also resulting in uncontrolled emissions to atmosphere on a regular basis. Based on the findings of the inspection, including a review of the monitoring results and other information, the Department issued Highveld Steel with a pre-notice in terms of Section 12(3) (a) of the Atmospheric Pollution Prevention Act, Section 31A of the Environment Conservation Act and Section 28(4) of the National Environmental Management Act. This notice pointed out to Highveld Steel that it was the Department's opinion serious harm is continuously being caused to the environment and to the health and well being of both the employees, as well as residents in the area, whose quality of life is being severely impacted upon. Furthermore, the fugitive dust emissions are resulting in an unacceptable dust nuisance issue in addition to potentially causing groundwater and soil pollution after the dust settles due to the leaching of minerals and various trace elements. Highveld was also informed that it is the Department's opinion that, despite the implementation of the various measures mentioned in Highveld Steel's response to this Department's findings of non-compliance during the environmental compliance inspection conducted in November 2007, no improvements have been noted in relation to the significant emissions emanating from the site.

The pre-notices issued to Highveld requested reasons why the Department should not instruct the company to submit a detailed plan on how it intends to mitigate / reduce process and fugitive emissions from its operations to ensure compliance with its APPA registration certificates and in line with national minimum emission standards. The pre-notice further stated that should the Department not approve this plan, the facility would need to cease with operations within one month of the decision by the Department not to approve the plan. Highveld submitted a proposed plan to the Department in March 2010 in response to the pre-notice. A meeting with representatives of the facility will be held early in the new financial year and a final decision will be made in relation to further enforcement action following this meeting.

CEMENT SECTOR

Follow-up inspections were also undertaken at the following cement facilities towards the end of the reporting period in order to compare the site conditions with the undertakings made in the representations responding to the inspection findings. The Department is in the process of finalizing a decision on whether to take enforcement action in relation to these facilities:

- Natal Portland Cement: CIMPOR ("NPC") Simuma
- Pretoria Portland Cement ("PPC"): Port Elizabeth

- PPC: Riebeeck West
- PPC: De Hoek
- AfriSam Ulco
- PPC Dwaalboom
- Lafarge Lichtenburg
- PPC Slurry

8.1.4 Status quo in relation to inspections at facilities conducted in 2007/08 and 2008/09 financial year:

FERRO-ALLOY, STEEL AND IRON SECTOR

Metalloys, Meyerton (BHP Billiton) (2007/08 NCER)

After the compliance inspection report was issued and representations received from the facility in 2008, the Gauteng Provincial Department of Agriculture and Rural Development ("GDARD") [then Gauteng Provincial Department of Agriculture, Conservation and Environment ("GDACE")] issued the facility with a pre-compliance notice in terms of section 31L of the NEMA and a pre-directive in terms of section 28(4) of the NEMA. This pre-notice requested the facility to provide GDARD with reasons why the facility should not be issued with a final notice requiring the submission of certain information and implementation of additional measures primarily aimed at waste disposal on site as well as the pelletising plant.

After review of the representations submitted in response to the pre-notice, the GDARD decided to issue a final notice on 20 March 2009 focusing on those issues related to the pelletising plant. Further representations and information were provided to GDARD. GDARD together with the national department will decide on further enforcement action that may be required in the next financial year.

Vanchem Vanadium Products (Pty) Ltd (2007/08 NCER)

The findings of the initial compliance inspection are set out in the 2007/08 NCER together with the subsequent administrative enforcement action that was taken. In response to the requirements of the Pre-Notice (issued in terms of the Atmospheric Pollution Prevention Act) and the Pre-Directive (NEMA-S28) issued, Vanchem provided the Department with an Action List, dated 29 April 2008. Following various meetings and further representations which resulted in specific timeframes for actions to be taken, resulted in an agreement between the Department and Vanchem on the actions required. Reports are submitted regularly by Vanchem on the progress of these actions and to date the relevant timeframes are being adhered to.



