



National Environmental Compliance & Enforcement Report 2007-8

Index

1. Purpose of report
2. Constraints and explanatory notes
3. Environmental Management Inspectors
4. Overall national statistics
5. Statistics per province
6. Industrial compliance and enforcement
7. Wildlife compliance and enforcement
8. Marine compliance and enforcement
9. Training and awareness for prosecutors and magistrates
10. What is ahead for 2008-9

1. Purpose of report

The purpose of this second National Environmental Compliance and Enforcement Report is to share with all our stakeholders the results achieved in the compliance monitoring and enforcement of national and provincial environmental legislation in South Africa in the period 1 April 2007 to 31 March 2008.

We believe that collecting data on compliance and enforcement activities is absolutely crucial for making appropriate strategic decisions on the application of resources to ensure effective and efficient enforcement of environmental legislation.

2006-7

2006-7 was the first year in which Environmental Management Inspectors and other environmental enforcement officials, particularly Fishery Control Officers and provincial enforcement officials, collaborated to report environmental enforcement statistics at a national level. The result of that process was the first National Enforcement Report, which included annual statistics for

- arrests of offenders, items seized from offenders, convictions by a court, sentences handed down, admission of guilt fines (in Rands);
- notices or directives issued to offenders and civil court applications launched against offenders.

In 2006-7, we were still testing the availability of information-gathering systems within all our institutions responsible for environmental enforcement. For this reason, the report was not nearly as detailed as we would have liked. In addition, we warned that this report was based on serious underreporting, a warning that is borne out by the significant increase in reported results in 2007-8.

2007-8

In 2007-8, there has been a significant increase in the comprehensive nature of reporting on the specified compliance and enforcement activities by the Environmental Management Inspectorate Institutions. It is also the first year that allows a comparison between performance of compliance and enforcement activities in respective financial years.

Although the information-gathering systems are not yet fully developed and the statistics appearing in this report have not undergone a stringent monitoring and verification process, the following preliminary trends are apparent:

- Compared to 2006/7, the number of reported arrests have nearly tripled in 2007/8;
- The number of convictions reported in 2007/8 are more than five times the number reported in 2006/7;
- The amount of reported admission of guilt fines issued has more than halved in 2007/8 as compared to 2006/7;
- The number of reported formal notices issued have remained relatively constant in 2006/7 and 2007/8;
- The types of enforcement responses vary greatly between EMI Institutions. Certain provinces report that their criminal dockets under investigation in 2007/8 total 441, whereas others report no criminal dockets under investigation for the same year. Other institutions report a total of 122 formal notices issued, as compared to others who have reported no formal notices issued during this period.

The accuracy and reliability of these statistics are subject to the constraints mentioned in 2 below; and must be seen in the context of the collection of national compliance and enforcement statistics only being in its infancy stage. However, the report starts to indicate variations and trends that may be analysed and used to plan for more effective compliance and enforcement in coming years.

2. Constraints and explanatory notes

The information contained in the 2007-8 report is far more reliable in comparison to the 2006-7 report, and it is therefore a far more accurate reflection of the activities and achievements of the Environmental Management Inspectorate than the previous report. Unquestionably, at least some of the dramatic increases in numbers in the 2007-8 report have to be ascribed to the underreporting in the 2006-7 report.

Note that for the purpose of this report, “**EMIs**” include environmental officials with enforcement powers who are not yet designated as EMIs but are exercising powers under provincial legislation, e.g. conservation officials who are empowered by provincial conservation ordinances, or FCOs¹ empowered by the Marine Living Resources Act, 1998.

“**Formal notices**” means compliance notices and pre-compliance notices issued in terms of Section 31L of NEMA² (as read with the EMI Regulations), directives and pre-directives issued under Section 31A of ECA³ and Section 28(4) of NEMA, notices issued under Section 12(2) and (3) of APPA⁴ and notices of intention to suspend or withdraw permits.

“**Criminal dockets under investigation by EMIs**” means actual criminal dockets opened with the South African Police Services, with CAS numbers.

¹ Fishery Control Officers

² National Environmental Management Act, 1998

³ Environment Conservation Act, 1989

⁴ Atmospheric Pollution Prevention Control Act, 1965

“Admission of guilt fines issued and admission of guilt fines paid”: This refers to admission of guilt fines issued or paid in terms of Section 56 of the Criminal Procedure Act, 1977. In instances where fines are received by the institution issuing them, such as SANParks, the “fines paid” figure is more reliable. In instances where fines are simply paid to the Clerk of the Court and paid to National Treasury, the “fines issued” figure is more reliable.

Institutions: For this report, we have grouped provincial entities together. Occasionally, institutions cooperate on a particular matter and the results may be reflected under both – where relevant, this is indicated in a footnote. Throughout we have to acknowledge the role of the South African Police Services (SAPS) who support most of the criminal cases listed in this report.

Arrests: This number simply indicates the number of individuals arrested by environmental enforcement officials during 2006-7.

