

# National Environmental Compliance and Enforcement **Report**

## 2018/19



**environmental affairs**

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA





# National Environmental Compliance and Enforcement Report 2018-19

2019

**DEPARTMENT OF ENVIRONMENT, FORESTRY & FISHERIES**

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# CONTENTS

<b>GLOSSARY OF TERMS:</b> .....	viii
<b>1. INTRODUCTION</b> .....	1
<b>2. KEY FINDINGS</b> .....	2
<b>2.1 The Environmental Management Inspectorate</b> .....	2
<b>2.2 Overall National Compliance and Enforcement Statistics</b> .....	4
<b>2.3 Statistics per Institution/ Province</b> .....	6
<b>2.4 National Complaints and Incidents</b> .....	6
<b>2.5 Annual Compliance and Enforcement Highlights</b> .....	6
<b>3. ENVIRONMENTAL MANAGEMENT INSPECTORS</b> .....	9
<b>3.1 ENVIRONMENTAL MANAGEMENT INSPECTORS PER INSTITUTION</b> .....	9
3.1.1 Local Authority Environmental Management Inspectors .....	10
3.2.1 Grades 1- 4 Environmental Management Inspectors .....	10
3.2.2 Grade 5 Environmental Management Inspectors .....	11
3.2.3 Environmental Management Inspector per institution .....	13
<b>4. OVERALL NATIONAL COMPLIANCE AND ENFORCEMENT STATISTICS</b> .....	15
<b>4.1 Enforcement</b> .....	15
Inspection Activities of EMI Institutions .....	19
4.2.3.1 Inspection Triggers .....	21
<b>5. STATISTICS PER NATIONAL INSTITUTION/PROVINCE</b> .....	23
<b>5.1 National Institutions</b> .....	23
5.1.1 Department of Environmental Affairs and Department of Water and Sanitation .....	23
5.1.2 SANParks and Isimangaliso Wetland Authority .....	24
<b>5.2 Provincial Institutions and Parks</b> .....	25
5.2.1 Western Cape .....	25
5.2.2 KwaZulu-Natal .....	26
5.2.3 Gauteng .....	27
5.2.4 Limpopo .....	28
5.2.5 Eastern Cape .....	29
5.2.6 Free State .....	30
5.2.7 Mpumalanga .....	31
5.2.8 Northern Cape .....	32
5.2.8 North West .....	33

<b>6. ENVIRONMENTAL JURISPRUDENCE</b> .....	35
<b>7. LEGISLATIVE DEVELOPMENTS</b> .....	42
<b>8. INDUSTRIAL COMPLIANCE AND ENFORCEMENT</b> .....	46
8.1 Pro-active Compliance Inspections .....	46
8.2 Ensuring substantive compliance through enforcement notices .....	50
<b>9. BIODIVERSITY COMPLIANCE AND ENFORCEMENT</b> .....	57
9.2. Court sentences relating to rhinoceros matters .....	57
9.3 Cases relating to elephant .....	59
9.4 Court sentences relating to other species .....	60
<b>10. OCEANS AND COAST COMPLIANCE AND ENFORCEMENT OPERATIONS</b> .....	63
10.1 Operations: Operation Phakisa Initiative .....	67
10.2 South Africa participates in global “30 days at sea” operation .....	67
<b>11. JOINT COMPLIANCE AND ENFORCEMENT OPERATIONS</b> .....	68
11.1 Barberton Nature Reserve Illegal Mining Project .....	67
11.2 The Launch of the School Awareness Programme in Free State, Goldfields .....	69
11.3 Joint operation at Dinokeng and Rust de Winter Dam .....	70
11.4 Anti-poaching roadblock operations .....	71
<b>12. NATIONAL ENVIRONMENTAL COMPLAINTS AND EMERGENCY INCIDENTS</b> .....	72
<b>13 ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT CAPACITY BUILDING</b> .....	75
<b>14 WHAT IS AHEAD FOR 2019-20?</b> .....	83

## FOREWORD

"Littering, illegal dumping and the pollution of our air, our streams, our rivers and our oceans have had negative effects on our health, our quality of life and on the very appearance of our country. We have become the throwaway generation. Instead of putting litter into waste bins, we toss it out onto the streets, instead of managing our waste, we dump it in places it is not supposed to be. All this makes our planet sick, it makes us sick and it makes our children sick. It is time for change."

These were the sobering words of President Cyril Ramaphosa as he launched the Green Good Deeds Programme in East London in March 2019. The programme is premised on sustainable development principles and seeks to encourage responsible environmental practice within and across all sectors and levels of society by changing behaviour towards littering, illegal dumping and waste in general. It is a clarion call to individuals, private sector, labour, NGO's, interfaith formations and society at large to clean South Africa, to make our cities, towns and rural areas places where it is safe and healthy for all to live.

The challenge of environmental authorities, both globally and locally, is to ensure an environment that is not harmful to their citizens' health and well-being, should not be underestimated. A recent international study estimates that the global production of plastic has increased from 2 million metric tons (Mt) in 1950 to 380 million Mt in 2015. By the end of 2015, 8,300 million Mt of virgin plastic had been produced. Significantly, roughly two-thirds of all plastic ever produced has been released into the environment and remains there in some form— as debris in the oceans, as micro- or nanoparticles in air and agricultural soils, as microfibers in water supplies, or as micro-particles in the human body. In 2010, between 4.8–12.7 million of plastic were discharged into the ocean. A 2012 study by the Department of Environmental Affairs shows that South Africa generated 108 million tons of waste, with approximately 90% ultimately ending up in landfill sites. Based on population and GDP growth information, it is estimated that this figure rose to approximately 114 million tons (of which 75% is landfilled) in 2016.

The status quo in South Africa is at risk of worsening due to China's recent trade restriction that bans its recyclers from importing 24 types of scrap, resulting in a drastic decrease of scrap plastic imports by 93% from 2017 to 2018. The impacts of China's trade restriction resonated throughout the global recycling industry. China went from importing 60% of scrap plastic generated by the G7 countries to less than 10% in 2018. This poses significant challenges to both developed and emerging economies. In developed countries, new recipients for scrap plastic need to be found. In 2017 for example, a stockpile of 23,000 tons of unsorted imported scrap plastic was open-burned in Latvia. This is because appropriate recycling facilities were not available in the country and the importer was not able to trade scrap plastic with China due to their change in policy.

President Ramaphosa concluded the launch of the Green Good Deeds Programme with this call to action, *"So let us commit today, right here and right now, that we will each do one good green deed a day, for the sake of ourselves, for the sake of others, and for the sake of our country."*

Firstly, I would like to commend the Environmental Management Inspectorate for the important work it has undertaken in the 2018/19 financial year, as outlined in this, the 13th National Environmental Compliance and Enforcement Report. At the same time, I call on the Inspectorate to let the President's message resonate loudly and clearly throughout its ranks. May these wise words act as a source of inspiration for each and every EMI to increase your efforts in fulfilling your Constitutional imperative to protect the environment against pollution and ecological degradation; and to take compliance and enforcement measures necessary to achieve the progressive realisation of this right. In the face of seemingly insurmountable challenges facing the environment, we cannot afford to fail...we must succeed.



**ISHAAM ABADER**



**DEPUTY DIRECTOR-GENERAL: REGULATORY COMPLIANCE & SECTOR MONITORING, DEPARTMENT OF ENVIRONMENT, FORESTRY & FISHERIES**

## ACRONYMS

### Key:

AIS

CITES

DG

EMI

GEF

GG

GN

NECER

SADC

SEMA

TOPS

WGIV

AEL

EA

RoD

WML

WUL

PCN

PM

### Key:

DEA

DMR

DWS

Eastern Cape DEDET

### General

Alien and Invasive Species

Convention on International Trade in Endangered Species of Wild Fauna and Flora

Director-General

Environmental Management Inspector

Global Environmental Facility

Government Gazette

Government Notice

National Environmental Compliance and Enforcement Report

South African Development Community

Specific Environmental Management Act as defined in NEMA

Threatened or Protected Species

Working Group 4

Atmospheric Emission Licence

Environmental Authorisation

Record of Decision

Waste Management Licence

Water Use Licence

Pre-Compliance Notice

Particulate Matter

### Institutions

National Department of Environmental Affairs

Department of Mineral Resources

Department of Water and Sanitation

Eastern Cape Department of Economic Development, Environment and Tourism



Eastern Cape Parks	Eastern Cape Parks and Tourism Agency
Ezemvelo	Ezemvelo KwaZulu-Natal Wildlife
Free State DESTEA	Free State Department of Economic Small Business Development, Tourism and Environmental Affairs
Gauteng DARD	Gauteng Department of Agriculture and Rural Development
Isimangaliso	Isimangaliso Wetland Park Authority
KwaZulu-Natal DEDTEA	KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs
Limpopo DEDET	Limpopo Department of Development, Environment and Tourism
Mpumalanga DARDLEA	Mpumalanga Department of Agriculture Rural Development, Land & Environmental Affairs
Mpumalanga Parks	Mpumalanga Tourism and Parks Agency
Northern Cape DENC	Northern Cape Department of Environment and Nature Conservation
North West DREAD	North West Department of Rural, Environment and Agricultural Development
NPA	National Prosecuting Authority
North West Parks	North West Park and Tourism Board
SANBI	South African National Biodiversity Institute
SANParks	South African National Parks
SAPS	South African Police Service
Western Cape DEADP	Western Cape Department of Environmental Affairs and Development Planning
DEA:EIP	DEA's Directorate: Environmental Impact and Pollution

**Key:**

APPA	Atmospheric Pollution Prevention Act 45 of 1965
CPA	Criminal Procedure Act 51 of 1977
ECA	Environment Conservation Act 73 of 1989
MRLA	Marine Living Resources Act 18 of 1998
NEMA	National Environmental Management Act 107 of 1998
NEM:AQA	National Environmental Management: Air Quality Act 39 of 2004
NEM:BA	National Environmental Management: Biodiversity Act 10 of 2004

**National Legislation**

NEM:ICMA	National Environmental Management: Integrated Coastal Management Act 24 of 2008
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
PAJA	Promotion of Administrative Justice Act 3 of 2000
POCA	Prevention of Organised Crime Act 121 of 1998

## GLOSSARY OF TERMS:

“**Admission of guilt fines (J534)**” means fines paid for less serious environmental offences in terms of Section 56 of the Criminal Procedure Act, 1977. For the purposes of this report, admission of guilt fines are reported separately from convictions imposed through formal trial proceedings.

“**Arrests by EMI**s” indicates the number of individuals arrested/summoned to Court by EMI for the purposes of criminal prosecution.

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

“**Convictions**” means convictions imposed by a Court, whether pursuant to a trial or a guilty plea. This excludes convictions by way of the payment of admission of guilt fines.

“**Criminal dockets**” means criminal dockets registered with the South African Police Service with an allocated CAS number.

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

“**Environmental crime**” is the violation of a common law or legislative obligation related to the environment which triggers a criminal sanction.

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

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

“**Initial inspection**” means the initial compliance inspection of a particular facility/person by EMI. These types of baseline inspections may cover a broad range of environmental aspects (for example, air, water, waste) as is the case with the sector-based strategic compliance inspections described in 8 below.

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

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

**“Notices/ directives issued”** means administrative enforcement tools, such as compliance notices and directives that are issued in response to suspected non-compliance with environmental legislation. These tools instruct the offender to take corrective action (e.g. ceasing an activity, undertaking rehabilitation, submitting information). Failure to comply with such compliance notice/ directive is a criminal offence.

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

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

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

**“Section 105A agreement”** means a plea and sentence agreement entered into between an Accused and the State in terms of which the Accused admits guilt and the conditions of the conviction and sentence are set out and confirmed by the Court.

**“S24G administrative fines”** means fines paid by applicants who wish to obtain an *ex-post facto* environmental authorisation after having unlawfully commenced with a listed or specified activity in terms of S24F(1) of NEMA or after having unlawfully commenced, undertaken or conducted a waste management activity without a waste management licence in contravention of section 20(b) of NEM:WA.

**“Unlawful commencement of listed activity”** means the commencement of activities which may have a detrimental effect on the environment and require an environmental authorisation or waste management licence. It is a criminal offence to commence or undertake these activities without first obtaining such an authorisation.

**“Warning letters”** are written documents that afford an opportunity to an offender to comply without initiation of a formal enforcement notice, 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 2018/19 financial year marks the 13<sup>th</sup> year in which DEA has collaborated with its provincial and local counterparts and statutory bodies to develop the National Environmental Compliance and Enforcement Report (NECER); a joint publication that aims to provide an overview of environmental compliance and enforcement activities undertaken by the various environmental authorities over the period of a financial year.

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

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

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

plans for the 2019/20 financial year.

It should be noted that the NECER is not without constraints. Constraints that should be noted include the fact that the NECER focuses on the activities of “environmental” authorities, but does not reflect the compliance and enforcement work being undertaken by other “related” sectors; such as water, agriculture, forestry and fisheries, mineral resources, labour, health or the South African Police Service. The NECER reporting system has also taken some time to filter through to the local authority level, although this year’s report shows encouraging signs of the growth of EMI activities in this sphere. In addition, the statistics reflected in this report emanate directly from the input received from the respective environmental authorities – no independent auditing or verification of this input is conducted by DEA or any other third party. In this regard, the report should be regarded as indicative (but not conclusive) of the general nature, scope and volume of activities undertaken by environmental compliance and enforcement authorities in this reporting period.

Despite these constraints, it is hoped that the NECER 2018/19 will continue to provide valuable information to its readers as it strives to highlight the critical work currently being undertaken by the environmental compliance and enforcement sector.



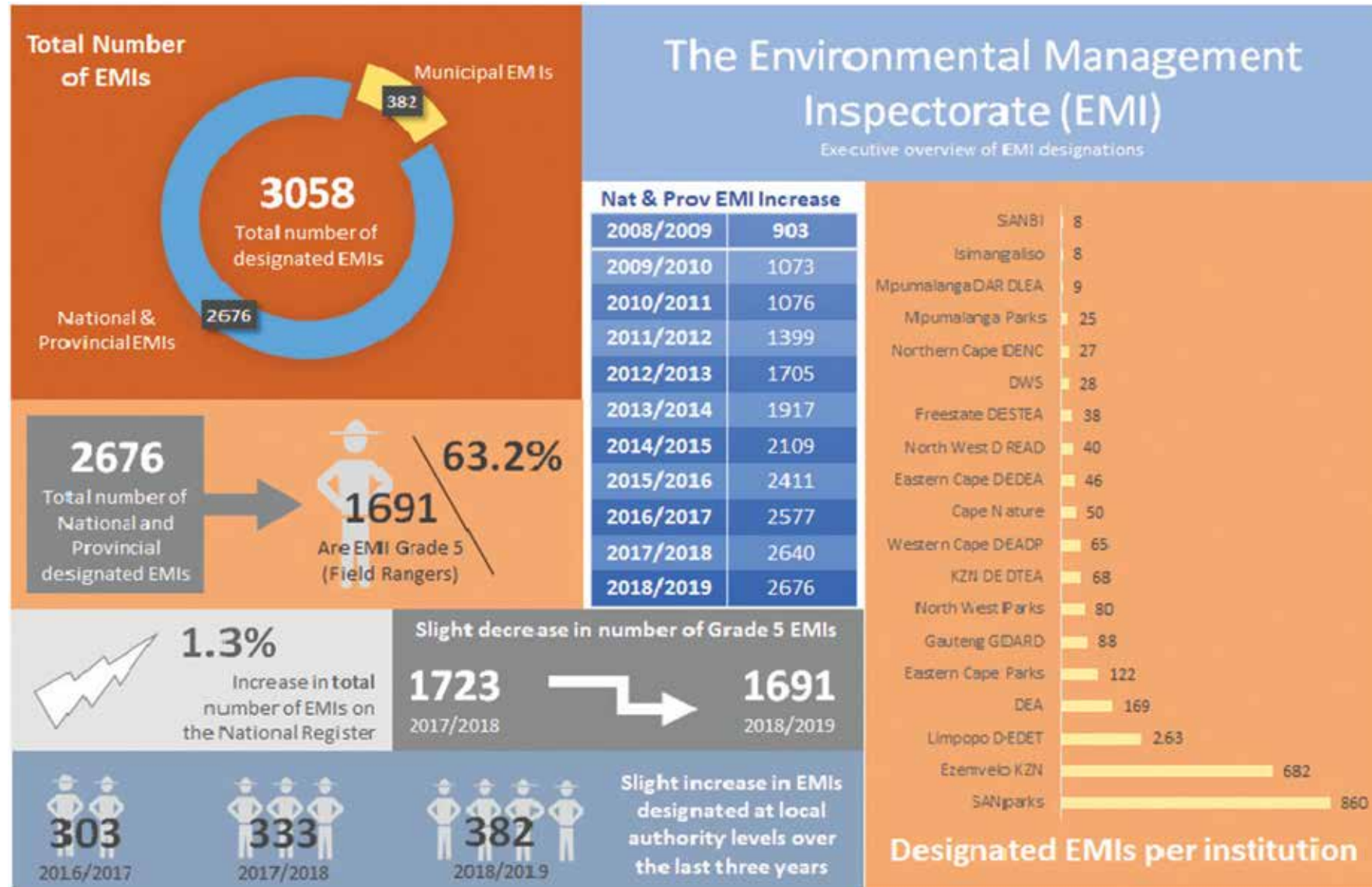
**KEY FINDINGS & ENVIRONMENTAL  
MANAGEMENT INSPECTORS**





2. KEY FINDINGS

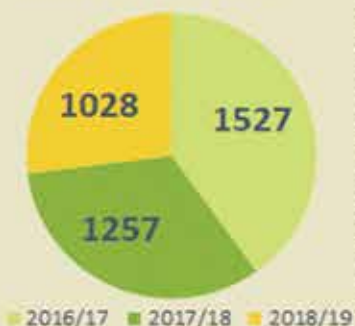
2.1 The Environmental Management Inspectorate



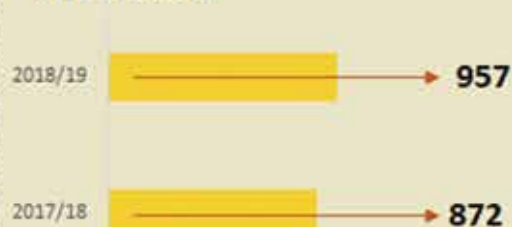
2.2 Overall National Compliance and Enforcement Statistics

Overall National Enforcement Statistics

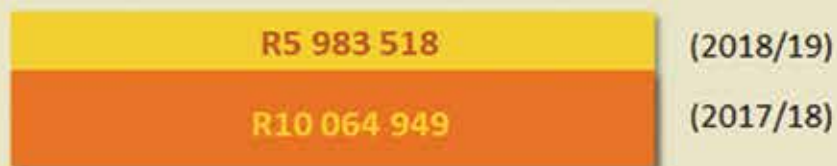
Dockets registered



Number of Admission of Guilt Fines Issued



The total number of section 24G administrative fines paid



Number of Criminal dockets handed to the NPA, has decreased from 2017/18 to 2018/19



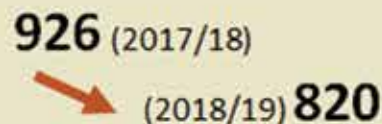
Decrease in Plea and Sentencing agreements



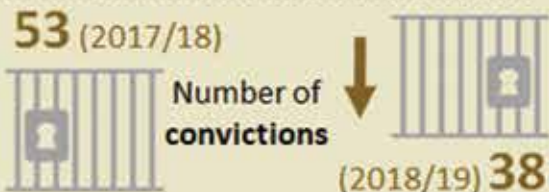
Total value of admission of guilt fines paid has increased from 2017/18 to 2018/19



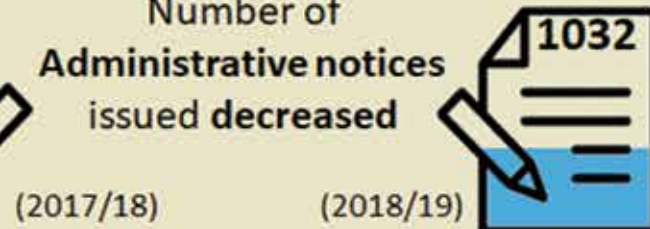
Total number of Arrests made by EMIs



Number of Acquittals increased from 10 to 14



Number of Administrative notices issued decreased





## Overall National Compliance Statistics

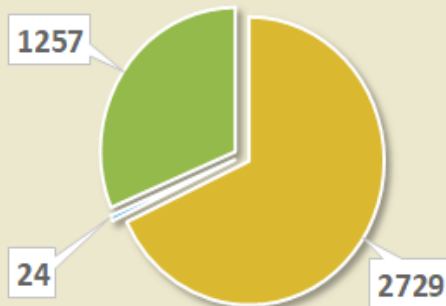


Number of **Facilities** that were inspected

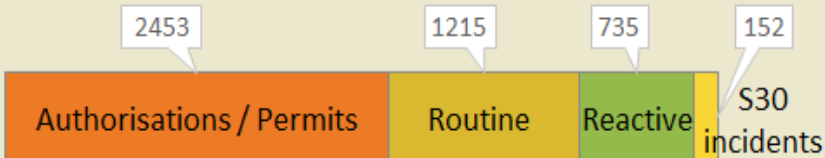
**4210** (2017/18)  
**4530** (2018/19)



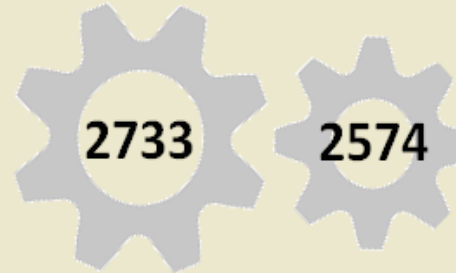
Of the number facilities inspected, **60,2%** were waste and pollution, **31,4%** biodiversity and **0.53%** oceans and coast related



The **4555 inspections conducted**, can be grouped in terms of



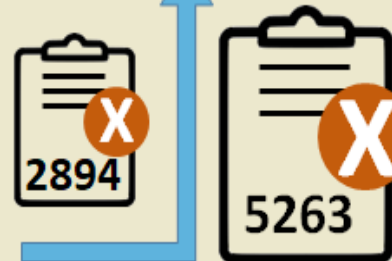
There was a **8.9% decrease** in the number of inspection reports finalised **compared** between the **two reporting years**



Total number of **proactive inspections** conducted, **decreased** from 2017/18 to 2018/19

Number of **Non Compliances** detected during inspections

2017-2018 2018-2019



**5037 brown**



**12 blue**

**214 green**



Number of **Non Compliances** detected represented per sector

Total number of **reactive inspections** conducted, a **8,3% decrease** compared to previous year



### 2.3 Statistics per Institution/ Province

- SANParks recorded the highest number of criminal dockets registered at **426**, followed by Ezemvelo with **168**. The third highest was Limpopo DEDET with **161** dockets registered while the least number of dockets recorded were by ECPTA at **6** criminal dockets, Mpumalanga DARDLEA at **5** criminal dockets and KwaZulu-Natal DEDTEA with **3** criminal dockets registered.
- SANParks recorded the highest number of arrests at **307**, followed by Limpopo DEDET which recorded **193** and Ezemvelo recorded **168** arrests.
- Cape Nature issued the highest total value of admission of guilt fines (J534s), amounting to **R 194 500** from the **113** fines issued, followed by Limpopo DEDET with a value of **R 184 410** from **366** fines issued.
- With a total of **272** DEA recorded the highest number of enforcement notices comprising of **180** pre-compliance, **71** pre-directive, **16** compliance notices and **5** directives. Secondly, WC DEADP recorded **230** enforcement notices – **72** pre-directives, **119** –pre-compliance notices, **12** final directives, and **27** - final compliance notices, thirdly KZN DEDTEA recorded **180** enforcement notices - **16** pre-directives, **120** pre-compliance notices, **15** directives and **29** final compliance notices. SANParks, CapeNature, Free State DEDTEA, Ezemvelo, Eastern Cape Parks, North West Parks Board and Mpumalanga Parks reported no enforcement notices issued.
- KwaZulu-Natal DEDTEA issued **59** warning letters, the highest of the EMI Institutions. They were followed by Eastern Cape DEDEA who issued **37** warning letters and thirdly Mpumalanga DARDLEA recorded **20** warning letters issued.
- Mpumalanga DARDLEA recorded the highest value of fines paid pursuant to section 24G in the sum of **R 2 995 000** followed by Gauteng DARD which recorded **R 2 710 018** while the Western Cape DEADP recorded **R1 977 750** and Limpopo DEDET recorded **R 208 500**.
- North West DREAD recorded the highest number of facilities inspected at **1277** of which **368** were in respect of brown issues, **15** were blue issues and **894** in respect of green. This was followed by KwaZulu-Natal DEDTEA with **712** (all brown) and DWS with **489** (all blue).
- DEA recorded the highest number of non-compliances detected at **1045** during the execution of compliance inspections, followed by KZN DEDTEA with **381**, followed by Eastern Cape DEDEA with **238**, Western Cape DEADP and Gauteng recorded having detected **153** non-compliances each. Other EMI institutions recorded less than **100** non-compliances detected.

