

# Environmental Enforcement Report 2011

Flemish High Council of Environmental Enforcement





**FLEMISH HIGH COUNCIL OF ENVIRONMENTAL ENFORCEMENT**

# **ENVIRONMENTAL ENFORCEMENT REPORT 2011**



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## **Preface by the Chairman of the Flemish High Council of Environmental Enforcement: Prof. Dr. Michael G. Faure LL. M.**

This environmental enforcement report is already the third of its kind. With this Environmental Enforcement Report 2011 the Flemish High Council of Environmental Enforcement again tries to provide an overview of and make a contribution to the developments in the environmental enforcement policy of Flanders. On the basis of the experience it gained through the questionnaire and the development of the Environmental Enforcement Reports 2009 and 2010, the Flemish High Council of Environmental Enforcement has been able to improve its methodology. Despite the fact that the questionnaire for the environmental enforcement actors has hardly changed, the development of the environmental enforcement report is always a learning process which is aimed at optimising the questionnaire, the processing of data and the analyses. Nevertheless, the Flemish High Council of Environmental Enforcement hopes that the environmental enforcement report has become a fixed value and can be used as a tool to outline policy and objectives.

This report relates to the period from 1 January 2011 through 31 December 2011. Just like the Environmental Enforcement Report 2010, this period covers an entire calendar year. As a result, it is possible to not only provide the content which is required by Flemish Parliament Act, but to also make a full comparison between the data from 2010 and 2011. This allows for a further analysis of the implementation of the Environmental Enforcement Act. The advantage for the future of such a standardised expression of figures is that it makes long-term evolutions clearer. For this reason, the Flemish High Council of Environmental Enforcement will each year use the same model for drawing up the environmental enforcement report.

On an international level as well the Flemish High Council of Environmental Enforcement seeks to contribute further by means of the Environmental Enforcement Report 2011. Just like the Environmental Enforcement Reports 2009 and 2010, the 2011 report is available in English, since the collection and analysis of such an amount and such a type of information can be used as an example of good practice in international environmental enforcement environments. Despite the fact that the Flemish High Council of Environmental Enforcement can learn a lot from its international fellow networks, the environmental enforcement report can also serve as a model for collecting and processing environmental enforcement data.

However, to draw up the Environmental Enforcement Report 2011 the Flemish High Council of Environmental Enforcement is once again dependent on the environmental enforcement actors in the Flemish Region. Although many actors have implemented the Environmental Enforcement Act by spontaneously complying with the request of the Flemish High Council of Environmental Enforcement to provide certain information, the response rate is not equally high with every public body. As a result, the data included in this report are not always entirely representative. Nevertheless, with the publication of this Environmental Enforcement Report 2011 the Flemish High Council of Environmental Enforcement wishes to extend its sincere gratitude to the actors that completed the questionnaire. Thanks to the provided data this report could be drawn up and conclusions could be reached about the enforcement activities of the actors in 2011 and about the evolution in the implementation of the Environmental Enforcement Act.



A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that form the name 'M. G. Faure'.

Prof. Dr. Michael G. Faure LL.M.  
Chairman of the Flemish High Council of Environmental Enforcement





## 1. Introduction

### 1.1 Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy

The origin of the Flemish High Council of Environmental Enforcement (Vlaamse Hoge Raad voor Milieuhandhaving or VHRM) goes back to the Flemish Parliament Act of 21 December 2007 which supplements the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy with a Title XVI 'Monitoring, Enforcement and Safety Measures'<sup>1</sup>, in short the Environmental Enforcement Act.<sup>2</sup>

The VHRM was created to support the Flemish Parliament and the Government of Flanders in the coordination of environmental enforcement policy and the interpretation of its content. In view of an efficient enforcement of environmental law, the VHRM sets up systematic consultations with the environmental enforcement actors. These consultations can result in agreements between the different actors. Such agreements are called protocols. The VHRM will set the pace, both in organising consultations with the environmental enforcement actors and in preparing and finalising the protocols.

The composition of the plenary meeting of the Flemish High Council of Environmental Enforcement was laid down in the Flemish Government Decree of 13 February 2009 on the appointment of the members of the Flemish High Council of Environmental Enforcement<sup>3</sup>. In addition, the VHRM works with four working groups to study special themes: 'Identification and Monitoring', 'The Imposition of Administrative and Criminal Sanctions', 'Information Exchange' and 'Data Collection, Innovation and Knowledge Gathering'.

The complete composition of the plenary meeting can be found on the VHRM website<sup>4</sup>.

Each year, the VHRM has to draw up an environmental enforcement report and an environmental enforcement programme. The environmental enforcement programme determines, for the coming calendar year, the enforcement priorities of the regional authorities that are in charge of environmental law enforcement. It may also contain recommendations regarding environmental law enforcement at the provincial and municipal levels and for cooperation with and between these policy levels.

The first programme, the Environmental Enforcement Programme 2010, was approved by the VHRM plenary meeting on 11 January 2010. The Government of Flanders ratified the document on 26 March 2010. On 15 June 2011, the plenary meeting approved the second environmental enforcement programme, that is the Environmental Enforcement Programme 2011. This was then submitted to the Government of Flanders for ratification. The Environmental Enforcement Programmes 2010 and 2011 can be found on the VHRM website<sup>5</sup>. Owing to the lack of personnel within the permanent secretariat of the Flemish High Council of Environmental Enforcement, no Environmental Enforcement Programme 2012 was published. It was also found that the environmental enforcement programme in its present form only has limited added value. That is why, in 2012, the Flemish High Council of Environmental Enforcement will discuss an adjustment of the programme content to pursue a more strategic approach.

The environmental enforcement report contains at least a general evaluation of the regional environ-

1 Publication in the Belgian Official Journal, 19 February 2009.

2 Note that the term 'Act' (or Flemish Parliament Act) stands for 'Decreet', and that 'Decree' (Government of Flanders Decree) stands for 'Besluit'. In other words, Decreet (Dutch) and Decree (English) should not be confused as synonyms.

3 Publication in the Belgian Official Journal, 19 March 2009.

4 <http://www.vhrm.be/vhrm/leden-vertegenwoordigers-en-plaatsvervangers>

5 <http://www.vhrm.be/documenten/milieuhandhavingsprogramma>

mental enforcement policy pursued over the past calendar year; a specific evaluation of the use of the individual enforcement instruments; an overview of cases in which no sentence was passed within the set term with respect to the appeals against decisions to impose administrative measures; an evaluation of the decision-making practice of public prosecutor's offices when it comes to whether or not to prosecute an identified environmental offence; an overview and comparison of the environmental enforcement policy conducted by municipalities and provinces; an inventory of the insights obtained during enforcement activity which can be used to improve environmental law, policy visions and policy implementation; and recommendations for the further development of environmental enforcement policy.

This report should include any relevant figures on the environmental enforcement policy conducted over the past calendar year. The environmental enforcement report is regarded as a crucial instrument in the support, and possible adjustment, of the environmental enforcement policy to be pursued. The Flemish High Council of Environmental Enforcement approved the Environmental Enforcement Report 2009 during the plenary meeting of Tuesday 9 November 2010. This first environmental enforcement report was officially presented to Minister Schauvliege, the Flemish Minister of Environment, Nature and Culture, on Wednesday 15 December 2010 and is available at the VHRM website. The Environmental Enforcement Report 2010 was approved by the plenary meeting of the Flemish High Council of Environmental Enforcement on 15 May 2012. Minister Schauvliege presented the Environmental Enforcement Report 2010 to the Government of Flanders on 22 June 2012<sup>6</sup>.

## **1.2 Methodology and relevance of the Environmental Enforcement Report 2011**

### **1.2.1 Methodology**

The aim of the environmental enforcement report is to provide a concrete picture, based on relevant, reliable figures and qualitative data, of the environmental enforcement policy that was pursued in the Flemish Region from 1 January 2011 through 31 December 2011.

In order to achieve this objective and its components laid down by Flemish Parliament Act, the Flemish High Council of Environmental Enforcement, by analogy with the Environmental Enforcement Reports of 2009 and 2010, drew up a questionnaire for the environmental enforcement actors which focuses on the specific duties of each of these actors.

The following actors were asked about their activities in the area of environmental law enforcement between 1 January 2011 and 31 December 2011:

- ▶ the Environmental Inspectorate Division of the Department of Environment, Nature and Energy;
- ▶ the Environmental Licences Division of the Department of Environment, Nature and Energy;
- ▶ the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy;
- ▶ the Land and Soil Protection, Subsoil and Natural Resources Division of the Department of Environment, Nature and Energy;
- ▶ the Secretary-General of the Department of Environment, Nature and Energy;

<sup>6</sup> <http://www.vhrm.be/documenten/milieuhandhavingsrapport>

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- ▶ the Public Waste Agency of Flanders;
  - ▶ the Flemish Land Agency;
  - ▶ the Flemish Environment Agency;
  - ▶ the Agency for Nature and Forests;
  - ▶ Waterwegen en Zeekanaal NV (Waterways and Sea Canal plc);
  - ▶ the Flemish Agency for Care and Health;
  - ▶ the Agency for Roads and Traffic;
  - ▶ the Agency for Waterways and Sea Canal;
  - ▶ nv De Scheepvaart (Shipping Agency plc);
  - ▶ the Department of Mobility and Public Works;
  - ▶ the Flemish mayors;
  - ▶ the Flemish municipalities;
  - ▶ the Flemish police districts;
  - ▶ the federal police;
  - ▶ the Flemish provincial governors;
  - ▶ the Flemish provincial supervisors;
  - ▶ the Environmental Enforcement Court;
  - ▶ the public prosecutor's offices.

A standard questionnaire was used again in order to obtain comparable data. Questions were asked, among other things, about the number of supervisors within the organisation, the number of full-time equivalents (FTE) dedicated by this supervisor/these supervisors to environmental enforcement duties within the framework of the Environmental Enforcement Act and the number of FTEs dedicated to the administrative support of environmental enforcement duties by non-supervisors, the number of inspections<sup>7</sup> carried out between 1 January 2011 and 31 December 2011, the number of initial official reports and identification reports drawn up, and the number of imposed administrative measures and safety measures. The bodies imposing the sanctions were also asked about their activities between 1 January 2011 and 31 December 2011.

Based on the information obtained via the standardised questionnaire, a quantitative picture will be provided of the activities of the enforcement actors since the coming into force of the Environmental Enforcement Act. These figures, accompanied by explanatory text, will be displayed graphically in a graph and/or table.

Since this is the third environmental enforcement report of the Flemish High Council of Environmental Enforcement it was possible to make certain comparisons between the figures included in the Environmental Enforcement Report 2010 and the figures which the Flemish High Council of Environmental Enforcement

<sup>7</sup> An inspection in the context of environmental enforcement is to examine with a legal and/or a natural person who is bound by environmental law obligations, whether or not this legal and/or natural person actually complies with these obligations. This can be broken down into on-site inspections and inspections of documents. In addition, the data pertain to the number of environmental enforcement inspections that were carried out and not to the number of breaches that were identified during these inspections. (<http://www.vhrm.be/voor-de-toezichthouder/glossarium>)

received in response to the questionnaire for the Environmental Enforcement Report 2011. The way in which the data were processed is different for the first Environmental Enforcement Report 2009 on the one hand, and the Environmental Enforcement Reports 2010 and 2011 on the other hand. For this reason, the present environmental enforcement report will only make comparisons with the 2010 data. The questionnaires for these two reports are different in just one respect, since a clarification turned out<sup>8</sup> to be necessary for the 2011 survey. This comparison between 2010 and 2011 provides an insight into the further evolution of the implementation of the Environmental Enforcement Act.

The Flemish Parliament Act clearly stipulates what subjects have to be reported on as a minimum. For this reason, the VHRM has tailored the questionnaire to these requirements, although it did opt to use a different table of contents than the one listed in the Environmental Enforcement Act.

### 1.2.2 Structure

First, an evaluation is made of the environmental enforcement policy pursued in the past calendar year by the regional supervisors, and the federal and local police, as well as of the enforcement activities performed at the local level by provincial governors, provincial supervisors, municipal supervisors and supervisors of intermunicipal associations. Figures will be provided of the number of supervisors per organisation, the number of FTEs dedicated by this supervisor/these supervisors to environmental enforcement duties within the framework of the Environmental Enforcement Act, the number of FTEs dedicated to the administrative support of environmental enforcement duties by non-supervisors, and the number of inspections carried out by these supervisors in 2011. This will also allow us to get an idea of the number of inspections that were carried out per supervisor. With regard to the federal and local police, the types of official reports are discussed that were drawn up by the police forces in the context of environment in 2011. In addition, specific attention is devoted to the proactive inspections carried out by the federal police within the framework of waste shipments, and to the activities of local police supervisors. After that, the pursued local environmental enforcement policy is evaluated. When local environmental enforcement policy is discussed, attention is also drawn to the number of Category 1, Category 2 and Category 3 plants on the territory. In addition, the supporting role of the provinces with respect to the municipalities is evaluated on the basis of the reports of the provinces in the framework of the Cooperation Agreement 2008-2013. Finally, the supervisory duties carried out by the Flemish cities and municipalities are studied.

The focus in this second chapter is thus mainly on the efforts made by the supervisory bodies. As indicated earlier, a comparison will be made with the data from the Environmental Enforcement Report 2010, whenever relevant.

In Chapter 3 emphasis is on the use of the individual environmental enforcement instruments, the administrative measures and the safety measures by the different environmental enforcement actors. In order to clearly define the term 'environmental enforcement instrument', a list was made of these instruments on the basis of the parliamentary preparations for the Environmental Enforcement Act. This list was used to draw up the standardised questionnaire. It concerns the following instruments: recommendations, exhortations, administrative measures (regularisation order, prohibition order, administrative enforcement, or a combination thereof), safety measures, administrative fines (and deprivation of benefits) and criminal penalties<sup>9</sup>. Just like in the Environmental Enforcement Report 2010, the enforcement instruments

8 For the Environmental Enforcement Report 2010 it was asked how many FTEs were dedicated by the supervisors to environmental enforcement duties and how many FTEs were dedicated to the administrative support of environmental enforcement duties. For the Environmental Enforcement Report 2011, on the other hand, it was asked how many FTEs were dedicated by this supervisor/these supervisors to environmental enforcement duties within the framework of the Environmental Enforcement Act and how many FTEs were dedicated to the administrative support of environmental enforcement duties by non-supervisors. This question required clarification, since it was not interpreted in the same way by the supervisory bodies. In order to avoid misunderstandings, the question was therefore adjusted in such a way that it could no longer be interpreted in different ways.

9 The administrative fines (and deprivation of benefits) and the criminal penalties will be discussed in the chapter 'Evaluation of the sanctions policy pursued over the past calendar year', since this is more in line with the contents of the Environmental Enforcement Report 2010, in which

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will be compared to the number of inspections during which a breach was identified and not to the total number of inspections that were carried out (as was the case in the Environmental Enforcement Report 2009). This implies that in this chapter of the present environmental enforcement report comparisons can indeed be made with the data from 2010 and that the use of the instruments can be evaluated.

The official report and the identification report as well are included in this specific evaluation of the use of the individual environmental enforcement instruments.

Next, Chapter 4 'Evaluation of the sanctions policy pursued over the past calendar year' provides an overview of the administrative and criminal sanctions imposed by the Flemish Land Agency (VLM), the Environmental Enforcement, Environmental Damage and Crisis Management Division (AMMC) of the Department of Environment, Nature and Energy, the public prosecutor's offices and the Environmental Enforcement Court (MHHC).

Other types of fines can be imposed as well, such as municipal administrative sanctions and fines in the framework of mandatory levies. However, these do not fall within the scope of the Environmental Enforcement Act and will therefore not be further discussed.

In the conclusion of this report (Chapter 5), it is attempted to inventory the insights obtained during enforcement activity which can be used to improve environmental law, policy visions and policy implementation and to formulate recommendations for the future development of environmental enforcement policy.

The data pertaining to 2011 will be used to carry out the evaluation below. In addition, a comparison will be made, whenever possible and relevant, between 2010 and 2011 on the basis of the data from the Environmental Enforcement Report 2010.

### 1.2.3 Notes

Despite the high expectations of the Flemish High Council of Environmental Enforcement and the far-reaching ambitions of the VHRM itself, a few notes need to be made about this Environmental Enforcement Report 2011.

The Environmental Enforcement Act stipulates that the environmental enforcement report shall contain, among other things, an evaluation of the regional environmental enforcement policy pursued over the past calendar year, a specific evaluation of the use of the individual enforcement instruments and an evaluation of the decision-making practice of the public prosecutor's offices when it comes to whether or not to prosecute an identified offence. These cannot be evaluations in the strict sense, however. In order to actually determine how effective the environmental enforcement policy is, a number of evaluation criteria should be defined beforehand. Since this is the third environmental enforcement report of the Flemish High Council of Environmental Enforcement it is possible, however, to make an evaluation of the further implementation of the Environmental Enforcement Act. The data from the Environmental Enforcement Report 2010 can be regarded as a point of reference in this context<sup>10</sup>. Naturally, it will be even more relevant in the future to make such comparisons, since an evaluation will then pertain to several environmental enforcement reports. As the situation created by the Environmental Enforcement Act is only recent, the necessary caution should be exercised with respect to the figures and any conclusions and recommendations based on those figures.

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the evaluation of the sanctions policy is treated separately in Chapter 4.

10 Given the fact that the data from the first report were processed somewhat differently, that they do not cover an entire calendar year and can therefore not always be compared with the analyses from the Environmental Enforcement Reports 2010 and 2011, the Environmental Enforcement Report 2009 is not regarded as a point of reference.

A second note refers to the fact that the level of response was low and that there were variations in the data. Although the various relevant actors were sent an official request to participate, and there is an obligation to participate for actors who come under the Flemish Region, there was no complete response. As a result, the figures in this report are not entirely representative, and the conclusions should also be interpreted in this light.

As indicated earlier in the description of the structure, the activities of local police supervisors are discussed in a separate chapter, after the activities of the federal police. This has to do with the fact that local police forces have distinct duties with regard to environmental law enforcement. On the one hand, police officers have been appointed as supervisors within a police district in some cities and municipalities. On the other hand, local police forces are in charge of basic police services and more specifically carry out all duties of the administrative and judicial police that are necessary to manage local events and phenomena that occur on the territory of the police district, as well as to fulfil some police duties of a federal nature. In this context they naturally also enforce environmental law, but not as supervisors under the Environmental Enforcement Act. For this Environmental Enforcement Report 2011 the superintendents of the Flemish police districts were asked to only report, when a supervisor or supervisors was/were appointed within the police district, about the activities of this supervisor or these supervisors. This section (2.2.3) should therefore be read together with the evaluation of the pursued local environmental enforcement policy (2.3.4).

As the Environmental Enforcement Report 2011 is only the third report to be published by the VHRM and this was also only the third time the environmental enforcement actors were surveyed by the VHRM, it was again decided to keep the survey as brief as possible. The development of the environmental enforcement report is a learning process, both for the VHRM itself and for the surveyed environmental enforcement actors. As a result, not all relevant data were requested. Naturally, this has consequences for the data obtained, but also for the conclusions that can be drawn from them. The present environmental enforcement report only allows for a reflection to be made of what the environmental enforcement actors and supervisors did during 2011 in terms of monitoring and the imposition of sanctions, not of how or why they did so. As the survey was about figures and no context information was required, this can leave a lot of room for interpretation. However, the members, representatives and deputies of the Flemish High Council of Environmental Enforcement did have the possibility to comment further on the content of the data after processing them, thus placing the results in a broader context. The advantage of using one and the same questionnaire is, however, that comparisons can be made and evolutions can be discerned.

Even this third environmental enforcement report has its limits, although it is a next step in the evaluation of the environmental enforcement policy in the Flemish Region and in the further implementation of the Environmental Enforcement Act in 2011.

### 1.3 Environmental enforcement policy

It goes without saying that the activities carried out by environmental enforcement actors in Flanders in 2011 were not random. The environmental enforcement policy in the Flemish Region is determined, among other things, by the Coalition Agreement of 15 July 2009<sup>11</sup>, the Policy Memorandum on Environment and Nature 2009-2014<sup>12</sup> and the Policy Paper on Environment and Nature 2011-2012<sup>13</sup> of Minister Schauvliege.

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11 The entire 'Coalition Agreement of 15 July 2009' can be consulted at the following URL: [http://www.vlaanderen.be/servlet/Satellite?c=Solution\\_C&cid=1247734278469&pagename=Infolijn/View](http://www.vlaanderen.be/servlet/Satellite?c=Solution_C&cid=1247734278469&pagename=Infolijn/View)

12 The entire 'Policy Memorandum on Environment and Nature 2009-2014' can be consulted at the following URL: [http://www.vlaanderen.be/servlet/Satellite?pagename=Infolijn%2FView&c=Solution\\_C&p=1186804409590&cid=1171947608450](http://www.vlaanderen.be/servlet/Satellite?pagename=Infolijn%2FView&c=Solution_C&p=1186804409590&cid=1171947608450)

13 The entire 'Policy Paper on Environment and Nature 2011-2012' can be consulted at the following URL: <http://docs.vlaamsparlement.be/docs/stukken/2011-2012/g1328-1.pdf>

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Among other things, the Coalition Agreement 2009-2014 'A vigorous Flanders in decisive times - for an innovative, sustainable and warm society' defines the general outline for environmental enforcement in Flanders and determines that the environmental enforcement reports of the Flemish High Council of Environmental Enforcement shall evaluate the Environmental Enforcement Act and its practical implementation in a goal-oriented manner. The main lines and priorities of the policy are determined in annual environmental enforcement programmes. When considered desirable, organisational cooperation agreements will be embedded in enforcement protocols established under the auspices of the Flemish High Council of Environmental Enforcement. Furthermore, the Government of Flanders states that adequate training, permanent education and solutions to other needs of supervisors and criminal investigators will be provided.

In other words, this Coalition Agreement assigns a specific role to the environmental enforcement reports of the Flemish High Council of Environmental Enforcement. In addition to the subjects laid down in the Flemish Parliament Act, the reports must also make an evaluation of the practical implementation of the Environmental Enforcement Act.

The Policy Memorandum 2009-2014 on Environment and Nature of the Flemish Minister for Environment, Nature and Culture, Joke Schauvliege, lays down, among other things, the development of an effective administrative enforcement of environmental infringements and environmental offences as a strategic objective. The new legal framework – the Environmental Enforcement Act – should make it possible to react quickly and make a clear statement when imposing exclusive (in the case of environmental infringements) and alternative (in the case of environmental offences) administrative fines, both to offenders and to supervisors and reporting authorities. The development of a clear and coherent framework containing criteria on the basis of which the amount of the fine and/or the deprivation of benefits can be calculated, with a view to legal certainty, is considered equally important.

The implementation of the Environmental Enforcement Act is also included in the policy memorandum as an operational objective. The main lines and priorities of environmental enforcement policy will be determined, with account being taken of the recommendations in the annual environmental enforcement programmes that are drawn up by the Flemish High Council of Environmental Enforcement. The practice of enforcement will be evaluated for its effectiveness and efficiency, among other things via the annual environmental enforcement reports. Cooperation agreements between the different environmental enforcement actors will, when considered useful, be anchored in enforcement protocols. In the framework of the Flemish Parliament Act the Minister will grant support to supervisors and criminal investigators.

The idea is also that, as a result of the increase in the number of local (municipal, or, where they have been appointed, intermunicipal and police district) supervisors, the Flemish Environmental Inspectorate will be able to concentrate more on plants with greater environmental relevance (such as Seveso and IPPC companies) and on waste chain enforcement. The enforcement should change from a reactive to a proactive approach through specific thematic enforcement campaigns, on the one hand, and to a routine approach, on the other. In the latter, inspections focused on emissions and self-monitoring inspections of companies are of central importance. Attention should also be paid to the supervision of unlicensed facilities and activities which nevertheless require a licence.

In implementation of the Coalition Agreement of 15 July 2009 the Government of Flanders opts for a partnership with strong local administrations, also in the area of environmental and nature policy. Strategic objectives therefore include that the Government of Flanders fights compartmentalisation, creates more internal cooperation and synergies and supports local administrations in their pursuit of a local environmental policy. In this framework, the adjustment of the Cooperation Agreement 2008-2013 with the local authorities is an operational objective.



As regards the Cooperation Agreement 2008-2013 in particular and local environmental enforcement in general it may be useful within this framework to make mention of the White Paper 'Internal Reform of the Federated State'<sup>14</sup> of 8 April 2011. This reads as follows "In the frame of the Cooperative Agreement on the Environment, which runs until 2013, approximately 25 million euros is allocated to municipal and provincial authorities and questions are asked about the limited added value in relation to the planning burden which is deemed excessive. Given the maturity of the local environmental policy and the need for investment resources for sewage systems and operational resources for enforcement, the municipal share of the agreement is shifted to sewage systems for municipalities. The provincial share of the agreement, including the resources of the addendum of the agreement on municipalities, shall shift to enforcement by the Flemish Region instead of by municipalities or provinces." The precise impact and implications of this provision in the White Paper 'Internal Reform of the Federated State' for local enforcement are yet to become clear. The Flemish High Council of Environmental Enforcement has examined various possible scenarios regarding the role of the local supervisor in the enforcement landscape as a whole. In order to gain more clarity about the subject, the study 'Local Environmental Enforcement. The Implementation of the Environmental Enforcement Act at Municipal Level' was contracted out and a congress on Local Environmental Enforcement was organised in 2012.

In the Policy Paper on Environment and Nature 2011-2012 the Flemish Minister for Environment, Nature and Culture, Joke Schauvliege, refers in the context of environmental enforcement to the Flanders in Action key project 51-2 'Fully implementing the Environmental Enforcement Act with attention to the evaluation tracks and the impact thereof'<sup>15</sup>. It is mentioned that the LNE working group 'Environmental Enforcement' worked in 2011 on a further coordination of enforcement activities, a clarification of the legislation and the exchange of expertise, with great focus on the implementation of a uniform sanctions policy for environmental law in its entirety. The framework with criteria for determining the amount of fines was further refined and developed for a number of specific environmental breaches. In the autumn of 2011 a study was completed to develop a general framework and methodology for the instrument 'deprivation of financial benefit'. This policy paper also mentions that the Environmental Enforcement Programme 2011 of the Flemish High Council of Environmental Enforcement gathered the priorities of the different enforcement actors and that in 2011 as well the Environmental Enforcement Report 2010 was drawn up which gives a more complete picture of the implementation of the Environmental Enforcement Act. In 2012, the focus will be on the introduction and application of additional enforcement instruments and the general evaluation of the Environmental Enforcement Act which is laid down by Flemish Parliament Act. In her policy paper the Minister states that proposals for an adjustment of the legislation will be formulated, whenever necessary and desired. In addition the Minister declares that in 2012 work will be done towards the implementation of the White Paper 'Internal Reform of the Federated State' with regard to environmental enforcement and that the Environmental Enforcement Report 2011 will make an important contribution to the adjustment of the environmental enforcement policy. The working groups of the Flemish High Council of Environmental Enforcement analyse different problems regarding enforcement. If the policy requires adjustment, the VHRM can formulate recommendations on this matter, such as the implementation of the study 'Local Environmental Enforcement. The Implementation of the Environmental Enforcement Act' in 2012.

It should be clear that the Flemish High Council of Environmental Enforcement can and should play a role in the support of the Government of Flanders and the Flemish Minister for Environment, Nature and Culture in the implementation of the Coalition Agreement, the Policy Plan and the Policy Paper. As indicated earlier, the Flemish High Council of Environmental Enforcement itself also plays an important role in the design of the policy framework, viz. by annually drawing up the environmental enforcement report and the environmental enforcement programme. The Environmental Enforcement Reports 2009 and 2010 and the Environmental Enforcement Programmes 2010 and 2011 not only contain policy recommendations

14 The entire White Paper 'Internal Reform of the Federated State' of 8 April 2011 can be consulted at the following URL:

[http://ikdoe.vlaandereninactie.be/wp-content/uploads/2011/04/Witboek\\_8april2011.pdf](http://ikdoe.vlaandereninactie.be/wp-content/uploads/2011/04/Witboek_8april2011.pdf)

15 <http://www.vlaandereninactie.be/en>



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at the strategic level, but also operational recommendations for the environmental enforcement actors themselves. The development of the environmental enforcement report and the environmental enforcement programme forms a cycle in which both documents complement each other and in which comparisons can be made with regard to the further implementation of the Environmental Enforcement Act. As indicated earlier, it was impossible to draw up an Environmental Enforcement Programme 2012 due to a lack of personnel within the permanent secretariat of the Flemish High Council of Environmental Enforcement. In the future it will be examined whether the environmental enforcement programme should be fleshed out differently, so as to make it possible, for instance, to lay down the environmental enforcement priorities of the different actors on a more strategic level and to allow the Flemish High Council of Environmental Enforcement to perform its duties in a more methodical way.

## **2. Evaluation of the Flemish Environmental Enforcement Policy in 2011**

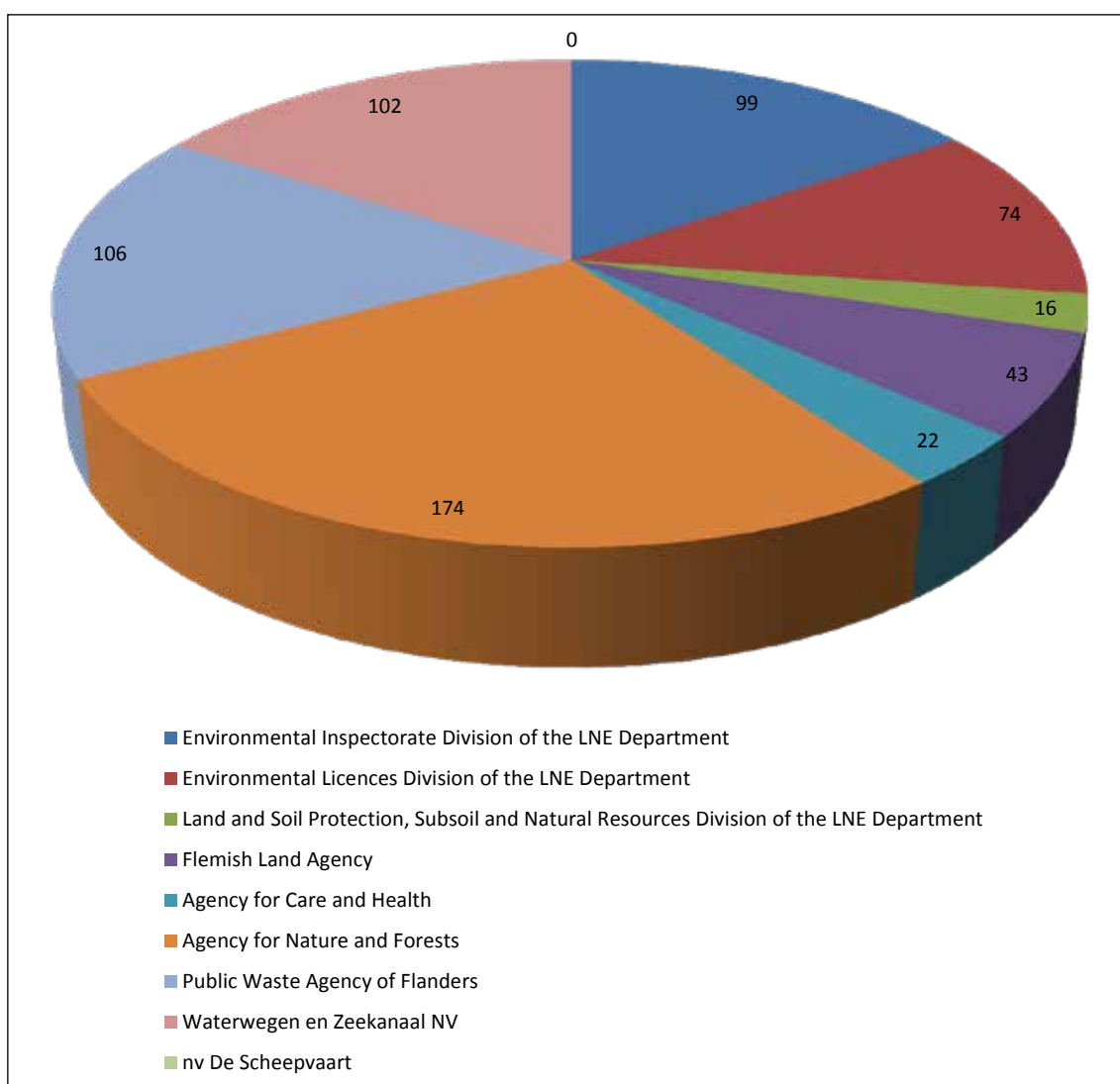
The purpose of this chapter is to evaluate the Flemish environmental enforcement policy from 1 January 2011 to 31 December 2011. However, it should be noted that it is not possible to make a real evaluation in the strict sense of the word of the entire environmental enforcement policy. The report rather relates to the enforcement and supervisory duties of the different actors who were active in the Flemish Region in 2011. Whenever possible, a comparison will also be made in terms of percentage with the data collected by the Flemish High Council of Environmental Enforcement in the Environmental Enforcement Report 2010.

### **2.1 Evaluation of the regional environmental enforcement policy**

#### **2.1.1 Appointed regional supervisors**

The Environmental Enforcement Act determines in Article 16.3.1 that the personnel of the department and the agencies coming under the policy areas of Environment, Nature and Energy, Welfare, Public Health and Family, and Mobility and Public Works can be appointed as supervisors by the Government of Flanders. It concerns the following enforcement actors: the Secretary General of the Department of Environment, Nature and Energy (LNE); the Environmental Inspectorate Division of the LNE Department; the Environmental Licenses Division of the LNE Department; the Land, Soil Protection, Subsoil and Natural Resources Division of the LNE Department; the Flemish Land Agency; the Flemish Environment Agency; the Agency for Care and Health; the Agency for Nature and Forests; the Public Waste Agency of Flanders, and Waterwegen en Zeekanaal NV (Waterways and Sea Canal plc). Since 2010, following the introduction of the amendment decree of the Government of Flanders of 19 November 2010, the Agency for Roads and Traffic, the Maritime Access Division of the Department of Mobility and Public Works and nv De Scheepvaart (Shipping Agency plc) can appoint supervisors as well. Article 16.3.2 of the Environmental Enforcement Act also stipulates that only persons who have the necessary qualifications and characteristics to adequately perform the supervisory duties can be appointed supervisors.

In the questionnaire the regional supervisory bodies were therefore asked about the number of supervisors, appointed by the Government of Flanders, they had at their disposal in 2011. The graph below shows the number of supervisors used by the regional enforcement actors in 2011.



Graph 1 Number of supervisors per regional enforcement actor in 2011

The Flemish High Council of Environmental Enforcement did not receive any response from the Secretary General of the Department of Environment, Nature and energy, the Flemish Environment Agency and the Maritime Access Division of the Department of Mobility and Public Works. Therefore, these actors were not included in the above graph.

Through the Ministerial Order of 20 June 2011 30 supervisors were appointed for nv De Scheepvaart. These competences were basically assigned to the dike inspectors of this organisation. In accordance with Article 35 of the Environmental Enforcement Decree, these appointed regional supervisors would receive an identity card in accordance with the Flemish Government Decree of 10 July 2008 on the identity cards of the staff of the services of the Government of Flanders who are in charge of inspection or control. However, nv De Scheepvaart has communicated that it has never received these cards. That is why the number of supervisors is presented as zero in the above graph.

The different responding regional enforcement actors all had several supervisors at their disposal in 2011. However, their number differs greatly. Some enforcement actors could call on the services of a large

number of supervisors appointed within the organisation itself, whereas other actors had to perform their duties using a small number of supervisors. This can probably be explained by the fact that some enforcement actors were assigned a large number of supervisory duties, whereas other actors are charged with enforcing a limited number of laws and Flemish Parliament Acts, as a result of which 'supervision' is rather an additional task for them. In addition it is also possible for an enforcement actor with limited competences to choose to appoint a large number of supervisors, so that the supervisory duties can be spread over a wide range of supervisors. Since the legislator merely indicates in the Environmental Enforcement Act that certain persons can be appointed as regional supervisors, provided they have the necessary qualifications and characteristics to adequately perform the supervisory duties and provided they are personnel of the department and agencies belonging to one of the policy areas referred to in Article 2 of the framework Flemish Parliament Act on administrative policy of 18 July 2003, that are appointed by the Government of Flanders, but does neither further specify whether these supervisors must be engaged full-time in environmental law enforcement nor what exactly these necessary qualifications and characteristics should be, the regional enforcement bodies can decide for themselves how the supervision is organised within their organisation.

Thanks to the data from the Environmental Enforcement Report 2010, it became possible to compare the total number of supervisors which the supervisory body had at its disposal in 2010 and 2011. This ratio is reflected in the table below.

Regional enforcement actor	Number of supervisors in 2010	Number of supervisors in 2011
Environmental Inspectorate Division of the LNE Department	100	99
Environmental Licences Division of the LNE Department	80	74
Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department	8	16
Flemish Land Company	41	43
Flemish Environment Company	4 <sup>16</sup>	Non-response
Agency for Care and Health	24	22
Agency for Nature and Forests	175 <sup>17</sup>	174 <sup>18</sup>
Public Waste Agency of Flanders	96	106
Waterwegen en Zeekanaal NV	102	102
Agency for Roads and Traffic - Planning and Coordination Division	Not available	Not available
Maritime Access Division of the Department of Mobility and Public Works	0	Non-response
nv De Scheepvaart	0	0
<b>Total</b>	<b>630</b>	<b>636</b>

Table 1 *Number of supervisors per regional enforcement actor in 2010 and 2011*

The number of appointed supervisors with the regional enforcement actors remained practically the same in 2011 as in 2010. Neither a declining nor a rising trend was observed in general. Certain actors did, however, report a decline. The Environmental Licences Division, for instance, had 74 supervisors at its disposal in 2011 instead of 80 in 2010, whereas other actors had more supervisors at their disposal in 2011.

<sup>16</sup> 2010 is the first year in which the VMM had supervisors at its disposal. Investments were mainly made in training. At the beginning of 2011, the number of supervisors was extended.

<sup>17</sup> Excluding 96 supervisors from the Policy Division of the Agency for Nature and Forests (ANB) who only have right of access but are not authorised to establish environmental infringements or environmental offences. Therefore they are not included in the aforementioned figure.

<sup>18</sup> Excluding 92 supervisors from the Policy Division of the Agency for Nature and Forests (ANB) who only have right of access but are not authorised to establish environmental infringements or environmental offences. Therefore they are not included in the aforementioned figure.

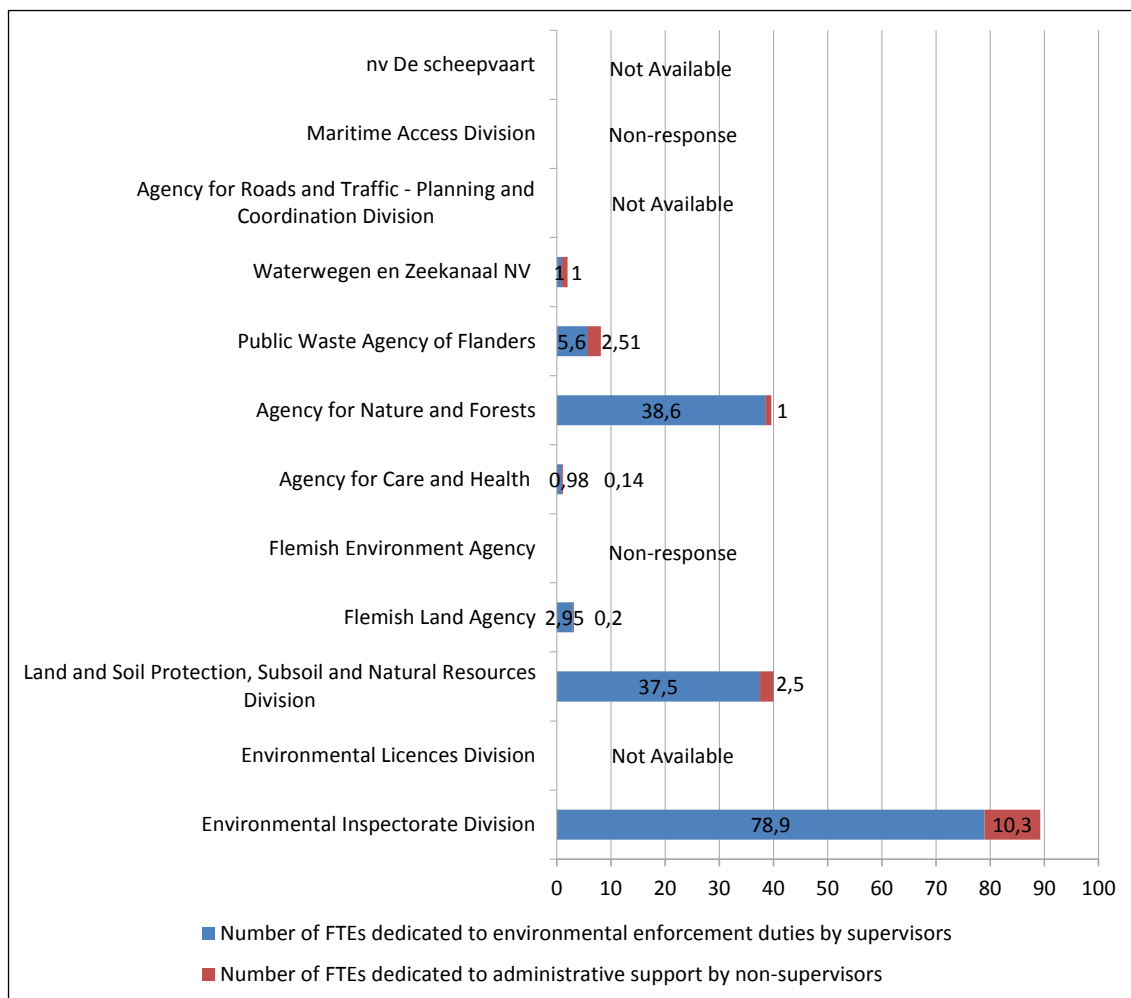
The number of supervisors with the Land and Soil Protection, Subsoil and Natural Resources Division, for instance, doubled and the Public Waste Agency of Flanders had 10 additional supervisors at its disposal in 2011.

As indicated earlier, 30 supervisors were appointed by nv De Scheepvaart in 2011, but these supervisors do not yet have the required identity card.

### **2.1.2 Efforts related to environmental enforcement duties**

As indicated above, the way in which the regional enforcement bodies organise their enforcement duties varies strongly. Some actors have appointed a lot of supervisors, while the environmental enforcement duties are rather limited. However, these appointments may be necessary because enforcement (either on a limited basis or not) can be part of the duties of each staff member. There are also bodies where the supervisors are engaged almost full-time in the implementation of environmental enforcement duties. This means that the number of appointed supervisors does not provide an accurate picture of the enforcement duties that are actually carried out. For this reason, the regional supervisory bodies were also asked to indicate how many full-time equivalents (FTEs) were dedicated to enforcement duties in 2011. As mentioned before, the Environmental Enforcement Act does not specify how many FTEs should be dedicated to enforcement duties. Nevertheless, the number of FTEs can provide a clearer and more balanced picture of the actual efforts that are made in the field of environmental enforcement.

The total amount of time dedicated to environmental enforcement duties by the regional supervisors – expressed in FTEs – can be presented by means of the following graph. In addition, the graph below represents the number of FTEs that were dedicated to the administrative support of environmental enforcement duties by non-supervisors.



Graph 2 Efforts related to environmental enforcement duties in FTEs in 2011

The graph above clearly shows that there is a large difference between the different enforcement actors in terms of the number of FTEs that were dedicated to environmental enforcement duties by the appointed regional supervisors in 2011 and of how the supervision was organised within the organisation. Naturally, this goes hand in hand with the assigned supervisory duties. The Environmental Inspectorate Division, for instance, had almost 79 FTEs and 99 supervisors at its disposal for enforcement duties, whereas the Agency for Care and Health had only 0.98 FTEs, but 22 supervisors. This can be explained by the duties and the share of enforcement therein of these enforcement actors. In the Environmental Inspectorate Division the supervisors are engaged almost full-time in enforcement, whereas among the supervisors of the Agency for Care and Health only a very limited number of supervisors dedicate their time to this. The enforcement duties of some organisations pertain to a very specific component of environmental health law and constitute only a small share of the whole set of duties of these staff members.

However, the question can be raised as to whether it is a good thing to combine the function of supervisor with other functions, since the time some actors spend on enforcement duties seems to be minimal. It should be assessed whether the environmental enforcement duties of a specific actor are that specific and complex that intensive training and experience are required to realise the enforcement in the best possible way. If the enforcement actor has complex enforcement duties, it seems to make more sense for the supervisors to be specialists who are engaged full-time in enforcement rather than generalists for whom

environmental law enforcement is an additional duty on top of their already existing duties.

Once again, the Environmental Licences Division of the Department of Environment, Nature and Energy failed to communicate to the Flemish High Council of Environmental Enforcement how many FTEs were dedicated to environmental enforcement duties. This information was not made available for the Environmental Enforcement Report 2010 either. This was due to the fact that no specific time registration was done by the Environmental Licences Division. For the Environmental Enforcement Report 2009, on the other hand, it could be reported that a total of 84 supervisors were appointed and a total of 0.15 FTEs were dedicated to environmental enforcement duties. Naturally, the Flemish High Council of Environmental Enforcement hopes that the Environmental Licences Division will register these data in 2012 in view of the reporting for the next environmental enforcement report.

The enforcement actors were also asked how many FTEs were dedicated to environmental enforcement duties by non-supervisors in 2011. The question concerned the staff members who provide administrative support within the framework of the organisation's supervisory duties, such as the drawing up of enforcement policy, reporting, correspondence and legal assistance. The graph above shows that the regional enforcement organisations strongly differ from each other in this field as well and that there is no correlation between the number of FTEs dedicated by supervisors and the number of FTEs dedicated by non-supervisors. In the Environmental Inspectorate Division, for instance, about 11% of the total number of FTEs dedicated to environmental enforcement in 2011 was spent by non-supervisors on administrative support. The Environmental Inspectorate Division remarks, however, that the administrative support (drawing up of enforcement policy, reporting,...) within the Division was for the main part carried out by the supervisors themselves. The administrative support by non-supervisors within the Environmental Inspectorate Division mainly has to do with correspondence, file management application and logistics with regard to the control duties. It is the ambition of the Environmental Inspectorate Division to optimise the support of supervisory and enforcement duties, among other things by calling in the services of administrative staff and by using a supporting file management application and a template system for enforcement documents. With Waterwegen en Zeekanaal NV this even amounted to 50% and with the Public Waste Agency of Flanders (OVAM) to 30%. The 2.51 FTEs that were used by OVAM for administrative support only partially had to do with the drawing up of the agency's enforcement policy, reporting, correspondence, legal assistance, etc. More than half of these 2.51 FTEs were dedicated to the support of external inspection services and the police for providing advice, assessing ECO-forms of the police, providing training, answering questions from external inspection services, the police and the public prosecutor's offices,... The goal of this support is to have the inspections by these external inspections services and the police pass off efficiently and effectively. With the Agency for Nature and Forests and with the Flemish Land Agency this involves 2.53% and 6.25% respectively of the total number of FTEs dedicated to enforcement duties. This could indicate that (almost) all members of staff who have practical enforcement duties, either administrative or not, were appointed within the organisation as supervisors or that the supervisors, in addition to their inspections, were also responsible themselves for the administrative, policy-based and legal support of their inspection duties, whereas other organisations chose to have these duties performed by non-supervisors. The Environmental Inspectorate Division remarks that this conclusion also applies to the Environmental Inspectorate Division, given the remark formulated earlier with regard to the administrative duties of the supervisors themselves.

A comparison can be made between 2010 and 2011 on the basis of the data from the Environmental Enforcement Report 2010. Within the framework of the Environmental Enforcement Report 2010 it was asked how many FTEs the supervisors dedicated to environmental enforcement duties under the Environmental Enforcement Act and how many FTEs were dedicated to the administrative support of environmental enforcement duties. This made it possible to reflect the total amount of time dedicated to environmental enforcement duties by the regional supervisory bodies. However, because this question was interpreted differently by the supervisory bodies, a clarification was added to the questionnaire used for

drawing up the present environmental enforcement report. It was asked how many FTEs these supervisors dedicated to environmental enforcement duties in the context of the Environmental Enforcement Act and how many FTEs were dedicated by non-supervisors to the administrative support of environmental enforcement duties. Therefore, for the analysis of the comparison below, account should be taken of the fact that the figures of 2010 cannot be interpreted in the same way for each actor. For some actors the FTEs dedicated to the administrative support of enforcement duties in 2010 and 2011 refer to the FTEs dedicated by non-supervisors, whereas with some other actors the number of FTEs dedicated to the administrative support of environmental enforcement duties in 2010 refers to the administrative duties carried out by the supervisors. The administrative support of environmental enforcement duties does indeed, like in the 2010 and 2011 surveys, refer to the amount of time dedicated within the framework of the environmental enforcement duties by non-supervisors. This may include, for instance, policy-based support (drawing up of reports and programmes), purely administrative duties (correspondence, organisation of controls), and legal assistance (developing internal guidelines for supervisors).

The table below gives a comparison of the total number of FTEs dedicated to environmental enforcement duties in 2010 and 2011 by the supervisory body and the breakdown between the number of FTEs dedicated by supervisors and the number of FTEs dedicated by non-supervisors (in the context of administrative support).

Regional enforcement actor	Total FTEs dedicated to environmental enforcement duties		FTEs dedicated by supervisors to environmental enforcement duties		FTEs dedicated by non-supervisors to administrative support of environmental enforcement duties	
	2010	2011	2010	2011	2010	2011
Environmental Inspectorate Division of the LNE Department	91.40	89.2	81.10	78.9	10.30	10.3
Environmental Licences Division of the LNE Department	Not available	Not available	Not available	Not available	Not available	Not available
Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department	3.15	3.15	2.95	2.95	0.20	0.20
Flemish Land Agency	39.90	40.00	35.60	37.50	2.30	2.50
Flemish Environment Agency	0.20	Non-response	0.20	Non-response	0.00	Non-response
Agency for Care and Health	2.51	1.12	2.20	0.98	0.31	0.14
Agency for Nature and Forests	45.05	39.60	45.05 <sup>19</sup>	38.60 <sup>20</sup>	0.00	1.00
Public Waste Agency of Flanders	8.10	8.11	6.10	5.60	2.00	2.51
Waterwegen en Zeekanaal NV	2.00	2.00	1.00	1.00	1.00	1.00
Agency for Roads and Traffic - Planning and Coordination Division	Not available	Not available	Not available	Not available	Not available	Not available
Maritime Access Division of the Department of Mobility and Public Works	0.00	Non-response	0.00	Non-response	0.00	Non-response
nv De Scheepvaart	0.00	Not available	0.00	Not available	0.00	Not available
<b>Total</b>	<b>192.31</b>	<b>183.18</b>	<b>174.20</b>	<b>165.53</b>	<b>16.11</b>	<b>17.65</b>

Table 2 Efforts related to environmental enforcement duties in 2010 and 2011



No general evolution can be established in the total number of FTEs dedicated to environmental enforcement duties in 2010 and 2011. With some actors this number either remained the same or rose slightly, whereas with other actors this number decreased by maximum 3.35 FTEs. If the enforcement body already had a fairly large number of FTEs at its disposal in 2010, this decrease is less noticeable. On the other hand, for an organisation such as the Agency for Care and Health which only dedicated 2.51 FTEs to enforcement duties in 2010, a decrease of more than 50% could be observed. It can be concluded from this that the organisation pays much less attention to environmental enforcement. The decrease in the total number of FTEs dedicated to enforcement duties was, with most bodies, mainly reported in the FTEs which supervisors dedicated to environmental enforcement duties.

For the Environmental Inspectorate Division, the Flemish Land Agency, the Agency for Nature and Forests and the Agency for Care and Health the decrease or increase in the number of FTEs goes hand in hand with a decrease or increase in the number of supervisors. With the Land and Soil Protection, Subsoil and Natural Resources Division and Waterwegen en Zeekanaal NV, on the other hand, an increase in the number of supervisors and a decrease in the number of FTEs could be reported compared to 2010. This means that more supervisors were appointed, but that less time was dedicated to enforcement.

In order to be better able to interpret the efforts of the regional supervisory bodies in the field of environmental enforcement in their context, it was asked how many environmental enforcement inspections were carried out by these supervisors between 1 January 2011 and 31 December 2011. The definition of 'inspection' is as follows: "An inspection in the context of environmental enforcement is to examine with a legal and/or a natural person who is bound by environmental law obligations, whether or not this legal and/or natural person actually complies with these legal obligations. This can be broken down into on-site inspections or inspections of documents".<sup>21</sup> In order to obtain a more detailed picture of the number of inspections, the regional environmental enforcement actors were explicitly asked to make a distinction between the number of environmental enforcement inspections carried out by the supervisors and the number of inspections - supervised<sup>22</sup> by these supervisors - carried out by accredited/certified institutions or recognised experts. It should be added in this context that not each regional environmental enforcement actor has the authority to have such inspections carried out and to supervise them. The table below gives an overview of the total number of environmental enforcement inspections carried out by the supervisors and the total number of supervised inspections (if applicable) in 2011.

19 Including 4 FTEs administrative support by supervisors. Excluding the FTEs dedicated by the Management Division of the ANB (foresters, regional managers,...); this amount of time dedicated is estimated at 8 FTEs, but cannot be precisely calculated since the persons concerned usually perform their management and supervisory duties at the same time. For the Environmental Enforcement Report 2010, 41.05 FTEs dedicated by supervisors to environmental enforcement duties and 4 FTEs dedicated to the administrative support of environmental enforcement duties were reported. However, these 4 FTEs were dedicated by the supervisors themselves. That is why in the present environmental enforcement report 45.05 FTEs are included as the total number of FTEs dedicated to environmental enforcement duties by supervisors in 2010.

20 Including 4 FTEs administrative support by supervisors. Excluding the FTEs dedicated by the Management Division of the ANB (foresters, regional managers,...); this amount of time dedicated is estimated at 8 FTEs, but cannot be precisely calculated since the persons concerned usually perform their management and supervisory duties at the same time.

21 VHRM glossary, page 10: <http://www.vhrm.be/voor-de-toezichthouder/glossarium/>

22 'Supervised' means that the supervisors monitor the quality of the inspections by certified organisms and intervene if necessary.

Regional enforcement actor	Number of environmental enforcement inspections carried out by supervisors	Number of inspections - supervised by supervisors - carried out by accredited/certified institutions or recognised experts
Environmental Inspectorate Division of the LNE Department	11,923	-
Environmental Licences Division of the LNE Department	121	428 <sup>23</sup>
Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department	260	-
Flemish Land Agency	377 <sup>24</sup>	111
Flemish Environment Agency	Non-response	-
Agency for Care and Health	39	-
Agency for Nature and Forests	7,384	-
Public Waste Agency of Flanders	555	92 <sup>25</sup>
Waterwegen en Zeekanaal NV	Not available	-
Agency for Roads and Traffic - Planning and Coordination Division	Not available	Not available
Maritime Access Division of the Department of Mobility and Public Works	Non-response	Non-response
nv De Scheepvaart	Not available	-
<b>Total</b>	<b>20,659</b>	<b>631</b>

*Table 3 Total number of environmental enforcement inspections carried out by supervisors and total number of supervised inspections in 2011*

The table above shows that some environmental enforcement actors, in addition to the inspections carried out by their own supervisors, also supervise inspections that are carried out by accredited/certified inspection bodies. This means that the inspections are carried out by another body, but that these inspections are checked or supervised by (the supervisors of) the regional environmental enforcement actors. This turned out to be the case in 2011 within the Environmental Licences Division, the Flemish Land Agency and the Public Waste Agency of Flanders. However, not every enforcement actor has the authority to have inspections performed by accredited inspection institutions. The Environmental Licences Division remarks in this context that during these inspections the supervisors can also carry out on-site inspections or inspections of documents themselves, and can take care of any subsequent enforcement measures.

Within the Environmental Licences Division, the Flemish Land Agency and the Agency for Nature and Forests the number of environmental enforcement inspections carried out increased in 2011 compared to 2010. Within the Environmental Inspectorate Division and the Public Waste Agency of Flanders this number declined slightly, which can be explained by the decrease in the number of supervisors and the declining number of available FTEs. OVAM also communicated that, in addition to the above-mentioned

<sup>23</sup> Inspections of liquid and gaseous fuel engineers.

<sup>24</sup> A total of 4,086 different inspection processes, laid down in 2,654 reports (initial and follow-up inspection reports, official reports, administrative measures), of which 377 inspections for which sanctions are imposed in accordance with the Environmental Enforcement Act.

<sup>25</sup> The Public Waste Agency of Flanders communicated not having complete information at its disposal with regard to the inspections by accredited/certified institutions.

555 inspections of 2011, 637 inspections were carried out by external inspection services, the police or Customs, for which the Public Waste Agency of Flanders provided support. During these inspections only support was given. Consequently, the inspections themselves as well as the results are the responsibility of external inspection services, the police and Customs. Within the Land and Soil Protection, Subsoil and Natural Resources Division the number of inspections decreased despite the fact that this Division had more supervisors at its disposal in 2011. A remarkable decline in the number of performed environmental enforcement inspections could be registered within the Agency for Care and Health. Whereas the Agency still carried out 866 environmental enforcement inspections in 2010, only 30 inspections were performed in 2011. This runs parallel to the strong decline in the FTEs that are made available.

The table below not only reflects the number of supervisors, the total number of FTEs dedicated to enforcement duties<sup>26</sup> and the number of environmental enforcement inspections carried out by the supervisors, but also makes a comparison by dividing the number of performed environmental enforcement inspections by the number of supervisors, in order to present the average number of inspections per supervisor. Because an inspection is often more than just actually carrying out the inspection and paying an on-site visit, the number of inspections carried out by the supervisors will, in order to obtain a more balanced picture, be divided by the total number of FTEs dedicated to enforcement duties per regional body, with an eye to presenting an average number of inspections per FTE. In this way the preparations of each inspection and the administrative process are taken into account as well. So as not to provide a distorted picture, the number of inspections will only relate to those inspections that were actually carried out by the appointed supervisors and not those inspections which were supervised by the supervisors.

Regional enforcement actor	Number of supervisors	Total number of FTEs	Number of inspections carried out by supervisors	Average number of inspections per supervisor	Average number of inspections per FTE
Environmental Inspectorate Division of the LNE Department	99	89.2	11,923	120.43	133.67
Environmental Licences Division of the LNE Department	74	Not available	121	1.64	Not available
Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department	16	3.15	260	16.25	82.54
Flemish Land Agency	43	40	377	8.77	9.43
Flemish Environment Agency	Non-response	Non-response	Non-response	Non-response	Non-response
Agency for Care and Health	22	1.12	39	1.77	34.82
Agency for Nature and Forests	174	39.60	7,384	42.44	186.46
Public Waste Agency of Flanders	106	8.11	555	5.24	68.43
Waterwegen en Zeekanaal NV	102	2	Not available	Not available	Not available
Agency for Roads and Traffic - Planning and Coordination Division	Not available	Not available	Not available	Not available	Not available
Maritime Access Division of the Department of Mobility and Public Works	Non-response	Non-response	Non-response	Non-response	Non-response
nv De Scheepvaart	0	Not available	Not available	Not available	Not available
<b>Total</b>	<b>636</b>	<b>183.18</b>	<b>20,659</b>	<b>32.48</b>	<b>112.77</b>

Table 4 Efforts related to environmental enforcement duties 2011

Besides the number of environmental enforcement inspections carried out, the average number of inspections per supervisor is another possible perspective from which to look at the efforts of the regional

<sup>26</sup> It shows both the number of FTEs dedicated by supervisors to environmental enforcement duties within the framework of the Environmental Enforcement Act and the number of FTEs dedicated by non-supervisors to the administrative support of environmental enforcement duties.

enforcement actors. The table above shows a large asymmetry between the different supervisors with regard to the average number of inspections per supervisor. Within the Environmental Inspectorate Division and the Agency for Nature and Forests the average number of inspections per supervisor is respectively at 120.3 and 42.4, whereas with the other responding regional supervisors this number amounts to a maximum of 16.25 and a minimum of 1.64 inspections per supervisor. This large discrepancy can partially be explained by the fact that environmental law enforcement is an exclusive duty for the Environmental Inspectorate Division and the staff, whereas for other enforcement bodies this is often an additional duty, both for the organisation and for the staff.

The Environmental Inspectorate Division also reports that within the Division the inspections are (almost) exclusively prepared by the supervisors, but that support is given by the administrative staff in terms of administrative processing. The inspections are only carried out by the supervisors.

It is communicated in the table above that the total number of FTEs and the number of inspections carried out by supervisors are not available for nv De Scheepvaart. This means that the average number of inspections per supervisor and the average number of inspections per FTE cannot be calculated. Nv De Scheepvaart communicated that the enforcement within the context of the current Flemish Parliament Act on Materials, the Act on Surface Waters and the Flemish Parliament Act on Integrated Water Policy is part of the general extensive set of duties of the dike inspectors. The enforcement duties as laid down in the Environmental Enforcement Act and for which the dike inspectors of nv De Scheepvaart are competent, cannot be detached from the other duties within their set of duties. Since the duties regarding environmental enforcement are strongly integrated into the general set of duties of the dike inspectors, it was impossible for nv De Scheepvaart to give the number of FTEs and the number of inspections. The actions taken by the dike inspectors of nv De Scheepvaart in the field of environmental enforcement in 2011 were therefore always either directly or indirectly related to other duties. Waterwegen en Zeekanaal NV could not give the number of inspections carried out by the supervisors under the Environmental Enforcement Act either. In fact, it was communicated that no specific actions were carried out in 2011 and that the environmental enforcement inspections are embedded in the daily inspections of/along waterways.

Yet, another - more accurate - picture is obtained when comparing the number of performed inspections with the total number of FTEs that were dedicated to enforcement duties. With all the responding enforcement actors for whom this calculation could be made, the average was much higher than the number of inspections per supervisor. The average number of inspections per FTE is the highest within the Agency for Nature and Forests, as in 2011, 186.46 inspections were carried out per full-time equivalent. Within the Environmental Inspectorate Division and the Land and Soil Protection, Subsoil and Natural Resources Division the average number of inspections per FTE is respectively at 133.67 and 82.54.

The number of inspections of the Flemish Land Agency only refers to those inspections for which sanctions are imposed in accordance with the Environmental Enforcement Act. In 2011, however, a total of 4,086 different inspections were recorded within the Flemish Land Agency.

The lowest average number of inspections per supervisor, viz. 1.64, can be found within the Environmental Licences Division. It was impossible, however, to calculate the average number of inspections per FTE for the Environmental Licences Division, since the number of FTEs that were used for environmental enforcement duties was not available. In 2011, no specific time registration was done either by the Environmental Licences Division. As a result, it is impossible to express the amount of time dedicated in FTEs. The low average number of inspections per supervisor can be explained by the fact that the limited number of inspections was carried out by a large number of supervisors. The reason for this is that the enforcement duty of these supervisors is only a small component of their extensive set of duties.