Items seized: This item was included to provide our stakeholders with a picture of the type and number of contraband and other items seized by environmental enforcement officials. This number excludes items seized as evidence of criminal activity, such as documents and computer records. Many of the seized items are forfeited to the state on conviction.

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

Sentences: This column lists sentences handed down by courts for environmental crimes in 2007-8. Generally speaking, the penalties – particularly the monetary fines – are low.

Admission of guilt fines: Many smaller environmental offences are never prosecuted, but admission of guilt fines simply issued to the offenders. The amount in this column indicates the amount of money paid by offenders in 2007-8. In many cases, these fines are paid over by the Clerk of the Criminal Court to the institutions who issued the fines.

Notices/directives issued: Notices and directives to take corrective action of some sort (ceasing an activity, undertaking rehabilitation, submitting information) are used extensively by environmental enforcement officials, particularly in relation to developments and industrial activities. In many instances, a notice or directive alone will result in compliance, without further action (such as prosecution or civil litigation).

Civil court applications launched: Where notices or directives are ignored, and / or urgent damage is being caused to the environment, our institutions may need to institute civil proceedings in the High Court.

3. Environmental Management Inspectors

As at 31 March 2008, there were 866 Environmental Management Inspectors (EMIs) on the EMI Register kept by the Department of Environmental Affairs and Tourism in terms of regulation 6(2) of the Regulations relating to Qualification Criteria, Training and Identification of; and Forms to be used by Environmental Management Inspectors (GN R494 in GG 28869 of 02 June 2006). The distribution of EMIs is reflected below:

SANParks		630
Department of Environmental Affairs and Tourism		48
Isimangaliso Wetland Park		1
Western Cape Department of Environmental Affairs and Development Planning		23
Cape Nature		6

KwaZulu-Natal Department of Agriculture and Environmental Affairs		27
Ezemvelo KZN Wildlife		26
Gauteng Department of Agriculture, Conservation and Environment		32
Limpopo Department of Economic Development, Environment and Tourism		20
Eastern Cape Department of Economic Development and Environmental Affairs		15
Free State Department of Tourism, Environmental & Economic Affairs		10
Mpumalanga Department of Agriculture and Land Administration and the Mpumalanga Tourism and Parks Agency		10
Northern Cape Department of Tourism, Environment and Conservation		12
Northwest Department of Agriculture, Conservation and Environment		6
TOTAL		866

4. Overall national statistics

	2006-7	2007-8
Criminal dockets under investigation by EMIs	-	1762
Arrests by EMIs	898	2614
NPA declined to prosecute ("nolle prosequi")	-	16
Acquittals (per accused)	-	441
Convictions (number of accused convicted)	134	748
Section 105A agreements (plea bargains)	-	6
Admission of guilt fines issued	R1,570,360	R744,706
Admission of guilt fines paid	-	R657,700
Warning letters written	-	102
Formal notices issued	235	246
Interdict applications launched	11	2

5. Statistics per national institution/province

5.1 NATIONAL INSTITUTIONS

	SOUTH AFRICAN NATIONAL PARKS		MARINE & COASTAL MANAGEMENT		ENVIRONMENTAL QUALITY & PROTECTION	
	2006-7	2007-8	2006-7	2007-8	2006-7	2007-8
Criminal dockets under investigation by EMIs	-	62	1756	207	-	19
Arrests by EMIs	61	127	1388	3884	2	-
NPA declined to prosecute ("nolle prosequi")	-	-	16	-	-	-
Acquittals (per accused)	-	-	220	221	-	-

	SOUTH AFRICAN NATIONAL PARKS		MARINE & COASTAL MANAGEMENT		ENVIRONMENTAL QUALITY & PROTECTION	
	2006-7	2007-8	2006-7	2007-8	2006-7	2007-8
Convictions (number of accused convicted)	7	10	134	794	1	-
Section 105A agreements (plea bargains)	-	-	32	91	-	-
Admission of guilt fines issued	-	-	R1714186	R2710673	-	-
Admission of guilt fines paid	R20 700	R160,050	R706700	R196424	-	-
Warning letters written	-	-	102	316	-	5
Formal notices issued	1	2	260	235	14	16
Interdict applications launched	-	-	11	2	-	1

5.2 WESTERN CAPE

	DEPARTMENT OF ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING		CAPE NATURE	
	2006-7	2007-8	2006-7	2007-8
Criminal dockets under investigation by EMIs	-	-	-	39
Arrests by EMIs	-	-	-	5
NPA declined to prosecute (nolli prosequi")	-	-	-	1
Acquittals (per accused)	-	-	-	0
Convictions (number of accused convicted)	11	-	11	23
Section 105A agreements (plea bargains)	-	-	-	0
Admission of guilt fines issued	-	-	-	R38 700
Admission of guilt fines paid	R2 000	-	R2 000	R23 000
Warning letters written	-	-	-	-
Formal notices issued	32	71	32	-
Interdict applications launched	2	-	2	-