### 2.4 National Complaints and Incidents

- In 2018/19, the total number of complaints and section 30 incidents reported through the various reporting channels was **680**, which indicates a decrease of **9.1% (97)** from **748** in 2017/18.
- The reported number of incidents in terms of section 30 of NEMA has increased from **115** in 2017/18 to **125** in 2018/19, while the number of complaints reported decreased by **12.3%** from **633** in 2017/18 to **555** in 2018/19.
- There has been a fluctuation in the reporting of certain types of incidents, with a significant decrease in reports on illegal dumping and waste related issues from **139** in 2017/18 to **87** in 2018/19 and followed by the significant decrease in poaching reported matters from **45** in 2017/18 to **1** in 2018/19, and reports of contraventions relating to import and export decreasing from **88** in 2017/18 to **38** in 2018/19.
- There has been a slight decrease in the number of complaints and incidents from all modes of reporting falling within the mandate of DEA from **312** in 2017/18 to **310** in 2018/19, while complaints which were referred to DMR, DWS and Local Authorities have decreased slightly.

### 2.5 Annual Compliance and Enforcement Highlights

Category	Result	Institution	Legislation
Most inspections conducted	Green issues = 658 Brown issues = 199 Total = <b>857 facilities</b>	Limpopo DEDET	Multiple
Highest sentence of direct imprisonment <u>without</u> the option of a fine	<b>State v Mpumalanga</b> <ul style="list-style-type: none"> <li>• Count 1: Regulation 45 (2) (a)(i) of Act 57 of 2003 (NEMPA) : Hunting of a protected animal in a National Park;</li> <li>• Count 2: Section 3 of Act 60 of 2000 : Possession of unlicensed firearm</li> <li>• Count 3: Section 90 of Act 60 of 2000 : Unlawful possession of ammunition</li> </ul>	SANPARKS	Regulation 45 (2)(a) (i) of Act 57 of 2003 (NEMPA)

2.5 Annual Compliance and Enforcement Highlights			
Category	Result	Institution	Legislation
	<ul style="list-style-type: none"> <li>Count 4: Section 120 (10)(b) of Act 60 of 2000 : Possession of a firearm with the intent to commit a crime;</li> <li>Count 5: Section 45 (1) of Act 57 of 2003: Trespassing in a National Park.</li> </ul> <p>The accused was sentenced to <b>20 years</b> imprisonment.</p>	SANPARKS	Regulation 45 (2)(a) (i) of Act 57 of 2003 (NEMPA)
Highest sentence for a pollution and waste case	<p><b>State v Emporium Base Minerals (Pty) Ltd and Another (Germiston Regional Court No: 4 SH 100/2017)</b></p> <p>The accused was found guilty in his personal capacity of illegal disposal of hazardous waste and causing significant pollution to the environment. The accused was sentenced to <b>8 years</b> imprisonment, of which is wholly suspended for a period of 5 years on the condition that the accused must rehabilitate the site.</p>		

2.5 Annual Compliance and Enforcement Highlights			
Category	Result	Institution	Legislation
Highest sentence for a pollution and waste case	The accused was found guilty in his personal capacity of illegal disposal of hazardous waste and causing significant pollution to the environment. The accused was sentenced to <b>8 years</b> imprisonment, of which is wholly suspended for a period of 5 years on the condition that the accused must rehabilitate the site.	DEA	Section 26(1) of NEMWA
Highest number of section 24G fines issued	<b>12</b> fines were issued and paid with a total sum of <b>R 2 995 000</b> being collected.	Mpumalanga DARDLEA	NEMA section 24G
The highest number of enforcement notices issued	<b>275</b> enforcement notices were issued, covering a broad range of contraventions in the brown, green (focused on alien and invasive species) and blue sectors.	DEA	NEMBA NEMWA NEMA NEMAQA NEMICMA
Highest number of admission of guilt fines issued	<b>366</b> were issued to the sum total of <b>R 162 780</b>	Limpopo DEDET	LEMA

# ENVIRONMENTAL MANAGEMENT INSPECTORS





### 3. ENVIRONMENTAL MANAGEMENT INSPECTORS

EMIs represent the environmental compliance and enforcement capacity in respect of NEMA and the SEMAs. There are, of course, officials appointed in terms of provincial legislation and local authority by-laws who also carry out environmental compliance and enforcement functions in terms of that legislation. In many instances, officials may carry both the EMI designation in terms of national environmental legislation; as well as a separate provincial or municipal designation in respect of ordinances or by-laws.

As at 31 March 2019, the national EMI Register (kept by DEA in terms of Regulation 6(2) of the Regulations relating to Qualification Criteria, Training and Identification of, and Forms to be used by Environmental Management Inspectors (GN R480 in GG 40879 of 31 May 2017)) reflected a total of 3058 EMIs, comprising of 2676 from national and provincial authorities and 382 from municipalities. The distribution (or annual increase) of EMIs is reflected in the table below.

#### 3.1 Environmental Management Inspectors per Institution

Institution Name	2016-17FY	2017-18FY	2018-19FY
<b>National Authorities</b>			
DEA	83	135	169
iSimangaliso	4	6	8
SANParks	802	859	860
DWS	-	17	28
SANBI	4	4	8
<b>Provincial Environmental Authorities</b>			
Eastern Cape DEDEA	50	44	46
Free State DESTEA	41	40	38
Gauteng DARD	49	50	88
KwaZulu-Natal DEDTEA	34	68	68
Limpopo DEDET	269	256	263
Mpumalanga DARDLEA	11	9	9
Northern Cape DENC	30	28	27
North West DREAD	46	46	40
Western Cape DEADP	77	66	65
<b>Provincial Parks Authorities</b>			
CapeNature	39	43	50

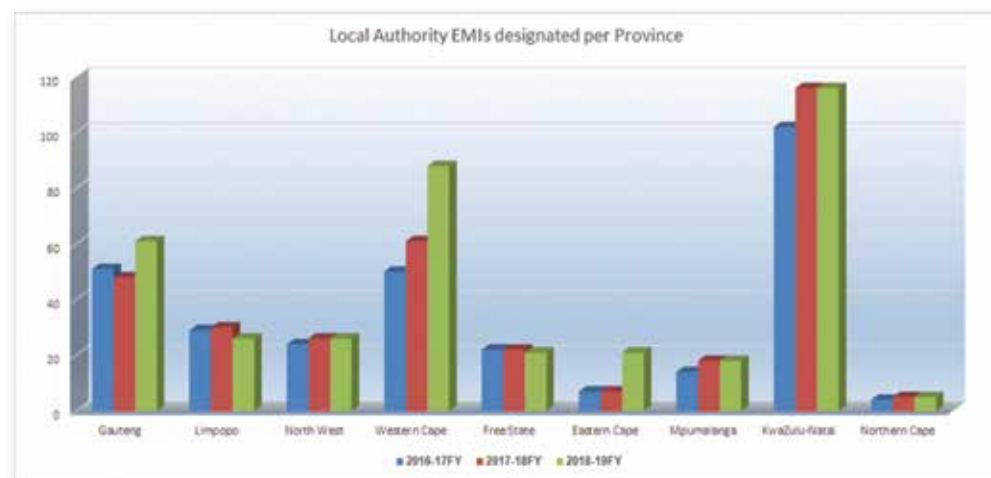
Eastern Cape Parks	158	137	122
Ezemvelo	605	661	682
Mpumalanga Parks	19	19	25
North West Parks Board	90	89	80
<b>TOTAL</b>	<b>2411</b>	<b>2577</b>	<b>2676</b>

### 3.1.1 Local Authority Environmental Management Inspectors

There has been a steady growth in the total number of EMIs at local authority level in the past 6 years since the commencement of the EMI local authority project. The addition of the local authority sphere of government to the capacity of the Inspectorate is aimed at capacitating local authorities to undertake compliance and enforcement in relation to certain environmental issues which fall within their existing mandate (in terms of Schedules 4 and 5 of the Constitution). The financial year saw the local authority EMI capacity increase by **14.7%** from **333** in 2017/18 to **382** in 2018/19, with **13** EMIs designated in Gauteng, **27** in the Western Cape and **14** in the Eastern Cape.

**Table: Number of local authority EMIs designated**

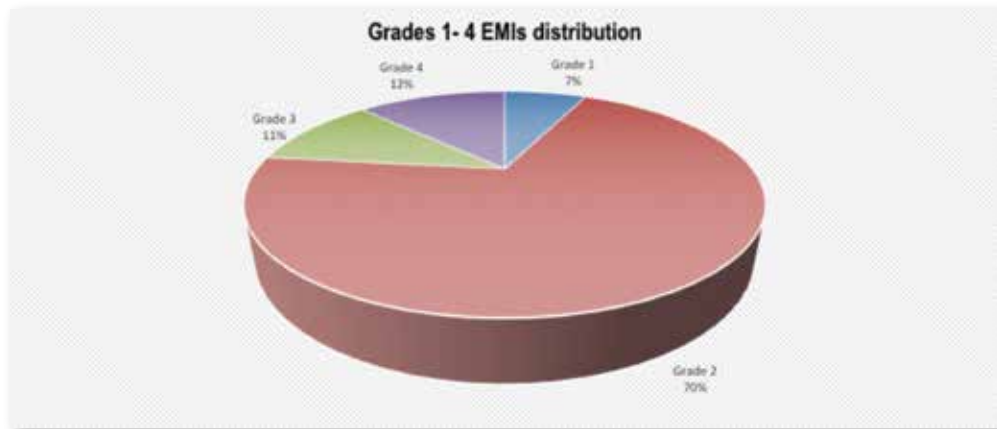
PROVINCE	2016-17FY	2017-18FY	2018-19FY
Gauteng	51	48	61
Limpopo	29	30	26
North West	24	26	26
Western Cape	50	61	88
Free State	22	22	21
Eastern Cape	7	7	21
Mpumalanga	14	18	18
KwaZulu-Natal	102	116	116
Northern Cape	4	5	5
<b>TOTAL</b>	<b>303</b>	<b>333</b>	<b>382</b>



**Graph 1: Graphical representation of municipal EMIs designated in different provinces over a three year period**

### 3.2.1 Grades 1- 4 Environmental Management Inspectors

EMIs are categorised according to various grades which reflect the compliance and enforcement powers bestowed on them in terms of Chapter 7 of NEMA to enable them to undertake specific functions. The grading system is intended to align the function of the EMI with the appropriate legislative powers. Grades 1, 2, 3 and 4 EMIs are located within all EMI Institutions and undertake compliance monitoring, and enforcement activities in the brown, green and blue sub-sectors.



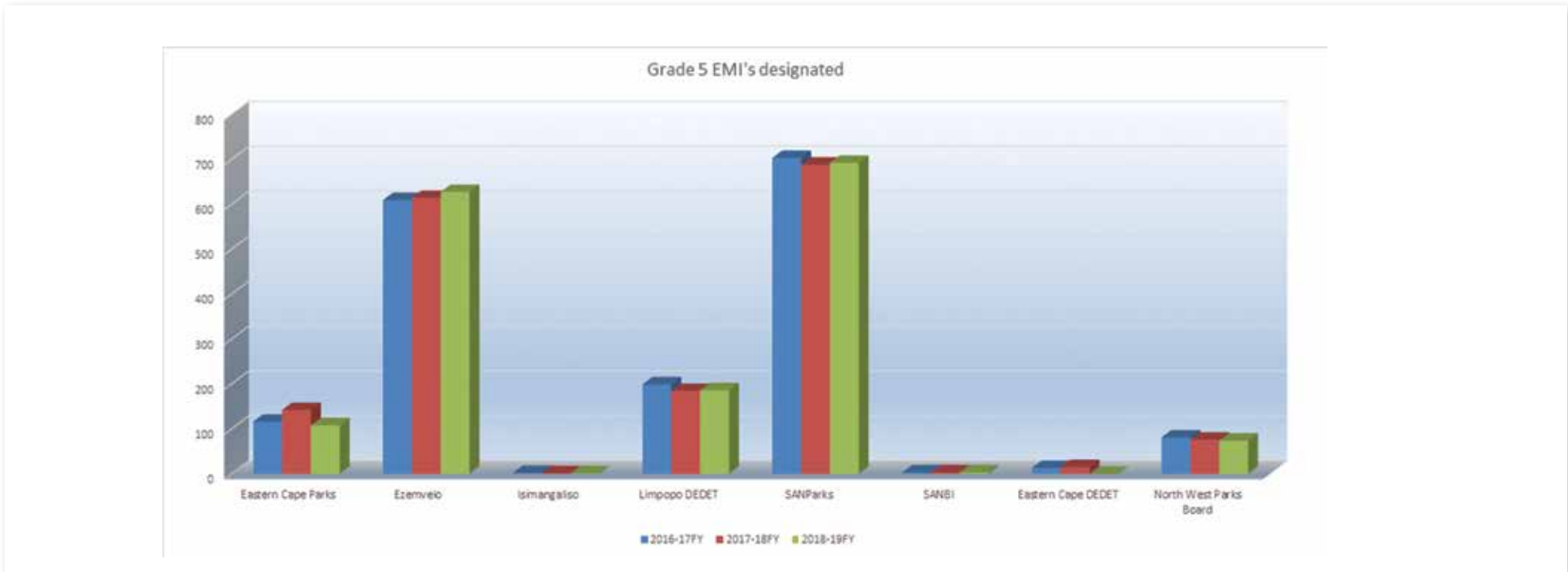
Pie Chart 1: Overall percentage distribution of EMIs Grades 1-4

### 3.2.2 Grade 5 Environmental Management Inspectors

Grade 5 EMIs are appointed as “Field Rangers” to execute compliance and enforcement duties within various national and provincial protected areas. Accordingly, they are predominantly spread across those EMI institutions who are management authorities in respect of protected areas. Grade 5 EMIs play a critical role in monitoring activities and undertaking enforcement within these protected areas by conducting routine patrols and forming key team members of various anti-poaching units. Although there has been a general increase in the number of Grade 5 designated EMIs since 2012/13, there was a slight **1.85% (41)** decrease in Grade 5 EMIs recorded in 2018/19 with approximately **180** field rangers from MPTA still awaiting Grade 5 EMI designation.

INSTITUTION	2016-17	2017-18	2018-19
Eastern Cape Parks	116	142	108
Ezemvelo	609	614	627
Isimangaliso	2	1	1
Limpopo DEDET	199	184	186
SANParks	703	688	692
SANBI	3	3	3
Eastern Cape DEDET	13	15	-

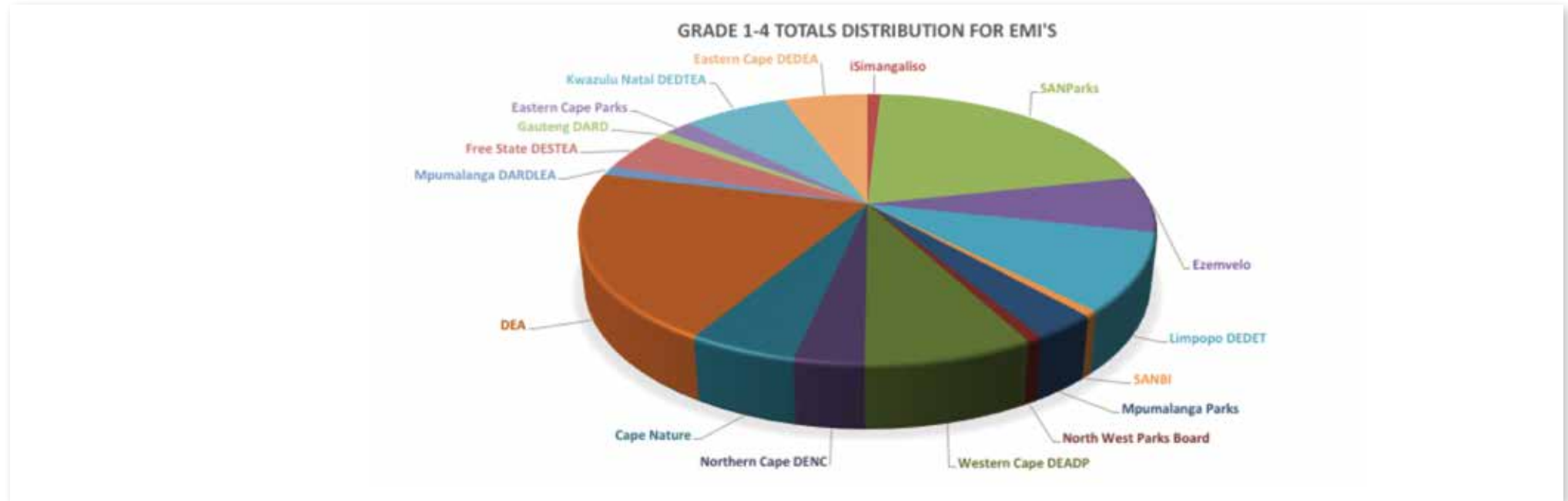
INSTITUTION	2016-17	2017-18	2018-19
North West Parks Board	81	76	74
<b>TOTAL</b>	<b>1726</b>	<b>1723</b>	<b>1691</b>



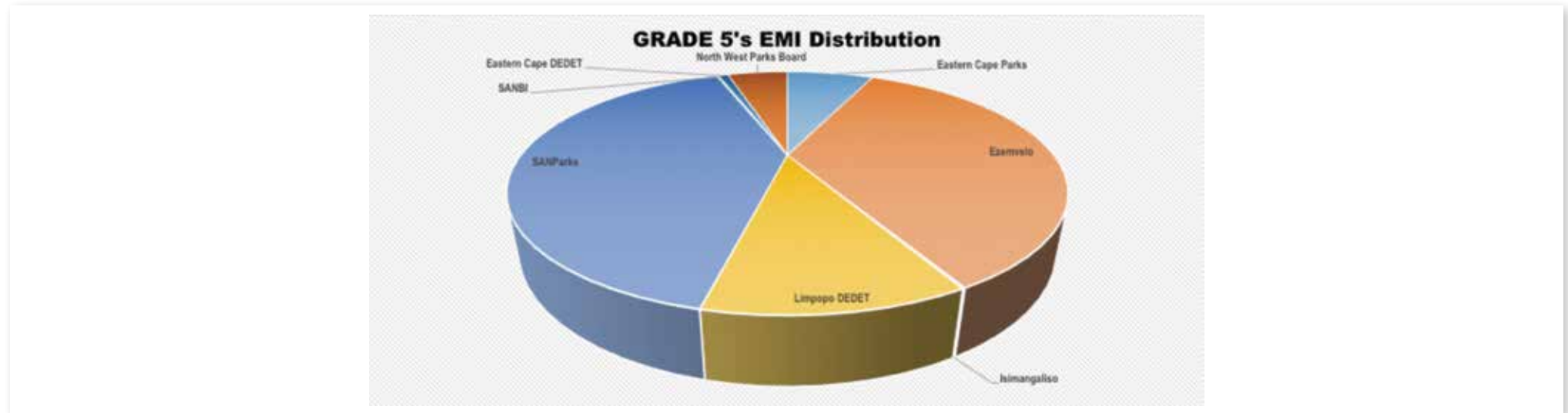
Graph 2: Number of Grade 5 EMIs (Field Rangers) per institution



