



# NATIONAL ENVIRONMENTAL COMPLIANCE & ENFORCEMENT REPORT 2021/22



**forestry, fisheries  
& the environment**

Department:  
Forestry, Fisheries and the Environment  
REPUBLIC OF SOUTH AFRICA





**National Environmental Compliance & Enforcement Report 2021-22**

2022

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<b>FOREWORD</b>	

The World Economic Forum's (WEF) Global Risks Report (Report) was released in January 2022; and provides a comprehensive analysis of the key risks predicted to arise from current global economic, societal, environmental and technological conditions. The Report tracks global risks perceptions among risk experts and world leaders in business, government, and civil society; and presents the results of the latest Global Risks Perception Survey (GRPS), followed by an analysis of key risks emanating from current tensions.

This report finds that respondents to the GRPS perceive societal risks—in the form of “social cohesion erosion”, “livelihood crises” and “mental health deterioration”—as those that have worsened the most since the pandemic began. For the next five years, respondents again signal societal and environmental risks as the most concerning. However, over a 10-year horizon, the health of the planet dominates concerns: environmental risks are perceived to be the five most critical long-term threats to the world as well as the most potentially damaging to people and planet, with “climate action failure”, “extreme weather”, and “biodiversity loss” ranking as the top three most severe risks. Their projected effects are extensive, and include intensified rates of involuntary migration, natural resource crises, pollution harms to health, geopolitical resource contestation, social security collapse and livelihood and debt crises.

South Africa has, over the 2021/22 financial year, felt the brunt of these environmental risks. For example, heavy downpours in KwaZulu Natal over only two days in April 2022 caused South Africa's worst and most deadly natural disaster to date: a flash flood so rare and devastating it has a one in 300-year probability of recurring. In addition to the humanitarian crisis, these floods resulted in a host of environmental challenges, including groundwater contamination, leachate runoff, landslides, damage to critical infrastructure resulting in pollution and exacerbated the existing plastic pollution problem in the Indian Ocean.

Yet, there are those that seek to exploit these global vulnerabilities to further their own financial gains. A new INTERPOL report takes an in-depth examination of 27 pollution crime case studies shared by law enforcement in INTERPOL member countries. The report found that the proceeds of the pollution offences ranged from USD 175,000 to USD 58 million, corresponding to an average of USD 19.6 million for each case. The proceeds of the 27 pollution crime cases combined are estimated to amount to half a billion US dollars. Equally alarming are the costs to clean up and decontaminate illegal pollution sites, which ranged from USD 6 million to 37 million (USD 15.6 million

on average) according to the cases examined.

It is against this uncertain and challenging backdrop that I present to you the 2020/21 National Environmental Compliance and Enforcement Report, which highlights the collective efforts of the Environmental Management Inspectorate, officials from various national, provincial and local government departments and organs of state, accorded the critical responsibility to protect the environment for the benefit of present and future generations. While the circumstances in which these officials execute this duty is often fraught with seemingly insurmountable challenges, let me remind you of the words of President Cyril Ramaphosa during the November 2021 COP26 UN climate change conference:

*“We can all make a difference by making responsible decisions, whether it is by recycling our trash, by choosing sustainable food sources, by conserving water, or by keeping our communities clean. Each of these decisions we make has an impact on our natural world and on the climate crisis that affects us all. Let us all play our part in the fight against climate change.”*



**MS NOMFUNDO TSHABALALA**

**DIRECTOR-GENERAL OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

## ACRONYMS

<b>Key:</b>	<b>General</b>
<b>AEL</b>	Atmospheric Emission Licence
<b>AIS</b>	Alien and Invasive Species
<b>CITES</b>	Convention on International Trade in Endangered Species of Wild Fauna and Flora
<b>CN</b>	Compliance Notice
<b>DG</b>	Director-General
<b>EA</b>	Environmental Authorisation
<b>EEFC</b>	Environmental Enforcement Fusion Centre
<b>EMI</b>	Environmental Management Inspector
<b>FCO</b>	Fisheries Control Officer
<b>GG</b>	Government Gazette
<b>GN</b>	Government Notice
<b>HCRW</b>	Health Care Risk Waste
<b>INL</b>	International Narcotics and Law Enforcement
<b>IUU</b>	Illegal, Unreported and Unregulated
<b>IWZ</b>	Integrated Wildlife Zone
<b>MOCPC</b>	Marine and Ocean Crime Priority Committee
<b>MPA</b>	Marine Protected Area
<b>NATJOINTS</b>	National Joint Operational Intelligence Structure
<b>NBIF</b>	National Biodiversity Investigators Forum
<b>NCF</b>	National Environmental Compliance Form
<b>NECER</b>	National Environmental Compliance and Enforcement Report
<b>NECES</b>	National Environmental Compliance and Enforcement Strategy
<b>OCIMS IVT</b>	Oceans and Coasts Information Management System Integrated Vessel Tracking
<b>PCN</b>	Pre-Compliance Notice
<b>PM</b>	Particulate Matter
<b>SEMA</b>	Specific Environmental Management Act
<b>TOPS</b>	Threatened or Protected Species
<b>WGIV</b>	Working Group 4
<b>WML</b>	Waste Management Licence
<b>WUL</b>	Water Use Licence

<b>Key:</b>	<b>Institutions</b>
<b>DALRRD</b>	Department of Agriculture, Land Reform and Rural Development
<b>DFFE</b>	National Department of Forestry, Fisheries and the Environment
<b>DoH</b>	Department of Health
<b>DMR</b>	Department of Minerals and Energy
<b>DWS</b>	Department of Human Settlements, Water and Sanitation
<b>Eastern Cape DEDET</b>	Eastern Cape Department of Economic Development, Environmental Affairs and Tourism
<b>ECPTA</b>	Eastern Cape Parks and Tourism Agency
<b>Ezemvelo</b>	Ezemvelo KwaZulu-Natal Wildlife
<b>Free State DESTEA</b>	Free State Department of Economic Development, Small Business Development, Tourism and Environmental Affairs
<b>Gauteng DARD</b>	Gauteng Department of Agriculture and Rural Development
<b>Isimangaliso</b>	Isimangaliso Wetland Park Authority
<b>KwaZulu-Natal DEDTEA</b>	KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs
<b>Limpopo DEDET</b>	Limpopo Department of Economic Development, Environment and Tourism
<b>Mpumalanga DARDLEA</b>	Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs
<b>Mpumalanga Parks</b>	Mpumalanga Tourism and Parks Agency
<b>NMBM</b>	Nelson Mandela Bay Municipality
<b>Northern Cape DENC</b>	Northern Cape Department of Environmental Affairs and Nature Conservation
<b>North West DEDECT</b>	North West Department of Economic Development, Environment, Conservation and Tourism
<b>NPA</b>	National Prosecuting Authority
<b>North West Parks</b>	North West Park and Tourism Board
<b>SANBI</b>	South African National Biodiversity Institute
<b>SANParks</b>	South African National Parks
<b>SAPS</b>	South African Police Service
<b>Western Cape DEADP</b>	Western Cape Department of Environmental Affairs and Development Planning

<b>Key:</b>	<b>Legislation</b>
<b>CPA</b>	Criminal Procedure Act 51 of 1977
<b>ECA</b>	Environment Conservation Act 73 of 1989
<b>LEMA</b>	Limpopo Environmental Management Act 7 of 2003
<b>MLRA</b>	Marine Living Resources Act 18 of 1998

<b>NCNCA</b>	Northern Cape Nature Conservation Act 9 of 2009
<b>NEMA</b>	National Environmental Management Act 107 of 1998
<b>NEM:AQA</b>	National Environmental Management: Air Quality Act 39 of 2004
<b>NEM:BA</b>	National Environmental Management: Biodiversity Act 10 of 2004
<b>NEM:ICMA</b>	National Environmental Management: Integrated Coastal Management Act 24 of 2008
<b>NEM:PAA</b>	National Environmental Management: Protected Areas Act 57 of 2003
<b>NEM:WA</b>	National Environmental Management: Waste Act 59 of 2008
<b>NWA</b>	National Water Act 36 of 1998
<b>PAJA</b>	Promotion of Administrative Justice Act 3 of 2000
<b>POCA</b>	Prevention of Organised Crime Act 121 of 1998

## **GLOSSARY OF TERMS:**

**“Admission of guilt fines (J534)”** means fines paid for less serious environmental offences in terms of Section 56 of the 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 21/22 financial year marks the 15<sup>th</sup> 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.

NECER is divided into 15 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 environmental compliance and enforcement; 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 2022/23 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.

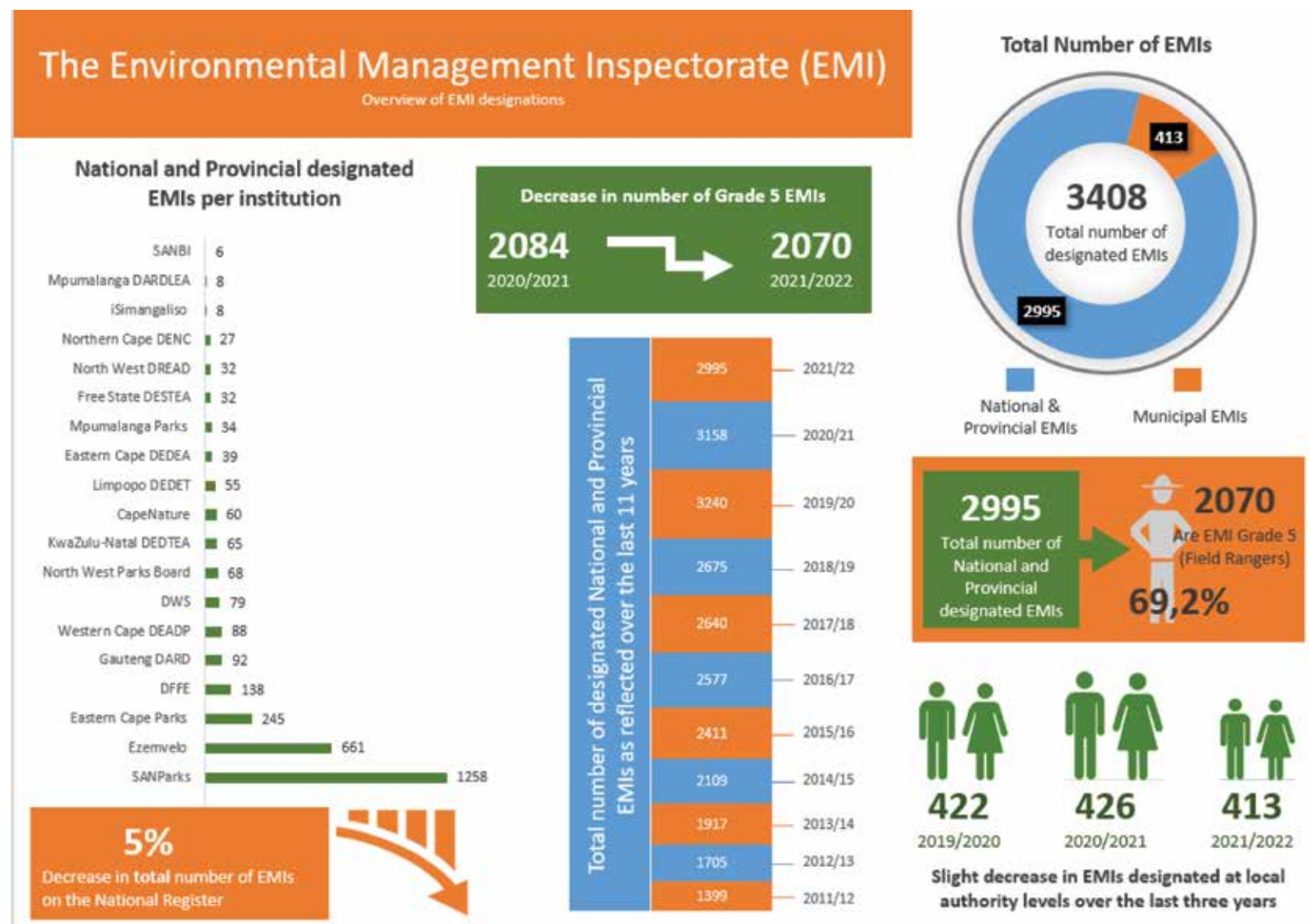
Despite these constraints, it is hoped that the NECER 2021/22 will continue to provide valuable information to its readers as it strives to highlight the critical work currently being undertaken by the environmental compliance and enforcement sector.

## KEY FINDINGS

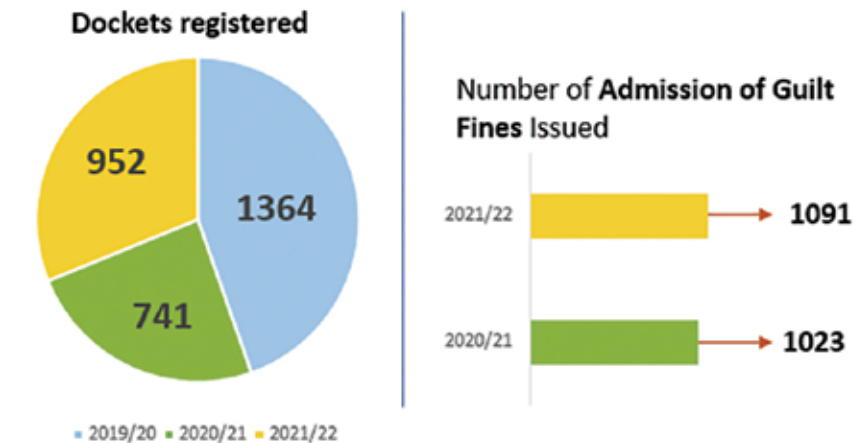


## 2. KEY FINDINGS

### 2.1 The Environmental Management Inspectorate



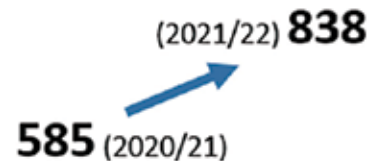
## 2.2 Overall National Compliance and Enforcement Statistics



**Number of Criminal dockets handed to the NPA, has increased from 2020/21 to 2021/22**



**Total number of Arrests made by EMIs**



**Number of Acquittals increased from 0 (2020/21) to 5 (2021/22)**



**Number of convictions 262.5%**

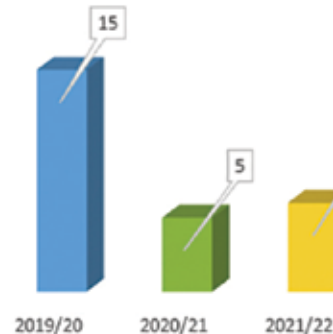


## Overall National Enforcement Statistics

The total Rand amount of **section 24G** administrative fines paid **decreased**



**Plea and Sentencing agreements**



**Total value of admission of guilt fines paid has increased from 2020/21 to 2021/22**



**Number of Administrative notices issued increased**

(2020/21)



(2021/22)



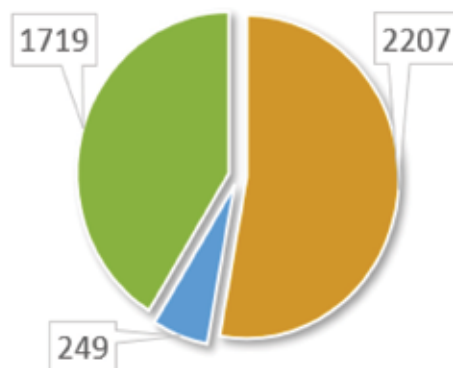
Number of **Facilities** that were inspected decreased

**4171** (2021/22)

**4267** (2020/21)



Of the number facilities inspected, **53%** were waste and pollution, **41%** biodiversity and **5.9%** oceans and coast related



The **4171 inspections** were initiated by the following triggers:

2918

Authorisations  
/ Permits

1253

Reactive  
Inspections



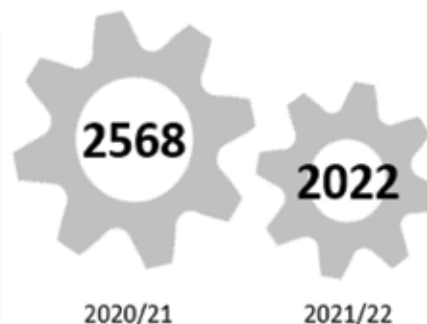
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There was a **95% increase** in the number of inspection reports finalised **compared** between the **two reporting years**



3708

## Overall National Compliance Statistics



Total number of **proactive inspections** conducted, **decreased** from 2020/21 to 2021/22

Number of **Non Compliances** detected during inspections

2020-2021

2021-2022



**3529 brown**



**635 blue**



**823 green**

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

Total number of **reactive inspections** conducted, a **29% increase** compared to previous year

2021/22

**1986**

2020/21

**1545**

### 2.3 Annual Compliance and Enforcement Highlights

**Highest sentence of direct imprisonment without the option of a fine:**

State versus Walter Hendrick: **Accused 1 (40 years) Accused 2&3 (30 years each):**  
Trespassing, illegal possession of firearm, ammunition and illegal hunting of Rhinoceros  
SANParks

**Highest sentence for a pollution and waste case:**

S v Ellias Maphanaga:  
2 counts: **20 years** imprisonment or **R100 000 fine**, half suspended for 5 years/1 count: **5 years**  
imprisonment or a fine of **R5000**.  
Contraventions of the NEM:WA, the NWA and NEMA.  
DFFE

**Highest number of section 24G fines issued:**

**21 fines** were issued and paid with a total sum of **R5 749 544** being collected.  
GDARD

**The highest number of enforcement notices issued:**

**279** enforcement notices issued  
Mostly for unlawful commencement of EIA listed activities  
Western Cape DEADP

**Highest number of admission of guilt fines issued:**

**698** were issued to the sum total of **R 761 983**.  
Contraventions of NEM:PAA  
SANParks

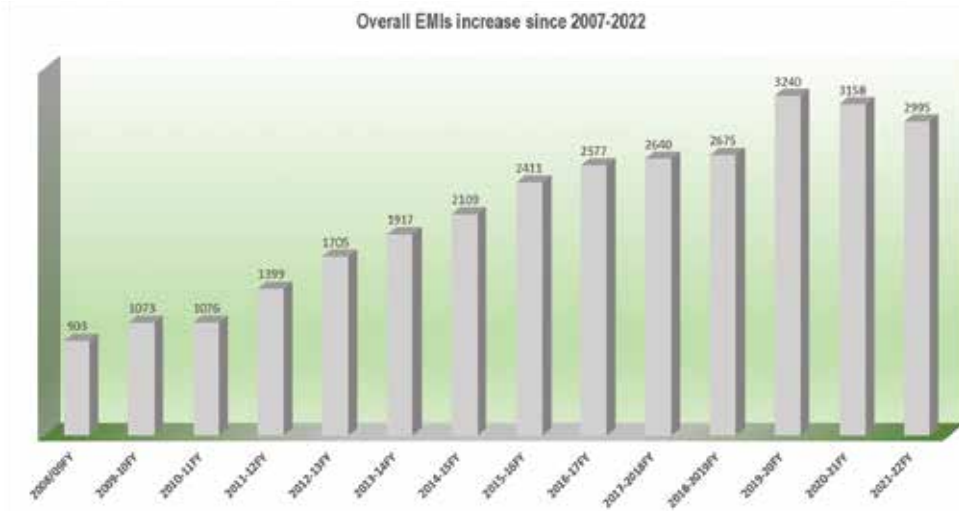


**ENVIRONMENTAL MANAGEMENT  
INSPECTORS**

### 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 2021, 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 **3408** EMIs, comprising of **2995** from national and provincial authorities and **413** from municipalities. The annual capacity of EMIs is reflected in the table below.



Graph 1: Total EMI capacity: 2007 - 2022

Institution Name	2019-20FY	2020-21FY	2021-22FY
National Authorities			
DFFE	160	170	138
iSimangaliso	8	8	8
SANParks	1315	1293	1258
DWS	22	27	79
SANBI	8	7	6
Provincial Environmental Authorities			
Eastern Cape DEDEA	45	38	39
Free State DESTEA	32	33	32
Gauteng DARD	88	49	92
KwaZulu-Natal DEDTEA	57	47	65
Limpopo DEDET	67	70	55
Mpumalanga DARDLEA	9	10	8
Northern Cape DENC	32	26	27
North West DREAD	39	39	32
Western Cape DEADP	71	84	88
Provincial Parks Authorities			
CapeNature	42	42	60
Eastern Cape Parks	72	247	245
Ezemvelo	705	688	661
Mpumalanga Parks	25	35	34
North West Parks Board	76	71	68
<b>TOTAL</b>	<b>2873</b>	<b>3158</b>	<b>2995</b>

Table 1: EMI Capacity per Institution: 2019-2022

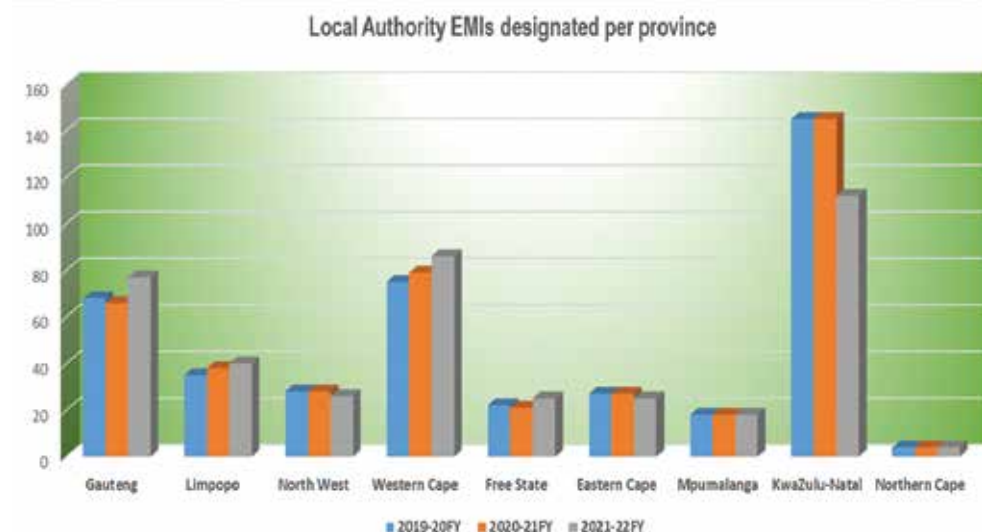
### 3.1 Local Authority Environmental Management Inspectors

There has been a steady growth in the total number of EMIs at local authority level in the past 12 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 decrease by **3%** from **426** in 2020/21 to **413** in 2021/22.

PROVINCE	2019-20FY	2020-21FY	2021-22FY
Gauteng	68	66	77
Limpopo	35	38	40
North West	28	28	26
Western Cape	75	79	86
Free State	22	21	25
Eastern Cape	27	27	25
Mpumalanga	18	18	18
KwaZulu-Natal	145	145	112
Northern Cape	4	4	4
<b>TOTAL</b>	<b>422</b>	<b>426</b>	<b>413</b>

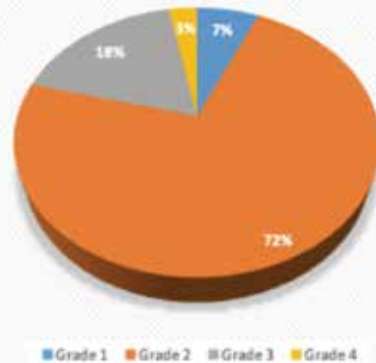
Table 2: Local Authority EMI Capacity per province 2019 - 2022



### 3.2 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.

Percentage distribution for Grade 1-4 EMIs



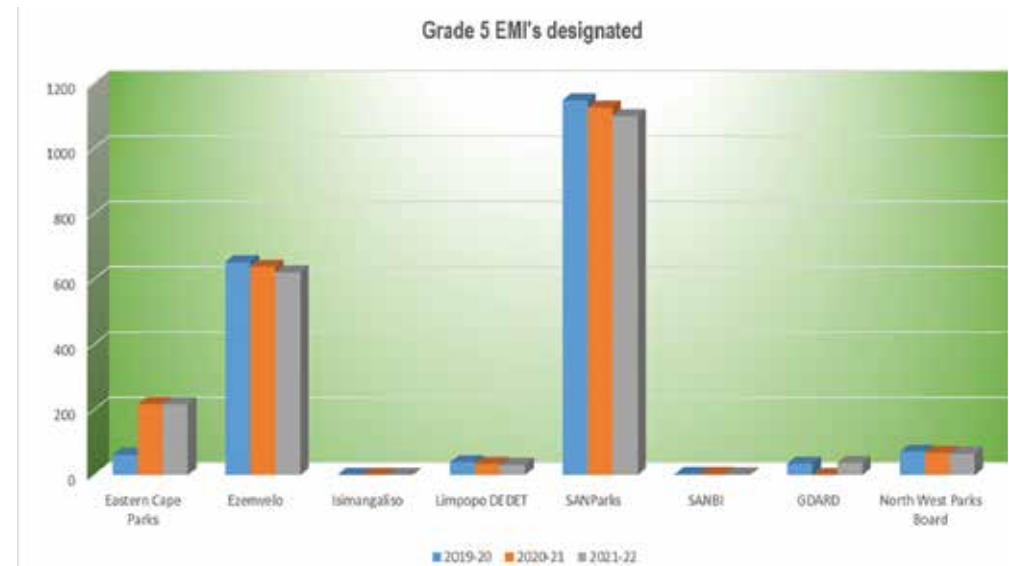
Graph 3: EMI Distribution per Grade (1-4)

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 slight decrease in the number of Grade 5 designated EMIs in 2021/22 compared to the previous steady increase in previous years, a **0.7% (14)** decrease in Grade 5 EMIs recorded in 2021/22 as compared to the previous financial year, with approximately **180** field rangers from MPTA still awaiting Grade 5 EMI designation.