5.3 KWAZULU-NATAL

	DEPARTMENT OF AGRICULTURE AND ENVIRONMENTAL AFFAIRS		EZEMVELO KZN WILDLIFE AND ISIMANGALISO WETLAND PARK	
	2006-7	2007-8	2006-7	2007-8
Criminal dockets under investigation by EMIs	-	7	-	939
Arrests by EMIs	-	-	299	1436
NPA declined to prosecute (nolli prosequi")	-	-	-	7
Acquittals (per accused)	-	-	-	22

	DEPARTMENT OF AGRICULTURE AND ENVIRONMENTAL AFFAIRS		EZEMVELO KZN WILDLIFE AND ISIMANGALISO WETLAND PARK	
	2006-7	2007-8	2006-7	2007-8
Convictions (number of accused convicted)	-	-	54	156
Section 105A agreements (plea bargains)	-	-	-	6
Admission of guilt fines issued	-	-	-	R514 400
Admission of guilt fines paid	-	-	R107 350	R344 600
Warning letters written	-	-	-	-
Formal notices issued	-	-	25	-
Interdict applications launched	-	-	6	-

5.4 GAUTENG

GAUTENG DEPARTMENT OF AGRICULTURE, CONSERVATION AND ENVIRONMENT ⁵	2006-7	2007-8
Criminal dockets under investigation by EMIs	-	19
Arrests by EMIs	19	11
NPA declined to prosecute (nolli prosequi ⁵)	-	-
Acquittals (per accused)	-	-
Convictions (number of accused convicted)	8	8
Section 105A agreements (plea bargains)	-	-
Admission of guilt fines issued	R33 100	R27 050
Admission of guilt fines paid	-	R24 300
Warning letters written	-	8
Formal notices issued	83	122
Interdict applications launched	1	1

5.5 LIMPOPO

LIMPOPO DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM	2006-7	2007-8
Criminal dockets under investigation by EMIs	-	441
Arrests by EMIs	16	736
NPA declined to prosecute ("nolle prosequi")	-	3
Acquittals (per accused)	-	414
Convictions (number of accused convicted)	6	477
Section 105A agreements (plea bargains)	-	-
Admission of guilt fines issued	-	-
Admission of guilt fines paid	R229 582	R 70 700
Warning letters written	-	3

⁵ During the 2006/07 and 2007/08 financial years, GDACE issued s24G fines to a total of R4 440 330.00 with the highest fine at this stage being R500 000 for an illegal commercial development.

LIMPOPO DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM	2006-7	2007-8
Formal notices issued	-	-
Interdict applications launched	-	-

5.6 EASTERN CAPE

	DEPARTMENT OF ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS		EASTERN CAPE PARKS BOARD	
	2006-7	2007-8	2006-7	2007-8
Criminal dockets under investigation by EMIs	-	54	-	2
Arrests by EMIs	-	73	-	13
NPA declined to prosecute ("nolle prosequi")	-	1	-	-
Acquittals (per accused)	-	2	-	-
Convictions (number of accused convicted)	1	47	1	-
Section 105A agreements (plea bargains)	-	-	-	-
Admission of guilt fines issued	-	R7 1300	-	-
Admission of guilt fines paid	R11 750	-	R11 750	-
Warning letters written	-	17	-	1
Formal notices issued	-	5	-	-
Interdict applications launched	-	-	-	-

5.7 FREE STATE

DEPARTMENT OF TOURISM, ENVIRONMENTAL & ECONOMIC AFFAIRS	2006-7	2007-8
Criminal dockets under investigation by EMIs	-	33
Arrests by EMIs	10	33
NPA declined to prosecute ("nolle prosequi")	-	-
Acquittals (per accused)	-	-
Convictions (number of accused convicted)	5	2
Section 105A agreements (plea bargains)	-	-
Admission of guilt fines issued	1	R23 100
Admission of guilt fines paid	R11 350	R20 300
Warning letters written	-	3
Formal notices issued	39	19
Interdict applications launched	-	-

5.8 MPUMALANGA

	DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION		MPUMALANGA TOURISM AND PARKS AGENCY	
	2006-7	2007-8	2006-7	2007-8
Criminal dockets under investigation by EMIs	-	-	-	23
Arrests by EMIs	28	-	28	26
NPA declined to prosecute ("nolle prosequi")	-	-	-	-
Acquittals (per accused)	-	-	-	1
Convictions (number of accused convicted)	12	-	12	20
Section 105A agreements (plea bargains)	-	-	-	-
Admission of guilt fines issued	-	-	-	-
Admission of guilt fines paid	R1 500	-	R1 500	R21 750
Warning letters written	-	-	-	R9750
Formal notices issued	22	23	22	-
Interdict applications launched	2	-	2	-

5.9 NORTHERN CAPE

DEPARTMENT OF TOURISM, ENVIRONMENT AND CONSERVATION	2006-7	2007-8
Criminal dockets under investigation by EMIs	11	24
Arrests by EMIs	-	66
NPA declined to prosecute ("nolle prosequi")	-	1
Acquittals (per accused)	-	2
Convictions (number of accused convicted)	5	2
Section 105A agreements (plea bargains)	-	-
Admission of guilt fines issued	-	R6 000
Admission of guilt fines paid	R6 100	-
Warning letters written	-	45
Formal notices issued	15	8
Interdict applications launched	-	-