Hernic Ferrochrome, Brits (2007/08 NCER)

Hernic's representations in response to the inspection report addressed most issues and concerns raised in the report. Hernic proposed a number of measures to deal with the pollution emanating from its various waste sites, many of which are historical. They also advised that the regular exceedances of permit limits relating to emissions to air have been addressed by the rebuilding of the scrubber system and dust is suppressed by the newly introduced water sprayers above the conveyor feeding pellets to the stockpiles. A follow-up inspection to Hernic will be undertaken in order to ensure that the facility is meeting timeframes and to confirm whether or not the environmental impacts, to air and ground water contamination, have been reduced and are being effectively managed. The outcome of the follow-up inspection will determine whether enforcement action is necessary.

Xstrata Wonderkop Works (2008/09 NCER)

The 2008/09 NCER provides information on the findings of the inspection conducted. Subsequent to the issuing of the report and receipt of representations, Xstrata was issued with an enforcement letter, dated 13/04/2010, requesting further information on issues that have not been adequately addressed in the representations. This information, which relates primarily to the APPA contraventions, has been received. A review of this information by Air Quality specialists will inform the need for further action

REFINERIES SECTOR

PetroSA (2007/08 NCER)

A follow-up inspection was recently conducted at the facility in order to ensure that it is meeting the timeframes provided in its representations responding to the inspection report findings and to confirm whether or not the environmental impacts, particularly related to waste and possible ground water contamination, had been reduced and are being effectively managed. The follow-up inspection report is still in the process of being finalised and the Department will decide whether enforcement action is necessary based on the final findings thereof.

8.2 Reactive Enforcement

In addition to undertaking proactive compliance monitoring and enforcement, the different environmental departments, both at provincial and national level, spend a significant amount of time investigating and initiating enforcement action in reaction to reports of environmental contraventions. Although a large percentage of this type of enforcement action in relation to waste, pollution and environmental impact assessment cases is initiated through the use of administrative enforcement mechanisms, such as directives and compliance notices, there has been an increase in the number of criminal prosecutions relating to these matters. Often, however, it is necessary

to follow both the criminal and administrative enforcement routes in order to ensure that the perpetrators are punished for the illegal activities but that the environment is also protected and rehabilitated. Below is a discussion of some of these cases that were dealt with during the reporting period.

8.2.1 Burial of Healthcare Risk Waste - Welkom

During 2009, based on information received by the department, Environmental Management Inspectors together with the SAPS uncovered a syndicate illegally disposing of a significant volume of Health Care Risk Waste (HCRW) on various properties in and around the Welkom area. Following a preliminary investigation, search warrants were executed simultaneously in four provinces at the end of November 2009. After discovering the buried waste on the specific properties, Compliance Notices were served on the owner of each of the properties as well as the company whose responsibility it was to legally dispose of this waste. In total four sites were identified as illegal disposal sites in the Welkom area and one in Klerksdorp in the North West Province.

The HCRW that has been buried includes needles, swabs, bandages, syringes, vials containing blood, drips, pharmaceuticals as well as other waste associated with the type of waste generated by hospitals. A limited amount of anatomical waste was also found. The Compliance Notices required the appointment of independent waste management service providers to be responsible for the cleanup of the sites as well as the appointment of a geohydrologist to assess the pollution levels and oversee the clean up and rehabilitation operation. As the HCRW was buried in the ground, the removal of the waste required the simultaneous removal of all soils that had the potential of being contaminated. A significant volume of waste (HCRW mixed with soil) therefore needed to be removed as part of the cleanup process. Due to the mixed nature of the waste and the sheer volumes involved, the only feasible option for disposal was landfilling the waste (even though the Department generally does not support landfilling of HCRW), particularly considering the safety risk that would be involved in the manual separation of the HCRW from the soil.

As there are significant costs associated with the clean up and rehabilitation, the individuals who were first issued with the Compliance Notices indicated that they were not in a financial position to comply with instructions. Such non-compliance to these notices amounts to a criminal offence. Further investigations into the sources / generators of the HCRW and the responsible waste management company led to the issuing of Compliance Notices to the Wasteman Group.

Wasteman, without admitting liability, has to date complied with the instructions in the notices. Although the clean-up operation began on 03 March 2010, it was temporarily halted in order further investigate the full extent of the volumes of waste which appeared to have been under-estimated. The operations re-commenced on 31 May 2010, after consideration by the Department of a specialist report that addressed those issues associated with the removal of these larger quantities. Although the Department is responsible for managing this enforcement action, the co-operation and assistance from the Matjhabeng Local Municipality in Welkom as well as the various provincial environmental



departments, namely Western Cape, Gauteng, FreeState, North West and the Kwazulu Natal, provided critical support at various stages of the process. The criminal investigation in relation to this matter is ongoing. The department is working closely with the South African Police Services, the National Prosecuting Authority and the Asset Forfeiture Unit in relation to this investigation. To date, seven arrests have been made.