3.2. 3 Environmental Management Inspector per institution

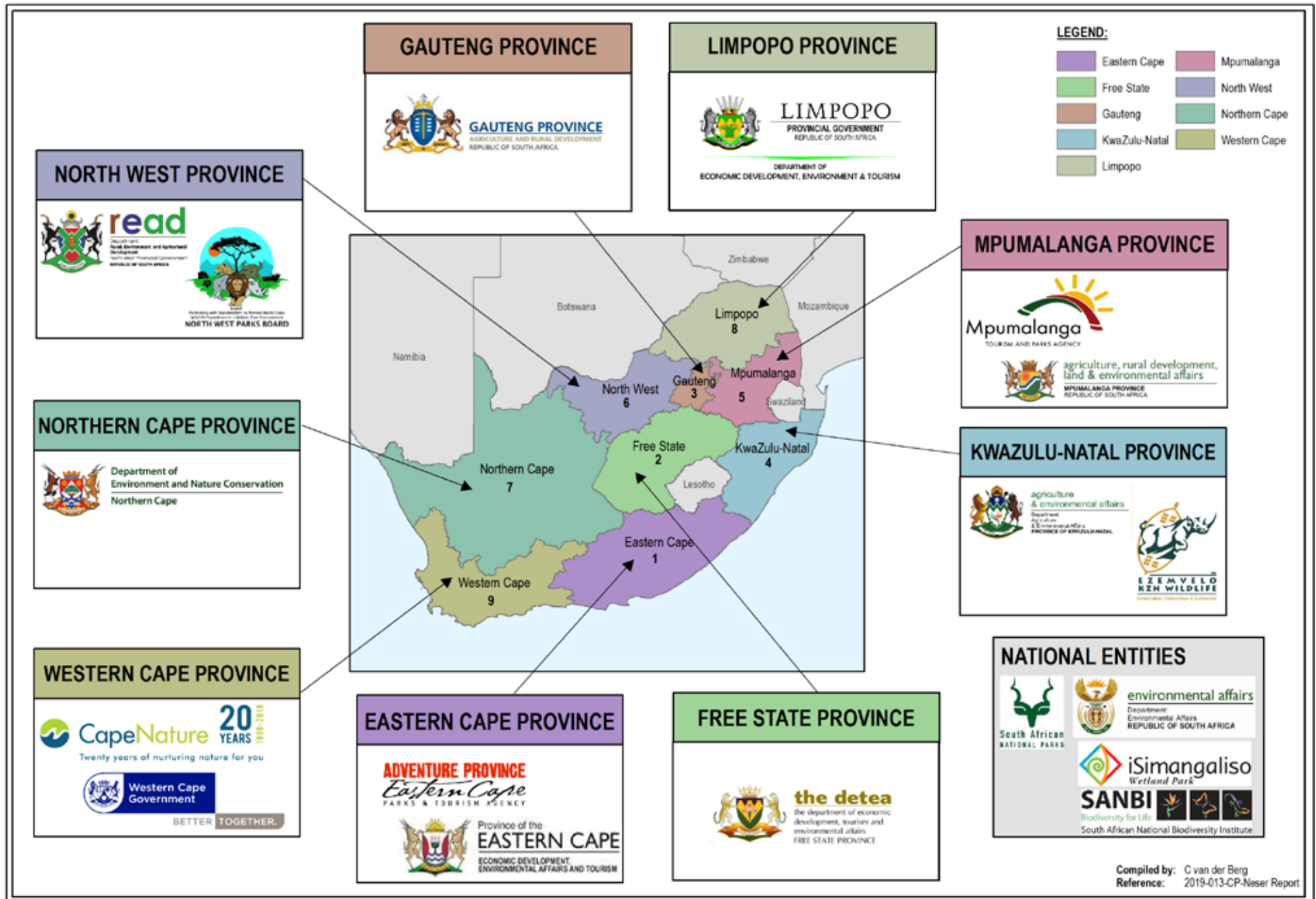


Pie chart 2: Distribution of Grade 1-4 EMIs per EMI institutions



Pie chart 3: Distribution of Grade 5 EMIs across EMI institutions

# OVERALL NATIONAL COMPLIANCE AND ENFORCEMENT STATISTICS

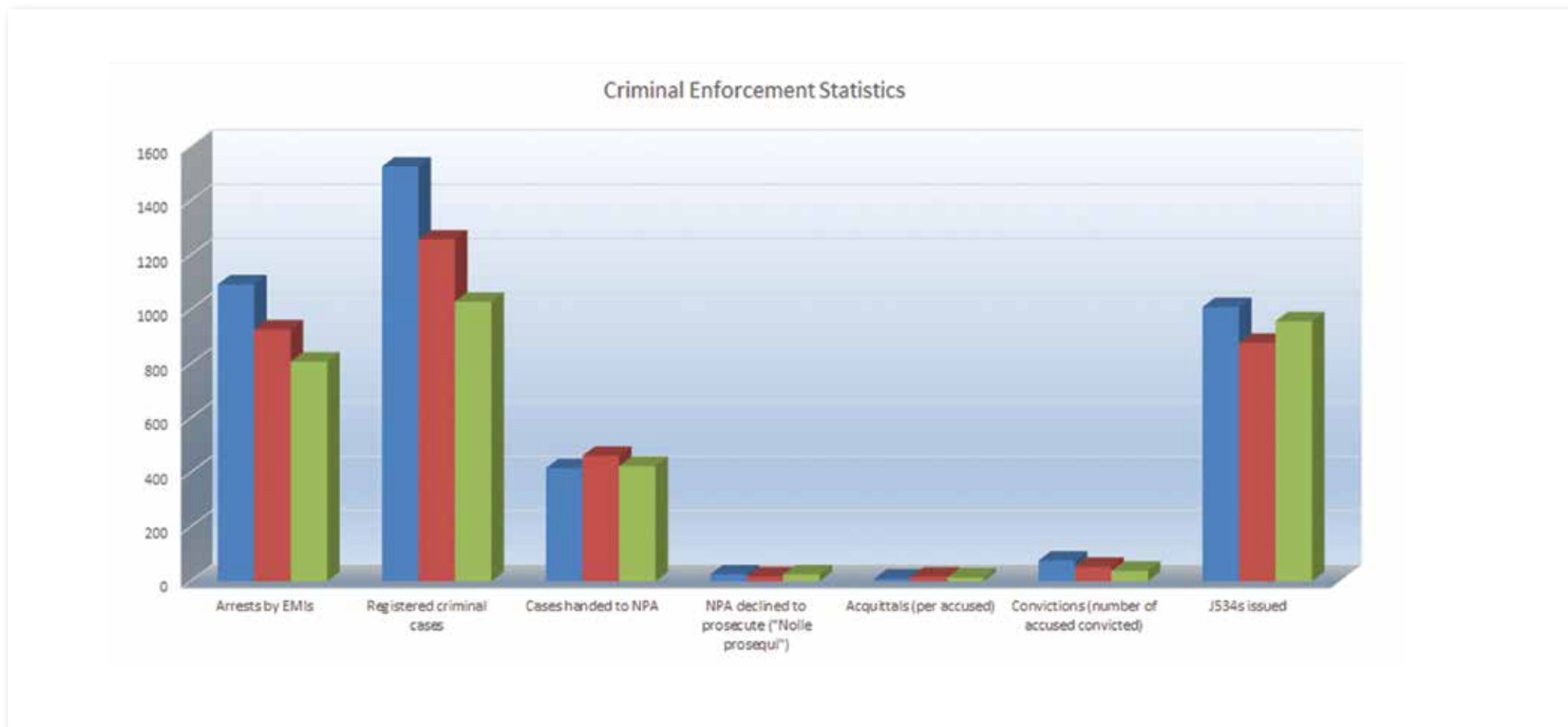


Compiled by: C van der Berg  
 Reference: 2019-013-CP-Neser Report

## 4. OVERALL NATIONAL COMPLIANCE AND ENFORCEMENT STATISTICS

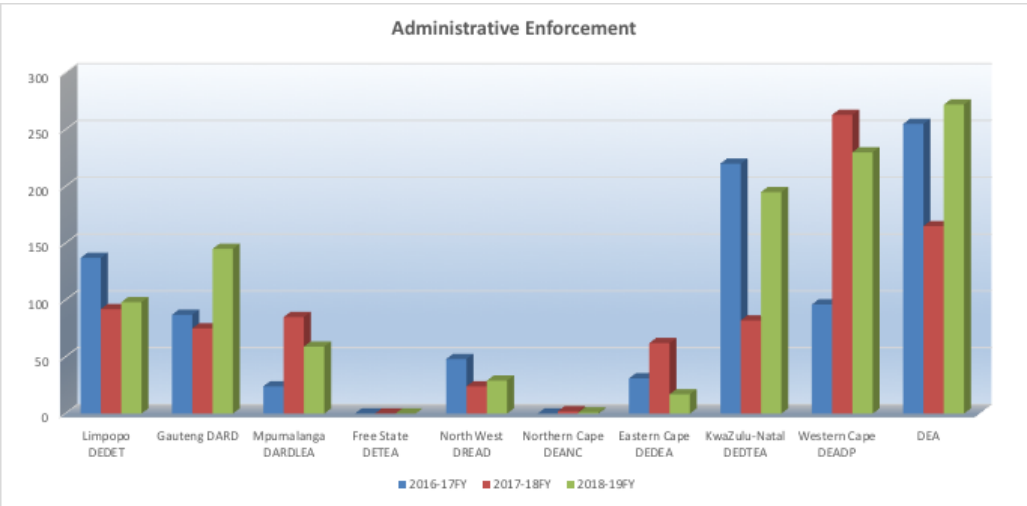
### 4.1 Enforcement

	2016-17FY	2017-18FY	2018-19FY
<b>Criminal Enforcement</b>			
Arrests by EMIs	1092	926	820
Criminal dockets registered	1526	1257	1028
Cases handed to NPA	416	446	424
NPA declined to prosecute (nolle prosequi)	74	18	25
Section 105A agreements (plea bargains)	11	8	4
Acquittals	10	10	14
Convictions (excl. J534s)	76	53	38
J534 (Admission of Guilt Fines): Total number issued	1010	872	957
J534: Total number paid	628	523	460
J534: Total value of fines paid	R 393 291	R 251 300	R312 930
<b>Administrative Enforcement and Civil Actions</b>			
Warning letters issued	296	324	154
Pre-directives issued	261	286	179
Pre-compliance notices issued	535	576	635
Final directives issued	144	103	55
Final compliance notices issued	131	128	163
Civil Court applications launched	7	2	0
S24G administrative fines: Total value paid	R 9 766 445,22	R 10 064 949,65	R5 983 518,51
S24G: Total number of fines paid	91	110	71

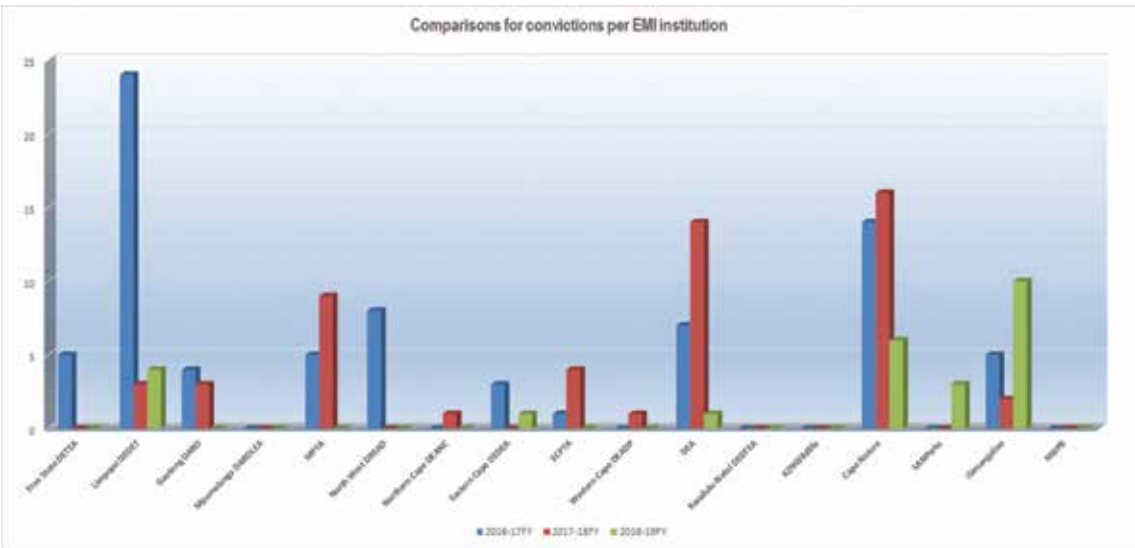


**Graph 2: Overall Criminal Enforcement Statistics from 2016-17FY to 2018-19FY.**

The following two graphs compare the use of enforcement notices and criminal enforcement mechanisms by each of the EMI Institutions. The comparison for the 2018/19 financial year reveals that the use of enforcement notices (i.e. directives and notices) remains the preferred tool for the authorities that deal with brown issues, with the DEA, KwaZulu-Natal DEDTEA, Western Cape DEADP and Gauteng DARD showing the highest numbers issued for this reporting period. In respect of the number of criminal convictions, iSimangaliso recorded the highest number of convictions **26.3%**, followed by Cape Nature which contributed **15.8%** of the total of **38**; and Limpopo DEDET **10.52%** (**4** of **38**).



Graph 4: Comparative number of enforcement notices issued per institution



Graph 5: Comparative number of convictions obtained per institution for three financial years

#### 4.1.2. Most prevalent types of environmental crimes

The 2018/19 financial year continued to display a similar pattern in relation to the most prevalent types of environmental crimes being detected by the various EMI Institutions. For the brown sub-sector, the unlawful commencement of environmental impact assessment listed activities continues to be the most common non-compliance, while in the green sub-sector, illegal hunting and illegal entry continues to be the predominant environmental crimes.

Province	Institution	Prevalent crimes	Number of incidents reported
National Institutions (excl. iSimangaliso)	DEA	Illegal possession of alien and invasive species - nurseries (NEMBA)	148
	SANParks	Illegal hunting of rhino in a national park (NEM: PAA)	880
Eastern Cape	Eastern Cape DEDEA	Unlawful commencement of listed activities (Decree no. 9 of 1992, section 39)	102
	Eastern Cape Parks	Illegal fishing without the necessary permit (MLRA)	21
Free State	Free State DESTEA	Illegal hunting and possession of wild animals without the necessary permit (Ordinance 8 of 1969)	17
Gauteng	Gauteng DARD	Unlawful commencement of listed activities (NEMA)	152
Kwa-Zulu Natal	Ezemvelo	Illegal entry / Illegal hunting Prohibited activity (Ordinance 15 of 1974)	550
	KwaZulu-Natal DEDTEA	Unlawful commencement of listed activities (NEMA)	189
Limpopo	Limpopo DEDET	Picking indigenous plants without a permit (LEMA)	386
Mpumalanga	Mpumalanga DARDLEA	Unlawful commencement of listed activities (NEMA)	61
	Mpumalanga Parks	Illegal rhino hunting (Mpumalanga Nature Conservation Act 10 of 1998 section 5)	32
Northern Cape	Northern Cape DENC	Illegal disposal of sewage without a permit (NEMWA, NEMA)	17
North West	North West DREAD	Unlawful commencement of listed activities (NEMA)	33
	North West Parks	Illegal hunting of rhino (NEM:BA section 57)	24

Province	Institution	Prevalent crimes	Number of incidents reported
Western Cape	CapeNature	Fishing without possession of necessary permit (MLRA section 13(3))	19
	Western Cape DEADP	Unlawful commencement of listed activities (NEMA)	160

## 4.2 Compliance Monitoring Inspections

### Inspection Activities of EMI Institutions

Conducting compliance monitoring inspections to ascertain whether or not the regulated community is complying with the relevant legislative provisions, as well as with authorisations, licences and permits issued in terms of this legislation, play a critical role in ensuring continued compliance. Without effective compliance monitoring, non-compliance may go undetected and thus the necessary enforcement could not be pursued.

The following tables highlight blue, green and brown compliance inspections conducted during the 2018/19 financial year. It is important to note that a single facility may require a number of environmental authorisations, licences or permits. A baseline inspection comprises an assessment of compliance with each and every authorisation, licence and permit held by a facility, including with each condition thereof, must be ascertained. It is critical that this initial or baseline inspection is then followed up with further inspections so that any improvement or deterioration in the level of environmental compliance by that facility may be assessed.

### 4.2.1 Compliance Inspections per Trigger

INSTITUTION	COMPLAINT	PERMIT	PLANNED INSPECTION	SECTION 30 INCIDENT	ROUTINE INSPECTION	GRAND TOTAL
Cape Nature	-	379	0	0	0	379
DEA	310	22	101	125	109	667
Eastern Cape DEDEA	9	20	230	0	109	368
KwaZulu Natal DEDTEA	103	141	58	1	544	847
Limpopo DEDET	134	180	543	0	0	857
Mpumalanga DARDLEA	94	8	58	0	0	160
Northern Cape DENC	-	134	143	0	0	277
North West DREAD	83	0	87	2	241	413
Western Cape DEADP	-	0	46	0	212	258
Gauteng DARD	2	278	-	24	0	304
<b>Grand Total</b>	<b>735</b>	<b>1162</b>	<b>1291</b>	<b>152</b>	<b>1215</b>	<b>4530</b>

## 4.2.2 Compliance Inspections per Type/Non-Compliances detected/Enforcement required: Brown, Green and Blue

BROWN						
Institution	Facilities Inspected	Pro-active	Reactive	Inspection Report finalised	Number of non-compliances	Number requiring Enforcement actions
DEA	231	46	185	34	699	18
Eastern Cape DEDEA	263	245	18	238	1246	70
Gauteng DARD	304	262	42	280	88	34
KwaZulu-Natal EDTEA	782	706	76	750	1269	256
Limpopo DEDET	199	197	2	193	789	88
Mpumalanga DARDLEA	160	60	100	137	680	70
North West DREAD	411	290	121	343	54	76
Northern Cape	121	101	20	-	-	-
Western Cape DEADP	258	46	212	258	212	230
<b>Grand Total</b>	<b>2729</b>	<b>1852</b>	<b>779</b>	<b>2114</b>	<b>5037</b>	<b>842</b>

GREEN						
Institution	Facilities Inspected	Pro-active	Reactive	Inspection Report finalised	Number of non-compliances	Number requiring Enforcement actions
Cape Nature	379	-	379	-	0	-
DEA	74	74	-	74	-	1
Northern Cape DENC	153	149	4	-	-	-
Limpopo DEDET	658	519	139	624	90	29
Eastern Cape DEDEA	94	91	3	82	8	19
North West DREAD	2	-	2	1	1	2
Kwa-Zulu Natal DEDTEA	65	14	51	59	115	34
<b>Grand Total</b>	<b>1425</b>	<b>698</b>	<b>574</b>	<b>766</b>	<b>214</b>	<b>84</b>



BLUE						
Institution	Facilities Inspected	Pro-active	Reactive	Inspection Report finalised	Number of non-compliances	Number requiring Enforcement actions
DEA	21	21	0	20	12	0
Northern Cape DENC	3	3	0	0	0	0
<b>Grand Total</b>	<b>24</b>	<b>24</b>	<b>0</b>	<b>20</b>	<b>12</b>	<b>0</b>

#### 4.2.3 Compliance Inspections undertaken by Local Authority EMI Institutions: Per Trigger/ Type/ Non-Compliances detected/ Enforcement required: Brown

The inspection statistics represented in the table below is based on the input provided by a limited number of municipalities; and must be considered in the context of the sector being at the initial stages of establishing a comprehensive reporting system for compliance and enforcement activities of local authority EMIs.

