



NATIONAL ENVIRONMENTAL COMPLIANCE & ENFORCEMENT REPORT 2022/23



**forestry, fisheries
& the environment**

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



National Environmental Compliance & Enforcement Report 2022-23

2023

Department of Forestry, Fisheries and the Environment

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FOREWORD

On 07 July 2022, the Secretary General of the United Nations (UN) delivered a report on preventing and combating crimes that affect the Environment to the 77th session of the General Assembly. The report is prefaced by an overview of the devastating impacts of environmental crime, noting that they continue to undermine efforts to implement the 2030 Agenda for Sustainable Development, directly affecting the achievement of several of the 17 Sustainable Development Goals, including those related to the food-water-health nexus, energy and climate, poverty and inequality, environmental conservation and effective, accountable and inclusive institutions at all levels.

The report further notes that environmental crimes threaten the rule of law, governance and national security; they rob local communities of their livelihoods and have a negative impact on social and economic development. The enormous profits generated by this crime type have also been used to finance other criminal activities, frequently interlinked with corruption and economic crimes, as well as other serious crimes including trafficking in persons and forced labour. These crimes are typically committed by perpetrators ranging from individuals to legal persons and transnational criminal groups.

Amongst the root causes of these crimes is said to be poor governance and widespread corruption, minimal budgets allotted to law enforcement, prosecution services and courts, and very low volume of proceeds from sustainable and managed use of natural resources going back into communities. Despite the damage caused, environmental crimes are frequently regarded as being victimless and incidental; and are not always considered a serious crime or a high priority. Existing legislation and policies often do not reflect the serious nature of the crimes or fail to take into account the sheer scale of the loss of resources resulting from such crimes. Levels of political commitment and operational capacity to tackle crimes that affect the environment are still not commensurate with the scope and scale of the problem itself.

In light of the sombre picture painted by the Secretary General in the background to his report, it is understandable that environmental compliance and enforcement authorities, such as South Africa's Environmental Management Inspectorate (Inspectorate), may feel that the odds are heavily stacked against them in their goal of providing the country's inhabitants with a clean and healthy environment in fulfilment of their Constitutional duties. However, the report goes on to list a comprehensive

set of measures implemented by 38 Member States taken to address the obstacles that may impede the effective implementation of legislation designed to ensure the sustainable utilisation of natural resources.

In fact, much of the work of the Inspectorate, as detailed in this 16th National Environmental Compliance and Enforcement Report is aligned to the recommendations of the UN Secretary General's report. This not only shows that many of the challenges experienced by environmental compliance and enforcement authorities are global, shared by many developed and developing nations, but also bears testament to the fact that the efforts of South Africa's Environmental Management Inspectorate are aligned to international best practises.

For example, the UN report proposes that any vulnerabilities in legislation are addressed that can help reduce opportunities for crimes that affect the environment. I am aware that the NEMLAA was signed into law on 24 June 2022, with many of its provisions, aimed at strengthening the compliance and enforcement powers of EMIs and EMPs, having recently been brought into effect. In addition, the Inspectorate has been in the process of the development of a Policy and draft Bill that proposes to introduce a system of administrative penalties for environmental contraventions that will add an additional enforcement mechanism to the current legislative toolkit available to EMIs.

However, the UN Reports recognises that legislative reform is, in itself, not sufficient; and that such developments, must go hand in hand with the strengthening of investigative, prosecutorial and judicial cooperation at the national, regional and international levels. In this respect, 2022/23 has, through the support of donor funding, seen the inaugural meeting of the Director of Public Prosecutions Environmental Working Group, which brings together all provincial National Prosecuting Authority nodal offices to address the suite of environmental prosecution issues, including challenges, specific cases, strategic interventions etc.

The need for continual, targeted improvement and development in investigative and forensic science capabilities that supports national law enforcement entities and understanding of and capacity to tackle environmental crimes is also a priority identified in the UN Report. Recognising this need, the Inspectorate has continued with an ongoing donor-funded project to develop SA-BOLD, which is a cutting-edge information system that utilises DNA barcoding and has the potential to assist EMIs to identification of a species, specimen and / or derivatives in a scientifically sound

and legally defensible manner.

The UN Report recommends that States should consider strengthening anti-corruption frameworks, promoting ethical practices, integrity and transparency and endeavouring to prevent conflicts of interest, with the aim of preventing corruption as it relates to environmental crimes. It is against this backdrop that the Inspectorate initiated a process to develop an Integrity Management Field Guide that aims to provide the necessary framework and guidance for those involved in law enforcement to create and maintain integrity management programs in the conservation field.

Due to the nature, scope and complexity of environmental crimes, the UN Reports acknowledges that environmental crimes cannot effectively be addressed solely through the efforts of environmental or conservation authorities. There is a need for effective cooperation and collaboration with a broad range of stakeholders, including from civil society, the private sector and the banking sector, as well as cooperation across sectors, including through public-private partnerships. The Inspectorate has given effect to this recommendation through increased collaboration with key role-players, both in the non-governmental sector space (through increased collaboration and alignment with biodiversity-related NGOs; the private sector through the Integrated Wildlife Zones initiative as well as Traditional Leadership in the oceans and coastal sub-sector) as well as with other government regulatory authorities (in the form of Operation Phakisa Initiative 5 (Marine & Ocean Crime Priority Committee) and the conclusion of collaborative agreements with the South African Revenue Service, the Road Traffic Management Corporation and the Border Management Authority.

Finally, the UN Report highlights the dearth of research and data on crimes that affect the environment in many countries. Filling that research and data gap is vital to developing and implementing evidence-based crime prevention strategies and properly evaluating their effectiveness. The Inspectorate has, during this reporting period, been through an intensive training phase on the iNCEIS, which is a case management system that aims to improve the operational efficiency of the execution of EMI compliance and enforcement functions, whilst at the same time improving the reporting and strategic decision-making ability of the Inspectorate. It is envisaged that iNCEIS will operate hand in glove with DFFE's Environmental Enforcement Fusion Centre (EEFC) to allow for greater efficiency in the manner in which environmental crimes are addressed.

These are just a few examples of how South Africa's Environmental Management Inspectorate has responded to the global needs of environmental compliance and enforcement as identified by the UN Secretary General's recent report on Preventing and Combating Crimes that affect the Environment. While I recognise that there is still a long road ahead of the Inspectorate to achieve sustainable development in this country, I must applaud you for the work that you have undertaken in the financial year and urge you to continue with the invaluable efforts – with this, it is my pleasure to present to you the 2022/23 National Environmental Compliance and Enforcement Report.



MS NOMFUNDO TSHABALALA

DIRECTOR-GENERAL OF FORESTRY, FISHERIES AND THE ENVIRONMENT

ACRONYMS

Key:

AEL	Atmospheric Emission Licence
AIS	Alien and Invasive Species
AoG	Admission of Guilt (also referred to as J534s)
BMA	Border Management Authority
BoWP	Barcode of Wildlife Programme
CEWG	Compliance and Enforcement Working Committee
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CN	Compliance Notice
CSS	Crime Scene Sampling
DG	Director-General
EA	Environmental Authorisation
EEFC	National Environmental Enforcement Fusion Centre
EMI	Environmental Management Inspector
EMPI	Environmental Mineral and Petroleum Inspector
FCO	Fisheries Control Officer
GEF	Global Environmental Facility
GG	Government Gazette
GN	Government Notice
HCRW	Health Care Risk Waste
iNCEIS	Integrated national Compliance and Enforcement Information system
INL	International Narcotics and Law Enforcement
IOSTT	Intelligence for Operations Sub-Task Team
IUU	illegal, unreported and unregulated
IWZ	Integrated Wildlife Zones Initiative
MOCPC	Marine and Ocean Crime Priority Committee
MES	Minimum Emission Standards
MPA	Marine Protected Area
NATJOINTS	National Joint Operational Intelligence Structure

NBIF	National Biodiversity Investigators Forum
NCF	National Environmental Compliance Form
NECER	National Environmental Compliance and Enforcement Report
NECES	National Environmental Compliance and Enforcement Strategy
NECEF	National Environmental Compliance and Enforcement Framework
NISCWT	National Integrated Strategy to Combat Wildlife Trafficking
NTC	National Targeting Centre
OCIMS IVT	Oceans and Coasts Information Management System Integrated Vessel Tracking
PCN	Pre-compliance Notice
PM	Particulate Matter
SAPS FSL SAU	South African Police Service Forensic Science Laboratory, Scientific Analysis Unit
SEMA	Specific Environmental Management Act
TOPS	Threatened or Protected Species
WGIV	Working Group 4
WML	Waste Management Licence
WUL	Water Use Licence
WWF	World Wildlife Fund for Nature

Key:	Institutions
DALRRD	National Department of Agriculture, Land Reform and Rural Development
DFFE	National Department of Forestry, Fisheries and the Environment
DoH	Department of Health
DMRE	Department of Minerals Resources and Energy
DWS	Department of Water and Sanitation
DEDEAT	Eastern Cape Department of Economic Development, Environmental Affairs and Tourism
ECPTA	Eastern Cape Parks and Tourism Agency
Ezemvelo	Ezemvelo KwaZulu-Natal Wildlife
DESTEA	Free State Department of Economic, Small Business Development, Tourism and Environmental Affairs
GDARDE	Gauteng Department of Agriculture, Rural Development and Environment
Isimangaliso	Isimangaliso Wetland Park Authority

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. This type 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 identified or specified 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 formal administrative, civil or criminal enforcement proceedings.

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

1. INTRODUCTION

The 22/23 financial year marks the 16th year in which DFFE has collaborated with its provincial and local counterparts and statutory bodies to develop the National Environmental Compliance and Enforcement Report (NECER); a joint publication that aims to provide an overview of environmental compliance and enforcement activities undertaken by the various environmental authorities over the period of a financial year.

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

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

The NECER is divided into 14 chapters. It commences with a summary of the key findings of the report, followed by a section outlining the capacity and profile of the Environmental Management Inspectorate. An overall perspective of the national compliance and enforcement statistics is followed by a more detailed breakdown per institution/province. The subsequent legal chapters include recent court cases related to 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 EMI's and other law enforcement authorities. We end the report off with a look ahead to plans for the 2023/24 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 2022/23 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

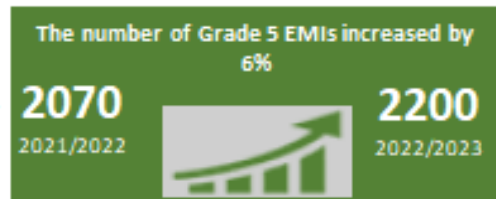
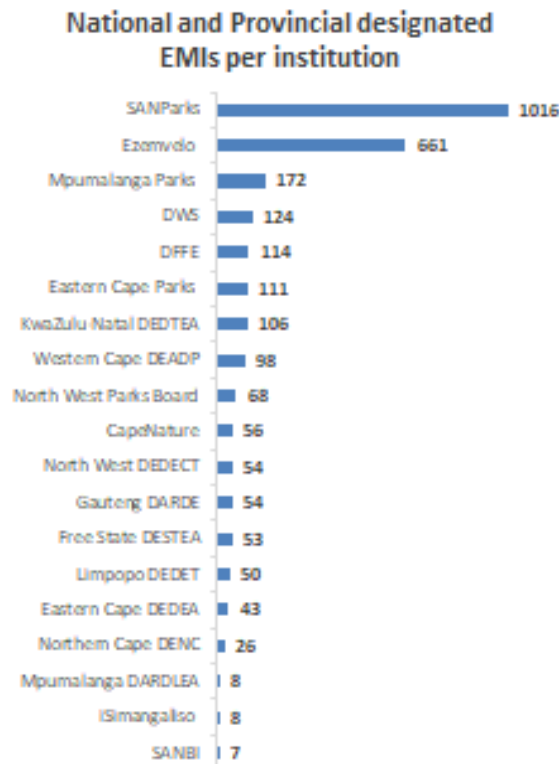


2. KEY FINDINGS

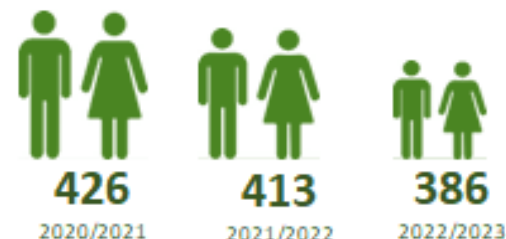
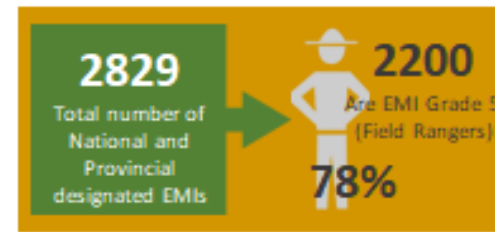
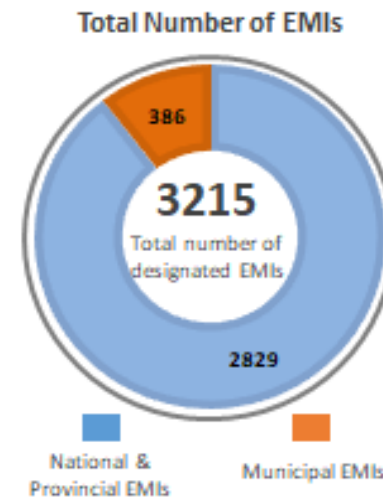
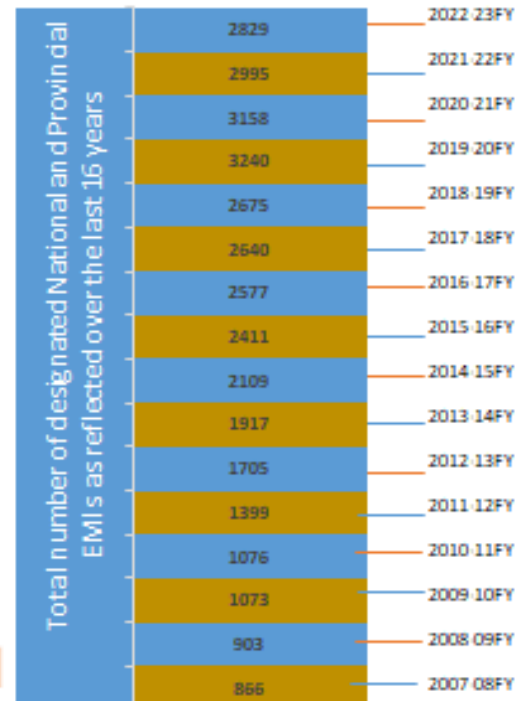
2.1 The Environmental Management Inspectorate

The Environmental Management Inspectorate (EMI)

Overview of EMI designations

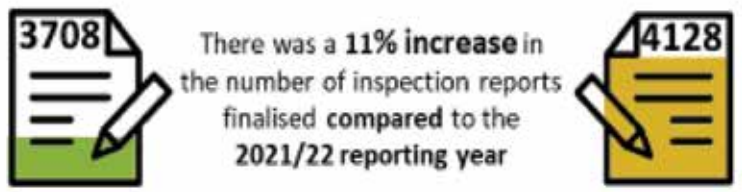
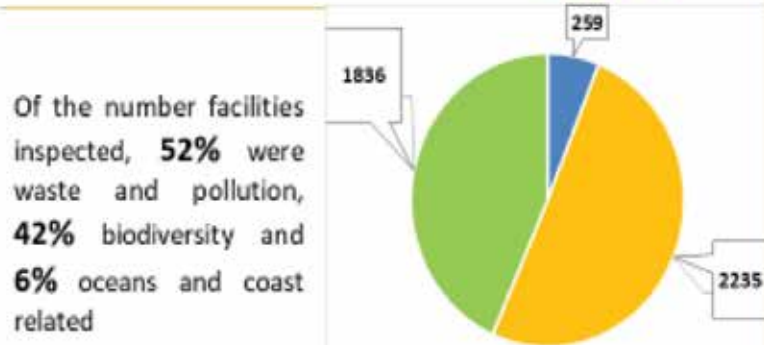


6% decreased in total number of EMIs on the National Register

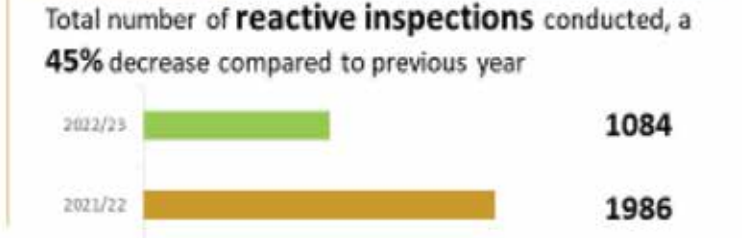
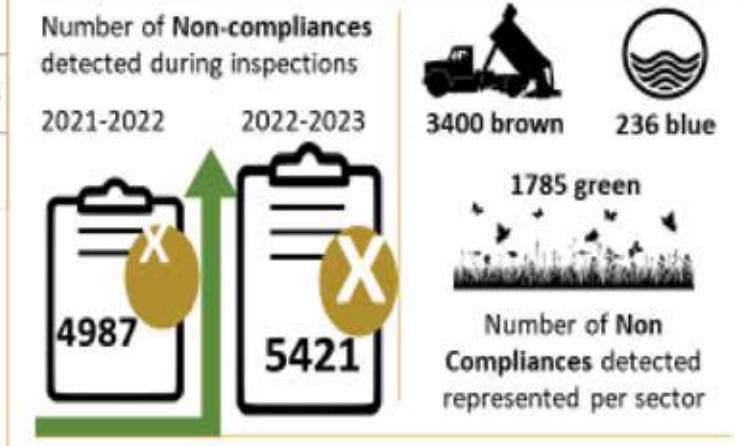
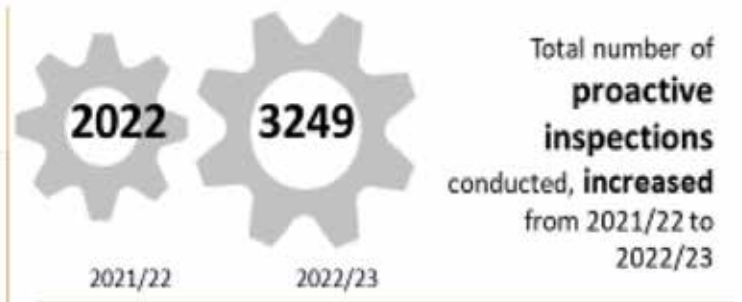


7% decrease in EMIs designated at local authority levels over the past reporting year

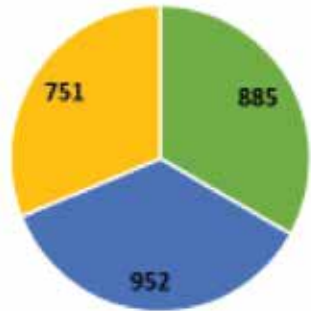
2.2 Overall National Compliance and Enforcement Statistics



Overall National Compliance Statistics

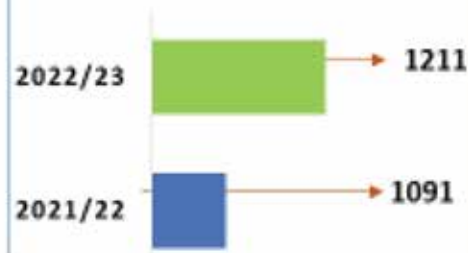


Dockets registered



■ 2020-2021 ■ 2021-2022 ■ 2022-2023

Number of Admission of Guilt Fines Issued



Number of Criminal dockets handed to the NPA, has decreased from 2021/22 to 2022/23



Total number of Arrests made by EMIs



Number of Acquittals decreased from 5 (2021/22) to 1 (2022/23)

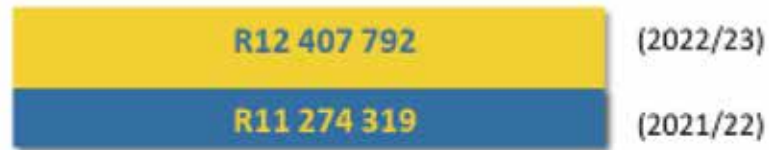


Number of convictions increased by 55%

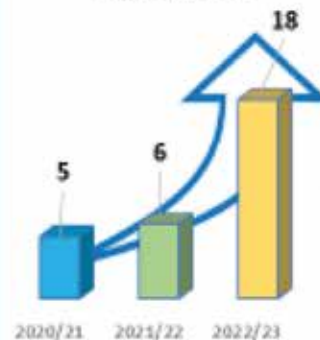


Overall National Enforcement Statistics

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



Plea and Sentencing agreements



Total value of admission of guilt fines paid has decreased from 2021/22 to 2022/23



Number of Administrative notices issued increased



2.3 Annual Compliance and Enforcement Highlights

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

State versus Oscar Ndlovu and Isaac Zitha:

Count 1: 3 Years imprisonment, Count 2: 6 Years imprisonment, Count 3: 2 Years imprisonment, Count 4: 10 Years imprisonment, Count 5: 1 Year imprisonment, Count 6: 3 Years imprisonment, Count 7: 6 Years imprisonment, Count 8: 5 Years imprisonment, Count 9: 5 Years imprisonment, Count 10: 2 Years imprisonment, Count 11: 10 Years imprisonment, Count 12: 10 Years imprisonment

Accused found guilty of: Trespassing, illegal possession of firearm, ammunition and illegal hunting of Rhinoceros

SANParks

Highest sentence for a pollution and waste case:

State versus Rand West City Local Municipality

Count 1: Contravention of Section 49A(1)(e) read with Sections 1, 49B(1)(f) of the National Environmental Management Act, Act 107 of 1998;

Count 2: Contravention of Section 67(1)(a) read with Section 16(1)(d) and 68(1) of the National Environmental Management: Waste Act 59 of 2008

Accused pleaded guilty in terms of S105A of the CPA and was sentenced to a fine of R10 000 000-00 (ten million) of which R7 000 000-00 (seven million) is suspended for a period of 5 (five) years with a number of conditions.

DFFE

Highest number of section 24G fines issued:

85 fines were issued and paid with a total sum of **R9 599 292** being collected.

GDARDE

The highest number of enforcement notices issued:

337 enforcement notices issued mostly pertaining to illegal possession of alien and invasive species (NEM:BA) and unlawful commencement of a listed waste management activity without a WML (NEM:WA)

DFFE

Highest number of admission of guilt fines issued:

758 were issued to the sum total of **R 810 206**.

Contraventions of NEM:PAA

SANParks

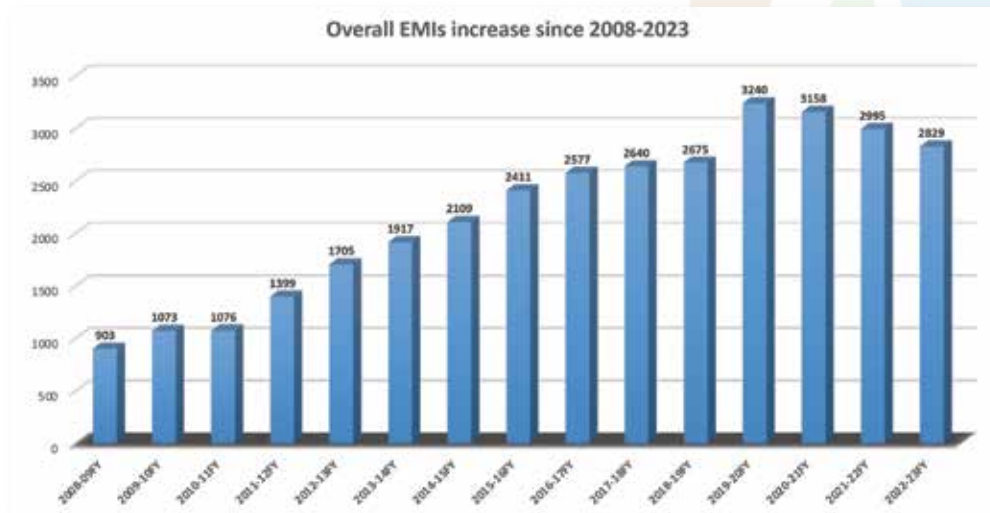


**ENVIRONMENTAL MANAGEMENT
INSPECTORS**

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 2023, 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 **3215** EMIs, comprising of **2829** from national and provincial authorities and **386** from municipalities. The annual capacity of EMIs is reflected in the table below.



Graph 1: National and Provincial EMIs capacity: 2007 - 2023

3.1 Environmental Management Inspectors per Institution

Institution Name	2020-21FY	2021-22FY	2022-23FY
National Authorities			
DFFE	170	138	114
iSimangaliso	8	8	8
SANParks	1293	1258	1016
DWS	27	79	124
SANBI	7	6	7
Provincial Environmental Authorities			
Eastern Cape DEDEA	38	39	43
Free State DESTEA	33	32	53
Gauteng DARDE	49	92	54
KwaZulu-Natal DEDTEA	47	65	106
Limpopo DEDET	70	55	50
Mpumalanga DARDLEA	10	8	8
Northern Cape DENC	26	27	26
North West DEDECT	39	32	54
Western Cape DEADP	84	88	98
Provincial Parks Authorities			
CapeNature	42	60	56
Eastern Cape Parks	247	245	111
Ezemvelo	688	661	661
Mpumalanga Parks	35	34	172
North West Parks Board	71	68	68
TOTAL	3158	2995	2829

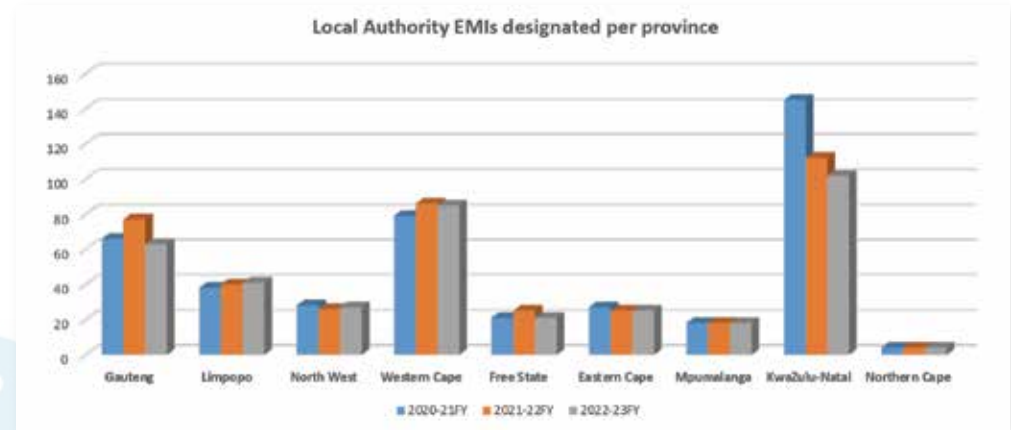
Table 1: EMI Capacity per Institution: 2019-2022

3.2 Local Authority Environmental Management Inspectors

There has been a steady growth in the total number of EMIs at local authority level in the past 13 years since the commencement of the EMI local authority project. The addition of the local authority sphere of government to the capacity of the Inspectorate is aimed at capacitating local authorities, provide them with relevant mandate to enforce certain environmental issues (in terms of Schedules 4 and 5 of the Constitution) and with the legislative tools to do so. However, this financial year saw the local authority EMI capacity decrease by 7% from 413 in 2021/22 to 386 in 2022/23.