8.2.2 Illegal developments in the Isimangaliso Wetland Park World Heritage Site

The iSimangaliso Wetland Park management authority has been extremely busy this reporting period taking enforcement action against a number of developments within the Park which are in contravention of both the National Environmental Management: Protected Areas Act and the NEMA. Criminal prosecutions have been successful in relation to two illegal developers, were both found guilty in two different cases and both received a fine of R100,000 and a five year suspended prison sentence conditionally suspended for five years. The conditions for the suspended parts of the sentences is that both accused do not contravene the NEM:Protected Areas Act in the next five years and that they at their own cost rehabilitate the development site in accordance with a rehabilitation plan developed by the iSimangaliso Wetland Park. Both developments were broken down and rehabilitated. There were a further 4 criminal cases opened and dockets have been handed over to the National Prosecuting Authority for prosecution.

The department assisted the management authority in the issuing of a Compliance Notice to Mr Ephraim Madolwane Tembe and Mr Simon Mlabane Tembe who were responsible for building on the frontal dune in the sensitive Bhanga Nek area of the Park. This notice required the perpetrators to remove structures, as they had been built in the absence of environmental authorization, and rehabilitate the area. These instructions were ignored, even after the Minister of Water and Environmental Affairs confirmed the Compliance Notice in terms of an appeal process. Failure by the Tembe brothers to comply with these instructions left the management authority and the department with no option but to approach the High Court for an order to demolish the buildings and rehabilitate the environment. An interdict was granted in favour of the authorities but the perpetrators still refused to comply. These developers are now therefore in contempt of the court order and the management authority has again approached the High Court for relief, asking the court

1) to interdict and restrain the Respondents from threatening, assaulting or in any way interfering with the lawful execution of their duties by any employees of the park, 2) for an order committing the Respondents to prison for a period of three (3) months and 3) for an order authorising the First and/or Second Applicants immediately to enter the Bhanga Nek camp/development site to destroy, remove and/or demolish the new construction taking place on the site and to rehabilitate that portion of the site to the condition in which it was.

The management authority has also had to resort to approaching the High Court for interdicts for

the demolition of many of other illegal structures. Court interdicts were granted by the Durban High Court in November 2010 against the Inkwazi Resort, the Joubert holiday cottage and the Bronkhorst lodge. All these respondents failed to comply with the court order and in February 2010 the park authorities demolished these developments in terms of the orders granted. Rehabilitation work is presently underway at all these sites.

8.2.3 Pan African Parliament (PAP)

In line with an environmental authorization issued by the department, the Department of Public Works (DPW) began with construction of the Pan African Parliament at the site in Midrand, Gauteng. During the excavation activities associated with the bulk earthworks, it became clear that the construction was, in fact, taking place on a wetland. The existence of the wetland had not been identified during the environmental impact assessment process and this information had therefore not been taken into account in the decision to issue the authorization.

A directive was issued to the Department of Public Works to cease with all construction activities and to implement specific measures to mitigate ongoing harm to the environment, particularly downstream of the site. This directive was later amended in line with further recommendations of wetland specialists. The DPW has appointed consultants and specialists to ensure maintenance of the mitigation measures on site and to move forward with the legal and permitting processes required in terms of the environmental legislation. These processes will facilitate a thorough assessment of the future use of the site, involving public participation.

8.2.4 Port Elizabeth Harbour

Complaints were received regarding the environmental impacts associated with the manganese ore facility as well as the fuel tank farm situated at the PE Harbour. The impact of a fuel leak emanating from the tank farm was highlighted as a particular area of concern. An environmental compliance inspection was conducted by Environmental Management Inspectors ("EMIs") from both the national and Eastern Cape Provincial Department of Economic Development and Environmental Affairs ("DEAET") on 3 October 2008. Based on the findings of the inspection, as well as a review of the information submitted, the Department issued pre-directives to Shell SA (Ltd) ("Shell"), Transnet Port Terminals ("TPT") and Vulindlela Logistics (Pty) Ltd, a company who had been operating a scrap metal yard on the premises.