##### 4.2.3.1 Inspection Triggers

BROWN					
INSTITUTION	COMPLAINT	PERMIT	PLANNED INSPECTION	ROUTINE INSPECTION	TOTAL
KwaZulu-Natal Municipalities	1	-	1	1	3
Limpopo Municipalities	4	-	3	19	26
North West Municipalities	34	75	8	-	117
Gauteng Municipalities	133	-	190	-	323
Western Cape Municipalities	1	32	-	-	33
<b>TOTAL</b>	<b>173</b>	<b>107</b>	<b>202</b>	<b>20</b>	<b>502</b>







## 5. STATISTICS PER NATIONAL INSTITUTION/PROVINCE

### 5.1 National Institutions

#### 5.1.1 Department of Environmental Affairs and Department of Water and Sanitation



#### environmental affairs

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA



#### water & sanitation

Department:  
Water and Sanitation  
REPUBLIC OF SOUTH AFRICA

	2016-17FY	2017-18FY	2018-19FY	2016-17FY	2017-18FY	2018-19FY
<b>DEPARTMENT OF ENVIRONMENTAL AFFAIRS (BRANCH: LEGAL, AUTHORISATIONS, COMPLIANCE AND ENFORCEMENT)</b>				<b>DEPARTMENT OF WATER AND SANITATION</b>		
<b>CRIMINAL ENFORCEMENT</b>				<b>CRIMINAL ENFORCEMENT</b>		
Arrests by EMIs	8	4	2	0	0	-
Criminal dockets registered	52	50	29	5	2	-
Cases handed to NPA	31	32	28	3	2	-
NPA declined to prosecute (nolle prosequi)	10	4	4	0	0	-
Section 105A agreements (plea bargains)	1	4	2	1	0	-
Acquittals	0	0	0	0	0	-
Convictions	7	14	1	0	0	-
J534s issued	12	15	7	0	0	-
J534s paid	R 22 800,00	R 32 500	R 22 000	0	0	-
<b>ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS</b>				<b>ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS</b>		
Warning letters written	43	27	8	17	22	-
Pre-directives issued	78	74	71	124	138	-
Pre-compliance notices issued	132	151	180	0	0	-
Final directives issued	1	7	5	44	29	-
Final compliance notices issued	44	7	16	0	0	-
Civil Court applications launched	0	0	0	6	0	-
S24G administrative fines paid (total value / number)	R 2 355 000	-	-	0	0	-
	5	-	2	0	0	-

## 5.1.2 SANParks and Isimangaliso Wetland Authority



	SOUTH AFRICAN NATIONAL PARKS			ISIMANGALISO WETLAND PARK AUTHORITY		
	2016-17FY	2017-18FY	2018-19FY	2016-17FY	2017-18FY	2018-19FY
<b>CRIMINAL ENFORCEMENT</b>						
Arrests by EMI	311	220	307	30	5	20
Criminal dockets registered	644	498	426	29	25	30
Cases handed to NPA	257	298	186	2	6	21
NPA declined to prosecute (nolle prosequi)	0	-	1	0	0	1
Section 105A agreements (plea bargains)	-	-	0	0	0	0
Acquittals	-	7	1	0	0	1
Convictions	-	□	3	5	2	10
J534s issued	262	276	407	10	2	1
J534s paid (number)	43	38	33	10	-	1
J534s paid (value)	R 37 400	R38 950	R 27 000	R 9 500	-	R2500
<b>ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS</b>						
Warning letters written	-	-	-	2	2	0
Pre-directives issued	-	-	-	0	0	0
Pre-compliance notices issued	-	-	-	2	0	0
Final directives issued	-	-	-	0	0	0
Final compliance notices issued	-	-	-	0	0	0
Civil Court applications launched	-	-	-	1	0	0

## 5.2 Provincial Institutions and Parks

### 5.2.1 Western Cape



	DEPARTMENT OF ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING			CAPE NATURE		
	2016-17FY	2017-18FY	2018-19FY	2016-17FY	2017-18FY	2018-19FY
<b>CRIMINAL ENFORCEMENT</b>						
Arrests by EMLs	0	0	0	40	44	29
Criminal dockets registered	9	12	14	31	44	25
Cases handed to NPA	0	12	14	8	26	16
NPA declined to prosecute (nolli prosequi)	0	2	3	0	2	3
Section 105A agreements (plea bargains)	0	1	0	8	3	1
Acquittals	0	1	0	0	0	0
Convictions	0	1	0	14	16	6
J534s issued	0	0	0	74	90	113
J534s paid (number)	0	0	0	29	16	64
J534s paid (value)	0	0	0	R 35 550	R39,350	R69,250
<b>ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS</b>						
Warning letters written	0	0	0	0	0	0
Pre directives issued	17	59	72	0	0	0
Pre-compliance issued	61	124	119	0	0	0
Final directives issued	7	28	12	0	0	0
Final compliance notices issued	11	52	27	0	0	0
Civil Court applications launched	0	0	0	0	0	0
\$24G administrative fines paid (total value / number)	R 6 580 000 41	R2 869 500 23	R1,977,750 17	0	0	0

## 5.2.2 KwaZulu-Natal



	DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM & ENVIRONMENTAL AFFAIRS			EZEMVELO KZN WILDLIFE		
	2016-17FY	2017-18FY	2018-19FY	2016-17FY	2017-18FY	2018-19FY
<b>CRIMINAL ENFORCEMENT</b>						
Arrests by EMLs	0	0	0	136	120	130
Criminal dockets registered	2	2	3	173	157	168
Cases handed to NPA	1	1	0	-	-	-
NPA declined to prosecute (nolli prosequi)	1	1	0	-	-	-
Section 105A agreements (plea bargains)	0	0	0	-	-	-
Acquittals	0	0	0	-	-	-
Convictions	0	0	0	-	-	-
J534s issued	0	0	0	46	3	-
J534s paid (number)	0	0	0	33	3	-
J534 paid (value)	R 0	R 0	R 0	R 47 500	R 3 800	-
<b>ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS</b>						
Warning letters written	31	120	59	-	-	-
Pre-directives issued	0	1	16	-	-	-
Pre-compliance notices issued	172	50	120	-	-	-
Final directive issued	1	2	15	-	-	-
Final compliance notices issued	47	29	29	-	-	-
Civil Court applications launched	0	0	0	-	-	-
S24G administrative fine paid (total value/ number)	R 316 800	-	-	-	-	-
	27	1	1		-	-

## 5.2.3 Gauteng



GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT	2016-17FY	2017-18FY	2018-19FY
<b>CRIMINAL ENFORCEMENT</b>			
Arrests by EMLs	3	7	7
Criminal dockets registered	1	29	18
Cases handed to NPA	10	28	24
NPA declined to prosecute (nolle prosequi)	0	3	3
Section 105A agreements (plea bargains)	0	0	0
Acquittals	0	0	0
Convictions	4	3	0
J534s issued	12	14	14
J534s paid (number)	6	11	14
J534s paid (value)	R 4 000	R 11 600	R 12 800
<b>ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS</b>			
Warning letters written	1	0	0
Pre-directives issued	0	3	2
Pre-compliance notices issued	4	42	83
Directives issued	82	13	0
Final compliance notices issued	1	17	60
Civil Court applications launched	0	0	0
S24G administrative fines paid (total value/ number)	R 4 568 247	R 4 358 449	R 2 710 018
	56	59	28

## 5.2.4 Limpopo



LIMPOPO DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND CONSERVATION	2016-17FY	2017-18FY	2018-19FY
<b>CRIMINAL ENFORCEMENT</b>			
Arrests by EMLs	310	306	193
Criminal dockets registered	269	227	161
Cases handed to NPA	7	4	26
NPA declined to prosecute (nolle prosequi)	48	1	5
Section 105A agreements (plea bargains)	0	0	0
Acquittals	9	0	8
Convictions	24	3	4
J534s issued	472	420	366
J534s paid (number)	416	411	331
J534s paid (value)	R 172 290	R 94 250	R162 780
<b>ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS</b>			
Warning letters written	157	0	5
Pre-directives issued	34	5	10
Pre-compliance notices issued	83	76	71
Directives issued	5	3	3
Final compliance notices issued	15	7	14
Civil Court applications launched	0	0	0
S24G administrative fines paid (total value/ number)	R 1 006 097	R 1 399 300	R 208 500
	16	11	3



## 5.2.5 Eastern Cape



	DEPARTMENT OF ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS			EASTERN CAPE PARKS & TOURISM AGENCY		
	2016-17FY	2017-18FY	2018-19FY	2016-17FY	2017-18FY	2018-19FY
<b>CRIMINAL ENFORCEMENT</b>						
Arrests by EMLs	32	43	41	23	34	6
Criminal dockets registered	50	46	45	29	33	6
Cases handed to NPA	14	31	30	0	2	4
NPA declined to prosecute (nolle prosequi)	4	4	5	0	1	1
Section 105A agreements (plea bargains)	0	0	0	0	0	0
Acquittals	0	0	0	0	1	1
Convictions	3	0	1	1	4	3
J534s issued	51	37	33	7	14	3
J534s paid (number)	19	10	1	7	8	1
J534s paid (value)	R 21 101	R 22 250	R 8 500	R 1 950	R 2 450	R 600
<b>ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS</b>						
Warning letters written	21	69	37	0	0	0
Pre-directives issued	1	0	4	0	0	0
Pre-compliances issued	26	59	10	2	3	1
Final directives issued	1	1	1	0	0	0
Final compliance notices issued	3	2	2	1	1	0
Civil Court applications launched	0	0	0	0	2	0
S24G administrative fines paid (total value/ number)	R10 000	R112 000	R 10 000	0	0	0
	1	4	9			

## 5.2.6 Free State



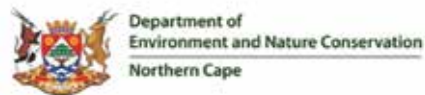
DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS <sup>1</sup>	2016-17FY	2017-18FY	2018-19FY
<b>CRIMINAL ENFORCEMENT</b>			
Arrests by EMLs	32	1	6
Criminal dockets	32	2	12
Cases handed to NPA	13	-	9
NPA declined to prosecute (nolle prosequi)	3	1	2
Section 105A agreements (plea bargains)	2	-	0
Acquittals	1	1	0
Convictions	5	-	0
J534s issued	23	-	12
J534s paid (number)	18	-	12
J534s paid (value)	R 8 050	-	R 7 500
<b>ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS</b>			
Warning letters written	-	-	-
Pre-directives issued	-	-	-
Pre-compliance notices issued	-	-	-
Directives issued	-	-	-
Final compliance notices issued	-	-	-
Civil Court applications launched	-	-	-
S24G administrative fines paid (total value / number)	-	-	-
	-	-	-

## 5.2.7 Mpumalanga



	MPUMALANGA DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT, LAND & ENVIRONMENTAL AFFAIRS			MPUMALANGA TOURISM AND PARKS AGENCY		
	2016-17FY	2017-18FY	2018-19FY	2016-17FY	2017-18FY	2018-19FY
<b>CRIMINAL ENFORCEMENT</b>						
Arrests by EMLs	0	0	0	54	49	39
Criminal dockets registered	4	18	5	65	65	31
Cases handed to NPA	0	2	1	23	16	14
NPA declined to prosecute (nolle prosequi)	0	0	0	1	0	0
Section 105A agreements (plea bargains)	0	0	0	0	0	0
Acquittals	0	0	0	0	1	0
Convictions	0	0	0	5	9	0
J534s issued	0	0	1	2	0	0
J534s paid (number)	0	0	0	2	0	0
J534s paid (value)	0	0	R0	R 2000	0	R0
<b>ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS</b>						
Warning letters written	20	39	20	0	0	0
Pre-directives issued	4	6	2	0	0	0
Pre-compliances issued	16	53	31	0	0	0
Final directives issued	0	20	17	0	0	0
Final compliance notices issued	4	6	9	0	0	0
Civil Court applications launched	0	0	0	0	0	0
S24G administrative fines paid (total value/ number)	R 1 519 300	R 1 180 700	R 2 995 000	0	0	0
	14	10	12			

## 5.2.8 Northern Cape



DEPARTMENT OF ENVIRONMENT AND NATURE CONSERVATION	2016-17FY	2017-18FY	2018-19FY
<b>CRIMINAL ENFORCEMENT</b>			
Arrests by EMLs	0	24	34
Criminal dockets	1	28	19
Cases handed to NPA	0	7	12
NPA declined to prosecute (nolle prosequi)	0	1	0
Section 105A agreements (plea bargains)	0	0	0
Acquittals	0	0	0
Convictions	0	0	0
J534s issued	1	11	0
J534s paid (number)	1	1	0
J534s paid (value)	R 2 500	R 500	R0
<b>ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS</b>			
Warning letters written	1	13	22
Pre-directives issued	0	0	0
Pre-compliance notices issued	0	0	0
Directives issued	0	0	1
Final compliance notices issued	0	2	0
Civil Court applications launched	0	0	0
S24G administrative fines paid (total amount/ number)	-	R 145 000	R0
	-	3	0

## 5.2.9 North West



NORTH WEST DEPARTMENT OF RURAL, ENVIRONMENT AND AGRICULTURE DEVELOPMENT				NORTH WEST PARKS AND TOURISM BOARD		
	2016-17FY	2017-18FY	2018-19FY	2016-17FY	2017-18FY	2018-19FY
<b>CRIMINAL ENFORCEMENT</b>						
Arrests by EMIs	109	34	0	4	0	3
Criminal dockets	83	26	0	56	43	39
Cases handed to NPA	43	19	0	1	0	39
NPA declined to prosecute (nolle prosequi)	5	0	0	0	0	0
Section 105A agreements (plea bargains)	0	0	0	0	0	0
Acquittals	0	0	0	0	0	0
Convictions	8	0	0	0	0	0
J534s issued	26	14	0	0	0	0
J534s paid (number)	26	6	0	0	0	0
J534s paid (value)	R 24 650	R 9 450	R0	0	0	0
<b>ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS</b>						
Warning letters written	3	2	3	-	-	-
Pre-directives issued	3	0	2	-	-	-
Pre-compliances notices issued	7	18	20	-	-	-
Directives issued	37	0	1	-	-	-
Final compliance notices issued	3	6	6	-	-	-
Civil Court applications launched	0	0	0	-	-	-
S24G administrative fines paid (total value / number)	-	-	R 60 000,00	-	-	-
	-	-	2	-	-	-



## 6. ENVIRONMENTAL JURISPRUDENCE

### THE ROLE OF A COURT IN INSTANCES OF NON-COMPLIANCE BEING ATTENDED TO BY THE RELEVANT STATUTORY REGULATORY AUTHORITY



Source: <http://www.famouspublishing.co.za/crest/gasping-for-air/>

#### **Upper Highway Air NPC v Enviroserv Waste Management (Pty) Ltd et al (Respondents 1-7) (3692/2017) (High Court of South Africa – Kwazulu-Natal Local Division [Durban]) (21 June 2018)**

This matter concerned the Shongweni landfill site, operated by Enviroserv, in Durban. Enviroserv has a WML for the Shongweni landfill site. During 2016 the public started complaining of offensive odours emanating from the site impacting on people's health. A compliance notice was issued instructing Enviroserv to, amongst others, cease the disposal of all types of waste at Shongweni landfill site, to conduct various assessments related to health and pollution and to undertake certain remedial activities. In this respect, Enviroserv had to submit regular progress reports to DEA.

In April 2017 DEA suspended Enviroserv's WML due to insufficient progress made in complying with the instructions contained in the compliance notice. Various conditions were imposed on Enviroserv as part of the suspension, including, for example, the implementation of best practicable environmental options in dealing with odours and gas emanating from the site. Enviroserv appealed some of the conditions of the suspension and the appeal was upheld, resulting in the relaxation of the conditions of the suspension of its WML. Upper Highway Air NPC (UHA) was dissatisfied with this decision and brought review proceedings to the Court, which included a claim for a *mandamus*.

Around the same time Enviroserv's WML was suspended, UHA instituted an action against Enviroserv and served summons on it, seeking to interdict it from conducting waste management activities on that site, except those necessary for the mitigation and remediation of the problem and to order it to comply with the conditions of the WML and statutory obligations. The interdict further required Enviroserv to account in respect of advantages received as a consequence of its alleged unlawful behaviour on the site. Shortly thereafter, UHA instituted another application, seeking to interdict Enviroserv from receiving, treating and disposing of waste at the site, including the disposal of leachate into the waste body, pending the outcome of the action proceedings. Alternatively, an interdict was sought pending the outcome of the appeal by Enviroserv against the suspension of its WML, due to the fact that Enviroserv's appeal would have suspended the suspension of its licence. This *interim* interdict was granted, pending the finalisation of this application.

This application was brought to consider whether or not, pending the outcome of the review or the action which has been instituted, there should be an interdict in addition to the steps which have been taken by DEA.

#### **Judgement**

The Court confirmed that the Minister did not reinstate Enviroserv's WML – she varied the conditions of suspension thereof to allow for the introduction of solid inorganic waste excluding sulphur, subject to extensive monitoring, reporting and supervision.

DEA is a specialist regulator with access to scientists and other experts and regulatory powers are given to it by NEMA. The Court confirmed that the debate related to the efficacy of different remedial actions is a matter for DEA and not the Court to consider, as it is highly scientific in nature.

The Court further held that the granting of an interdict pending the review or the action will not provide a solution to the problem. The site had been closed for more than a year and the offensive odours had not disappeared. The WML has been suspended and there have been ongoing engagements between DEA and Enviroserv. The activities permitted in terms of the suspension are aimed at accelerating the remedial process. The allegation that these activities are not likely to be effective is not a basis for interdicting it. There was no evidence presented to the Court that proved this and there will be ongoing monitoring and reporting to DEA.



The Court concluded that ongoing management of the Shongweni landfill site should be governed by DEA and the Minister in accordance with its regulatory powers in terms of NEMA. For the Court to effectively close the site would be to usurp the functions of the Minister of Environmental Affairs.

### ADHERENCE TO THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT 3 OF 2000 (PAJA) IN DECISIONS IMPACTING ON THE ENVIRONMENT



Source: <https://citizen.co.za/news/south-africa/2024389/judge-throws-out-bid-to-stop-fight-against-mining-in-mabola-protected-area/>

#### **Mining and Environmental Justice Community Network of South Africa et al v Minister of Environmental Affairs et al (50779/2017) (8 November 2018)**

The Applicants lodged an application to have the decisions of Ministers of Environmental Affairs and Mineral Resources to grant permission for coal mining activities of Atha-Africa Ventures (Pty) Ltd (Atha) in a protected wetland area forming part of the Mabola Protected Environment (MPE) reviewed and set aside. The grounds of review, in principle, related to the Ministers failure to adhere to sections 3 & 4 of the Promotion of Administrative Justice Act 3 of

2000 (PAJA).

#### **Judgement**

The Court reviewed and set aside the decisions of the Ministers of Environmental Affairs and Mineral Resources to allow mining in a protected environment, and remitted Atha's application in terms of section 48 of NEMPAA for reconsideration to these Ministers. When reconsidering, the Ministers must adhere to sections 3 and 4 of PAJA, take into account the relevant principles in section 2 of NEMA and the interests of local communities, and defer any decision until statutory appeal processes are concluded. The court interpreted section 48 of NEMPAA to mean that, despite the fact that all necessary authorisations were obtained to conduct lawful mining, if the land is in a protected environment in terms of NEMPAA, written permission of both Ministers must first be obtained, which includes the undertaking of proper public participation in the decision-making process. Nowhere in the permission letter signed by the Ministers was it stated that a departure from these procedural requirements was motivated, considered or concurred to.

The Court found that their decision resulted in an unjustifiable and unreasonable departure from the procedural requirements of PAJA, leading to unfair administrative action, which should be reviewed and set aside. Decision-making authorities should apply the precautionary principle (risk-averse and cautious approach) when dealing with sensitive ecosystems, such as wetlands. The Ministers simply relied upon the mitigation and management of environmental impacts, such as acid mine drainage, according to the requirements of other competent authorities (for example, DWS). Financial provision for rehabilitation purposes was also not distinctively and independently assessed by the Ministers. Furthermore, when the decisions were taken, statutory appeal procedures related to authorisations granted to Atha were pending. Until all internal remedies have been exhausted in respect of these authorisations, their existence, nature and any conditions thereof would not have been determined. The Court further confirmed that "a failure to take South Africa's international responsibilities relating to the environment into account and a failure to take into account that the use and exploitation of non-renewable natural resources must take place in a responsible and equitable manner would not satisfy the 'higher level of scrutiny' necessary when considering whether mining activities should be permitted in a protected environment or



not". Such failure constitutes a failure by the State as the trustee of vulnerable environments.

### THE COURTS DISCRETION TO ADMIT EVIDENCE THAT HAS BEEN UNCONSTITUTIONALLY OBTAINED



Source: <https://www.heraldlive.co.za/news/2019-03-16-cheers-in-court-as-rhino-poachers-are-convicted/>

#### ***S v Ndlovu et al (CC90/2017) [2018] ZAECGHC 123 (26 November 2018)***

The three accused in this case were charged with numerous counts related to rhino poaching, to all of which they pleaded not guilty. This judgement relates to one specific incident where a white rhino was darted with a tranquilizer gun and its horn removed, resulting in the death of the rhino.

The defence contested the admissibility of the evidence relating to the discovery of the rhino horn and tranquiliser dart gun, it being alleged that the search conducted by the police without a warrant, was unconstitutional and unlawful. In this matter, a backpack with a rhino horn was observed through the open door of a chalet, after which police officials decided to enter the

chalet, without a warrant, to conduct a search. Once they had entered the chalet, the rest of the evidence was found, including a dart gun, yellow saw, cell phones, a firearm magazine and some blank cartridges.

#### **Judgement**

The Court confirmed that the official had no official instructions whatsoever to enter the chalet; and that his decision was taken by him alone on the spur of the moment before the door of the chalet was opened. In the circumstances it was clear that there was no prior decision by the official's superiors to enter the chalet in violation of the accused's constitutional rights. The entering and searching of the chalet by the official without a search warrant was unlawful and was in violation of constitutional rights.

Self-incriminating evidence obtained through a violation of an accused's constitutional rights would normally be excluded on the grounds of unfairness if it were found that, but for the conscripted evidence, the derivative evidence would not have been discovered. The Court referred to various previous cases where the admission of evidence obtained unlawfully did not affect the fairness of the trial. As a result, the Court found that the admission of the evidence found in this case would not render the trial of the three accused unfair. It is real evidence, the existence of which would have been revealed independently of the accused's right to privacy, had the police entered the chalet lawfully in terms of a search warrant.

The official's superior had information emanating from a covert surveillance unit and from an informer in Port Elizabeth, which subsequently caused him to suspect the involvement of the occupants of the Audi in the commission of rhino poaching. This information, together with his knowledge of the *modus operandi* of rhino poachers in the Eastern Cape, led the official's superior to believe that the Audi contained evidence related to rhino poaching. Considering all of these circumstances, the court found this belief to be based on reasonable grounds. The admission of the evidence would not be detrimental to the administration of justice. On the contrary, the exclusion of the evidence would bring the administration of justice into disrepute.

## THE REQUIREMENT OF OBTAINING CONSENT FROM COMMUNITY MEMBERS PRIOR TO THE UNDERTAKING OF MINING ACTIVITIES ON LAND HELD IN TERMS OF CUSTOMARY LAW



Source: <http://aidc.org.za/right2sayno-across-borders/>

### ***Baleni et al (Applicants) v Minister of Mineral Resources et al (Respondents) (73768/2016) (22 November 2018)***

The applicants are residents of Umgungundlovu, a titanium-rich area on the Wild Coast. They and their ancestors have lived on this land for centuries. There are also several family graves, making this area essential for family and community rituals. An Australian mining company, Transworld Energy and Mineral Resources (SA) Pty Ltd ("TEM"), applied for a mining right to mine the titanium ores by means of an open-cast mine to be located in close proximity to where the applicants are residing as part of the Xolobeni Mineral Sands Project. The applicants do not want TEM to mine on this land as they also depend on the land for survival. A moratorium was issued on this application on 9 June 2017 in light of growing tensions surrounding this project.