INSTITUTION	2019-20	2020-21	2021-22
Eastern Cape Parks	62	217	216
Ezemvelo	651	637	620
Isimangaliso	1	1	1
Limpopo DEDET	39	34	31
SANParks	1146	1124	1098
SANBI	3	3	2
GDARD	35	-	37

INSTITUTION	2019-20	2020-21	2021-22
North West Parks Board	71	68	65
TOTAL	2008	2084	2070

Table 3: Grade 5 EMIs per Institution: 2019 – 2022



Graph 3: Number of Grade 5 EMIs (Field Rangers) per institution: 2019 - 2022



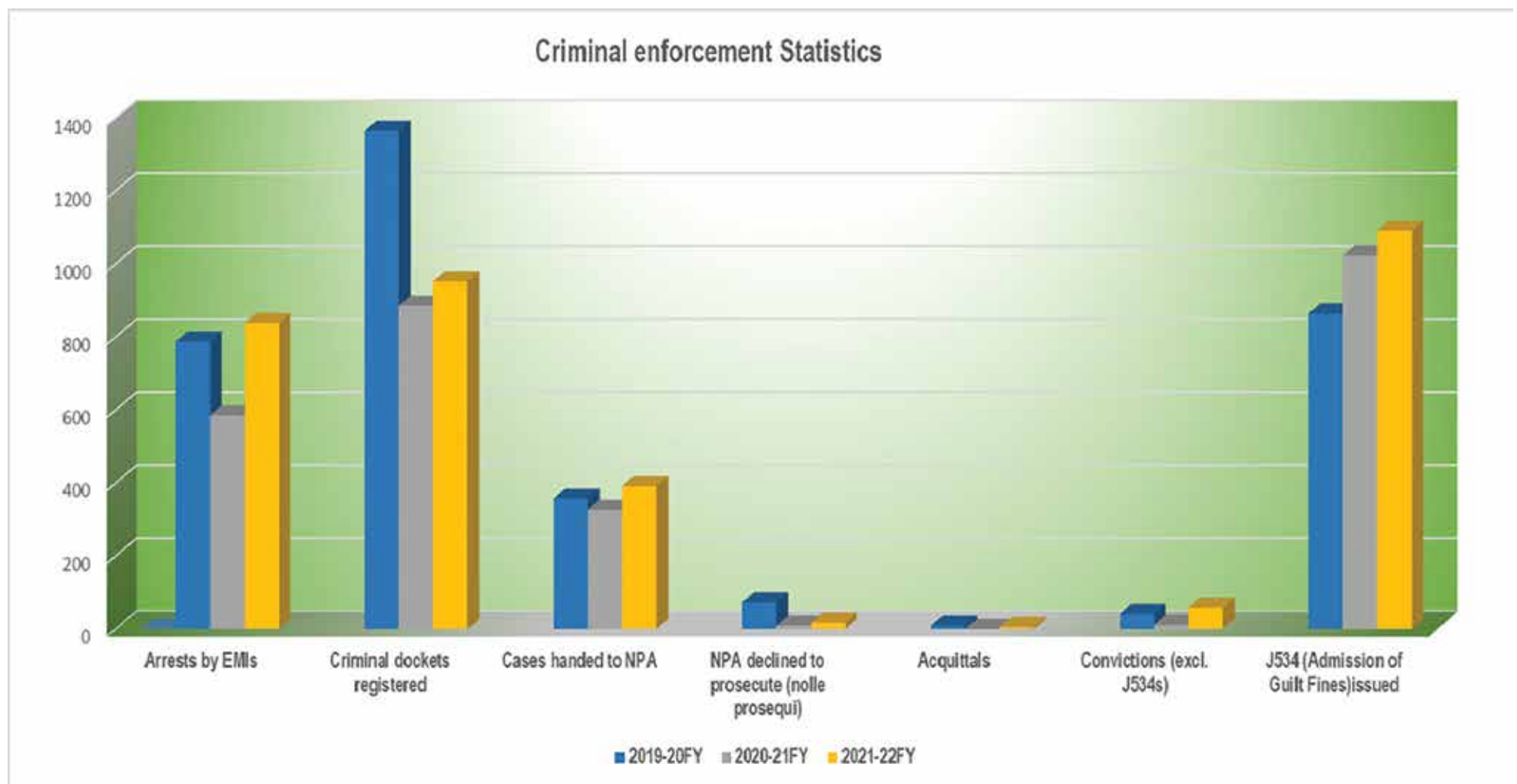
OVERALL NATIONAL COMPLIANCE  
AND ENFORCEMENT STATISTICS

#### 4.OVERALL NATIONAL COMPLIANCE AND ENFORCEMENT STATISTICS

##### 4. 1 Enforcement

	2019-20FY	2020-21FY	2021-22FY
Criminal Enforcement			
Arrests by EMIs	787	585	838
Criminal dockets registered	1364	885	952
Cases handed to NPA	357	326	391
NPA declined to prosecute (nolle prosequi)	73	9	17
Section 105A agreements (plea bargains)	12	5	6
Acquittals	9	0	5
Convictions (excl. J534s)	41	16	58
J534 (Admission of Guilt Fines): Total number issued	864	1023	1091
J534: Total number paid	345	421	390
J534: Total value of fines paid	R286 896	R353 795	R408 730
Administrative Enforcement and Civil Actions			
Warning letters issued	153	79	129
Pre-directives issued	302	213	338
Pre-compliance notices issued	714	586	646
Final directives issued	95	71	32
Final compliance notices issued	207	182	244
Civil Court applications launched	3	0	0
S24G administrative fines: Total value paid	R7 179 405	R 18 540 666	R11 274 319
S24G: Total number of fines paid	76	99	66

**Table 4: Overall criminal and administrative enforcement actions: 2019-2022**

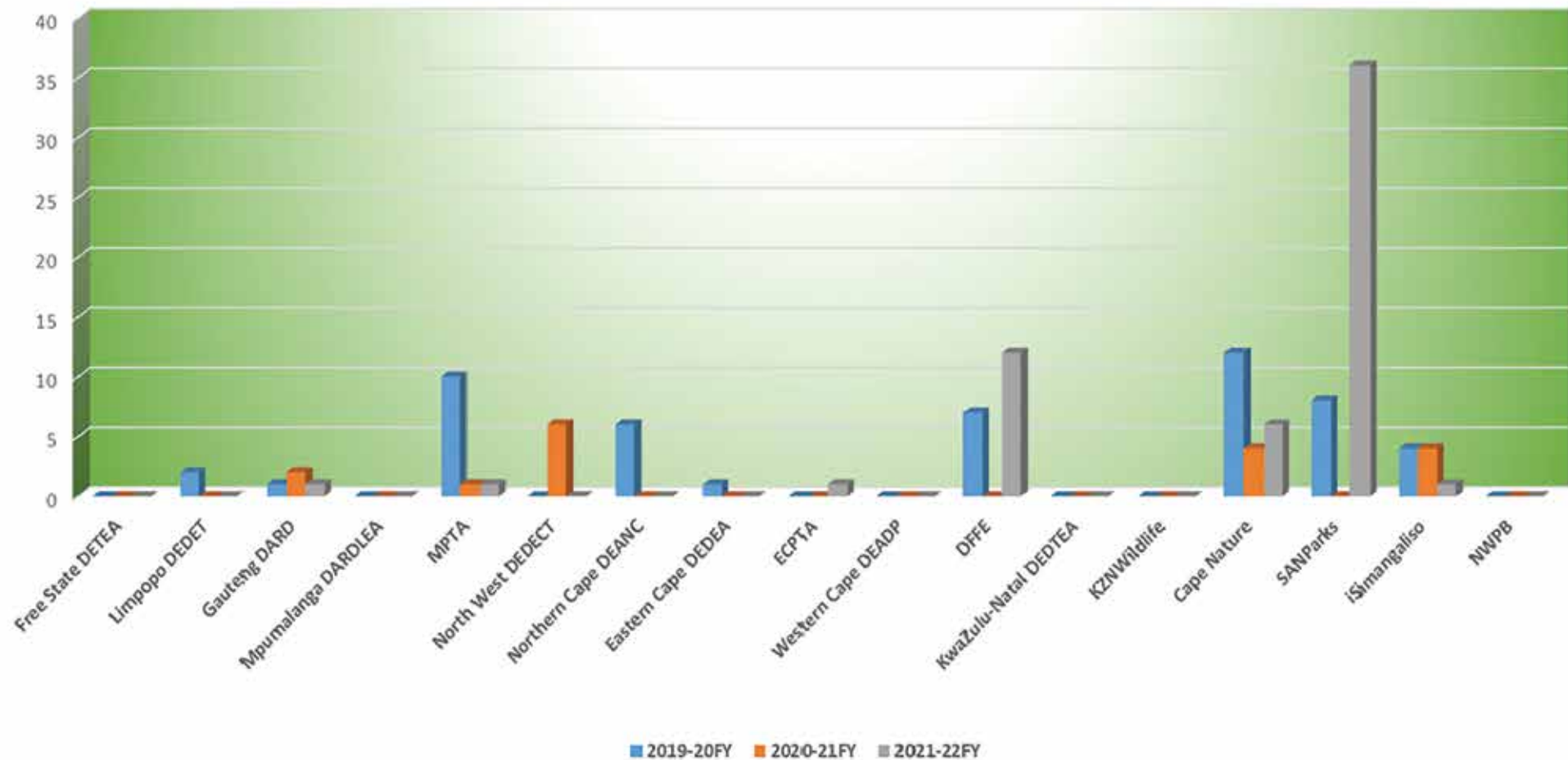


**Graph 4: Overall Criminal Enforcement Statistics from 2019-22.**

#### 4.1.1 Use of administrative and criminal enforcement mechanisms

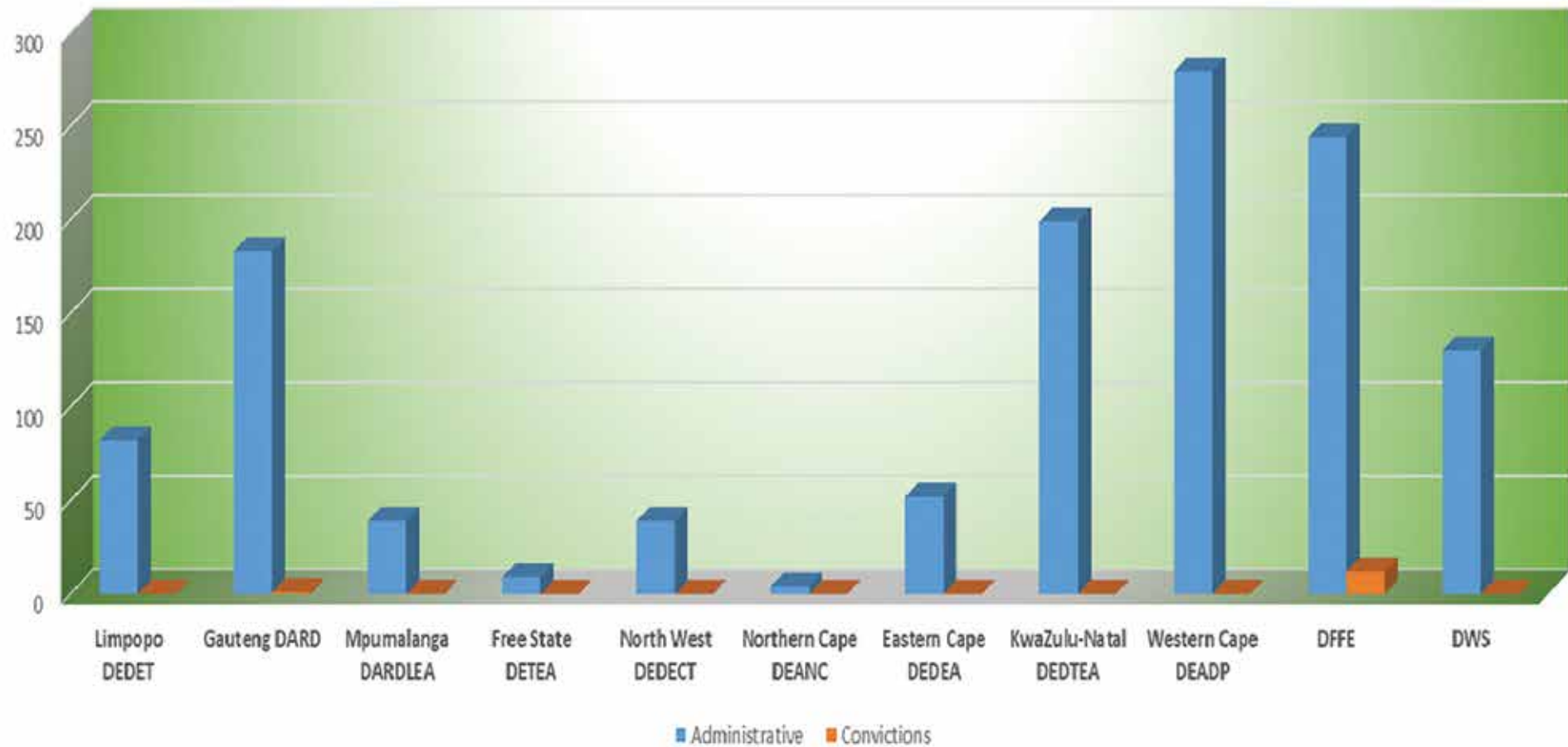
The following three graphs compare the use of enforcement notices and criminal enforcement mechanisms by each of the EMI Institutions. The comparison for the 2021/22 financial year reveals that the use of enforcement notices (i.e. directives and notices) remains the preferred tool for the authorities 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, SANParks recorded the highest number of convictions: 36 of 58 (**62%**) and followed DFFE with 12 (20%) and Cape Nature which contributed **10%** (6 of 58 each).

### Convictions comparison per EMI institutions



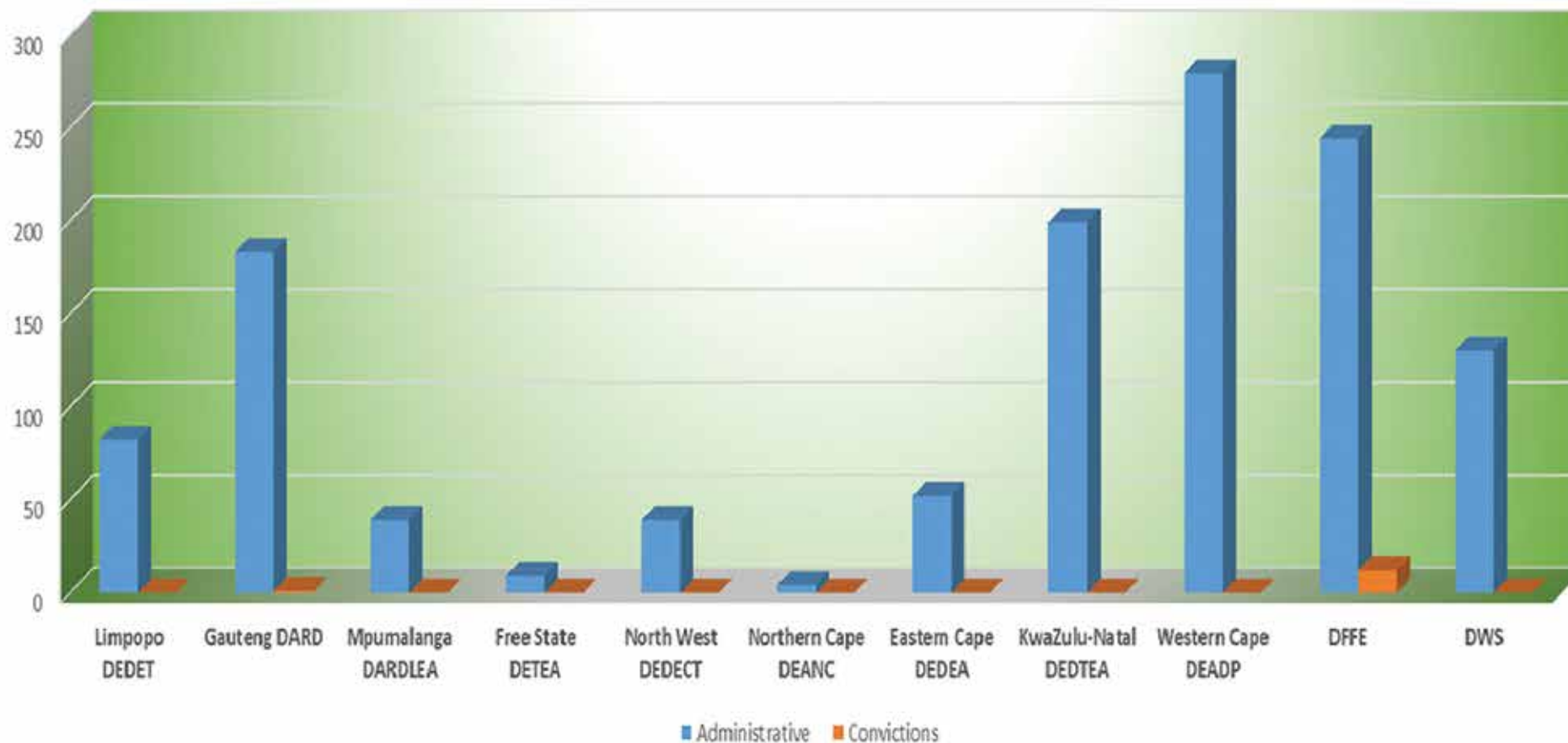
Graph 5: Number of enforcement notices issued per institution: 2019 - 2022

## Administrative versus conviction outcomes



Graph 6: Number of convictions obtained per institution: 2019-2022

### Administrative versus conviction outcomes



**Graph 7: Convictions versus enforcement notices per provinces**

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

The 2021/22 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 EIA listed activities continues to be the most common non-compliance, while in the green sub-sector, illegal hunting and illegal entry onto protected areas continues to be the predominant environmental crimes.

Province	Institution	Prevalent crimes	Number of incidents reported
National Institutions	DFFE	Illegal possession of alien and invasive species: (NEM:BA)	123
		Unlawful commencement without WML: (NEMWA)	123
	iSimangaliso	Possession of protected species (MLRA)	10
	SANParks	Illegal hunting of protected species in a national park (NEM: PAA)	741
Eastern Cape	Eastern Cape DEDEA	Unlawful commencement of listed activities (NEMA)	56
	Eastern Cape Parks	Illegal entry without the necessary permit (NEMA: PAA)	17
Free State	Free State DESTEA	Unlawful commencement of listed activities (NEMA)	15
Gauteng	Gauteng DARD	Unlawful commencement of listed activities (NEMA)	247
Kwa-Zulu Natal	Ezemvelo	Illegal entry / Illegal hunting Prohibited activity (Ordinance 15 of 1974)	620
	KwaZulu-Natal DEDTEA	Unlawful commencement of listed activities (NEMA)	176
Limpopo	Limpopo DEDET	Picking indigenous plants and wood collection without a permit (LEMA)	158
Mpumalanga	Mpumalanga DARDLEA	Unlawful commencement of listed activities (NEMA)	55
	Mpumalanga Parks	Illegal hunting protected species (Mpumalanga Nature Conservation Act 10 of 1998)	59
Northern Cape	Northern Cape DENC	Illegal possession of protected species without a permit (NEMBA, NCNCA)	8
North West	North West DEDECT	Unlawful commencement of listed activities (NEMA)	32
	North West Parks	Illegal hunting of rhino (NEM:BA)	15
Western Cape	CapeNature	Illegal possession of protected species without a necessary permit (Western Cape Nature Conservation Ordinance 19 of 1974)	124
	Western Cape DEADP	Unlawful commencement of listed activities (NEMA and NEMWA) and incidents related to pollution and waste degradation in terms of NEMA s28	210

Table 5: Most prevalent types of environmental crimes per province

#### 4.2 Compliance Monitoring

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 2021/22 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	Reactive (Complaint)	Planned Inspection (Strategic, Routine & Permit)	Grand Total
Cape Nature	–	184	184
Eastern Cape DEDEA	–	84	84
Forestry, Fisheries and Environment	118	220	338
Free State DESTEA	4	529	533
Gauteng DARD	–	294	294
Isimangaliso	–	57	57
Kwazulu-Natal EDTEA	187	414	601
Limpopo DEDET	394	293	687
Mpumalanga DARDLEA	81	19	100
MTPA	63	–	63
North West DEDECT	135	315	450
Northern Cape DENC	61	60	121
Water and Sanitation	–	266	266
Western Cape DEADP	210	183	393
<b>Grand Total</b>	<b>1253</b>	<b>2918</b>	<b>4171</b>

**Table 6: Types of Triggers for Compliance Inspections per Institution**

#### 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 finalized	Number of non-compliances	Number requiring Enforcement action
Limpopo DEDET	274	201	73	263	–	153
Western Cape DEADP	393	113	210	393	279	195
Mpumalanga DARDLEA	100	8	92	91	–	68
Northern Cape DENC	59	–	59	15	–	–
Gauteng DARD	294	269	25	293	545	488
Free State DESTEA	8	3	5	8	16	–
KwaZulu-Natal EDTEA	599	414	185	567	654	204
North West DEDECT	159	68	91	125	486	33
DFFE	197	116	81	152	1023	47
Eastern Cape DEDEA	62	–	62	55	326	7
Water and Sanitation	62	62	–	62	–	9
<b>Grand Total</b>	<b>2207</b>	<b>1254</b>	<b>850</b>	<b>2024</b>	<b>3329</b>	<b>1204</b>

Table 7 – Compliance Inspection follow up actions: brown

Green						
Institution	Facilities Inspected	Pro-active	Reactive	Inspection Report finalised	Number of non-compliances	Number requiring Enforcement action
Cape Nature	184	32	152	184	52	–
Limpopo DEDET	413	92	321	402	194	20
Northern Cape DENC	62	60	2	16	11	–
Free State DESTEA	525	16	506	398	–	–
Isimangaliso	57	2	55	30	6	50
North West DEDECT	290	246	44	288	5	–
DFFE	86	80	6	79	14	76
Eastern Cape DEDEA	22	22	–	22	10	6

Green						
Institution	Facilities Inspected	Pro-active	Reactive	Inspection Report finalised	Number of non-compliances	Number requiring Enforcement action
MTPA	63	63	–	63	–	–
Water and Sanitation	17	–	17	15	531	16
Grand Total	1719	568	1103	1497	823	168

Table 8 - Compliance Inspection follow up actions: green

Blue						
Institution	Facilities Inspected	Pro-active	Reactive	Inspection Report finalised	Number of non-compliances	Number requiring Enforcement action
Kwazulu-Natal EDTEA	2	–	2	2	2	2
North West DEDECT	1	1	–	1	1	–
DFFE	55	24	31	13	118	26
Water and Sanitation	187	175	–	171	514	31
Grand Total	245	200	33	187	635	59

Table 9 - Compliance Inspection follow up actions: blue

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

##### 4.2.3.1 Inspection Trigger

Institution	Complaint	Permit	Planned Inspection	Routine Inspection	Grand Total
Gauteng Municipalities	70	–	189	25	284
Limpopo Municipalities	18	3	10	17	48
KwaZulu-Natal Municipalities	53	18	17	6	94
Western Cape Municipalities	5	20	0	36	61
Grand Total	146	41	216	84	487

Table 10 - Types of Triggers for Compliance Inspections: local authorities



STATISTICS PER NATIONAL  
INSTITUTION/PROVINCE

## 5. STATISTICS PER NATIONAL/PROVINCE INSTITUTION

## National Institutions

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



**forestry, fisheries  
& the environment**  
Department:  
Forestry, Fisheries and the Environment  
REPUBLIC OF SOUTH AFRICA



**water & sanitation**  
Department:  
Water and Sanitation  
REPUBLIC OF SOUTH AFRICA

	2019- 20FY	2020- 21FY	2021- 22FY	2019-20FY	2020-21FY	2021-22FY
DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT (BRANCH: REGULATORY COMPLIANCE AND SECTOR MONITORING)	DEPARTMENT OF WATER AND SANITATION					
CRIMINAL ENFORCEMENT	CRIMINAL ENFORCEMENT					
Arrests by EMIs	0	26	68	0	-	0
Criminal dockets registered	69	51	100	2	-	0
Cases handed to NPA	29	56	69	1	-	0
NPA declined to prosecute (nolle prosequi)	3	1	4	0	-	0
Section 105A agreements (plea bargains)	2	1	3	0	-	0
Acquittals	0	0	2	0	-	0
Convictions	7	0	12	0	-	0
J534s issued	7	31	42	0	-	21
J534s paid	R 20 000	R 40 000	R 56 000	0	-	0
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS	ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS					
Warning letters written	2	22	82	16	-	6
Pre-directives issued	81	68	86	94	-	116
Pre-compliance notices issued	130	164	129	59	-	0
Final directives issued	1	7	8	41	-	14
Final compliance notices issued	21	35	21	0	-	0
Civil Court applications launched	0	0	0	3	-	0
S24G administrative fines paid (total value / number)	R 1 000 000	-	-	-	-	-
	1	-	-	-	-	-

## 5.1.2 SANParks, Isimangaliso Wetland and SANBIAuthority and SANBI



	SOUTH AFRICAN NATIONAL PARKS			ISIMANGALISO WETLAND PARK AUTHORITY			SANBI
	2019-20FY	2020-21FY	2021-22FY	2019-20FY	2020-21FY	2021-22FY	2021-22FY
CRIMINAL ENFORCEMENT							
Arrests by EMIs	130	124	145	63	20	16	0
Criminal dockets registered	574	353	356	55	34	30	0
Cases handed to NPA	90	93	68	54	15	23	0
NPA declined to prosecute (nolle prosequi)	2	0	0	42	2	0	0
Section 105A agreements (plea bargains)	0	0	2	0	2	0	0
Acquittals	0	0	2	2	0	0	0
Convictions	8	0	36	4	4	1	0
J534s issued	356	647	698	4	1	0	23
J534s paid (number)	32	160	135	0	1	0	0
J534s paid (value)	R 27 750	R101 025	R 144 350	R0	R500	R0	R0
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS							
Warning letters written	-	-	-	0	0	0	-
Pre-directives issued	-	-	-	0	0	0	-
Pre-compliance notices issued	-	-	-	0	0	0	-
Final directives issued	-	-	-	0	0	0	-
Final compliance notices issued	-	-	-	0	0	0	-
Civil Court applications launched	-	-	-	0	0	0	-

## 5.2 Provincial Institutions and Parks

## 5.2.1 Western Cape



	DEPARTMENT OF ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING			CAPE NATURE		
	2019-20FY	2020-21FY	2021-22FY	2019-20FY	2020-21FY	2020-21FY
CRIMINAL ENFORCEMENT						
Arrests by EMIs	0	0	0	53	83	184
Criminal dockets registered	14	10	10	40	37	82
Cases handed to NPA	13	8	10	20	30	67
NPA declined to prosecute (nolli prosequi)	1	1	0	6	1	4
Section 105A agreements (plea bargains)	3	0	0	5	1	0
Acquittals	0	0	0	0	0	0
Convictions	0	0	0	12	4	6
J534s issued	0	0	0	82	78	77
J534s paid (number)	0	0	0	16	8	23
J534s paid (value)	R0	R0	R0	R26 400	R36 800	R 44 350
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS						
Warning letters written	0	0	0	0	0	0
Pre directives issued	64	84	80	0	0	0
Pre-compliance issued	91	104	115	0	0	0
Final directives issued	27	22	60	0	0	0
Final compliance notices issued	22	28	20	0	0	0
Civil Court applications launched	0	0	0	0	0	0
S24G administrative fines paid (total value /number)	R2 278 325	R 2 386 166	R 4 519 775	0	0	0
	27	68	24			

## 5.2.2 KwaZulu-Natal



	DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM & ENVIRONMENTAL AFFAIRS			EZEMVELO KZN WILDLIFE		
	2019-20FY	2020-21FY	2021-22FY	2019-20FY	2020-21FY	2021-22FY
CRIMINAL ENFORCEMENT						
Arrests by EMIs	0	0	0	109	172	193
Criminal dockets registered	1	3	5	124	156	127
Cases handed to NPA	0	2	3	–	–	–
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	25
J534s paid (number)	0	0	0	–	1	18
J534 paid (value)	R0	R0	0	–	R 2 500	R 26 150
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS						
Warning letters written	5	3	4	–	–	–
Pre-directives issued	35	47	36	–	–	–
Pre-compliance notices issued	170	144	115	–	–	–
Final directive issued	7	19	11	–	–	–
Final compliance notices issued	48	28	37	–	–	–
Civil Court applications launched	0	0	0	–	–	–
S24G administrative fine paid (total value/ number)	1	–	R 110 000	–	–	–
	R0	–	2		–	–

## 5.2.3 Gauteng



GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT	2019-20FY	2020-21FY	2021-22FY
CRIMINAL ENFORCEMENT			
Arrests by EMIs	15	16	13
Criminal dockets registered	23	8	17
Cases handed to NPA	31	17	34
NPA declined to prosecute (nolle prosequi)	2	2	4
Section 105A agreements (plea bargains)	1	0	0
Acquittals	0	0	0
Convictions	1	2	1
J534s issued	9	9	17
J534s paid (number)	7	7	15
J534s paid (value)	R 6 850	R 10 800	R 17 450
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS			
Warning letters written	0	0	0
Pre-directives issued	5	6	6
Pre-compliance notices issued	97	91	131
Directives issued	3	3	2
Final compliance notices issued	48	36	44
Civil Court applications launched	0	0	0
S24G administrative fines paid (total value/ number)	R 2 884 079	R10 762 500	R5 749 544
	19	11	21

## 5.2.4 Limpopo



LIMPOPO DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND CONSERVATION	2019-20FY	2020-21FY	2021-22FY
CRIMINAL ENFORCEMENT			
Arrests by EMIs	151	94	104
Criminal dockets registered	138	77	73
Cases handed to NPA	16	15	11
NPA declined to prosecute (nolle prosequi)	1	1	0
Section 105A agreements (plea bargains)	1	0	1
Acquittals	0	0	1
Convictions	2	0	0
J534s issued	316	216	149
J534s paid (number)	293	206	143
J534s paid (value)	R 123 860	R 134 370	R 85 430
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS			
Warning letters written	0	2	0
Pre-directives issued	6	3	3
Pre-compliance notices issued	87	44	62
Directives issued	1	3	0
Final compliance notices issued	13	9	17
Civil Court applications launched	0	0	0
S24G administrative fines paid (total value/ number)	R0	R 250 000	-
	0	1	-

