

NATIONAL ENVIRONMENTAL COMPLIANCE & ENFORCEMENT REPORT 2020/21



forestry, fisheries
& the environment

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FOREWORD

A 2019 report by the United National Environment Programme (UNEP), titled “Environmental Rule of Law: First Global Report” notes that *“Environmental laws have grown dramatically over the last three decades, as countries have come to understand the vital linkages between environment, economic growth, public health, social cohesion, and security. As of 2017, 176 countries have environmental framework laws; 150 countries have enshrined environmental protection or the right to a healthy environment in their constitutions; and 164 countries have created cabinet-level bodies responsible for environmental protection. These and other environmental laws, rights, and institutions have helped to slow — and in some cases to reverse — environmental degradation and to achieve the public health, economic, social, and human rights benefits that accompany environmental protection.”*

South Africa falls squarely within the scope of countries that have a comprehensive and intricate legislative framework that regulates all aspects of the environment. With section 24 of the Constitution providing the imperative for the development and implementation of reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development, the last two decades of intensive law reform have resulted in an all-embracing statutory regime comprising of 9 principal Acts (covering protected areas, biodiversity, waste and air quality, water, coastal management and impact assessment), augmented by approximately 150 pieces of subordinate legislation (in the form of various regulations, norms and standards, declarations and other notices) including over 450 discrete criminal offences. It is notable that this already extensive “suite” of environmental legislation excludes those enacted to regulate related sectors, such as fisheries and forestry; as well as the legislative regime existing at the provincial and local authority level.

With such a considerable armoury of legislative provisions, one may conclude that the country is well-equipped to tackle the global and domestic threats of climate change, species extinction and biodiversity loss, air and water pollution, water scarcity, deforestation and soil degradation. However, the 2019 UNEP Report warns: *“Too often, implementation and enforcement of environmental laws and regulations falls far short of what is required to address environmental challenges. Laws sometimes lack clear standards or necessary mandates. Others are not tailored to national and local contexts and so fail to address the conditions on the ground. Implementing ministries are often underfunded and politically weak in comparison to ministries responsible for economic or natural resource development. And while many countries are endeavouring to strengthen implementation of environmental law, a backlash has also occurred as environmental defenders are killed and funding for civil society restricted. These shortfalls are by no means limited to developing nations: reviews of developed nations have found their performance on environmental issues lacking in certain respects. In short, environmental rule of law is a challenge for all countries.”*

Ultimately, the scores of words written in our statute books are of very little value to the citizens of this country, unless these words are transformed into actions through the rigorous implementation of South Africa’s environmental laws. One of the cornerstones of implementation is the capacity of government to effectively execute compliance and enforcement activities, which ensures that the regulated community respects and fulfils its legislative obligations. This, the 15th National Environmental Compliance and Enforcement Report, documents the efforts of the Environmental Management Inspectorate to bridge this “implementation gap” through strengthening of institutional capacity, improving collaboration with key role-players, clarifying roles and mandates, aligning national, provincial and local objectives and scaling up of joint operations. This year’s edition should be considered in light of the impact that the COVID-19 pandemic has had on the work of the Inspectorate, which has continued to operate during this difficult and challenging period in order to ensure an environment that is not detrimental to the health and well-being of the country’s inhabitants.

Compliance with environmental law is key to human health and welfare. It ensures adherence to the standards, procedures, and approaches provided for in our laws to ensure that we have clean air, clean water, and a healthy environment. It is also important to ensuring people’s rights to access and use land, water, forests, and other resources are respected and protected, thus advancing livelihoods, food security, and dignity.



NOMFUNDO TSHABALALA

DIRECTOR-GENERAL OF FORESTRY, FISHERIES AND THE ENVIRONMENT

ACRONYMS

Key:	General
AEL	Atmospheric Emission Licence
AIS	Alien and Invasive Species
CBP	Customs and Border Protection
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CN	Compliance Notice
DG	Director-General
DPCI	Directorate of Priority Crime Investigations
EA	Environmental Authorisation
ECEL	Environmental Compliance and Enforcement Lekgotla
EMI	Environmental Management Inspector
EMRI	Environmental Mineral Resource Inspector
FCO	Fisheries Control Officer
GEF	Global Environmental Facility
GG	Government Gazette
GN	Government Notice
HCRW	Health Care Risk Waste
INCEIS	Integrated National Environmental Compliance and Enforcement System
IRRP	Integrated Rehabilitation and Remediation Plan
IUU	illegal, unreported and unregulated
MAJOC	Mission Area Joint Operations Centre
MPA	Marine Protected Area
NBIF	National Biodiversity Investigators Forum
NCF	National Environmental Compliance Form
NECER	National Environmental Compliance and Enforcement Report
NECES	National Environmental Compliance and Enforcement Strategy
NECF	National Environmental Crime Forum

NSPCA	National Council of Societies for the Prevention of Cruelty to Animals
OCIMS IVT	Oceans and Coasts Information Management System Integrated Vessel Tracking
PCN	Pre-Compliance Notice
PM	Particulate Matter
RoD	Record of Decision
SADC	South African Development Community
SANDF	South African National Defence Force
SEMA	Specific Environmental Management Act
TOPS	Threatened or Protected Species
USCBP	U.S. Customs and Border Protection
WGIV	Working Group 4
WML	Waste Management Licence
WUL	Water Use Licence
WWF	World Wide Fund for Nature
Key:	Institutions
DFFE	National Department of Forestry, Fisheries and the Environment
DoH	Department of Health
DMR	Department of Minerals and Energy
DWS	Department of Human Settlements, Water and Sanitation
Eastern Cape DEDET	Eastern Cape Department of Economic Development, Environmental Affairs and Tourism
Eastern Cape Parks	Eastern Cape Parks and Tourism Agency
Ezemvelo	Ezemvelo KwaZulu-Natal Wildlife
Free State DESTEA	Free State Department of Economic Development, 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 Economic Development, Environment and Tourism
Mpumalanga DARDLEA	Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs
Mpumalanga Parks	Mpumalanga Tourism and Parks Agency
Northern Cape DENC	Northern Cape Department of Environmental Affairs 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

Key:

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

Legislation

GLOSSARY OF TERMS:

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

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

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

“**Convictions**” 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. This 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 EMIs. 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.

“**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 EMIs 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 WML 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. 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 2020/21 financial year marks the 14th year in which DFFE 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 perspective of the national compliance and enforcement statistics is

followed by a more detailed breakdown per institution/province. The subsequent legal chapters include recent court cases related to the environment; as well as the legislative developments that came into effect in the past financial year. We then turn to operational activities related to the brown, green and blue sub-sectors, as well as joint stakeholder operations. This is followed by an overview of the environmental prosecutions that took place during the reporting period and the types of court sentences handed down. 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 and other law enforcement authorities. We end the report off with chapters on stakeholder engagement and look ahead to plans for the 2021/22 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, as well as the DWS but does not reflect the compliance and enforcement work being undertaken by

other “related” sectors; such as 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 DFFE 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 and water affairs’ compliance and enforcement authorities in this reporting period. The restrictions implemented in response to the COVID-19 pandemic have had an overall negative impact on the extent of the Inspectorate’s compliance and enforcement activities, as officials they were required to prioritise non-compliances posing the greatest risk to the environment. However, as these limitations are lifted, it is envisaged that the Inspectorate will return to the same levels of activity as in previous reporting periods.

Despite these constraints, it is hoped that the NECER 2020/21 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

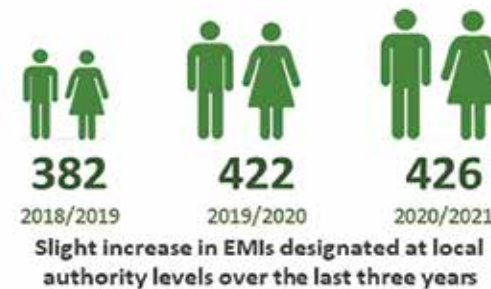
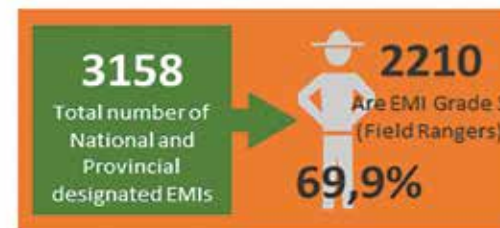
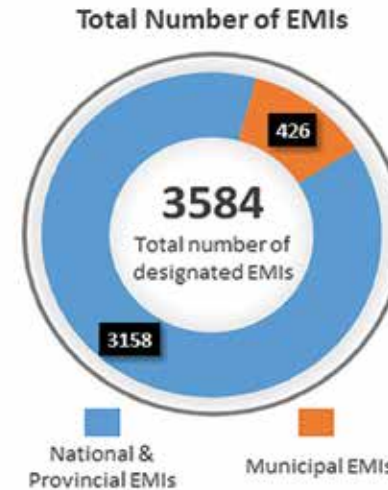
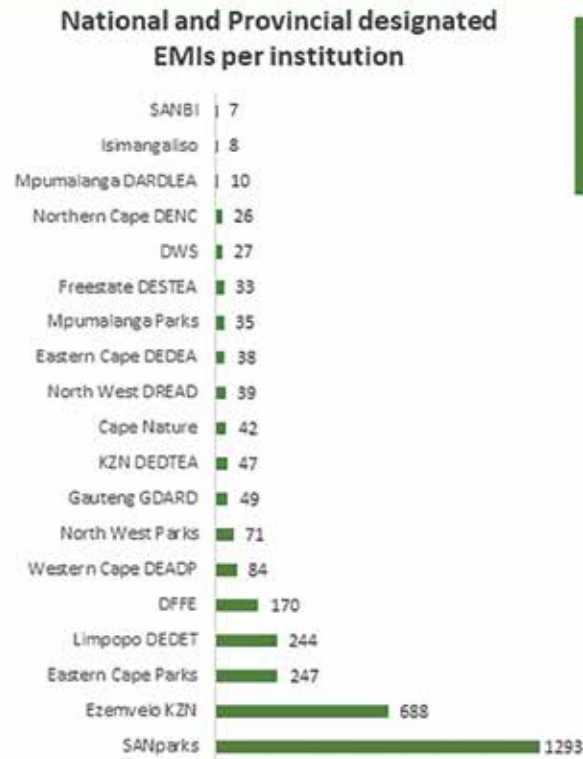


2. KEY FINDINGS

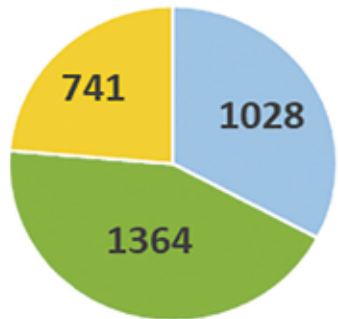
It is clear from the overall national statistics set out below that the restrictions implemented in response to the COVID-19 pandemic had an impact on the work of the Inspectorate during 2020/21. There was a decrease in the majority of indicators summarised below in comparison to 2019/2020, as officials were required to prioritise non-compliances posing the greatest risk to the environment for compliance and enforcement action in order to maximise resources and comply with the different lockdown requirements.

The Environmental Management Inspectorate (EMI)

Overview of EMI designations

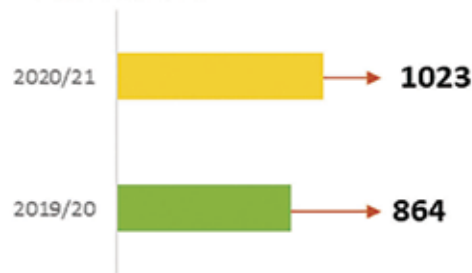


Dockets registered



■ 2018/19 ■ 2019/20 ■ 2020/21

Number of Admission of Guilt Fines Issued



Overall National Enforcement Statistics

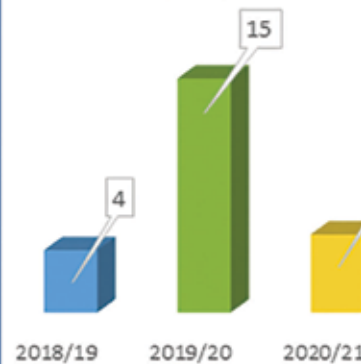
The total Rand amount of section 24G administrative fines paid increased



Number of Criminal dockets handed to the NPA, has decreased from 2019/20 to 2020/21



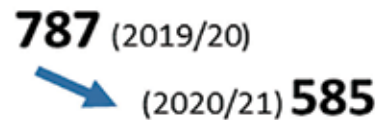
Decrease in Plea and Sentencing agreements



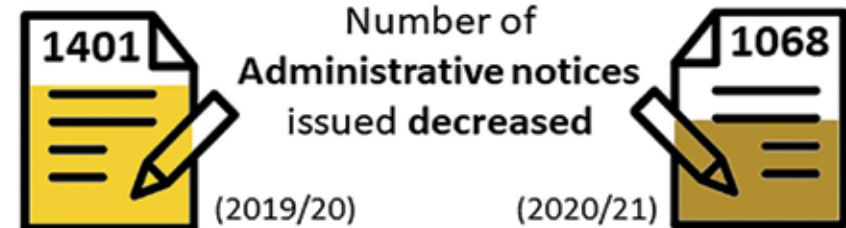
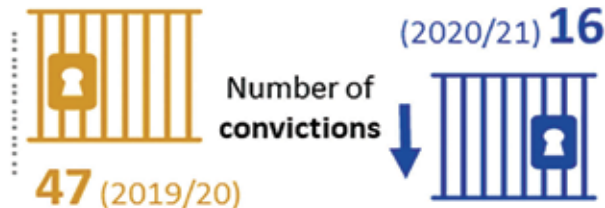
Total value of admission of guilt fines paid has increased from 2019/20 to 2020/21

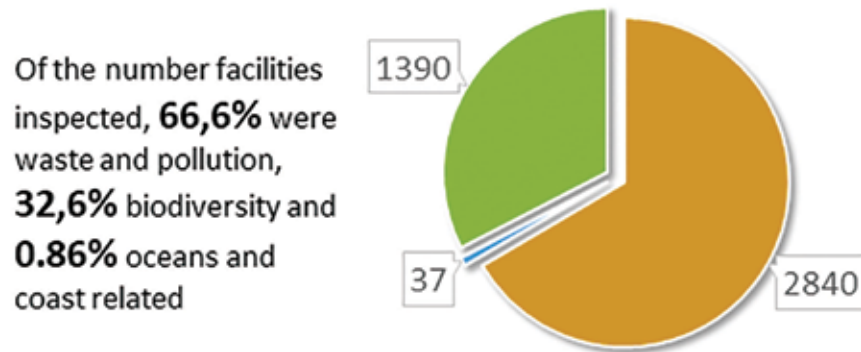


Total number of Arrests made by EMIs



Number of Acquittals decreased from 9 (2019/20) to 0 (2020/21)





The **5395 inspections** were initiated by the following triggers:



Overall National Compliance Statistics



Number of **Non Compliances** detected during inspections

2019-2020 vs 2019-2020



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

Total number of **reactive inspections** conducted, a **18.6% decrease** compared to previous year



2.4 Annual Compliance and Enforcement Highlights			
Category	Result	Institution	Legislation
Most inspections conducted	Green issues = 535 Brown issues = 396 Total = 931 facilities	North West DEDECT	Multiple
Highest sentence of direct imprisonment <u>without</u> the option of a fine	State versus Masinge Trespassing, illegal possession of firearm, ammunition and illegal hunting of Rhinoceros The accused was sentenced to effectively 25 years imprisonment: Count 1: 3 yrs ; Count 2: 8 yrs, Count 3: 4 yrs , Count 4: 15 yrs, Count 5: 10 yrs	SANPARKS	Regulation 45 (2)(a) (i) of Act 57 of 2003 (NEMP:AA)
Highest sentence for a pollution and waste case	S v Wood Glaze (Pty) Ltd In 2012, Wood Glaze bought land in Phoenix from eThekweni Municipality, namely Erf 1086 and Erf 1661. They envisaged using the land to build low-cost houses for disadvantaged and impoverished communities. However, there was a wetland on the property and the company filled in gravel and building rubble to build platforms on which the houses were to be built. This infilling caused parts of the wetland to erode, thus affecting the wetland and its buffer area.	DFFE	Con tr a v e n t i o n of the NEM:WA, contravention of the NWA and two counts of contravention of the NEMA.

2.4 Annual Compliance and Enforcement Highlights			
Category	Result	Institution	Legislation
Highest sentence for a pollution and waste case	The accused was sentenced to R7.5 million fine	DFFE	Con tr a v e n t i o n of the NEM:WA, contravention of the NWA and two counts of contravention of the NEMA.
Highest number of section 24G fines issued	11 fines were issued and paid with a total sum of R10 762 500 being collected.	GDARD	NEMA section 24G
The highest number of enforcement notices issued	274 enforcement notices were issued, mostly related to the unlawful commencement of listed activities.	DFFE	Multiple
Highest number of admission of guilt fines issued	647 were issued to the sum total of R559 900	SANParks	NEM:PAA



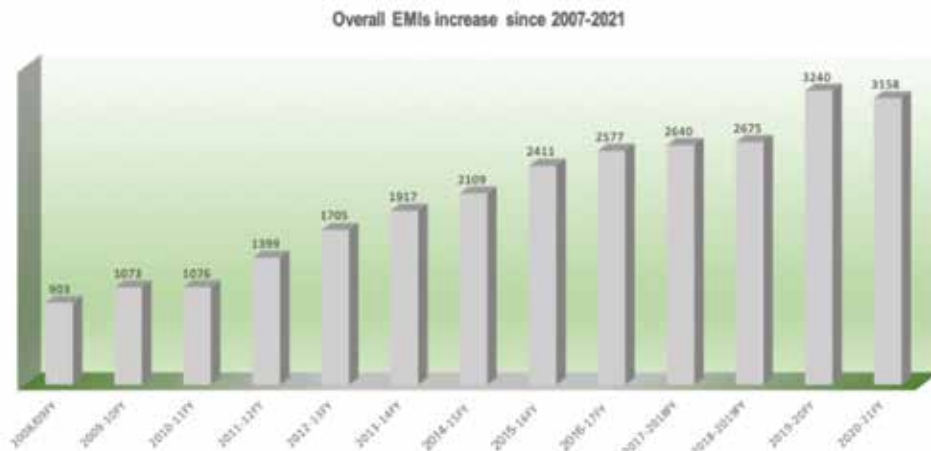
**ENVIRONMENTAL MANAGEMENT
INSPECTORS**

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 2020, the national EMI Register (kept by DFFE 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 **3568** EMIs, comprising of **3158** from national and provincial authorities and **426** from municipalities. The distribution (or annual increase) of EMIs is reflected in the table below.

3.1 The total number of EMIs (national and provincial) from 2007-2021



3.2 Environmental Management Inspectors per Institution

Institution Name	2018-19FY	2019-20FY	2020-21FY
National Authorities			
DFFE	169	160	170
iSimangaliso	8	8	8
SANParks	860	1315	1293

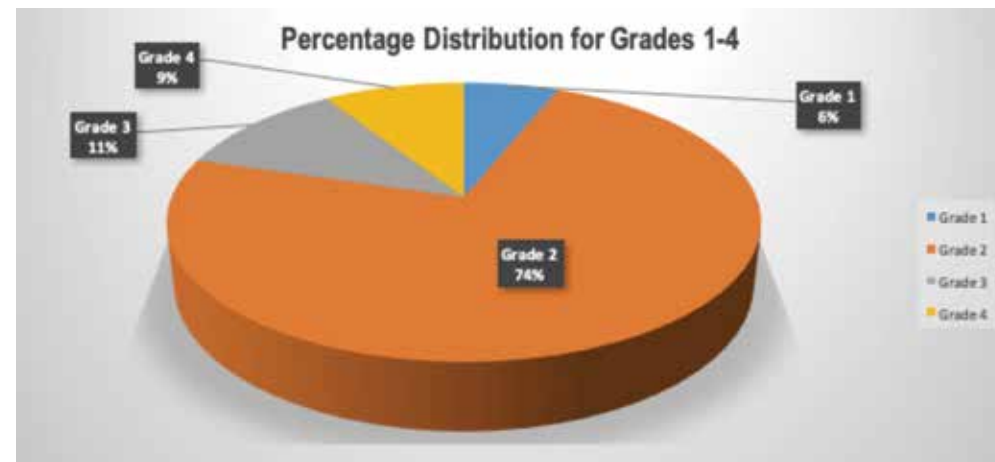
Institution Name	2018-19FY	2019-20FY	2020-21FY
DWS	28	22	27
SANBI	8	8	7
Provincial Environmental Authorities			
Eastern Cape DEDEA	46	45	38
Free State DESTEA	38	32	33
Gauteng DARD	88	98	49
KwaZulu-Natal DEDTEA	68	57	47
Limpopo DEDET	263	246	244
Mpumalanga DARDLEA	9	9	10
Northern Cape DENC	27	32	26
North West DREAD	40	39	39
Western Cape DEADP	65	72	84
Provincial Parks Authorities			
CapeNature	50	42	42
Eastern Cape Parks	122	249	247
Ezemvelo	682	705	688
Mpumalanga Parks	25	25	35
North West Parks Board	80	76	71
TOTAL	2676	3240	3158

3.2.1 Local Authority Environmental Management Inspectors

There has been a steady growth in the total number of EMIs at local authority level in the past 11 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 to capacitate local authorities, provide them with relevant mandate to enforce certain environmental issues (in terms of Schedules 4 and 5 of the Constitution) with the legislative tools to do so. The financial year saw the local authority EMI capacity increase by **0.94%** from **422** in 2019/20 to **426** in 2020/21.

Table: Number of local authority EMIs designated

PROVINCE	2018-19FY	2019-20FY	2020-21FY
Gauteng	61	68	66
Limpopo	26	35	38
North West	26	28	28
Western Cape	88	75	79
Free State	21	22	21
Eastern Cape	21	27	27
Mpumalanga	18	18	18
KwaZulu-Natal	116	145	145
Northern Cape	5	4	4
TOTAL	382	422	426

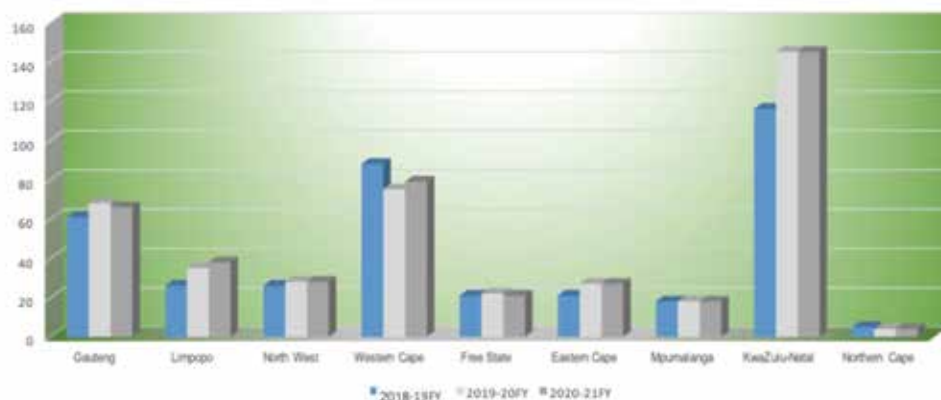


Pie Chart 1: Overall percentage distribution of EMIs Grades 1-4

3.2.3 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 within these protected areas by conducting routine patrols and forming key team members of various anti-poaching units. There has been a general increase in the number of Grade 5 designated EMIs since 2012/13, with a **4.8% (112)** decrease in Grade 5 EMIs recorded in 2020/21 as compared to the previous financial year, with approximately **180** field rangers from MPTA still awaiting Grade 5 EMI designation.

Local Authority EMIs designated per province



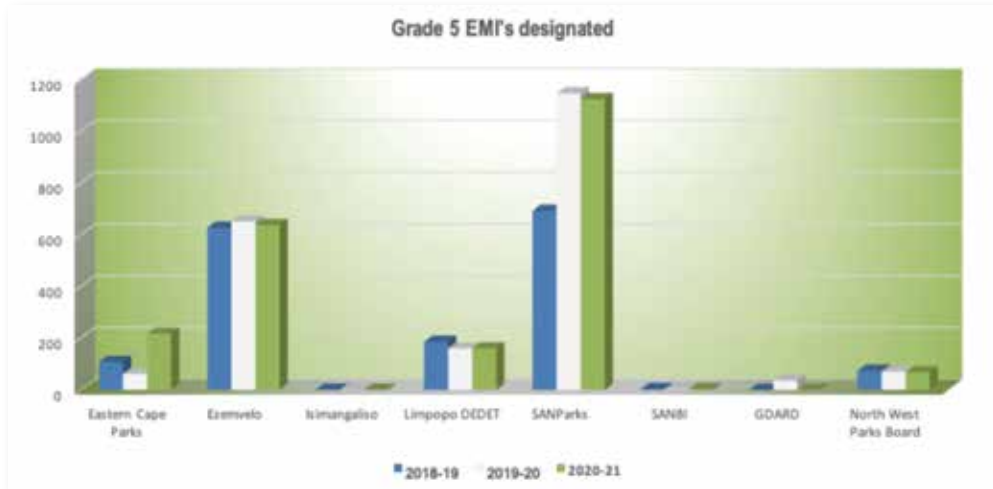
Graph 1: Graphical representation of municipal EMIs designated in different provinces over a three year period

3.2.2 Grades 1- 4 Environmental Management Inspectors

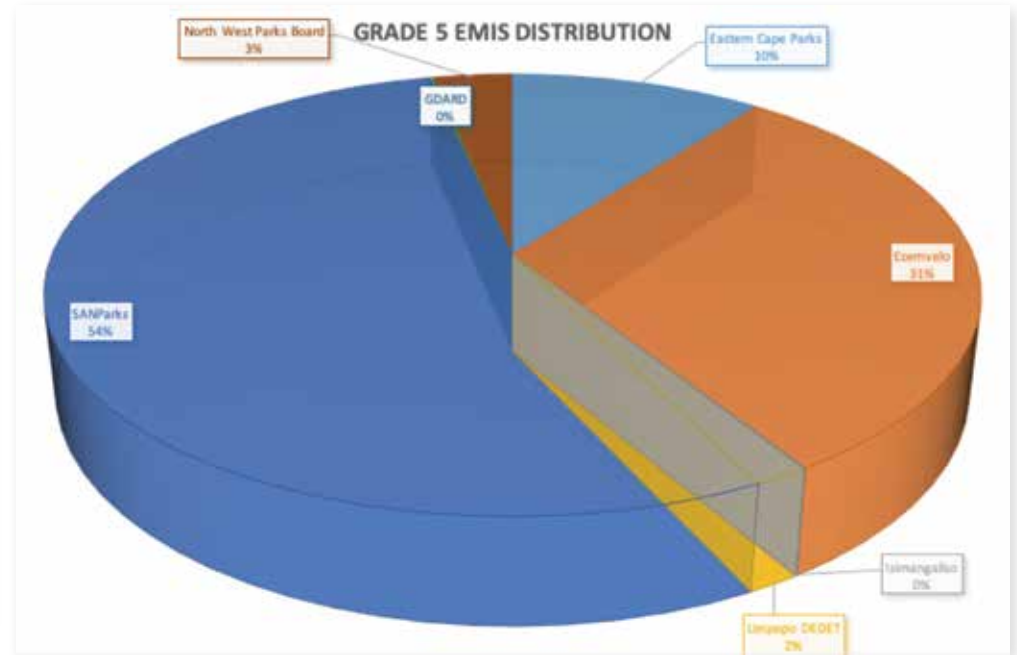
EMIs are categorised according to various grades which reflect the compliance and enforcement powers bestowed on them in terms of Chapter 7 of NEMA. The grading system is intended to align the function of the EMI with the appropriate legislative powers. Grades 1, 2, 3 and 4 EMIs are located within all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

INSTITUTION	2018-19	2019-20	2020-21
Eastern Cape Parks	108	62	217
Ezemvelo	627	651	637
Isimangaliso	1	1	1
Limpopo DEDET	186	39	160
SANParks	692	1146	1124
SANBI	3	3	3
GDARD	-	35	-
North West Parks Board	74	71	68