The figures from the Environmental Enforcement Report 2010 allow for a comparison to be made between the average number of inspections per supervisor in 2010 and 2011, and the average number of inspections per FTE. Just like in the above table the number of inspections will only refer to those inspections that were actually carried out by the appointed supervisors and not the inspections that were supervised by these supervisors. In addition, the number of FTEs refers to the total number of FTEs dedicated to enforcement duties, which means both the number of FTEs dedicated to enforcement duties by the supervisors and the FTEs dedicated to the administrative support of environmental enforcement duties<sup>27</sup>. As indicated earlier, the idea is to provide a more complete picture of the implementation of an inspection.

In the table and graphs below a comparison is made between the average number of inspections per regional supervisor in 2010 and 2011 and between the average number of inspections per FTE in 2010 and 2011.

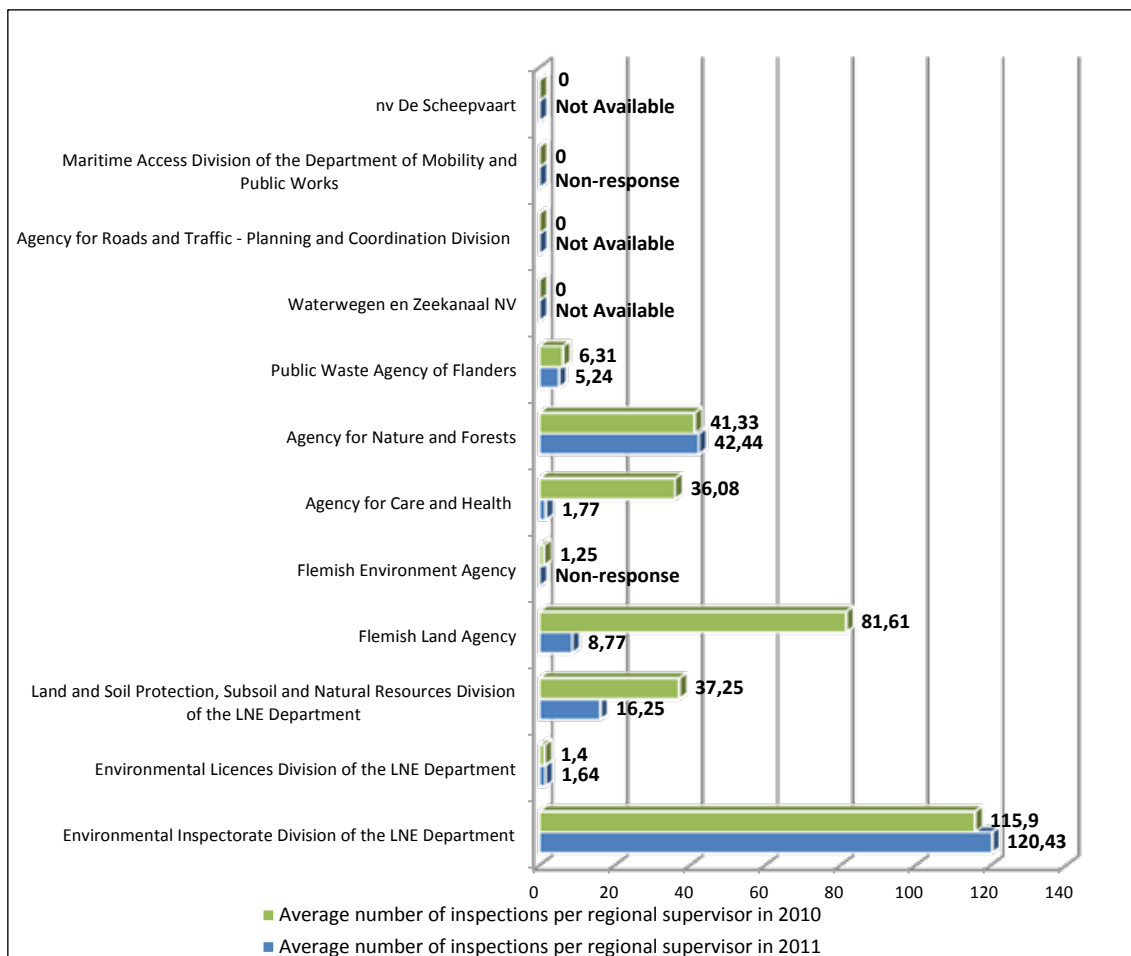
Regional enforcement actor	Average number of inspections per regional supervisor		Average number of inspections per FTE	
	2010	2011	2010	2011
Environmental Inspectorate Division of the LNE Department	115.90	120.43	126.81	133.67
Environmental Licences Division of the LNE Department	1.4 <sup>28</sup>	1.64	Not available <sup>29</sup>	Not available
Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department	37.25	16.25	94.60	82.54
Flemish Land Agency	81.16	8.77	75.02	9.43
Flemish Environment Agency	1.25	Non-response	25	Non-response
Agency for Care and Health	36.08	1.77	345.02	34.82
Agency for Nature and Forests	41.33	42.44	160.55	186.46
Public Waste Agency of Flanders	6.31	5.24	74.81	68.43
Waterwegen en Zeekanaal NV	0.00	Not available	0.00	Not available
Agency for Roads and Traffic - Planning and Coordination Division	Not available	Not available	Not available	Not available
Maritime Access Division of the Department of Mobility and Public Works	0.00	Not available	0.00	Not available
nv De Scheepvaart	0.00	Not available	0.00	Not available
<b>Total</b>	<b>39.88</b>	<b>32.48</b>	<b>130.65</b>	<b>112.77</b>

*Table 5 Comparison of the average number of inspections per regional supervisor and the average number of inspections per FTE in 2010 and 2011*

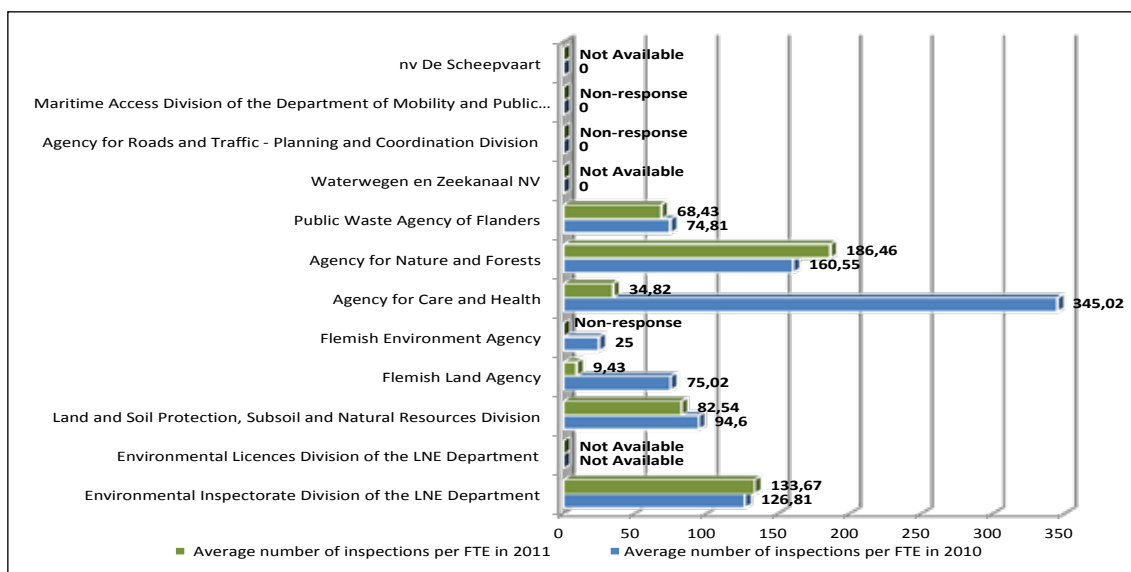
27 As mentioned earlier, the surveyed environmental enforcement actors interpreted the concept 'administrative support' differently in the survey for the Environmental Enforcement Report 2010. Therefore, some caution is to be exercised in interpreting these 2010 data: the data cannot be compared for all the actors just like that.

28 The Environmental Licences Division reported an average number of inspections per supervisor of 6.53 and a total of 522 inspections in 2010. Out of these 522 inspections, 410 inspections were carried out of liquid and gaseous fuel engineers (309 inspections and 101 reinspections after inspections with an unacceptable measurement result), 12 inspections of laboratories and 100 inspections of the in-service training of environmental coordinators. However, it should be mentioned here that the 410 inspections of liquid and gaseous fuel engineers were not carried out by the supervisors of the Environmental Licences Division themselves, but by an accredited inspection body. The average number of inspections per supervisor of the Environmental Licences Division should therefore be reduced from 6.53 to 1.4.

29 No specific time registration was done by the Environmental Licences Division in 2010. As a result, it is impossible to express the amount of time dedicated in FTEs.



Graph 3 Comparison of the average number of inspections per regional supervisor in 2010 and 2011



Graph 4 Comparison of the average number of inspections per FTE in 2010 and 2011

The table and graphs above show that there is no uniform evolution in the average number of inspections per supervisor. For the Environmental Inspectorate Division, the Environmental Licences Division and the Agency for Nature and Forests this average rose respectively from 115.90 inspections in 2010 to 120.43 in 2011, from 1.40 in 2010 to 1.64 in 2011 and from 41.33 in 2010 to 42.44 in 2011.

The substantial decrease in the average number of inspections per supervisor - including in the average number of inspections per FTE - within the Flemish Land Agency can be explained by the fact that the total number of environmental enforcement inspections carried out in 2010 referred to those inspections that were carried out by the Flemish Land Agency under the Flemish Parliament Act on Manure and the Environmental Enforcement Act, whereas the total number of environmental enforcement inspections carried out in 2011 only referred to those inspections that were carried out under the Environmental Enforcement Act. If, for 2011, the 4,086 inspections (both under the Flemish Parliament Act on Manure and the Environmental Enforcement Act) are taken into account, the average number of inspections per supervisor amounts to 95.02 and the average number of inspections per FTE to 102.15, which is thus not a decrease, but on the other hand a substantial increase.

Within the Land and Soil Protection, Subsoil and Natural Resources Division a strong decline is recorded in the average number of inspections per supervisor. Since this decrease is not as strong as in the average number of inspections per FTE, it may be assumed that this strong decline is owing to a doubling of the number of supervisors in 2011.

It can be established that the average number of inspections per regional supervisor and the average number of inspections per FTE within the Agency for Care and Health have strongly declined. This is due to the fact that the Agency for Care and Health only carried out 39 environmental enforcement inspections in 2011, as compared to 866 inspections in 2010. The total number of FTEs used for enforcement duties also decreased by more than 50% in 2011. It can therefore be concluded that the Agency for Care and Health generally devotes less attention to environmental enforcement.

Within the Public Waste Agency of Flanders as well the average number of inspections per supervisor and the average number of inspections per FTE fell in 2010, compared to 2011.

## **2.2 Evaluation of the environmental enforcement policy pursued by the police**

To draw up the present environmental enforcement report the Flemish High Council of Environmental Enforcement again surveyed the federal and local police about their environmental enforcement activities. It was asked, among other things, how many official reports were drawn up by the federal and local police for environmental offences in the Flemish Region following reports, complaints or offenders being caught in the act between 1 January 2011 and 31 December 2011. More detailed information was also asked about the specific activities of the federal police in the context of environmental enforcement and about the activities of the supervisors appointed within the local police districts.

### **2.2.1 In general**

The table below gives an overview of the types of official reports that were drawn up with regard to the environment by police forces in 2011. The figures include both the initial official reports and the simplified official reports.<sup>30</sup> The fact that the simplified official reports are included as well explains the difference

<sup>30</sup> Simplified official reports are mainly drawn up for non-serious breaches, for instance with unknown offenders, which are not systematically referred to the public prosecutor's office.

between the number of official reports drawn up by the police forces and the number of dossiers - drawn up by the police forces - received by the public prosecutor's offices (cf Chapter 4.1). The figures originate from the General National Database. The General National Database (Algemene Nationale Gegevensbank/ ANG) is the whole of information systems of the integrated police force, the purpose of which is to support the duties of the judicial or administrative police, so as to guarantee a maximally structured and secured information management.<sup>31</sup>

Type of breach	Units			Total
	Local police	Federal police	Other	
Waste by professional person	491	42	1	534
Waste shipment	119	34	0	153
Waste: licence-recognition	56	5	0	61
Waste by private person	3,478	65	3	3,546
Air pollution	453	5	1	459
Water pollution	194	21	1	216
Soil pollution	105	2	0	107
Noise pollution	546	9	0	555
Environment flora fauna Destruction	346	7	2	349
Environment flora fauna Animal welfare	688	6	20	715
Environment flora fauna Nature protection	322	8	13	343
Environment flora fauna Licence recognition	63	8	6	77
Environment flora fauna Other	2	0	0	2
Other phenomena linked to Environment <sup>32</sup>	11,639	259	105	12,003
<b>Total</b>	<b>18,502</b>	<b>466</b>	<b>152</b>	<b>19,120</b>

Table 6 *Official reports drawn up by police forces for environmental offences in the Flemish Region in 2011*

The table above shows that the majority of the official reports in 2011 were drawn up by the local police. 96.76% of the total of 19,120 official reports regarding environment were produced by the local police, 2.43% by the federal police and 0.79% by other police services.

In addition, the figures above indicate that most of the official reports of 2011 were classified in the category 'other phenomena regarding the environment', namely almost 63% of the total number of official reports drawn up. This category includes, among other things, noise nuisance, as well as infringements which do not fall within the scope of the Environmental Enforcement Act, such as infringements within the framework of spatial planning or fireworks fraud. The second largest category, both for the local and

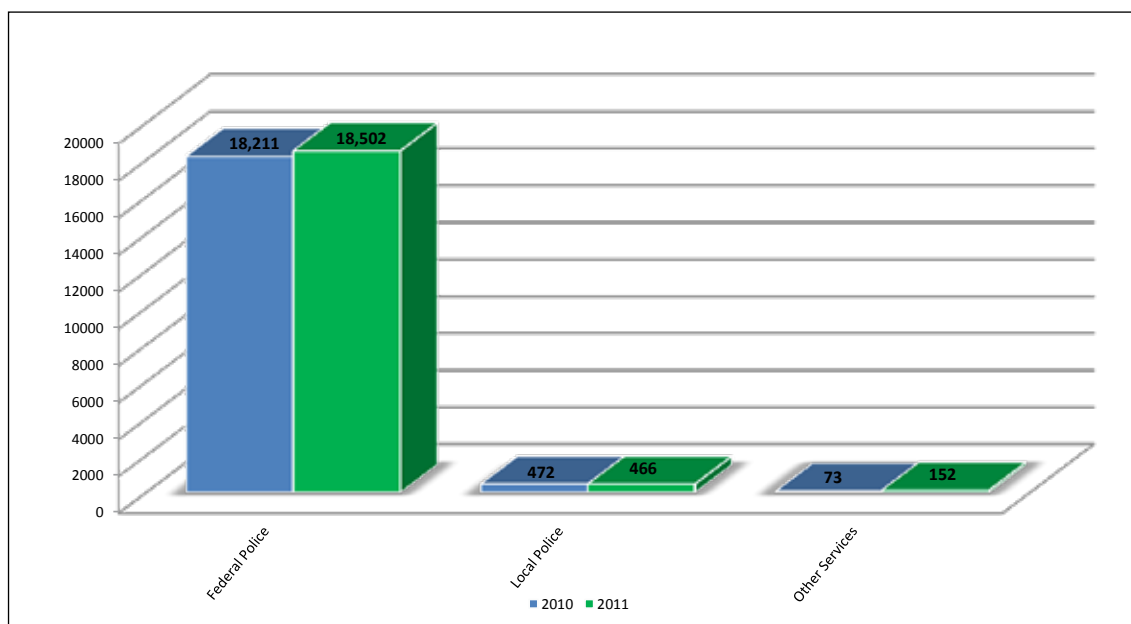
<sup>31</sup> <http://www.lokalepolitie.be/5412/algemene-informatie/199-de-algemene-nationale-gegevensbank.html>

<sup>32</sup> The category 'other phenomena linked to environment' encompasses among other things noise pollution, as well as breaches that do not come under the Environmental Enforcement Act (such as spatial planning, fireworks fraud,...).



the federal police, is 'waste by private person', which represents 18.54% of the total number of official reports drawn up.

By way of comparison the graph below also gives the total number of official reports drawn up in 2010 in addition to the total number of official reports drawn up by the federal police, the local police and other services in 2011.



*Graph 5 Total number of official reports drawn up by the local police, the federal police and other services in 2010 and 2011*

The graph above indicates that 18,756 official reports were drawn up in 2010, whereas this number rose to 19,120 in 2011. This increase can be observed in the number of official reports that were drawn up by the local police and the other police services. On the other hand, a slight decrease can be recorded in the number of official reports drawn up by the federal police in 2010. The next section will specifically discuss the enforcement policy pursued by the federal police in 2011.

## **2.2.2 Evaluation of the environmental enforcement policy pursued by the federal police**

The Flemish High Council of Environmental Enforcement also surveyed the federal police about its activities in the field of environmental enforcement for the Environmental Enforcement Report 2011. It was asked, among other things, how many official reports were entered in the General National Database on Environmental Offences in 2011 where the identifying unit belonged to the federal police. These data were presented in table 6 under 2.2.1. It was also asked, for instance, how many people within the federal police force had been actively involved in environmental law enforcement in the Flemish Region in 2011.

Within the federal police force 132 people were part of the Environmental Network in Flanders in 2011. The idea behind this Environmental Network is to exchange information about environmental breaches, offer mutual support, develop best practices together, and conduct large-scale investigations in an effective and efficient way. This network also includes members of local police forces. However, the figure of 132 federal police staff who are actively involved in environmental enforcement is both an overestimation

and an underestimation, since this figure is an extraction from the Environmental Network database. Not all people included in this database are still actively involved in environmental enforcement. Conversely, it is also true that not all staff within the federal police who are involved in environmental enforcement are included in this network. The figure of 132 people should therefore be regarded as indicative only.

It is more accurate to say that in 2011 49 FTEs within the federal police force were actively involved in environmental enforcement in the Flemish Region. This concerned 10 FTEs within the Environment Division of the Directorate of Crime against Goods<sup>33</sup>, 31 FTEs of research capacity within the Federal Judicial Police and 8 FTEs of phenomenon coordinators. These phenomenon coordinators, amounting to 17 in total, examine and monitor the phenomenon 'environmental crime'.

The federal police deal with supra-local phenomena that meet the definition of serious environmental crime. This includes, among other things, the repeated and systematic non-compliance with legislation and other legal provisions; a strong connection with fraud; activities that take place on an organised basis, mostly within companies; activities with a supra-regional spread and international branches; activities that are aimed at substantial gain; and activities which often cause irreparable damage to the environment and/or pose a risk to public health.

In 2011, a total of 466 initial official reports were entered in the General National Database on Environmental Offences, and this only on the territory of the Flemish Region and where the identifying unit belonged to the federal police force. These reactive environmental enforcement identifications were made following reports, complaints or offenders being caught in the act. These official reports did not only refer to environmental offences, but also to environment-related breaches.

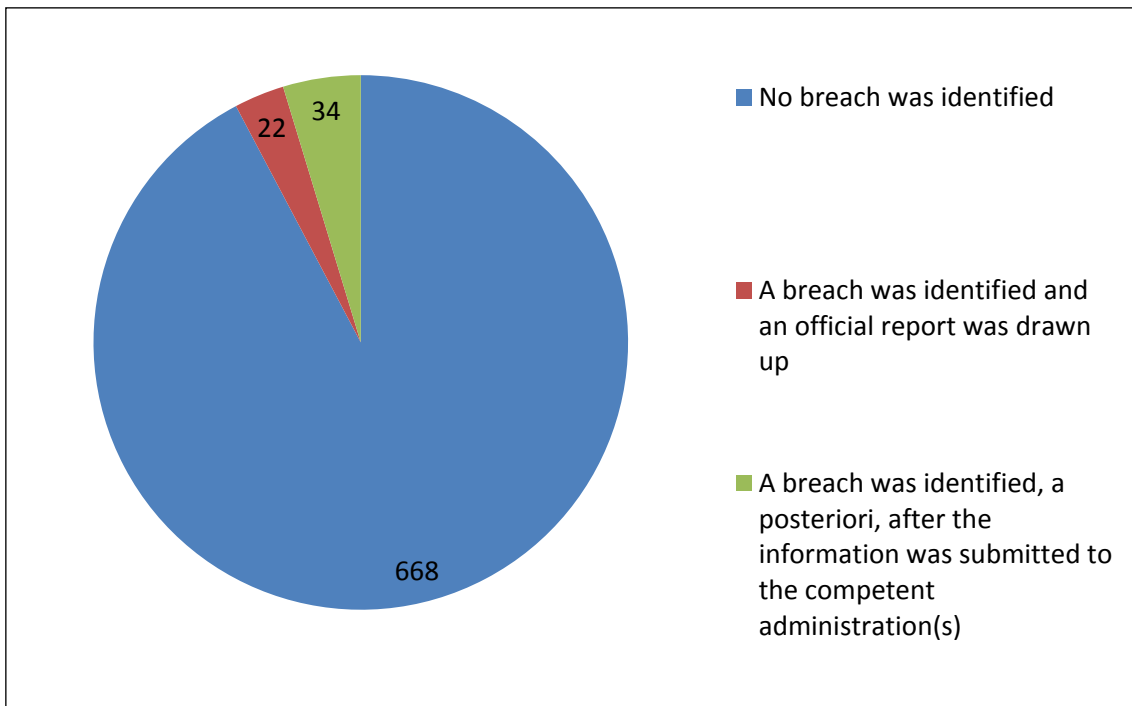
#### **PROACTIVE INSPECTIONS IN THE FRAMEWORK OF WASTE SHIPMENTS ON THE TERRITORY OF THE FLEMISH REGION**

In addition to these reactive inspections, the federal police also carried out 724 proactive inspections in the framework of waste shipments on the territory of the Flemish Region in 2011. Within the federal police force it was decided to focus on waste which represents a serious threat to public health or the environment, and which generates huge (illegal) profits. This focus on inspections of waste shipments was also specified by the federal police in the National Safety Plan 2008-2011, in which the Federal Government decided to consider serious environmental crime (concentrating on serious, organised cases of waste fraud) as a priority, and to tackle this crime with projects via annual integrated action plans. These inspections of waste shipments are usually done in cooperation with local police forces.

During 56 of these inspections a breach was identified. The further result of these inspections is shown in the graph below.

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33 Directie van de bestrijding van de criminaliteit tegen goederen (DJB).



*Graph 6 Official reports drawn up by police forces in relation to environmental crime for the year 2011 for the Flemish Region, broken down by local police, federal police and other services*

In 2011, a total of 724 inspections of waste shipments were carried out. In almost 92% of these inspections no breach was identified and in 3% of the cases an official report was immediately drawn up. These official reports were drawn up when the ECO-form was being completed<sup>34</sup>. However, it is possible that, once the information was checked by the administrations and breaches were identified after all, even more official reports were drawn up afterwards. The latter was included in the above graph as ‘A breach was identified, a posteriori, after the information was submitted to the competent administration(s)’. Once the ECO-form for waste has been drawn up, it is submitted to the Environment Division of the Federal Judicial Police for further analysis. This division checks the data. A number of data relating to ‘high-risk waste streams’ are exchanged with the competent administrations. Based on the additional information and administrative data, it is still possible, a posteriori, to identify breaches which result in initial official reports. In concrete terms, this concerned 34 cases, or 4.69% of the inspections in 2011.

It is apparent from the Environmental Enforcement Report 2010 that, in 2010, 1,352 proactive inspections were carried out by the federal police within the framework of waste shipments on the territory of the Flemish Region. In 1,215 of these inspections no breach was identified. 61 breaches were identified for which an official report was immediately drawn up and 76 breaches were identified a posteriori. This comparison indicates that the total number of proactive inspections decreased from 1,352 in 2010 to 724 in 2011, and that the percentage share of the identified breaches - either on-site or a posteriori - declined from 10% in 2010 to less than 8% in 2011. This could mean that the rate of compliance has increased.

In both 2010 and 2011 the enforcement activities of the federal police were focused on inspections of waste shipments. These activities refer to the National Safety Plan 2008-2011. The National Safety Plan defines the strategy to be followed by the Ministers for Foreign Affairs and Justice with regard to safety. It stipulates that a number of crime phenomena will be dealt with as a priority. It also determines the con-

<sup>34</sup> During each inspection of a waste shipment (including manure) the police officer draws up a document, called ‘ECO-form for waste’. With this document, it is possible to make part of the waste stream visible.

tribution to be made by the police services to address these phenomena.

One of the crime phenomena to be tackled as a priority regards (organised) environmental crime, which was defined as any form of illegally harming (laid down in regulations or legal provisions at the regional, federal, European or international level) the environment or any attempt made thereto through destruction, pollution, etc. In the National Safety Plan 2008-2011 this approach to environmental crime further concentrates on waste fraud or the illegal harming of the environment through the non-ecological processing, removal (dumping, discharge) or mixing of waste.<sup>35</sup>

### **2.2.3 Evaluation of the environmental enforcement policy pursued by local police forces**

The aforementioned general section (2.2.1) on the police forces discusses the official reports that were drawn up by the local police and the federal police in 2011 with regard to a specific environmental theme. However, the activities of the local police supervisors are treated in this separate chapter, after the activities of the federal police. This has to do with the fact that the local police have distinct duties with regard to environmental law enforcement. On the one hand, police officers have been appointed as supervisors within a police district in some cities and municipalities. On the other hand, local police forces are in charge of basic police services and more specifically carry out all duties of the administrative and judicial police that are necessary to manage local events and phenomena that occur on the territory of the police district, as well as to fulfil some police duties of a federal nature. In this context they naturally enforce environmental law, but not as supervisors under the Environmental Enforcement Act. Within various police districts specialised environmental units can be set up or it can be opted to have one or more members of staff specialise in environment-related matters. These staff members are not always required to have supervisor status; they can also just work in the capacity of judicial police officers. It should also be mentioned that 232 people from the local police are part of the Environmental Network as described earlier with regard to the federal police.

For the present Environmental Enforcement Report 2011, however, the superintendents of the Flemish police districts were asked to only report, when one or more supervisors were appointed within the police district, on the activities of this supervisor or these supervisors. This section should therefore be read in combination with the evaluation of the pursued local environmental enforcement policy (2.3).

#### **SUPERVISORS APPOINTED WITHIN LOCAL POLICE FORCES**

Besides the appointment of a municipal supervisor among the municipality's own staff or by an intermunicipal association, it can be opted, possibly via a cooperation agreement, to appoint supervisors among the local police force to perform municipal environmental enforcement activities. Local police supervisors are, just like local supervisors, appointed within the municipality itself or within an intermunicipal association and assigned to monitor compliance with the following legislation:

- ▶ Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy: Title III – company-internal environmental care in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Act of 28 December 1964 on air pollution abatement in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Act of 26 March 1971 on the protection of surface waters against pollution, waste water dischar-

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<sup>35</sup> [http://www.polfed-fedpol.be/org/org\\_pns\\_phenomenes\\_milieu\\_nl.php](http://www.polfed-fedpol.be/org/org_pns_phenomenes_milieu_nl.php)

ges and the detection of any kind of pollution in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.

- ▶ Act of 18 July 1973 on noise pollution abatement in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Flemish Government Decree of 7 November 1982, Article 2.
- ▶ Royal Decree of 24 February 1977 on electronically amplified music, Article 5.
- ▶ Articles 11, 12, 13, 14, 17, 18 and 20 of the Flemish Parliament Act of 2 July 1981 on the prevention and management of waste and the corresponding implementing orders in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Flemish Parliament Act of 24 January 1984 containing measures with regard to groundwater management in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Flemish Parliament Act of 28 June 1985 on environmental licences in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Flemish Parliament Act of 22 December 2006 on the protection of water against agricultural nitrate pollution.
- ▶ Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.

In addition to the aforementioned competences, Article 34 of the Decree of 12 December 2008 implementing Title XVI of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy also assigns a supervisory duty to the local supervisor to identify breaches in relation to establishments classified into Category 1 in accordance with Appendix 1 to Title 1 of Vlarem – within the framework of the aforementioned laws, acts and regulations – based on sensory perceptions, and to conduct investigations in the sense of Article 16.3.14 of the Environmental Enforcement Act.

In the survey of police districts, similar to that conducted among municipal supervisors (see 2.3.4.2), questions were asked about the number of inhabitants in the police district, whether the police district has an appointed supervisor at its disposal, the number of, the amount of time dedicated by and the reporting of supervisors and the organisation of the supervisory activities within the local police force, and obviously

the number of inspections and identifications carried out, as well as the results linked to these inspections. The result of the performed inspections will be discussed in Chapter 3 'Evaluation of the application of the individual environmental enforcement instruments and safety measures'. This section will focus on the response rate, the number of supervisors appointed within local police districts and the registration with the Environmental Licences Division of the Department of Environment, Nature and Energy, the average amount of time dedicated by these supervisors, the number of inspections carried out following complaints and the number of inspections carried out at own initiative, the average number of inspections per supervisor and the average number of inspections per FTE. Whenever relevant, a comparison will be made between 2010 and 2011 on the basis of the data from the Environmental Enforcement Report 2010.

### RESPONSE FROM THE LOCAL POLICE CONCERNING THE REQUEST FOR INPUT

The Flemish High Council of Environmental Enforcement received a completed questionnaire from 90 of the 118 police districts in the Flemish Region, which is a response rate of 76.27%.

Just like for the municipalities, it was decided to use a classification based on the number of inhabitants in the police district, as in this way more significant differences could be found than if a classification of police districts per province would have been used, for instance. 5 categories of police districts are used.

The table below gives an overview of the response on the basis of the 5 categories of police districts.

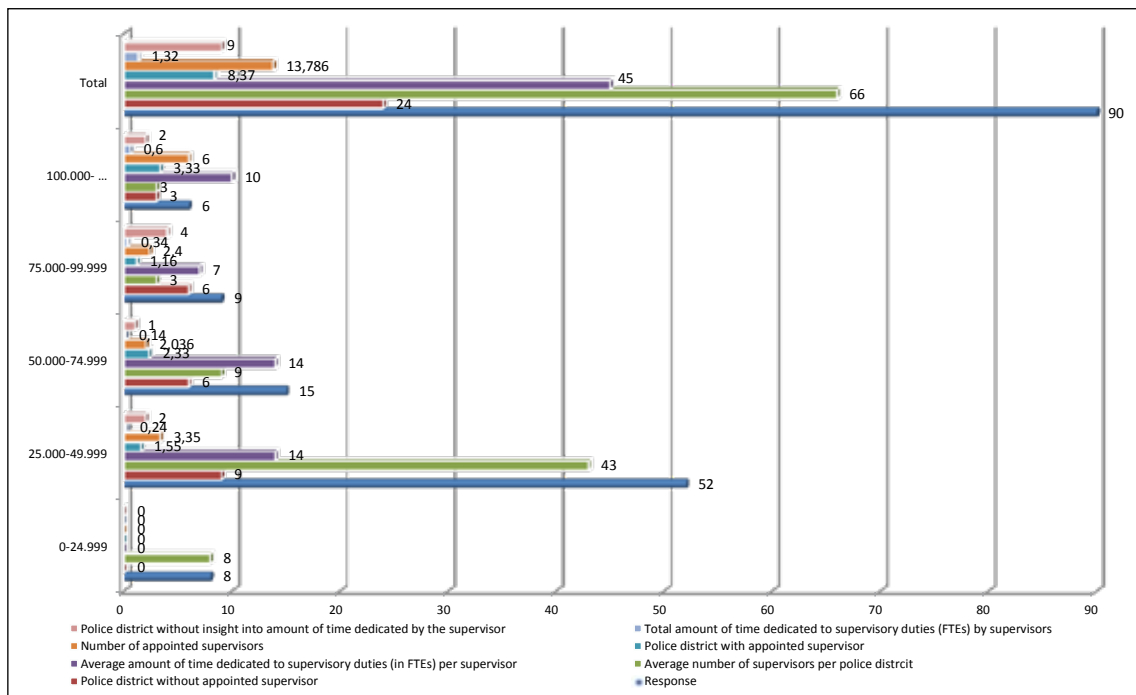
	Number of police districts in the category in question	Number of responding police districts per category in 2011	Number of responding police districts per category in 2010
Police districts with 0-24,999 inhabitants	11	8	8
Police districts with 25,000-49,999 inhabitants	69	52	53
Police districts with 50,000-74,999 inhabitants	23	15	22
Police districts with 75,000-99,999 inhabitants	9	9	6
Police districts with more than 100,000 inhabitants	6	6	5
<b>Total</b>	<b>118</b>	<b>90</b>	<b>94</b>

*Table 7 Categories of Flemish police districts, including number of police districts per category and number of respondents per category*

The data above show that 90 of the 118 Flemish police districts sent a response for the present Environmental Enforcement Report 2011. This is a response rate of 76.27%, which is a decrease compared to the response rate for the Environmental Enforcement Reports 2010 and 2009, which amounted to 79.66% and 77.12% respectively. This decrease is mainly visible in the category of police districts with 50,000 to 74,999 inhabitants. For the Environmental Enforcement Report 2010 no less than 95.65% of all the police districts in this category still responded, whereas for the present environmental enforcement report this share decreased to 65.22%. On the other hand, a positive element is that for the present environmental enforcement report a response rate of 100% was reached for the categories of police districts with a population of 75,000 to 99,999 and police districts with more than 100,000 inhabitants.

**APPOINTMENT OF LOCAL POLICE SUPERVISORS AND AMOUNT OF TIME DEDICATED BY THEM**

Article 16§1 of the Decree of 12 December 2008 implementing Title XVI of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy, in short the Environmental Enforcement Decree, stipulates that municipalities are required to have at least 1 supervisor at their disposal within one year after the coming into effect of the aforementioned Decree, which was on 1 May 2010. This can be either a municipal supervisor or a Vlarem officer, or a supervisor or a Vlarem officer of an intermunicipal association, or a supervisor or a Vlarem officer of a police district. Within two years of the coming into effect of this Decree on 1 May 2011, municipalities with more than three hundred Category 2 plants in accordance with Title I of Vlarem or with more than thirty thousand inhabitants if the number of plants is insufficiently known are at least required to have two supervisors at their disposal. This can be either municipal supervisors, police district supervisors or supervisors of intermunicipal associations. Since the possibility exists to appoint supervisors within the police districts, all the police districts in the Flemish Region were asked whether or not a supervisor was appointed within their police district, how many supervisors were appointed and how much time these supervisors dedicated to environmental enforcement duties within the framework of the Environmental Enforcement Act in 2011. These data are presented globally and by category in the following graph:



Graph 7 Overview of efforts related to environmental enforcement duties by local police supervisors (according to police district population)

	0- 24,999	25,000-49,999	50,000-74,999	75,000-99,999	100,000-...	Total
Response	8	52	15	9	6	90
Police district with appointed supervisor	0	9	6	6	3	24
Police district without appointed supervisor	8	43	9	3	3	66
Number of appointed supervisors	0	14	14	7	10	45
Average number of supervisors per police district	0	1.55	2.33	1.16	3.33	1.88
Total amount of time dedicated to supervisory duties by supervisors (FTEs)	0	3.35	2.03	2.4	6	13.78
of which FTEs dedicated to environmental enforcement duties by the supervisor within the framework of the Environmental Enforcement Act	0	3.25	1.48	2.2	6	12.93
of which FTEs dedicated to the administrative support of environmental enforcement duties	0	0.1	0.55	0.2	0	0.85
Average amount of time dedicated to supervisory duties per supervisor (in FTEs)	0	0.24	0.14	0.34	0.6	0.31
Police district that has no insight into the amount of time dedicated per supervisor	0	2	1	4	2	9

*Table 8 Overview of efforts related to environmental enforcement duties by local police supervisors (according to population)*

It can be deduced from the above data that 26.66% of the total number of responding police districts has at least one supervisor within the force, whereas 73.33% of the districts do not. Within these 24 police districts with an appointed supervisor a total of 45 supervisors were available, which is an average number of supervisors of 1.88 per responding police district where a supervisor was appointed. A total of 13.78 FTEs were dedicated to supervisory duties in 2011, of which 12.93 FTEs were dedicated by supervisors to environmental enforcement duties under the Environmental Enforcement Act and 0.85 FTEs were dedicated to the administrative support of environmental enforcement duties. This comes down to an average amount of time dedicated of 0.31 FTEs per appointed supervisor within the police district in 2011. However, it should be mentioned that 9 of the responding police districts indicated not having any insight into the amount of time spent by the supervisor.

When looking more specifically at the separate categories of police districts, it strikes that within the smallest category none of the responding police districts had a supervisor at their disposal. For the category of police districts with 25,000 to 49,999 inhabitants 17.30% of the responding police districts indicated having appointed a supervisor within the force. For the category of police districts with 50,000 to 74,999 inhabitants this share amounted to 40% and for the category of police districts with 75,000 to 99,999 inhabitants to 66.66%. In the largest category half of the responding districts reported having appointed a supervisor within the force.

It can be established that the average number of supervisors per police district rises in accordance with



the scale of the police district. An exception to this is the category of police districts with 75,000 to 99,999 inhabitants, which on average has decreased again to 1.16 supervisors per police district. The average amount of time dedicated to supervisory duties per supervisor has grown as well to a maximum of 0.6 FTEs per supervisor appointed within a police district with more than 100,000 inhabitants. One exception is the average amount of time dedicated by the supervisor appointed within a police district with 50,000 to 74,999 inhabitants. This is indeed only 0.14 FTEs, whereas the average amount of time dedicated by a supervisor in a smaller category is no less than 0.24 FTEs.

It could be concluded from the above table that the smaller the police district the smaller the number of supervisors appointed within this district and the lower the average amount of time dedicated to supervisory duties per supervisor. This could be explained by the principle of scale increase and specialisation. When police districts have more inhabitants, this could mean that the police district itself is larger as well, which in its turn could mean that police officers within a larger force can specialise and the appointed supervisors can focus more on environmental duties as laid down in the Environmental Enforcement Act.

In addition to the aforementioned general analysis with regard to 2011, a comparison could be made on the basis of the data from the Environmental Enforcement Report 2010 to see whether an evolution can be discerned in the appointment of supervisors and the amount of time dedicated by them in 2010 and 2011. Furthermore, the table and graph below allow for a comparison to be made between the total number of appointed supervisors<sup>36</sup> and the average number of supervisors in 2010 and 2011 per category of police districts. When comparing the real figures, account should naturally be taken of the difference in response rate in 2010 and 2011.

	0- 24,999		25,000-49,999		50,000-74,999		75,000-99,999		100,000-...		Total	
	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011
Response	8	8	53	52	22	15	6	9	5	6	94	90
Police district with appointed supervisor	0	0	10	9	6	6	4	6	1	3	21	24
Police district without appointed supervisor	8	8	43	43	16	9	2	3	4	3	73	66
Number of appointed supervisors	0	0	14	14	10	14	5	7	2	10	31	45
Average number of supervisors per police district	0	0	1.4	1.55	1.66	2.33	1.25	1.16	2	3.33	1.47	1.88

Table 9 Number of local police supervisors appointed in 2010 and 2011

<sup>36</sup> The Environmental Enforcement Report 2010 provided an overview of the number of police districts that had a supervisor at their disposal. This supervisor could belong to the police district itself, to an intermunicipal association or to the municipality. In order to give a more accurate picture of the efforts made by the local police supervisors themselves, a comparison is made between the number of police districts that appointed a supervisor in 2010 and 2011. The figures for 2010 were recalculated for that reason.

Generally, the table above indicates that the average number of supervisors per police district increased in 2011 compared to 2010, namely from 1.47 to 1.88. This increase can be found within the different categories of police districts, except in the category of police districts with 75,000 to 99,999 inhabitants, where the average number of supervisors appointed per police district decreased slightly. Apart from that, the data for the smallest category remained the same for 2010 and 2011 and none of the responding police districts has appointed a supervisor yet. Despite the fact that the response rate was higher in 2010 than in 2011, it can be established that the number of police districts which appointed at least one supervisor increased. In 2010, 22.34% of the responding police districts had appointed at least one supervisor within the force. In 2011, this share amounted to 26.66%.

However, it may be more interesting to compare the average amount of time each supervisor dedicated to supervisory duties in 2010 and 2011, instead of the average number of supervisors. This is the total number of given FTEs dedicated to supervisory duties per category of police districts, divided by the total number of given appointed supervisors per category of police districts. This comparison is reflected in the next table.

	0- 24,999		25,000-49,999		50,000-74,999		75,000-99,999		100,000-...		Total	
	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011
Total amount of time dedicated to supervisory duties by the supervisor (FTEs)	0.00	0.00	5.03	3.35	8.2	2.04	1.60	2.40	1.60	6.00	16.43	13.77
of which FTEs dedicated to environmental enforcement duties by the supervisor within the framework of the Environmental Enforcement Act	0.00	0.00	3.77	3.25	5.00	1.49	1.60	2.20	0.80	6.00	11.17	12.94
of which FTEs dedicated to administrative support	0.00	0.00	1.26	0.10	3.20	0.55	0.00	0.20	0.80	0.00	5.26	0.85
Average amount of time dedicated to supervisory duties per supervisor (in FTEs)	0.00	0.00	0.36	0.24	0.82	0.14	0.32	0.34	0.40	0.60	0.53	0.31
Police district that has no insight into the amount of time dedicated	0	0	0	2	8	1	1	4	1	2	10	9

Table 10 Overview of efforts related to environmental enforcement duties by local police supervisor (according to population) in 2010 and 2011

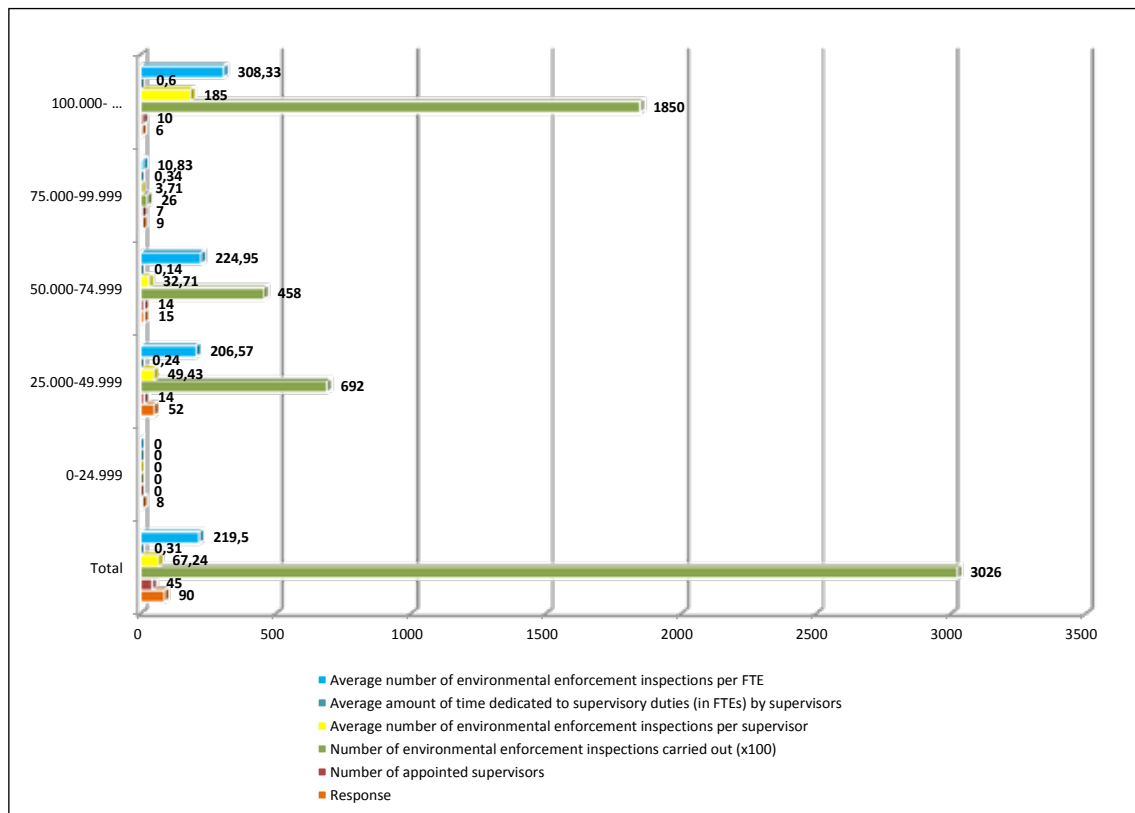
It was indicated earlier that the average number of supervisors per police district increased in 2011 compared to 2010. The real number of appointed supervisors, as given by the responding police districts, also grew from 31 in 2010 to 45 in 2011. From the table above it can be deduced, however, that the average amount of time dedicated to supervisory duties per supervisor decreased in 2011 compared to 2010, especially in the number of FTEs dedicated to administrative support. This means that, despite the increase in the number of supervisors appointed within the police districts, these supervisors can spend less time on environmental duties as laid down in the Environmental Enforcement Act. This could mean that some

of the police district supervisors were only appointed for appearance's sake.

The decrease in the average amount of time dedicated per supervisor is especially striking in the categories of police districts with 50,000 to 74,999 and 25,000 to 49,999 inhabitants. Given the fact that the number of appointed supervisors rose within the first category and remained the same within the second category, this decrease in the average amount of time dedicated per supervisor may be explained by the strong decrease in both categories of the total amount of time dedicated to supervisory duties by the supervisors.

### ENVIRONMENTAL ENFORCEMENT INSPECTIONS CARRIED OUT BY LOCAL POLICE SUPERVISORS

In order to gain an insight into the activities of local police supervisors, the graph and table below show the total number of environmental enforcement inspections that were carried out per category of police districts, as well as the average number of environmental enforcement inspections per supervisor and per FTE. The survey explicitly asked about the number of environmental enforcement inspections that were carried out within the framework of the Environmental Enforcement Act by this/these police district supervisor(s) between 1 January 2011 and 31 December 2011. The term 'inspection' was defined as follows: "An inspection in the context of environmental enforcement is to examine with a legal and/or a natural person who is bound by environmental law obligations, whether or not this legal and/or natural person actually complies with these legal obligations. This can be broken down into on-site inspections or inspections of documents".



Graph 8 Efforts related to environmental enforcement duties by local police supervisors (according to police district population)

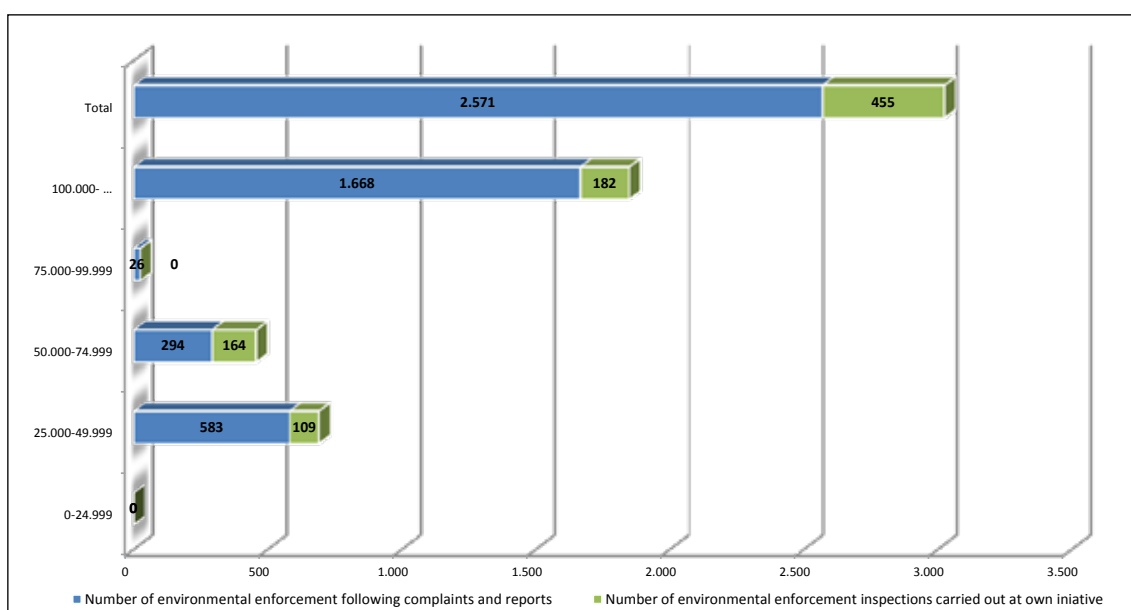
	Response	Number of appointed supervisors	Number of environmental enforcement inspections carried out	Average number of environmental enforcement inspections per supervisor	Average amount of time dedicated to supervisory duties by supervisors (in FTEs)	Average number of environmental enforcement inspections per FTE
Total	90	45	3,026	67.24	0.31	219.50
0-24,999	8	0	0	0.00	0.00	0.00
25,000-49,999	52	14	692	49.43	0.24	206.57
50,000-74,999	15	14	458	32.71	0.14	224.95
75,000-99,999	9	7	26	3.71	0.34	10.83
100,000-...	6	10	1,850	185.00	0.60	308.33

Table 11 *Efforts related to environmental enforcement duties by local police supervisors (according to population)*

In order to put the data above in the right context, it should be mentioned that one police district in the category of police districts with more than 100,000 inhabitants reported having performed 1,749 inspections. This would mean that one police district carried out more than half of the total number of inspections that were performed by local police supervisors. Naturally, such a number has a certain impact on the figures.

The table and graph above show that in 2011 a total of 3,026 inspections were carried out by 45 local police supervisors. This is an average number of inspections per supervisor of 67.24 and an average number of inspections per FTE of 219.50. It could be deduced from this that local police supervisors dedicate only little time to environmental enforcement duties, although they carry out a large number of inspections within the framework of the Environmental Enforcement Act. When considering the different categories of supervisors, this figure of 67.24 inspections per supervisor and 219.50 inspections per FTE is put into perspective. In fact, in the smallest category no supervisors were appointed within the police districts in 2011. As a result, no inspections were carried out by supervisors within the framework of the Environmental Enforcement Act. In the categories of police districts with 25,000 to 49,999 and 50,000 to 74,999 inhabitants the average number of inspections per supervisor and the average number of inspections per FTE are lower than the average at the Flemish level. On the other hand, both averages are substantially lower than in the category of police districts with 75,000 to 99,999 inhabitants. As a result, it can be assumed that the average number of environmental enforcement inspections per supervisor and the average number of inspections per FTE in the category of police districts with more than 100,000 inhabitants have a strong impact on the Flemish average, since they amount to 185 inspections per supervisor and 308 inspections per FTE respectively. This can be explained by the fact that one police district in this category reported having carried out 1,749 inspections.

In terms of inspections the questionnaire distinguished between the number of environmental enforcement inspections following complaints and reports and the number of environmental enforcement inspections carried out at own initiative, for instance within the framework of a planned environmental enforcement campaign. The received data are graphically presented in the graph below.



*Graph 9 Number and type of environmental enforcement inspections carried out by local police supervisors (according to police district population) within the framework of the Environmental Enforcement Act in 2011*

It is apparent from the graph above that local police supervisors carried out 85% of the environmental enforcement inspections following complaints and reports and 15% at their own initiative. Compared to the Environmental Enforcement Report 2010, this is a strong increase in the proactive supervision by local police supervisors. During that period, this share only amounted to 5.77%, whereas 94.23% of the inspections were carried out following complaints and reports.

When looking at the different categories separately, it strikes that the share of the inspections following complaints and reports in the category of police districts with 50,000 to 74,999 inhabitants amounted to only 64% and the share of proactive inspections even represented 36% of the total number of inspections carried out in this category. Opposed to that are the inspections carried out by supervisors in the category of police districts with 75,000 to 99,999 inhabitants. The 26 inspections were all carried out by these supervisors following complaints and reports. This means that no proactive action was taken at all within these police districts.

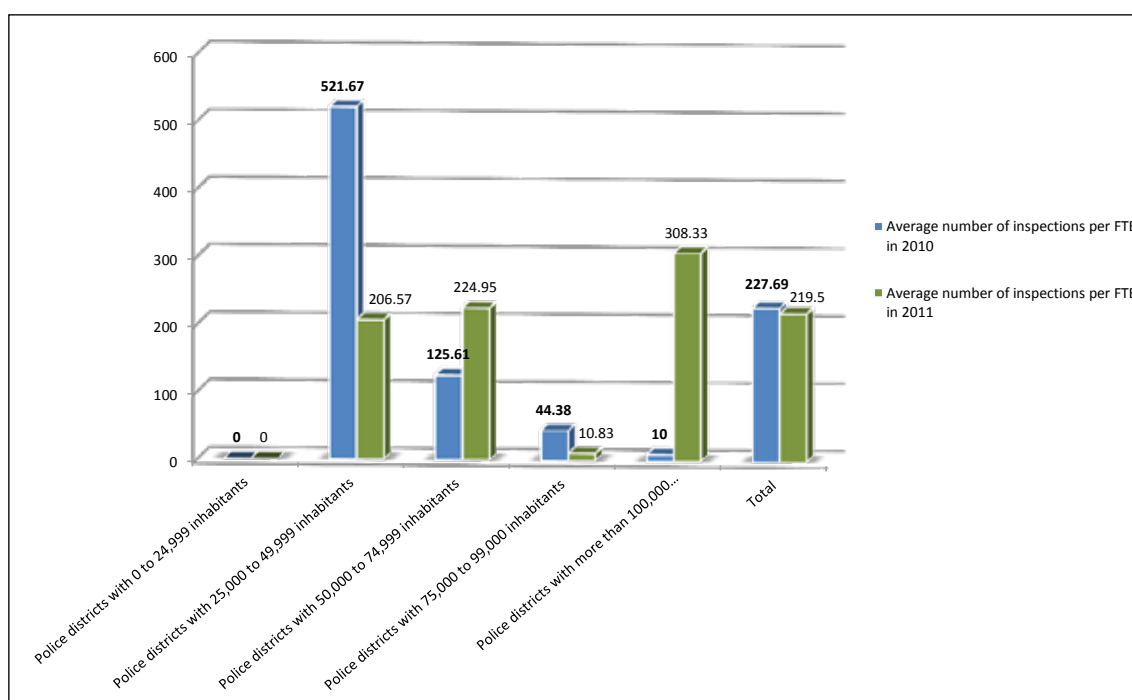
On the basis of the data from the Environmental Enforcement Report 2010 a comparison can be made of the average number of inspections carried out per supervisor in 2010 and 2011 per category of police districts.

	Average number of environmental enforcement inspections per supervisor in 2010	Average number of environmental enforcement inspections per supervisor in 2011
Police districts with 0-24,999 inhabitants	0.00	0.00
Police districts with 25,000-49,999 inhabitants	187.42	49.43
Police districts with 50,000-74,999 inhabitants	103.00	32.71
Police districts with 75,000-99,999 inhabitants	14.20	3.71
Police districts with more than 100,000 inhabitants	8.00	185
Total	120.67	67.24

Table 12 Average number of environmental enforcement inspections per supervisor in 2010 and 2011

In total, 3,741 environmental enforcement inspections were carried out by the 31 local police supervisors in 2010. As a result, the average number of inspections per supervisor was 120.67 and the average number of inspections per FTE amounted to 227.69. It should be mentioned, however, that for the Environmental Enforcement Report 2010 as well, one police district in the category of police districts with 25,000 to 49,999 inhabitants had reported having carried out 1,710 inspections. This could mean that in 2010 as well about half of the total of environmental enforcement inspections carried out by local police supervisors were carried out by one single police district. Since the data from the Environmental Enforcement Report 2010 as well as the data for the present report should therefore be put into perspective, it still means that the average number of inspections per supervisor was almost halved in 2011 compared to 2010. This is owing to the fact that in 2011 more local police supervisors were appointed and fewer environmental enforcement inspections were carried out during that year.

Another possible angle for considering the efforts of local police supervisors and for comparing these efforts to those of 2010 is to look at the average number of inspections per FTE. This may provide a clearer picture, since not each appointed local police supervisor can be engaged full-time in environmental enforcement duties. The average number of inspections is obtained by dividing the total number of inspections carried out within a category of police districts by the total number of FTEs dedicated to environmental enforcement duties within that same category. In this way the efforts - on the basis of the number of inspections - are compared with one full-time equivalent and a comparison can be made between the categories and in terms of time.



Graph 10 Average number of environmental enforcement inspections per FTE in 2010 and 2011

In the above graph, account should be taken, on the one hand, of the fact that in 2010 one single police district (category of police districts with 25,000 to 49,999 inhabitants) had reported having carried out almost half of the total number of environmental enforcement inspections in 2010 and, on the other hand, of the fact that again one single police district (category of police districts with more than 100,000 inhabitants) indicated having carried out more than half of the total number of environmental enforcement inspections in 2011. Naturally, this means that the above data need to be put into perspective. In general, a slight decrease can be observed in the average number of inspections per FTE. This can be explained by the fact that in 2011 fewer environmental enforcement inspections were carried out than in 2010, but also by the fact that in 2011 fewer FTEs were dedicated in total to environmental enforcement duties by local police supervisors than in 2010. Still, the generally decreasing trend in the average number of inspections per FTE cannot be confirmed for each of the separate categories.

## 2.3 Evaluation of the pursued local environmental enforcement policy

### 2.3.1 Provincial governors

The competences of the provincial governors of the 5 Flemish provinces are very clearly defined in the Environmental Enforcement Act. More specifically, they are authorised to impose administrative measures and/or safety measures in the framework of:

- ▶ the Act of 26 March 1971 on the protection of surface waters against pollution;
- ▶ the Flemish Parliament Act of 2 July 1981 on waste prevention and management;
- ▶ Articles 4 (operation without a licence) and 22 (operation Categories 2 and 3 without complying with the licensing requirements) of the Flemish Parliament Act of 28 June 1985 on environmen-

tal licences.

An overview is given of the requests/petitions which the governors received for the imposition of administrative measures as well as the number of administrative measures that were actually imposed following these requests/petitions. It was also asked to give the number of requests which the provincial governor received between 1 January 2011 and 31 December 2011 for the imposition of safety measures and the number of safety measures that were actually imposed.

### 2.3.1.1 Administrative measures

The table below indicates per province how many requests/petitions the provincial governor concerned received between 1 January 2011 and 31 December 2011, and who submitted these requests (regional supervisor, municipal supervisor, supervisor of an intermunicipal association, police district supervisor, provincial supervisor) or petitions (third parties). Requests for the imposition of administrative measures are to be understood as requests from supervisors to the provincial governor to take administrative measures. On the other hand, administrative measures can also be the subject of a petition for imposition by people who suffer direct detriment as a result of an environmental infringement or environmental offence, people who have an interest in this environmental infringement or environmental offence being controlled, and legal persons as referred to in the Act of 12 January 1993 on a right of action with regard to the protection of the environment. This petition must be made by registered letter to the people authorised to impose administrative measures and by a petition, stating sufficient reasons, which shows that an environmental infringement or environmental offence is taking place, and in keeping with a strict procedure with short terms.

The Flemish High Council of Environmental Enforcement did not receive any response from the provincial governor of West Flanders and can therefore not draw any conclusions with regard to the relevant activities in the present environmental enforcement report.

Administrative measures		Governor of the province				
		Limburg	Flemish Brabant	Antwerp	East Flanders	West Flanders
Requests/petitions for the imposition of administrative measures	Requests/petitions received by the governor between 1 January 2011 and 31 December 2011:	1	0	2	0	Non-response
	Requests made by regional supervisors:	0	0	0	0	Non-response
	Requests made by municipal supervisors:	0	0	0	0	Non-response
	Requests made by supervisors of an intermunicipal association:	0	0	0	0	Non-response
	Requests made by police district supervisors:	0	0	0	0	Non-response
	Requests made by provincial supervisors:	0	0	0	0	Non-response
	Petitions filed by third parties:	1	0	2	0	Non-response



*Table 13 Requests/petitions for the imposition of administrative measures received by the governors of the Flemish provinces in 2011*

The data above show that only very limited use was made of the possibility to ask the provincial governor to impose administrative measures. Only the provinces of Limburg and Antwerp received such petitions. The same conclusion was drawn in the Environmental Enforcement Report 2010. In 2010, the province of Flemish Brabant (next to the provinces of Limburg and Antwerp) received a petition from third parties to impose administrative measures. Neither in 2010 nor in 2011 did the supervisors use the possibility to request the provincial governor to impose an administrative measure.

The instrument 'requests/petitions for the imposition of administrative measures' addressed to the provincial governor was thus not frequently used in 2011 either. The reason for this could be twofold. On the one hand, because the supervisors - either regional or local - are better placed to impose administrative measures themselves, since the supervisors can act independently and neutrally (cf Article 16.3.3 of the Environmental Enforcement Act) and with the required expertise, qualifications and abilities (cf Article 16.3.2 of the Environmental Enforcement Act) instead of submitting a request to that end to the provincial governor. Another or additional explanation could be that third parties which can file petitions for the imposition of administrative measures with the provincial governor are not informed about this possibility and in the first instance opt to contact the environmental department of the municipalities or the local police (first line processing) in order to reach the supervisor.

Apart from the question regarding the number of requests/petitions which the provincial governor received in 2011 for the imposition of administrative measures, it was also asked how many and which types of administrative measures were imposed by the provincial governor in 2011. The governor cannot only impose these administrative measures following a request or petition, but also at his or her own initiative. The provincial governors of Flemish Brabant and East Flanders indicated not having imposed any administrative measures in 2011. Neither did the provincial governor of Antwerp, despite the fact that two petitions were filed by third parties to impose administrative measures. Only the provincial governor of Limburg imposed an administrative measure in the form of 'administrative enforcement', whereby actual action was taken against the identified environmental infringement or environmental offence. However, on the basis of the current data, it is impossible to indicate whether this administrative measure was imposed following a request/petition or at the provincial governor's own initiative. In 2010 as well, only one administrative measure, namely a regularisation order, was imposed. This measure was imposed by the provincial governor of Antwerp.

Although it is impossible to find out the reason why no or hardly any administrative measures were imposed on the basis of the current data, several scenarios can be imagined. One of the reasons may be that the requests/petitions were submitted to the governors without good reason, or did not fall within the responsibilities of the governors.

Another reason may be the lack of capacity, support, personnel or experience which the governors were faced with to actually implement the new competences within the framework of the Environmental Enforcement Act. Therefore, it may have been opted to have the supervisors themselves impose the administrative measures. Today, the governor of each province should be able to call in the services of the Environmental Inspectorate Division to assist him or her in these duties.

Despite the fact that for the moment no definitive conclusions can be drawn yet with regard to the competences regarding enforcement in the Environmental Enforcement Act, it can again be carefully concluded that the imposition of administrative measures by provincial governors, and the requests/petitions filed to that end, are both a competence and possibility that is not very frequently used.

### 2.3.1.2 Safety measures

Article 16.7.1 of the Environmental Enforcement Act stipulates that safety measures are measures through which provincial governors, amongst others, can take or impose any actions they consider necessary under the given circumstances to eliminate, reduce to an acceptable level or stabilise a substantial risk to man or the environment.