Upon request from Shell and TPT, meetings with both entities were held in July and August 2009 and it was agreed that a follow-up inspection to the PE Harbour would be conducted in order to assess the current state of the site and assess whether the measures proposed had been implemented and the impacts were being effectively mitigated. Following this follow-up inspection, which took place in September 2009, and a review of additional information, the department made a decision to issue TPT with an amended pre-directive. Although many of the concerns raised in



the initial pre-directive had been investigated and assessed by means of specialist studies, it was felt that a number of issues remained significant. The amended pre-directive therefore ensured that TPT was not required to implement some of the initial measures which were no longer required as specialist studies had been conducted and added instructions based on the findings of these specialist studies and new information.

In line with the requirements of administrative justice, TPT has again been afforded an opportunity to make representations in response to the amended pre-directive. No amended pre-directive or final directive has yet been issued to Shell. An environmental impact assessment is currently underway in relation to the fuel leak and measures required in order to manage this aspect. As soon as a decision has been made in relation to this process, a decision will be made as to whether further enforcement action is required.

8.2.5 Sabie Sawmill – York Timbers

On 11 October 2007, a High Court Order instructed various government departments (including the national and Mpumalanga provincial environmental departments) to ascertain the state of compliance with environmental legislation of the Sabie Sawmill and Plywood Plant (now operated by York Timbers). A joint inspection was conducted by Environmental Management Inspectors (“EMIs”) from the national and provincial departments, officials from the Thaba Chweu Municipality, as well as the Department of Water Affairs (“DWA”). The findings from this inspection, a follow-up inspection and a review of additional information resulted in the development of an enforcement strategy aimed at the significant number of non-compliances found at the site. This strategy included a criminal investigation, with a specific focus on the waste issues.

Representations were made by York Timbers in response to the inspection report findings, which included non-compliances with various conditions of its air pollution registration certificate, effluent permit and water use licence. Copies of the inspection report were also sent to the Director-Generals of the Department of Water Affairs, Department of Health, the Department of Labour, the Municipal Manager of the Thaba Chweu Local Municipality, as well as the Head of the provincial department

Following an opportunity given to York Timbers to make oral representations, the department decided to use a combination of administrative enforcement tools, as provided for in the various pieces of environmental legislation.

The pre-directive was aimed at addressing the activities and situation on site that poses a risk of serious harm to the environment (including air pollution) while the pre-compliance notice was aimed at dealing with the non-compliances relating to permitting requirements. These notices were issued to York Timbers in January 2009 and representations received in response thereto. The department is presently in a final directive, which in the process of being finalised. The department is in the process of making a decision as to whether or not final notices need to be issued.

8.2.6 SANRAL

The Department is beginning to identify institutions and persons that continue to contravene environmental legislations despite enforcement actions being taken. Although SANRAL obtains the relevant environmental authorisations, officials from the Department continue to detect non-compliances with the conditions of these authorisations. The most recent non-compliance was detected in relation to the Central Operations Centre being constructed along the N1 highway in Gauteng; however, non-compliances have also been detected in the past in relation to authorisations for the R21 highway upgrade in Gauteng, Mokapane Weighbridge, the N4 ring road in Nelspruit and the N1 highway upgrade in Gauteng. Based on these repeated contraventions, the Department will now have to step up its enforcement response as the administrative enforcement tools used in relation to these contraventions do not appear to be effective in raising the level of compliance.

9. Biodiversity Enforcement and Compliance

9.1 Biodiversity Enforcement and Compliance Capacity

Biodiversity enforcement and compliance has been fragmented for a long time due to the concurrent competence of nature conservation but this will change in the not so distant future as a new directorate has been approved within the Branch Biodiversity and Conservation of the Department of Environmental Affairs (DEA), namely the Directorate: Biodiversity Enforcement. The purpose of this directorate is to coordinate enforcement and compliance with the National Environmental Management: Biodiversity Act and the National Environmental Management: Protected Areas Act.

A national, multi-departmental biodiversity investigators forum was established in March 2009. This Forum coordinates and acts as a contact point where all biodiversity related law enforcement information could be collected, accessed, distributed and tasked to specific subgroups of the Forum. Provincial conservation and South African National Parks investigators and police officers use the Forum to discuss, share and exchange information on wildlife related law enforcement organized crime incidents such as the increased illegal killing of rhinoceros.