INSTITUTION	2018-19	2019-20	2020-21
TOTAL	1691	2322	2210



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



Pie chart 2: Distribution of Grade 5 EMIs across EMI institutions



848
Total Cases

141
In Progress Cases

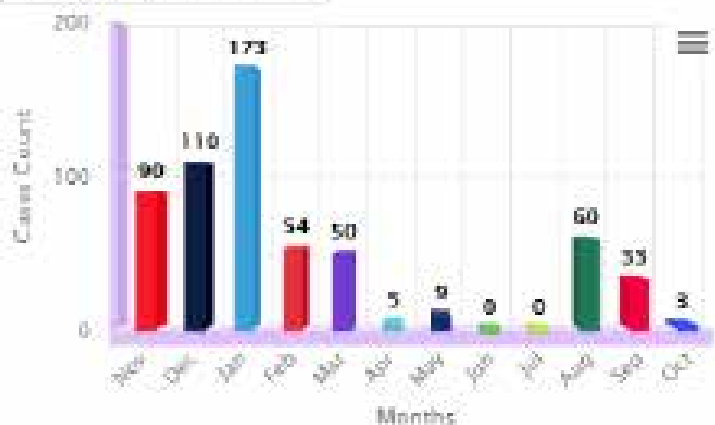
158
Completed Cases

10
Time Lapsed Cases

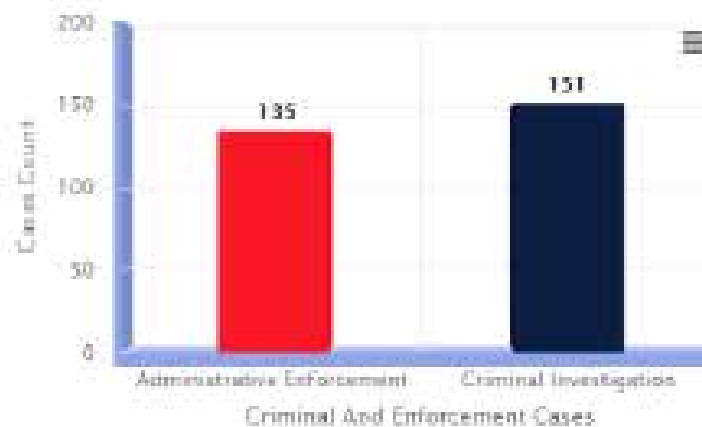
90
Total Cases of Current

Total Cases Per Month

-Select Financial Year-



Comparison Between Criminal And Administrative Enforcement Cases



Notifications

No Notifications

Registered EMI

GRADE	MALE	FEMALE	OTHER	TOTAL
Graded	61	38	0	99

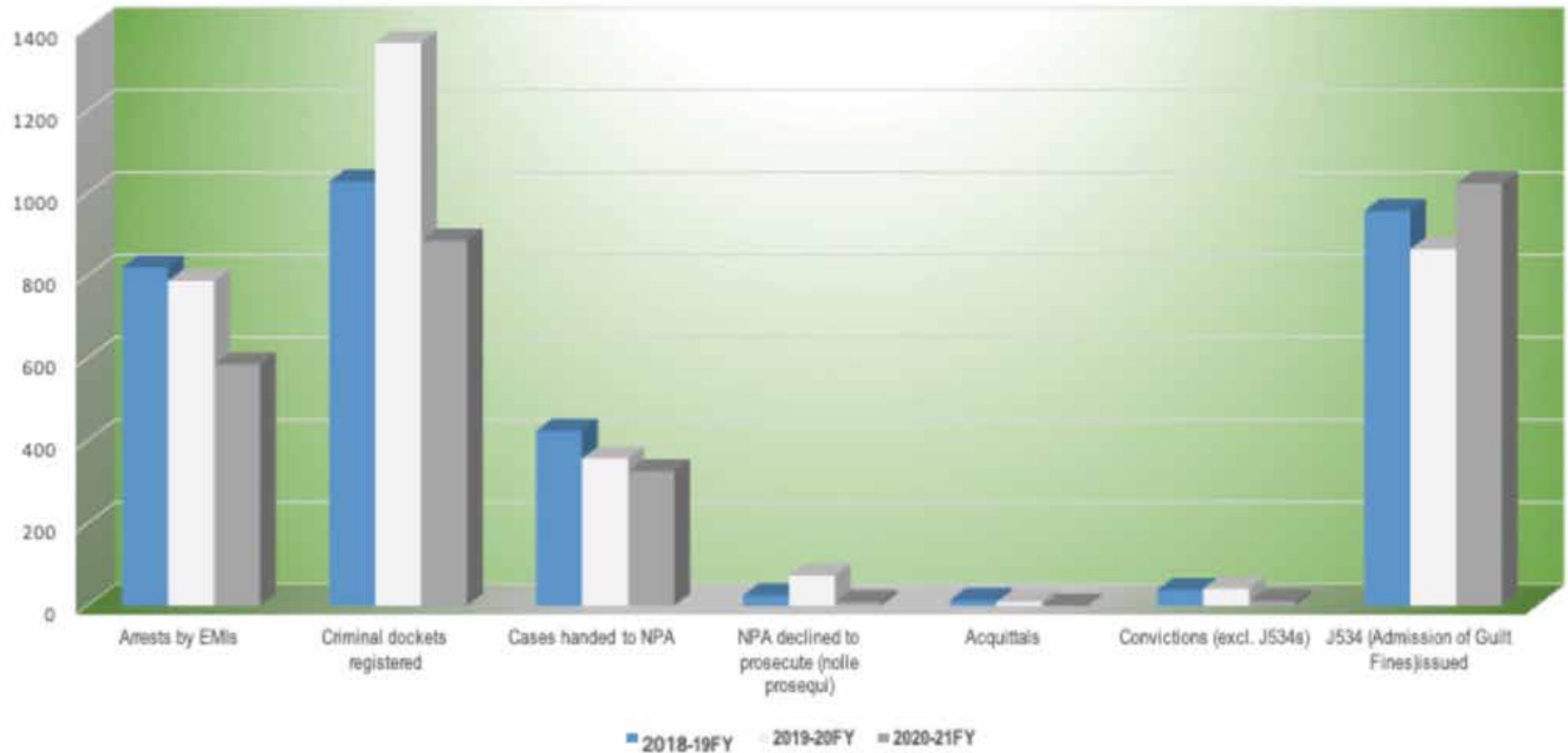
OVERALL NATIONAL COMPLIANCE AND ENFORCEMENT STATISTICS

4. OVERALL NATIONAL COMPLIANCE AND ENFORCEMENT STATISTICS

4.1 Enforcement

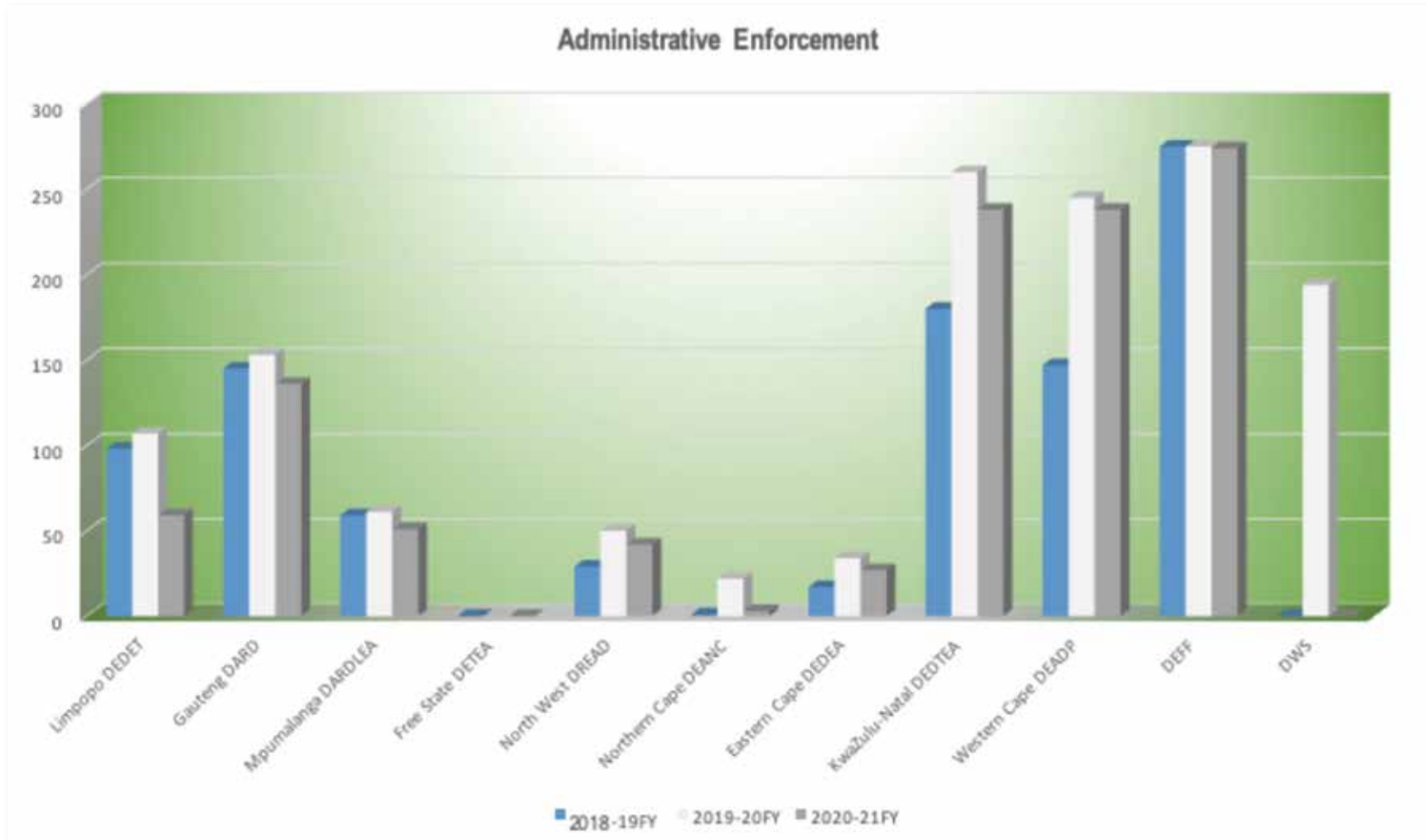
	2018-19FY	2019-20FY	2020-21FY
Criminal Enforcement			
Arrests by EMLs	820	787	585
Criminal dockets registered	1028	1364	885
Cases handed to NPA	424	357	326
NPA declined to prosecute (nolle prosequi)	25	73	9
Section 105A agreements (plea bargains)	4	12	5
Acquittals	14	9	0
Convictions (excl. J534s)	38	41	16
J534 (Admission of Guilt Fines): Total number issued	957	864	1023
J534: Total number paid	460	345	421
J534: Total value of fines paid	R312 930	R 286 896	R 353 795
Administrative Enforcement and Civil Actions			
Warning letters issued	154	153	79
Pre-directives issued	163	302	213
Pre-compliance notices issued	586	714	586
Final directives issued	52	95	71
Final compliance notices issued	148	207	182
Civil Court applications launched	0	3	0
S24G administrative fines: Total value paid	R5 983 518,51	R 7 179 405	R 18 540 666
S24G: Total number of fines paid	71	76	99

Criminal enforcement Statistics

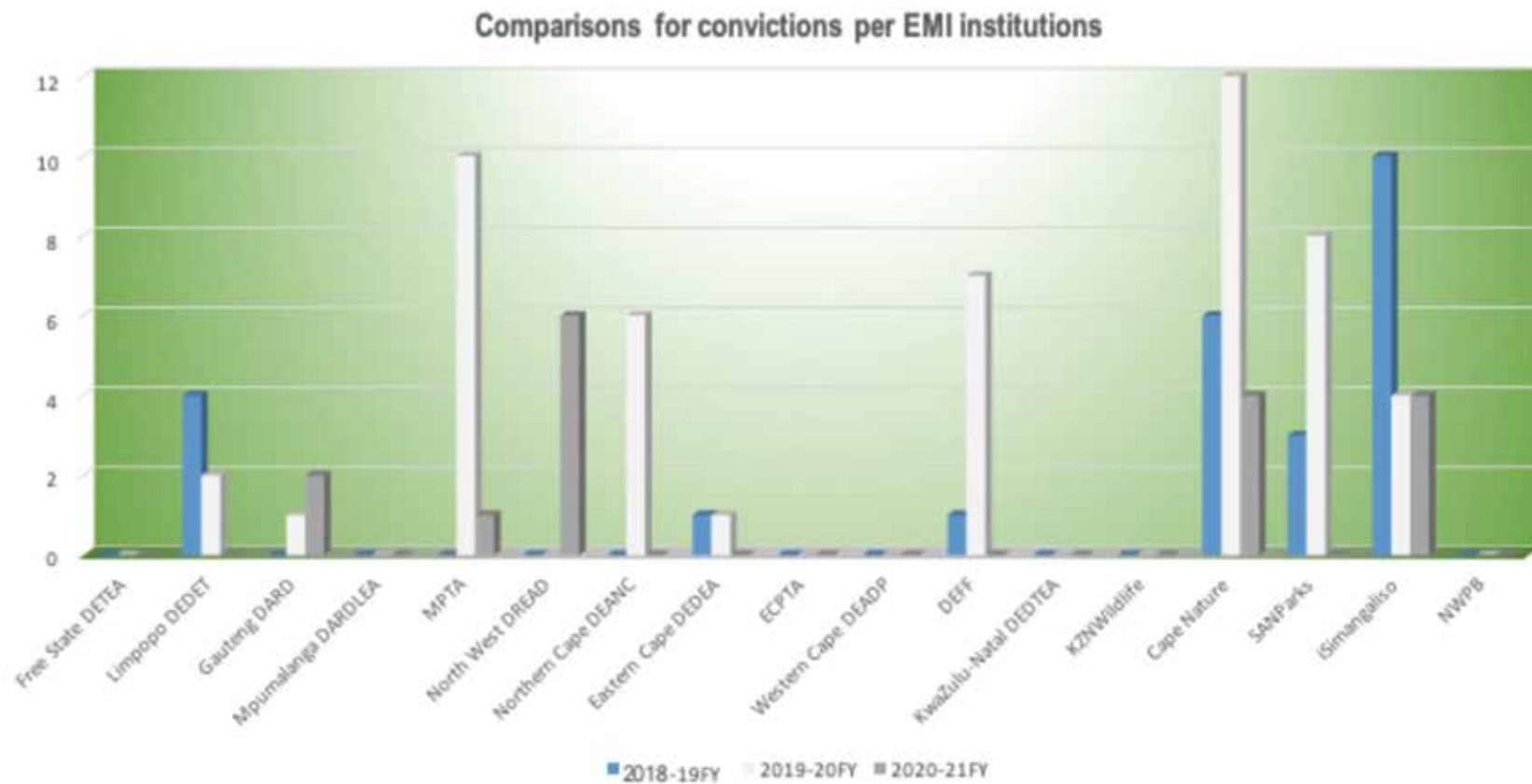


Graph 3: Overall Criminal Enforcement Statistics from 2018-19FY to 2020-21FY.

The following three graphs compare the use of enforcement notices and criminal enforcement mechanisms by each of the EMI Institutions. The comparison for the 2020/21 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 DFFE, 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, North West DEDECT recorded the highest number of convictions: 6 of 16 (37,5%) and followed iSimangaliso and Cape Nature which contributed 25%(4 of 16 each); and GDARD 12,5% (2 of 16).

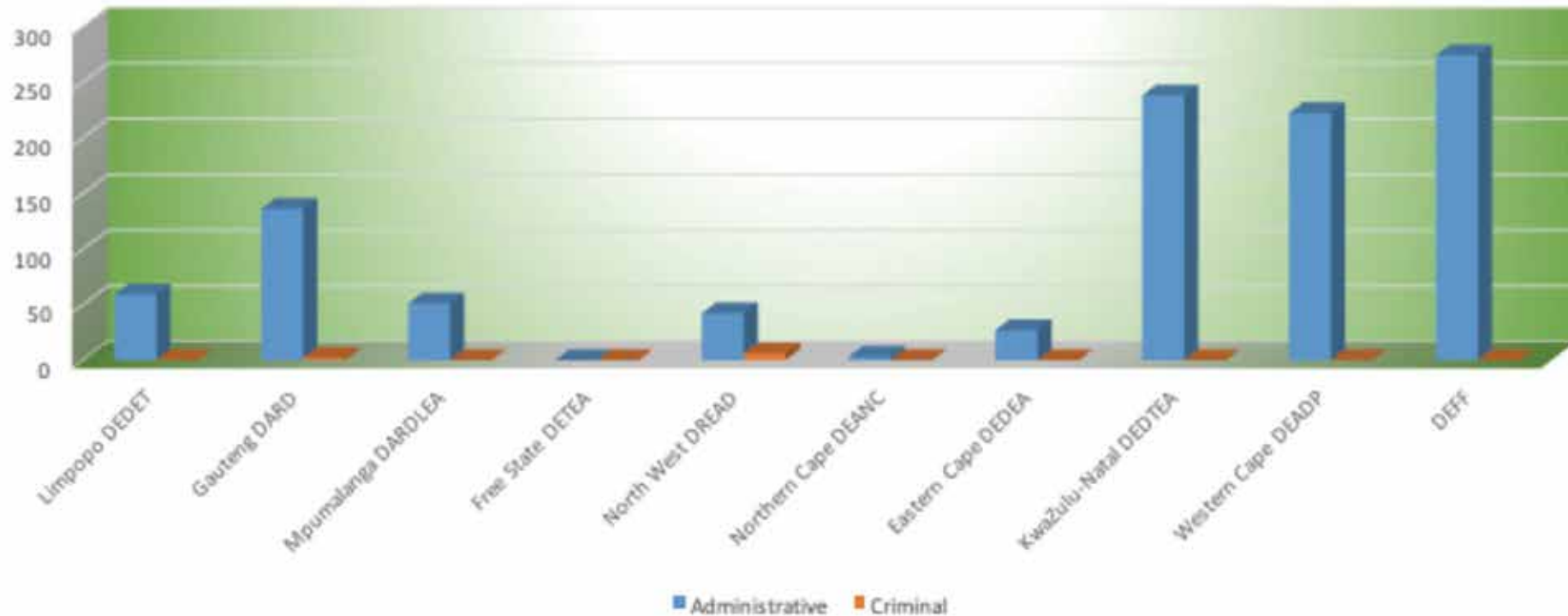


Graph 4: Comparative number of enforcement notices issued per institution



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

Administrative versus Criminal Enforcement Proceedings



Graph 6: Convictions versus enforcement notices per provinces

4.1.2. Most prevalent types of environmental crimes

The 2020/21 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)	DFFE	Illegal possession of alien and invasive species - nurseries (NEMBA)	128
	SANParks	Illegal hunting of protected species in a national park (NEM: PAA)	316

Province	Institution	Prevalent crimes	Number of incidents reported
Eastern Cape	Eastern Cape DEDEA	Unlawful commencement of listed activities	39
	Eastern Cape Parks	Illegal entry without the necessary permit (NEMA: Protected Areas Act 57 of 2003)	20
Free State	Free State DESTEA	Illegal possession of wild animals without the necessary permit (Ordinance 8 of 1969)	6
Gauteng	Gauteng DARD	Unlawful commencement of listed activities (NEMA)	169
Kwa-Zulu Natal	Ezemvelo	Illegal entry / Illegal hunting Prohibited activity (Ordinance 15 of 1974)	575
	KwaZulu-Natal DEDTEA	Unlawful commencement of listed activities (NEMA)	206
Limpopo	Limpopo DEDET	Picking indigenous plants and wood collection without a permit (LEMA)	231
Mpumalanga	Mpumalanga DARDLEA	Unlawful commencement of listed activities (NEMA)	68
	Mpumalanga Parks	Illegal hunting protected species (Mpumalanga Nature Conservation Act 10 of 1998 section 5)	35
Northern Cape	Northern Cape DENC	Illegal possession of protected species without a permit (NEMBA, NCNCA 9 of 2009)	16
North West	North West DEDECT	Unlawful commencement of listed activities (NEMA)	31
	North West Parks	Illegal hunting of rhino (NEM:BA section 57)	16
Western Cape	CapeNature	Illegal possession of protected species without a necessary permit (Section 42(1) of the Western Cape Nature Conservation Ordinance 19 of 1974)	66
	Western Cape DEADP	Unlawful commencement of listed activities (NEMA)	221

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 action in the case of non-compliance would, in many cases, not be pursued.

The following tables highlight blue, green and brown compliance inspections conducted during the 2020/21 financial year. It is important to note that a single facility may require a number of environmental authorisations, licences or permits. 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	-	37	4	-	-	41
DFFE	87	18	152	222	19	498
Eastern Cape DEDET	-	-	-	-	68	68
Free State DESTEA	25	4	307	-	14	350
Gauteng DARD	24	209		39	-	272
Isimangaliso	-	-	12	-	-	12
Kwazulu-Natal EDTEA	172	139	82	6	268	667
Limpopo DEDET	-	45	230	-	-	275
Mpumalanga DARDLEA	114	3	35	-	-	152
North West DREAD	563	-	515	-	98	1176
Ezemvelo KZN Wildlife	297					297
Northern Cape DENC	1	2	3	-	17	23
Western Cape DEADP	221	-	114	-	134	469
Grand Total	1504	248	1987	267	618	4300

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 action
Limpopo DEDET	191	191	-	190	-	108
Western Cape DEADP	469	114	221	-	0	195
Mpumalanga DARDLEA	152	52	100	149	101	101
Northern Cape DENC	20	2	18	-	-	-
Gauteng DARD	296	209	63	232	452	44
DFFE	358	96	262	609	1303	48
Eastern Cape DEDET	43	43	-	-	93	2
Free State DESTEA	18	12	9	-	16	-
Isimangaliso	12	12	-	-	24	-
Kwazulu-Natal EDTEA	764	578	187	-	486	-
North West DEDECT	396	255	141	295	-	37
DWS	121	117	4	30	-	45
Grand Total	2840	1681	1005	1505	2475	580

Green						
Institution	Facilities Inspected	Pro-active	Reactive	Inspection Report finalised	Number of non-compliances	Number requiring Enforcement action
Cape Nature	41	-	41	-	0	-
Limpopo DEDET	400	328	72	400	-	-
Northern Cape DENC	11	9	2	-	-	-
DFFE	82	39	43	82	21	-
Eastern Cape DEDET	24	24	-	-	-	-
Ezemvelo KZN Wildlife	297	-	297	-	-	-
North West DEDECT	535	471	64	400	-	-
Grand Total	1390	871	519	882	21	0

Blue						
Institution	Facilities Inspected	Pro-active	Reactive	Inspection Report finalised	Number of non-compliances	Number requiring Enforcement action
DFFE	37	16	21	30	33	7
Grand Total	37	14	21	30	33	7

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

Institution	Complaint	Permit	Planned Inspection	Routine Inspection	Grand Total
Gauteng Municipalities	53	-	224	-	277
Limpopo Municipalities	18	9	5	32	64
KwaZulu-Natal Municipalities	2	7	5	10	24
Western Cape Municipalities	5	13	1	15	34
Grand Total	78	29	235	57	399



**STATISTICS PER NATIONAL
INSTITUTION/PROVINCE**

5. STATISTICS PER NATIONAL INSTITUTION/PROVINCE

5.1 National Institutions

5.1.1 Department of Forestry, Fisheries and the Environment and Department of Water and Sanitation



	2018-19FY	2019- 20FY	2020- 21FY	2018-19FY	2019-20FY	2020-21FY
DEPARTMENT OF ENVIRONMENTAL AFFAIRS(BRANCH: REGULATORY MONITORING AND SECTOR COMPLIANCE)				DEPARTMENT OF WATER AND SANITATION		
CRIMINAL ENFORCEMENT				CRIMINAL ENFORCEMENT		
Arrests by EMIs	2	0	26	-	0	-
Criminal dockets registered	29	69	51	-	2	-
Cases handed to NPA	28	29	56	-	1	-
NPA declined to prosecute (<i>nolle prosequi</i>)	4	3	1	-	0	-
Section 105A agreements (plea bargains)	2	2	1	-	0	-
Acquittals	0	0	0	-	0	-
Convictions	1	7	0	-	0	-
J534s issued	7	7	31	-	0	-
J534s paid	R 22 000	R 20 000	R 40 000	-	0	-
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS				ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS		
Warning letters written	8	2	22	-	16	-
Pre-directives issued	71	81	68	-	94	-
Pre-compliance notices issued	180	130	164	-	59	-
Final directives issued	5	1	7	-	41	-
Final compliance notices issued	16	21	35	-	0	-
Civil Court applications launched	0	0	0	-	3	-
S24G administrative fines paid (total value / number)	-	R 1 000 000	-	-	-	-
	2	1	-	-	-	-

5.1.2 SANParks, Isimangaliso Wetland Authority and SANBI



	SOUTH AFRICAN NATIONAL PARKS			ISIMANGALISO WETLAND PARK AUTHORITY			SANBI
	2018-19FY	2019-20FY	2020-21FY	2018-19FY	2019-20FY	2020-21FY	2020-21FY
CRIMINAL ENFORCEMENT							
Arrests by EMLs	307	130	124	20	63	20	0
Criminal dockets registered	426	574	353	30	55	34	0
Cases handed to NPA	186	90	93	21	54	15	0
NPA declined to prosecute (<i>nolle prosequi</i>)	1	2	0	1	42	2	0
Section 105A agreements (plea bargains)	0	0	0	0	0	2	0
Acquittals	1	0	0	1	2	0	0
Convictions	3	8	0	10	4	4	0
J534s issued	407	356	647	1	4	1	5
J534s paid (number)	33	32	160	1	0	1	0
J534s paid (value)	R 27 000	R 27 750	R101 025	R2500	R0	R500	R 4 500
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS							
Warning letters written	-	-	-	2	0	0	2
Pre-directives issued	-	-	-	0	0	0	0
Pre-compliance notices issued	-	-	-	0	0	0	0
Final directives issued	-	-	-	0	0	0	0
Final compliance notices issued	-	-	-	0	0	0	0
Civil Court applications launched	-	-	-	0	0	0	0

5.2 Provincial Institutions and Parks

5.2.1 Western Cape



	DEPARTMENT OF ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING			CAPE NATURE		
	2018-19FY	2019-20FY	2020-21FY	2018-19FY	2019-20FY	2020-21FY
CRIMINAL ENFORCEMENT						
Arrests by EMLs	0	0	0	29	53	83
Criminal dockets registered	14	14	10	25	40	37
Cases handed to NPA	14	13	8	16	20	30
NPA declined to prosecute (<i>nolli prosequi</i>)	3	0	0	3	6	1
Section 105A agreements (plea bargains)	0	0	0	1	5	1
Acquittals	0	0	0	0	0	0
Convictions	0	0	0	6	12	4
J534s issued	0	0	0	113	82	78
J534s paid (number)	0	0	0	64	16	8
J534s paid (value)	0	R0	R0	R69 250	R26 400	R36 800
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS						
Warning letters written	0	0	0	0	0	0
Pre directives issued	56	64	84	0	0	0
Pre-compliance issued	70	91	104	0	0	0
Final directives issued	9	27	22	0	0	0
Final compliance notices issued	12	22	28	0	0	0
Civil Court applications launched	0	0	0	0	0	0
S24G administrative fines paid (total value/number)	R1,977,750	R2 278 325	R 2 386 166	0	0	0
	17	27	68			

5.2.2 KwaZulu-Natal



	DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM & ENVIRONMENTAL AFFAIRS			EZEMVELO KZN WILDLIFE		
	2018-19FY	2019-20FY	2020-21FY	2018-19FY	2019-20FY	2020-21FY
CRIMINAL ENFORCEMENT						
Arrests by EMIs	0	0	0	130	109	172
Criminal dockets registered	3	1	3	168	124	156
Cases handed to NPA	0	0	2	-	-	-
NPA declined to prosecute (nolli prosequi)	0	0	0	-	-	-
Section 105A agreements (plea bargains)	0	0	0	-	-	-
Acquittals	0	0	0	-	-	-
Convictions	0	0	0	-	-	-
J534s issued	0	0	0	-	-	11
J534s paid (number)	0	0	0	-	-	1
J534 paid (value)	R0	R0	R0	-	-	R 2 500
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS						
Warning letters written	59	5	3	-	-	-
Pre-directives issued	16	35	47	-	-	-
Pre-compliance notices issued	120	170	144	-	-	-
Final directive issued	15	7	19	-	-	-
Final compliance notices issued	29	48	28	-	-	-
Civil Court applications launched	0	0	0	-	-	-
S24G administrative fine paid (total value/ number)	-	1	-	-	-	-
	1	R0	-		-	-

5.2.3 Gauteng



GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT	2018-19FY	2019-20FY	2020-21FY
CRIMINAL ENFORCEMENT			
Arrests by EMIs	7	15	16
Criminal dockets registered	18	23	8
Cases handed to NPA	24	31	17
NPA declined to prosecute (<i>nolle prosequi</i>)	3	2	2
Section 105A agreements (plea bargains)	0	1	0
Acquittals	0	0	0
Convictions	0	1	2
J534s issued	14	9	9
J534s paid (number)	14	7	7
J534s paid (value)	R 12 800	R 6 850	R 10 800
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS			
Warning letters written	0	0	0
Pre-directives issued	2	5	6
Pre-compliance notices issued	83	97	91
Directives issued	0	3	3
Final compliance notices issued	60	48	36
Civil Court applications launched	0	0	0
S24G administrative fines paid (total value/ number)	R 2 710 018	R 2 884 079	R10 762 500
	28	19	11

5.2.4 Limpopo



LIMPOPO DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND CONSERVATION	2018-19FY	2019-20FY	2020-21FY
CRIMINAL ENFORCEMENT			
Arrests by EMIs	193	151	94
Criminal dockets registered	161	138	77
Cases handed to NPA	26	16	15
NPA declined to prosecute (<i>nolle prosequi</i>)	5	1	1
Section 105A agreements (plea bargains)	0	1	0
Acquittals	8	0	0
Convictions	4	2	0
J534s issued	366	316	216
J534s paid (number)	331	293	206
J534s paid (value)	R162 780	R 123 860	R 134 370
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS			
Warning letters written	5	0	2
Pre-directives issued	10	6	3
Pre-compliance notices issued	71	87	44
Directives issued	3	1	3
Final compliance notices issued	14	13	9
Civil Court applications launched	0	0	0
S24G administrative fines paid (total value/ number)	R 208 500	R0	R 250 000
	3	0	1