Provincial governors - and therefore also mayors - can take safety measures by virtue of their function or upon a supervisor's request. For this reason, the provincial governors were asked how many requests for the imposition of safety measures they received and how many safety measures they actually imposed. The governors of the provinces of Limburg, Flemish Brabant, Antwerp and East Flanders communicated that they neither received any requests for the imposition of safety measures between 1 January 2011 and 31 December 2011 nor imposed any such measures in 2011. In 2010, none of the provincial governors received a request for the imposition of safety measures and no safety measures were taken at their own initiative either. For the sake of completeness, it should be mentioned that the Flemish High Council of Environmental Enforcement did not receive any response from the provincial governor of West Flanders

## 2.3.2 Provincial supervisors

### 2.3.2.1 Environmental enforcement activities by provincial supervisors

#### **APPOINTED PROVINCIAL SUPERVISORS**

Article 16.3.1, §2, 2° of DABM stipulates that personnel of the province can be appointed as supervisors by the Provincial Executive. These are the so-called provincial supervisors.

With a view to this provision, the VHRM therefore considered it appropriate to ask the registrars of the five Flemish provinces about the appointment of these supervisors and their efforts with regard to environmental enforcement duties.

In the framework of DABM, these provincial supervisors are competent to monitor compliance with:

- ▶ Article 2 of the Act of 26 March 1971 on the protection of surface waters against pollution, Category 2 and 3 unnavigable watercourses and their appurtenances;
- ▶ Article 12 of the Flemish Parliament Act of 2 July 1981 on waste prevention and management, Category 2 and 3 unnavigable watercourses and their appurtenances.

On the basis of the Environmental Enforcement Report 2010 it could be established that in 2010 none of the provinces had a supervisor as referred to in Article 16.3.1, §1, 2° of the Environmental Enforcement Act at their disposal who was appointed by the Provincial Executive, or a Vlare officer. The provinces of Limburg, Antwerp, East Flanders and West Flanders communicated that in 2011 still no supervisors had been appointed within their province. In the province of Antwerp 8 provincial supervisors have started their training in November 2011 in conformity with Article 13 of the Environmental Enforcement Decree. This training will last until April 2012. With the Flemish Government Decree of 19 November 2010 it was decided in the Environmental Enforcement Decree that in order to receive the Certificate of Competence provincial supervisors do not have to attend the theoretical and practical training regarding noise nuisance and air pollution and do not have to take the related competence tests. This means that the training was tailored to the competences of provincial supervisors.

The Flemish High Council of Environmental Enforcement did not receive any response from the province of Flemish Brabant.

#### **EFFORTS RELATED TO ENVIRONMENTAL ENFORCEMENT DUTIES**

Just like the other supervisors, provincial supervisors were asked how many environmental enforcement inspections they carried out - following complaints and reports or at their own initiative - within the framework of the Environmental Enforcement Act between 1 January 2011 and 31 December 2011, in order to analyse the efforts regarding their environmental enforcement duties. The outcome of these inspections was also asked about.

The four responding provinces reported that, just like in 2010, they did not have any provincial supervisors at their disposal in 2011. As a result, no inspections were carried out under the Environmental Enforcement Act in 2011.

The problem arising here – the failure to appoint provincial supervisors and the fact that subsequently no inspections were carried out – is therefore that no enforcement activities were carried out by the provincial supervisors with respect to the legislation in the framework of Title XVI of DABM, for which they are competent.

#### **2.3.2.2 Implementation of competences regarding unnavigable watercourses (other than those included in the Environmental Enforcement Act) by appointed provincial staff**

Apart from the duties of the provinces under the Environmental Enforcement Act, account should be taken of their responsibilities as watercourse managers. Within this context the provinces also have a duty to monitor compliance with legislation that is not included in Title XVI of the Environmental Enforcement Act, but for which provincial staff were appointed per province to carry out these supervisory duties, namely:

- ▶ Act of 28 December 1967 on unnavigable watercourses;
- ▶ Royal Decree of 5 August 1970 containing the general police regulations on unnavigable watercourses.

Despite the fact that this legislation has not been entered in the Environmental Enforcement Act, this supervision and any related inspections or inspectors are briefly discussed below in this Environmental Enforcement Report 2011.

#### **APPOINTED PROVINCIAL STAFF**

The table below does not just show the number of provincial staff members who are authorised to supervise and inspect the unnavigable watercourses, but also the number of FTEs that were dedicated to these inspections by these appointed provincial staff members in 2011.

	Provincial staff appointed for inspections of un-navigable watercourses	FTEs dedicated to inspections of un-navigable watercourses by appointed provincial staff
Limburg	5	0.5
Flemish Brabant	Non-response	Non-response
Antwerp	7	2.5
East Flanders	2	<0.1
West Flanders	4	4

Table 14 Number of appointed provincial staff and amount of time dedicated to un-navigable watercourses in 2011

The data above show that the provinces of Limburg, Antwerp, East Flanders and West Flanders had at least two provincial staff members at their disposal in 2011 to carry out inspections of un-navigable watercourses. On the other hand, however, these appointed provincial staff members could dedicate only part of their time to these inspections. Only the province of West Flanders appointed 4 provincial staff members who were also engaged full-time in inspections of un-navigable watercourses. This sharply contrasts with the data from the Environmental Enforcement Report 2010 in which the province of West Flanders also reported that 4 provincial staff members were appointed, but no FTEs were dedicated to inspections of un-navigable watercourses by these four staff members. For the other provinces the data are similar to those in the table above. Only the province of Limburg still had seven provincial staff members at its disposal in 2010. Yet, the number of FTEs dedicated to inspections of un-navigable watercourses remained the same.

For the sake of completeness, it should be mentioned that the Flemish High Council of Environmental Enforcement did not receive any response from the province of Flemish Brabant.

#### EFFORTS WITH REGARD TO UNNAVIGABLE WATERCOURSES

The table below gives an overview of the number of inspections that were carried out by the provincial staff members with regard to un-navigable watercourses, the number of exhortations that were formulated during these inspections and the number of official reports that were drawn up following the identification of an offence during these inspections.

Efforts of appointed provincial staff members with regard to un-navigable watercourses	Province				
	Limburg	Flemish Brabant	Antwerp	East Flanders	West Flanders
Number of inspections of un-navigable watercourses	30	Non-response	Not available	22	0
Number of official reports drawn up during these inspections of un-navigable watercourses	10	Non-response	0	2	0
Number of exhortations formulated during these inspections of un-navigable watercourses	20	Non-response	90	9	0

Table 15 Number of inspections of un-navigable watercourses in 2010 and number of exhortations formulated and official reports drawn up during these inspections

To clarify the above data it should first of all be said that the province of Antwerp indicated not being able to give the number of inspections of unnavigable watercourses, since inspections were carried out on a continuous basis without being recorded.

When comparing the number of inspections with the number of FTEs dedicated to inspections of unnavigable watercourses, it can be established that in the province of Limburg an average of 60 inspections were carried out per FTE and 220 in East Flanders. The province of West Flanders reported using 4 full-time staff members for inspections of unnavigable watercourses. However, it was indicated that no inspections were performed in 2011.

In the province of Limburg an instrument was used for each inspection. Following 33.33% of the inspections an official report was drawn up and following 66.66% an exhortation was formulated. As said earlier, the province of Antwerp could not give the exact number of inspections that were carried out in 2011. However, it did indicate that 90 exhortations were formulated following inspections of unnavigable watercourses. The province of East Flanders reported having performed 22 inspections. For 9.09% of these inspections an official report was drawn up and for 40.90% an exhortation was formulated. The result of the other 11 inspections was not communicated.

For the sake of completeness, it should be mentioned that the Flemish High Council of Environmental Enforcement did not receive any response from the province of Flemish Brabant.

The table below gives an overview of the breaches that were identified by the provinces in 2011 following inspections of unnavigable watercourses.

Type of breaches:	Province				
	Limburg	Flemish Brabant	Antwerp	East Flanders	West Flanders
Damage to banks	3	Non-response	20	5	0
Discharge into watercourse	4	Non-response	10	0	0
Other	13	Non-response	60	19	0

Table 16 Type of breaches regarding unnavigable watercourses in 2011

The provinces of Limburg, Antwerp and East Flanders reported a total of respectively 20, 90 and 24 breaches. Still, they indicated that respectively only 10, 0 and 2 official reports were drawn up by the provincial staff members. Most of the identified breaches were thus nullified through exhortations. However, Article 29 of the Code of Criminal Procedure stipulates that all authorities, public officers or officials who, during the performance of their duties, obtain information on a crime or offence are under the obligation to immediately report this to the public prosecutor of the court of the judicial district in which the crime or offence took place or the suspect might be found, and provide that magistrate with any relevant information, official reports and records.

Most of the established breaches referred to 'other types of breaches'. Apart from that, 'damage to banks' and 'discharge into watercourse' accounted for respectively 20.89% and 10.44% of the 134 breaches that were identified in total.

The Environmental Enforcement Report 2010 mentioned a total of 141 breaches regarding unnavigable watercourses that were identified by the provincial staff members. 22.69% referred to 'damage to banks', 10.63% to 'discharge into watercourse' and the remaining 94 breaches referred to 'other types of breaches', including breaches against the 1-metre zone, the 5-metre zone and structures in the watercourse.

### **2.3.3 Supporting role of the provinces with respect to the municipalities**

The activities of the provinces in the area of environmental enforcement are not only discussed in the framework of the Environmental Enforcement Act. They can also be analysed via the reporting in the framework of the Cooperation Agreement 2008-2013. This Cooperation Agreement 2008-2013 is a voluntary agreement between the Flemish Region and the Flemish provinces in the area of environment, under which financial and content-oriented support from the Government of Flanders is obtained in exchange for the implementation of certain actions. All five Flemish provinces have signed this cooperation agreement. Among other things, this implies that the provinces are responsible for the guidance, coordination and support of municipal environmental policy. The provinces take an active supporting role with respect to individual municipalities, and provide guidance to municipalities depending on their needs. The provinces are under the obligation to draw up an annual report on the implementation of the provincial cooperation agreement. This report touches upon the following topics in conformity with the agreements made: instruments, waste, product use, water, nuisance, energy, mobility, nature, soil and sustainable development.

Therefore, the Environmental Enforcement Report 2011 discusses the reports from the five provinces within the framework of the Cooperation Agreement 2008-2013 and with regard to 2011 in the light of the supporting role of the provinces vis-à-vis the municipalities in the field of environmental enforcement. The data below thus originate from the 2011 reports of the five provinces, namely the reports they made within the framework of the Cooperation Agreement 2008-2013.

In each province these supporting duties are carried out through information centres and through the set-up of regional meetings and the (co-)organisation of training pathways, consultations and training.

The five Flemish provinces and the Government of Flanders jointly organised a study day entitled 'Odour Nuisance for Local Licensing and Enforcement Bodies'. This study day took place in Leuven on 28 January 2011 and was repeated in Ghent on 28 February 2011. The themes that were discussed during these study days included among other things the transposition of the Flemish odour policy into a local odour policy, the interpretation of odour studies and EIRs, odour issues when granting licenses, the processing of odour complaints and parallel sessions with practical experience in specific aspects of the odour issue.

In 2011, the province of Limburg organised a course on MKROS ('Milieuklachten, registratie en opvolgings-systeem', literally translated as 'Environmental complaints, registration and follow-up system') to explain the basic principles and follow-up module. In the MKROS test environment the municipalities could enter a number of complaints and follow-up steps. Also, more information was provided about the analysis of nuisance complaints and the follow-up of these complaints. The province of Limburg also organised courses relating to environmental enforcement. On 26 April 2011, a study day entitled 'Drawing up Official Reports' was organised for environmental officers. Here, the definition, the purpose, the terms of validity, the nullity and the obligation to draw up an official report were discussed and the form and content of an official report were explained in greater detail. A number of cases were also worked out in smaller groups. On 28 April 2011, a study day on the Environmental Enforcement Act was organised for environmental officers and local supervisors. An overview was also given of the legislation. In addition, the main lines and scope of the Flemish Parliament Act were explained. Other items that were discussed include the diffe-

rence between environmental offences and environmental infringements and the identification thereof, supervision and prosecution, and the list of environmental infringements and how to prevent them. In addition, the theory was clarified using a number of examples of good practice.

On 27 April 2011, the province of Antwerp organised the course 'Platform for Local Environmental Enforcement: Garages and Body Works' where the Solvents Directive and the new directives for dangerous substances were discussed, among other things. On 4 October 2011, the province of Antwerp organised the course 'Platform for Local Environmental Enforcement: Animal Husbandry' where the list of ammonia-emission poor stables and air conditioning were discussed. The target group of this course consisted of municipal environmental officers and their co-workers, and police officers.

In the period from November to December 2011 a course was given in the province of Antwerp to obtain (or renew) the Certificate of Competence for noise measurements.

On the basis of the individual consultation with the municipalities and the active assistance of the municipalities the province of Antwerp reported in the Annual Environmental Programme 2012 a number of problems regarding environmental enforcement. The following was communicated in this programme, among other things: "When drawing up this Annual Environmental Programme, there is still no clarity about how the enforcement duties will be divided. As a result, no one wanted to invest in enforcement. Those who did, felt at a disadvantage. On the one hand, the Environmental Enforcement Act applies. On the other hand, it is unclear whether it is useful to further invest in its implementation, since the White Paper (cf White Paper 'Internal Reform of the Federated State') takes a totally different view." During the individual consultation with the municipalities it was asked whether it would be a good idea to transfer environmental enforcement completely to the Flemish Region. There were different opinions about this matter. One possibility would be to make the municipalities responsible for first line supervision. Also, the legal accountability of the supervisor (in reality often the environmental officer) is a stumbling block for many. No system or partnership can fully exclude the potential risks. However, not everyone considers this insurmountable. A clear statute is required in this context. The three main problems in terms of environmental enforcement are lack of staff and time, possibly linked to a lack of expertise; the discussion about who carries legal responsibility, linked to the lack of a clear statute for environmental officers (by extension: supervisory officers); and the double role of a municipality which acts as both licensing authority and enforcement body, which is often also politically sensitive.

In the province of East Flanders the training for local supervisors was organised in 2011. This training consisted of several modules for which people could enrol separately, such as environmental legislation, environmental law enforcement, waste, surface water pollution, air, noise nuisance, environment and nature conservation, and soil and water pollution. In addition, the provincial environmental network for police and environmental officers organised two meetings in 2011. A lawsuit could be attended at Ghent Court and a meeting was organised within the framework of animal welfare. A MKROS course was also due to take place in November 2011, but had to be cancelled for lack of participants.

The municipalities of the province of East Flanders can turn to the Provincial Centre for Environmental Research for technical scientific support in the field of nuisance and noise.

Within the framework of the visits which the province of East Flanders paid to the municipalities in 2011, it was established that most of the visited municipalities did not carry out any proactive inspections in the context of environmental enforcement. The municipalities did visit companies within the framework of the environmental license application and considered this to be very useful (and proactive). Some municipalities were encouraged by the province to start up more structured consultation with the police on enforcement and the follow-up of complaints.

The province of West Flanders also organised the training for supervisors in 2011. In February 2011, a course on the follow-up and reporting module of MKROS was organised as well. The participants were given an explanation after which they could practise on the computer and ask questions. Apart from that, two workshops were organised in May and September 2011, featuring the theme 'drawing up official reports'.

The province of Flemish Brabant organised in 2011 the training 'Renewal of Competence of Certificate for Noise Nuisance Abatement' in cooperation with the Provincial Institute for Training and Education. Two sessions of the refresher course for environmental supervisors (theory and practice) were organised as well. At the district consultation meetings of environmental officers topics relating to environmental enforcement were regularly discussed.

### **2.3.4 Supervisory duties performed by Flemish cities and municipalities**

Just like for the aforementioned enforcement actors, it is attempted, based on the supervisory duties carried out by the Flemish cities and municipalities, to provide an insight into the efforts they made in the area of local environmental enforcement.

Similarly to the Flemish provinces, the supervisory duty of the Flemish cities and municipalities is twofold. In practice this is reflected in the fact that the Environmental Enforcement Act defines enforcement duties for two municipal actors: the mayor and the municipal supervisor.

The competences of the mayors of the 308 Flemish cities and municipalities are very clearly specified in the Environmental Enforcement Act. Concretely, they are competent to impose safety measures and administrative measures in the framework of the following legislation:

- ▶ Act of 26 March 1971 on the protection of surface waters against pollution;
- ▶ Flemish Parliament Act of 2 July 1981 on waste prevention and management;
- ▶ Article 4 of the Flemish Parliament Act of 28 June 1985 on environmental licences: operation of a nuisance-causing plant without a licence;
- ▶ Article 22 of the Flemish Parliament Act of 28 June 1985 on environmental licences: operation of a Category 2 or 3 plant in contravention of the licensing requirements;
- ▶ Article 62 of the Flemish Parliament Act of 27 October 2006 on soil remediation and soil protection;
- ▶ Flemish Parliament Act of 22 December 2006 on the protection of water against agricultural nitrate pollution.

The second municipal actor – the municipal supervisor – was assigned the duty of monitoring compliance with the following legislation:

- ▶ Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy: Title III – company-internal environmental care in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Act of 28 December 1964 on air pollution abatement in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside;



- ▶ Act of 26 March 1971 on the protection of surface waters against pollution, waste water discharges and the detection of any kind of pollution in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Act of 18 July 1973 on noise pollution abatement in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Flemish Government Decree of 7 November 1982, Article 2;
- ▶ Royal Decree of 24 February 1977 on electronically amplified music, Article 5;
- ▶ Articles 11, 12, 13, 14, 17, 18 and 20 of the Flemish Parliament Act of 2 July 1981 on waste prevention and management and the corresponding implementing orders in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Flemish Parliament Act of 24 January 1984 containing measures with regard to groundwater management in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Flemish Parliament Act of 28 June 1985 on environmental licences in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Flemish Parliament Act of 22 December 2006 on the protection of water against agricultural nitrate pollution;
- ▶ Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.

In addition to the aforementioned competences, Article 34 of the Decree of 12 December 2008 implementing Title XVI of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy also assigns a supervisory duty to the municipal supervisor to identify breaches in relation to plants classified into Category 1 according to Appendix 1 to Title 1 of *Vlarem* – within the framework of the above-mentioned laws, acts and regulations – based on sensory perceptions, and to conduct investigations in the sense of Article 16.3.14 of the Environmental Enforcement Act.

#### 2.3.4.1 Mayors

The survey of the mayors of the cities and municipalities in the Flemish Region ran parallel with the survey

of the municipal supervisors (see 2.3.4.2) for the present Environmental Enforcement Report 2011. The mayors were asked to report on their activities within the framework of the imposition of administrative measures and safety measures in 2011. The Flemish High Council of Environmental Enforcement received a response from 196 mayors in the Flemish Region. This is a response rate of 63.63%. For the Environmental Enforcement Report 2010, a response rate of 60.06% was achieved.

### **ADMINISTRATIVE MEASURES**

The tables and graphs below give an overview of the responding mayors in the different categories of cities and municipalities, the number of mayors who received a petition or request for the imposition of administrative measures and the number of mayors who imposed an administrative measure in 2011.

‘Requests for the imposition of administrative measures’ are to be understood as any requests to impose administrative measures from regional supervisors, municipal supervisors, local police supervisors, provincial governors...to the people as referred to in Article 16.4.6 of the Environmental Enforcement Act who are authorised to take administrative measures, such as the mayor.

On the other hand, administrative measures can also be the subject of a petition for imposition by people who suffer direct detriment as a result of an environmental infringement or environmental offence, people who have an interest in this environmental infringement or environmental offence being controlled, and legal persons as referred to in the Act on a right of action with regard to the protection of the environment. This petition must be made by registered letter to the people authorised to impose administrative measures, like for instance mayors, and by a petition stating sufficient reasons, which shows that an environmental infringement or environmental offence is taking place, and in keeping with a strict procedure with short terms.

The table below shows the number of responding mayors per category of municipalities and the number of mayors who received a request/petition in 2011 for the imposition of administrative measures and the number of mayors who imposed administrative measures in 2011.

Mayor of:	Number of responding mayors	Number of mayors who received a request/petition in 2011 for the imposition of administrative measures	Number of mayors who imposed administrative measures in 2011
Municipalities with 0-4,999 inhabitants	7	3	2
Municipalities with 5,000-9,999 inhabitants	43	5	3
Municipalities with 10,000-14,999 inhabitants	56	9	8
Municipalities with 15,000-19,999 inhabitants	29	9	7
Municipalities with 20,000-24,999 inhabitants	21	2	1
Municipalities with 25,000-29,999 inhabitants	9	2	2
Cities and municipalities with 30,000-74,999 inhabitants	25	6	9
Cities with more than 75,000 inhabitants	6	2	1
<b>Total</b>	<b>196</b>	<b>38</b>	<b>33</b>

*Table 17 Response rate of the mayors of the Flemish cities and municipalities and the number of these mayors who received a request/petition in 2011 for the imposition of administrative measures and the number of mayors who imposed administrative measures in 2011*

In total, 38 of the 196 responding mayors received a request or petition to impose an administrative measure. This means that almost 20% of the responding mayors received a request or petition. The table above also shows that, in 2011, 33 mayors actually imposed administrative measures, whether or not following a petition/request or at their own initiative. This is 16.83% of the total number of responding municipalities. It can in any case be deduced from this that not every request or petition actually led to the imposition of administrative measures.

In the category of cities and municipalities with a population of 30,000 to 74,999 it can be observed that more mayors imposed an administrative measure than the number of mayors who received a request or petition. This means that at least three mayors in this category imposed an administrative measure at their own initiative.

In comparison with the data from the Environmental Enforcement Report 2010 it can be established that the response rate for 2011 was higher. However, the number of mayors who received a request or petition to impose administrative measures was higher in 2010 than in 2011, namely 23.78% in 2010 compared to 19.38% of the total number of responding mayors in 2011. In addition it can be established that the number of mayors who actually imposed administrative measures was also higher in 2010 than in 2011, namely 23.24% in 2010 compared to 16.83% of the total number of responding municipalities in 2011.

Given the aforementioned difference between a petition and a request for the imposition of an administrative measure, the mayors were asked how many petitions and requests they received in 2011. The table below gives an overview of the number of petitions and requests that were submitted to the mayors in

the different categories of cities and municipalities and of which supervisors submitted these requests.

Administrative measures		Mayor of a city/municipality with a population of:								Total
		0-4,999	5,000-9,999	10,000-14,999	15,000-19,999	20,000-24,999	25,000-29,999	30,000-74,999	75,000-...	
Requests/petitions for the imposition of administrative measures	Requests/petitions received by the mayor in 2011:	3	10	46	22	2	22	33	6	144
	Requests made by regional supervisors:	0	5	2	4	0	1	1	0	13
	Requests made by municipal supervisors:	0	0	2	5	0	1	0	0	8
	Requests made by supervisors of an intermunicipal association:	0	0	9	0	1	20	11	0	41
	Requests made by police district supervisors:	0	0	2	3	0	0	20	2	27
	Requests made by provincial supervisors:	1	1	2	2	0	0	0	1	7
	Petitions filed by third parties:	2	4	29	8	1	0	1	3	48

Table 18 Requests/petitions for the imposition of administrative measures received by the mayors of the Flemish cities and municipalities in 2011

The above data show that the 38 mayors who received a petition or request for the imposition of administrative measures in 2011 together received a total of 144 of these petitions or requests. Despite the fact that fewer mayors - 44 compared to 38 - received such a petition/request, the number of requests/petitions increased from 117 in 2010 to 144 in 2011. 33.33% of these petitions/requests referred to petitions filed by third parties, 18.75% to requests from police district supervisors, 28.74% to requests from supervisors of an intermunicipal association, 5.55% to requests from municipal supervisors and 9.02% to requests from regional supervisors. The mayors also reported that they received a total of 7 requests for the imposition of administrative measures from provincial supervisors. As said earlier, no provincial supervisors had been appointed yet in 2011. This raises the question as to what extent the terminology of the Environmental Enforcement Act is fully understood by the enforcement actors.

On the basis of the data from the Environmental Enforcement Report 2010 a comparison can be made between the total number of requests/petitions received by the mayors in 2010 and 2011. The graph below compares the percentage share of requests/petitions and the actors who submitted them for 2010 and 2011.

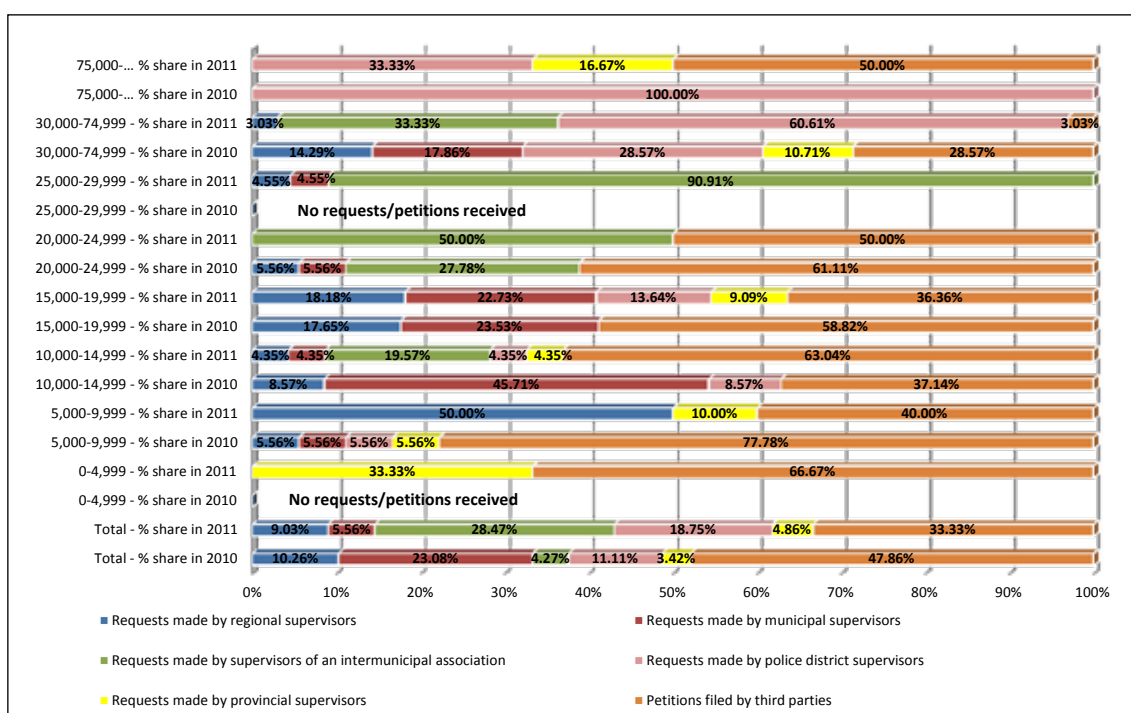


Table 11 Requests/petitions for the imposition of administrative measures received by the mayors of the Flemish cities and municipalities in 2011

The comparison in the graph above shows that the percentage share of the number of petitions from third parties for the imposition of administrative measures declined in 2011 compared to 2010. This decrease can also be observed in the real figures. In 2010, no less than 56 petitions were filed to the mayors by third parties, whereas this number fell to 48 in 2011.

In addition, it can be established that the percentage share of requests from supervisors of intermunicipal associations strongly increased. In 2010, 5 requests for the imposition of administrative measures were submitted by supervisors of intermunicipal associations. In 2011, this number amounted to 41. On the other hand, the share of requests submitted by supervisors of the municipalities themselves strongly decreased. In 2010, no less than 27 requests for the imposition of an administrative measure were submitted by municipal supervisors. In 2011, this number declined to 8. This could be explained by the fact that municipal supervisors have become more familiar with the instruments of the Environmental Enforcement Act and impose the administrative measures themselves instead of asking their mayors to do so. The strong increase in requests from supervisors of intermunicipal associations is not so strange either. This could on the one hand mean that enforcement is organised more and more at the intermunicipal level. On the other hand, it may be assumed that a supervisor of an intermunicipal association will more easily ask the mayor to take measures, given the huge impact these administrative measures may have.

The mayors of the Flemish cities and municipalities were not only asked about the number of petitions and requests for the imposition of administrative measures they received in 2011, but also about how many and which types of administrative measures they actually imposed in that year.

The administrative measures that may be imposed are:

- Prohibition order: This is an order from the authorised supervisor to the suspected offender to

end certain activities, works, or the use of objects;

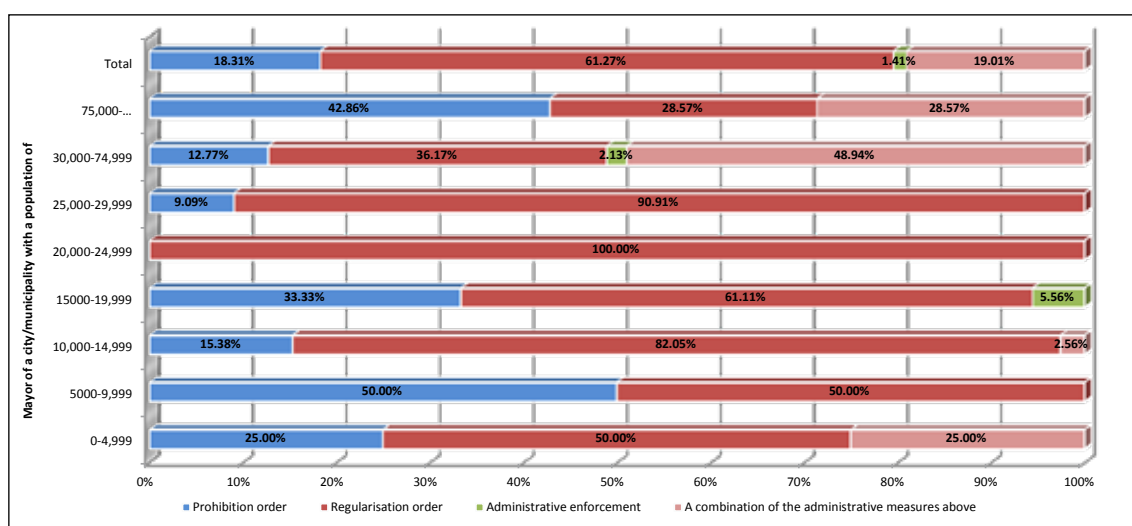
- ▶ Regularisation order: This is an order from the authorised supervisor to the suspected offender to take certain measures to end the environmental infringement or environmental offence, reverse its consequences, or prevent its repetition;
- ▶ Administrative enforcement: In this case the authorised supervisor takes actual action against the identified environmental infringement or environmental offence;
- ▶ Or a combination of these measures.

In order to examine the effectiveness of this instrument, it was also asked whether it was possible to have the imposed administrative measure implemented within the imposed term. If the rate of compliance of the instrument 'administrative measures' would be low, this could mean that this environmental enforcement instrument is neither very effective or efficient, nor has a great impact.

The table and graph below give an overview of the types of administrative measures that were imposed by the mayors and the number of these imposed administrative measures that were not implemented within the imposed term.

Administrative measures		Mayor of a city/municipality with a population of:								
		0-4,999	5,000-9,999	10,000-14,999	15,000-19,999	20,000-24,999	25,000-29,999	30,000-74,999	75,000-...	Total
Administrative measures imposed by mayors	Administrative measures imposed by mayors in 2011	4	4	39	18	1	22	47	7	142
	Prohibition order:	1	2	6	6	0	2	6	3	26
	Regularisation order:	2	2	32	11	1	20	17	2	87
	Administrative enforcement:	0	0	0	1	0	0	1	0	2
	A combination of the above-mentioned administrative measures:	1	0	1	0	0	0	23	2	27
	It was not possible to have the measure carried out within the imposed term:	1	0	4	2	0	0	0	0	7

Table 19 Administrative measures imposed by the mayors of the cities and municipalities in the Flemish Region in 2011



Graph 12 Administrative measures imposed by the mayors of the cities and municipalities in the Flemish Region in 2011

It was already indicated earlier that not every administrative measure was imposed following a petition or request, since in a specific category of cities more mayors imposed administrative measures than the number which had received a petition or request to do so. This means that some of the administrative measures were imposed at the mayors' own initiative. The above figures also show that not every petition or request actually resulted in the imposition of administrative measures by the mayors, since a total of 142 administrative measures were imposed (of which some at their own initiative) and 144 requests or petitions were submitted to the mayors.

Of the 142 administrative measures that were imposed by the mayors 18.31% referred to a prohibition order, 61.27% to a regularisation order and only 1.41% to administrative enforcement. For 19.01% of the total number of imposed administrative measures a combination of different types of measures was used.

Compared to 2010, more administrative measures were imposed by the mayors in the Flemish Region in 2011. In 2010, administrative measures were imposed by the mayors in 128 cases. However, the percentage share of the measure 'administrative enforcement' was 6.25% during that period. This instrument was thus used six times more often in 2010 than in 2011.

In order to examine the effectiveness of the instrument 'administrative measure', the VHRM has asked again whether it was possible to have the imposed administrative measure implemented within the imposed term. If the rate of compliance of the instrument would be low, this could mean that this environmental enforcement instrument is neither very effective nor efficient, nor has a great impact. Yet it can be deduced from the above table that only 7 out of the total of 142 administrative measures imposed by the mayors were not implemented within the imposed term. This is just under 5% of the total number of administrative measures that were imposed. In 2010, this share still amounted to 16.41%. Naturally, not only the increase in the use of the instrument 'administrative measure' by the mayors in the Flemish Region, but also the increase in the number of administrative measures that were implemented in time can be regarded as positive elements.

## SAFETY MEASURES

Apart from imposing administrative measures, the mayors are also authorised to impose safety measures. Safety measures are measures through which the persons, mentioned in Article 16.4.6, such as the mayor, can take or impose any actions they consider necessary under the given circumstances to eliminate, reduce to an acceptable level or stabilise a substantial risk to people or the environment. Safety measures can be aimed at the following situations, among other things (Article 16.7.2 of the Environmental Enforcement Act):

- ▶ the suspension or execution of works, actions or activities, immediately or within a given term;
- ▶ the prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon;
- ▶ the complete or partial closure of a plant;
- ▶ the seizure, storage or removal of relevant objects, including waste and animals;
- ▶ no entry to or leaving of certain areas, grounds, buildings, or roads.

The table below gives an overview of the number of responding mayors who received a request for the imposition of safety measures and the number of mayors who actually imposed a safety measure, either on the basis of a request or at their own initiative.

Mayor of:	Number of responding mayors	Number of mayors who received a request for the imposition of safety measures in 2011	Number of mayors who imposed safety measures in 2011
Municipalities with 0-4,999 inhabitants	7	0	0
Municipalities with 5,000-9,999 inhabitants	43	1	1
Municipalities with 10,000-14,999 inhabitants	56	5	4
Municipalities with 15,000-19,999 inhabitants	29	3	2
Municipalities with 20,000-24,999 inhabitants	21	1	1
Municipalities with 25,000-29,999 inhabitants	9	2	2
Cities and municipalities with 30,000-74,999 inhabitants	25	3	3
Cities with more than 75,000 inhabitants	6	0	1
<b>Total</b>	<b>196</b>	<b>15</b>	<b>14</b>

*Table 20 Response rate of the mayors of the Flemish cities and municipalities and the number of these mayors who received a request for the imposition of safety measures in 2011 and the number of mayors who imposed safety measures in 2011*



The table above shows that 15 of the 196 mayors in the Flemish Region received a request for the imposition of safety measures. This is 7.65% of the responding mayors and a slight increase compared to the 6.49% in the Environmental Enforcement Report 2010.

It is also indicated that 14 of the 196 mayors in the Flemish Region actually imposed at least one safety measure in 2011, whether by virtue of their office or following a request. This is 7.14% of the total number of responding mayors. For 2010, 16 of the 185 mayors reported having imposed at least one safety measure, which is 8.64%. This means that an actual decrease in terms of percentage can be observed in the number of mayors taking safety measures.

The mayors can impose safety measures by virtue of their office, but also following the request of a supervisor. The table below gives an overview of the number of requests that were submitted to the mayors in 2011 in the different categories of cities and municipalities and of which supervisors submitted these requests.

Safety measures		Mayor of a city/municipality with a population of:								Total
		0-4,999	5,000-9,999	10,000-14,999	15,000-19,999	20,000-24,999	25,000-29,999	30,000-74,999	75,000-...	
Requests for the imposition of safety measures	Requests received by the mayor between 1 January 2011 and 31 December 2011:	0	1	15	5	2	10	6	0	39
	Requests made by regional supervisors:	0	1	2	1	0	1	4	0	9
	Requests made by municipal supervisors:	0	0	4	1	0	9	2	0	16
	Requests made by supervisors of an intermunicipal association:	0	0	2	0	0	0	0	0	2
	Requests made by police district supervisors:	0	0	7	3	2	0	0	0	12
	Requests made by provincial supervisors:	0	0	0	0	0	0	0	0	0

Table 21 *Requests for the imposition of safety measures received by the mayors of the Flemish cities and municipalities in 2011*

The 15 mayors who indicated, for 2011, having received a request for the imposition of a safety measure together received a total of 39 such requests. This is an increase compared to the 22 requests for the imposition of safety measures which the mayors in the Flemish Region received in 2010.

Of these 39 requests 23.08% originated from regional supervisors, 41.03% from municipal supervisors, 5.13% from the supervisors of intermunicipal associations and 30.77% from local police supervisors. This is a more varied picture than in the Environmental Enforcement Report 2010, since the requests for the imposition of safety measures were only made by municipal supervisors and local police supervisors with a ratio of respectively 59.09% and 40.91% of the total number of requests submitted to the mayors for the

imposition of safety measures.

The mayors of the Flemish cities and municipalities were not only asked to indicate how many requests for the imposition of safety measures they received in 2011, but also how many and which types of safety measures they actually imposed in that year.

The table below gives an overview of the safety measures actually imposed by the mayors and of the types of safety measures that were imposed. The VHRM also requested, by analogy with the request for administrative measures, whether it was possible to have the measure implemented within the imposed term. Again, this could be an indication of the effectiveness of the instrument 'safety measure'.

Safety measures		Mayor of a city/municipality with a population of:							
		0-4,999	5,000-9,999	10,000-14,999	15,000-19,999	20,000-24,999	25,000-29,999	30,000-74,999	75,000-...
Safety measures imposed by the mayors	Safety measures imposed by the mayor between 1 January 2011 and 31 December 2011:	0	1	10	3	1	3	6	2
	the suspension or execution of works, actions or activities, immediately or within a given term	0	1	5	1	1	0	1	2
	the prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon	0	0	2	0	0	2	1	0
	the complete or partial closure of a plant	0	0	1	0	0	0	0	0
	the seizure, storage or removal of relevant objects, including waste and animals	0	0	2	2	0	1	4	0
	no entry to or leaving of certain areas, grounds, buildings, or roads	0	0	0	0	0	0	0	0
	It was not possible to have the measure carried out within the imposed term:	0	1	3	2	0	2	3	0

Table 22 Safety measures imposed by the mayors of the cities and municipalities in the Flemish Region in 2011

The 14 mayors who indicated having imposed a safety measure in 2011, together imposed a total of 26 safety measures. Since 39 requests for the imposition of safety measures were submitted to the mayors, this means that not every request was complied with. It is also possible that the mayors imposed safety measures at their own initiative by virtue of their office. These 26 imposed safety measures are a strong decrease compared to the 43 safety measures imposed in 2010.

Of the 26 safety measures imposed by the mayors 42.31% referred to the suspension or execution of works, actions or activities, immediately or within a given term and 19.23% referred to the prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon. In 3.85% of the cases, the safety measure constituted of the complete or partial closure of a plant and in 34.62% of the cases of the seizure, storage or removal of relevant objects, including waste and animals. For 2010, these percentage shares amounted to 44.19%, 18.60%, 4.65% and 23.26% respectively. Apart from that, the instrument 'no entry to or leaving of certain areas, grounds, buildings, or roads' was imposed four times as a safety measure in 2010.

In 42.30% of all the safety measures imposed by the mayors it was impossible to have the measure carried out within the imposed term, which means that barely 57.7% of the safety measures was directly complied with. In 2010, this rate of compliance still amounted to 90.70%.

### 2.3.4.2 Municipal supervisors

To obtain an insight into the organisation and efforts regarding local environmental enforcement, the 308 Flemish cities and municipalities were asked via a questionnaire, by analogy with the Environmental Enforcement Reports 2009 and 2010, to provide information about the appointment of supervisors, the organisation of supervisory activities in the municipality, the number of environmental enforcement inspections carried out, as well as the result of these inspections. The results of the environmental enforcement inspections are discussed in Chapter 3 where an evaluation per enforcement instrument will provide an insight into this. The present chapter tries to give a picture of:

- ▶ the response of the municipalities to the VHRM questionnaire;
- ▶ the number of Category 1, 2 and 3 nuisance-causing plants;
- ▶ the appointment of supervisors by the Flemish cities and municipalities;
- ▶ the number of appointed supervisors per municipality;
- ▶ the amount of time dedicated to supervisory duties by supervisors;
- ▶ the organisation of supervisory activities in cities and municipalities;
- ▶ the number of inspections carried out per category of municipality, per supervisor, and per FTE.

In addition, the collected data can be used to analyse to what extent the municipalities in the Flemish Region satisfy the provisions of the Environmental Enforcement Act with regard to the appointment of supervisors. Article 16,§1 of the Decree of 12 December 2008 implementing Title XVI of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy, in short the Environmental Enforcement Decree, indeed stipulates that municipalities are required to have at least 1 supervisor at their disposal within one year after the coming into effect of the aforementioned Decree, which was on 1 May 2010. This can be either a municipal supervisor or Vlarem officer, or a supervisor or Vlarem officer of an intermunicipal association, or a supervisor or Vlarem officer of a police district. As of 1 May 2011, municipalities with more than three hundred Category 2 plants in accordance with Title I of Vlarem or with more than thirty thousand inhabitants if the number of plants is insufficiently known are at least required to have two supervisors at their disposal. This can be either municipal supervisors, or police district supervisors, or supervisors of intermunicipal associations.

### RESPONSE FROM THE MUNICIPALITIES CONCERNING THE REQUEST FOR INPUT

In order to put the following figures regarding environmental enforcement on the municipal level in the right context, it is important to gain insight into the response of the municipalities to the questionnaire for the Environmental Enforcement Report 2011.

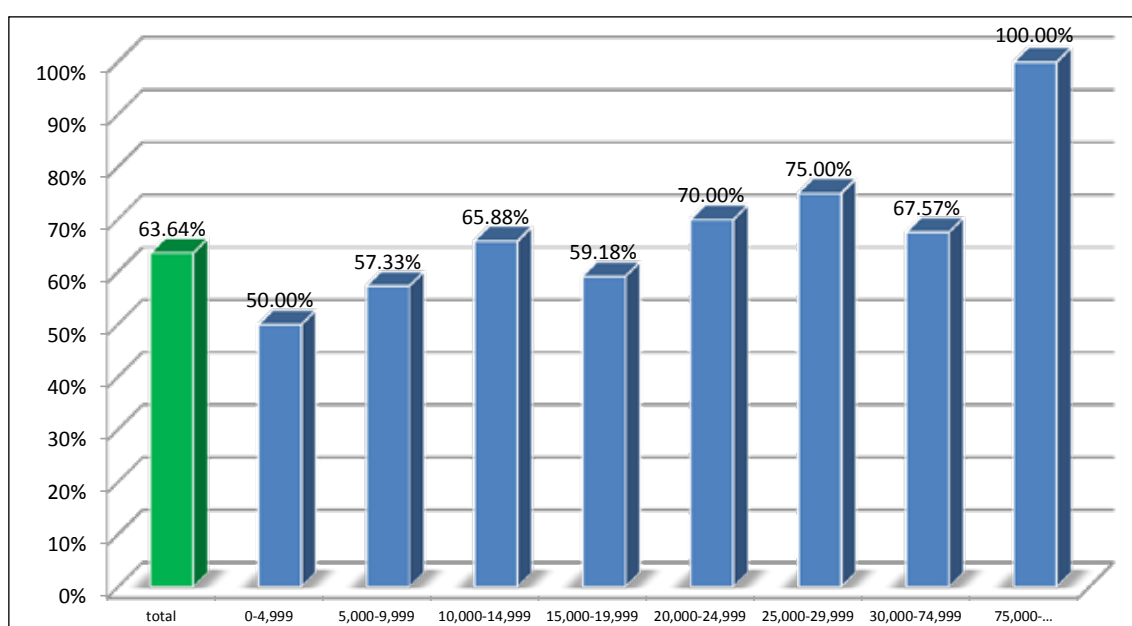
In total, the VHRM received an answer from 196 of the 308 Flemish municipalities. A list of these municipalities can be found in Appendix 1 to this report.

In order to get an idea of the differences between the different 'types' of municipalities, it was again decided to present the municipalities' results in 8 categories on the basis of the population of the municipality. By maintaining this classification it is possible to make comparisons on the basis of the data from the Environmental Enforcement Report 2010. For purposes of the classification, account was taken of the number of inhabitants given by the municipalities in the questionnaire.

The table and graph below represent the response rate, both in real numbers and in percentages, with respect to the total number of municipalities in the category concerned.

	Number of cities and municipalities in the category in question	Number of responding cities and municipalities per category
Municipalities with 0-4,999 inhabitants	14	7
Municipalities with 5,000-9,999 inhabitants	75	43
Municipalities with 10,000-14,999 inhabitants	85	56
Municipalities with 15,000-19,999 inhabitants	49	29
Municipalities with 20,000-24,999 inhabitants	30	21
Municipalities with 25,000-29,999 inhabitants	12	9
Cities and municipalities with 30,000-74,999 inhabitants	37	25
Cities with more than 75,000 inhabitants	6	6
<b>Total</b>	<b>308</b>	<b>196</b>

Table 23 Categories of Flemish cities and municipalities, including number of cities and municipalities per category and number of respondents per category in 2011



Graph 13 Response rate (%) to questionnaire for municipalities (according to population)

In total, the VHRM timely received a completed questionnaire from 196 municipalities. For the Environmental Enforcement Reports 2009 and 2010, respectively 193 and 185 municipalities still sent a response. This is an increase in the response rate of 62.66% of the total number of municipalities in 2009 (to 60.06% in 2010) to 63.64% of the total number of municipalities for the Environmental Enforcement Report 2011.

When considering the different categories of municipalities, however, this increase is not equally visible in each of these categories. Municipalities with a population of 15,000 to 19,999, 20,000 to 24,999 and 30,000 to 74,999 had a lower response rate in 2011 than in 2010. This rate declined respectively from 63.27% to 59.18%, from 73.33% to 70% and from 78.38% to 67.57% in 2011, compared to 2010.

Just like for the Environmental Enforcement Report 2010, a response rate of 100% could be recorded for the category of cities with more than 75,000 inhabitants. Despite the fact that in some categories a decline can be observed, it can be established that in each category at least 50% of the total number of municipalities in the categories submitted the completed questionnaire in time to the VHRM for it to draw up the figures below. This means that the conclusions that are drawn on the basis of the received data can be regarded as representative. Account will probably have to be taken of the fact that those who completed the questionnaire are likely to be more closely involved in environmental enforcement.

#### **NUISANCE-CAUSING PLANTS PER MUNICIPALITY**

Cities and municipalities were asked how many licensed plants falling into Categories 1, 2 and 3 in accordance with Appendix I to Title I of Vlareem are located on their territory, and at what number they estimated the total of unlicensed nuisance-causing plants in their city/municipality in 2011. The purpose of this question was to gain insight into the number of nuisance-causing plants per municipality, as this is essential to draw up a good inspection plan and to estimate and evaluate the efforts made in the field of environmental supervision. In addition, the number of nuisance-causing plants falling into Category 2 is used as criterion to determine how many supervisors a municipality should have at its disposal. In order to avoid any confusion, the term 'unlicensed nuisance-causing plant' was defined as follows: These are

plants that could be classified, on the basis of Vlarem, as Category 1, 2 or 3 plants, but have not yet been licensed as such.

Therefore, the table below shows the total number of Category 1, 2 and 3 nuisance-causing plants, as well as the estimated number of unlicensed nuisance-causing plants. The table also gives the average number of nuisance-causing plants per category and the number of municipalities that have no clear information on the number of nuisance-causing and unlicensed plants on their territory.

Number of inhabitants	Number of respondents per population category	Category 1 plants in 2011			Category 2 plants in 2011			Category 3 plants in 2011			Unlicensed plants in 2011		
		Total number according to survey	Average number per municipality	Number of municipalities that have no information on number of Category 1 plants	Total number according to survey	Average number per municipality	Number of municipalities that have no information on number of Category 2 plants	Total number according to survey	Average number per municipality	Number of municipalities that have no information on number of Category 3 plants	Total number according to survey	Average number per municipality	Number of municipalities which do not know the number of unlicensed plants or indicated that there were no unlicensed plants in 2011
0-4,999	7	102	17	1	361	60.16	1	774	129	1	5	5	6
5,000-9,999	43	1,634	39.85	2	6,243	148.64	1	11,314	282.85	3	521	37.21	29
10,000-14,999	56	2,821	55.31	5	6,149	120.56	5	20,434	408.68	6	580	36.25	40
15,000-19,999	29	1,832	67.85	2	4,837	179.14	2	13,943	516.40	2	479	34.21	15
20,000-24,999	21	1,087	51.76	0	3,947	187.95	0	14,169	674.71	0	260	32.50	13
25,000-29,999	9	2,704	300.44	0	5,481	609.00	0	9,934	1103.78	0	115	57.50	7
30,000-74,999	25	2,799	116.62	1	7,531	313.79	1	24,070	1,002.91	1	445	74.16	19
75,000-...	6	2,770	461.67	0	5,768	961.33	0	22,094	3682.33	0	840	420	4
<b>Total</b>	<b>196</b>	<b>15,749</b>	<b>86.53</b>	<b>11</b>	<b>40,317</b>	<b>216.75</b>	<b>10</b>	<b>116,732</b>	<b>637.87</b>	<b>13</b>	<b>3,245</b>	<b>51.50</b>	<b>133<sup>37</sup></b>

 Table 24 Nuisance-causing plants per municipality<sup>37</sup>

<sup>37</sup> 126 municipalities indicated that the number of unlicensed plants on their territory was unknown and 7 municipalities communicated that no unlicensed nuisance-causing plants were present on their territory.

It is extremely important for cities and municipalities to have information on the number of plants on their territory, not only with a view to planning their own environmental enforcement efforts, but also to comply with the obligations laid down by Acts and decrees. As mentioned earlier, municipalities with more than three hundred Category 2 plants should have two supervisors at their disposal since 1 May 2011.

The table above shows that the responding municipalities reported a total of 172,798 Category 1, Category 2 and Category 3 plants on their territory. This means that an average of 86.53 Category 1 plants are present within the 185 responding municipalities that knew the number of Category 1 plants on their territory and an average of 216.75 Category 2 plants on a total of 186 municipalities who knew the number of Category 2 plants on their territory in 2011. For the Category 3 plants, the average amounts to 637.87 for the 183 municipalities who could actually give the number of these plants. Despite the fact that the response rate for the present environmental enforcement report is higher than for the Environmental Enforcement Report 2010, it should be observed that these average numbers of Category 1, Category 2 and Category 3 plants are lower in 2011 than in 2010. In 2010, these amounted to respectively 60.44, 221.89 and 684.36 for each responding municipality that knew the number of plants on its territory.

The above data also show that 11 municipalities could not communicate the number of Category 1 plants in their municipalities in 2011. 10 municipalities could not give the number of Category 2 plants that were present on their territory in 2011 and 13 municipalities could not give the number of Category 3 plants present in their municipalities in 2011. This comes down to respectively 5.61%, 5.10% and 6.63% of the total number of responding municipalities that do not have any insight into the number of this category of plants on their territory. Despite the fact that this is a decrease compared to the Environmental Enforcement Report 2010 when for Category 1 plants 7.02%, for Category 2 plants 5.94% and for Category 3 plants 9.19% of the responding municipalities could not give the numbers, it should be repeated that when the number of nuisance-causing plants is unknown, there is insufficient possibility to efficiently and effectively plan environmental enforcement activities. Therefore, the municipalities which do not yet have this information could be recommended to start gathering this knowledge.

In addition, it can be established that 63 municipalities had knowledge of a total of 3,245 unlicensed nuisance-causing plants on their territory. 126 municipalities indicated that the number of unlicensed plants on their territory was unknown and 7 municipalities communicated that no unlicensed nuisance-causing plants were present on their territory. The fact that it is known that a total of 3,245 - which is an increase compared to the number of 2,233 that was given for the Environmental Enforcement Report 2010 - nuisance-causing plants requiring a license are present on the territory of 63 municipalities without these actually being licensed in 2011, raises the question as to why enforcement in these municipalities was not focused on these unlicensed nuisance-causing plants in 2011. After all, these municipalities are aware of violations against the applicable environmental law and should therefore be expected to take relevant action. As a recommendation to those cities and municipalities, it could therefore again be proposed that priority still be given to the monitoring of these unlicensed nuisance-causing plants in the municipal inspection plans.

#### ORGANISATION OF LOCAL SUPERVISION

Article 16,§1 of the Decree of 12 December 2008 implementing Title XVI of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy stipulates that municipalities are required to have at least one supervisor at their disposal within one year after the coming into effect of the aforementioned Decree, which was on 1 May 2010. This can be either a municipal supervisor, or a supervisor of an intermunicipal association, or a police district supervisor. Within two years of the coming into effect of this Decree on 1 May 2011 municipalities with more than three hundred Category 2 plants in accordance with Title I of Vlare, or with more than thirty thousand inhabitants if the number of plants is



insufficiently known, are required to have two supervisors at their disposal. This can be either municipal supervisors, or supervisors of intermunicipal associations, or police district supervisors.

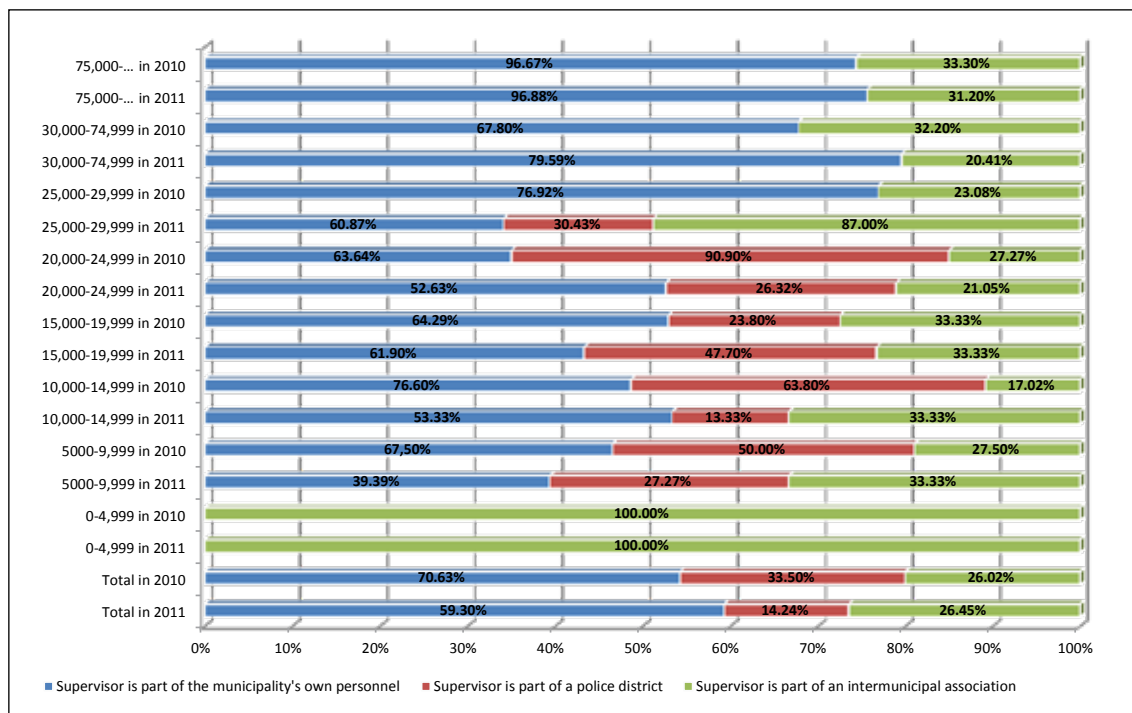
The table below shows per category of municipalities how they implemented the duties of local supervisor in 2011: with their own personnel, or via an intermunicipal association or a police district. The figures below refer to the number of supervisors, not the number of municipalities.

Organisation of local supervision	Supervisor is part of the municipality's own personnel	Supervisor is part of an intermunicipal association	Supervisor is part of a police district
Total	204	49	91
0- 4,999	0	0	4
5,000-9,999	26	18	22
10,000-14,999	48	12	30
15,000-19,999	26	2	14
20,000-24,999	20	10	8
25,000-29,999	14	7	2
30,000-74,999	39	0	10
75,000-...	31	0	1

Table 25 *Organisation of supervision in cities and municipalities according to population in 2011*

The table above shows that in 2011 the 196 responding municipalities had a total of 344 supervisors at their disposal, 59.30% of whom belonged to the municipality's own personnel, 14.24% to an intermunicipal association and 26.45% to the police district. Since no response rate of 100% was achieved, neither from the municipalities nor from the police districts, and since no accurate picture is available of the number of intermunicipal associations that are active in the field of enforcement, the figures above may give a distorted picture. In some cases, the number of supervisors who are part of a police district and an intermunicipal association will probably have been counted twice, given the fact that these supervisors can be counted by several municipalities. As a result, the percentage share of the number of supervisors who are part of the municipality's own personnel will even be higher in reality.

On the basis of the data from the Environmental Enforcement Report 2010 a comparison can be made between the number of municipal supervisors, supervisors of intermunicipal associations and local police supervisors in 2010 and 2011. This is reflected in the graph below.



Graph 14 Organisation of local supervision (in percentages) per population in 2010 and 2011

The Environmental Enforcement Report 2010 shows that in 2010 the municipalities had a total of 269 supervisors at their disposal, 190 of whom belonged to the municipality's own personnel, 9 to an intermunicipal association and 70 to the police district. This indicates that the number of supervisors available in 2011 sharply rose compared to 2010, given the fact that in 2011 municipalities had a total of 344 appointed supervisors at their disposal.

As can be deduced from the above graph, this increase revealed itself in terms of percentage in the number of supervisors who were part of an intermunicipal association and the police district. Even in real numbers this increase is substantial, namely from 9 supervisors in 2010 to 49 in 2011. Given the increased response rate, this may have to be put into perspective. The percentage increase in the number of supervisors within intermunicipal associations and police districts could be expected to take place within smaller municipalities. This is confirmed by the graph above, since the share of supervisors who are part of the municipalities themselves is nonexistent or decreased in the smaller categories in 2011 compared to 2010. It is only in the category of municipalities with a population of 15,000 to 19,999 - with a relapse in the category of municipalities with a population of 20,000 to 24,999 - that the percentage share of supervisors who are part of the municipalities themselves exceeds the total average. On the other hand, there is of course the fact that the share of supervisors who are part of the police district and intermunicipal association increased in 2011 compared to 2010 in the smaller categories of municipalities. This trend could imply that the smaller the municipalities the more intermunicipal associations or police districts are called on to appoint supervisors. The way in which the local supervision is organised may be interesting for smaller municipalities. The appointment of an intermunicipal supervisor or police district supervisor (as long as this district is responsible for several municipalities) could result in a scale increase in terms of expertise and geographical employability of the supervisor. As the position of supervisor is currently not required to be full-time equivalent and in smaller municipalities it is often combined with other duties, the appointment of a full-time equivalent supervisor within an intermunicipal association or a police district can only increase the expertise of this supervisor. Furthermore, it would be recommendable to appoint

several supervisors within an intermunicipal association or a police district, since the supervisors would then not need to perform any inspections in their own municipalities. The appointment of an intermunicipal supervisor or a police district supervisor could also lead to the duties of 'supervisor' and 'adviser' being separated in the licensing procedure. It is frequently commented that in many cases the environmental officer (and hence the adviser) is today often appointed as supervisor, and is therefore practically a party and a judge at the same time.

The appointment, the amount of time dedicated and the activities of local police supervisors were discussed in Chapter 2.2.3 'Evaluation of the environmental enforcement policy pursued by the local police'. To this end, the superintendents of the 118 police districts in the Flemish Region were addressed. A separate section on the environmental enforcement policy of intermunicipal associations is not yet possible, however, since the Flemish High Council of Environmental Enforcement does not yet have an overall picture of the intermunicipal associations that have organised around environmental enforcement or have taken up environmental enforcement as one of their duties. Still, a separate section of this chapter will look more closely at a specific intermunicipal association and how it is organised.

Since the end date of 1 May 2011 expired during the study period, it seemed appropriate to ask the municipalities whether they had a supervisor/supervisors at their disposal in 2011. This could give an idea of the extent to which the municipalities in the Flemish Region have implemented the Environmental Enforcement Act. Hence, the tables below include information on whether the responding municipalities actually appointed at least one or two supervisors. This can, on the one hand, be determined on the basis of the number of Category 2 nuisance-causing plants that are present on the territory of the municipalities (see earlier), or if this number is unknown, on the basis of the number of inhabitants.

Appointment of supervisors on the basis of the number of nuisance-causing plants	Number of municipalities		
	Without supervisors	With 1 supervisor	With 2 or more supervisors
> 300 Category 2 nuisance-causing plants	5	15	13
< 300 Category 2 nuisance-causing plants	37	92	23
No insight into the number of nuisance-causing plants	3	6	2

Table 26 Appointment of supervisors on the basis of the number of nuisance-causing plants

If the number of nuisance-causing plants is taken as the criterion for determining the number of supervisors which a municipality should have at its disposal - whether or not appointed within the municipality itself, through an intermunicipal association or within the police district - it can be concluded on the basis of the above table that at least 60 and at most 66 of the 196 responding municipalities are not complying with the legal provisions of the Environmental Enforcement Decree. This comes down to a minimum of 30.61% of the responding municipalities.

If the number of plants is not precisely or insufficiently known, the number of supervisors which a municipality should have at its disposal can also be determined on the basis of the population. This is simulated in the table below. As soon as a municipality has more than 30,000 inhabitants, it should have at least 2 supervisors at its disposal.

Appointment of supervisors on the basis of the population	Number of municipalities		
	Without supervisors	With 1 supervisor	With 2 or more supervisors
Total	49	113	33
0-4,999	7	0	0
5,000-9,999	16	26	0
10,000-14,999	12	41	3
15,000-19,999	5	22	2
20,000-24,999	6	10	5
25,000-29,999	1	3	5
30,000-74,999	2	11	12
75,000-...	0	0	6

Table 27 *Appointment of supervisors on the basis of the population*

It is also apparent from the table above that, if the population is used as criterion for determining the number of supervisors which is legally laid down, 60 of the 196 responding municipalities do not yet have a sufficient number of supervisors at their disposal. Since each municipality should have at least one supervisor at its disposal and municipalities with more than 30,000 inhabitants even two, it can be established that barely 69.38% of all the responding municipalities complied with the legal provisions of the Environmental Enforcement Decree in 2011.

The data above indicate that, both on the basis of the calculation of the number of Category 2 plants and of the number of inhabitants, more than 30% of the responding municipalities did not comply with the legal provisions and had therefore not appointed sufficient supervisors on 1 May 2011.