The applicants relied on the Interim Protection of Informal Land Rights Act 31 of 1996 ("IPILRA") to justify their view that free and informed consent is required

before they may be deprived of their land. TEM and the first to fourth respondents (government parties) do not acknowledge this right to consent. They argue that, in terms of the Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA"), mere consultation is required with the community prior to awarding a mining right. They argued that the MPRDA trumps the IPILRA and provides that no owner can have a right to refuse to provide consent to mining. The applicants responded that this interpretation do not appreciate the differences between customary communities, like themselves, and common-law owners. The applicants approached this Court to obtain an order to declare, amongst others, that the Minister of Mineral Resources lacks lawful authority to grant a mining right unless the provisions of IPILRA have been complied with, and that full and informed consent of the applicants and their community must be obtained prior to the granting of any mining right.

### **Judgement**

The Court granted this application; and found it appropriate to make a declaratory order in light of the contestation of this mining right and the high levels of tension. IPILRA requires consent prior to the grant of a mineral right, whereas the MPRDA only requires consultation with interested and affected parties. Both Acts were, however, enacted to redress our history and, therefore, must be read together.

In terms of the MPRDA, the State is now the custodian of all mineral resources on behalf of the people of South Africa, but it also recognises the need to promote local and rural development, and social upliftment of communities affected by mining. As a result, the Minister may grant a mining right against the will of the land owner and must only be given 21 days' prior notice of the commencement of the operations. IPILRA, on the other hand, was adopted to protect those who had insecure tenure due to the failure to recognise customary title and requires consent prior to deprivation of informal rights to land, which would include the granting of a mining right. The Court found that section 2(1) of IPILRA does not require that the MPRDA be taken into consideration as the granting of a mining right in terms of the MPRDA does not constitute expropriation.

The Court also acknowledged the importance of customary law and confirmed that the MPRDA does not purport to regulate customary law at all – it only trumps common law where such provisions are inconsistent with the



MPRDA. Communities, like the applicants' community, are afforded broader protection in terms of the IPILRA than the protection afforded to common law owners when mining rights are considered by the Minister. As a result, IPILRA and MPRDA must operate alongside each other in this case, resulting in the Court finding that consent needed to be obtained from the community prior to the granting of a mining right.

### THE STATUS OF ADMISSION OF GUILT FINES IN RELATION TO CRIMINAL RECORDS



Source: <https://www.miltons.law.za/traffic-fines-and-admissions-of-guilt-will-they-earn-you-a-criminal-record/>

### *State v Madhinha (Review 18617) (7 December 2018)*

The accused was arrested for assault, following which a case was registered and entered into the relevant SAPS registers, included the taking of the accused's fingerprints and a docket being opened. The accused was detained and handed a written notice (J534) which included an endorsement that he may admit guilt in respect of the offence and pay a stipulated fine of R500-00 without appearing in Court. The accused paid the fine, and was released. The written notice and AOG fine was given to the clerk of the Court, who entered the particulars of the written notice in the criminal record book for AOGs. A magistrate examined the documents and did not set aside the conviction and sentence. The SAPS then entered in their criminal record system the name of the accused, the date of conviction, the charge and sentence as AOG R500-00.

A few years later the accused applied for a position at the company, Uber. In the process of acquiring a police clearance certificate, it was revealed that the accused had a criminal record. The SAPS informed him that the AOG he paid a few years ago was by law a conviction and sentence. The accused then approached the Court to apply for an order to have the conviction and sentence set aside.

### Judgement

In terms of section 57(1) of the CPA an accused may, without appearing in Court, admit guilt in respect of an offence by paying a stipulated fine, if the summons or written notice is endorsed to the effect that the fine may be paid. Upon entry of the essential particulars in the criminal record book for AOGs and surrendering the notice to the clerk of the Court, the accused shall be deemed to have been convicted and sentenced by the Court in respect of the offence in question. Only thereafter can a magistrate decide to set aside the verdict, after examination of the documents and if in the interest of justice. Section 271 of the CPA refers to previous convictions that may be proved and can then be taken into account when imposing any sentence in respect of the offence of which the accused has been convicted.

The Court found that a written notice is a method of securing the attendance of an accused in a magistrate's Court for a less serious offence. Such written notice is issued by a peace officer, who on reasonable grounds, believes that a Magistrate's Court, on convicting such accused of that offence, will not im-

pose a fine exceeding the amount determined by the Minister. Peace officers may endorse the written notice to the effect that the accused may admit guilt in respect of the offence in question and that he or she may pay the stipulated fine without appearing in Court.

The Court found that the conviction and sentence of an accused in terms of section 57(6) is *sui generis* (one of a kind). It is not a verdict or a declaration by the clerk of the Court. It is an automatic consequence of an administrative act performed by a member of the Court's support services. The facts of a relevant case, whether the accused admitted or denied some of them, or whether the accused was in fact and in law guilty of the offence are not considered at all in a conviction in terms of section 57(6). Admission of guilt in terms of section 57 is not the one envisaged in section 271 when referring to "previous convictions", which envisages unequivocal admission of guilt.

The examination of the documents by a magistrate, after being confirmed by the clerk of the Court, is part of the judicial audit and oversight of Court processes and has the status of an order of a Court. Not all the evidence, especially the facts upon which the accused admits guilt, account for the accused's conviction, is considered. The accused is never brought before Court and convicted.

A finding on past conduct and the pronouncement of the conviction, because of its serious implications, should only follow where the evidence has established the guilt of the accused beyond reasonable doubt. In a criminal matter the only competent authority to make a pronouncement with such dire consequences should be a judicial authority, which is vested in the Courts. A conviction referred to in section 57(6) is not such a conviction; and the Court accordingly set the conviction aside in this matter.



LEGISLATIVE DEVELOPMENTS



## 7. LEGISLATIVE DEVELOPMENTS



### 7.1 National Environmental Management Act 107 of 1998

#### 7.1.1 Regulations

- Corrections to the Environmental Impact Assessment Regulations and Listing Notices, 2014:GN 706 in GG41766 of 13 July 2018

#### 7.1.2 Notices

- Department of Mineral Resources: Environmental Management Plan: GN 1192 in GG 42010 of 2 November 2018.
- Department of Transport: Environmental Management Plan: GN 56 in GG 42053 of 1 February 2019.
- Notice of identification, in terms of section 24(5) of the National Environmental Management Act, 1998, of a generic environmental management programme relevant to an application for substation and overhead electricity transmission and distribution infrastructure which require environmental authorisation as identified in terms of section 24(2) of the Act: GN 435 in GG 42323 of 22 March 2019.
- Notice of adoption of an Environmental Management Instrument and exclusion, in terms of section 24 (2)(e) of the Act, of phase 1 of the square kilometre array from the requirement to obtain environmental authorisation: GN 436 in GG 42323 of 22 March 2019.

- Notice of intention to appoint a high-level panel for review of policies on matters related to the management of elephant, lion, leopard, etc.: GN 243 in GG 42247 of 25 February 2019.

#### 7.1.3 Draft Regulations and Notices

- Proposed regulations to Phase-out the Use of Persistent Organic Pollutants: GN R744 in GG 41790 of 24 July 2018.
- Proposed amendment to regulations pertaining to the financial provision for prospecting, exploration, mining or production operations: GN 452 R10820 in GG 41584 of 20 April 2018.
- Amendments to Financial Provisioning Regulations, 2015: GN 991 in GG 41921 of 21 September 2018.

### 7.2 National Environmental Management: Air Quality Act 39 of 2004

#### 7.2.1 Regulations

- National Greenhouse Gas Emission Reporting Regulations: Notice of procedure to be followed by Category A Data Providers for registration and reporting as a Category A Data Provider: GN 71 in GG 42203 of 1 February 2019.

#### 7.2.2 Notices

- The 2017 National Framework for Air Quality Management in the Republic of South Africa: GN in GG 41996 of 26 October 2018.
- Amendment of the National Pollution Prevention Plans Regulations, 2017: GN 513 in GG 41642 of 22 May 2018.
- Amendments to the listed activities and associated minimum emission standards identified in terms of section 21 of the Act: GN 1207 in GG 42013 of 31 October 2018.

#### 7.2.3 Draft Regulations and Notices

- Draft National Dust Control Regulations: GN 517 in GG 41650 of 25 May 2018.
- Notice of intention to amend the 2012 National Framework for Air Quality Management in the Republic of South Africa: GN 516 in GG 41650 of 25 May 2018.
- Notice of intention to amend the list of activities which result in atmospheric



emission which have or may have a significant detrimental effect on the environment including health, social, economic, ecological or cultural conditions: GN 516 in GG 41650 of 25 May 2018.

- National Greenhouse Gas Inventory Report (NIR): Publication of the 6th draft: GN 552 in GG 41903 of 14 September 2018.
- Climate Change Bill, 2018: For public comment: GN 580 in GG 41689 of 8 June 2018.

### 7.3 National Environmental Management: Biodiversity Act 10 of 2004

#### 7.3.1 Notices

- Norms and standards for the marking of rhinoceros and rhinoceros horn and for the hunting of rhinoceros for trophy hunting purposes: GN 961 in GG 41913 of 21 September 2018.
- Declaration notice of the extension of Kweelera National Botanical Garden: GN 705 in GG 41766 of 13 July 2018.
- Notice extending the public commenting period for the draft amendments to the Alien and Invasive Species Regulations and the draft amendments to the Alien and Invasive Species List: GN 616 in GG 41722 of 22 June 2018.

#### 7.3.2 Draft Regulations and Notices

- Draft National Biodiversity Framework: GN 1143 in GG 41996 of 26 October 2018.
- Proposed National Norms and Standards for the Management of Elephants in South Africa: Gen N 1208 in GG 42015 of 2 November 2018.
- Proposed amendment to the alien and invasive species list and list of critically endangered, endangered, vulnerable and protected species: GN 988 in GG 41919 of 21 September 2018
- Draft notice prohibiting the carrying out of certain restricted activities involving Rhinoceros Horn: GN 987 in GG 41919 of 21 September 2018.
- Draft Regulations relating to Domestic Trade in Rhinoceros Horn: GN 986 in GG 41919 of 21 September 2018.

### 7.4 National Environmental Management: Integrated Coastal Management Act 24 of 2008

#### 7.4.1 Regulations

- Coastal Waters Discharge Permit Regulations, 2019: GN 382 in GG 42304 of 15 March 2019.

#### 7.4.2 Draft Regulations and Notices

- Draft South African Water Quality Guidelines for Coastal Marine Waters - Natural Environment and Mariculture Use: GN 404 in GG 42310 of 15 March 2019.

### 7.5 National Environmental Management: Protected Areas Act 57 of 2003

#### 7.5.1 Notices

- Declaration of land to be part of Table Mountain National Park: Proc. 3 in GG 42185 of 25 January 2019.

#### 7.5.2 Draft Regulations and Notices

- Consultation on intention to withdraw portions of land declared as part of the Karoo National Park: GN 123 in GG 42286 of 8 March 2019.
- Intention to de-proclaim attached respective land parcels as nature reserve: GN 70 in GG 42203 of 1 February 2019.
- Intention to de-proclaim attached respective land parcels as nature reserve: GN 69 in GG 42203 of 1 February 2019.
- Draft National Protected Areas Expansion Strategy for South Africa, 2016: Draft National Protected areas expansion strategy review 2016 in SA, for public comments: GN 667 in GG 42010 of 2 November 2018.

### 7.6 National Environmental Management: Waste Act 59 of 2008

#### 7.6.1 Regulations

- Waste Exclusion Regulations, 2018: GN 715 in GG 41777 of 18 July 2018.

#### 7.6.2 Notices

- Consultation on the proposed Industry Waste Tyre Management Plans: GN 472 in GG 41612 of 7 May 2018.
- Consultation on the amended proposed industry Waste Tyre Management Plans: GN 989 in GG 41920 of 21 September 2018.

### 7.7 Draft Regulations and Notices

- Proposed amendments to the national waste information regulations, 2012:

GN 701 in GG 41760 of 6 July 2018.

- Proposed national norms and standards for validation of the treatment efficacy and operation of a non-combustion treatment technology used to treat health care risk waste: GN 464 in GG 41601 of 30 April 2018.
- Proposed national health care risk waste management regulations: GN 463 in GG 41601 of 30 April 2018.
- Regulations for the control of import or export of waste, 2017: GN 22 in GG 42175 of 21 January 2019.
- Amendments to the regulations regarding the planning and management of residue stockpiles and residue deposits, 2015: GN 990 in GG 41920 of 21 September 2018.

## **7.8 World Heritage Convention Act 49 of 1999**

### **7.8.1 Notices**

- Isimangaliso World Heritage Site: Call requesting nominations for the appointment of suitable persons as members of the board: GN 427 in GG 41574 of 13 April 2018.
- Notice of intention to establish a board for Isimangaliso Wetland Park: GN 102 in GG 42708 of 31 January 2019.
- Skukuza Safari Lodge Management Agreement in the Kruger National Park investment opportunities at Letaba, Phalaborwa and Phabeni: GN 458 in GG 41839 of 17 August 2018.





INDUSTRIAL COMPLIANCE AND ENFORCEMENT





## environmental affairs

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA



## 8. INDUSTRIAL COMPLIANCE AND ENFORCEMENT

### 8.1 Pro-active Compliance Inspections

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

- Ferro-Alloy, Steel and Iron Sector
- Power Generation
- Identified landfill sites

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

### NECER 2018-2019: DETAILED INFORMATION TABLE RELATING TO STRATEGIC INSPECTIONS AND ENFORCEMENT ACTION TAKEN

ADDITIONAL ACRONYMS SPECIFIC TO THIS TABLE	
<b>AEL</b>	Atmospheric Emission Licence
<b>EA</b>	Environmental authorisation issued in terms of section 24 of NEMA read with the relevant Environmental Impact Assessment Regulations
<b>D:SAE</b>	DEA's Directorate: Environmental Impact and Pollution
<b>DEA</b>	National Department of Environmental Affairs
<b>RoD</b>	Record of Decision in respect of a decision issued in terms of activities listed under ECA
<b>WML</b>	Waste Management Licence

<b>WUL</b>	Water Use Licence
<b>Section 31H Notice</b>	A notice used to obtain further documentation/ Information from a facility
<b>PCN</b>	A notice of intention to issue a compliance notice in terms of section 31L of NEMA (also known as a pre-compliance notice)
<b>PM</b>	Particulate Matter
<b>Name of Facility</b>	<b>Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process</b>
<b>FERRO-ALLOY, IRON AND STEEL</b>	
<b>Arcelor-Mittal Newcastle Works, KwaZulu-Natal</b>	<p>The outcome of AMSA's appeal was finalised and the Department instituted review proceedings. At this point in time, several further civil interventions are in motion.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows:</p> <p>Page 13 of NECER 2007-2008;</p> <p>Page 25 of NECER 2008-2009;</p> <p>Pages 45 – 46 of NECER 2010-2011;</p> <p>Page 43 of NECER 2011-2012;</p> <p>Page 43 of NECER 2012-2013;</p> <p>Page 44 of NECER 2013-2014;</p> <p>Page 44 of NECER 2014-2015;</p> <p>Page 44 of NECER 2015-2016; and</p> <p>Page 47 of NECER 2017-2018.</p>

<p><b>Transalloys (Pty) Ltd, Mpumalanga</b></p>	<p>A follow-up inspection was conducted at the facility on 30 and 31 January 2018. The DEA is still in a process of analysing all the data and information gathered, following which a decision will be made on how to proceed with the matter.</p> <p>Discussions on previous compliance and enforcement activities related to this facility may be found in the previous NECER publications as follows:</p> <p>Page 47 of NECER 2013-2014;</p> <p>Page 46 of NECER 2014-2015;</p> <p>Page 56 of NECER 2015-2016;</p> <p>Page 53 of NECER 2016-2017; and</p> <p>Page 48 of NECER 2017-2018.</p>	<p><b>Samancor Tubatse Ferrochrome, Mpumalanga Province</b></p>	<p>A follow-up compliance inspection was conducted on 22 and 23 August 2017. The following were observed:*</p> <ul style="list-style-type: none"> <li>• Possible failure to comply with certain conditions of the AEL, WMLs and WUL;</li> <li>• Areas used for storage of hazardous waste and raw materials such as coal were believed not to be lined to prevent pollution of soil and water resources; and</li> <li>• Possible groundwater quality contamination on site. No significant improvement was observed as some of the scavenger boreholes continue to reflect a statistically increasing trend of Cr<sup>+6</sup> since 2010.</li> </ul> <p>A number of enforcement actions have been initiated.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows:</p> <p>Page 42 of NECER 2010-2011;</p> <p>Page 40 of NECER 2011-2012;</p> <p>Page 40 of NECER 2012-2013;</p> <p>Pages 46 – 47 of NECER 2013-2014; and</p> <p>Page 48 of NECER 2017- 2018.</p> <p>*The facility has not yet been afforded an opportunity to make representations on the findings contained in the report.</p>
<p><b>Samancor Ferrochrome Middleburg</b></p>	<p>The criminal case was due to be heard in the Middleburg Regional court on 05 November 2018. The matter was however provisionally withdrawn in order for the State to respond to the representations that were made by Samancor.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows:</p> <p>Page 41 of NECER 2010-11</p> <p>Page 38 of NECER 2011-12</p> <p>Page 38 of NECER 2012-13</p> <p>Page 56 of NECER 2015-16; and</p> <p>Page 52 of NECER 2016-17; and</p> <p>Page 48 of NECER 2017-2018.</p>		

<p><b>ArcelorMittal Vanderbijlpark, Gauteng</b></p>	<p>A PCN dated 14 March 2018 was issued to the facility by DEA in respect of the air pollution contraventions related to the site. Representations were received but the process was suspended as the significant non compliances warranted a criminal investigation. A criminal investigation was initiated and is ongoing. The administrative enforcement process will be reinstated soon.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows:</p> <p>Page 26 of NECER 2008-2009;</p> <p>Page 44 of NECER 2010-2011;</p> <p>Page 42 of NECER 2011-2012;</p> <p>Page 42 of NECER 2012-2013;</p> <p>Page 53 of NECER 2016-2017; and</p> <p>Page 48 of NECER 2017- 2018.</p>
<p><b>ArcelorMittal Saldanha Works</b></p>	<p>A follow-up inspection was conducted at the facility on 10 and 11 July 2018 and the following were found:</p> <ul style="list-style-type: none"> <li>• Possible non-compliances to conditions of the AEL including intermittent exceedances of PM at certain stacks;</li> <li>• Possible non-compliances to conditions of the WML which amongst others that included lack of reclassification of waste types and lack of records to demonstrate that reports are submitted to the Department as required;</li> <li>• Excessive dust from operations;</li> <li>• Certain boreholes showing traces of possible contamination; and</li> <li>• Possible utilization of waste for unauthorized purposes.</li> </ul> <p>The Inspection Report was issued on 13 February 2019 and representations were received from the facility on 19 April 2019 .Representations are still being reviewed before making a decision on the way forward on the matter.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows:</p> <p>Page 25 of NECER 2009-2010.</p>

<p><b>Tronox KZN Sands CPC Smelter, KwaZulu Natal</b></p>	<p>The following non-compliances were found during an inspection conducted at the facility on 6 November 2018:</p> <ul style="list-style-type: none"> <li>• Possible non-compliances to conditions of the AEL;</li> <li>• Possible contraventions of the NEM:WA Norms and Standards for Storage of Waste;</li> <li>• Possible contraventions of NEM:WA Waste Classification and Management Regulations and National Norms and Standards for the Assessment of Waste for Landfill Disposal;</li> <li>• Possible expansion of dams and installation of storage tanks without authorisations;</li> <li>• The possibility that waste was stored on on unlined areas; and</li> <li>• The possibility that effluent dams were overflowing</li> </ul> <p>*The site inspection report is currently being reviewed in order to determine the appropriate enforcement action.</p>
<p><b>POWER GENERATION</b></p>	
<p><b>Eskom Kendal Power Station</b></p>	<p>A meeting was held between the Department and DWS regarding enforcement action A PD was issued by the DWS in June 2018 A PCN was issued on 09 November 2018 by this Department and representations were received within the timeframe. On 09 November 2018, Kendal was issued with a second Notice of Intent to issue a Compliance Notice in terms of Section 31L of NEMA. Representations were received on 31 January 2019, including an action plan with measures to reduce emission levels.</p> <p>An on-site investigation was undertaken and further enforcement action is in process.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows:</p> <p>Page 55 of NECER 2016-2017; and</p> <p>Page 50 of NECER 2017-2018.</p>