The brunt of the rhino poaching onslaught over the years has been borne largely by the Kruger National Park (KNP), and the provincial reserves under the management of Ezemvelo KZN Wildlife (EKZNW). Since 2000 the KNP have lost a total of 207 animals and EKZNW a total of 82 animals. The last two years, (January, 2008 through to June, 2010) has shown a dramatic spike in the illegal



hunting of in South Africa. All provinces except Western- and Northern Cape have experienced an increased level of poaching activity. In 2008, 83 animals were poached and in 2009, 122 animals were hunted illegally, followed by 105 animals already recorded as illegally hunted by 10 June for 2010. If poaching continues at the current rate, by the end of December 2010, 242 animals will in all likelihood have been illegally killed.

9.2 Biodiversity Regulations/Norms and Standards

The DEA published national CITES Regulations on 5 March 2010 to be in compliance with CITES requirements that all Parties must have adequate national legislation for the implementation of the Convention. The DEA will issue CITES permits for all organs of state while the provincial conservation authorities will issue CITES permits for private individuals and all other institutions.

The Branch Biodiversity and Conservation has published national norms and standards for the marking of rhinoceros horn and the hunting of white rhinoceros for trophy hunting purposes on 20 July 2009 to further regulate marking and hunting of rhinoceros. These norms and standards give guidelines to provincial conservation authorities on the marking of rhinoceros horn and the control of hunting of white rhinoceros which have escalated tremendously over the last few years.

During February 2010 one person was arrested in the Free State for selling *Merwillia plumbea*, Blue squill, which is protected under the Threatened or Protected Species Regulations (TOPS), without permits. This person was also selling other plant material which is protected under the Free State Ordinance 8 of 1969. This case was finalized in May 2010 with a conviction of R6000, 00 or 8 months in prison suspended for three years. It seems that the magistrates see the non compliance to TOPS species as more serious than the Provincial legislation.

A further six cases are still pending or still under investigation in the Free State, the items confiscated vary from ivory, Blue cranes, Serval, Crocodile, Python, *Merwillia plumbea*, Aardwolf, Sungazers, Otters, Brown hyena etc.

9.3 INTERPOL Wildlife Crime Working Group

Officials from DEA and SANParks represented South Africa at the 21st Meeting of the Wildlife Crime Working Group of INTERPOL which was held in Manaus, Brazil in September 2009. The meeting brought together 80 participants from 29 of INTERPOL's member countries, the private sector and a number of international and non-governmental organizations.

Seventeen years ago, INTERPOL's General Assembly adopted a resolution creating its Environmental Crimes Committee, which in turn is supported by two working groups of which the Wildlife Crime Working Group is one. The Working Group is composed of decision-makers and

investigators working in the field of wildlife crime and strives to identify the various problems that arise in connection with wildlife crime investigations and find possible solutions. The first two days of the meeting were open to civil society, including non-governmental organizations and stakeholders. The purpose of the open meeting was to encourage communication, co-ordination and co-operation with the various stakeholders outside of government and to ensure that the strategies we develop consider the opinions of society at large. The next three days were closed sessions attended by police and governmental wildlife law enforcement officers and specialists and included discussion of emerging wildlife crime issues, law enforcement responses, and the activities of the Wildlife Crime Working Group. Working groups on Strategic planning, Wildlife prosecution assistance, Elephants and Rhinoceros, Communication and Operations were formed. The meeting also saw the development of future projects including a Wildlife Operations Project to work towards conducting international operational law enforcement activities around global wildlife crime threats, a Sustainable Funding Project, an Elephant and Rhinoceros Project and a project to improve communications.

South Africa participated in two INTERPOL law enforcement operations namely operation TRAM where the traditional medicine markets were targeted and Operation Mogatle where the target was illegal possession and trade in rhino and elephant products.