5.10 NORTHWEST

DEPARTMENT OF AGRICULTURE, CONSERVATION AND ENVIRONMENT	2006-7	2007-8
Criminal dockets under investigation by EMIs	-	32
Arrests by EMIs	6	5
NPA declined to prosecute ("nolle prosequi")	-	3
Acquittals (per accused)	-	-
Convictions (number of accused convicted)	2	-
Section 105A agreements (plea bargains)	-	-
Admission of guilt fines issued	-	3

DEPARTMENT OF AGRICULTURE, CONSERVATION AND ENVIRONMENT	2006-7	2007-8
Admission of guilt fines paid	R700	R5000
Warning letters written	-	20
Formal notices issued	4	3
Interdict applications launched	-	-

6. Environmental jurisprudence

Khabisi NO & another v Aquarella Investment 83 (Pty) Ltd & others [2007] 4 All SA 1439 (T)

The applicants in this matter represented the Department of Agriculture, Conservation and Environment (GDACE). In addition, the second applicant was a Grade 1 Environmental Management Inspector (EMI), designated to issue notices in terms of Section 31L of the National Environmental Management Act 107 of 1998 (NEMA).

The respondents intended to develop two adjacent properties through the erection of a series of three or four-storey cluster units and related activities. The applicants, being the relevant environmental authorities, sought to interdict the respondents from proceeding with the development.

The applicants demanded that the respondents stop this development or seek proper environmental authorisations from the relevant authorities in order to make sure that the development undertaken by the respondents would comply with required environmental standards. The respondents were not prepared to do so. The applicants then issued compliance notices in terms of section 31L of NEMA and directives in terms of section 31A of the Environment Conservation Act 73 of 1989 (ECA) to the respondents to cease all construction and construction-related activities on the property. The respondents indicated that they regarded the notices as invalid and of no force and effect, and that they would therefore ignore them and proceed with the intended development. The applicants then brought urgent proceedings for an interdict to enforce the compliance notices and directives.

The Court found that in terms of section 31L(4) of NEMA the respondents were obliged to comply with the compliance notices. If they wished to challenge the validity of the notices, then they had the option of invoking section 31L(5) and 31M of NEMA to lodge an objection against the notices, or to take the notices on judicial review directly attacking their validity. It was therefore not open to the respondents to simply ignore the notices and directives.

The Court's conclusion was that the respondents had begun a development which posed a serious threat of irreparable harm to the environment, ecology and biodiversity. Acting in terms of their constitutional duty to protect the environment, the applicants had ordered the respondents to cease the development, but the latter refused to comply. The applicants were found to have established the requirements for the interdict sought, and the Court granted such relief.

MEC, Department of Agriculture, Conservation & Environment & another v HTF Developers (Pty) Ltd [2008] JOL 21188 (CC)

The appellant owned a property zoned "special residential" which it intended to sub-divide into residential stands which would then be sold to individual buyers. The appellant had secured local authority approval for this. The third respondent, GDACE informed the appellant that they intended to issue a directive in terms of section 31A of ECA, requiring that the development of the property cease until authorisation in terms of ECA had been obtained. GDACE's stance was that the land in question was "virgin ground" and therefore before the appellant could proceed with its contemplated development, authorisation was required. According to the Department, the clearing of the virgin ground would result in serious damage to the environment. This conclusion was based on the findings of a site

inspection which revealed that most of HTF's property is located on an untransformed ridge, a sensitive environment characterised by high biodiversity which would be detrimentally affected by earthworks and infrastructural development. The development was thought to further threaten the existence of Red Data species as well as the naturally existing corridors that the ridges form.

The appellant disputed that its development amounted to a listed activity, contending that the concept of "virgin land" applied only to agricultural land and not land in a proclaimed township. The third respondent then issued a directive in terms of section 31A of ECA directing the appellant immediately to cease clearing the site and to cease its construction activities on the site, and to design and implement a plan for the land's rehabilitation. The appellant approached the High Court seeking an order declaring that the property in question was not virgin ground as defined in item 10 of Schedule 1 of the relevant regulations, and setting aside the directive. The High Court dismissed the application and the appellant then appealed to the Supreme Court of Appeal.

The Supreme Court of Appeal decision

On appeal to the Supreme Court of Appeal, the court held that the High Court had erred in its findings. The order of the High Court was subsequently set aside and substituted by an order setting aside the direction in terms of section 31A of ECA in respect of the land in question.

In the Supreme Court of Appeal, the issue relating to the determination of whether or not the land in question was virgin ground became moot. This was so because at that stage, the regulations which contained the prohibition of harmful activity on virgin ground were repealed.

It was, however, only in the Supreme Court of Appeal, that HTF raised the question of whether a competent authority must comply with the 30-day notice and comment procedure of section 32 of ECA before invoking its powers under section 31A of ECA.

