

DEA releases environmental compliance report

 By [Melissa Fourie](#)

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The Department of Environmental Affairs (DEA) has released its eighth annual National Environmental Compliance and Enforcement Report (NECER) on 2 November 2015.



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According to the Centre for Environmental Rights (CER), the NECER acknowledges that Environmental Management Inspectors (EMIs, or Green Scorpions) are not always able to take prompt enforcement action pursuant to inspections. However, the report is also sharply critical of companies and facilities that use claims of job creation and economic development to hide their failure to comply with environmental laws.

Despite the increase in number of EMIs in 2014/15, there has only been a 1.3% increase in facilities inspected by EMIs. Moreover, the 36% decrease in proactive inspections, coupled with a more than 50% decrease in reactive inspections, is deeply concerning and no explanation is given for this drastic change in compliance monitoring activity.

The report records a significant decrease in inspection reports finalised, from 2,271 in 2013/14 to 1,610 in 2014/15. The impacts of these statistics are exacerbated by the fact that the report notes a 41.5% increase in non-compliances detected during inspections. While this figure could reflect greater effectiveness in detection of violations, it could potentially also indicate a trend of worsening compliance amongst companies, which is inevitably exacerbated by delays in finalisation of inspection reports.

Directives issued

While the CER is disappointed to see that the number of notices and directives issued in response to suspected violations increased by only 2.8% to 729 in 2014/15, the 60% increase in so-called 'warning letters' issued is of greater concern. The report itself ascribes this to a "tendency to use less formal enforcement mechanisms to achieve compliance".

The report notes that there was a 13% decrease in the value of so-called section 24G fines paid by companies. A section 24G fine is a fine payable by companies that have unlawfully commenced with listed activities without applying for authorisation, which is a criminal offence.

The CER has for many years argued that this provision in the National Environmental Management Act undermines compliance by allowing companies to avoid the costs of proper environmental impact assessments and to buy themselves out of criminal prosecution. The fact that these fines generated more than R14m in ring-fenced, unallocated funds for EMIs also has the potential to incentivise departments to accept s24G applications and grant authorisations which otherwise should not be granted.

Criminal dockets

The CER welcomes the 8.5% increase in the number of criminal dockets registered. However, the 33% decrease in the number of criminal dockets handed to the National Prosecution Authority is deeply concerning, particularly because criminal enforcement is the primary tool available to EMIs to punish those who break environmental laws.

In response to the challenges of criminal prosecution and the long delays in getting convictions, the CER has for several years campaigned for the introduction of administrative penalties for environmental violations. We argue that administrative penalties can be imposed more speedily, and since administrative penalties tend to be much higher than criminal fines, can ensure that penalties reflect the real cost of environmental violations to society and act as a proper deterrent.

We call on the Minister of Environmental Affairs to provide all necessary support for her Department's development of administrative penalties for environmental violations.

In South Africa, compliance and enforcement of the National Water Act are the mandate of the Department of Water & Sanitation (DWS); and compliance and enforcement of environmental laws by mines are the mandate of the Department of Mineral Resources (DMR). Despite the EMIs publishing annual compliance and enforcement reports since 2007/8, neither the DMR nor the DWS has ever published compliance monitoring and enforcement results.

Commitments not upheld

Earlier this year, the DWS undertook to publish its own compliance monitoring and enforcement report in October 2015, and the DMR undertook to incorporate its compliance monitoring and enforcement results into the NECER. Neither department has as of yet upheld these commitments.

The failure to publicise their compliance monitoring and enforcement data makes it easy for companies with detrimental impacts on the environment to hide the status of their often dismal environmental compliance. These impacts have devastating consequences for local communities living around mines and industrial facilities.

The CER calls on the Minister of Water & Sanitation and the Minister of Mineral Resources to fulfill their promises and share their compliance and enforcement activities and results with all South Africans.

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