10. National Department Complaints and Emergency Incidents Register

DEA continued to collect statistics on environmental complaints received from the Environmental Crimes and Incidents Hotline, from the Minister and Director-General's office as well as direct and referred complaints/incidents from other organs of state or the public. The hotline serves as the main entry point for complaints on environmental crimes and emergency incidents and does not include complaints reported directly to provinces and local authorities or other EMI Institutions. There has been a significant increase in the number of complaints reported during 2009/2010 compared to 2008/9 financial year. Having carried a number of complaints from previous years, the newly established sub-directorate for complaints had to deal with backlogs while maintaining the momentum on the newly reported complaints. Despite the amendment to S30 of NEMA that criminalised the failure to report an emergency incident, the Department has not seen a marked increase in the volume of such incidents being reported. This could be attributed to a general lack of understanding of the definition of a reportable emergency incident or how and where to report S30 emergency incidents.



Nature of Complaint	Financial Year			Total
	2007-2008	2008-2009	2009-10	
Air pollution	76	58	64	198
Noise pollution	7	1	0	8
Illegal dumping	58	53	60	171
Illegal development	40	13	14	67
Illegal operation	84	56	58	198
Mining	11	4	20	35
Water pollution	24	18	44	86
Others	10	3	40	53
Poaching	13	4	21	38
Deforestation	4	3	0	7
Spillage	4	3	29	36
Cycads	2	3	1	6
Emergency Incidents	49	16	38	103
Total	382	235	389	1006

Table 7: Number and classification of complaints from the hotline

Financial Year	INSTITUTION REFERRED TO					Total
	DEA	DWA	DMR	LOCAL GOVERNMENT	PROVINCES	
2007-2008	248	46	6	26	7	333
2008-2009	123	34	4	11	47	219
2009-2010	138	63	22	6	122	351
Total	509	143	32	43	176	903

Table 8: Number of DEAT referred complaints and incidents

11. Capacity Building for EMIs, Magistrates and Prosecutors.

11.1 EMI Basic Training

2009/10 saw approximately 224 officials and students undergo the Environmental Management Inspector Basic Training Programme presented by three tertiary education institutions (University of South Africa, University of Pretoria and Cape Peninsula University of Technology). During this period, the alignment of environmental compliance and enforcement capacity with the regulatory duties of the various spheres of government in terms of NEMA and the SEMA's resulted in initiatives such as the provision of financial assistance to 13 local authority officials to undergo the basic training course in support of the implementation of NEM:AQA.

The next financial year will see national DEA undertake an inspectorate – wide training needs analysis that aims to gather comprehensive feedback from EMIs on the content, modality and delivery of the basic training course 5 years after it was first presented in the country. The completion of an EMI Operating Manual, consisting of a comprehensive set of Standard Operating Procedures, is also expected to assist the EMIs execute key compliance and enforcement activities in a consistent and legally defensible manner.

11.2 EMI Field Ranger Training (Grade 5)



DEA continued to collaborate with the NGO TRAFFIC (East-Southern Africa) to develop training material for field rangers or Grade 5 EMIs under a Norwegian-funded project. The filming, production and translation (into six official South African languages) of an instructional training DVD and facilitators' guide took place with the assistance of Ezemvelo-KZN Wildlife, SANPARKS and the Language Services section of the Department of Arts and Culture. A national workshop was held on the 31st of March 2010 at the Johannesburg Zoo with all the relevant EMI Institutions to discuss the content of the training material as well as the implementation thereof in the coming year.

11.3 EMI Specialised Training

In February 2010, 42 officials from across South Africa attended a week's intensive training course at the South African Biodiversity Institute in Silverton, Pretoria. This course focused on waste and pollution crime scene management, which was presented by subject matter experts from the different SAPS Forensic sections together, officials from the Environment Agency of England and Wales as well as specialists from national DEA. This 5 day course culminated in a practical exercise at the Garskloof Landfill site in which the EMIs were asked to manage and process crime scenes under the watchful eye of an expert. This course was also filmed and a six pack DVD set was distributed to all EMI institutions.

11.4 Magistrates and Prosecutors

The Department of Justice and Constitutional Development's Justice College continues to support the initiative to raise the awareness and competency of both magistrates and prosecutors in the prosecution and adjudication of environmental crime. In 2009/10 8 workshops were held across the country in provinces such as Gauteng, Western Cape, Mpumalanga, Kwazulu Natal and Eastern Cape, in which about 150 magistrates and prosecutors were exposed to environmental legislation and the crimes that are committed by offenders. The presenters of these workshops consist mainly of provincial EMIs, facilitating a focused discussion of local environmental challenges; and also encouraging personal networking with other key role-players in the criminal justice system.