## 5.2.5 Eastern Cape



	DEPARTMENT OF ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS			EASTERN CAPE PARKS & TOURISM AGENCY		
	2019-20FY	2020-21FY	2021-22FY	2019-20FY	2020-21FY	2021-22FY
CRIMINAL ENFORCEMENT						
Arrests by EMIs	64	0	54	2	4	5
Criminal dockets registered	111	58	54	1	2	2
Cases handed to NPA	15	48	65	1	0	0
NPA declined to prosecute ( <i>nolle prosequi</i> )	13	0	0	0	0	0
Section 105A agreements (plea bargains)	0	0	0	0	0	0
Acquittals	4	0	0	0	0	0
Convictions	1	0	0	0	0	1
J534s issued	42	0	0	12	0	15
J534s paid (number)	5	0	0	0	0	0
J534s paid (value)	R30 000	R0	R0	R 10 436	R0	R0
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS						
Warning letters written	97	18	26	-	-	-
Pre-directives issued	0	0	1	-	-	-
Pre-compliances issued	34	23	43	-	-	-
Final directives issued	0	0	2	-	-	-
Final compliance notices issued	0	4	6	-	-	-
Civil Court applications launched	0	0	0	-	-	-
S24G administrative fines paid (total value/ number)	R 20 000	-	-	-	-	-
	2	-	-			

## 5.2.6 Free State



DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS <sup>1</sup>	2019-20FY	2020-21FY	2021-22FY
CRIMINAL ENFORCEMENT			
Arrests by EMLs	2	-	0
Criminal dockets	3	-	2
Cases handed to NPA	2	-	2
NPA declined to prosecute ( <i>nolle prosequi</i> )	0	-	0
Section 105A agreements (plea bargains)	0	-	0
Acquittals	0	-	0
Convictions	0	-	0
J534s issued	1	6	20
J534s paid (number)	1	4	12
J534s paid (value)	R6 000	R11 000	R 34 500
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS			
Warning letters written	-	-	0
Pre-directives issued	-	-	2
Pre-compliance notices issued	-	-	6
Directives issued	-	-	0
Final compliance notices issued	-	-	1
Civil Court applications launched	-	-	0
S24G administrative fines paid (total value / number)	-	-	0
	-	-	0

<sup>1</sup> Statistics submitted was for green related cases

## 5.2.7 Mpumalanga



	MPUMALANGA DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT, LAND & ENVIRONMENTAL AFFAIRS			MPUMALANGA TOURISM AND PARKS AGENCY		
	2019-20FY	2020-21FY	2021-22FY	2019-20FY	2020-21FY	2021-22FY
CRIMINAL ENFORCEMENT						
Arrests by EMIs	0	0	0	58	26	45
Criminal dockets registered	9	14	7	60	37	60
Cases handed to NPA	1	11	2	34	15	23
NPA declined to prosecute ( <i>nolle prosequi</i> )	0	0	0	0	1	2
Section 105A agreements (plea bargains)	0	0	0	0	1	0
Acquittals	0	0	0	0	0	0
Convictions	0	0	0	10	1	1
J534s issued	0	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	7	1	0	0	0	0
Pre-directives issued	5	2	7	0	0	0
Pre-compliances issued	9	3	13	0	0	0
Final directives issued	2	12	10	0	0	0
Final compliance notices issued	45	34	9	0	0	0
Civil Court applications launched	0	0	0	0	0	0
S24G administrative fines paid (total value/ number)	R 997 000	R 5 142 000	R 895 000	0	0	0
	20	20	19			

## 5.2.8 Northern Cape



Department of  
Environment and Nature Conservation  
Northern Cape

DEPARTMENT OF ENVIRONMENT AND NATURE CONSERVATION	2019-20FY	2020-21FY	2021-22FY
CRIMINAL ENFORCEMENT			
Arrests by EMIs	49	28	10
Criminal dockets	32	16	11
Cases handed to NPA	30	14	8
NPA declined to prosecute ( <i>nolle prosequi</i> )	4	1	3
Section 105A agreements (plea bargains)	3	0	0
Acquittals	3	0	0
Convictions	6	0	0
J534s issued	7	9	3
J534s paid (number)	3	8	1
J534s paid (value)	R3 000	R 3 800	R 2 500
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS			
Warning letters written	26	31	10
Pre-directives issued	7	0	0
Pre-compliance notices issued	1	0	0
Directives issued	12	3	0
Final compliance notices issued	2	0	4
Civil Court applications launched	0	0	0
S24G administrative fines paid (total amount/ number)	R0	R0	R0
	7	0	0

## 5.2.9 North West



	NORTH WEST DEPARTMENT: ECONOMIC DEVELOPMENT, ENVIRONMENT, CONSERVATION AND TOURISM			NORTH WEST PARKS AND TOURISM BOARD		
	2019-20FY	2020-21FY	2021-22FY	2019-20FY	2020-21FY	2021-22FY
CRIMINAL ENFORCEMENT						
Arrests by EMIs	84	8	0	7	4	1
Criminal dockets	79	19	1	29	10	15
Cases handed to NPA	19	3	0	1	2	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	6	0	0	0	0
J534s issued	32	12	0	1	0	1
J534s paid (number)	0	12	0	1	0	1
J534s paid (value)	R 27 100	R 9 000	R0	R 1 000	R0	R500
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS						
Warning letters written	0	0	1	–	–	–
Pre-directives issued	5	9	1	–	–	–
Pre-compliance notices issued	36	23	32	–	–	–
Directives issued	1	2	0	–	–	–
Final compliance notices issued	8	8	6	–	–	–
Civil Court applications launched	0	0	0	–	–	–
S24G administrative fines paid (total value / number)	–	–	–	–	–	–
	–	–	–	–	–	–



## ENVIRONMENTAL JURISPRUDENCE

## 6. ENVIRONMENTAL JURISPRUDENCE

### 6.1 The Shell Seismic Survey saga: Proving reasonable apprehension of harm, the importance of the precautionary principle and public participation in the licensing process

#### 6.1.1 Border Deep Sea Angling Association et al (Applicants) v Minister of Mineral Resources and Energy et al (Respondents) (Case No. 3865/2021) - delivered on 3 December 2021

The Amazon Warrior is a seismic vessel which would commence seismic survey operations off the coast of South Africa. A seismic survey is a study in which seismic waves generated through compressed air are used to image layers of rock below the seafloor in search of geological structures to determine the potential presence of naturally occurring hydrocarbons (oil and gas). The vessel planned to sail off the eastern coastline of the country, in the Transkei Exploration Area, between 20 and 80 km from shore, for approximately four months, with the process of surveying taking place for approximately fifty percent of this time. The Amazon Warrior would discharge pressurised air from its airgun arrays to generate sound waves directed towards the seabed. All seismic activity on the eastern coast is blocked during the environmentally sensitive window between June – November, due to the high numbers of whales that would be encountered.

The applicants sought to temporarily interdict against the third, fourth and fifth respondents (described for convenience as ‘Shell’) from undertaking seismic survey operations under an Exploration Right, scheduled to commence from 1 December 2021 onwards. If granted, this interdict would operate pending the final determination of an application still to be launched for the review and setting aside of various decisions of the Minister of Mineral Resources and Energy (‘the review’), namely the grant of Exploration Right during 2014 and the subsequent renewals thereof. The application was brought on an ultra-urgent basis on 29 November 2021 with such short timeframes that the respondents were afforded only a day to answer. Shell filed a preliminary answering affidavit and noted that they have been unable to address various issues properly given the manner in which the matter proceeded. The applicants justified the urgency of the application on the basis that the 3D seismic survey was scheduled to commence on 1 December 2021, or shortly thereafter, and that its commencement will result in substantial and irreversible harm, including major damage to a large range of animals, including various fish species and marine

mammals, and destruction of the eggs of fish and squid in the intended survey area. The seismic survey area lies in close proximity to several Marine Protected Areas (MPAs) and Critical Biodiversity Areas.

#### The argument of irreparable harm and procedurally unfair administrative action

The detrimental environmental impact of seismic surveys was acknowledged in an EMPr and the implementation of various mitigation measures was necessitated. These included, prior consultation with ‘the fishing industry, DAFF (Branch: Fisheries) and other IAPs’. A communication plan dealing with the timing of the exploration activities and potential impact was also to be implemented. The applicants never received copies of the Exploration Right, its renewals or the approval of the EMPr and only became aware of their existence subsequent to receiving notification of commencement of the survey on 29 October 2021.

The applicants cited procedurally unfair administrative action as a ground for review and claimed that, had notification been received earlier, they would have taken steps either on appeal under the MPRDA, the Promotion of Administrative Justice Act 3 of 2000 (PAJA) or the common law. They also claimed that no notice of the audit report was given to potential and registered IAPs as required by the Environmental Impact Assessment Regulations, 2014. In addition, the environmental audit report was not prepared by an independent person.

#### The respondents’ counterarguments

Shell accepted that all stipulations set out in the EMPr remain legally binding and required evidence-based compliance and an audit. It submitted that the survey is fully compliant with the requirements of the EMPr and international standards. It relied on the EMPr compliance audit circulation for public comment on 20 May 2020, which was significant, due to the fact that its purpose was to confirm whether the EMPr requirements were still sufficient and valid for the project. It was provided to IAPs, including the first applicant, and to the general public for comment within 30 days. Shell also consulted with fisheries and tourism/ recreational operators and focused meetings were held telephonically with selected vessel operators identified by the specialist consultant.

Shell further argued that a seismic survey is standard practice and that onerous mitigation measures will be undertaken. It denied that the seismic survey will have significant detrimental impacts; and that an interdict would result in it missing the

opportunity to complete the survey within the current seismic window. Failure to do so could result in termination of its interest in the licence, and could result in a breach of obligations under the Exploration Right. Millions of dollars had been spent in preparation and Shell has operated for a considerable period of time on the basis that it enjoyed permission to proceed.

### Judgement

The application was dismissed with costs. The Court concluded that the applicants failed to prove a well-grounded apprehension of irreparable harm if the interim relief is not granted.

### Urgency

The Court found that the respondents suffered some prejudice as a result of having to respond in such a short period of time. Nevertheless, the quest to interdict the seismic survey before commencement would be futile if the applicants were required to wait for a hearing at a later time. In addition, the suggestion of extremely detrimental environmental impacts also motivated the urgency of the application. There is also a considerable element of public interest in this matter. Accordingly, the Court allowed the application to be heard on an urgent basis.

### Application for an interim interdict

The accepted test to be applied is whether the continuance of the thing against which an interdict is sought would cause irreparable injury to the applicant. If so, the better course is to grant the relief, but only if the discontinuance of the act would not involve irreparable injury to the respondent. If there is greater possible prejudice to the respondent an interim interdict will be refused.

### *A prima facie right*

Given the time that has elapsed, the Court had serious doubt as to the prospects of reviewing the process that led to the Exploration Right being granted in 2014. A court must take a broad view of when the public at large might reasonably be expected to have had knowledge of the action.

The Court found that the applicants hold *prima facie* prospects of success of review of the second renewal based on the extent of actual public participation and the need for effective consultation. A notification of the environmental audit report was given on 20 May 2020 to all IAPs registered during the 2013 process. The PASA Guidelines

also require “*genuine and effective engagement of minds between the consulting and consulted parties*”. The notification sent was a mere formalistic attempt to consult and does not constitute consultation. The Court also found that the fact that the same environmental consultant that compiled the EMPr conducted the audit and facilitated the public participation process resulted in a lack of independence.

### *Well-grounded apprehension of irreparable injury/ harm*

An expert witness did indicate that she did not agree with the assertion that there is no evidence that the seismic surveys would have any significant environmental impact and undertook to bring further expert testimony in due course. The Court found that the applicants’ submissions in this regard were speculative and without any substantive support. Accordingly, the court considered, inter alia, the detailed mitigation strategy contained in the EMPr and found that no reasonable apprehension of irreparable harm was established.

### *The balance of convenience*

The evidence before the Court indicated a significantly reduced likelihood of environmental harm in light of the mitigation measures imposed by the EMPr, without suggesting a fool-proof elimination of all risk. On the other hand, the granting of the interdict would harm Shell’s financial interests. The Court found that the balance of convenience favours Shell.

### 6.1.2 Sustaining the Wild Coast NPC et al (Applicants) v Minister of Mineral Resources and Energy et al (Respondents) (Case No. 3491/2021) - delivered on 28 December 2021

This second application was similarly launched to obtain an interim interdict against the third, fourth and fifth respondents from proceeding with the seismic survey, pending finalisation of the relief, being an interdict prohibiting the same respondents from proceeding with a seismic survey, unless and until an environmental authorisation has been granted under the NEMA.

Impact Africa submitted an application to the Petroleum Agency of South Africa (PASA) for an exploration right and a draft EMPr was made available to IAPs for comment. Advertisements were also placed in 4 newspapers in this regard. The DDG of the Department of Mineral Resources and Energy approved the EMPr and on 29 April 2014 the exploration right was granted.

### Prima facie right

The applicants argued that they established the following prima facie rights:

1. The communities' right to be meaningfully consulted about the seismic survey, as it impacts upon the customary fishing rights.
2. The public's statutory rights in relation to the environment under NEMA. NEMA requires the prospectors to obtain an environmental authorisation, which was not done. These NEMA obligations give effect to the communities' rights in relation to the environment.
3. The communities' constitutional rights in terms of sections 24 (environmental right), 30 (language and culture) and 31 (cultural, religious and linguistic communities) of the Constitution.

### Public participation challenged

The applicants challenged the consultation process that was followed prior to granting of the exploration right. The Amadiba traditional community adopted the view that the land belongs to them and that they also belong to the land, as it sustains them. They believe the sea and land have healing powers and play an important role in their way of life. They further believe that some of their ancestors reside in the sea and that they should not be disturbed through pollution or other disturbances. Accordingly, they are concerned that the seismic survey will upset their ancestors and impact on their cultural and spiritual relationship with the sea, as well as the climate.

There are also various other individuals and communities who make a living from fishing in the area in line with customary practises and who are of the view that the sea is where their ancestors reside. These communities and individuals alleged that Shell did not consult them during the public participation process prior to granting of the exploration right. No radio or community newspapers were used which would've facilitated communication in the required language. Only the "Kings" of the communities were consulted and it was assumed that those Kings speak for their subjects, which is in direct conflict with the communities' custom of seeking consensus. No group meetings were held in these communities' areas – only in cities like Port Elizabeth, East London and Port St Johns.

Shell argued that advertisements were published in four newspapers, notifying the public of the consultation process, in English and Afrikaans. No one was precluded

from registering as IAPs pursuant to the newspaper advertisements. Thereafter a series of in-person and focused group meetings were held as part of the engagement process. All registered IAPs were invited to these meetings.

### Irreparable harm

The applicants relied on cultural and spiritual harm, threatened harm to marine life and the negative impact on the livelihood of small-scale fishers. The applicants relied on the evidence of ten experts to prove irreparable harm. The experts cautioned against reliance on an 8-year-old EMPr for its denial of any significant harm and advised that a more refined understanding of the ecological context requires an up-to-date assessment. They provided detail on how the seismic survey would have an impact on individual animals, populations and ecosystems as a whole. Accordingly, they propose that a precautionary approach be followed. There were also attacks on the findings of the environmental audit report of 2020 and the adequacy of the drafters of the EMPr's qualifications.

Shell contended that the applicants failed to establish irreparable harm on the basis that there is no well-established or acceptable threshold for behavioural disturbance in marine mammals. Furthermore, it argued that it has been shown that seismic surveys do not cause injury or any biologically significant level of disturbance when mitigation measures are implemented.

### Balance of convenience

Shell argued that if the interdict is granted, it will make it impossible to complete the survey by end of May 2022 and that Shell will be unable to exploit the exploration right. Termination of the survey will result in an immediate cost of approximately R350 million, and an estimated total loss exceeding R1 billion.

### Alternative remedy

Shell alleged that the applicants could've approached the Minister of Mineral Resources and Energy to cancel or suspend its exploration right, instead of lodging this application.

### Urgency

Shell argued that the applicants failed to show why the application had to be brought on an urgent basis. The applicants argued that they wouldn't have obtained redress

in the ordinary course – without urgent interim relief, the seismic survey would cause ongoing harm as the application would most likely only have been heard towards the end of the seismic survey. The applicants only became aware of the seismic survey through the media during early November 2021. The application was launched on 2 December 2021 and argued on 17 December 2021.

### **Judgement**

The interim interdict was granted and the respondents were ordered to pay the costs of the application.

#### Prima facie right and public participation

Meaningful consultation entails providing communities with the necessary information on the proposed activities and affording them the chance to make informed representations. The Court found that the notification provided by Shell was inadequate. A person who does not know of the process cannot be expected to register and participate in the process as an IAP. The languages spoken by the communities are isiZulu and isiXhosa, and no notification was given in these languages. Illiterate people were also automatically excluded from the public participation process as only written advertisements were used as media. The King can also not make representations on behalf of all the community members and other individuals residing in the area. In addition, during the renewal application in May 2020, the same list of IAPs used in 2013.

In relation to the customary beliefs and practises, the Court held that even though it might not be understood by all, its existence must be accepted and, in terms of the Constitution, respected. Accordingly, the Court held that the exploration right, which was awarded on the basis of a substantially flawed consultation process, is unlawful and invalid. The Court confirmed that applicants' right to meaningful consultation as a *prima facie* right which deserves protection.

#### Irreparable harm

Shell did not contest the threat of harm to the applicants' cultural and spiritual belief and, accordingly, the Court accepted it. In its response to the applicants' expert evidence on environmental impacts, Shell did not allege or show that its deponent had the requisite expertise to refute the expert evidence of the applicants, therefore the Court placed no value on Shell's attempted rebuttal of the applicants' expert

evidence. Accordingly, the Court held that it was proven that there is a real threat that marine life would be irreparably harmed. Even if there were any uncertainties about the harm that may be suffered, the application of the precautionary principle is justified, taking into account the limitation on present knowledge about the consequences of an environmental decision.

#### Balance of convenience

The Court found that the financial loss that Shell would suffer cannot be weighed against the infringement of the constitutional rights in question. The breach of those constitutional rights threaten the livelihoods and well-being of the communities, as well as their cultural practices and spiritual beliefs. Accordingly, the Court found that the balance of convenience favours the applicants.

#### Alternative remedy

Section 47 of the MPRDA (to cancel/ suspend a right) is a time-consuming procedure which would allow the continuous threat of infringements of the applicants' rights. The Court found that this would not be a satisfactory remedy in these circumstances. It would also not be fair, considering that it is unlikely that the Minister would've cancelled/ suspended the right.

#### Urgency

The Court held that Shell had, under the circumstances, sufficient time to put its case before the Court. Further, given the extent of the public interest in the outcome of this application, the Court found in favour of the applicants in relation to the urgency of the application.

### **6.2 The right to freedom of expression within the realm of environmental damage and a legitimate expectation of a right to privacy concerning personal information already in the public domain.**

#### **Bool Smuts and Landmark Leopard and Predator Project - South Africa (Appellants) v Herman Botha (Respondent) (Case No. 887/2020)**

This is an appeal against a judgement handed down by the Eastern Cape High Court on 4 June 2020. On the 23 September 2019, a group of cyclists, including Mr Nicholas Louw traversed the farm of Varsfontein belonging to the respondent. Mr Louw noticed two cages on the farm, one containing a dead baboon and the

other a dead porcupine. According to his observations, the cages were positioned where there was no shade and water. He formed the view that the animals had died as a result of dehydration whilst trapped in the cages. He took photographs of the cages containing the dead animals and sent them to the first appellant, Mr Smuts, a wildlife conservationist and activist who has been a leader in efforts to promote the conservation of indigenous wildlife in South Africa. Mr Smuts contacted Mr Botha via WhatsApp and Mr Botha confirmed that he had a valid permit to hunt, capture and/or kill the baboons, porcupines and other vermin.

On the 9 October 2019, Mr Smuts posted, on Landmark Leopard's Facebook pages, pictures of the dead baboon and porcupine trapped on the farm owned by Mr Botha. On his Facebook page, Mr Smuts also included a picture of Mr Botha holding his six-month old daughter. Additionally, he posted a Google Search Location of Mr Botha's business, his home address and his telephone numbers. A WhatsApp conversation between Mr Smuts and Mr Botha was also posted, whereby Mr Smuts confirmed that he had the requisite permits. The post generated many comments on Facebook, which were mostly critical of Mr Botha and the particular practice of trapping animals.

#### Application launched in the Eastern Cape High Court

Mr Botha instituted an urgent application in the High Court of the Eastern Cape Division, Port Elizabeth (the High Court) for an interim interdict prohibiting Mr Smuts and Landmark Leopard from publishing defamatory statements about him. The Court granted a rule nisi in terms of which Mr Smuts and Landmark Leopard were ordered to remove the photographs of Mr Botha and certain portions of the Facebook page that made reference to Mr Botha, his business, its location and the name of the farm. Mr Smuts and Landmark Leopard were also prohibited from making further posts making reference to Mr Botha, his family and his business. The photograph of Mr Botha and his daughter was removed by Mr Smuts before the interim order was granted. Later on, the rule nisi was confirmed - the High Court held that although Mr Smuts and Landmark Leopard were entitled to publish the photographs and to comment on them, they were not entitled to publish the fact that the photographs were taken on a farm belonging to Mr Botha. The name of the farm and Mr Botha's identity, as the owner of it, constituted personal information protected by his right to privacy. His right to privacy was infringed by the publication of his personal information on Facebook.

#### The appeal launched

Mr Smuts then lodged an appeal. This Court had to now decide whether the publication of Mr Botha's personal information such as Mr Botha's identity and his

business and home address enjoys the protection of the right to privacy, or is the publication protected by the right to freedom of expression.

#### **Judgement**

The appeal was upheld - the order of the Eastern Cape High Court was set aside. The rule nisi was discharged and the application was dismissed. Where two rights (i.e. privacy and freedom of expression) are in competition with one another, a balancing act is required. The Court acknowledged the significance and importance of these two rights within a democratic society.

Mr Smuts stated that his intention in publishing the post was not to defame or otherwise harm Mr Botha but rather, to publicise or 'out' his animal trapping practices so as to stimulate the debate on this controversial issue. The Court highlighted that it is in the public interest that divergent views be aired in public and subjected to scrutiny and debate. However, the Court found that Mr Botha could not have had an objectively reasonable expectation of privacy - the identity of Mr Botha and his farm (including his use of animal traps) are matters, that he permitted to be placed in the public domain. No effort was made by him to keep this information or his commercial farming activities private. In addition, the information published by Mr Smuts can easily be found in the Deeds Office as well as on Google. His discomfort that these practices formed the subject of Mr Smuts' critical posts did not render the information he had made public, now private.

The High Court erred when it found that there was no compelling public interest in the disclosure of Mr Botha's personal information. It disregarded the content of Mr Smuts' post and focused on the response by members of the public. This reasoning interferes with the right of freedom of expression and activism and fails to strike a proper balance between personal information and the right to privacy and it further failed to recognise that publicising the truth about Mr Botha's animal trapping activities, to which the public have access and interest, does not trump his right of privacy.

The Court was of the view that it was not possible for Mr Smuts to have used less restrictive means to achieve the purpose of 'outing' Mr Botha's animal trapping activities without publicising his personal information. The public interest clearly outweighed the right to privacy. The public has a right to know about the activities of his business that directly impact animals.

The Constitution recognises that individuals in our society need to be able to hear, form and express opinions freely, on a wide range of topics, including animal trappings.

### 6.3 Subcategory 9.5 of GN R893 not to be enforced against sawmills and other similar facilities using external heat sources that fall within the definition of a Small Boiler

#### Sawmilling South Africa v Department of Environmental Affairs and the Minister of Environmental Affairs (case no. 28608/2019)

The basic operation of sawmills involve the harvesting of trees in a plantation which are felled and turned into logs that are taken to sawmills where they are sawn into planks and dried in kilns, which are thermally insulated chambers. The 2 types of kilns are directly fired kilns indirectly fired kilns. Only the latter is used in South Africa and is also known as externally heated kilns – the external source of heat is a boiler, located usually about 50 meters away from the kiln. The boiler is heated by burning biomass fuel that boils water to generate steam which is sent to the kiln in steel pipes. In the kiln it passes through a system of closed pipes inside the kiln and heats up the air inside the kiln. The warm air dries out the stacked timber. The kiln itself does not produce any heat and all sawmills in South Africa use boilers with a design capacity of less than 50 MW.

Certain listed activities and associated minimum emission standards identified in terms of section 21 of the National Environmental Management: Air Quality Act 39 of 2004 (NEMAQA) were published in GN R248 in GG 33064 on 31 March 2010 (the 2010 Regulations). An Atmospheric Emission Licence (AEL) is required to conduct any of the listed activities. Subcategory 9.5 of the 2010 Regulations listed the following activity: “The drying of wood by an external heat source...” with application to all installations producing more than 10 tons per month. The external heat source, in this scenario, would be the boiler, which is also the only part of the wood drying process that emits pollutants into the atmosphere.

On 1 November 2013 the Small Boiler Regulations were published (in GN R831 in GG 36973), regulating all small boilers with a design capacity between 10 and 50 MW net heat input. As a result, from 1 November 2013, the boiler component of wood drying installations used at sawmills were separately regulated. The list of activities and associated minimum emission standards was also amended on 22 November 2013 (GN R893 in GG 3705) (the 2013 Regulations) wherein the wording of subcategory 9.5 remained unchanged. The Applicant expected, however, that, as the Small Boiler Regulations were published, wood drying installations that use small boilers would be removed from the listed activities – no useful purpose could be served by requiring

sawmills to obtain AELs while already regulated by the Small Boiler Regulations. The Sawmilling industry complained to the Respondents and pointed out that there was no need to double-regulate wood drying installations and numerous engagements followed with all relevant stakeholders. The Applicant suggested that subcategory 9.5 be amended to state as follow: “The drying of wood using direct-fired kiln”.

The Respondent then notified the industry of their intention to amend subcategory 9.5 on 25 May 2018 to read as follow: “The drying of wood using direct-fired kilns, and the manufacture of laminated and compressed wood products”, with application to all installations producing more than 10 tons per month. The public had an opportunity to comment on this proposed amendment, but the Applicant was satisfied with the wording and did not comment.

The Respondent pointed out that, after having considered all comments that were received, it became evident that the proposal would have resulted in the exclusion of the majority of sawmills from being licensed under NEMAQA. Such exclusion would be inconsistent with the management of the impact that sawmills have on air quality. Accordingly, the proposed amendment was not accepted. On 31 October 2018, a new set of listed activities were published as final, with subcategory 9.5 reading “the drying of wood; and the manufacture of laminated and compressed wood products” with application to all installations producing more than 10 tons per month (the 2018 Regulations). A special arrangement provision was inserted requiring that where an external source of heat is used, such source of heat must comply with the relevant emission standards for controlled emitters and the municipal by-laws for fuel burning appliance or equipment, if relevant. The effect of this amendment was that all drying of wood installations now require an AEL, including indirectly fired kilns even though the boiler provides the external heat source which is already regulated under the Small Boiler Regulations. The 2018 Regulations were published without any engagement with the sawmilling industry.

The Applicant sought a court order to declare the amendment to subcategory 9.5 brought by the 2018 Regulations unconstitutional and invalid to the extent that it requires a sawmill that dries wood in an indirectly fired kiln with an external heat source in the form of a boiler with a design capacity of 50 MW or lower, to obtain an AEL. Alternatively, the Application sought an order to review and set aside the decision of the Second Respondent to publish the listed activity in subcategory 9.5 in its current form. The Applicant relied directly on the Constitution of the Republic of South Africa, 1996 (the Constitution) to bring this application, and not on any other

national legislation.