The Constitutional Court Decision

The matter was then taken on appeal to the Constitutional Court, which essentially had to make a ruling on whether the exercise of power in terms of section 31A of ECA was subject to the procedural requirements of section 32 of ECA to the effect that the decision must be preceded by a draft notice published for comment in the *Government Gazette*.

The Constitutional Court held that it is clear that any exercise of power in terms of section 31A of ECA, although not bound by internal procedural constraints, is subject to procedural fairness requirements in the form of section 36 of ECA and in terms of administrative review under PAJA.

In addition, the flexibility afforded by section 31A of ECA enables organs of State to react to situations of potential or actual environmental damage under a range of differing time frames, including those classified as urgent, while constrained by the corresponding procedural fairness requirements. All of these factors lead to the conclusion, the court held, that the exercise of power in terms of section 31A of ECA should not be constrained by the procedural requirements of section 32 of ECA.

Accordingly, the appeal by GDACE in the Constitutional Court was upheld.

Barnett and Others v Minister of Land Affairs and Others [2007] (11) BCLR 1214 (SCA)

The appellants in this case were the occupiers of sites and cottages on the Transkei Wild Coast, situated within an ecologically sensitive area not reserved for residential purposes. The settlement onto these sites had occurred shortly after April 1994-at the stage of transition from one government to the other, when administrative control in the area was in a state of flux. Permission to build these cottages had been obtained irregularly and was declared invalid. The Respondent obtained an eviction order in the Mthatha High Court against the appellants on the basis that the

sites occupied by them formed part of State land. The order also directed the appellants to demolish and remove all structures built on the sites within four months from date of the order, failing which the Government was authorised to have the structures demolished and removed at the appellants' expense. The appellants appealed against that judgment to the Supreme Court of Appeal.

Various defences raised by the appellants, including that of prescription, were considered and found to have no merit. They also raised a defence based on the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE). They contended that the Government had to satisfy the provisions of section 4(7) of that Act which provided that an eviction order might only be granted if the court was "of the opinion that it is just and equitable to do so, after considering all the relevant circumstances". It was rendered unnecessary to consider PIE, however, as it applied only to the eviction of persons from their homes. Holiday cottages erected for holiday purposes and visited occasionally over weekends and during vacations, albeit on a regular basis, by persons who had their habitual dwellings elsewhere did not fall within this ambit. For purposes of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, the cottages concerned could not be said to be the appellants' "homes".

The defence was rejected and the appeal was therefore dismissed with costs.

7. Industrial compliance and enforcement

In 2007-8, the industrial branch of the Environmental Management Inspectorate embarked on a series of compliance inspections in three industry sectors, namely:

- iron and steel
- ferroalloy (ferrochrome, ferromanganese, ferrovanadium and ferrosilicon)
- refineries

Iron and steel, ferroalloy and the refinery sectors have been prioritised in this environmental compliance campaign as their industrial processes may contribute significantly to pollution if not mitigated and managed properly. The same industry sectors are also currently undergoing a review of all their air pollution permits by the Department of Environmental Affairs and Tourism.

Compliance inspections have been conducted by EMIs in DEAT and provincial environment departments, joined by officials from municipalities and the Department of Water Affairs and Forestry.

Since February 2007, and since then has conducted comprehensive, baseline compliance inspections at 11 sites in Gauteng, Mpumalanga, Northwest and KwaZulu-Natal. Inspections have been conducted jointly by Inspectors from the Department of Environmental Affairs and Tourism and provincial environment departments, as well as officials from municipalities and the Department of Water Affairs and Forestry.

Below is an update on results of inspections in the iron and steel, ferroalloy and refineries industries, as well as report on enforcement action taken against various facilities.

1. Out of the 11 sites inspected, only one was found to be in substantial compliance with environmental legislation and permits. That facility is the **NATREF refinery** in Sasolburg, co-owned by SASOL and Total. The Inspectorate also acknowledges NATREF management's sound preparation for the inspection, and the conduct of refinery staff during the course of the inspection.
2. Findings of non-compliance at **Assmang's ferromanganese facility in Cato Ridge, KZN**, were released in July 2007. These included:
 - significant uncontrolled dust emissions, which contains the heavy metal manganese;

- serious non-compliance with a hazardous waste site permit;
- at least one unpermitted hazardous waste site.

DEAT Inspectors issued pre-notice (notifications of intention to issue a notice) to Assmang in October 2007. Following detailed representations put forward by Assmang and a series of meetings with authorities, in March 2008 DEAT (together with the KZN Department of Agriculture and Environmental Affairs and eThekweni Municipality) inter alia ordered Assmang:

- to implement a major fugitive manganese fume and dust emission control project by July 2010. A system that captures dust and fumes from the so-called "tap hole", a major contributor to fugitive emissions of manganese dust and fumes, to be completed by September 2009;
- for the next 2 years, Assmang must comply with all conditions of their hazardous waste site permit, failing which the permit will be suspended without further notice. (Note that Assmang has already addressed a number of the non-compliances detected during the 2007 inspection.)
- implement a major waste management improvement project by January 2011. This project includes relocation of slimes dams and a dust disposal facility and rehabilitation of the current sites, immediate implementation of dust control measures, preparation for use of new permitted slag dump, and major improvements in water management on site, and various permit applications to DEAT, DWAF and the KZN Department of Agriculture and Environmental Affairs.
- submit a plan for the investigation, assessment and evaluation of the environmental impact of the unlined slag dump within 2 months. Authorities have given Assmang 30 days to indicate whether they accept that the current slag dump must be reduced to zero by 2018, failing which a directive to that effect will be issued.