The coming year is likely to see a concerted effort to capacitate court officials who are expected to staff the dedicated environmental courts proposed by the Minister in November 2009. A Magistrates Benchbook as well as an updated version of the existing prosecutors' guide to environmental crime will be finalized and distributed.

11.5 EMI International Programme – United Kingdom Green Scorpions Project

The Environment Agency of England and Wales (EA) continued to provide both operational and

capacity-building support to the Inspectorate. During this period, the EA's legal section provided insight to South African magistrates and prosecutors on how environmental crimes are managed in the UK. In addition, technical and enforcement input from the EA was given at courses on waste and pollution crime scene management; as well as the paper and pulp industry (including on-site support for the conducting of the actual compliance inspections). 2009/10 marks the end of the current phase of the working partnership between DEA and the EA. 3 senior managers from national DEA's Regulatory Services travelled to the UK to meet their counterparts, observe international practices in environmental compliance and enforcement and generally undertake an assess the project. This collaboration began almost 5 years ago, since the inception of the Inspectorate, and has undoubtedly made an invaluable contribution to the development of the EMIs in executing their compliance and enforcement functions.

12. Stakeholder Engagement

12.1 MINTECH WGIV

The main forum of national and provincial coordination on environmental compliance and enforcement issues remains MINTECH Working Group IV. The members of this forum are all branches of national DEA, SANPARKS, the provincial environmental authorities and parks boards. In 2009/10, the focus of the working group shifted from capacity-building and policy development towards the implementation of NEMA and the SEMAs. In September 2009, for example, a national Waste Task Team was convened to facilitate the implementation of NEM:WA.

In addition to operational compliance and enforcement issues, the Working Group collaborates to develop joint compliance and enforcement strategies, policies and procedures and information resources. Stakeholder engagement and capacity building initiatives also form part of the agenda of this quarterly meeting.

12.2 Local Authority EMIs

In terms of the Constitution as well as NEMA and the SEMAs, national, provincial and local spheres of government have original duties to undertake certain environmental compliance and enforcement functions. For example, the transfer of the air emission licensing function from national to local authorities in terms of NEM:AQA also incorporates the transfer of compliance and enforcement duties that arise from that permitting function. Realising the serious impact of the commencement of the NEMA/SEMAs on the environmental compliance and enforcement function of local authorities, MINTECH WGIV (Compliance and Enforcement) convened a national 2 day workshop in January 2010 with 8 provincial environmental authorities, 17 local authorities, the Departments of Health, Cooperative Governance and Traditional Affairs as well as the Health Professions Council of South Africa and the South African Institute of Environmental Health Practitioners.



The aim of the workshop was to discuss key issues in the expansion of the Inspectorate to local authorities, including the Draft National Guideline for the Designation and Operation of EMIs at Local Authorities; as well as the development of individual provincial action plans for the implementation of this guideline. The draft guideline requires urgent approval from MINTECH so that the process to designate the 70 local authority officials that have already received EMI basic training can commence. The potential alignment of the qualification requirements of EMIs and Environmental Health Practitioners will undergo closer scrutiny in the coming year.

13. What is ahead for 2010-11?

2010-11 marks five years since the inception of the Environmental Management Inspectorate. The commencement of pieces of national environmental legislation regulating air quality, waste, coastal management, biodiversity and protected areas, means that EMIs are now mandated to regulate across the full spectrum of environmental contraventions.

The continued focus on follow-up and media specific compliance inspections are likely to reveal the level of improvement of facilities in their environmental performance from the time period when the initial baseline inspections were conducted. The establishment and operation of the Directorate: Biodiversity Enforcement in the national department is likely to see increased coordination and effectiveness in the fight against wildlife crimes, such the current rhino poaching scourge.

Building the environmental compliance and enforcement capacity of all three spheres of government will be assisted through the implementation of the Draft National Guideline on the Designation of EMIs at Local Authorities – this document provides guidance to designating authorities on key issues relating to the designation and operation of local authority EMIs, who have significant compliance and enforcement duties in terms of national air quality and waste legislation.







environmental affairs

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REPUBLIC OF SOUTH AFRICA