<p><b>Eskom Lethabo Power Station</b></p>	<p>The Department has reviewed the information submitted, by the facility, in response to the PCN dated 15 February 2018. The Department is currently engaging with the relevant AEL Licencing Authority regarding the information submitted as well as the way forward on the matter. This facility is one of the facilities to be included in the Department's bigger "sector based compliance and enforcement exercise" which has now been scheduled to take place during the 2019/2020 financial year.</p> <p>The shift in time-frames is due to the fact that Department has procured its own air quality monitoring instruments, which may be utilised during the exercise to ensure that the Department has its own comparative data results.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows:</p> <p>Page 24 of NECER 2009-2010;</p> <p>Page 53 of NECER 2010-2011;</p> <p>Page 49 of NECER 2011-2012;</p> <p>Page 48 of NECER 2012-2013;</p> <p>Page 54 of NECER 2013-2014;</p>	<p><b>Eskom Tutuka Power Station, Mpumalanga</b></p>	<p>A follow-up joint compliance monitoring inspection was conducted on 28 and 29 August 2018 and the following were found:</p> <ul style="list-style-type: none"> <li>• Possible non-compliances to conditions of the AEL including lack of submission of reports and exceedances of the emissions limits</li> <li>• Possible non-compliances to conditions of the EAs</li> <li>• Possible non-compliances to conditions of the WML</li> <li>• Possible non-compliances to conditions of the WUL</li> <li>• Possible ground and surface water pollution around the site</li> <li>• The possibility that sewage water is discharged and not meeting the limits from sewage works into watercourses</li> <li>• The possibility that dirty water dams are unlined posing a risk to water resources</li> </ul> <p>Discussions on previous compliance and enforcement activities related to this facility can be found:</p> <p>Page 58 of NECER 2015-16.</p>
<b>LANDFILLS</b>			
	<p>Page 55 of NECER 2016-2017; and</p> <p>Page 50 of NECER 2017-2018.</p>	<p><b>EnviroServ Shongweni Landfill Site, KwaZulu-Natal</b></p>	<p>Following a review of the all the information (technical and non-technical) provided to the Department, the Department decided not to proceed with further administrative enforcement action based on the previous compliance inspections. However it must be noted there are still a number of legal proceedings pending on this matter. The outcomes of the legal proceedings will guide the way forward on this matter.</p> <p>The Minister made a decision to systematically uplift certain restrictions imposed on the facility as compliance is demonstrated. In addition, the impact from the site is carefully being monitored as the Department has placed a monitoring station in close proximity to the Shongweni landfill site.</p> <p>The next appearance of the accused in relation to the criminal case will take place in the 2019/20 financial year</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows:</p> <p>Page 56 of NECER 2016-2017; and</p> <p>Page 51 of NECER 2017-2018.</p>
<p><b>Eskom Camden Power Station, Mpumalanga</b></p>	<p>A PCN was issued in August 2018 and the representations were received in October 2018 together with an action plan including timeframes. Compliance with these timeframes will continue to be monitored and further enforcement action will be initiated if the actions are not undertaken in terms of the commitments made.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows:</p> <p>Page 50 of NECER 2011-2012;</p> <p>Page 49 of NECER 2012-2013; and</p> <p>Page 51 of NECER of 2017-2018.</p>		

<p><b>FG Landfill Site, Gauteng</b></p>	<p>An Appeal Decision dated 3 November 2018 to uphold the Directive was made by the Minister. The facility has been complying with the instructions and / or conditions contained in the aforementioned Appeal Decision which, among others, required Interwaste to cease with disposal of waste at the site.</p> <p>Notwithstanding the above, the outcome of the current legal proceedings as well as the abovementioned engagements will determine the way forward on this matter.</p> <p>The Department is continuously monitoring the facility's compliance to environmental legislation, more so as a continuous monitor has been placed in close proximity to the FG landfill site. In addition to the above the Supreme Court of Appeal recently made a pronouncement in relation to Interwaste's challenge in relation to the Compliance Notice that was issued by the Gauteng Department of Agriculture and Rural Development. In this case the Compliance Notice instructed Interwaste to cease with the disposal of waste as they had been operating without a valid WML. After a protracted legal process the SCA confirmed the Compliance Notice and also went on to state the following:</p> <p>"When the licencing authority and officials entrusted with the management and enforcement of the provisions of the NEMA and the NEMWA are rightly concerned about issues of public health and safety and environmental rights they should be given their due. In the present case they were fulfilling their statutory and constitutional duties"</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows:</p> <p>Page 52 of NECER 2017-2018.</p>
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<p><b>Averda Vlakfontein Landfill Site, Gauteng</b></p>	<p>A baseline inspection was conducted at Averda Vlakfontein Landfill Site on 17 July 2018. The following possible non-compliances were found:*</p> <ul style="list-style-type: none"> <li>Records provided on site showed that the construction activities commenced after the WML had lapsed. No records were made available to show that the WML validity period was extended.</li> <li>Records to demonstrate that the WML was transferred to Averda for Vlakfontein site were not provided</li> <li>Significant non-compliances to WML conditions including failure to demonstrate that liner designs were approved, minimum freeboard of the Leachate Dam not met, co-disposal ratios not meeting the stipulated requirements</li> <li>Waste Storage Facility not registered in terms of the Norms and Standards for Storage of Waste</li> <li>Activities on site contravening Section 28 of NEMA</li> <li>Failure to comply with certain provisions of the NEM:WA as a result of some activities on site</li> <li>Certain activities on site that may constitute Water Use Activities in terms of Section 21 of NWA.</li> </ul> <p>An evaluation is currently being done with the view to institute multiple enforcement actions.</p> <p>Contraventions of the NWA have been referred to DWS.</p> <p>*The facility has not yet been afforded an opportunity to make representations to the findings contained in the report. The findings may however change depending on the submissions.</p>
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**OTHER**

<p><b>Dube TradePort MRO Hangar - Kwa Zulu-Natal</b></p>	<p>A compliance inspection was conducted on 17 October 2018. The non-compliances identified are in relation, but not limited to, the following:</p> <ul style="list-style-type: none"> <li>Potential harm to the environment and water resources;</li> <li>Activities conducted without a Water Use License; and</li> <li>Inadequate rehabilitation measures.</li> </ul> <p>The different enforcement options are being considered.</p>
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**8.2 Ensuring substantive compliance through enforcement notices**

Enforcement notices has been used by the Environmental Management

Inspectorate for a number of years in order to ensure that the damage caused to the environment is eliminated or remedied as a first response to non-compliant behavior. In order to demonstrate the efficacy of this approach, five sectors were targeted primarily in the air quality sector given its inherent ability to cause serious environmental harm. These sectors were as follows:

1. Facilities that have an obligation in terms of the NEM:AQA to report their emissions into the National Air Emissions Inventory System;
2. Crematoria;
3. Brick Manufacturers;
4. Lime production; and,
5. Climate Change Pollution Prevention Plans.

### 8.2.1 National Air Emissions Information System ("NAIES")

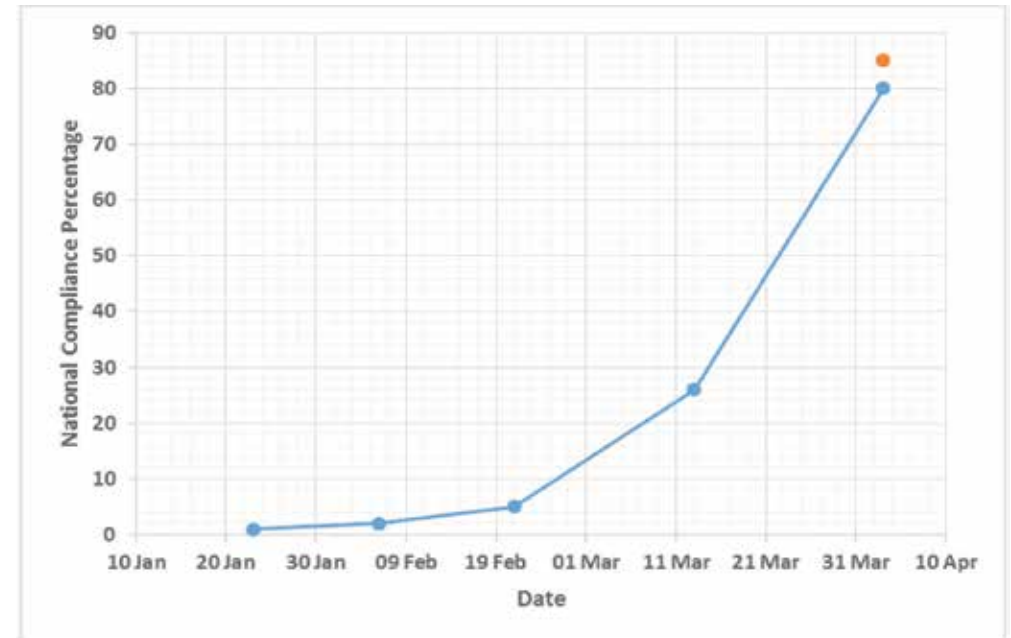
The National Atmospheric Emission Inventory System ("NAEIS") is an online national reporting platform that includes both air pollutants and greenhouse emissions inventories of the Republic. The system offers a new innovative way to report emissions which is a requirement of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) ("NEM:AQA").

The aim of the NAEIS is to provide all stakeholders with relevant up to date and accurate information on South Africa's emissions profile, as well as to provide an important mechanism to inform certain decisions in the air quality space. Given the importance of the system it was recommended that dedicated enforcement action be taken in order to compel industry to provide the necessary information as required by Regulations promulgated in terms of the NEM:AQA.

Furthermore, the purpose behind these Regulations is to encourage Atmospheric Emissions Licensing ("AEL") Authorities to evaluate reports that are submitted by industry. These reports ensure that authorities understand stack parameters (including emission units at facilities generating emissions), control devices and abatement devices used to reduce the amount of pollutants being released into the environment; and to ensure that the correct section 21 categories are captured in the NAEIS reports.

The level of compliance to these Regulations was at one point reported to be as low as **25%** at the end of February 2018. In order to increase the level of compliance with these reporting requirements, a total of **792** warning letters

were issued across the different sectors that report into the NAEIS across the country. In response to these warning letters, a spike in reporting was observed and, at the end of March 2018, reporting by industry reached **80%** as seen in the graph below.



Level of compliance in response to enforcement

### 8.2.2 Crematoria



Although a large number of crematoria have been authorised to operate lawfully, an opportunity arose for the undertaking of a comprehensive compliance monitoring exercise in order to ascertain the compliance status of these facilities with the relevant conditions and / or requirements of environmental law. In light of the above, this sector was prioritised for a National Blitz, as potential emissions include PM (dust), sulphur dioxide, nitrogen dioxide, carbon monoxide, carbon dioxide and heavy metals.

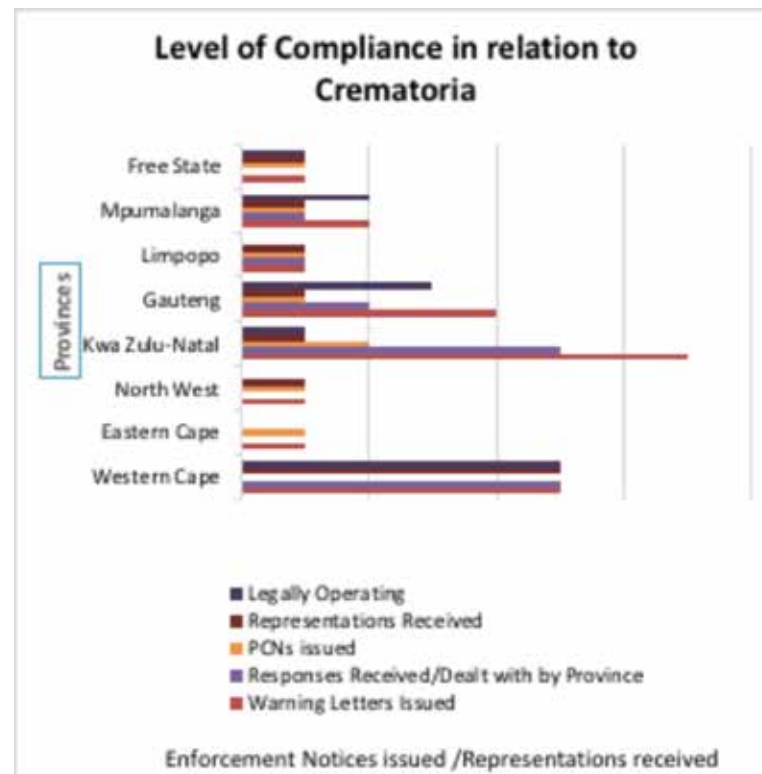
Crematoria can potentially have serious impacts on air quality due to increased emissions of the pollutants identified above. The increased emissions may be attributed to the following, amongst others, lack on maintenance on the cremation and abatement technology; outdated technology; historical design of crematorium; incineration and / or abatement technology not functioning optimally; and incomplete combustion.

Impacts are further compounded by the fact that there is a shortage of space in existing cemeteries and a scarcity of vacant areas left for the construction of new cemeteries across the country. This shortage results in more bodies of deceased people and / or animal carcasses being cremated.

In order to ensure that these facilities operate within the parameters of en-

vironmental law, twenty-two (22) warning letters were issued to different facilities. These included Western Cape - 5; Eastern Cape - 1; North West - 1; KwaZulu-Natal - 7; Gauteng - 4; Limpopo - 1; Mpumalanga - 2; and Free State - 1. Ten facilities responded by providing copies of their AELs and, in some instances, their emission monitoring reports, demonstrating compliance with the NEM:AQA and the NEMA. Two facilities had recently been inspected by the provincial Department, and as such, had been excluded from this process.

Eight of the facilities which did not respond to the warning letters were issued with a notice of Intention to issue a Compliance Notice as contemplated in section 31L of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") ("Pre-Compliance Notice"). Notwithstanding the above, it must be noted that this was the first phase of the project which sought to establish which of the facilities are in possession of the required AELs and to take action against those not in possession of the relevant licences.



The second phase will be to conduct verification inspections at the facilities which could not be contacted, as well as those facilities which are in possession of an AEL in order to determine the level of compliance at these facilities. The third phase would be to continue with the administrative process in order to improve and / or ensure compliance with environmental legislation. A possible fourth phase would be to institute criminal proceedings against those facilities which refuse to cooperate and / or comply with their legal requirement.

### 8.2.3 Brick Manufacturing

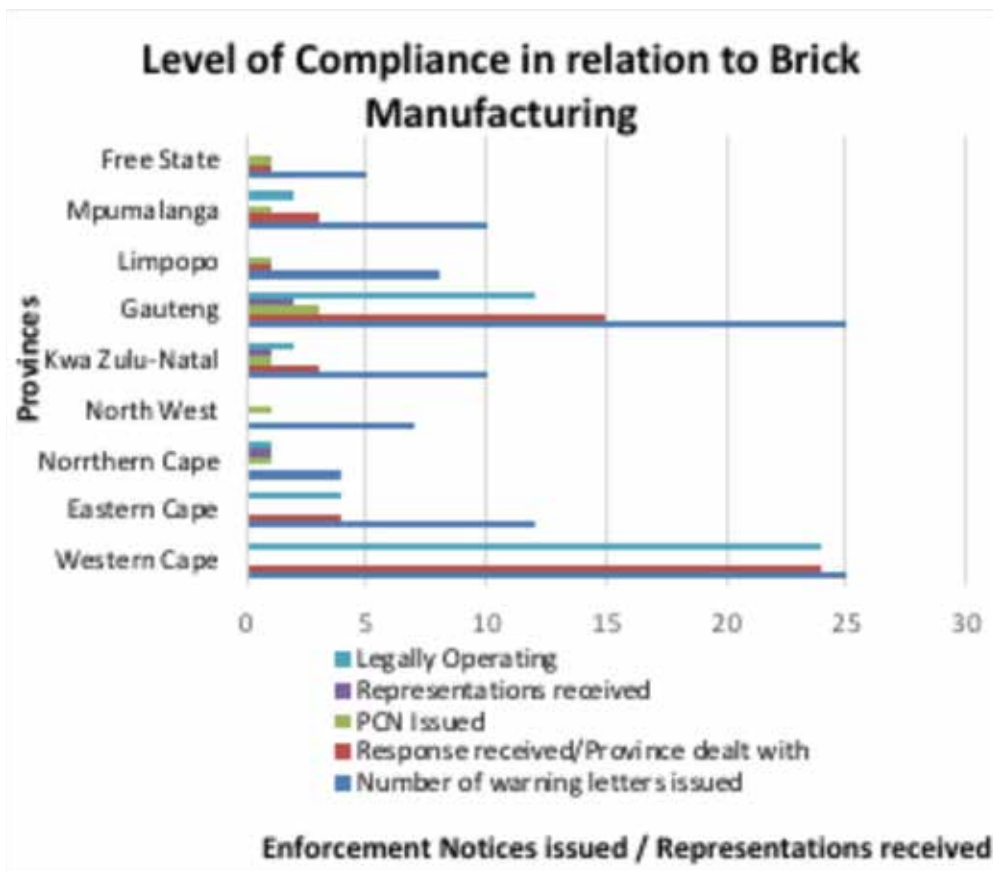


It is estimated that there are about 100 industrial brick producers in South Africa, representing a total production capacity of approximately 3.5 billion bricks per year. The vast majority (more than two-thirds) of these facilities em-

ploy clamp kiln firing technology, followed by tunnel Kilns and Traverse Arch Kilns. The major environmental concerns which arise from the brick manufacturing process relate to the mining of raw materials (the mining processes and environmental impacts will not be considered or assessed due to jurisdictional aspects); dust from the crushing and drying processes; as well as emissions generated during the firing of the bricks. Potential emissions include particulate matter (dust), sulphur dioxide, nitrogen dioxide, carbon monoxide, carbon dioxide and heavy metals.

Warning letters were issued to 106 identified possible facilities, the majority of which are members of the Clay Brick Association ("CBA"). The breakdown of the facilities identified per province are as follows: Western Cape - 25; Eastern Cape - 12; Northern Cape - 4; North West - 7; KwaZulu-Natal - 10; Gauteng - 25; Limpopo - 8; Mpumalanga - 10; and Free State - 5. 29 Facilities responded to the warning letters, providing copies of its AELs and emission monitoring reports, demonstrating its compliance with the NEM:AQA and the NEMA. A further 29 of the identified facilities make up various nationwide branches of one large company, where the Department is trying to engage with one central person on behalf of all the branches.





A notice of Intention to issue a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") ("Pre-Compliance Notice") was issued to 9 facilities which did not respond to the warning letters. Of these, 4 facilities have initiated engagements with the Department and at this stage only 1 of the 4 facilities has confirmed it is in possession of the required AEL. From the above it is clear that the Western Cape and Gauteng Provinces are the most compliant provinces currently.

### 8.2.4 Fertilizer Manufacturing & Lime Production



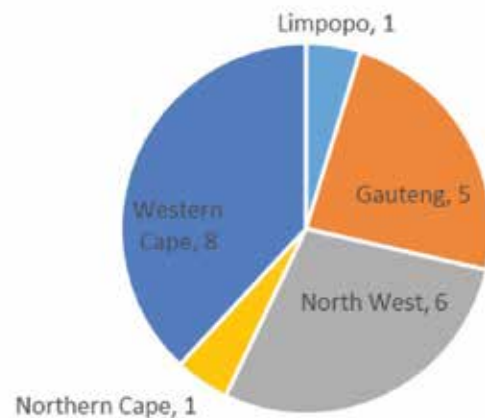
Through desktop research, it was established that certain facilities within the Fertilizer Manufacturing industry are also producing lime. The facilities identified within the Fertilizer Manufacturing and Lime Production sectors may trigger the listed activities and associated minimum emission standards identified in terms of Section 21 of the NEM:AQA, for which an AEL is required for plants undertaking these activities.

The facilities identified were located in the 8 provinces namely: Limpopo, Gauteng, Mpumalanga, Free State, North West, Western Cape, KwaZulu Natal and Northern Cape. No facility was found in the Eastern Cape. A total of 42 warning letters were issued to these facilities requesting a copy their AELs (Final or Provisional AEL), copies of any other environmental authorisation/s issued to the facilities and copies of the internal and external audit reports



compiled for the period January 2017 to date. Only 8 facilities responded, of which a large portion had several plants. A total of 21 pre-compliance notices were issued and all were acknowledged.

Distribution of Pre Compliance Notices per province



The copies of the AEL, other environmental authorisations and audit reports submitted by four (4) facilities will be reviewed to assess compliance with the conditions of the licences. Written representations submitted in response to the Notices of Intent will be reviewed and responded to in order to finalise the administrative enforcement action initiated.

#### 8.2.5 Climate Change: Pollution, Prevention Plans ("PPPs") Project

Regulation 4(1) of the National Pollution Prevention Plan Regulations was promulgated on the 21<sup>st</sup> of July 2017 and requires the submission of National Pollution Prevention Plans in terms of Regulation 4(1). Facilities which fall within the threshold of 0.1 Megatons and have submitted their first pollution prevention plans by the 21<sup>st</sup> December 2017 and 21 June 2018 were identified. A total of thirty-nine (39) PPPs were received and considered by the Department's Chief Directorate: Climate Change & Mitigation.

By the 25<sup>th</sup> of July 2018, the thirty-nine (39) PPP files were processed. Twenty-two (22) PPPs were approved, while sixteen (16) were rejected and one (1) is in progress. By the 30<sup>th</sup> of September 2018, seventeen (17) PPPs that were rejected or in progress were resubmitted and re-considered again as per the regulation. Eleven (11) of these were approved as they complied with Regulation 4(3)(a), which specifically sets out the requirements for the contents of PPPs. Four (4) of the PPPs were rejected again, however, one (1) of these was subsequently resubmitted, reconsidered and approved by 01 November 2018. Some facilities did not submit these PPPs. The three other facilities never resubmitted and therefore did not comply with the Regulations.

In terms of Regulation 8(a) of the National Pollution Plans Regulations 2017, any person is guilty of an offence if they fail to submit a PPP as required in terms of Regulation 4(1). Administrative enforcement action was taken and three (3) Pre-Compliance Notices were issued in March 2019. The administrative enforcement process is aiming primarily to encourage companies to comply with the Regulations.

The Department is in the process of reviewing all copies of the AELs and other environmental authorisation/s and audit reports submitted by four (4) facilities. Verifications and assessments of compliance with the conditions of these licences will be conducted in future. Pre-compliance notices for the remainder of the facilities identified will be issued in the 2019/2020 financial cycle.

#### 8.2.6 Conclusion

Many of the facilities from all the above-mentioned sectors continue to operate unlawfully or are in non-compliance with the requirements of their authorisations. Going forward the Department intends to continue engaging with the Municipalities and Air Quality Officers to target additional facilities which may be identified, to conduct site inspections, and to target facilities who have an AEL but are not compliant with the conditions contained therein.

Furthermore, and as can be seen from above, effective compliance is achieved through continued implementation of various interventions aimed at ensuring that the Inspectorate deals effectively with the growing trend of non-compliance and non-adherence to the existing environmental legislative framework. Enforcement in its simplest form, as can be seen from the above can result in a higher percentage of compliance.