The Respondents opposed both the rationality review in terms of the Constitution as well as the administrative review based on the Promotion of Administrative Justice Act 2 of 2000 (PAJA). They argued the following:

- There was no “administrative action” capable of being reviewed – the regulated activity in subcategory 9.5 remained as it was in its previous form in the 2013 Regulations and was not changed by the 2018 Regulations. It was legally impermissible for the Applicant to challenge the 2018 Regulations as the listing of wood drying, irrespective of the source of heat, was made in the 2013 Regulations. No decision was made by the promulgation of the 2018 Regulations which negatively affected the rights of the Applicant.
- The declaratory relief sought was fallacious.
- If there was an “administrative action”, the Respondents argued that the Applicant was limited to bring its review under PAJA, and not directly under section 1(c) of the Constitution.
- The application was filed late.

### Judgement

The Court found that the Applicant must succeed with the review and ordered that the Respondents’ decision to publish the listed activity in subcategory 9.5 of the 2018 Regulations be set aside. The Court made the following important findings:

#### The 2018 Regulations is an “Administrative Action” capable of being reviewed under PAJA

In terms of PAJA, administrative action must be lawful, reasonable and procedurally fair. The enactment of Regulations constitutes “administrative action” under PAJA. The Court found that to inform the industry of proposed Regulations, and then not to follow through with the proposal, can be nothing else than a decision.

The Court evaluated the three requirements to which this administrative action must adhere to as follow:

**1. Rationality:** The Respondent’s power, in this regard, is to publish a list of activities during which pollutants are emitted that may have a significant detrimental effect to the environment, which can be controlled. The legitimate aim is to protect the environment. The Respondents failed to produce expert evidence in relation to whether the listing of subcategory 9.5 assists in achieving this aim – to prevent the

emission of harmful pollutants. Government is required to produce evidence to justify the manner in which it regulates. In the absence thereof, the inclusion of subcategory 9.5 in the national list was found to be irrational.

**2. Procedural fairness:** Although the public was asked to comment on the proposed amendments to the 2013 Regulations, the proposed amendments were not adopted and the public was never consulted on the 2018 Regulations. Accordingly, any comments that were submitted did not reflect in the 2018 Regulations and this resulted in a procedurally unfair administrative action. The public was misled by this conduct.

**3. Reasonableness:** Sawmills are indeed now double-regulated by the 2018 Regulations and the Small Boiler Regulations – the hardship on sawmill were disproportionate to the benefit that double regulation may confer on the environment. In addition, additional financial burdens are put on sawmills by having to obtain AELs. The Court found subcategory 9.5 to be unreasonable.

#### Reliance on section 1(c) of the Constitution

The Court agreed with the Respondents’ argument and confirmed that if PAJA can be relied upon to bring this application, no reliance can be directly placed on the Constitution. PAJA can, of course, be measured against the relevant constitutional rights and values. The Court also referred to the relationship between PAJA, the Constitution and the common law and confirmed that an Act cannot be side stepped by resorting to common law.. Accordingly, common law may be used to inform the meaning of constitutional rights and Acts, but it cannot be regarded as an alternative to an Act.

Subsequent to this judgement, the Respondents lodged an application for leave to appeal, which was dismissed. In this order dated 10 June 2021, that Court amended the original order to read that “The Minister’s decision to publish the listed activity in sub-category 9.5 of the 2018 regulations is reviewed and set aside to the extent that it requires sawmills that dry wood in an indirectly fired kiln with an external heat source in the form of a boiler with a design capacity of 50 MW or lower than that to obtain an atmospheric emission licence”.

### 6.4 Local municipalities’ statutory duty to maintain storm water systems

*Featherbrooke Homeowners Association NPC v Mogale City Local Municipality et al (Case no. 11292/2020)*

Over the past years, an increase in the volume of storm water in the Muldersdrift area

had been experienced, which has placed pressure on the areas river's embankments, resulting in corrosion and instability. As a result of this, the security fence of the applicant's estate (Featherbrooke) was hanging by a thread and state infrastructure (power lines and sewage pipes) was exposed, leading to a high risk of pollution and electrocution. The applicant alleged that the respondents failed to provide any storm water mitigation, adaptation or prevention as far as chronic storm water flooding is concerned while they have a positive duty to mitigate storm water in line with their climate change policies. Although certain proposals regarding rehabilitation of the riverbank were made by some of the respondents, including an acknowledgement that the Mogale City Local Municipality (the Municipality) has some funds available immediately that could be used for rehabilitation, nothing happened. The applicant eventually took action itself by moving the security fence back to accommodate the changing flood line.

In 2016 the respondents advised the applicant to submit a section 24G application in relation to the necessary remedial work required to safeguard the riverbanks and associated storm water management structure. Later that year, the respondents decided that DWS would issue instructions in terms of section 19 of the National Water Act 36 of 1998 (NWA) to the Municipality and the City of Johannesburg Local Municipality (CoJ), and that the applicant must submit a Water Use Licence application (WULA). The section 19 instructions were never issued, but the applicant did submit a WULA, although the applicant was of the view that it was not required to obtain a WUL Licence due to the fact that it was for the purpose of remediating its own fence and the situation constitutes an emergency situation.

The applicant applied for an interim structured supervisory interdict against the Municipality, CoJ and the Johannesburg Roads Agency (Pty) Ltd (JRA) in relation to actions required to repair, underpin, remediate and manage the stream beds and the affected infrastructure. The applicant also requested the Court to oblige the Municipality and/or the CoJ to draft and implement a storm water management plan and that the DWS also be ordered to immediately take certain actions to mitigate and prevent flooding. The applicant also sought leave to effect the necessary rehabilitation if the respondents who are ordered to do so do not comply.

### **Judgement**

The Court granted the interim structured interdict by ordering only the Municipality to immediately, and in future, do all things necessary to repair, underpin, remediate and

manage the stream beds adjacent to the applicant's fence located next to that river. The Municipality must also draft and implement a storm water management plan and do all things necessary to repair, remediate and manage state-owned infrastructure near the estate which was exposed due to the flooding. The Municipality must report to the implementation of the structured interdict within 30 days from the date of the order and thereafter every three months.

### Municipalities and service delivery

The Court stressed the importance of the separation of powers between various spheres of government, as well as cooperative governance as indicated in sections 40 and 41 of the Constitution of the Republic of South Africa, 1996. The Court referred, amongst others, to section 156 which details the powers and functions of the different spheres of government. Part B of Schedule 4 indicates that municipal planning and storm water management system in built up areas are local government functional areas. The National Environmental Management Act 107 of 1998 (NEMA) also requires cooperative governance and prescribed principles and procedures for coordinating environmental functions exercised by state organs. NEMA also places a duty of care and remediation of environmental damage on every person who cause, has caused, or may cause degradation of the environment to take reasonable measures to prevent such degradation from occurring, continuing or recurring, including the obligation to take reasonable measures to remedy the effects of pollution or degradation (section 28). No assistance was received from any state department, despite having been asked therefore for more than 10 years.

### Relevance of the Disaster Management Act (DMA)

The DMA binds all spheres of government and aims to provide for an integrated and coordinated disaster management policy that focuses on preventing or reducing the risk/ severity of disasters. The Court analysed the definition of "disaster", "disaster management" and "emergency preparedness" and referred to section 42 which requires a municipality to set up a disaster management framework. Section 54 states that the council of a metropolitan municipality remains primarily responsible for the coordination and management of local disasters that occur in the area and that the council of the district municipality, after consultation with the relevant local municipality, is primarily responsible for the coordination and management of local disasters, irrespective of whether or not a local state of disaster has been declared. Section 56(2)(b) states that the costs of repairing or replacing public sector

infrastructure should be borne by the state organ responsible for the maintenance of such infrastructure.

#### Relevance of the Municipal Systems Act

The Local Government Municipal Systems Act 32 of 2000 (MSA) indicates that a new system of local government requires efficient, effective and transparent local public administration that conforms to constitutional principles. Municipalities are obliged to, amongst others, promote a safe and healthy environment in their municipalities.

No storm water management plan was adopted for the relevant area. Despite the respondents using the words “disaster” and “urgent” due to the ongoing floods and storm water mismanagement for years, there seems to have been no cooperative management in relation to CoJ and the Municipality.

#### Requirements for an interim interdict

The Court found that the applicant’s constitutional right in terms of section 24 is being infringed upon; and that they also have a well-grounded apprehension of irreparable harm as the flooding has exposed infrastructure which presents an ongoing risk of pollution, contamination and electric shock, as well as security. There is also a prospective financial harm in relation to the escalating remediation costs. The applicant has no other satisfactory remedy and the balance of convenience favours the applicant to the extent that its constitutional rights should be protected which outweighs any inconvenience for the respondents to find funds to try to mitigate the risky condition of the river.

### **6.5 The use of a structural interdict to compel organs of State to execute their duties in terms of the functional areas set out in Schedule 4 and 5 of the Constitution**

#### Agri Eastern Cape & others (Applicants) v MEC for the Department of Roads and Public Works & others (Respondents) (case no. 3928/2015)

Failure to repair and maintain the road network of farming communities in the Eastern Cape has prevailed for more than 10 years and the applicants have tried, through engagement with the respondents since 2011, to resolve the problem, to little avail. During 2011, Agri EC requested a meeting with the MEC, but no meeting materialised. On 1 February 2012 Agri EC wrote to the MEC and other officials with reference to the poor condition of the Eastern Cape gravel road network and flood damage which

occurred in 2010 and 2011. The letter concluded by requesting an action plan, with an offer of assistance by agricultural associations in identifying priorities and serving on project steering committees. Meetings took place between Agri EC and officials of the Department during 2014 and 2015 but no constructive improvement resulted.

#### The 12 May 2016 order by agreement

On 12 May 2016 an agreement between the parties was made an order of court. Essentially the respondents were ordered to file a report with the court within a certain time period on planned actions to repair and maintain roads. The applicant had opportunity to respond to the report, after which the report, if considered satisfactory by the court would be made an order of court. The matter was postponed.

The respondents complied with this order by submitting a report, explaining the challenges experienced in maintaining and repairing the road network. This report also included a 2016/2017 Roads Infrastructure Immovable Asset Management Plan which listed roads, work done and future work planned on each road during that year.

#### The application

In response, the applicants approached this court to obtain an order declaring the respondents to be legally obliged to repair all roads within their jurisdiction and an order that they comply with that obligation. The applicants requested a structural interdict which requires the respondents to conduct certain actions within envisaged time frames; and were of the opinion that such a remedy was warranted where the consequences of failure to comply with a court order will indeed be devastatingly serious for the economics and employment prospects of the agricultural community in the Eastern Cape.

The applicants, furthermore, required certainty on what steps individual farmers could take to repair roads themselves when the access roads to their farms are in such a state of disrepair that they cannot be used safely or when operators of commercial vehicles engaged in the farms’ business refuse to use the road at all. Farmers have spent money and time in repairing roads themselves out of necessity, and should be entitled to be recompensed when these repairs are the responsibility of the respondents.

#### The respondents’ arguments

The respondents acknowledged that, although some work has been done, there is

still a significant road maintenance backlog as a result of under-funding over many years and, even with massive funding the problem will persist. The Department has good intentions and has tried its best with limited resources to maintain roads in a trafficable state for public use. Although the Department has a clear implementation strategy regarding the maintenance of roads, procurement processes are prolonged and sometimes challenged, resulting in the need to start such process afresh.

The respondents were of the view that a structural interdict was incompetent and that there was no constitutional or statutory basis for seeking such an interdict - the applicants had not asserted any right which had been breached. They submitted their own draft order refusing the structural interdict, dismissing reimbursement for repairs undertaken and ordering the respondents to hold regular public meetings on progress made.

The respondents further argued that a court order instructing the Department to repair the roads would amount to an instruction by the judiciary to the executive branch of government to prioritise road repairs and maintenance above other pressing social priorities. In addition, the order would not be capable of being enforced because of insufficient funds.

The respondents referred to section 3 of the Eastern Cape Roads Act 3 of 2003 and argued that the wording of this section merely permits the MEC to maintain/ rehabilitate/ plan/ manage etc. provincial roads as implementation was depended on the availability of funds. They also referred to section 4(1) which provides that an agreement may be concluded between the Province and any other person in terms of which a person may undertake maintenance/ repair activities for the account of the Province. The use of this section will, however, also be dependent on the availability of funds.

### Judgement

The Court substantially granted the draft order of the applicants and ordered costs against the respondents. This order required specific steps and actions to be taken by the respondents within certain time periods, in the form of a structural interdict. The Court was of the view that constitutional and statutory basis existed for seeking the interdict. Part A of Schedule 5 of the Constitution provides for the functional areas of exclusive provincial legislative competence, one of which is provincial roads and traffic. In terms of s 125(2)(a) of the Constitution the Premier, together with the other members of the Executive Council, exercises executive authority by

implementing provincial legislation in the province. When one considers some of the consequences of the failure to repair and maintain roads illustrated in the applicants' affidavits, fundamental rights such as basic education and access to health care are indirectly affected. Section 3 of the Eastern Cape Roads Act 3 of 2003 encompasses an obligation on the MEC to use his/ her power in accordance with the constitutional exclusive legislative competence of the province. It is clear that the respondents failed to fulfil their constitutional obligations.

There are three sets of circumstances where a structural interdict is warranted:

1. Where it is necessary to secure compliance with a court order;
2. Where the consequences of even a good-faith failure to comply with a court order are so serious that the court should be at pains to ensure effective compliance; or
3. Where the mandatory order is so general in its terms that it is not possible to define with any precision what the government is required to do. This category is relevant to this case - the respondents' task is not simple and free from difficulties. The May 2016 order granted was an invitation to the government to formulate a plan, which was a promising start, but the respondents attempted to reverse the progress made by asking for a dismissal of the application and by proposing, in the alternative, an unhelpful draft order. This conduct suggests that the respondents will not put their best efforts into complying with the order.

The Court found that, although the applicants' draft order is in line with the respondents' plans, it didn't provide much of a strategy with regard to implementation and time frames and that a structural interdict is indeed required to move forward in a strategic manner.

# LEGISLATIVE DEVELOPMENTS



## 7. LEGISLATIVE DEVELOPMENTS

### 7.1. National Environmental Management Act 107 of 1998

#### 7.1.1 Regulations and Notices

- Appointment of a panel of experts to lead a review of the scientific basis for the breach of the mouth of Lake St Lucia Estuary GN 240/2021
- Identification of a Generic Environmental Management Programme relevant to an application for environmental authorisation for the development or expansion of gas transmission pipeline infrastructure - GN 373/2021
- Procedures to be followed when 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 411/2021
- Regulations to domesticate the requirements of the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade, 2021 - GN 413/2021
- Regulations to prohibit the production, distribution, import, export, sale and use of persistent organic pollutants that are listed by the Stockholm Convention on persistent organic pollutants, 2021 - GN 414/2021
- Amendments to the National Environmental Management Act, 1998, 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 – GN 517/2021
- Suspension of the implementation of the Regulations to domesticate the requirements of the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade, for a period of 12 months – GN 1514/2021
- National Environmental Management Act, 1998: Amendments to the Financial Provisioning Regulations – GN495/2021
- Identification in terms of sections 24(3), 24(5)(a) and 24(5)(b) of the National Environmental Management Act of expanded geographical areas of strategic importance for the development of electricity transmission and distribution infrastructure and the procedures to be followed when applying for or deciding on environmental authorisations for large scale electricity transmission and distribution

development activities identified in terms of section 24(2)(a) of the Act when occurring in geographical areas of strategic importance - GN 1637/2021 (*repeal and replacement of GN 383/2021*)

- GN1617/2021: Amendment of 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
- GN1816/2022: Withdrawal of amendment to regulation 39(2) of the Environmental Impact Assessment Regulations, 2014, as amended
- GN 317/2022: Amendment of the Plastic Carrier Bags and Plastic Flat Bags Regulations, 2021

#### 7.1.2 Draft Regulations and Notices

- GN 371/2021: Amendment to Financial Provisioning Regulations, 2015, as amended
- GN 559/2021: Consultation on intention to publish the National Guideline for consideration of climate change implications in applications for environmental authorisations, atmospheric emission licenses and waste management licenses
- GN 765/2021: Proposed Regulations pertaining to Financial Provisioning for the Mitigation and Rehabilitation of Environmental Damage caused by Reconnaissance, Prospecting, Exploration, Mining or Production Operations
- GN 1506/2021: Consultation on intention to adopt the Generic Environmental Management Programme for Development Projects within the Atlantis Urban Area as an environmental management instrument and to exclude activities identified in terms of section 24(2)(a) or (b) of the National Environmental Management Act, 1998, from the requirement to obtain environmental authorisation if undertaken within the geographical area of the Atlantis Urban Area
- GN 1572/2021: Consultation on the amendment of the identification in terms of section 24(5)(a) and (b) of the National Environmental Management Act, 1998 of the procedure to be followed in applying for environmental authorisation for large scale electricity transmission and distribution development activities identified in terms of section 24(2)(a) of the National Environmental Management Act, 1998 when occurring in geographical areas of strategic importance

- GN 1655/2021: Consultation on intention to amend the Section 24H Registration Authority Regulations, 2016
- GN 1924/2022: Consultation on the intention to publish the National Biodiversity Offset Guideline
- GN 378/2021: Extension of the period for Nomination of Suitable Persons to be appointed as members of SANParks
- GN 379/2021: Extension of the period for Nomination of Suitable Persons to be appointed as members of SANBI

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

### 7.2.1 Regulations and Notices

- Second generation AQMP for the Vaal Triangle Airshed Priority Area: final plan - GN 693/2021
- Technical guidelines for the validation and verification of greenhouse gas emissions - GN 1496/2021
- Methodological guidelines for quantification of greenhouse gas emissions – carbon sequestration in the Forestry Industry - GN 1700/2022

### 7.2.2 Draft Regulations and Notices

- GN 583/2021: Consultation on the Draft South African Atmospheric Emission Licence and Inventory Portal (SAAELIP) Data Management Policy, 2021
- GN 623/2021: Consultation on the draft South African Atmospheric Emission Licence and Inventory Portal (SAAELIP) Data Management Policy, 2021
- GN 1738/2022: Proposed regulations for implementing and enforcing Priority Area Air Quality Management Plans

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

### 7.3.1 Regulations and Notices

- Declaration of the Thohoyandou National Botanical Garden - GN 1475/2021
- GN 379: Extension of the period for Nomination of Suitable Persons to be appointed as members of SANBI
- Declaration of certain land as part of the existing Harold Porter National Botanical Garden – GN 1763/2022

### 7.3.2 Draft Regulations and Notices

- GN 547/2021: Notice of intention to declare certain land as part of the Harold Porter National Botanical Garden
- GN 563/2021: Consultation on the biodiversity management plants for Aloe Ferox and Honeybush Species (Cyclopia Subternata and Cyclopia Intermedia)
- GN 566/2021: Comments invited on the draft policy position on the conservation and ecologically sustainable use of elephant, lion, leopard and rhinoceros
- GN 1022/2021: Consultation on the proposed hunting/export quota for elephant, black rhinoceros and leopard hunting trophies for the 2021 calendar year
- GN 1476/2021: Consultation on the Draft Revised List of Ecosystems that are threaten and in need of Protection
- GN 1760/2022: Request for comments on the inclusion of Seventeen Succulent Plant Species and one Succulent Plant Genus in Appendix III of the convention on International Trade in Endangered Species of Wild Fauna and Flora

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

### 7.5.1 Regulations and notices

- National estuarine management protocol - GN 533/2021
- Delegation of powers in terms of section 89(1)(c) - Regulations 4, 5, 6 and 8 of the control of use of vehicles in the coastal area regulations - GN 641/2021

### 7.3.3 Draft Regulations and notices

- GN 720: National Environmental Management: Integrated Coastal Management Act (24/2008): Draft Coastal Management Line for Garden Route National Park in terms of section 25(1) read with section 25(5)(a)
- GN 285: Invitation to Members of the Public to submit written comments on the Draft Qinirha Estuarine Management Plan

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

### 7.4.1 Regulations and notices

- Declaration of land situated in Western Cape as part of the existing Bontebok National Park - GN 1064/2021

- Declaration of land to be part of an existing Mountain Zebra-Camdeboo Protected Environment in terms of the Act - GN 1916/2022
- GN 20: Declaration of Ncandu Private Forest and Grassland Nature Reserve, Cumberland Nature Reserve, additions to Karkloof Nature Reserve and Central Umgeni Conservancy as a Protected Environment
- GN 22: Declaration of various additions in terms of section 23(1) of the Act
- GN 378: Extension of the period for Nomination of Suitable Persons to be appointed as members of SANParks
- GN 39: Declaration of Sunshine Nature Reserve
- GN 40: Declaration of Viljoensdrift Nature Reserve

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

### **7.6.1 Notices and Regulations**

- National norms and standards for organic waste composting - GN 561/2021
- Notice of decision on applications received for the exclusion of a waste stream or a portion of a waste stream from the definition of waste for beneficial use – GN1021/2021

### **7.6.2 Draft Regulations and Notices**

- GN 1005/2021: Packaging Guideline: Recyclability by Design for Packaging and Paper in South Africa
- GN 1565/2021: Consultation on the amendments to the Regulations and notices regarding extended Producer Responsibility, 2020
- GN 1849/2022: Consultation on the Draft Industry Waste Tyre Management Plan
- GN 1943/2022: Extended producer responsibility scheme for the lubricant oil sector
- GN1944/2022: Extended producer responsibility for the pesticide sector
- GN 1945/2022: Extended producer responsibility scheme for the portable battery sector

# INDUSTRIAL COMPLIANCE AND ENFORCEMENT



## 8. INDUSTRIAL COMPLIANCE AND ENFORCEMENT

### 8.1 Pro-active Strategic Compliance Inspections & related Enforcement Action

The information contained in the table below, describes the actions taken by the Environmental Management Inspectorate within various industrial sectors. This work forms part of a continuous monitoring and evaluation program which was initiated in 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 regulatory authorities.

Given the ongoing nature of the compliance and enforcement functions relating to these industrial sectors, details of activities are provided for the relevant reporting period, as well as references made to the same facilities from previous years' reports. Notwithstanding the above, improvements are progressively being made but how this is translated into actual environmental improvement remains undetermined. Given the overall situation, criminal investigations appear to be the mechanism, which is least explored to address the non-compliant behaviour of some of the facilities which have not demonstrated an intention to comply with the law.

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>FERRO-ALLOY, IRON AND STEEL</b>	
<b>Transalloys (Pty) Ltd, Mpumalanga</b>	A Compliance Notice dated the 25th of March 2021 was issued. The Compliance Notice required a specialist to be appointed and conduct an investigation into soil, surface and groundwater quality from the Slag Disposal Site and Manganese Slimes Dam, and report those findings to the Department. The report, and the remediation measures contained therein was approved on 25 October 2021. Remediation is ongoing.