The Inspectorate is of the view that Assmang has attempted to comply with authorities' requirements, and have approved the capital expenditure required to implement the requirements. However, the Inspectorate is obviously concerned about recent fatal accidents at the Cato Ridge plant, and is working closely with the Department of Labour on monitoring measures taken by Assmang in response.

3. At **Arcelor Mittal's Vereeniging steel plant**, inspected in May 2007, Inspectors found non-compliances which included:

- A series of activities without the required environmental authorisations.
- Continued dumping of hazardous waste on an unpermitted site, despite repeated instructions from authorities to cease such activity.
- Particulate emissions to air that cause, have caused or may cause significant and serious pollution of the environment.
- Significant and serious pollution of surface and groundwater with phenols, iron, oil, fluoride and other hazardous substances.
- Failure to lodge audit reports.

Pre-notice was issued to ArcelorMittal by DEAT and Gauteng Inspectors:

- Gauteng Inspectors ordered ArcelorMittal to cease dumping hazardous waste on its Vaal Dump, and to submit a revised rehabilitation plan for this site.
- In October 2007, DEAT Inspectors ordered ArcelorMittal to implement a major dust emission control project within 18 months, and to submit proposals on interim measures to control fugitive dust emissions.

The Inspectorate currently believes that ArcelorMittal has made every effort to comply with authorities' requirements, and will hold it to the timeframes set in the notices.

4. At **Highveld Steel's Vanchem ferrovanadium plant outside Witbank**, Inspectors found serious contraventions with environmental legislation, which included:
- Excessive emissions of sulphur dioxide from the plant's processes – between 40 and 60 tonnes of SO₂ are emitted by the plant every day.
 - Serious exceedances of permit emissions limits for ammonia (up to 15 times the limit) and particulates (dust) (up to 27 times the limit).
 - Significant contamination of groundwater, linked to both the unlined and unpermitted hazardous waste dump on site (hazardous primarily because it contains the heavy metal vanadium) as well as the lack of separation of storm and process water on site.

In April 2008, DEAT Inspectors issued a pre-notice and a pre-directive to Highveld Steel providing the company with an opportunity to make representations within a specified timeframe on why a notice and directive should not be issued to the company requiring it to take certain measures.

5. At **BHP Billiton's Metalloys** site in Meyerton, Inspectors made the following key findings:
- more than 10 unpermitted and unlined disposal sites, both operative and inoperative, many of which are hazardous waste sites;
 - significant groundwater contamination as a result of these unlined waste sites;
 - significant fugitive emissions from metal and slag tapping; and
 - failure to lodge audit reports and environmental management plans as required by numerous EIA authorisations.
6. At the **PetroSA** refinery near Mosselbay, Inspectors found the following:
- management of waste disposal sites that is in serious non-compliance with waste site permits, including disposal of hazardous waste on sites not permitted to receive such waste, the absence of liner integrity testing and sludge ponds overflowing their freeboard;
 - the absence of spill and leak detection equipment and testing on a sub-sea pipeline; and
 - serious groundwater contamination at refinery's tank farm.
7. At **Hernic Ferrochrome's** plant outside Brits in Northwest, Inspectors made the following findings:
- the absence of a rehabilitation or closure plan for the capped slimes dams, particularly in view of past serious groundwater contamination with hexavalent chrome;
 - the lack of permits for various waste storage and disposal facilities;
 - poor storm and surface water management throughout the site;
 - regular and serious exceedances of permit limits on emissions to air; in addition, no investigation, evaluation and assessment have been done of the impact of these exceedances on the environment; and
 - inadequate dust control throughout the site.

Reports for ArcelorMittal's Newcastle steelworks and Highveld Steel's steelworks have recently been completed and sent to the companies to make representations within a specified time period. Xstrata's Wonderkop ferrochrome plant in Northwest and Sasol's Secunda refinery are still being finalised.

8. Wildlife compliance and enforcement

The delegation process to assign the authority to issue permits for threatened or protected species (TOPS) to line functions, have been completed for DEAT, Gauteng, Limpopo, Eastern Cape, Northern Cape, Free State and North West provinces.

This means that these provinces are issuing authorities for TOPS and issue TOPS permits for the undertaking of restricted activities. Although Western Cape, Mpumalanga and Kwa-Zulu Natal were not issuing TOPS permits during the 2007/08 financial year, they were in the process of finalizing the delegation.