5.2.5 Eastern Cape



	DEPARTMENT OF ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS			EASTERN CAPE PARKS & TOURISM AGENCY		
	2018-19FY	2019-20FY	2020-21FY	2018-19FY	2019-20FY	2020-21FY
CRIMINAL ENFORCEMENT						
Arrests by EMIs	41	64	0	6	2	4
Criminal dockets registered	45	111	58	6	1	2
Cases handed to NPA	30	15	48	4	1	0
NPA declined to prosecute (<i>nolle prosequi</i>)	5	13	0	1	0	0
Section 105A agreements (plea bargains)	0	0	0	0	0	0
Acquittals	0	4	0	1	0	0
Convictions	1	1	0	3	0	0
J534s issued	33	42	0	3	12	0
J534s paid (number)	1	5	0	1	0	0
J534s paid (value)	R 8 500	R30 000	R0	R 600	R 10 436	R0
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS						
Warning letters written	37	97	18	0	-	-
Pre-directives issued	4	0	0	0	-	-
Pre-compliances issued	10	34	23	1	-	-
Final directives issued	1	0	0	0	-	-
Final compliance notices issued	2	0	4	0	-	-
Civil Court applications launched	0	0	0	0	-	-
S24G administrative fines paid (total value/ number)	R 10 000	R 20 000	-	-	-	-
	9	2	-			

5.2.6 Free State



DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS ¹	2018-19FY	2019-20FY	2020-21FY
CRIMINAL ENFORCEMENT			
Arrests by EMIs	6	2	-
Criminal dockets	12	3	-
Cases handed to NPA	9	2	-
NPA declined to prosecute (<i>nolle prosequi</i>)	2	0	-
Section 105A agreements (plea bargains)	0	0	-
Acquittals	0	0	-
Convictions	0	0	-
J534s issued	12	1	6
J534s paid (number)	12	1	4
J534s paid (value)	R 7 500	R6 000	R11 000
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS			
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)	-	-	-
	-	-	-

¹ Statistics submitted was for green related cases

5.2.7 Mpumalanga



agriculture, rural development,
land & environmental affairs
MPUMALANGA PROVINCE
REPUBLIC OF SOUTH AFRICA



	MPUMALANGA DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT, LAND & ENVIRONMENTAL AFFAIRS			MPUMALANGA TOURISM AND PARKS AGENCY		
	2018-19FY	2019-20FY	2020-21FY	2018-19FY	2019-20FY	2020-21FY
CRIMINAL ENFORCEMENT						
Arrests by EMIs	0	0	0	39	58	26
Criminal dockets registered	5	9	14	31	60	37
Cases handed to NPA	1	1	11	14	34	15
NPA declined to prosecute (<i>nolle prosequi</i>)	0	0	0	0	0	1
Section 105A agreements (plea bargains)	0	0	0	0	0	1
Acquittals	0	0	0	0	0	0
Convictions	0	0	0	0	10	1
J534s issued	1	0	0	0	0	0
J534s paid (number)	0	0	0	0	0	0
J534s paid (value)	R0	R0	R0	R0	R0	R0
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS						
Warning letters written	20	7	1	0	0	0
Pre-directives issued	2	5	2	0	0	0
Pre-compliances issued	31	9	3	0	0	0
Final directives issued	17	2	12	0	0	0
Final compliance notices issued	9	45	34	0	0	0
Civil Court applications launched	0	0	0	0	0	0
S24G administrative fines paid (total value/ number)	R 2 995 000	R 997 000	R 5 142 000	0	0	0
	12	20	20			

5.2.8 Northern Cape



Department of
Environment and Nature Conservation
Northern Cape

DEPARTMENT OF ENVIRONMENT AND NATURE CONSERVATION	2018-19FY	2019-20FY	2020-21FY
CRIMINAL ENFORCEMENT			
Arrests by EMIs	34	49	28
Criminal dockets	19	32	16
Cases handed to NPA	12	30	14
NPA declined to prosecute (<i>nolle prosequi</i>)	0	4	1
Section 105A agreements (plea bargains)	0	3	0
Acquittals	0	3	0
Convictions	0	6	0
J534s issued	0	7	9
J534s paid (number)	0	3	8
J534s paid (value)	R0	R3 000	R 3 800
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS			
Warning letters written	22	26	31
Pre-directives issued	0	7	0
Pre-compliance notices issued	0	1	0
Directives issued	1	12	3
Final compliance notices issued	0	2	0
Civil Court applications launched	0	0	0
S24G administrative fines paid (total amount/ number)	R0	R0	R0
	0	7	0

5.2.9 North West



NORTH WEST DEPARTMENT: ECONOMIC DEVELOPMENT, ENVIRONMENT, CONSERVATION AND TOURISM				NORTH WEST PARKS AND TOURISM BOARD		
	2018-19FY	2019-20FY	2020-21FY	2018-19FY	2019-20FY	2020-21FY
CRIMINAL ENFORCEMENT						
Arrests by EMIs	0	84	8	3	7	4
Criminal dockets	0	79	19	39	29	10
Cases handed to NPA	0	19	3	39	1	2
NPA declined to prosecute (<i>nolle prosequi</i>)	0	0	0	0	0	0
Section 105A agreements (plea bargains)	0	0	0	0	0	0
Acquittals	0	0	0	0	0	0
Convictions	0	0	6	0	0	0
J534s issued	0	32	12	0	1	0
J534s paid (number)	0	0	12	0	1	0
J534s paid (value)	R0	R 27 100	R 9 000	0	R 1 000	R0
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS						
Warning letters written	3	0	0	-	-	-
Pre-directives issued	2	5	9	-	-	-
Pre-compliance notices issued	20	36	23	-	-	-
Directives issued	1	1	2	-	-	-
Final compliance notices issued	6	8	8	-	-	-
Civil Court applications launched	0	0	0	-	-	-
S24G administrative fines paid (total value / number)	R 60 000,00	-	-	-	-	-
	2	-	-	-	-	-



ENVIRONMENTAL JURISPRUDENCE

6. ENVIRONMENTAL JURISPRUDENCE

6.1 Whether a by-product reworked and sold off is considered waste in terms of NEMWA and the lawfulness of waste disposal facilities established pre-eca

[Minister of Environmental Affairs and others v Arcelormittal South Africa Limited \(AMSA\) \(GP case no 86171/2016, SCA case no. 342/2019\)](#)

This is an appeal against an order made by the Gauteng High Court (Pretoria) on 8 June 2018, in terms of which the decisions of the Minister of Environment, Forestry and Fisheries (then Environmental Affairs) were reviewed and set aside, and a declaratory issued. The Minister had, in 2016, dismissed an internal appeal lodged by AMSA against a directive and AMSA's objection to the compliance notice issued by the DFFE in 2015.

AMSA has been operational since the 1970s. A by-product of its steel manufacturing process is Basic Oxygen Furnace (BOF) slag formed in the course of the conversion of liquid iron from the blast furnace into steel in a basic oxygen furnace. At its Newcastle operations, AMSA's BOF slag is derived from two sources, namely 'current arisings' and 'reclaimed slag' that generates revenue for AMSA which equates to an average of R1,1 million per month.

DFFE issued AMSA with a WML for the construction and operation of a new BOF slag disposal site (BOFSDS) at the Newcastle operation in July 2011. It authorised the disposal of any quantity of hazardous waste to land and the construction of facilities listed in category B of the schedule to the licence. In September 2011 a decommissioning WML for AMSA's existing BOFSDS was issued, and in September 2016 this WML was revised to authorise AMSA to reclaim BOF slag from its existing BOFSDS with a view to decommission and rehabilitate the existing BOFSDS.

During February 2013, EMIs from DFFE conducted a second follow-up inspection of the Newcastle operations to determine whether AMSA complied with newly issued permits/licences/authorisations. Consequently, a notice was issued in terms of section 31H(1)(b) of NEMA. Several exchanges followed between DFFE and AMSA, resulting in the issuance of a PCN and pre-directive in July 2014. Despite representations received and meetings held, the DDG issued a combined compliance notice and directive in December 2015.

The CN was issued on the basis that AMSA was operating the existing BOF slag disposal site (BOFSDS) without a WML. The BOFSDS commenced operation prior to 1997. The CN advised AMSA that its disposal of BOF slag into the existing BOFSDS was unlawful as AMSA is not a holder of a WML. Further, DFFE took the view that the sale of the BOF slag, either in current arising or reclaimed slag, required the third parties to whom the slag was sold to hold WMLs. The CN instructed AMSA to immediately (within 24 hours) cease with the disposal of waste into the BOF slag disposal site until such time that DFFE agrees in writing that activities may

recommence. Further, AMSA was required to desist from selling slag to third parties without WMLs.

The directive was issued based on the fact that AMSA's activities caused or had the potential to cause significant pollution or degradation of the environment; and included the same instructions as the compliance notice. In addition, AMSA had to provide the Department with a list of companies to whom slag has been sold within 7 working days and proof of these companies being the holders of WMLs.

AMSA was of the view that it was not subject to the provisions of ECA, NEMA and NEMWA, as AMSA's operations had commenced before the enactment of these Acts. Accordingly, it sought the withdrawal of the CN and directive. In January 2016 AMSA lodged an objection against the compliance notice and an internal appeal against the directive. In July 2016 the Minister dismissed the appeal and the objection, noting that the directive and compliance notice came about as a result of AMSA's failure to comply with the dictates of NEMA and its environmental impacts.

In addition, AMSA argued that the BOF slag was not waste because at no stage were these by-products rejected, abandoned or unwanted, and therefore did not fall within the definition of 'waste' in NEMWA. The reasons for this view is that current arisings are never deposited nor stored in a BOFSDS and that it has commercial value. With regards to reclaimed slag, AMSA submitted that once the BOF slag is recovered from the BOFSDS and recycled, it ceases to be waste.

DFFE argued that because AMSA no longer required the BOF slag, this meant that it was rejected, abandoned and unwanted, hence its disposal to third parties. In addition, the fact that AMSA currently held a WML in respect of its new slag facilities, following the issuing of a decommissioning licence in respect of its pre-existing disposal site, was tantamount to an acknowledgement that slag constituted 'waste' as defined in NEMWA.

AMSA approached the High Court to review and set aside the Minister's decision to dismiss the appeal and objection, as well as to set aside the CN and directive, and to issue a declaratory order to confirm that the disposal, reclamation and sale of BOF slag to third parties did not contravene NEMA and NEMWA. The High Court concluded that the decisions of the Minister and DFFE were materially flawed and that the review should succeed. With regards to the WMLs the High Court agreed with AMSA that it did not require a WML in respect of its old BOFSDS, which had been in existence prior to the commencement of ECA and NEMWA. The Minister had to call upon AMSA to require a WML in terms of section 80(4) of NEMWA if it wanted to make NEMWA licensing requirements applicable. The Minister and DFFE then approached the Supreme Court of Appeal.

This appeal raised 4 questions:

- Whether AMSA was prohibited from disposing its BOF slag at its existing BOFSDS and from selling recycled BOF slag to its customers without a WML, or an exemption under the NEMWA.
- Whether the customers to whom AMSA sold its BOF slag required a WML in order to purchase AMSA's BOF slag.
- Whether the issuance to AMSA by DFFE of decommissioning and construction WMLs in 2011 meant that AMSA could no longer exercise its pre-existing rights that it had enjoyed long before the coming into operation of the ECA and later NEMWA.
- Whether the High Court was correct to review and set aside the Minister's decision to dismiss the internal appeal, and to grant declaratory relief.

Judgement

The answers on the first 3 questions above were answered in the negative and the last one in the affirmative. The appeal was dismissed with costs, and the High Court order was supplemented by the reviewing and setting aside of the directive and compliance notice issued by DFFE, as the High Court didn't include this in its order.

Retrospectivity of legislation

The Court confirmed that there is a general legal presumption against retrospectivity and, therefore, the general rule is that a statute does not have retrospective effect. ECA came into operation on 9 June 1989, after the commencement of AMSA's Newcastle operations (since the 1970s). If it wasn't for this, AMSA accepted that it would've required authorisation under section 22(1) of ECA as its operations triggered listed activities.

Statutory interpretation: BOF slag a waste?

The Court reiterated that statutory interpretation is an objective process of attributing meaning to words used in legislation. It entails a simultaneous consideration of the language, the context and the apparent purpose to which it is directed, and should always be construed consistently with the Constitution. Against this backdrop, the Court examined the definition of 'waste' and 'recycle' as contained in section 1 of NEMWA. The Court indicated that it becomes apparent, from the definition of 'waste' that any substance that is not 'unwanted, rejected, abandoned, discarded or disposed of' does not fall within the ambit of the definition. Similarly, once any substance has been recycled or recovered, in this instance from the BOFSDS, it ceases to be waste. Consequently, the 'current arisings' and 'reclaimed BOF slag' fall outside the ambit of the definition of waste.

NEMA came into operation on 29 January 1999 and contains principles that impose the

duty to avoid waste, but where it cannot be altogether avoided, it must be 'minimised and re-used or recycled' and other disposed of in a responsible manner, and also to ensure that 'pollution and degradation of the environment are avoided or, where they cannot be altogether avoided, minimised and remedied. The Court was of the view that AMSA was promoting the principle objectives of NEMA by recycling the BOF slag. In addition, the decommissioning WML authorised AMSA to decommission its existing BOFSDS and rehabilitate it – in order to give effect to this requirement, it was necessary for AMSA to reclaim part of the material deposited in the BOFSDS, i.e. separate BOF slag from the dump in its BOFSDS, and recycle it for sale to third parties in order to seal and rehabilitate the existing BOFSDS. Accordingly AMSA submitted an amendment application to the decommissioning WML to be authorised to reclaim BOF slag from its existing BOFSDS.

Declaratory order

The High Court was criticised for granting declaratory relief to AMSA – it was argued that part of the order made was unwarranted, having regard to the fact that AMSA had since been granted the WMLs. With the old site having been rehabilitated and sealed as required by the decommissioning WML and the new site having been commissioned, the declaratory order sought would be moot. The Court agreed with AMSA's argument that declaratory relief was justified as the alleged transgressions identified by DFFE in the CN exposed AMSA to criminal prosecution and could have serious consequences, and as the relief entails the exercise of a narrow discretion. Thus, the grounds upon which the exercise of such discretion can be interfered with on appeal are restricted. However, the Court was of the view that the High Court cannot be faulted by granting the declaratory order.

The Court concluded by making the following findings:

- The Newcastle operations were not subject to section 20 of ECA as it commenced before the enactment of this legislation.
- The WMLs issued to AMSA had no bearing on AMSA's existing rights and entitlements as recognised by section 80(4) of NEMWA. By instructing AMSA to cease using the existing BOFSDS, the DFFE and Minister would defeat the purpose of section 80(4) and this would undermine the effectiveness of NEMWA.
- Section 74 of NEMWA (application for exemption from the provisions of NEMWA) is not applicable in this case, as it would only be applicable if the Minister had invoked section 80(4).

THE USE OF A SECTION 34(3) OF NEMA ENQUIRIES IN RELATION TO ACTIVITIES CONDUCTED WITHOUT ENVIRONMENTAL AUTHORISATION

6.2 Uzani Environmental Advocacy CC (Uzani) V BP Southern Africa (Pty) Ltd (BP) (CC 82/2017)

BP constructed 21 filling stations in Gauteng without the required environmental authorisations (EAs) and submitted a series of section 24G applications in terms of NEMA thereafter. Uzani initiated court action against BP based on contraventions of section 22 of ECA and sections 24F and 28 of NEMA. On 1 April 2019, BP was found guilty on 17 counts of contravening section 22(1) read with sections 21(1) and 29(4) of ECA together with item 1(c) of Schedule 1 and Schedule 2 of Government Notice R.1182 of 5 September 1997 (the ECA listed activities), in that it was found to have constructed or upgraded (by increasing the fuel storage capacity) 17 petrol stations without the necessary EAs. The prosecution now applies for an order to hold a post-conviction enquiry under section 34(3) of the NEMA into the monetary value of the advantage which BP might have gained as a result of the offences it committed.

Section 34(3) of NEMA provides for an enquiry into and assessment of the monetary value of any advantage gained after conviction of an offence under any provision listed in Schedule 3. Schedule 3 includes contraventions of sections 19(1) and 19A read with 29(3), 20(1) and (9) read with section 29(4), 29(2)(a), 31A and 41A read with 29(3) of ECA. BP's main contention is that section 22 of ECA is not presently listed among the offences in respect of which such an enquiry is available (i.e. in Schedule 3 of NEMA) and, having regard to s 35(3)(n) of the Constitution, it is entitled to the benefit of the least severe punishment or penalty which prevailed between the time the offence was committed and now. Uzani submitted that as sections 21 and 22 of ECA are still effective, it demonstrates an intention not to exclude this offence from the possibility of a section 34(3) enquiry.

Judgement

The availability of section 34(3) enquiries to convictions based on contravention of section 22(1) of ECA

The court confirmed that a section 34(3) enquiry can only be held in respect of convictions for offences committed after the commencement of NEMA. Further, the applicable provisions were those in force at the time of the commissioning of the offences.

The court analysed the history of the legal framework pertaining to the removal of section 22(1) of ECA from Schedule 3 of NEMA. Despite of all the amendments, the court found that the ongoing intention of the legislature was to continue requiring authorisation for activities which may have an adverse impact on the environment. It was further evident that the amendments

and repeals which were effected amounted to no more than a re-enactment of the relevant sections of ECA into NEMA. The same offence as when contravening section 22(1) of ECA (at least in relation to a failure to obtain an EA for the construction of, or increasing storage facilities at, a petrol station) is now one under s 49A(1) of NEMA, which is a listed offence in terms of Schedule 3. The essence of the provisions has not changed. Accordingly a section 34(3) enquiry still applies in respect of a contravention of section 22(1) of ECA.

Similarly listed activities: transition from ECA to NEMA:

BP referred to previous judgements which confirmed that there is a presumption that the legislature must be taken not to have intended anything unjust unless it clearly intended otherwise. In addition, if found that the consequences of a conviction may result in graver consequences to the offender, whether it be in the form of the punishment or otherwise then he or she is entitled to be treated as if the amendment had not occurred, and if the amendment ameliorated the consequences then the offender is entitled to the benefit brought about by the change.

The Court rejected their argument, however, on basis that, firstly, BP's argument is premised on the contention that the legislature considered that constructing or upgrading a petrol station which required the underground storage of petrol and diesel was no longer an activity which may be detrimental to environment and therefore no longer required regulating through the process of authorisation. This contention is not in line with the purpose of section 24 of the Constitution and also fails to account for the fact that Regulations promulgated under section 24D of NEMA still identify the construction generally of storage facilities for petroleum products in underground containers with a combined capacity of only 80 cubic metres as a listed activity.

In addition, the Court did not agree that Parliament was satisfied that the punishment for contravening section 22(1) of ECA as set out in section 29(4) was adequate for this type of transgression. The legislature attempted to transpose over time into NEMA and its regulations specific activities (including those related to petrol stations) identified in ECA as requiring authorisation under pain of penalties and the consequences of remedies available under section 34(3)(a) of NEMA. The Court regarded this as a transfer of legislation by way of repeal and re-enactment. In such a case, if nothing in substance changed, then there was no intention to alter the law, only to modify or consolidate it; nor can there be any adverse consequence to trigger a concern about retrospectivity or unfairness either under interpretational guidelines or the Constitutional values.

The nature and purpose of a section 34(3) enquiry

BP contended that the Court should exercise its discretion not to order an enquiry on two grounds. Firstly, that the enquiry is part of the sentencing procedure. In this regard, Uzani

argued that section 34(3) of NEMA is not punitive in nature. The Court agreed with Uzani and was of the view that such enquiry is restorative in nature, occurs post-conviction and occurs separately before sentencing proceedings, although it might influence the outcome of sentencing proceedings. Since September 2009, section 34(3) can also be used to require that the person convicted takes sufficient remedial measures (which include rehabilitative steps) to restore the situation to the *status quo* preceding the degradation and ensure that it is not repeated.

Secondly, BP argued that the primary purpose of a section 34(3) enquiry is to determine if environmental degradation or damage has been caused and, if so, to punish the offender by way of an 'additional fine'. The court must therefore find that there has been environmental degradation caused during the period when the unauthorised activity constituting the offence occurred, before it will summarily enquire into the adequacy of a fine under section 29(4) of ECA. Only if a section 29(4) fine is inadequate can the court impose an additional punishment, but then only to cover the actual damage caused to the environment and not for the purpose of sentencing in general. Accordingly, BP argued that the court's role is therefore limited to enquiring whether, aside from the activity being unlawful for which penalties are prescribed under s 29(4) of ECA, the offender's actions caused environmental damage which it must redress by the payment of a fine, which is punitive in nature. Furthermore, a section 34(3) enquiry is not intended to compensate individuals for any harm or loss that might have arisen from environmental damage caused by an activity which had been undertaken without the necessary prior authorisation.

The court found BP's argument that the object of section 34 (3) was to deal with the rehabilitation of the environment to be incorrect as it fails to take into account that prior to the amendment of section 34(3) it did not provide for a remedial order. The clear focus of section 34(3) is the disgorgement of profits derived; and to provide financial relief out of the proceeds to others who have sustained damage or loss in consequence (which can be either physical harm or loss of profits due to unfair competition or environmental pollution). There is no requirement that there has to be an identified victim - it is enough that during the period in which the unauthorised activity was undertaken the offender obtained a financial advantage and in such a case the court may impose a fine accruing to the State up to the value of the benefit gained.

The enquiry ordered

The Court found that before it can order an enquiry into the monetary value of any advantage BP may have gained, it is first necessary to ascertain whether there had been actual degradation of the environment in respect of the filling stations in question. It should also enquire whether an EA would have been given if a proper application complying with all the requirements of ECA at the time had been complied with under section 22(1) of ECA. To determine this, the environmental impact assessment reports and other relevant written information in respect of

the section 24G of NEMA rectification reports BP had submitted must be scrutinised and Uzani must be given the opportunity to considering the documentation, cross examine and to call its own witnesses.

Accordingly, the court ordered such an enquiry to be held. The court also ordered that all documents provided to the environmental consultants who compiled the section 24G rectification reports be delivered to the court and Uzani. In addition, *subpoenas* must be served on the environmental assessment practitioner who signed these reports, as well as any person(s) who is in control and custody of the documents, as well as the person responsible for various environmental assessments to give evidence in relation to the contents of the documents.

THE CHARGING OF ALL MEMBERS OF A GROUP IN RELATION TO UNLAWFUL POSSESSION OF A FIREARM FOUND WITHIN THEIR VICINITY

6.3 Jabulani Mathonsi v The State (Case no. AR393/2018) (High Court of South Africa – Kwazulu-Natal Division (Pietermaritzburg) - Delivered on 20 May 2020

The appellant was found guilty in a regional court on three charges, namely:

1. A contravention of section 57 (1) of the National Environmental Management: Biodiversity Act 10 of 2004 (the carrying out of a restricted activity involving an attempt to hunt a rhinoceros);
2. A contravention of section 1(1)(a) of the Trespass Act 6 of 1959 (entering the Zulu Nyala Game Reserve unlawfully and without permission); and
3. A contravention of section 4(1)(f)(iv) of the Firearms Control Act 60 of 2000 (the unlawful possession of a prohibited firearm, namely a rifle of which the serial number had been removed).

He was sentenced to an effective period of 18 years' imprisonment. The appellant lodged this appeal in respect of the convictions and the sentence.

On the night of 19 July 2015, a report was received by a member of the Nyathi Anti-Poaching Unit, that a colleague had noticed footprints leading into the game reserve. A team was assembled and they followed the footprints in the reserve. They noticed from the footprints that the intruders had left the reserve and they continued to follow the footprints outside the reserve. It seemed to them that they were following four persons. Three of them crossed the N2 highway and the team followed their footprints. The fourth one remained on the road, where he was apparently arrested by other members of the Unit.

The footprints led them up a hill, and as they approached a cave, a person emerged from it and ran away. The appellant then came out of the cave, raised his hands and asked the members of the Unit not to shoot. A second person then came of the cave. He and the appellant both lay

down on the ground and they were handcuffed. The Unit member testified that the appellant was barefoot. The second person was wearing Adidas shoes, which he said were similar to the prints that they had been following. This person was later tried together with the appellant, and convicted of the same offences.

In the cave, the Unit member found a rifle with a silencer, together with a bag and a knife. He asked the two men who they were and what they were doing there. They identified themselves and the appellant said they had been to the Zulu Nyala Game Reserve to hunt rhinos.

The appellant, however, claimed in his evidence that he had not been near the cave and that he and his co-accused were arrested while they were innocently walking along a pathway, on their way to meet with a friend who lived in the vicinity of the hill. They both denied that they had entered the reserve, contradicting the earlier statement that they made to the Unit member.

The State called an expert witness who had compared casts of the footprints which were found in the reserve with the Adidas shoes which had been taken from the appellant's co-accused at the cave. He said there was a high probability that the prints in the reserve were made by these shoes, but scientifically he could not say that this was definitely the case as there were not enough matching points to rely on. He further advised that this evidence must be seen in the context of the case, and not in isolation.

Judgement

The Court upheld the appeal only to the extent that the conviction and sentence on count three are set aside. The effective sentence was reduced to three years' imprisonment, effective from 9 February 2017.

The Court was satisfied that, in light of the evidence provided, it can safely be accepted that the shoes worn by the co-accused, which had been examined by the expert witness, made some of the prints that were found in the reserve. The Court agreed with the convictions on counts one and two above.

In relation to count three, however, there was no evidence that the rifle found in the cave belonged to the appellant or that it was ever in his possession. It may have belonged to his co-accused, or to the third person who made his escape. The Court disagreed with the regional court's finding that the accused were found in possession of a firearm. The magistrate's reasoning was that the men entered the reserve with a common purpose to hunt a rhino and that therefore the possession of the rifle by one of them constituted possession by all of them.

This is an incorrect approach. The Court referred to a previous Supreme Court of Appeal judgement (*S v Mbuli* 2003 (1) SACR 97 (SCA) para 71) where the judge said that a mere intention on the part of the group to use the weapons for the benefit of them all will not suffice for a conviction. That judge further referred *S v Nkosi* 1998 (1) SACR 284 (W) where it was

held that the State has to prove that the group had the intention to exercise possession of the guns through the actual keeper, and the actual keepers had the intention to hold the guns on behalf of the group. There was no evidence in the present matter to support such a conclusion and the conviction on this count cannot stand.

THE NEED FOR ENVIRONMENTAL AUTHORISATIONS AS A SEPARATE AND DISTINCT LEGAL REQUIREMENT FROM A DMR ENVIRONMENTAL MANAGEMENT PROGRAMME PRE-2014

6.4 Global Environmental Trust & others v Tendele Coal Mining (Pty) Ltd & others (case no. 1105/2019) delivered on 9 February 2021

The Supreme Court of Appeal ("SCA") had to determine whether the first Respondent, Tendele Coal Mining (Pty) Ltd ("Tendele") was mining without the necessary statutory authorisations. Tendele commenced with mining operations in 2006 after obtaining an old order mining licence and right, and an approved EMP under the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA). Mining operations comprise of a single mining area, whilst being divided into five smaller sub-areas, each with a separate EMP and mining right, granted as follow:

1. Area 1: Mining right granted on 21 May 2007 and EMP approved on 22 June 2007.
2. Areas 2 and 3: Converted mining right granted on 1 February 2011 and EMP approved 30 March 2011. An amendment occurred to the mining right and EMP on 8 March 2013 and 29 May 2012, respectively, to include the KwaQubuka and Luhlanga areas (being the extended part of area 2).
3. Areas 4 and 5: Mining right granted on 31 May 2016 and EMP approved on 26 October 2016.

Tendele is actively mining only in area 1 and the extended part of area 2. Mining operations ceased in area 2 in January 2012 and operations in areas 4 and 5 have not yet commenced.

In October 2017, the appellants sought an interdict against Tendele on the basis that it was non-compliant in respect of approvals required in relation to mining, environmental authorisations, land use, interference with graves and waste management. Tendele opposed this application on the basis that its mining operations are undertaken in terms of valid mining rights and approved MPRDA EMPs. After the 'One Environmental System' was introduced on 8 December 2014, the holder of a mining right is required to have an environmental authorisation for its operations. But transitional arrangements were enacted for the continuation of mining operations lawfully conducted prior to 8 December 2014 and Tendele argued that they are operating lawfully - in compliance with relevant land-use planning laws and waste legislation. Tendele didn't, however, comply with relevant heritage laws when they removed/ altered traditional graves.

The High Court dismissed the application and found that a proper cause of action wasn't identified – the appellants had to identify the exact activities undertaken without the required environmental authorisation. The Court was of the view that a MPRDA EMP must be regarded as having been approved in terms of the National Environmental Management Act 107 of 1998 (NEMA) and has the status of an environmental authorisation. The Court concluded that the Mining Minister was satisfied with Tendele's MPRDA EMP and its mining operations; and that, to date, no action had been taken against Tendele. The Court also found that the relevant land-use laws do not apply to Tendele as its mining operations commenced prior to the date of coming into force of those laws. Furthermore, Tendele doesn't require a waste management licence (WML) since it was lawfully conducting mining operations in terms of approved EMPs.

The matter was then referred to the SCA for a determination of whether Tendele requires, in addition to a mining right and MPRDA EMP, an environmental authorisation in terms of NEMA, land use permissions, a WML and heritage related approvals for the altering/ relocation of graves.