PROVINCE	2020-21FY	2021-22FY	2022-23FY
Gauteng	66	77	63
Limpopo	38	40	41
North West	28	26	27
Western Cape	79	86	85
Free State	21	25	21
Eastern Cape	27	25	25
Mpumalanga	18	18	18
KwaZulu-Natal	145	112	102
Northern Cape	4	4	4
TOTAL	426	413	386

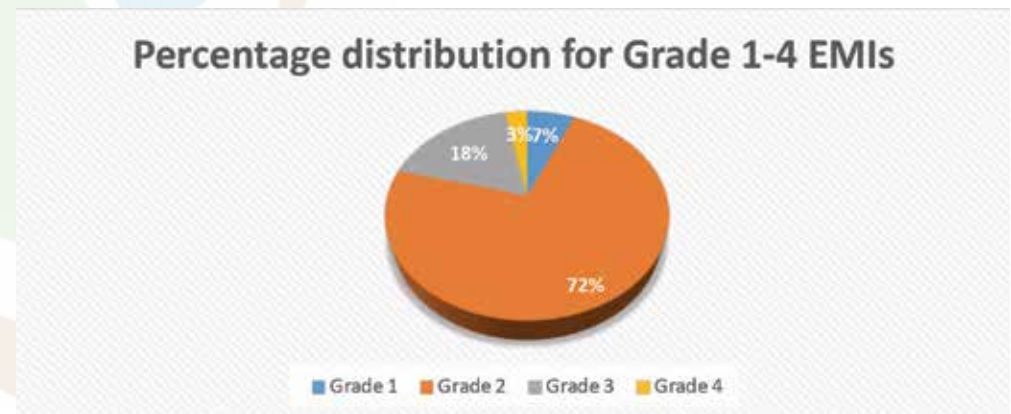
Table 2: Local Authority EMI Capacity per province 2020 - 2023



Graph 2: Local Authority EMI Capacity per province 2020 - 2023

3.3 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.



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

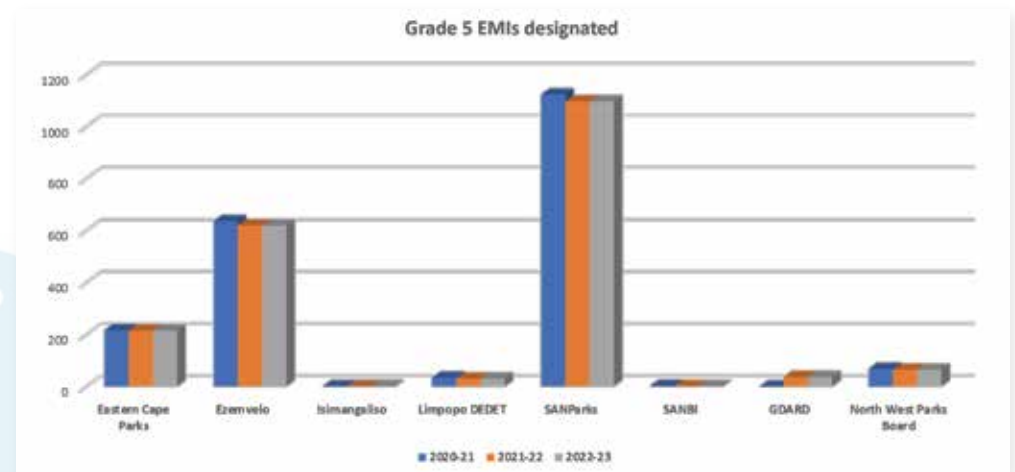
3.4 Grade 5 Environmental Management Inspectors

Grade 5 EMIs are appointed as “Field Rangers” to execute compliance and enforcement duties within various national and provincial protected areas. Accordingly, they are predominantly spread across those EMI institutions who are management authorities in respect of protected areas. Grade 5 EMIs play a critical role in monitoring activities within these protected areas by conducting routine patrols and forming key team members of various anti-poaching units. The number of Grade 5 designated EMIs has increased from 2070 in 2021/22 to 2200 in 2022/23 with **130** field rangers designated by MPTA.

INSTITUTION	2020-21	2021-22	2022-23
Eastern Cape Parks	217	216	216
Ezemvelo	637	620	620
Isimangaliso	1	1	1
Limpopo DEDET	34	31	31
SANParks	1124	1098	1098
SANBI	3	2	2
GDARDE	–	37	37
MTPA	–	–	130
North West Parks Board	68	65	65
TOTAL	2084	2070	2200

Table 3: Grade 5 EMIs per Institution: 2020 – 2023

Graph 3: Number of Grade 5 EMIs (Field Rangers) per institution: 2020 - 2023





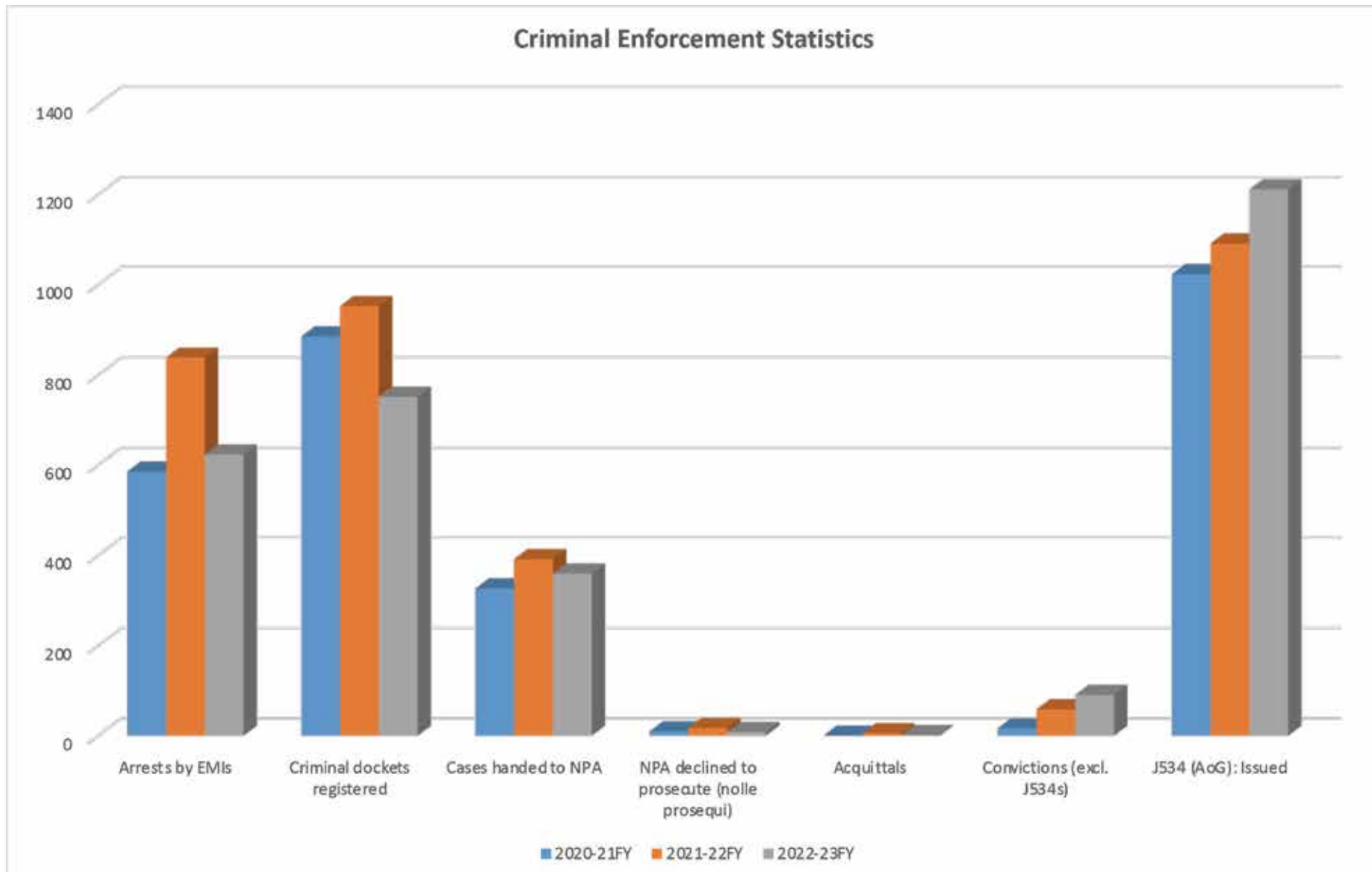
**OVERALL NATIONAL COMPLIANCE
AND ENFORCEMENT STATISTICS**

4. OVERALL NATIONAL COMPLIANCE AND ENFORCEMENT STATISTICS

4.1 Enforcement

	2020-21FY	2021-22FY	2022-23FY
Criminal Enforcement			
Arrests by EMI's	585	838	623
Criminal dockets registered	885	952	751
Cases handed to NPA	326	391	359
NPA declined to prosecute (<i>nolle prosequi</i>)	9	17	8
Section 105A agreements (plea bargains)	5	6	18
Acquittals	0	5	1
Convictions (excl. J534s)	16	58	90
J534 (Admission of Guilt Fines): Total number issued	1023	1091	1211
J534: Total number paid	421	390	593
J534: Total value of fines paid	R353 795	R408 730	R 308 750
Administrative Enforcement and Civil Actions			
Warning letters issued	79	129	87
Pre-directives issued	213	338	255
Pre-compliance notices issued	586	646	679
Final directives issued	71	32	105
Final compliance notices issued	182	244	190
Civil Court applications launched	0	0	0
S24G administrative fines: Total value paid	R 18 540 666	R11 274 319	R12 407 792
S24G: Total number of fines paid	99	66	118

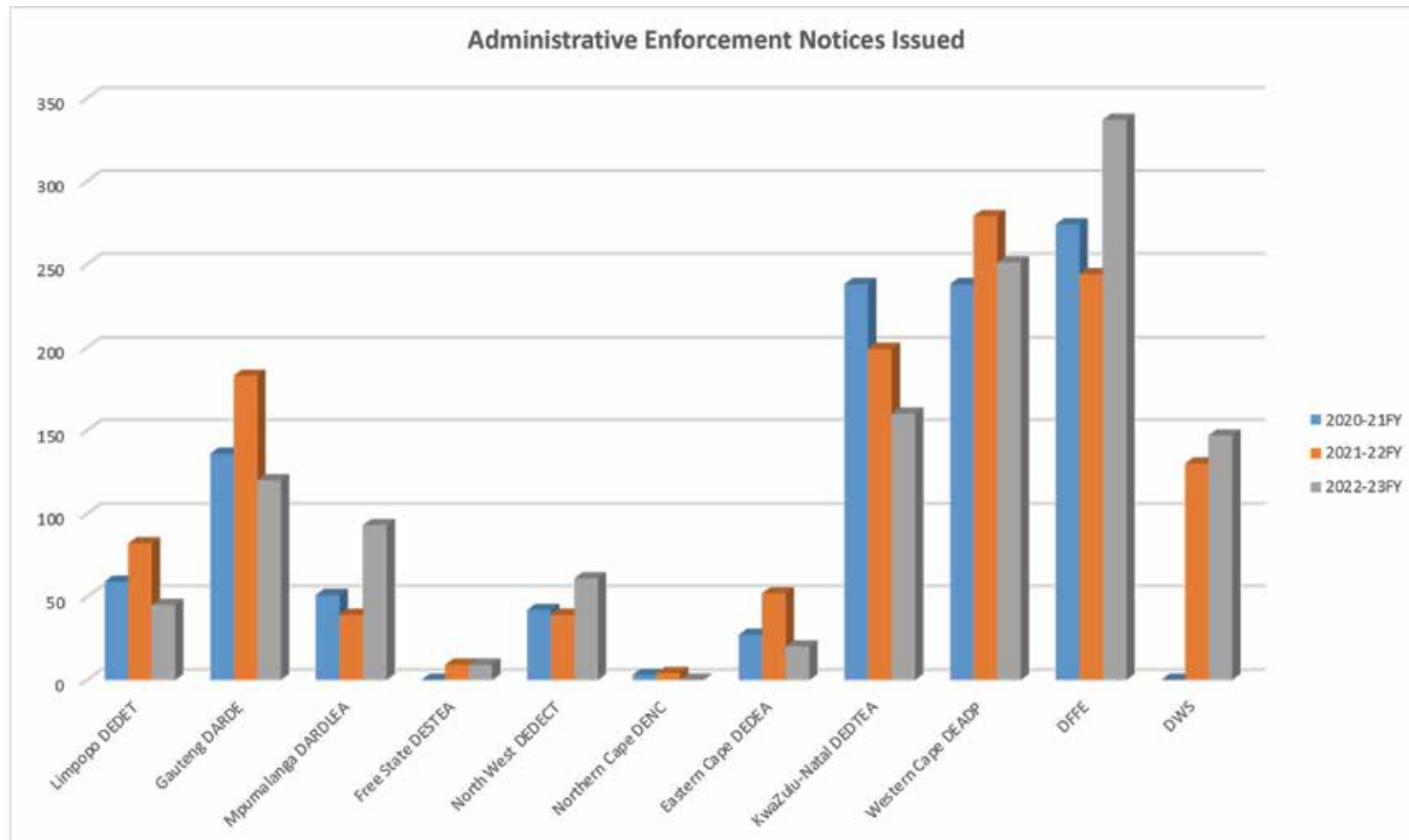
Table 4: Overall criminal and administrative enforcement actions: 2020-2023



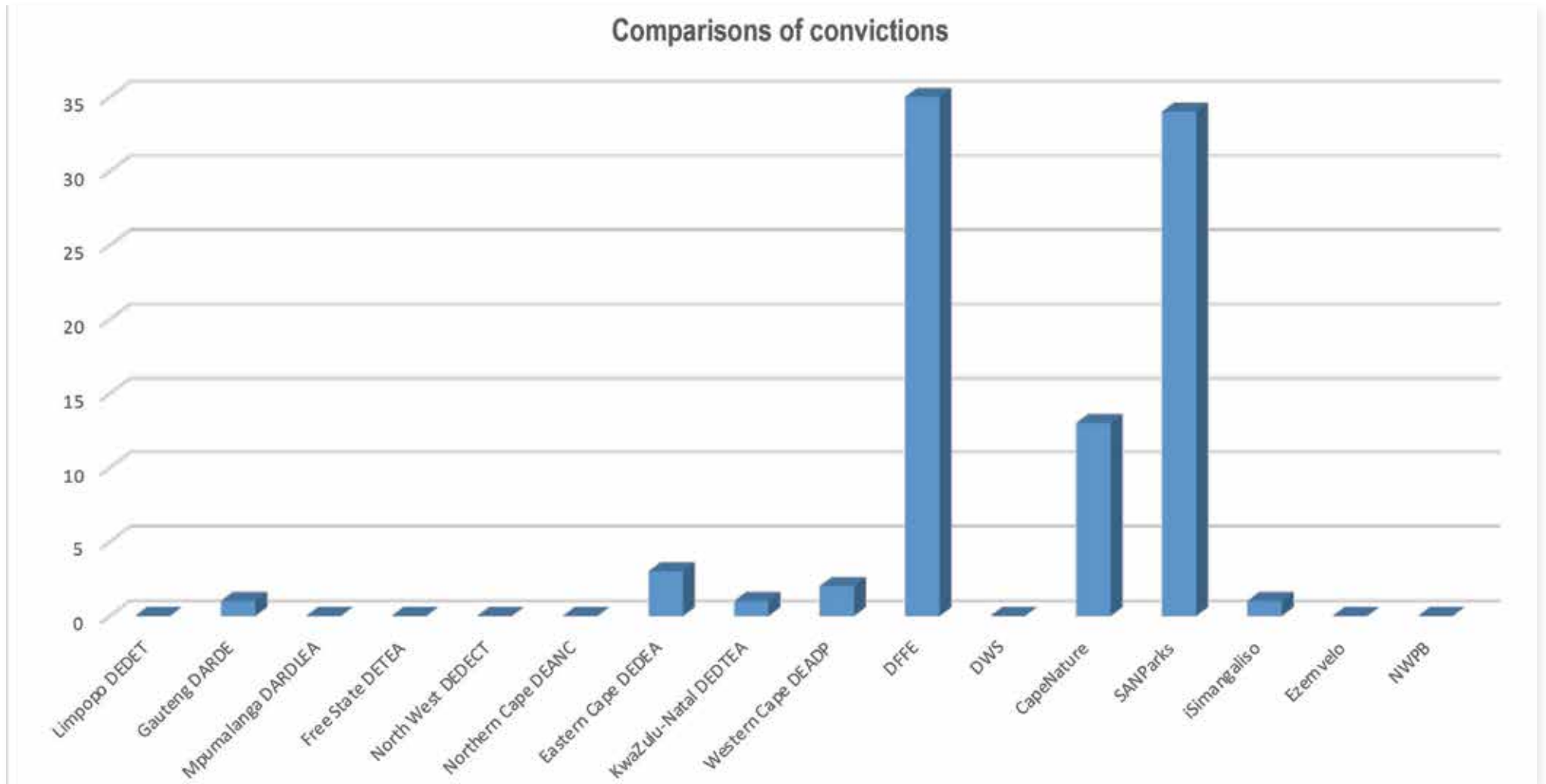
Graph 3: Overall Criminal Enforcement Statistics from 2020-23.

4.1.1 Use of administrative and criminal enforcement mechanisms

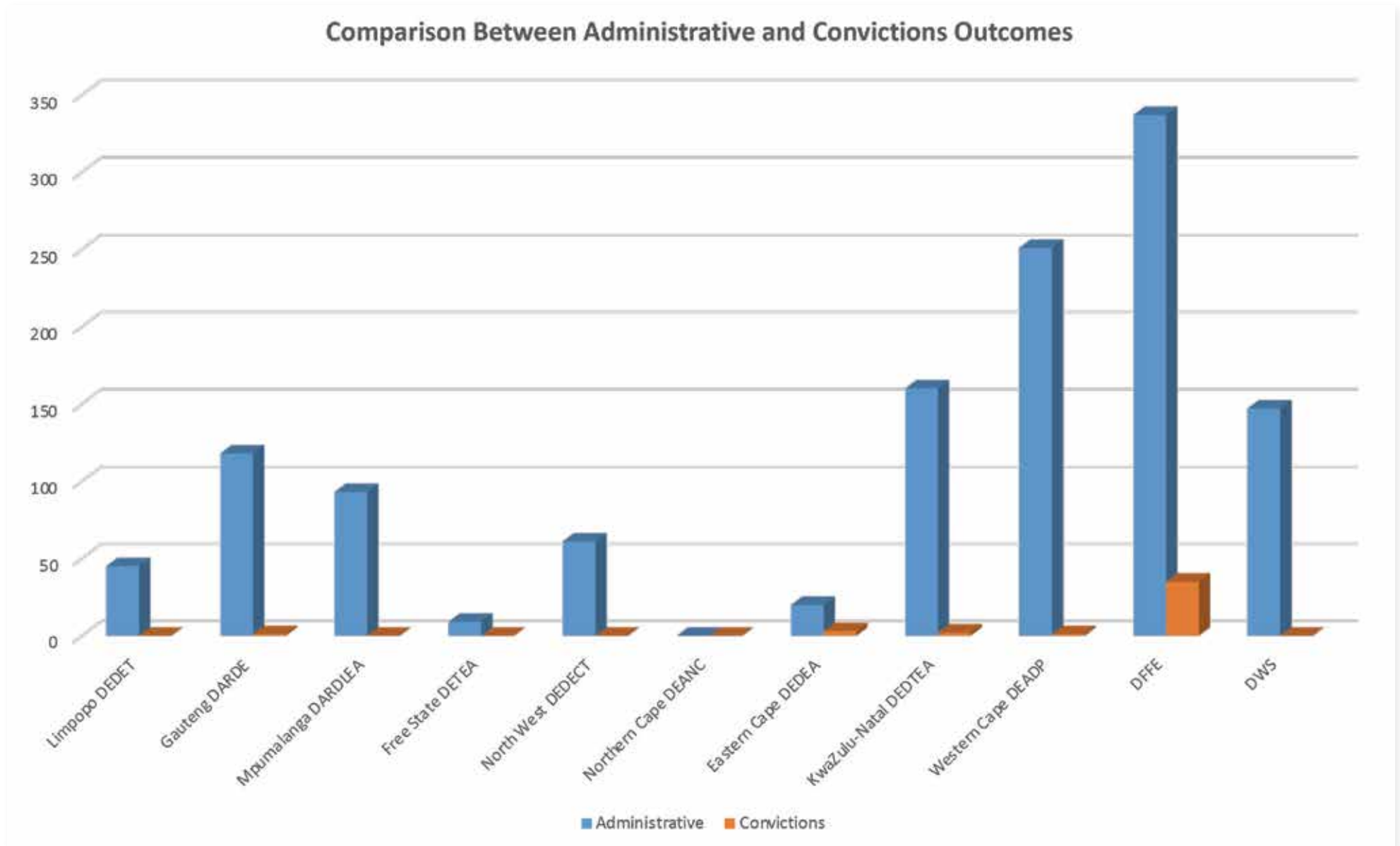
The following three graphs compare the use of enforcement notices and criminal enforcement mechanisms by each of the EMI Institutions. The comparison for the 2022/23 financial year reveals that the use of administrative enforcement notices (i.e. directives and other notices) remains the preferred tool for the authorities that deal with brown issues, with the DFFE, Western Cape DEADP, KwaZulu-Natal EDTEA, DWS and Gauteng DARDE showing the highest numbers issued for this reporting period. In respect of the number of criminal convictions, DFFE recorded the highest number of convictions: 35 of 90 (**39%**) followed by the SANParks with 34 of 90 (**38%**) and Cape Nature which contributed **14%** (13 of 90 each).



Graph 4: Number of enforcement notices issued per institution: 2020 - 2023



Graph 5: Number of convictions obtained per institution: 2022-2023



Graph 6: Convictions versus enforcement notices per provinces

4.1.2 Most prevalent types of environmental crimes

The 2022/23 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	Unlawful commencement without WML: (NEM:WA)	151
	DWS	Unauthorised water use	56
	iSimangaliso	Possession of protected species (NEM:PAA)	13
	SANParks	Illegal hunting of protected species in a national park/ travelling outside of official hours (NEM: PAA)	159 /166
Eastern Cape	Eastern Cape DEDEA	Unlawful commencement of listed activities (NEMA)	35
	Eastern Cape Parks	Illegal entry without the necessary permit (NEMA: PAA)	27
Free State	Free State DESTEA	Unlawful commencement of listed activities (NEMA)	-
Gauteng	Gauteng DARDE	Unlawful commencement of listed activities (NEMA)	129
Kwa-Zulu Natal	Ezemvelo	Illegal entry / Illegal hunting Prohibited activity (Ordinance 15 of 1974)	361
	KwaZulu-Natal DEDTEA	Unlawful commencement of listed activities (NEMA)	72
Limpopo	Limpopo DEDET	Picking indigenous plants and wood collection without a permit (LEMA)	138
Mpumalanga	Mpumalanga DARDLEA	Unlawful commencement of listed activities (NEMA)	74
	Mpumalanga Parks	Illegal hunting protected species (Mpumalanga Nature Conservation Act 10 of 1998)	27
Northern Cape	Northern Cape DENC	Illegal possession of protected species without a permit (NEM:BA, NCNCA)	-
North West	North West DEDECT	Unlawful commencement of listed activities (NEMA)	53
	North West Parks	Illegal hunting of rhino (NEM:BA)	17
Western Cape	CapeNature	Illegal possession of protected species without a necessary permit (Western Cape Nature Conservation Ordinance 19 of 1974)	88
	Western Cape DEADP	Unlawful commencement of listed activities (NEMA and NEM:WA) and incidents related to pollution and waste degradation in terms of NEMA s28	324

Table 5: Most prevalent types of environmental crimes per province

4.2 Compliance Monitoring

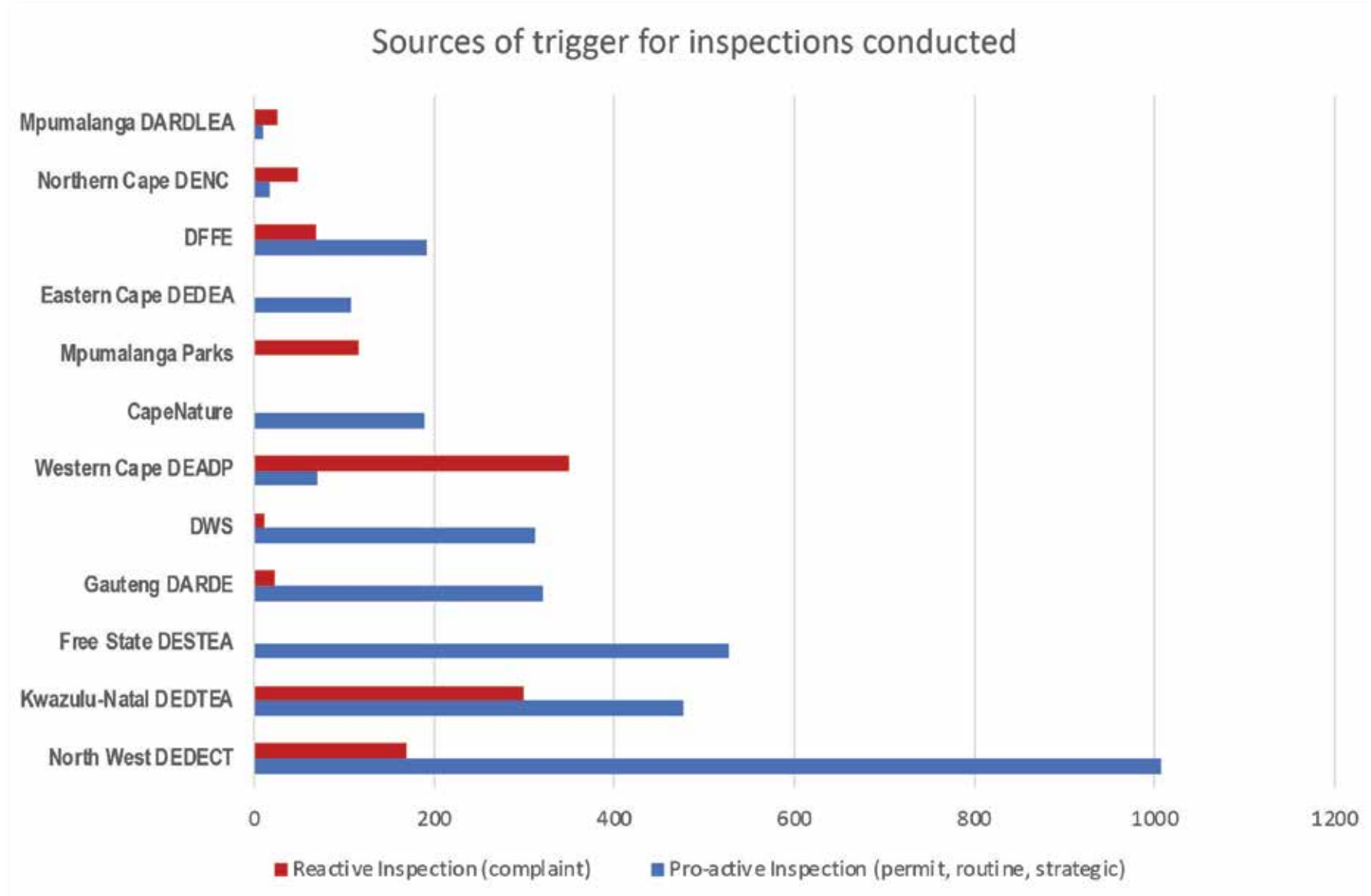
Conducting compliance monitoring inspections to ascertain whether or not the regulated community is complying with the relevant legislative provisions, as well as with authorisations, licences and permits issued in terms of this legislation, play a critical role in ensuring continued compliance. Without 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 2022/23 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.