#### **APPOINTMENT OF MUNICIPAL SUPERVISORS AND AMOUNT OF TIME DEDICATED**

The municipalities and cities in the Flemish Region were asked to report whether the municipality had a supervisor at its disposal between 1 January 2011 and 31 December 2011 and how many supervisors, if any, were appointed within the municipality itself, within the police district or within an intermunicipal association. This has already been discussed in the previous section. It was also asked how many supervisors were appointed within the municipality itself, how many FTEs these supervisors dedicated to environmental enforcement duties and how many FTEs were dedicated within the municipality itself to the administrative support of environmental enforcement duties by non-supervisors.

The table below gives an overview of the appointment of municipal supervisors and of the amount of time dedicated by municipal supervisors per category of municipalities.

	Total	0-4,999	5,000-9,999	10,000-14,999	15,000-19,999	20,000-24,999	25,000-29,999	30,000-74,999	75,000-...
Response	196	7	43	56	29	21	9	25	6
Municipality with appointed supervisor	146	0	26	44	24	15	8	23	6
Municipality without appointed supervisor	50	7	17	12	5	6	1	2	0
Number of appointed supervisors	204	0	26	48	26	20	14	39	31
Average number of supervisors per municipality	1.4	0	1	1.1	1.1	1.3	1.8	1.7	5.2
Total amount of time dedicated to supervisory duties by supervisors (FTEs)	60.26	0	6.33	14.59	7.59	4	3.45	8.4	15.9
of which FTEs dedicated to environmental enforcement duties by the supervisor within the framework of the Environmental Enforcement Act	43.72	0	4.12	10.08	4.53	3.13	2.03	5.93	13.9
of which FTEs dedicated to the administrative support of environmental enforcement duties by non-supervisors	16.54	0	2.21	4.51	3.06	0.87	1.42	2.47	2
Average amount of time dedicated to supervisory duties by supervisors (FTEs)	0.30	0	0.24	0.30	0.29	0.20	0.25	0.22	0.51
Municipality that has no information about the time dedicated per supervisor	24	0	4	9	1	4	3	3	0

Table 28 Appointment and amount of time dedicated of municipal supervisors per category of municipalities (by population)

The table above indicates that 146 of the total of 196 responding municipalities had a total of 204 supervisors at their disposal within the municipalities themselves, which comes down to an average of 1.4 supervisors per municipality.

When considering the different categories of municipalities, it is striking that the smaller the population

the larger the percentage share is of the number of municipalities without municipal supervisors. It can be established, for instance, that none of the municipalities in the category of municipalities with 0 to 4,999 inhabitants appointed a municipal supervisor. In the category of municipalities with 5,000 to 9,999 inhabitants 39.53% of the responding municipalities did not appoint any municipal supervisors. This trend continues as the number of inhabitants (on the basis of the categories) increases, namely 21.42% for municipalities with a population of 10,000 to 14,999, 17.24% for municipalities with a population of 15,000 to 19,999, 11.11% for municipalities with a population of 25,000 to 29,999, 8% for municipalities with a population of 30,000 to 74,999, and 0% in the largest category. Only the category of municipalities with a population of 20,000 to 24,999 does not follow this trend with 28.57%. Still, generally speaking it can be stated that the larger the population in the categories, the more municipalities appointed a supervisor within the municipality itself. It can also be established that the larger the population in the categories, the larger the average number of supervisors per municipality. This average number of supervisors varies from zero in the category of municipalities with 0 to 4,999 inhabitants to an average of 5.2 supervisors in the category of municipalities with more than 75,000 inhabitants.

The table above also shows information about the amount of time that is dedicated to supervisory duties within the municipalities. A distinction was made here between the number of FTEs dedicated by supervisors to environmental enforcement duties within the framework of the Environmental Enforcement Act and the number of FTEs dedicated to the administrative support of environmental enforcement duties by non-supervisors. In 2011, a total of 60.26 FTEs were dedicated to environmental enforcement duties by the responding municipalities. About 70% of this amount of time dedicated referred to environmental enforcement duties carried out by municipal supervisors within the framework of the Environmental Enforcement Act and about 30% referred to the administrative support of these environmental enforcement duties by non-supervisors.

On the basis of the aforementioned data and the data from the Environmental Enforcement Reports 2009 and 2010 a comparison - and possibly an evolution - can be made in the average number of supervisors per municipality in 2010 and 2011. The tables below give an overview of this.

	Average number of supervisors per city/ municipality in 2009	Average number of supervisors per city/ municipality in 2010	Average number of supervisors per city/ municipality in 2011
Municipalities with 0-4,999 inhabitants	1.00	0.00	0.00
Municipalities with 5,000-9,999 inhabitants	1.20	0.90	1.00
Municipalities with 10,000-14,999 inhabitants	1.51	0.93	1.09
Municipalities with 15,000-19,999 inhabitants	1.44	0.93	1.08
Municipalities with 20,000-24,999 inhabitants	1.63	1.00	1.33
Municipalities with 25,000-29,999 inhabitants	2.11	1.43	1.75
Cities and municipalities with 30,000-74,999 inhabitants	1.95	1.36	1.70
Cities with more than 75,000 inhabitants	4.80	4.83	5.17
<b>Total</b>	<b>1.62</b>	<b>1.17</b>	<b>1.40</b>

Table 29 Comparison of the average number of supervisors per city/municipality in 2009, 2010 and 2011

An interesting observation that can be made from the above table is the fact that, generally, the average number of municipal supervisors had decreased in 2010 compared to 2009, but increased again in 2011. This may be explained by the fact that during the survey for the Environmental Enforcement Report 2009 not all the terminology of the Environmental Enforcement Act was interpreted in the same way. As a result, these figures may be an overestimation and the figures of 2011 provide a more realistic picture. This could mean that the average number of supervisors per municipality has risen. In the various categories of municipalities this decrease is visible between 2009 and 2010 and this increase between 2010 and 2011.

More interesting than the evolution in the number of supervisors may be the evolution in the average amount of time dedicated to supervisory duties. Therefore, the table below provides an overview of the average number of FTEs which supervisors and municipalities dedicated to environmental enforcement duties in 2010 and 2011. The average amount of time dedicated to environmental enforcement duties refers both to the amount of time dedicated to environmental enforcement duties by supervisors and the administrative support of these environmental enforcement duties by non-supervisors. The average amount of time dedicated to environmental enforcement duties by supervisors only relates to the amount of time dedicated by the supervisors.

	Average amount of time dedicated to environmental enforcement duties in 2010	Average amount of time dedicated to environmental enforcement duties in 2011	Average amount of time dedicated to environmental enforcement duties by supervisors in 2010	Average amount of time dedicated to environmental enforcement duties by supervisors in 2011
Total	0.24	0.30	0.15	0.21
Municipalities with 0-4,999 inhabitants	0	0.00	0	0
Municipalities with 5,000-9,999 inhabitants	0.1	0.24	0.05	0.16
Municipalities with 10,000-14,999 inhabitants	0.28	0.30	0.19	0.21
Municipalities with 15,000-19,999 inhabitants	0.21	0.29	0.12	0.17
Municipalities with 20,000-24,999 inhabitants	0.09	0.20	0.06	0.16
Municipalities with 25,000-29,999 inhabitants	0.32	0.25	0.19	0.14
Cities and municipalities with 30,000-74,999 inhabitants	0.2	0.22	0.11	0.15
Cities with more than 75,000 inhabitants	0.66	0.51	0.47	0.45

Table 30 Comparison of the average amount of time dedicated to supervisory duties per municipal supervisor in 2010 and 2011

Apart from the fact that the average number of supervisors per municipality rose in 2011 compared to 2010, the above table also shows that the average number of FTEs each supervisor dedicated to enforcement duties within the municipalities increased from 0.24 in 2010 to 0.30 FTEs per supervisor in 2011. This average amount of time dedicated to supervisory duties not only refers to the number of FTEs that were dedicated by supervisors, but also to the number of FTEs that were dedicated to the administrative support of environmental enforcement duties. This concerns the staff members who provide administrative support within the framework of the organisation's supervisory duties, such as the drawing up of enforcement policy, reporting, correspondence and legal assistance.

If only the number of FTEs dedicated by the supervisors themselves is considered, an increase can also be observed in 2011 compared to 2010, namely of the average amount of time dedicated to environmental enforcement duties by supervisors of 0.15 FTEs in 2010 to 0.21 FTEs in 2011.

The increase in both parameters is visible in the various categories of municipalities. Only the category of municipalities with a population of 25,000 to 29,999 and the category of cities with more than 75,000 inhabitants report a decrease.

#### **ENVIRONMENTAL ENFORCEMENT INSPECTIONS CARRIED OUT BY MUNICIPAL SUPERVISORS**

In order to get an insight into the activities of municipal enforcement actors in the field, the table below not only shows the total number of environmental enforcement inspections carried out per category of municipalities, but also the average number of environmental enforcement inspections per supervisor, the average number of environmental enforcement inspections per FTE and the average amount of time dedicated to supervisory duties by supervisors in FTEs. The results of these inspections will then be discussed in the evaluation of the individual enforcement instruments in Chapter 3. The table below takes into account the total amount of time dedicated to environmental enforcement duties by the municipalities, which means both the number of FTEs dedicated to enforcement duties by the supervisors and the FTEs dedicated to the administrative support of environmental enforcement duties. As indicated earlier, the idea is to provide a more complete picture of the implementation of an inspection.



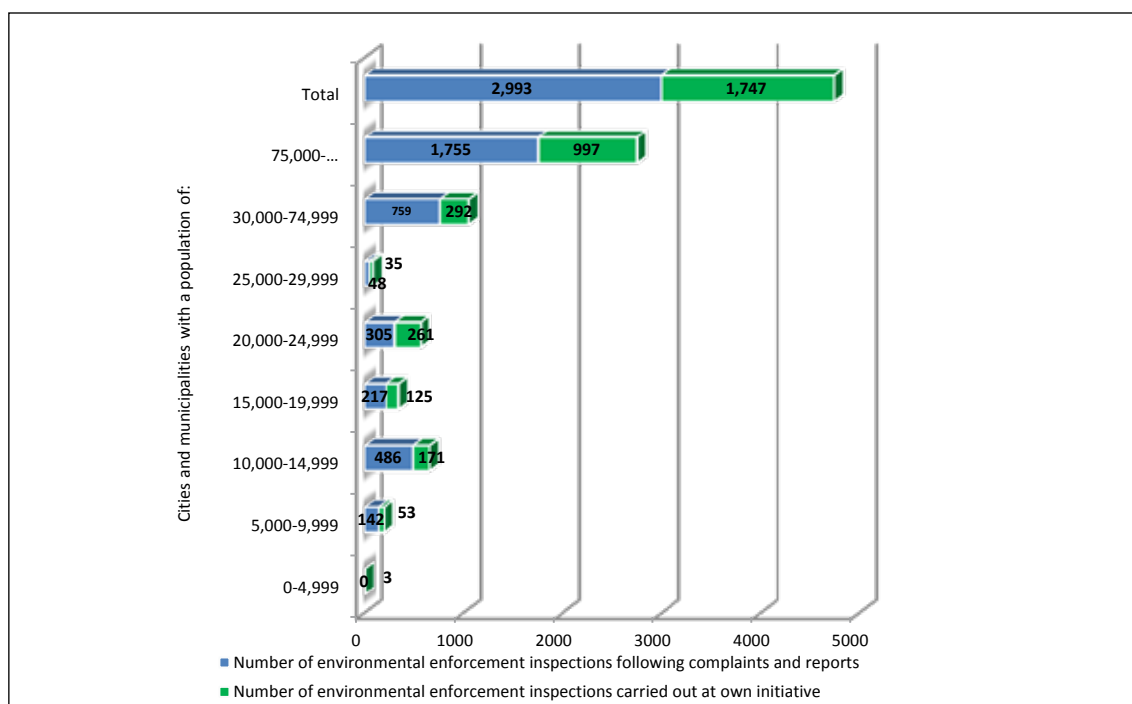
Number of inhabitants	Response	Number of appointed supervisors	Total amount of time dedicated to environmental enforcement duties in FTEs	Number of environmental enforcement inspections carried out	Average number of environmental inspections per supervisor	Average amount of time dedicated to environmental enforcement duties per supervisor (in FTEs)	Average number of environmental enforcement inspections per FTE
0-4,999	7	0	0	0	0	0	0
5,000-9,999	43	26	6.33	151	5.81	0.24	23.85
10,000-14,999	56	48	14.59	1,013	21.10	0.30	69.43
15,000-19,999	29	26	7.59	402	15.46	0.29	52.96
20,000-24,999	21	20	4.00	317	15.85	0.20	79.25
25,000-29,999	9	14	3.45	130	9.29	0.25	37.68
30,000-74,999	25	39	8.40	750	19.23	0.22	89.29
75,000-...	6	31	15.90	1,977	63.77	0.51	124.34
<b>Total</b>	<b>196</b>	<b>204</b>	<b>60.26</b>	<b>4,740</b>	<b>23.24</b>	<b>0.30</b>	<b>78.65</b>

Table 31 Efforts with regard to Table 31) Environmental enforcement duties by municipal supervisors per category of municipalities (according to population) in 2011

In 2011, a total of 4,740 inspections were carried out by 204 appointed municipal supervisors who dedicated a total of 60.26 FTEs to environmental enforcement duties. This is an average number of environmental enforcement inspections of 23.24 per supervisor and an average number of environmental enforcement inspections of 78.65 per FTE. This means that if each supervisor were to focus full-time on environmental enforcement duties, a total of 16,046 environmental enforcement inspections could be carried out by the 204 appointed supervisors. Due to the fact that the supervisors could dedicate on average less than 30% of their time to enforcement duties, only 4,740 inspections were carried out in total. These data would again make it possible to argue in favour of adjusting the Environmental Enforcement Act and Environmental Enforcement Decree in the sense that, instead of the number of supervisors per municipality, the number of FTEs that are to be dedicated to enforcement duties is laid down.

When looking at the number of performed environmental enforcement inspections, the average number of environmental enforcement inspections per supervisor and the average number of environmental enforcement inspections per FTE for each category of municipalities, a varied picture can be observed and no straightforward conclusions can be drawn. In all the categories - except the smallest cities where no supervisors were appointed and no inspections were carried out - the average number of environmental enforcement inspections per FTE is always higher than the average number of inspections per supervisor. This is owing to the fact that the appointed supervisors dedicated only a limited amount of their time to environmental enforcement duties within the framework of the Environmental Enforcement Act.

Just like for the Environmental Enforcement Report 2010, the municipalities were asked for the present report as well to give the number of environmental enforcement inspections that were carried out following complaints and reports and the number of environmental enforcement inspections that were carried out at own initiative, for instance on the basis of an environmental enforcement programme. This is reflected in the graph and table below. The table also includes the figures of 2010 for purposes of comparison.



Graph 15 Number of environmental enforcement inspections carried out by municipal supervisors within the framework of the Environmental Enforcement Act - following complaints and reports and at own initiative in 2011

A total of 4,740 inspections were carried out by municipal supervisors in 2011. 2,993 of these inspections were carried out following complaints and reports and 1,747 were carried out at own initiative, i.e. the proactive inspections. This is almost a 63% to 37% ratio.

It can also be established from the graph above that this trend is recurring in the different categories of municipalities. Only in the category of municipalities with a population of 30,000 to 74,999 more proactive inspections were carried out than reactive inspections following complaints and reports in 2011.

The table below makes a comparison between the number of proactive and reactive inspections carried out in 2010 and 2011.

Population	Total number of environmental enforcement inspections carried out		Number of environmental enforcement inspections following complaints and reports		Number of environmental enforcement inspections carried out at own initiative	
	2010	2011	2010	2011	2010	2011
0-4,999	0	0	0	0	0	0
5,000-9,999	195	151	142	105	53	46
10,000-14,999	657	1,013	486	723	171	290
15,000-19,999	342	402	217	244	125	158
20,000-24,999	566	292	305	164	261	153
25,000-29,999	83	130	48	94	35	36
30,000-74,999	1,038	750	746	350	292	400
75,000-...	2,752	1,977	1,755	1,313	997	664
<b>Total</b>	<b>5,633</b>	<b>4,740</b>	<b>3,699</b>	<b>2,993</b>	<b>1,934</b>	<b>1,747</b>

*Table 32* Number of environmental enforcement inspections carried out by municipal supervisors within the framework of the Environmental Enforcement Act - following complaints and reports and at own initiative in 2010 and 2011

A first striking element is the fact that despite the increase in the average number of FTEs dedicated to enforcement duties per supervisor in 2011, fewer inspections were carried out than in 2010. This may be explained by the type of inspections that were carried out. In 2010, no less than 65% of the inspections were carried out following complaints and reports, whereas this share dropped to 63% in 2011. This means that more time was made available for inspections at own initiative. It can be assumed that these are more complex dossiers which require a methodical approach.

The tables below provide an overview of the average number of environmental enforcement inspections per supervisor and the average number of inspections per FTE. These figures were obtained by dividing the number of environmental enforcement inspections per category by the total number of supervisors per category and the total number of FTEs per category respectively. As was also calculated for the regional supervisors, amongst others, the total number of FTEs refers to the number of FTEs that were dedicated by the supervisor to environmental enforcement duties within the framework of the Environmental Enforcement Act and the number of FTEs dedicated to the administrative support of environmental enforcement duties. In this way account is taken of the different time-related aspects of supervisory duties.

On the basis of the Environmental Enforcement Report 2010 a comparison can also be made in the tables below between the average number of environmental enforcement inspections per municipal supervisor

in 2010 and 2011 and the average number of environmental enforcement inspections per FTE in 2010 and 2011.

Population	Average number of environmental enforcement inspections per supervisor in 2010	Average number of environmental enforcement inspections per supervisor in 2011
0-4,999	0.60	0.00
5,000-9,999	4.88	5.81
10,000-14,999	13.98	21.10
15,000-19,999	8.14	15.46
20,000-24,999	17.15	15.85
25,000-29,999	6.38	9.29
30,000-74,999	17.81	19.23
75,000-...	91.73	63.77
<b>Total</b>	<b>21.00</b>	<b>23.24</b>

*Table 33 Average number of environmental enforcement inspections per municipal supervisor in 2010 and 2011*

It is apparent from the table above that the average number of inspections per supervisor rose in 2011 compared to 2010. It was already indicated that the number of environmental enforcement inspections performed in 2011 is considerably lower than that in 2010. This means that this increase in the average number of inspections per supervisor can be explained by a decrease in the number of appointed supervisors. In 2010, the municipalities still reported having a total of 269 supervisors at their disposal. This share decreased - despite the increased response rate - to 204 supervisors in 2011.

This increase can be observed for the different categories of municipalities. Only the category of municipalities with a population of 20,000 to 24,999 and the category of cities with more than 75,000 inhabitants recorded a decrease in the average number of environmental enforcement inspections per supervisor. As a result, the decrease in the number of performed environmental enforcement inspections was the largest in these categories.

It is more accurate, however, to compare the average number of inspections per FTE in 2010 and 2011, since the number of FTEs indicates how much time was actually dedicated to environmental enforcement duties.

Population	Average number of environmental enforcement inspections per FTE in 2010	Average number of environmental enforcement inspections per FTE in 2011
0-4,999	0.00	0.00
5,000-9,999	51.32	23.85
10,000-14,999	49.92	69.43
15,000-19,999	39.31	52.96
20,000-24,999	195.17	79.25
25,000-29,999	20.24	37.68
30,000-74,999	89.37	89.29
75,000-...	139.34	124.34
<b>Total</b>	<b>88.03</b>	<b>78.66</b>

Table 34 Average number of environmental enforcement inspections per FTE in 2010 and 2011

Despite the fact that an increase could be observed in the average number of inspections per supervisor, it can be deduced from the above figures that in 2011 a decrease took place in the average number of environmental enforcement inspections per FTE compared to 2010. In 2010, an average of 88.03 inspections were carried out per full-time equivalent, whereas this share fell to 78.66 inspections in 2011. This can mainly be explained by the decrease in the number of performed environmental enforcement inspections. On the other hand, a decrease - despite the higher response rate in 2011 - can also be observed in the total number of FTEs dedicated to environmental enforcement duties. In 2010, the total amount of time dedicated to environmental enforcement duties by the municipalities amounted to 64.17 FTEs, whereas this decreased to 60.26 FTEs in 2011. As mentioned earlier, the type of inspections plays a crucial role in this amount of time dedicated. A possible explanation could be that a shift is taking place from the implementation of rather simple inspections to more complex and time-consuming inspections by municipal supervisors. It was already shown earlier that the share of inspections carried out at own initiative in the total number of environmental enforcement inspections had grown in 2011 compared to 2010.

However, the different categories of municipalities do not provide a consistent picture in this respect. In a number of categories a growing number of inspections per FTE can even be observed. Yet, the decrease is the largest in the category of municipalities with a population of 20,000 to 24,999, since the number of inspections decreases by more than 100 in 2011, despite the fact that the average amount of time dedicated to environmental enforcement duties in this category rose from 0.09 in 2010 to 0.20 in 2011. The huge decrease in the average number of inspections per FTE can also be explained by the decrease in the number of inspections from 566 in 2010 to 317 in 2011.

### 2.3.4.3 Intermunicipal supervisors

Article 16.3.1, §1, 4° of the Environmental Enforcement Act provides for the possibility to appoint personnel of an intermunicipal association as supervisors. Such intermunicipal supervisors can only perform supervisory duties in the municipalities that belong to the intermunicipal association.

The above data show that these intermunicipal associations are playing an increasing role in the local environmental enforcement landscape, given the growing number of supervisors who were appointed within intermunicipal associations. Therefore, the Flemish High Council of Environmental Enforcement considers it important to map out the activities of these intermunicipal associations. Up till now, however, it could not yet be communicated which intermunicipal associations were established in view of en-

vironmental law enforcement in a number of municipalities and which intermunicipal associations have added environmental enforcement to their set of duties. In view of the future environmental enforcement reports, the Flemish High Council of Environmental Enforcement will try to provide a picture of this enforcement actor as well. The VHRM can indeed subscribe to a number of advantages of organising the monitoring of compliance with environmental legislation via an intermunicipal association. For instance, it may be interesting for smaller municipalities to organise themselves this way. The appointment of an intermunicipal supervisor could lead to a scale increase in terms of the expertise and geographical availability of the supervisor. As the position of supervisor is currently not required to be full-time equivalent, and in smaller municipalities it is often combined with other duties, the appointment of a full-time equivalent within an intermunicipal association can only increase the expertise of this supervisor. Furthermore, it would be recommendable to appoint several supervisors within an intermunicipal association, because in this way supervisors would not have to perform any inspections in their own municipalities. At the same time, the appointment of intermunicipal supervisors could result in a separation between the functions of supervisor and adviser in the licensing procedure and the problem of a supervisor acting also as adviser within the framework of an environmental license application is avoided.

On the basis of a case for which data were acquired from one intermunicipal association, a first insight can be provided into how this intermunicipal association has organised itself. The intermunicipal association concerned has provided support to 13 municipalities through four appointed supervisors since May 2010. Since these municipalities can of course also appoint supervisors within their own staff or within the police district, this comes down to a minimum average of 0.30 supervisors per affiliated municipalities. By way of comparison it can be communicated that in the previous section it could be established that the smaller municipalities with 0 to 4,999 inhabitants did not have any supervisors at their disposal at all.

It was communicated that this intermunicipal association dedicated a total of 1,284.5 hours to environmental enforcement duties in 2011. 48.20% was dedicated to environmental enforcement duties by supervisors under the Environmental Enforcement Act and 51.79% to the administrative support of environmental enforcement duties. Since this parameter was expressed in number of hours and not in number of FTEs dedicated to enforcement duties, it is impossible to give the average amount of time dedicated per municipality.

In 2011, these 4 supervisors of an intermunicipal association carried out a total of 94 environmental enforcement inspections, which is 23.4 inspections per supervisor and 7.23 inspections per affiliated municipality. This average of 23.4 inspections per supervisor is just above the average number of inspections per municipal supervisor, namely 23.24. Of these 94 inspections, 43.61% was carried out following a complaint or report, and 56.39% was carried out at own initiative. More than half of the inspections were proactive inspections. This share is substantially more than the share of proactive inspections carried out by municipal supervisors. In addition, it can be communicated that for 53 environmental enforcement inspections a recommendation was made, for 3 inspections an exhortation was formulated and for 3 inspections an official report was drawn up. The proportion of the number of recommendations compared to the number of exhortations and official reports could indicate that these supervisors are still adopting a cautious approach.

Each year, the intermunicipal association delivers to each affiliated municipality an individual annual report containing an overview of the activities (including amount of time dedicated per municipality) and a planning for the next year of operation. This shows not only that the activities performed are reported on, but also that a methodical approach is adopted to environmental enforcement. Naturally, this already revealed itself in the number of proactive environmental enforcement inspections that were carried out by this intermunicipal association in 2011. Such an organised approach is of course only to be encouraged. The scale increase which such intermunicipal associations can offer should certainly not be underestima-

ted either. Especially for smaller municipalities, and in particular those where no supervisor was appointed yet - the organisation of local environmental enforcement via intermunicipal associations may provide a solution in view of effective enforcement.

## 2.4 Conclusion

The data from this chapter show that the number of regional supervisors slightly increased in 2011 (636) compared to 2010 (630). This means that, despite the financial crisis which also affects the Government of Flanders, the number of supervisors (measured in members of staff) has not declined.

On the other hand, a small decrease could be observed in the total number of FTEs dedicated to environmental enforcement duties. Whereas in 2010 this number was still 192.31, it amounted to only 183.13 in 2011 for all the regional enforcement actors together. Still, the estimate of the FTEs that were actually dedicated to environmental enforcement duties is always a subjective assessment to some extent. Therefore, this need not necessarily be regarded as a negative thing. Moreover, it is striking that for some actors the number of FTEs remained the same or increased slightly, whereas for other actors it decreased somewhat. In 2011, a decrease of more than 50%, namely to 1.12 FTEs, can only be reported for the Agency for Care and Health, which dedicated 2.51 FTEs to enforcement duties in 2010.

The average number of inspections per regional supervisor decreased slightly in 2011 compared to 2010. Whereas in 2010 this still amounted to 39.98 (in total for all regional enforcement actors), this fell to 32.48 in 2011. Some actors, such as the Environmental Licences Division, have a relatively low number of inspections per supervisor, viz. 1.46. However, this has to do with the limited number of inspections that were carried out by a large number of supervisors. The reason for this is that the enforcement duty of these supervisors is only a small part of a relatively large set of duties. With other enforcement actors, such as the Environmental Inspectorate and the Agency for Nature and Forests, the average number of inspections per supervisor increased. Only with the Flemish Land Agency a strong decrease could be reported in the total number of environmental enforcement inspections that were carried out. This is due, however, to the fact that in 2010 the inspections reported by the Flemish Land Agency referred to inspections within the framework of both the Environmental Enforcement Act and the Flemish Parliament Act on Manure. In 2011, only those inspections were reported which actually fell within the scope of the Environmental Enforcement Act. Therefore, no actual decrease took place. In fact, this modification (which is only a modification in the method of reporting) within the Flemish Land Agency is also the reason for the decrease in the average total number of inspections of the regional supervisors. To repeat: when this method of reporting within the Flemish Land Agency is eliminated from the data, no decrease can be observed but instead an increase in the number of inspections per regional supervisor, which definitely qualifies as a positive evolution.

Just like in 2010, the local police turns out to be very active in drawing up official reports. In total, 19,120 official reports were drawn up with regard to environment in 2011. 96.76 originated from the local police. Like in 2010, the federal police prioritised organised environmental crime and especially waste fraud and the illegal harming of the environment, among other things through waste offences.

In 2011, 26.66% of the total number of responding police districts had appointed at least one supervisor within the force. Within these 24 police districts with one appointed supervisor a total of 45 supervisors were available, which is an average number of supervisors of 1.88 per responding police district. What is striking, is that no supervisors were appointed within the smallest category of police districts. It was apparent from Table 8 in this chapter that the smaller the police district, the smaller also the number of supervisors appointed within this district and the lower also the average amount of time dedicated to

supervisory duties per supervisor. It seems that the increased scale is beneficial to the effectiveness: when police districts have a larger number of inhabitants, the police force can specialise and the supervisors can focus increasingly on environmental enforcement duties. The data also reveal that in 2011 the average number of appointed supervisors per police district increased (1.88) compared to 2010 (1.47). A reason for concern, however, is the fact that the respondents of the police districts indicated that the average amount of time dedicated to supervisory duties decreased, while the number of FTEs dedicated to administrative support increased. This means that, although the number of supervisors appointed within the police districts grew, these supervisors could generally dedicate less time to environmental enforcement duties. Therefore, the question arises as to whether supervisors were sometimes appointed for appearance's sake within a police district, without any environmental enforcement duties actually being carried out.

The local police carries out 85% of their environmental enforcement inspections following complaints and reports, and 15% at their own initiative. In 2010, the number of reactive inspections still amounted to 94.23% and the number of proactive inspections to 5.77%. As a result, there are growing opportunities for the local police to take proactive (and consequently methodical) measures.

A striking element is that in 2011 as well the provincial governors received hardly any petitions for the imposition of administrative measures. This option was thus hardly used by the citizens. The same goes for petitions for the imposition of safety measures. Neither in 2010 nor in 2011 the provincial governors received any petitions for the imposition of safety measures.

Currently, at least 1 province (Antwerp) has started a training programme for provincial supervisors. However, within the 4 responding provinces no provincial supervisor was employed in 2011 (just like in 2010). As a result, they could not report on the supervision that was carried out within the framework of the Environmental Enforcement Act in 2011 either. It should also be remarked that the provinces actively support municipalities within the framework of the Cooperation Agreement 2008-2013.

Whereas provincial governors seem to hardly receive any requests for the imposition of administrative measures, this is certainly not the case for the mayors. In 2011, 38 of the 196 responding mayors received a request or petition to impose an administrative measure and 33 of them actually imposed an administrative measure in 2011, either at their own initiative or following a request. The number of petitions for the imposition of administrative measures also rose from 117 in 2010 to 144 in 2011. This means that the possibility of requesting the mayor to impose administrative measures seems to be used more and more. A larger number of administrative measures were also imposed in 2011 (total of 142) than in 2010 (total of 128). Another striking element is that only 7 out of the total of 142 administrative measures imposed by the mayors were not implemented within the imposed term. Non-compliance with the measure thus occurs in less than 5% of the number of imposed measures.

Within the municipalities there is still the problem of some municipalities lacking information about the number of nuisance-causing plants on their territory. More than 5% of the municipalities indicated not being able to communicate how many Category 1, Category 2 and Category 3 nuisance-causing plants were present in total on their territory. This continues to be a major point of concern. Municipalities should at least have some knowledge of the number of nuisance-causing plants on their territory and by extension of the fact whether each Category 2 or Category 3 plant carries out any unlicensable activities, or has a legal license/notification, which is in keeping with the actual activities that were established on site. The number of unlicensed nuisance-causing plants is a source of concern as well. It seems important for municipalities to prioritise the supervision of these unlicensed plants.

The importance of an increased scale was established for the local police. This also seems to be the case for municipalities. Naturally, municipalities have the possibility to not only appoint a supervisor within the



police district, but also within the framework of an intermunicipal association. It is worrisome, however, that 60 of the 196 responding municipalities, despite the legal provisions laid down in the Environmental Enforcement Decree, do still not satisfy the obligation to have one or more supervisors at their disposal, depending on the number of inhabitants or of the number of Category 2 plants present on their territory. As indicated earlier, the data reveal that the smaller the population, the larger the percentage share of municipalities without municipal supervisors. It is thus precisely the smaller municipalities that fail to comply with the legal provisions. Therefore, the option of an intermunicipal association could be important to them.

It is apparent from the data that the average number of supervisors per municipality increased in 2011 compared to 2010, which is both important and positive. Whereas this number amounted to 1.17 in 2010, this was 1.40 in 2011. The amount of time (expressed in FTEs) which municipal supervisors could dedicate to environmental enforcement duties also increased from 0.24 in 2010 to 0.30 in 2011. This certainly also qualifies as a positive evolution.

It is striking, however, that the total number of environmental enforcement inspections that were carried out decreased both in absolute terms and in terms of the average number of inspections per FTE. Although the average number of FTEs dedicated to enforcement duties per municipal supervisor increased in 2011, fewer inspections were thus carried out than in 2010. This is not yet alarming, but does require attention.

The data also reveal an important difference between the number of appointed municipal supervisors on the one hand and the number of FTEs available for environmental enforcement duties on the other. In 2011, 4,740 inspections were carried out by 204 appointed municipal supervisors. Together, they dedicated a total of 60.26 FTEs to environmental enforcement duties, or an inspection per supervisor of 23.24 and an average number of environmental enforcement inspections per FTE of 78.65. In other words, many appointed supervisors seem to be able to dedicate only a limited amount of their time (on average less than 30%) to enforcement duties. This may have to do with the fact that municipal supervisors are not just engaged in environmental enforcement duties, but also in many other duties. This fact could on the one hand lead to the recommendation to determine the number of FTEs to be dedicated to environmental enforcement duties when laying down the legal provisions in the Environmental Enforcement Act, instead of the number of supervisors per municipality (since there is no guarantee that these supervisors will actually be engaged in environmental enforcement). A second conclusion that can be drawn from this is that the scale increase does seem important for environmental enforcement. Especially smaller municipalities seem to have difficulty in satisfying the legal obligation of appointing a municipal supervisor. When smaller municipalities appoint a supervisor, the amount of time (expressed in FTEs) this supervisor can dedicate to environmental enforcement is mostly limited. For this reason it can be stressed once again that precisely for these smaller municipalities the alternative of appointing a supervisor through an intermunicipal association may be an attractive option. This increased scale may benefit the expertise and effectiveness of environmental enforcement by local supervisors.

### **3. Evaluation of the use of the individual environmental enforcement instruments and safety measures**

While the previous chapter mainly focused on the individual enforcement actors and their efforts in the framework of the Environmental Enforcement Act, this chapter is centred around the environmental enforcement instruments.

The idea is to obtain insight into the use of all the resources that were made available to enforcement actors to reach their objectives. Particular attention will be paid to whether certain instruments are used less often, for example because they are new instruments which the enforcement actors are less familiar with, or which they avoid using due to a lack of knowledge and expertise.

In contrast to the Environmental Enforcement Report 2009 - just like the Environmental Enforcement Report 2010 - the enforcement instruments in this report are compared to the number of performed enforcement inspections during which a breach was identified. In the Environmental Enforcement Report 2009 these were compared for each actor with the total number of performed inspections. The advantage of comparing with the number of inspections during which a breach was identified is that the use of instruments can be reflected when necessary, with the exception of recommendations. At the same time a picture is provided of the total number of inspections compared to the number of inspections during which a breach was identified. This makes it possible to comment on the actors' degree of compliance and targeted enforcement. Since this method of analysis was also used in the Environmental Enforcement Report 2010, it is now possible to compare the use of environmental enforcement instruments in 2010 and 2011 in this report, which was not possible with the data from the Environmental Enforcement Report 2009.

Similar to Chapter 2 'Evaluation of the regional environmental enforcement policy', the evaluation of the individual enforcement instruments is based on the information given by the enforcement actors. The use of these figures implies that all the notes and remarks made earlier apply here as well.

In the previous chapter the local police and municipal supervisors are subdivided into different categories on the basis of their population. In this chapter local police supervisors and municipal supervisors are included as one single actor, besides the regional actors.

The different enforcement instruments are discussed in the chapter below.

#### **3.1 'Inspections during which a breach was identified'**

In order to make an accurate evaluation of the environmental enforcement instruments, the right parameters should be compared with each other. In the table below the total number of performed inspections is broken down into the number of 'inspections during which no breach was identified' and the number of 'inspections during which a breach was identified'. Since an instrument can only be used to establish an environmental offence or environmental infringement, the number of times it was applied will be compared to the number of 'inspections during which a breach was identified'. One exception to this is the instrument 'recommendation'. The reason for this is that the recommendation can only be applied when there is a risk of an environmental offence or environmental infringement, but no breach was identified yet.

Enforcement actor:	Total number of inspections in 2011	Number of 'inspections during which no breach was identified'	% share in 2011	Number of 'inspections during which a breach was identified'	% share in 2011
AMI	11,923	11,046	92.64%	877	7.36%
AMV	121	2	1.65%	119	98.35%
ALBON	260	222	85.38%	38	14.62%
VLM	377	284	75.33%	93	24.67%
VMM	Non-response	Non-response	Non-response	Non-response	Non-response
AZ&G	39	16	41.03%	23	58.97%
ANB	7,384	6,170	83.56%	1,214	16.44%
OVAM	555	190	34.23%	365	65.77%
W&Z	Not available	Not available	Not available	Not available	Not available
AWV	Not available	Not available	Not available	Not available	Not available
AMT	Non-response	Non-response	Non-response	Non-response	Non-response
nv De Scheepvaart	Not available	Not available	Not available	Not available	Not available
Provincial supervisors	0	0	0.00%	0	0.00%
Municipal supervisors	4,740	1,216	25.65%	3,524	74.35%
Local police supervisors	3,242	266	8.20%	2,976	91.80%
Total	28,641	19,412	67.78%	9,229	32.22%

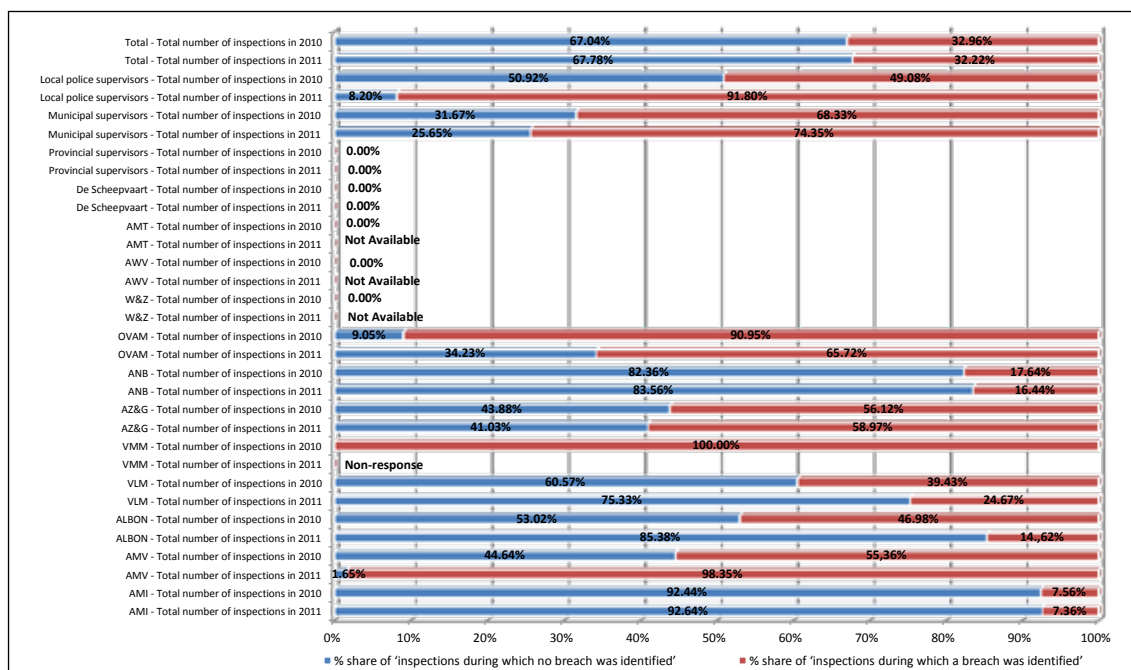
Table 35 Comparison between the number of 'inspections during which no breach was identified' and the number of 'inspections during which a breach was identified' for 2011

A general conclusion that can be drawn from the above table is that no breach could be identified during 67.78% of the inspections. This means that a breach could be identified during barely 32% of the total number of inspections that were carried out. These figures are not all that different from the result of the Environmental Enforcement Report 2010. In 2010 as well, a breach was identified during barely 32.93% of the inspections. However, the figures in the above table do show that there is a large difference between the enforcement actors in terms of the percentage share of the number of inspections during which a breach was either identified or not. AMI, ALBON, VLM and ANB, for instance, carried out a lot more inspections during which no breach was identified, whereas this percentage is much lower with local police supervisors and municipal supervisors. However, it cannot be assumed that there is a uniform breakdown of the number of inspections during which a breach was identified between the different actors. An important factor that has an impact on this figure is the number of inspections that were carried out following complaints and reports (reactive) and the number of inspections performed at own initiative (proactive). It can be expected, for instance, that more breaches will be identified during inspections that are carried out following complaints and reports. The actors whose main activity is environmental enforcement and who can therefore make time for carrying out inspections at their own initiative, use the supervision or these very inspections as an enforcement instrument. Indeed, the awareness that there is a chance that supervision will be carried out can in itself encourage plants to comply with environmental law. Inspections at own initiative are often also organised on a regular basis both before and after the inspection during which the breach was actually identified. This means that several inspections are carried out before the actual identification of breaches. The impact of this on-site presence may therefore result in fewer bre-

ches being identified with these environmental enforcement actors and during the inspections carried out at own initiative.

On the other hand, the limited number of inspections during which a breach could be identified may raise questions about whether the enforcement and inspection by the actors were (sufficiently) targeted. Targeted environmental supervision could indeed lead to the most efficient use of enforcement instruments, in view of actual environmental gains, among other things by targeting and identifying risk factors.

A comparison can be made of the compliance rate between 2010 and 2011 on the basis of the data from the Environmental Enforcement Report 2010. Therefore, the graph below provides a picture of the ratio between the share of inspections during which no breach was identified and the share of inspections during which a breach was identified in 2010 and 2011.



Graph 16 Comparison between the number of 'inspections during which no breach was identified' and the number of 'inspections during which a breach was identified' for 2010 and 2011

It is at once apparent from this graph that there is a difference between the various actors in terms of the number of inspections during which a breach was identified (and consequently also the inspections during which no breach was identified). However, this is to be expected, since the actors have diverse supervisory duties which each require a specific enforcement method.

For the Environmental Licences Division there is a great difference with the survey year 2010 when the share of 'inspections during which a breach was identified' amounted to 55.36%. This share is 98.35% for the survey year 2011. This may be explained by the fact that in 2011 more targeted inspections took place, as a result of which more environmental offences or infringements could be identified. The municipal supervisors indicated having identified an environmental offence or infringement in 74.35% of the total number of inspections. This is an increase compared to the survey year 2010 when this share still amounted to 68.33%. A possible explanation for this may be found in the figures of 'inspections following a complaint'. Indeed, the municipal supervisors carried out relatively more inspections following a complaint compared to the survey year 2010. For the local police supervisors a large increase can be observed in the share of 'inspections during which a breach was identified'. In 2011, this was 91.80% compared to 49.08%

for the survey year 2010. This is probably owing to the fact that one police district reported a large number of inspections for the survey, but could not indicate how many environmental offences or infringements had been identified following these inspections (see 'inspections with unknown results').

The reverse applies to the figures of ALBON from the 2011 survey. In the Environmental Enforcement Report 2010 the share of 'inspections during which a breach was identified' amounted to 46.98%. This same share is considerably lower (14.62%) for the most recent survey. For the Public Waste Agency of Flanders (OVAM) as well, a large decrease can be recorded in the number of inspections during which a breach was identified. In 2011, an environmental offence or infringement was identified during 65.77% of all the inspections, which is much lower than for the survey year 2010 (90.95%). This is due to the fact that for the survey year 2010 OVAM reported, for the total number of inspections carried out, both the inspections carried out by OVAM itself and the inspections during which OVAM provided support, but the results of which were not included in the reports by OVAM. For the survey year 2011, only those inspections were recorded that were carried out by OVAM itself.

For the Environmental Inspectorate Division the share of inspections during which a breach was identified remained practically the same as in the survey year 2010. In 2011, this share amounted to 7.36% (in 2010: 7.56%), which is rather low compared to other regional actors. In this context the Environmental Inspectorate Division indicated that its supervision is aimed at promoting compliance with environmental law. On-site presence is an important tool to that end. The continued supervision within the Environmental Inspectorate Division should result in a lower number of breaches over time, provided the on-site presence is guaranteed. In this sense a low percentage of inspections during which a breach was identified could also be proof of the effectiveness of the supervision.

The Flemish Land Agency indicated having performed fewer inspections during which a breach was identified in 2011 (24.67% of the total number of inspections). In 2010, the VLM recorded 1,213 inspections (39.43%) during which an environmental offence or infringement was identified. The Agency for Care and Health reported a small increase in the number of inspections during which a breach was identified. In the most recent survey year, 23 breaches were identified on a total of 39 inspections. Compared to 2010, there is thus a small rise in the share of 'inspections during which a breach was identified', namely from 56.12% for 2010 to 58.97% in 2011. The Agency for Nature and Forests indicated that fewer breaches were identified during inspections in 2011. The share of these inspections amounted to 16.44% in 2011 compared to 17.64% for the survey year 2010. This is therefore only a small difference.

### **3.2 'Inspections with unknown results'**

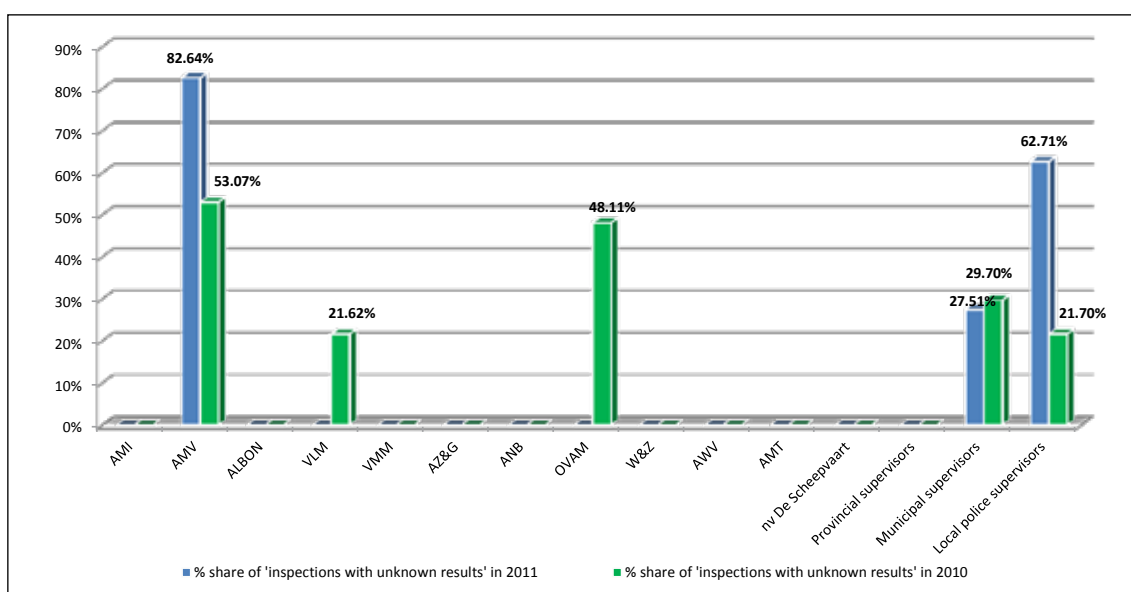
Through the survey among the environmental enforcement actors it was examined how many inspections had unknown results. This was done by deducting the number of inspections without further action and the total number of times an instrument was used from the total number of inspections. This is thus always a minimum number, since several instruments can be used during an inspection. In the graph below the number of 'inspections with unknown results' is compared to the total number of environmental enforcement inspections carried out by the enforcement actor.

Enforcement actor:	Number of inspections by supervisors	Number of 'inspections with unknown results'	% share in 2011
AMI	11,923	0	0.00%
AMV	121	100	82.64%
ALBON	260	0	0.00%
VLM	377	0	0.00%
VMM	Non-response	Non-response	Non-response
AZ&G	39	0	0.00%
ANB	7,384	0	0.00%
OVAM	555	0	0.00%
W&Z	Not available	Not available	Not available
AWV	Not available	Not available	Not available
AMT	Non-response	Non-response	Non-response
nv De Scheepvaart	Not available	Not available	Not available
Provincial supervisors	0	Not available	Not available
Municipal supervisors	4,740	1,304	27.51%
Local police supervisors	3,242	2,033	62.71%

Table 36 Number of 'inspections with unknown results' in 2011

The table above shows that only three actors indicated not knowing all the results of the inspections that were carried out in 2011. The high number of inspections with unknown results with the local police supervisors is largely due to the fact that one police district indicated having performed a large number of inspections, without adding the results, however.

Within the Environmental Licences Division as well a high percentage can be recorded of the number of inspections with unknown results compared to the total number of inspections that were carried out. However, it was communicated that the 100 inspections with unknown results refer to inspections regarding environmental coordinators for which the results were not yet known when the questionnaire was completed. The graph below gives a comparison of the percentage share of the total number of inspections with unknown results in 2010 and 2011.



Graph 17 Comparison of percentage share of 'inspections with unknown results' in 2010 and 2011

For the Environmental Licences Division a substantial increase can be observed in the number of inspections with unknown results. For 2010, this number amounted to 53.07% and for 2011 to 82.64%. As mentioned earlier, this Division indicated that it did not yet have all the results for the inspections regarding environmental coordinators at the time of the survey. In 2011, this share also strongly increased with the local police supervisors, compared to 2010. However, it was already mentioned that this figure is somewhat distorted because one police district reported that it carried out a large number of inspections of which the results are not known. The municipal supervisors, on the other hand, recorded a lower share of inspections with unknown results in 2011. Although the decrease is rather small (27.51% for 2011, compared to 29.70% for 2010), this may indicate that the inspections were monitored better. Good monitoring is indeed crucial for efficiently drawing up the environmental enforcement report. Complete information is to be used as much as possible. Each inspection with unknown results also means that only an incomplete evaluation can be made for the relevant actor and the whole set of instruments.

In addition, a substantial decrease can be observed for the Public Waste Agency of Flanders. In 2010, the number of inspections with unknown results was still 48.11% of the total number of inspections, whereas in 2011 no inspections took place with unknown results. This is due to the fact that for the survey year 2010 OVAM reported, for the total number of inspections carried out, both the inspections carried out by OVAM itself and the inspections during which OVAM provided support to inspections carried out by external inspection services, police forces, ...but the results of which were not included in the reports by OVAM. For the survey year 2011, only those inspections were recorded that were carried out by OVAM itself.

### 3.3 'Inspections without further action'

In the survey the environmental enforcement actors were asked about the number of inspections carried out during which breaches – either environmental infringements or environmental offences – of the applicable environmental law were identified, but for which no action was taken. In the table below the number of 'inspections without further action' is compared to the total number of 'inspections during which a breach was identified' by the enforcement actor in 2011. In addition, the percentage share of these 'inspections without further action' is given.

Enforcement actor:	Number of 'inspections during which a breach was identified'	Number of 'inspections without further action'	% share in 2011
AMI	877	0	0
AMV	119	1	0.84%
ALBON	38	0	0
VLM	93	0	0
VMM	Non-response	Non-response	Non-response
AZ&G	23	0	0
ANB	1,214	0	0
OVAM	365	0	0
W&Z	Not available	Not available	Not available
AWV	Not available	Not available	Not available
AMT	Not available	Not available	Not available
nv De Scheepvaart	Not available	Not available	Not available
Provincial supervisors	0	0	0
Municipal supervisors	3,524	81	2.30%
Local police supervisors	2,976	11	4.13%
<b>Total</b>	<b>9,229</b>	<b>93</b>	<b>1%</b>

*Table 37* Number of 'inspections without further action' in 2011 compared to the total number of 'inspections during which a breach was identified'

The table above clearly shows that in 2011 no action was taken by the supervisor in only 1% of the inspections during which a breach was identified. In 2010, this share still amounted to 8% (921 inspections without further action compared to 11,378 environmental enforcement inspections that were carried out). This decrease is definitely a positive thing.

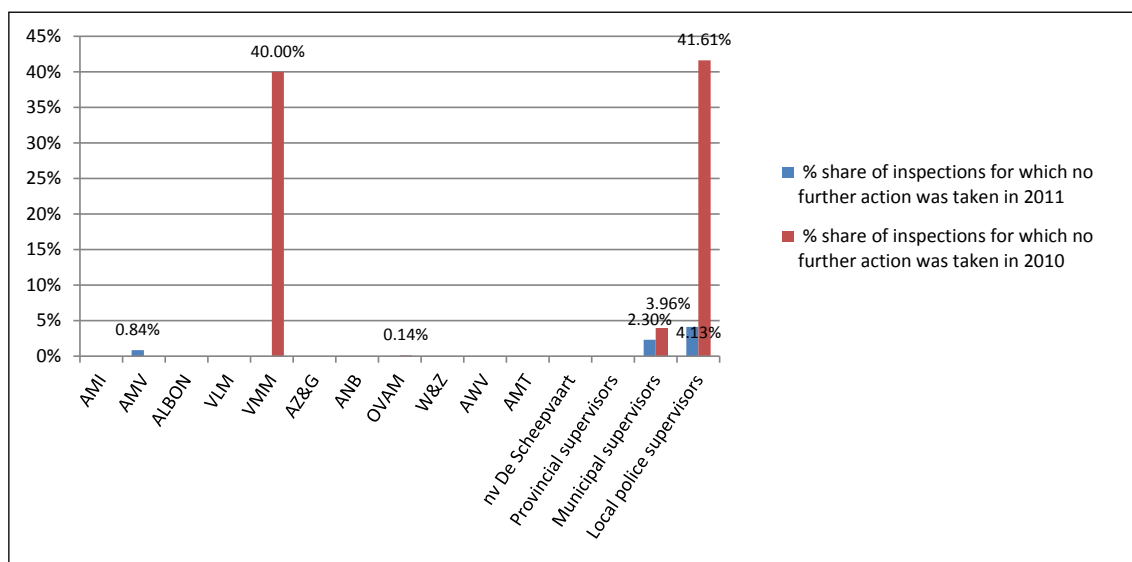
Article 16.3.23 of the Environmental Enforcement Act stipulates that upon identification of an environmental infringement the supervisor may draw up an identification report. The supervisor is thus not obliged to do so. However, Article 29 of the Code of Criminal Procedure stipulates that all authorities, public officers or officials who, during the performance of their duties, obtain information on a crime or offence are under the obligation to immediately report this to the public prosecutor of the court of the judicial district in which the crime or offence took place or the suspect might be found, and provide that magistrate with all relevant information, official reports and records. Carrying out an inspection without drawing up an official report for the established offence is therefore contrary to the above-mentioned legal provision. There is however an area of tension between the legal requirements and the practice. The question arises as to whether it is still necessary that an official report is drawn up each time an environmental offence is identified, especially since the Environmental Enforcement Act offers a whole range of instruments. This fact will be further examined by the Flemish High Council of Environmental Enforcement.

Only three actors indicated that action was not always taken following an inspection during which a breach was identified. These actors are the local police supervisors (4.13% of the total number of inspections performed), the municipal supervisors (2.30%) and the Environmental Licences Division (0.84%). With regard to the figure of the local police supervisors it should be remarked, however, that the police district which indicated having carried out a huge number of inspections, did not respond to the question as to how many inspections were left without further action. However, that same police district did have a large



number of inspections with unknown results.

The graph below gives a comparison of the percentage share of the total number of inspections during which a breach was identified, but for which no further action was taken in 2010 and 2011.



Graph 18 Percentage share of the number of inspections during which a breach was identified, but for which no further action was taken in 2010 and 2011.

For 2011, it can be established that fewer inspections took place for which no further action was taken following the identified breach. Only AMV, the municipal supervisors and the local police supervisors made mention of inspections during which a breach was identified, but for which no further action was taken. However, the decrease with the municipal supervisors and local police supervisors is substantial, namely respectively from 3.96% to 2.30% and from 41.61% to 4.13%. This strong decrease among the municipal supervisors could be the result of a growing use of the instruments offered to supervisors by the Environmental Enforcement Act. For 2011, OVAM indicated that no inspections during which a breach was identified were left without any further action. Since the Flemish High Council of Environmental Enforcement did not receive any questionnaire from VMM, it cannot be stated whether the number of inspections without further action decreased here as well.

### 3.4 Evaluation of the instrument ‘recommendation’

In Article 16.3.22 of DABM the instrument ‘recommendation’ is described as follows: ‘When supervisors observe that an environmental infringement or an environmental offence threatens to occur, they may give any recommendations they consider useful to prevent this’.

Since the ‘recommendation’ is a preventative instrument and can therefore only be used if no offence was identified, the number of recommendations is compared to the number of inspections during which no breach was identified. When interpreting the data below, however, account should be taken of the fact that during an inspection a breach can be identified and that, apart from the application of an exhortation, an identification report or an official report, a recommendation is also formulated during that same inspection with regard to any possible future breaches. An overestimation in terms of percentage of the number of formulated recommendations with regard to the number of inspections during which no bre-

ach was identified can therefore not be excluded.

The table below gives an overview of the application of the instrument ‘recommendation’ by the different supervisory actors in 2011.

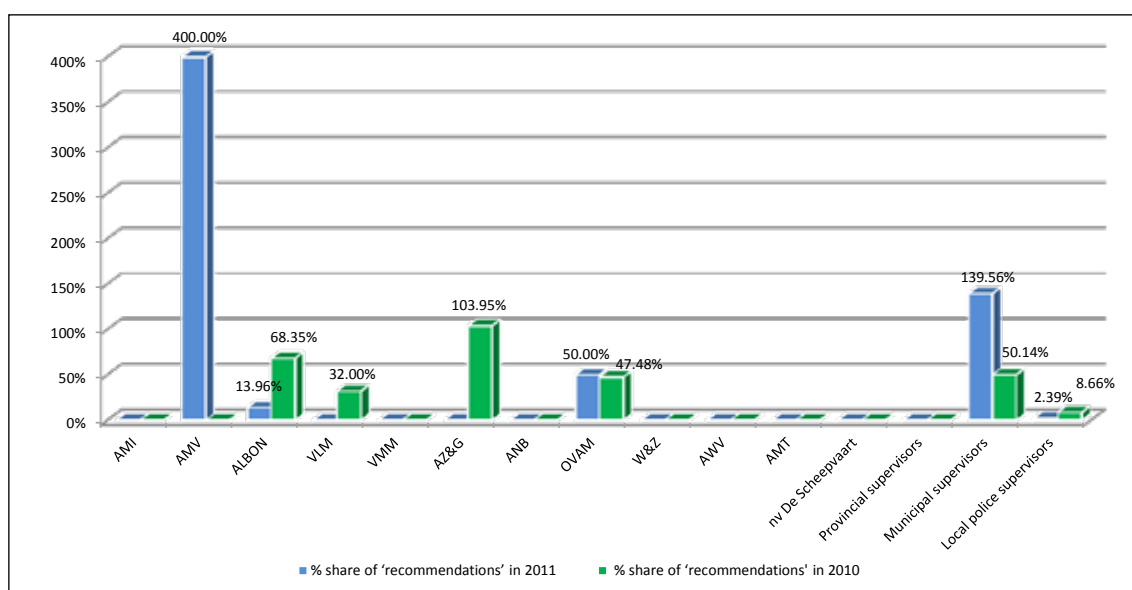
Enforcement actor:	Number of ‘inspections during which no breach was identified’	Number of ‘recommendations’ by supervisors	% share in 2011
AMI	11,046	133	1.20%
AMV	2	8	400.00%
ALBON	222	31	13.96%
VLM	284	Not available	Not available
VMM	Non-response	Non-response	Non-response
AZ&G	16	0	0.00%
ANB	6,170	0	0.00%
OVAM	190	95	50.00%
W&Z	Not available	Not available	Not available
AWV	Not available	Not available	Not available
AMT	Not available	Not available	Not available
nv De Scheepvaart	Not available	Not available	Not available
Provincial supervisors	0	0	0.00%
Municipal supervisors	1,216	1,697	139.56%
Local police supervisors	266	71	2.39%

*Table 38 Number of ‘recommendations’ made by supervisors in 2011 compared to the total number of ‘inspections during which no breach was identified’*

It can be deduced from the above table that 2,035 recommendations were formulated on a total of 19,412 inspections that were carried out and during which no breach was identified. This comes down to 10.48%. In 2010, this amounted to 7.45% (1,724 recommendations compared to 23,141 inspections during which no breach was identified), which could mean that in 2011 more preventive measures were taken by supervisors during the inspections during which no breach was identified. However, it should of course be taken into account that not every inspection results in the formulation of a recommendation, since an environmental infringement or offence is not likely to occur during every inspection.

However, a great difference can be observed between the different environmental enforcement actors with regard to the use of the recommendation as instrument. The table above shows that OVAM, AMV and the municipal supervisors regularly use the instrument, whereas this share is lower or even nonexistent within AMI, the local police supervisors, AZ&G and ANB.

The graph below gives a comparison of the percentage share of the total number of inspections during which no breach was identified and for which a recommendation was formulated in 2010 and 2011.



Graph 19 Percentage share of the total number of inspections during which no breach was identified and for which a recommendation was formulated in 2010 and 2011

It can be deduced from the table above and the corresponding graph that not every actor uses the instrument 'recommendation' just as frequently. In addition, some figures require further explanation.

It can be established that the Environmental Licences Division recorded an increase of 400% of the share of 'recommendations' in 2011. However, the table above shows that this refers to 8 recommendations formulated by AMV on a total of 2 inspections during which no breach was identified. AMV also indicates that not all the results of the inspections are known yet. The Land and Soil Protection, Subsoil and Natural Resources Division reported having made less use of the instrument 'recommendation' in 2011. In 2010, the share of the instrument 'recommendation' still amounted to 68.35%, which is higher than the 13.96% for 2011. In 2010, the Flemish Land Agency still reported having formulated a recommendation for 32% of the total number of inspections during which no breach was identified. It is apparent from the 2011 survey that the VLM no longer made any use of the instrument 'recommendation'. The VLM indicated in the survey, however, that oral recommendations are often given during an inspection, but that these are not registered by the supervisors. An actor who frequently used the instrument 'recommendation' in 2010 was the Agency for Care and Health. In 2010, the share of recommendations still amounted to 103.95% on the total number of inspections during which no breach was identified. In 2011, however, the Agency did not formulate any recommendations at all. This may be owing to the low number of inspections during which no breach was identified. In 2011, the Public Waste Agency of Flanders used the instrument 'recommendation' 95 times on a total of 190 inspections, which is a share of 50%. Compared to the survey year 2010 (47.48%), this can be regarded as a stable share.

The municipal supervisors formulated the largest (absolute) number of recommendations (1,697). On a total of 1,216 inspections during which no breach was identified, the recommendation has a share of 139.56%. Compared to 2010 when this share was still 50.14%, this is a large increase. This could possibly be explained by the fact that in the survey a large city reported giving a recommendation during each inspection, which had an impact on the total number of recommendations from the municipal supervisors. The local police supervisors reported having used the instrument 'recommendation' 71 times. This represents a share of 2.39% on a total of 266 inspections during which no breach was identified. This is a decrease compared to 2010 (8.66%).

### 3.5 Evaluation of the instrument ‘exhortation’

For the instrument ‘exhortation’ a clear definition can be found in DABM as well. Article 16.3.27 of DABM states: ‘When supervisors, during the performance of their supervisory duties, identify an environmental infringement or an environmental offence, they may exhort the suspected offender and any other parties involved to take the necessary measures to end this environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition’.