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Transalloys (Pty) Ltd, Mpumalanga</b>	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.
<b>Samancor Tubatse Ferrochrome, Limpopo Province</b>	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. <ul style="list-style-type: none"> <li>• Non-compliances with the conditions contained in the WML number 112/9/11/L1051/5 dated 03 May 2017;</li> <li>• Non-compliance with the with the duty of care provisions of the NEMWA;</li> <li>• 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</li> <li>• Commencement with activities which is defined as water uses in terms of Section 21 of the NWA.</li> <li>• 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.</li> <li>• 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.</li> </ul>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Samancor Tubatse Ferrochrome, Limpopo Province</b>	<ul style="list-style-type: none"> <li>• However, and in consultation with both the LEDET 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.</li> </ul> <p>The Department referred the illegal water use activities to Department of Water and Sanitation Olifants River Catchment Area on Referral letter dated 25 March 2021.</p>
<b>ArcelorMittal Saldanha Works</b>	<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> <p>Page 25 of NECER 2009-2010; Page 48 of NECER 2018-2019; and Page 50 of NECER 2019-2020</p>
<b>Tronox KZN Sands CPC Smelter, KwaZulu Natal</b>	<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. Monthly progress reports have been submitted and compliance is being monitored. 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 2019-2020.</p>
<b>Glencore Lion Smelter Operations, Limpopo</b>	<p>Due to the fact that Glencore Lion Smelter Operations ("the facility") had been issued with new/amended environmental authorisations, the Department decided to conduct a further inspection of the facility.</p> <p>During the inspection a number of contraventions and non-compliances were identified. These included the following:</p> <ul style="list-style-type: none"> <li>• failure to comply with the conditions contained in the Record of Decision;</li> </ul>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Glencore Lion Smelter Operations, Limpopo</b>	<ul style="list-style-type: none"> <li>• failure to comply with the conditions contained in the Environmental Authorisation ("EA");</li> <li>• failure to comply with the conditions contained in the Waste Management Licence ("WML");</li> <li>• failure to comply with the conditions contained in the Atmospheric Emission Licence ("AEL");</li> <li>• the alleged undertaking of a listed activity without the required Environmental Authorisation, in terms of section 24 of the NEMA;</li> <li>• failure to adhere to the requirements of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) ("NEM: WA"); and,</li> <li>• failure to adhere to the requirements of the NEMA.</li> </ul> <p>In light of the above, the Department decided to initiate an administrative enforcement process against the facility.</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 48 of NECER 2014-2015; Page 56 of NECER 2015-2016; Page 51 of NECER 2019-2020; and, Page 51 of NECER 2020-2021.</p>
<b>ssmang Cato Ridge Works Ltd, Cato Ridge Kwa Zulu Natal</b>	<p>On the 21st of May 2021, the Department undertook a compliance inspection at the waste management facilities of Assmang Cato Ridge Works Ltd – Cato Ridge ("the facility").</p> <p>During the inspection a number of contraventions and non-compliances were identified. However, and due to possibility of pollution and impacts occurring the Department decided to concentrate on the following issues of concern [Duty of care]:</p> <ul style="list-style-type: none"> <li>• failure to adhere to the requirements of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) ("NEM: WA"); and,</li> <li>• failure to adhere to the requirements of the NEMA.</li> </ul>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Assmang Cato Ridge Works Ltd, Cato Ridge Kwa Zulu Natal</b>	<p>In light of the above, the Department decided to initiate an administrative enforcement process against the facility.</p> <p>A pre-compliance notice dated the 11th of February 2022 was issued to the facility, and the facility has provided the Department with an action plan to deal with the issues of concern.</p> <p>The action plan is currently being monitored, and it is estimated that the implementation of the plan will be completed by the end of 2022.</p> <p>In light of the above, the Department will continue to monitor the facility's compliance with the action plan, and to environmental laws.</p>
<b>Bushveld Vanchem (Pty) Ltd, Witbank Mpumalanga</b>	<p>A joint compliance monitoring inspection was conducted at this facility on 28 April 2021 by EMIs from the Department of Forestry, Fisheries and the Environment, Mpumalanga Department of Rural Development, Land and Environmental Affairs and Nkangala District Municipality. The following were found:</p> <ul style="list-style-type: none"> <li>• Non-compliances to conditions of the AEL and the WML</li> <li>• Intermittent exceedances of PM and NH3 limits</li> <li>• Failure to adhere to NEMWA Section 21 as a result of inadequate waste storage practices</li> <li>• failure to put measures in place to prevent pollution from overflows of the dirty water dam</li> </ul> <p>Page 13 of NECER 2007-2008; Page 27 of NECER 2008-2009; and Page 14 of NECER 2014-15</p>
<b>POWER GENERATION</b>	
<b>Eskom Kendal Power Station, Mpumalanga</b>	<p>The Department issued the facility with a Pre-compliance notice dated the 10th of March 2021. The facility then provided the Department with representations to the pre-compliance notice.</p> <p>Upon reviewing the representations, the Department noted that a large portion of the non-compliances and / or issues of concern were in the process of being addressed.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Eskom Kendal Power Station, Mpumalanga</b>	<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.</p> <p>In light of the above, the Department has issued the facility with a letter dated the 19th of April 2022, requesting a status update on all commitments made [and implementation thereof]. The facility is still within its submission time-frame.</p> <p>Following receipt and review of the facility's response, the Department will make a decision on the way forward.</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; Page 52 of NECER 2019-2020; and Page 50 of NECER 2020-2021.</p>
<b>Eskom Camden Power Station, Mpumalanga</b>	<p>A warning letter dated 08th of July 2021 was issued to Camden for non-compliance with projects that emanated from the Compliance Notice dated the 14th of May 2020.</p> <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). Besides the damage caused to the wetland, the activity was potentially undertaken without the required authorisations in terms of the NEMA and the NWA. 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.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Eskom Camden Power Station, Mpumalanga</b>	<p>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., however the Compliance Notice have not been approved while Eskom had requested submitted rehabilitation report to rehabilitated affected areas while Section 24G EA required.</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>
<b>Eskom Tutuka Power Station, Mpumalanga</b>	<p>The facility was issued with a Compliance Notice on the 12th of May 2020. Most of the matters were water related.</p> <p>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>
<b>Eskom Tutuka Power Station, Mpumalanga</b>	<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>
<b>Eskom Grootvlei</b>	<p>The site inspection was conducted by Environmental Management Inspectors ("EMI's") from this Department, as well as from the Department of Agriculture, Rural Development, Land and Environmental Affairs ("DARDLEA") and Gert Sibande District Municipality ("GSM") on the 25th and 26th of May 2021.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Eskom Grootvlei</b>	<p>The compliance notice I intend to issue relates to the following:</p> <ul style="list-style-type: none"> <li>• Non-compliance to conditions in the Waste Management Licence ("WML") for the Asbestos Sites dated 11 March 2009 and referenced as 2/9/11/P97;</li> <li>• Managing waste in a manner which may cause harm to the environment which is considered to be prohibited under the National Environment Management: Waste Act, Act No. 59 of 2008 ("NEM: WA");</li> <li>• Unlawful and intentional or negligent commission or omission of an act which has the potential to cause significant pollution or degradation of the environment or is likely to cause significant pollution or degradation of the environment; and</li> <li>• Unlawful and intentional or negligent commission or omission of any act which has the potential to detrimentally affect or is likely to detrimentally affect the environment;</li> </ul> <p>A Notice of Intent dated 25 October 2021 was issued to the facility to which a response was received on the 29th of November 2021. The Department has since issued a conditional close-out letter to Grootvlei.</p>
<b>Eskom Kusile Power Station, Mpumalanga</b>	<p>The site inspection was conducted by Environmental Management Inspectors ("EMI's") from this Department, as well as from the Department of Agriculture, Rural Development, Land and Environmental Affairs ("DARDLEA"), the Department of Water and Sanitation ("DWS") and Nkangala District Municipality ("NDM") on the 17th and 18th of August 2021 at the Eskom Kusile Power Station (herein referred to as "Kusile") in Mpumalanga Province.</p> <p>The following issues were identified:</p> <ul style="list-style-type: none"> <li>• Non-compliances to conditions of the AEL, WML, EAs and WUL</li> <li>• Failure to comply with duty in respect of waste management as a result of spillages of waste, poor waste management practices and improper waste storage.</li> </ul>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Eskom Kusile Power Station, Mpumalanga</b>	<p>Capacity of dirty water dams compromised by sediments, leading to contaminated water overflowing to the environment.</p> <ul style="list-style-type: none"> <li>• Use of contaminated water with elevated levels of some contaminants for dust suppression.</li> <li>• Excessive dust from the ash dump.</li> </ul> <p>The report was issued to the facility and a response was received on the 22nd of March 2022. The matter has been referred for Enforcement Action.</p>
<b>Eskom Matla Power Station, Mpumalanga</b>	<p>A joint site inspection was conducted by EMI's from this Department, as well as from DARDLEA and Nkangala District Municipality on 26 to 27 October 2021 and the following issues were identified:</p> <ul style="list-style-type: none"> <li>• Non-compliances to conditions of the AEL.</li> <li>• Failure to comply with duty of care as a result of PM emissions frequently exceeding the Minimum Emission Standards (MES); Unlined Old Ash Dam and associated Ash Water Return Dams containing contaminated water; and frequent overflows and/or effluent discharge from the wastewater containing facilities to the receiving environment.</li> <li>• Failure to comply with duty in respect of waste management due to disposal of hazardous waste like oil contaminated sediments on unlined ash dams; storage of hazardous waste in areas not adequately roofed</li> </ul>
<b>Landfill</b>	
<b>City of Cape Town Vissershok Landfill Site, Western Cape</b>	<p>A Notice of Intention was issued to the facility based on:</p> <ul style="list-style-type: none"> <li>• Non-compliances to conditions of the WML</li> <li>• Use of treated leachate to suppress dust on site despite it not meeting applicable limits of the General Authorisation</li> <li>• Water (surface and ground) quality monitoring not conducted for certain parameters since May 2020</li> </ul>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>City of Cape Town Vissershok Landfill Site, Western Cape</b>	<ul style="list-style-type: none"> <li>• Frequent overflows and/or discharge of the leachate from collection sumps and contaminated stormwater from detention ponds during rainy periods</li> <li>• Groundwater quality exceeding stipulated limits on certain boreholes.</li> </ul> <p>Representations were submitted during July 2021. Certain concerns in relation to the representations have been raised with the facility, who have been afforded an additional opportunity to respond thereto. At the time of writing hereof, the facility is still within the timeframes for submission of the additional information. 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>
<b>Averda Vlaktefontein Landfill Site, Vereeniging Gauteng</b>	<p>A follow-up compliance monitoring inspection was undertaken at this facility on 7 September 2021 and the following were found:</p> <ul style="list-style-type: none"> <li>• Non-compliances to conditions of the WML</li> <li>• Failure to comply with duty in respect of waste management due to storage of waste on areas which were not roofed, lined or bunded.</li> <li>• Excessive dust from ash handling and storage area.</li> <li>• Elevated concentrations of H<sub>2</sub>S and NH<sub>3</sub> recorded.</li> <li>• Spillages of waste and leaking hydrocarbons at the unlined Shunt Yard.</li> <li>• Records to demonstrate compliance with the 2013 Waste Classification and Management Regulations as well as copies of Complaints and Incidents Registers were not provided</li> </ul> <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.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Averda/EnviroServ Vissershok Landfill Site, Cape Town Western Cape</b>	<p>A compliance monitoring inspection was conducted at this facility on 29 November 2021. The following issues were found:</p> <ul style="list-style-type: none"> <li>• Non-compliances to conditions of the WML</li> <li>• Failure to comply with duty ins respect of waste management due to improper storage of waste and windblown waste scattered around the site.</li> </ul>
<b>EnviroServ Aloes Landfill Site, Port Elizabeth, Eastern Cape</b>	<p>The facility was inspected on 2 February 2022 where the following issues were noted:</p> <ul style="list-style-type: none"> <li>• Non-compliances to conditions of the WML.</li> <li>• Dust fallout rates exceeding the Dust Control Regulations.</li> </ul> <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.</p>
<b>CEMENT</b>	
<b>Sephaku Cement Delmas Plant, Mpumalanga</b>	<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"> <li>• Non-compliances to conditions of the AEL.</li> <li>• Dust monitoring not conducted on a monthly basis as required.</li> <li>• Waste management records not meeting the requirements of the Waste Classification and Management Regulations 634 dated 23 August 2013.</li> <li>• Unauthorised use of waste and construction of a dam on a wetland without the required EA.</li> </ul> <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>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Sephaku Cement Delmas Plant, Mpumalanga</b>	<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"> <li>• 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;</li> <li>• 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.</li> </ul> <p>The facility was found to be issued with a Water Use Licence dated 15 January 2016 and the recommendation made to refer non-compliance in relation to EIA activity for the construction of evaporation dam within a wetland for further investigations was approved in the DEFF referral letter dated 18 June 2021 to MDARDLEA and a notification of referral dated 18 June 2021 was issued to Sephaku Cement. This matter is closed from DFFE Administrative Enforcement.</p>
<b>HEALTH CARE RISK WASTE TREATMENT</b>	
<b>Averda East London, Eastern Cape</b>	<p>A compliance inspection was conducted on the 8th of September 2020 and the following were found:</p> <ul style="list-style-type: none"> <li>• 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</li> </ul>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Averda East London, Eastern Cape</b>	<ul style="list-style-type: none"> <li>• Failure to comply with duty in respect of waste management in relation to improper storage of waste</li> <li>• Records on sources and amounts of waste as well as disposal records received not provided upon request</li> </ul> <p>Enforcement process was initiated on the 12th of December 2020 and representations were made. A Compliance Notice was issued on the 23rd of June 2021. Representations were submitted on the 18th of August 2021. A close-out referral letter was issued on the 5th of November 2022. A decision will be made as to how to proceed.</p>
<b>Averda SA (Pty) Ltd – Klerksdorp Incinerator, North West</b>	<p>On the 09th of April 2021 the facility provided the Department with its representations. Additional representations was also provided to the Department during July 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> <p>Discussions on previous compliance and enforcement activities related to this facility can be found in the previous NECER publications as follows: Page 53 of NECER 2020-2021.</p>
<b>ClinX Waste Management cc, Gauteng</b>	<p>Inspection conducted on 16 September 2020 identified the following:</p> <ul style="list-style-type: none"> <li>• Non-compliance to conditions of the WMLs and AEL</li> <li>• 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</li> <li>• Excessive emissions of particulate matter (PM) from the incinerators</li> <li>• Some documents required to demonstrate compliance not provided</li> </ul>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>ClinX Waste Management cc, Gauteng</b>	<p>A Notice of Intention dated the 20th of May and a Compliance Notice dated the 23rd of June 2022 was issued to the facility. Monitoring compliance thereto is ongoing.</p>
<b>Enerwaste Solutions, Gauteng</b>	<p>The following were observed during an inspection conducted at the facility on 18 June 2020:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• 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</li> <li>• Operation of an incinerator for treatment of HCRW without an AEL</li> <li>• 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.</li> </ul> <p>Criminal investigation is underway.</p> <p>The matter is closed from administrative enforcement action and only a Criminal case was initiated.</p>
<b>Averda City Deep, Gauteng</b>	<p>An inspection conducted at the facility on 11 June 2020 identified the following:</p> <ul style="list-style-type: none"> <li>• 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</li> </ul>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Averda City Deep, Gauteng</b>	<ul style="list-style-type: none"> <li>• Failure to comply with duty in respect of waste management including offloading waste in unroofed area</li> <li>• 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</li> </ul> <p>Findings were shared with the facility and a decision on way forward will be made once representations have been received</p>
<b>Compass Clayville, Gauteng</b>	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.
<b>Biomed, Gauteng</b>	<p>The following were found during an inspection conducted at the facility on 31 July 2020:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• Bulk of documents to demonstrate compliance were not made available</li> <li>• 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.</li> </ul> <p>A letter requesting more information before a decision is made on the non-compliances have been issued to the facility.</p>
<b>Cecor Allied, Gauteng</b>	<p>An inspection at the facility was conducted on 17 July 2020 and the following were found:</p> <ul style="list-style-type: none"> <li>• Non-compliances to conditions of the WML amongst others: Monitoring Committee meetings not held as required; internal audits not conducted as required.</li> <li>• 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.</li> </ul>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Optimum Waste- George, Western Cape</b>	<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"> <li>• 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</li> <li>• Records on sources and amounts of waste; disposal records received not provided upon request</li> <li>• 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</li> </ul> <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>
<b>BCL, Western Cape</b>	<p>An inspection was conducted on 24 November 2020 and the following contraventions were identified:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• Records to demonstrate compliance including Incidents and Complaints Registers; Records of Treatment; waste manifests not made available</li> </ul> <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
<b>Compass, Western Cape</b>	<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> <p>Administrative enforcement action was initiated, and a Pre-Compliance Notice was issued on the 20th of April 2021. Representations were submitted on the 3rd of May 2021. All non-compliances were addressed.</p> <p>The matter was closed out on the 28th of May 2021.</p>
<b>Averda Killarney Gardens, Gauteng</b>	<p>The following were found during an inspection conducted at the facility on 25 November 2020:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• Records to demonstrate compliance including Incidents and Complaints Registers; training records; waste manifests not made available</li> </ul> <p>Findings were shared with the facility and a decision on way forward will be made once representations have been received.</p>
<b>Ecocycle, Free State</b>	<p>An inspection was conducted at the facility on 21 January 2021 and the following were found:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• 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.</li> </ul> <p>The facility ceased with all operations subsequent to the issuance of a pre compliance notice.</p> <p>Site verification inspection is required to be done prior approval of the close-out letter.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Compass, KwaZulu Natal</b>	<p>An inspection was conducted at the facility on 15 June 2020 and the following were found:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• Records to demonstrate compliance including waste manifests were not made available</li> </ul>
<b>Makhathini, KwaZulu Natal</b>	<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>
<b>Buhle Waste, Limpopo</b>	<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"> <li>• Non-scanning of waste for radioactivity.</li> <li>• Lack of a validation report from an accredited laboratory, and related Converter reduction tests</li> <li>• Non-existence of external audits and monitoring committee</li> <li>• Follow-up inspection was conducted on 16 July 2020 against the conditions of Reviewed WML:</li> <li>• 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.</li> </ul> <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> <p>Close-out letter was drafted and not yet approved yet.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
Others	
<b>South 32 Richards Bay (formerly known as BHP Billiton), KwaZulu Natal</b>	<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"> <li>• Non-compliances to conditions of the authorisations (WMLs, ECA permits, EA, AEL);</li> <li>• Groundwater pollution around the old un-rehabilitated disposal sites;</li> <li>• Overflows and discharge of contaminated water from disposal sites into the watercourses surrounding the facility; and</li> <li>• Failure to control and eradicate alien and invasive species in terms of NEMBA.</li> </ul> <p>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> <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>
<b>South 32 Richards Bay (formerly known as BHP Billiton), KwaZulu Natal</b>	<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:</p> <p>Page 52 of NECER 2016-2017; and</p> <p>Page 49 of NECER 2019-2020.</p>
<b>Organic Synthesis Engineering Chemistry</b>	<p>The compliance monitoring inspection was conducted on the 30 November 2021 by EMLs from this Department, and in establishing the compliance status of the facility, several non-compliances with the Waste Management Licence number 12/9/11/L1105/9 dated 18 November 2018 issued by this Department were detected.</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Organic Synthesis Engineering Chemistry</b>	<p>Enforcement action was initiated through issuance of the Pre-Compliance Notice dated 1 March 2022, representations received and under review.</p>
<b>Bio Med Disposal Services (Pty) Benoni Industrial Extension 9, Ekurhuleni Metropolitan Municipality, Gauteng.</b>	<p>A comprehensive, follow-up compliance inspection was conducted in November 2021 to monitor compliance with applicable environmental legislations and authorisations issued in terms of such legislation, with a particular focus on the Waste Management Licence (WML) with reference No. 12/9/11/L191202125624/3/R issued this Department of on 09 April 2020. The inspection also assessed compliance against National Environmental Management Act, 1998 (Act No. 107 of 1998), the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) and National Norms and Standards for the Storage of Waste, 2013 (GN No. 926 of 2013).</p> <p>Several non-compliances to WML, Norms and Standards and duty of care were detected, enforcement action was to be initiated to address the non-compliances.</p>
<b>SA Fuels and Combustion Supplies Reuse and Recycling (Pty) Ltd, Springs, Gauteng Province.</b>	<p>A compliance monitoring inspection was conducted on the 6th of August 2021 by EMLs from this Department. Non-compliance with conditions of the WML (Reference Number: 112/9/11/L50297/3 dated the 26th of August 2016) and the revised WML (Reference Number: 12/9/11/L21051295738/3/R dated the 16th of July 2021).</p> <p>Enforcement action was initiated through the issuance of a Pre-Compliance Notice dated the 25th of October 2021. Representations were submitted on the 29th of October 2021. Additional representations were submitted on the 5th of November 2021 and the 1st of December 2021, Further information was requested. A decision will be made as to how to proceed.</p>
<b>Bushveld Vanchem, Witbank, Mpumalanga Province</b>	<p>A comprehensive joint compliance inspection was conducted on the 28th of April 2021, and the following possible contraventions were identified:</p> <ul style="list-style-type: none"> <li>• Non-compliance with the WML;</li> <li>• Non-compliances with the AEL including exceedances of the maximum emission rates; and</li> </ul>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process
<b>Bushveld Vanchem, Witbank, Mpumalanga Province</b>	<ul style="list-style-type: none"> <li>Groundwater quality exceeding stipulated limits.</li> </ul> <p>A Notice of Intention dated the 20th of August 2021 was issued to the facility. Representations were submitted during March 2022. Certain concerns in relation to the representations have been raised with the facility, who have been afforded an additional opportunity to respond thereto. At the time of writing hereof, the facility is still within the timeframes for submission of the additional information.</p>

## 8.2 Municipal Landfill Site Compliance

This is an ongoing project initiated during 2017/18 Financial Year. The sector was prioritised for inspections due to the poor compliance records amongst the sectors inspected by the EMIs. The objective of the project is to assess the level of compliance with the requirements of authorisations and environmental legislation applicable to landfill sites with the aim to improve compliance at these sites. EMIs are continuing to take enforcement action against municipalities for contraventions identified.

The following table presents a number of landfill sites inspected by the EMIs as part of this project since 2017. At the end of 2021/22 FY, a total of 307 sites which represents 51% of the 581 sites across the country have been inspected as part of this project.



PROVINCE	2017/18 FY	2018/19 FY	2019/20 FY	2020/21 FY	2021/22 FY	Total landfills inspected between 2017/18 and 2021/22 ( * total number of sites in brackets)
Eastern Cape	7	6	5	2	5	18
Mpumalanga	5	13	17	21	18	42
Gauteng	3	7	12	11	16	22
Northern Cape	5	5	9	15	17	17
North West	2	16	14	18	8	21
KwaZulu Natal	8	4	16	8	8	34
Western Cape	18	54	61	69	44	100
Limpopo	25	21	22	18	29	34
Free State	-		2	5	9	21
<b>TOTAL</b>	<b>73</b>	<b>126</b>	<b>158</b>	<b>169</b>	<b>154</b>	<b>307 (581)</b>

**Table: Number of sites inspected per province**

As shown in the figure below, none of the provinces has more than half of their sites achieving a compliance score of over 75%. All inspected sites in Northern Cape and Free State achieved compliance status of less than 50%.



Figure: Compliance rating of sites per province

Amongst others, the following observations were made in relation to issues posing a risk to the environment i.e. access control as well as waste compacting and covering:

- Lack of access control as a result of lack of or inadequate fencing and manned gates resulting in animals as well as reclaimers setting up shacks and living within the landfill sites. In addition, waste types which are prohibited<sup>1</sup> from landfill sites, like tyres, are still disposed of since there is no personnel to monitor incoming waste. As shown in the figure below, only four provinces (Gauteng, Limpopo, Western Cape and Kwa Zulu Natal) have adequate access control at more than 50% of the inspected sites.

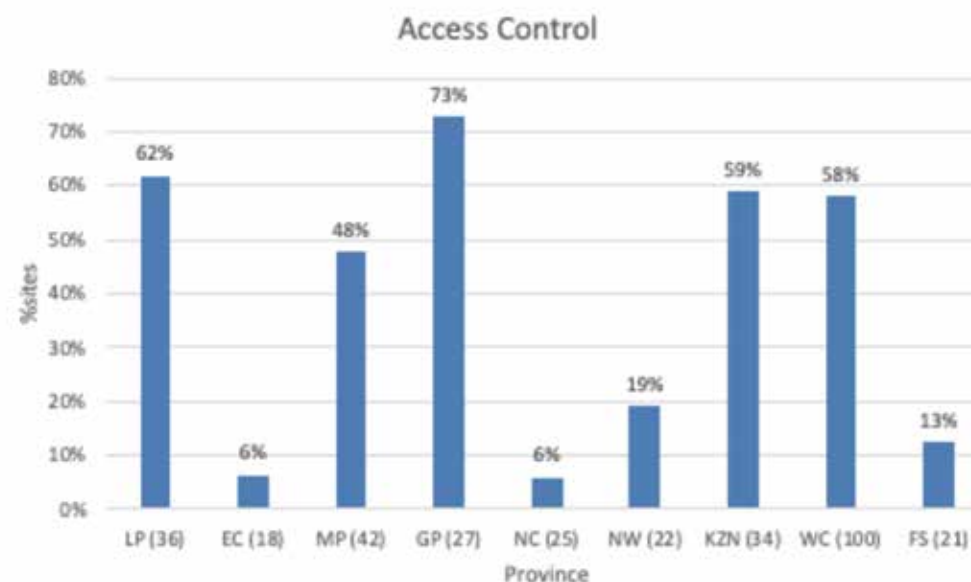


Figure: Percentage of sites with adequate access control per province



- Waste which is not covered with suitable material on a regular basis increases nuisance and environmental concerns like odour, dust, windblown litter as well as the presence of scavengers and vermin. The risk of fire due to readily available combustible material and increased leachate production caused by infiltration of rainwater into the waste is also increased. Only two provinces (Mpumalanga and Gauteng) have sites, the majority of which have adequate covering. All inspected sites in Northern Cape and Free State are not adequately covering and compacting waste.

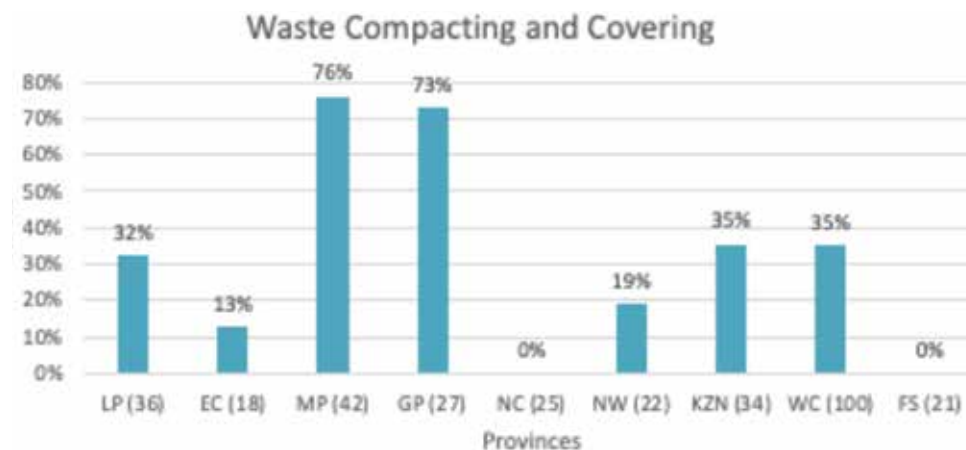


Figure: Percentage of sites with adequate waste covering and compacting



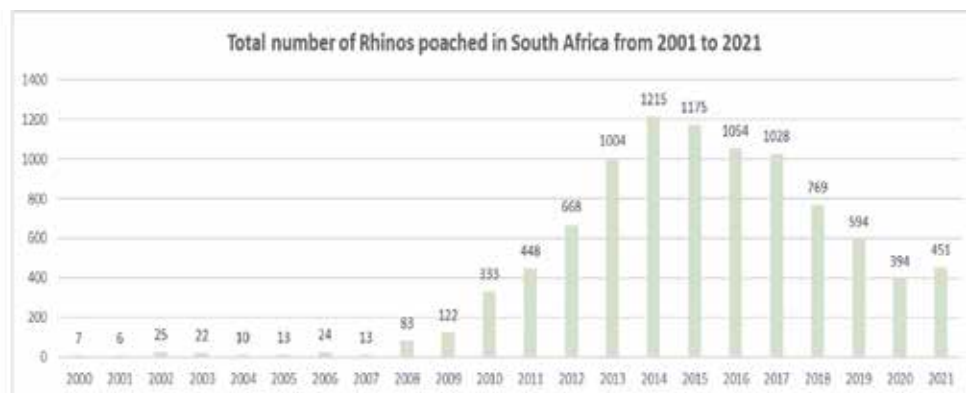
**BIODIVERSITY/ PROTECTED AREAS  
COMPLIANCE AND ENFORCEMENT**

## 9. BIODIVERSITY/ PROTECTED AREAS COMPLIANCE AND ENFORCEMENT

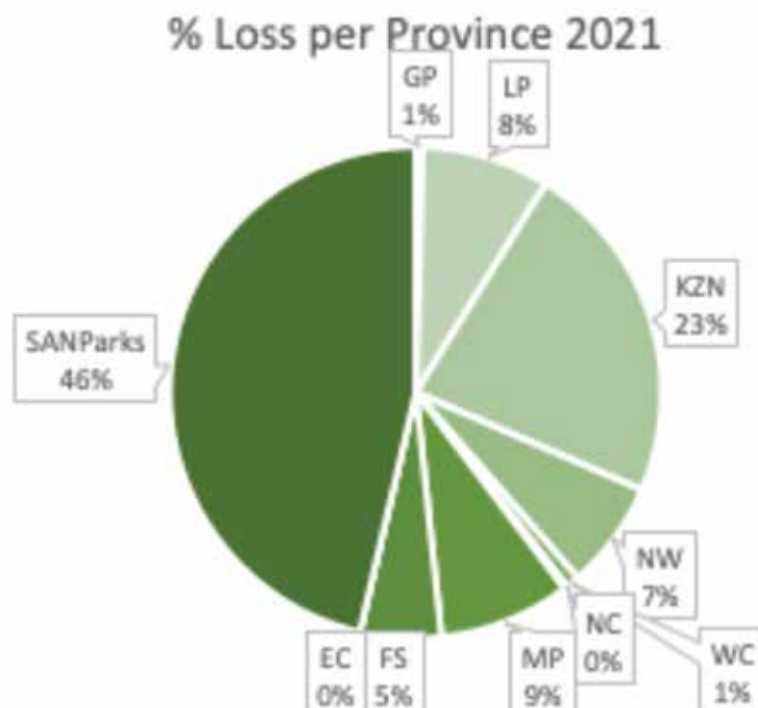
During the 2021/22 Financial Year, the Inspectorate continued with its foundational work to combat the decline of species known to be at risk from illegal activities. In this respect, the multi-stakeholder Rhino Anti-Poaching (RAP) Sub Committee continued its collaborative efforts to give effect to the recommendations of the August 2016 Rhino Lab. In addition, a strategic, proactive approach was adopted in order to address the emerging risk to specific plant species. The National Response Strategy and Action Plan to Address the Illegal Trade in South African Succulent Flora was developed in response to a recent, dramatic rise in the illegal harvesting of succulent plants across South Africa's arid zone.

South Africa	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>SANParks</b>	0	4	20	14	7	10	17	10	36	50	146	258	428	609	828	826	662	504	422	328	247	209	5635
<b>Gauteng</b>	0	0	0	0	0	0	0	0	0	7	15	9	1	8	5	2	6	4	2	5	2	2	68
<b>Limpopo</b>	0	0	0	0	0	0	0	0	23	16	52	74	59	114	110	91	90	79	40	45	18	38	849
<b>Mpumalanga</b>	0	0	0	0	0	0	2	3	2	6	17	31	28	92	83	67	32	49	51	34	13	39	549
<b>North West</b>	0	0	0	0	0	2	0	0	7	10	57	21	77	87	65	46	56	96	65	32	19	32	672
<b>Eastern Cape</b>	0	0	0	0	0	0	0	0	1	3	4	11	7	5	15	14	17	12	19	2	0	0	110
<b>Free State</b>	0	0	0	0	0	0	0	0	0	2	3	4	0	4	4	10	17	38	16	11	1	24	134
<b>KwaZulu Natal</b>	7	2	5	8	3	1	5	0	14	28	38	34	66	85	99	116	162	222	142	133	93	102	1365
<b>Western Cape</b>	0	0	0	0	0	0	0	0	0	0	0	6	2	0	1	1	0	0	0	0	0	4	14
<b>Northern Cape</b>	0	0	0	0	0	0	0	0	0	0	1	0	0	0	5	2	12	24	12	4	1	1	62
<b>Total</b>	7	6	25	22	10	13	24	13	83	122	333	448	668	1004	1215	1175	1054	1028	769	594	394	451	9458

Table 11: Numbers of rhinos poached in South Africa per annum: 2000 - 2021



Graph 7: Numbers of rhinos poached in South Africa per annum: 2000 - 2021



Graph 8: Percentage of rhinos poached per province in 2021

### 9.1 Work of the Rhino Anti-Poaching Sub-Committee

The RAP is a sub-committee of MINTECH Working Group 4 and was set up to drive implementation of the anti-poaching initiatives from the August 2016 Rhino Lab. The RAP Sub-Committee comprises representatives of the DFFE Chief Directorate: Sector Enforcement, provincial conservation authorities, South African National Parks, South African Police Service, private rhino owners and Integrated Wildlife Zones.