Institution	Pro-active Inspection (permit, routine, strategic)	Reactive Inspection (complaint)	Grand Total
North West DEDECT	1007	169	1176
Kwazulu-Natal DEDTEA	476	299	775
Free State DESTEA	527		527
Gauteng DARDE	320	23	343
DWS	312	11	323
Western Cape DEADP	70	349	419
CapeNature	188		188
Mpumalanga Parks		115	115
Eastern Cape DEDEA	107		107
DFFE	192	68	260
Northern Cape DENC	17	48	65
Mpumalanga DARDLEA	10	25	35
Grand Total	3226	1107	4333

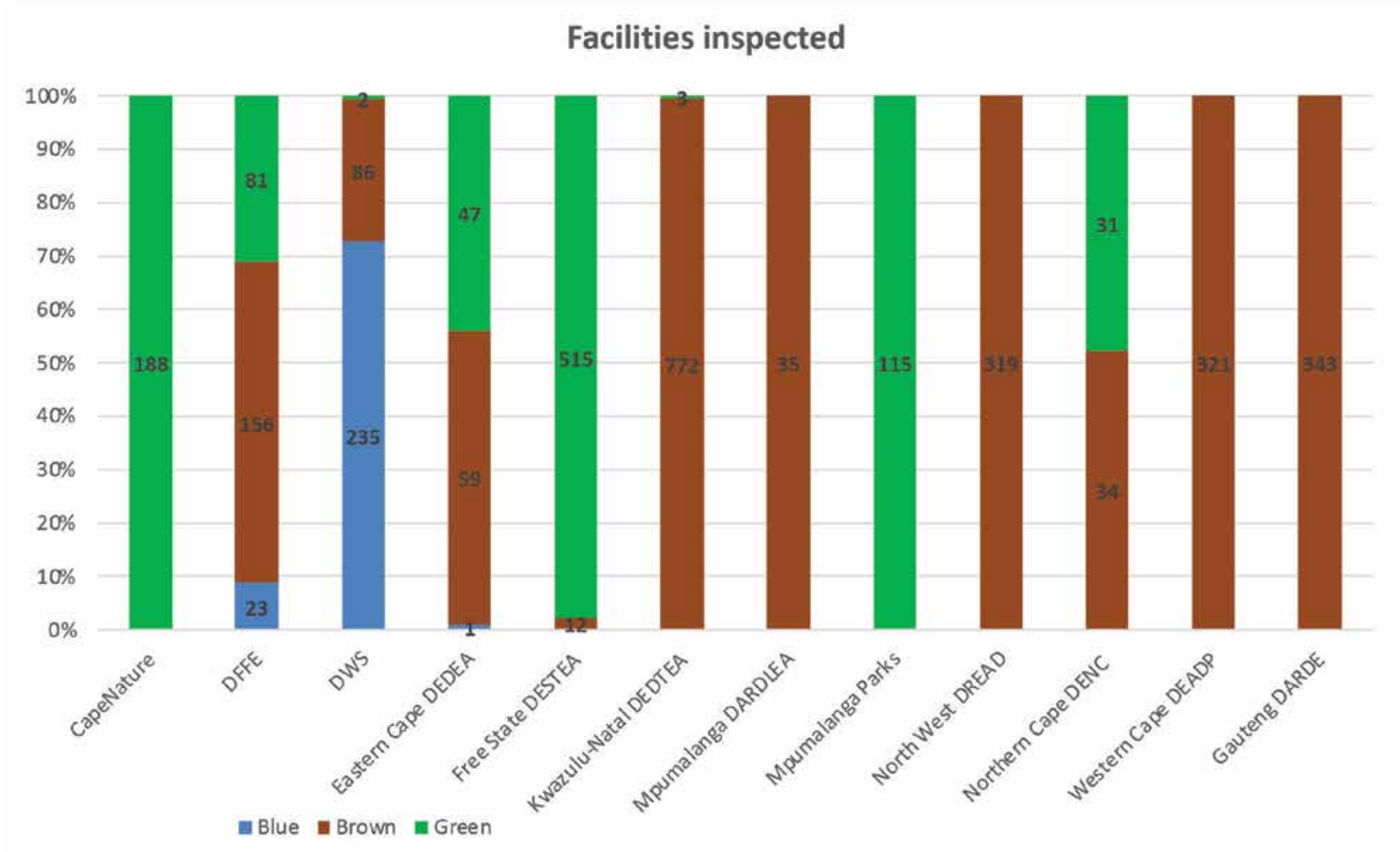
Table 6: Types of Triggers for Compliance Inspections per Institution

4.2.1 Compliance Inspections per Trigger

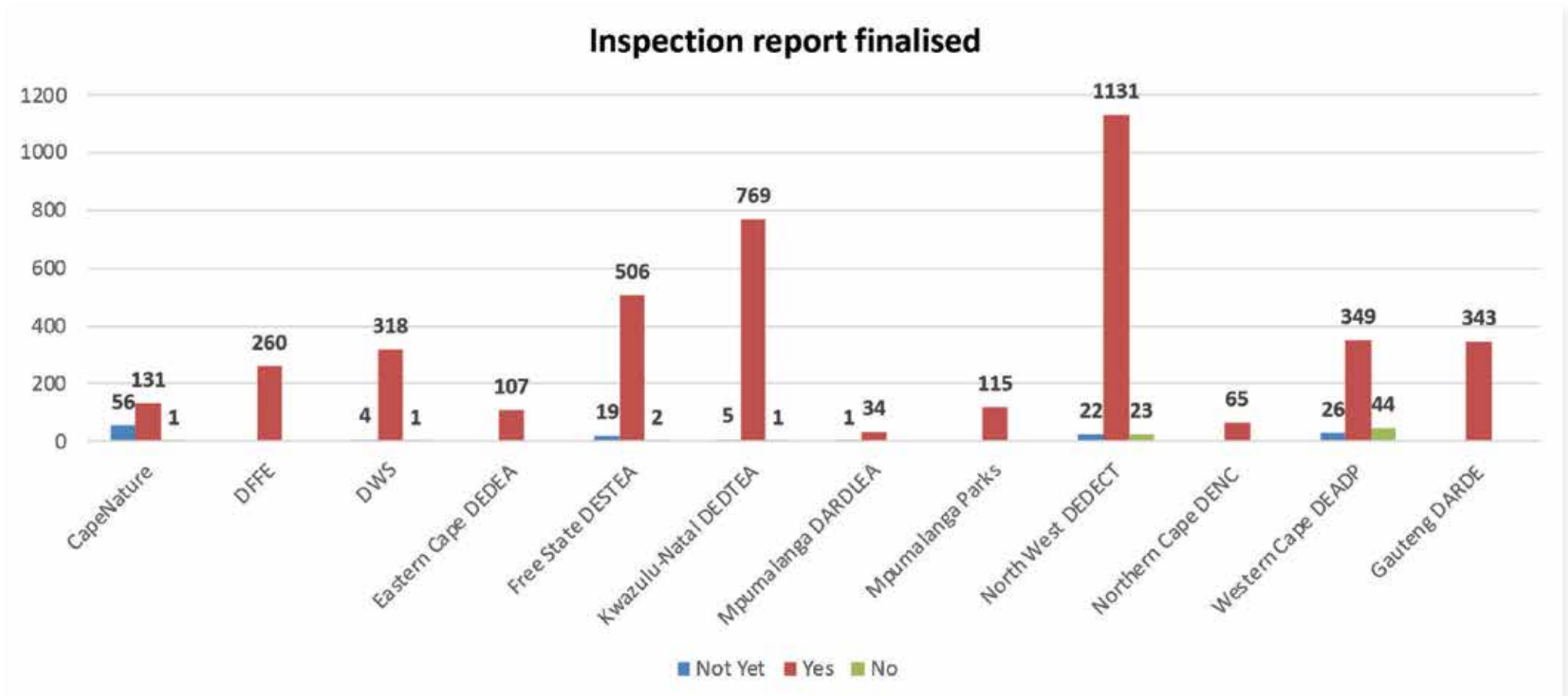


Graph 7: Graphical representation on sources of trigger for conducted inspections.

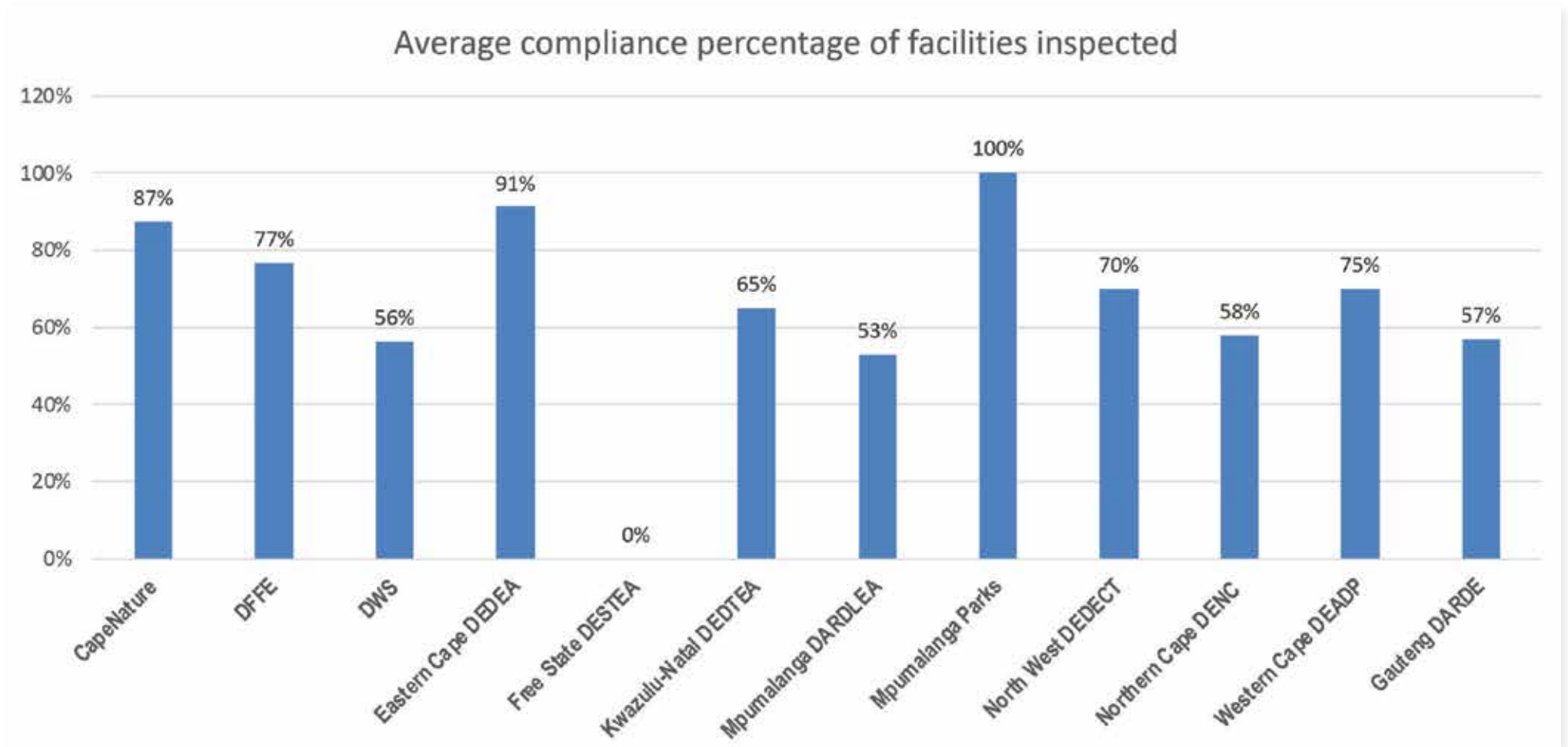
4.2.2 Compliance Inspections per sector



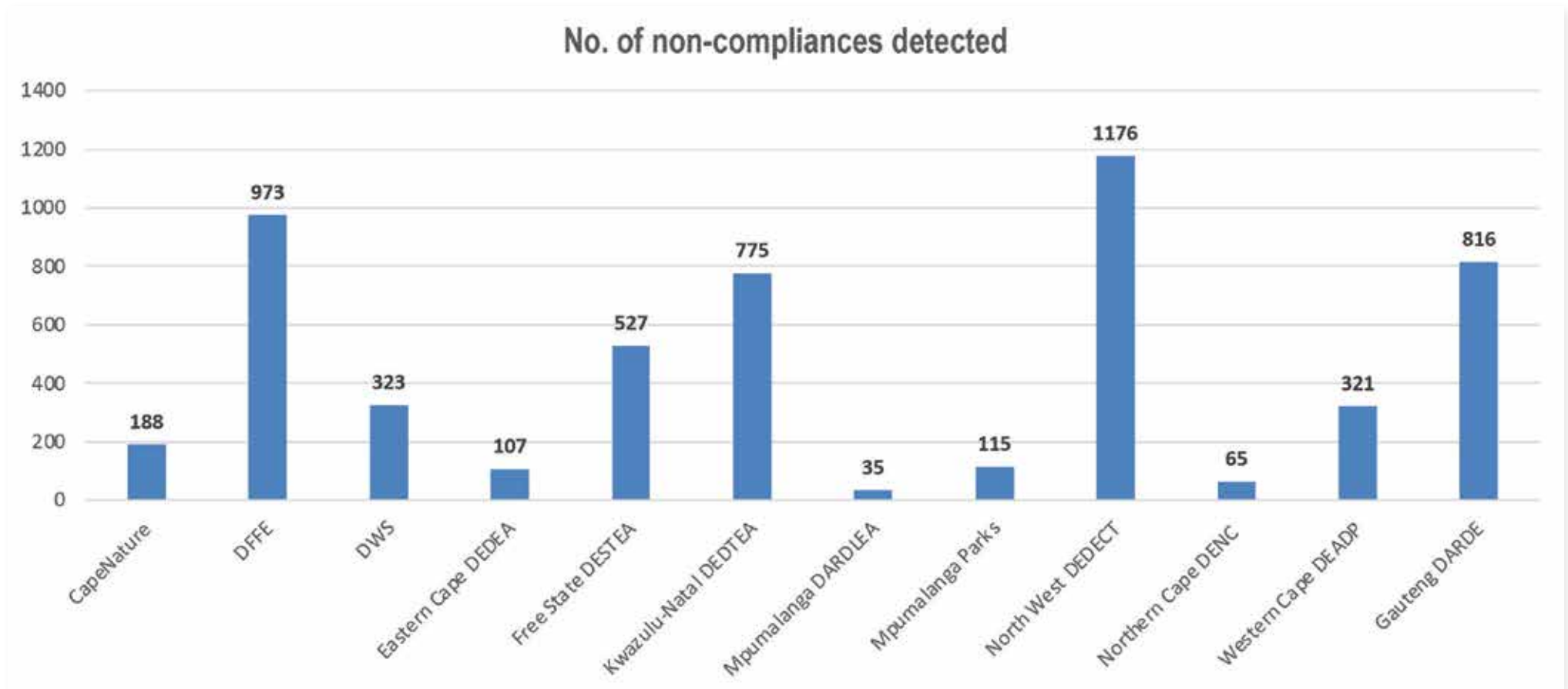
Graph 8: Graphical representation of percentage of sectors on which inspections are conducted.



Graph 9: Graphical representation on inspection report finalised.



Graph 10: Graphical representation of percentage of compliance of facilities subject to inspections.



Graph 11: Representation of non-compliance detected during inspections

STATISTICS PER NATIONAL
INSTITUTION/PROVINCE



5. STATISTICS PER NATIONAL/ PROVINCE/ INSTITUTION

5.1. National

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



	2020- 21FY	2021- 22FY	2022- 23FY	2020-21FY	2021-22FY	2022-23FY
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	26	68	18	-	0	0
Criminal dockets registered	51	100	103	-	0	0
Cases handed to NPA	56	69	51	-	0	0
NPA declined to prosecute (<i>nolle prosequi</i>)	1	4	1	-	0	0
Section 105A agreements (plea bargains)	1	3	10	-	0	0
Acquittals	0	2	0	-	0	0
Convictions	0	12	35	-	0	0
J534s issued	31	42	46	-	21	21
J534s paid	R 40 000	R 56 000	R 114 000	-	0	0
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS				ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS		
Warning letters written	22	82	29	-	6	6
Pre-directives issued	68	86	63	-	116	104
Pre-compliance notices issued	164	129	219	-	0	0
Final directives issued	7	8	26	-	14	43
Final compliance notices issued	35	21	29	-	0	0
Civil Court applications launched	0	0	0	-	0	0
S24G administrative fines paid (total value / number)	-	-	R250 000.00	-	-	-
	-	-	1	-	-	-

5.1.2 SANParks, Isimangaliso Wetland Authority, and SANBI



	SOUTH AFRICAN NATIONAL PARKS			ISIMANGALISO WETLAND PARK AUTHORITY			SANBI
	2020-21FY	2021-22FY	2022-23FY	2020-21FY	2021-22FY	2022-23FY	2022-23FY
CRIMINAL ENFORCEMENT							
Arrests by EMIs	124	145	75	20	16	8	0
Criminal dockets registered	353	356	202	34	30	12	0
Cases handed to NPA	93	68	85	15	23	5	0
NPA declined to prosecute (<i>nolle prosequi</i>)	0	0	0	2	0	0	0
Section 105A agreements (plea bargains)	0	2	0	2	0	0	0
Acquittals	0	2	0	0	0	0	0
Convictions	0	36	34	4	1	1	0
J534s issued	647	698	758	1	0	0	2
J534s paid (number)	160	135	306	1	0	0	0
J534s paid (value)	R101 025	R 144 350	R 308 750	R500	R0	R0	R5000
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS							
Warning letters written	-	-	-	0	0	4	-
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 Departments and Conservation Entities

5.2.1 Western Cape



	DEPARTMENT OF ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING			CAPENATURE		
	2020-21FY	2021-22FY	2022-23FY	2020-21FY	2021-22FY	2022-23FY
CRIMINAL ENFORCEMENT						
Arrests by EMIs	0	0	0	83	184	145
Criminal dockets registered	10	10	8	37	82	80
Cases handed to NPA	8	10	6	30	67	60
NPA declined to prosecute (<i>nolli prosequi</i>)	1	0	0	1	4	2
Section 105A agreements (plea bargains)	0	0	1	1	0	1
Acquittals	0	0	0	0	0	0
Convictions	0	0	2	4	6	13
J534s issued	0	0	0	78	77	48
J534s paid (number)	0	0	0	8	23	19
J534s paid (value)	R0	R0	R0	R36 800	R 44 350	R 30 700
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS						
Warning letters written	0	0	0	0	0	0
Pre directives issued	84	80	44	0	0	0
Pre-compliance issued	104	115	127	0	0	0
Final directives issued	22	60	9	0	0	0
Final compliance notices issued	28	20	71	0	0	0
Civil Court applications launched	0	0	0	0	0	0
S24G administrative fines paid (total value /number)	R 2 386 166	R 4 519 775	R 1 914 500	0	0	0
	68	24	21			

5.2.2 KwaZulu-Natal



	DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM & ENVIRONMENTAL AFFAIRS			EZEMVELO KZN WILDLIFE		
	2020-21FY	2021-22FY	2022-23FY	2020-21FY	2021-22FY	2022-23FY
CRIMINAL ENFORCEMENT						
Arrests by EMIs	0	0	0	172	193	163
Criminal dockets registered	3	5	9	156	127	100
Cases handed to NPA	2	3	13	–	–	–
NPA declined to prosecute (nolli prosequi)	0	0	1	–	–	–
Section 105A agreements (plea bargains)	0	0	1	–	–	–
Acquittals	0	0	0	–	–	–
Convictions	0	0	1	–	–	–
J534s issued	0	0	0	11	25	19
J534s paid (number)	0	0	0	1	18	18
J534 paid (value)	R0	0	0	R 2 500	R 26 150	R 38 280
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS						
Warning letters written	3	4	4	–	–	–
Pre-directives issued	47	36	29	–	–	–
Pre-compliance notices issued	144	115	91	–	–	–
Final directive issued	19	11	9	–	–	–
Final compliance notices issued	28	37	31	–	–	–
Civil Court applications launched	0	0	0	–	–	–
S24G administrative fine paid (total value/ number)	–	R 110 000	R 0	–	–	–
	–	2	0		–	–

5.2.3 Gauteng



GAUTENG DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT AND ENVIRONMENT	2020-21FY	2021-22FY	2022-23FY
CRIMINAL ENFORCEMENT			
Arrests by EMIs	16	13	34
Criminal dockets registered	8	17	30
Cases handed to NPA	17	34	44
NPA declined to prosecute (<i>nolle prosequi</i>)	2	4	1
Section 105A agreements (plea bargains)	0	0	1
Acquittals	0	0	0
Convictions	2	1	1
J534s issued	9	17	19
J534s paid (number)	7	15	17
J534s paid (value)	R 10 800	R 17 450	R 34 000
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS			
Warning letters written	0	0	0
Pre-directives issued	6	6	4
Pre-compliance notices issued	91	131	82
Directives issued	3	2	0
Final compliance notices issued	36	44	34
Civil Court applications launched	0	0	0
S24G administrative fines paid (total value/ number)	R10 762 500	R5 749 544	R9 599 291.93
	11	21	85

5.2.4 Limpopo



LIMPOPO DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND CONSERVATION	2020-21FY	2021-22FY	2022-23FY
CRIMINAL ENFORCEMENT			
Arrests by EMIs	94	104	29
Criminal dockets registered	77	73	40
Cases handed to NPA	15	11	6
NPA declined to prosecute (<i>nolle prosequi</i>)	1	0	2
Section 105A agreements (plea bargains)	0	1	0
Acquittals	0	1	1
Convictions	0	0	0
J534s issued	216	149	160
J534s paid (number)	206	143	159
J534s paid (value)	R 134 370	R 85 430	R 89 860
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS			
Warning letters written	2	0	1
Pre-directives issued	3	3	1
Pre-compliance notices issued	44	62	37
Directives issued	3	0	0
Final compliance notices issued	9	17	7
Civil Court applications launched	0	0	0
S24G administrative fines paid (total value/ number)	R 250 000	-	-
	1	-	-

5.2.5 Eastern Cape



	DEPARTMENT OF ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS			EASTERN CAPE PARKS & TOURISM AGENCY		
	2020-21FY	2021-22FY	2022-23FY	2020-21FY	2021-22FY	2022-23FY
CRIMINAL ENFORCEMENT						
Arrests by EMLs	0	54	46	4	5	1
Criminal dockets registered	58	54	54	2	2	1
Cases handed to NPA	48	65	14	0	0	0
NPA declined to prosecute (<i>nolle prosequi</i>)	0	0	1	0	0	0
Section 105A agreements (plea bargains)	0	0	4	0	0	0
Acquittals	0	0	0	0	0	0
Convictions	0	0	3	0	1	0
J534s issued	0	0	2	0	15	24
J534s paid (number)	0	0	1	0	0	5
J534s paid (value)	R0	R0	R2000	R0	R0	R2 100
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS						
Warning letters written	18	26	38	-	-	-
Pre-directives issued	0	1	2	-	-	-
Pre-compliances issued	23	43	16	-	-	-
Final directives issued	0	2	0	-	-	-
Final compliance notices issued	4	6	2	-	-	-
Civil Court applications launched	0	0	0	-	-	-
S24G administrative fines paid (total value/ number)	-	-	-	-	-	-
	-	-	-			

5.2.6 Free State



DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS ¹	2020-21FY	2021-22FY	2022-23FY
CRIMINAL ENFORCEMENT			
Arrests by EMIs	-	0	0
Criminal dockets	-	2	0
Cases handed to NPA	-	2	0
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	6	20	57
J534s paid (number)	4	12	28
J534s paid (value)	R11 000	R 34 500	R 63 300
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS			
Warning letters written	-	0	0
Pre-directives issued	-	2	2
Pre-compliance notices issued	-	6	6
Directives issued	-	0	0
Final compliance notices issued	-	1	1
Civil Court applications launched	-	0	0
S24G administrative fines paid (total value / number)	-	0	0
	-	0	0

5.2.7 Mpumalanga



	MPUMALANGA DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT, LAND & ENVIRONMENTAL AFFAIRS			MPUMALANGA TOURISM AND PARKS AGENCY		
	2020-21FY	2021-22FY	2022-23FY	2020-21FY	2021-22FY	2022-23FY
CRIMINAL ENFORCEMENT						
Arrests by EMIs	0	0	0	26	45	36
Criminal dockets registered	14	7	10	37	60	33
Cases handed to NPA	11	2	0	15	23	25
NPA declined to prosecute (<i>nolle prosequi</i>)	0	0	0	1	2	0
Section 105A agreements (plea bargains)	0	0	0	1	0	0
Acquittals	0	0	0	0	0	0
Convictions	0	0	0	1	1	0
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	1	0	4	0	0	0
Pre-directives issued	2	7	9	0	0	0
Pre-compliances issued	3	13	64	0	0	0
Final directives issued	12	10	15	0	0	0
Final compliance notices issued	34	9	5	0	0	0
Civil Court applications launched	0	0	0	0	0	0
S24G administrative fines paid (total value/ number)	R 5 142 000	R 895 000	R 644 000	0	0	0
	20	19	11			

5.2.8 Northern Cape



Department of
Environment and Nature Conservation
Northern Cape

DEPARTMENT OF ENVIRONMENT AND NATURE CONSERVATION	2020-21FY	2021-22FY	2022-23FY
CRIMINAL ENFORCEMENT			
Arrests by EMIs	28	10	-
Criminal dockets	16	11	-
Cases handed to NPA	14	8	-
NPA declined to prosecute (<i>nolle prosequi</i>)	1	3	-
Section 105A agreements (plea bargains)	0	0	-
Acquittals	0	0	-
Convictions	0	0	-
J534s issued	9	3	-
J534s paid (number)	8	1	-
J534s paid (value)	R 3 800	R 2 500	-
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS			
Warning letters written	31	10	-
Pre-directives issued	0	0	-
Pre-compliance notices issued	0	0	-
Directives issued	3	0	-
Final compliance notices issued	0	4	-
Civil Court applications launched	0	0	-
S24G administrative fines paid (total amount/ number)	R0	R0	-
	0	0	-

5.2.9 North West



	NORTH WEST DEPARTMENT: ECONOMIC DEVELOPMENT, ENVIRONMENT, CONSERVATION AND TOURISM			NORTH WEST PARKS AND TOURISM BOARD		
	2020-21FY	2021-22FY	2022-23FY	2020-21FY	2021-22FY	2022-23FY
CRIMINAL ENFORCEMENT						
Arrests by EMIs	8	0	67	4	1	1
Criminal dockets	19	1	71	10	15	6
Cases handed to NPA	3	0	49	2	2	1
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	6	0	0	0	0	0
J534s issued	12	0	55	0	1	1
J534s paid (number)	12	0	30	0	1	1
J534s paid (value)	R 9 000	R0	R 43 750	R0	R500	R0
ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS						
Warning letters written	0	1	1	-	-	-
Pre-directives issued	9	1	0	-	-	-
Pre-compliance notices issued	23	32	44	-	-	-
Directives issued	2	0	3	-	-	-
Final compliance notices issued	8	6	14	-	-	-
Civil Court applications launched	0	0	0	-	-	-
S24G administrative fines paid (total value / number)	-	-	-	-	-	-
	-	-	-	-	-	-

ENVIRONMENTAL JURISPRUDENCE



6. ENVIRONMENTAL JURISPRUDENCE

6.1 Procedurally unfair administrative action as basis for setting aside an exploration right

Sustaining the Wild Coast NPC et al v Minister of Mineral Resources and Energy et al (case no. 3491/2021) – delivered on 1 September 2022

Impact Africa Limited (Impact) obtained an exploration right which necessitated a seismic survey off the southeast coast of South Africa (this project is owned by Shell). It was argued that the survey will impact negatively upon the livelihood and the constitutional and customary fishing and religious rights of the coastal communities.