Judgement

In the **minority judgement**, the SCA found that Tendele's mining operations were unlawful and unconstitutional without an environmental authorisation. The existence of a DMR EMP pre-2014 did not exonerate Tendele from the need to obtain an environmental authorisation for mining related listed activities from environmental competent authorities, notwithstanding the transitional provisions introduced by the National Environmental Management Amendment Act in section 82 (confirming that pre-2014 environmental authorisations, WMLs and EMPs related to mining will now be regarded as fulfilling the requirements of NEMA). Section 82 did not elevate the status of a MPRDA EMP to that of a NEMA environmental authorisation - rather it should be deemed to be an EMP approved in terms of NEMA.

In the **majority judgement**, the SCA dismissed the appeal and stressed the importance of the contents of affidavits in motion proceedings. The court found that these documents serve not just to define the issues between the parties, but also to place the essential evidence before the court. An applicant must therefore raise in the founding affidavit the issues as well as the evidence upon which it relies to discharge the onus of proof resting on it. New cases may also not be made out in reply.

The SCA confirmed that the allegation that an environmental authorisation was required and not obtained had to be substantiated by, at least, the identified activities and the dates of commencement. The appellants were not as specific in identifying the exact listed activities triggered, or the commencement date of these activities. Tendele could not be expected to provide the missing information or deny the allegation as sufficient facts were not provided by the appellants. Because of this failure, the court declined to provide the proper interpretation of

NEMA and dismissed the application because the requirements for an interdict had not been met.

THE USE OF SLAPP SUITS TO SILENCE OR INTIMIDATE ENVIRONMENTAL ACTIVISTS ACTING IN PUBLIC INTEREST

6.5 Mineral Sands Resources (Pty) Ltd & another v Christine Redell & Others (Case No. 7595/2017); Mineral Commodities Limited & another v Mzamo Dlamini & Others (Case No. 14658/2016) and Mineral Commodities Limited & another v JGI Clarke (Case No. 12543/2016) delivered on 9 February 2021

Two related mining companies and their directors (Tormin Mineral Sands Project and the Xolobeni Mineral Sands Project) sued three environmental attorneys as well as three community activists for defamation and claimed damages in the sum of R14,25 million, alternatively, the publication of apologies. In each of these actions the defendants raised a Strategic Litigation Against Public Participation (SLAPP) defence by means of two special plea sets. In the first special plea set, the defendants contended that the plaintiffs' conduct in bringing each of the actions is an abuse of process, amounting to the use of court process to achieve an improper end and to cause the defendants' financial and/or other prejudice in order to silence/ intimidate them. They also contended that the plaintiffs' conduct violates the right to freedom of expression entrenched in section 16 of the Constitution of the Republic of South Africa.

In the second special plea set, the defendants contended that the claims of the mining companies are bad in law because trading corporations, operating for profit, cannot sue for defamation without alleging that the defamatory statements are false, were wilfully made and that the plaintiffs will suffer patrimonial loss arising from the defamatory statements concerned. It was, however, common cause between the parties that the second special plea cannot be sustained. The plaintiffs have conceded that the current law relating to the requirements of a juristic person to sue for defamation does not support their contentions.

The plaintiffs argued that the defendants' reliance on the motive of the plaintiffs to bring these actions is irrelevant to the abuse of process debate. The defendants referred to various decisions of our courts that make it expressly clear that motive/purpose is relevant to the abuse of process doctrine. The plaintiffs contended that a defendant's protection against an abuse of process is limited to the Vexatious Proceedings Act 3 of 1956 ("VPA") and the common law, to which the defendants did not refer. The VPA requires an application for protection against a vexatious litigant to be brought by a defendant – such protection cannot be obtained by filing a plea in which abuse is alleged.

The plaintiffs further contended that in order for legal proceedings to constitute an abuse of process, those proceedings must have been instituted without reasonable grounds and be obviously unsustainable on their merits as a certainty and not merely on a preponderance of

probability.

The defendants conceded that an application in terms of the VPA has not be pursued and that, for the purposes of exception proceedings, each of the allegations made by them in the special plea must be accepted, acknowledged and recognised as correct. Thus it must be accepted that the mining companies do not honestly believe that they have any prospect of recovering the quantum of damages claimed by the defendants. The defendants also argued that the mining companies have not sought interdicts against the impugned expression, but instead sought to achieve the same result via the back door, by instituting a series of damages claims, with the purpose of intimidating and silencing public criticism by the relevant defendants. The defendants contended for the development of the common law through the lens of either section 39(2) or section 173 of the Constitution, since such development would give proper protection to the right to freedom of expression in the context of environmental debates.

Judgement

These actions were classified as SLAPP suits and, consequently, the first set of special pleas constitute a valid defence to the action, and the first set of exceptions was dismissed. The court didn't find it necessary to develop the common law in this respect.

The Court reiterated that it has the inherent power and duty in terms of section 173 of the Constitution to stop frivolous and vexatious proceedings when they amount to an abuse of its processes. Such power must, however, only be exercised in a clear case and with great caution. An abuse of process takes place where procedures permitted by the Rules of Court to facilitate the pursuit of the truth are used for a purpose extraneous to the objective. What constitutes an abuse of process of the court is a matter which needs to be determined by the specific circumstances of each case.

The Court referred to the importance of section 16 of the Constitution, protecting the broader concept of freedom of expression, which includes academic freedom, as a mechanism to ensure section 24, which protects the right to a healthy environment and stressed the importance of free engagement and debate on matters of public importance. Previous courts have recognised that an order preventing a person from making allegedly defamatory statements is a "drastic interference with freedom of speech and should only be ordered where there is a substantial risk of grave injustice". Such an order is therefore granted only in extremely circumscribed and narrow circumstances, and only after considering the prejudice to the public.

The Features of SLAPP

SLAPPs are meritless or exaggerated lawsuits intended to intimidate all individuals and organisations acting in the public interest. During a SLAPP suit, the legal system is used, usually disguised as an ordinary civil claim (like damages for defamation). These lawsuits

are notoriously, long drawn out, and extremely expensive legal battles, which consume vast amounts of time, energy, money and resources. SLAPPs are designed to turn the justice system into a weapon to intimidate people who are exercising their constitutional rights, restrain public interest in advocacy and activism; and convert matters of public interest into technical private law disputes. In some instances, the plaintiffs propose settlements which include a damages payment, an agreement to stop the activism that prompted the litigation, a public apology and an undertaking not to discuss the terms of the settlement. SLAPP suits are still a relatively new phenomenon in most jurisdictions and no anti-SLAPP legislation exists in South Africa.

The importance of purpose/motive of the litigation

The Court also confirmed that the purpose or motive of the litigation has been found to be relevant to the question of abuse of process in numerous previous cases. In the United States, an "improper purpose test" is applied to determine the context of the litigation. Essentially proof of three elements is required namely that the defendant engaged in public participation on a public interest issue, the plaintiff is pursuing an improper purpose, and that the lawsuit is meritless. The improper purpose must be the main purpose and is established where a reasonable person would consider the main purpose for starting the proceedings is:

- (i) to discourage the defendant or anyone else from engaging in public participation;
- (ii) to divert the defendant's resources away from engagement in public participation; or
- (iii) to punish or disadvantage the defendant for engaging in public participation.

This is an objective test and the threshold is relatively high for a defendant to prove the purpose and motivations of the plaintiff. If a case for improper purpose has been made out, the onus shifts to the plaintiff to prove that the action has substantial merit. If the plaintiff cannot meet this requirement, the action will be deemed a SLAPP.

Weighing up of public interest against real harm suffered by statements made

In Canada, the Supreme Court confirmed that the court will not hear SLAPP style lawsuits unless the plaintiff can pass a rigorous test to show that it suffered real harm that outweighs the public interest in the expression of those views. This court agreed with this view and reaffirmed the right to participate in environmental activism as well as the importance of protecting freedom of expression on matters of public interest. The merits cannot be ignored in the determination of this matter.

Applying the theory to these actions

The fact that South African law does not have specific legislative mechanisms to deal with SLAPP suits could be exploited by corporates. However, the interest of justice should not be compromised due to the lack of legislative framework.. All defendants were targeted more or less at the same time in 2016 and 2017, to have an intimidating effect. The Court also

noted that the vertical and unequal power relationship between the parties in relation to the availability of resources is obvious. The plaintiffs instituted these proceedings fully aware of the fact that there is no realistic prospect of recovering the damages they seek. The alternative prayers, being a public apology, is a signature mark of SLAPP suits. The Court found that these defamation cases were not genuine and *bona fide*, but merely a pretext with the only purpose to silence its opponents and critics.

Individuals or NGOs must have the freedom to respond to issues affecting society, such as those related to the environment and sustainable development. Litigation of this nature poses a serious threat to the defendants' participation in matters of public importance, particularly environmental issues. Legal action of this nature should be discouraged.

LEGISLATIVE DEVELOPMENTS



7. LEGISLATIVE DEVELOPMENTS

7.1 National Environmental Management Act 107 of 1998

7.1.1 Regulations and Notices

- Adoption of a generic environmental management programme for the management and mitigation of environmental impacts resulting from the implementation of working for ecosystems projects and the exclusion of these projects from the requirement to obtain an environmental authorisation (GN 105 in GG 44173 on 5 February 2021)
- Adoption of a generic environmental management programme for the management and mitigation of environmental impacts resulting from the implementation of Working for Water projects and the exclusion of those projects from the requirement to obtain an environmental authorisation (GN 106 in GG 44173 on 5 February 2021)
- Adoption of a generic environmental management programme for the management and mitigation of environmental impacts resulting from the implementation of Working for Wetlands projects and the exclusion of those projects from the requirement to obtain an environmental authorisation (GN 107 in GG 44173 on 5 February 2021)
- Amendment of section 24H Authority Regulations (GN 906 in GG 43632 of 21 August 2020)
- Amendment of the EIA Regulations (Regulation 54A) (GN 599 in GG 43358 of 29 May 2020)
- Procedures for the assessment and minimum criteria for reporting on identified environmental themes in terms of sections 24 (5) (a) and (h) and 44 of the Act, when applying for environmental authorisation (GN 1150 in GG 43855 of 30 October 2020)
- Identification of procedures to be followed when applying for or deciding on an environmental authorisation application for large scale wind and solar photovoltaic facilities, when occurring in renewable energy development zones (GN 142 in GG 44191 on 26 February 2021)
- Identification of geographical areas important for the development of strategic gas transmission pipeline infrastructure (GN 143 in GG 44191 on 26 February 2021)
- Identification of geographical areas of strategic importance for the development of large scale wind and solar photovoltaic energy facilities (GN 144 in GG 44191 on 26 February 2021)
- Identification of procedures to be followed when applying for or deciding on an environmental authorisation application for the development of electricity transmission and distribution infrastructure when occurring in renewable energy development zones (GN 145 in GG 44191 on 26 February 2021)
- Adoption of a generic environmental management programme for the management and mitigation of environmental impacts resulting from the implementation of the Land Care projects and the exclusion of these projects from the requirement to obtain an environmental

authorisation (GN 276 in GG 44341 on 29 March 2021)

- Adoption of amended Chapter 2 and Chapter 5 of the Integrated Environmental Management Plan for Phase 1 of the square kilometre array and amendment to conditions of exclusion (GN 250 in GG 44320 on 25 March 2021)

7.2 Draft Regulations and Notices

- Notice calling for submissions, scientific information, socio-economic information or any other relevant information to the Advisory Committee (High-Level Panel) appointed to review existing policies, legislation and practices relating to the management and handling, breeding, hunting and trade of elephant, lion, leopard and rhinoceros): Extension of date for submissions and information (Gen N 277 in GG 43332 of 15 May 2020)
- Consultation on the identification of geographical areas of strategic importance for the development of electricity transmission and distribution infrastructure and to repeal Government Notice 113, published under Government Gazette 41445 of 16 February 2018 (GN 787 in GG 43528 of 17 July 2020)
- Consultation on the intention to adopt a standard for the development of electricity transmission and distribution infrastructure within identified geographical areas and the exclusion of this infrastructure from the requirement to obtain an environmental authorisation (GN 835 in GG 43571 of 31 July 2020)
- Consultation on the adoption of a generic environmental management programme for the management and mitigation of environmental impacts resulting from the implementation of the Land Care projects and the exclusion of these projects from the requirement to obtain an environmental authorisation (GN 838 in GG 43571 of 31 July 2020)
- Consultation on the adoption of a generic environmental management programme for the management and mitigation of environmental impacts resulting from the implementation of the working for wetlands projects and the exclusion of these projects from the requirement to obtain an environmental authorisation (GN 833 in GG 43571 of 31 July 2020)
- Consultation on the intention to identify the procedures to be followed when applying for or deciding on an environmental authorisation application for the development of electricity transmission and distribution infrastructure when occurring in renewable energy development zones (GN 840 in GG 43571 of 31 July 2020)
- Consultation on the adoption of a generic environmental management programme for the management and mitigation of environmental impacts resulting from the implementation of working for ecosystems projects and the exclusion of these projects from the requirement to obtain an environmental authorisation (GN 839 in GG 43571 of 31 July 2020)
- Consultation on adoption of a generic environmental management programme for the management and mitigation of environmental impacts resulting from the implementation of

working for water projects and the exclusion of these projects from the requirement to obtain an environmental authorisation (GN 837 in GG 43571 of 31 July 2021)

- Consultation on the intention to identify the procedures to be followed in applying for or deciding on an environmental authorisation application for large scale wind and solar photovoltaic facilities, when occurring in renewable energy development zones (GN 841 in GG 43571 of 31 July 2020)
- Consultation on the intention to adopt a generic environmental management programme relevant to an application for environmental authorisation for the development or expansion of gas transmission pipeline infrastructure (GN 834 in GG 43571 of 31 July 2020)
- Consultation on the intention to identify geographical areas of strategic importance for the development of large scale wind and solar photovoltaic energy facilities (GN 786 in GG 43528 of 17 July 2020)
- Consultation on the intention to amend the procedures to be followed in applying for or deciding on an environmental authorisation application for large scale wind and solar photovoltaic renewable energy development activities when occurring in renewable energy development zones (GN 785 in GG 43528 of 17 July 2020)
- Consultation on the intention to identify geographical areas important for the development of strategic gas transmission pipeline infrastructure (GN 788 in GG 43528 of 17 July 2020)
- Consultation on the intention to identify the procedures to be followed in applying for or deciding on an environmental authorisation for the development or expansion of gas transmission pipeline infrastructure when occurring in strategic gas pipeline corridors (GN 836 in GG 43571 of 31 July 2020)
- National Environmental Management Act, 1998 Amendments to the Environment Conservation Act Plastic Carrier Bags and Plastic Flat Bags Regulations of 2003 (GN 869 in GG 43601 of 7 August 2020)
- Consultation on the intention to publish draft Regulations to prohibit the production, distribution, import, export, sale and use of persistent organic pollutants (GN 1026 in GG 43747 of 30 September 2020)
- Consultation on draft regulations to domesticate the requirements of the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade (GN 1088 in GG 43802 on 13 October 2020)
- Consultation on proposed amendments to the Environmental Impact Assessment Regulations listing notice 1, listing notice 2 and listing notice 3 of the Environmental Impact Assessment Regulations, 2014 for activities identified in terms of section 24(2) and 24D of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (GN 1224 in GG 43904 of 13 November 2020)
- Consultation on the proposed amendment to Chapter 2 and Chapter 5 of the Integrated

Environmental Management Plan for Phase 1 of the Square Kilometre Array and proposed amendment to the conditions of exclusion (GN 1271 in GG 43944 on 27 November 2020)

7.3 National Environmental Management: Air Quality Act 39 of 2004

7.3.1 Regulations and Notices

- Amendments to the regulations regarding the phasing-out and management of ozone depleting substances (GN 10 in GG 44065 of 11 January 2021)

7.3.2 Draft Regulations and Notices

- Draft Second Generation Air Quality Management Plan for Vaal Triangle Airshed Priority Area (GN 654 in GG 43418 of 12 June 2020)
- For comment: Declaration of certain printing industry activities as controlled emitters and establishment of emission standards (GN 855 in GG 43591 of 7 August 2020)
- For comment: Consultation on draft technical guidelines for validation and verification of greenhouse gas emissions (GN 920 in GG 43644 of 24 August 2020)
- Draft methodological guidelines for quantification of greenhouse gas emissions - carbon sequestration in the forestry industry to support the implementation of the greenhouse gas emission reporting regulations, 2016 (GN 1283 in GG 43962 of 4 December 2020)
- Draft methodological guidelines for quantification of greenhouse gas emissions (GN 135 in GG 44190 of 19 February 2021)

7.4 National Environmental Management: Biodiversity Act 10 of 2004

7.4.1 Regulations and Notices

- Regulations relating to trade in rhinoceros horn (GN 626 in GG 43386 on 3 June 2020)
- Notice prohibiting the carrying out of certain restricted activities involving rhinoceros horn (GN 625 in GG 43386 on 3 June 2020)
- Amendment of the alien and invasive species list and list of critically endangered, endangered, vulnerable and protected species (GN 627 in GG 43386 on 3 June 2020)
- Publication of the non-detriment finding for *Aloe ferox* (Bitter aloe) made by the Scientific Authority (GN 1295 in GG 43871 on 7 December 2020)
- Alien and Invasive Species Lists, 2020 (GN 1003 in GG 43726 on 18 September 2020), and amended by GN 1100 in GG 43818 of 16 October 2020 and GN 115 in GG 44182 of 24 February 2021
- Alien and Invasive Species Regulations, 2020 (GN R1020 in GG 43735 on 25 September 2020), and amended by GN 1100 in GG 43818 of 16 October 2020 and GN 115 in GG 44182 of 24 February 2021

7.4.2 Draft Regulations and Notices

- Proposed emergency intervention in terms of section 105A of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), in respect of the shot-hole borer beetle *Euwallacea fornicatus* (*Polyphagous*) (*Coleoptera: Curculionidae: Scolytinae*) (GN 961 in GG 43686 of 4 September 2020)
- Draft revised National Biodiversity Framework published for public comment in terms of the Act (GN 171 in GG 44229 of 5 March 2021)

7.5 National Environmental Management: Integrated Coastal Management Act 24 of 2008

7.5.1 Draft Regulations and notices

- Draft amendments to the National Estuarine Management Protocol (GN 705 in GG 43474 on 26 June 2020)

7.6 National Environmental Management: Protected Areas Act 57 of 2003

7.6.1 Regulations and notices

- Withdrawal of the declaration of the farms specified in the notice as part of the Karoo National Park in terms of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (GN 598 in GG 43358 on 29 May 2020)
- Correction notice amending the notice declaring the Agulhas Front Marine Protected Area in terms of section 22A of the National Environmental Management: Protected Areas Act, 2003 (GN 782 in GG 43528 of 17 July 2020)
- Correction notice amending the regulations for the management of the Agulhas Front Marine Protected Area (GN 797 in GG 43534 of 17 July 2020)
- Correction notice amending the notice declaring the Southwest Indian Seamount Marine Protected Area in terms of section 22A of the National Environmental Management: Protected Areas Act, 2003 (GN 784 in GG 43528 of 17 July 2020)
- Correction notice amending the regulations for the management of the Southwest Indian Seamount Marine Protected Area (GN 783 in GG 43528 of 17 July 2020)

7.6.2 Draft Regulations and Notices

- Draft amendments to the regulations for the management of the Aliwal Shoal Marine Protected Area (GN 890 in GG 43618 of 17 August 2020)
- Notice of intention to declare the remaining extent of Erf 4492, Swellendam as part of the Bontebok National Park (GN 232 in GG 44293 of 19 March 2021 and GN 246 in GG 44307 of 23 March 2021)

7.7 National Environmental Management: Waste Act 59 of 2008

7.7.1 Notices and Regulations

- Extended Producer Responsibility Regulations, 2020 (GN in GG 43879 on 5 November 2020)
- Extended Producer Responsibility Scheme for the electrical and electronic equipment sector (GN 1185 in GG 43880 on 5 November 2020)
- Extended Producer Responsibility Scheme for the lighting sector (GN 1186 in GG 43880 on 5 November 2020)
- Extended Producer Responsibility Scheme for paper, packaging and some single use products (GN 1187 in GG 43880 on 5 November 2020)
- National Waste Management Strategy 2020 (GN 56 in GG 44116 on 28 January 2021)

7.8 Draft Regulations and Notices

- Draft amendments to the regulations and notices regarding extended producer responsibility, 2020 (GN 239 in GG 44295 of 19 March 2021)
- Draft norms and standards for the treatment of organic waste (GN 275 in GG 44340 of 29 March 2021)

INDUSTRIAL COMPLIANCE AND ENFORCEMENT



8. INDUSTRIAL COMPLIANCE AND ENFORCEMENT

8.1 Pro-active Compliance Inspections

NECER 2019-2020: DETAILED INFORMATION TABLE RELATING TO STRATEGIC INSPECTIONS AND ENFORCEMENT ACTION TAKEN

The information contained in the table below, describes the actions taken by the Environmental Management Inspectorate within the industrial sector. This work forms part of a continuous monitoring and evaluation program which dates back to 2006 when the Environmental Management Inspectorate was formed. It is furthermore important to note, that undertaking compliance and enforcement within this space requires a significant amount of planning and coordination since the regulatory function in respect of the different environmental media that is impacted by these facilities cuts across all spheres of government which are represented by many different Departments. As such, the Environmental Management Inspectorate has systematically facilitated compliance over the years. This approach at times takes several years to complete, given the significant numbers of non-compliances that are detected which cannot be resolved in a short space of time for various reasons. Many improvements have been noted over the years but significant non compliances are still detected from time to time. Stringent enforcement action in the form of criminal action has therefore been instituted where it is deemed necessary.

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
FERRO-ALLOY, IRON AND STEEL	
BHP Billiton Metalloys Meyerton, Gauteng (Now known as South 32)	A Compliance Notice was issued to this facility on the 11 th of May 2016 which called for the submission of an Integrated Rehabilitation and Remediation Plan ("IRRP") which in the main dealt with the waste and water related issues that were detected. The Department in consultation with the DWS approved the IRRP in 2018.

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
BHP Billiton Metalloys Meyerton, Gauteng (Now known as South 32)	The implementation of the measures contained in the IRRP will be guided in terms of PART 8 of the NEMWA. This constituted a pragmatic way forward followed in dealing with all the contamination related issues in a holistic and integrated manner. Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows: Page 13 of NECER 2007-2008; Page 27 of NECER 2009-2010; Pages 43 - 44 of NECER 2010-2011; Page 42 of NECER 2011-2012; Page 42 of NECER 2012-2013; Pages 44 - 45 of NECER 2013-2014; Page 44 of NECER 2014-2015; Page 44 of NECER 2015-2016; and Page 51 of NECER 2016-2017.
Transalloys (Pty) Ltd, Mpumalanga	The inspection report was issued to the facility on the 19 th of August 2019, and representations were received dated the 23 rd of October 2019. An enforcement process was initiated on the 14 th of May 2020 which provided the facility with an opportunity to make a representation to the non-compliances that were detected. A Compliance Notice dated the 25 th of March 2021 was issued. Compliance herewith is being monitored, as the facility is still within the time frame for compliance with the instructions at the time of drafting this report. Discussions on previous compliance and enforcement activities related to this facility may be found in the previous NECER publications as follows: Page 47 of NECER 2013-2014; Page 46 of NECER 2014-2015; Page 56 of NECER 2015-2016; Page 53 of NECER 2016-2017; and Page 47 of NECER 2018-2019.