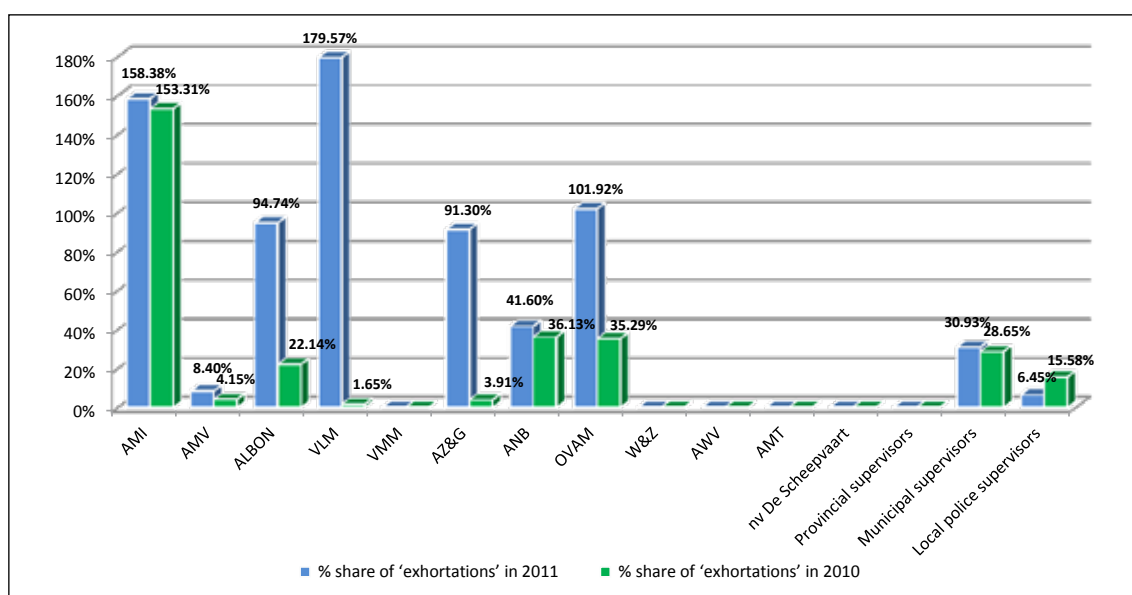
The table and graph below show the figures relating to the use of the instrument ‘exhortation’ compared to the total number of inspections during which a breach was identified. These figures were given by the different environmental enforcement actors from the survey year 2011.

Enforcement actor:	Number of ‘inspections during which a breach was identified’	Number of ‘exhortations’ by supervisors	% share in 2011
AMI	877	1,389	158.38%
AMV	119	10	8.40%
ALBON	38	36	94.74%
VLM	93	167	179.57%
VMM	Non-response	Non-response	Non-response
AZ&G	23	21	91.30%
ANB	1,214	505	41.60%
OVAM	365	372	101.92%
W&Z	Not available	Not available	Not available
AWV	Not available	Not available	Not available
AMT	Not available	Non-response	Non-response
nv De Scheepvaart	Not available	Not available	Not available
Provincial supervisors	0	Not available	Not available
Municipal supervisors	3,524	1,090	30.93%
Local police supervisors	2,976	192	6.45%

Table 39 Number of ‘exhortations’ formulated by supervisors in 2011 compared to the total number of ‘inspections during which a breach was identified’

Just like the Environmental Enforcement Report 2010 already showed, it is clear for 2011 as well that the instrument ‘exhortation’ is widely applied by the different actors. All the actors used the instrument ‘exhortation’ in 2011, apart from those actors who did not appoint a supervisor or who did not respond. The Environmental Inspectorate Division, VLM, ALBON, OVAM and the Agency for Care and Health used the instrument ‘exhortation’ very frequently. VLM, AMI and OVAM formulated more exhortations than the number of inspections during which a breach was identified, which means that several exhortations were formulated per breach. ALBON and the Agency for Care and Health formulated on average 1 exhortation per inspection. This percentage is substantially lower with AMV, ANB, the municipal supervisors and the local police supervisors.

The graph below gives a comparison of the percentage share of the total number of inspections during which a breach was identified and for which an exhortation was formulated in 2010 and 2011.



Graph 20 Percentage share of the total number of inspections during which a breach was identified and for which an exhortation was formulated in 2010 and 2011

All the actors, with the exception of the local police supervisors, indicated having used the instrument 'exhortation' more in 2011 than in 2010. A remarkable increase can be observed for the Flemish Land Agency in the share of 'exhortations' on the total number of inspections 'during which a breach was identified'. However, it should be remarked that the number of inspections 'during which a breach was identified' was calculated for the VLM on the basis of the number of inspections for which sanctions were imposed in accordance with the Environmental Enforcement Act, whereas the VLM reported the total number of 'exhortations' that were formulated. The number of exhortations formulated by the VLM thus refers to those coming under the Environmental Enforcement Act and the Flemish Parliament Act on Manure. It was impossible to make a distinction in this respect.

On the basis of the graph it can also be established that the Land and Soil Protection, Subsoil and Natural Resources Division (ALBON) recorded a strong increase in the share of formulated exhortations. However, this fact should be put into perspective by looking at the absolute numbers of formulated exhortations. In 2010, ALBON used the instrument 'exhortation' 31 times, compared to 36 times in 2011. The high share of the instrument 'exhortation' is caused by the lower number of inspections during which a breach was identified in 2011. The Agency for Care and Health also has a substantially higher share (91.30%) of formulated exhortations compared to 2010 (3.91%). The same remark can be made as for ALBON, since the number of inspections during which a breach was identified is lower (23) in 2011 than in 2010 (486), as a result of which there are large differences in terms of percentage share. A fourth actor for which the absolute figures of the formulated 'exhortations' are also to be considered, is the Public Waste Agency of Flanders (OVAM); here as well a strong increase in the share of 'exhortations' is observed, namely from 35.29% in 2010 to 101.92% in 2011. In absolute figures, more exhortations were formulated by OVAM in 2010 (493) than in 2011 (372), but the number of inspections during which a breach was identified is substantially lower in 2011. Despite the lower (absolute) figures of formulated exhortations, these actors continue to use this instrument more frequently in 2011. This is due to the fact that for the survey year 2010 OVAM reported, for the total number of inspections carried out, both the inspections carried out by OVAM itself and the inspections during which OVAM provided support, but the results of which were not included in the reports by OVAM. For the survey year 2011, only those inspections were recorded that were carried out by OVAM itself.

The share of exhortations increased for the actors AMI, AMV, ANB and the municipal supervisors. Although this increase is of a different order than with the actors discussed earlier, it continues to be an important fact. The Environmental Inspectorate Division recorded an increase in the share of exhortations from 153.31% in 2010 to 158.38% in 2011. An increase was also reported for the Environmental Licences Division in 2011. Compared to 2010, the share of formulated exhortations has doubled from 4.15% in 2010 to 8.40% in 2011. Although the percentage shares have doubled, this can partially also be explained by the lower number of inspections during which a breach was identified in 2011. The Agency for Nature and Forests also recorded an increase in the use of the instrument 'exhortations' in 2011. In 2010, the share of formulated 'exhortations' still amounted to 36.13%, which is lower than 41.60% for 2011. Another actor that indicated having made more frequent use of the instrument 'exhortation' is the municipal supervisor. In 2010, 1,106 exhortations were formulated on a total of 3,860 inspections during which a breach was identified. This is a share of 28.65%. In 2011, 1,090 exhortations were formulated on a total of 3,524 inspections during which a breach was identified. As a result, this represents a share of 30.93%.

The most recent survey shows that the local police supervisors used the instrument less frequently in 2011 than in 2010. The share of the 'exhortation' on the total number of identified breaches represents 6.45% for 2011, compared to 15.58% in 2010. This could be explained by the fact that one police district indicated having carried out a large number of inspections for which almost exclusive use was made of the instrument 'official report'.

The figures show that for certain actors the instrument 'exhortation' is a frequently used instrument for inspections during which an environmental offence or environmental infringement was identified. However, an observation should be made about the use of the instruments 'exhortation' and 'official report'. In the Environmental Enforcement Reports 2009 and 2010 the VHRM mentions the fact that the only legal way to proceed was to also draw up an official report (in conformity with Article 29 of the Code of Criminal Procedure) when formulating an exhortation, or to draw up an identification report. This means that the sum of the number of official reports and the number of identification reports should be at least as high as the number of exhortations that were formulated. When running ahead to 3.7 'Evaluation of the instrument 'official report'', it can be stated that this is not the case for certain actors. As indicated earlier, AMI formulated 1,389 exhortations and drew up only 550 official reports and 1 identification report. Even AMV, ALBON, AZ&G, OVAM and the municipal supervisors drew up fewer official reports and identification reports than they formulated exhortations, despite the fact that an exhortation means that an offence or infringement was identified. The Agency for Nature and Forests even communicated explicitly that when an environmental offence was identified either an exhortation was formulated or an official report was drawn up, but that the two instruments were never combined. Yet, it is also possible to formulate an exhortation with respect to an environmental infringement. The next chapter 3.6 'Evaluation of the instrument 'identification report' shows that AMI drew up one identification report in 2011. OVAM and the municipal supervisors drew up respectively 8 and 34 identification reports, whereas ALBON, AMV and AZ&G drew up none. It is possible, however, that an exhortation was formulated for an environmental infringement, but that no identification report was made. Supervisors can indeed draw up an identification report when identifying an environmental infringement, but they are not obliged to do so. Another explanation for the difference between the number of exhortations and the number of official reports/identification reports may be that several exhortations were formulated compared to one official report or one identification report that was drawn up and which contained several breaches.

In addition, there still seems to be an area of tension between Art. 29 of the Code of Criminal Procedure and enforcement practice. The VHRM will publish a memorandum in which it will try to explain this area of tension by presenting several approaches to this matter, in order to allow supervisory bodies as well as supervisors themselves to adopt a logical and healthy attitude to this area of tension and to the use of enforcement instruments.

### 3.6 Evaluation of the instrument ‘identification report’

The ‘identification report’ is an enforcement instrument which was created with the coming into force of the Environmental Enforcement Act on 1 May 2009. One of the most important changes in the Environmental Enforcement Act is the decriminalisation of certain administrative infringements of environmental regulations with a limited effect on the environment, according to six cumulative criteria to be met by such infringements. This resulted in a list, included as 12 appendices to the Decree of 12 December 2008, of behaviour that qualifies as an environmental infringement. This type of behaviour is thus no longer punishable. The identification report is the instrument for reporting environmental infringements, so that an exclusive administrative sanction can then be applied. Supervisors can draw up such an identification report, but are not under the obligation to do so. Supervisors have discretionary power in this respect and can therefore judge themselves whether its use is appropriate.

The table below reflects the number of identification reports drawn up by individual enforcement actors compared to the number of inspections during which a breach was identified. It should be remarked that the ‘identification report’ is an instrument which is used by supervisors when an environmental infringement is identified. The figure which the instrument is compared to is the number of inspections during which a breach was identified, including both environmental offences and environmental infringements. The figures below thus do not give a picture of the number of times an environmental infringement was identified and the number of times an identification report was drawn up for this.

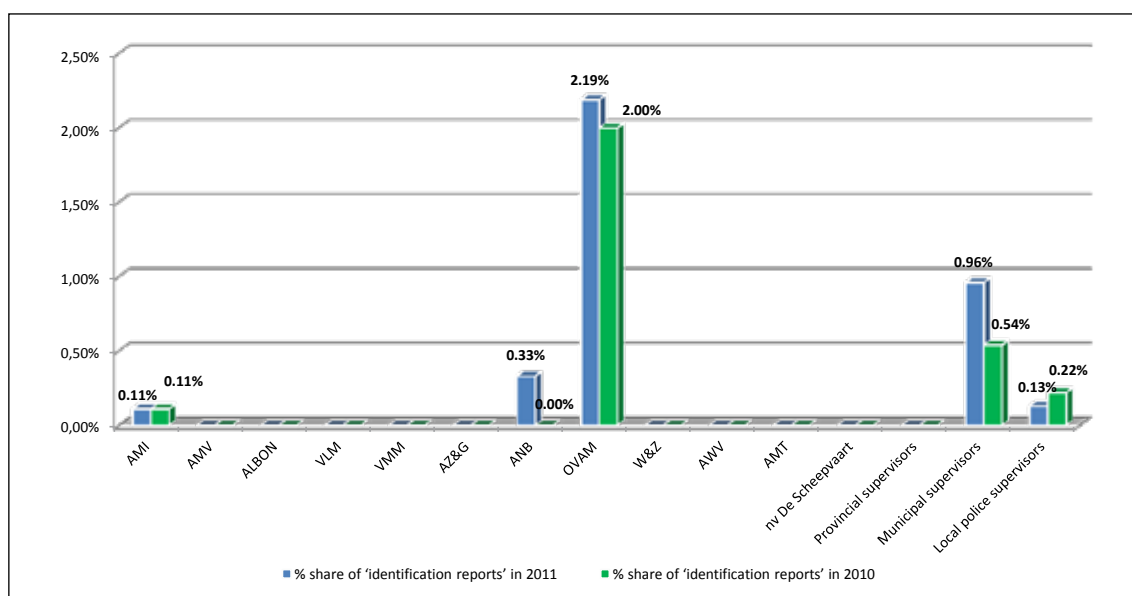
Enforcement actor:	Number of ‘inspections during which a breach was identified’	Number of ‘identification reports’ by supervisors	% share in 2011
AMI	877	1	0.11%
AMV	119	0	0.00%
ALBON	38	0	0.00%
VLM	93	0	0.00%
VMM	Non-response	Non-response	Non-response
AZ&G	23	0	0.00%
ANB	1,214	4	0.33%
OVAM	365	8	2.19%
W&Z	Not available	Not available	Not available
AWV	Not available	Not available	Not available
AMT	Not available	Not available	Not available
nv De Scheepvaart	Not available	Not available	Not available
Provincial supervisors	0	Not available	Not available
Municipal supervisors	3,524	34	0.96%
Local police supervisors	2,976	4	0.13%

Table 40 Number of ‘identification reports’ drawn up by supervisors in 2011 compared to the number of ‘inspections during which a breach was identified’

The Environmental Enforcement Report 2010 showed that the instrument ‘identification report’ is hardly anchored in the standard work method of the different actors. One year later, the 2011 survey shows that the actors still make little use of the instrument. The majority of the actors do not use the instrument at all, whereas the other actors made only very limited use of it.

The low use of the identification report can be explained by the fact that supervisors have no obligation to draw up an identification report when they identify an environmental infringement. They have discretionary power in this respect. The figures do not allow us to give a picture of the number of environmental infringements that were established, but only of the number of inspections during which a breach was identified. It is therefore not possible to comment on the use of this discretionary power by the supervisors. On the other hand, but also in relation to this, the relevance of the current criteria and the current exhaustive list need to be examined more closely. The VHRM will further look into this, among other things within the framework of the evaluation of the Environmental Enforcement Act. In addition, it should be noted that the enforcement measures which an enforcement actor chooses to implement during a specific year co-determine the type of breaches (environmental infringements or environmental offences) identified by this actor. As a result, the number of identification reports and official reports drawn up by enforcement actors will vary according to the specific enforcement measures these actors have chosen to implement.

The graph below gives a comparison of the percentage share of the total number of inspections during which a breach was identified and for which an identification report was drawn up in 2010 and 2011.



Graph 21 Percentage share of the total number of inspections during which a breach was identified and for which an identification report was drawn up in 2010 and 2011

A first remarkable fact that can be established with regard to the figures in the graph is that (with the exception of the Agency for Nature and Forests) each actor that used the 'identification report' in 2010 also used this instrument in 2011.

In 2011, the Environmental Inspectorate Division used the 'identification report' only once on a total of 877 inspections during which a breach was identified. This means that the share of the 'identification report' is the same for 2011 (0.33%) as for the survey year 2010. An actor that did not make any use yet of the instrument 'identification report' in 2010 is the Agency for Nature and Forests which reported having drawn up 4 identification reports on a total of 1,214 inspections during which a breach was identified. Because of the high number of inspections with an identified breach this is a share of 0.33%. The Public Waste Agency of Flanders and the municipal supervisors used the instrument 'identification report' in



2010 as well as in 2011. OVAM indicated having made more use of the identification report than in 2010. This actor drew up 8 identification reports on a total of 365 inspections during which a breach was identified. This means that the share of the instrument discussed here is 2.19% compared to 2.00% in 2010. The municipal supervisors reported having used the instrument 'identification report' 34 times in 2011. In 2010, 21 identification reports were drawn up. Only the local police supervisors made less frequent use of the instrument 'identification report' compared to 2010. In 2011, the 'identification report' represented 0.13% of the total number of inspections during which a breach was identified. This is thus a slight decrease compared to 2010 when this share was still 0.22%.

It was already remarked in the Environmental Enforcement Reports 2009 and 2010 that the enforcement actors may have applied a definition of the instrument 'identification report' which differs from the definition in DABM. The VHRM anticipated this by mentioning in the survey for the present Environmental Enforcement Report that, when asked about the number of identification reports that were drawn up and communicated to the Environmental Enforcement, Environmental Damage and Crisis Management Division, this does not refer to internal inspection requests, but to formal identification reports, as specified in Art. 16.3.23 of the Environmental Enforcement Act. In order to ensure that a uniform definition is used in the future, the term 'identification report' has also been included in the VHRM glossary that was published in early 2012<sup>38</sup>. This 'redefinition' may have contributed to the registration of a lower number of identification reports in 2011. Still, this provides an accurate picture of the actual use of this instrument, as defined in DABM.

Just like in 2010, there is also a certain discrepancy in 2011 between the number of given identification reports on the one hand and the number of identification reports that were referred to the AMMC on the other hand. The latter received (see Chapter 4) two identification reports from the municipal supervisors, whereas the permanent secretariat of the VHRM received 34 reports on the use of this instrument by municipal supervisors.

### 3.7 Evaluation of the instrument 'official report'

While environmental infringements can be identified via an identification report, supervisors have to use official reports to report environmental offences to the public prosecutor's office. The table below provides an overview of the initial official reports drawn up per enforcement actor with respect to the number of inspections during which a breach was identified in 2011.

Once again, only limited figures are available, just like for the instrument 'identification report'. The comparison between the number of official reports drawn up and the number of inspections during which a breach was identified does not give an accurate picture of the number of identified environmental offences. The reason for this is that the number of inspections during which a breach was identified may refer to either environmental offences or environmental infringements.

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38 <http://www.vhrm.be/voor-de-toezichthouder/glossarium>

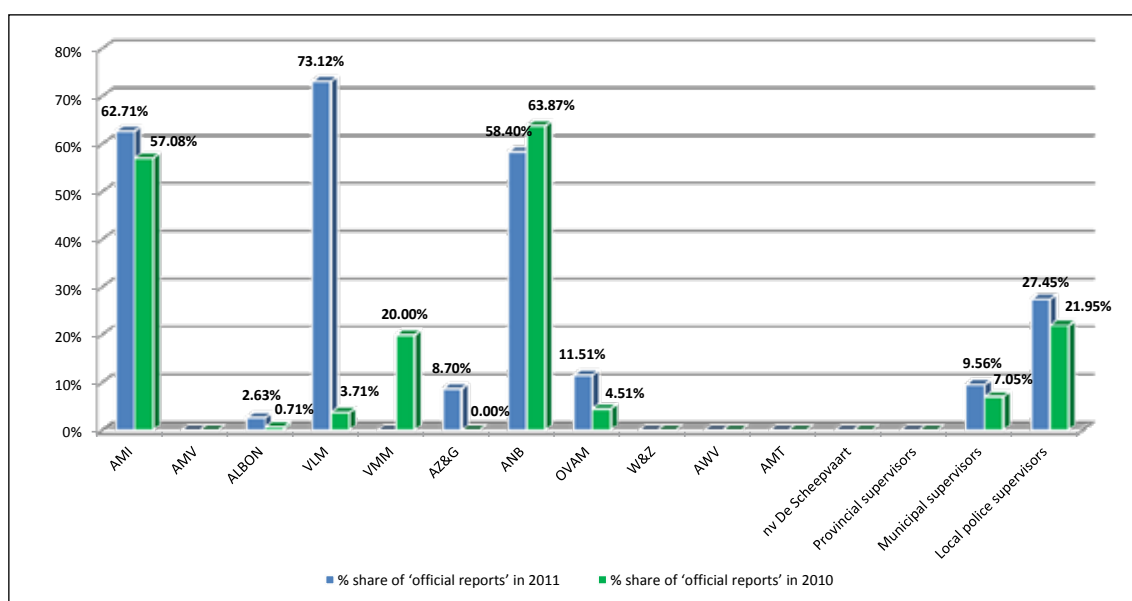
Enforcement actor:	Number of 'inspections during which a breach was identified'	Number of 'official reports' by supervisors	% share in 2011
AMI	877	550	62.71%
AMV	119	0	0.00%
ALBON	38	1	2.63%
VLM	93	68	73.12%
VMM	Non-response	Non-response	Non-response
AZ&G	23	2	8.70%
ANB	1,214	709	58.40%
OVAM	365	42	11.51%
W&Z	Not available	1	Not available
AWV	Not available	55	Not available
AMT	Not available	Not available	Not available
nv De Scheepvaart	Not available	Not available	Not available
Provincial supervisors	0	Not available	Not available
Municipal supervisors	3,524	337	9.56%
Local police supervisors	2,976	817	27.45%

Table 41 *Number of 'official reports' drawn up by supervisors in 2011 compared to the number of 'inspections during which a breach was identified'*

In 2011, the Environmental Inspectorate Division, the Flemish Land Agency and the Agency for Nature and Forests drew up an official report during more than 50% of the inspections during which a breach was identified. With the other enforcement actors this share is considerably lower.

The figures above again point out the area of tension which exists in enforcement practice with regard to the identification of an offence and the drawing up of an official report. Article 29 of the Code of Criminal Procedure indeed stipulates that when an offence is identified an official report must be drawn up. This would mean that for each inspection during which a breach was identified an official report would be drawn up and this share would in theory amount to 100%, unless the breach would be an environmental infringement. However, since none of the actors reported a share of 100%, it may be assumed that the enforcement actors used other instruments to correct/have corrected the identified breaches, such as an exhortation or an administrative measure.

The graph below gives a comparison of the percentage share of the total number of inspections during which a breach was identified and for which an official report was drawn up in 2010 and 2011.



Graph 22 Percentage share of the total number of inspections during which a breach was identified and for which an official report was drawn up in 2010 and 2011

The figures of the Flemish Land Agency require further explanation. In 2010, the figures were compared and calculated on the basis of the number of reported inspections that fell within the scope of both the Environmental Enforcement Act and the Flemish Parliament Act on Manure. For 2011, the VLM only reported the inspections that come under the Environmental Enforcement Act.

A general increase can be observed in the use of the instrument 'official report'. The Environmental Inspectorate Division indicated having drawn up 550 official reports in 2011. Given the fact that a breach was identified during 877 inspections, this means that the official report represents a share of 62.71%. This is a slight increase compared to 2010 when this share amounted to 57.08%. Another actor that made more frequent use of the instrument 'official report' in 2011 is the Land and Soil Protection, Subsoil and Natural Resources Division (ALBON). This actor used the instrument 'official report' only once for 38 inspections during which a breach was identified, as a result of which it represents a share of 2.63%. In 2010, ALBON used this instrument only once as well, but since fewer inspections were carried out during which a breach was identified the share was lower in 2010 (0.71%).

When considering the graph above for the Flemish Land Agency, the aforementioned remark needs to be taken into account. No comparison can be made between the figures of 2010 and 2011. It can be established, however, that the official report is an important instrument to the Flemish Land Agency. As a result, it represents a considerable share of 73.12% in 2011.

In 2010, the Agency for Care and Health did not use the instrument 'official report' yet. For 2011, the Agency for Care and Health reported having drawn up two official reports for 23 inspections during which a breach was identified, which is a share of 8.70%. In 2011, the Public Waste Agency of Flanders had a higher share (11.51%) of the use of the instrument 'official report' than in 2010 (4.51%). However, this increase can be explained by the fact that for the survey year 2010 OVAM reported, for the total number of inspections carried out, both the inspections carried out by OVAM itself and the inspections during which OVAM provided support, but the results of which were not included in the reporting by OVAM. For the survey year 2011, only those inspections were recorded that were carried out by OVAM itself. In 2011,

OVAM used the official report 42 times for 365 inspections during which a breach was identified. In 2010, OVAM still used the instrument 'official report' 63 times for 1,397 inspections during which a breach was identified, either during inspections that were supported by OVAM or the inspections which OVAM carried out itself.

The municipal supervisors and local police supervisors also had a higher share of the instrument 'official report' in 2011. The municipal supervisors used the official report 337 times for 3,524 inspections during which a breach was identified. This makes that the share of the instrument 'official report' is 9.56% for 2011 compared to 7.05% in 2010. The local police supervisors also had a higher share for the instrument 'official report'. In 2010, this was 21.95% compared to 27.45% for the survey year 2011. The local police supervisors drew up 817 official reports in 2011, as a result of which this actor made the most use of the instrument 'official report' in absolute figures.

Only the Agency for Nature and Forests indicated having made less frequent use of the 'official report' in 2011. The 2011 survey shows that ANB carried out 1,214 inspections during which a breach was identified. Moreover, 709 official reports were drawn up by ANB. Therefore, the share of the instrument 'official report' on the total number of inspections during which a breach was identified is 58.40%. Compared to 2010 when this share was 63.87%, this is thus a slight decrease.

The Agency for Roads and Traffic did not report how many inspections were carried out in 2011. Consequently, it could not be calculated how many inspections were carried out during which a breach was identified. It was reported, however, that 55 official reports were drawn up within the framework of the Environmental Enforcement Act.

## **3.8 Evaluation of the instrument 'administrative measure' and 'appeals against decisions to impose administrative measures'**

### **3.8.1 Evaluation of the instrument 'administrative measure'**

Just like for the Environmental Enforcement Reports 2009 and 2010, it was also decided for the present report to consider and evaluate 'administrative measures' as an environmental enforcement instrument. In accordance with the provisions of Chapter IV of the Environmental Enforcement Act, the imposition of administrative measures is part of administrative enforcement, together with the imposition of administrative fines. In this sense, we could also have discussed administrative measures in Chapter 4.2. However, it was opted to pronounce upon the use of the entire set of enforcement instruments available to supervisors in the field in the conclusion of the present chapter.

Articles 16.4.5 through 16.4.18 of Title XVI of DABM lay down the rules for the imposition, the repeal, the implementation, the appeal against and the petition for the imposition of administrative measures. Appeals against decisions to impose administrative measures will be discussed in greater detail in Chapter 3.8.3.

In accordance with Article 16.4.7 of DABM administrative measures can take the form of:

- ▶ an order to the suspected offender to take measures to end the environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition;
- ▶ an order to the suspected offender to end activities, works, or the use of objects;

- ▶ an actual action of the persons mentioned in Article 16.4.6, at the expense of the suspected offender, to end the environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition;
- ▶ a combination of the measures mentioned in 1°, 2° and 3°.

The table below gives an overview of the total number of imposed administrative measures in relation to the number of inspections during which a breach was identified per enforcement actor.

Enforcement actor:	Number of 'inspections during which a breach was identified'	Number of imposed administrative measures	% share in 2011
AMI	877	51	5.82%
AMV	119	0	0.00%
ALBON	38	0	0.00%
VLM	93	13	13.98%
VMM	Non-response	Non-response	Non-response
AZ&G	23	0	0.00%
ANB	1,214	112	9.23%
OVAM	365	5	1.37%
W&Z	Not available	Not available	Not available
AWV	Not available	Not available	Not available
AMT	Not available	Not available	Not available
nv De Scheepvaart	Not available	Not available	Not available
Provincial supervisors	0	Not available	Not available
Municipal supervisors	3,524	131	3.72%
Local police supervisors	2,976	37	1.24%

Table 42 Number of imposed administrative measures in relation to the number of inspections during which a breach was identified in 2011

The figures show that all the actors (with the exception of AZ&G, AMV and ALBON) that performed inspections during which a breach could be identified used the instrument 'administrative measure'. Two actors that made only limited use of the instrument were the local police supervisors and OVAM. The local police supervisors used the instrument 'administrative measure' 37 times for 2,976 inspections during which a breach was identified. This means that the share of the administrative measure for this actor was 1.24%. Another actor that indicated having made less frequent use of the instrument 'administrative measure' was OVAM. This actor applied an administrative measure in 1.37% of the inspections during which a breach was identified. This comes down to 5 administrative measures.

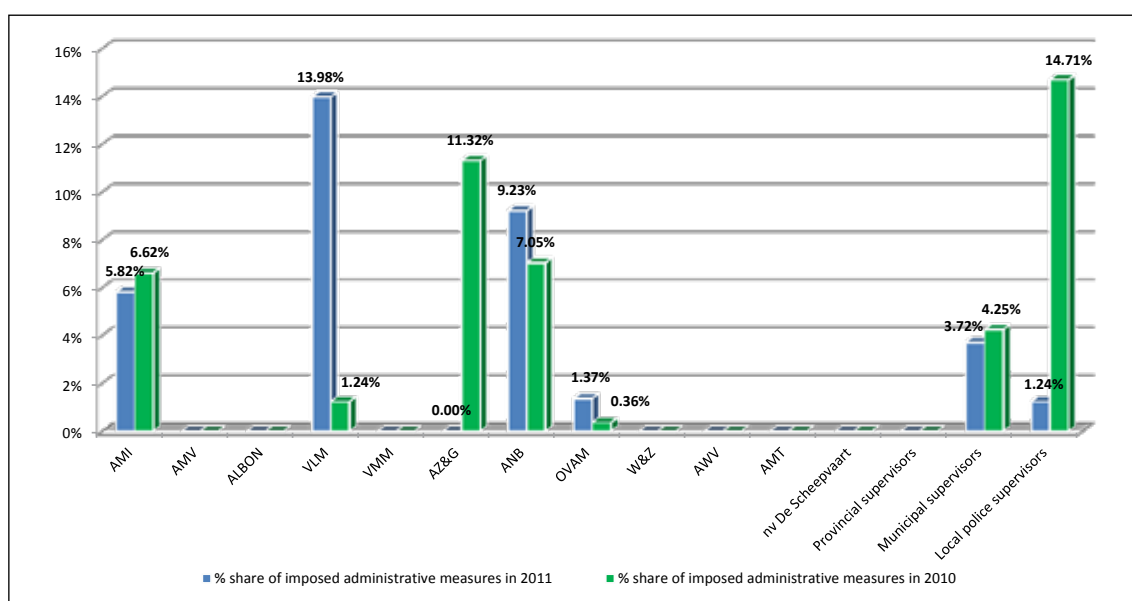
For AMI and the municipal supervisors a fairly equal share of the use of the instrument 'administrative

measure' can be registered. AMI imposed an administrative measure for 51 inspections during which a breach was identified, which represents a share of 5.82%. The municipal supervisors carried out 3,524 inspections during which a breach was identified. For 131 of these inspections an administrative measure was imposed. In terms of percentage this means that an administrative measure was imposed in 3.72% of the total number of inspections during which a breach was identified.

The actors that most frequently used the instrument 'administrative measure' were the Agency for Nature and Forests and the Flemish Land Agency. In the survey for the present environmental enforcement report ANB indicated having imposed 112 administrative measures. This actor carried out 1,214 inspections during which a breach could be identified. As a result, the share of the administrative measure is 9.23%. VLM imposed 13 'administrative measures' for 93 inspections during which a breach was identified. Consequently, the share of the administrative measure amounts to 13.98% for VLM.

It can be concluded that the instrument 'administrative measure' is a well-known and frequently used instrument among certain actors. Apart from AMI, VLM and ANB, the administrative measure is an important instrument for OVAM and the local supervisors (municipal and local police). However, the administrative measure was not at all or to a lesser extent applied by certain actors.

On the basis of the data from the Environmental Enforcement Report 2010, the graph below makes a comparison of the percentage share of imposed administrative measures with respect to the number of inspections during which a breach was identified in 2010 and 2011.



Graph 23 Percentage share of the total number of inspections during which a breach was identified and for which an administrative measure was imposed in 2010 and 2011

For certain actors an additional remark is to be formulated which could put the differences between 2010 and 2011 into perspective. When looking at the graph, there seems to be a strong increase in the share of the administrative measure for VLM. This conclusion cannot be drawn, since the Environmental Enforcement Report 2010 took into account the number of inspections of VLM which fell within the scope of both the Environmental Enforcement Act and the Flemish Parliament Act on Manure. As a result, the share is lower for the survey year 2010 and no accurate comparison can be made with 2011 when only the inspections under the Environmental Enforcement Act were taken into account. A more accurate picture is given

when the real figures are compared. In 2010, the VLM imposed 15 administrative measures compared to 13 for the most recent survey year. The percentage is thus influenced by the more accurate comparison to the total number of inspections.

A remarkable difference in the use of the instrument 'administrative measure' can be observed with the local police supervisors. In 2010, 1,836 inspections were carried out during which a breach was identified and administrative measures were imposed for 270 of these inspections, which is a share of 14.71%. In 2011, however, 2,976 inspections were carried out during which a breach was identified and administrative measures were imposed for only 37 of these inspections, which is a share of 1.24%. It should be remarked on this conclusion that the total number of inspections is strongly influenced by one police district which did not use any administrative measures.

Two other actors who had a higher share of the instrument 'administrative measure' in 2011 were the Public Waste Agency of Flanders and the Agency for Nature and Forests (ANB). For ANB, the share of the administrative measure rose by 2.18 percentage points from 7.05% in 2010 to 9.23% in 2011. Within OVAM, on the other hand, the percentage share increased from 0.36% in 2010 to 1.37% in 2011, but the number of imposed administrative measures remained the same, namely 5. This can be explained by the difference in the total number of inspections during which a breach was identified. In 2010, 1,397 inspections were reported for this and in 2011, 365. The difference can therefore be explained by the fact that for the survey year 2010 OVAM reported, for the total number of inspections carried out, both the inspections carried out by OVAM itself and the inspections during which OVAM provided support, but the results of which were not included in the reports by OVAM. For the survey year 2011, only those inspections were recorded that were carried out by OVAM itself.

Another remarkable element is the decrease in the use of the instrument within the Agency for Care and Health. In 2010, this share still amounted to 11.32% (55 administrative measures), whereas in 2011 no administrative measures were imposed. This can be explained by the strong decrease in the number of inspections during which a breach was identified, namely from 486 in 2010 to 23 in 2011.

The table below gives an overview of the share of the different types of administrative measures in relation to the total number of administrative measures imposed per enforcement actor in 2010 and 2011. Such a comparison makes it possible to reflect a certain trend in the necessity of specific types of administrative measures.

Enforcement actor	Administrative measures																							
	Prohibition order <sup>39</sup>						Regularisation order <sup>40</sup>						Administrative enforcement <sup>41</sup>						A combination of the above-mentioned administrative measures					
	2010			2011			2010			2011			2010			2011			2010			2011		
	N	%		N	%		n	%		n	%		n	%		n	%		n	%		n	%	
AMI	17	29.31%	16	31.37%	37	63.80%	25	49.02%	1	1.72%	2	3.92%	3	5.17%	8	15.69%								
AMV	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%								
ALBON	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%								
VLM	3	20%	0	0.00%	9	60%	8	61.54%	0	0.00%	0	0.00%	3	20%	5	38.46%								
VMM	0	0.00%	-	-	0	0.00%	-	-	0	0.00%	-	-	0	0.00%	-	-								
AZ&G	2	3.64%	0	0.00%	51	92.72%	0	0.00%	2	3.64%	0	0.00%	0	0.00%	0	0.00%								
ANB	14	15.55%	25	22.32%	54	60.00%	49	43.75%	0	0.00%	0	0.00%	22	24.45%	38	33.93%								
OVAM	0	0.00%	0	0.00%	1	20.00%	0	0.00%	4	80.00%	5	100.00%	0	0.00%	0	0.00%								
W&Z	0	0.00%	-	-	0	0.00%	-	-	0	0.00%	-	-	0	0.00%	-	-								
AWV	0	0.00%	-	-	0	0.00%	-	-	0	0.00%	-	-	0	0.00%	-	-								
AMT	0	0.00%	-	-	0	0.00%	-	-	0	0.00%	-	-	0	0.00%	-	-								
Nv De Scheepvaart	0	0.00%	-	-	0	0.00%	-	-	0	0.00%	-	-	0	0.00%	-	-								
Provincial supervisors	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%								
Municipal supervisors	30	18.29%	36	27.48%	77	46.95%	71	54.20%	4	2.44%	1	0.76%	53	32.32%	23	17.56%								
Local police supervisors	9	3.33%	5	13.51%	32	11.85%	1	2.70%	6	2.22%	8	21.62%	223	82.60%	23	62.16%								

Table 43

Type of administrative measures imposed in 2010 and 2011

39 An order to the suspected offender to take measures to end the environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition.

40 An order to the suspected offender to end activities, works, or the use of objects.

41 An actual action of the persons, mentioned in Article 16.4.6 of DABM, at the expense of the suspected offender, to end the environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition.



It can be deduced from the above table that the enforcement actors who used administrative measures in 2011, opted to apply a variety of administrative measures, just like in 2010. OVAM was the only actor to use administrative enforcement in 2011, whereas in 2010 it also imposed a regularisation order. In 2011, the regional supervisors made more use of a combination of the administrative measures. An opposite evolution can be observed with the local supervisors. In real numbers, fewer administrative measures were imposed with municipal supervisors and local police supervisors, as well as fewer combinations of administrative measures in terms of percentage.

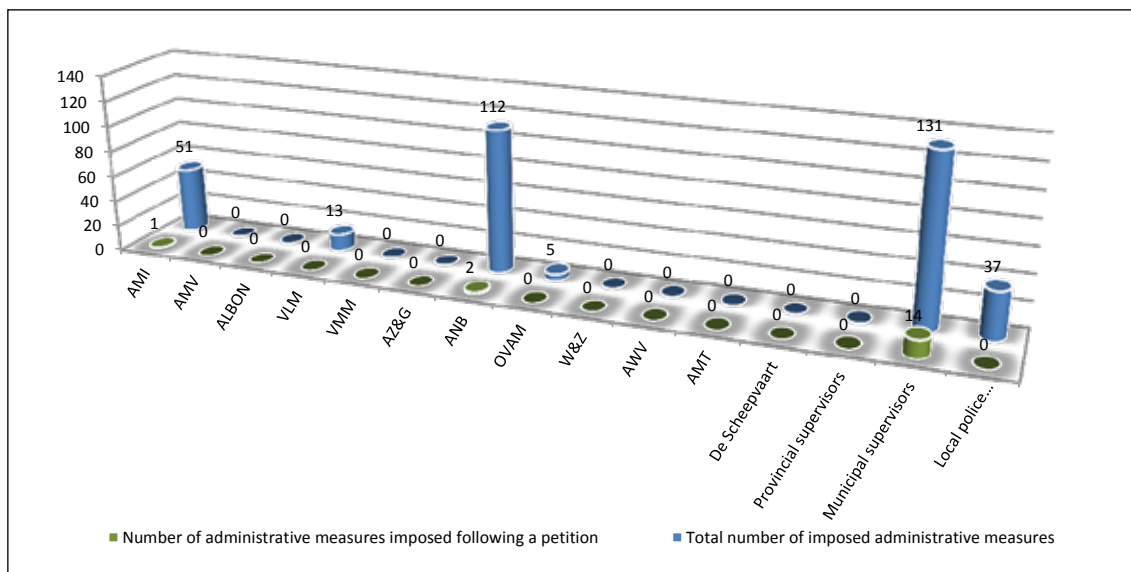
Almost 50% of the total number of administrative measures imposed by AMI were regularisation orders. This was also the most frequently used instrument with the Flemish Land Agency, the municipal supervisors and the Agency for Nature and Forests. However, the local police supervisors made more use of the combination of possible administrative measures.

In the survey for the present environmental enforcement report - by analogy with that for the Environmental Enforcement Report 2010 - an additional question was included about the number of administrative measures that were imposed following a petition. Article 16.4.18 of Title XVI of DABM stipulates that people who meet one of the following descriptions may file a petition for the imposition of an administrative measure:

- ▶ natural persons and legal persons who suffer direct detriment as a result of the environmental infringement or environmental offence;
- ▶ natural persons and legal persons who have an interest in this environmental infringement or environmental offence being controlled;
- ▶ legal persons as referred to in the Act of 12 January 1993 on a right of action with regard to the protection of the environment.

Each petition for the imposition of an administrative measure must be addressed to the people in charge of its implementation. Article 16.4.6 Title XVI of DABM stipulates that supervisors for the environmental legislation to which their supervisory duties are related, the governor of a province or his or her deputy for the environmental infringements or environmental offences, appointed by the Government of Flanders, and the mayor or his or her deputy for the environmental infringements or environmental offences, appointed by the Government of Flanders, are all authorised to respond to petitions for the imposition of an administrative measure.

The graph below shows the total number of imposed administrative measures for the 2011 survey year. This also includes the number of administrative measures that were imposed following a petition.



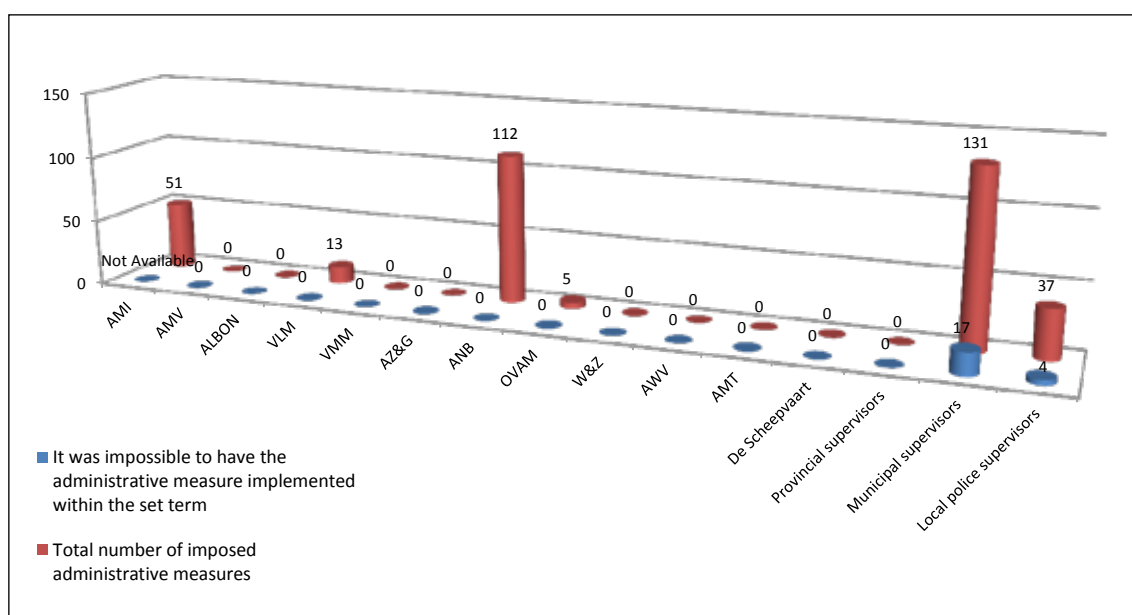
Graph 24 Overview of the number of administrative measures - imposed in 2011 - following a petition

It can be deduced from the graph above that in 2011 only the Agency for Nature and Forests, the municipal supervisors and the Environmental Inspectorate Division imposed administrative measures following a petition. With the municipal supervisors no less than 10% of the total number of administrative measures was imposed following a petition. One of the reasons why the municipal supervisors imposed the largest share of administrative measures following a petition may be that they are the most local actor. People (cf Article 16.4.18) who want to file a petition can simply contact their local supervisor through the urban or municipal contact points. This 10% is a decrease, however, compared to 2010. In 2010, 32 of the 164 administrative measures were imposed following a petition, which was 20%.

With the Environmental Inspectorate Division, no less than 10% of the administrative measures were imposed following a petition in 2010 (6 administrative measures following a petition compared to the total of 58 imposed administrative measures), whereas this percentage decreased in 2011 to 2% (1 administrative measure following a petition compared to total of 51 imposed administrative measures). While in 2010 the local police supervisors still imposed 2 of the 270 administrative measures following a petition, no administrative measures were imposed following a petition in 2011.

A prerequisite for the effectiveness of administrative measures is that they are actually implemented within the set term. A delayed implementation of such measures can result in greater damage and increased risks. In these cases the instrument 'administrative enforcement' could provide a solution for exerting additional pressure on people or bodies which do not implement the administrative measure within the set term. Within the framework of the evaluation of the Environmental Enforcement Act the Flemish High Council of Environmental Enforcement recommended in the spring of 2012 to introduce the instrument 'administrative enforcement' in the set of environmental enforcement instruments available to supervisors.

In order to find out what is the share of administrative measures that were not implemented within the set term, the different actors were asked to give this number for the present environmental enforcement report as well. These numbers are reflected in the graph below, together with the total number of imposed administrative measures.



Graph 25 Number of administrative measures imposed in 2011 which could not be implemented within the set term

The above graph shows that with the regional enforcement actors all the administrative measures were imposed within the set term. Only with the Agency for Nature and Forests almost 4.5% of the total number of imposed administrative measures was not implemented within the set term. This is a decline compared to 2010, when it was 11%.

The Environmental Inspectorate Division indicated that for several reasons no unambiguous number could be given, like for instance the fact that the implementation of the imposed administrative measure did not coincide with the calendar year or that several measures were imposed which did not have to be implemented at the same time.

Of the administrative measures that were imposed by the municipal supervisors, almost 13% could not be implemented in time. This is similar to the data from the Environmental Enforcement Report 2010 which indicated that 21 of the total of 164 imposed administrative measures could not be implemented in time.

In 2011, the local police supervisors jointly imposed 37 administrative measures, 4 of which could not be implemented in time. This 11% is a strong increase compared to 2010 when 270 administrative measures were imposed and only 1 was not implemented within the set term.

### 3.8.2 Appeals against decisions to impose administrative measures

#### 3.8.2.1 Number of appeals lodged against decisions to impose administrative measures and relevant decisions

Article 16.4.17 of DABM stipulates that the suspected offender may lodge an appeal against a decision to impose administrative measures with the Minister. The appeal must be submitted to the Minister within a period of fourteen days from notification of the decision to impose administrative measures, at the ad-

dress of the Environmental Enforcement, Environmental Damage and Crisis Management Division (afdeling Milieuhandhaving, Milieuschade en Crisisbeheer/AMMC) of the Department of Environment, Nature and Energy.

In 2011, 44 appeals were lodged with the Minister against decisions to impose administrative measures. The AMMC is in charge of the preparation of the appeal case, which means that it studies its admissibility, sets up a hearing, if applicable, and formulates an advisory opinion for the Minister. The figures, received through the survey of the AMMC, revealed that 10 appeals were declared inadmissible. Of the 34 appeals that were declared admissible, 13 referred to environmental health and 21 to environmental management.

In the table below a comparison is made on the basis of the data from the Environmental Enforcement Report 2010 between the number of appeals lodged against decisions to impose administrative measures in 2010 and 2011.

	2010	2011
Total number of appeals against decisions to impose administrative measures	39	44
Inadmissible appeals	10	10
Admissible appeals with regard to environmental health	12	13
Admissible appeals with regard to environmental management	17	21

*Table 44 Comparison between the number of appeals lodged against decisions to impose administrative measures in 2010 and 2011*

In 2011, a total of 44 appeals were lodged against decisions to impose administrative measures. This means that an appeal was lodged in 12.6% of the total of 349 imposed administrative measures. In 2010, this share amounted to only 6%. This increase could be explained by the fact that the procedures for lodging an appeal are better known by the suspected offenders. The increase in the real number of appeals against decisions to impose administrative measures is indeed striking, given the decrease in the number of administrative measures imposed in 2011 (349) compared to 2010 (657).

The table above also shows that most of the admissible appeals refer to environmental management, both in 2010 and in 2011.

The Minister has to take a decision within a period of 90 days from receipt of the appeal. On condition that this is notified to the suspected offender, as well as the person who imposed the administrative measure, the Minister may extend this period once by 90 days.

Since the administrative measures expire if no decision is taken within the given period, it is important for the Minister to reach a decision within the term laid down by Flemish Parliament Act. The table below gives an overview of the decisions of the Minister with regard to the appeals against decisions to impose administrative measures that were declared admissible in 2010 and 2011.

	2010	2011
Total number of admissible appeals	29	34
Decision of the Minister within the term laid down by Flemish Parliament Act	29	34
Number of appeals that were declared well-founded	6	4
Number of appeals that were declared partially well-founded	8	5
Number of appeals that were declared unfounded	15	19
Number of appeals that were declared devoid of purpose	0	6

Table 45 Comparison between the decision of the Minister with regard to the appeals against decisions to impose administrative measures that were declared admissible in 2010 and 2011

It can be deduced from the figures above that more than 50% of the admissible appeals were declared unfounded by the Minister, both in 2010 and in 2011. Only 6 of the 29 admissible appeals were declared well-founded in 2010, which is about 20%. In 2011, this was almost 15%.

The table below shows the percentage of appeals against decisions to impose administrative measures in comparison to the total number of administrative measures imposed, by type, both for 2010 and 2011.

Type of the imposed administrative measures	% of appeals against decisions to impose administrative measures in comparison to the number of imposed administrative measures	
	2010	2011
Prohibition order	9.33%	6.09%
Regularisation order	6.51%	19.48%
Administrative enforcement	0.00%	25.00%
A combination of the aforementioned administrative measures	1.64%	4.12%

Table 46 Percentage share of appeals against decisions to impose administrative measures in comparison to the total number of administrative measures imposed, by type, in 2010 and 2011

The above table shows that in 2011 most appeals were lodged against administrative enforcement. For the 16 administrative measures of administrative enforcement that were imposed by the supervisors, 4 appeals were lodged. This may be explained by the fact that this is the most far-reaching type of administrative measure. In addition, an appeal was lodged against almost 20% of the regularisation orders that were imposed.

It can generally be established that in 2011 more appeals were lodged against the imposed administrative measures, except in the case of prohibition orders.

### 3.8.2.2 Number of appeals lodged against refused petitions for the imposition of administrative measures and relevant decisions

Article 16.4.18, §4 of the Environmental Enforcement Act stipulates that an appeal can be lodged with the Minister against the refusal to impose an administrative measure. The Minister will reach a relevant decision within a term of sixty days following receipt of the appeal. The Environmental Enforcement,

Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy advises the Minister in these appeals.

The table below gives an overview of the number of appeals lodged against refused petitions to impose administrative measures.

	2010	2011
Appeals against refused petitions for the imposition of administrative measures	8	11
Number of appeals that were declared well-founded	1	1
Number of appeals that were declared partially well-founded	1	3
Number of appeals that were declared unfounded	6	6
Number of appeals that were declared inadmissible	0	1
Appeals for which no decision was taken within the period of 60 days laid down by Flemish Parliament Act	1	0

*Table 47*                      *Number of appeals lodged against refused petitions for the imposition of administrative measures*

The table above shows that, in 2011, 11 appeals were lodged against refused petitions for the imposition of administrative measures. This is a slight increase compared to 2010. The majority, namely over 50%, of these appeals were declared unfounded and only 1 appeal was declared entirely well-founded.

In 2011, all the decisions were taken within the term of 60 days laid down by Flemish Parliament Act, whereas in 2010 a decision was not reached in time for 1 appeal. However, the period during which a decision is to be taken is an indicative period. As a result, the expiry of the measure in case the decision is not taken in time does not apply here.

### **3.9 Evaluation of the instrument ‘safety measure’**

In Chapter VII of Title XVI of DABM the procedure for applying safety measures to persons responsible for the substantial risk, as well as the lifting of safety measures are discussed. For a better understanding of the figures below and the related evaluation, Articles 16.7.1 and 16.7.2 of the Environmental Enforcement Act are reproduced below.

Article 16.7.1 defines the instrument ‘safety measures’ as follows: “Safety measures are measures by which the persons mentioned in Article 16.4.6 can take or impose any actions they consider necessary under the given circumstances in order to eliminate, reduce to an acceptable level or stabilise a substantial risk to people or the environment”. The next article, Article 16.7.2, stipulates that safety measures can be aimed at the following situations, among others:

- ▶ the suspension or execution of works, actions or activities, immediately or within a given term;
- ▶ the prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon;
- ▶ the complete or partial closure of a plant;
- ▶ the seizure, storage or removal of relevant objects, including waste and animals;

- ▶ no entry to or leaving of certain areas, grounds, buildings, or roads.

Contrary to the supervision and the enforcement instruments discussed in this chapter the use of safety measures completely falls outside the enforcement process. Safety measures are indeed not aimed at preventing or reversing the consequences of environmental infringements or environmental offences. They are only imposed when there may be serious danger to people or the environment. Consequently, safety measures are a totally separate category within the Environmental Enforcement Act. Therefore, they are neither an administrative measure, nor an administrative fine, nor a criminal penalty. Although these are restrictive measures, they do not presuppose any error by the person they are aimed at, and neither are they intended to penalise. What prevails in a safety measure is the general interest, including the protection of public health, order, peace and quiet, and safety.<sup>42</sup> Because safety measures can be imposed by supervisors, amongst others, as described in the Environmental Enforcement Act, they are still included as instruments in this chapter. However, the idea is not to compare the number of imposed safety measures to the total number of implemented environmental enforcement inspections, as was the case for the other instruments. It will only be examined how many and which safety measures were taken by which actors.

The table below gives an overview of the number and types of imposed safety measures, broken down by environmental enforcement actor in 2011.

	The suspension or execution of works, actions, or activities	The prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon	The complete or partial closure of a plant	The seizure, storage or removal of relevant objects, including waste and animals	No entry to or leaving of certain areas, grounds, buildings, or roads	Total
AMI	1	0	0	0	0	1
AMV	0	0	0	0	0	0
ALBON	0	0	0	0	0	0
VLM	1	0	0	0	0	1
VMM	Non-response	Non-response	Non-response	Non-response	Non-response	0
AZ&G	3	0	2	0	0	5
ANB	0	0	0	0	1	1
OVAM	0	0	0	1	0	1
W&Z	Not available	Not available	Not available	Not available	Not available	Not available
AWV	Not available	Not available	Not available	Not available	Not available	Not available
AMT	Not available	Not available	Not available	Not available	Not available	Not available
Nv De Scheepvaart	Not available	Not available	Not available	Not available	Not available	Not available
Provincial supervisors	0	0	0	0	0	0
Municipal supervisors	18	7	3	2	2	32
Local police supervisors	10	3	2	0	0	15
<b>Total</b>	<b>33</b>	<b>10</b>	<b>7</b>	<b>3</b>	<b>3</b>	<b>56</b>

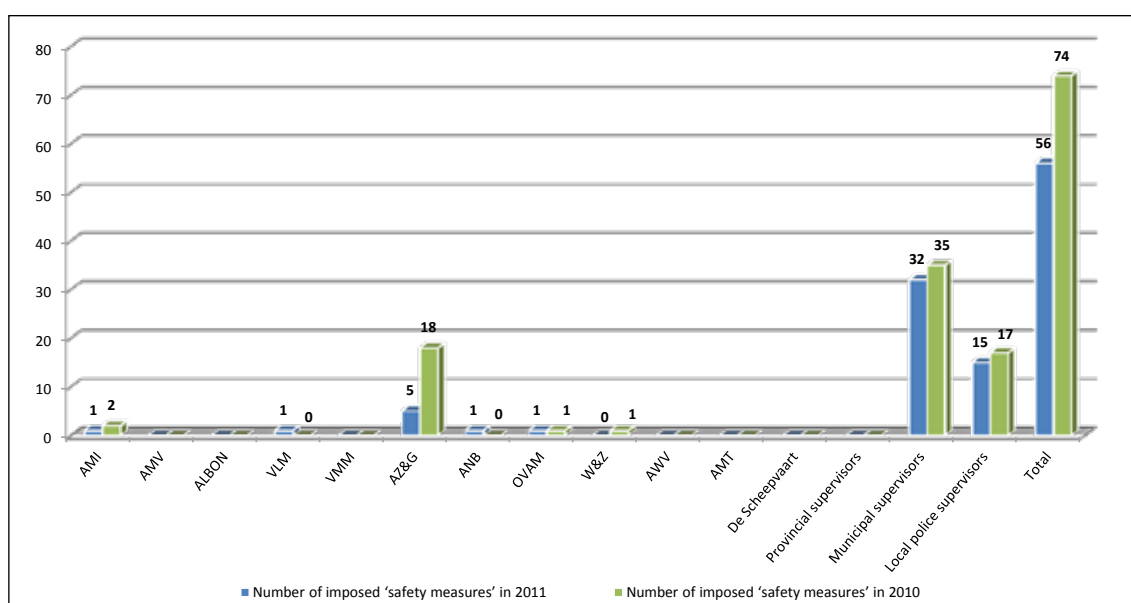
Table 48 Type of safety measures imposed in 2011

<sup>42</sup> Explanatory Memorandum; parliamentary proceedings, Session 2006-2007, 13 June 2007, Document 1249 (2006-2007) - No. 1, pages 12 and 15.

The table above shows that in 2011 a total of 56 safety measures were imposed. In 2011, the majority of the enforcement actors imposed at least one safety measure. The municipal supervisors and local police supervisors imposed respectively more than 57% and 28% of the total number of safety measures. With the regional supervisors only 1 measure was imposed, except for the Agency for Care and Health which imposed 5 safety measures in 2011.

The safety measure that was imposed most frequently is the ‘suspension or execution of works, actions, or activities’. This type was imposed in almost 59% of the total number of imposed safety measures. The ‘seizure, storage or removal of relevant objects, including waste and animals’ and ‘no entry to or leaving of certain areas, grounds, buildings, or roads’ were the measures that were imposed the least often.

A comparison could be made between the total number of safety measures imposed in 2010 and 2011 on the basis of the data from the Environmental Enforcement Report 2010. This is reflected in the graph below.



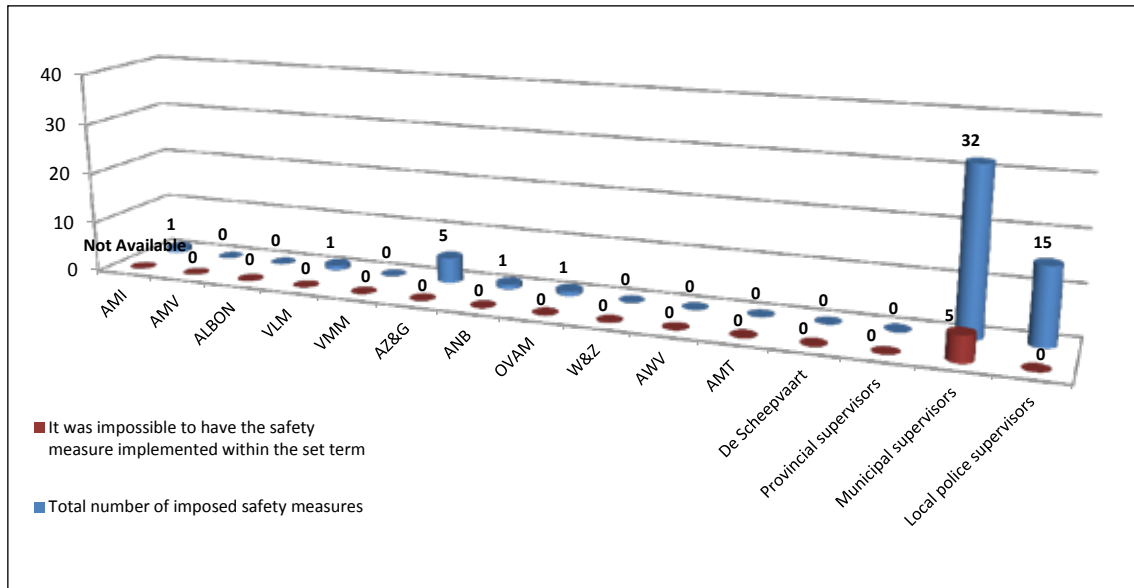
Graph 26 Total number of safety measures imposed per actor in 2010 and 2011.

The graph above shows that in 2010 more safety measures were imposed than in 2011. This decrease is visible with all the actors, except with the Flemish Land Agency and the Agency for Nature and Forests. These actors did not impose any safety measures in 2010 and only one in 2011.

This falling trend could also be observed in the Environmental Enforcement Report 2010 which compared the data from 2010 to those from 2009. In 2009, 2010 and 2011 a total of respectively 97, 74 and 56 safety measures were imposed. This could be explained by the fact that not every enforcement body listed the safety measures as referred to in the Environmental Enforcement Act in the questionnaire for the Environmental Enforcement Reports 2009 and 2010.

The supervisory bodies were also asked to indicate the number of safety measures which could not be implemented within the set term. The result is presented in the graph below.





Graph 27 Number of safety measures imposed in 2011 which could not be implemented within the set term (compared to the total number of imposed safety measures)

Only 5 of the total of 56 imposed safety measures could not be implemented within the set term in 2011. These five safety measures that were not implemented in time are safety measures imposed by the municipal supervisors. This means that 15% of the safety measures imposed by the municipal supervisors was not implemented in time. This can probably be explained by the fact that they also took the largest number of safety measures in 2011. The data from the Environmental Enforcement Report 2010 show a similar picture, namely that 11% of the safety measures imposed by the municipal supervisors was not implemented in time. Also in 2010, one safety measure that was imposed by a local police supervisor was not implemented in time.

The Environmental Inspectorate Division indicated that for several reasons no unambiguous number could be given, like for instance the fact that the implementation of the imposed safety measures did not coincide with the calendar year or that several measures were imposed which did not have to be implemented at the same time.

### 3.10 Conclusion

Chapter 3 lists the use in percentage of the instruments made available to enforcement actors in relation to the number of inspections during which a breach was identified. Given the fact that the aforementioned methodology was also used in the Environmental Enforcement Report 2010 (contrary to the Environmental Enforcement Report 2009), it is now possible to compare practices in 2010 and 2011.

In the first instance, the number of inspections during which a breach was identified was compared to the total number of inspections. A general conclusion that can be drawn is that no breach was identified during almost 68% of the inspections. This figure is practically the same as in 2010 (67%). The general high rate of compliance is thus repeated in 2011. However, (just like in 2010) great differences continue to exist between the different enforcement actors in terms of the percentage of the total number of inspections during which a breach was identified. This percentage varies from 7.36% with AMI to an extreme 91.80% with the local police supervisors. The explanation for these large differences which was advanced earlier, namely that they are due to the performance of inspections following complaints and reports and the implementation of inspections at own initiative by the different enforcement actors, can definitely be refined, given the fact that the actors have different supervisory duties and each of them holds a specific position within the enforcement chain. As a result, different actors perform their duties in different ways.

The share of inspections with unknown results rose in 2011 to 82.64%, compared to 53.07% in 2010. This strong increase is owing to the fact that 1 police district reported having performed a large number of inspections with unknown results, and that AMV does not yet have all the results for the inspections relating to the environmental coordinators at its disposal. Just like in 2010, only AMI, ALBON, AZ&G and ANB report knowing all the results of the inspections carried out in 2011. OVAM and VLM are now joining that list. Globally speaking, the results are better in 2011 than in 2010. A positive trend is thus revealing itself.

In 2011, no measures were taken by the supervisor in only 1% of the inspections during which a breach was identified. In 2010, this share still amounted to 8%. Again, a positive trend can be observed.