Public consultation and obtaining the exploration right

Impact submitted an application to the Petroleum Agency of South Africa (PASA) for an exploration right and a draft environmental management programme (EMPr), together with a background information document was made available to interested and affected parties (IAPs) for comment. These IAPs were identified through an “analysis of stakeholders engaged in previous similar studies in the area”. Advertisements were placed in 4 newspapers and after 21 calendar days, the comments received were compiled into a report, forming part of the draft EMPr. The draft EMPr was made available to IAPs for a further 30 calendar days on the project website. Two group meetings were held with ECPTA and the EC DEDEAT, as well as further meetings involving the monarchs in the Transkei. All comments received were documented in a comments and responses report and no substantive changes were made to the EMPr in preparing the final report for submission to PASA. PASA recommended the approval of the EMPr; the DDG approved the EMPr and on 29 April 2014 the exploration right was granted, valid for a period of three years. No environmental authorisation was obtained.

No seismic and exploration activities were subsequently conducted but two renewals of the exploration right were applied for and subsequently granted on 20 December 2017 and 30 July 2021. In 2018, a 2D multi-client seismic survey in the area was conducted as a precursor to the 3D survey, which is the subject of this application. On 29 October 2021, SLR Consulting, on behalf of Shell, gave notice of Shell's intention to commence with a 3D seismic survey and this is when the applicants aver they became aware of the situation.

Urgent *interim* interdict applications

An urgent *interim* interdict was subsequently applied for to restrain Shell and Impact from undertaking seismic survey operations, pending separate proceedings launched to review the exploration right and its renewals. This application was dismissed on the ground that the applicants had not established a well-grounded apprehension of irreparable harm that would occur if the interim relief was not granted. A second application was lodged to interdict Shell from undertaking the survey, pending the determination of whether the seismic survey required an environmental authorisation. The court granted this interdict, while highlighting the importance of meaningful public participation and customary rights.

This application

This application sought orders reviewing the granting of the exploration right and the renewals thereof, as well as declaratory and interdictory relief. The applicants argue as follow:

1. Environmental authorisation is necessary for exploration activities.
2. The process of consulting with IAPs was materially flawed and inadequate – it didn't consider the nature and structure of the applicants' communities, as well as the manner in which decisions are taken by communities. Those communities holding customary law rights ought to have been specifically consulted.
3. The application for the exploration right was also not adequately consulted on with the applicants and, consequently, the decision was taken without considering anticipated harm to marine and bird life, and the communities' spiritual and cultural rights – contrary to the precautionary principle. Ultimately, the mitigation measures of the EMPr are insufficient to address the threats.
4. The area in which the impugned survey was to be conducted enjoys a special legal status in terms of NEM:ICMA, affording the environment a particularly high level of protection. The decision-makers failed to consider NEM:ICMA, and also didn't consider the potential climate change impacts.

The Respondents argued that the applicants are barred from seeking this review as more than 180 days lapsed since the decisions were taken (not in line with section 7(1) (b) of PAJA), and the applicants also didn't exhaust all internal remedies available to them. They further contend that no environmental authorisation is required in addition

to the EMPr in terms of the MPRDA. Seismic surveys are routine and have been performed in the past, which is evidence that they are not harmful to marine and bird life. There are no climate change impacts associated with accessing a seismic vessel any more than there would be a fishing or commercial vessel. This is substantiated by expert evidence. In light of the social and economic development that will result from the survey, it ought to be allowed. The consultation process was adequate and there is no obligation to consult applicants specifically in circumstances where they took no steps to register as IAPs.

In rebuttal, the applicants argued that the application was not brought late as they only became aware of the decisions in November 2021. They further contend that, given the DMRE Minister's public statements in which he criticised public interest groups for challenging seismic surveys and maintained his refusal to review Shell's exploration rights, no purpose would have been served in lodging an internal appeal.

Judgement

The Court reviewed and set aside the granting and renewals of the exploration right. Accordingly, the Court found it unnecessary to grant the declaratory relief sought, confirming that the respondent requires an environmental authorisation prior to conducting the seismic survey.

The intervention of Greenpeace and Natural Justice

These two applicants do not have a direct personal interest in the proceedings, but applied to intervene. The Court found that, in terms of section 38 of the Constitution and section 32(1) of NEMA, they are allowed to intervene in the public's interest and in the interest of protecting the environment. The Court found that this litigation is of a public or constitutional nature – it involves a Constitutional infringement and breach of NEMA. Accordingly, the range of interests upon which the intervening parties might rely ought to be broadly construed.

Delay in lodging the review application

Three administrative decisions were made in this case: The decision to grant the exploration right on 29 April 2014, the renewal decision on 20 December 2017 and the second renewal on 26 August 2021. Section 7(1)(b) of PAJA indicates that any judicial review proceedings must be instituted without unreasonable delay and no later than 180 days after the date on which the person concerned was either

informed or became aware of the administrative action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons (which is November 2021 in this case). Accordingly, there was no delay in bringing this application.

The Court referred to the requirement in section 3(2)(b)(iii) of PAJA to give persons materially and adversely affected by a decision a clear statement of the administrative action, and that these persons also have to be notified of any right of review or internal appeal (section 3(2)(b)(iv)), and adequate notice of the right to request reasons (section 3(2)(b)(v)). The MPRDA also explicitly confirms that all administrative actions taken in terms of the MPRDA must adhere to PAJA (section 6). Accordingly, the DMRE had to give notice of the award of the exploration right and its renewals to (registered and unregistered) IAPs, their right to review or appeal and to request reasons, which it did not.

Exhaustion of internal remedies

PAJA and the MPRDA is clear in that internal remedies must first be exhausted prior to lodging a court application for review of an administrative decision. The Court may, however, exempt a person from this obligation in exceptional circumstances (depending on the facts of the case and the nature of the administrative action). The reasons why the applicants did not lodge an internal appeal are, firstly, that they became aware of the exploration right 7 years after the initial grant of thereof. Secondly, at the time of the launching of the first application for urgent interdictory relief, the commencement of the survey was imminent and there was no time to follow internal processes. Thirdly, there was an agreement between the parties to expedite the timeframes of this application, with no time to pursue internal appeal processes and, fourthly, the applicants felt that the DMRE Minister is biased against them based on statements made by him. The rule against bias is entrenched in the Constitution - a remedy will only be effective if it is objectively implemented. The Court found that the Minister's public statements gave rise to a reasonable apprehension of bias against the applicants and relieve the applicants of the duty to exhaust their internal remedies.

Grounds for review

1. *Procedural unfairness*: All administrative action must be procedurally fair (section 33(1) of the Constitution) and the Court found that the decision to grant the exploration

right was procedurally unfair as the consultation was unfair. The IAPs were not identified through a public process and the EMPr is cryptic in relation to what exactly the 'stakeholder analysis' entailed. As certain communities were not identified, they were disadvantaged. The first outreach to the public was through the newspaper advertisements in March 2013. These (not-local) newspapers are in English and Afrikaans and out of reach of the local communities in the area. Only the traditional leaders were consulted, instead of all community members and this is not aligned with a constitutional democracy and the MPRDA. Meaningful consultation is not merely a tick-box exercise, but a genuine, bona fide, substantive two-way process aimed at achieving consensus. No notice boards were erected. Later on, the information was accessible online, to which the local community members would not have access. This ground, alone, is sufficient to review the granting and renewals of the exploration right.

1. Failure to consider relevant considerations: Section 6(2)(e)(ii) of PAIA provides for judicial review where action was taken without taking into account relevant considerations. It was argued that the EMPr failed to take the following into account: anticipated harm to marine and bird life; the communities' spiritual and cultural rights and their rights to livelihood; and climate change considerations. The Court highlighted the relevance of the precautionary principle and found that when the decisions were taken the possibility of harm, including climate change impacts by the eventual oil/gas exploitation and use, was not considered as required (based on expert evidence). The Court further confirmed that the Minister of DMRE did not fulfil his duty to manage and control any activity on or in coastal waters in the interests of the whole community, or the duty to ensure that coastal public property is used, managed, protected, conserved and enhanced in the interests of the whole community (ss12 and 21 of NEM:ICMA).

2. Failure to comply with applicable legal prescripts: Section 80(1)(g) of the MPRDA requires expansion of opportunities for disadvantaged persons to enter into and actively participate in the mineral and petroleum industries. The Court found that although there were statements in the EMPr that jobs would be created and government revenues increased, no substantial detail was provided. Accordingly, there was indeed a failure to comply with this provision.

6.2 Interdict against the legalisation of hunting and exporting of Black Rhino, Leopard and African Elephant and the requirements for an interim interdict

The trustees for the time being of the Humane Society International – Africa Trust et al v Minister of Forestry, Fisheries and the Environment et al (Case no. 6939/2022) - delivered on 21 April 2022

The Minister of Forestry, Fisheries and the Environment fixed a quota for the number of leopard, elephant and black rhinoceros (rhino) that may be lawfully hunted within RSA and exported as trophies on 31 January 2022 ("Minister's decision") (to be implemented during 2022). The Minister, as the National Management Authority in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Regulations, 2010, has the duty to allocate annual quotas in relation to the listed species to provinces. The three species are all listed on Appendix 1 of CITES. Permits may only be granted for the export of these species once the Scientific Authority (SANBI) has evaluated the proposed quota and made a Non-Detriment Finding (NDF), advising that the export will not be detrimental to the survival of the species.

The three species are also listed in terms of the Threatened or Protected Species (TOPS) Regulations promulgated under the National Environmental Management: Biodiversity Act 10 of 2004 (NEM:BA), with the consequence that a TOPs permit is required to conduct restricted activities involving a specimen of these species (like hunting/ exporting). NEM:BA further highlights the importance of the determination of NDF findings by requiring broad public consultation as well as scientific and professional review prior to finalisation thereof.

The 2021 Quota process and public participation

The Minister gave notice, in the Government Gazette, of her intention to consult on the 2021 quota for the export of hunting trophies of elephant, black rhinoceros and leopard in October 2021. The quotas were not submitted to Parliament prior to such publication as required by NEM:BA. The Applicants provided detailed objections to the proposed quotas, comprising of extensive scientific data and argument. One of their objections was that no final NDF report was issued for the 2021 quota of black rhino, thereby rendering the quota determination unlawful. In respect of the NDF that was issued for leopard, it was found that the export of hunting trophies posed a high risk to the survival of the species. Similarly, the applicants argued that the quota is unlawful as there were specific mitigation measures proposed in the report which were not satisfied.

An interim order was made on 25 March 2022 pending the handing down of this judgement, whereby the Minister's decision was suspended pending the delivery of this judgement and the applicants were directed to bring the contents of the interim order to the attention of the various MECs responsible for environment in each province. The Minister was further directed to formally lodge her quota decision with the Court and the applicant had the opportunity to respond thereto and amend the requested relief if required. The relief sought through this application is, pending the determination of the review and setting aside of the Minister's decision, the interdicting of the implementation of the determined quotas, the further issuing of quotas or associated hunting and export permits.

Judgement

The Court granted the interim order on an urgent basis – pending the review of the Minister's decision, her decision is interdicted from being implemented. She is further interdicted from publishing in the Government Gazette, or in any other way issuing further quotas for elephant, black rhino and leopard or any permits for hunting or export of these species.

To successfully obtain an interim interdict it must be shown that:

1. The right sought to be protected is clear or prima facie established (although open to some doubt)

The Court found procedural unfairness in that the Minister was not permitted, by law, to advertise the fixing of quotas in 2021, asking the public to comment thereon, and then only considering their comments at a future point in time (i.e. a calendar year later), due to the postponement of the entire implementation thereof to 2022. There may be differing considerations from year to year due to natural disasters i.e. floods, drought, fires or disease, or poaching activities, which could influence quota allocations. This postponement of implementation violated the common law principle of legitimate expectation (of procedural fairness), being capable of review under the *Promotion of Administrative Justice Act 3 of 2000 (PAJA)*. In addition, the Court found in favour of the applicants in that the interdict will ensure that the Minister complies with her statutory procedural duties under NEM:BA while publishing the quotas (i.e., prior parliamentary consultation).

2. A well-grounded apprehension of irreparable harm if the interdict is not granted

There is indeed such apprehension - if no interdict is granted, 170 animals may be

hunted and exported during 2022. The beneficiaries will be wealthy, foreign hunters. If the interdict is granted, those animals will be spared.

3. The balance of convenience favours the granting of the interim relief

The inconvenience to the Minister is that permits for the 2021 calendar year quota will not be issued by the MEC's pending the hearing of the review. However, that does not mean that the financial considerations are lost – if the review fails, the quota will be implementable. The Minister can also start the process afresh. The balance of convenience favours the applicant.

4. The applicant has no other remedy

The court retains an overriding discretion in determining whether these requirements were met.

6.3 SLAPP suits: Already part of our common law and the importance of ulterior motive and merits as basis thereof

Mineral Sands Resources (Pty) Ltd et al v Christine Redell et al and the Centre for Applied Legal Studies et al (amicus curiae) (case no. CT 66/21) – delivered on 14 November 2022

Strategic Litigation against Public Participation (SLAPP suits) are lawsuits initiated against individuals or organisations who speak out on an issue of public interest as an indirect tool to limit the expression of others and to deter parties from participating in public affairs. This case is the first SLAPP suit heard in the Constitutional Court of the Republic of South Africa.

The Applicants, being Australian mining companies and their executives, initiated defamation suits against the Respondents, being environmental lawyers and activists, based on various allegedly defamatory statements made by the Respondents. The Applicants are engaged in the Tormin Mineral Sands Project and the Xolobeni Mineral Sands Project, against which there are fierce community opposition, with the Respondents at the forefront thereof. The alleged defamatory statements (being that the Tormin mining operations are duplicitous and unlawful) were made by the first to third Respondents during a lecture series at the University of Cape Town. The fourth and fifth Respondents participated in a radio interview during which they discussed the mining activities and expressed contentious opinions and trenchantly criticised the mining operations. The sixth Respondent made allegedly defamatory

statements in two e-books, a journal article, several radio interviews, video clips, emails and interviews published on social media and broadcasted on television. The claims amount to a total in excess of R14 million, or, in the alternative, the Applicants claimed public apologies.

The Respondents raised two special pleas of which the first was that the actions were brought for the ulterior purpose of discouraging, censoring, intimidating and silencing the Respondents and the public in relation to public criticism of the mining companies – being a SLAPP suit. They argued that the Applicants didn't allege any patrimonial loss, or that the statements made were false, or that they honestly believe that they have any prospect of recovering the amount of damages claimed. There is indeed a pattern of conduct involving defamation actions for ulterior purpose. This is an abuse of the court process used to achieve an improper end and to use the litigation to cause the Respondents financial and/ or other prejudice in order to silence them. This also violates their Constitutional right to freedom of expression. They argued that previous case law confirms that the common law does allow for ulterior motive solely to determine abuse of process in certain circumstances. However, if it is found that the existing common law does not allow for a SLAPP suit defence, the common law must be developed. The second plea was heard separately.

The Applicants excepted to the first special plea by contending that the SLAPP suit defence does not currently exist in our common law. Allowing a SLAPP suit defence would result in actions being dismissed without any regard to the merits of the application and this will result in an abuse of process.

The High Court dismissed the exception to the SLAPP suit plea and recognised that such a defence already exists within our common law, whereafter the Applicants approached this Court to reverse the High Court's decision. This Court had to determine whether South African common law permits for the SLAPP suit defence and whether ulterior motive alone may be determinative of the doctrine of abuse of process.

Judgement

The Court dismissed the Respondents' first special plea based on it lacking averments necessary to sustain a defence – they only relied on ulterior motive as basis for the SLAPP suit and not the merits of the case. The appeal was upheld. However, the Court did confirm that the SLAPP suit defence is already contained within South African common law and the Respondents were afforded 30 days to amend their first

special plea, failing which it will be dismissed.

In order for appeal to be granted in the Constitutional Court, the matter must raise a constitutional issue or an arguable point of law of general public importance, and the interest of justice must warrant the granting of such leave to appeal. Both parties and the Court agreed that the interests of justice favour the granting of leave to appeal and that the issues are of pressing constitutional importance as it involves the Constitutional rights of freedom of speech and access to courts.

The SLAPP suit has its origin in the United States of America and Canada and there appears to be an increase in this type of cases. There are even some foreign jurisdictions with anti-SLAPP legislation. The intention of SLAPP suits is usually not to win the case by enforcing a legitimate right, but to simply waste resources and time of the other party until they abandon their defence. It can be brought as defamation claims, abuse of process, malicious prosecution or delictual liability cases. The Court found that both merit and motive must play a role in the test for a SLAPP suit – one cannot rely solely on motive as the Respondents did. It is also not a requirement that there should be a range of vexatious suits for the test to be met – just one case will be sufficient.

Ultimately, the Court held that there is no need to develop common law as the doctrine of abuse of process, which already exists in our common law, can accommodate a SLAPP suit defence. A SLAPP suit defence relies, in essence, on abuse of process and all courts have the power and right to protect its own processes from abuse (under the common law and section 173 of the Constitution). An enquiry into abuse of process depends on the facts and circumstances of each case. Abuse of process can appear in different forms – the use of the procedural rules of court, the bringing of unmeritorious cases, illegality cases where the underlying reasons for being brought is irrelevant, malicious prosecution/ the integrity of private prosecution, and where the court process is used to undermine Constitutional rights. Collectively, this type of litigation the Court called "abusive litigation".

The Court added that Parliament has the right to consider whether the SLAPP suit defence must be legislated.

6.4 Mandatory presence of the Sheriff at the execution of an eviction order against unlawful occupants

Jerome Badenhorst and another v City of Ekurhuleni et al (case no. 00052/23) - delivered on 8 March 2023

In a preceding court hearing, the execution of an eviction order (issued on 9 June 2021) by the City of Ekurhuleni, the South African Police Service and Metro Police (the Respondents) was declared unlawful due to the fact that the Sheriff was not present. The Court further ordered that the execution of the order must be suspended pending an outcome on further relief sought by the applicants (being a stay on the eviction order pending an investigation of the applicants' need for alternative accommodation). Court directed the Respondents to restore the applicants to the properties from which they were unlawfully evicted. The date of that judgement is 3 March 2023, but the order was not reduced to writing.

The City of Ekurhuleni subsequently lodged an application for leave to appeal against that order and requested the Court to reduce its reasons for that order to writing. In its application, the City of Ekurhuleni argued that the absence of the Sheriff did not render the execution of the eviction order unlawful. Paragraph 3 of the order makes it clear that those charged with the execution of the order were "the City of Ekurhuleni Police Services and or the South African Police Services and or assisted by the Sheriff of this Court or his lawful deputy and a Locksmith". This text indicates that the order could be carried out by either the City of Ekurhuleni, or the SAPS, or the Sheriff working with a locksmith, or a combination of these.

Judgement

The Court reduced the reasons for its declaration order of unlawfulness of the execution of the eviction order, and the suspension of the execution thereof, to writing as follow:

The eviction order was issued under section 4 of the Prevention of Illegal Eviction from, and Unlawful Occupation of Land Act 19 of 1998 (PIE Act), and executed in the Sheriff's absence. Section 4(11) of the PIE Act states that "the Sheriff must at all times be present during an eviction, demolition or removal." The purpose of this section is to help ensure that evictions are carried out in a humane and orderly manner, as required by section 26 of the Constitution of the Republic of South Africa. The Court found that there was good reason to believe that the way that the Respondents executed the eviction order was neither humane nor orderly, and the absence of the Sheriff may have facilitated some of the less fortunate conduct the Applicants alleged. The eviction commenced without notice at 5am and involved the use of tear gas and rubber bullets. 500 Families were targeted, about 250 of whom were removed before the order was stayed in urgent court around 11am that morning. Significant

numbers of people appear to have been left on the streets – at least 700 children were targeted. The Court found this to be unacceptable – the eviction took place *ultra vires* the PIE Act and was, as a result, considered to be a mere spoliation process i.e. an effort by the City of Ekurhuleni to regain possession of the land that was subject to the unlawful occupation.

The Court further found that although paragraph 3 of the eviction order might seem ambiguous, paragraph 4 of the eviction order made it clear that the Sheriff was required to be present, referring to the execution "by the Sheriff and/ or his/ her authorised deputy". This is consistent with section 4(11) of the PIE Act and section 43(1) of the Superior Courts Act, which requires the Sheriff to "execute all sentences, judgments, writs, summonses, rules, orders, warrants, commands and processes of any Superior Court. The order must be interpreted consistently with the statutes they are meant to enforce.

The Court found that it is not necessary for it to exercise appellate powers as it merely declared the eviction unlawful and suspended the execution thereof – it did not set aside, vary or correct the order. The effect of this is that the steps taken to implement the order must be reversed – the order remains valid and may be executed once the suspension is lifted.

6.5 The imposition of harsh sentences for environmental offences, and the increase thereof on appeal

Mfana Ignitus Kubai and Obed Samin Chauke v the State (Case no. 14/2019) - delivered on 27 January 2023

In 2014 the appellants were arrested after a carcass of a recently killed rhino was found with two horns missing. The appellants were found in possession of a rifle and two horns in a black refuse bag. They were subsequently tried in court and found guilty of, amongst other charges, hunting of a specially protected wild animal in contravention of the Limpopo Environmental Management Act 7 of 2003 (LEMA) in May 2016.

During sentencing proceedings, evidence in aggravation of sentencing was led by the manager of the relevant game farm in relation to the challenges they face relating to rhino poaching – 11 rhinos were lost between 2010 and 2014 as a result thereof. Only 3 cases were successfully prosecuted. In 2014, the farm had 51 rhinos left and it cost them R200 000 per month to deploy security forces. As a result of increased poaching

the owner had no option than to sell 30 rhinos at half of their market value. An EMI from SANParks also led evidence in relation to rhino poaching challenges experienced by SANParks, as well as national statistics of rhino poaching. The immense interest of SANParks in these types of matters was demonstrated by the appointment of GreenLaw Foundation as a Watching Brief over this Court. A Probation Officer further placed his report on record wherein he brought to the fore the appellants' personal circumstances (living a lavish lifestyle and driving luxurious cars) and the impact of rhino poaching and opined on what an appropriate sentence would be. Accordingly, the appellants were sentenced to 11 years direct imprisonment in terms of section 276(1)(b) of the Criminal Procedure Act 51 of 1977 (CPA).

The appellants then approached this Court with an application for leave to appeal the sentence and conviction. In December 2016, the appellants were granted bail pending the outcome of the appeal. The Court refused to grant leave to appeal the conviction but granted the leave to appeal the sentence imposed. Upon submission of the application for leave to appeal the sentence, the Registrar issued a directive to the appellants, directing them to show cause why the Court should not increase the sentence imposed by the trial court by filing heads of argument. The second appellant subsequently abandoned his appeal against his sentence and served his sentence, after which he was released (probably on parole).

The first appellant based his appeal against the sentence imposed on him on the following grounds:

1. The trial court erred in not considering the penalty clauses in section 117(1)(a) of LEMA (indicating that, as a maximum, a fine of not more than R250 000 and/ or imprisonment for a period not exceeding 15 years may be imposed, together with a fine not exceeding 4 times the commercial value of the fauna or flora in respect of which the offence was committed).
2. The appellant is a first offender, has two minor children, is 35 years old, is the bread winner and spent almost two years in custody awaiting trial.
3. The trial court erred in finding that no other sentencing option was appropriate.

Accordingly, the appellant argued that the sentence imposed was harsh, disproportionate and induces a sense of shock. An appropriate sentence, he argued, would be 24 months imprisonment, of which 12 months is suspended for 5 years subject to certain conditions. This was based on a previous case where the appellant was charged with the possession of pangolin.

The State, in rebuttal, argued that the appellant had experience in rhino horn poaching as he was once involved in 11 cases of rhino poaching, for which he was arrested, but not prosecuted, as he agreed to co-operate with the SAPS to secure a successful arrest and prosecution of the person to whom he would've sold the horns. His experience, coupled with greed, prompted him to commit the offence himself.

Judgement

The Court found that the trial court erred in relation to the legislative provision in terms of which the sentence was imposed (CPA vs LEMA). Based on this finding, the Court was bound to interfere with the sentence imposed and consider such sentence afresh.

The general principle surrounding sentencing is that the punishment should fit the criminal and the crime and be fair to society. The Court found that the sentence imposed was too lenient and shockingly inappropriate. In order to bring an equilibrium between the offence committed and the interest of society and the appellants' personal circumstances, the sentence was increased to the maximum penalty allowed in terms of LEMA, namely 15 years direct imprisonment.

Factual background

The Court evaluated the factual background with emphasis on evidence in aggravation of the sentence. When the State led the evidence of the two witnesses and probation officer in aggravation of sentence, the appellant opted not to rebut the State's case and did not lead any evidence in mitigation of sentence, notwithstanding an opportunity granted to him. Accordingly, there was no evidence on whether the appellant was remorseful or not, and whether he will be in a position to afford any fine, if a fine were deemed an appropriate sentence.

The fact that the appellant was previously arrested for poaching incidents indicated to the Court that he is knowledgeable about the poaching of wild animals. He went to the game farm with a full intent to hunt – in camouflaged clothes with a rifle and silencer, as well as a lunch box. The Court further found him knowledgeable and experienced in the operation of hunting, the governing laws and the avoidance of prosecution. He admitted the rifle was his and carried it all the way from his home – over 200 km. The Court referred to previous case law that indicated that a heartless criminal should not be punished leniently, lest the administration of justice is brought into disrepute.

Legislative basis for sentencing and seriousness of the offence

Rhino is declared a specially protected wild animal in terms of schedule 2 of LEMA, and it is a criminal offence to hunt such without a permit. Based on the evidence led by the EMI in relation to the national statistics of rhino poaching in South Africa and more specifically Limpopo, the Court agreed that at the rate of which rhinos are poached, they are on the verge of extinction, which infringes on the section 24 Constitutional right of all citizens of South Africa. Accordingly, the offence committed is deemed very serious. This is further confirmed by the lengths to which the State

has gone to put a Watching Brief in place throughout the proceedings.

In cases where society has an interest, premeditated and heartless criminals should not be punished too leniently. The sentence should reflect the shock and indignation of interested persons and the community at large, as well as deter others from committing a similar offence.