- The following initiatives from the Rhino Lab were taken forward during the 2021/22 FY:
- The zoning approach was further refined with the establishment of seven Integrated Wildlife Zones (IWZ) (with support from Peace Parks Foundation) to enable allocation of resources and more effective collaboration within these high risk geographical areas, inclusive of the private sector;
- National roll out of CMORE, a situational awareness information management platform, where all role players within the IWZ as well as other programmes are able to collaborate, making use of real-time insights and analytical capability;
- Park Ranger Qualification curriculum was finalised and is awaiting certification by QCTO;
- National coordination/liaison and consolidation of information and support by DFFE through the establishment of Environmental Enforcement Fusion Centre (EEFC) inclusive of the Analyst Unit;

Work continued with the security cluster in the context of the draft National Integrated Strategy to Combat Wildlife Trafficking (NISCWT) to gather, analyse and share intelligence in a wider anti-trafficking approach and a number of focussed investigations were initiated relating to illegal killing of rhinoceros and trade parts and derivatives.



Map 1: Rhino Anti-Poaching Integrated Wildlife Zones

## 9.2 National Response Strategy and Action Plan to Address the Illegal Trade in South African Succulent Flora (January 2022)

Recent years have shown a dramatic rise in the illegal harvesting of succulent plants across South Africa's arid zone. Provinces affected include the Eastern, Western and the Northern Cape with focus being on species occurring within the Succulent Karoo Biome. This biome in particular contains species with high levels of diversity and endemism and as such has been identified as a global biodiversity hotspot of international and national importance. Many of these unique species are often not available in nurseries / as cultivated material to supply the current demand.

This demand is primarily driven by the Far East for horticultural / private collections and due to this lack of availability South Africans are increasingly being enticed to illegally collect targeted species. The high demand has therefore resulted in indiscriminately illegal in-situ collection of these unique species, causing several species to be driven to the brink of extinction.

As such DFFE, with support from SANBI and the Worldwide Fund for Nature convened a two-day strategic workshop with key role-players to ensure a collaborative approach when drafting a National Response Strategy aimed at addressing this key issue. Role-players included relevant government agencies, conservation authorities, NGOs with

local community input and ensured that the strategy encompasses several high-level objectives relating to the succulent flora of the arid zone and went about setting key actions required to successfully meet the following objectives:

## RESPONSE STRATEGY AND ACTION PLAN OBJECTIVES



1. Ensure the long-term survival of representative populations;
2. Ensure the establishment of well-managed ex situ collections;
3. Capacitate the compliance and enforcement sector to enable more effective action against illegal collection and trade;
4. Ensure the policy and regulatory environment frameworks are streamlined to support improved compliance and enforcement, whilst also enhancing sustainable use and management;
5. Reduce pressure on wild populations by engaging local communities and facilitating diversification of livelihoods (where applicable);
6. Develop effective and consistent communication briefs about the impact of illegal

plant collection and trade that fosters biodiversity positive attitudes and does not lead to un-intended consequences; and

7. Explore options for the development of a formal economy that benefits the country and contributes to socio-economic development and conservation.

8. Under each objective, key actions, sub-actions, lead agents, supporting role players, priority and timelines have been assigned.

Implementation of this National Response Strategy will be prioritised in the next financial year.

# OCEANS AND COAST COMPLIANCE AND ENFORCEMENT



## 10. OCEANS AND COAST COMPLIANCE AND ENFORCEMENT

In the 2021/2022 financial year the oceans and coastal compliance and enforcement sector focused its efforts on a number of illegal activities having a detrimental impact on the coastal environment, including Coastal Pollution, Illegal Structures/Encroachment, Off-Road Vehicle driving, illegal access points and feeding of marine species.

In order to supplement these operational activities, EMLs operating in this sector also participated in proactive measures to educate and raise awareness amongst communities on the importance of compliance with the laws that regulate the coastal zones. These initiatives are aimed not only at decreasing the incidents of non-compliance, but also encouraging members of the public to report non-compliances to the relevant authorities.

### 10.1 Coastal pollution

#### 10.1.1 – Gqeberha Harbour

A coastal pollution operation, consisting of several inspections, was aimed at identifying the sources of pollution along the Sunshine Coast, particularly, in and around Gqeberha Harbour and the Swartkops estuary. Pump stations situated on and around Gqeberha Harbour belonging to Nelson Mandela Bay Municipality (NMBM) were identified as the potential pollution sources because they often malfunction and are designed to allow effluent to overflow directly into coastal waters via storm-water outlets and canals. Motherwell canal and Markman canal which are maintained and managed by NMBM have been identified as the sources of effluent and solid waste which ends up into Swartkops Estuary.

Administrative Notices (including 2 Pre-Coastal Protection notices, 1 final Coastal Protection; and 1 Pre-Directive and 1 Final Directive) were issued to NMBM to instruct them to comply with the coastal legislation and cease with any pollution causing activities in the Gqeberha Harbour and the Swartkops estuary. Moreover, businesses such as fish restaurants and abalone farms were issued with notices due to their contribution to coastal pollution.



Photo: DFFE and NMBM officials during inspections at the municipal pump stations

#### 10.1.2 Transnet National Port Authority - Durban Port

EMLs investigated several complaints relating to discharge of raw sewage at various storm water outfall drains into coastal waters and Durban harbour. The discharge of raw sewage was due to failure of the municipal wastewater treatment work infrastructure. Administrative notices were issued to eThekweni Municipality in this regard. Unfortunately, numerous pollution incidents continue to take place and it will be necessary to initiate a criminal investigation, as administrative notices are not being complied with.

### 10.2 Illegal Developments/Encroachments

Landowners and establishments along the Eastern Cape coastline often maintain and modify areas that fall outside of their property boundaries and encroach illegally onto coastal public property. In Jeffrey's Bay, twelve administrative notices were issued to owners who undertook a number of encroachment activities, including the

clearing of coastal vegetation and the construction of infrastructure. The remediation of these areas is achieved through the issuance of administrative enforcement notices, instructing the landowners, where applicable, to cease and remove these encroachments.



**Photo: Removal of stairs constructed outside of the cadastral property boundary after administrative enforcement notices served**

### 10.3.Unauthorised Use of Vehicles in the Coastal Environment

#### 10.3.1 Wild Coast

Various vehicles, including trucks and bakkies, are frequently used by offenders in the Wild Coast to illegally extract significant volumes of sand from the beach and coastal dunes. Five case dockets relating to the unauthorised use of vehicles in the coastal area were opened and registered in various police stations (Coffee Bay

and Willowvale). Three cases were finalised with admission of guilt fines of R3000 paid by each truck driver. Two cases are still pending. Furthermore, twenty-three fines have been issued resulting from the unauthorised use of vehicles within the coastal area, for purposes of illegal sand mining and fishing. Focused operations will continue in relation to the illegal mining and extraction of sand which, not only has a detrimental impact on the environment, but also involves organised crime syndicates with increased amounts of money being made as a result of these illegal activities.

#### 10.3.2 KZN Off-Road Driving Prohibition Signboards

A total of 7 Off-Road Vehicle (ORV) Driving Prohibition Signboards were installed along the coast of KZN, where they were strategically placed in hotspot areas due to the high number of complaints and tyre tracks observed during coastal patrols. The signboards instruct the public not to use any vehicles within the coastal area unless in possession of a permit as per the 2014 Regulations under NEM:ICMA.

Despite all these efforts, illegal activities persist and require ongoing vigilance from members of the public. For example, EMLs received a complaint regarding the use of ORVs at the Richards Bay Harbour, and together with the assistance of Border Police, tracked down and apprehended the driver and apprehended. A criminal case was registered at Richards Bay.



**Photo: Illegal ORV Driving in KZN**

On another occasion, following complaints received by the Department regarding ORV use at uMkomaas River Mouth North, KZN, EMIs were deployed to investigate the matter together with eThekweni Local Municipal Parks and Beaches law enforcement. Two criminal cases were subsequently registered in respect of the individuals that were caught using ORVs outside the designated boat launch site boundaries.



**Photo: Two vehicles found in uMkomaas River Mouth contravening the ORV Regulations**

#### 10.3.3. ORV use in the Western Cape (Walker Bay Nature Reserve)

In 2022, a joint operation was coordinated to focus on the continuous challenge of unlawful ORV usage along the Walker Bay Nature Reserve, Western Cape. During the operation it became evident that there is a need to align the approaches taken by all relevant regulatory authorities to vehicular access to these types of areas. However, what was concerning was how close the Black Oysters lay their eggs to the 4x4 trails. This further highlighted the need for the public to strictly drive in demarcated trail routes and stay off other parts of the coastal zone.

#### 10.4 Illegal Feeding of Marine Species (Hout Bay, Western Cape)

EMIs assessed the situation at Hout Bay in relation to the feeding of seals which has persisted for at least the past 20 years. The intention was to engage with the community members and inform them that the feeding of seals is a prohibited activity without a permit and that it contributes to the habituation of wild seals. This activity remains a challenge as the seals come from Duiker Island and have local populations in Hout Bay.

Since the removal of seals is not a viable option, compliance monitoring coupled with awareness raising and enforcement will continue while exploring other options to prevent these illegal activities, keeping in mind that Hout Bay has been identified as a tourist destination with many of its community members living below the poverty line. EMLs also engaged with the Hout Bay Seal Rehabilitation Centre who had provided a draft community outreach proposal and would like to work with the Inspectorate and the community members to uplift the area. The recommendation was to engage with the community and rather see if they can become “voluntary ambassadors/ conservationists” with aim of protecting the seals.

## 10.5 Environmental education and awareness

### 10.5.1 Westbank clean up: Coastal Pollution (Solid Waste)

In September 2021, various stakeholders, including DFFE, DEDEAT, Buffalo City Metropolitan Municipality and Coca Cola participated in this clean-up. The campaign had 80 participants that were divided into groups to clean various sections within West Bank coastline. Officials from each of these institutions presented on their respective roles with regards to the coastline, and educated or capacitated the participants about the impacts and solutions towards the illegal dumping in the area. Recycling was also encouraged by officials as some of the waste included plastic bottles and other materials that can be recycled and sold to gain some income.



Photo: environmental education and clean up campaign at West Bank

### 10.5.2 Eastern Cape Traditional Leaders interventions

#### 10.5.2.1 Traditional leaders' workshop – Wild Coast Sun - 9 & 10 November 2021

The DFFE, together with Eastern Cape Department of Cooperative Governance and Traditional Affairs and DEDEAT hosted a Traditional and community leader's workshop at Wild Coast Sun Hotel in Mbizana, on 9th and 10th of November 2021. This two-day workshop targeted traditional and community leaders from coastal areas of Lusikisiki, Flagstaff and Mbizana.

The purpose of this workshop was to raise awareness on marine and coastal environmental legislation, whilst acknowledging the leadership authority vested in various traditional houses. This initiative continues to demonstrate the importance of the Traditional leader's involvement in assisting compliance and enforcement officials who operate primarily in the oceans and coastal space of the Eastern Cape Province to confront the challenges faced. Over 20 traditional and community leaders from Eastern Cape attended the Marine and Coastal Compliance and Enforcement Promotion workshop. Over 50 government officials attended the workshop. These Departments included the DALRRD, DMR, DWS, Eastern Cape Provincial Heritage Resources Authority and ECPTA.

Traditional leaders have stressed the need for environmental education and awareness programmes in their respective communities and that the workshops should include inland Traditional leaders as environmental issues affect all people.

#### 10.5.2.2 Debriefing meeting – 22 February 2022

The DFFE together with Eastern Cape Department of Cooperative Governance and Traditional Affairs and DEDEAT hosted a workshop debriefing session with linkosi. Over seventeen (17) traditional leaders from Eastern Cape attended the linkosi debriefing session that was held at Wild Coast Sun Hotel in Mbizana, on 22<sup>nd</sup> February 2022. The purpose of the debriefing session was to evaluate the impact of the workshops held with Traditional Leaders in the Eastern Cape on 18-19 February 2019, 21-22 August 2019 at Mthatha and 9-10 November 2021 at Mbizana respectively - whether the presentations were relevant and helpful to the Traditional Leaders, especially enabling them to explain the same to their communities. The session also focused at providing Traditional Leaders with an opportunity to share their views and experiences on how government and Traditional Leaders can best work together in the management and protection of coastal resources.

#### *10.5.2.3 KwaZulu Natal Traditional Leaders interventions*

As a direct result of the marine coastal compliance and enforcement workshop for traditional leaders that was held on 23-25 March 2021 in uMhlanga, KZN, a criminal case was registered for coastal forest clearance following a complaint lodged by Inkosi and the community. Individuals were caught harvesting threatened and protected trees for medicinal use without authorisation. A case docket was registered at KwaMbonambi Police Station. Four suspects were arrested and detained, and 49 big bags of medicinal plants were seized. This proves the success of the workshops, as Traditional Leaders and community members are now aware of which activities are illegal in terms of marine and coastal environmental legislation.



**Photo: Traditional Leaders and Izinduna: the Marine and Coastal Legislations Compliance and Enforcement promotion workshop in Mhlanga, KZN**

# JOINT COMPLIANCE AND ENFORCEMENT OPERATIONS



## 11. JOINT COMPLIANCE AND ENFORCEMENT OPERATIONS

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



#### Introduction

The Marine and Ocean Crime Priority Committee (MOCPC) (Initiative 5 of Operation Phakisa) continues, through a joint multi-dimensional approach, to provide for the continued enforcement of and adherence to South African maritime legislative and regulatory frameworks in territorial waters and maritime zones. Constituted as the MOCPC of the NATJOINTS in the previous reporting period, the operational approach is developed around the 5 Pillar Plan associated with the National Crime Combatting Strategy. The MOCPC has the responsibility to report on and assimilate all marine and ocean crime successes and confiscations to ensure an integrated, national picture. Previous perceptions of maritime security were related to naval and policing actions. With the changing of the global economy and reliance on maritime trade routes, maritime security has become inclusive of national security, marine environmental crime, economic development, and human security. The practical aspects now include crimes such as trafficking of illicit goods (include fauna and flora and other environmentally damaging products / items including waste), illegal fishing and marine pollution.

Led by the DFFE, supported by the NATJOINTS, operations are planned and executed in the Western Cape, Eastern Cape, Northern Cape as well as KwaZulu Natal territorial waters, inclusive of the adjacent coastal areas, and the maritime zones.

During the reporting period, **confiscations to the value of R 55 740 337** were effected, with the confiscations of **abalone amounting to R 39 739 550**. Although the abalone confiscations are considerable, the abalone has already been removed from the water and whilst these activities are reported as successes, they do not contribute to the survival of the species in the ocean. Although the MOCPC has made a notable impact on the mitigation of illegal camp sites and structures along the seaboard, illegal mining continues in large areas of the coastal region and contributes to ecological damage of local ecosystems. The placement of dolosse has prevented access to some sites but the illegal miners constantly move.



Photo: 13 trucks caught illegally sand mining in Mzamba

The MOCPC meets every alternate month. Chaired by DFFE and co-chaired by the SAPS, the MOCPC functions as per the Enhanced and Coordinated Compliance and Enforcement Programme Initiative 5 Work Plan. The Work Plan has nine Performance Indicators with specific quarterly targets. Phakisa 5 has managed to meet the majority of the targets for 21/22. The MOCPC is supported by the Intelligence for Operations Sub-Task Team providing integrated and coordinated National situational, trends and challenges overview to the MOCPC.

#### Planned operational approach

- During the reporting period, confiscations to the value of **R 55 740 337** were effected. The breakdown of confiscations are as follows:
- **Abalone.** R 39 739 550.
- **Crayfish/Rock Lobster.** R 1 915 530

- **Associated Equipment.** R 10 394 875. Associated equipment is inclusive of boats, vehicles, trailers, diving equipment, processing equipment and nets.
- **Other Marine Resources.** R 455 190. Other marine resources are non-abalone, crayfish or rock lobster confiscations.
- **Non-Marine Resource.** R 3 235 083. Non-marine resources are confiscations that are not used in the illicit harvesting of marine resources, such as enhancing creams, cigarettes and copper wire.

Action	Total	Action	Total
Beach Vehicle Patrols	7 212	Processing Inspections	<b>379</b>
Beach Foot Patrols	3 427	• On vessel at sea	176
Slipways Visited	5 743	• Processing plant on land	166
Harbour and Yacht Clubs Visited	2 464	• Aquaculture facility	37
Business Inspections	263	Permits Checked	<b>9 622</b>
Persons Searched	4 469	• Commercial	2 454
Vehicles Searched	5 002	• Interim Relief	746
VCP	978	• Recreational	6 422
Prevention	1 329	Vessels Inspected	<b>3 180</b>
Sea Patrols	350	• Foreign	81
Observation Duties	695	• Commercial	1 517
		• Interim Relief	338
		• Recreational	1 244

Table 12: MOCPC Operational Activities: 2021/22

### Illegal, unreported, and unregulated (IUU) fishing.

During one of Phakisa focussed joint operations in August 2021, there was a notable success against the Seychelles Flagged Fishing Vessel TORNG TAY NO 1 for under declaration of catch. Her catch on-board differed to that declared on the AREP and the Master was fined R 50 000, with R 500 000 suspended for 3 years.



Photo: Vessel TORNG TAY NO 1 fines for under-declaration of catch

### Reactive approach

During the period under review, five interventions were conducted beyond territorial waters. Three interventions were related to the possible smuggling of narcotics, one was suspected IUU activity and one related to possible environmental crime. The Oceans and Coastal Information Management System Integrated (OCIMS) Vessel Tacking was used to good effect in all interventions and highlighted the value of a maritime domain awareness system.

### Conclusion

Initiative 5 of Phakisa highlights government's commitment to enhancing the blue ocean economy, enforcing maritime and marine legislation, and mitigating marine related crime in the maritime zones. The results from the operations are indicative of the commitment by members of the participating departments to establishing a secure maritime environment that will be appreciated by future generations.

This Initiative has proven that an integrated coordinated approach to Maritime Compliance and Enforcement is possible, effective and has a positive impact on the environment and public opinion. The presence of an integrated law enforcement component allows for a broad spectrum of risks threats to be identified and mitigated.

A possible contributing factor to the success of the Initiative 5, is the expansion of the Phakisa ICC and enforcement decision making processes, to include departmental information from the non-traditional ICC members such as the Revenue Service, Fisheries and Environment. This has allowed subject matter expert information contributing to the planning and execution of the operational approach.

# PROSECUTION OF ENVIRONMENTAL OFFENCES IN 2020/21



## 12. PROSECUTION OF ENVIRONMENTAL OFFENCES IN 2020/21

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

### 12.1 Pollution and Waste Convictions

#### 12.1.1 Sewage

S v Ellias Maphanga	
<b>Province:</b>	Limpopo
<b>Description:</b>	<p>DFFE received a complaint from the Presidency regarding the alleged discharge of raw sewage into the storm water drains in Jane Furse within the Makhuduthamaga Local Municipality in Limpopo. The complainant further alleged that the downstream community relies on the water from the local river and the risk to health and the environment was of concern.</p> <p>On the 23 February 2018 EMIs conducted a site inspection to assess and confirm the allegation of pollution of the local river; and observed the trench that was dug through the wetland to allow raw sewage to flow into the river at Maphanga Residence. Another follow-inspection was also conducted on the 21 June 2018 and ongoing pollution was observed.</p> <p>A site investigation was conducted by the EMI at Maphanga Residence, and they observed next to the houses constructed next to the wetland, large black septic tank discharging the raw sewage to the environment. It was also alleged that Mr Maphanga failed to comply with the CN.</p>
<b>Charges:</b>	<ul style="list-style-type: none"> <li>• Section 26(1)(b) read with Section 1, Section 67(1)(a) and Section 68(1) of the NEMWA of 2008: unlawful discharge of sewage in a manner that is likely to cause pollution to the environment.</li> <li>• Section 49A(1)(a) read with Section 1, 24F and Section 49B of the NEMA, further read with Activity 14 &amp; 19 of Regulations GN R983 of 04 December 2014: conducting Listed Activities without Environmental Authorisation.</li> <li>• Contravention of Section 151(1)(a) &amp; (2) read with Section 1, 21(a) &amp; (b), 22(1) &amp; 152 of the NWA to wit: conducting Water Use Activities without a WUL.</li> </ul>
<b>Judgement/Sentence:</b>	<p>Accused pleaded guilty in terms of S112 of the CPA on 3 counts in contravention of the provisions of NEMA, NEMWA and NWA and was sentenced on count 2 (NEMWA) and 3 (NEMA) taken together, <b>to 20 years imprisonment or R100 000 fine, half suspended for 5 years</b> on condition that he was not found guilty of any contravention of NEMA and NEMWA during the period of suspension and also on condition that he comply with the rehabilitation order. He was also sentenced on Count 5 (NWA) <b>to 5 years imprisonment or a fine of R5000.</b></p>

#### 12.1.2 Ecological degradation

S v Hidwa Mabone Enterprise (Pty) Ltd	
<b>Province:</b>	Mpumalanga
<b>Description:</b>	<p>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.</p>
<b>Charges:</b>	<ul style="list-style-type: none"> <li>• 1 count of contravening Section 49A(1)(f) read with Sections 1 &amp; 49B(1) of the National Environmental Management Act, 107 of 1998.</li> <li>• 1 count for contravening of Section 151(1)(a) &amp; (2) read with Section 1, 21(c), 22(1) &amp; 152 of the National Water Act, 36 of 1998section 49A(1)(f) of NEMA.</li> <li>• 1 count of contravening section Section 151(1)(a) &amp; (2) read with Section 1, 21(i), 22(1) &amp; 152 of the National Water Act, 36 of 1998.</li> </ul>
<b>Judgement/Sentence:</b>	<p>The accused pleaded guilty in terms of Section 112 of the CPA and was sentenced to a <b>R200 000 (two hundred thousand rand) which was wholly suspended for 5 years</b> with conditions, which included the rehabilitation of the site by the accused.</p>
S v Nongobozi Trading Enterprise CC	
<b>Province:</b>	Mpumalanga
<b>Description:</b>	<p>The Accused were found mining unlawfully within the Barberton Nature Reserve. Company claimed that they had a permit to mine in the area however investigation revealed that permit they possess did not authorised them to mine in the Protected Area. issued.</p>
<b>Charges</b>	<ul style="list-style-type: none"> <li>• Contravention of Section 48(1)(a) read with Section 89(1)(a) and (2) of NEM:PAA: Unlawfully &amp; intentionally conducting mining activities in a nature reserve.</li> </ul>

**S v Nongobozi Trading Enterprise CC****Charges**

- Contravention of Section 89(3) read with Section 86 of NEM:PAA and Regulations 36(b) and 54(a) of GNR 99 dated 8 February 2012: Unlawfully & intentionally digging of soil in a nature reserve without a written Authorisation of management.
- Contravention of Section 46(1) read with Section 89(1)(a) of the NEM:PAA: Unlawfully & intentionally entering in a nature reserve without the written permission by the Management.
- Contravention of S49(1)(f) read with S48B(1) of the NEMA: Unlawfully & intentionally committing an act that is likely to detrimentally affect the environment.
- Contravention of Section 21(c) read with S22, S151(1)(a) and S151(2) of NWA: Unlawfully & intentionally used water otherwise than as permitted in Act: Impeding or diverting the flow of water in a water resource.
- Contravention of Section 21(f) read with S22, S151(1)(a) and S151(2) of NWA: Unlawfully & intentionally used water otherwise than as permitted in Act: Discharging waste or water containing waste into a water resource.
- Contravention of Section 21(i) read with S22, S151(1)(a) and S151(2) of NWA: Unlawfully & intentionally used water otherwise than as permitted in Act: Altering the beds, banks, course or characteristics of a water resource.

**Judgement/Sentence**

The accused 1 (the company) pleaded guilty in terms of Section 112(2) of the CPA and was sentenced for Counts 1 – 3 taken together to **R5 million fine wholly suspended for 5 years** with conditions that Accused not be convicted of similar offences, and sentenced for Counts 4 – 7 taken together to **R5 million fine wholly suspended for 5 years** with same conditions.

**12.1.3 Hazardous Waste****S v Enviroshore Refiners (Pty) Ltd****Province:**

KZN

**Description:**

In October 2017 the then DEA received a complaint from SARS Customs regarding a shipment of 57 containers that were imported into South Africa containing mixed waste. The waste was imported from a company in Oman, Asia by the accused. The contents of the containers were investigated, and samples were taken. The containers contained white plastic 1-ton bags filled with sand that was used in cleaning up chemical and hydro-carbon spills.

**S v Enviroshore Refiners (Pty) Ltd****Description:**

A site investigation was conducted at the premises of the Accused where it was discovered that the white plastic bags found in the containers were stored in huge piles on the site. It was further established that the accused had a Waste Management License and was in contravention of the conditions thereof as well as the Norms and Standards for storing waste.

**Charges:**

- 3 counts of contravening Section 67(1)(h) read with Sections 1 & 68(1) of the National Environmental Management: Waste Act, 59 of 2008.
- 2 counts for contravening section 67(1)(b) & 68(2) of the National Environmental Management: Waste Act, 59 of 2008.

**Judgement/Sentence:**

Accused pleaded guilty in terms of section 105A plea and sentence agreement and was sentenced to a fine of **R 500 000 which was wholly suspended for a period of 5 years** with conditions.

**S v Kings Suckers 24 7 (Pty) Ltd****Province:**

Gauteng

**Description:**

On the 13<sup>th</sup> December 2019, DFFE EMIs received a complaint from officials at the City of Tshwane regarding the illegal disposal of oil at the Rooiwal Waste Water Treatment Works ("WWTW"). The complainant in the matter followed the truck of the accused after they collected oil waste from a sewage tank. He followed them to the Rooiwal WWTW where he observed them emptying the contents of the truck into the WWTW. The complainant took photos and after this disposal the accused came to the premises for another two times to collect waste oil from the sewer and oil trap.

**Charges:**

- 1 count of contravening Section 67(2)(d) read with Sections 1 & 68(2) of the National Environmental Management: Waste Act, Act 59 of 2008
- 1 count for contravening Section 26(1)(a) read with Sections 1, 67(1)(a) & Section 68(1) of the National Environmental Management: Waste Act, Act 59 of 2008.

**Judgement/Sentence:**

Accused pleaded guilty in terms of section 105A plea and sentence agreement and was sentenced to a fine of **R 50 000 which was wholly suspended for a period of 5 years** with conditions. Accused was further sentenced to a **fine of R 30 000**.

**S v Matthews Khamalao and Michael Sesotlo****Province:**

Gauteng

**Description:**

Two accused were found where they were busy disposing of liquid waste onto an open piece of land

**Charges:**

Contravening Section 26(1)(a) read with Sections 1, 67(1)(a.) and 68(1) of the National Environmental Management: Waste Act, Act 59 of 2008 – illegal disposal of waste

**Judgement/Sentence**Both accused were sentenced to a fine of **R100 000,00** (One hundred thousand rand) wholly suspended for 5 years**S v Siyaphambili Waste Services****Province:**

KwaZulu Natal

**Description:**

During the 30 days at sea operation, it was found that Siyaphambili Waste Services stored used oil in open containers not suitable for waste storage. Oil spilled onto the ground which is likely to cause pollution/degradation to the environment.