Since a recommendation can only be formulated when an environmental infringement or environmental offence threatens to occur, this instrument was compared to the number of inspections during which no breach was identified. This amounted to still 7.45% of the cases in 2010 and to 10.48% in 2011. However, just like in 2010, there are many differences between the various actors in terms of the use of this instrument. Certain actors hardly ever use this instrument, whereas others make frequent use of it. This use represents a share of 139.56% with the municipal supervisors. When interpreting these data, however, it should be taken into account that during an inspection a breach can be identified and that, apart from the application of an exhortation, an identification report or an official report, a recommendation is also formulated during that same inspection with regard to any possible future breaches. An overestimation in terms of percentage of the number of formulated recommendations with regard to the number of inspections during which no breach was identified can therefore not be excluded.

As the Environmental Enforcement Report 2010 already showed, it is clear for 2011 as well that the instrument 'exhortation' is widely applied by the different actors. Each actor, with the exception of the local police supervisors, used the above instrument more in 2011 than in 2010. The fact that some actors draw up multiple exhortations, in comparison with the number of official reports (and identification reports of an environmental breach), can be explained by assuming that for almost every breach that was ticked in the official report/identification report, usually one or more exhortations are formulated. Again, this requires closer examination.

The Environmental Enforcement Report 2010 showed that the instrument 'identification report' was not very well-known by supervisors. It seems that in 2011 as well this instrument was hardly ever used, or even not at all. It should be pointed out that a supervisor may draw up an identification report, but is not obliged to do so (he has discretionary power) when identifying an environmental infringement. Again, this should be further looked into.

In 2010, it was established that the official report was used very irregularly by the different actors. This also turns out to be the case in 2011. For instance, in 2011, AMI, ANB and VLM drew up an official report for more than 58% of the inspections during which a breach was identified. This percentage was much lower with the other actors. Since a breach can be either an environmental offence or an environmental infringement, the number of inspections during which an environmental offence was identified is unknown. It is currently obligatory, by virtue of Article 29 of the Code of Criminal Procedure, to draw up an official report for inspections during which an environmental offence was identified. However, it seems very unlikely that only environmental infringements have been identified in 42% of the inspections during which a breach was identified. Therefore there may be a so-called area of tension in enforcement practice with regard to the identification of an offence and the drawing up of an official report. Another possibility could be that a number of identified environmental offences are combined into one official report when the inspections take place in quick succession. Again, a closer and more detailed examination seems advisable.

As for the administrative measure, the total share of this instrument on the number of inspections during which a breach was identified in 2011 is 3.8%, whereas this was 6.3% in 2010. It is remarkable that this strong decrease can largely be attributed to the local police supervisors. It can be concluded that the instrument 'administrative measure' is a well-known and frequently used instrument among certain actors. Apart from AMI, VLM and ANB, the administrative measure is an important instrument for municipal supervisors. Just like in 2010, it was established in 2011 as well that the enforcement actors opted in favour of a variety of administrative measures.

Whereas the Minister for Environment still received 29 appeals against decisions to impose administrative measures in 2010, this number amounted to 44 already in 2011. Of the 34 appeals that were declared admissible by the AMMC, 13 referred to environmental health and 21 to environmental management. Just like in 2010, the Minister reached a decision within the period laid down by Flemish Parliament Act. It can be concluded that more than 50% of the admissible appeals were declared unfounded by the Minister, both in 2011 and in 2010. Respectively 6 and 4 appeals were declared well-founded by the Minister. Apart from the appeals against decisions to impose administrative measures, 11 appeals were lodged in 2011 against refused petitions for the imposition of administrative measures, compared to 8 in 2010. Of the 11 appeals, 1 was declared inadmissible by the AMMC. The Minister reached a decision within the period of 60 days laid down by Flemish Parliament Act and declared 1 appeal well-founded, just like in 2010.

As for the instrument 'safety measure', a total of 56 such measures were imposed in 2011, compared to 74 in 2010. In 2011, the majority of the enforcement actors imposed at least one safety measure. The municipal supervisors accounted for a share of more than 57% and the local police had a share of 28%. Five exceptions aside, all the imposed safety measures were actually implemented within the imposed deadline. It thus seems that this important instrument has become widely accepted by the majority of the enforcement actors.

## 4. Evaluation of the Flemish Environmental Sanctions Policy in 2011

With the addition of Title XVI 'Supervision, Enforcement and Safety Measures' to the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy a framework was created within which, in addition to criminal sanctions, administrative sanctions can also be applied in the form of alternative and exclusive administrative fines, whether or not with a deprivation of benefits<sup>43</sup>. To this end, a distinction was made between environmental offences and environmental infringements. The latter are non-serious breaches of administrative obligations, which do not involve any danger to people or the environment, and which are listed exhaustively by the Government of Flanders in the appendices to the implementing order of the Environmental Enforcement Act. No criminal sanctions can be applied in relation to such environmental infringements under DABM, but exclusive administrative fines can be imposed by a new regional body that was created for this purpose, namely the Environmental Enforcement, Environmental Damage and Crisis Management Division (afdeling Milieuhandhaving, Milieuschade en Crisisbeheer or AMMC) of the Department of Environment, Nature and Energy. Alternative administrative fines, on the other hand, can only be imposed for environmental offences. In principle, such offences can be prosecuted, but when the public prosecutor decides not to do so and notifies the AMMC of this in due time, the environmental offence can be penalised by the AMMC with an alternative administrative fine. The decision whether or not to prosecute a case is reached on the basis of the Classification Document ('Sorteernota'). This document of the public prosecutor aims to determine which cases will be processed by the public prosecutor's offices themselves and which cases will be referred to the AMMC, so that each official report is processed in an appropriate manner. This is determined on the basis of a number of technical/legal, legal/economic, criminological and practical considerations.<sup>44</sup>

When an environmental infringement is identified, the supervisor can draw up an identification report. This identification report is sent immediately to the regional body, which is the AMMC. The regional body can impose an exclusive fine, possibly accompanied by a deprivation of benefits. After receiving the identification report, the AMMC can, within a period of 60 days, inform the suspected offender of its intention to impose an exclusive administrative fine (possibly accompanied by a deprivation of benefits). Within a period of 90 days from notification, the regional body decides on the imposition of an exclusive administrative fine, possibly accompanied by a deprivation of benefits. Within ten days, the suspected offender should be informed of this decision.

When an environmental offence is identified, the person reporting the offence must immediately submit an official report to the public prosecutor at the court of the judicial district where the environmental offence took place. Together with the official report, a written request must be submitted in which the public prosecutor is asked to pronounce on whether or not the environmental offence will be prosecuted. The public prosecutor has 180 days to decide on this, counting from the day the official report was received. Before the expiration of this period and after a prior reminder from the person who reported the offence, this period can be extended once by another period of maximum 180 days, provided reasons are stated. The AMMC is informed of this extension. Both a decision to subject an environmental offence to criminal proceedings and a public prosecutor's failure to communicate his or her decision to the AMMC in due time rule out the imposition of an administrative fine.

If the public prosecutor has informed the AMMC in due time of his or her decision not to prosecute the environmental offence, the AMMC must start the procedure for a possible imposition of an alternative administrative fine. After receiving this decision, the AMMC must inform the suspected offender within a period of 30 days of its intention to impose an alternative fine (possibly with a deprivation of benefits). The AMMC then has 180 days to decide whether an alternative administrative fine (possibly accompanied

<sup>43</sup> A deprivation of benefits is a sanction by which an offender is made to pay an amount (which may be an estimated amount) equal to the amount of the net financial benefit obtained from the environmental infringement or the environmental offence (as defined in the VHRM glossary).

<sup>44</sup> This Classification Document is available at: <http://www.vhrm.be/documenten/milieuhandhavingsprogramma/mhp2010-bijlage-3.pdf>

by a deprivation of benefits) will be imposed. Within ten days the suspected offender must be informed of this decision.

An appeal can be lodged with the Environmental Enforcement Court against the decisions of the AMMC relating to both alternative and exclusive administrative fines.

Prior to the Environmental Enforcement Act the Flemish Land Agency could already impose administrative fines itself for infringements included in Article 63 of the Flemish Parliament Act of 22 December 2006 on the protection of water against agricultural nitrate pollution (Flemish Parliament Act on Manure). The Flemish Parliament Act stipulates on whom fines can be imposed, as well as the amounts of the fines. In case of serious breaches, as referred to in Article 71 of that same Flemish Parliament Act, the Flemish Land Agency can draw up an official report, which may be followed by criminal prosecution by the public prosecutor.

Hence, in this section, in which an evaluation will be made of the Flemish sanctions policy in 2011, we will not only look at the activities of the public prosecutor's offices, but also at those of the AMMC, the Environmental Enforcement Court and the Flemish Land Agency.

By combining the figures from the Environmental Enforcement Report 2010 with the data provided in the survey for the present environmental enforcement report, it is possible to already identify a number of trends in the implementation of the Environmental Enforcement Act.

## 4.1 Evaluation of the criminal sanctions policy

As stated earlier, the person identifying an environmental offence must immediately submit an official report to the public prosecutor at the court of the judicial district where the environmental offence took place.

In the present environmental enforcement report it is therefore important to evaluate the criminal sanctions policy pursued in 2011. That is why the Flemish High Council of Environmental Enforcement addressed the Board of Procurators General, asking, among other things, about the number of cases submitted to the public prosecutor's offices in the Flemish Region, and what treatment those cases received.

Before these figures can be discussed, some notes should also be made first in the present environmental enforcement report with respect to the data.

The figures come from a central database (REA/TPI system) of the statistical analysts connected to the general prosecutor's offices and the Board of Procurators General, which is based only on registrations by the criminal divisions of the public prosecutor's offices of the courts of first instance, and does not contain any data on the number of environmental cases processed by the general prosecutor's offices or the cases related to environmental matters processed by police prosecutors.<sup>45</sup>

The introduction of the municipal administrative sanction for small-scale forms of nuisance (such as street littering from 29 February 2008 onwards) also has an impact on the number of environmental cases submitted to the public prosecutor's offices.

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<sup>45</sup> It should be pointed out that a few cases relating to nature protection law fall under the competence of the police prosecutors and the police courts (e.g. official reports drawn up in relation to breaches of forestry legislation or fishing legislation, even if the breaches are considered to be major offences). Hence, these environmental cases are not all included in the figures, as they are not all counted in the REA/TPI figures. In this field the registration within the public prosecutor's offices will be standardised in the future.

The Flemish High Council of Environmental Enforcement asked whether it was possible to only reflect cases that had occurred in the Flemish Region. The limitation to Flanders was achieved, on the one hand, by counting the cases processed by the Flemish public prosecutor's offices and, on the other hand, by introducing a limitation for the judicial district of Brussels based on a combination of the reporting authority (where official reports drawn up by police departments located in the Brussels Capital Region were not taken into account) and the location where the breach took place (where breaches committed outside the Flemish Region were not taken into account).

Furthermore, the database contains a double counting of data related to 'other submissions/referrals'. This means that each official report received by a public prosecutor's office is entered in the database and assigned a reference number. If this official report has to be referred to another public prosecutor's office, it is entered in the database once more and assigned a new reference number.

Simplified official reports<sup>46</sup> are not included in the database of the public prosecutor's offices. The public prosecutor's offices are only provided with a list of simplified official reports. However, if the official report is requested by the public prosecutor's office after all, the database will take these cases into account. The problem is that these simplified official reports are included in the General National Database (see Chapter 2) and the figures below contain an underestimation of the number of simplified official reports that were effectively drawn up.

Generally speaking, it should be stated that the statistics presented by public prosecutor's offices are not statistics on crime or breaches of the regulations, and should therefore not be interpreted as such.

Just like in the previous chapters, the VHRM will try to make a comparison between 2010 and 2011 on the basis of the data from the Environmental Enforcement Report 2010 and the data received during the survey for the Environmental Enforcement Report 2011. Contrary to the comparison 2009-2010 in the Environmental Enforcement Report 2010, it is possible to make a comparison on the basis of real figures in the present report. The 2009 data did not refer to an entire calendar year, whereas the data on 2010 and 2011 did refer to the same study period.

It should be pointed out that it is still too early to draw conclusions based on the data extracted on 10 January 2011 and 10 January 2012 about the different ways in which the cases registered in 2010 and 2011 were processed. The figures are merely indicative for both years, since the state of progress of these cases can still have changed after the extraction date. Nevertheless, it will be tried to identify some trends.

Cases submitted to the public prosecutor's office are assigned a main charge and possibly one or more additional charge codes (prevention codes) by the public prosecutor. However, this registration of additional charge codes does not take place everywhere. The statistics below are based on all cases for which at least one of the following charge codes as used by the public prosecutor's offices was recorded, with the classification per topic proposed by the VHRM (nature protection law, waste, manure, licences and emissions):

- ▶ Nature protection law:
  - ▶ 63A - Hunting
  - ▶ 63B - Fishing
  - ▶ 63M - Flemish Parliament Act on Forests

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46 A simplified official report implies that the most important data about certain non-serious breaches are recorded on an electronic medium. The police only carry out summary investigations or requests for information if necessary. In this way, the reception of redundant documents by public prosecutor's offices is reduced.

- ▶ 63N - Washington Convention - protected animal species, plants and ivory
- ▶ 64J - Flemish Parliament Act on nature conservation and the natural environment, including the prohibition of and the licence obligation for the modification of vegetations and small landscape elements
- ▶ Waste<sup>47</sup> :
  - ▶ 64E - Illegal dumping
  - ▶ 64F - Waste management
  - ▶ 64L - Import and transit of waste (Law of 9 July 1984)
- ▶ Manure:
  - ▶ 63I - Manure
  - ▶ 63O - Flemish Parliament Act on Manure
- ▶ Licence:
  - ▶ 64D - Commodo-Incommodo (Environmental Licence)
  - ▶ 64H - Operation of an unlicensed plant
  - ▶ 64I - Non-compliance with Vlare legislation
- ▶ Air/water/soil/noise (emissions):
  - ▶ 64A - Air and water pollution
  - ▶ 64B - Carbon oxide (CO)
  - ▶ 64C - Noise nuisance, decibels in urban environment (Royal Decree of 24 February 1977)
  - ▶ 64G - Illegal water abstraction
  - ▶ 64M - Surface water pollution
  - ▶ 64N - Groundwater pollution

A selection of environmental enforcement cases was made on the basis of the above-mentioned charge codes.

First of all, a picture will be given of the total number of cases received by the public prosecutor's offices. This will be done according to the aforementioned charge codes, and, whenever possible, by reporting authority.

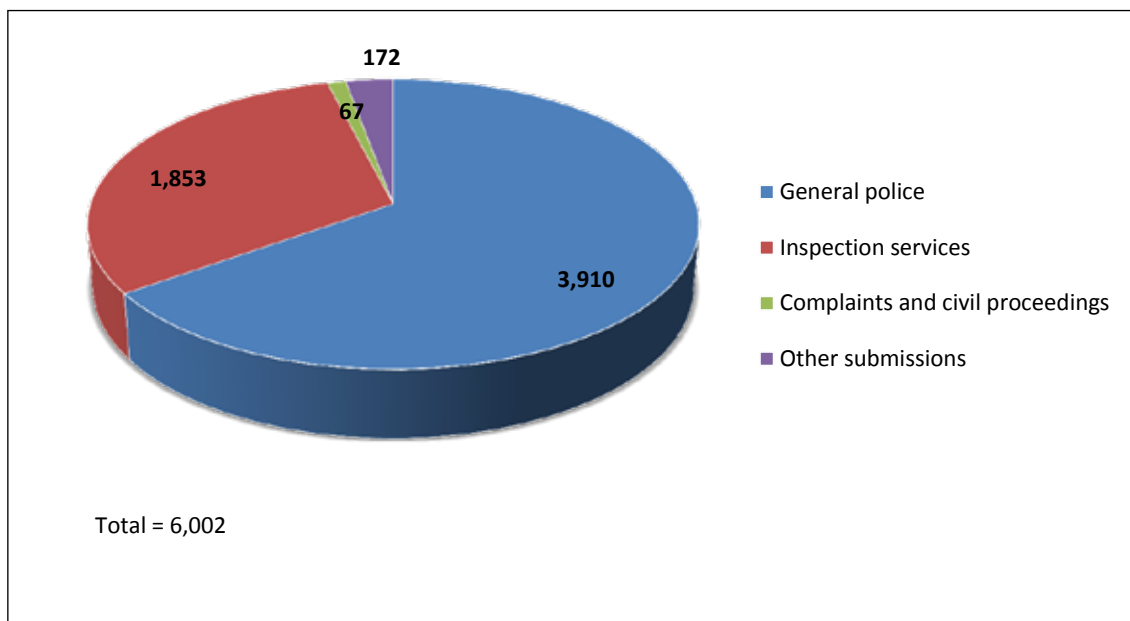
Then, we will look at the last state of progress (on 10 January 2012) of the cases which the public prosecutor's offices received in 2011, after which we will discuss the reasons for the dismissal of the cases falling under environmental enforcement in greater detail. Given that the reference date for these data is 10 January 2012, it is important to interpret the state of progress of these cases in their right context. The relevant data and percentages only refer to the situation on 10 January 2012 and do not reflect the final status of a case. Consequently, only trends can be described and no final conclusions can be drawn yet.

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<sup>47</sup> There are no separate charge codes (number and letter) for breaches relating to the Flemish Parliament Act on Soils, which is why these are classified under the charge code 'waste'.

#### 4.1.1 Reception

The graph below shows the number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011, per reporting authority, and subdivided into four different categories, namely general police, inspection services, complaints and civil proceedings, and other submissions.<sup>48</sup>



Graph 28 Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011, per reporting authority

In total, throughout 2011, the public prosecutor's offices received 6,002 cases, 65.14% (3,910 in number) of which were submitted by the general police<sup>49</sup> as reporting authority and 30.87% (1,853 in number) of which were submitted by the inspection services<sup>50</sup> as reporting authority. Complaints and civil proceedings<sup>51</sup> made up 1.11% (67 in number), while other submissions<sup>52</sup> made up 2.86% (172 in number) of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in 2011.

On the basis of the above graph it can be stated that most environmental breaches were reported by the general police in 2011. This trend could already be deduced from the data from Chapter 2.2 'Evaluation of the environmental enforcement policy pursued by the police' which showed that in 2011 the different police services drew up 19,120 official reports for environmental breaches. As already indicated, the number of official reports includes both the initial official reports and the simplified official reports. The fact that the simplified official reports are included in this as well explains the difference between the number of official reports drawn up by the police forces and the number of cases - drawn up by the police forces - received by the public prosecutor's offices, as reflected in the above graph.

48 Cases recorded by the public prosecutors of the police courts are not included in the provided figures.

49 The category 'general police' comprises local and federal police forces.

50 The inspection services are administrative services with a limited competence to report breaches, such as the regional environment administrations (supervisors).

51 It concerns complaints from private persons, as well as complaints from process servers or from private organisations and civil plaintiffs.

52 Submissions from other public prosecutor's offices (referred cases) and courts, as well as from other sections of the same public prosecutor's office, from foreign public prosecutor's offices/courts and from courts belonging to the same judicial district give rise to the creation of a new case. This category also contains all the cases which do not fall into any of the other three categories. These also include the cases received from municipal supervisors and supervisors of intermunicipal associations.



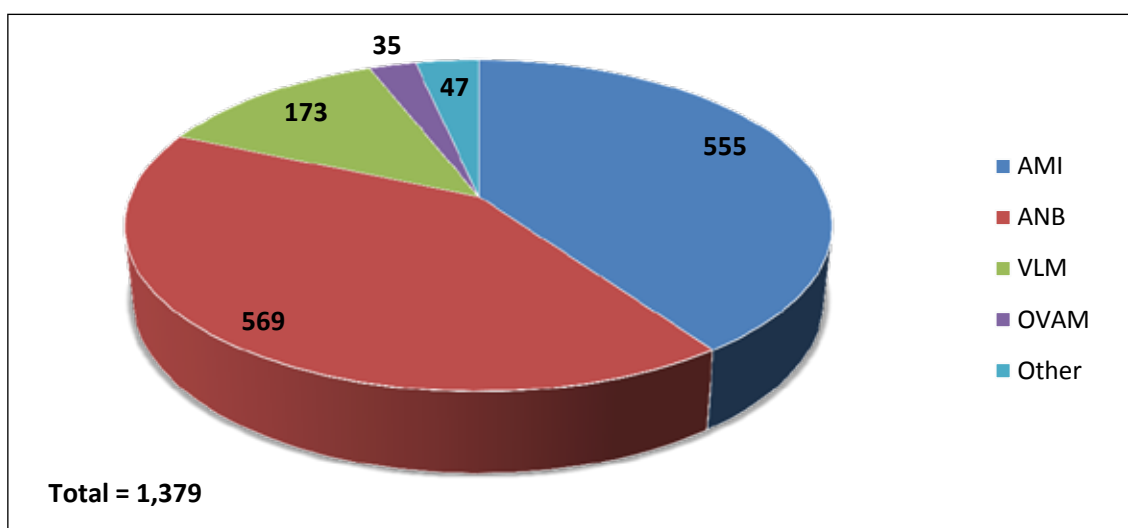
On the basis of the data from the Environmental Enforcement Report 2010 a comparison can be made in the table below between the number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region by reporting authority in 2010 and 2011.

Reporting authority	2010	2011
General police services	4,147	3,910
Inspection services	1,860	1,853
Complaints and civil proceedings	69	67
Other submissions	291	172
<b>Total</b>	<b>6,367</b>	<b>6,002</b>

*Table 49* Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region per reporting authority in 2010 and 2011

The table above shows a slight decrease in environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010 and 2011. This decrease can mainly be observed in environmental enforcement cases originating from the general police services and the other submissions. The number of cases submitted to the criminal divisions of the public prosecutor's offices by the inspection services is almost as high in 2011 as in 2010, just like the complaints and civil proceedings. The same picture could also be found in the Environmental Enforcement Report 2009. In 2009, a total of 6,162 environmental enforcement cases were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, 67.04% of which originated from the general police services and 26.89% from the inspection services. 1.09% referred to complaints and civil proceedings and 4.98% to other submissions.

In the graph below the environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011 are further subdivided by Flemish environmental enforcement service.



*Graph 29* Number of environmental enforcement cases submitted by the Flemish environment services as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011

In 2003, a technical working group was set up within the Committee on Prosecution Policy<sup>53</sup>, with the aim of improving insight into cases submitted to the public prosecutor's offices by the environment services of the Flemish Region. The only code that was available then at the level of the environment services of the Flemish Region was M2. However, it was decided to use, from 1 January 2005 onwards, specific codes within the reference numbers provided to the public prosecutor's offices by the environment services. Initially, the following codes were created:

- ▶ H1 : Environmental Inspectorate Division
- ▶ H2 : Forests & Green Areas
- ▶ H3 : Nature
- ▶ H4 : Water
- ▶ H5 : Manure Bank
- ▶ H6 : OVAM
- ▶ H7 : Other<sup>54</sup>

Because these specific reference numbers were used, it was possible to create the graph above for 2011. This shows how many cases were submitted by each Flemish environment service as reporting authority.

In 2011, a total of 1,379 cases were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region which originated from the Flemish inspection services that used the above codes.

Currently, 'Forests & Green Areas' and 'Nature' together form the Agency for Nature and Forests (Agentschap voor Natuur en Bos or ANB). This is reflected accordingly in the above graph, where ANB combines the cases falling under H2 and H3. Since 2008, the ANB has only used the code H2. The majority of these cases, that is 41.26%, originate from ANB. The Environmental Inspectorate Division also represented a substantial share of the total number of cases originating from the Flemish inspection services, namely 40.25%. OVAM and VLM account respectively for a share of 2.54% and 12.55%.

For the cases relating to water the separate code H4 was provided. Since no cases with code H4 were recorded in 2011 by the criminal divisions of the public prosecutor's offices in the Flemish Region, this code does not feature in the above graph. The Flemish Environment Agency has not responded to the questionnaire sent by the VHRM in the context of the drafting of the present environmental enforcement report. Therefore, it cannot be verified whether VMM carried out any inspections or drew up any official reports in 2011.

In comparison to Chapter 3.7 'Evaluation of the instrument 'official report'' a few differences can be observed between the number of reported official reports drawn up by the enforcement actors and the number of reports received by the criminal divisions of the public prosecutor's offices in the Flemish Region. The Environmental Inspectorate Division, for instance, indicated having drawn up 550 official reports, whereas the criminal divisions with the public prosecutor's offices received a total of 555 environmental enforcement cases from AMI in 2011. VLM as well reported having drawn up fewer official reports than were

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53 The Committee on Prosecution Policy is the predecessor of the Flemish High Council of Environmental Enforcement and aimed to be a work platform regarding environment and spatial planning at the regional level where priorities were laid down and agreements were made between the official level and the public prosecutor's offices. However, this Committee did not have any legally embedded framework, as opposed to the Flemish High Council of Environmental Enforcement.

54 H7 mainly includes official reports coming from the Administration for Roads and Traffic and the Administration for Waterways and Maritime Affairs. As there was a possibility that these services would undergo changes, but no clear information was available on the precise nature of those changes, it was decided to let them both use code H7. The Administration for Roads and Traffic would then no longer use the code 'WG', which had previously been reserved for this body.

received by the criminal divisions of the public prosecutor's offices. A reverse observation can be made for OVAM and ANB. OVAM reported having drawn up 42 official reports in 2011, while the criminal divisions of the public prosecutor's offices received only 35 environmental enforcement cases from OVAM in 2011. When asking OVAM about this, it seemed that 7 follow-up official reports were also counted in the requested number of initial official reports. The Agency for Nature and Forests indicated having drawn up 709 official reports. The number of environmental enforcement cases submitted by ANB, as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011, amounted to 569. This can be explained by the fact that a number of official reports of the Agency for Nature and Forests are also being processed by the police courts.

These figures are probably an underestimation, as not all Flemish environment administrations seem to know about the possibility of using a specific code. As a result, the process by which some cases were included in the figures above cannot be identified. The VHRM again recommends that the different environment administrations make consistent use of these codes.

The table below makes a comparison between the number of environmental enforcement cases originating from the Flemish environment services as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010 and in 2011.

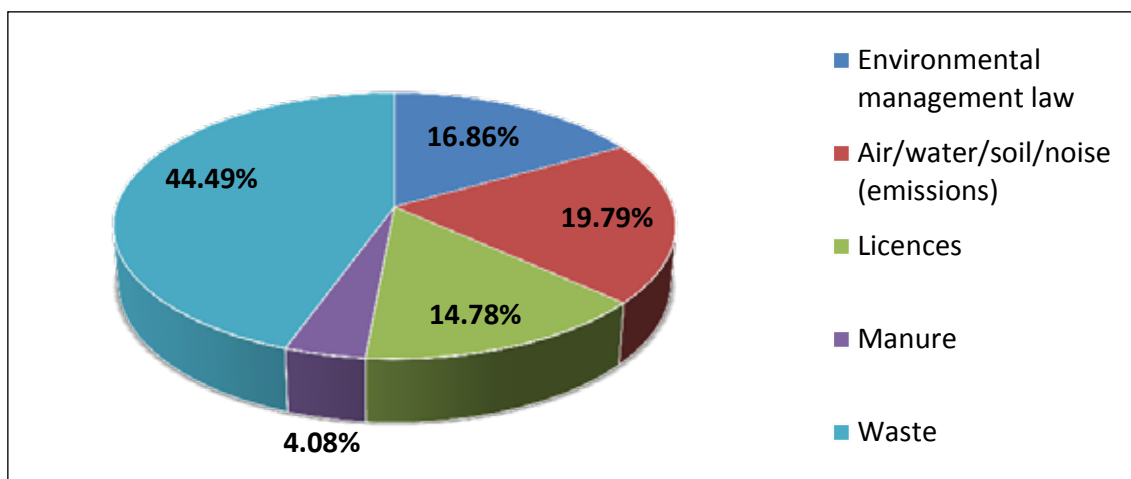
Flemish environment services	2010	2011
Environmental Inspectorate Division	504	555
Agency for Nature and Forests	572	569
Flemish Land Agency	263	173
Public Waste Agency of Flanders	53	35
Other	46	47
<b>Total</b>	<b>1,438</b>	<b>1,379</b>

*Table 50*      *Number of environmental enforcement cases submitted by the Flemish environment services as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010 and 2011*

The number of environmental enforcement cases submitted by the Flemish environment services as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region decreased slightly in 2011 compared to 2010. This decrease can be recorded for the number of cases submitted by VLM, OVAM and ANB. However, in terms of percentage the environmental enforcement cases submitted by the Agency for Nature and Forests continue to constitute the largest part. This was also the case in 2009 and 2010.

Earlier we have already provided an overview of the different charge codes that are used to record environmental enforcement cases. This allows us for 2011 as well to present an overview in the graphs and tables below of the share of each charge code in the total number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011.

The graph below illustrates the percentages of cases recorded with the charge codes under the headings of waste, manure, licences, air/water/soil/noise (emissions) and environmental management, compared to the total number of cases recorded with one of these charge codes in 2011.



*Graph 30 Percentage share of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, per main charge, for cases in 2011*

The table above shows that in 2011 the majority of the total of 6,002 environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region referred to waste, namely 44.49% or 2,670 cases. With regard to environmental management 1,012 cases were recorded, which comes down to 16.68% of the total number of environmental enforcement cases. Respectively 1,188 and 887 cases were recorded with regard to emissions (air, water, soil and noise) and licences. As a result, these themes represented respectively 19.79% and 14.78% of the total number of environmental enforcement cases in 2011. The theme 'manure' constituted 4.08% with a total of 245 cases.

The table below not only makes a further subdivision of the main charge codes of 'nature protection law', 'emissions', licences, 'manure' and 'waste', but also compares between 2010 and 2011 on the basis of the data from the Environmental Enforcement Report 2010.

	Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region	2010	2011
			6,367
Environmental management	63A - Hunting	251	202
	63B - Fishing	150	189
	63M - Flemish Parliament Act on Forests	104	132
	63N - Washington Convention - protected animal species, plants and ivory <sup>55</sup>	138	176
	64J - Nature conservation and the natural environment, including the prohibition of and the licence obligation for the modification of vegetations and small landscape elements	316	313
	Total Environmental Management	959	1,012
Air/water/soil/noise (emissions)	64A - Air and water pollution	454	282
	64B - Carbon oxide (CO)	19	11
	64C - Noise nuisance, decibels in urban environment (Royal Decree of 24 February 1977)	777	620
	64G - Illegal water abstraction	4	1
	64M - Surface water pollution	227	216
	64N - Groundwater pollution	52	58
	Total Air/Water/Soil/Noise	1,533	1,188
Licences	64D - Commodo-incommodo	177	147
	64H - Operation of an unlicensed plant	188	146
	64I - Non-compliance with Vlare legislation	503	594
	Total Licences	868	887
Manure	63I - Manure	69	60
	63O - Flemish Parliament Act on Manure	256	185
	Total Manure	325	245
Waste	64E - Illegal dumping	1,711	1,921
	64F - Waste management	894	608
	64L - Importation and transit of waste	77	141
	Total Waste	2,682	2,670

Table 51 Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, per main charge code, for cases in 2010 and 2011

As indicated earlier, the majority of the environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region referred to waste, namely 44.49%. In 2010 this was 42.12%. When looking at the charge code 'waste' in greater detail, it can be observed that, just like in the Environmental Enforcement Report 2010, the majority refer to cases of illegal dumping, namely no less than 32.01% of the total number of environmental enforcement cases recorded in 2011. This is even an increase compared to 2010, since illegal dumping represented a share of 26.87% then. It can be concluded from this that 'illegal dumping' is still the most frequently reported environmental breach in 2011.

The charge code 'emissions' as well represented a substantial share in 2011, namely 1/5 of the total number of recorded cases that could be placed under this heading. This is a slight decrease compared to 2010

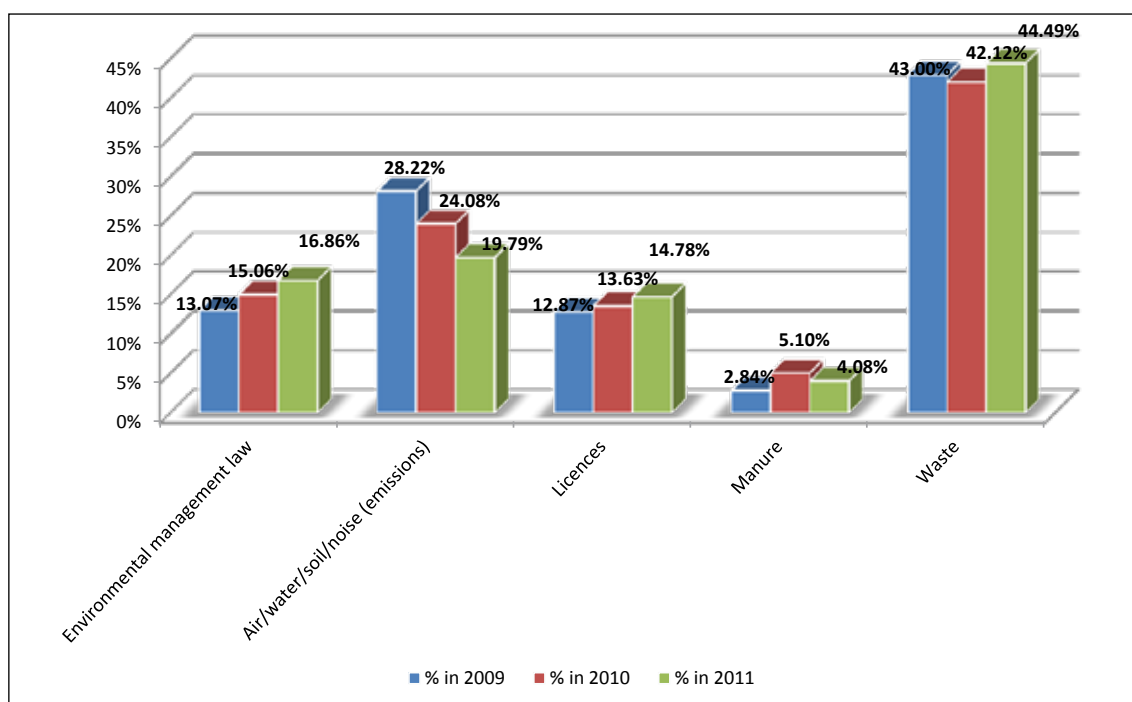
<sup>55</sup> Code 63N (Washington Convention - protected animal species, plants and ivory) does strictly speaking not come entirely under environmental management, since nature protection law is defined in the Environmental Enforcement Decree as the whole set of legal rules that are oriented towards the management of nature and the environment on the one hand, and nature conservation and the promotion of biological and landscape diversity, on the other, more specifically the regulations specified in Article 16.1.1, first sub-paragraph, 2°, 3°, 4°, 7°, 14°, 15° and 16°, of the Environmental Enforcement Act. Since this prevention code refers to all so-called CITES files, a (limited) number of files will also be included here which do not fall within the scope of DABM. The import, export and transit of CITES specimens is in fact a federal competence in accordance with Article 6 §1 III 2° of the Special Act of 8 August 1980.

when this charge code was still 24.08% of the total number of cases. In 2011 as well, more than 10% of the total number of environmental enforcement cases referred to noise nuisance and almost 10% was classified under the charge code 64I 'non-compliance with Vlare legislation'.

To clarify the remarkable decrease in the number of cases with charge code 64A 'air and water pollution' it should be communicated that this decrease can be explained by a modified registration with a number of public prosecutor's offices where the code 64A is no longer used but where, depending on the facts, these cases are recorded under code 64M or 64I.

Both in 2010 and in 2011 the cases with charge codes 63I 'manure' and 63O 'Flemish Parliament Act on Manure' constitute only a small part of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region. This could be explained by the fact that since 2006 (see below) the Flemish Land Agency can issue some of its own administrative fines under the Flemish Parliament Act on Manure.

Apart from a comparison of the real figures of 2010 and 2011 it is also possible to make a comparison in terms of percentage of the number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, per main charge codes, in 2009, 2010 and 2011. The graph below gives an overview of this.



Graph 31 Comparison of number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, per main charge codes, in 2009, 2010 and 2011

The above graph shows that the shares of environmental enforcement cases with regard to environmental management and licences have grown in the total number of cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, whereas the number of cases with charge codes 64A, 64B, 64C, 64M and 64N (air, water, soil and noise or in short emissions) is decreasing. In 2009 as well as in 2010 and 2011 the cases regarding waste accounted each time for more than 40% of the total number of environmental enforcement cases.

#### **4.1.2 State of progress**

Besides the figures regarding the amount of environmental enforcement cases received, we were also able to obtain information for the Environmental Enforcement Report 2011 on the state of progress of the environmental enforcement cases for the study period. However, it must be noted that the data extraction took place on 10 January 2012. As a result, no final conclusions can be drawn about the processing of the cases. Nevertheless, we will try to describe some trends.

The classification was made on the basis of the following states of progress:

##### **PRELIMINARY INVESTIGATION**

Cases which were still in the stage of preliminary investigation on 10 January 2012.

##### **WITHOUT FURTHER ACTION / DISMISSAL**

In cases where no further action is taken or the case is dismissed, this means that, for the time being, there will be no further prosecution of the case, and that the preliminary investigation has been concluded. The decision to take no further action is in principle always temporary. As long as the limitation period has not expired, the case can be reopened. However, it should be remarked that, statistically speaking, this category also contains the cases in which the public prosecutor decided to refer the cases to the AMMC in view of the imposition of an alternative administrative fine. As a result of this decision the limitation period expires and makes the decision final.<sup>56</sup>

##### **CASE REFERRED**

This category comprises cases which on 10 January 2012 had been referred to another public prosecutor's office or other (legal) institutions. As long as these referred cases are not returned to the public prosecutor's office of origin, they remain in this state of progress. In other words, for this public prosecutor's office they can be considered closed. They are reopened with a different reference number by the public prosecutor's office of destination.

##### **AMICABLE SETTLEMENT**

The category 'amicable settlement' comprises cases in which an amicable settlement was proposed, the cases in which an amicable settlement was not (fully) paid yet, cases which were closed with the payment of the amicable settlement and in which the limitation period has expired and, finally, cases in which an amicable settlement was refused but which have not yet moved to a different state of progress.

##### **MEDIATION IN CRIMINAL CASES**

The category 'mediation in criminal cases' comprises cases in which the public prosecutor has decided to propose mediation in criminal cases to the parties involved. This category includes cases in which mediation in criminal cases was proposed and a decision is pending for the parties involved, cases which were closed following successful mediation in criminal cases and for which the limitation period has expired and, finally, cases in which the offender did not comply with the requirements, but which have not yet

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<sup>56</sup> Currently, it is examined within the expertise network of the public prosecutor whether there is a possibility to place the cases referred to the general entity under a different heading (expiry of limitation period).

moved to a different state of progress.

### **INVESTIGATION**

The category 'investigation' contains cases which have been placed under judicial investigation and which have not yet been heard in chambers with a view to the determination of the court proceedings.

### **CHAMBERS**

This category contains cases from the stage of the determination of the court proceedings onwards, until the moment of a possible hearing before the criminal court. Cases which will not be prosecuted further maintain this state of progress.

### **WRIT OF SUMMONS & FURTHER PROCEEDINGS**

This category contains cases in which a writ of summons has been issued or a decision following a writ of summons was taken. This includes cases in which a writ of summons, a hearing before the criminal court, a sentence, an objection, an appeal, etc. has taken place.

The table below provides a picture of the last state of progress d.d. 10 January 2012 for the environmental enforcement cases recorded with the criminal divisions of the public prosecutor's offices of the Flemish Region in 2011. Both the total number of cases in Flanders and the number of cases per public prosecutor's office are given. In addition, the percentage share of the different states of progress with respect to the total number of environmental enforcement cases is given, both for 2011 and 2010, in order to make a comparison possible.



	Total number of cases		Preliminary investigation		Without further action		Case refer		Amicable settlement		Mediation in criminal cases		Investigation		Chambers		Writ of summons and further proceedings		Unknown/error																					
	2010	2011	2010		2011		2010		2011		2010		2011		2010		2011		2010		2011																			
			n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%																		
Vlaanderen	6,367	6,002	1,687	26.50	1,687	28.11	3,505	55.05	3,532	58.85	431	6.77	285	4.75	415	6.52	287	4.78	1	0.02	1	0.02	42	0.66	35	0.58	1	0.16	5	0.08	272	4.27	170	2.83	4	0.06	/	/		
Dendermonde	671	734	149	22.21	106	14.44	439	65.42	557	75.89	39	5.81	43	5.86	36	5.37	0	0	1	0.15	1	0.14	1	0.15	12	1.63	0	0.00	0	0.00	6	0.89	15	2.04	0	0.00	/	/		
Gent	901	980	268	29.74	200	20.41	388	43.06	662	67.55	566	17.31	57	5.82	22	2.44	15	1.53	0	0.00	0	0.00	14	1.55	17	1.73	3	0.33	1	0.10	50	5.55	28	2.86	0	0.00	/	/		
Oudenaarde	282	248	118	41.84	91	36.69	108	38.30	119	47.98	5	1.77	5	2.02	49	17.38	29	11.69	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	4	1.61	0	0.00	/	/		
Brugge	643	532	203	31.57	189	35.53	392	60.96	296	55.64	12	1.87	7	1.32	9	1.40	9	1.69	0	0.00	0	0.00	6	0.93	2	0.38	0	0.00	1	0.19	21	3.27	28	5.26	0	0.00	/	/		
Ieper	182	165	54	29.67	57	34.55	112	61.54	99	60	11	6.04	4	2.42	2	1.10	4	2.42	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	3	1.65	1	0.61	0	0.00	/	/		
Kortrijk	678	483	153	22.57	150	31.06	408	60.18	270	55.9	42	6.19	20	4.14	14	2.06	13	2.69	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	60	8.85	30	6.21	1	0.15	/	/		
Veurne	137	109	55	40.15	36	33.03	59	43.07	46	42.2	9	6.57	14	12.84	5	3.65	9	8.26	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	9	6.57	4	3.67	0	0.00	/	/		
Antwerpen	550	495	104	18.91	122	24.65	231	42.00	271	54.75	36	6.55	26	5.25	111	20.18	59	11.92	0	0.00	0	0.00	5	0.91	0	0.00	0	0.00	0	0.00	63	11.45	17	3.43	0	0.00	/	/		
Mechelen	245	250	39	15.92	93	37.2	151	61.63	141	56.40	21	8.57	10	4	15	6.12	2	0.80	0	0.00	0	0.00	3	1.22	0	0.00	0	0.00	1	0.40	13	5.31	3	1.20	3	1.22	/	/		
Turnhout	531	452	164	30.89	147	32.52	327	61.58	275	60.84	9	1.69	5	1.11	4	0.75	14	3.10	0	0.00	0	0.00	9	1.69	0	0.00	2	0.38	1	0.22	16	3.01	10	2.21	0	0.00	/	/		
Hasselt	287	335	86	29.97	49	14.63	140	48.78	229	68.36	18	6.27	8	2.39	36	12.54	39	11.64	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	7	2.44	10	2.99	0	0.00	/	/		
Tongeren	419	437	93	22.20	120	27.46	242	57.76	226	51.72	34	8.11	54	12.36	38	9.07	25	5.72	0	0.00	0	0.00	0	0.00	3	0.69	2	0.48	0	0.00	10	2.39	9	2.06	0	0.00	/	/		
Lewen	380	364	84	22.11	91	95	197	51.84	173	47.53	9	2.37	21	5.77	74	19.47	68	18.68	0	0.00	0	0.00	1	0.26	0	0.00	0	0.00	1	0.27	14	3.68	10	2.75	0	0.00	/	/		
Brussel	461	418	137	25.38	236	56.46	311	67.46	168	40.19	30	6.51	11	2.63	0	0.00	1	0.24	0	0.00	0	0.00	3	0.65	1	0.24	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	/	/

Table 52 Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011, possibly through addition to a mother case, including the state of progress on 10 January 2012 per category of charge and per judicial district, and comparison with 2010

The table above shows that almost 30% of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011 were in the stage of preliminary investigation on 10 January 2012. The exact number, namely 1,687 cases, is still the same in 2011 as in 2010. However, since in 2011 fewer environmental enforcement cases were recorded in total, a slight increase in terms of percentage can be observed in the number of cases that were in the stage of preliminary investigation on the date of extraction.

A second increase in terms of percentage can be reported in the number of cases for which no further action was taken in 2011, namely from 55.05% of the total number of cases in 2010 to 58.85% in 2011. In real figures, this is only an increase of 27 cases. However, this does not alter the fact that almost 60% of all the environmental enforcement cases was already left without further action on the date of extraction. In the next section '4.2.3 Reasons for dismissal' the reasons for taking no further action will be discussed in greater detail.

An amicable settlement was proposed for almost 5% of all the environmental enforcement cases recorded in 2011. This is a strong decrease compared to 6.77% in 2010 and 10.42% in 2009. In real numbers, it concerned 285 cases in 2011 and 431 cases in 2010. This decrease may be owing to the fact that the public prosecutor's offices referred a higher percentage of cases to the AMMC in 2011 than in 2009 and 2010. The cases for which an amicable settlement had already been proposed in the past (such as regularisations, illegal dumping, waste incineration, cases without aggrieved parties/complainants,...) are reported to be more readily referred to the AMMC (see below) for the imposition of an alternative administrative fine. Within this framework it can be referred to the Classification Document of the public prosecutor<sup>57</sup> which aims to determine which cases will be processed by the public prosecutor's offices themselves and which cases will be referred to the AMMC, so that each official report is processed in an appropriate manner. This is determined on the basis of a number of technical/legal, legal/economic, criminological and practical considerations.

On the basis of the above table it can be established that on 10 January 2012 a writ of summons was already issued for 2.83% of the total number of environmental enforcement cases recorded in 2011. This is 170 of the 6,002 cases, which is a decrease compared to the figures from the Environmental Enforcement Report 2010. These figures indicated that on 10 January 2011 a writ of summons was issued for almost 5% or 272 of the 6,373 environmental enforcement cases recorded in 2010.

When looking at the different criminal divisions of the public prosecutor's offices, it can be established that an average of 429 environmental enforcement cases was recorded per public prosecutor's office in 2011. In 2010, this average amounted to 455 cases per public prosecutor's office. A remarkable element in the table above is, among other things, the fact that the public prosecutor's offices of Ieper and Veurne are far below this average in 2011. This can simply be explained by the fact that these are remarkably smaller public prosecutor's offices.

Whereas in the Environmental Enforcement Report 2010 a strong increase could still be observed with all the public prosecutor's offices in the number of cases for which no further action was taken in 2010 compared to 2009, the table above shows that this trend is not so uniform any more. In each public prosecutor's office more than 40% of the cases recorded in 2011 was still left without any further action, but there is certainly no increase in this percentage within all the public prosecutor's offices. With respect to 2010, the share of the cases without further action decreased in the public prosecutor's offices of Bruges, Ieper, Kortrijk, Mechelen, Turnhout, Tongeren, Leuven and Brussels. In the other public prosecutor's offices, on the other hand, this percentage rose.

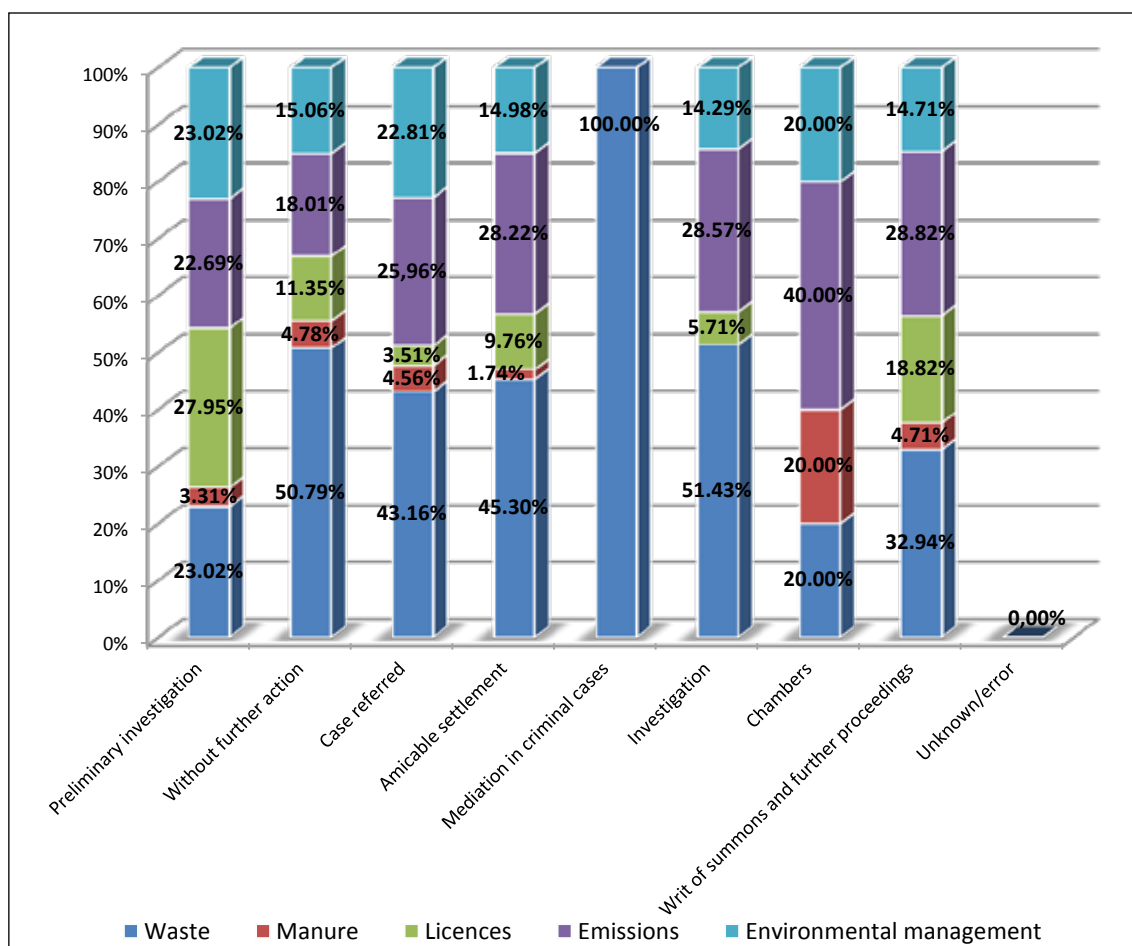
As could be generally observed, the number of amicable settlements fell in 2011 compared to 2010, both in real figures and the share of the total number of recorded environmental enforcement cases. This trend is visible within all the public prosecutor's offices, except those of Ieper, Veurne, Turnhout, Hasselt and Brussels where an increase was reported in the number of amicable settlements. On 10 January 2012, the

57 Environmental Enforcement Programme 2010, pages 103-104

public prosecutor's office of Leuven still processed, despite a real decrease in terms of percentage compared to 2010, more than 18% of the total number of environmental enforcement cases recorded in 2011 through an amicable settlement.

A general decrease could also be reported in the number of cases for which a writ of summons was already issued on 10 January 2012. Again, this trend does not apply to each separate public prosecutor's office. On 10 January 2012, the public prosecutor's offices of Oudenaarde, Bruges, Hasselt and Brussels had issued more writs of summons in terms of percentage for environmental enforcement cases that were recorded in 2011 compared to the figures from the Environmental Enforcement Report 2010.

The graph and table below reflect, per state of progress, the share of the different categories of charge codes (waste, manure, licences, emissions and environmental management). The cases relating to waste, manure, licences, emissions and environmental management were compared to a reference value equal to 100 for each state of progress (preliminary investigation, without further action, case referred, amicable settlement, mediation in criminal cases, investigation, chambers, writ of summons & further proceedings, unknown/error). The table below makes a comparison between 2010 and 2011, per state of progress of the share of the different categories of charge codes (waste, manure, licences, emissions and environmental management).



Graph 32 State of progress as at 10 January 2012 for environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011 according to the share of the charge category (waste, manure, licences, emissions and environmental management)

	Waste		Manure		Licences		Emissions		Environmental management		Total
	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	
Preliminary investigation	33.73%	23.02%	3.20%	3.31%	25.96%	27.95%	22.05%	22.69%	15.06%	23.02%	100.00%
Without further action	48.10%	50.79%	6.56%	4.78%	8.73%	11.35%	21.88%	18.01%	14.72%	15.06%	100.00%
Case referred	35.27%	43.16%	6.96%	4.56%	6.03%	3.51%	29.23%	25.96%	22.51%	22.81%	100.00%
Amicable settlement	45.78%	45.30%	0.72%	1.74%	8.43%	9.76%	31.81%	28.22%	13.25%	14.98%	100.00%
Mediation in criminal cases	0.00%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	0.00%	100.00%
Investigation	26.19%	51.43%	9.52%	0.00%	9.52%	5.71%	47.62%	28.57%	7.14%	14.29%	100.00%
Chambers	20.00%	20.00%	0.00%	20.00%	10.00%	0.00%	30.00%	40.00%	40.00%	20.00%	100.00%
Writ of summons & further proceedings	25.37%	32.94%	1.47%	4.71%	21.32%	18.82%	41.18%	28.82%	10.66%	14.71%	100.00%
Unknown / error	75.00%	0.00%	0.00%	0.00%	0.00%	0.00%	25.00%	0.00%	0.00%	0.00%	100.00%

Table 53 *States of progress as at 10 January 2011 and 10 January 2012 for environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010 and 2011 (percentage) according to the share of the charge category (waste, manure, licences, emissions and environmental management)*

The graph and table above show that more than half of the total number of cases recorded in 2011 for which no further action was taken on 10 January 2012 referred to waste. This is an increase compared to 2010, when it was 48.10%. The 'waste' cases also represent 45.30% of the amicable settlements. A similar trend could be established in the Environmental Enforcement Report 2010.

In addition, the majority of the environmental enforcement cases that were recorded in 2011 and for which a writ of summons was already issued on 10 January 2012 also referred to waste, namely 32.94% of the total number of cases for which a writ of summons was issued. This is a strong increase compared to the Environmental Enforcement Report 2010 when only 25.37% of all the cases for which a writ of summons was issued referred to waste. On the other hand, a decrease can be recorded for the cases relating to emissions. It could be deduced from the Environmental Enforcement Report 2010 that 41.18% of the cases for which a writ of summons had already been issued on 10 January 2011 referred to emissions, whereas this percentage decreased to 28.82% for 2011.

The table below gives a comparison in terms of percentage between the data from 2010 and 2011 per charge code and per state of progress (preliminary investigation, without further action, case referred, amicable settlement, mediation in criminal cases, investigation, chambers, writ of summons and further proceedings, unknown/error) which the cases in the charge codes were in on respectively 10 January 2011 and 10 January 2012. The states of progress (preliminary investigation, without further action, case referred, amicable settlement, mediation in criminal cases, investigation, chambers, writ of summons and further proceedings, unknown/error) were compared to a reference value equal to 100, i.e. a specific category of charge code (waste, manure, licences, emissions and environmental management).

	Waste		Manure		Licences		Emissions		Environmental management	
	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011
Preliminary investigation	21.22%	13.84%	16.62%	20.00%	50.46%	46.67%	24.27%	28.28%	26.49%	33.70%
Without further action	62.86%	72.81%	70.77%	68.98%	35.25%	45.21%	50.03%	53.54%	53.81%	52.57%
Case referred	5.67%	4.99%	9.23%	5.31%	3.00%	1.13%	8.22%	6.23%	10.11%	6.42%
Amicable settlement	7.08%	5.28%	0.92%	2.04%	4.03%	3.16%	8.61%	6.82%	5.74%	4.25%
Mediation in criminal cases	0.00%	0.04%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.10%	0.00%
Investigation	0.41%	0.73%	1.23%	0.00%	0.46%	0.23%	1.30%	0.84%	0.31%	0.49%
Chambers	0.07%	0.04%	0.00%	0.41%	0.12%	0.00%	0.20%	0.17%	0.42%	0.10%
Writ of summons & further proceedings	2.57%	2.27%	1.23%	3.27%	6.68%	3.61%	7.31%	4.12%	3.02%	2.47%
Unknown / error	0.11%	0.00%	0.00%	0.00%	0.00%	0.00%	0.07%	0.00%	0.00%	0.00%
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

*Table 54 Categories of charge codes (waste, manure, licences, emissions and environmental management) of the environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region: comparison of the percentage share in 2010 and 2011 according to the state of progress as at 10 January 2011 and 10 January 2012 respectively per category of charges*

Just like in the previous graph and table it can be observed that the cases regarding waste mainly stayed without further action (72.81% of the total number of recorded cases regarding waste). At the same time an increase of more than ten percentage points can be observed compared to 2010 (62.86%) and more than twenty percentage points compared to 2009 when almost half of the number of cases regarding waste remained without further action. The cases regarding waste are also the cases that were recorded most frequently by the criminal divisions of the public prosecutor's offices in the Flemish Region, in 2009 (43%) as well as in 2010 (42.12%) and 2011 (44.48%). In addition, it can be established with regard to the cases relating to waste that in terms of percentage fewer amicable settlements were proposed and a writ of summons was issued less frequently in 2011 than in 2010 as at 10 January 2012.

The table above shows a similar picture for manure as for cases relating to waste. For almost 70% of these cases relating to manure it was decided that no further action would be taken in 2011. The percentage share of the amicable settlement, on the other hand, rose in 2011 compared to 2010, even though this was still almost 5% of all the cases regarding manure in 2009.

With regard to the cases relating to licences an increase can also be observed in the percentage share of the number of cases for which no further action was taken. In 2009, the share of cases without further action amounted to only 30.59%, whereas in 2010 this rose to 35.25% and in 2011 to 45.21%. It can also be deduced from the table above that as at 10 January 2012 fewer writs of summons were issued for cases relating to licences than during that same period in 2011. Also, as at 10 January 2012 almost half of these cases were in the preliminary stage of investigation. The cases regarding emissions show a similar picture, namely a percentage increase in the number of cases for which no further action was taken and a percentage decrease in the number of cases for which a writ of summons was already issued on the date of extraction.

Despite the fact that a percentage decrease can be observed in the cases relating to environmental management for which no further action was taken in 2011 compared to 2010, the fact remains that no action was taken for more than half of these cases. In addition, 1/3 of these cases were still in the stage of preliminary investigation on the date of extraction.

It can generally be established that in 2011 a strong increase took place in the number of environmental enforcement cases for which no further action was taken compared to 2009 and 2010 (only the share of cases regarding manure and environmental management decreased slightly in 2011 compared to 2010, even though a strong increase can be reported with respect to the data from the Environmental Enforcement Report 2009). The minimum share and the maximum share of the cases for which no further action was taken amounted in 2009, 2010 and 2011 to respectively 30% and 50%, 35% and 70.77% and 45.21% and 72.81%. In the next section we will therefore pay more attention to the reasons for not taking any further action.

**NOTE:**

In the analysis above all environmental enforcement cases for which no further action was taken by the public prosecutor's offices in the Flemish Region were added up. It was indeed mentioned that 58.85% of the environmental enforcement cases remained without further action or were dismissed by the public prosecutor's offices in the Flemish Region. Still, this figure needs to be put into perspective. We should take account of the fact that a large number of cases received by the public prosecutor's offices can, in fact, not be prosecuted. 'Referred' cases and 'technical dismissals' should therefore be left out of consideration. In other words, more measures are taken in environmental cases than the figures above suggest. This is because only the 'prosecutable cases' should be taken into account. For environmental enforcement cases recorded by the public prosecutor's offices in 2011 this would amount to 4,500 prosecutable cases, instead of 6,002. In this way, the results of the calculations would be that in fact an amicable settlement was already proposed in 6.38% of the recorded cases instead of 4.78% as stated above, and that a writ of summons was issued in 3.78 % of the cases instead of 2.83%. Still, this is a decrease compared to the percentages obtained through this method of calculation in the Environmental Enforcement Report 2010. In fact, as at 10 January 2011 an amicable settlement was already reached in 9.11% of all the environmental enforcement cases and a writ of summons was already issued in 6.52% of the cases.

### **4.1.3 Reasons for dismissal**

In the section above referring to the state of progress of environmental enforcement cases it was found that, as at 10 January 2012, 58.85% of the cases had already been dismissed without further action by the public prosecutor's offices in the Flemish Region. However, for the drafting of the present environmental enforcement report the Flemish High Council of Environmental Enforcement was also provided with figures that further clarify these cases that were dismissed without further action.

In relation to cases without further action it is important to take into account the reasons for dismissal. Article 28 quater, §1 of the Code of Criminal Procedure, added by the Act of 12 March 1998, obliges public prosecutors to provide reasons for their decisions. Public prosecutor's offices have a refined list of reasons for 'without further action' at their disposal, which is standard for the whole country and was formalised as a result of the Franchimont reform. This list – and the possible categories – was included in circular letter COL12/98 of the Board of Procurators General about the application of the Act of 12 March 1998.

For the figures at hand the following classification was used:

- ▶ Dismissal based on the principle of opportunity:
  - ▶ limited consequences for society
  - ▶ situation regularised

- ▶ relational offence
- ▶ limited detriment
- ▶ reasonable term exceeded
- ▶ lack of precedent
- ▶ chance events with cause
- ▶ young age
- ▶ disproportion criminal proceedings - social disruption
- ▶ victim's attitude
- ▶ compensation to the victim
- ▶ insufficient investigation capacity
- ▶ other priorities.
- ▶ Technical dismissal:
  - ▶ no offence
  - ▶ insufficient proof
  - ▶ limitation
  - ▶ death of the offender
  - ▶ withdrawal of the complaint (in case of offences requiring a complaint)
  - ▶ amnesty
  - ▶ incompetence
  - ▶ final judgement
  - ▶ immunity
  - ▶ absolution due to extenuating circumstances
  - ▶ absence of complaint
  - ▶ offender(s) unknown.
- ▶ Dismissal for other reasons:
  - ▶ administrative fine
  - ▶ Praetorian probation
  - ▶ signalling of the offender.
- ▶ Unknown/error: cases for which the reason for the absence of further action could not be determined.

It should be noted that the distinction between technical and opportunity-based reasons is not always easy to make. Some of the cases that are dismissed for technical reasons could be regarded as dismissals based on the principle of opportunity.

The table below illustrates the types of 'without further action' (dismissal based on the principle of opportunity, technical dismissal and other reason for dismissal) reported by the different public prosecutor's offices in the Flemish Region, compared to all the environmental enforcement cases which were in the 'without further action' state of progress on 10 January 2012. The figures from the Environmental Enforcement Report 2010 allow for a comparison to be made between the share of the different types of 'without further action' and the total number of cases that remained without further action in 2010 and 2011.