LEGISLATIVE DEVELOPMENTS

7. LEGISLATIVE DEVELOPMENTS

As was the case in preceding financial years, 2022/23 saw a significant amount of reform in the legislation that EMI's are required to implement. From a compliance and enforcement perspective, the most pertinent amendment, was the publication of the National Environmental Management Laws Amendment Act. (NEMLAA) Although this Amendment Act was not brought into effect during 2022/23, it brought about significant amendments to NEMA as well as the SEMAs that have a direct impact on the mandate, powers, functions, powers and duties of EMI's and EMPIS.

Amendments within the Environmental Impact Assessment space related to, amongst others, the adoption of the EGI standard as an environmental management instrument, application procedures, exclusions and extensions pertaining to compliance with minimum emission standards and the appointment of the Environmental Assessment Practitioners Association of South Africa (EAPASA) as the single registration authority. Regulations relating to the domestication of the Rotterdam Convention were published, as well as draft amendments to existing regulations covering financial provisioning, hydraulic fracturing, the phase out of persistent organic pollutants and the management of mercury.

Within the air quality space, amendments related to the verification and quantification of Greenhouse Gas Emissions and consultation on the proposed regulations for implementing and enforcing priority area air quality management plans, as well as the 8th draft National Greenhouse Gas Inventory Report. The most important biodiversity related amendments were in relation to the revision of the list of ecosystems that are threatened and in need of protection, the revised National Biodiversity Framework 2019-2024 and various Biodiversity Management Plans. A Ministerial task team was also appointed to identify and recommend voluntary exit options and pathways from the Captive Lion Industry. Within the coastal space, regulations pertaining to General Discharge Authorisations were published and the Waste related amendments included extended producer responsibility schemes, and new and amended norms and standards.

7.1 National Environmental Management Act 107 of 1998

7.1.1 Regulations and Notices

- Adoption of the standard for the development and expansion of power lines and substations within identified geographical areas and the exclusion of this

infrastructure from the requirement to obtain an environmental authorisation - GN 2313/22

- Extension of the Appointment of the Environmental Assessment Practitioners Association of South Africa as the single registration authority in terms of section 24H(3) read with 24H(6) of the Act for a Period of Twelve (12) Months - GN 3017/23
- Regulations to Domesticate the Requirements of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 2023 - GN 3072/23
- Amendments to the Financial Provisioning Regulations, 2015 – GN2087/22
- Act No. 02 of 2022: National Environmental Management Laws Amendment Act, 2022 – GN 2203/22
- Amendment of the section 24H Registration Authority Regulations, 2016 – GN 2320/22
- Amendment of the enabling provision under which the Regulations laying down the procedure to be followed for the adoption of spatial tools or environmental management instruments has been made – GN2688/22
- Amendment of the Identification in terms of section 24(5) (a) and (b) of the Act, 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 Act when occurring in Geographical Areas of strategic importance – GN 2716/22
- Extension of the Suspension Notice on 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, by a further 120 days – GN 2757/22
- Ministerial task team to identify and recommend voluntary exit options and pathways for the Captive Lion Industry – GN 2846/22
- Extension of the appointment of the Environmental Assessment Practitioners Association of South Africa as the single registration authority in terms of section 24H(3) read with 24H(6) of the Act for a period of twelve (12) months – GN 3017/23
- Regulations to domesticate the requirements of the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade – GN 3072/23
- Withdrawal of the amendment to regulation 39(2) of the Environmental Impact

Assessment Regulations, 2014, as amended, published in Government Notice No. 517 in Government Gazette No. 44701 of 11 June 2021 – GN1816/2022

7.1.2 Draft Regulations and Notices

- Proposed amendments to the Regulations to Phase-Out the use, Production, Distribution, Sale, Import and Export of persistent Organic Pollutants – GN 3180/23
- Notice of intention to establish a national environmental consultative and advisory forum re suspension and postponement of compliance with the minimum emission standards and the applications for the issuance of Provisional Atmospheric Emission Licences – GN2076/2022
- Consultation on the draft National Regulations for the Management of Mercury in South Africa – GN 3189/23, GN 2234/22 and GN 2244/22.
- Consultation on the intention to adopt the National Web Based Environmental Screening Tool as an Environmental Management Instrument – GN 2464/22
- Consultation on the intention to exclude the development and expansion of solar photovoltaic installations from the requirement to obtain an environmental authorisation based on compliance with an adopted environmental management instrument – GN 2466/22
- Proposed Regulations pertaining to the Exploration and Production of Onshore Oil and Gas Requiring Hydraulic Fracturing – GN2273/22
- Proposed Regulations Pertaining to Financial Provisioning for the Mitigation and Rehabilitation of Environmental Damage Caused by Reconnaissance, Prospecting, Exploration, Mining or Production Operations – GN 2272/22
- Consultation on the intention to prescribe minimum requirements for the submission of applications for an authorization, right, permit or licence for the Onshore Exploration of Oil and Gas intending to utilize Hydraulic Fracturing – GN 2265/22
- Protocol for the Specialist Assessment and Minimum Report content requirements for Environmental Impacts on the Cape Vultures by Onshore Wind Energy Generation facilities – GN 2718/22
- Consultation on the procedure to be followed for the assessment and minimum criteria for reporting of identified environmental themes in terms of section 24(5) (a) and (h) of the Act when applying for environmental authorisation (Draft Cape Vulture Protocol) –2734/2022
- Consultation on the intention to amend the procedures for the assessment and

minimum criteria for reporting on identified environmental themes in terms of section 24(5)(a) and (h) and 44 of the National Environmental Management Act, 1998, when applying for environmental authorisations (Terrestrial Plant Species Protocol) – GN 2717/2022

- Consultation on the intention to amend the procedures for the assessment and minimum criteria for reporting on identified environmental themes in terms of section 24(5)(a) and (h) and 44 of the Act, when applying for environmental authorisation (Terrestrial Animal Species Protocol) – GN 2274/2022

7.2 National Environmental Management: Air Quality Act 39 of 2004

7.2.1 Regulations and Notices

- Methodological Guidelines for Quantification of Greenhouse Gas Emissions – GN 2598/22
- Postponement of a need to be SANAS accredited as an Independent Assessor to Verify Greenhouse Gas Emissions – GN 2917/22

7.2.2 Draft Regulations and Notices

- Consultation on Proposed Regulations for Implementing and Enforcing Priority Area Air Quality Management Plans – GN 2353/22
- Consultation on proposed regulations for implementing and enforcing priority area air quality management plans – GN 3152/23
- Draft 8th National Inventory Report for the Republic of South Africa for public comment – GN2321/22

7.3 National Environmental Management: Biodiversity Act 10 of 2004

7.3.1 Regulations and Notices

- Revised National List of Ecosystems that are Threatened and in Need of Protection - GN 2747/22
- List of Terrestrial Species and Freshwater Species that are Threatened or Protected, Restricted Activities that are Prohibited, and Restricted Activities that are Exempted - GN 3012/23
- Regulations pertaining to Threatened or Protected Terrestrial Species and Freshwater Species - GN 3009/23
- The National Norms and Standards for the Management of Elephants in South Africa – GN 3010/23 and 3011/23

- Withdrawal of Government Notices No. 3009, 3010, 3011, 3012 and 3013, published in Government Gazette No. 47984 of 3 February 2023 – GN 3238/23
- Repeal of the notice amending the alien and invasive species list and list of critically endangered, endangered, vulnerable and protected species, and amendment and commencement of the notice prohibiting the carrying out of certain restricted activities involving rhinoceros horn, and the regulations pertaining to trade in rhinoceros horn – GN 3013/23
- Publication of the revised National Biodiversity Framework 2019-2024 for Implementation) – GN 2423/22
- Biodiversity Management Plans for Aloe Ferox and Honeybush Species (Cyclopia Subternata and Cyclopia Intermedia) – GN 2192/22

7.3.2 Draft Regulations and Notices

- Consultation on the draft Multi-Species Biodiversity Management Plan for Vultures in South Africa – GN 2817/23
- 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 - GN 2825/22
- Extension of the commenting period on the draft Multi-Species Biodiversity Management Plan for Vultures in South Africa – GN 2988/23
- Draft African Penguin Biodiversity Management Plan – GN 2302/23

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

7.4.1 Regulations and notices

- General discharge authorisation in terms of section 69(2) - GN 2290/22

7.4.2 Draft Regulations and notices

- None

7.5 National Environmental Management: Protected Areas Act 57 of 2003

7.5.1 Regulations and notices

- None

7.6. National Environmental Management: Waste Act 59 of 2008

7.6.1 Notices and Regulations

- Extended Producer Responsibility Scheme for the Pesticide Sector - GN 3177/23
- Extended Producer Responsibility Scheme for the Portable Battery Sector - GN 3179/23
- Extended Producer Responsibility Scheme for the Lubricant Oil Sector - GN 3178/23
- National Norms and Standards for the Treatment of Organic Waste - GN 1984/22
- Notice of extension of reporting period by identified producer responsibility organisations and producers to the extended producer responsibility online system until 31 August 2022 - GN 2328/22
- Notice of decisions on applications received in terms of regulation 6(4) of the Waste Exclusion Regulations, 2018, for the exclusion of a waste stream or a portion of a waste stream from the definition of waste for beneficial use – GN3075/2023

7.6.2 Draft Regulations and Notices

- Proposed amendments to the National Norms and Standards for the Assessment of Waste for Landfill Disposal, 2013 – GN 3183/23
- Proposed amendments to the National Norms and Standards for Disposal of Waste to Landfill, 2013 – GN 3184/23
- Proposed amendments to the Waste Classification and Management Regulations, 2013 GN 3185/23
- Consultation on the Draft Amendments to the Waste Tyre Regulations, 2017 – GN 2956/23
- Consultation on the draft Household Hazardous Waste Management Strategy - GN 2987/2023
- Consultation on the draft section 29 Industry Waste Management Plan for Tyres – GN 2852/22
- Consultation on the intention to take a decision on applications for the exclusion of a waste stream or a portion of such a waste stream for beneficial use from the definition of waste – GN 2106/22



INDUSTRIAL COMPLIANCE AND ENFORCEMENT

8. INDUSTRIAL COMPLIANCE AND ENFORCEMENT

8.1 Proactive 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 which is impacted by these facilities is spread 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, the details of facilities which were mentioned in the previous NECER may feature in the table below. Notwithstanding the above, improvements are progressively being made over time.

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references
FERRO-ALLOY, IRON AND STEEL		
Transalloys (Pty) Ltd, Mpumalanga	A Compliance Notice was issued on the 25 th of March 2021. The Compliance Notice required a specialist to be appointed to investigate soil, surface and groundwater quality from the Slag Disposal Site and Manganese Slimes Dam, and to report those findings to the Department. The report, and the remediation measures contained therein was approved on 25 October 2021. Monitoring compliance to this Notice continued during the 22/23 financial year.	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. Page 49 of NECER 2021-2022

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references
Tronox KZN Sands CPC Smelter, KwaZulu-Natal	A PCN was issued dated the 2 nd of November 2020. Representations and an action plan were submitted on the 3 rd of December 2020. The action plan was approved on the 28 th of May 2021 and the progress concerning the performance of this aspect is monitored monthly. Continuous progress reports were submitted and monitored during 22/23.	Page 51 of NECER 2019-2020 Page 50 of NECER 2020-2021
Glencore Lion Smelter Operations, Limpopo	Considering the findings of the compliance inspection conducted during the 2020/2021 Financial Year, the Department decided to initiate an administrative enforcement process against the facility. A PCN, detailing with the findings of the compliance inspection, was signed on the 20 th of June 2022 and thereafter issued to the facility. The notice afforded the facility a period of thirty (30) calendar days from receipt of the PCN, to make representations to the contents thereof. The facility provided the Department with its representations within the allocated time period.	Page 48 of NECER 2014-2015; Page 56 of NECER 2015-2016; Page 51 of NECER 2019-2020; Page 51 of NECER 2020-2021; and, Page 50 of NECER 2021-2022

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references	Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references
Glencore Lion Smelter Operations, Limpopo	<p>Following a review of the representations and information provided, the Department noted that certain non-compliances had been adequately addressed, however, there were others which were still in the process of being adequately addressed. Information provided included short, medium as well as long term measures to ensure continuous and sustainable compliance with environmental laws.</p> <p>The Department will continue to monitor the facility to ensure that the non-compliances identified are adequately addressed. Notwithstanding the above, the matter will remain within the enforcement process until the Department is satisfied that all non-compliances have been/are being adequately addressed, and that environmental laws and being complied with.</p>	<p>Page 48 of NECER 2014-2015; Page 56 of NECER 2015-2016; Page 51 of NECER 2019-2020; Page 51 of NECER 2020-2021; and, Page 50 of NECER 2021-2022</p>	Bushveld Vanchem (Pty) Ltd, Witbank Mpumalanga	<ul style="list-style-type: none"> • Non-compliances with the AEL including exceedances of the maximum emission rates; and • Groundwater quality exceeding stipulated limits. <p>A notice of intention to issue a compliance notice dated the 20th of August 2021 was issued to the facility. Representations were submitted during March 2022. Certain concerns in relation to the representations were raised with the facility, additional representations and information were submitted and are being reviewed after which a decision on the way forward will be made.</p>	<p>Page 13 of NECER 2007-2008; Page 27 of NECER 2008-2009; and Page 14 of NECER 2014-15 Page 51 of NECER 2021-2022</p>
Bushveld Vanchem (Pty) Ltd, Witbank Mpumalanga	<p>A joint compliance monitoring inspection was conducted at this facility on 28 April 2021 by EMIs from the DFFE, DARDLEA and Nkangala District Municipality. The following were found:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the AEL and the WML; 	<p>Page 13 of NECER 2007-2008; Page 27 of NECER 2008-2009; and Page 14 of NECER 2014-15 Page 51 of NECER 2021-2022</p>	Samancor Ferrometals, Mpumalanga Province	<p>A joint follow-up compliance inspection was conducted at the facility on 30 May 2022. During the said compliance inspection the following non-compliances were noted:</p> <ul style="list-style-type: none"> • Non-compliance to conditions of the AEL, WML and the WUL • Non-compliance with the provisions of Section 22 of the NEM: AQA by illegally conducting a listed activity in terms of Section 21 Notice (GN 893 of 22 November 2013), Subcategory 4.1: • Drying and Calcining. Though the facility has an existing AEL, the pre-heating of feed material is not part of the said AEL. 	<p>Page 48 of NECER 2013-14. Page 47 of NECER 2014-15</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references	Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references
Samancor Ferrometals, Mpumalanga Province	<ul style="list-style-type: none"> • Non-compliance with section 22 read with 21(a) of the NWA by abstracting water from borehole and from Mine Decant even though this water use activity is not part of the existing WUL • Non-compliance with the duty of care provisions of the NEMA and NEM:WA which related to the following: <ul style="list-style-type: none"> ○ Excessive particulate matter (PM) emissions from the furnace stacks which exceed the minimum emission standards (MES) in the AEL ○ Excessive fugitive dust emanating from Furnaces and Batching Plant also resulting in dust-fall exceeding the dust-fall rates limit in the National Dust Control Regulations ○ Unlined and highly silted pollution control dams and associated activities which were in poor state of maintenance 	<p>Page 48 of NECER 2013-14. Page 47 of NECER 2014-15</p>	Samancor Ferrometals, Mpumalanga Province	<ul style="list-style-type: none"> • Commencement of activities without an AEL • Commencement of activities without a WUL • Non-compliance to conditions of AEL • Non-compliance to conditions of WML • Non-compliance to conditions of WUL; and • Managing waste in a manner which may cause harm to the environment. <p>Representations were made on the 31st of January 2023. This information is being reviewed and a decision on the way forward will be made soon.</p>	<p>Page 48 of NECER 2013-14. Page 47 of NECER 2014-15</p>
Samancor Ferrometals, Mpumalanga Province	<ul style="list-style-type: none"> ○ Lack of and insufficient remedial actions at the three Historic Slimes Dams, Northern Slimes Dam and at Slag Dump which have groundwater pollution plume ○ Discharging of polluted water into unlined Clean Water Trench ○ Contravention of the Waste Classification and Management Regulations ○ A notice of intention to issue a compliance notice was issued on the 5th of December 2022 for the following non-compliances 		South32 Richards Bay: Hillside	<p>Compliance inspection was conducted at the facility on 11 April 2022. The following findings were made during the said inspection:</p> <ul style="list-style-type: none"> • Non-compliance to the conditions of the AEL dated 03 December 2018 and reference No: KNUT003/AEL0009/2 which included: <ul style="list-style-type: none"> ○ Sulphur dioxide and PM emissions exceeding the minimum emission standards (MES) in the AEL at the Boiler 1 to 5 during the period of 2021 ○ Coal used at the Boilers was found to be having higher ash and sulphur content than the regulated limit in the AEL • Non-compliance with the provisions of Section 22 of the NEM: AQA by illegally conducting a listed activities in terms of Section 21 Notice (GN 893 of 22 November 2013); 	

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references	Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references
South32 Richards Bay: Hillside	<ul style="list-style-type: none"> • Heating of molten aluminium using Sasol Gas at Casthouse without an AEL, Subcategory 4.2: ○ Description: The Combustion Installations not used for Primarily for steam raising and electricity generation (except drying) ○ A request letter was issued on the 19th of April 2022 		Eskom Camden Power Station, Mpumalanga	<ul style="list-style-type: none"> • Site verification inspection was conducted on 23 May 2023. Rehabilitation plan was approved on 2 August 2023 for implementation.	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
POWER GENERATION					
Eskom Camden Power Station, Mpumalanga	A warning letter dated 08 th of July 2021 was issued to Camden for non-compliance with projects that emanated from the Compliance Notice dated the 14 th of May 2020. 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. <ul style="list-style-type: none"> • A notice of intention to issue a Compliance Notice dated the 25th of March 2021 was issued and representations dated the 08th of April 2021 was received 	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	Eskom Tutuka Power Station, Mpumalanga	The facility was issued with a Compliance Notice on the 12 th of May 2020. Most of the matters were water-related. A response was submitted and a variation requested for certain timeframes to be extended. The facility has not complied with some of the instructions contained in the Compliance Notice. A letter of non-compliance dated the 27 th of October 2022 was therefore issued and the matter has been referred to for criminal investigation.	Page 58 of NECER 2015-2016; Page 49 of NECER 2018-2019; and Page 53 of NECER 2019-2020
			Eskom Grootvlei	A site inspection was conducted by EMIs from DFFE, as well as DARDLEA and Gert Sibande District Municipality on the 25 th and 26 th of May 2021. An administrative notice was processed to address the following alleged non compliances: <ul style="list-style-type: none"> • Non-compliance to conditions in the WML for the Asbestos Sites dated 11 March 2009 and referenced as 2/9/11/P97; 	

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references	Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references
Eskom Grootvlei	<ul style="list-style-type: none"> • Managing waste in a manner which may cause harm to the environment which is considered to be prohibited under NEM: WA; • 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 • 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; <ul style="list-style-type: none"> ○ A conditional close out letter was issued, since the majority of the non-compliances were addressed. 		Eskom Kusile Power Station, Mpumalanga	<ul style="list-style-type: none"> • Capacity of dirty water dams compromised by sediments, leading to contaminated water overflowing to the environment. • Use of contaminated water with elevated levels of some contaminants for dust suppression. • Excessive dust from the ash dump. <p>The report was issued to the facility and a response was received on the 22nd of March 2022.</p> <p>The matter was referred for further enforcement action since many of the non-compliances remain unresolved.</p> <p>A pre-compliance notice was issued on the 22nd of June 2022. This Notice related to the following:</p> <ul style="list-style-type: none"> • Non-compliance to conditions in the AE) • Non-compliance to conditions in the EA • Non-compliance to conditions in the Integrated Environmental Authorisation • Non-compliance to conditions in the WUL • Commencement of activities without an EA • Managing waste in a manner which may cause harm to the environment which is considered to be prohibited under the NEM:WA • Potential pollution or degradation of the environment 	
Eskom Kusile Power Station, Mpumalanga	<p>The site inspection was conducted by EMLs from the DFFE, as well as from DARDLEA, DWS and Nkangala District Municipality on the 17th and 18th of August 2021 at the Eskom Kusile Power Station in Mpumalanga Province.</p> <p>The following issues were identified:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the AEL, WML, EAs and WUL • 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. 				

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references	Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references
	<ul style="list-style-type: none"> Representations were made on the 20th of July 2022 and a follow-up inspection was conducted on the 29th of November 2022. Based on the observations as well as the Action Plan that was submitted by Kusile, a final Compliance Notice dated 26th of January 2023, was issued. <p>Kusile requested a variation to certain timeframes contained in the Notice and was issued with a decision on the 24th of April 2023..</p>		City of Cape Town Vissershok Landfill Site, Western Cape	<ul style="list-style-type: none"> Non-compliances to conditions of the WML; 	Page 51 of NECER 2010-2011. Page 53 of NECER 2021-2022
LANDFILLS			Averda Viakfontein Landfill Site, Vereeniging Gauteng	A site inspection was conducted on the 24 th of March 2022 in relation to odours emanating from the site. A PCN dated the 11 th of May 2022 was issued. Investigations were initiated and reports on the findings thereof were submitted to the DFFE. Based thereon this matter was closed on 19 July 2022.	Page 52 of NECER 2017-2018. Page 53 of NECER 2021-2022
City of Cape Town Vissershok Landfill Site, Western Cape	<ul style="list-style-type: none"> Use of treated leachate to suppress dust on site despite it not meeting applicable limits of the General Authorisation; Water (surface and ground) quality monitoring not conducted for certain parameters since May 2020; Frequent overflows and/or discharge of the leachate from collection sumps and contaminated stormwater from detention ponds during rainy periods; Groundwater quality exceeding stipulated limits on certain boreholes. <p>Representations were submitted during July 2021. Certain concerns in relation to the representations were then raised with the facility. Based on the additional representations and information received demonstrating compliance, this matter was closed on 9 December 2022.</p> <p>A notice of intention to issue a compliance notice was issued to the facility based on:</p>	Page 51 of NECER 2010-2011. Page 53 of NECER 2021-2022	Averda/ EnviroServ Vissershok Landfill Site, Cape Town Western Cape	A compliance monitoring inspection was conducted at this facility on 29 November 2021. The following issues were found: <ul style="list-style-type: none"> Non-compliances to conditions of the WML Failure to comply with duty in respect of waste management due to improper storage of waste and windblown waste scattered around the site. This matter was closed on the 9th of December 2022. 	
			EnviroServ Aloes Landfill Site, Port Elizabeth Eastern Cape	A PCN was issued on the 20 th of June 2022. This notice related to the following: <ul style="list-style-type: none"> Non-compliance to conditions in the Waste Management Licence (WML) Non-compliance to Dust Control Regulations. <p>Representations were made on the 11th of July 2022. Enforcement approach to be determined.</p>	Page 52 of NECER 2017-2018. Page 54 of NECER 2021-2022

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references	Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references
Dolphin Coast Landfill Management, KwaDukuza KwaZulu-Natal	<p>Compliance monitoring inspection was conducted on 2 November 2022 and the following were found:</p> <ul style="list-style-type: none"> • Non-compliance to conditions of the WML; • Suspected commencement with a listed activity without the requisite authorisations in terms of Section 24 of NEMA for diverting a stream; • Failure to comply with duty in respect of waste management including freeboard at the leachate ponds not maintained; stagnant leachate, poor covering of waste, uncovered leachate tanks; • Elevated levels of electrical conductivity; total dissolved solids, sulphate, chloride, sodium and tritium on the surface water quality monitoring points located downstream of the site; • Contravention of the Waste Classification and Management Regulations. 	<p>Page 52 of the NECER 2017-18</p>	Enerwaste Solutions, Gauteng	<ul style="list-style-type: none"> • Operation of an incinerator for treatment of HCRW without an AEL; • Documents to demonstrate compliance like waste assessment and waste classification reports for waste residue (ash); records of incoming waste, source, type of waste and date on which waste is received was not provided upon request. <p>The matter is closed in relation to administrative enforcement action and the facility was criminally convicted.</p>	
HEALTH CARE RISK WASTE TREATMENT					
Enerwaste Solutions, Gauteng	<p>The following were observed during an inspection conducted at the facility on 18 June 2020:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the WML including Emergency Preparedness and Risk Mitigation Plan; • 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; 		Biomed, Gauteng	<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 WML with reference No. 12/9/11/L191202125624/3/R issued by DFFE on 09 April 2020. The inspection also assessed compliance against NEMA, NEM:WA and the 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 and the matter was referred for further enforcement action.</p> <p>A site verification inspection will be conducted in the 2nd quarter of the 2023/2024 financial year and a warning letter will be issued to the Facility for non-compliances and for decommissioning of the burnt incineration technology for failure to report for Section 30A emergency incident.</p>	

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references	Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references
<p>Ecocycle, Free State</p>	<p>An inspection was conducted at the facility on 21 January 2021 and the following were found:</p> <ul style="list-style-type: none"> • Contraventions of the requirements of the Norms and Standards for Storage of Waste including Inadequate notices regarding hazards associated with the site; employees not trained to handle hazardous and infectious waste; external audits not conducted; • Failure to comply with duty in respect of waste management including storage of waste including longer than stipulated timeframes on site leading to odours; inadequate measures for storage and handling of isolation waste; anatomical waste stored in refrigerators not meeting specified storage temperatures. <p>The facility ceased with all operations subsequent to the issuance of a PCN. A site verification inspection is required to be done in the 2023/2024 financial year prior approval of the close-out letter.</p>		<p>Gledhow Sugar</p>	<ul style="list-style-type: none"> • SO₂ and PM emissions exceeding the minimum emission standards (MES) at the Boilers; • Excessive continuous dust-fallout rates exceeding the limits for residential and non-residential as contained in the National Dust Control Regulations; • Non-compliance with the provisions of Section 20 of the NEM: WA by illegally conducting a Waste Management Activity which involve constructing ash settling ponds at the Ash Dump without a WML; • Contravening duty of care provisions of the NEMA and NEM: WA which related to the unlined Coal Storage Area; unlined Ash Settling Ponds; unlined burnt limestone storage area and spillages of various waste streams around the site. <p>Enforcement action was initiated and an appropriate way forward is under consideration.</p>	
PULP AND PAPER					
SUGAR MILLS					
<p>Gledhow Sugar</p>	<p>Compliance inspection was conducted at the facility on 26 October 2022. The following findings were made during the said inspection:</p> <ul style="list-style-type: none"> • No-compliance to the conditions of the Atmospheric Emission ash and sulphur content in the coal used at the boilers exceeding the limits; 		<p>Mondi South Africa (Pty) Ltd, Richards Bay Mill</p>	<p>A compliance inspection was conducted on 26 July 2022. The following non-compliances were noted during inspection:</p> <ul style="list-style-type: none"> • Non-compliances to conditions of the AEL, EA; • Contravening the provisions of Section 22 of the NEM: AQA by illegally conducting a listed activities in terms of Section 21 Notice (GN 893 of 22 November 2013); • Contravening section 22 read with 21(g) of the NWA by disposing wastewater or effluent at the two (2) Effluent Emergency Dams without a WUL 	<p>Page 47 of the 2012-13 NECER</p>