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
Samancor Tubatse Ferrochrome, Limpopo Province	<p>In order to continuously monitor the compliance status at this facility, another inspection was conducted on the on 02nd July 2019 where the following alleged non compliances were observed.</p> <ul style="list-style-type: none"> • Non-compliances with the conditions contained in the WML number 112/9/11/ L1051/5 dated 03 May 2017; • Non-compliance with the with the duty of care provisions of the NEMWA; • Non-compliance with the provisions of Section 24F of the NEMA by illegally commencing with Activity 19 of GNR 983 of December 2014 without an EA; and • Commencement with activities which is defined as water uses in terms of Section 21 of the NWA. • Establishment of the H:H Baghouse Dust Disposal Facility within 500m of a watercourse which possibly triggered Section 21 of the NWA for which a Water Use Licence is required. <p>In order to address these issues, an administrative enforcement process was initiated, and representations thereto was received by the Department. During the evaluation of this matter the Department found that most of the concerns as it relates to the regulatory mandate of the DFFE were addressed. However, and in consultation with both the DARDLEA and the DWS the concern in relation to the construction of the H:H Baghouse, which was allegedly constructed within a watercourse, will be attended to these authorities.</p>	ArcelorMittal Saldanha Works	<p>An administrative enforcement notice was issued on the 18th of June 2020. Representations were submitted on the 7th of September 2020 which was evaluated by various line functions within the DFFE. A final decision in relation to this matter is imminent.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows:</p>
ArcelorMittal Vanderbijlpark, Gauteng	<p>Representations were submitted dated the 1st of June 2020 and a way forward in consultation with the GDARD is currently underway.</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; Page 44 of NECER 2010-2011; Page 42 of NECER 2011-2012; Page 42 of NECER 2012-2013; Page 53 of NECER 2016-2017; Page 48 of NECER 2018-2019; and Page 50 of NECER 2019-2020</p>	ArcelorMittal Saldanha Works	<p>Page 25 of NECER 2009-2010; Page 48 of NECER 2018-2019; and Page 50 of NECER 2019-2020</p>
		Tronox KZN Sands CPC Smelter, KwaZulu Natal	<p>A Pre-Compliance Notice was issued dated the 2nd of November 2020. Representations and action plan were submitted dated the 3rd of December 2020. The action plan was approved on the 28th of May 2021.</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 51 of NECER 2019-2020</p>
		Glencore Lion Smelter Operations, Limpopo	<p>On the 20th of July 2021 the Department undertook a review of the WML issued to Glencore Lion Smelter Operations ("the facility"). The aim of the aforementioned process was to review the WML, and ensure that the conditions contained therein are still relevant, and operate to reduce any environmental impact/s [to the best extent applicable].</p> <p>On conclusion of the WML review process it was noted that the issues of concern identified during the previous Environmental Compliance Inspection [as it pertains to the Department's mandate], had largely been addressed or was in the process of being adequately addressed [either by commitments made to the Department's Notice of Intention or through the WML review process itself.</p> <p>The new WML dated the 18th of September 2020 has been issued to the facility, and compliance to the conditions contained therein will be monitored by the Department.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<p>Glencore Lion Smelter Operations, Limpopo</p>	<p>In light of the above, particularly the fact that the issues of concern have been / are being addressed, and other matters has been referred to the relevant Department/s [with mandate] for consideration of the way forward, the Department has subsequently closed its file as no further enforcement action is currently required.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows: Page 48 of NECER 2014-2015; Page 56 of NECER 2015-2016; and Page 51 of NECER 2019-2020.</p>
REFINERIES	
<p>Sasol Secunda Refinery, Mpumalanga</p>	<p>The Department has reviewed the representations submitted by the Sasol Secunda Refinery (“the facility”), and has noted that a large portion of the non-compliances and / or issues of concern have been addressed or is in the process of being addressed.</p> <p>This process is being undertaken in consultation with the Department [to the extent that it relates to conditions contained in any Environmental Authorisations, Licences and / or approvals issued by the Department].</p> <p>Due to the nature of the business as well as the impacts caused by the current global Covid-19 pandemic, the Department has identified that some of the commitments made are still in the process of being implemented and / or finalised, and therefore the facility will be engaged regarding a status update on any/all measures identified for implementation to improve its compliance status.</p> <p>Notwithstanding the above, on the 20th and 21st of April 2021 the Department conducted an on-site investigation [as part of a criminal investigation instituted against the facility], in relation to the non-compliances previously identified. Said criminal investigation is currently in process, and as such no further information can be provided at this stage.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<p>Sasol Secunda Refinery, Mpumalanga</p>	<p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows: Page 13 of NECER 2007-2008; Page 27 of NECER 2008-2009; Page 25 of NECER 2009-2010; Page 40 of NECER 2010-2011; Page 36 of NECER 2011-2012; Page 37 of NECER 2012-2013; Page 48 of NECER 2013-2014; Page 49 of NECER 2014-2015; Page 57 of NECER 2015-2016; Page 53 of NECER 2016-2017; and Page 51 of NECER 2019-2020.</p>
<p>Astron Energy (Pty) Ltd (Previously known as Chevron Refinery), Western Cape</p>	<p>Further update on progress made on implementation of measures to address previous findings of non-compliance was received by the Department on 17 December 2020. Amongst others the update shows that the Tank TA Programme developed to ensure that the appropriate maintenance of tanks and related infrastructure are undertaken is ongoing; a Dissolved Air Flootation Unit has been installed at the Effluent Treatment Plant to address the smells/ Volatile Organic Compounds; an Invasive Alien Plant Management Plan has been compiled and a service provider was appointed for implementation; and the lining options for the pervious Impound Basin are being investigated.</p> <p>Discussion on previous compliance and enforcement activities related to this facility can be found in previous NECER publications as follows: Page 27 of NECER 2008-2009; Page 25 of NECER 2009-2010; Page 39 of NECER 2010-2011; Page 36 of NECER 2011-2012; Page 50 of NECER 2017-2018; and Page 52 of NECER 2019-20</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
POWER GENERATION	
Eskom Kendal Power Station	<p>The Compliance Notice that was issued aimed to bring Kendal into compliance with the minimum emission standards (MES) as per the requirements of their AEL as well as to ensure that effective measures in terms of repairs and maintenance of the Units were implemented. Unfortunately, Kendal still remains in non-compliance with their MES as the monthly emission reports show exceedances at various units. In terms of the approved Emission Reduction Strategy, Kendal provides monthly progress reports to the Department. Certain projects have commenced and are currently underway and/ or reached completion, however, the timeframes for certain action items have been revised/ delayed. Kendal is therefore in non-compliance with the Strategy and therefore with the Compliance Notice as well. A letter of non-compliance was issued to Kendal and the matter has now been referred to the DPP to add on as an additional charge.</p> <p>In addition, a routine inspection was conducted on 13 November 2020 that the facility's Ash Disposal Facility. Contraventions identified included:</p> <ul style="list-style-type: none"> • failure to implement recommendations made by Specialists to address the sources of elevated sulphate levels in groundwaterNon-compliances to conditions of the authorisation including failure to establish a Monitoring Committee; no records of leakage monitoring system in place and that a Compensatory Strategy for the loss of wetland habitat and functioning was not yet developed. <p>These concerns were raised with Eskom and a decision in relation to the way forward is imminent.</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; Page 50 of NECER 2017-2018; Page 48 of NECER 2018-2019; and Page 52 of NECER 2019-2020</p>
Eskom Camden Power Station, Mpumalanga	<p>A Compliance Notice which is dated the 14th of May 2020 which instructed the facility to undertake certain instructions within specified timeframes. Three (3) variations were requested with regards to an extension of timeframes for certain instructions. The facility has submitted most of the necessary documentation and this will be monitored throughout the duration of the projects to be implemented.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
Eskom Camden Power Station, Mpumalanga	<p>Another reactive inspection was conducted at the facility on 15 December 2020 in response to a reported contravention. It was discovered during inspection that an Earth Drain was constructed outside the authorised construction footprint and or demarcated "no-go" area (i.e. within 500m buffer around delineated wetlands).</p> <p>Besides the damage caused to the wetland, the activity was potentially undertaken without the required authorisations in terms of the NEMA and the NWA.</p> <p>Notice of Intent to issue a Compliance Notice in terms of section 31L of NEMA dated the 25th of March 2021 was issued to Eskom for illegal construction of the earth drainages and gabions in within the wetland without the EA. Eskom submitted representation to the Notice of Intent dated the 08th of April 2021 and a Compliance Notice has been initiated since an EA was required for activities undertaken in a wetland area falling outside the footprint of the authorised activities.</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; Page 49 of NECER 2012-2013; Page 51 of NECER of 2017-2018; Page 49 of NECER 2018-2019; and Page 53 of NECER 2019-2020</p>
Eskom Tutuka Power Station, Mpumalanga	<p>The facility was issued with a Compliance Notice on the 12th of May 2020. Most of the matters were water related. A response was submitted and a variation requested for certain timeframes to be extended. Compliance to the project plans will be monitored till the time of completion.</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 58 of the NECER 2015-2016; Page 49 of the NECER 2018-2019; and Page 53 of NECER 2019-2020</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
Eskom Duvha Power Station, Mpumalanga	<p>A baseline joint inspection was conducted at the facility by EMI's from DFFE, DWS, DARDLEA and Nkangala District Municipality on 29 and 30 October 2019. The following possible non-compliances and contraventions were found:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the AEL; • Water use activities conducted on site without WULs; • Activities that may cause harm to health and environments amongst others: <ul style="list-style-type: none"> ○ Unlined dirty water dams which may be contributing to groundwater contamination recorded on site; ○ Recurrence of overflow incidents from dirty water dams;
Eskom Duvha Power Station, Mpumalanga	<ul style="list-style-type: none"> ○ Disposal of waste like coal rejects, sulphuric acid sludge and spent resins at the unlined Ash Dam; ○ Excessive dust emissions; ○ PM exceeding the stipulated limits; and <p>• Failure to classify waste in terms of NEMWA Norms and Standards for Assessment of Waste for Landfill Disposal</p> <p>An additional request for information was issued to the facility which was provided. A request has been sent to the Nkangala District Municipality to find out if the Municipality has taken enforcement action or if DFFE should. No response from the Municipality has been received at the time of drafting this report.</p>
LANDFILLS	
FG Landfill Site, Gauteng	<p>Following its previous correspondence [approval/s and other] the Department sent a letter dated the 09th of July 2020 to Interwaste [in relation to the FG Landfill Site] requesting a status update on its compliance to the instructions/ conditions contained in the Appeal Decision dated the 03rd of November 2018. The facility has provided its response to the Department's letter. The response has been reviewed and the Department has noted that the facility is still in the process of complying with the instructions/ conditions contained in the Appeal Decision.</p> <p>In addition to the above, it must be noted that the instructions/ conditions contained in the Appeal Decision is not only relevant to the mandate of this Department, but also to that of other Departments. In light of the above, the Department is monitoring the facility's compliance in a consultative manner [with the other relevant Department's]. Subsequent to the above, there has also been other consultations between the Department and Interwaste in relation to status of compliance at all its facilities</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
FG Landfill Site, Gauteng	<p>The Department will continue to monitor the process in ensuring that the facility achieves the highest possible compliance to environmental laws.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows: Page 52 of NECER 2017-2018; and Page 50 of NECER 2018-2019; Page 54 of NECER 2019-2020.</p>
EnviroServ Holfontein Landfill Site, Gauteng	<p>A follow-up inspection was conducted at this site on 24 November 2020. The site obtained an overall compliance score of 87% against the three (3) WMLs and the applicable legislative provisions. Amongst others non-compliances included:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WMLs • Elevated levels of electrical conductivity on off-site surface waterbodies and groundwater • Levels of carbon monoxide and H₂S which may result in odour/ nuisance conditions to downwind receptors. • A final decision in relation to this matter is imminent. <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows: Page 24 of NECER 2009-2010; Page 49 of NECER 2014-2105; Page 59 of NECER 2015-2016; and Page 56 of NECER 2016-17</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
City of Cape Town Vissershok Landfill Site, Western Cape	<p>An inspection was conducted at the site on 18 February 2021. This was a follow-up an Action Plan submitted by the City on 25 June 2018 in response to findings of an inspection conducted on 23 January 2018. The following non-compliances were observed during this inspection:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WML • Use of treated leachate to suppress dust on site despite it not meeting applicable limits of the General Authorisation • Water (surface and ground) quality monitoring not conducted for certain parameters since May 2020 • Frequent overflows and/or discharge of the leachate from collection sumps and contaminated stormwater from detention ponds during rainy periods • Groundwater quality exceeding stipulated limits on certain boreholes. <p>These alleged concerns currently form part of an administrative enforcement process that was initiated against the facility and the Department.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows: Page 51 of NECER 2010-2011.</p>	Sephaku Cement Delmas Plant, Mpumalanga	<p>The Department issued a request letter for information dated 25 March 2021 and the facility submitted the following evidence which addressed the non-compliances detected during the inspection.</p> <ul style="list-style-type: none"> • The Dust fallout Monitoring Reports for sampling Period: August 2019 to December 2020 were submitted with evidence confirming that the Abatement Equipment Control Technology meets the efficiency requirements of 99.0% achieving compliance with condition 7.1 of the Atmospheric Emission License (ref: NDM/AEL/MP313/15/02) dated the 30th of November 2016; • Submitted the letter dated 28 of January 2020 Eskom Kendal Power Station authorising that fresh and weathered ash be excluded from definition of Waste and be utilised for beneficial use including cement. The exclusion was for waste stream or a portion of a waste stream from the definition of waste in terms of regulation 5 and regulation 6 of the Waste Exclusion Regulations of 2018 published in terms of GNR 715 of 18 July 2018 of NEMWA. <p>Recommendation was made to refer non-compliance in relation to water use activities to DWS for further investigations.</p>
CHEMICALS			
CEMENT			
Sephaku Cement Delmas Plant, Mpumalanga	<p>A joint compliance monitoring inspection was conducted at the facility on 17 April 2018 and the following possible non compliances were detected:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the AEL. • Dust monitoring not conducted on a monthly basis as required. • Waste management records not meeting the requirements of the Waste Classification and Management Regulations 634 dated 23 August 2013. • Unauthorised use of waste and construction of a dam on a wetland without the required EA. <p>The Inspection Report was issued to the facility on 30 October 2018 and representations were received on 29 November 2018. The DFFE's Chief Directorate: Compliance Monitoring has finalised analysing the information gathered</p> <p>The final inspection report was made available to the DFFE's Chief Directorate: Enforcement on 09 April 2020 and enforcement action is in the process of been taken against non-compliances detected at this facility.</p>	Foskor Richards Bay Operations, KwaZulu Natal	<p>An enforcement response was initiated on the 28th of May 2020 which provided the facility with an opportunity to make representations.</p>
<p>Based on the representations received, the Department made a decision to issue a Compliance Notice on the 28th of August 2020. Foskor has submitted the necessary documentation and the Department is in the process of approving certain plans in order for the implementation thereof. This will be monitored as the projects commence.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows: Page 52 of NECER 2011-2012; Page 50 of NECER 2012-2013; Page 42 of NECER 2013-2014; and Page 54 of NECER 2019-2020</p>			

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
HEALTH CARE RISK WASTE TREATMENT	
Buhle Waste – Port Elizabeth, Eastern Cape	<p>On the 07th of September 2020 a comprehensive environmental compliance inspection was undertaken at the Buhle Waste – Port Elizabeth facility. Contraventions identified were as follows:</p> <ul style="list-style-type: none"> • Non-compliances to requirements of the Norms and Standards for Storage of Waste including lack of stormwater containment system, personnel on site not trained regarding hazards and how to handle hazardous waste, etc. • Failure to keep waste manifest records in terms Waste Classification and Management Regulations Waste <p>A detailed compliance inspection report was subsequently drafted and forwarded to the Department’s Chief Directorate: Sector Enforcement for possible enforcement action. In light of the findings contained in the inspection report, an administrative enforcement route was undertaken and a PCN dated the 26th of November 2020 was issued to the facility [in terms of section 31L of the NEMA]. The PCN afforded the facility an opportunity to make representations to the allegations contained therein.</p> <p>On the 26th of January 2021 the facility provided the Department with its representations. Additional representations were also provided to the Department on the 15th of February 2021 [as requested by the Department].</p> <p>Following a review of the representations submitted it was identified that the facility had adequately addressed all of the Department’s concerns. In light of the above, it was decided that there was no further intervention required from the Department and the matter was subsequently closed.</p>
Buhle Waste - East London, Eastern Cape	<p>A Compliance Inspection was conducted on the 08th of September 2020. Non-compliances found includes:</p> <ul style="list-style-type: none"> • Contraventions of the Regulations for Norms and Standards for Storage of Waste including inadequate access control measures; training records not made available; Emergency Preparedness Plans not in place; • Some records including documents verifying the dates of collection; authorised collector/s and final point of treatment, or disposal were not made available upon request <p>An enforcement process was initiated on the 26th of January 2021 and representations were made and the matter was closed out on a conditional basis on the 07th of May 2021.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
Averda East London, Eastern Cape	<p>A compliance inspection was conducted on the 8th of September 2020 and the following were found:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WML including: hazardous waste stored in open containers; wastewater discharged of into the environment; surface water quality monitoring not conducted; internal audits not conducted as per the stipulated frequency • Failure to comply with duty in respect of waste management in relation to improper storage of waste • Records on sources and amounts of waste as well as disposal records received not provided upon request <p>Enforcement process was initiated on the 12th of December 2020 and representations were made. A decision will be made as to how to proceed.</p>
Averda SA (Pty) Ltd – Klerksdorp Incinerator, North West	<p>On the 28th of July 2020 a comprehensive environmental compliance inspection was undertaken at the Averda SA (Pty) Ltd – Klerksdorp Incinerator. The following were found during inspection:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WML and the AEL • Failure to comply with duty in respect of managing waste • Emissions exceeding the Minimum Emission Standards • Some documents required to demonstrate compliance were not provided <p>A detailed compliance inspection report was subsequently drafted and forwarded to the Department’s Chief Directorate: Sector Enforcement for possible enforcement action. In light of the findings contained in the inspection report, an administrative enforcement route was undertaken and a PCN dated the 02nd of March 2021 was issued to the facility [in terms of section 31L of the NEMA]. The PCN afforded the facility an opportunity to make representations to the allegations contained therein.</p> <p>The facility is still within the timeframe provided for the submission of its representations.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
Eastern Cape Incineration Services (EnviroServ Roodepoort), Gauteng	<p>The following findings of non-compliance were identified during a Compliance Inspection conducted on the 5th of August 2020:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WML and the AEL • Frequent exceedances of the Minimum Emission Standards • Storage of waste for periods exceeding stipulated timeframes <p>An enforcement process was initiated on the 26th of January 2021, representations were made and the matter was closed out on the 23rd of March 2021. It should also be noted that the City of Johannesburg initiated a separate Enforcement process against the air quality related non-compliances</p>
ClinX Waste Management cc, Gauteng	<p>Inspection conducted on 16 September 2020 identified the following:</p> <ul style="list-style-type: none"> • Non-compliance to conditions of the WMLs and AEL • Failure to comply with duty in respect of waste management including storage of redundant reusable waste at an unroofed area with spillages of waste and some waste containers filled with decomposing waste; partially treated waste stored among untreated waste • Excessive emissions of particulate matter (PM) from the incinerators • Some documents required to demonstrate compliance not provided <p>These concerns were addressed to the management of the facility and the Department is reviewing the response.</p>
Enerwaste Solutions, Gauteng	<p>The following were observed during an inspection conducted at the facility on 18 June 2020:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WML including Emergency Preparedness and Risk Mitigation Plan lacking required contact details of the nearest police station and other emergency services, no MC meeting ever took place since the commencement of operation on 21 July 2017, failure to reporting to Authorities; Waste Management Control Officer not designated • Untreated waste like sharps, infectious waste and pharmaceutical waste inside plastic bags and some unpackaged waste piled inside the warehouse despite the facility being shut down since September 2019 • Operation of an incinerator for treatment of HCRW without an AEL • Documents to demonstrate compliance like waste assessment and waste classification reports for waste residue (ash); records of incoming waste, source, type of waste and date on which waste is received was not provided upon request. <p>Criminal investigation is underway.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
Clinical Waste Management, Gauteng	<p>Non-compliances identified during an inspection on 14 September 2020 at the facility includes:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WML including: Emergency Preparedness Plan not updated; Complaints and Incident Register not kept; Internal and External Audits not conducted; Monitoring Committee not established • Majority of documents required to demonstrate compliance were not made available. <p>Findings were shared with the facility and full compliance has been achieved, the case is closed.</p>
Averda City Deep, Gauteng	<p>An inspection conducted at the facility on 11 June 2020 identified the following:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WML including storage of waste longer than the stipulated timeframes; Internal audits not conducted as required; Monitoring and Measurement Plan not in place; Monitoring Committee not meeting at required frequency; treatment efficacy validation not conducted at stipulated intervals
Averda City Deep, Gauteng	<ul style="list-style-type: none"> • Failure to comply with duty in respect of waste management including offloading waste in unroofed area • Some documents to demonstrate compliance like waste manifests for disposal of waste and wastewater; Complaints and Incidents Register; Environmental Management Programme (EMPr); Emergency preparedness Plan not made available <p>Findings were shared with the facility and a decision on way forward will be made once representations have been received</p>
Compass Clayville, Gauteng	<p>There were no significant findings of non-compliance noted besides the late submission of an audit report during the inspection conducted on 15 September 2020.</p>
Biomed, Gauteng	<p>The following were found during an inspection conducted at the facility on 31 July 2020:</p> <ul style="list-style-type: none"> • Non-compliance to conditions of the WML including complaints and incident register not kept; treatment efficacy tests not conducted as stipulated; audits against the Norms and Standards for Storage of Waste not conducted • Bulk of documents to demonstrate compliance were not made available • Failure to comply with duty in respect of waste management amongst others: treated waste not adequately shredded; waste stored not treated within stipulated timeframes; waste residue stored in uncovered containers; used oil stored without secondary containment.
Biomed, Gauteng	<p>A letter requesting more information before a decision is made on the non-compliances have been issued to the facility.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
Cecor Allied, Gauteng	<p>An inspection at the facility was conducted on 17 July 2020 and the following were found:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WML amongst others: Monitoring Committee meetings not held as required; internal audits not conducted as required. <p>Feedback letter requesting an Action Plan to address the non-compliances was issued and the facility responded on 14 April 2021. A decision on how to proceed on the matter will be made.</p>
Optimum Waste-George, Western Cape	<p>A Compliance Inspection was conducted on the 24th of August 2020 and the following contraventions were observed:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WML including lack of dirty runoff collection and containments system; audits not conducted at stipulated frequencies; Monitoring Committee meetings not held as required • Records on sources and amounts of waste; disposal records received not provided upon request
Optimum Waste-George, Western Cape	<ul style="list-style-type: none"> • Failure to comply with duty in respect of waste management including Ash and lime waste stored on unlined and unroofed areas leaching into the environment; HCRW waste spilled on the floor and not cleaned causing nuisance conditions and possible harm to employee health; pharmaceutical waste stored unsecured on the treatment floor <p>An enforcement process was initiated on the 09th of November 2020 and representations were made and the matter was closed out on the 17th of February 2021. In addition, a notice of intention to issue a Compliance Notice in terms of Section 31L of NEMA was issued by the Garden Route District Municipality on 21 August 2020.</p>
BCL, Western Cape	<p>An inspection was conducted on 24 November 2020 and the following contraventions were identified:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WML including failure to submit records required; surface water quality monitoring not conducted; external audits not conducted at required frequency • Records to demonstrate compliance including Incidents and Complaints Registers; Records of Treatment; waste manifests not made available <p>A letter requesting more information before a decision is made on the non-compliances have been issued to the facility.</p>
Compass, Western Cape	<p>There were no significant findings of non-compliance noted besides the late submission of an audit report during the inspection conducted on 11 February 2021.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
Averda Killarney Gardens, Gauteng	<p>The following were found during an inspection conducted at the facility on 25 November 2020:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WML including: EMPr not in place; failure to report on the South African Waste Information System (SAWIS); backup generator not installed • Records to demonstrate compliance including Incidents and Complaints Registers; training records; waste manifests not made available <p>Findings were shared with the facility and a decision on way forward will be made once representations have been received.</p>
Ecocycle, Free State	<p>An inspection was conducted at the facility on 21 January 2021 and the following were found:</p> <ul style="list-style-type: none"> • Contraventions of the requirements of the Norms and Standards for Storage of Waste including Inadequate notices regarding hazards associated with the site; employees not trained to handle hazardous and infectious waste; external audits not conducted
Ecocycle, Free State	<ul style="list-style-type: none"> • Failure to comply with duty in respect of waste management including storage of waste including longer than stipulated timeframes on site leading to odours; inadequate measures for storage and handling of isolation waste; anatomical waste stored in refrigerators not meeting specified storage temperatures. <p>The facility ceased with all operations subsequent to the issuance of a pre compliance notice.</p>
Compass, KwaZulu Natal	<p>An inspection was conducted at the facility on 15 June 2020 and the following were found:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WML and contraventions of the Norms and Standards for Storage of waste including treatment efficacy testing not conducted at required timeframes; reports not submitted as required; incomplete Monitoring Plan for the site • Records to demonstrate compliance including waste manifests were not made available
Makhathini, KwaZulu Natal	<p>An inspection was conducted at the facility 03 March 2021 against Norms and Standards for Storage of waste and no non-compliances were found.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
Buhle Waste, Limpopo	<p>The first inspection was conducted on 25 April 2018 against the conditions of WML:</p> <p>Non-compliances to conditions of the WML, inter alia included:</p> <ul style="list-style-type: none"> • Non-scanning of waste for radioactivity. • Lack of a validation report from an accredited laboratory, and related Converter reduction tests • Non-existence of external audits and monitoring committee <p>Follow-up inspection was conducted on 16 July 2020 against the conditions of Reviewed WML:</p>
Buhle Waste, Limpopo	<ul style="list-style-type: none"> • Even though some of the above-mentioned non-compliances have been rectified, there are non-compliances still found against the conditions of the reviewed WML. <p>The Enforcement: EIP Directorate issued a request letter dated 25 March 2021 for external audits reports which were submitted and non-compliances addressed however follow-up inspection was conducted on 9 June 2021 for verification that non-compliances with the conditions of WML were addressed including the status of compliance with the duty of care legal provisions. PCN dated 8 July 2021 was subsequently issued and representation was submitted with measures put in place to address the non-compliances to the duty of care legal provisions in terms NEMWA.</p>
OTHER	
South 32 Richards Bay (formerly known as BHP Billiton), KwaZulu Natal	<p>A follow-up inspection was conducted on 28 and 29 May 2019 and the following possible contraventions were identified:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the authorisations (WMLs, ECA permits, EA, AEL); • Groundwater pollution around the old un-rehabilitated disposal sites; • Overflows and discharge of contaminated water from disposal sites into the watercourses surrounding the facility; and • Failure to control and eradicate alien and invasive species in terms of NEMBA • The inspection report has been forwarded to DFFE's Chief Directorate: Enforcement on the 22nd of January 2020 to decide on how to proceed with the matter. <p>The Chief Directorate: Enforcement is in the process of deciding whether enforcement action should be taken.</p> <p>While the facility has not been provided with an opportunity to respond to the findings as yet, these findings have been shared with them.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
South 32 Richards Bay (formerly known as BHP Billiton), KwaZulu Natal	<p>The Pre-Compliance Notice issued dated the 26th of November 2020. Representations was submitted dated the 26th of January 2021. A decision will be made to determine whether further administrative enforcement action will be taken.</p> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows: Page 52 of NECER 2016-2017;</p>

8.2 The first phase of implementing the National Pollution Prevention Plan Regulations, 2017 (period from 21 June 2018 to 31 December 2020).

The National Pollution Prevention Plans Regulation was promulgated on the 21st of July 2017 and amended for companies to submit their plans by 28 June 2018. The companies that are within the threshold of emitting above 0.1Megatons CO₂eq and within the listed production processes have submitted their first pollution prevention plan by the 21st December 2017 and the 21st of June 2018. By the end of December 2020 phase 1, a total of thirty-nine (39) Pollution Prevention Plans (PPPs) and related annual progress reports were received and considered by the Chief Directorate: Climate Change Monitoring, Evaluation and Mitigation.

During the July 2018 PPPs processing phase, of the 39 PPPs files that were processed, twenty-two (22) PPPs were immediately approved, while sixteen (16) were initially rejected and one (1) was in progress at the time. By the 30th of September 2018, seventeen (17) PPPs that were rejected and one (1) in progress was resubmitted and re-considered again as per the regulation. Eleven (11) of these were approved as they complied with Regulation 4(3)(a). Four (4) of the PPPs were rejected again, however one (1) of these was subsequently resubmitted, reconsidered and approved by 01 November 2018.

During the submissions, several facilities required the initiation of compliance and/or enforcement processes in response to a failure to submit the PPP or annual progress reports in compliance with the regulations. In terms of Regulation 8(a) of the National Pollution Plans Regulations, 2017, states that any person is guilty of an offence if they fail to submit a pollution prevention plan as required in terms of regulations 4(1). Administrative enforcement action was initiated where three facilities and (3) Pre-Compliance Notices were issued in March 2019. The administrative enforcement process was aimed primarily to encourage facilities to comply with the regulations to submit their PPPs and annual progress reports. The tables below outline the nature of the production process and the status up to 31 March 2021.

Production process	Admin enforcement action taken	Resubmission status as of April 2020	Admin enforcement continued	Resubmission status as of September 2020	Status as of 31 March 2021
Ferro-alloys (Silicon-manganese (SiMn) & High Carbon Ferro-Manganese (HCFEMn))	Pre-Compliance Notice	No	Compliance Notice	No	Yes (subsequent PPP submitted under review)
Coal Mining	Pre-Compliance Notice	No	Second Pre-Compliance Notice	Yes Closed out	
Ferrochrome and underground coal mining	Pre-Compliance Notice	No	Second Pre-Compliance Notice	Yes Closed out	

The companies whose PPPs were approved were directed to implement the approved PPP in terms of regulation 4 (3) (a). Up until the 30th of April 2019, nine (9) facilities still had not submitted their Annual Progress Report by the 31st of March 2019 as required by regulation 5 (1) and (2). Of the nine (9) facilities five (5) submitted the PPPs and was favourably considered.

Regulation 8(b) of the National Pollution Plans Regulations, 2017 states that a person is guilty of an offence if that person fails to submit an annual progress report as required in terms of regulations 5(1). Several facilities were found to have an approved PPPs and yet initially failed to submit their Annual Progress Reports by the 31st of March 2019 as required in terms of regulation 5(1). The administrative enforcement process was recommended for the four (4) facilities aimed primarily to encourage facilities to comply with the PPP regulations. Subsequent to the administrative enforcement action initiated all the facilities submitted the required Annual Progress Reports and were considered by the Department. Table A below outlines the nature of the production process and the status up to 31 March 2021.

Production process	Admin enforcement action taken	Resubmission status as of March 2020	Admin enforcement continued	Resubmission status as of June 2020	Status as of 31 March 2021
Pulp and Paper production	Pre-Compliance Notice	No	Compliance Notice	Yes (resubmitted) Closed out	

Production process	Admin enforcement action taken	Resubmission status as of March 2020	Admin enforcement continued	Resubmission status as of June 2020	Status as of 31 March 2021
Ferro-alloys production	Pre-Compliance Notice	Yes	None	Closed out	
Cement production	Pre-Compliance Notice	Yes	None	Closed out	
Carbon black production	Pre-Compliance Notice	Yes	None	Closed out	

8.4 State vs EnviroServ Waste Management Pty Ltd

Background to Shongweni Landfill Site operated by EnviroServ Waste Management Pty Ltd

The Shongweni Landfill Site is owned and operated by EnviroServ Waste Management Pty Ltd and is situated along M461 Road Clifton Canyon, Durban KZN. The company was issued with a WML by the then Department of Environmental Affairs which is now known as DFFE in term of section 49(1) (a) of NEM:WA. The site is operated in terms of the conditions of the licence for waste disposal.

Complaints from members of the community and Investigations by the Department

Between 2015 and 2017, DFFE received numerous complaints from the residents surrounding Shongweni Landfill site. The complaints were about the offensive odour allegedly emanating from Shongweni Landfill site. Due to the number of the complaints received, the Department applied and conducted a search in Shongweni Landfill site in order to establish the source of the odour and to determine the type of waste that was being dumped into the landfill site. The search warrant was executed and later a criminal case was registered with SAPS against EnviroServe for contravening section 35(2) read with section 51(1) (a) of NEM:AQA and other four charges related to the NEM:WA.

Investigation Process

DFFE continued with its investigation and obtained more than 1000 affidavits from members of the community who were affected by the odour including specialist reports from Infotex (Pty) Ltd, Envitech Solutions and Airshed. The case was so complex as the defence argued that there were other possible contributors to the offensive odour which was affecting the members of the community. DFFE commissioned a number of specialist studies to single out the main cause of the offensive odour. The department also procured air monitoring equipment stationed near Shongweni Landfill site.

Finally in 2017, the Investigation was finalised and the docket was submitted to the Director of Public Prosecution for decision whereafter a number of meetings and consultations followed. A decision was made to prosecute the the company, the Chief Executive Officer, , the Group Technical Director, , the Operations Manager and the waste disposal specialist.

EnviroServ pleaded guilty and agreed to pay out R4.4m

On 14 December 2020, EnviroServ entered into a S105A plea and sentence agreement with the National Prosecuting Authority. They pleaded guilty to one of the five charges brought against them. The charge related to the contravention of section 35(2) read with section 51(1) (a) of NEM:AQA and other charges against the four Directors were withdrawn.

This agreement stipulated that they had to pay a fine of R2 million Rand, with a further R2 million Rand suspended for three years, on condition that the company is not convicted of a further environmental contravention caused by gross negligence. A further amount of R1.2 million Rand would be paid to DFFE to be used by the Environmental Management Inspectorate for the proper execution of its enforcement duties, environmental rehabilitation and enforcement training. Furthermore an amount of R1.2 million to be paid to the Upper Highway Air.



8.5 Municipal Landfill Site Inspections

This project focuses on municipal general disposal sites compliance. The sector was prioritised due to the poor compliance records amongst the sectors inspected by the EMIs.