	Number of environmental enforcement cases		Dismissed without further action		Dismissal of cases based on the principle of opportunity		Technical dismissals		Dismissals for other reasons		Unknown/error	
	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011
Flanders	6,367	6,002	3,505	3,532	1,108	738	1,380	1,217	1,016	1,577	1	0.03%
Dendermonde	671	734	439	557	89	83	124	137	226	337	0	0.00%
Ghent	901	980	388	662	71	56	252	278	65	328	0	0.00%
Oudenaarde	282	248	108	119	29	33	38	43	41	43	0	0.00%
Bruges	643	532	392	296	310	99	66	95	16	102	0	0.00%
leper	182	165	112	99	24	29	50	34	38	36	0	0.00%
Kortrijk	678	483	408	270	4	5	266	129	137	136	1	0.25%
Veurne	137	109	59	46	15	3	18	24	26	19	0	0.00%
Antwerp	550	495	231	271	92	63	54	74	85	134	0	0.00%
Mechelen	245	250	151	141	48	34	68	50	35	57	0	0.00%
Turnhout	531	452	327	275	67	39	108	94	152	142	0	0.00%
Hasselt	287	335	140	229	52	116	64	75	24	38	0	0.00%
Tongeren	419	437	242	266	88	84	91	85	63	57	0	0.00%
Leuven	380	364	197	173	53	45	94	66	50	62	0	0.00%
Brussels	461	418	311	168	166	49	87	33	58	86	0	0.00%

Table 55 Per public prosecutor's office, number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010 and 2011 and share of dismissals based on the principle of opportunity, technical dismissals and dismissals for other reasons (state of progress as at 10 January 2011 compared to state of progress as at 10 January 2012)



The table above shows that, in 2011, 58.84% of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region was already dismissed as at 10 January 2012. This is a slight percentage increase compared to 2010 when 55.05% of the total number of environmental enforcement cases was dismissed without further action. The majority, that is 44.65%, of the dismissed cases remained without further action because of 'other reasons' (administrative fine, Praetorian probation or the signalling of the offender). In addition, 34.46% of the dismissed cases remained without further action because of technical reasons and 20.89% for opportunity-based reasons. Compared to the figures from the Environmental Enforcement Report 2010 a decrease can be established in the percentage share of the dismissals for opportunity-based reasons and for technical reasons and an increase in the percentage share of dismissals for other reasons.

The growing percentage share of dismissed cases for other reasons is a trend that can be found in most public prosecutor's offices. Only with the public prosecutor's offices of Oudenaarde, Veurne, Hasselt and Tongeren this percentage share has slightly decreased (but not always of the real numbers). In the following table these other reasons for dismissal will be discussed in greater detail. One of these reasons is indeed that the public prosecutor's office refers the case to the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy in view of the imposition of an administrative fine. Therefore, the table below gives the reasons for dismissal per item of charge code (waste, manure, licences, emissions and environmental management) both for 2010 and 2011. This allows us to get an idea of which types of cases are dismissed for which reasons, and how the Environmental Enforcement Act could have influenced this.

	Waste						Manure						Licences						Air/water/soil/noise (emissions)						Environmental management						Total					
	2010		2011		2010		2011		2010		2011		2010		2011		2010		2011		2010		2011		2010		2011		2010		2011					
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%						
Opportunity	(1) limited consequences for society																																			
	148	8.78%	72	4.01%	22	9.57%	1	0.59%	12	3.92%	7	1.75%	62	8.08%	11	1.73%	70	13.57%	5	0.94%	314	8.96%	96	2.72%												
	133	7.89%	107	5.96%	49	21.30%	28	16.57%	48	15.69%	45	11.22%	43	5.61%	55	8.65%	25	4.84%	21	3.95%	298	8.50%	256	7.25%												
	0	0.00%	1	0.06%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	0.03%												
	5	0.30%	3	0.17%	4	1.74%	1	0.59%	0	0.00%	1	0.25%	2	0.26%	0	0.00%	20	3.88%	4	0.75%	31	0.88%	9	0.25%												
	8	0.47%	3	17.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	0.25%	2	0.26%	3	0.47%	1	0.19%	0	0.00%	11	0.31%	7	0.20%										
	37	2.19%	36	2.01%	2	0.87%	0	0.00%	3	0.98%	0	0.00%	0	0.00%	13	1.69%	17	2.67%	29	5.26%	23	4.32%	84	2.40%	76	2.15%										
	44	2.61%	49	2.73%	6	2.61%	3	2.74%	6	1.96%	11	2.74%	54	7.04%	44	6.92%	4	0.78%	9	1.69%	114	3.25%	116	3.28%												
	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	0.19%	0	0.00%	1	0.03%										
	40	2.37%	18	1.00%	1	0.43%	7	4.14%	3	0.98%	0	0.00%	0	0.00%	13	1.69%	6	0.94%	17	3.29%	7	1.32%	74	2.11%	38	1.08%										
Technical	(9) disproportion criminal proceedings – social disruption																																			
	0	0.00%	1	0.06%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	0.25%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2	0.06%										
	35	2.08%	16	0.89%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	0.13%	1	0.16%	2	0.39%	0	0.00%	38	1.08%	17	0.48%										
	6	0.36%	3	0.17%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	0.16%	5	0.97%	3	0.56%	11	0.31%	7	0.20%										
	53	3.14%	41	2.29%	16	6.96%	10	5.92%	12	3.92%	2	0.50%	26	3.39%	13	2.04%	26	5.04%	46	8.65%	133	3.79%	112	3.17%												
	509	30.19%	350	19.51%	100	43.48%	50	29.59%	84	27.45%	68	16.96%	216	28.16%	151	23.74%	199	38.57%	119	22.37%	1,108	31.61%	738	20.89%												
	73	4.33%	61	3.40%	22	9.25%	0	0.00%	12	3.92%	16	3.99%	137	17.86%	66	10.38%	22	4.26%	25	4.70%	266	7.59%	168	4.76%												
	431	25.56%	455	25.36%	3	1.30%	7	4.14%	26	8.50%	18	4.49%	131	17.08%	114	17.92%	65	12.60%	57	10.71%	656	18.72%	651	18.43%												
	6	0.36%	2	0.11%	0	0.00%	0	0.00%	1	0.33%	0	0.00%	15	1.96%	3	0.47%	1	0.19%	1	0.19%	0	0.00%	23	0.66%	5	0.14%										
	4	0.24%	1	0.06%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	0.16%	1	0.19%	0	0.00%	5	0.14%	2	0.06%										
Other	(21) incompetence																																			
	0	0.00%	1	0.06%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	3	0.39%	1	0.16%	0	0.00%	2	0.38%	3	0.09%	4	0.11%										
	1	0.06%	2	0.11%	0	0.00%	0	0.00%	2	0.65%	0	0.00%	5	0.65%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	8	0.23%	2	0.06%										
	0	0.00%	0	0.00%	0	0.00%	0	0.00%	3	0.98%	1	0.25%	1	0.13%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	4	0.11%	1	0.03%										
	1	0.06%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	00	0.00%	0	0.00%	1	0.03%	0	0.00%										
	207	12.28%	212	11.82%	2	0.87%	0	0.00%	11	3.59%	17	4.24	115	14.99%	77	12.11%	79	15.31%	78	14.66%	414	11.81%	384	10.87%												
	723	42.88%	734	40.91%	27	11.74%	7	4.14%	55	17.97%	52	12.97%	407	53.06%	262	41.19%	168	32.56%	162	30.45%	1,380	39.37%	1,217	34.46%												
	418	24.79%	670	37.35%	103	44.78%	112	66.27%	166	54.25%	281	70.07%	140	18.25%	223	35.06%	148	28.68%	250	46.99%	975	27.82%	1,536	43.49%												
	1	0.06%	2	0.11%	0	0.00%	0	0.00%	1	0.33%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2	0.06%	2	0.06%										
	34	2.02%	38	2.12%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	4	0.52%	0	0.00%	1	0.19%	1	0.19%	39	1.11%	39	1.10%												
453	26.87%	710	39.58%	103	44.78%	112	66.27%	167	54.58%	281	70.07%	144	18.77%	223	35.06%	149	28.88%	251	47.18%	1,016	28.99%	1,577	44.65%													
Unknown/error	Unknown/error																																			
	1	0.06%	/	/	0	0.00%	/	/	0	0.00%	/	/	0	0.00%	/	/	0	0.00%	/	/	1	0.03%	/	/	1	0.03%	/	/								
	1	0.06%	/	/	0	0.00%	/	/	0	0.00%	/	/	0	0.00%	/	/	0	0.00%	/	/	1	0.03%	/	/	1	0.03%	/	/								
Total	1686	100.00%	/	/	230	100.00%	/	/	306	100.00%	/	/	767	100.00%	/	/	100.00%	516	/	/	3,505	100.00%	/	/	3,505	100.00%										

Table 56 Per item of charge code, environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010 and 2011 and share of dismissals based on the principle of opportunity, technical dismissals and dismissals for other reasons (state of progress as at 10 January 2011 and 10 January 2012)

As shown from the previous table, 20.89% of the dismissed cases remained without further action for opportunity-based reasons. In reality, it concerns 738 cases on the total of 3,532 cases that were already dismissed without further action in 2011 as at 10 January 2012. 256 of these 738 cases were dismissed because the situation had already been regularised. In addition, 3.28% of the total number of dismissed cases remained without further action because it concerned 'chance events with cause', 2.72% or 96 cases because the offence had 'limited consequences for society', and 2.15% because of 'lack of precedents'. The other reasons for dismissal for opportunity-based reasons, such as the fact that the offence has a 'limited detriment' or because of the offender's 'young age', were used only to a limited extent.

Compared to 2009 and 2010, the percentage share of the opportunity-based dismissals decreased in 2011, namely from 35.68% of the total number of dismissed cases in 2009 to 31.61% in 2010 and to 20.89% in 2011. This is also apparent from the real numbers. Whereas 1,108 cases were dismissed for reasons of opportunity in 2010, this number amounted to 738 cases in 2011. This decrease can also be observed within the different reasons separately.

In 2011, more than 20% of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region were dismissed for technical reasons, or 34.46% of the cases were dismissed without further action for technical reasons. Most of the technical dismissals, namely 651 of the total of 1,217 cases, were dismissed because insufficient evidence was available to prove the offence. Also, 384 cases were technically dismissed because the offender is unknown. The reason 'offender unknown' is a technical reason for dismissal, but in many cases the offenders remain unknown because it is decided, based on the principle of opportunity, not to identify the offenders. This is because the detriment caused by the offence is often disproportionate to the costs of tracing the offenders. However, this means that some of the cases that were dismissed for technical reasons could in fact be regarded as dismissals based on the principle of opportunity.

Compared to 2010, a decrease in technical dismissals can also be observed in 2011, both in real numbers and in the percentage share of the technical dismissals in the total number of cases for which no further action was taken. In 2010, this share still amounted to 39.37% and referred to 1,380 cases. In 2011, it amounts to 34.46% or 1,217 cases.

An increase can be observed, however, in those cases that are dismissed for 'other reasons'. In 2010, 1,016 cases were dismissed for other reasons. This referred to 28.99% of the total number of cases for which no further action was taken. In 2011, 1,577 cases were already dismissed for other reasons on 10 January 2012, which comes down to 44.65% of the total of 3,532 dismissed cases. As indicated earlier, these other reasons may relate to the referral of an official report to the Environmental Enforcement, Environmental Damage and Crisis Management Division for the imposition of an administrative fine, the Praetorian probation or the signalling of the offender. The real numbers and percentage shares of these last two motives remained the same in 2011 compared to 2010. The increase in the number of dismissals for other reasons is therefore owing to the growing number of cases that were referred to the administrations (either the AMMC, or the Manure Bank) for the imposition of an administrative fine. No less than 43.49% or 1,536 of the total number of dismissed cases remained without further action by the criminal divisions of the public prosecutor's offices in view of the imposition of an administrative fine. This share amounted to 23.92% in 2009 and 27.82% in 2010. This means that, in 2011, 25.59% of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region were referred to the administrations for the imposition of an administrative fine. This is an increase of more than ten percentage points compared to 2010 when 15.31% of the total number of environmental enforcement cases were dismissed for this reason and an increase of more than 15 percentage points compared to 2009 when 10.13% of the total number of environmental enforcement cases were dismissed in view of the imposition of an administrative fine. A strong rise in real figures can also be observed in

the table above. In 2010, 975 cases were referred in view of the imposition of an administrative fine. This number amounted in 2011 already to 1,536 as at 10 January 2012.

It can be deduced from the above table that cases are still being dismissed, but that more frequent use is made of the alternative provided to the public prosecutor's offices by the Environmental Enforcement Act, namely dismissals with a view to the imposition of an administrative fine. This stresses the important impact of the Environmental Enforcement Act and its aim to properly deal with each separate environmental offence. Naturally, the success of the Environmental Enforcement Act can even grow, among other things given the differences that exist between the public prosecutor's offices in dismissing cases in view of the imposition of an administrative fine. Other cases are also eligible for the imposition of an administrative fine, such as cases that are dismissed for other priorities or for reasons such as 'situation regularised', 'lack of precedent', 'victim was compensated' and 'limited consequences for society'. The Flemish High Council of Environmental Enforcement also formulated this remark in the Environmental Enforcement Report 2010. It can already be deduced from the figures in the above table that the real numbers and the percentage shares of these reasons decreased with respect to the total number of dismissed cases. This can also be regarded as a positive trend within the framework of the Environmental Enforcement Act. It is important to examine the evolution in the imposition of this administrative fine, given the increase in the number of cases that are dismissed in view of the imposition of such a fine and given the fact that the policy is to deal with each environmental offence in an appropriate manner. Therefore, this is discussed at length in the next section.

When looking specifically at the categories of charge codes of the environmental enforcement cases that are dismissed, the following can be concluded:

- ▶ Waste: the criminal divisions of the public prosecutor's offices in the Flemish Region recorded 2,670 cases regarding waste in 2011, 1,794 of which were dismissed. This comes down to 67.19% of the total number of cases regarding waste that were dismissed, which is an increase compared to 2010 when this was still 62.86%.

More than 1/4 of the dismissed cases regarding waste remained without further action for lack of evidence, 17% because the reasonable term was exceeded and almost 12% because the offenders were unknown. However, the majority of these cases remained without further action in view of the imposition of an administrative fine, namely 37.35% of the total number of dismissed cases regarding waste. This is a strong increase compared to the percentage share of this reason in 2010, which was 24.79%.

Of all the cases that were dismissed in view of the imposition of an administrative fine in 2011, 43.61% referred to waste.

- ▶ Manure: in 2011, the criminal divisions of the public prosecutor's offices in the Flemish Region recorded 245 cases relating to manure. 169 or almost 69% of them were dismissed. Again, the major reason was the imposition of an administrative fine. Therefore, no further action was taken for 112 cases. In addition, 28 cases remained without further action because the situation was regularised. In this context as well an increase in the percentage share of the reason for dismissal 'administrative fine' can be observed compared to 2010. In 2010, 44.78% of the total number of dismissed cases relating to manure remained without further action for this reason, whereas this share amounted to 66.27% in 2011.

Of all the cases that were dismissed in view of the imposition of an administrative fine in 2011, 7.29% referred to manure.

- ▶ Licences: a total of 887 cases referring to 'licences' were recorded in 2011. 45.20% or 401 cases

were dismissed. More than 70% of these 401 cases, namely 281 cases, remained without further action in view of the imposition of an administrative fine, whereas in 2010 this amounted to just under 55% of the total number of dismissed cases referring to licences. 45 cases were dismissed in 2011 because the situation was regularised. This is 11.22% of the total number of cases referring to licences for which no further action was taken.

Of all the cases that were dismissed in view of the imposition of an administrative fine in 2011, 18.29% referred to licences.

- ▶ Emissions: in 2011, the criminal divisions of the public prosecutor's offices in the Flemish Region recorded 1,188 cases referring to air/water/soil/noise, of which 636 cases or 53.53% were dismissed. Again, the main reason for dismissal was the imposition of an administrative fine, given the fact that the share of this reason amounted to 35.06% compared to the total number of dismissed cases referring to emissions. This comes down to 223 cases. In 2010, this share amounted to 18.25%. Other important reasons for dismissal were the fact that the situation had been regularised, that the fact was not an offence, that insufficient evidence was available and that the offenders were unknown.

Of all the cases that were dismissed in view of the imposition of an administrative fine in 2011, 14.51% referred to emissions.

- ▶ Environmental management: the criminal divisions of the public prosecutor's offices in the Flemish Region recorded 1,012 cases regarding environmental management in 2011, 532 or 52.56% of which were dismissed. Among the cases referring to environmental management the administrative fine was again the main reason for dismissal, as this represents a percentage share of 46.99% of the total number of dismissed cases referring to environmental management. Again, a strong increase can be observed compared to 2010 when this share amounted to 26.68%. The other major reasons were the fact that the public prosecutor's offices had other priorities, the fact that insufficient evidence was available to prove the offence and the fact that the offenders were unknown.

Of all the cases that were dismissed in view of the imposition of an administrative fine in 2011, 16.27% referred to environmental management.

Finally, it can be observed that in 2011 several partnerships between public prosecutor's offices were set up<sup>58</sup> or continued<sup>59</sup>. One of the results is that most<sup>60</sup> of the environmental enforcement cases of the public prosecutor's offices of Ieper, Veurne and Bruges were processed in 2011 by the public prosecutor's office of Kortrijk and that most<sup>61</sup> of the environmental enforcement cases of Mechelen were processed by the public prosecutor's office of Turnhout.

Within this framework it can be examined whether this specialisation within the prosecution service has resulted in a more effective prosecution policy regarding environmental enforcement in 2011, by placing focus on the comparison between the processing of environmental enforcement cases by the public prosecutor's offices of Veurne, Bruges and Mechelen<sup>62</sup> in 2010 on the one hand and 2011 on the other. When comparing these figures it immediately becomes apparent that these three public prosecutor's offices

58 The partnership between the public prosecutor's offices of Mechelen and Turnhout became operational on 1 January 2011. The partnership between the public prosecutor's offices of East Flanders became operational on 1 December 2011.

59 The partnership between the public prosecutor's offices of West Flanders became operational on 1 November 2010.

60 In this case it concerns all the cases with charge codes 63A, 63N, 63O, 64A, 64D, 64F, 64G, 64H, 64I, 64J, 64L, 64M and 64N of the Ieper, Bruges and Veurne districts that were processed by the public prosecutor's office of Kortrijk. The so-called 'liveability offences' (such as infringements against the regulations on river fishing, the Flemish Parliament Act on Forests, animal protection, noise nuisance, illegal dumping, etc.) do not fall within the scope of this partnership between public prosecutor's offices and therefore remained the responsibility of the two public prosecutor's offices with territorial competence in this respect.

61 In this case it concerns the environmental enforcement cases with charge codes 63A, 63B, 63M, 63N, 63O, 64A, 64D, 64C, 64E, 64G, 64F, 64H, 64I, 64J, 64L, 64M and 64N.

62 Since a partnership has already existed between the public prosecutor's offices of Kortrijk and Ieper since 1 January 2008 with regard to environment/urban planning (Kortrijk) on the one hand, and hormones/food safety (Ieper) on the other, most of the environmental enforcement cases of Ieper have been processed since that date by the magistrates of the public prosecutor's office of Kortrijk.

have clearly pursued a changed policy to reduce the dismissals for reasons of opportunity. The dismissals for reasons of opportunity of the public prosecutor's office of Mechelen, for instance, decreased from 31.79% to 24.11% and within the office of Veurne from 25.42% to 6.52%. The decrease within the public prosecutor's office of Bruges is the most spectacular, namely from 79.08% in 2010 to 33.45% in 2011 (in absolute figures: from 310 to 99 cases). With regard to this parameter it can thus be concluded that the specialisation and increased scale within the public prosecutor's offices can in any case be evaluated positively.

When evaluating the number of amicable settlements proposed by these public prosecutor's offices, the number of writs of summons issued and the number of cases referred to the AMMC in view of the imposition of an alternative administrative fine, a less uniform policy can be deduced, probably due to several reasons<sup>63</sup>. Still, here and there figures are reported which point to a changed policy. For instance, it can be referred to the growing number of writs of summons issued by Bruges with regard to environmental enforcement cases (from 3.27% in 2010<sup>64</sup> to 5.26 % in 2011), to the growing number of amicable settlements in such cases in Veurne (namely from 3.65 % in 2010<sup>65</sup> to 8.26 % in 2011) and to the rising number of such cases in Mechelen that were referred in view of the imposition of an alternative administrative fine (namely from 9.39 % in 2010<sup>66</sup> to 18 % in 2011).

It is yet to be expected whether this trend will continue in the coming years. However, it can already be cautiously concluded that cooperation and specialisation at the level of the public prosecutor's offices lead to a more efficient prosecution policy.

Chapter 4.2 gives an evaluation of the administrative sanctions policy and indicates, among other things, how the Environmental Enforcement, Environmental Damage and Crisis Management Division handles the cases referred to this Division of the LNE Department by the public prosecutor's offices.

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63 The fact that these cases are sometimes processed more intensively may result in the cases for which a writ of summons is to be issued being processed more slowly. In a specific public prosecutor's office there was also a lack of magistrates at some point. Account should also be taken of the fact that some of these partnerships between public prosecutor's offices were still in the start-up phase in 2011.

64 1.25% in 2009.

65 2.27 % in 2009.

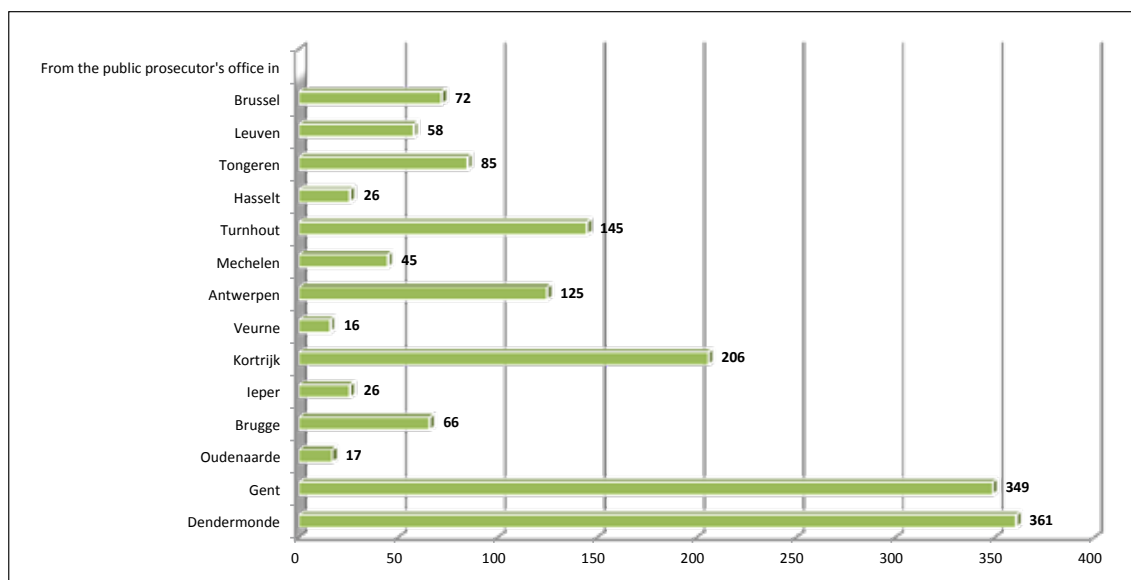
66 4.81 % in 2009.

## 4.2 Evaluation of the sanctions policy pursued by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy

DABM stipulates that exclusive and alternative administrative fines shall be imposed by the regional body that was assigned to that end by the Government of Flanders, namely the Environmental Enforcement, Environmental Damage and Crisis Management Division (afdeling Milieuhandhaving, Milieuschade en Crisisbeheer or AMMC) of the Department of Environment, Nature and Energy. Given the important role assigned to this division, the AMMC was also asked about its activities in the framework of environmental enforcement for the Environmental Enforcement Report 2011.

### 4.2.1 Processing of environmental offences

In the framework of the processing of environmental offences by the AMMC in 2011 it was asked how many official reports the AMMC received from each of the public prosecutor's offices between 1 January 2011 and 31 December 2011. This is reflected in the graph below.



Graph 33 Official reports received by the AMMC of the Department of Environment, Nature and Energy from public prosecutor's offices in the Flemish Region in 2011

It can be deduced from the above graph that in 2011 the AMMC received a total of 1,597 official reports from the criminal divisions of the public prosecutor's offices in the Flemish Region in view of the imposition of an alternative administrative fine in 2011<sup>67</sup>. Each public prosecutor's office uses this possibility created by the Environmental Enforcement Act. However, differences continue to exist between the public prosecutor's offices as to the number of official reports that were referred. For instance, the cases from the public prosecutor's office of Dendermonde amount to 22.60% of the total number of official reports the AMMC received, whereas those of Veurne amount to only 1%.

The table below not only gives the number of cases the AMMC received from the public prosecutor's offices in 2011, but also the number of environmental enforcement cases recorded by the criminal divisions

<sup>67</sup> This concerns the number of official reports the AMMC received in 2011. It should be taken into account that some of these official reports were drawn up in 2010, and possibly also in 2009, but which the public prosecutor decided in 2011 to refer to the AMMC in view of the imposition of an administrative fine.



of the public prosecutor's offices in the Flemish Region in 2011. This allows us to calculate the percentage of cases which each of the public prosecutor's offices refers to the AMMC. In this context it should be noted that not all the official reports that were recorded in 2011 by the public prosecutor's offices were actually processed in 2011. In fact, the public prosecutor's offices have a period of 180 days (can be extended once by 180 days) to refer the case to the AMMC. On the basis of the Environmental Enforcement Report 2010, the figures relating to 2010 are also reflected in the table below.

	Official reports received by the AMMC from the public prosecutor's offices		Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices		Percentage share of official reports referred to the AMMC	
	2010	2011	2010	2011	2010	2011
Flanders	1,100	1,597	6,367	6,002	17.28%	26.61%
Dendermonde	230	361	671	734	34.28%	49.18%
Ghent	157	349	901	980	17.43%	35.61%
Oudenaarde	11	17	282	248	3.90%	6.85%
Bruges	81	66	643	532	12.60%	12.41%
Ieper	29	26	182	165	15.93%	15.76%
Kortrijk	138	206	678	483	20.35%	42.65%
Veurne	28	16	182	109	15.38%	14.68%
Antwerp	69	125	550	495	12.55%	25.25%
Mechelen	23	45	245	250	9.39%	18.00%
Turnhout	136	145	531	452	25.61%	32.08%
Hasselt	8	26	287	335	2.79%	7.76%
Tongeren	85	85	419	437	20.29%	19.45%
Leuven	55	58	380	364	14.47%	15.93%
Brussels <sup>68</sup>	50	72	461	418	10.85%	17.22%

Table 57 *Percentage share of cases received by the public prosecutor's offices in the Flemish Region in 2010 and 2011 and referred to the AMMC of the Department of Environment, Nature and Energy*

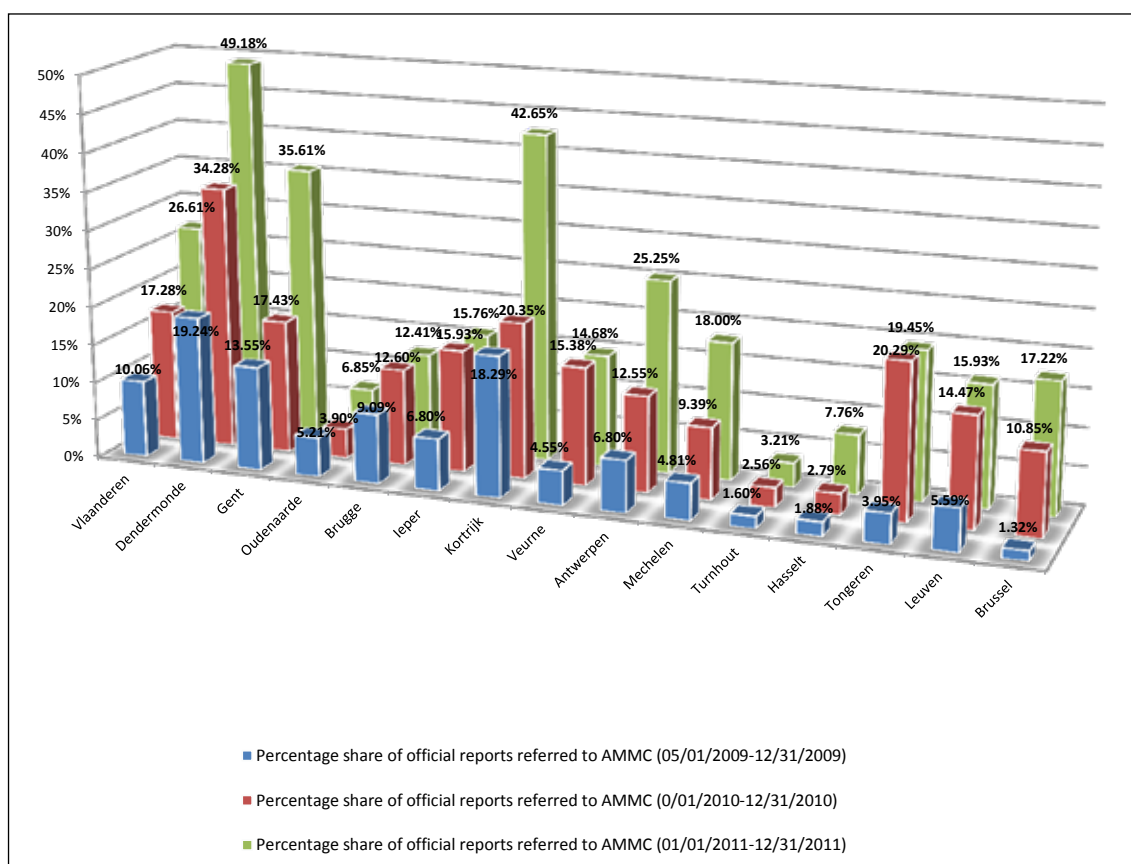
The table above shows that the AMMC received 26.61% of the number of environmental enforcement cases as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011 (a total of 6,002 cases) in view of the imposition of an alternative administrative fine (a total of 1,597 cases). It should be remarked, however, that there is some noise in the figures to be compared (see below). For this reason the analysis of this section will be mainly based on the figures which the Flemish High Council of Environmental Enforcement received from the AMMC. This does not alter the fact, however, that the aforementioned figure of 26.61% is a strong increase compared to the figure of 17.28% from the Environmental Enforcement Report 2010. The previous section already drew attention to the positive evolution in the dismissal of environmental enforcement cases by the public prosecutor's offices in view of the imposition of an administrative fine. The aforementioned data confirm this positive trend and point to an improved implementation of the Environmental Enforcement Act.

Since this is the third environmental enforcement report of the Flemish High Council of Environmental Enforcement it is in any case possible to make a limited evaluation of the impact of the Environmental

<sup>68</sup> This concerns the public prosecutor's offices of Brussels and Vilvoorde.



Enforcement Act with regard to the cases that are referred by the public prosecutor's offices to the AMMC in view of the imposition of an administrative fine for 2009, 2010 and 2011. This is reflected in the graph below.



Graph 34 Percentage share of cases received by the public prosecutor's offices in the Flemish Region and referred to the AMMC in 2009, 2010 and 2011

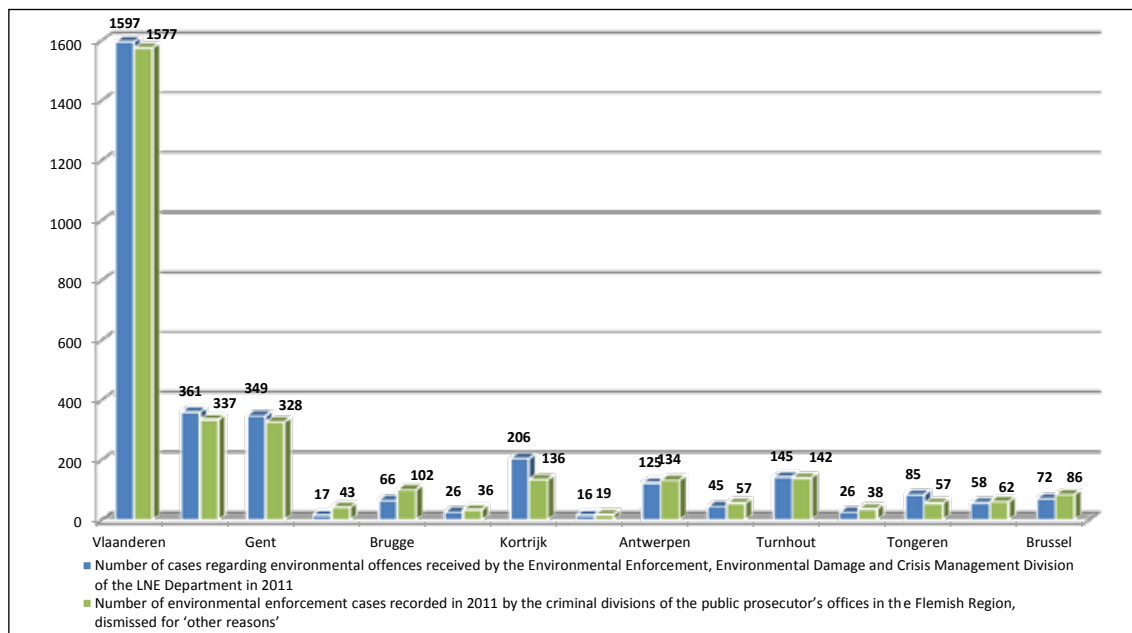
In total, the percentage share of official reports referred to the AMMC since the coming into effect of the Environmental Enforcement Act in 2009 has already increased by more than 15 percentage points and just over 1/4 of the environmental enforcement cases recorded with the public prosecutor's offices are referred to the AMMC. However, the graph above clearly shows regional differences in the percentage share of official reports that are referred to the AMMC in view of the imposition of an alternative administrative fine. At the same time it can be observed that this is happening for each of the public prosecutor's offices. This growing trend shows that the public prosecutor's offices are gradually making more use of the possibilities offered by the Environmental Enforcement Act. This implies that the public prosecutor's offices can spend more time on the more serious environmental offences, whereas the other offences can still be processed in an appropriate manner through the imposition of an administrative fine.

In addition to the reasons for opportunity-based dismissals in the previous section, these results indicate that there is still a growth margin for the number of environmental offences for which an administrative fine could be imposed by the AMMC.

**NOTE**

The figures above referring to the number of cases submitted by the public prosecutor's offices and re-

ceived by AMMC are based on the figures which the Flemish High Council of Environmental Enforcement received from the AMMC. When we compare these figures to the cases recorded in 2011 that were dismissed by the public prosecutor's offices - on the basis of the figures which the VHRM received from the public prosecutor's offices - for 'other reasons' (including the referral in view of the imposition of an administrative fine, in addition to the Praetorian probation and the signalling of the offender), a certain discrepancy may be observed. This is reflected in the following graph.



Graph 35 Number of environmental enforcement cases dismissed for 'other reasons' in 2011 by the criminal divisions of the public prosecutor's offices in the Flemish Region, compared to the number of cases relating to environmental offences received by the AMMC in 2011

In the first instance it should be mentioned that the figures of the public prosecutor's offices may be an overestimate, since the aforementioned figures refer to the cases that were dismissed 'for other reasons'. These 'other reasons' not only include the referral in view of the imposition of an administrative fine, but also those dismissals that are related to the Praetorian probation and the signalling of the offender<sup>69</sup>. Moreover, the referral in view of the imposition of an administrative fine implies that the case was referred to either the AMMC or to the Manure Bank. There may thus be slight differences.

Another explanation could be that the figures which the Flemish High Council of Environmental Enforcement received from the public prosecutor's offices refer to the date of the breach or the date of reception by the public prosecutor's office, on the one hand, and the latest state of progress on 10 January 2012, on the other (see above). The figures the VHRM received from the AMMC, however, refer to all the official reports which the AMMC received during the exact period from 1 January 2011 to 31 December 2011. Therefore, there is a real possibility that between 1 and 10 January 2012 other official reports were decided to be referred in view of the imposition of an administrative fine, but that these cases were not (yet) counted by the AMMC as it only received them in 2012.

Although there is a difference between the total numbers – the number of cases received by the AMMC is higher than the number of cases dismissed 'for other reasons' by the public prosecutor's offices – in some cases the figures received from the separate public prosecutor's offices are slightly higher than those provided by the AMMC. This may, in part, be owing to the following reasons:

<sup>69</sup> This is proven by table 56: these two last categories refer to 41 cases.

the selection of cases by the public prosecutor's offices was made on the basis of a specific list of charge codes, drawn up in consultation with the VHRM. From the moment a case was assigned one of these codes, this case was included in the count of cases of the public prosecutor's offices. Hence, in theory, there is a possibility that the figures of the public prosecutor's offices comprise cases which had been assigned other charge codes as well. These other charge codes could, in theory, have had a relatively greater weight, leading the case to be referred to another administration.

Certain environmental cases that were selected on the basis of the charge codes assigned were processed by means of a municipal administrative sanction or another type of administrative fine.

In order to gain a complete picture of the action taken in all cases received by the public prosecutor's office, it was decided, in consultation with the VHRM, that for combined cases the decision taken at the level of the so-called 'mother case' would be looked at. In other words, it is possible that a public prosecutor's office combined two or more cases (because they refer to the same suspect and the same type of offence) and that those different cases were submitted together (but as one single whole with the reference number of the 'mother case'). It is therefore possible that the AMMC may have treated these cases as a single case, whereas they were counted as several cases in the figures of the public prosecutor's offices, given that the decision refers to more than one case (at the level of the public prosecutor's office cases are defined by means of a reference number; each initial official report results in the creation of one reference number).

It is possible that errors occurred in the recording of charges at the public prosecutor's office, or that the recording of charges was inaccurate or incomplete, resulting in certain cases not being selected at the level of the public prosecutor's office, whereas they were submitted to the AMMC.

The aforementioned reasons may explain why with some public prosecutor's offices the number of cases that were dismissed for 'other reasons' (including the referred cases in view of the imposition of an administrative fine) is higher than the number of cases actually received by the AMMC.

However, there is no real explanation for the fact that the total number for Flanders and the numbers for the other public prosecutor's offices indicate that the AMMC would have received more cases than the public prosecutor's offices have actually referred (which is even an overestimation in the graph above).

By analogy with the Environmental Enforcement Report 2010, more specific data are included with regard to the origin and theme of the cases referred to the AMMC. For instance, the table below gives the number of cases which the AMMC received from the different enforcement bodies, namely the Agency for Roads and Traffic, the federal police, the local police, the municipal supervisors, the Environmental Inspectorate Division, the Agency for Nature and Forests, OVAM and the Flemish Land Agency.

Enforcement actor	Official reports which the AMMC received in 2011	
	N	%
Total	1,597	100.00%
Agency for Roads and Traffic	30	1.88%
Federal police	36	2.25%
Local police	829	51.91%
Municipal supervisors	45	2.82%
Environmental Inspectorate Division	287	17.97%
Agency for Nature and Forests	306	19.16%
OVAM	9	0.56%
Flemish Land Agency	52	3.26%
Provinces	3	0.18%

*Table 58 Percentage share of cases received by the public prosecutor's offices in the Flemish Region in 2011, per enforcement actor*

In clarification of the aforementioned figures it should be communicated that 3 official reports which the AMMC received in 2011 originated from the provinces. It concerned two reports drawn up by a forestry official and one by a noise technician. Since these reporting authorities differ from the provincial supervisors as referred to in the Environmental Enforcement Act - and none of whom were appointed yet in 2011 as indicated in Chapter 2 - these cases will not be discussed in the explanation below.

A first conclusion that can be drawn from the above table is the fact that just over half (51.91%) of the cases the AMMC received, referred to official reports that were drawn up by the local police (whether or not by supervisors). Apart from that, almost 20% originates from the Agency for Nature and Forests and almost 18% of the official reports were drawn up by supervisors of the Environmental Inspectorate Division. This trend could already be observed in the Environmental Enforcement Report 2010 in which it could be established that, in 2010, more than 45% of the official reports which the AMMC received from the public prosecutor's offices referred to official reports that were drawn up by the local police (supervisors or not) and 30% originated from the Agency for Nature and Forests. However, an increase can be recorded in the number of cases drawn up by the supervisors of the Environmental Inspectorate Division. Whereas the public prosecutor's offices referred 160 cases of this division to the AMMC in 2010, which amounts to 14.56% of the total number of cases received by the AMMC in 2010, this number increased to 287 cases in 2011, which is almost 1/5 of the total number of cases received by the AMMC.

The following table gives an overview of the topics of the cases which the AMMC received in 2011. Here, the same themes are used as those in the evaluation of the sanctions policy pursued by the public prosecutor's offices.

Environmental themes	Official reports which the AMMC received in 2011	
	N	%
Total	1,597	100.00%
Environmental management	335	20.98%
Air, Water, Soil and Noise	230	14.40%
Licences	283	17.72%
Manure	68	4.26%
Waste	681	42.64%

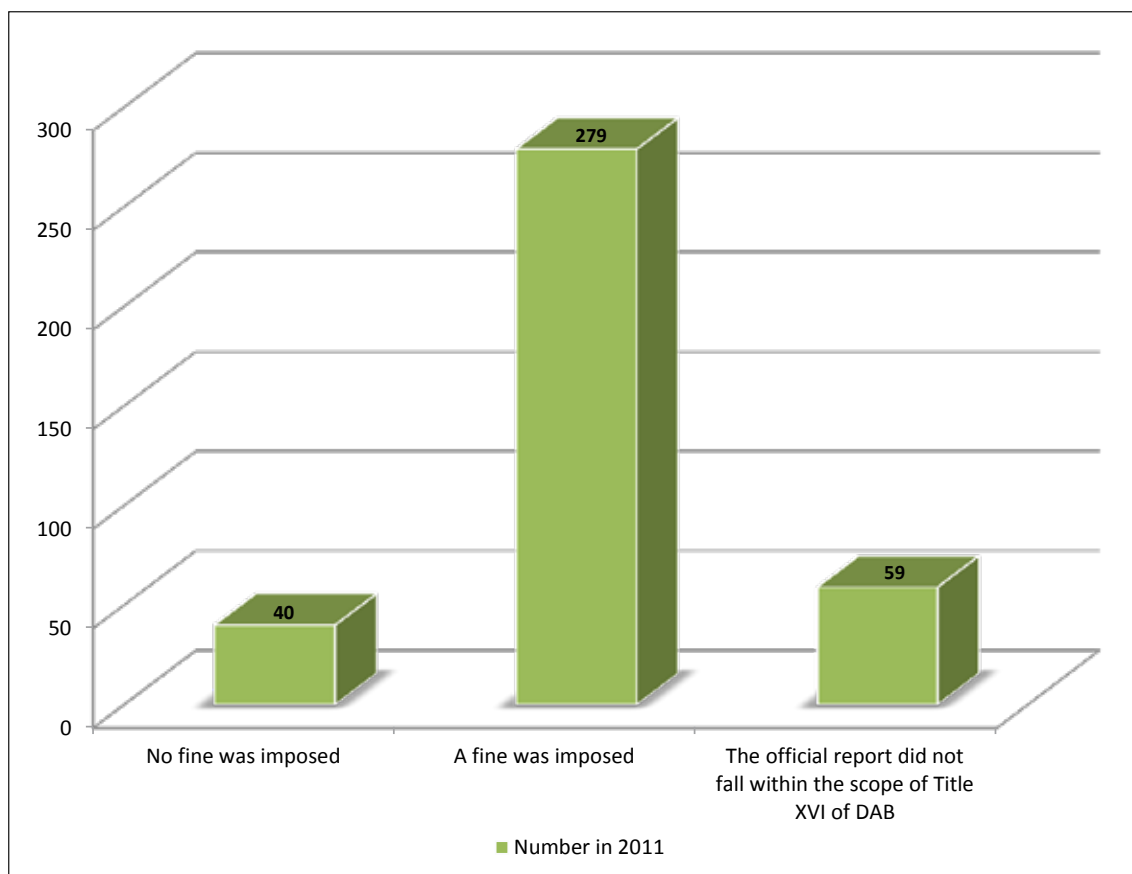
Table 59 Percentage share of official reports received by the AMMC in 2011, per environmental theme

The table above shows a similar picture as in the previous section, which indicated that most of the cases that were referred by the criminal divisions of the public prosecutor's offices in view of the imposition of an administrative fine referred to waste, namely 43.61%. The AMMC indicated that 42.64% of the number of official reports that were referred in 2011 pertained to 'waste'. These percentages are practically similar for 'licences' and 'emissions'. In the previous section it could be established, for instance, that 14.51% of the environmental enforcement cases that were dismissed in view of the imposition of an administrative fine referred to emissions and 18.29% to licences. The difference in percentage share with regard to the cases referring to manure (7.29% compared to 4.26% indicated by the AMMC) can be explained by the fact that the public prosecutor's offices can also refer cases to the Manure Bank in view of the imposition of an administrative fine. Probably owing to the limited noise in the figures (see earlier) these percentages also differ slightly for the cases referring to environmental management (16.27% compared to 20.98% reported by the AMMC).

On the one hand, an increase can be observed with regard to the theme 'licences' compared to 2010. In 2010, this theme accounted for 10.45% of the total number of cases received by the AMMC, whereas this share already amounted to 17.72% in 2011. On the other hand, a percentage decrease in the number of cases relating to environmental management can be established. In 2010, this share amounted to no less than 29.09%, whereas this decreased in 2011 to almost 21% of the number of cases received by the AMMC. However, in real numbers an increase can be observed, namely from 320 official reports in 2010 to 355 in 2011. This development can possibly be linked to the fact that in 2011 the public prosecutor's offices referred more cases drawn up by the supervisors of the Environmental Inspectorate Division to the AMMC.

In 2009, the AMMC received 304 official reports. This number rose to 1,100 in 2010 and to 1,597 in 2011. However, in 2009 no alternative administrative fines were imposed yet by the AMMC. In 2010, the number of alternative administrative fines amounted to 219. Now that it turns out that the number of cases that are referred to the AMMC further increased in 2011, it is important to examine how these cases were processed by the AMMC. The idea behind the Environmental Enforcement Act and the establishment of the regional body was in the first instance to have more sanctions imposed for environmental offences. Moreover, the purpose was to create a tit-for-tat policy in which environmental offences that were referred by the public prosecutor's offices to the AMMC for the imposition of an administrative fine were quickly processed.

The graph below gives an overview of the number and types of decisions taken by the AMMC in 2011 within the framework of the alternative administrative fine. The decisions taken by the AMMC in the context of the exclusive administrative fine are discussed below.



Graph 36 Decisions taken by the AMMC in 2011 in the context of alternative administrative fines

The above graph shows that the AMMC processed a total of 378 cases in 2011. For 10.58% of the cases it was decided not to impose a fine. In 15.60% of the cases it was impossible to impose an alternative administrative fine because the official report did not fall within the scope of the Environmental Enforcement Act<sup>70</sup>, and for 279 of the 378 cases that were processed in 2011 (73.80%) a fine was actually imposed. It should be stressed that it concerns the number of processed cases, since in 2011 the AMMC processed a multiple of this number (through notifications, initiation of procedure, investigation of cases, feedback to reporting authority, organisation of hearings, etc.).

If the number of processed cases is compared to the number of cases which the AMMC received from the criminal divisions of the public prosecutor’s offices in the Flemish Region in 2011 (1,597), it can be established that 23.66% of the received cases were processed. This should be put into perspective, however, by mentioning the fact that some of the cases which the AMMC processed in 2011 are cases which the AMMC already received in 2009 or 2010. On the basis of the data from the Environmental Enforcement Reports 2009 and 2010 and the data from the survey for the present environmental enforcement report, an overview can be given in the table below of the decisions which the AMMC of the LNE Department took within the framework of the alternative administrative fines in 2009, 2010 and 2011. By comparing the total number of cases received to the total number of cases processed by the AMMC since the entry into effect of the Environmental Enforcement Act, these conclusions can be reflected more accurately.

70 These decisions include, for instance, offences that date back to before 1 May 2009, official reports that were drawn up by unqualified supervisors, violations to which municipal administrative sanctions apply and official reports in which the crown prosecutor did not decide in time not to prosecute. These also encompass cases in which the offender was unknown or deceased.

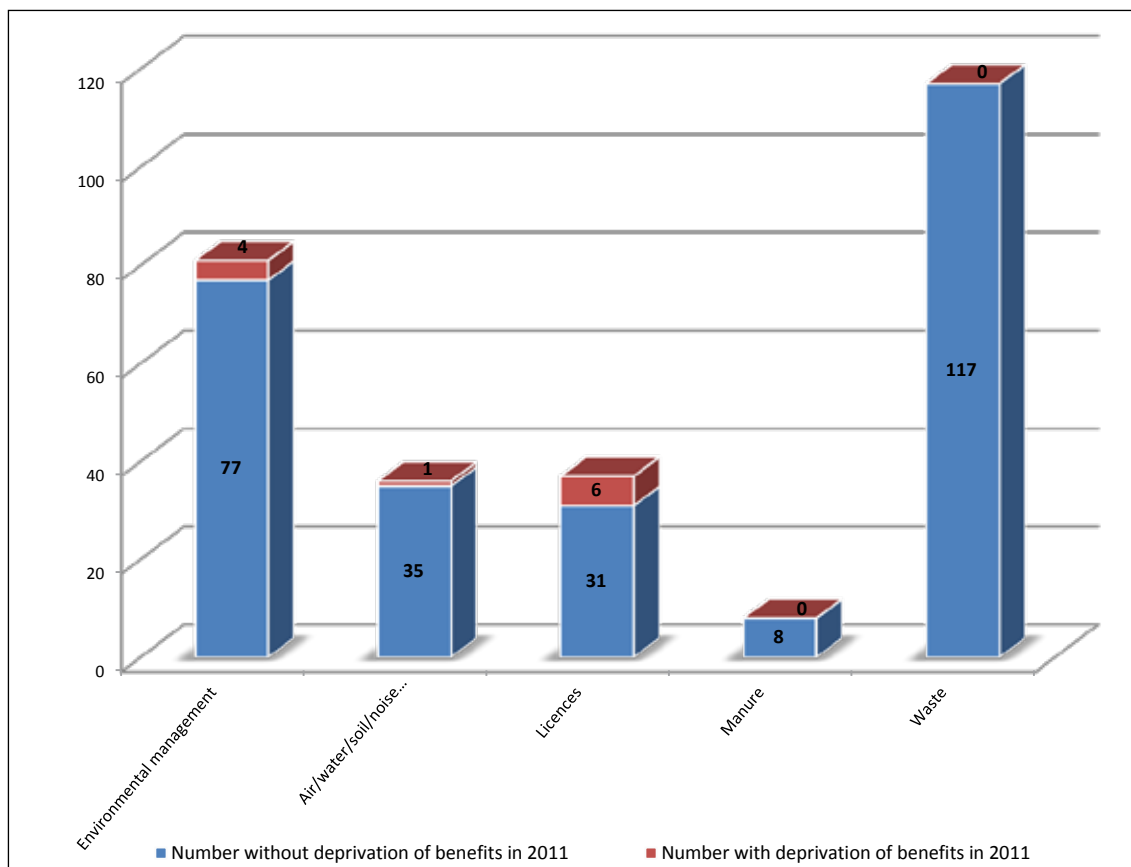
Alternative administrative fine	Number in 2009	Number in 2010	Number in 2011
Official reports received by the AMMC from the public prosecutor's offices	304	1,100	1,597
Decisions reached within the framework of the alternative administrative fine	5	219	378
No fine was imposed	0	6	40
A fine was imposed	0	151	279
The official report did not fall under the scope of Title XVI of DABM	5	62	59

Table 60 *Decisions taken by the AMMC in the context of alternative administrative fines in 2009, 2010 and 2011*

A first conclusion that can be drawn on the basis of the aforementioned data is that not only the number of cases which the AMMC receives from the criminal divisions of the public prosecutor's offices in the Flemish Region is rising, but also the number of decisions which the AMMC takes within the framework of the alternative administrative fine. Between 1 May 2009 and 31 December 2011 the AMMC received 3,001 cases. During that period only 602 decisions were taken, of which 430 decisions to impose a fine. This means that 27.35% of the number of cases which the AMMC received since the entry into effect of the Environmental Enforcement Act, and the decision deadline of which expired before 31 December 2011, were processed. A fine was imposed in 19.53% of the total number of cases during that period.

Despite the fact that, generally, sanctions are imposed for more environmental offences thanks to the new system of administrative fines - if one assumes that these offences would otherwise have been dismissed for opportunity-based reasons - it can be established that the number of processed cases during the study period (1 May 2009-31 December 2011) is still too low. In total the AMMC received 3,001 cases between 1 May 2009 and 31 December 2011, the decision deadline of which expired on 31 December 2011 for 2,201 cases. During that period 602 decisions were taken, of which 430 decisions to impose a fine. This means that 27.35% of the received cases, the decision deadline of which expired before 31 December 2011, were processed. As a result of the limited outflow, the objectives of the Environmental Enforcement Act have not yet been sufficiently realised.

The graph below presents the framework within which an alternative administrative fine was imposed in 2011, whether or not accompanied by a deprivation of benefits.



Graph 37 Framework within which an alternative administrative fine was imposed by the AMMC, with and without a deprivation of benefits

Of the 279 alternative administrative fines imposed by the AMMC, 29.03% referred to environmental management, 12.90% to emissions, 12.90% to licences, 2.86% to manure and 41.93% to waste. It is apparent from the Environmental Enforcement Report 2010 that of the 151 fines which the AMMC imposed in 2010, more than 53% referred to waste, 19.21% to emissions, almost 15% to environmental management, 11.26% to licences and 1.32% to manure.

In addition it can be established that 3.94% - or 11 cases - of these fines were accompanied by a deprivation of benefits. It should be remarked that in late 2010 the AMMC contracted out a study with the aim of developing a framework in which the instrument 'deprivation of benefits' can be applied, so as to have it used more frequently. The final report was submitted to the AMMC in the autumn of 2011, but confirmed partially the conclusion that in many cases the application of a net deprivation of financial benefits is difficult or even impossible.

The fact that the cases regarding waste constitute the majority of the total number of alternative administrative fines imposed by the AMMC can be related to the fact that almost 43% of the inflow of cases also refers to waste. When looking even closer at the inflow of 2011, it can be established that in terms of percentage more cases referring to environmental management actually result in the imposition of an alternative administrative fine. These account for almost 21% of the inflow, whereas almost 30% of the outflow of alternative administrative fines relates to environmental management.

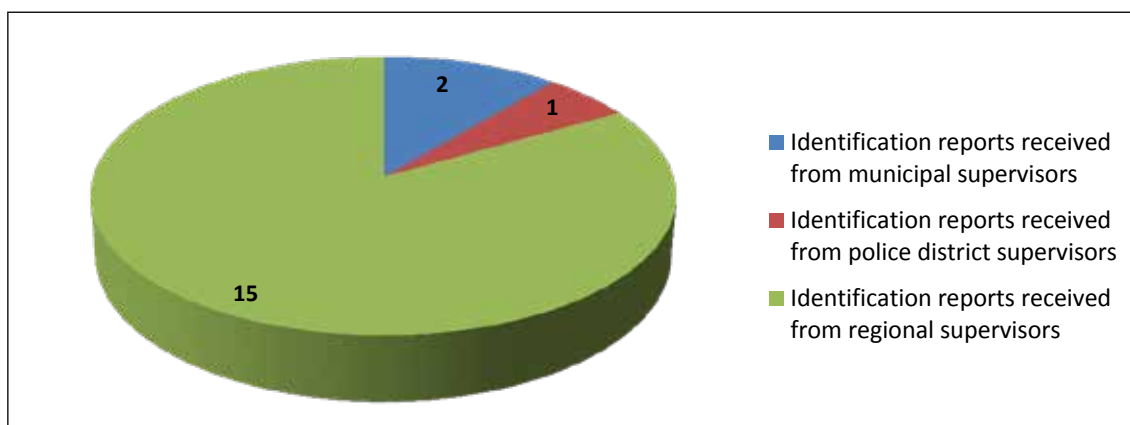


#### 4.2.2 Processing of environmental infringements

The Government of Flanders included 18 appendices with the Environmental Enforcement Decree containing an exhaustive list of environmental infringements. These environmental infringements were decriminalised. As mentioned earlier, when an environmental infringement is identified, the supervisor can draw up an identification report. This identification report is sent immediately to the regional body, which is the AMMC. After receiving the identification report, the AMMC can, within a period of 60 days, inform the suspected offender of its intention to impose an exclusive administrative fine (possibly accompanied by a deprivation of benefits). Within a period of 90 days from this notification of its intention, the AMMC has to decide on the imposition of an exclusive administrative fine, possibly accompanied by a deprivation of benefits. The suspected offender must be informed of this decision within ten days.

The AMMC was therefore asked about the number of identification reports it received in 2011, about whether these were drawn up by municipal, provincial, regional or police district supervisors, and about the context in which these identification reports were drawn up and fined.

The graph below gives an overview of the number of identification reports the AMMC received in 2011, subdivided by supervising actor.



Graph 38 Identification reports received by the AMMC per enforcement actor in 2011

The above graph shows that in 2011 the AMMC received 18 identification reports, of which 83.33% were drawn up by regional supervisors, 11.11% by municipal supervisors and only 1 or 5.55% by a police district supervisor.

Compared to 2010, this is a strong decrease in the number of identification reports drawn up. In fact, the Environmental Enforcement Report 2010 mentions the fact that the AMMC received 38 identification reports, most of which were also drawn up by the regional supervisors. The use of the instrument 'identification report' has thus decreased in 2011 and is on the same level as in 2009 when only 18 identification reports were also referred to the AMMC. At the time, however, this was an entirely new instrument that had been introduced by the Environmental Enforcement Act. This decrease and the generally limited use of the instrument could be explained by the fact that the supervisors have discretionary power in this context and can decide for themselves whether to lay down an environmental infringement in an identification report. Given the often limited resources and time, it is not illogical that priority attention is devoted to environmental offences rather than to environmental infringements. Environmental infringements indeed do not have the actual impact on the environment which environmental offences (usually) have. Another explanation may be the type of breaches that were classified as environmental infringements. For instance, hardly any breaches of nature protection law and no breaches relating to the Flemish Parliament Act

on Manure have been included as environmental infringements in the appendices to the Environmental Enforcement Decree. Within the framework of the evaluation of the Environmental Enforcement Act a possible extension of the list of environmental infringements is examined.

Chapter 3.6 'Evaluation of the instrument 'identification report' reports on the use of this instrument by the supervisors. For this reason the different supervisors were asked how many identification reports they drew up in 2011. These numbers differ greatly from the numbers the AMMC indicates having received in 2011. The responding municipal supervisors indicated having drawn up a total of 34 identification reports, whereas the AMMC received only 2 identification reports from this actor. The responding local police supervisors reported having drawn up 4 identification reports, whereas in 2011 the AMMC received only 1 identification report that was drawn up by a local police supervisor. Two possible explanations can be suggested here. Either a large number of identification reports was not referred to the AMMC and the procedure to be followed should be better communicated. Or the supervisors are not entirely familiar yet with the terminology from the Environmental Enforcement Act, as a result of which 'erroneous' data were filled out in the questionnaire. The VHRM is trying to provide a solution for this through the environmental enforcement glossary<sup>71</sup>.

It can also be concluded in Chapter 3.6 'Evaluation of the instrument 'identification report'' that the responding regional supervisors drew up 13 identification reports in 2011, while the AMMC received 15 of these reports. This can be explained by the fact that not every regional supervisory body responded to the VHRM questionnaire and not everybody could supply the requested information.

The AMMC was asked to indicate in what framework these 18 identification reports were drawn up in 2011. This is reflected in the table below.

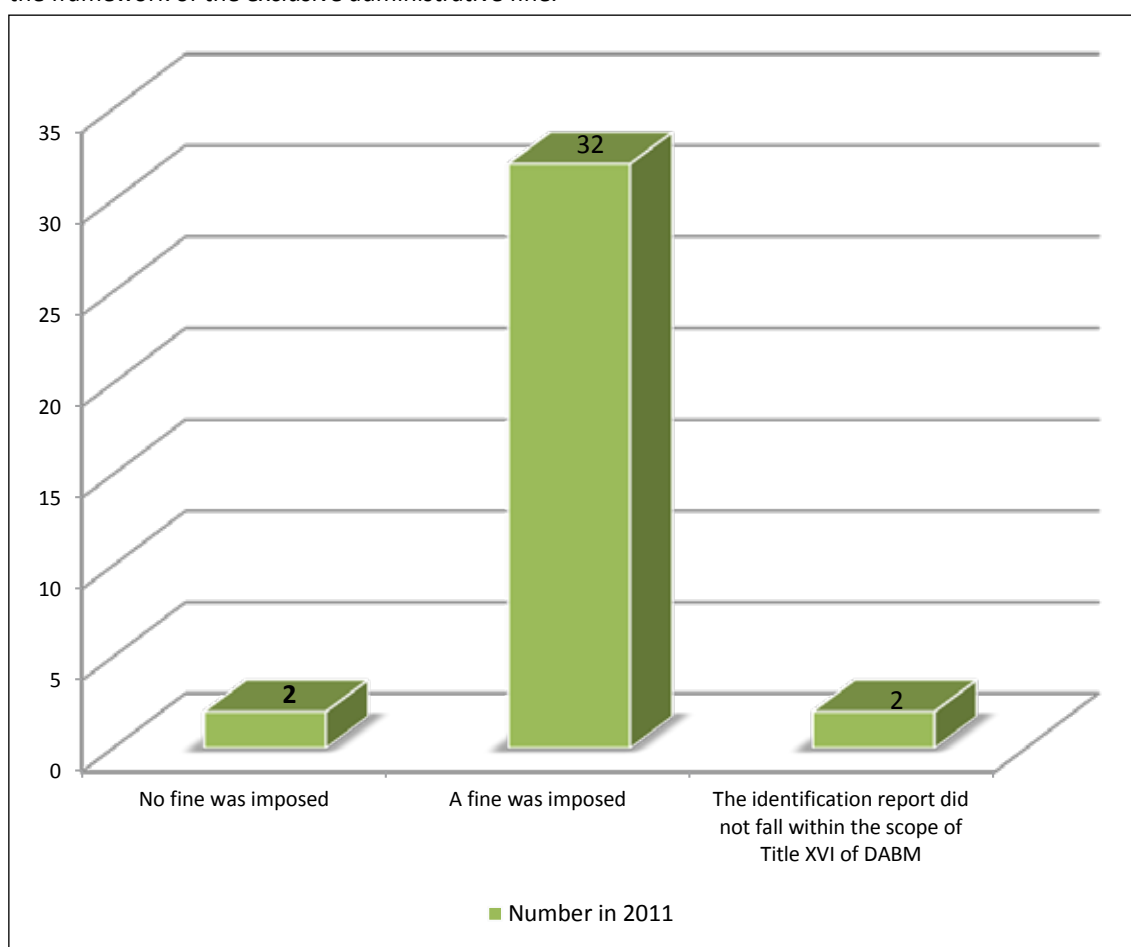
Identification reports	Number in 2011
Company-internal environmental care	0
Environmental impact and safety reporting	0
Soil protection and remediation	0
Noise research laboratories	0
Groundwater management laboratories	0
Water analysis laboratories	0
Sectoral provisions on environmental health	3
Waste prevention and management	10
Maintenance and inspection of burners	0
Certification of refrigeration companies	0
Fire protection systems	0
Soil remediation	0
Flemish Parliament Act on Forests	4
Flemish Parliament Act on Hunting	1
Ozone-depleting substances	0
Flemish Parliament Act on Surface Minerals	0
Fluorinated greenhouse gases	0
REACH	0

Table 61 Identification reports received by the AMMC per subject, in 2011

71 <http://www.vhrm.be/voor-de-toezichthouder/glossarium>

The above data may lead us to conclude that the instrument ‘identification report’ is only used for a limited number of types of environmental infringements, whereas there is a wide range of environmental infringements. For instance, more than half of the identification reports in 2011 had waste prevention and management as subject. The Environmental Enforcement Reports 2009 and 2010 also indicated that most infringements that were identified referred to waste prevention and management. This is owing to specific enforcement actions that were carried out by the OVAM supervisors. Contrary to 2009 and 2010, identification reports were also drawn up for environmental infringements with regard to environmental management, namely violations against the Flemish Parliament Act on Forests and one breach of the Flemish Parliament Act on Hunting.