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references	Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references
Mondi South Africa (Pty) Ltd, Richards Bay Mill	<ul style="list-style-type: none"> • Contravening duty of care provisions of the NEMA and NEM:WA including: <ul style="list-style-type: none"> ○ Poor effluent management which may be related to blocked storm water drains; excessive water or effluent ponding at the Dregs and Grits storage area and poor maintenance of stormwater drains within the Mill and suspicious discharge of what appears to be process water into storm water drains; ○ Heavy fuel storage tank stored on an unbunded and unlined area; ○ Possible groundwater Pollution at the Landfill Site; excessive leachate generation which may be due to- disposal of waste classified as hazardous with extremely high moisture content and overflowing to the nearby wetland; poor management of leachate, and poor disposal of waste at Mondi Landfill and lack of cut-off tranches or drain around at the Landfill Site; ○ Lack of classification and assessment of certain waste streams being disposed at the Mondi Landfill Site and at DCLM. • Groundwater pollution at ETP which may be due to -: Suspected effluent leakages at Sothern Primary Clarifiers of ETP, poor storage of various waste streams within ETP Area, grass growing from the liner of Eastern Emergency Dam, and effluent pipes not placed within drains/channel around Sothern Primary Clarifier of the ETP; • Rubble and other waste streams stored on unlined surface at the open area behind Bleach Plant 	Page 47 of the 2012-13 NECER	Mondi South Africa (Pty) Ltd, Richards Bay Mill	<ul style="list-style-type: none"> • Coal stored beyond the concrete base on unlined surface and also blocking the storm water drain; • Lime mud stored on unlined surface next to the Lime Kilns; • Biocide and deform storage tanks at the Clay Calcination Plant within the Paper Machine have insufficient bund; <p>A Notice of Intention to issue a Compliance Notice dated the 10th of January 2023 was issued, representations received and are in the process of being reviewed.</p>	Page 47 of the 2012-13 NECER
FERTILIZER AND ACID GENERATION					
			Foskor Richards Bay	<p>Compliance inspection was conducted at the facility on 12 April 2022. This inspection was triggered by the alleged incident of gas leak in February 2022 and only focused on air quality management. The following findings were made during the said inspection:</p> <ul style="list-style-type: none"> • No-compliance to the conditions of the AEL which among others included significant gas leaks from a number of areas within Sulphuric Acid Plant; • Contravening the National Dust Control Regulations; • Contraventions of the duty of care provisions of the NEMA and NEM:WA which related to the following: <ul style="list-style-type: none"> ○ Excessive SO₂ emissions negatively impacting on the ambient air; ○ Insufficient bunding and/or lack of bunding at the Sulphuric Acid Plant A. 	Page 52 of NECER 2011-2012; Page 50 of NECER 2012-2013; Page 42 of NECER 2013-2014; and Page 54 of the NECER 2019-20

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references	Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references
Foskor Richards Bay	<p>Considering the findings of the compliance inspection conducted during the 2022/2023 Financial Year, the Department decided to initiate an administrative enforcement process against the facility.</p> <p>APCN, detailing the findings of the compliance inspection was issued to the facility. The notice afforded the facility with an opportunity to make representations to the contents thereof. The facility provided the Department with a response. Following a review of the response, the Department identified that additional information was required, and a letter requesting the additional information was issued to the facility.</p> <p>Additional information has been provided by the facility, and the Department is currently monitoring the progress to the commitments made, and response provided.</p>	<p>Page 52 of NECER 2011-2012; Page 50 of NECER 2012-2013; Page 42 of NECER 2013-2014; and Page 54 of the NECER 2019-20</p>	Glencore Merafe Venture Operations: Rustenburg Smelter	<ul style="list-style-type: none"> o Lack of pollution remediation measures at Northern Slimes Dam; o Unlined and highly silted Pollution Control Dams; o Lack of pollution remediation measures at Slag Dump and the three (3) Historic Slimes Dams; o Tailings leaking to bare ground from process water and tailings pipes next to Mine Decant; o Process water being discharged to unlined Clean Water Trench; • Contravening the Norms and Standards for the Storage of Waste and National Norms and Standards for Sorting, Shredding, Grinding, Crushing, Screening or Baling of General Waste, • Contravening the regulations contained in the Waste Classification and Management Regulations. 	
SMELTERS AND REFINERIES					
Glencore Merafe Venture Operations: Rustenburg Smelter	<p>A compliance inspection was undertaken on the 21st of April 2022. The following non-compliances were noted during the said inspection:</p> <ul style="list-style-type: none"> • Non-compliances to the conditions of the WML; • Contravening the duty of care provisions of the NEMA and NEM:WA which related to the following: <ul style="list-style-type: none"> o Possible groundwater pollution at the Northern Slag Disposal Facility and Slimes Disposal Facility; o Frequent PM exceedances of the AEL emission limit; 			<p>Considering the findings of the compliance inspection conducted during the 2022/2023 Financial Year, the Department decided to initiate an administrative enforcement process against the facility. A PCN, detailing the findings of the compliance inspection, was signed on the 12th of August 2022 and thereafter issued to the facility.</p> <p>The facility provided the Department with its representations, which was done within the allocated time period.</p>	

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references	Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references
Glencore Merafe Venture Operations: Rustenburg Smelter	<p>Following a review of the representations and information provided, the Department noted that certain non-compliances had been adequately addressed, however, there were others which are in still in the process of being adequately addressed. Information provided included short, medium as well as long term measures to ensure continuous and sustainable compliance with environmental laws.</p> <p>In light of the above, particularly the potential impacts of the non-compliances still to be addressed the Department issued the facility with a letter dated the 13th of February 2023. The intention of the letter was to obtain a status update on non-compliances which have not yet been adequately addressed. The facility was afforded a period of fourteen (14) calendar days to provide the Department with the requested information, and said information was provided to the Department within the allocated time period.</p> <p>The Department will continue to monitor the facility to ensure that the non-compliances identified are adequately addressed.</p>		Anglo American Platinum Limited: Waterval Smelter	<ul style="list-style-type: none"> • Contravening the duty of care provisions of the NEMA and NEM:WA which related to the following: <ul style="list-style-type: none"> ○ Possible groundwater pollution due to the impact from the Smelter, Concentrator and Acid Plants; ○ Uncovered waste skips containing hazardous Waste at the Salvage Yard; ○ Excessive uncontrolled emissions due to an incident at the Tower Plant; ○ SO₂ fugitive releases from molten material transfer at the Slag Cleaning Furnaces are not captured. <p>Considering the findings of the compliance inspection conducted during the 2022/2023 Financial Year, the Department decided to initiate an administrative enforcement process against the facility.</p> <p>APCN, detailing the findings of the compliance inspection, was signed on the 19th of October 2022 and thereafter issued to the facility.</p> <p>The facility then provided the Department with its representations, which was done within the allocated time-period.</p>	
Anglo American Platinum Limited: Waterval Smelter	<p>A compliance inspection was undertaken on the 26th of May 2022. The following non-compliances were noted during inspection:</p> <ul style="list-style-type: none"> • Non-compliance to conditions of the AEL and EA; • Non-compliance to regulations contained in the National Norms and Standards for Sorting, Shredding, Grinding, Crushing, Screening or Baling of General Waste; 			<p>Following a review of the representations and information provided, the Department noted that certain non-compliances had been adequately addressed, however, there were others which are in still in the process of being adequately addressed. Information provided included short, medium as well as long term measures to ensure continuous and sustainable compliance with environmental laws.</p>	

Name of Facility	Principle findings related to environmental non-compliance, findings of follow-up inspections and status of enforcement process	Previous NECER references
Anglo American Platinum Limited: Waterval Smelter	<p>In light of the above, particularly the potential impacts of the non-compliances still to be addressed the Department issued the facility with a letter dated the 13th of February 2023. The intention of the letter was to obtain a status update on non-compliances which have not yet been adequately addressed. The facility was afforded a period of fourteen (14) calendar days to provide the Department with the requested information, and said information was provided to the DFFE within the allocated time period.</p> <p>The information has been reviewed by the relevant sections within the Department, and discussions are currently taking place on the way forward on this matter.</p>	

8.2 Municipal Landfill Site Compliance

The project was initiated during the 2017/18 Financial Year and executed by the provincial Environmental Management Inspectors. It entails conducting compliance monitoring inspections at municipal landfill sites. Inspections included an assessment of compliance of the selected landfills against the provisions of the NEMA and NEM:WA with a special focus on the WMLs in terms of Section 20(b) of NEM:WA issued to the sites. Assessments comprise of detailed site inspections, observations, a review of the information provided by site representatives and a review of records/documentation. The level of compliance was rated based on the score of 0-49% as non-compliant; 50-74% partial compliant and 75-100% compliant.

Since the inception of the project, a total of 328 sites (60% of operational landfill sites) have been inspected. In three provinces, Eastern Cape, Northern Cape and Free State, less than 50% of the landfill sites have been inspected in these provinces.

Province	Total number of sites per province	Inspected (2017/18 to 2022/23 FY)
Limpopo	44 (33 operational)	33 (100%)
Eastern Cape	103	20 (19%)
Mpumalanga	47	47 (100%)
Gauteng	26	26 (100%)
Northern Cape	92	25 (27%)
North West	22	22 (100%)
KwaZulu-Natal	40	36 (90%)
Western Cape	96 (operational only)	96 (100%)
Free State	73 (64 licensed + 9 unlicensed)	23 (31%)
Total	543	328 (60%)

Figure 1: Number of sites per province vs sites inspected

The majority of the sites inspected were found to be non-compliant to legislative requirements as shown in the figure below.





The status of compliance for all inspected sites in the Free State and Northern Cape was found to be less than 50%. Access control remains one of the biggest challenges faced by municipalities. Most sites have inadequate and/ or no fencing and manned gates, leading to squatters residing on the landfill sites. This also results in disposal of unpermitted waste streams (like whole tyres) on these sites. In addition, lack of covering and compacting was observed at most sites.

The findings of non-compliance or contraventions recorded at sites are addressed through various interventions including compliance promotion mechanisms like discussions with municipalities to address the findings, action plans with commitments to address the findings submitted by municipalities, referral of licenses to licensing sections for review where conditions are not monitorable, applicable or suitable for the sites, and enforcement action (administrative and criminal).

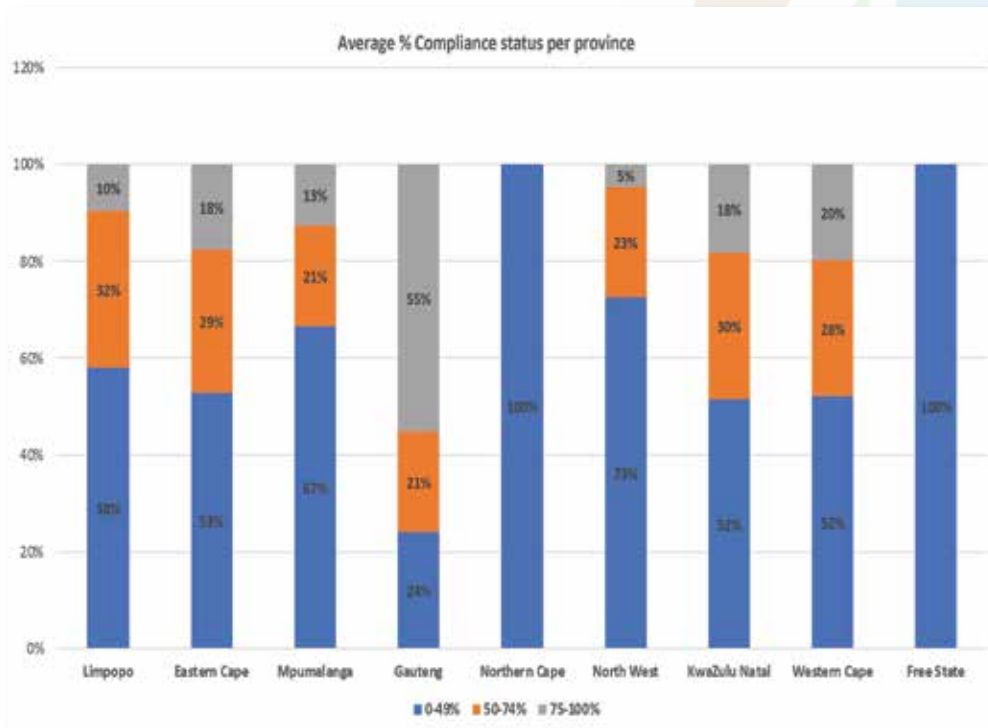


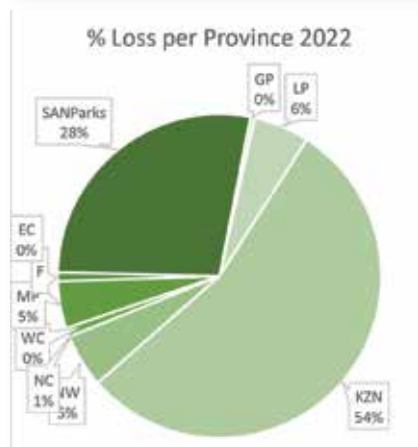
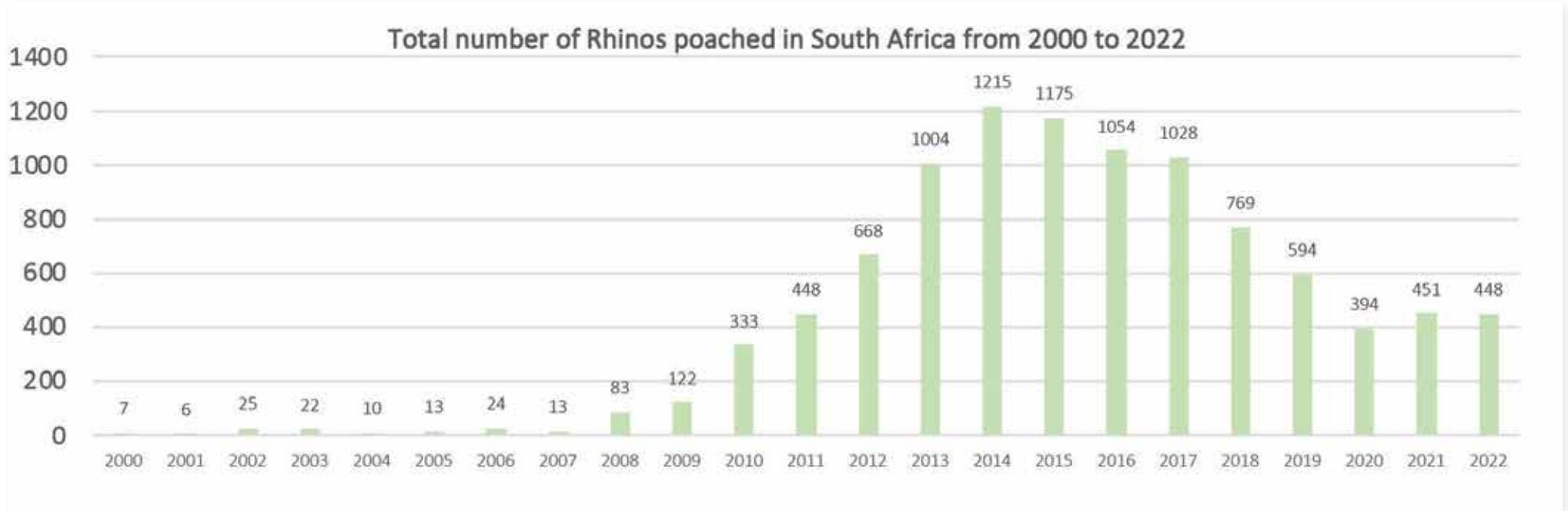
Figure 2: Average compliance status per province (latest inspection per site from 2017/18 to 2022/23)



**BIODIVERSITY/ PROTECTED AREAS
COMPLIANCE AND ENFORCEMENT**

9. BIODIVERSITY/ PROTECTED AREAS COMPLIANCE AND ENFORCEMENT

9.1 Rhinoceros poaching statistics



Numbers of rhinos poached in South Africa per annum: 2000 - 2022

South Africa	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
SANParks	0	4	20	14	7	10	17	10	36	50	146	258	428	609	828	826	662	504	422	328	247	209	124	5759
Gauteng	0	0	0	0	0	0	0	0	0	7	15	9	1	8	5	2	6	4	2	5	2	2	2	70
Limpopo	0	0	0	0	0	0	0	0	23	16	52	74	59	114	110	91	90	79	40	45	18	38	25	874
Mpumalanga	0	0	0	0	0	0	2	3	2	6	17	31	28	92	83	67	32	49	51	34	13	39	21	570
North West	0	0	0	0	0	2	0	0	7	10	57	21	77	87	65	46	56	96	65	32	19	32	24	696
Eastern Cape	0	0	0	0	0	0	0	0	1	3	4	11	7	5	15	14	17	12	19	2	0	0	0	110
Free State	0	0	0	0	0	0	0	0	0	2	3	4	0	4	4	10	17	38	16	11	1	24	4	138
KwaZulu-Natal	7	2	5	8	3	1	5	0	14	28	38	34	66	85	99	116	162	222	142	133	93	102	244	1609
Western Cape	0	0	0	0	0	0	0	0	0	0	0	6	2	0	1	1	0	0	0	0	0	4	0	14
Northern Cape	0	0	0	0	0	0	0	0	0	0	1	0	0	0	5	2	12	24	12	4	1	1	4	66
Total	7	6	25	22	10	13	24	13	83	122	333	448	668	1004	1215	1175	1054	1028	769	594	394	451	448	9906

Percentage of rhinos poached per province from 2000 - 2022

9.2 Integrated Wildlife Zone Initiative

The IWZ initiative is a key focus area of the RAP sub-committee of WGIV; and is aimed at ensuring short-term stability within specific geographic areas demarcated around key rhino populations, within which the relevant government and private role players are effectively working together to combat rhino poaching.

In 2022/23, a national Environmental Enforcement Fusion Centre was activated in order to provide support to improve the reactive and proactive responses to poaching in Integrated Wildlife Zones by enabling focussed strategies and intelligently deploying resources. Critical gaps were identified in the IWZ and addressed empowerment, technology and equipment-based interventions. This has resulted in increased arrests and improved outcomes of rhino crime prosecutions within the IWZs.



9.3 National Response Strategy and Action Plan to Address the Illegal Trade in South African Succulent Flora

The National Response Strategy and Action Plan to Address the Illegal Trade in South African Succulent Flora was developed to counter the dramatic rise in the illegal harvesting of succulent plants across South Africa's arid zone, especially in the Eastern, Western and the Northern Cape. The 2022/23 FY saw the commencement of the implementation of this strategy, with the SAPS Stock Theft and Endangered Species Unit, in collaboration with provincial EMIs, having initiated several criminal investigations into succulent cases in various provinces. In addition, DFFE liaised with Namibian authorities with regards to an alleged illegal import and export of succulents and SAPS Directorate for Priority Crime Investigations is currently busy with a high-level investigation into this matter. Further work is also being undertaken in relation to the development of guidelines for the submission of expert evidence in court proceedings; as well as the proper seizure and custody procedures to be followed when succulents are seized by law enforcement authorities.



Photo: succulents seized as part of a criminal investigation

9.4 Rhino Anti-Poaching (RAP) Committee

The RAP strives to ensure better collaboration between national, provincial and private entities in the protection of rhino populations. In 2022/23, the ongoing training of ranger leader corps resulted in greater effectiveness of certain ranger and anti-poaching teams. Collaboration with the associated private sector security has been strengthened through the IWZ approach to ensure key rhino population clusters and neighbouring landowners are duly facilitated, guided and supported to collectively implement joint projects to protect the rhino, other wildlife and enhance community safety.

The deployment of the rhino crime information system as a component within the consolidated wildlife crime database, enables DFFE, SANParks and provincial conservation authorities to securely store and share information on wildlife crime investigations improving the State's ability to identify targets, linkages and guide investigators to focus on the different levels of the syndicates. In addition, the roll-out of CMORE across the country has ensured all provinces with rhinoceros populations are reporting rhino incidents in a standardized manner. The technological support that CMORE offers to ground operations is paramount in aligning field teams, monitoring pressure and predicting high threat areas.



**OCEANS AND COAST COMPLIANCE AND
ENFORCEMENT**

10. OCEANS AND COASTAL COMPLIANCE AND ENFORCEMENT

In the 2022/2023 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, EMI's 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 Illegal land occupations and developments in coastal areas

In the Eastern Cape, DFFE received a complaint regarding illegal land occupation at Port St Johns. This illegal activity was occurring within a coastal state forest (Phungana forest). Officials attended to the matter with the assistance of SAPS, where it was observed that certain protected trees had been cut down, while others were marked to indicate ownership. Ongoing monitoring of the site through Operation Phakisa together with numerous community meetings have managed to prevent further illegal activities in this area.



Photo: Members of SAPS and the EMI's observe the effects of illegal land occupation in the Phungana state forest, Port St Johns



Photos: multi-stakeholder teams comprising national, provincial and local authority EMI's respond to illegal land occupation and encroachments along the KZN coast

In KwaZulu-Natal, persons alleged to be part of the Dokodweni community occupied land that they claimed belong to the traditional authorities of Dokodweni. DFFE together officials from KZN EDTEA, Mandeni Local Municipality and relevant traditional authorities collaborated to prevent further unauthorised coastal development in this area. Also in the province, EMI's on coastal patrols identified over 30 coastal encroachment activities by private property owners residing along the coast, resulting in the issuance of administrative enforcement notices.

10.1.2 Coastal Pollution

Coastal pollution in the Sarah Baartman Region, specifically in the Kouga Municipality has been ongoing from 2018. Most of it has been linked to illegal connections of sewer lines to storm water inlets which discharge directly to the sea, often from malfunctioning municipal pump stations and waste water treatment works. As a result, DFFE and EC DEDEAT EMI's received numerous complaints from concerned members of the public in the Jeffrey's Bay area; and enforcement action was initiated.



Photos: fish kills as a result of sewage pollution in the marine environment, Sarah Baartman Region

In the Western Cape, a planning meeting was co-ordinated after receiving a complaint from the Knysna Municipality about several properties which have unlawfully encroached onto the coastal zone. The meeting highlighted the need for a collaborative effort from all spheres of government to deal with this persisting issue

which cumulatively resulted in the loss of around 4874 m² of coastal vegetation.

It was agreed that a strategic plan was to be developed that would look at identifying the properties in and around the Knysna region that have encroached onto the coastal zone and appropriate enforcement action was deemed necessary to prevent the privatisation of coastal public property, resulting in the execution of the operation between 13-15 June 2022.



10.2 Building Coastal Management Awareness amongst Traditional Leaders

In 2022/23 DFFE continued with its Marine and Coastal Compliance and Enforcement Promotion Workshops, which seek to build the awareness of traditional and community leaders on the importance of conservation and preservation of the coastal area and the ecosystem services that it generates. In the Eastern Cape, a workshop was held at Mpekweni Beach Resort in Peddie in November 2022 with an attendance of over 27 traditional and community leaders together with over 47 government officials. In KwaZulu-Natal a workshop was held at Umhlanga Garden court in March 2022 to which all Amakhosi/ Traditional leaders located along the KZN Coast were invited.



Photo: Traditional Leaders Coastal Awareness Workshop, Mpekweni Beach Resort, 09th -10th November 2022

10.3 Illegal sandmining

The Eastern Cape coastline, specifically the Wild Coast area has been significantly impacted by illegal sand mining activities, which is a growing phenomenon that is observed on a daily basis. Illegal sandmining activities destroy sandy beaches, dunes and coastal forests by interfering with dynamic coastal processes and ultimately limit the rights of citizens to enjoy a clean and healthy coastal environment. EC Province and DFFE have been attending to numerous complaints regarding the illegal use of motor vehicles used in illegal sand mining. Constant monitoring of these activities by EMLs has resulted in the issuance of a total of 28 fines.



Photo: illegal sandmining activities in the Wild Coast, Eastern Cape

10.4 West Coast Festive Season Coastal Operation



Photos: EMLs from DFFE and WC DEADP execute a festive season coastal operation along the West Coast

During December 2022, officials from DFFE and Western Cape DEADP undertook a inspection of the West Coast. The inspection revealed the presence of numerous historical land use issues such as Deurspring (near Papendorp) as well as Gert Du Toit se Baai. The land use challenges range from unlawful occupation of land to

illegal camping within the Coastal Public Property. These activities bring with them a host of other challenges, such as illegal driving within the coastal area as well as waste management issues. Many of these old sites are linked to historical mining use of the land as well as abandoned quarries that were used by mining companies and then later informally decommissioned. It was established that DMRE as well as the local municipality will be critical to resolving these issues as many of the land occupiers have already been provided with water and electricity.



**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

The MOC PC through a joint multi-dimensional approach towards integrated border management, provides for the continued enforcement of and adherence to, South African maritime legislative and regulatory frameworks in territorial waters and maritime zones. Such operational approach allows for a maritime environment conducive to the development of the ocean economy and the integrity and sovereignty of South African Waters.

Constituted as the MOC PC of the NATJOINTS in the previous reporting period, the operational approach is developed around the 5 Pillar Plan which allows for both preventative and reactive operations to disrupt and mitigate marine crimes in the maritime zones. Led by the DFFE, supported by the NATJOINTS, operations are planned and executed in the Western, Eastern, and Northern Cape as well as KwaZulu-Natal territorial waters, inclusive of the adjacent coastal areas, and the maritime zones. The MOC PC meets every alternate month, with the IOSTT meeting monthly.

During the reporting period, confiscations to the value of R64 753 936 were affected. Of this total figure, R40 414 640 accounted for the confiscation of abalone while R19 735 355 worth of equipment and vehicles/vessels were confiscated, removing the tools utilized in the commission of illegal activities.



Figure 1: Showing Abalone confiscated in Gqeberha, Eastern Cape (Illegal Abalone Processing Factory)

The MOC PC meets every alternate month. Chaired by DFFE and co-chaired by the SAPS, the MOC PC 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 22/23. The MOC PC is supported by the IOSTT providing integrated and coordinated National situational, trends and challenges overview to the MOC PC.



Figure 2: Showing “the face” of Marine and Oceans Crime Priority Committee, from left to right: Ms Angelique Reolofse (Secretariat), Mr Tembalethu Tanci (MPG Delivery Unit Head), Birgadier A.M Calitz (Chairperson) and Ms Frances Craigie (Chairperson)

During the reporting period, confiscations to the value of R 64 753 936 were affected. This is an increase in R 9 013 599 compared to the previous reporting period. The breakdown of confiscations is reflected in the following table:

Product	State of product	Total	Total Overall
Abalone	Whole	R 7 562 392	R40 414 640
	Shucked	R 15 083 005	
	Dried	R 17 769 243	
Rock Lobster	Whole	R 571 300	R3 468 600
	Tails	R 2 867 300	
Fish and Other Marine Resources	-	R 910 878	R 910 878
Associated Equipment	-	R 882 129	R 882 129
Transportation	Vehicles, Vessels and Trailers (62x cars and trucks, 2x TLBs, 20x vessels and 3x trailers)	R 15 523 500	R 15 523 500
Narcotics	-	R 224 463	R 224 463
Illegal Mining Equipment	-	R 3 329 726	R 3 329 726

Although the confiscations of abalone are considerable, this abalone has already been removed from the water and these interventions unfortunately do not usually contribute to the survival of the species. Unless the abalone is intercepted shortly after harvesting, the chance of survival is limited.

The confiscation of the associated equipment can be seen as a preventative measure. The removal of the “Tools of the Trade” prevent the illicit activity for an interim period. Due to the lucrative illicit industry and extent of the operations, this success is short term as the syndicates are able to replace what they have lost with new equipment. An increase in the value of confiscated equipment (by R 6 010 754) compared to the previous reporting period illustrates the change in approach to remove the “Tools of the Trade”.