Findings of the project:

Some of the common non-compliances observed include:

- Lack of covering of waste leading to windblown waste, nuisance and breeding of vectors
- Lack of Access Control which leads to disposal of unauthorised waste and reclaimers residing on site
- Audits not conducted (External and Internal)
- Inadequate monitoring, reporting and record keeping
- Water quality monitoring not conducted
- Leachate and stormwater management systems not in place

The following table shows compliance status and number of sites inspected since 2017 till March 2021

PROVINCE	Non-Compliant 0% to 49%	Partially Compliant 50% to 74%	Compliant 75% to 100%	Total landfills inspected between 2017/18 and 2020/21 (* total number of sites in brackets)
Eastern Cape	26	4	4	34 (103)
Mpumalanga	24	11	7	42 (28 licensed only)
Gauteng	7 (includes 4 unlicensed)	5	12	24 (26)
Northern Cape	17	0	0	17 (92)
North West	13	4	1	18 (18 licenced operational only)
KwaZulu Natal	13	9	8	30 (40)
Western Cape	44	20	27	91 (154 including closed / under construction)
Limpopo	17	11	7	35 (39 includes under/ closed construction)
Free State	6	2	0	8 (73)
TOTAL	167	66	66	299 (573)

*figure may not include some unlicensed dumping sites

Moving Forward

The project is still ongoing and the following interventions are undertaken as part of the project:

- Continued Engagements with municipalities and monitoring through Action Plans submitted by municipalities to address the non-compliances
- Sharing findings with other stakeholders to provide support and guidance to municipalities
- Enforcement action (administrative and criminal) is initiated for non-compliances

**BIODIVERSITY/ PROTECTED AREAS
COMPLIANCE AND ENFORCEMENT**



9. BIODIVERSITY/ PROTECTED AREAS COMPLIANCE AND ENFORCEMENT

The Lockdown Regulations promulgated under the Disaster Management Act 53 of 2005 referred to “wildlife management” and “anti-poaching” as functions falling within the ambit of essential services, which incorporated EMIs operating in the green (biodiversity/ protected areas) sub-sector. Despite this, many EMI institutions considered the work of EMIs across all sub-sectors, including brown (pollution, waste) and blue (marine, oceans and coast) as falling within the same categorisation, resulting in the majority of EMIs across the country being deployed in the field during the lockdown period.

All EMI institutions consistently noted a rise in specific types of environmental crime coinciding with the commencement of the Lockdown Restrictions. At the same time, officials were faced with significant budgetary cuts as well as the adverse health impacts of the virus. In a quick survey conducted with 13 EMI Institutions, it was found that 88 EMIs were infected; 14 were hospitalized and 4 EMIs lost their lives as a result of COVID 19.

During the 2020/21 period, the Inspectorate noted a marked increase in contraventions with environmental legislation, including illegal land invasions in and

around protected areas/forests, poaching (including dog hunting and snaring) in protected areas (including Marine Protected Areas) and clearing of indigenous vegetation.

In the Eastern Cape, for example, land invasions and deforestation around the East London Airport and Umtiza Nature Reserve escalated drastically during the COVID 19 lockdown period. Large tracts of forest have been cleared on properties belonging to the Department of Public Works (DPW), Agricultural Research Council (ARC), SA National Tuberculosis Association (SANTA) and even Eastern Cape Parks and Tourism Agency (ECPTA). The Umtiza Nature Reserve is only 560 hectares and protects the last 1% of *Mesic Kaffrarian Thicket*. There are numerous TOPS listed species within the protected area and in the pockets of surrounding forests, including populations of cycads, blue duikers and samango monkeys. The *Umtiza listerana*, an endemic tree, is almost entirely confined to this area. The conservation importance of this forest was already recognised in 1870 after vast tracts had been commercially exploited by sawyers. The last portions of forest were formally protected in 1887, making the Umtiza Forest one of South Africa’s oldest declared protected areas. Various administrative and criminal enforcement actions by DFFE and DEDEAT have had a limited impact on the continuous clearing of indigenous forest or illegal construction of infrastructure in this area.



EMIs in the **Limpopo Province** also noted an increase in criminal activities as the lockdown period progressed, receiving up to 15 complaints a day, ranging from illegal hunting and deforestation to possession of wild animals without permits. These included the illegal possession and trade of pangolin, hunting in the night, keeping wild animals in captivity without permits or in unhygienic conditions, killing of pythons, destruction of baobab trees and the illegal transporting and possession of lion bones without a permit. An upturn in the illegal trade in Pangolin resulted in three separate cases, in which 5 suspects were arrested and charged 5 suspects during the lockdown period. In a joint one-day anti-poaching operation involving EMIs, private security anti-poaching units, SAPS and SANDF, more than 90 snares were removed in the Phalaborwa area. LEDET EMIs conducted several joint operations with the SAPS and inspections with NSPCA and SPCA.





The number of Pangolins rescued by **Gauteng province** continued to increase during the lockdown period, with three pangolin trafficking incidents reported in the 2nd quarter of 2020/21. A task team consisting of the SAPS Stock Theft & Endangered Species unit, SAPS K9 unit, Hawks, GDARD EMIs and the African Pangolin Working Group is working hard and around the clock to ensure that the pangolin smugglers are apprehended. Firstly, on the 07th August 2020, a 252A operation was conducted in Midrand and four suspects were arrested. A live pangolin, Range Rover, Toyota Yaris, 8 cell phones and Firearm were confiscated during the arrest. On the 17 September 2020, another 252A operation was conducted in Olifantsfontein and six suspects were arrested. A live pangolin, Isuzu bakkie and Honda Civic were confiscated. Finally, three (3) suspects were arrested in Cullinan on the 18th September 2020; and a live Pangolin and Opel Kadet seized. The rescued pangolins were taken to a place of safety for treatment and to be released back into the wild thereafter. The suspects in all these cases were charged for contravening NEMBA, Section 57(1), for conducting a restricted activity involving a specimen of TOPS without a Permit.

Table 10.1 Total number of Rhinos poached in South Africa from 2001 to 2020

INSTITUTION/PROVINCE	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
SANParks (Kruger National Park)	252	425	606	827	826	662	504	422	327	247
SANParks (Marakele National Park)	6	3	3	0	-		0	0	1	
SANParks (Mapungubwe National Park)	0	0	0	1	-		0	0	0	
KZN	34	66	85	99	116	162	222	142	133	93
Limpopo	74	59	114	110	91	90	79	40	45	18
Western Cape	6	2	0	1	1	0	0	0	0	0
Eastern Cape	11	7	5	15	14	17	12	19	2	0
Gauteng	9	1	8	5	2	6	4	2	5	2
North West	21	77	87	65	46	56	96	65	32	19
Free State	4	0	4	4	10	17	38	16	11	1
Northern Cape DENC	0	0	0	5	2	12	24	12	4	1
Mpumalanga	31	28	92	83	67	32	49	51	34	13
TOTAL	448	668	1004	1215	1175	1054	1028	769	594	394

9.1 Ramsar Wetland Enforcement Operation

The RAMSAR Convention on Wetlands is the intergovernmental treaty that provides the framework for the conservation and wise use of wetlands and their resources. The Convention was adopted in the Iranian city of Ramsar in 1971 and came into force in 1975. Since then, almost 90% of UN member states, from all the world's geographic regions, have acceded to become "Contracting Parties". The convention entered into force in South Africa on 21 December 1975. South Africa currently has 27 Ramsar sites (sites with wetlands designated as Wetlands of International Importance) with a surface area of 563,005 hectares (source: www.ramsar.org)

South Africa therefore prioritises wetlands that have been designated as Ramsar sites by affording them high protection and/or conservation status under the NWA and NEMA, resulting in seeking sustainable solutions to prevent pollution, change or deterioration in the status of health or the resource and limit/prevent development in these wetlands. It should be noted that most of the Ramsar sites and wetlands prioritise by Ramsar resolutions such as peatlands and estuaries are dependant on catchments and groundwater flow to maintain hydrological and ecological processes. These ecosystems are not isolated features in the landscape and land use activities upstream of these wetlands should therefore be regulated. The importance of catchments to these wetlands were recognised in three resolutions at the 13th Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands in Dubai, United Arab Emirates, 21-29 October 2018 (Resolutions xiii.12; 20 & 21).

The Ramsar Convention obliges South Africa to report on the degradation of Ramsar sites. The Montreux Record is a register of wetland sites on the List of Wetlands of International Importance where changes in ecological character have occurred, are occurring, or are likely to occur as a result of technological developments, pollution or other human interference. (source: www.ramsar.org)

During 2020, three Ramsar Wetlands were identified which needed enforcement intervention in order to protect these valuable water resources namely Barberspan, Verlorenvlei and the Bot-Kleinmond.

Operations were held at Verlorenvlei and Kleinmond during August 2020. Authorities who participated were DFFE, DEADP, Cape Nature, Breede-Gouritz Catchment Management Agency, DWS and the Overstrand Municipality. Impacts addressed ranged from the illegal disposal of hazardous waste, alien and invasive vegetation, illegal water uses and EIA activities. At Verlorenvlei a total of 4 pre-directives and 2 pre-compliance notices, 1 CN and 2 compliance audit letters were issued. At Bot-Kleinmond 3 pre-compliance notices, 6 pre-directives, 1 CN and 1 removal notice were issued. The operation at Barberspan was held during October 2020. Authorities who participated were the DFFE, DWS, DMR and North West Parks Board. Impacts addressed ranged from sewage to alien and invasive vegetation. The following enforcement actions were executed: 1 pre-directive, 2 CNs and 3 pre-compliance notices were issued. Six criminal cases were also registered.

These multi-agency enforcement operations prove to provide optimum efficiency and effectiveness, as all forms of contraventions of environmental legislation gets addressed. Furthermore, by undertaking these operations in this manner, resources could be pooled and further efficiencies were observed by using air support at Barberspan and also Intelligence reports provided by Cape Nature at Bot-Kleinmond.



Each Department's participation in this operation demonstrated the commitment by these environmental authorities to conserve and promote the wise use of our wetlands and their ecosystems.

Prosecution illegal disposal of waste in wetland:

DFFE recently secured the conviction of Wood Glaze (Pty) Ltd in a matter which involved the illegal disposal of waste into a wetland. This investigation emanated from a criminal case docket that was registered during 2014; and was subsequently handed over to the DPP KZN for prosecution.

During this investigation, a wetland specialist from DFFE confirmed the presence of the wetland, and also that the infilling reduced the wetland in extent from 2.9 ha to 1.7 ha, a direct destruction of 41% of this natural environment.

This evidence was presented to the Director of Public Prosecutions in KZN who then decided to institute prosecution against Wood Glaze (Pty) Ltd. Wood Glaze decided not to dispute the evidence but decided to enter into a 105A plea and sentence agreement in terms of the Criminal Procedures Act 51 of 1977.

The sentence that was imposed, in addition to the rehabilitation order Wood Glaze (Pty) Ltd needs to comply with, sends a strong message that these offenders will be punished. It further demonstrates that the availability of scientific experts can assist with these type of investigations.

Wood Glaze (Pty) Ltd was sentenced in the Durban Regional Court to a fine of The company was fined R1 875 000 per count (7 counts of contravening the NEMA, NEMWA and NWA) of which R1 250 000 per count is suspended for five years on condition that:

- the Accused is not convicted of any contravention of any the provisions under the National Environmental Management Act, NEMWA and/or the NWA committed during the period of suspension AND
- the Accused accepts the appointment of a multidisciplinary specialist team comprising with a representative from the Municipality within 30 days after the finalization of this order.
- The accused must implement the approved rehabilitation plan;
- The accused must, from date of this sentence, provide a monthly feedback report on the progress in compliance with all instructions contained under paragraph 11 and proof of payment of the fine as deferred above to the investigating officer on or before the last day of each month; and
- The accused must submit to the Department confirmation from the specialist team that the agreed rehabilitation was fully completed as per the approved plan within two years from date of approval of the rehabilitation plan.



ENFORCEMENT OCEANS AND COAST



10. ENFORCEMENT OCEANS AND COAST

The DFFE Directorate Enforcement - Oceans and Coast is entrusted with a responsibility to ensure compliance with Marine and Coastal Legislation. The South African coastal environment faces a huge challenge with regard to pollution, illegal development and poaching of marine resources. The following objectives were crafted so as to ensure that all of the mentioned above challenges are addressed:

The appointment of ten (10) Environmental Monitors for KZN and Eastern Cape have led to better coverage of the South African coast, and as such the below successes were achieved. Among activities that the Directorate have been engaging in, they also embarked on awareness and training of Traditional Leadership. The training highlighted processes that need to be followed in allocating land for development, especially within sensitive coastal environments.

EASTERN CAPE AND KWAZULU-NATAL ENFORCEMENT: OCEANS AND COAST PROJECTS 2020/21

10.1 Traditional Leaders Marine and Coastal Legislation Training



(Amakhosi and Izinduna Workshop: 29 -30 March 2021)

Over 50 Amakhosi and Izinduna from KwaZulu-Natal attended the third leg of a Marine and Coastal Compliance and Enforcement Promotion workshop, in Durban, KZN on 25-26 and 29-30 March 2021. Up until this far a total of 167 Izinkosi and Izibonda from Eastern Cape were also engaged in the same fashion. The DFFE together with KZN Department of Cooperative Governance and Traditional Affairs (COGTA) and EDTEA hosted traditional and community leaders for these workshops which are aimed at raising awareness of environmental legislation,

whilst acknowledging the leadership authority vested in various traditional houses. This initiative demonstrates the importance of these leaders and community involvement and assisting compliance and enforcement officials who operate primarily in the oceans and coastal spaces of the KwaZulu-Natal Province to confront the challenges they are facing.

Since Operation Phakisa: Initiative 5 is aimed at achieving enhanced and coordinated compliance and enforcement, the involvement of all stakeholders in ensuring sustainable use of marine and coastal resources is vital and it is therefore imperative that traditional leaders are capacitated to play their role in this initiative. Section 43 of the Integrated Coastal Management Act stipulates that the Member of Executive Council (MEC) mandated to deal with Environmental Affairs in a coastal province may appoint any member of the public, who has appropriate expertise, as a voluntary coastal officer. A voluntary coastal officer must exercise the powers and perform the duties assigned to him or her by the MEC in a manner that conserves and protects coastal public property. This workshop will also assist in capacitating Traditional Leaders so as to be considered for appointment by the MEC of the province as Voluntary Coastal Officers as stipulated in this section.

The DFFE, after consultation with Cooperative Governance and Traditional Affairs (COGTA) and EDTEA have identified Amakhosi and Izinduna from the following Districts: King Cetywayo, Ugu, eThekweni, Ilembe and have identified a total of fifty-six (56) Amakhosi and Izinduna that will be attending the workshop. The presentations at the training workshop will focus on environmental legislation that relates to the management and protection of the coastal environment which includes coastal zone, coastal public property, estuaries, illegal sand mining, Marine Protected Areas, pollution, illegal driving of vehicles in a coastal area. The workshop will also cover the management and protection of other natural resources such as Fisheries, Forestry, Mineral Resources and Energy; including the Prosecution of Environmental Crimes. The workshop seeks to highlight the importance of conservation and preservation of the coastal area, the ecosystems and other related activities, not only by the authorities, but by the communities as well with practical examples provided of the strides that have been made so far.



10.2 Pollution at Transnet National Port Authority

The Directorate dealt with several transgressions relating to pollution at various seaports including Durban harbour. Pollution was taking place from companies that are responsible for maintaining vessels, including different types of pollutants such as grit material, oil residues and discharging untreated effluent into coastal waters. Administrative notices were issued to the transgressors and the site compliance has been achieved because they rehabilitated the site.



10.3 Port St Johns - Sand Dune Destruction

Eastern Cape has been affected by the low rate of job opportunities and as a result people find themselves engaged in different types of illegal economic activities, for example sand mining. Illegal sand mining has destroyed fragile coastal ecosystems to such an extent that it is highly unlikely that they can be restored. Visible enforcement is one of the strategies that has played a role in curbing this type of criminality - several trucks that were about to load sand were turned away before they could cause more damage to the environment. Landowners who were operating illegal mines on their properties were warned to stop and apply for permits. Some of the landowners who allowed mining activities from their properties voluntarily closed their properties using chains after they were informed of the unlawfulness of actions taking place on their properties. Although visibility of law enforcement agencies has increased through these operations, sand mining continues to take place within sensitive coastal areas.

10.4 Construction of illegal coastal structures

Coastal vegetation has been cleared, and construction of wooden stairs constructed without any authorisation at Tugela mouth area, Mandeni Local Municipality. The activities have taken place in a rural community where people approach local Amakhosi/ Izinduna to get possession of sites and thereafter start the development without approaching government authorities. The structure is constructed on a coastal sensitive sand dune where coastal erosion is imminent. Action has been taken using administrative enforcement tools so that the structure be removed and cleared vegetation rehabilitated.

10.5 Appointment of Environmental Monitors

The DFFE and iSimangaliso Wetland Park Authority have embarked on a programme to appoint Environmental Monitors to assist with the implementation and enforcement of the NEM:ICMA, its regulations, and other related and applicable legislation.

Environmental Monitors have undergone EMI training Grade 2 and 5 and they are currently mandated to conduct inspections along the coast in order to ensure compliance to permits and permit conditions in terms of Coastal Waters Discharge permits and Off-Road Vehicle permits, identify and capture evidence suspected illegal structures within a Coastal Public Property and refer for enforcement intervention. Identify suspected illegal discharges along the coast and within estuaries and refer for enforcement action. They can conduct coastal patrols in order to identify all illegal activities related to NEM:ICMA. They participate during Compliance and Enforcement joint operations under Initiative 5 of Operation Phakisa.



WESTERN CAPE

ENFORCEMENT: OCEANS AND COAST PRESSING MATTERS

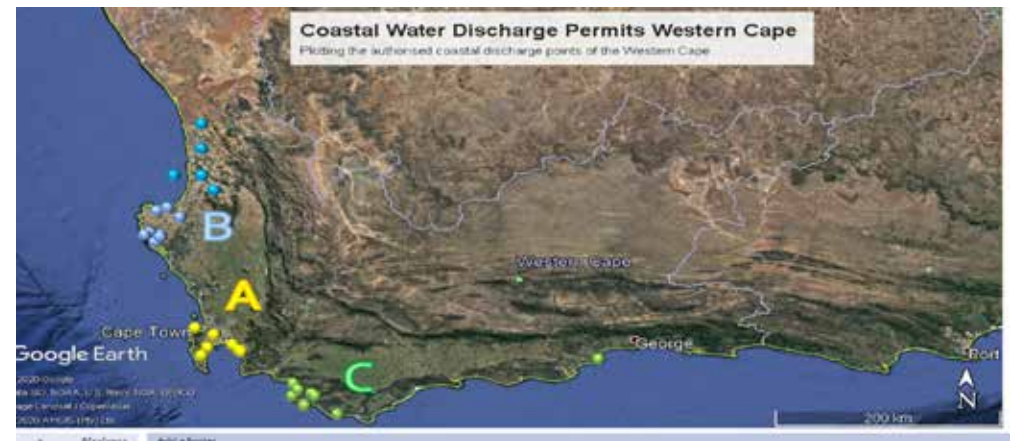
10.6 The establishment of the HWM and the impact of the Surveyor General (SG) advisory notes on Enforcement

With the NEM:ICMA regulating activities taking place within the Coastal Zone with specific reference to development of structures along the coast, the position of the HWM was under fire and many times used as a defence in representations for the DFFE to not issue Final Administrative Notices. This particular matter involved Benguela Cove Estate and a fence that was allegedly erected within the Coastal Public Property due to the fact that the fence was inundated with water and appeared to be within coastal waters in the Bot River Estuary. It resulted in discussions around the HWM and after engagements with officials from the DFFE Oceans and Coastal Branch as well as a task team that looked at the advisory notes given by the SG, it was concluded that the HWM is an ambulatory line, that needs to be observed at a specific point in time at the specific area in question during open mouth conditions. This means that even when it may appear that structures may be within the HWM, looking at historical aerial photography, looking at spring tides, moon phases as well as influence from fresh water systems must all be taken into account.



10.7 Mapping of facilities that have Coastal Waters Discharge Permits

A project was initiated by the Directorate: OC Enforcement looking at Coastal Water Discharges and its cumulative impact on the coastal environment. The Western Cape was selected as a pilot for further investigation. After this initiation of this project, facilities that are discharging into coastal waters will be strategically inspected to ascertain compliance with their permits and at the same time, facilities that are discharging illegally will also be addressed through the appropriate enforcement mechanisms. The project will run into the 2021-2022 financial year and will involve leading experts and Professors in chemical analyses to assist in collecting, analysing and interpreting the various data sources. The sectors to be inspected will be Aquaculture, Fish Processing, Waste Water Treatment Plants, Desalination Plants and Industrial and manufacturing plants.



10.8 Trekoskraal

Since the 1980s people have been using Trekoskraal, a beautifully enclosed section along the West Coast, as a camp site as well as other recreational activities such as fishing, surfing, snorkelling and off-road driving with 4x4 vehicles. For many years it has resulted in numerous complaints being sent to the local, provincial and DFFE with specific reference to the illegal camping and illegal use of off-road vehicles within the Coastal Zone. This activity when conducted by an entire community was starting to cause devastating effects on the coastal environment. A common defence used was that the campers had received permission from the private landowner and had been doing so for many years. Towards the end of December 2020, a joint Blitz operation was initiated by Directorate: Enforcement Oceans and Coasts to issue fines to those illegally using off road vehicles within the Coastal Zone and to give warnings to those illegally camping without permission from the municipality or owner of the land. Due to the strong intergovernmental relations that was formed, closer monitoring of Trekoskraal by the local law enforcement and the various Departments has resulted in Trekoskraal now being protected by the 3 different spheres of Government with the support of SAPS.

10.9 The House in Grotto Bay

A lease agreement that started in 1982 resulted in years of frustration and continuous attempts with environmental agencies to implement the principles of the ICM Act and have a (what was believed to be an illegal housing structure demolished. After deeper investigations it was found that an agreement between the previous occupier and the Department of Community Development, now known as Department of Public Works and Infrastructure (“DPWI”), had been entered to for a period of 5 years and then later on extended by verbal agreement. Ownership, responsibility for the illegal upgrades and management of the structure became an issue of dispute. After the issuance of Pre-Removal Notices by Directorate: Oceans and Coasts and discussions with the defence attorney of the transgressor, it was agreed that the occupier will vacate the house and remove all upgrades to the house. After discussions with DPWI, it was agreed that they will demolish the house after the occupier has completely removed all his additions to the structure.



10.10 Quality Filtration Systems

Quality Filtration Systems (QFS) is a desalination plant that was setup during the drought crises in the Western Cape and received a Coastal Water Discharge permit in 2018. A complaint was then subsequently reported to DFFE by the City of Cape Town for the illegal operation of the facility as it had previously acted under the Permit that had been issued to the City of Cape Town. It was later found that due to disputes around the deliverables of the agreement, QFS had terminated the agreement with the City and no longer had authorisation to discharge effluent in coastal waters and had also unlawfully been occupying land with their plant without permission from the City. The Directorate: Enforcement Oceans and Coasts had conducted a site inspection and issued a Removal Notice. After dispute with the attorneys a letter was sent out to QFS to inform them that the DFFE is prepared to take criminal action for non-compliance to the Removal notice, this then resulted in the entire plant being removed from the premises.

10.11 Milnerton Lagoon

The Milnerton Lagoon and Diep River Estuary has been subjected to sewage spills as a result of failing pump stations and sub-standard effluent being discharged from the Potsdam Waste Water Treatment Works. As a result DEADP as well as DFFE had issued Pre-Notices for the City to place mitigation measures in place to address the pollution and to also upgrade and fix the failure sewerage infrastructure. A decision was taken between the DFFE and DEADP to allow DEADP to lead the enforcement action to avoid duplication. After the issuing of a Directive by DEADP, the City had lodged an appeal to the Directive which resulted in the Notice being upheld but amended. The matter now is still on-going with close monitoring by the DEADP and engagement between the City, DEADP and DFFE. The matter has also been subjected to media enquiries to ascertain whether the City has been making meaningful changes to

address the pollution issues that the Diep River and Milnerton Lagoon has been subjected to. While action plans, plans for upgrade to the sewerage infrastructure as well as estuarine management plan is being put in place, it remains to be seen the effectiveness of the City's plan to prevent, mitigate and address the failing sewerage infrastructure which has resulted in the poor condition of the Milnerton Lagoon.



10.11 ABALONE POACHING ACTIVITIES: ROBBER ISLAND MARINE PROTECTED AREA (TABLE BAY HARBOUR CAS 84/03/2020)

Robben Island was declared as a Marine Protected Area in terms of section 22A of NEM:PAA on 23 May 2019. Thereafter Regulations for the management of the Robben Island Marine Protected Area was promulgated under Government Notice R 94 and published under Government Gazette 42479 of 23 May 2019 which commenced on 1 August 2019.

DFFE became involved with these investigations and managed to secure a conviction on two divers attempting to dive within the Robben Island Marine Protected Area.

The two divers (accused) entered into a S105A plea and sentence agreement and was convicted and sentenced to 3 years' imprisonment wholly suspended for 5 years (attempted to fish in Robben Island MPA). Both accused fined to 1-year imprisonment wholly suspended for 5 years (possession of prohibited gear in terms of the Marine Living Resources Act).

In this agreement the State however made it known that these types of offences were prevalent in the Cape Town Magistrate Court's jurisdiction and that it has become increasingly difficult to police and combat due to financial and human capacity constraints.

For the period 2019 and 2020 at least 45 cases were registered where multiple divers attempted or succeeded to harvest abalone within the Robben Island Marine Protected area. Most of these cases are still on the court roll.

With the Island declared as a Marine Protected Area, and the penalty clauses under the NEM:PAA being much more harsh, these type of penalties will hopefully deter poachers depleting our marine resources within the Marine Protected Area.



Good Morning

Welcome

– Scheduled to start at 08:30 –

Detection and Handling of Illicit wildlife Specimens, Chemicals and Waste Course for SARS CUSTOMS



Part

Type

- GC
- JR
- JG
- K
- LT
- MN
- OS

JOINT COMPLIANCE AND ENFORCEMENT OPERATIONS

- MN
- BN
- JG
- OS
- GC
- XC
- K
- GB
- JR

11. JOINT COMPLIANCE AND ENFORCEMENT OPERATIONS

11.1 Ocean and Marine Crime Priority Committee (Initiative 5): Enhanced and Coordinated Compliance and Enforcement



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 DFFE, supported by the NATJOINTS Structures has focused on joint operations in the maritime environment, with multiple role-players, with different jurisdictions.

Phakisa Initiative 5 focuses on the joint approach to operations within the maritime environment, deploying multiple role-players, with different jurisdictions, to achieve a common objective. To this effect, the NATJOINTS is utilised to execute such operations and provide as a nodal point for operations.

The approach to the integrated enforcement and compliance in the border environment and the positive impact on the coastal regions, has resulted in Phakisa 5 being constituted as the Ocean and Marine Crime Priority Committee of the NATJOINTS. The plan, known as the 5 Pillar Plan, is preventative as well as reactive, aimed at disrupting and mitigating the organised nature of marine related crimes in the country.

NATJOINTS Supplementary Instruction 6, issued 25 March 2020, prescribed Phakisa Initiative 5's operational approach in support of COVID-19, securing the sea borderline and ensuring the safety and security of the South African populace, effective from 1 April to 30 May 2020. Marine

enforcement operations were only conducted after reviewing the threat level. In this regard operations were conducted in the WC and NC with notable successes. Despite COVID-19 restrictions in place, 30 arrests were effected, marine resources to the value of R 571 574 and equipment to the value of R 1 030 300 were confiscated and fines to the value of R 46 000 were issued. 26 of these fines were COVID-19 related.

With the lowering of Lockdown Levels, NATJOINTS Supplementary Instruction 7 to NATJOINTS Operational Instruction 31 of 2016 was issued at the beginning of June 2020. Whilst support to COVID-19 was still required, due to the number of marine resource transgressions and incident reports, it was deemed essential to redeploy Phakisa entities into the coastal regions.

The confiscations reflect below are the total confiscations as the Ocean and Marine Crime Priority Committee

Items		Value
Abalone (Wet)	=	R 15 732 827
Abalone (Dry)	=	R 47 651 911
Rock Lobster	=	R 519 780
Fish and Shell Fish	=	R 78 460
Trailers and Boats	=	R 1 879 050
Vehicles	=	R 2 598 600
Diving equipment	=	R 551 000
Weapons	=	R 53 650
Fishing Equipment	=	R 31 425
Tobacco	=	R 759 103
Stolen Property	=	R 25 500
Illicit Goods	=	R 240 863
Total	=	R 70 122 169

7. During the reporting period, the following compliance and enforcement activities took place under Phakisa Initiative 5:

Emanguzi Implementation Protocol: As per the Emanguzi Implementation Protocol, the border enforcement operation with Mozambique, Phakisa was required to conduct two

enforcement and compliance interventions per quarter within the coastal regions and MPAs. Six Phakisa interventions have taken place in the area of operations, resulting in the confiscation of firearms and the issuing of fines in respect of contraventions of the MLRA and NEMA.

Although COVID-19 negatively impacted on the availability of forces, Phakisa 5 generally managed to maintain a presence in the coastal regions. The presence of **Fishery Patrol Vessels (when available)** and the **TWIGA Ghost boat** (loaned for anti-poaching operations) in the operational areas had a positive impact and prevented the poachers from launching. The deployment of SAPS Border Police and Fisheries RHIBS at Robben Island neutralised the threat of poaching and resulted in a number of arrests and confiscations.

Arrest of Chinese Trawlers. The arrest of six Chinese trawlers took place in the Port of Cape Town for illegally entering South African waters. The vessels were apprehended by the DFFE FPV (Fishery Patrol Vessel) west of Cape Town and escorted to Cape Town outer port limits (OPL), fined and released. Whilst transiting the RSA coast the vessels were continuously monitored by Phakisa 5 to ensure no further transgressions.

Arrest of Chinese Captain and Crew. Phakisa 5 provided the track of the vessel Top Grace proving that she closed the coast to throw stowaways overboard. The vessel was detained in Richards Bay and the Master and six crew were found guilty of attempted murder.