The AMMC was asked to indicate which decisions were taken in 2011 with respect to the received identification reports. The graph below gives an overview of the decisions regarding fines taken in 2011 within the framework of the exclusive administrative fine.



Graph 39 Decisions taken by the AMMC in 2011 in the context of exclusive administrative fines

In 2011, the AMMC took 36 decisions for received identification reports. In 32 of these cases, or 88.88%, it was decided to impose a fine and in 2 cases it was each time decided on the one hand not to impose a fine and on the other hand that a fine could not be imposed given the fact that the identification report did not fall within the scope of the Environmental Enforcement Act. As indicated earlier, the AMMC received only 18 identification reports in 2011. Since 36 decisions were taken, it can be assumed that some of these decisions referred to identification reports which the AMMC received in 2009 or (mainly) in 2010. On the basis of the data from the Environmental Enforcement Reports 2009 and 2010 a comparison can be made between the decisions taken by the AMMC within the framework of exclusive administrative fines and the

identification reports received in 2009, 2010 and 2011 and a more accurate overview can be provided of how environmental infringements are processed by the AMMC. This comparison is reflected in the table below.

Exclusive administrative fine	Number in 2009	Number in 2010	Number in 2011
Identification reports received by the AMMC	18	38	18
Decisions reached within the framework of the exclusive administrative fine	4	13	36
No fine was imposed	3	0	2
A fine was imposed	1	5	32
The identification report did not fall under the scope of Title XVI of DABM	0	8	2

Table 62 *Decisions taken by the AMMC in 2009, 2010 and 2011 in the context of exclusive administrative fines*

As indicated above a decrease can be observed in the number of identification reports received by the AMMC. However, this is not the case for the number of dossiers in which the AMMC takes a decision and the number of fines that are imposed each year. A catch-up movement can definitely be noticed here. In the period from 1 May 2009 to 31 January 2011 the AMMC received 74 identification reports from the supervisors. During that period 53 decisions were taken by the AMMC, of which 38 decisions to impose a fine. This means that during the study period since the coming into effect of the Environmental Enforcement Act a decision was reached in 71.62% of the number of received identification reports. In 51.35% of the total number of received cases this already resulted in the imposition of a fine. Again, it should be remarked that the decision deadline does not expire until 2012 for some of the environmental infringements that were received in late 2011.

### 4.3 Evaluation of the administration of justice by the Environmental Enforcement Court

The Milieuhandhavingscollege or MHHC (Environmental Enforcement Court) is an administrative court that was created by virtue of Article 16.4.19 of DABM. It passes judgement in appeals against decisions of the Environmental Enforcement, Environmental Damage and Crisis Management Division to impose alternative or exclusive administrative fines.

The Environmental Enforcement Court was also surveyed by the VHRM about its activities in 2011. It was asked about the number of appeals against decisions of the AMMC it had received in the framework of both environmental offences and environmental infringements in 2011. Another question was how these appeals were processed. In addition, a comparison can be made between the activities of the MHHC in 2010 and 2011 on the basis of the data from the Environmental Enforcement Report 2010.

The table below shows the activities of the Environmental Enforcement Court in 2010 and 2011 with regard to the appeals against decisions of the AMMC in the context of an environmental offence.

Environmental offences	Number in 2010	Number in 2011
Appeals against decisions of the AMMC in the context of an environmental offence	11	24
Rejections, stating reasons, on the grounds that the appeal is inadmissible or unfounded, resulting in the confirmation of the imposed alternative administrative fine	2	7
Declarations, stating reasons, that the appeal is well-founded, resulting in a reduction of the imposed alternative administrative fine	1	2
Declarations, stating reasons, that the appeal is well-founded, resulting in a remission of the imposed alternative administrative fine	1	2
Annulments, stating reasons, of the unlawfully taken decision of the AMMC, with the order to take a new decision with regard to the alternative administrative fine under the conditions laid down by the MHHC	0	0
No judgement pronounced yet	7	13

Table 63 *Appeals received against decisions of the AMMC in the context of an environmental offence by the Environmental Enforcement Court in 2010 and 2011 and the results of the processing thereof*

As indicated earlier, the AMMC imposed 279 alternative administrative fines in 2011. In 2011, the Environmental Enforcement Court received 24 appeals against decisions of the AMMC in the context of imposed alternative administrative fines. This means that an appeal was lodged against at least 8.60% of the decisions of the AMMC. This percentage may be a bit higher since the offender may lodge an appeal with the Environmental Enforcement Court within thirty days starting from the day following the notification of the regional body's decision. This means that an appeal could still have been lodged against the decisions taken by the AMMC during the last thirty days of 2011. In 2010, the MHHC received 11 appeals and 151 alternative administrative fines were imposed by the AMMC. This means that an appeal was lodged against 7.28% of the total number of alternative administrative fines imposed in 2010. This comparison shows a very low percentage increase in the number of appeals that were lodged with the MHHC compared to the number of alternative fines that were imposed by the AMMC in 2011 compared to 2010.

In 2011, the Environmental Enforcement Court took a decision in 11 out of the 24 lodged appeals. Seven times it concerned a rejection, stating reasons, of the appeal on grounds of it being inadmissible or unfounded. This implies that the alternative administrative fines imposed by the AMMC were confirmed. Twice, the decision of the Environmental Enforcement Court was that the fine imposed by the AMMC was reduced on the basis of a declaration, stating reasons, that the appeal was founded and twice, the alternative administrative fine imposed by the AMMC was remitted on the basis of a declaration, stating reasons, that the appeal was founded.

Of the 24 appeals that were lodged in 2011 no judgement had been pronounced yet in 13 cases in that same year. This can be explained by the terms and procedures laid down by the Environmental Enforcement Act, among other things in the framework of the notification, the submission of a reply to the appeal and a response and the pronouncement of the decision. If these terms are exhausted, the procedure can indeed last 270 days, namely at most five working days for sending the petition to the regional body; maximum 15 days for the regional body to deliver the case and the documents to the Environmental Enforcement Court; up to 5 working days for the composition of the case, consultation and procedural calendar; up to 150 days for the exchange of replies; up to 45 days between the last reply and the session; up to 45 days following the closure of the debates to reach a judgement. This means that no decision had to be taken yet by the Environmental Enforcement Court for the appeals that were lodged in the last 270

days of 2011.

An appeal can also be lodged with the Environmental Enforcement Court against the exclusive administrative measures imposed by the Environmental Enforcement, Environmental Damage and Crisis Management Division. The table below reflects the lodged appeals and the decisions taken by the Environmental Enforcement Court in 2010 and 2011.

Environmental infringements	Number in 2010	Number in 2011
Appeals against decisions of the AMMC in the context of an environmental infringement	1	5
Rejections, stating reasons, on the grounds that the appeal is inadmissible or unfounded, resulting in the confirmation of the imposed exclusive administrative fine	0	2
Declarations, stating reasons, that the appeal is well-founded, resulting in a reduction of the imposed exclusive administrative fine	0	0
Declarations, stating reasons, that the appeal is well-founded, resulting in a remission of the imposed exclusive administrative fine	0	0
Annulments, stating reasons, of the unlawfully taken decision of the AMMC, with the order to take a new decision with regard to the exclusive administrative fine under the conditions laid down by the MHHC	0	0
No judgement pronounced yet in 2010 / 2011	1	3

*Table 64 Appeals received against decisions of the AMMC in the context of an environmental infringement by the Environmental Enforcement Court in 2010 and 2011 and the results of the processing thereof*

In 2011, the MHHC received 5 appeals against decisions of the AMMC in the context of an environmental infringement. Since the AMMC imposed 32 exclusive administrative fines in 2011, this means that an appeal was lodged with the Environmental Enforcement Court against at least 15.6% of the decisions taken by the AMMC. This percentage may be a bit higher since the offender may lodge an appeal with the Environmental Enforcement Court within thirty days starting from the day following the notification of the regional body's decision. This means that an appeal could still be lodged against the decisions taken by the AMMC during the last thirty days of 2011. The Environmental Enforcement Report 2010 showed that the MHHC received one appeal in 2010 and that 5 exclusive administrative fines were imposed by the AMMC. This means that an appeal was lodged against 20% of the total number of imposed exclusive administrative fines in 2010. This comparison shows a slight percentage decrease in the number of appeals that were lodged with the MHHC compared to the number of exclusive fines that were imposed by the AMMC in 2011 compared to 2010.

In 2011, the Environmental Enforcement Court took two decisions with regard to the 5 appeals that were lodged in 2011. These judgements concerned a rejection, stating reasons, of the appeal on grounds of it being inadmissible or unfounded. As a result, the exclusive administrative fines imposed by the AMMC were confirmed. No judgement was pronounced yet in 2011 with regard to 3 of these 5 appeals lodged in 2011. Within the framework of the appeals against the exclusive administrative fines imposed by the AMMC the Environmental Enforcement Court is also bound by the procedures and terms laid down in the Environmental Enforcement Act.

#### **4.4 Evaluation of the sanctions policy pursued by the Flemish Land Agency**

Not only the Environmental Enforcement, Environmental Damage and Crisis Management Division can impose administrative fines. The Flemish Land Agency (Vlaamse Landmaatschappij or VLM) was authorised to impose administrative fines already with the coming into force of the Flemish Parliament Act of 22 December 2006 on the protection of water against agricultural nitrate pollution (generally known as the Flemish Parliament Act on Manure).

In its Article 63, the Flemish Parliament Act on Manure provides an exhaustive list of infringements for which administrative fines can be imposed by the VLM. The said article also defines the calculation of the amounts of the fines. Article 71 of the aforementioned Flemish Parliament Act stipulates for which infringements an official report has to be drawn up.

Administrative fines can be imposed in relation to the following infringements: nitrogen and phosphate balance; overfertilisation of plots; more animals than nutrient emission rights; unproven manure sales; notification and cancellation of shipments; late notification of shipments; shipments without proof of dispatch or presentation of an agreement with the neighbours; failure to establish or notify an agreement with the neighbours; shipments without a correct and complete manure sales document; failure to comply with the notification obligation; erroneous notification; failure to keep a register; nutrient balances not available for inspection; shipment without mandatory documents; refusal to use Sanitel; failure to use or incorrect use of AGR-GPS; manure processing obligation and processing of 25% NER; manure excretion balances: available for inspection and on notification; shipment by recognised shippers: notification or cancellation; shipment by recognised shippers: no shipping document; nitrate residue in high-risk area: exceedance; nitrate residue in high-risk area: refusal of sampling and nitrate residue (both in and outside high-risk area): cultivation plan and fertilisation plan/register.

The Flemish Land Agency was therefore not only asked about the number of environmental enforcement inspections carried out in 2011 and the measures taken following these inspections, as described in Chapters 2 and 3, but also about the number of administrative fines imposed by the VLM in the framework of the inspection reports drawn up by it and about the type of infringements these referred to.

Thanks to the data from the Environmental Enforcement Report 2010, it is possible to compare the number and types of administrative fines imposed by the Flemish Land Agency in 2010 and 2011.

The table below shows the number of field identifications and the number of administrative fines imposed by the VLM in 2010 and 2011.

Administrative fines imposed by the VLM	2010		2011	
	Number of field identifications	Number of fines	Number of field identifications	Number of fines
Administrative fines imposed by the VLM in 2010 in keeping with the provisions included in the Flemish Parliament Act on Manure	278	5,436	154	4,814
an administrative fine regarding nitrogen and phosphate balance	8	738	2	1,036
an administrative fine for overfertilisation of a plot	55	19	18	26
an administrative fine for keeping more animals than nutrient emission rights (NER-D)	0	2,138	6	2,052
an administrative fine for unproven manure sales	2	3	2	2
an administrative fine for notification and cancellation of shipments	0	73	22	25
an administrative fine for late notification of shipments	0	546	0	122
an administrative fine for shipments without proof of dispatch or presentation of an agreement with the neighbours	5	3	2	1
an administrative fine imposed for failure to establish or notify an agreement with the neighbours	6	7	2	2
an administrative fine for shipments without a correct and complete manure sales document	103	109	45	54
an administrative fine for failure to comply with the notification obligation	4	1,280	0	1,412
an administrative fine for erroneous notification	4	4	11	7
an administrative fine for failure to keep a register	2	5	3	2
an administrative fine for not keeping nutrient balances available for inspection	0	415	0	0
an administrative fine for shipment without mandatory documents	29	30	21	14
an administrative fine for refusal to use Sanitel	0	0	0	0
an administrative fine for failure to use or incorrect use of AGR-GPS	60	64	20	52
an administrative fine regarding manure processing obligation and processing of 25% NER	0	0	0	0
an administrative fine regarding manure excretion balances	0	0	0	7
an administrative fine for shipment by recognised shippers (notification or cancellation)	0	1	0	0
an administrative fine for shipment by recognised shippers (no shipping document)	0	1	0	0
an administrative fine for exceedance of nitrate residue in high-risk area	0	0	0	0
an administrative fine for refusal of sampling of nitrate residue in high-risk area	0	0	0	0
an administrative fine regarding cultivation plan and fertilisation plan/register for nitrate residue (both in and outside high-risk area)	0	0	0	0

Table 65 Number and nature of the administrative fines imposed by the Flemish Land Agency

The table above shows that in 2011 the VLM imposed 4,814 fines following 154 field identifications. The difference between the number of infringements identified in the field and the number of imposed fines is due to the term for the imposition of the fines. A fine was not always imposed in 2011 for the identifications made in 2011. The fines imposed in 2011 can still relate to identifications made during the previous years. On the other hand, it is possible that breaches that were identified in 2011 were not fined until 2012. Moreover, the fines imposed in 2011 originate from breaches identified in the field as well as from administrative inspections. This means that some of the fines were imposed administratively following the inspection of the database and that these are not reflected in the number of field identifications either.

It can generally be established that in 2011 fewer field identifications were made and fewer fines were also imposed than in 2010. Still, this decrease in the number of fines is not as large as the decrease in the number of field identifications. Both for transport inspections and land application inspections a falling trend could be observed in the number of field identifications. This means that the compliance rate increased and that the inspections thus generated the desired result.



Most of the fines refer to the manure balance and the absence of or an incorrect declaration. These breaches could be identified through administrative inspections.

## 4.5 Conclusion

One of the goals of the present Environmental Enforcement Report 2011 is to evaluate the Flemish environmental sanctions policy in 2011. This means, among other things, that the decisions of public prosecutor's offices whether or not to impose criminal sanctions for an identified environmental offence, the decisions of the AMMC within the framework of alternative and exclusive administrative fines and the decisions of the Environmental Enforcement Court with regard to appeals against administrative fines imposed by the AMMC and the practice of VLM to impose administrative fines in the context of the Flemish Parliament Act on Manure were discussed in this chapter.

By combining the figures from the Environmental Enforcement Report 2010 with the data provided in the survey for the present environmental enforcement report, it is possible to already identify a number of trends in the implementation of the Environmental Enforcement Act.

With respect to the enforcement policy of the public prosecutor's offices in the Flemish Region it can be concluded that in 2011 they received 6,002 (in 2010: 6,367) cases relating to the environment, 65.14% (2010: 65.64%) of which came from the general police (local and federal police, including police district supervisors), and 30.87% (2010: 29.17%) from the inspection services. 1.11% (2010: 1.02%) referred to complaints and civil proceedings and 2.86% (2010: 4.56%) to other submissions. A slight decrease can be observed here in the number of cases that were submitted in 2011 compared to 2010. This is mainly due to the decrease in the cases originating from the general police and the other submissions.

Based on the specific codes used by regional supervisors it was possible to draw a picture of the cases they submitted. In 2011, this concerned 1,379 cases (2010: 1,438), of which 41.26% (2010: 39.78%) originated from ANB, 40.25% (2010: 35.05%) from AMI, 12.55% (2010: 18.29%) from VLM, and 3.69% (2010: 2.54%) from OVAM. These figures are probably still an underestimation, as not all Flemish environment administrations use the specific codes for the reference numbers. The different environment administrations can also be recommended to make consistent use of these codes. A slight decrease in the number of cases that were submitted in 2011 compared to 2010 can be reported, which is mainly due to the inflow from VLM, OVAM and ANB. However, the latter still has the largest number.

It was also possible to report per topic (waste, manure, licences, air/water/soil/noise (emissions), environmental management) based on the charge codes for 2011. In total, 6,002 cases (2010: 6,367) were recorded with these charge codes by the public prosecutor's offices in the Flemish Region in the study period, of which 44.49% (2010: 42.12%) referred to waste, 4.08% (2010: 5.10%) to manure, 14.78% (2010: 13.63%) to licences, 19.79% (2010: 24.08%) to emissions and 16.68% (2010: 15.06%) to environmental management. More specifically, 32.07% (2010: 26.87%) referred to illegal dumping. This means that illegal dumping was involved in almost 1 out of 3 cases of the number of cases for which an official report was drawn up in 2011 (an increase by 5.14% compared to 2010). Even in 2011, it is still the environmental breach for which most of the reports were drawn up.

On 10 January 2012, nearly 30% (2010: just over 25%) of the environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region was still in the preliminary investigation stage, while almost 5% (2010: 6.52%) was in the state of progress 'amicable settlement' and 2.83% (2010: 4.27%) in the phase of 'writ of summons'. A second percentage increase can be observed in the number of cases that were classified without further action in 2011 (58.85% in 2011 compared

to 55.05% in 2010). In real numbers this means that only 27 cases more were dismissed than in 2010. However, this does not alter the fact that almost 60% of all the environmental enforcement cases was already classified without further action on the date of extraction. Of the official reports which the public prosecutor's offices received in 2011, a writ of summons was issued for 2.83% (170 cases) and an amicable settlement was pronounced in that same year for 4.78% of the cases (287 cases). It could be interesting to also gain an insight into the total number of writs of summons and amicable settlements per year (irrespective of the time when the official report was received). However, this requires an extended survey among the public prosecutor's offices.

The fact that no less than 58.85% of the environmental enforcement cases recorded by the public prosecutor's offices in the Flemish Region, during the study period and as at 10 January 2012, were dismissed, needs to be placed in the right context. In fact, many of the recorded cases cannot be prosecuted. These include the technical dismissals (34.46%). Moreover, 'other dismissals' (administrative fine, Praetorian probation, signalling of the offender) and 'dismissals based on the principle of opportunity where it can be demonstrated that the situation had been regularised' were also included in the state of progress 'without further action'.

Within the framework of the state of progress of environmental enforcement cases a number of trends can be described which build on those that were already observed in the Environmental Enforcement Report 2009. For most of these cases, 58.85%, it was decided that no further action would be taken in 2011. More than half of these cases referred to waste. The resulting trend is that the category for which the largest number of cases was received was also the one with the highest dismissal ratio. It is established that the cases referring to waste are mainly dismissed without further action (72.81% of the total number of recorded cases regarding waste), which is an increase of more than 10% compared to 2010 and more than 20% compared to 2009. It can generally be observed that in 2011 the number of environmental enforcement cases which were dismissed without further action strongly increased compared to 2010 and 2009, with the exception of cases referring to manure and environmental management. In cases for which no further action was taken it is important to take into account the reasons for dismissal. There is, for instance, the opportunity-based dismissal, the technical dismissal and the dismissal for other reasons. The total number of dismissals in the framework of 'other reasons - administrative fine' is especially interesting in the context of the present environmental enforcement report.

Obviously, it is important in the framework of the new Environmental Enforcement Act to examine whether there is a further impact of the possibility given to public prosecutors in the Flemish Parliament Act to refer cases relating to environmental offences to the AMMC in view of the imposition of an administrative fine. The figures presented in this chapter indicated that the upward trend which was already visible in the Environmental Enforcement Report 2009 was continued. In total, nearly 10.06% of all environmental enforcement cases recorded by the public prosecutor's offices in the Flemish Region after 1 May 2009 were submitted to the AMMC for the imposition of an administrative fine. In 2010, this number rose to 17.28%. Despite the fact that the Flemish Parliament Act was only in force for 1.5 years, this increase can still be considered remarkable. This positive trend further manifested itself in 2011. 26.61% of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region was referred to the AMMC. Although cases are probably still being dismissed by public prosecutor's offices, more frequent use is made of the alternative provided by the Environmental Enforcement Act, namely the referral to the AMMC in view of the imposition of an administrative fine. Given the important regional differences that exist between the various public prosecutor's offices in the number of cases that are dismissed in view of the imposition of an administrative fine, a further extension of the application of the Environmental Enforcement Act is definitely one of the possibilities.

In the light of the objective to process as many environmental offences as possible in an appropriate man-

ner, it is important to closely monitor the development of the administrative fines.

In 2009, the AMMC received 304 official reports. This number rose to 1,100 in 2010 and to 1,597 in 2011. In May 2009, the AMMC was established and the implementation of the required processes and the framework for the imposition of fines was started. However, no alternative administrative fines were imposed yet by the AMMC. In 2010, 219 decisions were taken to impose a fine. In 2011, this number increased to 378, which means that 30% more decisions were taken than in 2010. This increase in itself is a positive evolution. However, given the fact that the inflow of environmental offences also rose sharply in 2011, it should be said that the objective of the Environmental Enforcement Act - to issue the proper sanctions for as many environmental offences as possible - is still insufficiently met. In total the AMMC received 3,001 cases between 1 May 2009 and 31 December 2011, the decision deadline of which expired before 31 December 2011 for 2,201 cases. During that period 602 decisions were taken, of which 430 decisions to impose a fine. This means that 27.35% of the received cases, the decision deadline of which expired before 31 December 2011, was processed. In the summer of 2011, the Government of Flanders decided to recruit additional personnel for the imposition of fines, in order to realise a greater outflow in 2012.

The AMMC is not only authorised to impose alternative administrative fines, but also to impose exclusive administrative fines for environmental infringements. Such environmental infringements are recorded in identification reports by supervisors, after which, given their decriminalisation, these reports are submitted directly to the AMMC. In 2011, the AMMC received 18 identification reports (15 from regional supervisors, 2 from municipal supervisors and 1 from a police district supervisor). This is a strong decrease compared to 2010 (when it received 38). This decrease may be due to the fact that a supervisor can (and is not obliged to) draw up a report and will therefore be more inclined to give an exhortation first. Another explanation may be the type of breaches that were classified as environmental infringements. For instance, hardly any breaches of nature protection law and no breaches relating to the Flemish Parliament Act on Manure were included as environmental infringements. Within the framework of the evaluation of the Environmental Enforcement Act a possible extension of the list of infringements is looked into. As indicated above a decrease can be observed in the number of identification reports received by the AMMC. In the period from 1 May 2009 to 31 January 2011 the AMMC received 74 identification reports from supervisors. During that period the AMMC took 53 decisions, including 38 to impose a fine. A catch-up movement is definitely taking place and can be regarded as positive.

Appeals may be lodged with the Environmental Enforcement Court against AMMC decisions to impose fines. In 2011, the Environmental Enforcement Court received 24 appeals (2010: 11) against decisions to impose alternative administrative fines and 5 appeals (2010: 1) against decisions to impose exclusive administrative fines of the AMMC. Also in 2011, the Environmental Enforcement Court took a decision in 11 of the 24 appeals lodged against the alternative administrative fine: in 7 cases this resulted in a confirmation of the AMMC's decision. In 13 cases no decision has thus been reached yet. As for the 5 appeals against AMMC decisions in the context of an environmental infringement, 2 decisions were taken in 2011. In both cases the AMMC's decision was confirmed. All in all it can be concluded that in less than 10% of the cases an appeal is lodged against the AMMC decision to impose an alternative administrative fine and in less than 20% of the cases against the decision to impose an exclusive administrative fine. The rather limited number of decisions of the Environmental Enforcement Court can be explained, among other things, by the terms and procedures, laid down by the Environmental Enforcement Act within the framework of the notification, the submission of a reply to the appeal and a response, and the pronouncement of the decision.

Since the coming into force of the Flemish Parliament Act on Manure, the VLM has been authorised to impose administrative fines for certain breaches of this Flemish Parliament Act on Manure. The VLM was therefore not only asked about the number of environmental enforcement inspections carried out in 2011

(and in 2010) and the actions taken following these inspections, but also about the number of administrative fines it imposed in the framework of the inspection reports it drew up and about the type of infringements these referred to. In 2011, the VLM imposed 4,814 (2010: 5,436) administrative fines following 154 (2010: 278) field identifications. The difference between the number of infringements identified in the field and the number of imposed fines is due to the term for the imposition of the fines. A fine was not always imposed in 2011 for all the breaches identified in 2011, so they can also relate to identifications made in previous years. Moreover, the fines imposed in 2011 originate from breaches identified in the field as well as from administrative inspections. As a result, these are not reflected in the number of field identifications made in 2011.

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## 5. Conclusion

### 5.1 Summary conclusions

Just like the Environmental Enforcement Reports 2009 and 2010, this enforcement report for 2011 will first of all give an overview of the main conclusions. The present environmental enforcement report consists of three large parts. A number of conclusions were already given at the end of each section. These will be largely summarised below.

The Environmental Enforcement Report 2010 could be compared with that of 2009 to a limited extent. The limitation mainly had to do with the fact that the Environmental Enforcement Report 2009 only covered the period from 1 May 2009 to 31 December 2009. For the first time, the VHRM can thus provide an evaluation and a comparison of two complete years (2010 and 2011) so that, in the light of the figures on 2009, it can be examined whether certain trends are structural rather than incidental.

As indicated in the introduction, it is important to also point out the important methodological limitations of the present environmental enforcement report. One problem is in any case, that although it provides a lot of figures on the method of enforcement used by the different actors in the Flemish Region, these figures in themselves offer neither any insight into the effectiveness of environmental enforcement, nor into the enforcement burden of the inspected parties or into the environmental benefits. Due to the limited means available to the VHRM it is currently, unfortunately, impossible, but will definitely be necessary in the future, to establish causal relations between the instruments used and the improvement of environmental quality, for instance.

In addition, account should also always be taken of the limitations of the figures: although a growing number of actors respond and provide information to the VHRM, the response is never 100%. This is almost the case for the regional enforcement actors, but to a lesser extent for the local enforcement actors. This should be considered when certain positive trends are established, for instance. These can thus partially be owing to a so-called response bias. It is, for instance, also possible that especially the most active (in the field of enforcement) actors also respond to the VHRM's request to provide information. Unfortunately, it can be assumed that precisely those who did not respond are suspected to carry out fewer enforcement activities. Therefore, the results on the basis of the data that are provided by a large number of (local) enforcement actors cannot per definition be extrapolated to the Flemish Region as a whole. Despite these limitations, which should always be taken into account when interpreting the data, it is now possible after all to provide a reasonable insight into the enforcement activities of the different enforcement actors in the Flemish Region for the third year in a row.

The main conclusions/findings can be summarised as follows:

#### Evaluation of the supervision carried out

1. Just like in previous years, a first conclusion about the supervision that was carried out is drawn from a comparison between the number of actors involved (according to the Environmental Enforcement Act), their competences and the actual efforts they have made to fulfil their environmental enforcement duties. Chapter 2 of this report again shows that major differences exist between the enforcement actors with respect to the number of appointed supervisors, the amount of time they dedicate, their supervisory duties and the number of environmental enforcement inspections carried out.

2. Compared to 2010, no general evolution can be established in the total number of FTEs that were dedicated to environmental enforcement duties by the regional supervisory bodies in 2011. With some actors this number either remained the same or rose slightly, whereas with other actors this number decreased to a limited extent.

3. The total employable FTEs that were dedicated by the regional supervisors to environmental enforcement duties decreased somewhat in 2011 compared to 2010. However, this does not seem significant and is not to be regarded as a point of concern.

4. The average number of inspections per regional supervisor and per FTE also decreased slightly in 2011 compared to 2010. Again, this decrease is not substantial and does therefore not require any further attention.

5. In 2011, 96.76% of the total of 19,120 official reports regarding environment was drawn up by the local police.

6. In 2011, 3,026 inspections were carried out by 45 local police supervisors. This is an average number of inspections per supervisor of 67.24 and an average number of inspections per FTE of 219.50. 85% of the environmental enforcement inspections was carried out following complaints and reports. In 2010, the number of reactive inspections still amounted to 94.23%.

7. Third parties seem to make relatively little use of the possibility to submit a petition to the provincial governor to impose administrative measures. A petition to impose safety measures is very rarely submitted as well. Neither in 2010 nor in 2011 any requests for the imposition of safety measures were submitted. Compared to 2010, more administrative measures were imposed by the mayors in 2011. The number of petitions for the imposition of administrative measures also rose from 117 in 2010 to 144 in 2011.

8. In the province of Antwerp the training for provincial supervisors started in November 2011. However, since (like in 2010) no provincial supervisors were available yet in 2011, no inspections were carried out within the framework of the Environmental Enforcement Act. No supervisors were appointed and therefore no inspections were carried out within the framework of the Environmental Enforcement Act in the other provinces either.

9. 133 of the 196 municipalities indicated not knowing the number of unlicensed plants or having no unlicensed plants on their territory in 2011. The number of municipalities which reported not having any insight into the total number of licensed Category 1, Category 2 and Category 3 plants on their territory amounted to 5.61% in 2011. In 2010, this was 7.5%. 63 municipalities also reported having a total of 3,245 unlicensed nuisance-causing plants on their territory.

In 2011, 60 of the 196 responding municipalities reported having insufficient supervisors (one or two, depending on the number of Category 2 plants or the population) at their disposal. This means that almost 70% of the responding municipalities satisfied the legal provisions of the Environmental Enforcement Decree in 2011.

10. In 2011, the average number of FTEs dedicated by municipal supervisors to enforcement duties rose to 0.30 FTEs per supervisor (compared to 0.24 FTEs in 2010). On the other hand, these municipal supervisors carried out fewer inspections in total in 2011 (4,740 compared to 5,633 in 2010). The number of inspections carried out following complaints and reports decreased from 65% in 2010 to 63% in 2011, as a result of which more time became available for inspections at own initiative.

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### Evaluation of the separate environmental enforcement instruments and safety measures

1. An evaluation of the different enforcement instruments shows that in 2011 (like in 2010) most instruments made available by the Environmental Enforcement Act are de facto also used by the different supervisors.
2. It is remarkable that no breach was identified in almost 68% of the inspections. This figure is practically the same as that of 2010 (67%). This could mean that the environmental regulations in the Flemish Region are generally complied with to a high extent. However, there are striking differences between the enforcement actors.
3. The share of inspections with unknown results rose to 82.64% in 2011, compared to 53.07% in 2010. However, this may be due to a measurement problem, because 1 police district indicated having performed a large number of inspections with unknown results. AMI, ALBON, AZG and ANB indicated knowing the results of all the inspections carried out in 2011, which may be regarded as a positive trend.
4. In 2011, no further action was taken for only one percent of the inspections during which a breach was identified. This share still amounted to 8% in 2010. This can therefore be considered a positive evolution.
5. Just like in 2009 and 2010, supervisors are still not very familiar with the identification report as environmental enforcement instrument. This instrument was hardly to not at all used in 2011. It should be mentioned here, however, that the supervisors have discretionary power with regard to the drawing up of identification reports.
6. Just like in 2010, very unequal use seems to be made of official reports in 2011. Certain actors draw up an official report during more than 58% of the inspections, whereas this number is lower with other actors.
7. Even though the administrative measure was still used during 6.3% of the inspections during which a breach was identified, this only amounted to 3.8% in 2011. This decrease is largely owing to the use of the instrument by local police supervisors.
8. In 2011, a total of 56 safety measures were imposed, while this number amounted to 74 in 2010. Five exceptions aside, all the imposed safety measures were actually implemented within the imposed deadline.

### Evaluation of the sanctions policy

1. In 2011, the public prosecutor received a total of 6,002 cases regarding the environment. In 2010 this amounted to 6,367 cases. A small (and possibly irrelevant) decrease can thus be reported. 65.14% of these cases originated from the general police; 30.87% from the inspection services.
2. In 2011, 58.85% of the cases were dismissed without further action. In 2010, this amounted to 55.05% (however, in concrete terms it concerns only 27 cases).
3. An increase can be observed in the number of cases that were dismissed by the public prosecutor in view of the imposition of an administrative fine. As at 10 January 2010, almost 10% of the environmental enforcement cases recorded by the public prosecutor's offices in 2009 were dismissed in view of the im-



position of an administrative fine (this includes, among other things, cases referred to the AMMC). This conclusion of 10 January 2010 thus referred to cases recorded by the public prosecutor's offices in the Flemish Region after 1 May 2009. On 10 January 2011, this share (over the year 2010) increased already to 15.31% and on 10 January 2012 it amounted (over 2011) to no less than 25.59%. This means that cases which probably used to be dismissed by public prosecutor's offices are now referred to the AMMC in view of the imposition of an administrative fine. In this way one of the objectives of the Environmental Enforcement Act is realised.

4. However, large differences still exist between the public prosecutor's offices in terms of the cases that are referred to the AMMC. Therefore, it continues to be necessary to achieve good coordination between the public prosecutor's offices in this respect.

5. Between 1 May 2009 and 31 December 2011, the AMMC received a total of 3,075 cases referring to environmental offences and environmental infringements. During that period 655 decisions were taken, of which 468 decisions to impose an (alternative or exclusive) administrative fine. In some of the received cases no decision had to be taken yet in 2011, since the decision deadline had not yet expired. The flow of cases with the AMMC is a point of focus, however. There are two reasons to be optimistic in this context: first of all, the Government of Flanders decided in the summer of 2011 to recruit additional personnel for the imposition of fines; secondly, the possibility has meanwhile been introduced for the AMMC to end cases with an administrative transaction as well<sup>72</sup>. These measures justify the hope that in 2012 a larger flow of cases will be realised with the AMMC. Naturally, the effectiveness of the imposition of fines by the AMMC is a crucial element in the overall implementation of the Environmental Enforcement Act.

## 5.2 Recommendations

Several recommendations can be formulated on the basis of the aforementioned summary conclusions and the data presented in this report. Given the legal duty of the VHRM, a distinction is made between recommendations for the Government of Flanders (5.2.1) on the one hand and points of focus which the VHRM itself wants to look into (5.2.2) on the other. Some of the mentioned aspects also featured in the Environmental Enforcement Reports 2009 and 2010; certain elements from those reports are already addressed now by the VHRM.

### 5.2.1 Recommendations for the Government of Flanders

By virtue of Article 16.2.5 of the Environmental Enforcement Act the VHRM formulates recommendations in the environmental enforcement report for the further development of environmental enforcement policy. One of the duties assigned to the VHRM is to propose main lines and priorities for the policy aimed at environmental law enforcement. A number of recommendations which the VHRM formulated in the past gave rise to legislative action. In some cases legislative measures by the Government of Flanders will now also be proposed. It is important to mention that, within the framework of the evaluation of the Environmental Enforcement Act<sup>73</sup>, the VHRM has formulated recommendations for the revision of the Environmental Enforcement Act which were delivered to the Government of Flanders via the Minister. The Government of Flanders confirmed these recommendations on 20 July 2012. On Tuesday 23 October 2012, a hearing was organised in the Environment Committee of the Flemish Parliament<sup>74</sup> on the recommendations formulated by the

72 The relevant provisions were laid down in the Environmental Enforcement Act by the Flemish Parliament Act of 20 April 2012 on various provisions regarding environment and nature (Belgian Official Journal of 22 May 2012). The relevant provisions were introduced in the Environmental Enforcement Decree by the Flemish Government Decree of 6 July 2012 modifying the Flemish Government Decree of 12 December 2008 implementing Title XVI of the Flemish Parliament Act of 5 April 1995 on general provisions regarding the environmental policy (Belgian Official Journal of 13 August 2012). The procedure came into effect on 23 August 2012.

73 On the basis of Article 41 of the Environmental Enforcement Decree.

74 For a report of this session, please refer to Document 1800 (2012-2013) - No 1 Report of hearing/exchange of views on the evaluation of the Environmental Enforcement Act Report on behalf of the Committee for Environment, Nature, Spatial Planning and Immoveable Heritage.



VHRM. For the sake of completeness, it suffices here to refer to the recommendations which the VHRM formulated within the framework of this evaluation of the Environmental Enforcement Act, so it is not necessary to repeat this.

As the VHRM already pointed out in 2010, a major point of concern with many supervisors is that in these times of crisis human and financial resources would become heavily burdened. In time, this could prove detrimental to the quality of enforcement. On the one hand, this calls for possibilities to improve the effectiveness of enforcement. On the other hand, it is important to maintain environmental enforcement capacity at the same level as much as possible in these difficult financial times, or to increase it when the current duties are extended (especially following more/more complex enforcement duties laid down in new laws). To its satisfaction the VHRM could conclude in this report that with most (regional) supervisors the capacity available for environmental enforcement (expressed in FTEs) remained practically the same.<sup>75</sup> The total number of supervisors for the regional environmental enforcement actors even increased slightly.<sup>76</sup> As said earlier, the VHRM has established this with satisfaction and recommends the Government of Flanders to continue on this path (of maintaining sufficient capacity for environmental enforcement). Furthermore, the following recommendations can be formulated:

- ▶ As already mentioned in the previous environmental enforcement reports, a number of municipalities still have no or insufficient knowledge of the number of nuisance-causing plants and the licence status of the Category 2 and 3 plants on their territory.

Therefore, the VHRM recommends municipalities which still have no knowledge of the number of nuisance-causing plants on their territory - which is an obstacle to an efficient and effective planning of environmental enforcement - to do anything necessary to still acquire this knowledge. In addition, it is necessary to provide the municipalities with the necessary support through a coordinating initiative of the Government of Flanders, namely the environmental licences database. It seems recommendable, once the database has been developed, to feed it with data provided by the municipalities. The responsibility is complementary in this respect.

- ▶ Chapter 2 of this report showed that in some cases there are large differences between the supervisors in terms of the amount of time dedicated, the number of supervisors and the supervisory duties on the one hand and the number of environmental enforcement inspections carried out on the other hand. It is recommended to carry out further research into the reasons for these differences. If necessary, measures can also be proposed to eliminate these differences.
- ▶ Chapter 2 of this report showed that a large number of unlicensed plants were still present on the territory of the responding municipalities.<sup>77</sup>
- ▶ It seems very important to the VHRM to take action with regard to these unlicensed nuisance-causing plants at the municipal level. Therefore, the VHRM recommends local supervisors as well as municipalities to prioritise the supervision of unlicensed nuisance-causing plants in their environmental enforcement practice. In fact, this is in line with the recommendations which the VHRM already formulated in the Environmental Enforcement Reports 2009 and 2010. Within this framework it is essential to make a clear demarcation between the competences of local supervisors and those of regional supervisors. The concept memorandum of the Government of Flanders of July 2012 on the evaluation of the Environmental Enforcement Act already laid down the main lines concerning this subject.
- ▶ Since 1 May 2011, all the municipalities should have a supervisor at their disposal, either within

75 The total number of FTEs dedicated to environmental enforcement duties with the regional enforcement actors decreased only slightly from 192.31 in 2010 to 183.18 in 2011. See Table 2 in Chapter 2 of the present report.

76 From 630 in 2010 to 636 in 2011; see Table 1 in Chapter 2 of the present report.

77 63 of the 196 responding municipalities reported having a total of 3,245 unlicensed nuisance-causing plants on their territory (see Chapter 2.3.4.2 Municipal supervisors of the present environmental enforcement report).

the municipality itself, or through an intermunicipal association or a police district. Table 27 of Chapter 2 shows that 60 of the 196 responding municipalities did not yet meet this obligation from the Environmental Enforcement Decree in 2011. Naturally, the VHRM recommends that municipalities are encouraged to still satisfy<sup>78</sup> this obligation, given its importance for the effectiveness of environmental enforcement.

- ▶ The data presented in Chapter 2 (see mainly Table 31 in Chapter 2 regarding the efforts which municipal supervisors made to fulfil their environmental enforcement duties) show that on average supervisors can dedicate less than 30% of their time to enforcement duties. That is why it seems recommendable according to the VHRM to adjust the Environmental Enforcement Act and the Environmental Enforcement Decree in that sense, so that the (compulsory) number of supervisors per municipality is no longer determined, but instead the number of FTEs to be dedicated to enforcement duties.
- ▶ The data show that, compared to 2010, the municipal supervisors are taking fewer reactive measures and more proactive measures.<sup>79</sup> This gives municipal supervisors more opportunities to process complex cases in a methodical way. Therefore, the VHRM recommends that it should be examined how the municipal supervisors can achieve optimal enforcement through a methodical approach.
- ▶ As already reported in the Environmental Enforcement Reports 2009 and 2010, it seems advisable, especially for smaller municipalities, to make more frequent use of supervisors who are appointed via intermunicipal associations. The use of an intermunicipal association may result in an increased scale in terms of expertise and spatial employability, which will benefit the quality and effectiveness of enforcement. Precisely because supervisors in smaller municipalities often cannot dedicate a full-time equivalent to supervision (and supervision is often to be combined with other duties), the use of an intermunicipal association may increase the effectiveness of enforcement for smaller municipalities. The VHRM recommends the Government of Flanders to encourage smaller municipalities to join such intermunicipal associations, with an eye to receiving support with regard to environmental enforcement.

Most of the aforementioned recommendations refer to supervision and inspection activities. A number of recommendations can also be made with regard to the instruments used and the sanctions policy:

- ▶ The figures presented in Chapter 3<sup>80</sup> reveal that some enforcement actors (such as the local police) identified a breach during almost every inspection, whereas<sup>81</sup> other enforcement actors identified only very few breaches.<sup>82</sup> The question is whether these differences are due to the fact that, for instance, some actors (such as the local police) act following complaints and reports (reactive) while other actors take action rather in a methodical, proactive way within the company walls of mostly complex plants (businesses) and are more familiar with administrative enforcement (remedying part) than with the aspect of imposing sanctions in environmental enforcement, as a result of which there is a difference in the practice of drawing up reports, or whether these differences are caused by other reasons. The VHRM recommends the Government of Flanders to subject these conclusions to closer examination.
- ▶ Large differences were also found between the actors as to the use of the instrument 'recommendation'. Some actors (such as the municipal supervisors) make very frequent use of this instrument, whereas others hardly use it. The frequent use of this enforcement instrument may point to a cautious approach adopted by the supervisors. Again, the VHRM recommends the Government of Flanders to look more closely into the causes of these differences.

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78 See mainly Chapter 2, Table 32.

79 In 2011, the reactive inspections (following complaints and reports) still amounted to 65%, whereas this share dropped to 63% in 2011.

80 See Table 35 in Chapter 3.

81 This amounted to 91.80% with the local police in 2011.

82 For instance, only 7.36% with AMI in 2011.

- ▶ The same goes for the instrument ‘exhortation’. Both in the Environmental Enforcement Reports 2010 and 2011 it could be established that some actors drew up multiple exhortations, whereas others hardly made any use of this instrument. In some cases, more exhortations were formulated than the number of official reports (or identification reports) that were made. Here as well, the VHRM recommends the Government of Flanders to examine this more closely.
- ▶ In the Environmental Enforcement Report 2010 the VHRM already reported a low use of the identification report for environmental infringements. It seems that in 2011 as well hardly any use was made of this instrument. The question is whether this is due to a small number of infringements and to the fact that these merely concern breaches of administrative obligations, or to the fact that supervisors make little use of the possibility (no obligation) of drawing up an identification report when they identify an environmental infringement. Once again the VHRM recommends the Government of Flanders to examine in more detail which are the causes for the relatively low use of the instrument ‘identification report’.
- ▶ An element which was already pointed out earlier by the VHRM is the potential field of tension between the obligations arising from Article 29 of the Code of Criminal Procedure to draw up an official report when an environmental offence is identified and the enforcement practice. The figures from the Environmental Enforcement Reports 2010 and 2011 seem to suggest that in many cases no official report was drawn up when a breach was identified. This could be related to the fact that these breaches are environmental infringements (in which case it is impossible to draw up an official report and only an identification report can be made). There could also be a so-called area of tension in enforcement practice between the identification of an offence and the drawing up of an official report. The VHRM has already studied this.<sup>83</sup>
- ▶ The Environmental Enforcement Reports of 2010 and 2011 not just show, as indicated earlier, that only a limited number of identification reports were drawn up. The data<sup>84</sup> presented by the AMMC even reveal that the number of infringements included in the identification report declined compared to 2010.<sup>85</sup> This also raises the question about the possibility to extend the number of breaches that qualify as environmental infringements, including with regard to nature protection law. The VHRM already formulated a recommendation in this respect within the framework of the evaluation of the Environmental Enforcement Act. Therefore, exclusive reference is made to the recommendation which was already formulated in that context.
- ▶ Finally, just like in 2009 and 2010 the VHRM established that major regional differences still exist between the public prosecutor’s offices in terms of the referral of cases to the AMMC. Therefore, the VHRM recommends that within the public prosecutor’s offices awareness be further raised of the possibility of the imposition of administrative sanctions by the AMMC. Although the number of cases referred to the AMMC, as indicated earlier, increased considerably in 2011, cases which are not processed by the public prosecutor’s offices (for instance, because of dismissal for opportunity-based reasons) are still not referred to the AMMC, although this is possible in keeping with the objective and spirit of the Environmental Enforcement Act. In this respect the VHRM recommends to examine (possibly through existing networks within the Board of Procurators General and the courts of first instance) whether further action can be taken to guarantee a uniform processing of environmental breaches by the public prosecutor’s offices in the Flemish Region. In this context we can also refer to the importance of partnerships between public prosecutor’s offices and the specialisation of magistrates in the field of environment to realise a better functioning prosecution policy.

83 <http://www.vhrm.be/voor-de-toezichthouder/ondersteunende-documenten>

84 See Graph 38 in Chapter 4.

85 In 2010, the AMMC still received 38 identification reports, contrary to a mere 18 in 2011.

## 5.2.2 Points of focus

Apart from the recommendations for the Government of Flanders formulated above, this report also draws attention to several points of focus which will determine the agenda of the VHRM itself. The recommendations formulated by the VHRM in 2010 have been acted upon to an important extent through several actions.<sup>86</sup>

In the first place the VHRM already indicated in the Environmental Enforcement Reports 2009 and 2010 that it is important for the quality of the reports to receive good and reliable data. Given the recommendations formulated by the VHRM it is important to receive a good response. Therefore the VHRM asks the different supervisors

- ▶ to provide as complete and timely information as possible to the VHRM. The VHRM has established that the response of the supervisors remains practically the same. The regional supervisors offer a good (but not complete) response. Municipal supervisors account for 60% of the response from municipalities. The VHRM calls, not only on the supervisors involved, but also on the umbrella organisations and hierarchical public law authorities, to convince supervisors of the significance of accurate data collection and to encourage them therefore to actually deliver the data requested by the VHRM.
- ▶ Because the VHRM is aware of the importance of using uniform concepts in order to have comparable data, the VHRM designed a glossary with unique terms. The VHRM invites the supervisors and other stakeholders to consult this glossary.<sup>87</sup> Naturally, the VHRM also hopes that supervisors and other actors will actually use the definitions and terms in this glossary as much as possible.
- ▶ In 2011, the VHRM worked on further agreements between supervisors and public prosecutor's offices to achieve a uniform set of codes for the various breaches of environmental law in order to enhance the uniformity and comparability of the data.
- ▶ The VHRM also pays attention to the effectiveness of environmental enforcement and wants to examine in time to what extent environmental enforcement also contributes to an effective improvement of environmental quality. Naturally, this should be placed in its overall context of the policy chain (set policy objectives, policy implementation: licensing policy/other instruments such as levies, and evaluation/adjustment of the policy that was initially put forward).

Through various instruments, including workshops and congresses, the VHRM itself has tried to foster the improvement of environmental enforcement quality, including in 2011. In 2011, for instance, a congress on targeted supervision was organised, among other things.

In the present environmental enforcement report a number of points of focus have again been identified which the VHRM wants to devote attention to in the future. Specific elements that were put forward and will be focused on by the VHRM include:

- ▶ The fact that the figures show that increased scale and specialisation are important. This was deduced among other things from the figures relating to local police supervisors.<sup>88</sup>
- ▶ A similar conclusion could be drawn with regard to the municipalities. Here as well it struck that the smaller the number of inhabitants of a municipality, the larger the percentage share of the

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86 See the different actions on the VHRM website: <http://www.vhrm.be>.

87 <http://www.vhrm.be/voor-de-toezichthouder/glossarium>

88 The smallest police district did in fact not have any supervisors at its disposal, see Table 8 in Chapter 2.

number of municipalities without municipal supervisor.<sup>89</sup> This is not surprising in se, although the VHRM considers it a point of focus how this necessary scale increase in view of a more effective enforcement can actually be realised both with local police supervisors and municipal supervisors.

Another striking element that is apparent from the figures in this report is that only very limited use is made of the possibility to submit a petition to the provincial governor to impose administrative measures.<sup>90</sup> The mayors within the municipalities, on the other hand, receive a lot more petitions to impose administrative measures.<sup>91</sup> Therefore, this raises questions about the effectiveness of this instrument (imposition of administrative measures through petition to provincial governor), since it is hardly used in practice.

- ▶ A striking element is that the figures also show that the administrative measures imposed by the mayors are acted upon relatively well. In 2011, only 7 of the 142 administrative measures imposed by the mayor were not implemented in time. It seems interesting to learn from this positive compliance with administrative measures imposed by the mayors. This is even more the case now that the compliance with safety measures imposed by the mayors seems to be much more problematic. Although the number of imposed measures is relatively low in 2011 (14 mayors indicated having imposed 26 safety measures) and by consequence also the statistical reliability, it is striking that only 57.7% of the safety measures were directly complied with. For 42.3% of the imposed safety measures the mayors indicated that it was impossible to have the measure carried out within the imposed term. It seems interesting to check which specific problems occur in the implementation of imposed safety measures and to connect this to a better compliance of administrative measures.
- ▶ The data of the public prosecutor's offices show that, in 2011, 4.78% of the cases were given an amicable settlement and that a writ of summons was also issued in 2.83% of the cases which the public prosecutor's offices received in 2011. It seems interesting to the VHRM to check whether it would be possible to gain an insight into the total number of writs of summons and amicable settlements (irrespective of the time when the official report was received). An insight into the amounts of amicable settlements and into how and when these were paid seems interesting as well. The same goes for the sanctions that were ultimately imposed by the trial judges. In consultation with the Flemish environment magistrates the VHRM will try to examine whether these data, that can provide further information about the practice of imposing sanctions, can be found out as well.
- ▶ As indicated earlier, one of the points of focus for the VHRM continues to be the flow of cases within the AMMC. It was already indicated that there are reasons to assume an optimistic scenario in this respect. However, at the same time this flow within the AMMC should be closely monitored, since it is important for a good functioning of the imposition of administrative fines for environmental breaches.
- ▶ As announced in the Environmental Enforcement Report 2010, an optimal coordination between criminal and administrative enforcement is of major importance. Within this framework the VHRM has worked to update the Priorities Document on the Prosecution Policy for Environmental Law in the Flemish Region of 30 May 2000. Meanwhile, a new concept of this Priorities Document has been tabled which takes account of the Environmental Enforcement Act and the Classification Document drawn up by the Board of Procurators General in 2010. The VHRM intends to make sure that a new Priorities Document will be signed in 2013.

89 See Chapter 2, Table 28.

90 See Table 13 in Chapter 2.

91 See Table 17 in Chapter 2.

Furthermore, the VHRM will pay attention to the following elements in 2013:

- ▶ In 2013, the VHRM will again evaluate the environmental enforcement policy and present the main lines and priorities of environmental law enforcement policy, among other things on the basis of the Environmental Enforcement Report 2012. Also in 2013, the VHRM will create the framework within which environmental enforcement actors can hold consultations, including in plenary meetings and working group meetings.
- ▶ In addition, the working groups will not just translate recommendations into work methods which may serve as guidelines to support environmental enforcement practice, but will also develop several models which may help supervisors in carrying out their duties.
- ▶ In 2013, the VHRM will also continue to enhance the support for environmental enforcement and participate actively in the international and European enforcement landscape, for instance by organising the Environmental Enforcement Networks conference, together with its international partners.
- ▶ Moreover, the VHRM will keep actively monitoring the advisory opinions formulated within the framework of the evaluation of the Environmental Enforcement Act. Meanwhile, the Government of Flanders adopted a concept memorandum in July 2012 in which it indicates how it intends to shape the reform of the Environmental Enforcement Act and environmental enforcement in general. It includes a number of policy recommendations which will be further developed by the VHRM:
  - ▶ In 2013, for instance, a methodology will be set up to design the strategic multi-annual programme. To this end, a new ad hoc working group will be established within the VHRM. For this purpose information will be retrieved from the IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law) network, of which the VHRM is a member and which has drawn up a Multi-Annual Strategic Programme (MASP) for the coming years.
  - ▶ In addition, it will be examined by the working group 'Data Collection, Innovation and Knowledge Gathering' how the enforceability of regulations can be improved.

In 2012, the VHRM already devoted special attention to local supervision by contracting out the study 'Local Environmental Enforcement. The Implementation of the Environmental Enforcement Act at the Municipal Level' and by organising the conference on local environmental enforcement. On the basis of this study and the conference conclusions the VHRM will formulate recommendations for the Government of Flanders with regard to the organisation of local supervision.

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## Glossary of terms - abbreviations

### Enforcement actors and institutions

ALBON:	Afdeling Land en Bodembescherming, Ondergrond en Natuurlijke Rijkdommen van het departement Leefmilieu, Natuur en Energie (Land and Soil Protection, Subsoil and Natural Resources Division of the Department of Environment, Nature and Energy)
AMMC:	Afdeling Milieuhandhaving, Milieuschade en Crisisbeheer van het departement Leefmilieu, Natuur en Energie (Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy)
AMI:	Afdeling Milieu-inspectie van het departement Leefmilieu, Natuur en Energie (Environmental Inspectorate Division of the Department of Environment, Nature and Energy)
AMT:	Afdeling Maritieme Toegang van het departement Mobiliteit en Openbare werken (Maritime Access Division of the Department of Mobility and Public Works)
AMV:	Afdeling Milieuvergunningen van het departement Leefmilieu, Natuur en Energie (Environmental Licences Division of the Department of Environment, Nature and Energy)
ANB:	Agentschap voor Natuur en Bos (Agency for Nature and Forests)
AWV:	Agentschap Wegen en Verkeer (Agency for Roads and Traffic)
AZ&G:	Agentschap Zorg en Gezondheid (Agency for Care and Health)
OVAM:	Openbare Vlaamse Afvalstoffenmaatschappij (Public Waste Agency of Flanders)
MHHC:	Milieuhandhavingscollege (Environmental Enforcement Court)
SG of the LNE Department:	Secretary-General of the Department of Environment, Nature and Energy
VHRM:	Vlaamse Hoge Raad voor de Milieuhandhaving (Flemish High Council of Environmental Enforcement)
VLM:	Vlaamse Landmaatschappij (Flemish Land Agency)
VMM:	Vlaamse Milieumaatschappij (Flemish Environment Agency)
VVP:	Vereniging van Vlaamse Provincies (Association of Flemish Provinces)
VVSG:	Vereniging van Vlaamse Steden en Gemeenten (Association of Flemish Cities and Mu-

nicipalities)

W&Z: Waterwegen en Zeekanaal NV (Waterways and Sea Canal plc)

## Environmental enforcement terminology

DABM Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy

GAS Gemeentelijke Administratieve Sanctie (Municipal Administrative Sanction)

MHR Milieuhandhavingsrapport (Environmental Enforcement Report)

## Other

ANG Algemene Nationale Gegevensdatabank (General National Database)

AGR-GPS Any means of transport used by a recognised Category B or Category C manure transporter for the transportation of manure or other fertilisers must be AGR-GPS compatible at all times.

This AGR-GPS compatibility means that all recognised means of transport must be fitted with AGR-GPS equipment that is part of an operational AGR-GPS system. In addition, the signals sent by this equipment via a computer server which is managed by a GPS service provider, must be directly and immediately sent to the Manure Bank.

B.S.: Belgian Official Journal

ECO-form Document which is completed by the police during waste shipment inspections and then sent to the central Environment Service in the framework of centralised data collection. Besides the purpose of control of individual shipments, the data are used to perform operational and strategic analyses.

PIVO Provinciaal Instituut voor Vorming en Opleiding (Provincial Institute for Training and Education)

REA/TPI National IT programme for courts of first instance with applications for criminal divisions of public prosecutor's offices and registries, youth court prosecutors and registries, civil registries

FTE Full-time equivalents



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## **Annexes**

Annex 1:        Responding municipalities

Annex 2:        Responding police districts

## **Annex 1: Responding municipalities**

Aalst	Geetbets	Leuven	Sint-Pieters-Leeuw
Aalter	Genk	Liedekerke	Sint-Truiden
Aarschot	Ghent	Lier	Staden
Aartselaar	Geraardsbergen	Lint	Steenokkerzeel
Affligem	Grobbendonk	Linter	Temse
Alken	Haaltert	Lochristi	Ternat
Antwerp	Halle	Londerzeel	Tessengerlo
Anzegem	Ham	Lubbeek	Tielt-Winge
Ardoois	Hamme	Lummen	Tienen
Arendonk	Hamont-Achel	Maarkedal	Tongeren
Asse	Hechtel-Eksel	Malle	Torhout
Avelgem	Heers	Mechelen	Veurne
Baarle-Hertog	Heist-op-den-Berg	Meerhout	Vilvoorde
Balen	Hemiksem	Meise	Vleteren
Beerse	Herent	Menen	Voeren
Beersel	Herentals	Merchtem	Vosselaar
Begijnendijk	Herenthout	Merksplas	Waregem
Bekkevoort	Herne	Mol	Wellen
Beringen	Herzele	Moorslede	Wemmel
Berlaar	Heusden-zolder	Niel	Wervik
Bierbeek	Heuvelland	Nieuwpoort	Westerlo
Bilzen	Hooglede	Nijlen	Wichelen
Blankenberge	Horebeke	Oosterzele	Wijnegem
Bonheiden	Houthulst	Oostkamp	Wingene
Boom	Hove	Oostrozebeke	Wommelgem
Boortmeerbeek	Huldenberg	Opwijk	Wortegem-Petegem
Borgloon	Hulshout	Oudenaarde	Zandhoven
Bornem	Ichtegem	Oud-Heverlee	Zaventem
Borsbeek	Ingelmunster	Oud-Turnhout	Zele
Boutersem	Izegem	Overijse	Zemst
Brakel	Jabbeke	Pittem	Zingem
Brecht	Kalmthout	Poelkapelle	Zoersel
Bruges	Kapellen	Poperinge	Zomergem
Damme	Kasterlee	Putte	Zonhoven
De Panne	Kinrooi	Puurs	Zonnebeke
De Pinte	Kluisbergen	Ravels	Zottegem
Deerlijk	Knokke-Heist	Retie	Zoutleeuw
Deinze	Koekelare	Roeselare	Zuienkerke
Dendermonde	Koksijde	Ronse	Zulte
Dentergem	Kontich	Roosdaal	Zwalm
Destelbergen	Kortemark	Ruiselede	Zwijndrecht
Diepenbeek	Kortenberg	Rumst	
Diest	Kortesseem	Schelle	
Diksmuide	Kortrijk	Scherpenheuvel-	
Dilsen-Stokkem	Kruibeke	Zichem	
Drogenbos	Laakdal	Schilde	
Duffel	Laarne	Schoten	
Eeklo	Landen	Sint-Genesius-Rode	
Evergem	Lebbeke	Sint-Katelijne-Waver	
Galmaarden	Ledegem	Sint-Laureins	
Gavere	Lendeledede	Sint-Lievens-Houtem	
Geel	Leopoldsburg	Sint-Niklaas	

## **Annex 2: Responding police districts**

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Police district Aalst	Police district Lanaken-Maasmechelen
Police district Aalter/Knesselare	Police district Leuven
Police district Aarschot	Police district Lier
Police district AMOW	Police district Lokeren
Police district Antwerp	Police district Lommel
Police district ARRO-leper	Police district Lubbeek
Police district Assenede/Evergem	Police district Maasland
Police district Balen/Dessel/Mol	Police district Machelen/Vilvoorde
Police district Beersel	Police district Maldegem
Police district Beringen/Ham/Tessenderlo	Police district Mechelen
Police district Berlaar/Nijlen	Police district Meetjesland-Centrum
Police district Berlare/Zele	Police district Middelkerke
Police district Beveren	Police district MIDOW
Police district Bilzen/Hoeselt/Riemst	Police district MIRA
Police district Blankenberge/Zuienkerke	Police district Noord
Police district Bodukap	Police district Noordoost-Limburg
Police district Brasschaat	Police district Oostende
Police district Bredene/De Haan	Police district Pajottenland
Police district BRT	Police district Polder
Police district Bruges	Police district RIHO
Police district Damme/Knokke-Heist	Police district RODE
Police district Deinze/Zulte	Police district Ronse
Police district Demerdal - DSZ	Police district Schelde-Leie
Police district Dendermonde	Police district Schoten
Police district Dijleland	Police district Sint-Pieters-Leeuw
Police district Dilbeek	Police district Spoorkin
Police district Druivenstreek	Police district TARL
Police district Erpe-Mere/Lede	Police district Tervuren
Police district Gaoz	Police district Tongeren/Herstappe
Police district Gavers	Police district Turnhout
Police district Gent	Police district Vlaamse Ardennen
Police district Geraardsbergen/Lierde	Police district VLAS
Police district Gingelom/Nieuwerkerken/Sint-Truiden	Police district Voeren
Police district Grens	Police district Voorkempen
Police district Grensleie	Police district West-Limburg
Police district Haacht/Boortmeerbeek/Keerbergen	Police district Zaventem
Police district Hageland	Police district Zuiderkempen
Police district Halle	Police district Zwijndrecht
Police district Hamme/Waasmunster	
Police district Hamont-Achel/Neerpelt/Overpelt	
Police district HAZODI	
Police district Hekla	
Police district Herzele/Sint-Lievens-Houtem/Zottegem	
Police district Het Houtsche	
Police district Hoegaarden/Tienen	
Police district Houthalen-Helchteren	
Police district KASTZE	
Police district Kempen N-O	
Police district Kempenland	
Police district K-L-M	
Police district Laarne/Wetteren/Wichelen	
Police district LAN	

## **COLOPHON**

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### **RESPONSIBLE EDITOR**

Prof. Dr. Michael G. Faure LL. M.  
Chairman of the Flemish High Council of Environmental Enforcement  
Koning Albert II-laan 20 bus 15  
1000 Brussels

### **EDITORIAL**

An Stas  
Permanent Secretary of the Flemish High Council of Environmental Enforcement

### **COVER DESIGN**

Nadia De Braekeler  
Graphic Designer in the Digital Printing Division of the department of Administrative Affairs

### **LAYOUT AND FORMAT**

Laila Macharis, Management assistant of the Flemish High Council of Environmental Enforcement

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Vlaamse Hoge Raad voor de Milieuhandhaving  
Koning Albert II-laan 20 bus 15  
1000 BRUSSEL