Intelligence Support to Operations

Previous perceptions of maritime security were related to naval and policing actions. With the changing 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 include crimes such as piracy, armed robbery at sea, trafficking of people and illicit goods, illegal fishing and marine pollution.

With the migration to the MOC PC and the responsibility for “Marine and Ocean Crime”, the requirement for accurate and proactive intelligence becomes more critical. Identification of both traditional and non-traditional threats becomes essential in order to ensure the integrity and sovereignty of South African waters and integrated border management.

Illegal Mining

Illegal mining within the coastal regions, specifically the NC, EC and KZN has become a serious challenge, not only from an environmental perspective, but given its contribution to the illicit economy, tax evasion and non-compliance to both National and Provincial legislative and regulatory frameworks. In the NC, the illicit mining concentrates on diamond dust and the majority of illegal miners in the NC are undocumented foreigners. In the EC and KZN, sand mining is prominent, which is causing significant ecological damage to local ecosystems and will be difficult to reverse. It is estimated that along the Wild Coast there are over 150 illegal sand mining sites. Although engagements with Traditional Leadership have been positive, these interventions have not had a defined impact on the illicit operations.

The alleged involvement of local Traditional Leadership, businesses and local Law enforcement alludes to the organised nature of the activity. Several operations have been planned and executed after complaints about illegal sand mining was reported to be happening on a daily basis; however, on arrival of enforcement officials in the area, there is no activity at the identified site. It is estimated that up to 20 trucks of illegally harvested sand per day are removed from illegal mining areas along the East Coast and it is estimated that Wild Coast illegal sand mining industry exceeds R2 billion/ annum.

Although operations have been conducted in the areas of concern, with some success, it has not mitigated the challenge. Challenges have been experienced due to the remoteness of some sites with the removal of equipment used in the illegal activity or the storage thereof and upon withdrawal of enforcement entities, the illegal activities continue. Attempts to block access to some sites have been implemented but in some areas the barricades were removed or a new road made through the sensitive coastal vegetation.

Although arrests have been made and J534s been issued, these activities have been aimed at the equipment operators and truck drivers. To mitigate the activity, an extensive effort is needed to identify the facilitators of the activity and the clients thereof. A comprehensive assessment is required to identify all individuals in the value chain and allow for a holistic approach to mitigate such activity.



Figure 3: Showing illegal sand mining in KZN, several cases were registered and equipment confiscated

**PROSECUTION OF ENVIRONMENTAL
OFFENCES IN 2022/23**



12. PROSECUTION OF ENVIRONMENTAL OFFENCES IN 2022/23

The tables below provide an overview of some of the more significant sentences handed down by the courts for environmental offences between 01 April 2022 until 31 March 2023:

12.1 Environmental Impact and Pollution Convictions

12.1.1 Sewage



State v Rand West City Local Municipality (represented by Themba Goba)

Province:
Gauteng

Charges:

Contravention of Section 151(1)(d) & (i) and 151(2) of the NWA

Judgement/Sentence:

The accused pleaded guilty in terms of S105A of the CPA and was sentenced to a fine of R3 000 000-00 which was wholly suspended for a period of 5 years on a number of conditions.

12.1.2 Hazardous Waste

**S v Enerwaste Solutions (Pty) Ltd (represented by Solly Mabunda)****Province:**

Gauteng

Description:

A routine compliance monitoring inspection against a WML issued to Enerwaste Solutions (Pty) Ltd dated 22 July 2016 (Ref: 12/9/11/L47684/3) and the PAEL issued to the facility and dated 19 January 2017 (Ref: 9/16/1/2/65/R) was conducted during which it was found that the facility was in non-compliance with these licences.

Charges:

- Section 67(1) (h), read with section 1 of NEM:WA;
- Contravening section 22, read with Section 51(1) (a) and 1 of the NEMAQA
- Section 49A(1)(k) of NEMA

Judgement/Sentence:

The accused pleaded guilty in terms of section 105A plea and sentence agreement and was sentenced to a fine of R500 000 of which R400 000 was suspended for a period of 5 years on the following conditions: The accused is not convicted of any further offences in terms of the NEMA, the NEM:WA and the NEMAQA.

S v Matjhabeng Local Municipality (represented by Zingisa Khutaza Tindleni)**Province:**

Free State

Description:

SAPS received information regarding Health Care Risk Waste that was disposed of at the Matjhabeng Landfill site, Odendaalsrus, which was not authorised to accept such waste. The DFFE was requested to investigate this matter further.

Charges

- Section 49A(1)(e) of NEMA;
- Section 49A(1)(k) of NEMA

Judgement/Sentence:

The accused pleaded guilty in terms of Section 105A of the CPA and was sentenced to a fine of R1 000 000-00 wholly suspended for a period of five (5) years on condition that the landfill be brought into compliance with the NEM:WA and comply with the compliance notice.

S v Gavin Brasher and 7 others**Province:**

Free State

Description:

Illegal disposal of Health Care Risk Waste: In October 2009, the DFFE received information regarding a medical waste company that were burying health care risk waste illegally in Welkom in the Free State area.

The Department applied for search warrants in four provinces to investigated and search the premises of the company involved as well as the premise of the private transport company that they employed. On 27 November 2009 medical waste was found illegally buried at the premise of a Brick Manufacturing business in Welkom in the Free State. After the first discovery of waste other search and seizure operations followed which led to the discovery of health care risk waste being buried on the following places as well.

Clean up on 4 of the sites took place during which 18 000 tonnes of medical waste were uncovered and disposed of an authorised manner, which costed the company +- R 54 million.

Accused 5 in the matter concluded a verbal agreement with the deceased CEO of the waste company to collect and transport the HCRW from their depots in other provinces to the sites in Welkom. He was also employed by Accused 1-4 and acted as a manager for them.

Charges

- 4 counts of contravening section 20(b) read with section 67(1)(a) & 68(1) of NEM:WA
- 4 counts of contravening section 16(1)(c) read with section 67(1)(a) & 68(1) of NEM:WA
- 4 counts of contravening section 16(1)(e) read with section 67(1)(a) & 68(1) of NEM:WA
- 4 counts of contravening section 26(1)(a) read with section 67(1)(a) & 68(1) of NEM:WA
- 4 counts of contravening section 67(2)(c) of NEM:WA
- 4 counts of contravening section 8(1) read with sections 1, 8(2), 38(1)(a) and 38(1)(p) of the Occupational Health and Safety Act 85 of 1993.

Judgement/Sentence:

Accused 5 pleaded guilty in terms of section 105A plea and sentence agreement and was sentenced to a fine of R1 000 000 or 5 years imprisonment, of which R800 000 of the fine and the 5 years imprisonment were suspended for 5 years on certain conditions. Accused was ordered to pay fine of R 200 000.

S v Brakenshaw Investments (Pty) Ltd

Province:

Gauteng

Description:

On the 3 February 2016 a site in Labore in Tsakane was visited after complaints from the municipality and surrounding neighbours about oil and grease sludge flowing from an abandoned site. A site investigation was conducted and samples were obtained, which showed that there was an abandoned soap manufacturing company on site; and that numerous vertical steel tanks were broken and the contents were flowing onto the property and into the neighbouring street. The whole site was covered with oil sludge and grease.

Charges:

- 1 count of contravening section 51(1)(a) read with sections 1 & 35(2) & 52 of NEMAQA.
- 1 count of contravening section 16(1)(c) read with 67(1)(a) & 68(1) of NEM:WA
- 1 count of contravening section 16(1)(e) read with 67(1)(a) & 68(1) of NEM:WA
- 1 count of contravening section 21(d) read with 67(1)(b) & 68(2) of NEM:WA
- 1 count of contravening section 26(1)(a) read with 67(1)(a) & 68(1) of NEM:WA
- 6 counts of contravening section 46 read with sections 45(d) & 172(1)(a) of the Ekurhuleni Metropolitan Municipality Public Health By-laws, 2006.

Judgement/Sentence:

Case went on trial and accused was found guilty on abovementioned charges and sentenced in terms of Section 297(1)(a)(i)(hh) of CPA on condition that the accused must communicate with the DFFE in getting an specialist in cleaning the site and provide the DFFE with a rehabilitation report on or before 31 Jan 2026, which the DFFE must provide to the court. The accused must appear in court on the 2 February 2026 for final sentencing.

12.2 Marine Species (Abalone) related convictions



S v Frayman Baadjies and two others**Province:**

Western Cape

Description:

The accused entered the Robben Island Marine Protected area, where they were involved in the search for abalone.

Charges:

- Contravening Regulation 8(1) and 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
- Contravening Regulation 3(1) and 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
- Contravening Section 46(1), read with section 89(1)(a) and Section 1 of NEM:PAA

Judgement/Sentence:

Count 1:

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

Count 2 :

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

Count 4:

The accused is sentenced to a period of 2(two) years imprisonment which is wholly suspended for a period of 5 (five) years, on condition that the accused is not convicted of contravening Regulation 3(2) for the Protection of Wild Abalone Regulations promulgated under Government Notice R62 and published in Government Gazette 30716 of 1 February 2008 read with Regulations 1 & 5(1) of the Regulations issued in terms of Section 77 of Act 18 of 1998 (Marine & Living Resources Act) and also read with Section 58(4) of the said Act committed during the period of suspension.

Count 5:

The accused is sentenced to a period of three (3) years imprisonment which is wholly suspended for a period of 5 (five) years, on condition that the accused is not convicted of contravening Section 46 of the NEM:PAA committed during the period of suspension.

S v Mhleli Dunjwa and two others**Province:**

Western Cape

Description:

The accused entered the Robben Island Marine Protected area, where they were involved in the search for 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 - fish in the RIRZ Robben Island Restricted Zone
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, read with Regulations 1 & 5(1) of the Regulations issued in terms of Section 77 of Act 18 of 1998 (Marine & Living Resources Act) - possession of prohibited gear in a listed area
3. Contravening Section 46(1) of the NEM:PAA - entered the Robben Island World Heritage site without the written permission of the management authority

Judgement/Sentence:

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 7(1) as promulgated in GN R 794 and published in GG No 42479 of 23 May 2019 or 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

Count 2:

The accused is sentenced to a period of 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 as promulgated under Government Notice R62 and published in Government Gazette 30716 of 1 February 2008.

Count 3:

The accused is sentenced to a period of 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 Section 46(1) of the NEM:PAA

S v Masixole Nogobovu and 6 others**Province:**

Western Cape

Description:

The accused entered the Robben Island Marine Protected area, where they were involved in the search for 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), read with section 89(1)(a) and section 1 of NEM:PAA and section 250 of the Criminal Procedure Act.

Judgement/Sentence:

Count 1:

The accused is sentenced to a period of four (4) years' imprisonment which is wholly 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 Robben Island Marine Protected Area as promulgated in GN R 794 and published in GG No 42479 of 23 May 2019

Count 2:

The accused is sentenced to 2(Two) years imprisonment which is wholly 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 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

Count 3:

The accused is sentenced to a period of three (3) years' imprisonment which is wholly 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 NEM:PAA

S v Neville Slabberts**Province:**

Western Cape

Description:

The accused entered the Robben Island Marine Protected area, where they were involved in the search for 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 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 NEM:PAA

Judgement/Sentence:

Count 1:

The accused is sentenced to 5 (Five) years imprisonment which is wholly suspended for a period of 5 (Five) years on condition that the accused is not convicted of contravening the regulations for the management of Robben Island Marine Protected Area as promulgated Government Notice GN R 794 and published in Government Gazette 42479 of 23 May 2019 committed during the period of suspension.

Count 2:

The accused is sentenced to a period of two (2) years' imprisonment which is wholly suspended for 5 (five) years, on condition that the accused is not convicted of contravening Regulation 3(1) Regulations for the Protection of Wild Abalone Regulations promulgated under Government Notice R62 and published in Government Gazette 30716 of 1 February 2008 read with Regulations 1 & 5(1) of the Regulations issued in terms of Section 77 of Act 18 of 1998 (Marine & Living Resources Act) committed during the period of suspension.

Count 3:

The accused is sentenced to 2 (Two) years imprisonment which is wholly suspended for a period of 5 (Five) years on the condition that the accused is not convicted 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 committed during the period of suspension.

Count 4:

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

12.3 Biodiversity Convictions

12.3.1 Rhinoceros



The State versus Aaron Mkhabela and Thokozane David Masinga

Province:

Mpumalanga

Charges:

Illegal Immigrant, hunting of a protected animal in a National Park, possession of unlicensed firearm, possession of unlicensed ammunition, possession of a dangerous weapon with the intent to commit crime, conspiracy to commit a crime

Judgement/Sentence:

Count 1: 1 Year imprisonment

Count 2: 3 Years imprisonment

Count 3: 10 Years imprisonment

Count 4: 6 Years imprisonment

Count 5: 2 Years imprisonment

Count 6: 1 Year imprisonment

Count 7: 4 Years imprisonment

The sentence in count 7 to run concurrent with the sentence in count 3, and the sentence in counts 5 & 6 to run concurrent with the sentence in count 4. Effective sentence: 20 years.

The State versus Oscar Ndlovu and Isaac Zitha

Province:

Mpumalanga

Charges:

Trespassing in a National Park, possession of a prohibited firearm (No serial number), possession of unlicensed firearm, hunting of a protected animal in a National Park, possession of a dangerous weapon with the intent to commit crime, trespassing in a National Park, possession of unlicensed firearm, possession of a dangerous weapon with the intent to commit crime, possession of a prohibited firearm (No serial number), possession of unlicensed ammunition, hunting of a protected animal in a National Park, hunting of a protected animal in a National Park

Judgement/Sentence:

Count 1: 3 Years imprisonment
 Count 2: 6 Years imprisonment
 Count 3: 2 Years imprisonment
 Count 4: 10 Years imprisonment
 Count 5: 1 Year imprisonment
 Count 6: 3 Years imprisonment
 Count 7: 6 Years imprisonment
 Count 8: 5 Years imprisonment
 Count 9: 5 Years imprisonment
 Count 10: 2 Years imprisonment
 Count 11: 10 Years imprisonment
 Count 12: 10 Years imprisonment

The court further ordered that the sentence in count 6 run concurrently with the sentence in count 1, the sentences in count 8, 9 and 10 run concurrently with the sentence in count 7, and that the sentence in count 12 to run concurrent with sentence in count 11. Effective sentence of 38 years imprisonment.

The State versus Sipho Khoza**Province:**

Mpumalanga

Charges:

Possession of unlicensed firearm, possession of unlicensed ammunition, possession of a dangerous weapon with the intent to commit crime, trespassing in a National Park, possession of a firearm with the intent to commit a crime, possession of a prohibited firearm (No serial number)

Judgement/Sentence:

Count 1: 5 Years imprisonment
 Count 2: 2 Years imprisonment
 Count 3: 5 Years imprisonment

Count 4: 2 Years imprisonment

Count 5: 5 Years imprisonment

Count 6: 6 Years imprisonment

25 Years imprisonment

The State versus Sipho Titus Khosa**Province:**

Mpumalanga

Charges:

Trespassing in a National Park, possession of unlicensed firearm, hunting of a protected animal in a National Park, hunting of a protected animal in a National Park, conspiracy to commit a crime, possession of unlicensed ammunition

Judgement/Sentence:

Count 1: 2 Years imprisonment
 Count 2: 5 Years imprisonment
 Count 3: 10 Years imprisonment
 Count 4: 10 Years imprisonment

Count 5: 4 Years imprisonment

Count 6: 2 Years imprisonment

The sentences in counts 2 and 6 to run concurrently, and the sentences in counts 3 and 5 to run concurrently.

Effective sentence: 27 years imprisonment

The State versus Nuro Barosse and Laurence Makamu**Province:**

Mpumalanga

Description:

Arrested inside National Park shortly after killing three rhinos

<p>Charges:</p> <p>Trespassing in a National Park, Illegal Immigrant, possession of unlicensed firearm, conspiracy to commit a crime, hunting of a protected animal in a National Park - Black Rhino, hunting of a protected animal in a National Park - White Rhino, hunting of a protected animal in a National Park - White Rhino, possession of unlicensed ammunition, possession of a dangerous weapon with the intent to commit crime</p>
<p>Judgement/Sentence:</p> <p>Count 1: 2 Years imprisonment</p> <p>Count 2: 1 Year imprisonment</p>
<p>Count 3: 5 Years imprisonment</p> <p>Count 4: 4 Years imprisonment</p> <p>Count 5: 10 Years imprisonment</p> <p>Count 6: 5 Years imprisonment</p> <p>Count 7: 5 Years imprisonment</p> <p>Count 8: 2 Years imprisonment</p> <p>Count 9: 1 Year imprisonment</p> <p>The sentences for counts 1, 2 and 5 to run concurrently and the sentences in counts 3 and 8 to run concurrent.</p> <p>Effective sentence: 25 years imprisonment</p>
<p>The State versus George Myanga</p>
<p>Province:</p> <p>Mpumalanga</p>
<p>Description:</p> <p>Arrested inside National Park shortly after killing three rhinos</p>
<p>Charges:</p> <p>Trespassing in a National Park, Illegal Immigrant, possession of unlicensed firearm, conspiracy to commit a crime, hunting of a protected animal in a National Park - Black Rhino, hunting of a protected animal in a National Park - White Rhino, hunting of a protected animal in a National Park - White Rhino, possession of unlicensed ammunition, possession of a dangerous weapon with the intent to commit crime</p>

<p>Judgement/Sentence:</p> <p>Count 1: 2 Years imprisonment</p> <p>Count 2: 1 Year imprisonment</p> <p>Count 3: 5 Years imprisonment</p> <p>Count 4: 4 Years imprisonment</p> <p>Count 5: 10 Years imprisonment</p>
<p>Count 6: 5 Years imprisonment</p> <p>Count 7: 5 Years imprisonment</p> <p>Count 8: 2 Years imprisonment</p> <p>Count 9: 1 Year imprisonment</p> <p>Sentences for counts 3 and 8 to run concurrently.</p> <p>Effective sentence: 33 Years</p>
<p>The State versus Foster Tibura Lubisi</p>
<p>Province:</p> <p>Mpumalanga</p>
<p>Charges:</p> <p>Trespassing in a National Park, possession of a prohibited firearm (No serial number), possession of unlicensed ammunition, possession of a dangerous weapon with the intent to commit crime, trespassing in a National Park, possession of a prohibited firearm (No serial number), possession of unlicensed ammunition, hunting of a protected animal in a National Park, trespassing in a National Park, possession of unlicensed firearm, possession of a dangerous weapon with the intent to commit crime, possession of unlicensed ammunition</p>
<p>Judgement/Sentence:</p> <p>Count 1: 2 Years imprisonment</p> <p>Count 2: 6 Years imprisonment</p> <p>Count 3: 2 Years imprisonment</p> <p>Count 4: 1 Year imprisonment</p> <p>Count 5: 2 Years imprisonment</p>

Count 6: 6 Years imprisonment
Count 7: 2 Years imprisonment
Count 8: 10 Years imprisonment
Count 9: 2 Years imprisonment
Count 10: 5 Years imprisonment
Count 11: 1 Year imprisonment
Count 12: 2 Years imprisonment
The sentences in count 2 and 10 to run concurrent with the sentence in count 6 and the sentences in count 3 and 7 to run concurrent with the sentence in count 12.
Effective sentence: 27 years

The State versus Luca Martini

Province: North West
Charges: Contravention of Section 71 (1) of the National Environmental Management: Biodiversity Act, Act 10 of 2004, read with Section 101(1)(a) and (2)(b), Chapter 7 and section 102(1) and (2) of the said Act, and read with Government Notice R1020 and R1003 in Government Gazette 43726, 43735 of September 2020 (Alien and Invasive Species Regulations and Alien and Invasive Species List), and further read with Section 250 of the Criminal Procedure Act, Act 51 of 1977 A person may not carry out a restricted activity involving a specimen of a listed invasive species without a permit issued in terms of Chapter 7. Contravention of Nature Conservation Ordinance No. 12 of 1983 read with 111(1) of the said Ordinance No person shall keep or convey live game, unless he or she is the holder of a permit which authorises him or her to do so.
Judgement/Sentence: Count: Introduction and Possession of Fallow deer without a permit: R11500.00 fine The matter was settled through an Alternative Dispute Resolution (ADR).

The State versus Roger Crispin

Province: North West
Charges: Contravention of Section 57 (1), (2)(b) of the National Environmental Management: Biodiversity Act, Act 10 of 2004, read with Section 101(1)(a)(b), as well as Section 56(1), Chapter 7 and section 102(1) and (2) of the said Act, and also read with Government Notice R150, R151 and R152 in Government Gazette 29657 of February 2007 (listing of threatened or protected species, as amended), read with Nature Conservation Ordinance, 1983 (Ordinance 12 of 1983) and further read with Section 250 of the Criminal Procedure Act, Act 51 of 1977. Possession and destroying six individual rhinoceros horns without a permit.
Judgement/Sentence: Count 1: Guilty for possession of six individual rhinoceros horns without a permit. Count2: Guilty for destroying six individual rhinoceros horns without a permit. Sentence: Sec 105A Plea: R120 000.00 or 3 years imprisonment, wholly suspended for 5 years.

12.3.2 Plants



The State versus AM Althanaian & 2 others (All accused Saudi Arabian nationals)

Province: Western Cape
Description: The accused arrived in RSA and met their co-accused. Their trip was planned to acquire endangered plant species to export illegally. They booked accommodation around areas known for flora species in demand. Their vehicle was stopped after SAPS received a tip-off, and they were arrested

Charges:

Possession of flora & Sec 4 of POCA

Judgement/Sentence:

All 3 accused were sentenced to 5 and 2 years respectively - imprisonment wholly suspended.

Asset Forfeiture Unit: To pay R 2 million – R 1 million to CARA & R 1 million to Cape Nature.

The State versus Josef Andreas Obies and Frederick Paulus Cloete**Province:**

Northern Cape

Description:

The accused were driving on 23 August 2020 on the R382 road to Port Nolloth, when they were stopped by the SAPS who requested to search the bakkie they were driving. The owner of the bakkie, Mr. Obies gave them permission to search the bakkie and SAPSe found 12 plants or trees known as the Halfmens, *Pachypodium namaquanam* on the bakkie. The accused went to the Richtersveld National Park the previous day, with 2 other men and removed the plants. They further knew where the plants were growing as they also stayed in the park and knew that they need permits to possess such plants.

Charges:

Accused pleaded guilty to the count of Contravening the provisions of Section 50 of the Northern Cape Nature Conservation Act 9 Of 2009 in that the accused was unlawfully and intentionally in possession of endangered protected plant species namely *Pachypodium namaquanam* without the necessary permit to have the aforementioned plants in their possession.

Judgement/Sentence:

7 years imprisonment

The State versus Chamunogwa Tabonga and Shoka Tinashe**Province:**

Limpopo

Charges:

The picking, possession of specially protected Plants, Entering a reserve without written permission

Judgement/Sentence:

Accused 1: Count 1 – Six Years imprisonment

Count 2: Two Years imprisonment

Count 3: Four Years imprisonment

Accused 2: Count 1: Eight Years imprisonment

Count 2: Two Years imprisonment

Count 3: Four Years imprisonment

Sentences to run concurrently

12.3.3 Pangolin:**The State versus Million Chimwayange and Christopher Chiridzani****Province:**

Limpopo

Charges:

Possession of Pangolin

Judgement/Sentence:

5 years imprisonment

The State versus Louis Le Grange

Province:

Limpopo

Charges:

Possession of pangolin

Judgement/Sentence:

8 years imprisonment

12.3.4 Reptiles



The State versus Daniel Lodhe and Marko Drescher

Province:

Northern Cape

Description:

The 2 German nationals were arrested as a result of the cumulative efforts of DFFE & the DPCI. The DFFE investigator established through social media that the accused 1 is soliciting persons to trade in reptiles. Subsequently, the accused traveled to RSA where they were arrested to buy 3 tortoises. Upon their arrest various species were found: 25 Lizards and 1 Gecko.

Charges:

The 4 charges ranged from trading, possession, transport and attempt to export. (They were still awaiting in custody for a period of approximately a year)

Judgement/Sentence:

Accused 1: A fine of R 850 000 was suspended and 4 years imprisonment on condition that the Accused pay R350 000.00 to DFFE

Accused 2: A fine of R 850 000 was suspended and 3 years imprisonment on condition that the Accused pay R100 000.00 to DFFE

The payments to DFFE is to be utilized to fight the illegal smuggling of reptiles specifically in the Northern Cape

The State versus Daniel Lodhe and Marko Drescher

Province:

Gauteng

Description:

Illegal International trade of Sungazers

Charges:

Illegal internal trade of six Sungazer lizards during 2019

Judgement/Sentence:

Accused 1: Six years imprisonment or R150 000 fine

Accused 2: Two years imprisonment or R50 000 fine

The State versus Prince Palo

Province:

Gauteng

Description:

Accused was found in possession of a backpack in which he kept a Leopard tortoise and a Marsh terrapin and which he offered for sale to motorists:

Charges:

Section 25 of Nature Conservation Act 12 of 1983

Judgement/Sentence:

Guilty-3 years imprisonment of which 2 years is suspended for 5 years

Guilty-7 years imprisonment of which 4 years is suspended for 5 years

12.3.5 Alien and Invasive Species

The State versus Robert Jones**Province:**

North West

Charges:

Contravention of Section 71 (1) of the National Environmental Management: Biodiversity Act, Act 10 of 2004, read with Section 101(1)(a) and (2)(b), Chapter 7 and section 102(1) and (2) of the said Act, and read with Government Notice R1020 and R1003 in Government Gazette 43726, 43735 of September 2020 (Alien and Invasive Species Regulations and Alien and Invasive Species List), and further read with Section 250 of the Criminal Procedure Act, Act 51 of 1977

A person may not carry out a restricted activity involving a specimen of a listed invasive species without a permit issued in terms of Chapter 7.

Contravention of Nature Conservation Ordinance No. 12 of 1983 read with 111(1) of the said Ordinance

No person shall keep or convey live game, unless he or she is the holder of a permit which authorises him or her to do so.

Any person convicted of an offence in terms of this Ordinance for which no penalty is expressed for, shall be liable to a fine not exceeding R750 or imprisonment for a period not exceeding 9 months or to both such fine and such imprisonment.

Judgement/Sentence:

Count: Introduction and Possession of Fallow deer without a permit: R13000.00 fine

The matter was settled through an Alternative Dispute Resolution (ADR).

Charges:

Contravention of Section 71 (1) of the National Environmental Management: Biodiversity Act, Act 10 of 2004, read with Section 101(1)(a) and (2)(b), Chapter 7 and section 102(1) and (2) of the said Act, and read with Government Notice R1020 and R1003 in Government Gazette 43726, 43735 of September 2020 (Alien and Invasive Species Regulations and Alien and Invasive Species List), and further read with Section 250 of the Criminal Procedure Act, Act 51 of 1977

A person may not carry out a restricted activity involving a specimen of a listed invasive species without a permit issued in terms of Chapter 7.

Contravention of Nature Conservation Ordinance No. 12 of 1983 read with 111(1) of the said Ordinance

No person shall keep or convey live game, unless he or she is the holder of a permit which authorises him or her to do so.

Judgement/Sentence:

Count: Introduction and Possession of Fallow deer without a permit: R13000.00 fine

The matter was settled through an Alternative Dispute Resolution (ADR).