Monitoring of Yachts. Throughout COVID-19 Phakisa monitored the movement of foreign yachts along the RSA seaboard. Interventions were conducted against three yachts in the Western Cape found to be in contravention of COVID-19 regulations. All yacht clubs and small ports along the Western and Eastern Cape seaboards were visited, the respective managers advised as to the requirements of COVID 19 and communication channels were enhanced.

Doring Bay. Investigation into the possible illegal seaweed collection and unauthorised use of private property. Investigation ongoing

Abalone Farms. Follow up investigations into theft of abalone by workers on the farm. In September 2020, the farm dumped approximate 60 000 abalone and buried it. Reason for disposal is that there is no longer a market for the Abalone. This is currently under investigation.

Integrated Plan Western Cape. Poaching in the Western Cape increased significantly on relaxing of Lockdown restrictions. Almost daily incidents were being reported across the Peninsular. An integrated plan to address poaching in the Peninsular has been developed and key to the mitigation would be the completion of the infrastructure developments at Hout Bay and the enforcement of Small Vessel Safety Regulations and the removal of the craft from the water. The South African Maritime Safety Authority and Department of Public Works and Infrastructure have been engaged in this regard.

Illegal Sand Mining. Sand mining severely impacts on the environment and local ecosystems

and can take place along the coastal regions and local river systems. Excavation of the sand in proximity to the ocean, estuaries and rivers directly threatens the ecological integrity of the area and can result in suffocating marine and river species and blocking sunlight from the remaining underwater vegetation in rivers.

After a prolonged period of non-participation, DMR is participating in Operation Phakisa 5. Although illegal sand mining is happening country wide, and intervention operations have been conducted in the EC, a decision was taken to initially concentrate in KZN. DMR identified the areas along the Umgeni River, Illovo, Umvoti, Kwahlanga and Richmond as critical areas in KAN and Mthatha Mouth, Tshani Mankosi, Port St Johns, Kobb Inn and Tshemese. These sanding mining activities have led to loss of life, negatively impacted the local ecosystems and disrupted the flow of water resources.

Intensive planning and collection of information was undertaken during this reporting period with multiple role players, inclusive of site visits and an aerial survey by one of DFFE's helicopters. The intention is to conduct a multi-disciplinary operation, not only to mitigate the activity, but to identify the perpetrators initiating the activity.

Whilst the intention is to use the KZN operation as an operational approach to mitigate sand mining in other Provinces, future operations will need to consider if the activity is related to Organised Crime or an opportunistic business. The prolonged damage to the ecosystems needs to be measured against the operational objectives. 7 Case dockets have been registered for illegal mining and 8 suspects arrested.

FRIO AEGEAN. Reacted on information from the Western Sahara Resource Watch (WSRW) based in Brussels that the Reefer Vessel FRIO AEGEAN planned to discharge fish illegally fished off the Western Sahara coast in Port Elizabeth. Vessel was tracked whilst transiting South African waters and was confirmed that vessel do enter Port Elizabeth or any port.

Oil Tanker ACHILLEAS. Tracking of the Liberian Registered Oil Tanker ACHILLEAS to ensure no untoward activity was conducted within South African waters by a foreign power. The ACHILLEAS was destined for US as part of seizure action by the US government involving Iranian crude oil aboard. The ACHILLEAS was not in contravention of UN resolutions but unilateral US sanctions

Hout Bay. The fishing port of Hout Bay remains a challenge to Law Enforcement. Current upgrades to the port infrastructure were again attacked during December 2020. Hout Bay is a nodal point for the launching of poaching vessels to Robben Island and the Peninsular. Enforcement operations in the area is violently opposed by some of the local community, resulting in further infrastructure damage. A contingency plan to address the challenge is being developed.

Operation 30 Days at Sea. Planning and collection of information/evidence for the INTERPOL

Ant-Pollution Operation in March 2020. The focus of the operation would be the illegal export of Plastic and E Waste and pollution within proximity to the Port of Durban. Due to COVID-19 the operation has been scaled down to focus on one port, namely Durban. The operational phase will be conducted in March 2021.

Trekos Kraal. Operations against the use of Off-Road Vehicles in protected areas were conducted in the Trekos Kraal area after numerous complaints from a local Landowner. After implementation of Level 3 in December 2020, all campers were removed as per the regulations of access to beaches.

Grotto Bay. Enforcement operations against illegal structures in the Coastal Zones are being planned. An integrated approach in cooperation with DPWI, the Local Municipality and Phakisa will be conducted.

OCIMS IVT. The OCIMS Integrated Vessel Tracking (IVT) System continues to be developed as a Maritime Domain Awareness system. Throughout COVID-19 OCIMS IVT monitored the movement of foreign yachts along the RSA seaboard and profiled merchant vessels entering South African ports. With the lowering of risk levels to COVID-19, the risk profile for the maritime environment is being realigned

- Irregularities of merchant vessels entering South African ports.
- Irregular movements off South African ports at night
- Possible irregular transshipments within South African waters.
- Identification of illegal fishing activity by foreign fishing vessels in South African waters.
- Support to the analysis of the IUU Port State Measures agreement pertaining to foreign fishing vessels

Strategic Work. The compilation of a Phakisa Threat, Risk and Opportunity Analysis is in process. The Analysis has resulted from the GTAC Collaborative Study finalised in the 1st quarter of 2020 and will guide further work that the Compliance and Enforcement Working Group (CEWG) will need to prioritise.



**PROSECUTION OF ENVIRONMENTAL
OFFENCES IN 2020/21**

12. PROSECUTION OF ENVIRONMENTAL OFFENCES IN 2020/21

In the 2020/21FY, the National Prosecuting Authority (NPA) recorded 746 criminal trials in which a verdict was handed down by a court of law. These cases related to offences committed in relation to legislation regulating waste and pollution, the marine and coastal environment and protected species. These include cases that were investigated by EMIs, the SAPS or other relevant law enforcement agencies. Of these verdicts, 722 were convictions, while 24 were acquitted, resulting in a 96.8% conviction rate.

The tables below provide an outline of some of the more significant sentences handed down by the courts for environmental offences:

RHINOCEROS



During the 2020/21 financial year, there were a total of 40 convictions achieved relating to rhinoceros, with a conviction rate of 95.2% in which 63 accused persons were convicted. In February 2021, the Constitutional Court overturned a controversial application for cases before the Skukuza Regional Court, where many rhino poaching cases are tried, to be moved to the Mhala Circuit Court.

S v Jimmy Mashopane	
Province	Free State
Description	The accused committed the offences between July and December 2018, killing 9 rhinos and stealing 14 rhino horns at Sandveld Nature Reserve, Hoopstad, Free State. On the day of the arrest, the SAPS received information of 2 alleged poachers entering the nature reserve. SAPS followed the tracks until about 800 meters outside the reserve where they found the accused under a tree. He tried to run but he was apprehended. Cellular phone data obtained from his phone placed him in the vicinity of the reserve during the period the crimes were committed.
Charges	10 counts of rhino poaching, 5 counts of theft, 2 counts of illegal possession of ammunition, illegal possession of firearm, possession of a prohibited firearm, cruelty to animals and money laundering.
Judgement/Sentence	1 count of rhino poaching, cruelty to animals and money laundering was taken together for purpose of sentencing and handed down a sentence of a 6 year jail term. The other 9 counts of rhino poaching, 5 counts of theft, 2 counts of possession of ammunition, 1 count of possession of firearm and possession of prohibited firearm: to 18 years imprisonment. Effective 24 years imprisonment .

S v Andries Mathebula and Shadrack Zitha	
Province	Mpumalanga
Description	Unknown tracks were found on Balule game farm, Hoedspruit, and a rhino carcass was found with its horns removed. SAPS was summoned to the scene and took samples. The accused's vehicle was stopped along the way to Polokwane by the SAPS and rhino horns, firearms, ammunition and an axe were confiscated. SAPS also found that the accused's clothes had bloodstains.
Charges	Contravening the provisions of Section 31(1)(a) of the Limpopo Environmental Management Act 7 of 2007 (LEMA); Unlawful possession of firearm without licence; Unlawful possession of ammunition and for illegal hunting of protected animals.

S v Andries Mathebula and Shadrack Zitha

Judgement/Sentence	<p>Accused 1 was sentenced to 15 years on each of the environmental charges and a further 5 years imprisonment on possession of illegal firearm.</p> <p>Accused 2 was sentenced to 12 years direct imprisonment plus 5 years imprisonment of possession of unlicensed firearm.</p> <p>All accused were declared unfit to possess firearm. The vehicle and the firearm were forfeited to the State.</p>
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S v Masinge

Province	Mpumalanga
Description	The accused was charged for offences related to the illegal hunting rhino.
Charges	Trespassing, illegal possession of fire-arm, ammunition and illegal hunting of Rhinoceros
Judgement/Sentence	Sentenced to effectively 25 years imprisonment: Count 1: 3 yrs ; Count 2: 8 yrs, Count 3: 4 yrs , Count 4: 15 yrs, Count 5: 10 yrs

ELEPHANT:**S v Enock Sibanda and Eckson Shirinda**

Province	Limpopo
Description	The accused entered the Kruger National Park, in 2018, where they shot and killed an elephant and removed its two tusks. 1 of the accused fled back to Mozambique with the firearm, however the remaining 2 accused were convicted of being in possession of a firearm, based on the principle of common purpose and the fact that the elephant died due to a gunshot. In addition, DNA was collected from the crime scene linking the accused to the commission of the offence.

S v Enock Sibanda and Eckson Shirinda	
Charges	<ul style="list-style-type: none"> Count 1: hunting and killing of an elephant, which is a listed specially protected wild animal and the removing of its tusks, Count 2: Illegal immigration, in terms of section 24 of Immigration Act 13 of 2011 due to them entering the Republic without being possession of any legal documents or passports; Count 3: trespassing, and Count 4: entering the Kruger National Park with a loaded firearm knowingly that there are wild animals.
Judgement/Sentence	Count 1 :8 years' imprisonment; Count 2:12 months imprisonment, count 3:12 months imprisonment; Count 4:8 years imprisonment, the accused was sentenced to 17 years imprisonment, and will serve an effective sentence of 8 years imprisonment due to the sentences running concurrently with each other.

SUCCULENTS:

S v Byungsu Kim and Young IL Sunwoo	
Province	Western Cape

S v Byungsu Kim and Young IL Sunwoo	
Description	2 South Korean men stole 1740 <i>Conophytum pagea</i> plants with at least 40 398 growth years in the Western Cape. These plants are listed as rare and critically rare in the SANBI Red List of South African plants. Millions of Rands were confiscated from them. The accused arrived in South Africa last year with a plan to search and collect flora. They were in the process of arranging for the flora to be exported from a nursery in the Western Cape when they were arrested. The accused are part of at least twelve groups apprehended with illegally collected succulents in the Western Cape and the Northern Cape in the past 5 months.
Charges	<ul style="list-style-type: none"> Possession of Flora without documentation; Picking of Protected Flora without a permit; Picking of Flora without the written permission of the landowner.
Judgement/Sentence	Both accused were sentenced to six years direct imprisonment, wholly suspended for five years. The court attached R2,476 million in cash from Kim and R2, 405 million from Sunwoo. The money was divided between CARA, the Western Cape Nature Conservation Board and the South African National Biodiversity Institute. The flora seized was forfeited to Cape Nature. The accused were also declared as undesirable persons in South Africa. Sunwoo has been deported to his country while his co-accused is in the process of being extradited to USA for similar crimes.

S v Kalman Kaminar	
Province	Western Cape
Description	<p>CapeNature officials arrested the accused after catching him and his succulent plant tour guide near Moordkuil. At the time of their arrest, he had 354 plants with him – 337 were protected and 17 were unprotected. Other plants were found at a guesthouse he was staying at in Robertson.</p> <p>Further investigation revealed that he arrived in the country on a guided tour for various succulent plants. He had a detailed itinerary with multiple stops in the area where the plants are found, detailed information on plant localities, place names and GPS coordinates of specific plants. He had a five-page price list titled '<i>Kal Kaminar – Never Enough Cactus. Hunting Fall Plant Sale 2019 Labels</i>' that listed various South African succulent plants.</p>
Charges	Two counts of illegal possession of succulent plants declared as protected.

S v Kalman Kaminar

Judgement/Sentence	2 years direct imprisonment wholly suspended for five years on conditions. Following a confiscation order overseen by the AFU, the court ordered the accused to pay R500 000 to the State – R250 000 to be paid into the Criminal Assets Recovery Account and R250 000 to be paid to the Western Cape Nature Conservation Board. The court declared Kaminar as an undesirable person and banned him from entering South Africa.
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S v Melodie du Toit representing Dougies Pets

Province	Mpumalanga
Description	Selling of prohibited plants in a nursery.
Charges	<ul style="list-style-type: none"> • Contravention of section 49A(1)(k) of the National Environmental Management Act 107 of 1998; • Contravention of section 71 (1) of the National Biodiversity Act 10 of 2004.
Judgement/Sentence	Fine of R3000 plus an additional R12 000 suspended for 3 years on conditions.

ALIEN AND INVASIVE SPECIES**S v Muhammad Riyaadh Satar**

Province	KwaZulu Natal
Description	The accused conducted a restricted activity involving listed invasive species (1 x Burmese Python; 2 x Turtles) without a permit.
Charges	Contravening section 71(1) of NEM:BA
Judgement/Sentence	Fined R10 000 or 2 years imprisonment , of which R5000 or 1 year imprisonment is suspended for 3 years

CYCADS:**S v Willem Frederick Van Dyk**

Province	Limpopo
Description	The accused bought 10 <i>Encephalartos Ghellinkii</i> and 2 <i>Encephalartos Natalensis</i> Cycads from an advert on Facebook. The cycads were sent from Port Shepstone to Mokopane where the accused resides via Post Net. Information was given to the officials of DFFE who investigated and waited for; and arrested the accused when he came to collect the cycads. The first package consisted of 7 cycads. While he was in custody, another package arrived containing 5 cycads.

S v Willem Frederick Van Dyk	
Charges	Contravening section 57(1) of the National Environmental Management: Biodiversity Act, Act 10 of 2004
Judgement/Sentence	He pleaded guilty and was sentenced to a R20 000 fine. The Cycads were forfeited to the State.

ABALONE:

S v Siphelo Ntsabo and Lusanda Fundakubi	
Judgement/Sentence	The accused pleaded guilty in terms of Section 105A of the CPA and was sentenced as follows: First charge: The accused was sentenced to 3 years' imprisonment which was wholly suspended for a period of 5 years. Second charge: The accused was sentenced to 1-year imprisonment which was wholly suspended for 5 years.

S v Sauls	
Province	Western Cape
Description	The accused was convicted of participating in an enterprise involved in unlawful activities involving abalone.
Charges	<ul style="list-style-type: none"> • 16 counts of corruption, • 2 counts of money laundering, • 12 counts of contravention of S44(2) of the Marine Living Resources Act and • 10 counts of contravention Marine Living Resources Act of regulation 36(1) (b).
Judgement/Sentence	The accused entered into a plea and sentencing agreement where he admitted to have poached abalone and bribed officials. 244 years imprisonment

S v Sibango	
Province	Western Cape
Description	The accused was part of a group of 4 men who were aware that a truck carrying cultivated abalone, escorted by a security vehicle, was traveling from Jacobsbaai to Cape Town International Airport. One of the passengers in their vehicle fired shots at the security vehicle and truck forcing it to stop. They then forced the truck driver into the boot of their escorting vehicle. The accused took over the driving of the truck and they went to Du Noon. They then obtained a buyer for the cargo and shared the proceeds of the sale amongst themselves. The accused was linked to the crimes through his DNA and fingerprints, which were found in the cabin of the truck they hijacked.

S v Siphelo Ntsabo and Lusanda Fundakubi	
Province	Western Cape
Description	The accused were found in the Robben Island Marine Protected Area attempting to harvest abalone.
Charges	<ul style="list-style-type: none"> • Contravening Regulation 7(1) of the Regulations for the management of the Robben Island Marine Protected Area promulgated under Government Notice GN R 794 and published in Government Gazette 42479 of 23 May 2019 • Contravening Regulation 3(2) of the Regulations for the Protection of Wild Abalone Regulations promulgated under Government Notice R62 and published in Government Gazette 30716 of 1 February 2008

S v Sibango	
Charges	<ul style="list-style-type: none"> • Two counts of attempted murder; • Robbery with aggravating circumstances; • Kidnapping; • Illegal possession of a firearm; and • Illegal possession of ammunition.
Judgement/Sentence	The Atlantis Regional Court sentenced the accused to 42 years direct imprisonment - 10 years for the two attempted murders charges, 20 years direct imprisonment for robbery with aggravating circumstances, 5 years direct imprisonment for kidnapping and 7 years direct imprisonment for illegal possession of a firearm and ammunition. This sentence follows the accused's decision to enter into a plea and sentencing agreement.

S v Wei Hua Li and Martin Ngale	
Province	Western Cape
Description	The accused were arrested in Rondebosch, and abalone worth R1.8m, as well as drying equipment, were seized during a search-and-seizure operation.
Charges	MLRA- various charges.
Judgement/Sentence	During their sentencing, it was disclosed that the suspects had previous cases of illegal possession of abalone; 1 had been released on parole at the time of his arrest, while the other had a pending matter which was finalised. Accused 1 was sentenced to 5 years, of which 2 were suspended for 5 years with strict conditions. He also received an additional year's imprisonment for another abalone case. Meanwhile, Accused 2 was sentenced to 5 years' direct imprisonment .

S v Martin Basebeti and Wei Hua Li	
Province	Western Cape
Description	The accused unlawfully operated a fish processing establishment, as well as landed, sold, received, transported and possessed abalone in contravention with the MLRA. 3841 (429.6 kg) wet units of abalone and 1928 (227.55kg) dried units of abalone with an approximate value of R 1 825 110.00] were involved.

S v Martin Basebeti and Wei Hua Li	
Charges	<ul style="list-style-type: none"> • Operating a fish processing establishment without a right; • Landing, Selling, Receiving or Possession of fish taken in contravention of the MLRA; • Transport or Possession of Abalone not in a whole state.
Judgement/Sentence	<u>Accused 1</u> : Count 1: Five (5) years direct imprisonment of which 2 years is suspended for Five(5) years, on condition that the Accused is not convicted of the same act; Count 2: Three (3) years direct imprisonment of which 2 years is suspended for a period of five (5) years, on condition that the Accused is not convicted of the same act.
Judgement/Sentence	Count 3: 1 year direct imprisonment suspended for a period of five (5) years on condition that the accused are not convicted of the same act. Count 1 to 3 to run concurrently. Effective: 3 years direct imprisonment. <u>Accused 2</u> : Count 1: Five (5) years direct imprisonment; Count 2: Three (3) years direct imprisonment. Count 1 and 2 to run concurrently. Effective: Five (5) years direct imprisonment.

S v Liuyi Lin & Gui Kang Yang	
Province	Western Cape
Description	A large quantity of abalone was seized: 3 939 units of dried abalone and 6 853 unit of wet abalone. These were clearly not for personal consumption but for the commercial purpose or exporting and selling.
Charges	<ul style="list-style-type: none"> • Operating a fish-processing establishment without a permit; • Illegal possession of abalone; • Illegal transportation of abalone; and • Illegally remaining in South Africa after their visitor's permits expired.
Judgement/Sentence	In terms of section 105(A) of the CPA, the accused agreed to a 6 months' imprisonment . R75 000 and a Mercedes Benz ML 350 , valued at R150 000, to be forfeited to the State to be auctioned and the money to be deposited into the bank account of the Criminal Asset Recovery Account. After they severed their sentences they will be deported to their country of origin.

PANGOLIN:



S v Orateng Mekwe & Jeolous Rungano

Judgement/Sentence	<p>Accused 1 pleaded guilty to a charge of contravening section 57(1) of NEMBA.</p> <p>Accused 2 pleaded guilty on a charge of Contravening section 49(1)(a) of the Immigration Amendment Act 13 of 2002.</p> <p>Accused 1 was sentenced to 10 years direct imprisonment and accused 2 to 3 months direct imprisonment for been illegal in the country. Both accused were declared unfit to possess a firearm in terms of section 103 of Act 60 of 2000.</p>
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S v Orateng Mekwe & Jeolous Rungano

Province	Gauteng
Description	SAPS received information that the accused wanted to sell a pangolin. The Cullinan Stock Theft Endangered Species Unit and as well as the Green Scorpions conducted an operation. On the date in question the accused proceeded to Silver Oaks Mall in Pretoria to finalized the transaction. 4 accused were arrested at Silver Oaks Mall and a live pangolin was seized from the accused.
Charges	<p>Contravening section 57(1) of NEMBA</p> <p>Contravening section 49(1)(a) of the Immigration Amendment Act 13 of 2002.</p>

REPTILES:



S v Willy Wilson Gondwe	
Province	Limpopo
Description	The accused was found at a truck park, close to the Beitbridge border, being in possession of 1100 Emperor Scorpions, 42 Bells Hingeback tortoises and 1 Water Lizzard, all listed in appendix II to CITES. The accused packaged the species in plastic carry bags hidden in 25L plastic containers.
Charges	Count 1: Contravention of S57(1A) of NEMBA Count 2: Contravention of S49(1)(a) of Act 13/2002 - illegal immigrant
Judgement/Sentence	Count 1: 6 years imprisonment Count 2: 2 years imprisonment of which half was suspended for 5 years on condition that Accused is not convicted on a contravention of S9 or S49 of Act 13/2002. In addition, he was declared unfit to possess a firearm , in terms of Section 103 of Act 60 of 2000. All the Scorpions, Tortoises and Water Lizard was forfeited to the State.

S v Dube	
Province	Limpopo
Description	The accused was stopped, searched and found to be in possession of a pangolin by the Stock Theft Unit and Limpopo Department of Environment. Dube was travelling next to Polokwane Nature Reserve when he was spotted carrying a pangolin.
Charges	Unlawful possession of protected species (pangolin)
Judgement/Sentence	The accused pleaded guilty to the charge. An effective 8 years imprisonment without the option of a fine

State V Ms. Lauren Bartholomew	
Province	Gauteng

State V Ms. Lauren Bartholomew	
Description	The accused made Facebook post of smuggling and selling of 3 angulated tortoises. The EMIs together with the Alberton SAPS conducted a 252A operation and agreed with the accused to meet and buy the tortoises. On the set date the accused proceeded to Alberton to finalize the transaction and when she realized that it was a set-up she denied being involved in the smuggling of game until she was searched. The accused was arrested on the spot for keeping of game without a permit, for smuggling of game and for providing false information to the EMIs. She was booked in the cells at Alberton Police Station and the tortoises were seized to the state.
Charges	Contravening section 39(1) of Ordinance 12 of 1983 57(1) Contravening section 49(1) of the NEMA 107 of 1998
Judgement/Sentence	The accused pleaded guilty to all charges and was sentenced to a suspended imprisonment and placed on Diversion Program for 8 weeks. The accused was instructed to submit the certificate of attendance at court after completing the program and the case against her would then be formally withdrawn.

HAMMERHEAD SHARK:



S v Tresso Trading 626 (Pty) Ltd	
Province	Western Cape
Description	The accused were found in possession of five CITES species – <i>Sphyrna lewini</i> and <i>Sphyrna zygaena</i>
Charges	Contravening Regulation 16(1)(b) of the CITES regulations as published in Government Notice R173 of 5 March 2013.
Judgement/Sentence	The accused pleaded guilty in terms of Section 105A of the CPA and was sentenced as follow: Accused sentenced to fine of R200 000 which is suspended for 5 years on the condition that the accused pays R115 000.00 to the DFFE and that the accused is not again convicted of CITES regulations during the period of suspension

COURT SENTENCES RELATING TO POLLUTION, WASTE AND IMPACT ASSESSMENT-HAZARDOUS WASTE:

S v Amro Natal CC and others	
Province	KZN
Description	It is alleged that the suspect(s) illegally disposed sewer sand, buckets, bags, stones, used oil and glycerol at various site including burial of hazardous waste at the company facility. EMIs from DFFE and eThekweni municipal officials conducted an investigation for the alleged illegal disposal of waste at Marianhill next to the River and at Salkot Silt in Merebank and samples were uplifted by EMIs. The EMIs executed a search warrant at the facility, where waste was found to be buried underground in flow bins that were connected through a pipe in the building. Samples were uplifted and taken to the laboratory. The EMIs also observed an area next to the fence that was filled and compacted with different kind of waste. Samples were also taken in this area as well.

S v Amro Natal CC and others	
Charges	<ul style="list-style-type: none"> • Contravening Section 26(1)(a) read with Sections 1, 67(1)(a) and Section 68(1) of NEMWA: Unlawful and negligently dispose or permit waste to be disposed at the facility. • Contravening Section 26(1)(b) read with Sections 1, 67(1)(a) and Section 68(1) of NEMWA: Unlawful and negligently permit waste to be disposed in a manner that is likely to cause pollution to the environment. • Contravention of Section 20(b) read with Sections 1,19, 67(1)(a) and Section 68(1) of NEM:WA, read with Category A, Listed Activity 3 or 6 of Government Notice (GN) No. 921 of 29 November 2013-. Conducted a waste management activity without a waste management license to wit: the recycling of general waste at the facility that has the operational area in excess of 500 square meters <i>or/alternative</i> the treatment of general waste using any form of treatment at the facility that has the capacity to process in excess of 10 tons but less than 100 tons. • Contravention of Section 16(1) (e) read with Sections 1, 67(1)(a) and Section 68(1) of NEM:WA - Failure to take all reasonable measure to prevent any employee or person under his supervision from contravening this Act
Judgement/Sentence	Accused pleaded guilty in terms of S105A on 2 counts. Accused was sentenced to R100 000 fine, of which R50 000 is suspended for 5 years on condition that she was not found guilty of any contravention of Section 16 and 20 of NEMWA.



S v Talmie Mining (Pty) Ltd

Charges	<ul style="list-style-type: none"> • Section 20(b) read with Section 1, Section 67(1)(a) and Section 68(1) of the NEMWA of 2008, further read with Category B listed Activity 3 of GN 921 of 29 November 2013 and further read with Section 332 of the CPA: conducted a waste management activity to wit: the recovery of waste at a facility that processes in excess of 1 ton of hazardous waste per day, without a WML. • Section 67(1)(a) read with Section 20 (b), Section 1, & Section 68 (1) of the NEMWA, read with Category A listed Activity 5 of GN 921 of 29 November 2013 and also read with Section 332(1) of the CPA conducted a waste management activity to wit: the recovery of waste in excess of 500kg but less than 1 ton of hazardous waste per day, without a WML. • Section 20(b) read with Section 1, Section 67(1)(a) and Section 68(1) of the NEMWA, further read with Category B, Activity 1 of GN 921 of 29 November 2013 and further read with Section 332 of the CPA: conducted a waste management activity to wit: the storage of hazardous waste in lagoons excluding of effluent, wastewater or sewage, without a WML. • Section 49A(1)(e) read with Section 1 and Section 49B(1) of the NEMWA and further read with Section 332 of the CPA: committed an act that is likely to cause significant pollution to the environment to wit: the storage of slag rock and chrome waste on unlined surface. • Section 67(1)(a) read with Section 16(1)(d), Section 1, & Section 68 (1) of the NEMWA, read with Section 332(1) of the CPA- failed to take reasonable measure to manage the waste in such a manner that it does not endanger the environment to wit: the storage of slag rock and chrome waste on unlined surface. • Section 49A(1)(e) read with Section 1 and Section 49B(1) of the NEMWA and further read with Section 332 of the CPA: committed an act that is likely to cause significant pollution to the environment to wit: the storage of sludge in the lagoons without the proper lining. • Section 67(1)(a) read with Section 16(1)(d), Section 1, & Section 68 (1) of the NEMWA, read with Section 332(1) of the CPA: failed to take reasonable measure to manage the waste in such a manner that it does not endanger the environment to wit: the storage of sludge in the lagoons without the proper lining • Contravention of Section 151(1)(a) & (2) read with Section 1, 21(a) & (b), 22(1) & 152 of the NWA to wit: taking water from water resource and storing of water , without a WUL.
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S v Talmie Mining (Pty) Ltd

Province	Mpumalanga
Description	<p>It was alleged that the accused was stealing chrome waste and slag rocks from the Tubatsi Samancor Smelters and Lion Smelters in Steelpoort where they took these substances to a plant to be processed or recovered. A search warrant was obtained by the DPCI members for a farm in Lydenburg. During the execution of the search warrant, the officials were informed that there are 2 processing plants operating on the same premises, including one used to recover chrome materials from chrome waste and another to recover ferrochrome from the slag rocks.</p> <p>The officials at Plant 1 observed heaps of waste chrome and slag rocks stored on site on unlined soil, the chrome waste was fed into the plant to be processed and to recover chrome, the waste sludge was released into three (3) sets of lagoons/dams on site that were separating the sludge from the waste water and the lagoons were partially lined with black plastic. Some of the plastic was torn and the sludge and waste water were seeping into the environment. At Plant 2 the slag rocks were fed into the plant where it is then processed to recover ferrochrome.</p>

S v Talmie Mining (Pty) Ltd

Judgement/Sentence	Accused pleaded guilty in terms of S105A on 3 counts in contravention the provision of NEMA, NEMWA and NWA and was sentenced to R1 Million fine, wholly suspended for 5 years on condition that he was not found guilty of any contravention of NEMA, NEMWA and the National Water Act during the period of suspension and also on condition that he comply with the rehabilitation order as stipulated in the plea agreement. The accused has to pay R10 000 for the investigation costs in terms of Section 34 of NEMA.
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S v Sam Marie Consulting CC T/A Biotech SA

Province	KwaZulu-Natal
Description	The KZN EDTEA requested the assistance of DFFE regarding an anonymous complaint they received in relation to oil pollution that was found in the uMhlatuzana River in the Queensburgh area. Officials from the DFFE went out to the scene where an area of the river was found to be polluted with old oil. An investigation of the surrounding areas as well as the storm water drains in the area indicated that the oil spillages originated from the business premises of Biotech SA in the Queensmead industrial area. A site investigation was conducted at the premises of Biotech SA and it was found that they operated an oil recycling facility. It was further established that the sewer line and the effluent water line was illegally connected to the storm water line through which the old oil was discharged into the uMhlatuzana River. It was further discovered that the operations conducted on the site triggered waste management activities for which the accused had no waste management license. The accused also had no permits from the eThekweni Municipality to discharge their effluent into the sewer lines and no permit to conduct a Scheduled Trade.
Charges	<ul style="list-style-type: none"> • Contravening section 20(b) of NEM:WA; • Contravening section 8(1) of Ethekewini Scheduled Trade and Occupational Bylaws Notice 134 of 1979
Judgement/Sentence	Finced R 200 000 suspended for 5 years . It was also ordered that the accused must pay R50 000 to the complainant.