**Charges:**

Contravening Section 49A(1)(e), read with section 1 of the National Environmental Management Act, Act 107 of 1998

**Judgement/Sentence:**The accused was sentenced to a fine of **R80 000,00 (eighty thousand rands) of which R40 000,00 (forty thousand rands) was suspended for 3 years** on condition that the accused is not convicted of having, during the period of suspension, committed the offense of contravening Section 49A(1)(e), read with section 1 of the National Environmental Management Act, Act 107 of 1998**12.1.4 Air Quality****S v Tronox Mineral Sands (Pty) Ltd****Province:**

Western Cape

**Description:**

The accused conducted a listed activity without an AEL by operating a Mineral Separation plant in which mineral solids are dried.

**Charges:**

Contravening Section 22, read with Section 51(1)(a) of the National Environmental Management: Air Quality Act No 39 of 2004

**Judgement/Sentence:**The Accused is sentenced to pay a fine of **R 5 000,000.00, (five million rand) of which the amount of R 1 000 000.00 (one million rand) is suspended for a period of 1 year**, on condition that the accused is not convicted of contravening the provisions of section 22 of the National Environmental Management: Air Quality Act No. 39 of 2004 ("the Air Quality Act")**12.2 Biodiversity Convictions****12.2.1 Rhinoceros**

A special focus is placed by the NPA on the prosecution of rhino and related matters in order to curb this growing transnational phenomenon. During the period of April 2021 to March 2022, 102 accused were convicted in 96 finalised cases.

**S v Mhlanga, Hlongwane and Chauke****Province:**

North West

**Description:**

At about 04:41 on the morning of 2 July 2018 two men were seen walking inside the reserve carrying bags and something that looked like a rifle. The two men exited the reserve through the fence and was picked up by a white Light Delivery Van (LDV). After a long chase, the driver of the suspicious LDV left the tarred road and drove into the bushes. The driver lost control and the vehicle came to a standstill. The three occupants alighted and scattered into three different directions.

**S v Mhlanga, Hlongwane and Chauke****Description:**

The rangers chased them on foot. Two of the suspects got away and one was apprehended. Upon searching the LDV three sets of fresh rhino horns were discovered (six horns in total), a .375 caliber hunting rifle, two .375 caliber live rounds and a bloodstained axe.

**Charges:**

Count 1: Contravention of Section 57(1) of the NEM:BA: Restricted activity involving a listed threatened or protected species without a permit: to wit killing of a female white rhino;  
 Count 2: Contravention of Section 57(1) of the NEM:BA: Restricted activity involving a listed threatened or protected species without a permit: to wit killing of a female white rhino;  
 Count 3: Contravention of Section 57(1) of the NEM:BA: Restricted activity involving a listed threatened or protected species without a permit: to wit killing of a female white rhino;  
 Count 4: Contravention of Section 57(1) of the NEM:BA: Restricted activity involving a listed threatened or protected species without a permit: to wit chopping and or cutting (dehorning) six (6) horns from three (3) female white rhinos;  
 Count 5: Contravention of Section 57(1) of the NEM:BA: Restricted activity involving a listed threatened or protected species without a permit: to wit possession of six (6) white rhino horns;  
 Count 6: Contravention of Section 57(1) of the NEM:BA: Restricted activity involving a listed threatened or protected species without a permit: to conveying six (6) white rhino horns;  
 Count 7: Theft – read with the provisions of Section 51(2) of Act 105 of 1997;  
 Count 8: Contravention of Section 46(1) of the NEM:PAA: Entering or residing without permission;  
 Count 9: Contravention of Section 4(1)(f)(iv) of the Fire Arms Control Act 60 of 2000: Possession of a prohibited firearm;  
 Count 10: Contravention of Section 90 of the Fire Arms Control Act 60 of 2000: Possession of Ammunition

**Judgement/Sentence:**

Count 1: 10 years imprisonment; Count 2: 10 years imprisonment; Count 3: 10 years imprisonment; Count 4: 10 years imprisonment; Count 5: 10 years imprisonment; Count 6: 10 years imprisonment; Count 7: 10 years imprisonment; Count 8: 3 years imprisonment; Count 9: 10 years imprisonment; and Count 10: 2 years imprisonment.

**S v Mlambo et al****Province:**

North West

**S v Mlambo et al****Description:**

On 20 October 2021 the operations room situated in Madikwe Nature Reserve noticed a white Quantum taxi driving around in the vicinity in a suspicious manner. The vehicle was stopped and five people emerging therefrom were taken to the Nietverdiend Police Station. One suspect escaped at the police station before he could be detained. The vehicle was searched and in the bonnet a black plastic bag containing two rhino horns, pieces of the mouth, the tail, a toenail as well as the two ears were discovered and seized. Inside the roof lining of the vehicle a .375 caliber hunting rifle, two rounds of live ammunition (one .375 caliber and one .416 caliber), two knives, an axe handle and a silencer were discovered and seized. In addition, underneath the driver seat in a compartment, another two horns were discovered.

**Charges:**

Count 1: Contravening Section 57(1) of the NEM:BA: Restricted activity involving a listed threatened or protected species without a permit: Hunting and or killing of a white rhino;  
 Count 2: Contravening Section 57(1) of the NEM:BA: Restricted activity involving a listed threatened or protected species without a permit: Hunting and or killing of a black rhino;  
 Count 3: Contravening Section 57(1) of the NEM:BA: Restricted activity involving a listed threatened or protected species without a permit: Chopping off the horns of a rhino;  
 Count 4: Contravening Section 57(1) of the NEM:BA: Restricted activity involving a listed threatened or protected species without a permit: Possession of four rhino horns;  
 Count 5: Contravention of Section 46(1) of the NEM:PAA: Entering or residing without permission;  
 Count 6: Contravention of Section 4(1)(f)(iv) of the Fire Arms Control Act 60 of 2000: Possession of a prohibited firearm; and  
 Count 7: Contravening Section 90 of the Firearms Control Act 60 of 2000: Possession of ammunition.

**Judgement/Sentence**

Accused 1: (Mlambo): Count 1: Ten (10) years imprisonment., Count 2: Ten (10) years imprisonment., Count 3: Five (5) years imprisonment., Count 4: Five (5) years imprisonment., Count 5: Two (2) years imprisonment., Count 6: Eight (8) years imprisonment., Count 7: Two (2) years imprisonment., It was ordered that the sentences imposed in Counts 2, 3, 4, 5 and 6 run concurrently with the sentence imposed in Count 1. Resultantly, the accused will serve **Twelve (12) years imprisonment.**

Accused 3 (Sithole):

Count 1: Ten (10) years imprisonment., Count 2: Ten (10) years imprisonment., Count 3: Five (5) years imprisonment., Count 4: Five (5) years imprisonment., Count 6: Eight (8) years imprisonment., Count 7: Two (2) years imprisonment,

It was ordered that the sentences imposed in Counts 2, 3, 4 and 5 run concurrently with the sentence imposed in Count 1. Resultantly, the accused will serve **Twelve (12) years imprisonment.**

**S v Valoyi****Province:**

Limpopo

**Description:**

Valoyi and his co accused, Ndlovu were arrested in May 2016 around Stolznek Section of Kruger National Park by rangers. Valoyi pleaded guilty. The state applied for a separation of trial and the trial is set down for 30 September 2021 in the same court.

**Charges:**

Trespassing in the Skukuza National Park, Contravention of Immigration Act, possession of a firearm with intent to commit a crime, possession of unlicensed firearm, possession of a dangerous weapon and possession of 6 rhinoceros.

**Judgement/Sentence:**

The court sentenced Valoyi to three years for trespassing, one-year for Contravention of Immigration Act, five years for possession of a firearm with intent to commit a crime, two years for unlicensed ammunition, one year for possession of a dangerous weapon and 15 years for possession of 6 rhinoceros. The court ordered the sentence in count 2 to run concurrent with that in count 1; and the sentences in count 4 and 5 to run concurrently. The **effective sentence is 23 years imprisonment**.

**S v Tibane and Sithole****Province:**

Limpopo

**Description:**

The three accused, Mhangane, Tibane, and Sithole were arrested in April 2019 by the police outside Kruger National Park around the area of Komatipoort and were found in possession of two rhino horns, firearm, ammunitions and an axe.

The other accused Mhangane, a South African citizen who was the driver of the vehicle that was utilised when they were apprehended by the police, pleaded not guilty and the state applied for a separation of trial which is set down for 27 July 2021 in the same court.

**Charges:**

Trespassing in Skukuza National Park, Contravention of the Immigration Act, killing of a rhino, possession of firearm with obliterated serial number, possession of silencer firearm, possession of firearm with intent to commit crime, possession of ammunition and possession of an axe.

**S v Tibane and Sithole****Judgement/Sentence:**

The court sentenced the pair to three years imprisonment for trespassing, one year of Contravention of Immigration Act, ten years for killing a rhino, six years for possession of a firearm with obliterated firearm, six years for possession of a silencer firearm, five years for possession of firearm with intention to commit crime, two years for possession of ammunition and one-year possession of an axe. The court ordered that the sentence in count 1 and 2 should run concurrently and further that counts 5,6,7,8 should run concurrently with count 4. **The effective jail term is 19 years imprisonment.**

**12.2.2 Cycads:****S v Tabonga and Tinashe****Province:**

Limpopo

**Description:**

The two accused were found in possession of 7 cycads with the value of R40 000 in a reserve, without a permit or permission to enter the reserve.

**Charges:**

Contravention of section 64(1)(a) of Act 7 of 2003 – picking, possession of specially protected plants (7), section 9(3)(a) of the Immigration Act 13 of 2002 and section 46(1) of NEMPAA – entered a reserve without permission.

**Judgement/Sentence:**

Tinashe: Count 1: 8 years imprisonment, Count 2: 2 years imprisonment, Count 3: 4 years imprisonment  
Tabonga: Count 1: 6 years imprisonment, Count 2: 2 years imprisonment, Count 3: 4 years imprisonment  
Sentences to run concurrently.

**12.2.3 Pangolin:****S v Robert Mlambo & others****Province**

Gauteng

**S v Robert Mlambo & others****Description**

On 9 July 2019 the Cullinan Stock Theft Endangered Species Unit conducted an operation in terms of section 252A Act 51 of 1977. On the date in question the accused proceeded to Silver Oaks Mall to finalize the transaction. Six accused were arrested at the said Mall and a live pangolin as well as the Toyota Fortuner were seized from the accused.

**Charges**

Contravening section 57(1) read with sections 1, 4, 6, 8, 56, 57, 87, 87A, 88, 90, 92, 93, 97, 98, 101(1) and 102 of NEMBA, further read with the Threatened or Protected Species List and Regulations (GN R150, R151 & R152) and further read with section 250 of the CPA.

**Judgement/Sentence**

10 years imprisonment

**12.2.4 Leopard:****S v Giyani Isaay Ntsemi, Saselamani****Province:**

Limpopo

**Description:**

Possession of dead wild animal remains (bones, skin and head) of a leopard as a protected wild animal without permit.

**Charges:**

Possession of the leopard remains in contravening the provisions of section 43(2) of the LEMA.

**Judgement/Sentence:**

The accused pleaded guilty on the charge preferred against him and after conviction the court then sentenced him to a Fine of **R20 000 or 5 years imprisonment of which R15 000 or 3 years was suspended** for 3 years on condition that accused must not be convicted for the same offence of contravening section 43(2) of LEMA during suspension.

**12.2.5 Elephant:****S v Sibanda and Shiranda****Province:**

Limpopo

**S v Sibanda and Shiranda****Description:**

Sibanda and Shirinda were arrested on 14 November 2018 inside Kruger National Park by rangers. The state prosecutor told the court about the impact of animal poaching on the environment. He said poaching affected the environment by depleting certain species of animals which can cause animals that are endangered to become extinct arguing for a suitable sentence.

**Charges:**

Trespassing in the Skukuza National Park, contravention of Immigration Act, possession of prohibited obliterated firearm, possession of ammunition, illegal hunting and killing of an Elephant.

**Judgement/ Sentence:**

The accused persons were jointly convicted for these charges through common purpose. The court sentenced Sibanda and Shirinda to eight years for illegal hunting and killing of an elephant by removing its tusk, 12 months' imprisonment for trespassing, 12 months for contravention of the Immigration Act and eight years for possession of prohibited obliterated firearm and ammunition. The court ordered the sentences to run concurrently. **Effective sentence: 8 years imprisonment.**

**12.3. Marine Convictions****S v Quewen Cloete and 7 others****Province:**

Western Cape

**Description:**

The accused entered the Robben Island Marine Protected area, where they harvested abalone.

**Charges:**

1. Contravening Regulation 8(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;
2. Contravention of Regulation 36(1)(a) of the Regulations as promulgated under Government Notice R 1111 and published in Government Gazette 19205 of 2 September 1998;
3. Contravening Regulation 36(1)(b) of the Regulations as promulgated under Government Notice R 1111 and published in Government Gazette 19205 of 2 September 1998;
4. 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 Quewen Cloete and 7 others****Charges:**

5. Contravening Regulation 4(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 read with Regulation 1 issued in terms of the National Environmental Management: Protected Areas Act, 2003 (Act No 57 of 2003);

6. Contravening Regulation 5(7) 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;

7. Contravening Section 46(1) of the National Environmental Management: Protected Areas Act, Act 57 of 2003, read with section 1, 9(b) of the said Act and read with Government Notice GN 514 of 3 June 2005.

**Judgement/Sentence:**

Accused 1,2,3 5, 6,7& 8 convicted as follow:

AD Count 1:

The accused is sentenced to **three (3) years' imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 8(1) as promulgated in GN R 794 and published in GG No 42479 of 23 May 2019.

AD Count 2:

The accused is sentenced to **R30 000, 00 (thirty thousand rand) fine or two years' imprisonment**.

AD Count 3:

The accused is sentenced to **three (3) years imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 36(1)(b) of the Regulations as promulgated under Government Notice R 1111 and published in Government Gazette 19205 of 2 September 1998.

AD Count 4:

The accused is sentenced to **One (1) year1 imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of 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 Quewen Cloete and 7 others****Judgement/Sentence:**

Accused 4 convicted as follow:

AD Count 1

The accused is sentenced to **five (5) years' imprisonment** in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977

AD Count 2

The accused is sentenced to **R30 000, 00 (thirty thousand rand) fine or two years' imprisonment**.

AD Count 3

The accused is sentenced to **three (3) years imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of contravening Regulation 36(1)(b) of the Regulations as promulgated under Government Notice R 1111 and published in Government Gazette 19205 of 2 September 1998 which is committed during the period of suspension

AD Count 4

The accused is sentenced to **five (5) years' imprisonment** in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977

**S v Duncan Hannekom and 5 others****Province:**

Western Cape

**Description:**

The accused entered the Robben Island Marine Protected area, where they harvested abalone.

**Charges:**

1. Contravening Regulation 6 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.

**S v Duncan Hannekom and 5 others****Charges:**

2. 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
3. Contravening Section 46(1) of the National Environmental Management: Protected Areas Act, Act 57 of 2003, read with section 1, 9(b) of the said Act and read with Government Notice GN 514 of 3 June 2005 Contravention of Regulation 36(1)(a) of the Regulations as promulgated under Government Notice R 1111 and published in Government Gazette 19205 of 2 September 1998
4. Contravening Regulation 36(1)(b) of the Regulations as promulgated under Government Notice R 1111 and published in Government Gazette 19205 of 2 September 1998

**Judgement/Sentence:**

All 6 accused convicted as follow:

AD Count 1

The accused is sentenced to **three (3) years' imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 6 of the Regulations for the management of the Robben Island Marine Protected Area as promulgated in GN R 794 and published in GG No 42479 of 23 May 2019

AD Count 2

The accused is sentenced to **two (2) years' imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of 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

AD Count 4

The accused is sentenced to **R40 000,00 (Forty thousand rand) or two years imprisonment which is half suspended for a period of 5 (five) years** on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 36(1)(b) of the regulations as promulgated under Government Notice R 1111 and published in Government Gazette 19205 of 2 September 1998.

**S v Brandon Patel and 6 others****Province:**

Western Cape

**S v Brandon Patel and 6 others****Description:**

The accused entered the Robben Island Marine Protected area, where they attempted to harvest abalone.

**Charges:**

1. Contravening Regulation 6 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
2. Contravening Regulation 3(1) 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
3. 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
4. Contravening Section 46(1) of the National Environmental Management: Protected Areas Act, Act 57 of 2003, read with section 1, 9(b) of the said Act and read with Government Notice GN 514 of 3 June 2005 Contravention of Regulation 36(1)(a) of the Regulations as promulgated under Government Notice R 1111 and published in Government Gazette 19205 of 2 September 1998

**Judgement/Sentence:**

All 7 accused were convicted as follows:

AD Count 1

The accused is sentenced to **three (3) years' imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 6 of the Regulations for the management of the Robben Island Marine Protected Area as promulgated in GN R 794 and published in GG No 42479 of 23 May 2019

AD Count 2

The accused is sentenced to **one (1) year imprisonment which is suspended for 3 (Three) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 3(1) 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

AD Count 3

The accused is sentenced to **one-year imprisonment which is suspended for 3 (Three) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 3(2) of the Regulations for the Protection of Wild Abalone as promulgated in GN R 62 and published in GG No 30716 of 1 February 2008

**S v Arlen August and 1 other****Province:**

Western Cape

**Description:**

The accused entered the Robben Island Marine Protected area, where they attempted to harvest abalone.

**Charges:**

1. Contravening Regulation 8(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
2. Contravening Regulation 9(6) 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
3. 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
4. Contravening Section 46(1) of the National Environmental Management: Protected Areas Act, Act 57 of 2003, read with section 1, 9(b) of the said Act and read with Government Notice GN 514 of 3 June 2005 Contravention of Regulation 36(1)(a) of the Regulations as promulgated under Government Notice R 1111 and published in Government Gazette 19205 of 2 September 1998

**Judgement/Sentence:**

Both accused were convicted as follow:

AD Count 1

The accused is sentenced to **three (3) years' imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 8(1) of the Regulations for the management of the Robben Island Marine Protected Area as promulgated in GN R 794 and published in GG No 42479 of 23 May 2019

AD Count 2

The accused is sentenced to **three (3) years' imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 9(6) of the Regulations for the management of the Robben Island Marine Protected Area as promulgated in GN R 794 and published in GG No 42479 of 23 May 2019

**S v Arlen August and 1 other****Judgement/Sentence:**AD Count 3

The accused is sentenced to **one-year imprisonment which is suspended for 3 (Three) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 3(2) of the Regulations for the Protection of Wild Abalone as promulgated in GN R 62 and published in GG No 30716 of 1 February 2008

AD Count 4

The accused is sentenced to a period of **three (3) years imprisonment which is wholly suspended for 5 (Five) years**, on conditions that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Section 46(1) of the National Environmental Management: Protected Areas Act, Act 57 of 2003.

**S v Paul West and 1 other****Province:**

Western Cape

**Description:**

The accused entered the Robben Island Marine Protected area, where they attempted to harvest abalone.

**Charges:**

1. Contravening Regulation 6 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
2. Contravening Regulation 4(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
3. Contravening Regulation 4(3) 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
4. 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 Paul West and 1 other****Charges:**

5. Contravening Section 56(5) (a), (c), (d), read with Section 58(1)(b) of the Marine Living Resources Act, 1998 (Act No 18 of 1998)

6. Contravening Section 46(1) of the National Environmental Management: Protected Areas Act, Act 57 of 2003, read with section 1, 9(b) of the said Act and read with Government Notice GN 514 of 3 June 2005 Contravention of Regulation 36(1)(a) of the Regulations as promulgated under Government Notice R 1111 and published in Government Gazette 19205 of 2 September 1998

**S v Paul West and 1 other****Judgement/Sentence:**

Accused 1 convicted as follow:

AD Count 1

The accused is sentenced to **three (3) years' imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 6 Regulations for the management of the Robben Island Marine Protected Area as promulgated in GN R 794 and published in GG No 42479 of 23 May 2019

AD Count 2

The accused is sentenced to **three (3) years' imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 4(1) Regulations for the management of the Robben Island Marine Protected Area as promulgated in GN R 794 and published in GG No 42479 of 23 May 2019

AD Count 3

The accused is sentenced to **three (3) years' imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 4(3) Regulations for the management of the Robben Island Marine Protected Area as promulgated in GN R 794 and published in GG No 42479 of 23 May 2019

AD Count 4

The accused is sentenced to **two (2) years imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of 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

AD Count 5

The accused is sentenced to **R30 000, 00 (Thirty thousand rand) or two (2) years imprisonment.**

AD Count 6

The accused is sentenced to **three (3) years imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Section 46(1) of the National Environmental Management: Protected Areas Act, 57 of 2003

**S v Paul West and 1 other****Judgement/Sentence:**

Accused 2 convicted as follow:

AD Count 1

The accused is sentenced to **three (3) years' imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 6 Regulations for the management of the Robben Island Marine Protected Area as promulgated in GN R 794 and published in GG No 42479 of 23 May 2019

AD Count 6

The accused is sentenced to **three (3) years' imprisonment, which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Section 46(1) of the National Environmental Management: Protected Areas Act, 57 of 2003

**S v Leroy Mentor****Province:**

Western Cape

**Description:**

The accused entered the Robben Island Marine Protected area, where he operated a vessel without a valid certificate of competence and certificate of fitness issued in respect of such vessel

**Charges:**

Contravening Regulation 4(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

**Judgement/Sentence:**

Accused convicted as follow:

AD Count 1

Accused was sentenced to a fine of R20 000 or 12 months imprisonment of which half is suspended for a period of 5 years on condition that he is not convicted and sentenced for contravention of the provisions of Regulation 4 issued in terms of the Environmental Management Protected Areas Act, committed during the period of suspension.

**S v Aviwe Mbuzeni and 3 others****Province:**

Western Cape

**Description:**

The accused entered the Robben Island Marine Protected area, where they attempted to harvest abalone.

**Charges**

1. Contravening Regulation 6 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

2. 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

3. Contravening Section 46(1) of the National Environmental Management: Protected Areas Act, Act 57 of 2003, read with section 1, 9(b) of the said Act and read with Government Notice GN 514 of 3 June 2005 Contravention of Regulation 36(1)(a) of the Regulations as promulgated under Government Notice R 1111 and published in Government Gazette 19205 of 2 September 1998

**Judgement/Sentence:**

All four accused were sentenced as follow:

AD Count 1

The accused is sentenced to a **period of three (3) years' imprisonment which is suspended for 5 (five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 6 as promulgated in GN R 794 and published in GG No 42479 of 23 May 2019.

AD Count 2

The accused is sentenced to two a period of **two (2) years imprisonment which is suspended for five (5) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 3(2) as promulgated in GN R 62 and published in GG No 30716 of 1 February 2008

AD Count 3

The accused is sentenced to two a period of **three (3) years imprisonment which is suspended for five (5) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Section 46(1) of the National Environmental Management Protected Areas Act, Act 57 of 2003

**S v Cullin Abrahams and 4 others****Province:**

Western Cape

**Description:**

The accused entered the Robben Island Marine Protected area, where they attempted to harvest abalone.

**Charges:**

1. 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
2. Contravening Regulation 4(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
3. Contravening Regulation 4(3) 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
4. Contravening Regulation 7(3)(a) 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
5. Contravening Regulation 9(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
6. 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
7. Contravening Section 56(5) (a), (c), (d), read with Section 58(1)(b) of the Marine Living Resources Act, 1998 (Act No 18 of 1998)
8. Contravening Section 46(1) of the National Environmental Management: Protected Areas Act, Act 57 of 2003, read with section 1, 9(b) of the said Act and read with Government Notice GN 514 of 3 June 2005 Contravention of Regulation 36(1)(a) of the Regulations as promulgated under Government Notice R 1111 and published in Government Gazette 19205 of 2 September 1998

**S v Cullin Abrahams and 4 others****Judgement/Sentence:**

All four accused were sentenced as follow:

AD Count 1

The accused is sentenced to **three (3) years' imprisonment which is suspended for 5 (Five) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 7(1) as promulgated in GN R 794 and published in GG No 42479 of 23 May 2019.

AD Count 5

The accused is sentenced to **two (2) years' imprisonment which is suspended for Five (5) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 9(1) as promulgated in Government Notice GN R 794 and published in Government Gazette 42479 of 23 May 2019.

AD Count 6

The accused is sentenced to **one (1) year imprisonment which is suspended for 3 (Three) years**, on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 3(2) as promulgated in GN R 62 and published in GG No 30716 of 1 February 2008

Accused 3 convicted as follows:

AD Count 1

The accused is sentenced to **five (5) years' imprisonment** in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977

AD Count 2

The accused is sentenced to **3 years imprisonment wholly suspended for five(5) years** on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 4(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 as promulgated in Government Notice GN R 794 and published in Government Gazette 42479 of 23 May 2019.

AD Count 3

The accused is sentenced to **3 years imprisonment wholly suspended for five(5) years** on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 4(3) 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 as promulgated in Government Notice GN R 794 and published in Government Gazette 42479 of 23 May 2019.

**S v Cullin Abrahams and 4 others**AD Count 4

The accused is sentenced to **3 years imprisonment wholly suspended for five (5) years** on condition that the accused is not convicted of having, during the period of suspension, committed the offence of contravening Regulation 7(3)(a) 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 as promulgated in Government Notice GN R 794 and published in Government Gazette 42479 of 23 May 2019.

AD Count 5

The accused is sentenced to **five (5) years imprisonment** in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977

AD Count 6

The accused is sentenced to **five (5) years' imprisonment** in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977

**S v Sevuyile Dares and 6 others****Judgement/Sentence:**

Accused 1-6 were sentenced as follow:

Accused were found guilty on all three counts. All three counts are taken together for sentencing – the accused was sentenced to a fine of **R3000 (Three thousand rand) or 90 days imprisonment**.

Accused 7 sentenced as follows:

The accused was found guilty on all three counts. All three counts are taken together for sentencing – the accused is sentenced to a **fine of R5000 (Five thousand rand) or 150 days imprisonment, a further 12 (twelve) months imprisonment suspended for a period of five (5) years** on condition that he is not convicted and sentenced for contravening the provisions of Regulation 6 Regulations for the management of the Robben Island Marine Protected Area, 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 and Section 46(1) of the National Environmental Management: Protected Areas Act, Act 57 of 2003 committed during the period of suspension.

**S v Sevuyile Dares and 6 others****Province:**

Western Cape

**Description:**

The accused entered the Robben Island Marine Protected area, where they attempted to harvest abalone.