The State versus Willen Du Rand**Province:**

North West



HOTLINE COMPLAINTS PER CATEGORY

13. NATIONAL ENVIRONMENTAL COMPLAINTS AND EMERGENCY INCIDENTS

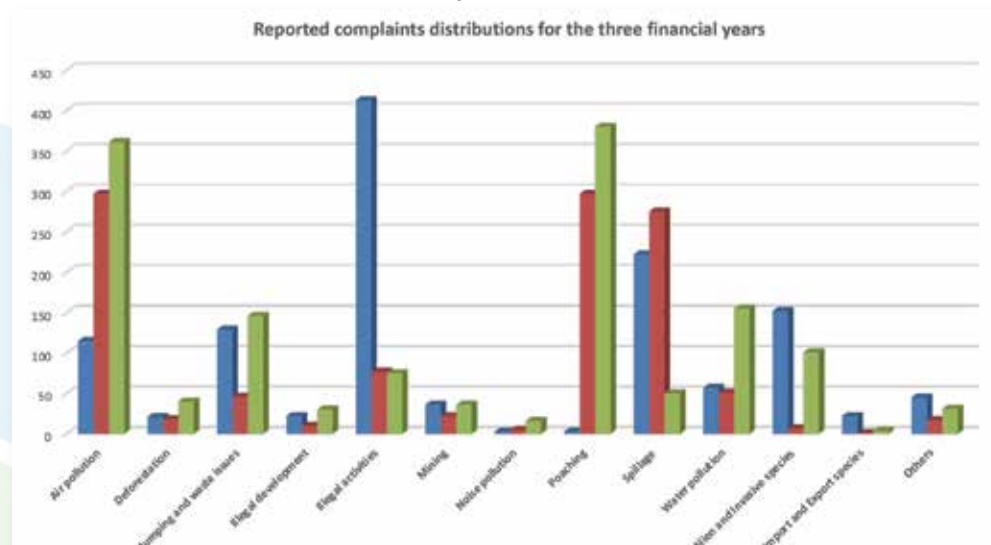
DFFE continued to collect statistics on environmental complaints received through the Environmental Crimes and Incidents Hotline from the Minister and Director-General's office, as well as complaints received directly from other organs of State and the public. The Hotline serves as the main point of entry for complaints on environmental crimes and incidents. However, complaints reported directly to provinces, local authorities or other EMI Institutions are not received through the Hotline. There has been an increase in the overall number of incidents and complaints reported from **1123** in 2021/22 to 1706 in 2022/23 financial years. Reports of poaching, air pollution, water pollution, illegal dumping and waste issues, alien and invasive species and spillages have recorded an increase with illegal activities (based on the initial complaint, these activities appear to be completely unpermitted /unlicensed) showing decreases.

13.1 Hotline complaints per category

Nature of Complaint	Financial Years			
	2020-21	2021-22	2022-23	Totals
Air pollution	115	297	361	773
Deforestation	21	18	40	79
Illegal dumping and waste issues	129	46	146	321
Illegal development	22	10	30	62
Illegal activities (based on the initial complaint, these activities appear to be completely unpermitted/unlicensed)	413	77	75	565
Mining	36	22	36	94
Noise pollution	3	5	16	24
Poaching	3	297	380	680
Spillage	222	275	50	547
Water pollution	57	51	155	263
Alien and Invasive species	152	7	101	260
Import and Export species	22	1	4	27

Nature of Complaint	Financial Years			
	2020-21	2021-22	2022-23	Totals
Others	45	17	31	93
Total	1240	1123	1425	3788

Table 13: Number and classification of complaints: 2020 - 2023



Graph 8: Graphical representation on the nature of complaints received

13.2 Referral of hotline complaints to responsible organs of State

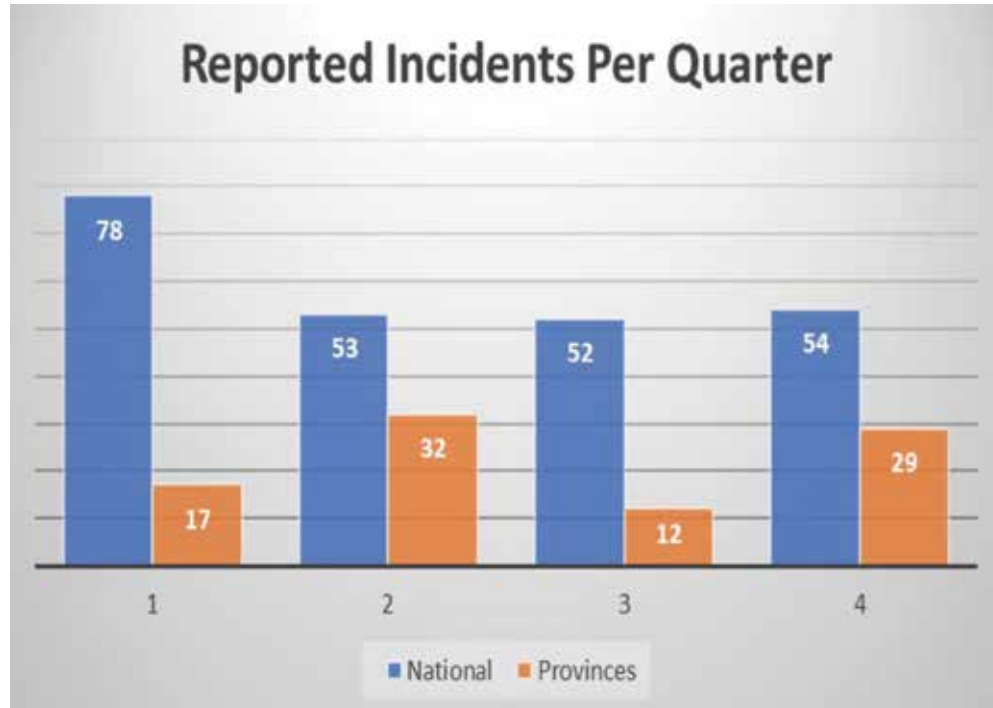
Financial Year	INSTITUTION REFERRED TO					Total
	DFFE	DWS	DMR	LOCAL GOVERNMENT	PROVINCES	
2020-2021	501	57	36	287	359	1240
2021-2022	502	51	22	236	312	1123
2022-2023	569	155	36	318	347	1425
Total	1572	263	94	841	1018	3788

Table 14: Number of DFFE referred complaints and incidents

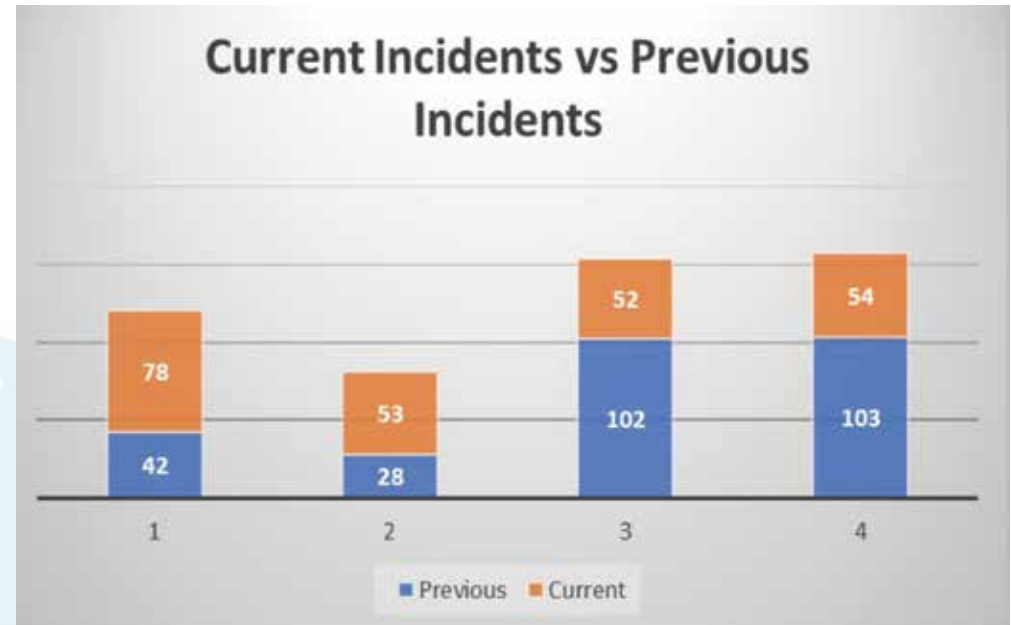
13.3 Section 30 NEMA

13.3.1 Analysis of 2022-2023 incidents

For the financial year a total of 281 incidents were reported including incidents reported in the province.

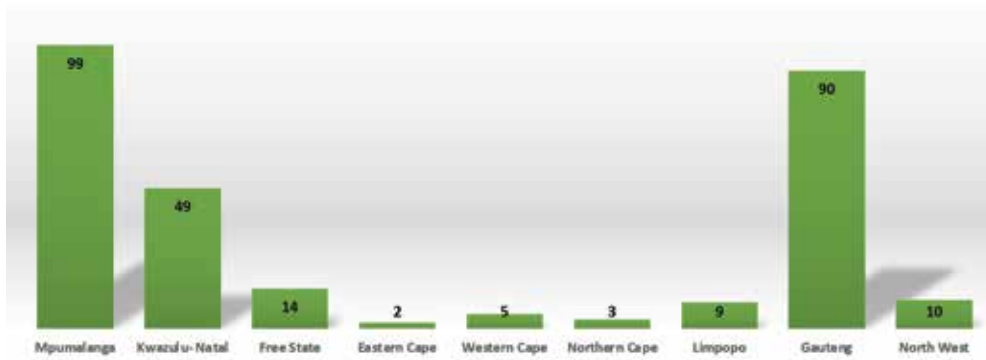


In the previous report incidents reported were for those dealt with by the DFFE. In the 2021/2022 financial year 275 were reported and in the 2022/2023 financial year 281 were reported which means 6 more incidents reported. Most incidents were reported in the first and second quarters for 2022/2023 compared to 2021/2022. It is noted that there was a decrease in incidents for quarters 3 and 4 in 2022/2023 financial year.

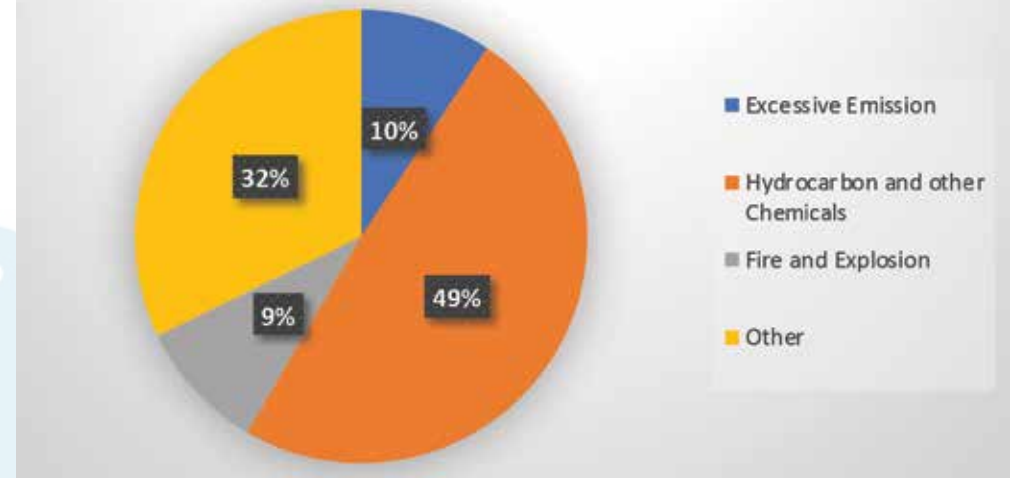


In the 2022/2023 financial year most incidents were reported in Mpumalanga which has been a trend like in the 2021/2022 financial year. Free State was second province with highest incidents, but it is now fourth and second province is Gauteng followed by the KwaZulu-Natal. Eastern Cape reported the lowest number of incidents, followed Northern Cape and Western Cape also recorded the lowest number of incidents. Mpumalanga incidents recorded are for emission incidents, spillage incidents from cross border trucks and theft from the Transnet Multipurpose Products Pipeline which caused spillage.

Incidents Reported Per Province



Types of Incidents



Most incidents were caused by spillages from mainly diesel and hydrocarbons (oil, Jet fuel and Petrol). Incidents in excessive emissions reported were referred to Municipalities who issued the Air Emission Licenses that is the reason the decrease in incidents for emission exceedances. Other incidents reported were for spillages were from sulphur pebbles, cooking oil, coal, ash; overflow of storm water dams and effluent dams.





**ENVIRONMENTAL COMPLIANCE AND
ENFORCEMENT CAPACITY BUILDING**

14. ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT CAPACITY BUILDING 2022-2023

The easing of the COVID-19 travel and gathering restrictions in the 2022-2023 reporting year provided the perfect opportunity to bolster capacity development programmes, not only for EMIs but relevant compliance and enforcement stakeholders as well. In addition to the re-institution of contact sessions, the ability to host virtual training within a secure platform facilitated a blended approach that allowed some courses and information sessions to be delivered quicker and at less of an expense. The following serves as an overview for the courses that were presented by DFFE.

14.1 EMI Basic Training Courses (May and October 2022)

There were two EMI basic training courses presented during the reporting period - the first being held in April to May and the second course from September to October 2022.

The basic training course is presented to all government environmental compliance and enforcement officials whom meet the required minimum standard as per legislative requirements.

Each course consists out of a 6-week eLearning component which comprises 18 topic specific courses, with each course including its own assessment. The average for all these assessments contributing to the final overall individual result.

The content of the eLearning also forms the basis for class-based written tests which is undertaken during the first week of the in-person contact session. The contact session consists out of 3 weeks that follows a logical chronological sequence: week 1 focuses on environmental legislation, week 2 on compliance inspections and administrative enforcement and week 3 criminal investigations and court proceedings.

There are a total of 12 separate individual assessments to be completed during this period and an official requires a final result of 50% or above to pass, and become eligible for EMI designation.

The overview for the two courses were as follows:

A. The May 2022 course was presented in Cape Town

- There were 46 officials in attendance – including 4 repeaters;
- Representatives from 9 national and provincial EMI Institutions and 4 local authorities;



EMI Basic Training Class for May 2022 in Cape Town

B. The October 2022 course was also presented in Ballito

- There were 51 officials in attendance – including 2 repeaters
- Representatives from 11 national and provincial EMI Institutions and 2 local authorities.



EMI Basic Training Class for October 2022 in Ballito

14.2 EMI – Executive Basic Training (July 2022)

July 2022 saw the assembly of Director Generals (DG), Head of Departments (HODs) and Deputy Director Generals (DDGs) for attendance at the EMI Executive Basic Training course. There were a total of eleven executives in attendance representing Ezemvelo KZN Wildlife, SANParks, DEDEA, DWS, GDARD, SANBI as well as DFFE.

The course was designed to cover a range of topics, including the operational and legislative aspects related to the EMI's mandate, powers, function and duties, as well as topics specifically aimed at capacitating executive level officials to understand their roles within the Inspectorate.

The course had nineteen expert presenters who covered a broad range of compliance and enforcement topics. The programme also included a practical session where attendees had to review final compliance notices and report back their findings as part of administrative enforcement.

The following topics made up the content of the course:

Overview of the EMI, mandate, functions, powers and duties, compliance monitoring, administrative enforcement, criminal enforcement, EMI Information management, crime analysis DFFE Fusion Centre, NEMA, NEM:WA, NEM:BA, NEM:PAA, NEM:ICMA and the NWA. With external stakeholders covering topics relating to Adjudicating Environmental Crime, which was presented by Magistrate Ian Cox, National Prosecuting Authority, presented by Senior State Advocate Marile

van Heerden, South African Police Service, a session presented by Brigadier OJ Kgotodithata, a session on Mining presented by Chief Director Nqobile Khanyile from DMRE as well as a session on “Defending your compliance notice” presented by Dr Jenny Hall from the University of Johannesburg.

A special thank you goes out to all the EMIs and external presenters for the time that they set aside in preparation and presentation of their respective topics.



Executives that attended the EMI Executive basic Training Course Gauteng 2022

14.3 EMI Specialised Training – Marking and sampling of Rhinoceros horn training (May and September 2022)

During May and September 2022, the DFFE presented three courses on the proper marking and taking of samples for DNA analysis of Rhinoceros horn.

The process of marking and the taking of samples from Rhino Horn for DNA analysis is clearly stipulated in the Norms and Standards for the Marking of Rhinoceros and Rhinoceros Horn, and for the hunting of Rhinoceros for trophy hunting purposes. These Norms and Standards cover a range of principles, one of which stipulates: “*The samples contemplated in subparagraph (1) above must be collected by, in the case of horn samples contemplated in subparagraph (1)(b), the relevant environmental management inspector, who has been adequately trained and certified in the collection of DNA samples.*”

The course itself follows a chronological sequence, starting with attendees having to complete an eLearning component which includes of “DNA – for EMIs” as well as

“Rhino Horn Sampling – Norms and Standards”. These modules serve the purpose of explaining the basics of what DNA is, and how it is fundamentally important in the work of an EMI.

These introductory topics are followed by the study of the content of the Regulations that guide the marking, sampling and hunting of Rhinoceros.

The classroom contact session then focussed on the following requirements:

- The province specific formula to be placed on the Rhino Horn with indelible ink,
- The importance of record keeping not only during but after sampling process,
- Interpretation of the different measurements of the horn that needs to be taken,
- Identification of the preferred areas of the horn from where samples should be taken,
- Equipment required for the sampling of the horn together with the correct application of such equipment,
- The completion and submission of the eRhodis application,
- Common mistakes and proper handling of diverse types of horns/ pieces and scenarios.



Rhinoceros horn marking and sampling course Western Cape 2022



Rhinoceros horn marking and sampling course Gauteng 2022



Rhinoceros horn marking and sampling course Free State, 2022

14.4 EMI/ SAPS – Barcode of Wildlife Program crime scene sampling training (May 2022)

The DFFE, in collaboration with SANBI and SAPS FSL SA, hosted a BoWP: CSS training session. The aim of this training was to capacitate mandated EMIs to collect samples (following Chain of Custody procedures) from derivatives and/ or species encountered at crime scenes in order to obtain positive species identification by means of DNA sequencing.

The training began with an eLearning pre-course programme which gave the attendees a chance to familiarise themselves with the concept that is DNA, as well as basic procedures of crime scene sampling, prior to the practical/ classroom session.

The practical training was delivered in May 2022 in Cape Town under the guidance of expert presenters. The practical training focussed on essential concepts relating to the BoWP as well as procedures applicable to crime scene sampling and exhibit management. The training was attended by a total of twenty-three participants from institutions including DFFE, Cape Nature, SANParks and the SAPS. Content delivered by subject matter experts, Dr Monica Mwale & Janine Baxter from SANBI and Lieutenant Colonel Herman Espach from SAPS FSL. The presentations covered a wide range of essential concepts on DNA barcode of wildlife, including DNA sequencing for species identification, chain of custody as it relates to sampling, submission procedures to SAPS Forensic Science Laboratory and practical scenarios



BoWP crime scene sampling training May Western Cape 2022

14.5 EMI Specialised Training – Investigator statement writing and moot court training. Part of INL funded Greenlaw “watching brief” project (June 2022)

A slightly different training modality was followed in the delivery of a course on proper statement writing by EMI criminal investigators during June 2022.

Based on the needs expressed by the EMIs, DFFE approached Greenlaw with the request to facilitate a practical, interactive Moot Court experience, in which officials were required to submit their respective statements, upon which would testify to and be cross-examined on, by defence Advocates and Senior Counsel.

This excellent opportunity was made possible as part of an INL funded, Greenlaw - Watching Brief, project.

A total of forty-five Biodiversity compliance and enforcement EMIs from DFFE participated in the event which received great responses.

The programme was followed a process of hosting two simultaneous moot court sessions attended by an equal number of officials, in order to ensure to provide everyone with the same opportunity to testify. The formalities of the court room had in place a magistrate, 1 prosecutor and 1 defence advocate in each court. This was followed by a plenary session during which feedback was provided on individual testimony in order to share the larger experience with all attendees.



The Greenlaw team that served as magistrates, prosecutors and defence council.



EMI Biodiversity officials that attended the statement writing and moot court training June 2022

14.6 EMI Specialised Training – Admission of Guilt Fine training (Sept 2022)

The DFFE received a request from the DEADP to assist with a course for their EMIs in the issuance of Admission of Guilt Fines (AoG) – generally referred to as J534s.

The request was, in part, based on the involvement of EMIs within Operation Phakisa during which time a significant number of “minor offences” are detected and that required appropriate enforcement responses.

The training course was ideal to be hosted virtually and was attended by forty-four EMIs.

The course covered topics such as:

- What is AoG? (Read with sections 56 and 57 of the CPA)
- AoGs in the environmental space (Linked to associated regulations)
- When to use AoGs (Determining severity and consequences)
- Important considerations and associated process flow
- Completion of the J534 (Practical approach, interpretation of different fields)
- Legal and administrative process after the issuing of the fine
- Practical examples

The legally correct issuance of AoG Fines is an enforcement mechanism that is available to EMIs and as such it is critical for them to understand the proper process of identifying correct criminal offences and associated administrative and legal procedures to follow.



Admission of guilt fine virtual training session Sept 2022

14.7 EMI Specialised Training – Expert Witness statement writing and moot court training. Part of INL funded Greenlaw “watching brief” project (June 2022)

Following a similar training modality as the EMI investigator statement writing course, the DFFE as part of the INL funded, Greenlaw - Watching Brief, project, initiated a training course on experts that testify in biodiversity criminal cases.

The role of an expert is to provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within his / her expertise. It is also a fact that most experts do not work within the law enforcement sector and therefore do not receive relevant exposure to criminal law and procedure. The range of topics and respective responsibilities represented at the course, were wide-ranging, including geographic information systems, scientific chemical analysis within forensic science laboratories, DNA profiling and sequencing, wetland delineation and impact assessment, species identification and crime impact, to horticultural and botany.



One of the sittings during the moot court.

The course started with the testimony by the experts in a moot court session (based on previous statements / reports that formed part of a criminal trial) followed by cross-examination by defence Advocates which then ended in detailed discussion and question session.

A total of twenty-one experts were in attendance and received invaluable information relating to:

- Their objective unbiased role within criminal proceedings;
- Requirements of admissibility for their expertise;
- Procedural flow of criminal trials; and
- The use of aids during testimony and concepts of inspection in loco.



Experts and the Greenlaw legal team that formed part of the training.

14.8 09th Environmental Compliance and Enforcement Lekgotla

The 09th Environmental Compliance and Enforcement Lekgotla (ECEL) was hosted during the reporting period which included a day of multiple training sessions being hosted. These included:

14.8.1 EMI Specialised Training – Cybercrime Act training (November 2022)

This training dealt with the proper seizure, handling and search of electronic devices, as part of an environmental criminal investigation (blue, brown, green) which has become an essential skill, and has, in recent times, been critical in successful prosecutions for EMIs. The session also exposed EMIs to the provisions of the new Cybercrime Act.

14.8.2 EMI – Shark fin and Stingray identification training (November 2022)

The course focussed on the drastic increase in the trade of shark fins and shark and ray meat products for the international market. WILDOCEANS, a programme of the WILDTRUST, together with entities TRAFFIC and SANBI, also shared species

identity manuals and training videos, including sharks (fins) and rays which fall within, marine TOPS, CITES and MPA legislation.

14.8.3 EMI – Wildlife poisoning crime scene training (November 2022)

This course focussed on pesticides and other toxins that have been increasingly used in the poisoning of wildlife. This training session assisted EMIs to identify, collect and manage these poisonous substances for the purposes and analysis and potential application in subsequent prosecution.

14.8.4 EMI Specialised Training – Air Quality Act training (November 2022)

The focus here was on local authorities, as the competent authority for the issuing of AEL; and the sphere of government with the Constitutional competence to administer “air pollution”. This session looked at capacitating EMIs to undertake enforcement actions in respect of non-compliances with the NEM:AQA, including a presentation on case studies and lessons learnt.

14.8.5 EMI Specialised Training – Section 30 incidents training (November 2022)

This training focussed on sharing Road Incident Management (RIMs), HAZMAT Incidents Management and Hazardous Chemicals incident management using WISER Software





WHAT IS AHEAD FOR 2023-24?

15. WHAT IS AHEAD FOR 2023-24?

An increase in environmental incidents was observed over the last year which have the potential to result 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 (especially given the concurrent nature of this competency). Against this background, an ideal opportunity exists to extend the government response to optimise the utilisation of criminal investigations as an environmental enforcement mechanism. This will hopefully result in the design of an “all of government enforcement model” which will, amongst others, be informed by lessons learnt from past experiences and consider resources available within government institutions to simultaneously deal with different, but mutually beneficial end points. We are hopeful that in the 2023/24 financial year, increased punitive outcomes will be achieved to demonstrate the importance of compliance with environmental laws and to ensure a higher level of accountability/deterrence at the end of the day.

From a biodiversity enforcement we will continue to support the SAPS to elevate the National Integrated Strategy to Combat Wildlife Trafficking (NISCWT) and ensure that we attain Cabinet approval of this important document. The Inspectorate will also concentrate on its core actions in this sub-sector, namely, the investigation of non-compliances with NEM:BA and its Regulations, organising and participation in joint compliance and enforcement operations involving Threatened and Protected Species, CITES listed species as well as Alien and Invasive species. We will also ensure that the multi-stakeholder RAP continues with its collaborative efforts (including the private sector) and the continued implementation of the GEF 7: South African Biodiversity Economy and Illegal Wildlife Trade will, amongst others, enhance forensic and scientific support services linked to wildlife trafficking and strengthen collaboration in the prosecution of environmental crime.

Under Phakisa Initiative 5 (MOC PC) we will look at intensifying actions to address illegal activities impacting the coastal environment in the Wild Coast. Intense stakeholder engagements are planned for 23/24, and these will be followed by sting operations to restore law and order with regards to utilisation of coastal resources in the Wild Coast and prevention of further destruction to biodiversity offset areas, established as a condition of the Record of Decision authorising the construction of the N2 Wild Coast Toll Highway.

The 2023/24 training programme will continue to focus on both the provision of basic and advanced/specialised training courses for EMIs, with the latter including skills development initiatives related to key compliance and enforcement functions (sampling and criminal docket management), priority eco-systems (wetlands) and recent legislative developments. In addition, a project to identify and map the broad scope of skills required by EMIs operating across the blue, green and brown subsectors will culminate in a Skills Competency Framework, that is envisaged to form the basis for further curriculum development for EMIs. Monitoring of the implementation of an integrated national Environmental Compliance and Enforcement Information System continues to be a priority in order to ensure that both strategic and operational decisions and activities of the Inspectorate are based on comprehensive and up-to-date information.

It is further envisaged that a draft Bill that seeks to introduce an administrative penalty system into the current legislative framework will be published for public comment, with the aim of adding a much-needed tool in the legislative armoury of EMIs to empower them to tackle environmental offenders.

Finally, the Inspectorate will ensure the approval of and begin implementation of the new National Environmental Compliance and Enforcement Framework (NECEF) that will provide a common roadmap for all organs of State that comprise the Inspectorate to improve their compliance and enforcement performance over the next five years.

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