**S v Johannes Nicolaas Roedolf Joubert and Moosa Ali**

Province	KZN
Description	Department received video footage from a complainant which showed the release of a significant volume of untreated leachate from the leachate containment facility which is situated at the Dolphin Coast Landfill Site. The leachate was being released directly into the Mdlotane river
Charges	<ul style="list-style-type: none"> • Contravention of Section 49A(1) (e) of the NEMA; • Contravention of 16(1)(c); 16(1) (e); Section 67(1)(h) section 26(1)(b) of the NEMWA • Contravention of section 151(1)(j) of the NWA

S v Johannes Nicolaas Roedolf Joubert and Moosa Ali	
Judgement/Sentence	All counts taken as one for the purpose of sentence Both accused sentenced to pay a fine of R1 000 000.00 or 4 years' imprisonment which is wholly suspended for a period of 5 years and addition both accused fined R20 000 or 2 years' imprisonment each.

S v ZINHLE PHUNGULA	
Province	KZN
Description	Waste pollution.
Charges	<ul style="list-style-type: none"> • Contravention of section 49A(1)(e) of NEMA; • Contravention of section 16(1)(e) of NEM:WA; • Contravention of section 67(1)(h) of NEM:WA; • Contravention of section 151(1)(j) of the NWA; • Contravention of section 26(1) of NEMWA
Judgement/Sentence	Both accused to pay a fine of R 1 000 000 or in default of payment to undergo 4 years imprisonment ; each which is wholly suspended for a period of 5 years. In addition, thereto both accused fined R20 000 or 2 years imprisonment each.

S v Thuthile Lina Mabaso	
Province	Mpumalanga
Description	Officials from DFFE, DMR and Inkomati-Usuthu Catchment Management Agency ("IUCMA") executed a joint operation where all illegal mining sites within the Barberton Nature Reserve were visited. While busy with the operation an excavator was observed mining in the Kaap River. Further investigation revealed that the accused did not have a WUL or EA to mine sand from the Kaap River.
Charges	<ul style="list-style-type: none"> • 1 count for contravening section 49A(1)(f) of NEMA. • 2 counts of contravening section 151(1)(a) of the NWA • 1 count of contravening section 151(1)(d) of the NWA
Judgement/Sentence	The accused pleaded guilty in terms of Section 112 of the CPA and was sentenced to a R500 000 fine which was wholly suspended for 5 years with conditions, which included the rehabilitation of the site by the accused.

ECOSYSTEM DEGRADATION



S v Advitat Trading 475 CC	
Province	Mpumalanga
Description	The company conducted illegal mining activities in the Barberton Nature Reserve. The accused company allegedly claimed that the mining permit was granted by DMR. The investigation revealed that the accused is mining in the wrong area.
Charges	<ul style="list-style-type: none"> • Contravention of Section 48(1) read with Section 89(1) (a) and (2) of the NEM:PAA: Conducting mining activities in a nature reserve. • Contravention of Section 89(3) read with Section 86 of the NEM:PAA and Regulations 36(1)(a)(i) and 54(a) of GNR 99 dated 8 February 2012: Removal of Minerals in a nature reserve without a written Authorization of management. • Contravention of Section 89(3) read with Section 86 of the NEM:PAA and Regulations 36(b) and 54(a) of GNR 99 dated 8 February 2012: Digging of soil or similar material in a nature reserve • Contravention of Section 89(3) read with Section 86 of the NEM:PAA and Regulations 44(a) and 54(a) of GNR 99 dated 8 February 2012: Removal of soil or stones from a water area • Contravention of Section 46(1) read with Section 89(1)(a) of the NEM:PAA : Entering in a nature reserve without the written permission by the Management • Contravention of Section 24F (1) (a) read with Section 24F (4) of the NEMA: Commencement of a listed activity without Environmental Authorisation.
Judgement/Sentence	The accused pleaded guilty in terms of Section 112 of the CPA and was sentenced to a R100 000 fine which was wholly suspended for 5 years with conditions, which included the rehabilitation of the site by the accused.



S v Wood Glaze (Pty) Ltd	
Province	KZN
Description	In 2012, Wood Glaze bought land in Phoenix from eThekweni Municipality, namely Erf 1086 and Erf 1661. They envisaged using the land to build low-cost houses for disadvantaged and impoverished communities. However, there was a wetland on the property and the company filled in gravel and building rubble to build platforms on which the houses were to be built. This infilling caused parts of the wetland to erode, thus affecting the wetland and its buffer area.
Charges	Contravention of the NEM:WA , contravention of the NWA and two counts of contravention of the NEMA.
Judgement/Sentence	<p>R7.5 million fine:</p> <p>The company was fined R1 875 000 per count of which R1 250 000 per count is suspended for five years. Also, the company has to appoint a multidisciplinary specialised team to effectively rehabilitate the wetland. This team must be set up within 60 days of the court order.</p> <p>The effective fine of R2.5 million must be settled with R500 000 paid within 10 days of the court order and the remaining R2 million must be paid in 20 consecutive instalments of R 200 000 on or before the end of each month. The first instalment is due on 30 April 2021.</p>

AIR QUALITY



S v EnviroServe Waste Management Ltd	
Judgement/Sentence	<p>The accused pleaded guilty in terms of Section 105A of the CPA and was sentenced as follows:</p> <p>In respect of count 1, Enviroserve is sentenced to a fine of R4 000 000 of which R2 000 000 is suspended for 3 years on condition that Enviroserve is not convicted of a further contravention of section 35(2) of NEM:AQA</p> <p>In terms of section 34(3)(b) of NEMA, Enviroserve is ordered to pay an amount of R1 200 000 to the Department and R1 200 000 to the Upper Highway Air NPC</p>



S v EnviroServe Waste Management Ltd	
Province	KwaZulu Natal
Description	The Shongweni Landfill Site, which is operated by EnviroServ Waste Management (Pty) Ltd ("EnviroServ") emitted offensive odours (H ₂ S) causing discomfort to affected communities. Such conditions were frequently encountered in the late evenings and early mornings, often when people are asleep. It is also known that H ₂ S can result in negative respiratory, skin irritations, nosebleeds and eye sensitivity which this affected community also complained about. More than 1200 witness statements were obtained in this investigation to state how this offensive odour impacted upon their livelihood.
Charges	Contravening Section 51(1) (a) of the NEM:AQA

S v ArcelorMittal South Africa	
Province	Gauteng
Description	ArcelorMittal Van der Bijl Works are situated within the Vaal Triangle Airshed Priority Area and was issued with an Air Emission Licence. They were found to be in non-compliance of a condition of their Air Emission Licence by emitting higher levels of H ₂ S than permitted.
Charges	Contravening Section 51(1) (e) of the NEM:AQA

S v ArcelorMittal South Africa

Judgement/Sentence

The accused pleaded guilty in terms of Section 105A of the CPA and was sentenced as follow:

The accused was sentenced to a **fine of R10 000**

In terms of section 34(3)(b) of the NEMA, the accused was also ordered to pay the amount of **R3 630 000 to DFFE** for the supply, delivery, installation and commissioning of air quality monitoring instruments for Sedibeng Municipality.



NATIONAL ENVIRONMENTAL COMPLAINTS AND EMERGENCY INCIDENTS

13. NATIONAL ENVIRONMENTAL COMPLAINTS AND EMERGENCY INCIDENTS

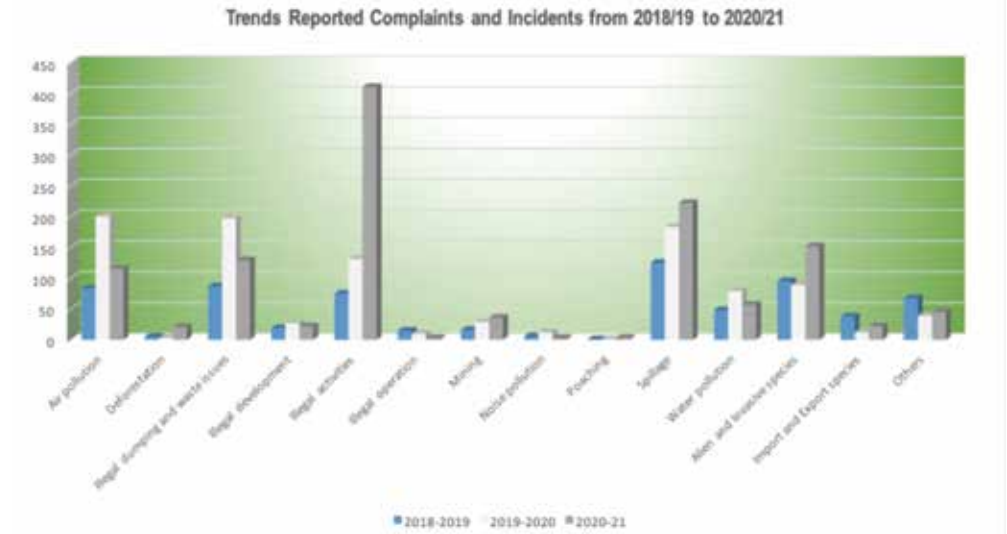
DFFE continued to collect statistics on environmental complaints received through the Environmental Crimes and Incidents Hotline from the Minister and Director-General’s office, as well as complaints received directly from other organs of State and the public. The Hotline serves as the main point of 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 an increase in the overall number of incidents and complaints reported from **680** in 2018/19, **1012** in 2019/2020 and **1098** in 2020/21 financial years. Reports of air pollution, illegal activities, water pollution, alien and invasive species and spillages have recorded an increase with illegal dumping and waste issues showing decreases.

13.1 Hotline complaints per category

Table 7: Number and classification of complaints

Nature of Complaint	Financial Year			Total
	2018-2019	2019-2020	2020-21	
Air pollution	83	200	115	398
Deforestation	5	3	21	29
Illegal dumping and waste issues	87	197	129	413
Illegal development	19	27	22	68
Illegal activities	75	131	410	616
Illegal operation	15	10	3	28
Mining	16	29	36	81
Noise pollution	6	12	3	21
Poaching	1	1	3	5
Spillage	125	183	222	530
Water pollution	48	79	57	184
Alien and Invasive species	95	89	152	336
Import and Export species	38	12	22	72

Others	67	39	45	151
Total	680	1012	1240	2932



Graph 6: Graphical representation on the nature of complaints received

13.2 Referral of hotline complaints to responsible organs of State

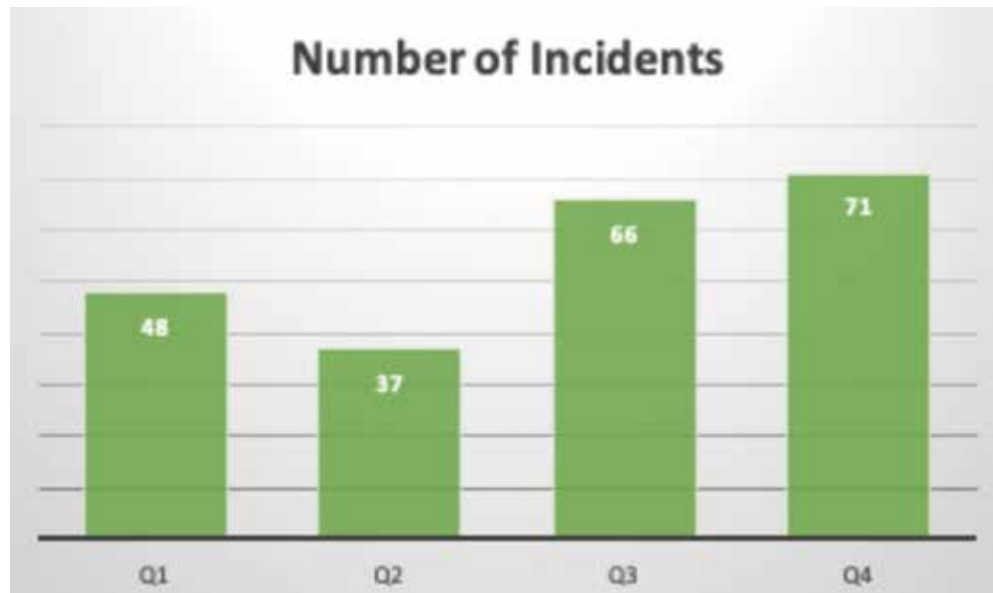
Table 8: Number of DFFE referred complaints and incidents

Financial Year	INSTITUTION REFERRED TO					Total
	DFFE	DWS	DMR	LOCAL GOVERNMENT	PROVINCES	
2018-2019	310	48	16	119	187	680
2019-2020	354	62	25	266	305	1012
2020-2021	501	57	36	287	359	1240
Total	1165	167	77	672	851	2932

13.3 Section 30 NEMA

13.3.1 Analysis of 2020-2021 incidents

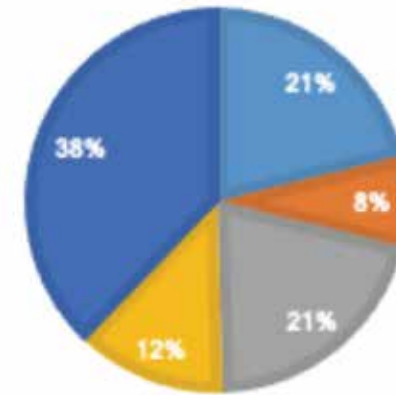
The department recorded 222 incidents in the financial, with quarter 4 having for the most incidents reported. Beginning of the year, especially quarter 2 had less incidents reported, these could be because of strict lockdown during that period. Refer to the chart below.



The top incidents reported were oil, petrol, diesel and emission exceedances, which accounted to 138 of the 222 incidents reported. The other 84 incidents, were of incidents of chemicals and other type of incidents which were reported once or twice the whole financial year.

TYPE OF INCIDENTS

■ Emission exceedances ■ oil ■ diesel ■ petrol ■ others



Mpumalanga had most incidents occurring in the province during the financial year followed by KwaZulu – Natal.

13.3.2 Analysis of 2020-2021 Section 30A Directives

The DFFE issued eight (8) verbal directives in terms of Section 30A of the NEMA for the 2020-2021 financial year. All 8 verbal directives were confirmed in writing. One (1) of the 8 verbal directives was subsequently revoked. Five (5) of the verbal directives were issued in the 1st quarter, one (1) in the 2nd quarter, one (1) in the 3rd quarter and one (1) in the last quarter (Refer to the graph in figure 1 below).

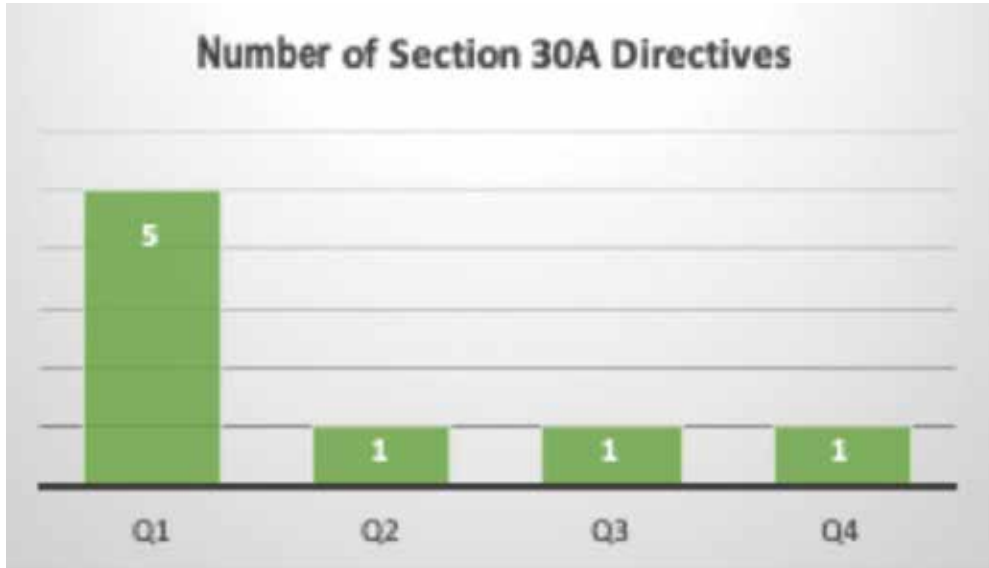


Figure 1: Number of verbal directives issued in the financial year 2020/21

The Section 30A Directives related to the following development types:

Issued Section 30A Directives	Development type	Province
1	47 Bridge developments within watercourses	KwaZulu Natal; Eastern Cape; Free State; and Limpopo provinces
1	Road rehabilitation within watercourse	Western Cape
3	Railway rehabilitation within watercourse	Kwazulu Natal; Limpopo; and Mpumalanga

Issued Section 30A Directives	Development type	Province
1	Electricity generation This Directive was formally revoked	Eastern Cape; KwaZulu Natal; and Western Cape
1	Drought relief	Western Cape
1	Power line Tower redevelopment within watercourse	Free State

SECTION 30A DIRECTIVES BY DEVELOPMENT TYPES

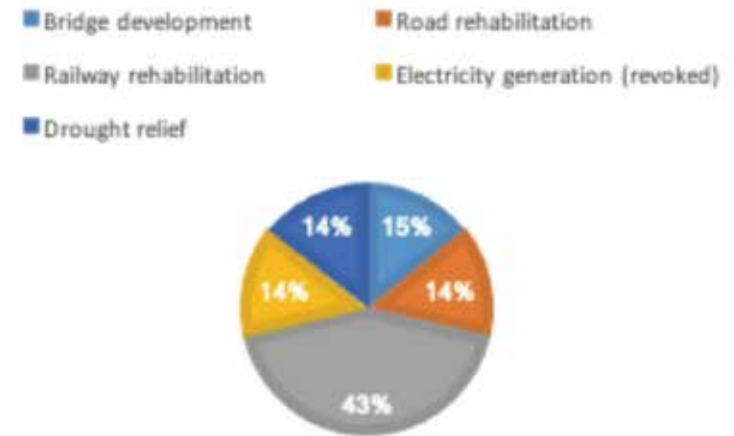


Figure 2: Section 30A Directives Development types



**ENVIRONMENTAL COMPLIANCE AND
ENFORCEMENT CAPACITY BUILDING**

14. ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT CAPACITY BUILDING



14.1 EMI Basic Training Courses (October – November, 38 officials)

Due COVID-19 lockdown restrictions only one EMI Basic Training Course could be presented during this period. The course itself was also adapted insofar as reducing the maximum number of attendees, smaller practical groups, together with physical distancing in and mask wearing in class. The course was attended by 39 officials from all three spheres of government, whom require either Grade 1, 2, 3 or 4 designation.

The training content is structured as to follow a chronological flow, which includes:

- 1) Legislation, including NEMA, SEMAs, as well as relevant provisions of the CPA and PAJA;
- 2) Theoretical and practical training in so far the proper legal execution of an inspection and report writing;
- 3) Taking administrative enforcement action
- 4) Undertaking criminal investigation and
- 5) Associated Court procedures.

There are 7 separate individual assessments done over this period and one needs to have a final average of 50% to pass.

The overview for the course is as follows:

- The October / November 2020 course was presented in Pretoria Gauteng
- 39 officials in attendance
- 9 Provincial EMI institutions represented
- 9 Local authorities represented
- Class average was 59%
- Highest mark achieved 80%
- 4 Officials failed



14.2 EMI Grade 5 Basic Training (July, 10 Officials)

An EMI Grade 5 Basic training course was hosted to 10 Environmental Monitors appointed to assist enforcement programmes within the DFFE Oceans Enforcement directorate.

Topics covered during the course included the Constitution of South Africa, the NEMA/SEMA Framework, EMI Code of Conduct, NEM:PAA & Regulations, NEMBA & Regulations, CPA applicable to the Grade 5 EMI, NEMICMA & Regulations, EMI Pocketbook, Arrest, Search & seizure, EMI First Responder and Crime Scene Management, Chain of Custody, statement writing, Admission of Guilt Fines as well as Court Structure, Role-players and Testifying in court.

Officials were assessed on theoretical as well as practical work and had to obtain a pass mark to qualify for designation.



14.3 Train-the-trainer SAWC – Grade 5 (July, 5 Officials)

There was also a train the trainer course presented to trainers from the Southern African Wildlife College. This training was as a result of an application received by DFFE from the SAWC for renewal of the original Director General approval to present the EMI grade 5 Basic training course to EMI institutions that employ field rangers. This approval is in the form of a Memorandum of Understanding (MoU), which also outlines the minimum requirements that the SAWC needs to abide in order for trained rangers to qualify to be designated as EMIs.

Officials from DFFE travelled to SAWC near Hoedspruit to share and explain updated training material with trainers and ensure that the content and standard of the course is maintained.



14.4 EMI Rhino Horn Sampling Course (July, 18 Officials)

A virtual Rhino horn sampling and verification course was hosted for 18 EMIs employed by Cape Nature (Western Cape Province). The course, as already mentioned, was aimed at training EMIs in the proper procedure of taking samples from Rhino Horn to be submitted for DNA analysis as required by law.

During the online course every effort was made to ensure that content was explained in an effective manner by utilising pre-recorded video clips as well as covering topics relating to legislation that stipulates the procedure for the marking and sampling of Rhino Horn, proper administrative procedures as well as the step-by-step process when using the e-RHODIS app.

A practical session will be scheduled as soon as travel is possible.



14.5 Rhino Horn Trade Provisions Course (August, 30 Officials)

During lockdown level 5 of the COVID-19 pandemic an online training session was conducted that focussed on topics such as:

- Regulations relating to trade in Rhinoceros horn
- Notice prohibiting the carrying out of certain restricted activities involving Rhinoceros horn
- Amendment of the alien and invasive species list and list of critically endangered, endangered, vulnerable and protected species

The virtual session was attended by 30 EMIs from across South Africa and a large portion of the course was dedicated to discussions in order to ensure comprehensive and practical understanding of the legislation presented.

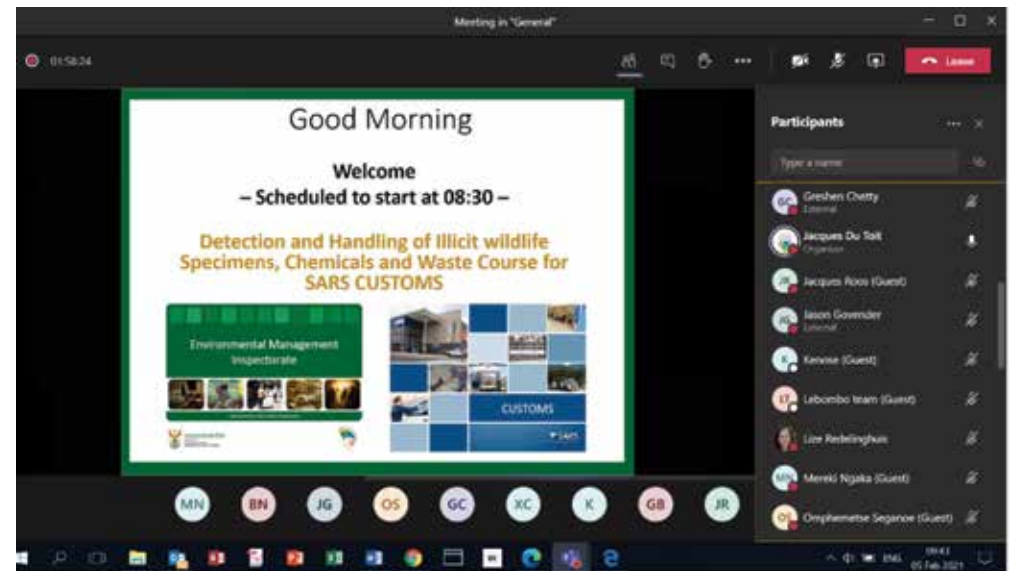


14.6 Cybercrime Meet – DARWIN (September – October, 15 Officials)

During October 2020 15 EMI criminal investigators attend an online Cybercrime course presented by a Cybercrime Expert attached to the French Embassy.

This program was initiated to train EMIs in the proper use of electronic evidence investigation tools. This allows for the investigation and analysis of seized electronic evidence in order to discover the exhibits necessary to build a criminal case.

The tools taught is currently used by the French National Police, and enable field investigators to search for digital evidence. This training was hosted as a pilot course in order to evaluate the need for possible formal cooperation in the future that will deal with cybercrime link to environmental matters



14.7 SARS Institute of Learning Train-the-Trainer (February 20 Officials)

DFFE (on behalf of the EMI) in collaboration with the SARS Institute of Learning developed curriculum to be rolled out by trainers from the institute to SARS Customs officials in the identification and proper handling of imported and or exported environmental commodities regulated by domestic legislation.

This includes animals and plants (including their derivatives), as well as Waste and harmful chemicals, ozone-depleting substances and polychlorinated biphenyls.

A virtual train-the-trainer course was hosted by DFFE to 20 officials within SARS. Future engagement has been scheduled before the training if formally rolled out to border officials

WHAT IS AHEAD FOR 2021-22?



15. WHAT IS AHEAD FOR 2021-22?

The frequency of joint EMI operations, which was heavily impacted over the last two years as a result of the COVID 19 pandemic, will be intensified over the next reporting cycle in the waste and pollution sector. These integrated operational exercises will be undertaken with the view to consolidate the efforts of the broad range of government institutions who exercises regulatory control over the environment in this particular area of work. These operational initiatives will further serve to facilitate a shift in the mind-set of regulatory authorities from a narrow focus on the use of administrative enforcement as the primary regulatory mechanism to the inclusion of criminal sanctions in appropriate cases. This has become more urgent, as syndicated crimes, especially in the illegal trade of waste, have started to show a significant footprint in the country.

The ongoing collaboration between Operation Phakisa Initiative 5 (Compliance and Enforcement) and the Benguela Current Commission (BCC) aims to improve the level of compliance and enforcement activities within Marine Protected Areas (MPA). Operational plans that will cover Bird Island and Sardinia Bay MPAs in Eastern Cape, and MPAs from Hangklip to Breede Estuary in the Western Cape have been compiled and awaiting approval.

The ongoing initiative to raise awareness amongst Traditional Leaders on the legislation, nature and impacts of environmental crimes occurring in the marine and coastal sector remains a priority for the forthcoming year. In addition to workshops planned in KwaZulu Natal and the Eastern Cape, there is also a proposal to explore the potential of appointing Traditional Leaders and Community Leaders as Voluntary Coastal Officers in terms of section 43 of the ICM Act, thereby promoting a collaborative approach to the protection of the coastal environment.

On the biodiversity and conservation front, the implementation of the anti-poaching initiatives of the Rhino Conservation Lab and the effective functioning of the national Environmental Enforcement Fusion Centre will remain as key focus areas. There will also be further emphasis on the implementation of the High Level Panel's recommendations relating to compliance and enforcement for the five iconic species namely Elephant, Rhinoceros (White & Black), Leopard and Lion. For the monitoring and control of alien and invasive species (AIS), operations are planned for various provinces, including North West, Western Cape and KwaZulu/Natal. Properties with alien and invasive species, pet shop and nurseries will be highlighted as key sectors that will receive the attention of the Inspectorate.

In light of the impact of restrictions of the COVID 19 regulations on the ability to deliver contract capacity development initiatives, further efforts will build on the foundational work that has started in relation to the development of E-Learning courses for EMIs and other regulatory authorities. The roll out of the integrated national Environmental Compliance and Enforcement Information System aims to develop a consolidated national resource for the Inspectorate that will ease reporting, record keeping and improve the quality of compliance and enforcement decisions. Further work on the introduction of an Administrative Penalty System seeks to

provide a comprehensive set of enforcement mechanisms to be included in the legislative toolkit of EMIs. Together with SALGA, the Inspectorate will undertake further activities to distil the legal mandate of local authority EMIs to undertake compliance and enforcement function in terms of NEMA and the SEMAs, with the aim of optimising their ability to fulfil their Constitutional mandate.

Finally, ongoing collaboration with relevant regulatory authorities, including the SAPS, NPA, SARS Customs and NSPCA, highlights the importance of adopting a "whole of government" approach to tackling environmental non-compliances.

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