

The Role of the Environmental Management Inspectors: M C C Forum: 21/05/09 Sonnyboy Bapela



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Overview

Overview of the “Green Scorpions” Environmental Management Inspectors (EMIs):

1. Who are EMIs?
2. Why have EMIs been created?
3. Mandate of EMIs
4. Powers of EMIs
5. Types of Enforcement actions
6. Achievements
7. Challenges

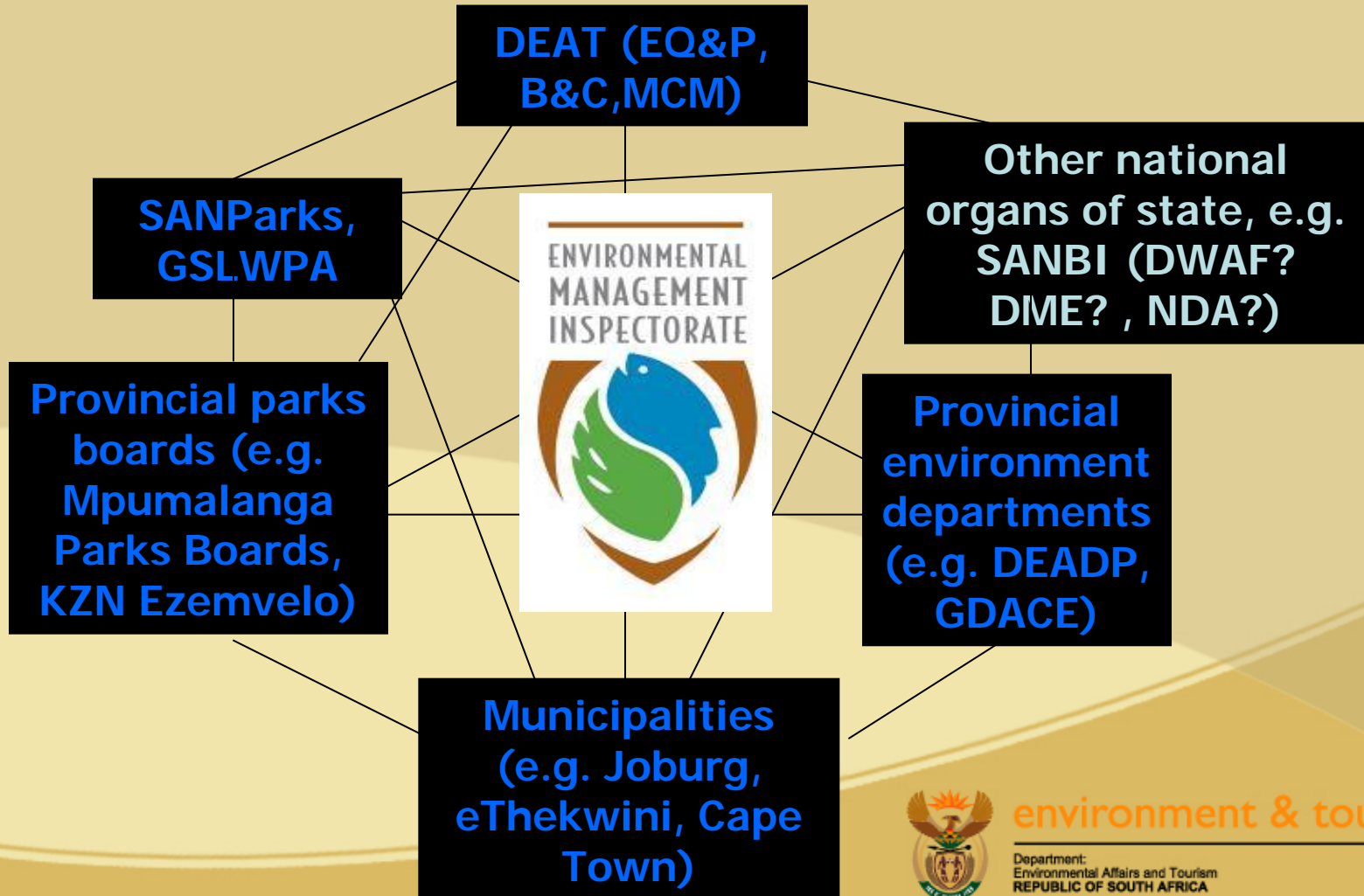


Environmental Management Inspectors

- Existing and newly recruited **environmental enforcement officials**: biodiversity, protected areas, environmental impact assessments, air quality, waste and coastal issues;
- Created by an amendment to NEMA that came into effect in May 2005 and empowered the **Minister and MEC** to designate **Environmental Management Inspectors (aka The Green Scorpions)**;
- **Not a new** national law enforcement unit under the NPA or the SAPS;



The EMI Network



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Why EMIs have been created

- Lack of proper compliance monitoring and enforcement system
- Lack cooperative between different departments
- Weak legal instruments
- Inspectors' cosy relationship with polluters
- Lack of proper communication channels
- Offenders played departments off against each other



Why EMIs have been created?