During the past few years hunting of white rhino in South Africa by Vietnamese hunters increased drastically. Of concern is that the illegalities involving these hunters included hunting without a hunting permit, exporting of the horns without a permit in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and / or trade in the horns once in the importing country, of which the latter is in contravention of CITES provisions (export of rhino horns for commercial purposes is prohibited). To ensure that protocols for trade in rhino horns are consistent and comply with biodiversity conservation requirements, MinMec has approved a proposed moratorium on the national trade in individual rhinoceros horn and any derivatives or rhino horn products. This moratorium will be in effect until further notice. With the moratorium a procedure for the marking of rhinoceros horn and hunting of white rhinoceros for trophy hunting purposes was also published.. This procedure is intended to regulate the hunting of white rhino on a national basis and to have a national standard for the marking of rhino horn. The procedure will be published as norms and standards in 2009 in order to make it legally binding.

The following completed court cases involving biodiversity, mainly TOPS specimens, are highlighted:

Mpumalanga – completed cases:

1. One suspect was charged in the Malelane Magistrate court for the illegal possession of rhino horn. He was found guilty and sentenced to a fine of R40 000.00 or imprisonment for 4 years, plus an addition period of 4 years imprisonment suspended for a period of 5 years.
2. One suspect was charged with theft of 32 cycads, all of which are specimens of *Encephalartos lehmannii* with stem diameters ranging from 17cm to 23cm and listed as protected under TOPS, from the Lowveld Botanical Garden in Nelspruit. The theft of these plants has a huge implication on the species in the botanical garden, as seeds of veld plants are used for pollination, after which the plants are grown under artificial conditions. The purpose of the project is to serve as a gene bank and to rehabilitate the plants.

The accused was found guilty and sentenced to a fine of R30 000.00 or imprisonment for 3 years, of which R15 000.00 or 18 months is suspended for 5 years. In addition, his vehicle has been declared forfeited to the state.

3. Four suspects have been charged with theft, illegal possession and transport of 27 wild cycad plants from the Songimvelo NR, all of which are specimens of *Encephalartos heenanii* and listed as critically endangered under TOPS, in the Nelspruit Regional court.

All the accused were found guilty. Three of them were sentenced to 10 years imprisonment, of which 3 years were suspended for a period of 5 years (they have already been in prison for 3 years). The fourth accused was sentenced to 10 years imprisonment, of which 5 years were suspended for a period of 5 years. In addition, his vehicle has been declared forfeited to the state.

In all of these cases, the charges were laid in terms of provincial legislation due to the fact that Mpumalanga can not issue TOPS permits yet.

Pending cases:

The following cases are still pending:

19 cycad cases, involving illegal possession, transport and theft,
2 cases of illegal possession of elephant ivory,
2 cases for illegally operating a reptile park,
1 case of illegally possessing 6 leopards, 2 cheetahs, 1 brown and 1 spotted hyena, 5 African wild dogs (all listed under TOPS), as well as 5 caracals and 3 African wild cats.

Eastern Cape – completed cases:

Sentence was recently handed down for the destruction of yellowwood trees in terms of the Forestry Act. 2 accused sentenced to 11 years imprisonment, of which 3 years were suspended, 2 accused were sentenced to 8 years imprisonment, of which 3 years were suspended.

Pending case:

1. Combined investigation with Organised Crime of the SAPS in Kimberley involving illegal trade of rhino horn. A Vietnamese and a South African citizen were charged in the Kimberley court. Although the Vietnamese citizen had an amount of R1.2 million in cash when he was arrested, the value of the rhino horns involved was valued at R1.2 million.

The two suspects were charged in terms of the National Environmental Management: Biodiversity Act (Act 10 of 2004) (NEMBA).

Free State – completed cases:

1. A traditional healer was charged, in terms of NEMBA, with the illegal possession of plants and specimens of the *Cordylus sp.*, all listed under TOPS, in the Welkom magistrate court.

The accused was found guilty and sentenced to a fine of R10 000.00 or 6 months imprisonment.

Pending cases:

1. 1 Suspect each has been charged, in terms of NEMBA, in two separate cases in the Frankfort and Viljoenskroon magistrate court respectively, for the illegal possession of a cheetah.
2. In a case where 7 persons were charged with poaching of rhinos, 2 of the accused pleaded guilty in the Kroonstad court. One of the accused was found guilty on 9 charges of poaching and sentenced to 10 years imprisonment, of which 2 years were suspended. The other accused was found guilty of 3 charges of poaching and sentenced to 5 years imprisonment, of which 30 months were suspended.

Linked to this case, 5 additional suspects have been charged in the Bloemfontein High Court with racketeering, which has been postponed to 2009.

3. 1 Suspect has been charged with the illegal possession and trade of 7 lions, in the Rouxville magistrate court.