**BIODIVERSITY COMPLIANCE AND ENFORCEMENT**





## 9. BIODIVERSITY COMPLIANCE AND ENFORCEMENT

In the 2018/19 reporting period, biodiversity compliance and enforcement continued to focus on the high-risk species, such as rhinoceros, elephants, pangolins and cycads, while still ensuring that other species receive the protection from the Inspectorate. The cases cited below are just a few examples of the successful convictions that have been obtained in respect of these species.

In addition to pursuing the criminal prosecution and conviction of offenders of biodiversity legislation, the Inspectorate has also been involved in a number of proactive international and domestic projects/ initiatives that seek to improve the capacity of the EMI to combat these types of offences.

In relation to rhino cases, EMIs from all the relevant institutions are actively involved in anti-poaching operations, crime scene management, ongoing support to the SAPS members (who take the lead in investigating these cases) as well as the NPA. The MINTECH Working Group IV's National Biodiversity Investigators Forum (NBIF) with its sub-committee focused on rhinoceros, is an important forum for sharing of information to enhance the collaboration and co-ordination between the Inspectorate and SAPS in relation to biodiversity investigations.

The Rhino Anti-Poaching (RAP) Committee of MINTECH Working Group IV, responsible for overseeing the implementation of the security / enforcement initiatives of the Rhino Conservation Lab, continued to make progress, with the finalisation of the *Guideline to Inform Decisions on the Establishment of Anti-Poaching Related Systems and Services* supported by WWF and CSIR.

As a result of implementing all the aspects of the Integrated Strategic Management Approach for Rhinoceros (including compulsory interventions focused on law enforcement and security), the Minister announced in February 2019 that the poaching situation had stabilised, despite escalating poaching pressure, and in the face of an increased and relentless rise of poaching activity into protected areas. As indicated in the table below, by the end of December 2018, the number of poached rhinoceros for 2018 was **769** compared to the previous year when the number of rhinoceros poached stood at **1 028**.

This is, in part, due to the concerted efforts of our law-enforcement and security agencies.

### 9.1: Total Number of Rhinos poached in South Africa for 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018

INSTITUTION/PROVINCE	2011	2012	2013	2014	2015	2016	2017	2018
SANParks (Kruger National Park)	252	425	606	827	826	662	504	422
SANParks (Marakele National Park)	6	3	3	0	-		0	0
SANParks (Mapungubwe National Park)	0	0	0	1	-		0	0
KZN	34	66	85	99	116	162	222	142
Limpopo	74	59	114	110	91	90	79	40
Western Cape	6	2	0	1	1	0	0	0
Eastern Cape	11	7	5	15	14	17	12	19
Gauteng	9	1	8	5	2	6	4	2
North West	21	77	87	65	46	56	96	65
Free State	4	0	4	4	10	17	38	16
Northern Cape DEANC	0	0	0	5	2	12	24	12
Mpumalanga	31	28	92	83	67	32	49	51
<b>TOTAL</b>	<b>448</b>	<b>668</b>	<b>1004</b>	<b>1215</b>	<b>1175</b>	<b>1054</b>	<b>1028</b>	<b>769</b>

### 9.2. Court sentences relating to rhinoceros matters

#### KEPING CHEN; (TABLE VIEW CAS 307/02/2018)

Province	Western Cape
Description	2 accused were arrested in Table View while in possession of 94 pieces of rhinoceros horn (total mass of 0,659kg)
Charge	Western Cape Nature Conservation Ordinance 19 of 1974, S. 47A(1)(b)

Judgement/Sentence	<p>Accused entered a section 105A plea and sentence agreement on 2018-03-18. Was sentenced to 15 months imprisonment, as well as 3 years imprisonment which was suspended for 5 years.</p> <p>POCA section 18 confiscation order of R160 000 was issued to the accused.</p>
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**S V SAM NNONE & 2 OTHERS**

Province	Limpopo
Description	During 9-10 February 2014 a rhino was shot and killed and both its horns were removed. Tracks were followed whereas accused 1-3 were arrested. They were found in possession of the 2 horns, an illegal firearm, ammunition and axe. The blood on their clothes & shoes matches the with the rhino carcass forensically.
Charge	<ul style="list-style-type: none"> <li>• Hunting of specially protected wild animals, to wit: Rhino - Section 31(1)(a) of the Limpopo Environmental Management Act 7 of 2003;</li> <li>• Theft - read with sec. 246 &amp; 155(2) of the CPA 51/1977: 2X Rhino Horn;</li> <li>• Trespassing - sec. 1(1)(a) of the Trespassing act 6/1959;</li> <li>• Providing a firearm/ammunition to person not allowed to possess it - Section 90 of the Firearms Control Act Section 120(10) (a) of the Firearms Control Act 60/2000 (06 Springfield caliber cd model 537 bolt action rifle);</li> <li>• Illegal possession of prohibited firearm – serial number altered - Section 4(1)(f)(iv) of the Firearms Control Act 60/2000 (06 Springfield calibre cd model 537 bolt action rifle);</li> <li>• Illegal possession of ammunition - Section 120(10)(b) of the Firearms Control Act 60/2000 (4 X .30-06 rounds of ammunition).</li> </ul>
Judgement/Sentence	<b>(15) fifteen</b> years imprisonment

**S V SM MALAZE & 1 OTHER**

Province	Limpopo
Description	On 27 February 2013 at Mabalingwe Private Game Reserve, Accused 1 was arrested inside the reserve, before any rhino was hunted, whilst being in possession of a rifle and ammunition for which he did not have a licence and which was stolen during a housebreaking. Accused 2 was arrested whilst driving in the vicinity of the reserve and ammunition was recovered in the vehicle as well as in his house. The court found that they had a common purpose to hunt a rhinoceros.
Charge	<ul style="list-style-type: none"> <li>• Section 31(1)(a) of the Limpopo Environmental Management Act 7 of 2003: Illegal hunting;</li> <li>• Section 3 of the Firearms Control Act, Act 60/2000: Illegal possession of a firearm;</li> <li>• Section 90 of the Firearms Control Act 60/2000: Illegal possession of ammunition;</li> <li>• Section 120(10)(a) of the Firearms Control Act, Act 60/2000.</li> </ul>
Judgement/Sentence	<b>(18) eighteen</b> years imprisonment

**S V YI LIN**

Province	Gauteng
Description	The accused was initially arrested during an undercover operation on 26 August 2015 when he and his brother bought 2 rhinoceros horns during an authorized undercover operation. They were both arrested and upon a search of his house, two tortoises were found in the garden. Neither one of them possessed the necessary permit to keep the said animals. Both accused were released on bail, but one of the accused failed to attend court and the matter was provisionally withdrawn pending the arrest of his brother. The accused was subsequently arrested when he attempted to export a parcel, declared as coffee beans which contained a rhinoceros horn. He was arrested at the premises of an international export company, whilst checking in the parcel.

Charge	<ul style="list-style-type: none"> <li>• Contravention of section 57(1) of the National Environmental Management: Biodiversity Act, Act 10 of 2004 – Dealing in two rhino horns from the species White Rhinoceros (<i>Ceratotherium simum</i>);</li> <li>• Contravention of section 39(1) of the Nature Conservation Ordinance, Ordinance 12 of 1983 – keeping of two tortoises from the species Bell's hinged - back tortoise (<i>Kinixys belliana</i>) without being in possession of a permit issued in terms of the Nature Conservation Ordinance, Ordinance 12 of 1983;</li> <li>• Contravention of section 57(1) of the National Environmental Management: Biodiversity Act, Act 10 of 2004 – transportation of 1 rhino horn from the species White Rhinoceros (<i>Ceratotherium simum</i>);</li> <li>• Contravention of section 57(1A) of the National Environmental Management: Biodiversity Act, Act 10 of 2004 – attempt to export 1 rhino horn from the species White Rhinoceros (<i>Ceratotherium simum</i>).</li> </ul>
Judgement/Sentence	<ul style="list-style-type: none"> <li>• Count 1: Accused is sentenced to pay a fine of Eighty Thousand Rand (R80 000-00) or to serve a term of Eight Months imprisonment, of which Forty Thousand Rand (R40 000) or 4 months imprisonment is suspended;</li> <li>• Count 3: Accused is sentenced to pay a fine of Five Hundred Rand (R500. 00) or to serve a term of Two (2) months imprisonment;</li> <li>• Count 4: Accused is sentenced to serve a term of Five (5) Years imprisonment, of which Three (3) Years imprisonment is suspended;</li> <li>• Count 5: Accused is sentenced to serve a term of Five (5) Years imprisonment, of which Three (3) Years imprisonment is suspended.</li> </ul> <p>Effective sentence: <b>R 40 500 and 4 years imprisonment.</b></p>

Charge	<ul style="list-style-type: none"> <li>• Regulation 45 (2)(a)(i) of Act 57 of 2003 (NEMPA) : Hunting of a protected animal in a National Park;</li> <li>• Section 3 of Act 60 of 2000 : Possession of unlicensed firearm</li> <li>• Section 90 of Act 60 of 2000 : Unlawful possession of ammunition;</li> <li>• Section 120 (10)(b) of Act 60 of 2000 : Possession of a firearm with the intent to commit a crime;</li> <li>• Section 45 (1) of Act 57 of 2003: Trespassing in a National Park.</li> </ul>
Judgement/Sentence	<b>20 years</b> imprisonment.

#### S V YOGANA SITOE & 1 OTHERS.

Province	Mpumalanga
Charge	<ul style="list-style-type: none"> <li>• Section 49 of Act 12 of 2003 : Immigration Act;</li> <li>• Section 45 (1) of Act 57 of 2003 : Trespassing in a National Park;</li> <li>• Regulation 45 (2)(a)(i) of Act 57 of 2003 (NEMPA) : Hunting of a protected animal in a National Park;</li> <li>• Regulation 45 (2)(a)(i) of Act 57 of 2003 (NEMPA) : Hunting of a protected animal in a National Park;</li> <li>• Section 3 of Act 60 of 2000 : Possession of unlicensed firearm;</li> <li>• Section 3 of Act 60 of 2000: Possession of unlicensed firearm.</li> </ul>
Judgement/Sentence	Counts 1, 2, 5 and 6 to run concurrently. <b>18 years</b> imprisonment.

### 9.3 Cases relating to elephant

#### STATE Vs WILLIAM MBIRIMI AND MUSIWA TICHARIRA CAS 1005/04/2009 (Cape Town H10/2018)

Description	Charged for illegal possession of 379 items of African elephant ivory with a total mass of 54.959kg
Charge	Western Cape Nature Conservation Ordinance, s. 42(1), s. 44(1)(b)(i)

#### S V MAPHOYISA MHAULE

Province	Mpumalanga
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Sentence	Both accused absconded after being released on bail. One accused was rearrested during October 2018. On 28 November 2018, the accused was sentenced to 5 years' direct imprisonment in the Cape Town Regional Court.
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#### 9.4 Court sentences relating to other species

##### S V MAPIPA LUXOLO, BONSILO ZONGOLA, AND ERENS BURROWS (CLANWILLIAM CAS 145/02/2018 & CLANWILLIAM 385/2018)

Description	Illegal picking and possession of 243,5 kg buchu ( <i>Agathosma betulina</i> )
Charge	Western Cape Nature Conservation Ordinance, s. 27(1)(b), s. 44(1)(a), s. 44(1)(e);
Sentence	<ul style="list-style-type: none"> <li>Accused 1 was sentenced on 11 July 2018 to 18 months direct imprisonment and a further 18 months imprisonment suspended for 5 years. He was also convicted for the theft of a CapeNature memory card and sentenced to a fine of R2000 or 12 months imprisonment suspended for 5 years.</li> <li>Accused 2 was sentenced on 2 July 2018 to a fine of R10 000 or 18 months imprisonment which is suspended for 5 years and a further fine of R25 567,50 or 2 years imprisonment.</li> <li>Accused 3 entered into a S105A plea and sentence agreement and was sentenced on 28 June 2018 to a fine of R10 000 or 12 months imprisonment suspended for 5 years, and a further fine of R25 567,50 or 2 years imprisonment. He was also convicted for the theft of a CapeNature memory card and sentenced to a fine of R2000 or 12 months imprisonment suspended for 5 years.</li> </ul>

##### STATE VS JAPANESE NATIONAL, KOJI IKOMA (Bellville SH4/282/2017)

Province	Western Cape Province
Charge	Western Cape Nature Conservation Ordinance, s. 27(1)(b), s. 44(1)(a), s. 44(1)(e)  Illegal possession of 48 <i>Ouroboros cataphractus</i> lizards that he had collected in the Nuwerus / Bitterfontein area of the Western Cape

Judgment/Sentence	On 22 May 2018, the accused was sentenced to a fine of R1-million or 13 years' imprisonment for the illegal possession and hunting of the 48 lizards. The accused was previously prosecuted in Australia in May 2017, after being arrested in Perth, Western Australia, while in possession of 8 <i>Tiliqua rugosa</i> lizards.
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##### STATE VS. JAPANESE NATIONAL, TAKASHI HANDA , CAS 50/12/2017 (Bellville SH4/04/2018)

Province:	Western Cape
Charge:	Western Cape Nature Conservation Ordinance, s. 27(1)(b), s. 44(1)(a), s. 44(1)(e);  Illegal collection 5 <i>Ouroboros cataphractus</i> lizards in the Nuwerus / Bitterfontein area of the Western Cape
Judgment/Sentence:	On 22 May 2018, the accused was sentenced to a fine of R300 000 or 6 years' imprisonment for the illegal possession and hunting of the 5 lizards. The accused also had previous convictions in Australia and in Japan for similar offences. He was arrested in October 2012 for the illegal collection and possession of 9 <i>Tiliqua rugosa</i> lizards and spent 6 months in prison. He was also arrested and prosecuted in October 2010 in Japan for the illegal import of slow loris primates and leopard cats.

##### STATE Vs TWO GERMAN NATIONALS, LEO TRÄGER AND HOLGER PELZLUTZVILLE CAS 17/03/2018

Province	Western Cape
Court	Bellville SH4/61/2018
Charge	Western Cape Nature Conservation Ordinance, s. 27(1)(b), s. 44(1)(a), s. 44(1)(e);  Hunting, transport and possession of live protected wild animals (to whit 21 <i>Armadillo girdled</i> lizards, 2 <i>Karoo girdled</i> lizards and 3 <i>Peers Nama</i> lizards) without permits.

Judgment/Sentence	On 22 May 2018, the 2 accused were each sentenced to a fine of R250 000 or 2 years imprisonment for the illegal possession and hunting of 26 lizards. Accused 1 also has a previous conviction, having been arrested in October 2015 in Jakarta, Indonesia, for the illegal possession and smuggling of 8 <i>Varanus borneoensis</i> monitors. Accused 1 spent 8 months in prison and paid a fine of 5,000,000 Rupiah (approximately €300).
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**OCEANS AND COAST COMPLIANCE AND  
ENFORCEMENT OPERATIONS**



## 10. OCEANS AND COAST COMPLIANCE AND ENFORCEMENT OPERATIONS

### 10.1 Operations: Operation Phakisa Initiative 5



Phakisa Initiative 5: Enhanced and Co-ordinated Compliance and Enforcement, has created a platform to achieve an integrated and coordinated approach in ensuring compliance to the South African Maritime Legislative and Regulatory frameworks within the coastal regions. Phakisa Initiative 5, led by the Department of Environmental Affairs (DEA), supported by the NATJOINTS Structures has focused on joint operations in the maritime environment, with multiple role-players, with different jurisdictions.

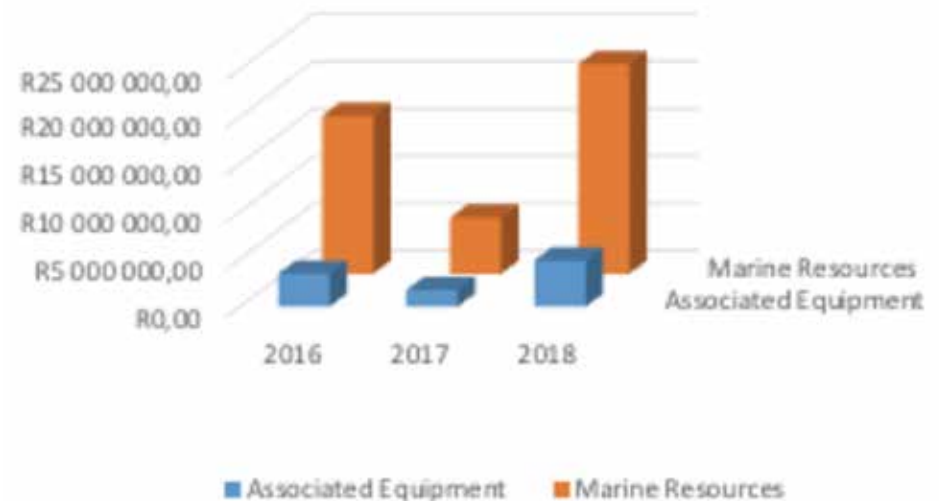
Overall confiscations for the period under review were R28 022 983, compared to R40 617 927 for the period 2017 to 2018. During the period under review the value of confiscated abalone and rock lobster was R21 317 365 and R675 050 respectively. This figure has risen significantly from the previous 2017/18 financial year in which confiscated marine resources, inclusive of abalone and rock lobster, amounted to only R6 037 204.

Confiscated equipment associated with illegal activity in the coastal region amounted to R5 052 160 for the period under review, in comparison to R2 049 000 for the 2017 to 2018 reporting period.

Total confiscations for the 2018/19 reporting period for all four Provinces amounted to R 28 022 983.00. Overall confiscations are as follows:

- Abalone: R 21 317 365
- Rock Lobster: R 676 050
- Marine Resources: R 88 345
- Associated Equipment: R 4 875 960
- Other and Illicit Goods: R 519 601
- CITES: R 515 000
- Narcotics: R 30 622.

**3 year comparison of the value of marine resources and associated equipment confiscated**





Searches, visits and operational activity have continued, projecting a visible government presence in the coastal regions, inclusive of the small ports. The establishment of a reactive capacity has proven successful and has met with significant successes.

The situation pertaining to the illegal harvesting of marine resources along the seaboard remains critical and there has been an increase in the aggression of poachers that has led to injuries, arson of state infrastructure and contributed to the loss of life. The increasing aggressive nature of the poachers could be attributed to the successes of Operation Phakisa, the disruption in the illegal trade and the loss to the crime syndicates. The positive impact Operation Phakisa has on the region when deployed is noticeable and appreciated by local communities. This achievement, however, continues to be underscored by the intensification of poaching activities on the withdrawal of Phakisa upon completion of the operation.

The deployment of the South African National Defence Force (SANDF) in support of Operation Phakisa under the auspices of Operation Corona had a positive impact on poaching activities, deterring poachers from entering the coastal waters and keeping the abalone in their natural habitats within the deployment area.

The implementation of the Overberg Intervention Plan, approved by the NATJOINTS in October 2017, still awaits approval by the Western Cape PROVJOINT. Operation Phakisa is of the view, that when implemented, the Overberg Intervention Plan will have a positive impact on poaching and criminal activities in the region.

	2016/17	2017/18	2018/19	Total Activity National – 3 year period
<b>Searches</b>	6 865	7 842	5 597	20 034
<b>Visits</b>	913	1 072	1 029	3 014
<b>Operational Activity</b>	4 702	5 337	5 282	15 321
<b>Total Activity Per Year</b>	12 480	14 251	11 908	38 639

The development of the National Ocean and Coastal Information System (OCIMS) is ongoing and continues to support operations under Initiative 5. Whilst using OCIMS, Phakisa Initiative 5 provided support to the significant nar-

cotics seizure in the Port of Ngqura and to the tracking of vessels of interest along the seaboard.

Operation Phakisa highlights government's commitment to enhancing the blue ocean economy, enforcing maritime and marine legislation and combatting the pillaging of marine resources by poachers and illegal foreign fishing vessels. Phakisa Initiative 5 has proven that an integrated coordinated approach to Maritime Compliance and Enforcement is possible, effective and has a positive impact on the environment and public opinion.



Seized Shark Fin Consignment





Confiscated vessels

### Reaching out to Traditional Leadership

The current interventions by government to restore law and order in and along the South African coastline are critical, but at the same time the need was identified to raise awareness with Traditional Leaders to ensure a broader understanding of the laws that govern the use of the coast and coastal resources. Oceans and Coast Enforcement co-ordinated a workshop in February in Mthatha. This workshop was attended by Traditional Leaders from Mbotyi, Noqhekwana, Chaguba, Mngazana, Mpande, Hluleka, Presleys Bay, Mngcibe, Coffee Bay and Hole-in-the-Wall coastal areas. A total of 58 Chiefs, Headmen and Community Leaders attended the workshop.

The Workshop covered all Marine and Coastal legislation applicable to the Eastern Cape, Wild Coast area. Presenters from National and Provincial Department of Environmental Affairs, Department of Agriculture, Forestry and

Fisheries, Department of Mineral Resources, Eastern Cape Park and Tourism Agency and the National Prosecuting Authority shared the podium in an effort to acquaint Traditional Leaders with the legislation applicable to the conservation / protection of coastal environment and marine resources.

Robust question and answer sessions were held after every presentation. Ongoing consultation with Traditional Leaders is important in order to reduce opportunities of misunderstanding between Traditional Leaders and Law Enforcers.



## 10.2 South Africa participates in global “30 days at sea” operation



South Africa has for the first time participated in a global marine law enforcement operation, code named “30 Days at Sea”, that led to 369 ship inspections being undertaken in South African ports and coastal waters, and a host of environmental violations being detected and the necessary action taken.

Globally led by Interpol and coordinated by its global network of 122 national coordinators, 30 Days at Sea involved environmental, fisheries, maritime and border agencies, national police, customs, and port authorities.