- Provide environmental enforcement officials with a **comprehensive set of legislative powers** to enable them to carry out their constitutional mandate;
- Promote **consistency** in which compliance and enforcement activities are carried out in terms of national environmental legislation



When are EMIs triggered into action?

- An EMI **must** monitor and enforce compliance with a law for which he or she has been designated
- An EMI **may** investigate any act or omission in respect of which there is a **reasonable suspicion** that it might constitute:
 - an offence in terms of such law;
 - a breach of such law ;or
 - a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law



Present Mandate

Present mandate:

1. Section 24 of the Constitution
2. **NEMA** (Principles, S28, EIA, and 4x4 Regulations)
3. **Biodiversity Act** (Regulations on threatened and protected species, alien and invasive species.)
4. **Protected Areas Act** (Regulations relating to World Heritage Sites, National Parks, National Reserves, National Monuments, and National Special Reserves)



Specific Powers

- **Routine inspections:** entering business premises to check compliance; seizing evidence;
- **Investigations:** questioning witnesses; inspecting, copying and removing documents; inspecting and removing articles or substances; taking photographs; taking samples; removing waste;
- **Enforcement:** search and seizure, roadblocks, arrest;
- **Administrative powers:** compliance notices, section 56 notices



Specific Powers

Cancellation of and disqualification for permits (S34C)-
the court convicting a person of an offence in terms of NEMA or a specific environmental management Act may:

- **withdraw** any permit or authorisation if the rights under that permit had been abused;
- **disqualify** that person from obtaining a permit or other authorisation for up to five years, and order that all other permitting authorities be notified of such disqualification



Enforcement actions

- Enforcement action includes:
- a **formal or informal warning** to comply;
- a **compliance notice or directive** (usually preceded by a pre-compliance notice or pre-directive);
- the **suspension or withdrawal of an authorisation** where the rights in that authorisation have been abused, or there is little or no intention of complying, or ability to comply, with that authorisation; and/or
- **criminal charges**



Compliance Inspections

- Move from reactive to **proactive** compliance monitoring & enforcement;
- Move to compliance monitoring & enforcement in areas and sectors **known for high levels of pollution**;
- selected four industry sectors for 2006-8:
 - **iron & steel and ferroalloy** (Operation Ferro)
 - **refineries** (National Refineries Environmental Compliance Project)
 - Operation Clean Cement
 - Pulp and paper
- Inspected **facilities** in KZN, Western Cape, Gauteng, Northwest, Mpumalanga, Free State, Limpopo and Eastern Cape.
- Issued **inspection reports**;
- Collaboration with national (DWAF), provincial and municipal officials;



Trends in non-compliance: Operation Ferro

- unpermitted disposal sites (active and inactive) (all sites)
- no rehabilitation plans
- groundwater contamination
- contraventions of ECA S20 permits
- exceedances of APPA permits
- emissions to air not covered in APPA permits
- unauthorised listed and scheduled activities
- no Environmental Management Plans
- no audit reports



Achievements

- Compiled two National Compliance and enforcement reports for 06/07 and 07/08;
- SOP between DEAT and SAPS signed;
- Basic EMI Training outsourced to three institutions of higher learning;
- Prosecutor manual produced distributed to all prosecutors;
- Integrated compliance and activities amongst the three spheres and some national departments;
- Conducted workshops with Magistrates; and
- Trained prosecutors on environmental crimes.



Achievements

- **Overall national statistics 2007-8**
- Criminal dockets under investigation by EMIs- 1762
- Arrests by EMIs 2614
- NPA declined to prosecute (nolli prosequi”)-16
- Acquittals (per accused)-441
- Convictions (number of accused convicted) 748



Achievements

- Section 105A agreements (plea bargains)-6
- Admission of guilt fines issue R744,706
- Admission of guilt fines paid-R657,700
- Warning letters written-102
- Formal notices issued 246
- Interdict applications launched 2



Challenges

- Capacity constraints
- Lack of cooperation with NPA
- Staff turn over



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THANK YOU



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