Gauteng – completed cases:

Many of the cases investigated by the Gauteng provincial department relate to the illegal import or export of wildlife and wildlife products through OR Tambo International Airport. During this financial year monetary penalties in the region of R800 000 were imposed by various courts in relation to nine different cases involving a range of animal products (such as rhino horn, elephant tusks and crocodile products) as well as live reptiles such as snakes. In two cases relating to the illegal possession of rhino horn by Vietnamese nationals, the court imposed a penalty of R300 000 or 6 years imprisonment. In the second case, the court, in addition to the R300 000 fine, ordered that the accused be deported and declared him unfit to apply for a permit for a period of 5 years.

GDACE also spent this financial year focussing on an awareness raising programme in order to increase detection rates; to provide EMI investigative support to other enforcement units at the airport after detection of the environmental contraband and to create a foundation for sound co-operative governance with other enforcement agencies (such as SAPS and Customs). The awareness programme and training provided to other law enforcement officials at the airport was initiated in mid-2007 and resulted in an almost 200% increase in the number of CITES cases originating at the airport between the first and second quarters of the 2007/2008 financial year.

9. Marine compliance and enforcement

In 2006-7, DEAT MCM'S Environmental Protection Vessels Inspected 6034 facilities, vessels or vehicles monitored for compliance.

Patrols/ operations	Inspections/ vessels including slipways	Inspections/ vehicles	Inspections/ restaurants	Vehicles /vessels/confiscated not yet forfeited	MCM Unit
304	-	-	-	14 boats, 7 vehicles	Environmental Protection Vessels
62	5461	-	817	13 boats, 31 vehicles	Compliance
25	-	-	-	14 vehicles, 7 vessels	Special Investigations Unit

10. Training and awareness for prosecutors and magistrates

In 2005, in response to a general concern about the ability of local prosecutors to adequately prosecute environmental crimes, as well as the need to sensitise the judiciary in the adjudication of environmental crimes, the Department of Environmental Affairs and Tourism, in collaboration with the Department of Justices' Justice College, commenced two training programmes which have both since been incorporated into Justice College's standard syllabus for elective training for prosecutors and magistrates.

Magistrates Awareness-Raising Workshops: Judging Environmental Crimes

The aim of this course is to build the awareness of magistrates on the importance of environmental crime, and to explore the particular issues raised for magistrates when adjudicating environmental prosecutions. Since its inception, 9 workshops have been successfully held, with a total of approximately 230 magistrates having attended one of the workshops.

Prosecutors' Training: Prosecuting Environmental Crimes

The training programme for prosecutors on the Prosecution of Environmental Crimes has also been an overwhelming success, with Justice College reporting that since 2006, all courses have been overbooked, indicating a strong interest from prosecutors in environmental crimes and the prosecution thereof. As at May 2008, 204 prosecutors have attended this training course.

11. What is ahead for 2008-9

In 2008-9, we hope to continue and improve on the collection of compliance and enforcement statistics from the various EMI Institutions. This year will also see significant developments in the development and implementation of compliance and enforcement procedures, projects and policies.

2008-9 will see a significant increase in legislative provisions that EMI will be required to enforce and monitor compliance with. National pieces of legislation expected to be enacted during this period include the National Environmental Management: Waste and Integrated Coastal Management Bills⁶. Regulations such as those related to threatened and endangered/ alien and invasive species, bioprospecting, access and benefit-sharing, elephant management; as well as waste tyres, asbestos and health care risk waste will require capacity for implementation.

In 2007-8, the Inspectorate developed its first Practice Note on Environmental Enforcement: *Principles of Enforcement of Environmental Legislation, including Criteria for Criminal Prosecution and the Provision of Zero Tolerance Offences*. This Practice Note is intended to give guidance to the regulated community on the considerations taken into account by Inspectors in deciding on the type of enforcement action to take in cases of non-compliance. The Practice Note specifies the criteria that would motivate EMIs to commence criminal prosecution, and also provides for EMI Institutions to declare "zero tolerance offences" where an offence is particularly threatening to the environment and the regulatory regime. Once approved, the Practice Note will be implemented and it is envisaged that it will bring a level of consistency to the application of enforcement mechanisms in response to non-compliances.

In 2008-9, a Standard Operating Procedure (SOP) will be concluded between the South African Police Services and the Environmental Management Inspectorate. This document will establish the respective roles and responsibilities of the two law enforcement agencies in the investigation of environmental crimes, including the management and closure of case dockets and the handling of seized items. The conclusion and implementation of this SOP; along with the addition of national environmental legislation on the SAPS Case Administration System (CAS) will hopefully see an increase in the recording and investigation of environmental crimes.

The Inspectorate began expanding its comprehensive inspections to two other sectors during this financial year, namely the Cement industry and the Pulp and Paper sector. The cement industry was selected due to the current pressure on the sector. Six facilities were inspected in the various provinces and a further round of inspections is planned for July and August 2008. This means that all production facilities from the sector would be inspected and baseline information obtained for future use.

⁶ In addition, a number of provisions of the National Environmental: Air Quality Act 39 of 2004 will also come into effect.

The expansion into the Pulp and Paper sector will commence during August 2008. This sector has been chosen as it has also been prioritized for the APPA review project in addition to having the potential to cause significant harm to the environment.