**Charges:**

1. Contravening Regulation 6 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
2. 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
3. Contravening Regulation 3(1) 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
4. Contravening Section 46(1) of the National Environmental Management: Protected Areas Act, Act 57 of 2003, read with section 1, 9(b) of the said Act and read with Government Notice GN 514 of 3 June 2005 Contravention of Regulation 36(1)(a) of the Regulations as promulgated under Government Notice R 1111 and published in Government Gazette 19205 of 2 September 1998

# NATIONAL ENVIRONMENTAL COMPLAINTS AND EMERGENCY INCIDENTS



### 13. NATIONAL ENVIRONMENTAL COMPLAINTS AND EMERGENCY INCIDENTS

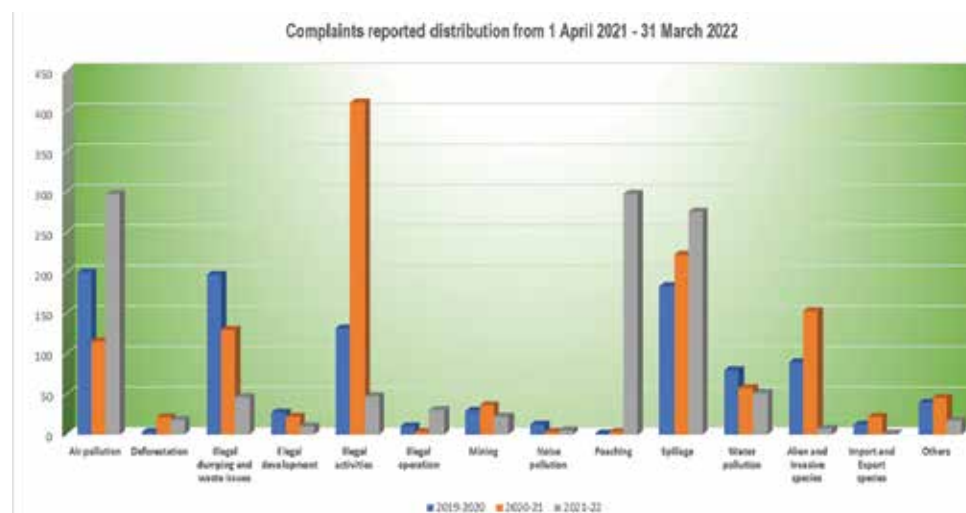
DFFE continued to collect statistics on environmental complaints received through the Environmental Crimes and Incidents Hotline from the Minister and Director-General's office, as well as complaints received directly from other organs of State and the public. The Hotline serves as the main point of 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 a slight decrease in the overall number of incidents and complaints reported from **1240** in 2020/21 to **1123** in 2021/22 financial years. Reports of air pollution, illegal activities (based on the initial complaint, these activities appear to be completely unpermitted/unlicensed), 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

Nature of Complaint	Financial Years			
	2019-2020	2020-21	2021-22	Totals
Air pollution	200	115	297	<b>612</b>
Deforestation	3	21	18	<b>42</b>
Illegal dumping and waste issues	197	129	46	<b>372</b>
Illegal development	27	22	10	<b>59</b>
Illegal activities (based on the initial complaint, these activities appear to be completely unpermitted/unlicensed)	141	413	77	<b>631</b>
Mining	29	36	22	<b>87</b>
Noise pollution	12	3	5	<b>20</b>
Poaching	1	3	297	<b>301</b>
Spillage	183	222	275	<b>680</b>
Water pollution	79	57	51	<b>187</b>
Alien and Invasive species	89	152	7	<b>248</b>
Import and Export species	12	22	1	<b>35</b>
Others	39	45	17	<b>101</b>

Nature of Complaint	Financial Years			
	2019-2020	2020-21	2021-22	Totals
<b>Total</b>	<b>1012</b>	<b>1240</b>	<b>1123</b>	<b>3375</b>

Table 13: Number and classification of complaints: 2019 - 2022



Graph 8: Graphical representation on the nature of complaints received

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

Financial Year	INSTITUTION REFERRED TO					Total
	DFFE	DWS	DMR	LOCAL GOVERNMENT	PROVINCES	
2019-2020	354	62	25	266	305	<b>1012</b>
2020-2021	501	57	36	287	359	<b>1240</b>
2021-2022	502	51	22	236	312	<b>1123</b>
<b>Total</b>	<b>1357</b>	<b>170</b>	<b>83</b>	<b>789</b>	<b>976</b>	<b>3375</b>

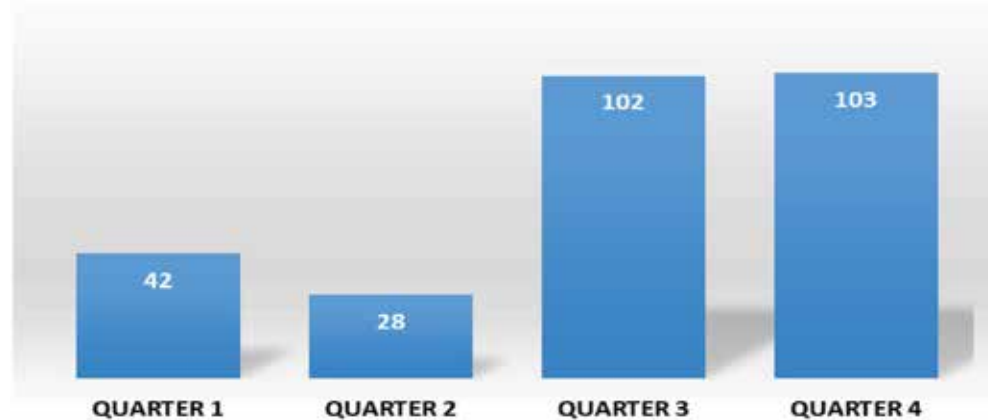
Table 14: Number of DFFE referred complaints and incidents

### 13.3 Section 30 NEMA

#### 13.3.1 Analysis of 2021-2022 incidents

The DFFE recorded 275 incidents in the 2021/2022 financial, with quarter 4 having the most incidents reported at 103. At the beginning of the year over 40 incidents were recorded. There was a drop in the number of incidents dealt with in quarter 2 at 28 incidents recorded and a huge rise of incidents received in quarter 3 and 4 respectively (Refer to the graph in graph 9 below). The rise in the number of incidents in quarter 3 and 4 could be attributed to the opening up of the country after the lock down restrictions were uplifted and economic activities were stimulated.

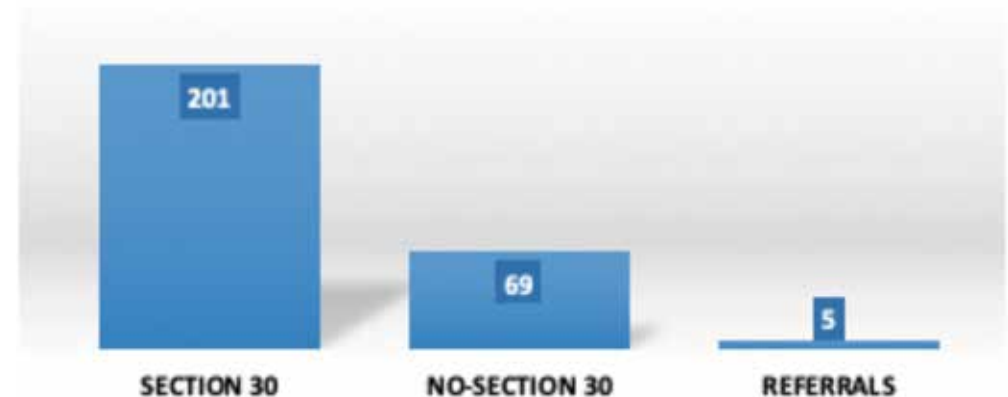
#### INCIDENTS RECEIVED PER QUARTER



Graph 9: NUMBER OF INCIDENTS RECEIVED PER QUARTER

From the 275 incidents received by the department, 201 incidents were classified as reportable incidents in terms of NEMA section 30. A total of 69 incidents received were classified as non-section 30 incidents as they fall outside of the elements of an incidents as defined in the NEMA section 30. A total of 5 incidents were referred to other spheres of government for appropriate action to be taken.

#### INCIDENTS CLASSIFICATION



Graph 10: NUMBER OF INCIDENTS REPORTED AND CLASSIFIED IN 2021/22

During this period of review Mpumalanga province had the highest number of reported incidents at a total of 103 incidents. Mpumalanga is followed by Free State province at 61 incidents, KwaZulu Natal at 42 incidents, Gauteng at 42 incidents, Limpopo at 25 incidents, Northwest and Western Cape provinces both at 10 incidents reported. Northern Cape at 5 incidents and Eastern Cape at 2 incidents reports the list number of incidents (See Figure 3 below illustrating incidents reported per province in descending order). The high volume of incidents recorded for Mpumalanga province can be attributed to the Power generation plants within the province and also the number of fuel theft from the Multi product pipelines laying across the province. Mpumalanga on the other hand through rail freight and road freight is a bypass for a number of commodities from adjacent provinces and neighbouring SADC countries.

## INCIDENTS REPORTED PER PROVINCE



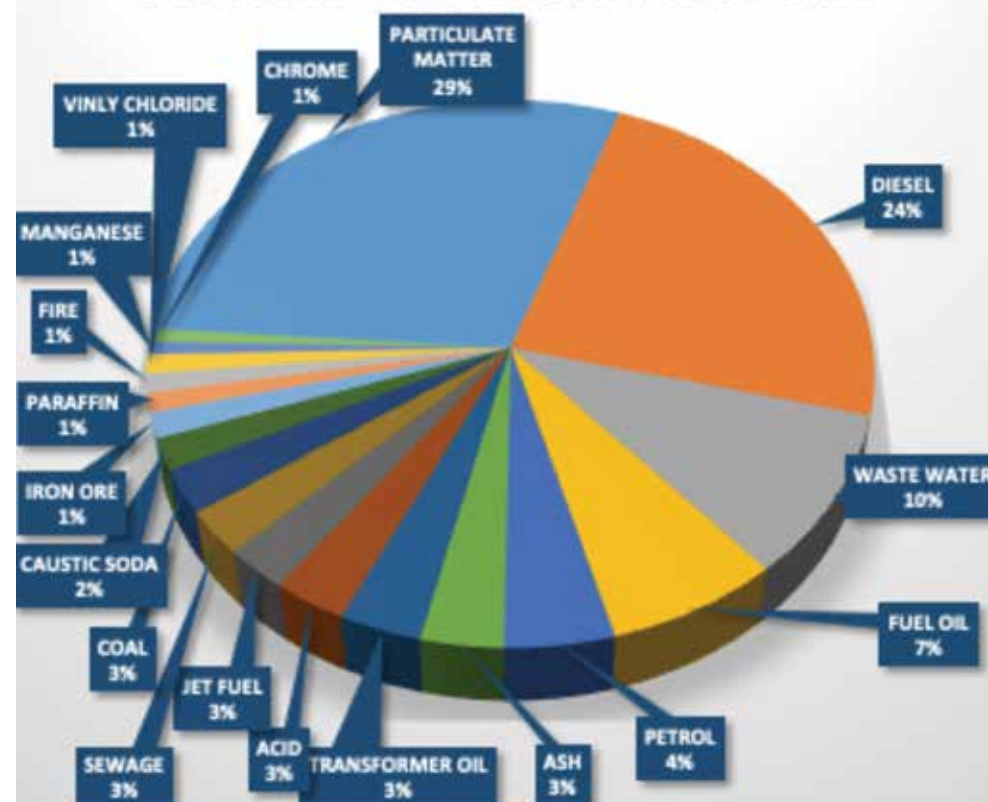
Graph 11: NUMBER OF INCIDENTS REPORTED PER PROVINCE

Particulate Matter is the leading pollutant reported at 29% overall reported incidents in the 2021/2022 financial year. The high record of particulate matter as a pollutant in 2021/2022 can be attributed to numerous plant failures reported by the country's power generation sector. The theft of hydrocarbons from the multiproduct pipelines across the country has resulted to Transnet Pipelines reporting a high number of incidents, with diesel being the second highest pollutant at 24%. In contrast, hydrocarbons like petrol, crude oil and jet fuel mainly from the multi product pipelines have recorded low percentages in terms of occurrences. This data depicts an increase in the number of transformer oil incidents reported in this period. Upon review of incident reports, the root cause for these transformer oil incidents can be attributed to the vandalism of substations across the country for the theft of copper cables.

When comparing incidents involving acid, there is a slight reduction at 3% compared to previous years when incidents involving acid spillages were on a rise within the road freight sector. Compliance promotion initiatives with the chemicals associations and engagements held by the Department with acid producing industries might have contributed to the sudden decline in incidents involving acids. Sewage incidents at 4% and wastewater incidents at 12% are also notable during this period of review

and interventions in terms of compliance are already in place for the control of these incidents (Refer to pie chart 1 below). Statistics indicates that some products reported as pollutants include non-hazardous substances including cooking oil, palm oil and maize products. These have been handled based on quantities involved and receiving environment. The chart below depicts the type of products reported more than as a pollutant in year 2021/2022.

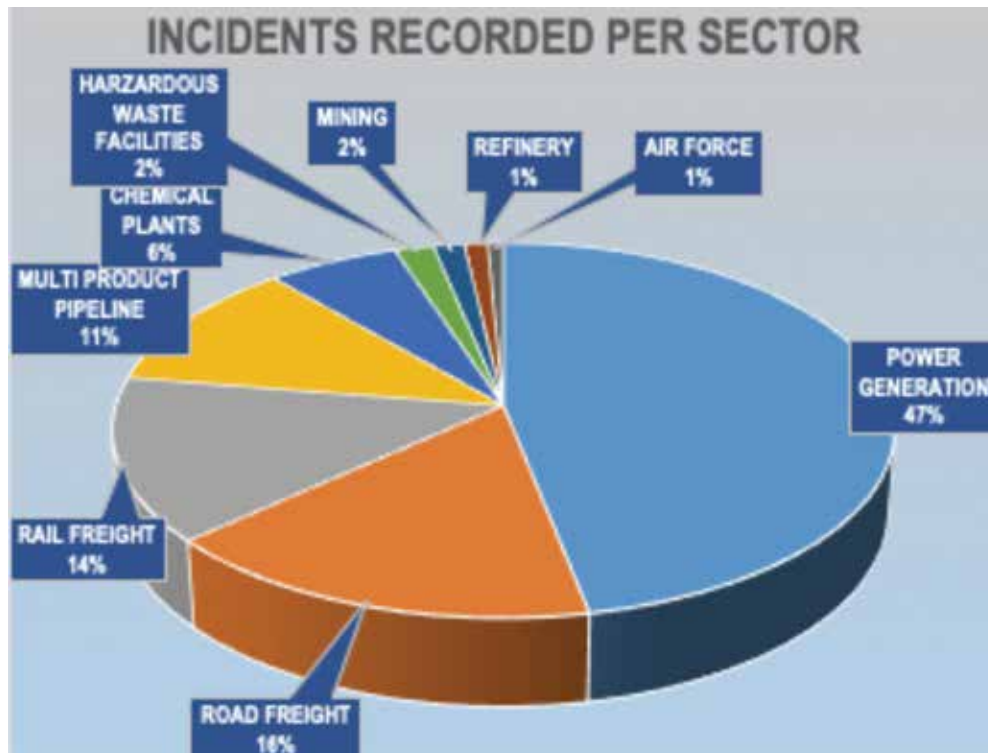
## PRODUCTS RECORDED AS POLLUTANTS



Pie Chart 1: SUBSTANCES RECORDED AS POLLUTANTS FOR 2021/2022 FINANCIAL YEAR

Power generation is the leading sector at 47% amongst the sectors reporting incidents in this period of review. Road freight sector (trucking industry) is the second highest sector taking up 16% overall recorded sectors in the year. Rail freight recorded

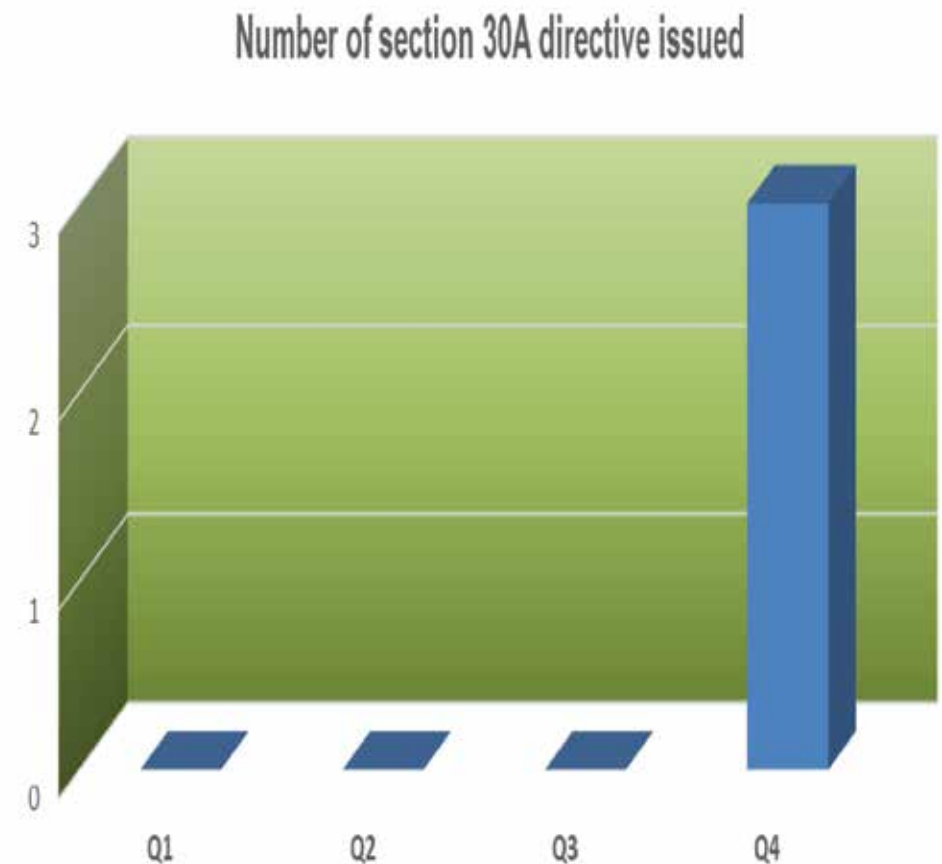
incidents are slightly lower than road freight recorded incidents at 14%. In the past years, Road Freight has been leading sector when it comes to incidents recorded per sector, power generation has taken over the sector drastically over the years. Multiproduct pipeline sector has been experiencing a high number of hydrocarbon spillages as a result of product theft from the pipeline infrastructure from KwaZulu Natal, Free State, Mpumalanga and Gauteng. In the past years, Rail Freight sector incidents were attributed to rail transportation of hazardous products. A change in the nature of incidents reported within the rail freight sector is notable during this period of review and can be linked to the incidences of vandalism within Transnet Freight Rail substations for copper theft as identified upon review of incident reports submitted to the Department (Refer to Figure 5. Below).



Pie chart 2: INCIDENTS RECORDED PER SECTOR FOR 2021/2022 FINANCIAL YEAR

### 12.3.2 Analysis of 2021-2022 Section 30A Directives

The DFFE issued four verbal directives in terms of Section 30A of the NEMA for the 2020- 2021 financial year. All four verbal directives were confirmed in writing. One of the four verbal directives was subsequently revoked. Three of the verbal directives were issued in the 4<sup>th</sup> quarter (Refer to the graph below).



Graph 12: Number of S30A verbal directives issued: 2021/22



**ENVIRONMENTAL COMPLIANCE AND  
ENFORCEMENT CAPACITY BUILDING 2021-2022**

#### 14. ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT CAPACITY BUILDING 2021-2022

The 2021-2022 reporting year continued to present a number of challenges for capacity development due to ongoing COVID-19 restrictions and the need for physical distancing. The following serves as an overview of the courses that were presented by DFFE.

##### EMI Basic Training Courses (May and October 2021)



Due COVID-19 restrictions the basic training had to be slightly adapted by reducing the maximum number of attendees, arranging smaller practical groups, together with physical distancing and mask wearing in class.

The October course saw the introduction of the new eLearning platform, where instead of working from an electronically distributed handbook, the attendees followed a systematic, multimedia rich online curriculum which includes topic quizzes. The basic training course is administered and coordinated by DFFE and open to officials from all three spheres of government, who require either Grade 1, 2, 3 or 4 EMI designation. Each course runs over a seven-week period, which includes distance and contact learning sessions.

There are 12 separate individual assessments done over this period and an official requires a final result of 50% or above to pass.

The overview for the two courses were as follows:

A. The May 2021 course was presented in Pretoria, Gauteng:

- 38 officials in attendance.
- 14 EMI institutions represented.

B. The October 2021 course was also presented in Pretoria, Gauteng:

- 38 officials in attendance.
- 15 EMI institutions represented.

##### EMI Grade 5 field ranger crime scene training (May 2021)



A basic biodiversity crime scene investigation training was provided to EMI senior Ezemvelo KZN Wildlife rangers. The training came about as part of a Peace Parks Foundation project funded by International Narcotics and Law Enforcement (INL) to GreenLaw Foundation. DFFE was invited to attend in order to represent the Inspectorate as well as to provide updates on latest developments within the operational field of exhibit collection and submission.

The backdrop for the two back-to-back courses were Hluhluwe – Imfolozi Reserve and Mkuze Reserve. The course contained a mixture of theory and practical work.

### EMI - Fishery Control Officer (FCO) Basic Bridging training (May 2021)

The DFFE presented an EMI refresher training course to experienced Fishery Control Officers (FCOs) who had attended the full basic training course some years ago. The need for the training came about due to recent integration (Fisheries, Forestry and the Environment) together with the promulgation of a range of Marine Protected Area Regulations. An agreement was reached that a refresher course would facilitate a smooth integration. Due to COVID the course was presented via a virtual platform.

The course focussed on the main differences and similarities between the EMI and FCO designation as well as recap of EMI functions, mandate, powers and duties; Working relationship with other regulatory authorities; EMI & Criminal Docket management;

Barcode of Wildlife Programme/ DNA sequencing; NEM:ICMA; NEM:BA; Threatened and Protected Species Regulations (Marine); CITES Regulations (Marine Species); NEM:PAA and Marine Protected Areas Regulations.

### Biodiversity crime analyst, statement writing and testifying - as part of INL funded Greenlaw “watching brief” project (July–November 2021)



This reporting year also saw an intervention that focussed on capacitating 13 environmental crime analysts in the proper drafting of and testimony relating to statements containing analysis/ links based on data analysed during criminal investigations.

This intervention formed part of the “Watching Brief” project (INL funded – GreenLaw), and was created based on the needs expressed by the data analysts.

The intervention was delivered over an extended period of time and amongst others resulted in:

- The development of a guideline on the technical drafting of statements by officials employed as environmental crime data analysts.
- Review of, and individual consultations (in-person and virtual) on previously drafted statements.
- Review of legal mandate for analysts to conduct analysis.
- Two day in-person Moot Court session with individual consultation to prepare analyst for testifying in court.

Officials employed as environmental crime data analysts’ day to day duties include the analyses of phone and financial data, mapping analysis and the linking thereof to crime scene analysis and modus operandi. Such information can be of high evidentiary value during criminal proceedings.

### EMI Specialised Training – Wetlands (September 2021, November 2021, February 2022)



The lifting of some of the COVID-19 restrictions made it possible for in-person practical training to proceed. During the reporting period there were 3 such courses hosted, in different geographical areas so as to afford as many relevant EMIs as possible the opportunity to attend.

The need for the course was great due to the frequency of cases where EMI's were faced with investigating cases where illegal activities were being conducted in and / or near wetlands.

The three courses presented were:

- Western Cape with 25 EMI's;
- Mpumalanga with 23 EMI's and;
- Gauteng with 28 EMI's in attendance.

The course was structured to have a theoretical pre-course eLearning component followed by practical focussed contact training. The eLearning component focussed on laying a basic foundation covering, common terminology, principles, international agreements and legislation relating to wetlands.

The contact course itself covered a range of topics which included, amongst others, the purpose and function of a wetland, the different types of wetlands, vegetation commonly found linked to wetlands, wetland rehabilitation, threats and impacts on wetlands as well as legislative provisions that regulate activities within a wetland.

Practical training definitely formed the basis for the course ranging from small scale experiments to daily excursions into different types of wetlands found in the area. The course ended with group presentations relating to their approach to a crime scene scenario involving a wetland, during which time they had to practically incorporate what was learnt during the course.

#### **EMI refresher training on the use of pocketbooks (November 2021)**

The proper use and completion of an official pocketbook forms a critical part of the daily activities of a compliance and or enforcement EMI. Officials within the Oceans and Coast Enforcement section requested a refresher training session focussing on the practical completion of a pocketbook. The session dealt with principles relating to format of entries, purpose of a pocketbook, process of making corrections, date and time formats as well as, what not to do and avoid when making entries into a pocketbook.

#### **DFFE SARS institute of learning. Train-the-trainer course on detection and handling of illicit environmental commodities (February 2022)**



The collaboration between the DFFE and SARS CUSTOMS further strengthened with the hosting of an in-person train-the-trainer course with trainers from the SARS Institute of Learning. The one week session provided the ideal opportunity to work through the practical components of the Identification, Handling and Processing of Regulated Environmental Commodities training course, which enabled the trainers to in turn deliver the course to SARS CUSTOMS officials stationed at all South African Ports.

Topics focussed on during the week included:

- Identification and testing for cylinders containing Ozone Depleting Substances;
- Identification and handling of biodiversity specimens, and derivatives;
- First responder to a crime scene and identification of exhibits for further investigation;
- Identification and handling and waste, chemicals, PCBs and Asbestos; as well as
- Statement writing.

The next step in the process is for DFFE to compile 4 x sets of biodiversity commodities which will be handed (on loan) to SARS Institute of Learning to assist them in delivering the training.

WHAT IS AHEAD FOR 2022-23?



## 15. WHAT IS AHEAD FOR 2022-23?

An increase in environmental incidents was observed over the last year which resulted in devastating impacts on the environment. These cases bring into question the environmental compliance profile of the sources of these problems; and require a cohesive and complex government intervention to effectively address them. Against this background, an ideal opportunity exists to extend the government response to optimise the utilisation of criminal investigations as an environmental enforcement mechanism. We are looking at designing an “all of government enforcement model” informed by lessons learnt from past experiences which considers resources available within government institutions to simultaneously deal with different, but mutually beneficial end points. We are hoping that in the 2022/23 financial year we will see increased punitive outcomes in order to demonstrate the importance of compliance with environmental laws and to ensure a higher level of accountability / deterrence at the end of the day.

Over the last two years the DFFE, in cooperation with the provincial conservation authorities, SANParks, private rhino owners and the SAPS, has implemented an Integrated Wildlife Zone (IWZ) approach. This approach has focussed on a more proactive and integrated response to wildlife crime that builds on existing initiatives and blurs the distinction made between national, provincial, and private parks whilst increasing situational awareness. Actions relating to biodiversity and conservation for 2022/2023 include among others, the implementation of the workplan of the RAP Sub-Committee to support the protection of the national rhino herd, thereby increasing the population across all public and private entities. The Environmental Enforcement Fusion Centre (EEFC) within the DFFE will continue to coordinate and improve the reactive and proactive response to rhino poaching and other wildlife crime with the Analyst Unit ensuring the necessary support to relevant investigating officers with profiling, association, cell phone, social media, crime scene and financial analysis. The implementation of the five-year Global Environmental Facility UNEP project: *South African Biodiversity Economy and Illegal Wildlife Trade - Enhance forensic and scientific support services linked to wildlife trafficking investigations* project will also commence in 2022/2023.

Phakisa Initiative 5, constituted as the NATJOINT Priority Committee on Marine & Ocean Crime will continue to drive the work within the marine and coastal environment. Currently most operations are focused on the in-shore coastal region and we will need to determine how the operational approach can be broadened to encompass more

interventions against illegal fishing and the illicit movement of goods, inclusive of CITES and Wildlife Trafficking. An extensive effort will also be made in the 2022/2023 financial year to concentrate on targeted areas of concern, with a focus not only on preventing the illegal activities themselves, but also targeting the value chain. This is inclusive of illicit mining and non-compliance to maritime legislative and regulatory frameworks and other border management processes. Partnering with coastal communities and Traditional Leaders also remains a priority.

On the capacity development front, 2022-2023, will see the return of “in-person” contact training sessions in line with the easing of restrictions linked to the COVID 19 regulations, however, continued development and implementation of the EMI E-Learning Platform will see a blended approach to the delivery of capacity development sessions. Ongoing collaboration with other law enforcement authorities with environmentally related mandates, including SARS Customs, RTMC and the BMA, will seek to empower these agencies to transfer the requisite skills and knowledge to the operational officials working under their respective mandates. A key focus area will be on the full-scale implementation of integrated national Environmental Compliance and Enforcement Information System, a case management system which aims to improve the operational efficiency of the execution of EMI functions, whilst at the same time improving the reporting and strategic decision-making ability of the Inspectorate.

A preliminary draft of a Bill that will introduce an Administrative Penalty System will undergo intensive internal consultation with key governmental stakeholders in order to ensure that critical input from all EMI Institutions is considered in the drafting thereof.

Finally, the development of a new National Environmental Compliance and Enforcement Strategy (NECES) will take place and will entail an assessment of the strengths and weaknesses in the implementation of the 2014 strategy by all national, provincial and local authority EMIs. Lessons learnt will be brought into the the compilation of a new strategy that will provide a common roadmap for the Inspectorate for the next medium-term period.

## NOTES

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