The month-long (1-31 October) operation was locally led by Operation Phakisa: Ocean Economy’s Compliance and Enforcement Initiative 5 and resulted in:

- 49 detections of environmental violations, addressed through enforcement notices;
- 10 cases of serious environmental non-compliance, dealt with through the criminal investigation process;
- A further 27 vessels with a gross tonnage of 1 250 214 tons that were identified for focussed MARPOL inspections.

These inspections led to numerous remedial measures being undertaken in

order to prevent the risk of pollution at sea. The largest of the ships inspected measured 333m in length.

There were also a number of incidents that were reported through the Interpol network in order for flag states and specific ships for necessary enforcement interventions by other countries.

In addition to the above, the following were the immediate results that can be reported:

- In excess of 5 000 tonnes of waste was removed from the marine environment.
- Revenue that would have been lost to the State will be recovered by SARS by following up on certain violations that were detected throughout the operation;
- Several unlawfully built structures within coastal public property which were detected during the operation will be addressed through enforcement notices;
- Three cases dealing with serious discharges of sewage and potentially harmful pollutants exceeding the maximum threshold of three companies’ coastal discharge permits are currently being addressed and
- One ship illegally discharging sewage into coastal waters was successfully prosecuted.

The focus areas of the operation in South Africa were concentrated in the Eastern Cape, Kwa-Zulu Natal and the Western Cape Provinces and the activities included container inspections, offshore bunkering, offshore dumping sites, Marine Protected Areas, Aquaculture facilities and MARPOL Annexure transgressions as key focus areas.

South Africa’s participation in the 30 Days at Sea Operation demonstrates the commitment of the South African government to combat marine environmental crimes and emphasises the integrated approach to border management.





**JOINT COMPLIANCE AND ENFORCEMENT  
OPERATIONS**

## 11 JOINT COMPLIANCE AND ENFORCEMENT OPERATIONS

### 11.1 Barberton Nature Reserve illegal mining project



Against the background of the decision in the Supreme Court of Appeal: Mpumalanga Tourism and Parks Agency and others v Barberton Mines (Pty) Ltd and others, the appellant court held the view that mining in certain types of protected areas is strictly prohibited. This decision set the foundation for the enforcement blitz in the Barberton Nature Reserve, which consequently was also the subject of the appellant court's decision. The enforcement initiative was undertaken in order to identify and combat the illegal activities taking place within the nature reserve. As such, a flyover was arranged on 13 June 2018 where several illegal mining sites were identified. In addition there were also abandoned mining sites identified where mining once took place but had subsequently been left abandoned without any rehabilitation. Mining activities outside of the park boundaries were also noted and included into the operational plan given that a number of authorities (including the Department of Mineral Resources) were also involved in this exercise.



The operation took place from the 23-25<sup>th</sup> of July 2018 and a follow up was undertaken from the 06<sup>th</sup> – 8<sup>th</sup> of November 2018. In total, twenty (25) site investigations were conducted over this period by members of the Department of Environmental Affairs in conjunction with SAPS: DPCI, SAPS: Barberton Police Station and the SAPS: Provincial Public Order Protection, officials from Mpumalanga Parks and Tourism Agency, the Department of Water and Sanitation and the Department of Mineral Resources.

In total 26 Enforcement Notices were issued in order to effect rehabilitation at various sites and 14 criminal actions were initiated against operators who either had a profile of continued non-compliance with environmental law or neglected to comply with their general duty of care responsibilities prior to abandoning the sites where they operated. Out of 14 criminal actions initiated, two (2) investigations were finalised and a decision was made by the Director of Public Prosecution to pursue prosecutions.

A further highlight of this operation was the interest that was shown by members of the SAPS and the HAWKS as this was the first operation of its kind which attracted a large contingent of SAPS and HAWKS representatives in an attempt to deal with land degradation issues. The follow up work that was undertaken in relation to the Barberton Nature Reserve demonstrates the importance of a cohesive law enforcement response from all the relevant stakeholders and could be regarded as precedent setting in relation to issues which do not generally feature on the priority list as far as environmental law enforcement matters are concerned.



### 11.2 The Launch of the School Awareness Programme in Free State, Goldfields

The Department of Environmental Affairs (DEA) Biosecurity Advocacy and Enforcement units have been working closely with the Free State Department of Economic, Small Business Development, Tourism and Environmental Affairs (FS DESTEA) since the discovery of the highly invasive red swamp crayfish (*Procambarus clarkia*) in Free State, Goldfields area.

The red swamp crayfish, also known as the Louisiana crayfish is indigenous to Northern Mexico and South-East United States of America. The species has spread throughout the world, mostly for aquaculture purposes and the pet shop trade. In many countries the red swamp crayfish has escaped into natural environments where it has devastated indigenous crayfish species and other aquatic organisms and caused irreversible damage to aquatic systems.



After the discovery of these species in Free State, inspections were done at all Pet Shops in the region where it was discovered that all of them had been offered crayfish for sale. During inspections it was also determined that school learners possess these species as pets in their homes and later release the species into dams when they lose interest.

Consequently, DEA has embarked on a number of awareness interventions in Free State such as awareness workshops, door to door campaigns and infor-

mation sessions as part of a broader campaign to promote voluntary compliance to the NEMBA and its Alien and Invasive Species (AIS) Regulations. As part of these awareness interventions, a school awareness programme was launched on the 7<sup>th</sup> of March 2019 in the Goldfields area where schools were visited by DEA to educate the learners and educators on the importance of biodiversity and highlighting the threats posed by AIS on biodiversity and human livelihood. Learners and educators were empowered with knowledge and were encouraged to play a meaningful role in the management of AIS. The Department will continue with the awareness campaign through different media platforms to ensure that our stakeholders are aware of their legal obligations.



### 11.3 Joint operation at Dinokeng and Rust de Winter Dam

The joint operation took place from 21 March to 24 March at Dinokeng Nature Reserve. The units involved were the SAPS Mounted unit, SAPS Diving unit, SAPS K9 unit, the Gauteng Dept. of Agriculture and Gauteng EMI's. The operation involved patrolling the Rust de Winter Dam with rubber boats as well as the Dinokeng Nature Reserve. The Dinokeng Conservancy was patrolled



with vehicles and on horseback. During the operation, a lot of snares were found. There were no arrests during the operation. The operation also served to strengthen relations between the Gauteng EMI's and other stakeholders in the region including the landowners. It also served in creating an awareness about the Inspectorate to members of the public within Dinokeng.



#### 11.4 Anti-poaching roadblock operations

The Gauteng Department of Agriculture and Rural Development; Directorate of Enforcement; Biodiversity Enforcement Unit undertook anti-poaching operations linked to roadblocks that were held on different highways (N1, N4, N12 and N3) in the province. The operations were joint operations with other law enforcement agencies such as; SAPS, Metropolitan Police, Department of Community Safety and Home Affairs Department. These roadblock operations produce positive results, in a sense that  $\pm 200$  vehicles are searched per operation to promote compliance and hundreds of information brochures are distributed to motorists.







**NATIONAL ENVIRONMENTAL COMPLAINTS  
AND EMERGENCY INCIDENTS**

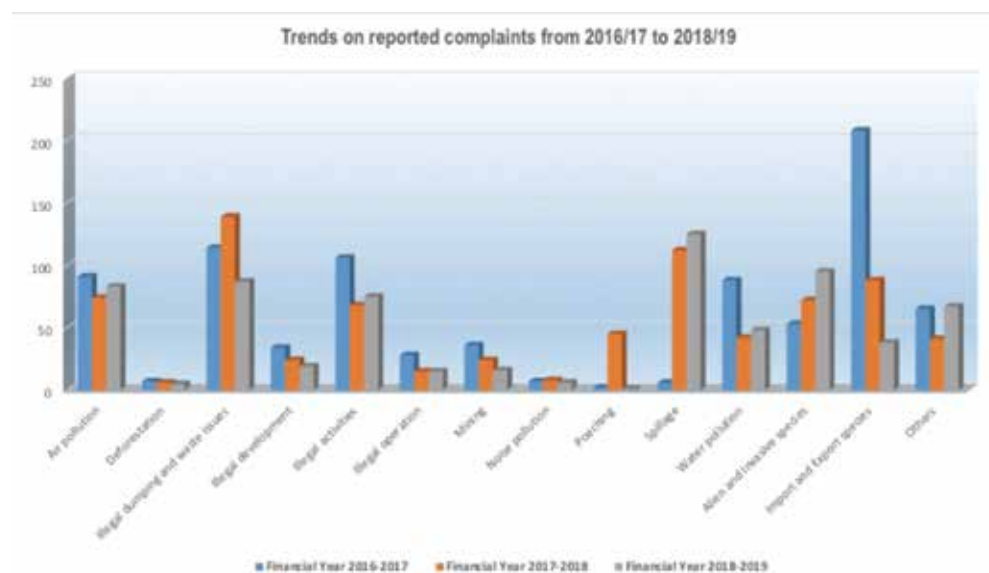
## 12. NATIONAL ENVIRONMENTAL COMPLAINTS AND EMERGENCY INCIDENTS

DEA continued to collect statistics on environmental complaints received through the Environmental Crimes and Incidents Hotline, the Minister and Director-General's office, as well as complaints received directly from other organs of State and the public. The Hotline serves as the main point of entry for complaints on environmental crimes and incidents. However, complaints reported directly to provinces, local authorities or other EMI Institutions are not received through the Hotline. There has been a general decrease in the overall number of incidents and complaints reported from **845** in 2016/17, **758** in 2017/18 and **680** in 2018/19 financial years. Reports of air pollution, illegal activities, water pollution, alien and invasive species and spillages have shown an increase with illegal dumping and waste issues showing decreases.

### 12.1 Hotline complaints per category

Nature of Complaint	Financial Year			Total
	2016-2017	2017-2018	2018-2019	
Air pollution	91	74	83	<b>248</b>
Deforestation	7	6	5	<b>18</b>
Illegal dumping and waste issues	114	139	87	<b>340</b>
Illegal development	34	24	19	<b>77</b>
Illegal activities	106	68	75	<b>249</b>
Illegal operation	28	15	15	<b>58</b>
Mining	36	24	16	<b>76</b>
Noise pollution	7	8	6	<b>21</b>
Poaching	2	45	1	<b>48</b>
Spillage	6	112	125	<b>243</b>
Water pollution	88	42	48	<b>178</b>
Alien and Invasive species	53	72	95	<b>220</b>
Import and Export species	208	88	38	<b>334</b>
Others	65	41	67	<b>118</b>
<b>Total</b>	<b>845</b>	<b>758</b>	<b>680</b>	<b>2228</b>

Table 7: Number and classification of complaints



Graph 6: Graphical representation on the nature of complaints received

### 12.2 Referral of hotline complaints to responsible organs of State

Financial Year	INSTITUTION REFERRED TO					Total
	DEA	DWS	DMR	LOCAL GOVERNMENT	PROVINCES	
2016-2017	375	88	36	166	180	<b>845</b>
2017-2018	312	42	24	209	171	<b>758</b>
2018-2019	310	48	16	119	187	<b>680</b>
<b>Total</b>	<b>997</b>	<b>178</b>	<b>76</b>	<b>494</b>	<b>538</b>	<b>2283</b>

Table 8: Number of DEA referred complaints and incidents

### 12.3 Section 30 NEMA Incidents:

An "incident" is defined in section 30 of NEMA as an "unexpected, sudden and uncontrolled released of a hazardous substance, including from a major emission, fire or explosion, that causes, has caused or may cause significant harm to the environment, human life or property".

From the **125** incidents reported to DEA, **110** of those were DEA mandated, **7** were referred to other authorities and **8** were classified as non-section 30 NEMA incidents. GDARD has recorded **24** section 30 NEMA incidents which were attended to by this province, which shows a **100%** increase from the **12** incidents attended to in 2017/18.



**ENVIRONMENTAL COMPLIANCE AND  
ENFORCEMENT CAPACITY BUILDING**





### 13. ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT CAPACITY BUILDING



#### Basic Training Courses (May and October, 112 officials)

The basic training course is administered and coordinated by DEA and utilises the expertise of experienced designated EMI from across the Inspectorate as

presenters of the course. Officials from all three spheres of government, whom require either Grade 1, 2, 3 or 4 designation, are permitted to submit application forms against which they are evaluated to ensure that they meet the minimum requirements to attend. Each course runs over a seven week period, which includes pre-course assignments and a contact learning session.

#### EMI

The training content is structured as to follow the chronological flow of the regulatory cycle, which includes:

- 1) Legislation, including NEMA, SEMAs, as well as relevant provisions of the CPA and PAJA;
- 2) Theoretical and practical training on the proper legal execution of an inspection and report writing;
- 3) Taking administrative enforcement against non-compliant individuals and/or companies;
- 4) Undertaking criminal investigations; and
- 5) Associated Court procedures.

There are 7 separate individual assessments done over this period and candidates need to obtain a final average of 50% to pass.

The overview for the two courses were as follows:

A. The May 2018 course was presented in Pretoria Gauteng

- 56 officials in attendance
- 13 EMI institutions represented

B. The October 2018 course was presented in Salt Rock KZN

- 56 officials in attendance
- 16 EMI institutions represented



#### **EMI Executive Basic Training course 2018 (August, 7 officials)**

In August 2018 the Department brought together DGs, HODs and DDGs for the presentation of a 2 day EMI Executive Basic Training course.

There were a total of seven executives in attendance representing Western-Cape, Limpopo, Eastern-Cape, KwaZulu-Natal and Mpumalanga provinces as well as National Department of Environmental Affairs (DEA).

The purpose of the training was to enable relevant executives to be designated as Grade 1 EMIs with the power to sign compliance notices in terms of environmental legislation.

The programme was structured so as to facilitate in-depth discussion on key issues and exchange of strategies while focussing on the mandate, functions powers and duties of an EMI.



#### **EMI Specialised Training - EIA Listed Activities (August, 56 EMIs)**

During the reporting period an advanced training course was also presented that focussed on EIA listed activities.

Rather than concentrating on the numerous activities individually, the course instead focussed on teaching EMIs the essential principles relating to the identification, interpretation and assessment of potential non-compliance with the EIA listed activity Regulations.

The training further included topics such as considerations to be taken into account when drafting reports, taking administrative and criminal enforcement action, as well as common pitfalls based on past examples and case law.





### **EMI Biodiversity Crime Sampling Course (December 35 EMIs)**

Over the past few years a number of projects were aimed at developing additional support tools for EMIs in relation to the taking and subsequent analysis of plant and animal DNA. An advanced biodiversity crime scene sampling course was presented to relevant EMIs in order to expose them to these new technologies as well as teaching proper procedures to be followed during the collection and submission processes.

The course was presented from the SANBI National Zoological Gardens in Pretoria, with the support from relevant laboratory, SAPS and EMI experts. There were a total of 35 officials, from 10 different EMI institutions in attendance. The course concluded with a sampling practical as part of the formal assessment.



### **Prosecutors Specialised Environmental Crime Course – Limpopo Province**

On request from the environmental nodal point within the NDPP's office in Pretoria, an advanced prosecutor's course was presented to prosecutors from within the Limpopo province in September.

The purpose of the course was to focus on latest legislative developments, as well as clarification and differentiation between national and provincial legislation, in relation to Biodiversity, Waste and Pollution as well as Water Act offences and cases.

The course was presented near Polokwane with 16 state prosecutors in attendance from across the Limpopo province.





### **Prosecuting Environmental Crime Course – Justice College & DEA EMI CD&S (April & November)**

The long standing collaboration between DEA and Justice College resulted in the delivery of two courses, in what was the 13th year of working in partnership to raise the awareness of prosecutors of the nature, scope and impact of environmental crime.

The first of the 1 week courses was hosted in Pretoria with the second presented in Cape Town. Over the two courses a total of 40 prosecutors from the National Prosecution Authority (NPA) received training.

Both courses focussed on essential aspects of environmental law and strived to expose prosecutors to:

1. The legal standing of an EMI including their powers, mandate, function and duties, as well as their role within the criminal investigation and trial,
2. The suite of environmental legislation: NEMA, NEMBA, NEMPAA, NEMWA, NEMAQA, NEMICM, WA and all associated subordinate legislation,
3. Latest environmental crime trends,
4. Discussion of relevant environmental case law,
5. Examples of commonly detected and investigated environmental crime,
6. Legislative provisions of critical importance to prosecutors during case preparation and trial,
7. Past trial experiences as well as strengths and weaknesses.

This collaboration continues to grow from strength to strength.



### EMI Grade 5 Train the Trainer course (July)

July 2018 witnessed a gathering of strategic importance as 36 officials from 10 different EMI institutions met over a three day period, not only to receive training but workshop a standardised approach in relation to the delivery of the EMI Grade 5 Basic Training for their respective field rangers.

The course focussed on:

1. Past experiences in the delivery of Grade 5 EMI Training;
2. Setting a uniform standard in relation to course content, assessment and presentation of the EMI Grade 5 curriculum.

The outcome of the course will see a uniform approach in the delivery and assessment of field rangers across South Africa in order to be designated as Grade 5 EMIs.



### SARS CUSTOMS Dog Detection Unit Awareness raising (September)

The long standing collaboration between the SARS Customs and the DEA (on behalf of the EMI) also continued. DEA had the privilege to provide "refresher" training for the Detector Dog Unit handlers, who were involved in the training of newly "employed" detector dogs at their Kempton Park premises.

During the course the officers were exposed to latest smuggling trends and legislative developments. Discussions were also had on the principle of developing reasonable suspicion as well as the essential actions to be taken at crime scenes.





#### **EMIs attending ILEA hosted courses (August and June)**

The International Law Enforcement Academy (ILEA) again hosted biodiversity focused training courses for relevant law enforcement officers from across Africa, and 9 EMIs had the privilege of attending these courses in Gaborone Botswana.

The two respective courses were titled:

- Wildlife Border Inspections Training, and the other
- Wildlife Trafficking Investigators Training

Both courses are presented by topic experts sourced from within US government agencies, amongst others United States Fish and Wildlife Service, and aims to teach but also facilitate networking across African countries on the topic of biodiversity protection.



#### **EMIs attend USCBP hosted course (March)**

The U.S. Department of Homeland Security's Customs and Border Protection (USCBP) again offered a course for relevant, interested South African port authority officials, and EMIs were afforded the opportunity to attend.

The course titled: International Border Interdiction Training, focussed on teaching skills and knowledge required for carrying out effective inspection, detection, cargo and passenger processing, and contraband seizure.

The goal of this program is to help build an internal train-the-trainer capacity and eventually infuse the curriculum into the formal training regime of the host nation.



### Environmental Compliance and Enforcement Capacity Building Projects (DEA WWF Funded by INL Project)

During 2017 the Department of Environmental Affairs collaborated with the World Wide Fund for Nature (WWF) and US Embassy (on behalf of INL) and, Silverfox Forensics (service provider) to develop new measures to combat wildlife crime in South Africa. This extensive project came to a successful conclusion during the 2018 – 2019 financial year.

The following is a summary of all the deliverables that were completed:

Awareness material for

1. Air Travellers
2. Muthi Traders
3. Port Enforcement officials
4. Port Operators and
5. Road Traffic Officers

Training curriculum for

6. DNA Barcoding
7. Criminal Docket Management
8. Investigative Tools manual
9. Inspections manual
10. Biodiversity Law curriculum
11. Together with a fully functional and personalised eLearning platform

In total over 3500 pages and more than 2.5 hours of final edited video material was developed as part of thi project.



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WHAT IS AHEAD FOR 2019-20?





#### 14. WHAT IS AHEAD FOR 2019-20?

2019-20 will see the environmental compliance and enforcement sector continue to develop mechanisms to measure the impact of the inspection and enforcement activities highlighted in this report. This financial year also signifies the final year of implementation of the National Environmental Compliance and Enforcement Strategy (NECES); and a review exercise will be initiated to assess the effects of the implementation of the strategy on the performance of the Inspectorate, together with the crafting of a new strategy for the medium to long term. The national Department will also be exploring the impacts of the consolidation of the environment, forestry and fisheries mandates under a single Ministry and its implications for an integration of compliance and enforcement functions. On a local level, the impact of the addition of the local authority EMLs to the national capacity will be monitored and assessed.

On the pollution, waste and impact assessment front, there will be a concerted effort to increase compliance and enforcement activities in areas of poor air quality, with a specific focus on declared priority areas; and the involvement of national, provincial and local authorities. There will be an ongoing focus on the execution of joint inspections, both in relation to specific industry sectors; as well as landfill sites.

Biodiversity compliance and enforcement will continue to focus on verification of private rhino horn stockpiles to ensure compliance with the norms and standards for the marking of rhinoceros and rhinoceros horn and for the hunting of rhinoceros for trophy hunting purposes. Implementation of the Anti-Poaching initiatives of the Rhino Conservation Lab will also be prioritised in line with the annual workplan. Priority species, such as large predators and cycads will remain high on the agenda of the Inspectorate, together with a continued emphasis on the monitoring and eradication of alien and invasive species in the pet-shop and nursery industries.

The work in the oceans and coastal realm will fall primarily under the ambit of Initiative 5 of Operation Phakisa, including the coordination of monthly/quarterly meetings and both proactive and reactive operations; as well as the initiation of the Collaborative Study which will assess the effectiveness of the deployment under Initiative 5. Alongside Operation Phakisa will be the continued initiative to raise the awareness with traditional leadership on the nature, scope and impacts of environmental crimes occurring in our coastal environment.

Both our strategic and operational work is dependent on our ability to collaborate effectively with a wide range of key compliance and law enforcement partners in order to achieve the positive results recorded in this report, particularly given the nature, scope, prevalence and complexity of environmental crime. We will therefore continue to emphasise and strengthen our work with international agencies, such as INTERPOL, UNODC and the CITES Secretariat, as well as those authorities within South Africa whose support is critical for the effective functioning of the Inspectorate. This includes both other sectoral national departments (such as the Department of Water, Sanitation and Human Settlements; and the Departments of Minerals and Energy) as well as law enforcement and prosecution authorities in the criminal justice system (such as the South African Police, the National Prosecuting Authority, the South African Revenue Service and State Security Agency).











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